

**Queen Ka'ahumanu Highway Widening Project**  
**106 Consultation Meeting**  
**February 8, 2020**  
**9:30am to 4:00pm**  
**NELHA meeting room**  
**Kona, Hawaii**

**1. Pule**

Kekoa Nazara (Kekoa) opened the meeting with a Pule.

**2. Welcome and Introductions**

Faith Rex (Faith) started the meeting. Everyone went around the room and introduced themselves, their organizations, and their roles.

In attendance:

- Tanya Lizama, Ala Kahakai NHT
- Amanda (Mandy) Johnson-Campbell, Ala Kahakai NHT
- Lauren Morawski, OHA
- Rick Gmirkin, Ala Kahakai NHT
- Susan A. Lebo, SHPD
- Isaac (Paka) Harp, Makani Hou
- Fred Cachola, Makani Hou
- Aric Arakaki, Ala Kahakai NHT
- Kekoa Nazara, Kona Hawaiian Civic Club
- Kiersten Faulkner, Historic Hawaii Foundation
- Jeff Zimpfer, Kaloko-Honokohau NPS
- Harry Takiue, HDOT
- Pua Aiu, HDOT
- Julann Sonomura, HDOT
- Marshall Ando, HDOT
- Richelle Takara, FHWA
- Amy Ford-Wagner, FHWA
- Lisa Powell, FHWA
- Faith Rex, SMS
- Anna Pacheco, SMS

Called in by phone (9:30am to 11:45am):

- Mandy Ranslow, ACHP
- David Clarke, FHWA

## Welcome

Marshall Ando (Marshall) was glad to see everyone and welcomed everyone including new faces. He appreciated everyone spending Saturday there and looked forward to a good and productive discussion.

Richelle Takara (Richelle) also thanked everyone for being there. Her goal was for a collaborative solution to reach everyone's goals and she looked forward to working together.

### **3. Meeting Protocols**

Faith reviewed the agreed upon protocols: Kapu Aloha. Respect what is said. Focus on the issue not the person. Respect everyone's time, as part of respecting time, the meeting must end at 4. Cell phones on silent. Faith also explained "parking lot issues". This is when things come up and the group wants to address them later; then they will be added to this list.

Fred Cachola (Fred) shared that the state legislature codified aloha spirit. Fred reviewed this definition with the group.

Isaac Harp (Paka) announced that they agree with proposed Amendment 1 but requested proposed additions be inserted within brackets, and deletions be struck with line out rather than deleted. Paka also stated that they disagreed with proposed Amendment 2 and needed a future meeting to discuss this. Additionally, Paka pointed out there is a lot of unfinished business. A review of original stipulations needs to be done as they do not think they are complete. Paka wanted to know who makes the final decision. Also, there has yet to be an explanation of how the breaches to the buffers occurred. Paka stated that it is unacceptable that HDOT has not cited accountable parties. He stated they are prepared to file official complaints as laws were broken. They entered this process with an open mind and in positive spirits. Historical properties were damaged, and they believe attorneys have multiple complaints they could bring to the table to file a lawsuit if that is what is needed to get a settlement.

### **4. Review of Agenda**

Faith reviewed the agenda and said she would like to move on to review Amendment 1 and go over the comments.

### **5. Comments on Amendment 1 that will extend the time beyond March 2020**

Lisa Powell (Lisa) said they received comments using track changes from Kiersten Faulkner (Kiersten) and Amanda Ranslow (Mandy R), that were included in the document being reviewed. Fred Cachola also provided comments via email. Lisa also said that they were planning to address some of Makani Hou's comments in the Amendment 2 portion of the day but could discuss them sooner if preferred. The group moved forward with Amendment 1 comments.

### **WHEREAS, the Area of Potential Effect...**

Mandy R had a comment written in this section. Lisa pointed out that there was a change made to address this. An additional question from Kiersten and Susan Lebo (Susan) was raised over inconsistent use of the terms "project area" and APE, which were being considered interchangeable. It must be stated that these are the same thing if they are or clarified if they are not.

**WHEREAS, the State Historic Preservation Division (SHPD)...**

Lisa addressed the written comment and correction in this clause requested by SHPD. This change was okayed by the group.

**WHEREAS, the SAIS...**

Fred raised his concern that the wording makes it seem as though all consulting parties walked the APE when only one did. Fred was concerned saying no comments were made was inaccurate because not everyone walked; 5 were invited, 4 did not attend, and no notes were taken. He also felt the wording gave the impression the consulting parties didn't care and that it gave a negative impression of consulting parties. Paka proposed the rewording of this clause to address these concerns. Paka added that he was offered the opportunity but could not make it. Later, Cynthia called him (Paka) and advised him there was "no comment".

Paka asked if the supplemental archeological survey was done before or after the damages. Susan said the survey was done after the disturbance for the entire revised APE. Paka pointed out that if that is the case, the survey wouldn't identify the condition prior to disturbance so it would be ineffective at identifying cultural significance prior to the breach. Susan said she would have to check her notes to find the condition of the properties at the time of the SAIS.

Susan recalled doing a walkthrough and wanted that included in the record. Lisa mentioned that was not the entire APE only partial. There was debate as to whether to record this in the whereas clauses of Amendment 1 or Amendment 2. It was agreed that this would go into the list of meetings and attendees that would be added as an attachment to Amendment 1.

Aric tried to clarify what "whereas" belonged where. The "WHEREAS" clauses should relate to the "NOW THEREFORE" closing paragraph. The clause, "WHEREAS, two historic trails (Sites 00002 and 10714) were damaged..." is more appropriate in Amendment 2. He felt other changes were needed as well. Aric suggested he would go through and make recommendations as to re-organizing. Fred pointed out the clauses need to explain why the Amendment is needed and it is because nothing happened.

Susan stated that we needed to include the dates of execution of events but suggested that it be included as an attachment of site visits and consultations rather than in WHEREAS clauses with dates, names, notes outcomes. Fred stressed the need to include outcomes or state that there were no outcomes. Paka agreed that creating a historical document would be a very effective way to avoid similar issues in the future and thanked Susan for the idea of creating an attachment with a timeline table.

Kiersten wanted it noted that the consulting parties received the draft SAIS, either in the clause or if removed, in the timeline. This was left out of the clause. Paka said he did not receive a copy of the SAIS.

**WHEREAS, the National Park Service...**

Fred wanted to know where the signage would be. Lisa stated the signs must be installed within the boundaries of the park. Fred wanted to see the map because he was concerned that this would place the signs too far to be seen. Jeff said the Stipulation stated in the park but its up for discussion exactly where. Fred was concerned the park is too far away from the road. Jeff was assuming the signs were meant to be read by folks inside the park not on the road. Jeff reported that Harper's Ferry (in charge of the signs) has some ideas and will schedule a meeting about sign placement. Fred said that this was the problem creating confusion, because Native Hawaiians have not been consulted at all on this. Fred was disappointed with hearing "it's okay, we'll do it later" and then a lack of consequences. This is not acceptable anymore.

Faith mentioned, the next portion of the Amendments will set more dates for actions.

Susan requested a copy of the executed MOA between highways and NPS and also requested a specific clause addressing consultation with consulting parties over the location and language of signage.

Lisa explained the MOA was just for transferring the money. Pua and Jeff both explained consultation is already required in the STIP and MOA. Jeff said he was currently working to schedule a meeting to work on signage details. Fred was still frustrated there was no information or details for them. Fred stated that certain recommendations from the Spirit Report require consultations with Native Hawaiians, but Fred wanted to know who will be in the room. The signs are Hawaiian culture related. Jeff explained no decisions were made, and options and ideas would be laid out for Fred and Paka and whoever else. Fred asked how a budget could be established without consulting them. Richelle pointed out that it's a starting place for the process. Fred was still disappointed. Paka accepted that they will be consulted moving forward on the signs and no decisions have been made yet. Aric agreed that nothing is set in stone and that funding was needed to start the concept planning and consultation. Fred wanted to know who determines at what point the consultation begins because it seemed to be reduced to nearly nothing and was not good enough. Fred said the language needed to be more specific.

Tanya mentioned adding location consultation to the clause, but Faith mentioned she didn't know if this could be included in that document as it was in an agreement with NPS. Faith believed the meeting to discuss this would happen soon, according to Jeff, and Jeff agreed. Faith acknowledged the significant disappointment in the delay and lack of more consulting on the signage process from Fred and Paka.

Kiersten suggested adding to the clause that the consultation should happen early in the process for the signage. Fred felt they should have sat down to discuss the signs PRIOR to execution of the MOA with NPS.

Paka also wanted to know who will be involved because some Native Hawaiian individuals or groups don't understand or represent the same goals. He wanted to be sure to avoid issues encountered with the terrain model.

**WHEREAS, several stipulations...**

Paka wanted to know, who was responsible for the additional costs incurred due to project extensions. What are the penalties for delays? He wanted to ensure the MOA had a timeframe that is respected with assigned responsibilities especially to additional costs. Fred agreed and wanted accountability, because its lack is why "I'll do it later" was okay.

David Clarke (David) explained that as the Federal Preservation Officer, he was responsible for compliance with Section 106. When there is a problem with an agreement document, unfulfilled commitments, time has lapsed and we're in the process of doing Amendments, David's position could be identified as the person responsible in Amendment 2 to ensure all parties follow through on commitments in agreements and Amendments. This would allow David's office to stay engaged and maintain oversight.

Paka wanted to know if there were any penalties for failure to meet the original requirements because this causes injuries to the original consulting parties who participate as volunteers. Now, another 5-years of expenses because the MOA party didn't fulfill the agreement.

David said there are penalties. Mandy R at the Advisory Council, is responsible for ensuring federal agencies follow Section 106. If FHWA did not adhere to the MOA the Council would be responsible for compliance. David said he would never risk the national program over this, so with him committed to this, it would be followed up on. Mandy R stated she looked forward to working with David to figure this out and felt HDOT was making a good faith effort to comply.

Paka thanked them for their comments but stated he didn't feel any relief.

Lisa confirmed that the Stipulations clause would be edited by adding a table in Amendment 2.

Fred wanted to clarify that these issues needed to be addressed one by one. Pua said the complaint belonged under the existing MOA as it was a complaint under Stipulation 18. Fred felt too many things were being placed into one document.

Susan felt the clause was necessary. Amendment 1 is being done to extend the time on the MOA and these stipulations with status were necessary, but expansion of the stipulation issues would be addressed further in Amendment 2.

Paka stated that the group needed to schedule a time to discuss the unfinished business as it directly related to the Stipulations.

Fred pointed out that completeness of Stipulations has been determined by HDOT so they have had no voice. Kiersten said she made a comment about this as well, later in the MOA, and she would like to discuss solutions.

Kiersten liked the chart in Amendment 1 as an attachment and liked the layout of the agreement on status of mitigations even if they are not agreed upon. As a reminder, Richelle stated the Amendment must be executed by March 17. This is needed to get more time. Kiersten agreed this created a challenge on completion/readiness. Richelle said signatures need to start next week. Kiersten believed

the table already looked alright but understood if it couldn't be finalized it could be included with Amendment 2.

Faith requested to finish up the whereas clauses and move on to the therefore clauses.

**WHEREAS, FHWA determined that the damaged sites...**

Susan said would confirm the SHPO determination in this clause.

There was discussion and questions from Susan and Mandy on the impacts of the misplaced and breached buffers. Pua said there were construction buffers but no additional permanent buffers, the construction and permanent buffers were the same. The construction buffers were breached and that was never expected.

Faith clarified that according to the language in the Amendment, the buffers were not considered part of the adverse effects.

Paka said the buffer zone was adversely affected and this was an adverse effect to the natural setting of the historical area. Fred asked who determines adversity? Lisa responded that it is FHWA with SHPO concurrence. Fred said that stating it was not adversely affected did not state the opinion of everyone. Not consulting with others again. Fred wanted to keep a record of how many people agree with the effect.

Paka wanted all signatories to be involved in decisions on the project and within Section 106. He emphasized that we live in a democracy and that democracy should be included in the Section 106 consultation process. Everyone should have a vote. Currently, it is a process of dictatorship.

Susan stated that even if the buffer breaches are not declared as an adverse effect/impact did that mean HDOT couldn't mitigate for the breach? Noncompliance in mis-locating the buffers combined with breaching the buffers should maybe require mitigation even without adverse effects. She questioned whether this warrants mitigation.

Lisa requested David's opinion on this. David explained a cultural place could be impacted, or places around this area, and there are specific commitments in the Section 106 document related to landscape and environment (take down a tree: example, put up a tree) such as natural areas outside of the historic properties must retain their look or are "redone" or restored.

Lauren requested at least for the record that photos be reviewed of the original state of the area.

Kekoa said there were supposed to be two buffers, then they were damaged or altered. All parties were meant to work in good faith. As an example, he said if you do something on your neighbor's property line, you try to restore it for them. This would not need to be legislated if it was taken care of. Not doing that is not working in good faith.

Lisa asked about sensitivity of restoration of buffer areas due to their cultural significance. Could they even do work in this area to restore them? Susan said it would have to be considered site by site.

**WHEREAS, consultation to address mitigation...**

Fred did not like the use of the word “on-going”. Paka suggested dropping the word.

**WHEREAS, during the one (1) year afforded...**

Fred commented that “good faith” is challenging because he has low trust after 8 years on this project. Fred requested good faith be defined and agreed upon in the document.

Susan raised concern over the term “breached” sites. The group considered using “breached” or “damaged” or listing all site locations. Pua agreed to add in the actual site numbers into this clause, and to look at and consider the breach buffers zones for rehabilitation.

There was discussion between Susan and Paka over the status of temporary and permanent buffers. Susan said the development of permanent buffer zones would be established and discussed in a preservation plan.

**NOW, THEREFORE...:**

Lisa responded to Mandy R’s review comment and said, “Projects” refers to the two project titles referred to in the title. They will add the specific project titles into the clause for clarity.

Faith invited David and Mandy R to make comments before signing off.

David wanted to move forward on Amendment 1 to extend the time frame to continue conversation on Amendment 2 and the mitigation in Amendment 2. He thanked everyone for taking the time on a Saturday, and felt it was extremely productive. Federal highways will continue to consult to extend the time with Amendment 1 and complete Amendment 2 to address affects. He will continue to be engaged and reminded to be referenced in Amendment 2 for oversight purposes. He also encouraged teleconferencing for some meetings to increase efficiency.

Mandy M said she looks forward to continuing to work on this and is committed. She hopes to receive consensus soon and said she understands that language matters and pushed folks to take comments from the Native Hawaiian organizations very seriously.

David and Mandy signed off at 11:45am.

Paka reminded that there are some disagreements on Stipulations marked as complete that are not complete in everyone’s opinion that need to be addressed specifically.

Richelle said to make a broad statement about Stipulations so they all could be discussed and addressed. Pua agreed they have left it broad to allow for this. Fred agreed that he likes it broad because it could include other Stipulations and any or all that they have disagreements over.

Paka did not believe Amendment 2 could be agreed upon this month and wanted to ensure there was time to reach consensus. There was some confusion and discussion over timeline. Richelle said Stipulations will be agreed upon within 1 year.

## **Stipulation 2**

Rick and Mandy raised concerns over the list of trails included. Pua said there is a table list of all trails. There was some discussion over whether or not to name specific trails or if just stating “all trails” was sufficient. It was agreed by group that “all trails” (do not call out the Māmalahoa Trail) is best.

Susan was concerned with use of the word “Project”. Need consistent use of project for clarity.

Kiersten was concerned that she asked earlier if APE and project area are the same and the response was yes, however the APE seems to have additional areas on the map. There is a need for clarification throughout regarding what is included in the APE and project area. Pua agreed they will work on the clarification. Kiersten was also wondering what map the area letters are referencing but maps had numbers. Pua agreed they need to make all the maps and language consistent with labelling.

Susan was also concerned about the Attachment 2, Page 1 of 1, Map. The outline and map elements were hard to distinguish. There needs to be more contrast. Pua agreed they will change the color. Susan also wanted things labeled and agreed that the additional colors will be effective. Pua will make maps clearer regarding borders, labels, APE, and original project area, additional project area etc.

## **Stipulation 11**

Paka wanted to reiterate using line out for deletions and brackets for additions. But the group said this is an addition. Paka requested then removing the word “delete” and the group agreed. This will be done throughout.

Mandy wanted to identify trails that are within the project area. Pua agreed.

## **Stipulation 20**

Susan asked what “applied for” meant. Pua responded that parts still needed to be cleaned up. There were no other issues, just clarification.

## **New Stipulations**

Kiersten said the intent of this is what happened and how can we ensure it didn’t happen again. Also, how to move forward and spell out commitments moving forward. Kiersten expressed the need for top leadership to be in the room at some point to express intent to solve problems and commitment to improvement.

Susan said agreement of Signatories need to be called out.

Lisa said these additional Stipulations are good, but they don’t feel there is time to include these. Kiersten said okay but we need to include a process timeline and commitment into Amendment 1. Paka agreed. Pua said there is one year to do Amendment 2, but for Amendment 1 she didn’t feel there is time to develop a schedule. Kiersten suggested a clause requiring a consultation schedule/protocol be developed immediately or within 3 weeks after execution. The consulting parties were concerned of

scheduling continuing to slip. Need consult schedule and reporting schedule. Kiersten wanted changes laid out for every mistake that has been made. Pua said yes but this is systemic and goes beyond this issue and is being addressed on a higher level. Pua also explained they are undergoing a larger process PA. Susan asked if it will be tied to this project at all. Pua said this is one of the learning experiences included. After Action Analysis could be included as an intended piece of the process PA that is planned. Susan said this needs to be codified and recorded as a requirement. Susan discussed some of the issues she notices reviewing the procedures and internal issues, such as hand-off and follow up by responsible staff and groups. Kekoa wanted accountability and guidelines to assure progress, learning from mistakes.

Richelle asked about moving new Stipulations into Amendment 2. Susan is concerned about having no inclusion of these plans in Amendment 1. Kiersten said you at least need to include a Stipulation with timeline for Amendment 1, you could keep timeline for Amendment 2 (Stipulations) in Amendment 2. Fred said we need the timeline in Amendment 1 for accountability.

Lisa suggested preparing a schedule for Amendment 1 or including an intent to create one in 30 days or something similar. Discussion on agreement of deadline for schedule.

Agreement to have a draft schedule by April 1<sup>st</sup>. All parties agree.

Tanya requested a clarification between SHPD and SHPO.

Kiersten said she would like to return to the issue of after-action analysis after lunch, as she still thought it needs to be clarified if it should be Amendment 1 or 2.

## **6. BREAK FOR LUNCH**

Returned from lunch break @ 1:13

### **[Continuation of pre-lunch discussion of NEW STIPULATIONS]**

Lisa said the group had discussed and that there will be a report by April 1 including a schedule and a schedule for an after-action analysis.

Paka requested that the schedule include follow up on unfinished business and review of disagreements on completion of mitigation issues.

Lisa/Richelle/Pua agreed.

Richelle wanted to know how much time the parties need to review Amendment 1 as corrected. Susan said SHPD will be busy all next week. Lisa said they will send it out next week. Kiersten wanted to review it. It is agreed that all parties will review within 3 business days to confirm all changes have been made. There will be no new business on next draft of Amendment 1 as it needed to go out for signatures right away.

## **7. Discussion of DRAFT Amendment 2**

**a. Overview of process starting from the last meeting**

Richelle started by reminding everyone that at the last meeting she and Marshall Ando said they didn't believe everything in the proposal would be a mitigation type action and could be included as something else and funded another way or through another grant option.

Paka said they want the mitigation funding not alternatives.

Lisa said these grants are just something that could help achieve the vision of those in the room. Lisa believes HDOT and FHWA better understand the overall vision now, even outside of the project area, and these funds may be helpful in supporting some of this work.

**b. Discussion of Transportation Alternatives Program (TAP)**

Amy presented information about the TAP funds. About \$1.9 million a year for Hawaii. Money is not meant for state government. Is meant for local agencies or land management agencies such as the National Park Service for related bike or pedestrian projects.

Lisa reviewed some of the desired projects from the coalition mitigation proposal for the damaged sites and addressed which could be eligible for funding through TAP funding. All except oral history and HDOT historical expert position could likely be funded with TAP.

Susan asked for match requirements. Requires a 20% match.

Pua said if you are interested in pursuing this, they are willing to put on a workshop to put together partners to discuss project planning and funding. Susan said they have \$50,000 in eligible funds that could be applied to this annually.

Aric said managing something like this might be challenging due to limited staff, but they could possibly bring on more staff.

Paka wanted to know if HDOT is trying to "pass the buck" to this grant program and other organizations and only repair one small section of the trail. Amy said this is meant to be an information sharing session about the program as an option, not a proposal.

Paka asked if HDOT could provide the matching funds. Pua said no. Lisa and Amy confirmed. HDOT could not provide the matching funds or be the recipients.

Amy reviewed again fund recipients and who is eligible. Pua and Amy clarified that state could not apply but counties and cities could. Pua reiterated that they could host a workshop for partners to review all specifics.

Faith said there is enough interest for more discussion on this in a separate specific meeting or workshop. Moving on to discussion of Amendment 2.

**c. DRAFT Amendment 2**

**i. Presentation of DRAFT Amendment 2 and Open discussion/questions on Amendment 2**

Pua reviewed photos distributed in their presentation. The first photo showed the trail close up, covered in fountain grass. The second photo reviewed plan: document the breach, clear vegetation, (though how is still up for discussion), develop preservation and development plan within the HDOT right of way. Fred asked why they selected that 1000 feet. Pua said we could discuss what will be included but this will be the process no matter what section is chosen.

Pua reviewed Stipulation 26 in Amendment 2. Within 2 years of Amendment HDOT shall develop a plan/agreement to address identification of APE for large projects, better projections and more timely communications. Kiersten expressed concerns over “stacking” this into another agreement. Fred had concerns about moving this with Amendment 1 to Amendment 2. He felt it should be considered in isolation. Susan saw this as a deliverable - an agreement of how these issues can be avoided in the future. This could be seen as a way of reviewing each issue and ensuring change. Fred still felt this was too complicated to include in Amendment 2.

Paka felt this didn’t belong in the MOA at all. This is just an internal process for HDOT and not an issue for the MOA.

Kiersten felt there are two types of mitigations, “we broke the trail, fix it” and “why did it happen? fix it”.

Tanya wanted to know if comments will be able to be made on the agreement between HDOT and SHPD regarding this new process agreement. Pua explained that it is being considered a “programmatic” agreement and that it will include consultation. Pua agreed to include that in the wording.

Paka raised concern over processes and interagency communications as well as responsibility for the project. Marshall reiterated that HDOT takes full responsibility for the project mistakes and failures. Whether it was the mistakes of staff or subcontractors or consultants or SHPD. HDOT takes responsibility.

Paka requested full disclosure of where the mistakes occurred that led to the damages and who was responsible. Paka asked Marshall for an account of this.

Marshall and Richelle stated they have an account of events.

Paka asked if they will release who is responsible - individuals and companies.

Marshall said they are not planning to release information on individuals and contractors, as it was their project. HDOT is responsible. We hire contractors, we are responsible. If they mess up then we mess up. We are responsible.

Paka said that this leaves them no choice but to bring legal action. He explained that without knowing who is responsible for the mistakes they feel the issues cannot be avoided in the future. They want to know who chose to leave out the walls or who made the mistake. They want to review drawings and plans and trace down who is responsible.

Marshall wanted to know what identifying who is specifically at fault will do to solve the mitigation issue.

Paka wanted to know so they could work with these responsible parties to deal with the issue. Was there collaboration between RM Towill, Goodfellow and HDOT? Were any retaining walls left out? Pua stated that at the last meeting, in her presentation it was pointed out that the retaining wall required by 4(f) near the National park entrance was left out of the drawings, and that is why the Māmalahoa trail was breached in that area. She pointed out that her presentation included the construction drawings relevant to that issues.

Paka noted that he had asked for full sized construction drawings. Julann responded that they only have half sized drawings, which had to be specially printed. Construction managers in the field use electronic versions for the drawings. There was extensive discussion over access to the drawing and original construction plans. Paka wanted full size plans for review, but HDOT said they are not available because they are now using digital formats.

Paka discussed resubmitting their mitigation proposal. He was hoping to show cost reduction in implementation through partnerships with different departments and organizations may allow for more of the work to be completed.

Fred reviewed the UH oral history project. It is for the entire Kekaha region, whereas their interest was the distinct significance of the trail system. As the Kupuna are lost he explained that we are losing the history. Fred saw this oral history as an entire network system that is knowledge you won't find anywhere else. Where are the trails, who used them, when, how often? Fred very specifically wanted a focused detailed oral history on trails. He believed the request lacked clarity.

Pua stated they were going to amend to UH MOU project to add this.

Fred said he didn't feel it could just be added on to an existing project with previously established funding.

Pua said they will look at this and reconsider. No decision on this yet.

Paka requested a dollar amount the HDOT is willing to place on mitigation for the project.

Pua said they are working on this. Waiting on a budget from Cultural Surveys. It was pointed out that this is the same consultant who misidentified the number of cultural sites. Paka said that we have the "two biggest problem children in this, RM Towill and CSH". Marshall acknowledged their concerns and said it would be taken into serious consideration.

Paka asked for the dollar amount when they have it and Marshall said yes but to understand it will be based on the assumption that they are moving forward with the mitigation projects currently being considered and the plans may change.

Fred spoke to the desire to preserve the few cultural sites that are left, and cumulative damages done by HDOT. We're not dealing with what is commensurate but dealing with what is lost every day. Fred has a plan to deal with commensurate and cannot ignore the cumulative damage that occurred over the years. "You just take one at a time until they're all gone. I hope you can understand some of the passion that goes into this."

Mandy brought oral history back up. She wanted clarification on what is included in this. Pua responded with the explanation that it is a miscommunication and more work needed to be done now to decide what the outcome of this will be. Julann suggested the following meeting with UH include the larger group to avoid miscommunication. Fred said the meeting he was at did not address inclusion of trails in the oral history at all.

Paka expressed the need to speak to Kupuna right away as there is nowhere else with this information. It would be unrealistic to only speak with 5 kupuna every 2 years as they are passing away and they are the last that know. Julann addressed the need to include this in the MOA with Hilo if it is to be included. Paka also brought up the need to curate artifacts harbored at UH Hilo.

Faith suggested the group consider what is the best use of their time for the next 45 minutes as the meeting will end at 4:00.

The group decided to review changes and agreements on Amendment 1.

Paka and Fred requested an unofficial, simplified, document summarizing the original MOA with the effective Amendment changes being proposed shown as track changes.

Fred reminded the group about his request on the wording change around consultants not attending the walk through, Pua and Richelle said the "WHEREAS, the SAIS was accepted..." clause will be removed and replaced with a chart.

Paka requested the "WHEREAS, the State Historic Preservation Division..." clause will be adjusted to say "post" construction. There was some discussion over when grading of various areas occurred. Paka asked when surveys occurred, before or after grading. Pua said that it varied. Paka would like to know specifically. Pua thought this will be included in the table. Paka wanted to know when which portions of the areas were graded. Pua said some were and some were not graded. The wording "during construction" is discussed for appropriateness. Susan said you would have to go back to the supplemental AIS to see what grading was completed before the survey. Paka wanted to know who produced the AIS, and Susan answered it was Cultural Surveys.

Susan reviewed more specific changes including adding NPS date of execution and that the chart list full site numbers instead of "damaged sites."

Group discussion returned to possible adverse effects in the buffer zones.

Paka referred to David's earlier comments that restoration may be necessary. Richelle said this did not apply under Section 106 but it potentially did under NEPA. Tanya and Mandy referred to the different elements of place that must be maintained.

There was re-consideration of the footnote on the definition of "good faith." Fred wanted a definition included. Richelle requested Fred to send one for inclusion. Fred wanted to see what they come up with first. Richelle requested one be sent to them if they would like it included.

Paka inquired whether the UH MOA is extended for 6 years as well. Pua confirms it will be.

Discussion of map changes and table of all trails included. Requested changes were confirmed.

Jeff said early next week discussion will begin on signage at NPS.

The word "deleted" will be removed throughout.

## **8. Additional time for Discussion of DRAFT Amendment 2**

### **9. Open discussion/questions**

- d. MOA Stipulations/Makani Hou Objection
- e. Notes from last meeting
  - i. Not reviewed.

## **10. Next Steps**

Lisa said by February 14<sup>th</sup> the MOA will be distributed by email. And by February 20<sup>th</sup> all comments will be submitted. Then finalized.

Concern was expressed by Susan that changes made won't be able to be reviewed again.

Kekoa asked if the cost of mitigation issues will be divvied out to responsible parties such as Goodfellow or other companies. Marshall said any issues with cost and subcontractors were addressed in change orders.

Next meeting was discussed.

Possible conference call or video conferencing. Saturday mornings best. Paka highlighted that the group is running out of time so its more efficient to have meetings via phone. Paka suggested a call on the 15<sup>th</sup> to discuss the updated Amendment 1, but Pua and Richelle clarified after this round of updates comments will be provided by emails, there will not be another meeting on Amendment 1.

Kiersten suggested that February 29<sup>th</sup> may be a good time to meet on the letter of objection since it is in-between the Amendment 1 completion and the release of the schedule.

All agreed. Set meeting for 9:00am to 12:00pm on the 29<sup>th</sup> of February. Paka expressed his desire to figure this out and end it once and for all. Paka said he will send out the meeting information for the conference call. He needed emails for anyone interested.

Paka clarified this meeting is only to discuss the complaint and response.

#### **11. Review of Meeting**

#### **12. Thank you**

Richelle said thank you and that it was always a learning experience.  
Marshall said likewise and thank you for today. He felt there was progress made and was grateful for everyone being open and honest.

#### **13. Pule**

Kekoa closed the meeting with a pule.

Mahalo and Aloha

**END 3:40pm**

AMENDMENT ONE TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION

AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
District of North Kona, Island of Hawaii, State of Hawaii  
which are known as the Queen Ka'ahumanu Highway Intersection  
Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole

WHEREAS, the Memorandum of Agreement for the Queen Kaahumanu widening project, Kailua to Ke'āhole and the Queen Kaahumanu Highway Intersection Improvements for the Kaloko-Honokōhau National Park (MOA) was executed on March 17, 2015; and

WHEREAS, the MOA is for a period of five (5) years from the execution of the MOA unless amended pursuant to Stipulation 21 of the MOA; and

**Deleted:** duration tenure of the

WHEREAS, the Area of Potential Effect as defined in the 2015 MOA did not include intersection stub out improvements, some staging areas and the connection of Phase 1 and Phase 2 of this project; and

**Commented [mmr1]:** A map or more detailed explanation of this may be helpful.

WHEREAS, FHWA delineated and the State Historic Preservation Division (SHPD) concurred with the revised APE on January 6, 2017 (Attachment 1), and requested a supplemental Archaeological Inventory Survey (SAIS) which HDOT commissioned and;

**Deleted:** approved

WHEREAS, the SAIS was accepted as final by SHPD on March 19, 2017 and consulting parties were given the opportunity to walk the revised APE on May 5, 2017 and had no additional comments to either the APE or the SAIS; and,

WHEREAS, the National Park Service (NPS) has offered to design and install the interpretive signs within the boundaries to the Kaloko-Honokohau National Historical Park, as required by Stipulation 11, and the FHWA and the NPS have executed a MOA transferring funds to allow the NPS to complete this stipulation; and

WHEREAS, several stipulations of the MOA have not been completed; and

**Commented [mmr2]:** A table showing stipulation status would be helpful here. It can be an attachment.

WHEREAS, two known historic trails (Sites 00002 and 10714) were damaged during construction and three site buffers were breached (Sites 19947, 28783, 28811); and

WHEREAS, FHWA determined that the damaged sites are an adverse effect in a letter to SHPO and ACHP dated August 3, 2017; and

WHEREAS, consultation to address mitigation for the adverse effect to the Mamalahoa Trail (Site 00002) and the Trail to Sea (Site 10714) is on-going and will be addressed in a subsequent future amendment; and

WHEREAS, during the one (1) year afforded by this Amendment (Amendment One), the Signatories and Consulting Parties agree to work in good faith to complete Amendment Two. Amendment Two will include Stipulations to mitigate the breached sites, a six-year extension to allow for the completion of Stipulation 5.B Native Hawaiian Cultural Outreach and Education; and will address necessary modifications to other Stipulations.

NOW, THEREFORE, in furtherance of the above recitals, the FHWA, the SHPO, the ACHP, the National Park Service, and HDOT agree that the Projects shall be implemented in accordance with the following amended stipulations in order to take into account the Projects effect on historic properties:

1. **Stipulation 2** of the MOA shall be deleted and replaced with the following text:

AREA OF POTENTIAL EFFECT. The Project's Area of Potential Effect (APE) (Attachment 1) includes the following:

- a. The 300-foot Right-of-Way (ROW) of the Queen Kaahumanu Highway;
- b. The Honokohau Settlement National Historic Landmark;
- c. The Kaloko-Honokohau National Historic Park;
- d. Trails that are immediately adjacent to and traverse the Project area that have been identified as significant to the Ala Kahakai National Historic Trail corridor (Attachment 2 of 2015 MOA), most notably the Mamalahoa Trail
- e. All improved intersections and stub-outs [A- F1, F2, G, I, J, K (portion of L)];
- f. Staging Areas (portion of areas C and K); and
- g. Construction Office (Area H)

2. **Stipulation 11** of the MOA shall be deleted and replaced with the following text:

INTERPRETIVE SIGN(S). The HDOT shall fund the National Park Service (NPS) to research, design, and produce mutually agreed upon interpretive signs in consultation with NHOs relating to the history of the trails identified in the Project ROW near the Kaloko-Honokōhau National Historic Park. The NPS will install these signs within the boundaries of the Kaloko-Honokōhau National Historic Park.

3. **Stipulation 20**, in accordance with Stipulation 21, shall be deleted and replaced with the following text:

Moved (insertion) [1]

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Commented [mmr3]: What does this mean?

DURATION. The original term of the MOA applied for five (5) years from the execution of the MOA. The duration is extended by a period of one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021.

4. **NEW STIPULATION:** Within 60 days of the execution of this amendment to the MOA, FHWA and HDOT shall provide to the SHPO and concurring and consulting parties a draft report on the results of an "After-Action Analysis" of how the project failed to identify and protect historic resources. Within 30 days of distributing the draft report, FHWA/HDOT shall present and discuss the draft report at an in-person meeting with the Signatories, Concurring and Consulting Parties to discuss the policies, procedures, training, field oversight and project management issues that allowed the violations to occur, and FHWA/HDOT's proposed action items to address the deficits and prevent similar actions from occurring on future projects.

FHWA-HDOT shall incorporate recommended process changes into a final After Action Analysis Report. FHWA-HDOT shall distribute the final report to all parties no later than six (6) months after the consultation meeting on the draft report. FHWA-HDOT shall hold a meeting and further discussion on the final report at the request of any party.

The FHWA Director of the Hawaii Office and the HDOT Director shall attend the meeting(s) in person to address how the FHWA and HDOT will make the recommended process changes.

5. **NEW STIPULATION:** Within 90 days of the execution of this amendment to the MOA, FHWA and HDOT shall provide to the SHPO and concurring and consulting parties a draft work plan to outline the scopes of work, timelines and assigned personnel for each of the mitigation measures. Any comments received by FHWA/HDOT from consulting parties within thirty (30) days of receipt shall be considered by FHWA/HDOT in developing a final scope of work.

For each of the individual stipulations, FHWA/HDOT shall provide pre-final draft documents and plans to consulting parties for review and comment. Any comments received by FHWA/HDOT from consulting parties within thirty (30) days of receipt shall be considered by FHWA/HDOT in finalizing and implementing the mitigation stipulations. FHWA/HDOT shall provide a response to all written comments received during the comment period, explaining how the comment was included in the final scope of work, or, if not included, the rationale for the exclusion.

FHWA/HDOT shall prepare a close-out memo for each of the stipulations to document mitigation actions taken with a timeline and outcomes achieved by the action. FHWA/HDOT shall distribute the close-out memo to the signatories and consulting parties. FHWA/HDOT shall hold a meeting and further discussion on the close-out memo at the request of any party.

**Moved up [1]:** During the one (1) year afforded by this Amendment (Amendment One), the Signatories and Consulting Parties agree to work in good faith to complete Amendment Two. Amendment Two will include Stipulations to mitigate the breached sites, a six-year extension to allow for the completion of Stipulation 5.B Native Hawaiian Cultural Outreach and Education; and will address necessary modifications to other Stipulations.

4. **NEW STIPULATION:** Within 60 days of the execution of this amendment to the MOA, FHWA and HDOT shall provide to the SHPO and concurring and consulting parties a draft report on the results of an "After-Action Analysis" of how the project failed to identify and protect historic resources. Within 30 days of distributing the draft report, FHWA/HDOT shall present and discuss the draft report at an in-person meeting with the Signatories, Concurring and Consulting Parties to discuss the policies, procedures, training, field oversight and project management issues that allowed the violations to occur, and FHWA/HDOT's proposed action items to address the deficits and prevent similar actions from occurring on future projects.

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The FHWA Director of the Hawaii Office and the HDOT Director shall attend the meeting(s) in person to address how the FHWA and HDOT will make the recommended process changes.

5. **NEW STIPULATION:** Within 90 days of the execution of this amendment to the MOA, FHWA and HDOT shall provide to the SHPO and concurring and consulting parties a draft work plan to outline the scopes of work, timelines and assigned personnel for each of the mitigation measures. Any comments received by FHWA/HDOT from consulting parties

**Commented [KF4]:** HHF recommends that the MOA include a stipulation to address the FHWA/HDOT systemic failure to prevent the work from occurring outside the approved Area of Potential Effect and lack of care to avoid the sensitive areas. Example language provided.

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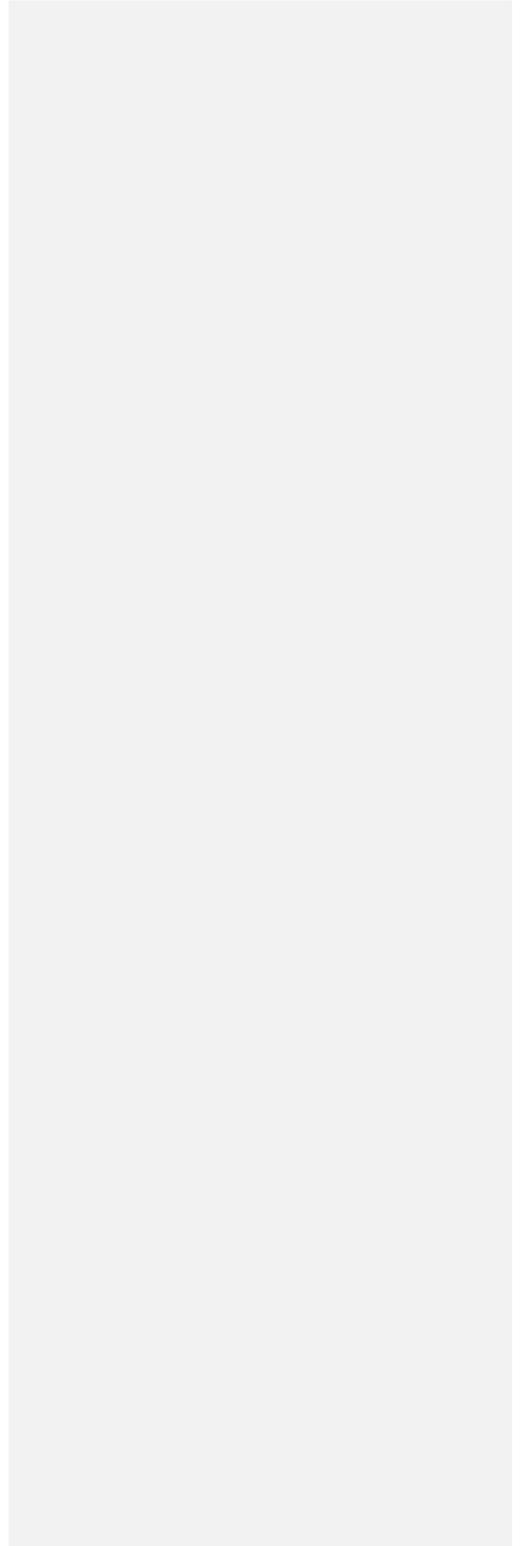
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**Commented [KF5]:** HHF agrees with the intent to use the additional 12 months to complete the unfinished stipulations in the existing MOA. There needs to be timelines, tasks, clear areas of responsibility and benchmarks to ensure the time is used effectively. Example language provided.

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AMENDMENT ONE TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION

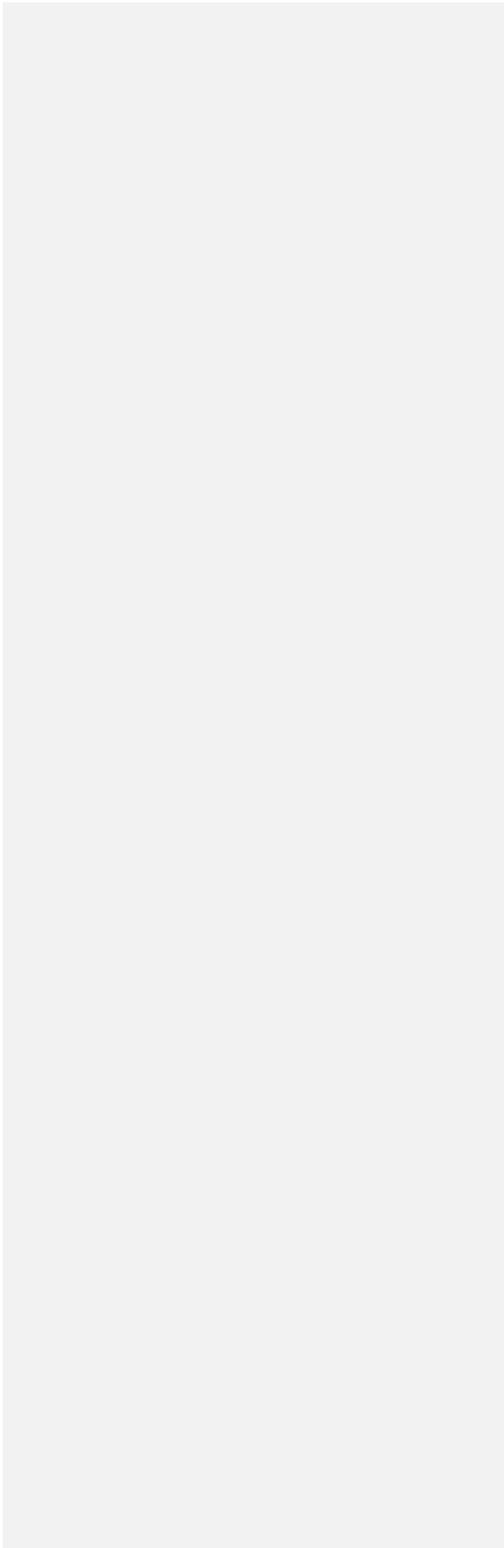
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
District of North Kona, Island of Hawaii, State of Hawaii  
which are known as the Queen Ka'ahumanu Highway Intersection  
Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole

SIGNATORY:

HAWAII STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_  
Suzanne D. Case, Hawaii State Historic Preservation Officer                      Date



AMENDMENT ONE TO THE  
MEMORANDUM OF AGREEMENT  
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ADVISORY COUNCIL ON HISTORIC PRESERVATION  
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and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

INVITED SIGNATORY:

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
Jade T. Butay, Director of Transportation

\_\_\_\_\_  
Date

AMENDMENT ONE TO THE  
MEMORANDUM OF AGREEMENT

Among the  
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FEDERAL HIGHWAY ADMINISTRATION

AND THE  
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Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

SIGNATORY:

KALOKO-HONOKŌHAU NATIONAL HISTORIC PARK

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Jeff Zimpfer, Acting Superintendent

AMENDMENT ONE TO THE  
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ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION

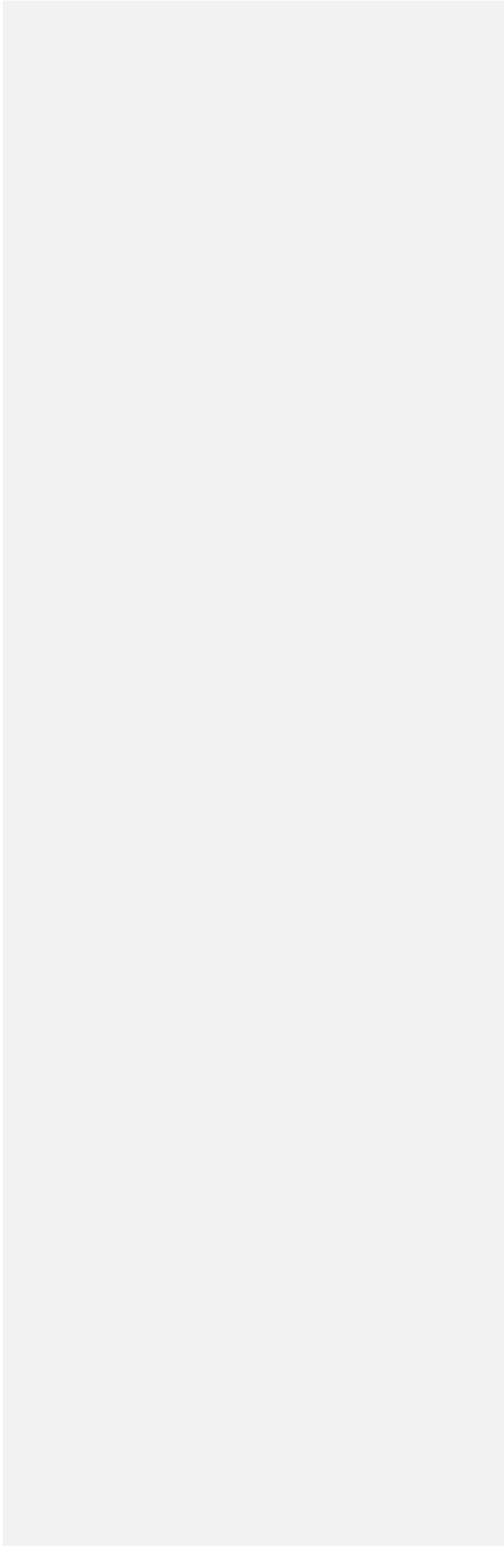
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and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole

SIGNATORY:

ALA KAHAKAI NATIONAL HISTORIAL TRAIL

BY: \_\_\_\_\_ Date  
Aric Arakaki, Superintendent





AMENDMENT ONE TO THE  
MEMORANDUM OF AGREEMENT

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and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole

CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKOHAU

BY: \_\_\_\_\_  
Fred Cachola, President

\_\_\_\_\_  
Date

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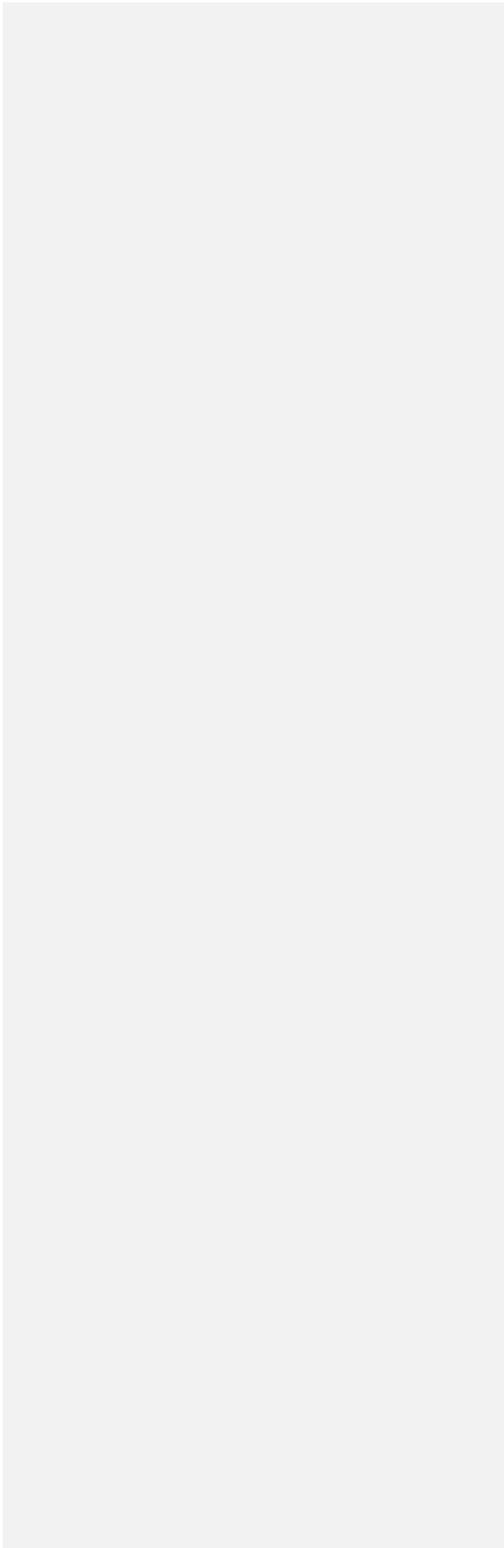
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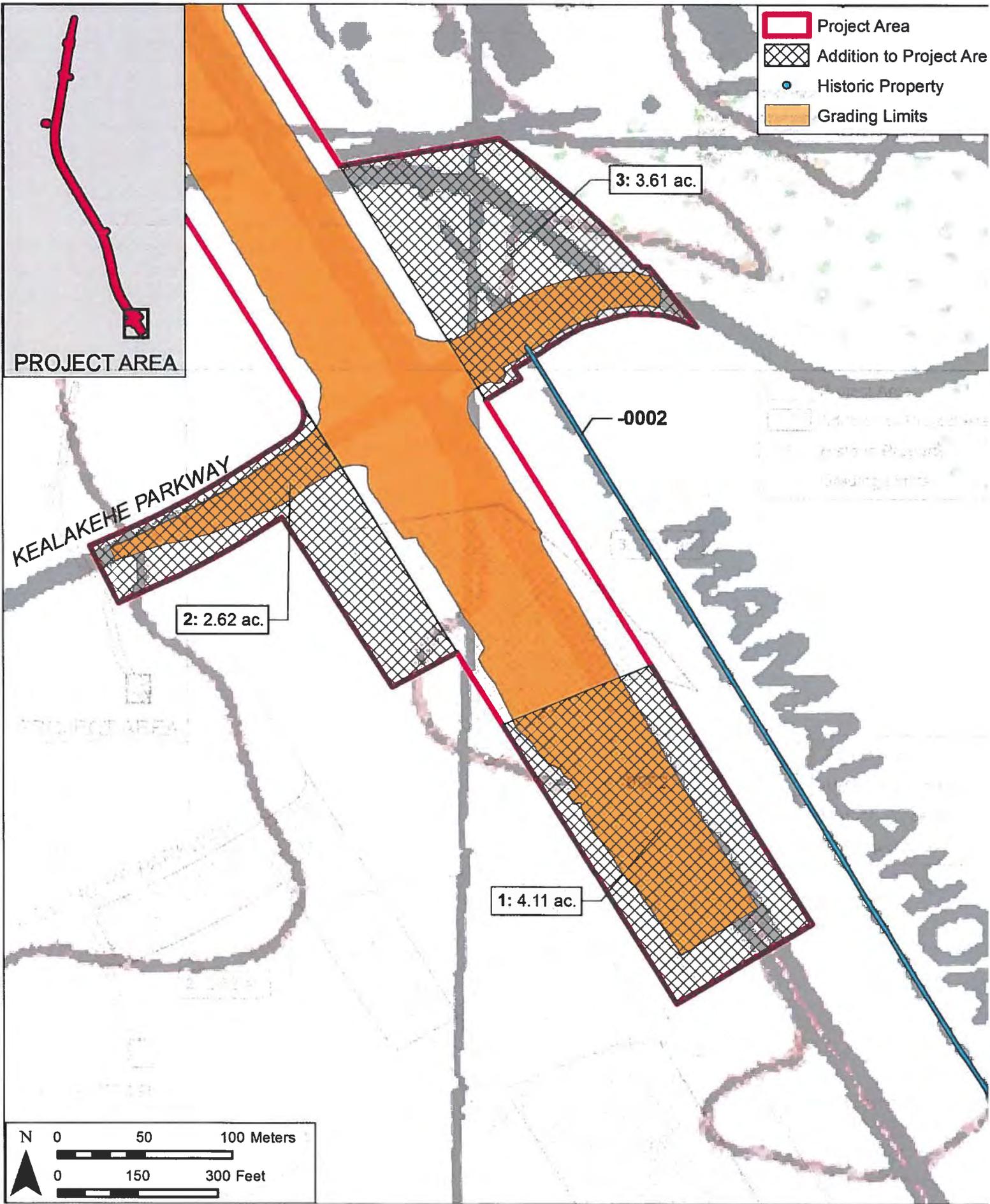
CONCURRING PARTY:

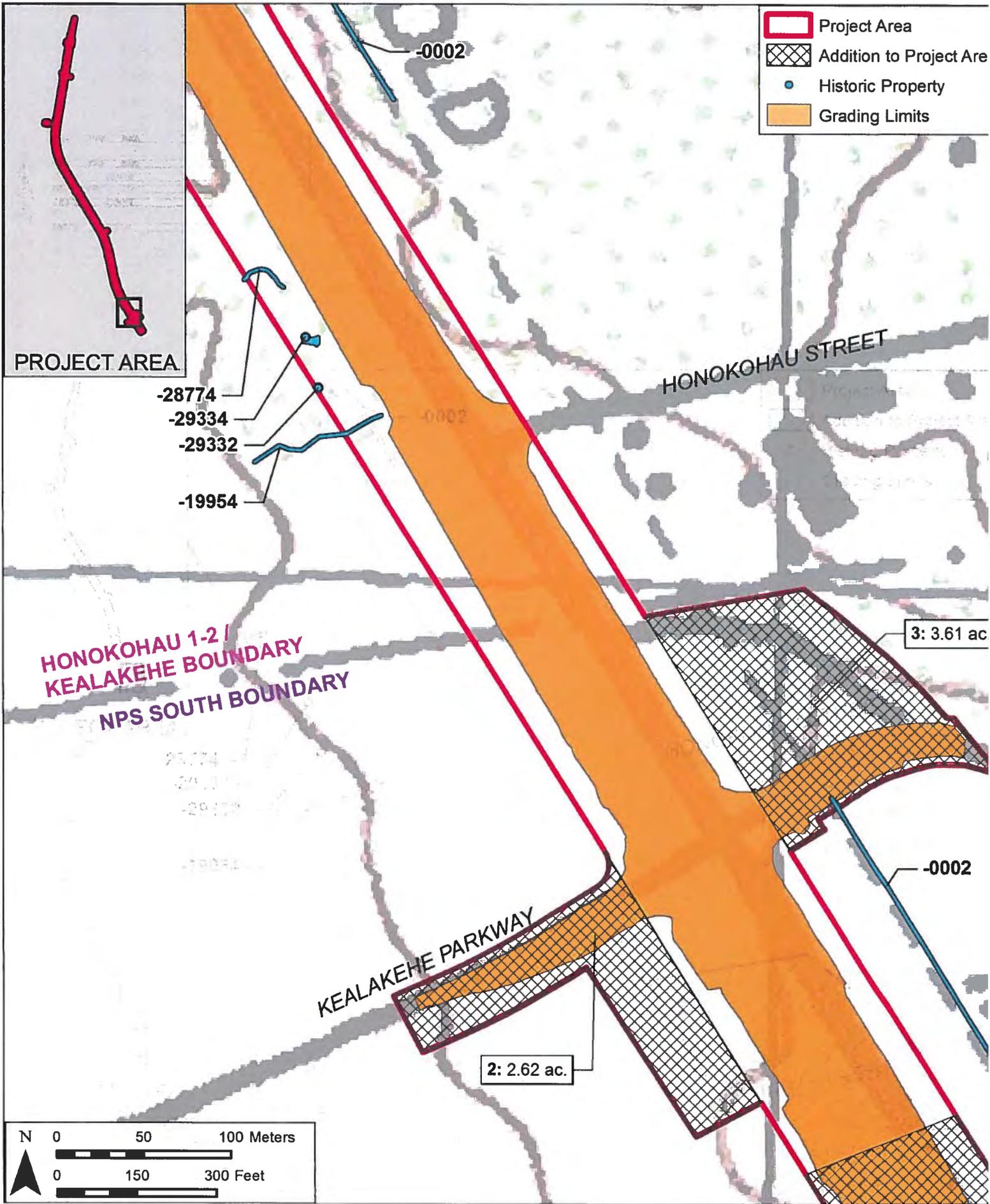
HISTORIC HAWAII FOUNDATION

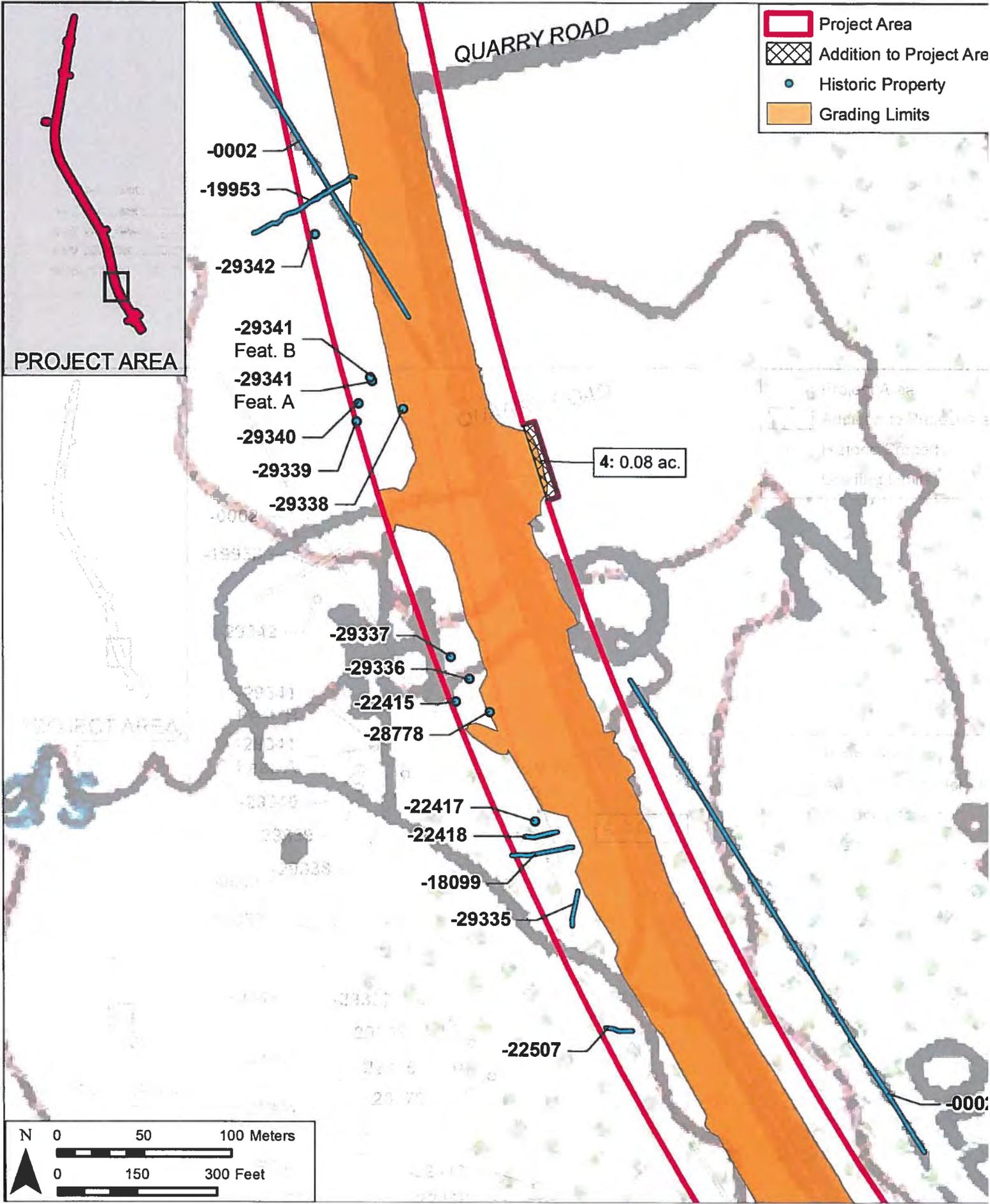
BY: \_\_\_\_\_  
Kiersten Faulkner, Executive Director

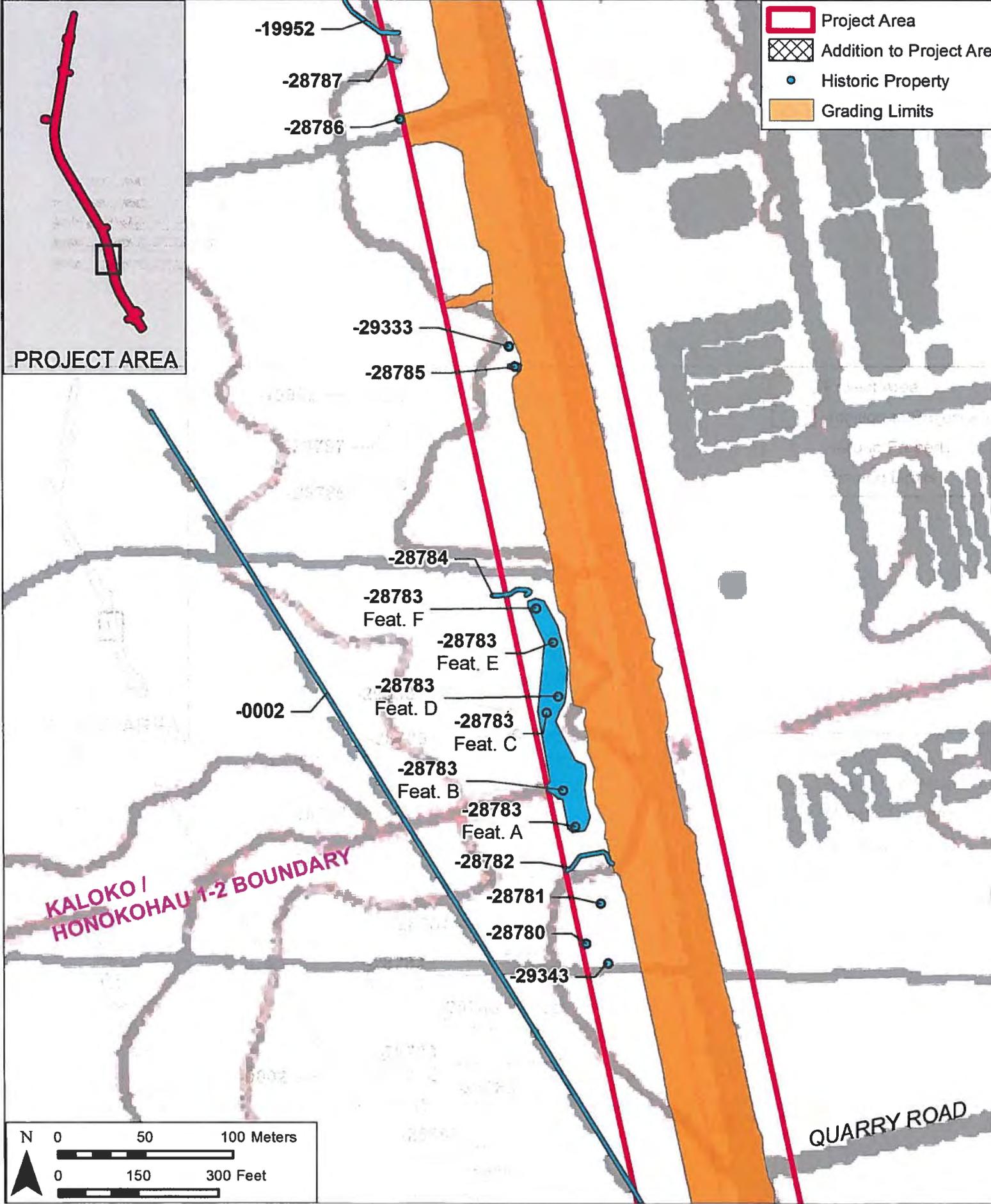
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Date

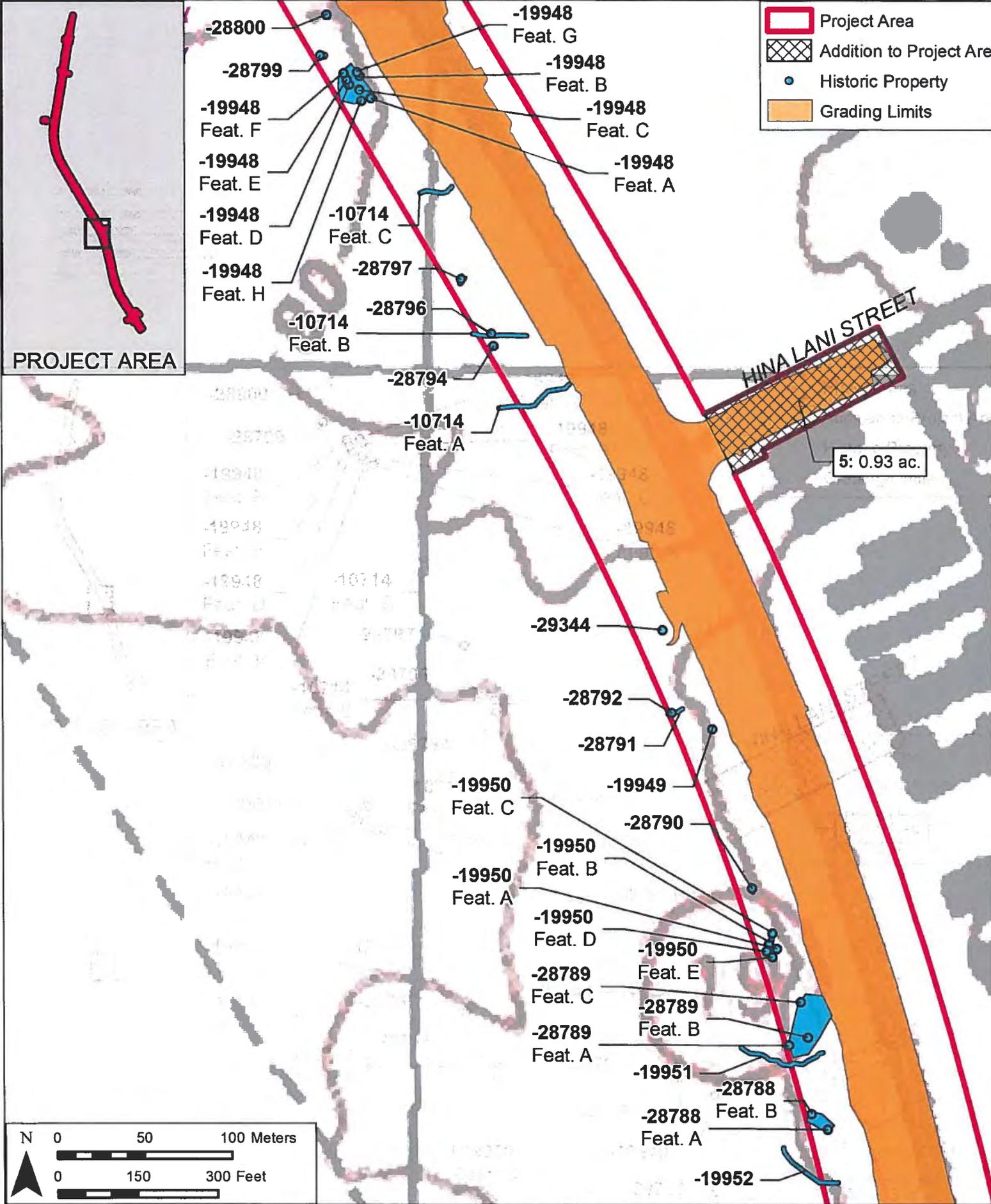


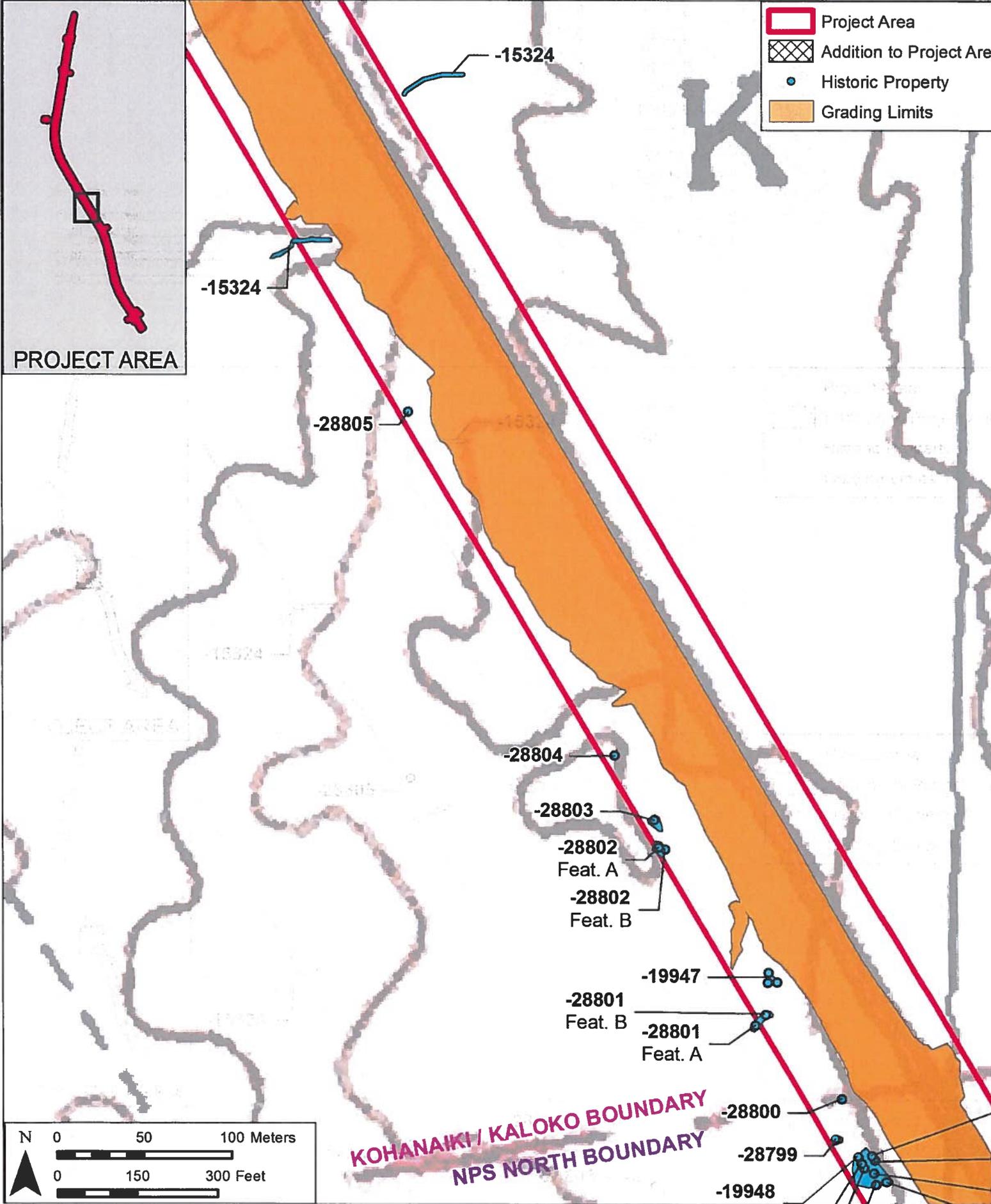


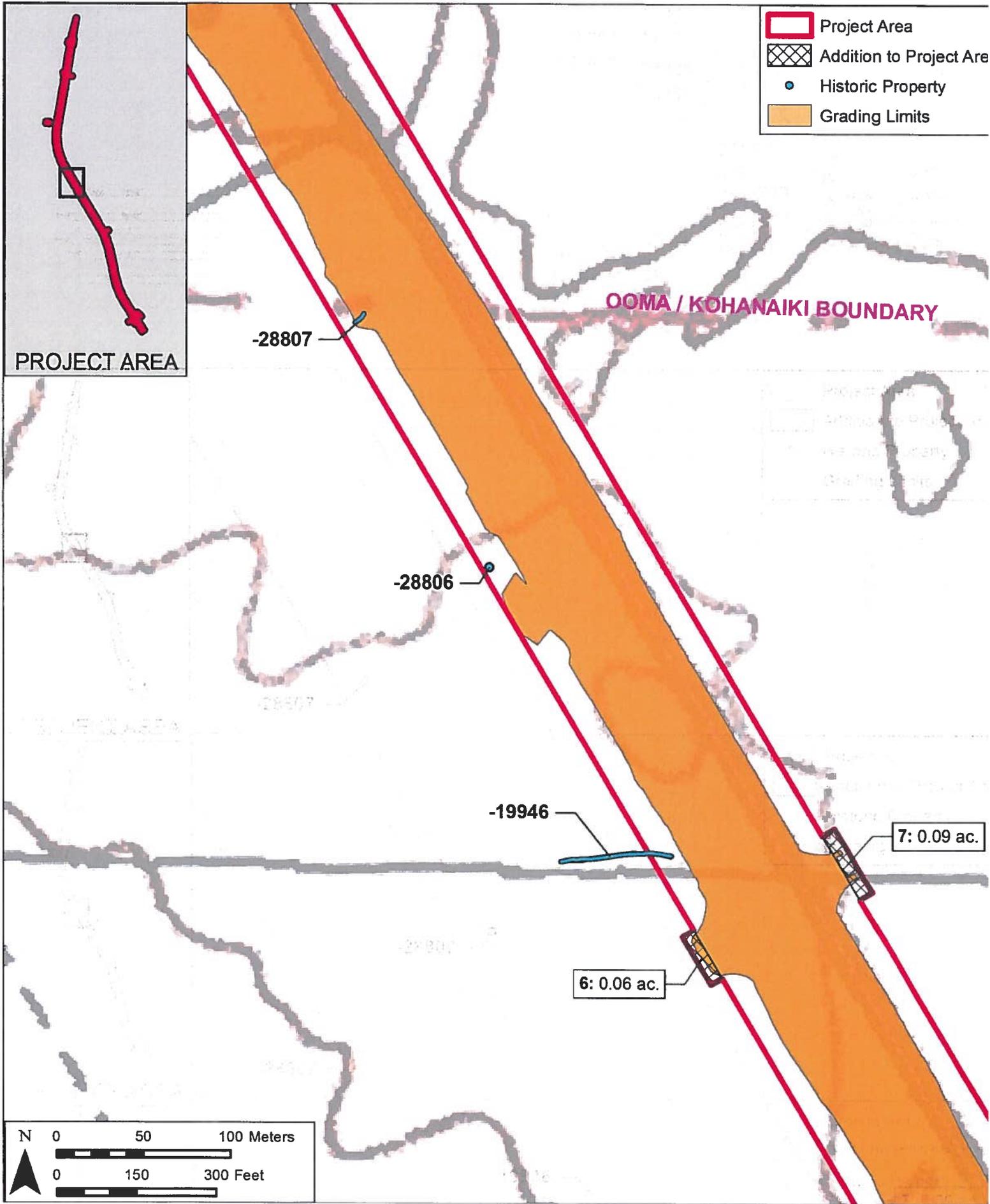


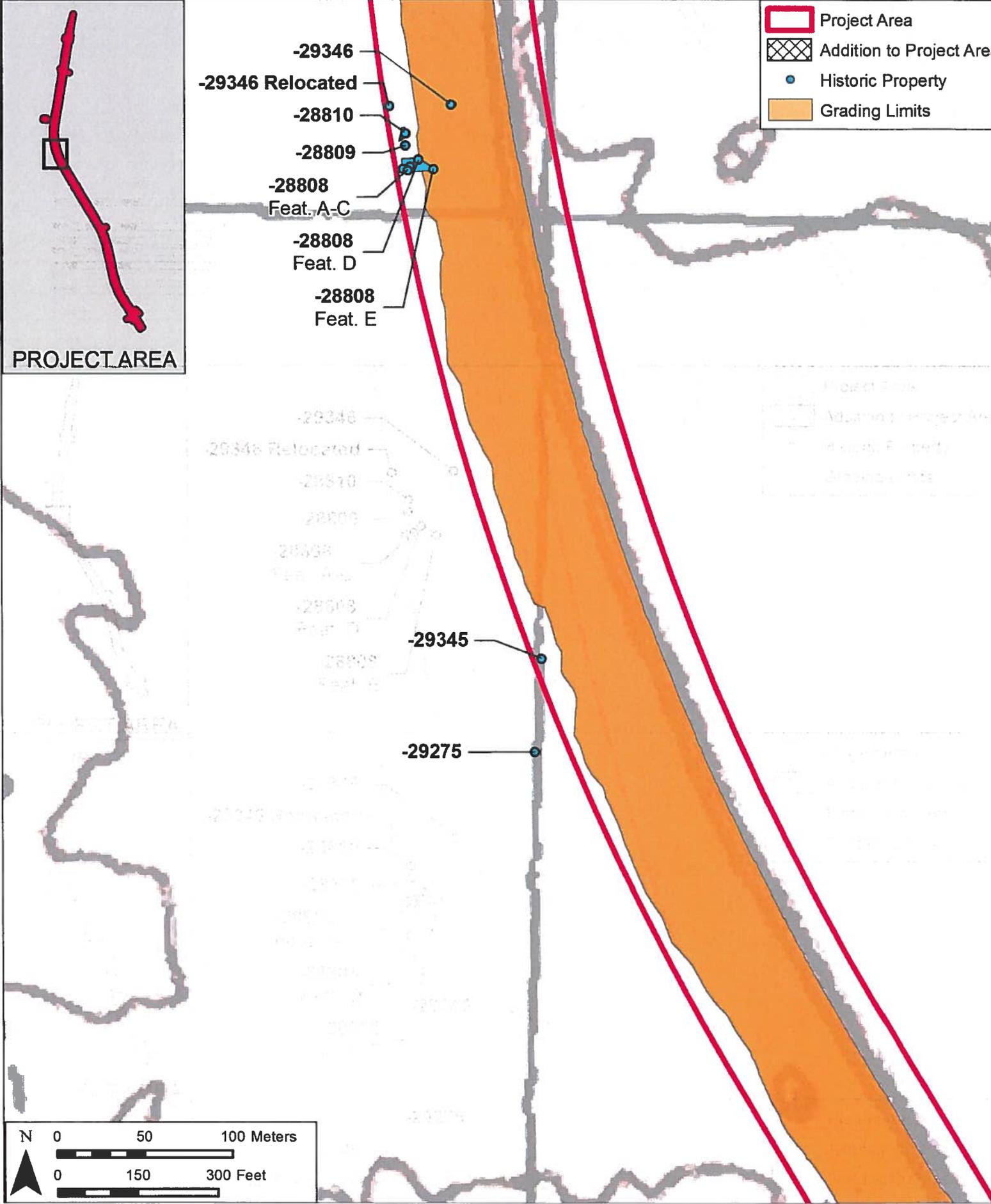


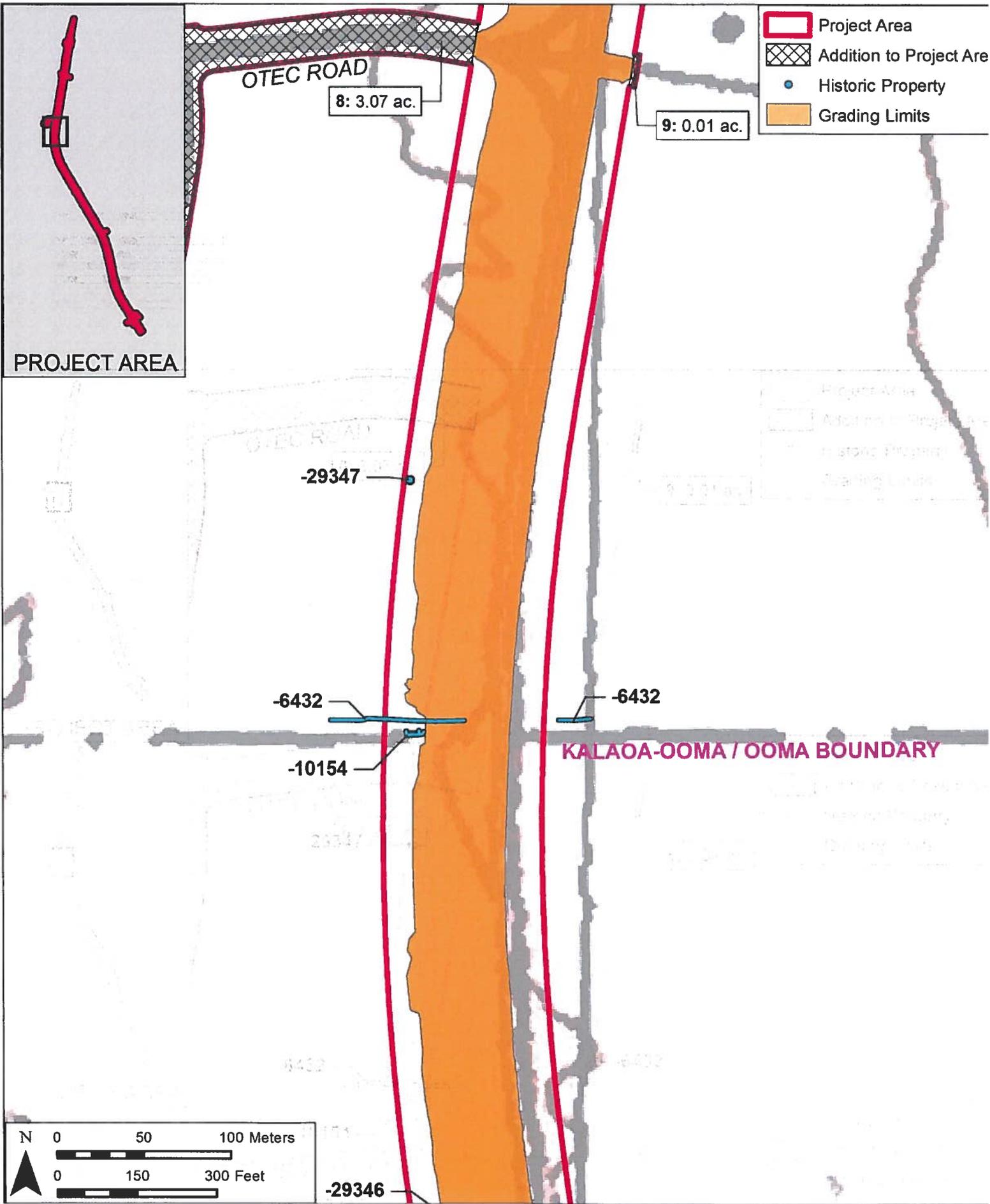


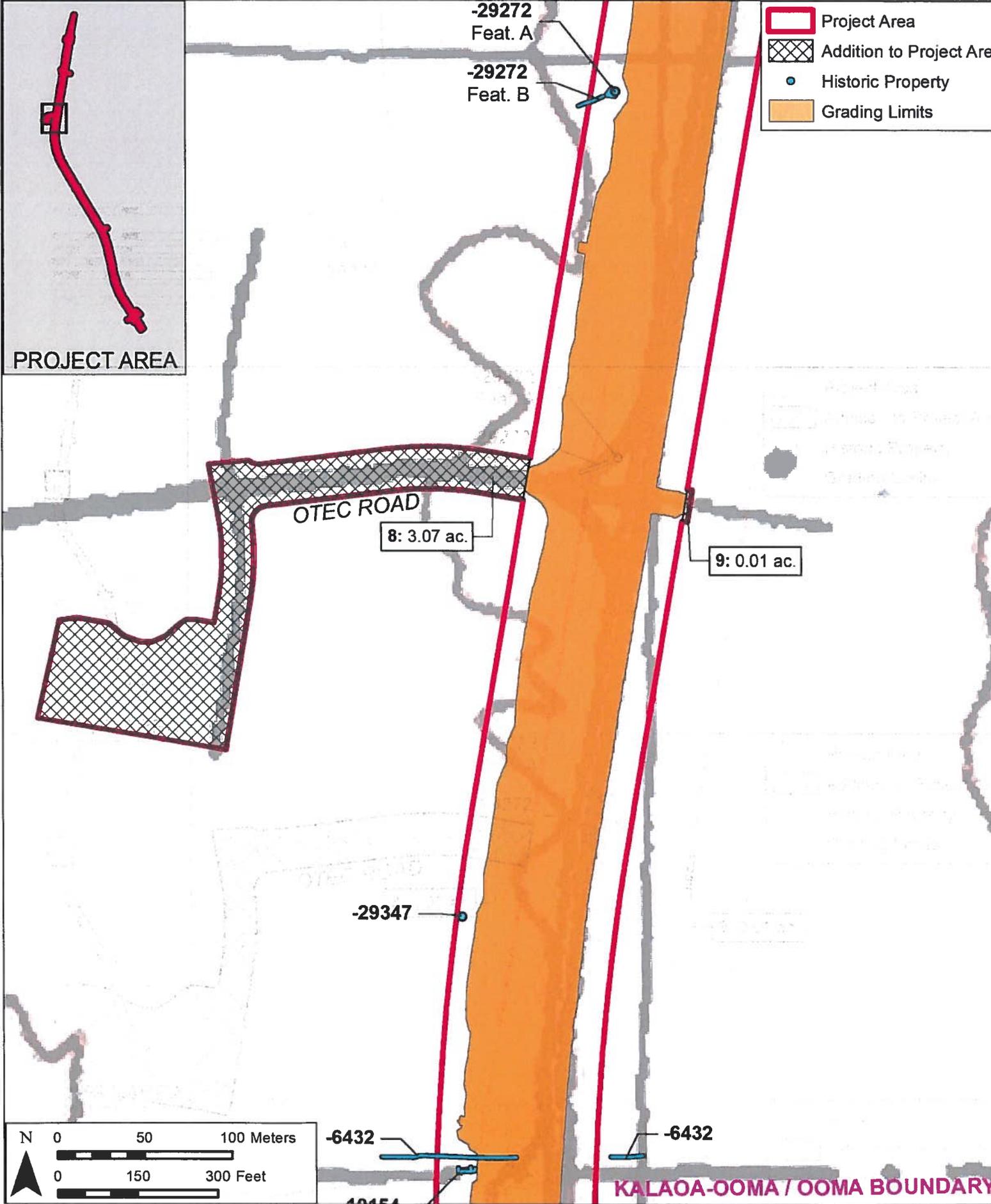


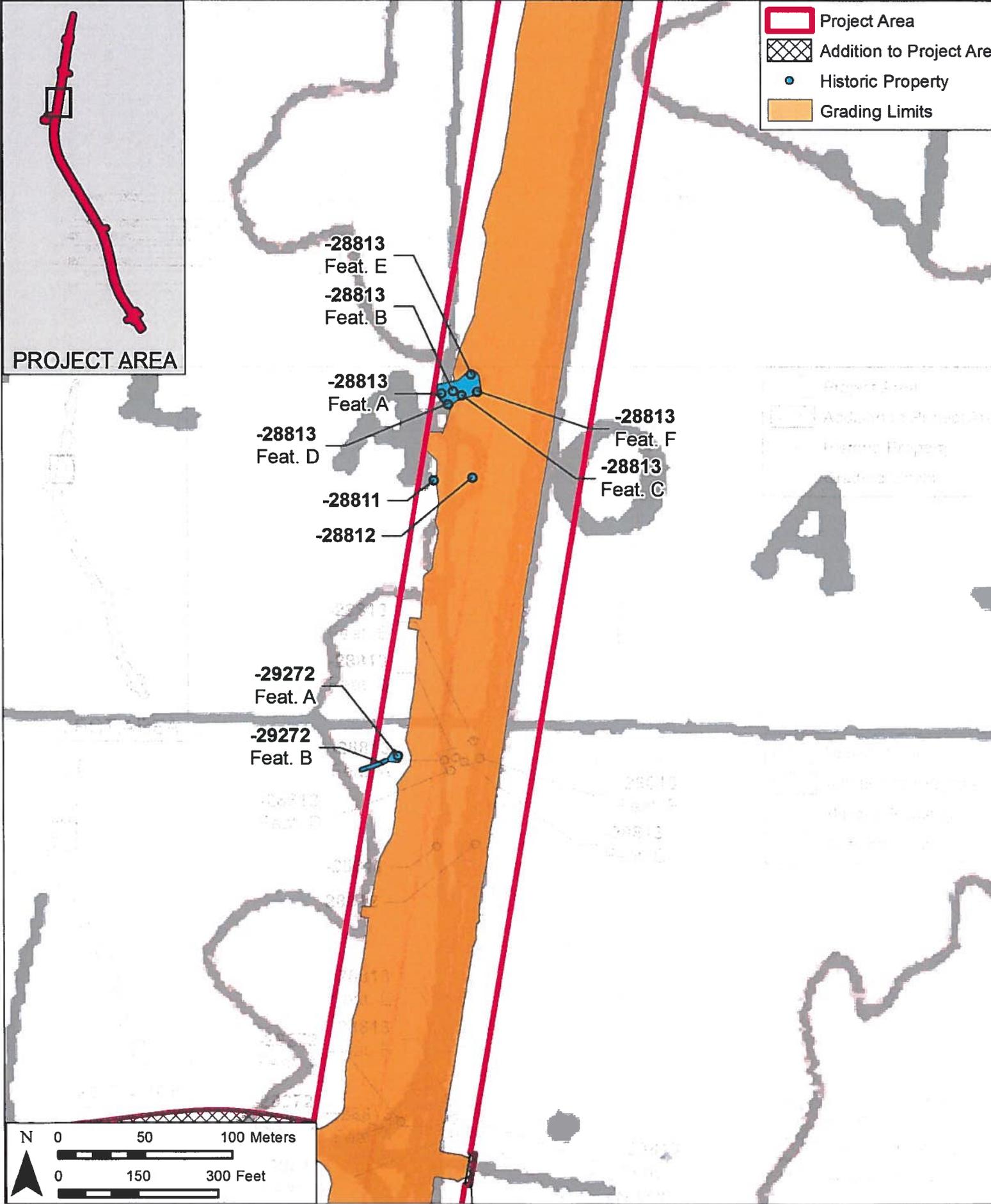


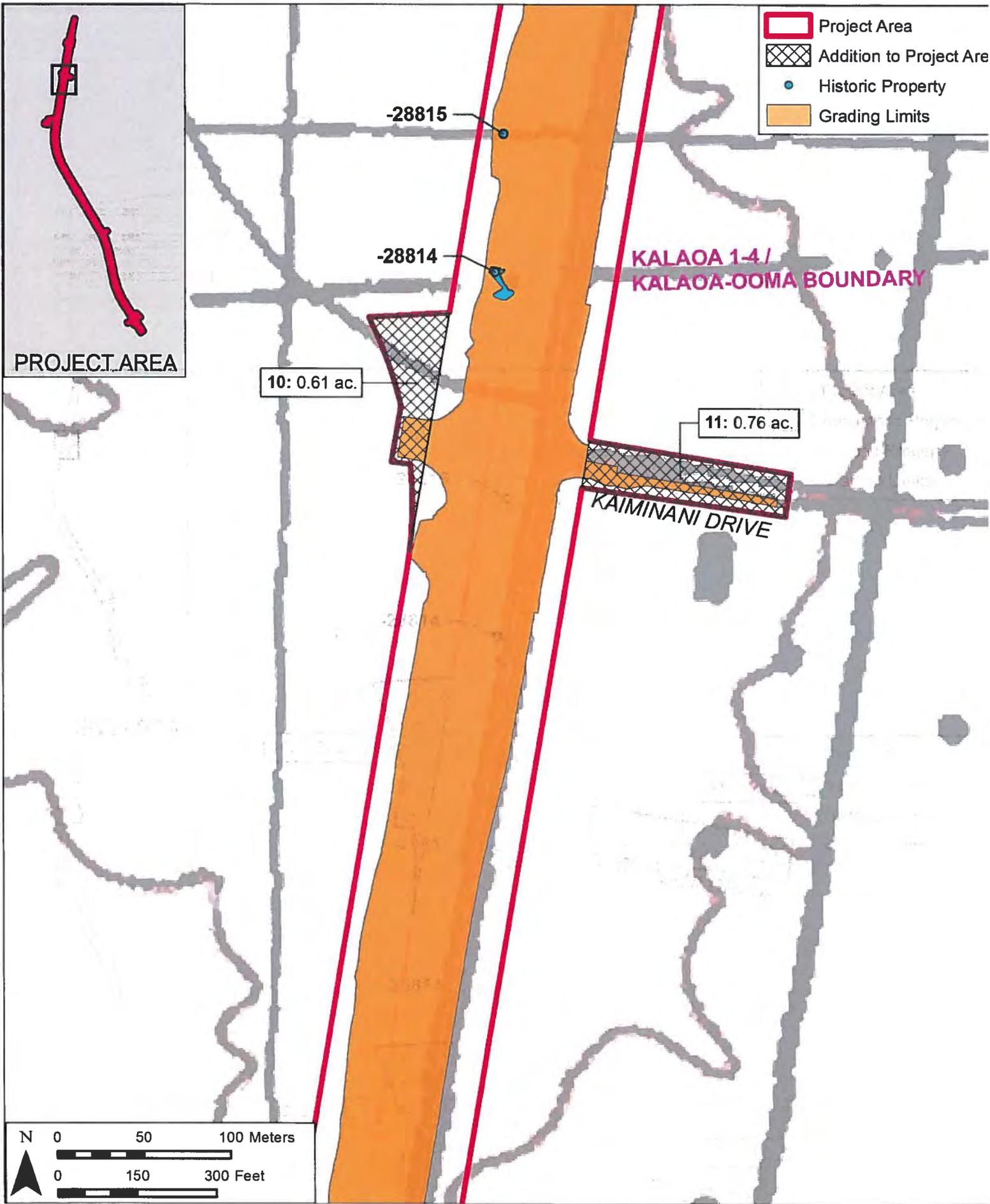


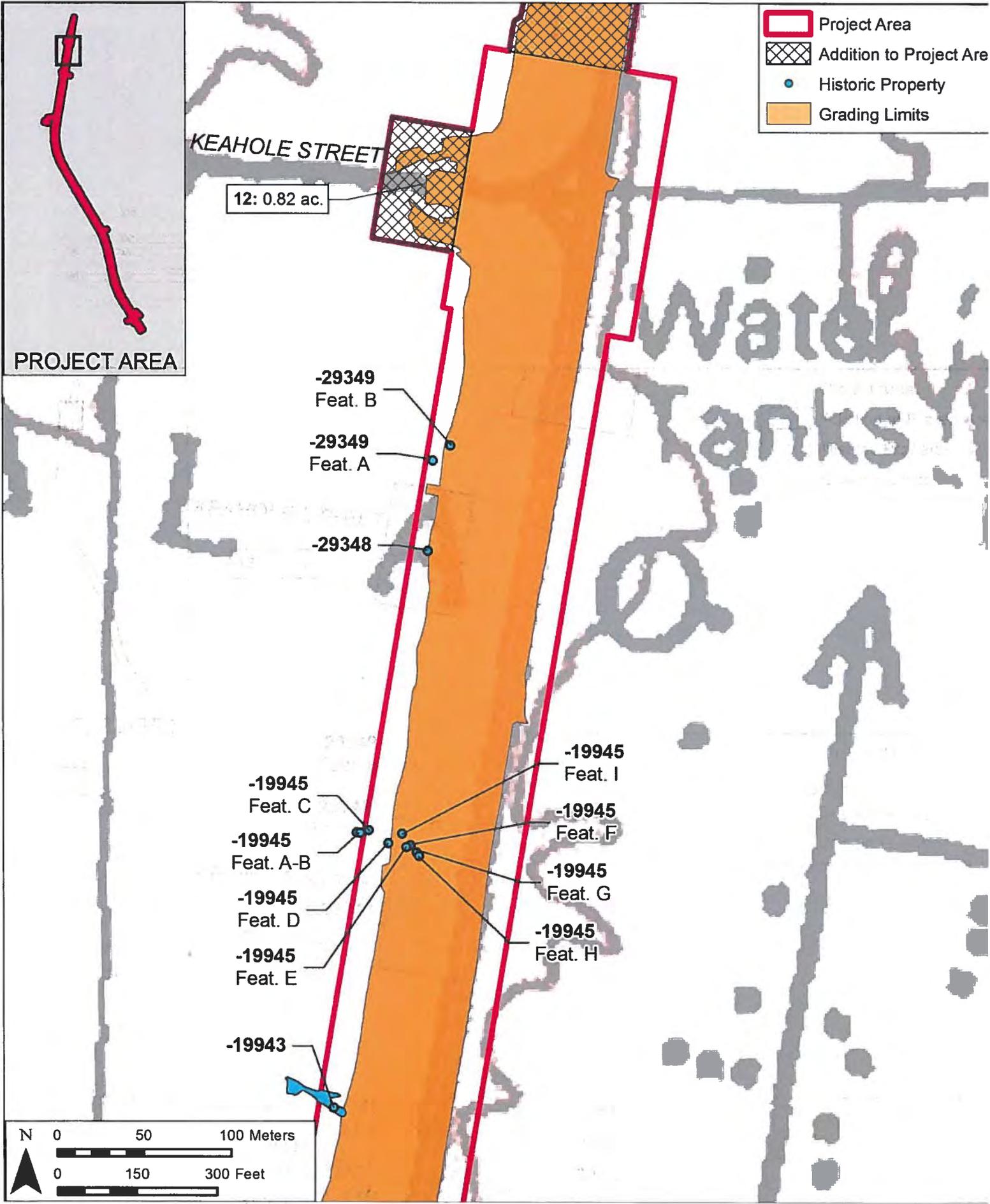


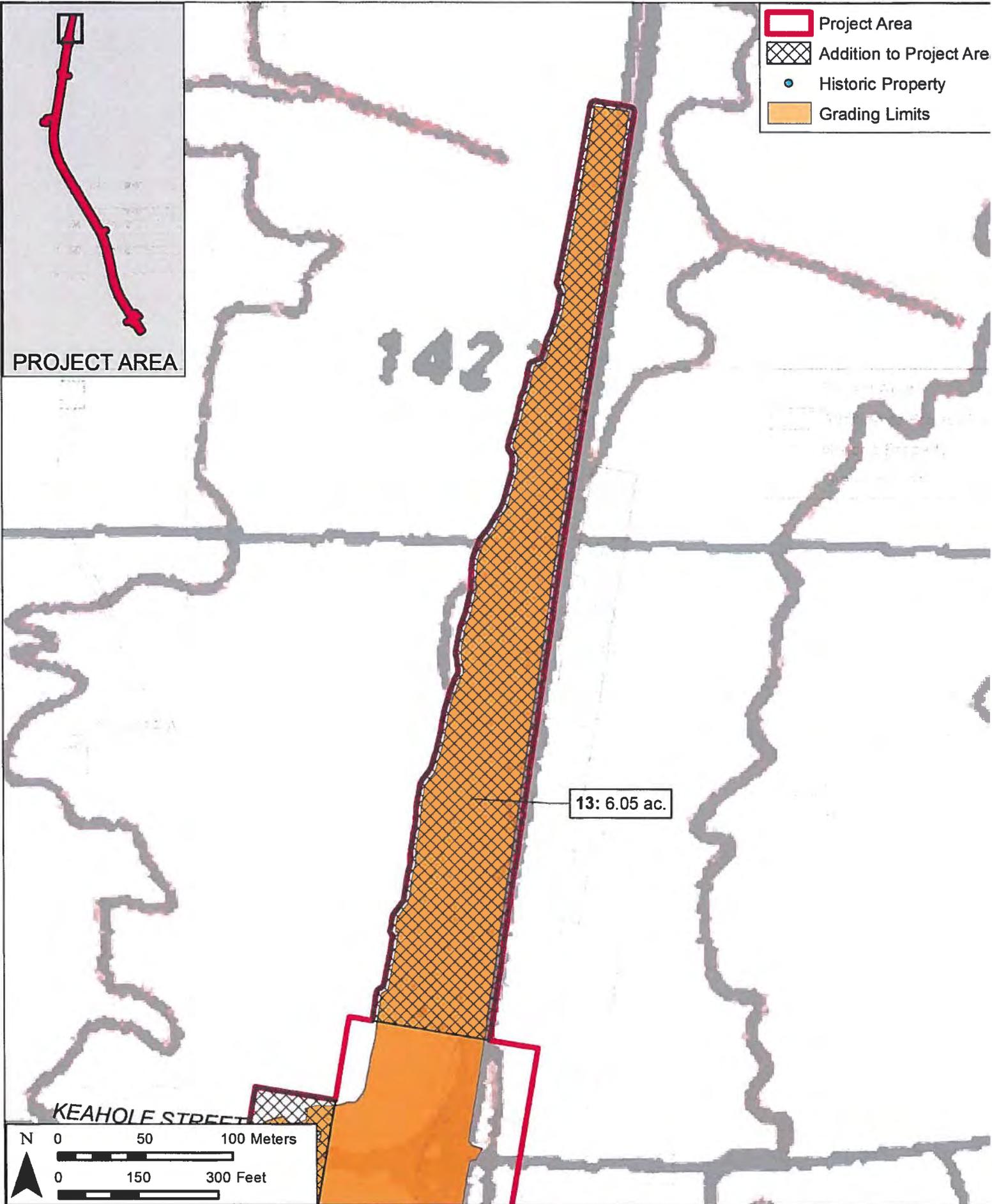


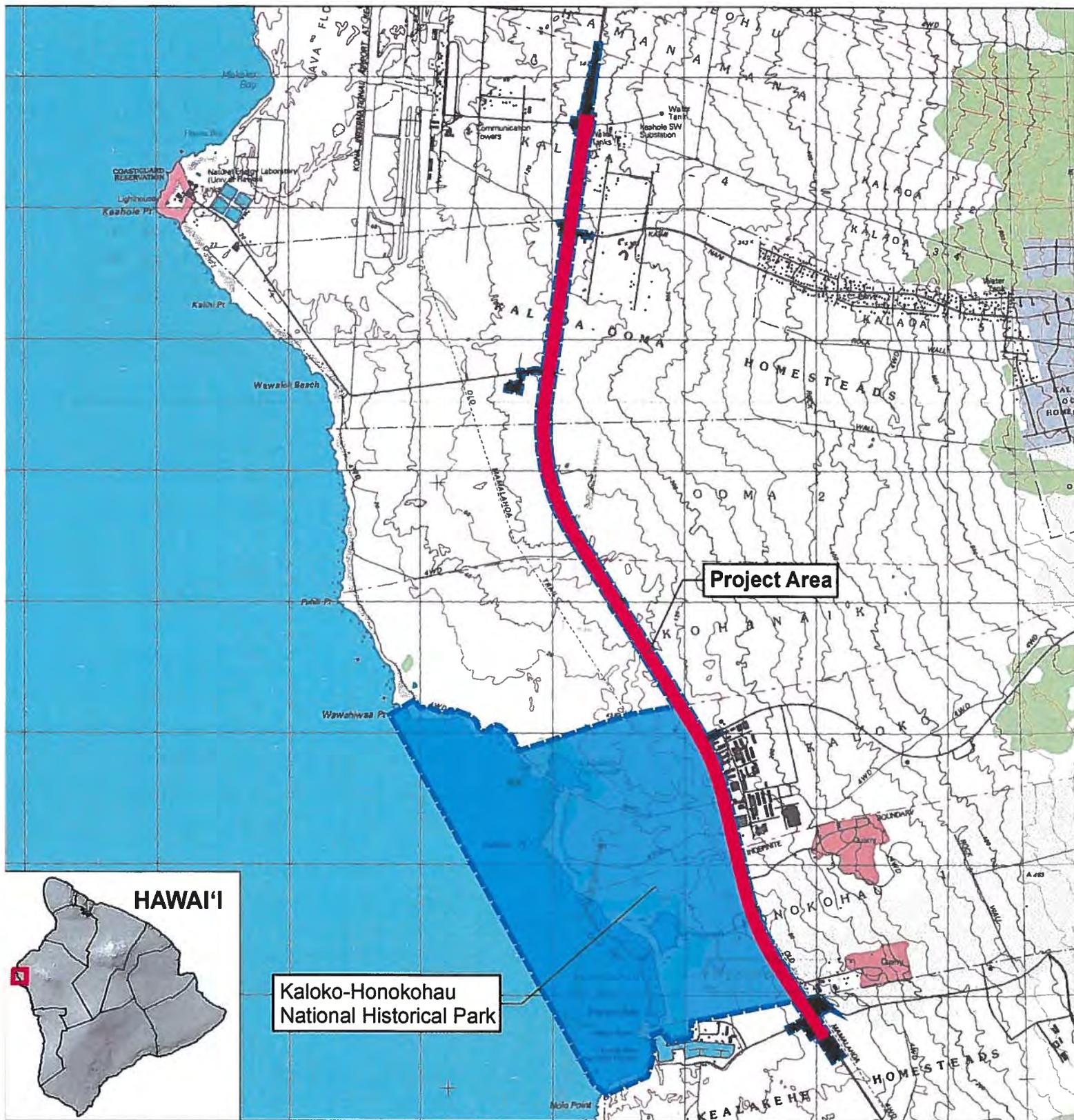










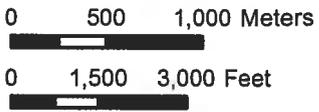


Kaloko-Honokohau National Historical Park

**Legend**

- Project Area
- Area of Potential Effect (APE)
- Addition to Project Area

**Scale**



Base Map: USGS Topographic Map, Keahole Point (1996) Quadrangle  
 Data Sources: CSH

*Cultural Surveys Hawaii, Inc.*

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
District of North Kona, Island of Hawaii, State of Hawaii  
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Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

WHEREAS, the Advisory Council on Historic Preservation (ACHP), Federal Highway Administration (FHWA), and the Hawaii State Historic Preservation Officer (SHPO) entered into a Memorandum of Agreement (“2015 MOA”) to address adverse effects to the above projects on March 17, 2015; and

WHEREAS, several stipulations of the MOA have not been completed (summarized in Attachment 1); and

WHEREAS, Amendment One to the MOA, executed on \_\_\_\_\_ to address changes to the Area of Potential Effect (APE) (Stipulation 2) and to provide funds from HDOT to the National Park Service to research, design, and produce interpretive signs (Stipulation 11). It also extended the term of the MOA to March 17, 2021 to allow time to execute this Amendment; and

WHEREAS, the Kaloko-Honokōhau National Historic Park, the Ala Kahakai National Historic Trail, the Office of Hawaiian Affairs, Makani Hou o Kaloko-Honokōhau, the Kona Hawaiian Civic Club, and the Historic Hawaii Foundation (collectively Consulting Parties) were all consulted on these amendments to the 2015 MOA at meetings held on November 23, 2019 and February 8, 2020; and

WHEREAS, HDOT needs more time to implement the cultural programs at the University of Hawaii at Hilo (UHH). In addition, the Consulting Parties have requested to be consulted by the UHH during the implementation of the cultural programs; and

WHEREAS, HDOT needed additional time to plan and host the relationship building workshop (Stipulation 14). After considering concerns raised by consulting parties about the limited ability for NHO’s to travel off-island to attend a statewide workshop, HDOT decided to host workshops on Hawaii, Maui, and Oahu between 08/2017 and 07/2018. Similar workshops were held in Kauai in 2015-2016. A summary of each of these workshops are included in Attachment 3 - Section 106 Workshops Summary; and

WHEREAS, HDOT inadvertently damaged the Māmalahoa Trail (site 00002) in 2 places, a total of 92 feet, and the Trail to the Sea (site 10714) in 2 places, a total of 36 feet (see Attachment 2 List of Trails and Amount Graded); and

WHEREAS, FHWA determined that the sites damaged are an adverse effect and communicated this in a letter to SHPO and ACHP dated August 3, 2017; and

WHEREAS, FHWA and HDOT met with MOA signatories and Consulting Parties on December 6, 2016 and April 7, 2017 regarding the site breaches and on May 23, 2017, June 26, 2019, and November 26, 2019 and February 8, 2020 to consult on mitigation for the site breaches; and

NOW THEREFORE, in furtherance of the above recitals, the FHWA, the SHPO, the ACHP, the National Park Service, and HDOT agree that the Projects shall be implemented in accordance with the following amended stipulations in order to take into account the Project's effect on historic properties:

I. Stipulation 5. B of the MOA shall be deleted and replaced with the following text:

B. NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION. The HDOT and the University of Hawaii at Hilo (UHH) have entered into a Memorandum of Understanding (MOU) to provide cultural programs and education to support Native Hawaiian Studies. The HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the duration of the agreement. The MOU includes the Kohala Center to help facilitate the contract and to provide a mechanism to better include local representation. Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.

II. Stipulation 20 of the MOA shall be deleted and replaced with the following text:

DURATION. The term of this MOA (Amendment 2) shall be five years from the date of execution of Amendment 2, or upon completion of the stipulations, whichever comes first.

III. Stipulations added to the MOA:

Stipulation 25. PRESERVATION AND RESTORATION OF THE MAMALAHOA TRAIL FROM KEALAKEHE PARKWAY TO MAKAI HALE ROAD. HDOT shall perform vegetation clearing and/or restoration of approximately 1,000 ft. of the trail Mamalahoa Trail from Kealakehe Parkway to Makai Hale Road, within its right of way, per the Preservation and Restoration Plan outlined below. HDOT shall develop a Preservation and Restoration Plan that meets the requirements of HAR 13-277, (rules Governing Archeological Site Preservation and Development) for a 1000-foot section of the Māmalahoa Trail from Kealakehe Parkway to Makai Hale Road (mauka of the Queen Kaahumanu Highway). The Preservation and Restoration Plan will include:

1. Research, in the form of a brief Historic Context, the uses of the trail in the Kekaha Area, particularly in the Ahupua‘a of Kaloko and Honokōhau.
2. A plan for repair or restoration of a section of the trail (approximately 1000 feet) within the HDOT right of way. HDOT shall consult with Makani Hou o Kaloko-Honokōhau, the Kona Hawaiian Civic club, and any other kupuna identified during this process. HDOT shall attempt to contact kupuna twice via email for comments on this project. HDOT will provide an opportunity for one in person meeting.
3. A vegetation clearing plan.
4. A plan for maintenance for this section of the trail, which will include access, litter control, future impacts and site stability and periodic monitoring of the site for impacts to historic integrity and site significance, and protocols for SHPD inspections.
5. An access plan or protocols.
6. Interpretation of the site. This will include some recognition of the connection of the trail to the other side of Kealakehe Road. This could be done through signage or other means.
7. A plan for permanent markers to identify the trail such as trail markers, signs or vegetation.

In addition, HDOT will revise the preservation plans for the two breached trails to document the breaches and the current condition of the trails within the APE. These will be included as part of the preservation and restoration plan.

Consulting parties will be provided opportunities to review and comment on the drafts of the Preservation and Restoration Plan at the 30% and 90% stage. Consulting parties will be provided with electronic copies of the drafts for review and will have 30 days to provide comments to HDOT. If written comments are received from SHPD and/or Consulting Parties, HDOT shall review the comments regarding the preservation plan and determine if further consultation is necessary. If no further consultation is determined necessary by HDOT, HDOT shall notify the Signatories and Consulting Parties of its decision.

SHPD will provide final approval of the Preservation and Restoration Plan

HDOT may transfer ownership of the trail to another entity to better manage the long-term maintenance of the trail.

**STIPULATION 26. APE AGREEMENT BETWEEN SHPD AND HDOT.** Within 2 years of Amendment 2, HDOT shall develop an agreement with SHPD to address identification of the APE for large projects, better protections for sites during construction, and more timely communication on future projects. This agreement can be part of a larger programmatic agreement between the two agencies.

In all other respects, the 2015 MOA shall remain in full force and effect.

DRAFT

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
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which are known as the Queen Ka‘ahumanu Highway Intersection  
Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

SIGNATORY

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John Fowler, Executive Director

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

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and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

SIGNATORY:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Ralph J. Rizzo, Administrator

AMENDMENT TWO TO THE  
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SIGNATORY:

STATE HISTORIC PRESERVATION OFFICER (State of Hawai‘i)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Suzanne D. Case, State of Hawai‘i Historic Preservation Officer

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ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
District of North Kona, Island of Hawaii, State of Hawaii  
which are known as the Queen Ka‘ahumanu Highway Intersection  
Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

INVITED SIGNATORY:

NATIONAL PARK SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William Thompson, Superintendent, Kaloko-Honokōhau National Historical Park

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Aric Arakaki, Superintendent, Ala Kahakai National Historical Trail

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
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Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

INVITED SIGNATORY:

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Jade T. Butay, Director of Transportation

Date: \_\_\_\_\_

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
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HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
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which are known as the Queen Ka‘ahumanu Highway Intersection  
Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

CONCURRING PARTY:

HISTORIC HAWAI‘I FOUNDATION

By: \_\_\_\_\_

Kiersten Faulkner, Director of Transportation

Date: \_\_\_\_\_

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
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HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the  
District of North Kona, Island of Hawaii, State of Hawaii  
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Improvements for the Kaloko-Honokōhau National Historic Park  
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

By: \_\_\_\_\_  
Sylvia Hussey., Ka Pouhana Chief Executive Officer

Date: \_\_\_\_\_

AMENDMENT TWO TO THE  
MEMORANDUM OF AGREEMENT

Among the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FEDERAL HIGHWAY ADMINISTRATION  
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Regarding the projects in the vicinity of the  
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and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKŌHAU

By: \_\_\_\_\_  
Fred Cachola, President

Date: \_\_\_\_\_

### Attachment 1

Stipulation	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
1. ON SITE POINT OF CONTACT	N/A	N/A	N/A		On site point of contact will continue to be updated annually during annual report or as needed
2. AREA OF POTENTIAL EFFECT (APE)	N/A	N/A	Complete	Because construction areas outside the 300' wide APE were not assessed for 1) historic sites and 2) effects to those sites, 22 ' of the Māmalahoa Trail was graded.	SHPD Concurred with expanded APE January 6, 2017 Log No. 2016.02942 Doc. No. 1701SL01. APE incorporated into MOA via Amendment 1 Dated _____
3. PROFESSIONAL STANDARDS	N/A	N/A	Complete	Makani Hou o Kaloko-Honokohau disagreed that Cultural Surveys Hawaii meets the professional guidelines as included in their formal disagreement under Stipulation 18.	Cultural Surveys Hawaii performed all work pertaining to the identification and treatment of archeological resources. The President, Principal of Firm, Dr. Hallett Hammatt, meets the professional qualification requirements.
4. ARCHAEOLOGICAL PRESERVATION AND MITIGATION PLAN (APMP, APRIL 2014), DATA RECOVERY AND PRESERVATION PLAN (DRPP, OCTOBER 2012), ARCHAEOLOGICAL MONITORING PLAN (AMP OCTOBER 2012) and BURIAL TREATMENT PLAN (BTP, OCTOBER 2012).	Prior to construction	Yes	Complete		Copies of subject plans are available on Socrata project site
5a. PROJECT REDESIGN	03/17/20	YES	Complete	The 4(f) requirement for a retaining wall to allow for a steeper slope to the highway where the Māmalahoa trail would be impacted by the widening, near the entrance to the National Park, was not included in construction plans. The archaeology coordinates and the construction coordinates were not aligned prior to construction. These mistakes led to the damage to the 2 trails in 4 locations.	Construction is now complete. Signed final plans dated 8/2016 available at HDOT district office

## Attachment 1

Stipulation	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
5b. NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION	03/17/20	NO	NOT COMPLETE	This stipulation is late getting started due to funding, staffing, and other issues between HDOT and UH Hilo. A new MOU was executed on October 1, 2019. At the request of Makani Hou, it included the Kohala Center, to ensure some connection to the Kekaha side of the island. The new MOU also included additional funding to cover overhead and the addition of the Kohala Center.	New MOU drafted with UHH. Will require extension of current MOA.
6. CULTURAL MONITORS	03/17/20	YES	Complete		Construction is complete, no need for further monitoring.
7. STREET LIGHTING	03/17/20	YES	Complete	In letter dated June 16, 2015 NPS approved luminaire substitution of 92W LED Streetlight (2 Light Engine) and 46W LED Street Light (1 Light Engine) due to CWES KS04-100 being obsolete.	Photo of completed street lighting attached to 2018 Annual Report
8. NOISE STUDY	03/17/20	YES	Complete	Makani Hou o Kaloko-Honokohau disagreed that this item is complete. They would like decibel readings taken now that the highway is complete.	Noise study on file with HDOT - Hawai'i District Office
9. HIGHWAY DRAINAGE	Report Annually Beginning 10/19	YES for Installation NO for annual reporting	Construction Complete 10/2018, Annual Reporting to Begin 10/2019	2019 Report delayed due to contractor issues.	Photo of completed Highway Drainage attached to 2018 Annual Report.
10a. PEDESTRIAN CROSSINGS - AT GRADE PEDESTRIAN CROSSINGS	03/17/20	YES	Complete		Photo of completed at-grade pedestrian crossings attached to 2018 Annual Report
10b. PEDESTRIAN CROSSINGS. UNDERPASS FEASIBILITY STUDY	03/17/20	YES	Complete	Makani Hou o Kaloko-Honoko disagrees that this item is complete. They would like an underpass to be built.	Final feasibility study including design guidelines (in appendix) distributed at 6/26/19 CP meeting and posted on the SharePoint site.

## Attachment 1

Stipulation	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
11. INTERPRETIVE SIGNS	03/17/20	NO	NOT COMPLETE	This Stipulation is late getting started. The NPS proposed to FHWA and HDOT that the NPS Harper's Ferry Group design, manufacture and install sign(s) in September, 2017. MOA between FHWA, NPS and HDOT for NPS to design, manufacture and install interpretive signs was delayed in the review process and finally executed 5/2/19.	5/2/19 MOA executed for NPS to design, manufacture and install interpretive signs in consultation with NHOs. The deadline in the interpretive sign MOA is 5/2/21
12. AHUPUA'A SIGNS	03/17/20	YES	Complete	Paka Harp has requested that the Honokohau 1 and 2 signs be changed to Honokohau Nui and Honokohau Iki.	Photo of completed Ahupua'a signs attached to 2018 Annual Report
13. LANDSCAPING PLANS	03/17/20	YES	Complete		Photo of completed landscaping attached to 2018 Annual Report
14. RELATIONSHIP BUILDING WORKSHOP	3/17/17	NO	Complete	This Stipulation was delayed. HDOT acknowledges that the handoff between the HDOT design branch who drafts the MOA to the HDOT District that is responsible for completing the MOA needs improvement. The stipulation was further delayed due to the damaged sites.	HDOT and FHWA are currently working on including a mitigation tracking system that includes due dates and responsible party. HDOT opted to host 2 more relationship building meetings, one each on Maui and Oahu. Summary report of relationship building workshop was distributed 11/5/2018 and is posted on the HDOT Socrata site.
15. TERRAIN MODEL	03/17/20	YES	Complete	Makani Hou o Kaloko-Honokohau disagrees that this item is complete. They would like another model built with the Queen Ka'ahumanu Highway removed.	Final terrain model was available for viewing at 6/26/19 CP meeting and digital terrain model posted on the HDOT Socrata site.
16. ARCHEOLOGICAL MATERIALS AND RECORDS	03/17/20	YES	Complete		Archeological materials will be curated by HDOT until another curating/display opportunity becomes available.

## Attachment 1

Stipulation	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
17. POST-REVIEW DISCOVERIES	Notification of CPs within 72 Hours of discovery	NO	NOT COMPLETE	<ul style="list-style-type: none"> <li>• NHOs were not notified in the timeframe required by Stipulation 17.</li> <li>• On July 28, 2016, HDOT was notified of possible site encroachments during construction at the mauka termini of the mauka-makai trail of Site 10714 Features A and C. HDOT issue a stop work order at this site and requested the Contractor and the Contractor's archaeologist to assess the damaged area.</li> <li>• SHPO was notified on 8/2/16</li> <li>• On 8/24 and 25, 2016 HDOT and SHPD did a site visit and confirmed the buffer breaches and damaged sites.</li> <li>• NHOs notified in email 9/30/16 and in meeting and site visit on 12/2/16</li> <li>• A site visit was conducted on 5/5/17 with NHOs to expanded APE.</li> <li>• NHOs were asked to notify HDOT of any additional sites in SAIS for the expanded APE by 5/19/17. No comments received.</li> <li>• Mitigation meeting held with NHOs and other Consulting Parties May 23, 2017 at NELHA.</li> <li>• 8/23/17 FHWA issued Notification of Adverse Effect for damaged sites.</li> </ul>	<ul style="list-style-type: none"> <li>• Action Plan during Construction drafted and used to address protection of known historic properties was developed to: 1) Fence all known sites at their construction buffers. Additionally, all sites were marked with a wooden lath which was marked with a pink flag and the site number. All laths were located in the southeast corner of the site fencing. 2) Clarify the role of the archaeological and cultural monitors and their ability to stop work.</li> <li>• FHWA began and will continue as necessary quarterly reporting to help ensure more timely reporting of issues.</li> <li>• The APE was revised and a Supplemental Archaeological Inventory was done.</li> <li>• HDOT and FHWA are both reviewing their 106 processes.</li> <li>• This Amendment 2 contains Stipulations to mitigate damaged sites</li> </ul>
18. DISPUTE RESOLUTION	N/A	N/A	NOT COMPLETE	<ul style="list-style-type: none"> <li>• 8/13/19 Fred Cachola of Makani Hou o Kaloko-Honokohau filed an objection via email to FHWA.</li> <li>• 10/25/19 In person meeting with representatives from Makani Hou, FHWA, SHPD and HDOT was held in Waimea to discuss objection and possible resolution.</li> <li>• FHWA responded to the complaint in writing 1/21/19.</li> </ul>	If the complaint cannot be resolved it will be forwarded to the ACHP per Stipulation 18.

## Attachment 1

Stipulation	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
19. MONITORING AND REPORTING	Annually	NO	NOT COMPLETE	Due to poor handoff between HDOT design and construction and at FHWA, the MOA was late to get started and annual reporting was not completed. First annual report was sent out February 24, 2017 for all work to date. Document sent April 28, 2017 broke down report into 2015 Annual Report (2nd column), revised 2016 report (3rd column) and MOA update (4th column).	Reports since 2017 have been timely filed. In addition to annual reports, quarterly reporting began in 2018 and will continue in 2020.
20. DURATION	03/17/20	NO	NOT COMPLETE	Seven stipulations as outlined above were not completed on time, so the MOA requires extension.	
21. AMENDMENTS	N/A	N/A	NOT COMPLETE	Amendment 1 to extend the duration of the MOA, was executed on _____	

## Attachment 2: List of Trails and Amount Graded

Site Number	Trail Name	Location	Amount of Trail Graded
00002	Māmalahoa Trail	Makai of QK-Hwy near the entrance to the Kaloko-Honokōhau National Park.	Total graded 160 feet. Allowable disturbance under 4(f) –90 feet. Excess graded-70 feet
00002	Māmalahoa Trail	Mauka of QK Hwy at the intersection with Kealakehe Parkway	22 feet graded
10714 Feature A	Trail to the Sea	Makai, approximately 88meters northwest of the intersection of Hina Lani St and the Queen Kaahumanu Hwy	16 feet
10714 Feature C	Trail to the Sea	Makai. Approximately 200 meters Northwest of the intersection of Hina Lani St. and the Queen Kaahumanu Hwy.	20 feet

**Federal Highways Administration and  
Hawai'i Department of Transportation  
Relationship Building Workshops**

**SUMMARY REPORT**

**I. Section 106 of the National Historic Preservation Act of 1966 requires consultation with Native Hawaiian organizations (NHO) in federal undertakings**

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. The Section 106 review process, seeks to avoid unnecessary harm to historic properties from such undertakings. ACHP has codified regulations implementing the Section 106 regulations in 36 CFR Part 800.

In 1992, the NHPA was amended to specifically require all federal agencies to consult with any Native Hawaiian organization (NHO). Section 101(d)(6)(A), clarified that properties of religious and cultural significance to NHOs may be eligible for listing in the National Register of Historic Places, and Section 101(d)(6)(B), requires federal agencies in carrying out their Section 106 responsibilities shall consult with any NHO that attaches religious and cultural significance to historic properties that may be affected by an undertaking. 36 CFR Section 800.16(f), defines consultation as the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.

**II. Federal Highway Administration and State of Hawai'i Department of Transportation sponsor statewide workshops to improve consultation with NHOs and communities**

The Federal Highway Administration (FHWA) has funded several State of Hawaii Department of Transportation (HDOT) projects where the Section 106 consultation process, especially with NHOs, could have been improved. Recognizing this, NHOs asked for specific stipulations addressing relationship building as part of the Memorandum of Agreement (MOA) for both the Kūhiō Highway Short-Term Improvements Project on Kaua'i and the Queen Kaahumanu Highway Widening Phase 2 Project on Hawai'i Island.

This Report provides a summary of the four (4) island-wide workshops that were required under the Section 106 MOA stipulations. Specifically, pursuant to Stipulation 4 of the Kūhiō Highway MOA, HDOT with the assistance of lead consultant SRI Foundation, developed a robust community engagement process. The community engagement process involved listening to the NHOs and Kauai community on how best to engage the NHOs and how to improve their relationship with HDOT. The process

included” (1) Preliminary engagement with the Kauai Advisory Council; (2) Several listening sessions in April 2015 among FHWA and HDOT staff, and NHOs and members of the Native Hawaiian community on Kauai on how to improve consultation between HDOT and NHOs; and (3) Three follow-up workshops on February 27, 2016 with smaller groups of NHOs on what HDOT heard in the listening sessions.

For the islands of Hawaii Island, Maui County, and Oahu, FHWA and HDOT with the assistance of lead consultant R. M. Towill, developed one-day workshops on each of the three islands on the topic of relationship building with the NHOs. Workshops were conducted for Hawai‘i Island, Maui County, and O‘ahu on August 29, 2017, January 9, 2018, April 9, 2018, and July 27, 2018, respectively. Invitation lists for these meetings were similar with the inclusion of representatives from FHWA, HDOT, State Historic Preservation Division (SHPD), ACHP, Office of Hawaiian Affairs (OHA), Historic Hawai‘i Foundation (HHF), Aha Moku Advisory Committee (AMAC), Aha Moku Councils, County agencies, Hawaiian Civic Clubs, Hawaiian Homestead Associations, Department of Hawaiian Homelands, Island Burial Councils, and NHOs listed on the U. S. Department of Interior list of NHOs. All the meetings were facilitated by Herb Lee of Mālama Waiwai LLC and Dawn Chang of Kuiwalu Consulting. Refreshments were provided. Meeting agendas were provided to the attendees prior to the meeting and meeting notes were distributed after each meeting.<sup>1</sup>

### **III. Common Themes from the Workshops**

There were several common themes that emerged from each of the 4 workshops.

#### **A. When to engage the community:**

- Early community engagement even before a specific project has been decided to avoid adverse impacts;
- There is a difference between community engagement and Section 106 consultation, and waiting to engage the NHOs and community in Section 106 process is too late. Attached is a copy of a diagram of the community engagement and consultation process that emerged from the Kauai workshops but was similarly described in the other workshops.

#### **B. Who to engage:**

- Need to engage the Hawaiian community/stakeholders from the geographic area where the project is being proposed – look to the AMAC geographic representatives, starting with the Po‘o for each island;
- Engage the families who have lineal or ancestral connections to the specific geographic area.

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<sup>1</sup> Summary notes of the respective workshops for Kaua‘i, Hawai‘i Island, Maui County and O‘ahu were previously sent out to all the workshop invitees.

C. How to engage the community, especially the native Hawaiian community:

- In culturally appropriate ways, i.e. small talk story sessions vs. public meetings, talk to kūpuna first;
- Need personal one-to-one contact rather than just sending out letters, and do not cold call, but rather find someone in the community that they trust to vouch for you;
- HDOT and the Counties need to be better coordinated on their projects, including sharing of information that they gather from the community;
- Consultation is an on-going process that requires timely follow-up if you want to have a trusting relationship.

D. How can HDOT improve relationships:

- Develop trust with the community by following up and engaging them early;
- Identify a point of contact on each island;
- Consider establishing a community engagement division that can reach out to the community, instead of having the project managers do it;
- Consider internal “training” on Section 106 and cultural sensitivity, particularly for personnel who may interface with the community;
- Consider doing more programmatic agreements for projects that are similar with minimal impacts;
- Conduct more of these workshops with the stakeholders as this is a good first step, but it needs to continue if the long-term goal is to improve relationships.

E. How can NHOs assist HDOT:

- NHO participants recognized that consultation is a two-way street where the NHOs have to participate in the consultation process and provide information about who to contact and not rely solely on HDOT;
- NHOs who have relevant information need to respond to meeting requests, correspondence, publications, etc. about projects that they may have information that could help to avoid adverse impacts;
- HDOT would greatly appreciate as much information during the planning process so that they can design projects to avoid impacts to cultural resources rather than mitigate;
- Some NHOs suggested that if they know about the project ahead of time and have a good relationship with HDOT, then the community could provide support to HDOT on legislative or even county council initiatives to testify in support of funding for their projects.

#### **IV. Unique themes from each island workshop**

While there were many common themes from all the workshops, there were also unique themes or issues from each County.

##### **A. Kauai**

- Consider establishing an “Advisory Council” for each island made up of key community stakeholders to provide guidance to HDOT;
- Establish a cooperative agreement with OHA to develop a database of NHOs and maintain the database for HDOT;
- Seek individuals who are trusted by the community, have experience working with community, and understand Native Hawaiian culture to facilitate meetings;
- HDOT should consider having dedicated liaisons to facilitate relations with Native Hawaiian community.

##### **B. Hawaii Island**

- HDOT should consider convening small talk story or kūkā sessions, not project-specific, in the communities in a more informal setting rather than the large public hearings;
- Some view HDOT as more of a developer or enabler and a threat to historic resources, therefore need to humanize HDOT staff;
- HDOT should consider public involvement or community in its overall project delivery process to ensure that HDOT staff will engage the community.

##### **C. Maui County (including Maui, Lanai, and Molokai)**

- Maui residents raised maintenance issues as a concern, and suggested collaborating with the community similar to the “Adopt-A-Highway” model (i.e. have residents help with grass cutting);
- Old government roads and trails are issues on Maui;
- HDOT needs to have separate meetings with NHOs rather than combined public meetings because they have a separate status from the public and will be more comfortable sharing.

##### **D. Oahu**

- Create a GIS mapping system of culturally sensitive sites or historic resources where the NHOs can include information and HDOT can review during the planning stages;
- Sometimes there are so many meetings that it causes stakeholder fatigue, so sometimes stakeholders just have to prioritize the projects that have greatest potential impact;

- Mitigation needs to include genuine consultation with the community, not be driven by HDOT staff;
- Establish a community engagement or outreach division within HDOT that has expertise with Section 106 and Chapter 6E and can conduct outreach, especially with NHOs, so that project managers would no longer have to assume this responsibility.

## **V. Next Steps**

Based upon what HDOT heard, several initiatives are being considered to improve relationships with NHOs and the community, including:

- Finding opportunities to meet with the NHOs to provide information about HDOT and seek their input into the early planning process. As a start to this effort, HDOT requested to be on the agenda for the October 2018 Annual Hawaiian Civic Club Convention on the island of Kauai and their request was granted;
- Providing training opportunities to HDOT staff on cultural sensitivity, native Hawaiian rights, Section 106;
- Developing a data base of NHOs for different geographic areas;
- Committing to follow-up with the consulting parties for various Section 106 mitigation commitments to ensure that they are being adhered to; and
- Reviewing all the workshop proposed Best Management Practices to determine appropriate and feasible actions for HDOT to implement.

## **VI. Conclusion**

Although the workshops were required pursuant to Section 106 MOAs, HDOT wanted to do more than “check off the box.” There is genuine commitment and desire by HDOT to improve their relationship with NHOs, interested stakeholders, and the community in general. Both FHWA and HDOT recognize the value in effective consultation and collaboration with NHOs on protecting cultural and historic properties for the highway projects. But more importantly, they recognize that early community engagement is critical to improving the overall relationship between HDOT and NHOs and the community, and ultimately build better roadways.

FHWA and HDOT heard from the NHOs and stakeholders that highway projects can be built to avoid impacts to historic and cultural properties with early community engagement with the NHOs and affected communities. In addition, projects that can avoid adverse impacts will minimize construction delays and cost overruns. By consulting people with ancestral ties to the proposed project area, roadway projects can be built in locations which may avoid adverse impacts to historic and cultural properties (i.e. iwi kūpuna and trails) rather than mitigating adverse effects. In addition, roadway projects can be designed to be more resilient for climate change by thinking seven generations ahead like how Hawaiians think and plan.

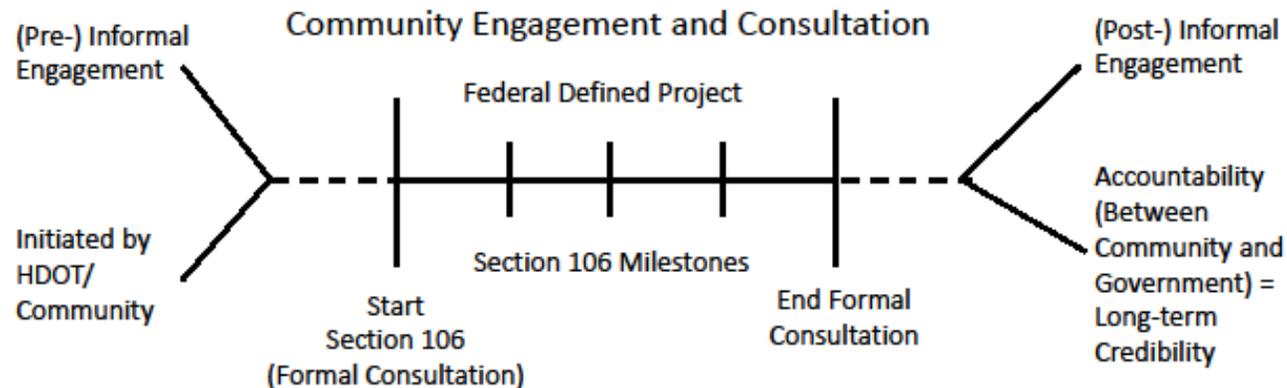
What became evident in all the workshops is that, (1) NHOs and the community want early community engagement even before the Section 106 consultation process that is required for highway projects with a federal nexus; (2) HDOT personnel, in particular project managers, want to have a better understanding and helpful tools in how to effectively engage with the NHO; s; and (3) Relationships are built upon trusting each other. At the beginning of each workshop, both HDOT and some NHOs were resistant and anxious about what to expect, but at the end of each workshop, there was candid sharing and optimism that these workshops have set the foundation for building trust between HDOT, NHOs, stakeholders, and the community at large.

FHWA and HDOT in particular, greatly appreciate the time that all the participants, including NHOs, interested stakeholders, agencies, and FHWA and HDOT staff took to attend these workshops to improve relationships, build better projects, and find better ways to protect valuable cultural and historic resources.

## Desired Outcomes: Involving Native Hawaiians early in the process

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- Begin consultation early.
- Let members of the community know which projects are planned for the future and provide as much information as possible on the details of these projects.



Key Concept: Ongoing relationship building  
Ma ka hana ka 'ike: Learn by doing

**ANNUAL REPORT** Calendar Year 2019

Queen Kaahumanu Highway Widening Phase 2 Memorandum of Agreement

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
1	<p><b>ON SITE POINT OF CONTACT.</b></p> <p>a. The FHWA in coordination with the HDOT shall designate an on-site point of contact (POC) within fourteen days of the execution of this MOA.</p> <p>b. This on-site POC shall maintain hard copies of all documents relative to this MOA and provide electronic copies of them upon request by any consulting party to this MOA.</p> <p>c. The on-site POC shall be responsible for receiving and distributing any daily archaeological or cultural monitoring reports related to the construction of the Project to the other consulting parties to this MOA via email on a weekly basis.</p> <p>d. All signatories, concurring parties, and consulting parties to this MOA shall identify a POC for their respective organizations and transmit contact information to the FHWA and HDOT who shall maintain a current POC list.</p>	<p>a. The FHWA and HDOT designated on-site POC is now Don Smith.</p> <p>b. Don Smith maintains hard copies of documents relative to the MOA and can provide electronic copies upon request.</p> <p>c. Archaeological and cultural monitoring reports are completed. No further work required.</p> <p>d. 4/8/2017 email sent with current POC's requesting all parties to the MOA respond with any updates. Updates were incorporated. Current POC's as of 12/30/18 are:</p> <p><b>FHWA</b> Lisa Powell (Lisa.Powell@dot.gov)</p> <p><b>SHPD</b> Susan Lebo (Susan.A.Lebo@hawaii.gov)</p> <p><b>ACHP</b> Mandy Ranslow (mranslow@achp.gov)</p> <p><b>HDOT</b> Donald Smith (Donald.L.Smith@hawaii.gov) Deona Naboia (Deona.Naboia@hawaii.gov)</p> <p><b>NPS</b> Tyler Paikuli-Campbell (Tyler_Paikuli-Campbell@nps.gov) Jeff Zimpfer (jeff_zimpfer@nps.gov) Aric Arakaki (Aric_arakaki@nps.gov) Rick Gmirkin (Rick_gmirkin@nps.gov)</p> <p><b>Makani Hou</b> Fred Cachola (fredcachola@gmail.com) Paka Harp (paka@sandwichisles.net)</p> <p><b>LaiOpua2020</b> Bo Kahui (bokahui@laiopua.org)</p>	<p>a. The FHWA and HDOT designated on-site POC is now Harry Takiue.</p> <p>b. Harry Takiue maintains hard copies of documents relative to the MOA and can provide electronic copies upon request.</p> <p>c. Work Complete</p> <p>d. 9/5/19 email sent by FHWA with current POC's requesting all parties to the MOA respond with any updates. Updates were incorporated. Current POC's as of 12/26/19 are:</p> <p><b>FHWA</b> Lisa Powell (<a href="mailto:Lisa.Powell@dot.gov">Lisa.Powell@dot.gov</a>)</p> <p><b>SHPD</b> Susan Lebo (<a href="mailto:Susan.A.Lebo@hawaii.gov">Susan.A.Lebo@hawaii.gov</a>) Sean Naleimaile (sean.p.naleimaile@hawaii.gov)</p> <p><b>ACHP</b> Mandy Ranslow (<a href="mailto:mranslow@achp.gov">mranslow@achp.gov</a>)</p> <p><b>HDOT</b> Harry Takiue (<a href="mailto:harry.h.takiue@hawaii.gov">harry.h.takiue@hawaii.gov</a>) Julann Sonomura (<a href="mailto:julann.m.sonomura@hawaii.gov">julann.m.sonomura@hawaii.gov</a>) Pua Aiu (Pua.Aiu@hawaii.gov)</p> <p><b>NPS</b> Tyler Paikuli-Campbell (Tyler_Paikuli-Campbell@nps.gov) Jeff Zimpfer (jeff_zimpfer@nps.gov) Aric Arakaki (Aric_arakaki@nps.gov) Rick Gmirkin (Rick_gmirkin@nps.gov) Amanda Johnson Campbell (Amanda_johnson@nps.gov)</p> <p><b>Makani Hou</b> Fred Cachola (fredcachola@gmail.com) Paka Harp (<a href="mailto:pakaharp@gmail.com">pakaharp@gmail.com</a>)</p>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
		<p><b>HHF</b> Kiersten Faulkner (Kiersten@historichawaii.org)</p> <p><b>OHA</b> Lauren Morawski (laurenm@oha.org) Keola Lindsey (keolal@oha.org) Shane Nelson (shanen@oha.org)</p> <p><b>Kona HCC</b> Cynthia Nazara (cynazara@gmail.com) Maurice Kahuwai (mkahawaii@hawaii.rr.com)</p>	<p><b>LaiOpua2020</b> Bo Kahui (<a href="mailto:bokahui@laiopua.org">bokahui@laiopua.org</a>)</p> <p><b>HHF</b> Kiersten Faulkner (<a href="mailto:Kiersten@historichawaii.org">Kiersten@historichawaii.org</a>)</p> <p><b>OHA</b> Lauren Morawski (laurenm@oha.org) Keola Lindsey (keolal@oha.org) Shane Nelson (shanen@oha.org)</p> <p><b>Kona HCC</b> Maurice Kahuwai (mkahawaii@hawaii.rr.com) Kekoa Nazara (koanazara@gmail.com)</p>	
2	<p><b>AREA OF POTENTIAL EFFECT (APE).</b> The Project's Area of Potential Effect (APE) includes the right-of-way (ROW) of the Queen Ka'ahumanu Highway, the Honokohau Settlement National Historic Landmark, the Kaloko-Honokohau National Historical Park, and trails that are immediately adjacent to and traverse the Project area that have been identified as significant to the Ala Kahakai National Historic Trail corridor (Attachment 2), most notably the Mamalahoa Trail.</p>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	
3	<p><b>PROFESSIONAL STANDARDS.</b> a. The HDOT shall ensure that all work carried out and documents prepared under this MOA are consistent with the recommendations of the August 2012 AIS cited above and conform to the Secretary of the Interior's Standards and Guidelines for Archeological Documentation, the ACHP's Section 106 "Archaeological</p>	<p>a. No Change</p>	<p>a. No change</p>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	<p>Guidance” and the SHPO’s requirements for data recovery and preservation.</p> <p>b. Further, all work pertaining to the identification and treatment of archaeological resources, including sites and objects, will be carried out by, or under the direct supervision of, a person or persons meeting the professional qualification for archaeology as found in “The Secretary of the Interior (SOI) Historic Preservation Professional Qualification Standards” (SOI Qualification Standards), per 36 CFR Part §61, Appendix A (Volume 48, No 190 dated September 29, 1983), and Title 13, Chapter 300, Hawai’i Administrative Rules (HAR).</p> <p>c. The HDOT shall provide, upon request, the documents identified in this MOA in either digital or paper copy to the requestor, subject to the confidentiality provisions of Section 304 of the NHPA.</p>	<p>b. Work complete.</p> <p>c. No requests made in 2018.</p>	<p>b. Work complete</p> <p>c. Documents have been posted on the RMT sharepoint site and HDOT Socrata site. Paper copies of the underpass feasibility study were available at the June 26, 2019 CP meeting. Paper copies of the following reports were available at the November 26, 2019 CP meeting:</p> <ul style="list-style-type: none"> <li>a. APMP, April 2014</li> <li>b. DRPP, October 2012</li> <li>c. AMP, October 2012</li> <li>d. AIS, July 2012</li> <li>e. BTP, October 2012</li> <li>f. Supplemental AIS March 2017</li> <li>g. BTP Addendum January 2019</li> </ul>	
4	<p><b>ARCHAEOLOGICAL PRESERVATION AND MITIGATION PLAN (APMP, APRIL 2014), DATA RECOVERY AND PRESERVATION PLAN (DRPP, OCTOBER 2012), ARCHAEOLOGICAL MONITORING PLAN (AMP OCTOBER 2012) and BURIAL TREATMENT PLAN (BTP, OCTOBER 2012).</b></p> <p>a. FHWA will ensure that HDOT complies with the implementation of the APMP, AMP, DRPP, and BTP and its compliance with the conditions of approval stipulated by SHPD.</p> <p>b. The HDOT shall provide the parties to this MOA a copy of the findings of the APMP, AMP and DRPP activities.</p> <p>c. Further, construction, including ground-disturbing activities will not commence until the data recovery fieldwork has been completed and a data recovery end of fieldwork report has been drafted and approved by SHPD.</p> <p>d. The end of fieldwork report shall be submitted to all parties of this MOA and NHOs who participated in the consultation process.</p> <p>e. The Data Recovery Final Report shall be submitted to SHPD for their approval.</p>	<p>a. APMP, AMP, AND DRP complete. BTP no longer required due to south section narrowing. 12/12/18 BTP Addendum submitted to SHPD. SHPD acceptance letter is forthcoming.</p> <p>b. Work complete.</p> <p>c. Construction complete and data recovery report has been submitted to SHPD.</p> <p>d. Draft End of Fieldwork Report anticipated mid-2019.</p> <p>e. 3/16/18 DOT submitted Final DRR (Vol. I to III) to SHPD.</p>	<p>a. BTP required amending since burial no longer disturbed due to south section narrowing. 12/12/18 BTP Addendum submitted to SHPD. SHPD accepted 2/15/19.</p> <p>b. The revised Archeological Monitoring Report (AMR) was received by HDOT from the Contractor 7/30/19. HDOT Historic Resource Specialist (HRS) returned End of Fieldwork Report to contractors for corrections/revisions 8/12/19. Revised AMR received by HDOT 11/25/19 and currently under review by HDOT HRS.</p> <p>c. Construction complete and data recovery report has been submitted to SHPD.</p> <p>d. End of fieldwork report complete. Submitted June 25, 2015 and accepted by SHPD July 16, 2015. (Log No. 2015.02518)</p> <p>e. No change.</p>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
5A	<p><b>PROJECT REDESIGN.</b></p> <p>The FHWA shall ensure that HDOT completes the redesign of the southern portions (between Kealakehe Parkway and Hinalani Street) of the proposed improvements, to minimize the impacts of the highway widening. The objective of the redesign is to avoid, where feasible, historic properties and to propose mitigation action to minimize potential impacts. The revised plans shall be made available for review by the consulting parties of this MOA upon receipt of a timely request to the HDOT.</p>	Work complete.	Work complete.	
5B	<p><b>NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION.</b></p> <p>a. The HDOT and the University of Hawai'i at Hilo (UHH) have entered into a Memorandum of Understanding (MOU) to provide cultural programs and education to support Native Hawaiian studies.</p> <p>b. The HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the five year duration of the agreement.</p> <p>c. Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.</p>	<p>a. HDOT coordinating MOU Amendment with UHH</p> <p>b. HDOT met with the Kohala Center and UH Hilo to continue collaborating on the MOU stipulations.</p> <p>c. Annual Reports have not been produced since the programs have not started.</p>	<p>a. Revised MOU adding the Kohala Center and additional funds was drafted in 2019 and signed by HDOT and UHH with an effective date of October 1, 2019. Per Makani Hou request, Don Smith distributed draft MOU to CPs via email July 28, 2019. Per Makani Hou request, UHH and Makani Hou met 12/3/19 to discuss the scope of the MOU. As a result of this meeting, Makani Hou requested the scholarship funds be used to set up an endowment, from which scholarship funds can be drawn annually, in perpetuity. HDOT and FHWA are researching if this is feasible. They also requested that the terms of the oral history reports be amended. HDOT working on this request with UHH.</p> <p>b. Since UHH program has not begun, this time requirement will not be met and MOA will require extension.</p> <p>c. Annual reports will begin when UHH programs begin.</p>	

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6	<p><b>CULTURAL MONITORS.</b></p> <p>HDOT prepared a Cultural Monitoring Scope of Work that describes the minimum qualifications and requirements for cultural monitor positions. The tasks of the cultural monitor(s) include: (a) serve as a liaison with the community to assist in the interpretation of cultural resources, (b) provide cultural education for construction workers, (c) prevent and minimize impacts to historic and cultural resources, (d) monitor the activities of the project archaeologist, and e) prepare daily reports. HDOT will engage a pool of cultural monitors to insure that whenever data recovery activities or construction activities disturb previously undisturbed areas a monitor is present. HDOT provided signatories and concurring parties to the MOA an opportunity to review and comment on the draft Cultural Monitoring scope of work. The FHWA approved the Final Cultural Monitoring Scope of Work on October 22, 2012. The HDOT shall select a cultural monitor(s) from a list of qualified applicants based on the objectives identified above. Participating NHOs were afforded the opportunity to identify and evaluate the potential cultural monitor candidates.</p>	<p>Cultural monitoring concluded in November 2018 with completion of construction.</p>	<p>Work complete.</p>	
7	<p><b>STREET LIGHTING.</b></p> <p>a. Street lighting shall only be provided at signalized intersections (Kealakehe Parkway, Lanihau, Hina Lani (also known as Hina-Lani or Hinalani), Hulikoa, Ka'imianani, and Ke'āhole Airport Road).</p> <p>b. Luminaire will be a CWES KS04-100 with SF-7 filter that will be "full cut-off" with no up light directed skyward other than incidental reflections.</p> <p>c. HDOT shall provide confirmation to the NPS that lights are level and properly installed.</p> <p>d. All lighting will use a "blue-cut" filter (yellow tinted) to prevent shorter wavelength light emission, which is known to disproportionately degrade the appearance of the night sky and disproportionately impact nocturnal wildlife species, and to reduce the perceived glare as seen from the National Parks.</p> <p>e. The intensity of the installed lighting shall not exceed 10,000 initial (at installation) lumens after filtering, nor exceed the minimum necessary for the task.</p> <p>f. For those intersections adjacent to the National Park (Kealakehe Parkway, Lanihau, and Hina Lani), the outer streetlights (those first and last encountered by drivers) shall be of lower intensity (at minimum 20% less intense than the other installed lights) to provide improved transition between lit and dark areas and to provide an incremental reduction in total lumen footprint.</p> <p>g. HDOT may modify the specifications contained herein if new technology becomes available that would better</p>	<p>a. Construction of street lighting completed in November 2018</p> <p>b. Work complete.</p> <p>c. Work complete.</p> <p>d. Work complete.</p> <p>e. Work complete.</p> <p>f. Work complete.</p> <p>g. Acknowledged.</p>	<p>a. Work complete.</p> <p>b. Work complete.</p> <p>c. Work complete.</p> <p>d. Work complete.</p> <p>e. Work complete.</p> <p>f. Work complete.</p> <p>g. Acknowledged.</p>	

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	meet the intent of this stipulation, provided the NPS agrees to such change in writing.			
8	<p><b>NOISE STUDY.</b></p> <p>a. The HDOT conducted a noise impact study in March 2014 to determine if the roadway improvements planned has the potential for impacting the activities within the National Park. The study was conducted in accordance with 23 CFR 774. The final report is pending.</p> <p>b. The findings will be made available to consulting parties in this MOA.</p>	<p>a. Work complete.</p> <p>b. Work complete.</p>	<p>a. Work complete. Also, reference Stipulation 18 Dispute Resolution.</p> <p>b. Work complete.</p>	
9	<p><b>HIGHWAY DRAINAGE.</b></p> <p>a. The HDOT shall install drainage control (drywells) equipped with oil/water separators to prevent polluted runoff from entering groundwater below the National Parks from a point 1,000 feet north of Hinalani Street to immediately south of the Kealakehe Parkway Intersection. HDOT shall construct the roadway and site the drywells to capture 90+% of storm runoff flows from both northbound and southbound lanes of highway in accordance with the HDOT standard specifications for stormwater treatment. Products utilized by the contractor shall provide that oil/water separators shall meet a minimum removal efficiency of 95%, and removal efficiencies of metals shall meet 95% of copper, 93% of lead, and 95% of zinc.</p> <p>b. The HDOT shall maintain drywell oil/water separators pursuant to the manufacturer's specifications to provide maximum protection of groundwater from polluted runoff. Annually, the HDOT shall provide NPS with reports of the actual maintenance of the drywells no later than 30 days after the anniversary of the installation of the drywells is completed. The reports shall include drywell location, date filters replaced, condition of filter replaced, and comments.</p> <p>c. This report shall be also made available to parties of this MOA and NHOs participating in the consultation process.</p>	<p>a. Drywell installation completed November 2018.</p> <p>b. Drywell installation completed in November 2018. Annual maintenance reports are anticipated to be prepared and made available to CPs beginning in November 2019</p> <p>c. Acknowledged.</p>	<p>a. Work complete.</p> <p>b. Annual filter inspection was completed November, 2019. HDOT is working with contractor to analyze results.</p> <p>c. Report will be made available to all parties once complete.</p>	
10A	<p><b>PEDESTRIAN CROSSINGS - AT GRADE PEDESTRIAN CROSSINGS.</b></p> <p>The HDOT shall provide at-grade pedestrian crossing at the following three locations: at the intersections of Hinalani</p>	Construction of pedestrian crossings completed in November 2018.	Work complete.	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	Street, Lanihau Street/Park Entrance, and Kealakehe Parkway. These crossings shall incorporate pedestrian refuges (where feasible) in the highway median where there is adequate space available for the pedestrian refuge, and will accommodate bicycle users.			
10B	<p><b>PEDESTRIAN CROSSINGS - UNDERPASS FEABILITY STUDY.</b></p> <p>a. The HDOT shall conduct a feasibility study with the objective of facilitating safe pedestrian access across the Queen Ka’ahumanu Highway at the “Trail to Honokōhau.” The study will examine at-grade crossing locations, the installation of a pedestrian tunnel crossing, and the modification of existing culverts for pedestrian-bicycle use. The study shall seek examples and policies regarding use of existing pedestrian tunnels and modified culverts in Hawai’i and other States. Subsurface crossing(s) shall include provisions for a third party organization to take responsibility for maintenance, security and liability for the crossing(s) as has been the policy of HDOT for more than a decade.</p> <p>b. The HDOT shall identify and select a qualified independent third party to conduct the study.</p> <p>c. As part of the study, HDOT shall consult with NPS to identify community organizations who may be invited to participate in the feasibility study. Organizations that may be invited to participate include: signatories to this MOA, NHOs, Peoples Advocacy Trails Hawai’i (PATH), County of Hawai’i, local primary and secondary school officials, universities, community groups, the Royal Order of Kamehameha, and the Association of Hawaiian Civic Clubs.</p> <p>d. As part of the feasibility study the HDOT shall convene a community meeting that has as its objective the development of design guidelines for future Queen Ka’ahumanu Highway expansion projects that includes provisions for trail connectivity and pedestrian crossings under the Queen Ka’ahumanu Highway as well as paralleling the highway.</p> <p>e. The HDOT shall transmit the findings of the feasibility study (inclusive of any documents or written testimony from the community meeting above) to parties participating in the feasibility study prior to the expiration of this MOA.</p>	<p>a. HDOT completed Draft Study. Prefinal Study currently being prepared.</p> <p>b. Work complete.</p> <p>c. Work complete.</p> <p>d. Work complete.</p> <p>e. Distribution of study anticipated in first quarter of 2019.</p>	<p>a. Final pedestrian underpass feasibility study completed June, 2019. Also, reference Stipulation 18 Dispute Resolution.</p> <p>b. Work complete.</p> <p>c. Work complete.</p> <p>d. Work complete.</p> <p>e. Paper copies of the study were distributed at the June 26, 2019 CP meeting. The study was also posted on the HDOT Socrata website and RMT share site for download.</p>	
11	<p><b>INTERPRETIVE SIGN(S).</b></p> <p>The HDOT shall research, design, and produce mutually agreed upon interpretive sign(s) in consultation with NPS and</p>	<ul style="list-style-type: none"> <li>3/13/18 Concept proposed by NPS approved by DOT/FHWA</li> </ul>	<ul style="list-style-type: none"> <li>5/2/19 MOA executed for NPS to design, manufacture, and install interpretive signs.</li> <li>July 2019 FHWA funds were transferred to NPS regional office</li> </ul>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	<p>NHOs relating to the history of the trails identified in the Project ROW near the Kaloko-Honokōhau National Historical Park and how the trails relate to the surrounding community. The sign(s) shall be (1) designed to meet NPS sign standards, (2) produced by HDOT, and (3) installed by the NPS within the boundaries of the Kaloko-Honokōhau National Historical Park.</p>	<ul style="list-style-type: none"> <li>• 6/20/18 NPS and FHWA met HDOT met with NPS on 2/10/2017 and 4/2017 to review agreement for fund transfer to design and produce signs.</li> <li>• 9/30/18 FHWA drafted MOA for NPS to design, produce and install signs. NPS review complete, HDOT Legal review ongoing.</li> </ul>	<ul style="list-style-type: none"> <li>• August 2019 Harper's Ferry designers performed first sight visit</li> <li>• December 2019 NPS is working with regional NPS office to get funds transferred to Kaloko-Honokōhau National Historical Park</li> </ul>	
12	<p><b>AHUPUA'A SIGNS.</b></p> <ol style="list-style-type: none"> <li>a. The HDOT shall install ahupua'a markers within the project limits following the guidelines of the HDOT's Ahupua'a Marker Program. The markers (ahu or sign on posts) shall be designed and installed in consultation with community groups and NHOs as prescribed by the Ahupua'a Marker Program.</li> <li>b. A notice of the proposed installation shall be published in the West Hawai'i Today newspaper.</li> <li>c. The markers shall be installed as part of the highway widening project.</li> </ol>	<ol style="list-style-type: none"> <li>a. Sign installation completed November 2018.</li> <li>b. Same as above.</li> <li>c. Same as above.</li> </ol>	<ol style="list-style-type: none"> <li>a. Work complete. Also, reference Stipulation 18 Dispute Resolution.</li> <li>b. Work complete.</li> <li>c. Work complete.</li> </ol>	
13	<p><b>HIGHWAY LANDSCAPING.</b></p> <p>The HDOT shall coordinate landscaping plans with the NPS in areas within the ROW fronting the Kaloko-Honokōhau National Historical Park; including intersections. The criteria for landscaping material include: native plant species or appropriate Polynesian-introduced species that require low maintenance and are drought tolerant. The plant species to be planted shall be decided upon jointly between HDOT and the NPS in consultation with the NHOs.</p>	<p>Construction of landscaping completed November 2018. Maintenance period by contractor ongoing until August 2019.</p>	<p>Work complete</p>	
14	<p><b>RELATIONSHIP BUILDING WORKSHOP.</b></p> <ol style="list-style-type: none"> <li>a. The FHWA and HDOT acknowledge the need to build upon existing and develop new relationships with NHO and communities statewide. The FHWA and HDOT shall commit to sponsoring an initial statewide (one day) relationship building workshop to provide a forum where discussion and knowledge exchange can occur between the FHWA, HDOT, NHOs, concurring parties, and community representatives in a non-project specific context.</li> <li>b. Other agencies may be invited to participate in this forum as deemed appropriate by a consensus decision between FHWA, HDOT, and OHA, advocating on behalf of NHO interests.</li> <li>c. This workshop shall be held within 24 months following the execution of this MOA.</li> <li>d. The subject of the workshop may cover five (5) major areas: (1) identification of issues, challenges or problems that NHOs and HDOT/FHWA have</li> </ol>	<ol style="list-style-type: none"> <li>a. Workshop for Maui County (Maui, Lāna'i and Moloka'i) held in Kahului Maui on 4/9/18, and workshop notes distributed on 8/7/18. Workshop for O'ahu held in Kāne'ohe on 7/27/18, and workshop notes distributed on 8/30/18. HDOT distributed Summary Report for all workshops to statewide invitees on 11/5/18. Work complete.</li> <li>b. Work complete.</li> <li>c. Workshop for Maui County (Maui, Lāna'i and Moloka'i) held in Kahului Maui on 4/9/18, and workshop notes distributed on 8/7/18. Workshop for O'ahu held in Kāne'ohe on 7/27/18, and workshop notes distributed on 8/30/18. HDOT distributed Summary Report</li> </ol>	<ol style="list-style-type: none"> <li>a. Work complete.</li> <li>b. Work complete.</li> <li>c. Work complete. Also, reference Stipulation 18 Dispute Resolution. Relationship building workshops were not held within 24 months.</li> </ol>	

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	<p>experienced in consultation with each other; (2) a technical training about National Historic Preservation Act Section 106, U.S. Department of Transportation Act Section 4(f), National Environmental Policy Act (NEPA), NHO protocols, relevant Hawaiian history or cultural practices, or other relevant laws and practices (mutually sharing information); (3) a problem-solving session to share knowledge about best practices that would assist NHOs, HDOT and FHWA to have productive and effective consultation; (4) to identify NHO and community representatives interested in participating in the next stage of relationship building that may involve a training course sponsored by the FHWA/HDOT that integrates the NEPA/NHPA/U.S. Department of Transportation Act, Section 4(f) decision making processes for transportation projects in Hawai'i; and (5) explore the development of agreement documents that guide NEPA/NHPA consultation for transportation projects in Hawai'i.</p> <p>e. The FHWA and HDOT may sponsor additional phases of the relationship building process and will decide within one year after the conclusion of the first workshop as appropriate and/or necessary.</p>	<p>for to invitees of all four statewide workshops on 11/5/18. Work complete.</p> <p>d. Agenda finalized and distributed to Maui and O'ahu attendees on 4/6/18 and 7/24/18, respectively. Work complete.</p> <p>e. HDOT presented two breakout sessions during the Annual Conference for the Association of Hawaiian Civic Clubs on November 14, 2018 on Kauai.</p>	<p>d. Work complete.</p> <p>e. HDOT held an internal debrief and future plan of action meeting on February 8, 2019 to engage and build relationships with NHO's. HDOT presented one breakout session at the Association of Hawaiian Civic Clubs Annual Convention November 13, 2019 on Maui.</p>	
15	<p><b>TERRAIN MODEL.</b></p> <p>a. The HDOT shall commission the construction of a terrain model depicting the lands of Kekaha (between Kailua and Anaehoomalu) in consultation with Makani Hou o Kaloko-Honokōhau. The model shall incorporate topographic relief, traditional place names, historic trails, settlement locations, interpretive signs, and other important landmarks, to be determined.</p> <p>b. The model may be housed at the Kaloko-Honokōhau National Historical Park under the auspices of the Hawai'i Pacific Parks Association.</p> <p>c. The model shall be of such scale that it can be transported to other locations and be used as a teaching tool.</p> <p>d. A second digital model will also be developed and include similar information as the terrain model.</p>	<p>a. Physical model shipped on Dec. 26, 2018 by model maker. Estimated delivery during the week of Jan. 7, 2019.</p> <p>b. HDOT to coordinate a display case and final location for the physical model.</p> <p>c. Model dimensions are 3 ft. by 5 ft. by 9 in.</p> <p>d. February 2018 digital model revised and distributed to attendees of Mtg #3 for final comment.</p>	<p>a. Physical model received by HDOT January, 2019. The model was presented at the consultation meeting with the CPs on June 26, 2019. Also, reference Stipulation 18 Dispute Resolution.</p> <p>b. HDOT built a display table for the model. Model currently housed at HDOT district office in Hilo.</p> <p>c. Model dimensions are 3 ft. by 5 ft. by 9 in.</p> <p>d. Digital terrain model is posted on RMTowill sharepoint sight. Email with instructions sent to CPs from Don Smith on July 4, 2019. Also, reference Stipulation 18 Dispute Resolution.</p>	
16	<p><b>ARCHAEOLOGICAL MATERIALS AND RECORDS.</b></p> <p>All archaeological materials and records discovered as a result of the subject project shall be housed and curated by the HDOT. The location and methods used shall be subject to</p>	Acknowledged	Acknowledged	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	<p>review and consultation with SHPD and shall be open for review and inspection by the public upon request to HDOT. If at some future date the NPS has space, personnel, and resources to take on this responsibility, the HDOT shall consult with NPS.</p>			
17	<p><b>POST-REVIEW DISCOVERIES.</b></p> <p>If previously unknown potential historic properties are discovered or unanticipated effects on identified historic properties are found during project construction, the HDOT shall take the actions identified below.</p> <p>The HDOT will immediately notify the SHPO, and immediately stop work at the site of the find until appropriate final mitigation measures are implemented.</p> <p>A. If the discovery or unanticipated adverse effect is located within the ROW, the HDOT will notify SHPO and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA of the findings within 72 hours. If the finding is adjacent to the Park boundary, then the HDOT will also notify the NPS at the same time that the SHPO is notified. All signatories, invited signatories and concurring parties to this MOA shall designate a "point of contact" and contact information for the representative who shall be notified pursuant to this provision or the inadvertent discovery of human skeletal remains as described at 17(C) below.</p> <p>B. The FHWA, the SHPO, and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA shall consult on the potential significance of the discovered property, National Register of Historic Places eligibility and any proposed treatment. Comments on the significance, of the discovered property, National Register of Historic Places eligibility and any proposed treatment or a request for additional time to provide comments shall be provided by the SHPO, signatories, invited signatories, and concurring parties to the FHWA within 48 hours of any notification as described in 17(A) in order to be considered. HDOT to ensure that any recommended treatment measures are implemented; and HDOT shall provide a final report to the SHPO and all signatories, invited signatories, and concurring parties on these actions when they are completed.</p> <p>C. In the event human skeletal remains are inadvertently discovered during project construction, the requirements of Chapter §6E-43.6, HRS, and Chapter 13-300, HAR, shall determine appropriate treatment.</p> <p>In addition to the parties who are notified of inadvertent discoveries pursuant to Chapter 13-300-40(b), HAR, and (c), the FHWA shall ensure all signatories, invited signatories and concurring parties to this MOA are notified of the inadvertent discovery and afforded a reasonable opportunity to comment</p>	<p>A. Work complete November 2018.</p> <p>B. Work complete.</p> <p>C. Work complete.</p>	<p>A. Work complete, so no new discoveries. For work on mitigation of damaged sites, see Stipulation 21.</p> <p>B. Work complete.</p> <p>C. Work complete.</p>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	on appropriate treatment. Comments shall be directed to the SHPD.			
18	<p><b>DISPUTE RESOLUTION.</b></p> <p>Should any signatory, invited signatory, or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:</p> <p>A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FHWA will then proceed according to its final decision.</p> <p>B. Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.</p> <p>C. Be responsible to carry out all other actions, subject to the terms of this MOA that are not the subject of the dispute.</p>	No formal objections filed in 2018.	<ul style="list-style-type: none"> <li>• 8/13/19 Fred Cachola of Makani Hou o Kaloko-Honokohau filed objection via email to FHWA. Summary of objection is as follows: <ul style="list-style-type: none"> <li>○ General-HDOT and FHWA reps are not trained in 106 process. FHWA should hold 2-day training and develop consultation protocols.</li> <li>○ Stipulation 4-Distribute reports and discuss at future meeting</li> <li>○ Stipulation 5 -Include NHOs in development of MOU.</li> <li>○ Stipulation 8-Distribute noise study report and discuss at future meeting. Take current noise measurements.</li> <li>○ Stipulation 10B-Provide summary of underpass feasibility study and discuss at future meeting.</li> <li>○ Stipulation 11-Consult with NHOs on interpretive signs.</li> <li>○ Stipulation 12-Honokohau 1 sign should read, "Honokohau Nui, " and the Honokohau 2 sign should read "Honokohau Iki."</li> <li>○ Stipulation 14-Add addendum to summary report for relationship building workshops explaining delay in holding workshops</li> <li>○ Stipulation 15-There was a failure among RMT staff in consulting with NHOs. Makani Hou envisioned terrain model without contemporary features (i.e. road)</li> <li>○ Stipulation 17-Post Review Discoveries-Destroyed sites swept under the rug and deadlines not met. Palamanui proposal given priority at June, 2010 meeting vs. NHO proposal.</li> <li>○ Stipulation 21-Request early notification and invitation to NHOs in considering amendments.</li> </ul> </li> <li>• 8/21/19 Lisa Powell of FHWA responded via email to objection in addition to offering in person meeting.</li> <li>• 10/25/19 In person meeting with representatives from Makani Hou, FHWA, SHPD and HDOT was held in Waimea to discuss objection and possible resolutions</li> </ul>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
			<ul style="list-style-type: none"> <li>• 11/22/2019 Draft meeting minutes distributed by FHWA.</li> <li>• 12/19/2019 Finalized notes from October meeting distributed to participants with understanding that written responses will follow in January 2020.</li> </ul>	
19	<p><b>MONITORING AND REPORTING.</b></p> <p>a. At the end of each calendar year following the execution of this MOA, or until it expires or is terminated, the FHWA, with the assistance of HDOT, shall provide all parties to this MOA and NHOs that participated a summary report (report) detailing work undertaken pursuant to its terms. This report shall summarize the implementation of the plans identified in Stipulation 4 and any other agreed upon mitigation measures detailed in this MOA. Such a report shall also include any scheduling changes proposed, any problems encountered, and any disputes and objections received in HDOT's and the FHWA's efforts to carry out the terms of this MOA.</p> <p>b. A review meeting may be called by the FHWA or HDOT upon request of a signatory, invited signatory or concurring party to this MOA.</p> <p>c. A Final Report shall be prepared and transmitted to the parties to this MOA, and NHOs that participated in consultation at the expiration of the MOA.</p>	<p>a. This document is the 2018 Annual Report. Quarterly tracking of incomplete tasks will also occur throughout 2019.</p> <p>b. A review meeting has not been requested.</p> <p>c. No change.</p>	<p>a. This document is the 2019 Annual Report. Quarterly tracking of incomplete tasks will also occur throughout 2020.</p> <p>b. Makani Hou requested a two day meeting to discuss the MOA stipulations at CP meeting on June 26, 2019. HDOT and FHWA met with Makani Hou and SHPD on October 25, 2019. At the November 26<sup>th</sup> CP meeting, another meeting was scheduled for February 8, 2020.</p> <p>c. No change.</p>	
20	<p><b>DURATION.</b></p> <p>The term of this MOA shall apply for a period of five (5) years from the execution of the MOA, unless amended pursuant to Stipulation 21 of this MOA below.</p>	MOA amendment currently being prepared, and will include extension.	MOA amendment will be required to extend the MOA.	
21	<p><b>AMENDMENTS.</b></p> <p>Any signatory, invited signatory, or concurring party to this MOA may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR Part 800 to consider such amendment. The authority to execute any final amendments shall be with the signatories of this MOA. The amendment will be effective on the last date a copy of it is signed by all of the signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate consultation on the proposed amendment in accordance with Stipulation 22 below.</p> <p>To address minor changes in the projects or the treatment of historic properties affected by the projects, FHWA may propose revisions to the APMP, DRPP, AMP, BTP or Cultural Monitoring Scope of work to the other parties to this MOA.</p>	HDOT prepared and is currently reviewing draft amendment.	<ul style="list-style-type: none"> <li>• Amendment required to expand APE to include side roads, include mitigation for damaged sites, acknowledge schedule relationship building workshop timeline not met, allow for the NPS to design, manufacture and install interpretive signs, and extend duration of MOA.</li> <li>• Draft Amendment submitted to FHWA by HDOT in March, 2019.</li> <li>• 6/26/2019 Meeting held discussing possible mitigation for damaged sites through Palamanui.</li> <li>• 11/15/2019 HDOT/FHWA propose two amendments-the first to extend the time to allow more consultation on the damaged site</li> </ul>	

No.	Stipulation	Work Undertaken in 2018	Work Undertaken in 2019	
	Upon the written concurrence of the signatories and invited signatories, FHWA may revise the plans(s) to incorporate the agreed upon changes without executing a formal amendment to this MOA		mitigation. Draft Amendment 1 sent to CPs by Harry Takiue. <ul style="list-style-type: none"> <li>• 11/26/2019 Consultation meeting held for Amendment 1 and damaged site mitigation.</li> </ul>	
22	<b>TERMINATION.</b> If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 21, above. If within thirty (30) days or another time period agreed to by the approving signatories an amendment cannot be reached, any approving signatory may terminate consultation on the proposed amendment to the MOA upon written notification to the other signatories. Other provisions of the MOA shall remain in effect.	No change.	No change.	
23	<b>COUNTERPART SIGNATURES.</b> This MOA may be executed in counterparts. Each signature page shall be incorporated into the MOA and considered a part of this MOA.			
24	This Agreement supersedes in its entirety the MOA dated March 5, 1999, as well as the 1999 Final Archaeological Treatment Plan.			

**ANNUAL REPORT** Calendar Years 2015 to 2017

Queen Kaahumanu Highway Widening Phase 2 Memorandum of Agreement

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017
1	<p><b>ON SITE POINT OF CONTACT.</b></p> <p>a. The FHWA in coordination with the HDOT shall designate an on-site point of contact (POC) within fourteen days of the execution of this MOA.</p> <p>b. This on-site POC shall maintain hard copies of all documents relative to this MOA and provide electronic copies of them upon request by any consulting party to this MOA.</p> <p>c. The on-site POC shall be responsible for receiving and distributing any daily archaeological or cultural monitoring reports related to the construction of the Project to the other consulting parties to this MOA via email on a weekly basis.</p> <p>d. All signatories, concurring parties, and consulting parties to this MOA shall identify a POC for their respective organizations and transmit contact information to the FHWA and HDOT who shall maintain a current POC list.</p>	<p>a. The FHWA and HDOT designed on-site POC is Sterling Chow, Assistant District Engineer, Hawaii Island.</p> <p>b. Sterling Chow maintains hard copies and has provided electronic copies upon request.</p> <p>c. Cultural monitoring reports were completed and distributed to the MOA contact list during data recovery from 5/21/15 to 6/16/17. Cultural monitoring reports were completed and sent to the MOA contact list during construction beginning 9/2/15 to present. Archeological monitoring reports were completed and sent to the MOA contact list during construction starting on 9/2/15 up to 11/1/15.</p> <p>d. The signatories and concurring parties have identified the POCs from their respective organizations. Contact list is prepared and maintained by HDOT.</p>	<p>a. No change.</p> <p>b. No change.</p> <p>c. Archaeological and cultural monitoring reports continue to be generated and sent to the current list of POCs. (See Attached.)</p> <p>d. Current POC list attached as addendum to 2016 annual report.</p>	<p>a. The FHWA and HDOT designated on-site POC is now Natasha Soriano.</p> <p>b. Natasha Soriano maintains hard copies of documents relative to the MOA and can provide electronic copies upon request.</p> <p>c. Archeological and cultural monitoring reports continue to be generated and sent to the current list of POCs</p> <p>d. 4/8/2017 email sent with current POC's requesting all parties to the MOA respond with any updates. Updates were incorporated. Current POC's as of 12/29/17 are:</p> <p><b>FHWA</b> Lisa Powell (Lisa.Powell@dot.gov)</p> <p><b>SHPD</b> Susan Lebo (Susan.A.Lebo@hawaii.gov) Amy Rubingh (Amy.Rubingh@hawaii.gov)</p> <p><b>ACHP</b> Sarah Stokely (sstokely@achp.gov)</p> <p><b>HDOT</b> Donald Smith (Donald.L.Smith@hawaii.gov) Natasha Soriano (Natasha.A.Soriano@hawaii.gov) Deona Naboia (Deona.Naboia@hawaii.gov)</p> <p><b>NPS</b> Tyler Paikuli-Campbell (Tyler_Paikuli-Campbell@nps.gov) Jeff Zimpfer (jeff_zimpfer@nps.gov) Aric Arakaki (Aric_arakaki@nps.gov) Rick Gmirkin (Rick_gmirkin@nps.gov)</p> <p><b>Makani Hou</b> Fred Cachola (fredcachola@gmail.com) Paka Harp (paka@sandwichisles.net)</p> <p><b>LaiOpua2020</b> Bo Kahui (bokahui@laiopua.org)</p> <p><b>HHF</b> Kiersten Faulkner (Kiersten@historichawaii.org)</p>

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
				<p><b>OHA</b>            Lauren Morawski (laurenm@oha.org)            Keola Lindsey (keolal@oha.org)</p> <p><b>Kona HCC</b>            Cynthia Nazara (cynazara@gmail.com)            Maurice Kahuwai (mkahawaii@hawaii.rr.com)</p>	
2	<p><b>AREA OF POTENTIAL EFFECT (APE).</b></p> <p>The Project's Area of Potential Effect (APE) includes the right-of-way (ROW) of the Queen Ka'ahumanu Highway, the Honokohau Settlement National Historic Landmark, the Kaloko-Honokohau National Historical Park, and trails that are immediately adjacent to and traverse the Project area that have been identified as significant to the Ala Kahakai National Historic Trail corridor (Attachment 2), most notably the Mamalahoa Trail.</p>	No action in 2015	<ul style="list-style-type: none"> <li>In Summer of 2016, during investigation of site breaches, it was determined the APE did not include work on side roads which is outside the 300-ft. HDOT ROW.</li> </ul>	<ul style="list-style-type: none"> <li>The expanded APE was approved by SHPD on 1/6/17.</li> <li>HDOT requested SHPD concurrence on a Supplemental Arch. Inventory Survey (SAIS) reporting on expanded areas. Comments have been received from SHPD and are being addressed. SAIS Approved on 3/19/17 by SHPD.</li> <li>SAIS was distributed to signatories and consulting parties in email 4/8/17. HDOT notified signatories and consulting parties on 4/28/17 of a site visit to the expanded APE set for 5/5/17. HDOT asked that any comments on the SAIS or additional known cultural or historical properties within the expanded APE be submitted to HDOT by 5/19/17.</li> <li>5/5/17 Site visit held with Native Hawaiian organizations to expanded APE. No comments were received by 5/19/17 deadline.</li> <li>8/30/17 FHWA Issued Notification of Adverse Effect for damaged sites which included expanded APE.</li> </ul>	
3	<p><b>PROFESSIONAL STANDARDS.</b></p> <p>a. The HDOT shall ensure that all work carried out and documents prepared under this MOA are consistent with the recommendations of the August 2012 AIS cited above and conform to the Secretary of the Interior's Standards and Guidelines for Archeological Documentation, the ACHP's Section 106 "Archaeological Guidance" and the SHPO's requirements for data recovery and preservation.</p> <p>b. Further, all work pertaining to the identification and treatment of archaeological resources, including sites and objects, will be carried out by, or under the direct supervision of, a person or persons meeting the professional qualification for archaeology as found in "The Secretary of the Interior (SOI) Historic Preservation Professional Qualification Standards" (SOI Qualification Standards), per 36 CFR Part §61, Appendix A (Volume</p>	<p>a. HDOT affirms HDOT is in conformance with this requirement.</p> <p>b. Cultural Surveys Hawaii is performing all work pertaining to the identification and treatment of archaeological resources. The President, Principal of Firm, Dr. Hallett Hammatt, meets the professional qualification requirements.</p>	<p>a. No change.</p> <p>b. No change.</p>	<ul style="list-style-type: none"> <li>No change.</li> <li>No change.</li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	<p>48, No 190 dated September 29, 1983), and Title 13, Chapter 300, Hawai'i Administrative Rules (HAR).</p> <p>c. The HDOT shall provide, upon request, the documents identified in this MOA in either digital or paper copy to the requestor, subject to the confidentiality provisions of Section 304 of the NHPA.</p>	<p>c. No requests made in 2015</p>	<p>c. HDOT provided copies of AMP, AIS, DRPP, and APMP to Fred and Paka of Makani Hou at meeting 12/7/16</p>	<ul style="list-style-type: none"> <li>• HDOT provided copies of SAIS through posting to RMT sharesite to POC's 4/8/17 and in email on 4/27/17.</li> </ul>	
4	<p><b>ARCHAEOLOGICAL PRESERVATION AND MITIGATION PLAN (APMP, APRIL 2014), DATA RECOVERY AND PRESERVATION PLAN (DRPP, OCTOBER 2012), ARCHAEOLOGICAL MONITORING PLAN (AMP OCTOBER 2012) and BURIAL TREATMENT PLAN (BTP, OCTOBER 2012).</b></p> <p>a. FHWA will ensure that HDOT complies with the implementation of the APMP, AMP, DRPP, and BTP and its compliance with the conditions of approval stipulated by SHPD.</p> <p>b. The HDOT shall provide the parties to this MOA a copy of the findings of the APMP, AMP and DRPP activities.</p> <p>c. Further, construction, including ground-disturbing activities will not commence until the data recovery fieldwork has been completed and a data recovery end of fieldwork report has been drafted and approved by SHPD.</p> <p>d. The end of fieldwork report shall be submitted to all parties of this MOA and NHOs who participated in the consultation process.</p> <p>e. The Data Recovery Final Report shall be submitted to SHPD for their approval.</p>	<p>a. Construction started on 9/3/2015. Due to the narrowing of the hwy median, the retaining wall shown in the BTP is no longer required. An amendment to the BTP dated Sept 2015 was submitted to the burial council for approval.</p> <p>b. Copies of the subject plans are available for review at the office of HDOT, Hawai'i District.</p> <p>c. Data Recovery Plan (DR) completed June 2015. Data Recovery End of Field Work report submitted to SHPD on 6/25/2015. SHPD response letter dated 7/16/15 determined that field work complete for data recovery and preservation phases. Construction began 9/3/15.</p> <p>d. Data Recovery End of Field Work report was not submitted to NHOs.</p> <p>e. Data Recovery Final Report not complete.</p>	<p>a. After site breaches, Final Action Plan developed to ensure compliance with implementation of APMP, AMP, DRPP, and BTP.</p> <p>b. Copies of the APMP, AMP, DRPP, and BTP are available for review at the office of HDOT, Hawai'i District</p> <p>c. No change.</p> <p>d. Data Recovery End of Field Work report submitted to consulting parties in an email 2/16/17.</p> <p>e. Data Recovery Final Report being drafted by CSH.</p>	<p>A. Final Action Plan distributed to NHOs in email 4/4/17.</p> <p>B. As requested by NHOs, copies of APMP, DRPP, and AMP and end of fieldwork letters are posted RMTTC Share site on 4/8/17 <a href="https://share.rmtowill.com/index.php/s/bjTqGBKwEjB72eC">https://share.rmtowill.com/index.php/s/bjTqGBKwEjB72eC</a></p> <p>C. No change.</p> <p>D. Data Recovery End of Field Work report posted on sharepoint site (above) with a notification email sent to signatories and consulting parties 4/8/17.</p> <p>E. Draft Data Recovery Final Report (Vol. I to III submitted to HDOT May 2017.</p>	
5A	<p><b>PROJECT REDESIGN.</b></p> <p>The FHWA shall ensure that HDOT completes the redesign of the southern portions (between Kealakehe Parkway and Hinalani Street) of the proposed improvements, to minimize the impacts of the highway widening. The objective of the redesign is to avoid, where feasible, historic properties and to propose mitigation action to minimize potential impacts. The revised plans shall be made available for review by the consulting parties of this MOA upon receipt of a timely request to the HDOT.</p>	<p>a. Conceptual re-design completed in 2015</p> <p>b. Final re-design plans for the area between Kealakehe Parkway and Hinalani Street in progress.</p>	<p>c. Final construction final plans for the area between Kealakehe Parkway and Hinalani Street were completed August 2016 and construction is ongoing.</p>	<p>d. Construction for re-designed project is ongoing and scheduled for completion October 2018.</p>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017
5B	<p><b>NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION.</b></p> <p>a. The HDOT and the University of Hawai'i at Hilo (UHH) have entered into a Memorandum of Understanding (MOU) to provide cultural programs and education to support Native Hawaiian studies.</p> <p>b. The HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the five year duration of the agreement.</p> <p>c. Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.</p>	<p>a. On October 23, 2013 the State of Hawaii Department of Transportation and the University of Hawaii entered into an agreement to implement the following program:</p> <ul style="list-style-type: none"> <li>- Native Hawaii archaeology/anthropology</li> <li>- Native Hawaiian studies scholarship program.</li> <li>- Hawaiian immersion/charter school support</li> <li>- Recording of oral histories</li> <li>- Cultural programming support</li> </ul> <p>b. The MOU was not implemented in 2015</p> <p>c. Annual Reports have not been produced since the programs have not started.</p>	<p>a. No change.</p> <p>b. HDOT (S. Chow) re-initiated consultation with UHH in December 2016 to determine steps to implement the various programs.</p> <p>c. No change</p>	<p>a. MOU emailed to POC's 4/26/17 and posted on RMT sharesite.</p> <p>b. 3/11/17 UH Hilo submitted budget to HDOT. NHO Makani Hou provided comment that the Kohala Center (TKC) may be more appropriate and cost effective to implement portions of the program.9/2017 HDOT met with UH Hilo and the Kohala Center- The Kohala Center and UH Hilo will collaborate to fulfill the MOU stipulations.</p> <p>c. No change.</p>
6	<p><b>CULTURAL MONITORS.</b></p> <p>HDOT prepared a Cultural Monitoring Scope of Work that describes the minimum qualifications and requirements for cultural monitor positions. The tasks of the cultural monitor(s) include: (a) serve as a liaison with the community to assist in the interpretation of cultural resources, (b) provide cultural education for construction workers, (c) prevent and minimize impacts to historic and cultural resources, (d) monitor the activities of the project archaeologist, and e) prepare daily reports. HDOT will engage a pool of cultural monitors to insure that whenever data recovery activities or construction activities disturb previously undisturbed areas a monitor is present. HDOT provided signatories and concurring parties to the MOA an opportunity to review and comment on the draft Cultural Monitoring scope of work. The FHWA approved the Final Cultural Monitoring Scope of Work on October 22, 2012. The HDOT shall select a cultural monitor(s) from a list of qualified applicants based on the objectives identified above. Participating NHOs were afforded the opportunity to identify and evaluate the potential cultural monitor candidates.</p>	<p>HDOT selected cultural monitors from a list of qualified applicants:</p> <ul style="list-style-type: none"> <li>- Cynthia Nazara (starting 4/15/2015)</li> <li>- Justin Asing (starting 4/15/2015)</li> <li>- Ron Michell (starting 4/15/2015)</li> <li>- Walter Wong (starting 4/15/2015)</li> </ul> <p>a. Jacob Keanaaina (starting 8/31/2015)</p> <p>b. Momi Wheeler (starting 8/31/2015)</p> <p>c. Jessica Fernandez (starting 9/2/2015 ending 9/25/2015)</p> <p>d. Nicole Lui (starting 10/5/2015)</p> <p>Note: May/June 2015 – Cultural monitors were present for data recovery work.</p> <p>September 2015 to present cultural monitors present for construction activities</p>	<ul style="list-style-type: none"> <li>• Contract with Justin Asing terminated 4/19/16</li> </ul>	<p>a. April 7, 2017 NHO Cynthia Nazara reaffirmed that cultural sensitivity training is done for all employees of the project.</p>

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
7	<p><b>STREET LIGHTING.</b></p> <p>a. Street lighting shall only be provided at signalized intersections (Kealakehe Parkway, Lanihau, Hina Lani (also known as Hina-Lani or Hinalani), Hulikoa, Ka'imianani, and Ke'āhole Airport Road).</p> <p>b. Luminaire will be a CWES KS04-100 with SF-7 filter that will be "full cut-off" with no up light directed skyward other than incidental reflections.</p> <p>c. HDOT shall provide confirmation to the NPS that lights are level and properly installed.</p> <p>d. All lighting will use a "blue-cut" filter (yellow tinted) to prevent shorter wavelength light emission, which is known to disproportionately degrade the appearance of the night sky and disproportionately impact nocturnal wildlife species, and to reduce the perceived glare as seen from the National Parks.</p> <p>e. The intensity of the installed lighting shall not exceed 10,000 initial (at installation) lumens after filtering, nor exceed the minimum necessary for the task.</p> <p>f. For those intersections adjacent to the National Park (Kealakehe Parkway, Lanihau, and Hina Lani), the outer streetlights (those first and last encountered by drivers) shall be of lower intensity (at minimum 20% less intense than the other installed lights) to provide improved transition between lit and dark areas and to provide an incremental reduction in total lumen footprint.</p> <p>g. HDOT may modify the specifications contained herein if new technology becomes available that would better meet the intent of this stipulation, provided the NPS agrees to such change in writing.</p>	<ul style="list-style-type: none"> <li>- Conceptual plans reflect street lighting only at signalized intersections.</li> <li>- In letter dated June 16, 2015 NPS approves luminaire substitution of 92WLED Streetlight (2 Light Engine) and 46W LED Street Light (1 Light Engine) due to CWES KS04-100 being obsolete.</li> <li>- Lights are not yet installed.</li> <li>- Conceptual plans/specifications in compliance.</li> <li>- Conceptual plans/specifications in compliance.</li> <li>- Conceptual plans/specifications in compliance.</li> <li>- June 2015 NPS concurs with luminaire change to incorporate new technology.</li> </ul>	<ul style="list-style-type: none"> <li>a. Final plans reflect street lighting only at signalized intersections.</li> <li>b. No change.</li> <li>c. No change.</li> <li>d. Final plans/specifications in compliance.</li> <li>e. Final plans/specifications in compliance.</li> <li>f. Final plans/specifications in compliance.</li> <li>g. No change.</li> </ul>	<ul style="list-style-type: none"> <li>a. Construction of street lighting scheduled for completion August 2018.</li> <li>b. No change.</li> <li>c. No change.</li> <li>d. No change.</li> <li>e. No change.</li> <li>f. No change.</li> <li>g. No change.</li> </ul>	
8	<p><b>NOISE STUDY.</b></p> <p>a. The HDOT conducted a noise impact study in March 2014 to determine if the roadway improvements planned has the potential for impacting the activities within the National Park. The study was conducted in accordance with 23 CFR 774. The final report is pending.</p> <p>b. The findings will be made available to consulting parties in this MOA.</p>	<ul style="list-style-type: none"> <li>a. Noise Study Final Report completed in February 2015.</li> <li>b. On file with HDOT- Hawai'i District Office. Has not been made available to consulting parties.</li> </ul>	<ul style="list-style-type: none"> <li>a. No change.</li> <li>b. No change.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> <li>• The noise study is within the 4(f) document posted on the share site on 4/8/17 <a href="https://share.rmtowill.com/index.php/s/bjTqGBKwEjB72eC">https://share.rmtowill.com/index.php/s/bjTqGBKwEjB72eC</a></li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
9	<p><b>HIGHWAY DRAINAGE.</b></p> <p>a. The HDOT shall install drainage control (drywells) equipped with oil/water separators to prevent polluted runoff from entering groundwater below the National Parks from a point 1,000 feet north of Hinalani Street to immediately south of the Kealakehe Parkway Intersection. HDOT shall construct the roadway and site the drywells to capture 90+% of storm runoff flows from both northbound and southbound lanes of highway in accordance with the HDOT standard specifications for stormwater treatment. Products utilized by the contractor shall provide that oil/water separators shall meet a minimum removal efficiency of 95%, and removal efficiencies of metals shall meet 95% of copper, 93% of lead, and 95% of zinc.</p> <p>b. The HDOT shall maintain drywell oil/water separators pursuant to the manufacturer's specifications to provide maximum protection of groundwater from polluted runoff. Annually, the HDOT shall provide NPS with reports of the actual maintenance of the drywells no later than 30 days after the anniversary of the installation of the drywells is completed. The reports shall include drywell location, date filters replaced, condition of filter replaced, and comments.</p> <p>c. This report shall be also made available to parties of this MOA and NHOs participating in the consultation process.</p>	<p>a. Conceptual re-design plans completed in 2015 which incorporated drywells per this requirement.</p> <p>b. Oil/water separators maintenance and reporting will begin once constructed.</p> <p>c. Reporting will begin once drywells in place.</p>	<p>a. Final plans completed incorporating drywells per this requirement.</p> <p>b. No change.</p> <p>c. No change.</p>	<p>a. Drywells are anticipated to be completed August 2018.</p> <p>b. Drywells are anticipated to be completed August 2018. Annual reports will be prepared and anticipate to be published August 2019 and made available to consulting parties.</p> <p>c. No change</p>	
10A	<p><b>PEDESTRIAN CROSSINGS - AT GRADE PEDESTRIAN CROSSINGS.</b></p> <p>The HDOT shall provide at-grade pedestrian crossing at the following three locations: at the intersections of Hinalani Street, Lanihau Street/Park Entrance, and Kealakehe Parkway. These crossings shall incorporate pedestrian refuges (where feasible) in the highway median where there is adequate space available for the pedestrian refuge, and will accommodate bicycle users.</p>	<p>a. Conceptual re-design plans completed in 2015 which incorporate pedestrian crossings. Final plans are in progress.</p>	<p>b. Final plans incorporate at-grade pedestrian crossings and were completed in August 2016</p>	<p>c. Construction completion of pedestrian crossings scheduled for October 2018.</p>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
10B	<p><b>PEDESTRIAN CROSSINGS - UNDERPASS FEABILITY STUDY.</b></p> <p>a. The HDOT shall conduct a feasibility study with the objective of facilitating safe pedestrian access across the Queen Ka'ahumanu Highway at the "Trail to Honokōhau." The study will examine at-grade crossing locations, the installation of a pedestrian tunnel crossing, and the modification of existing culverts for pedestrian-bicycle use. The study shall seek examples and policies regarding use of existing pedestrian tunnels and modified culverts in Hawai'i and other States. Subsurface crossing(s) shall include provisions for a third party organization to take responsibility for maintenance, security and liability for the crossing(s) as has been the policy of HDOT for more than a decade.</p> <p>b. The HDOT shall identify and select a qualified independent third party to conduct the study.</p> <p>c. As part of the study, HDOT shall consult with NPS to identify community organizations who may be invited to participate in the feasibility study. Organizations that may be invited to participate include: signatories to this MOA, NHOs, Peoples Advocacy Trails Hawai'i (PATH), County of Hawai'i, local primary and secondary school officials, universities, community groups, the Royal Order of Kamehameha, and the Association of Hawaiian Civic Clubs.</p> <p>d. As part of the feasibility study the HDOT shall convene a community meeting that has as its objective the development of design guidelines for future Queen Ka'ahumanu Highway expansion projects that includes provisions for trail connectivity and pedestrian crossings under the Queen Ka'ahumanu Highway as well as paralleling the highway.</p> <p>e. The HDOT shall transmit the findings of the feasibility study (inclusive of any documents or written testimony from the community meeting above) to parties participating in the feasibility study prior to the expiration of this MOA.</p>	<p>a. October 2015 - Began underpass feasibility study. Preliminary design concept completed in November 2015.</p> <p>b. HDOT selected RM Towill Corporation as the qualified independent third party.</p> <p>c. The consultant started the project. They intend to consult with NPS next year.</p> <p>d. A community meeting is planned for 2017.</p> <p>e. This will be done once the study is completed.</p>	<p>a. No change.</p> <p>b. No change.</p> <p>c. No change</p> <p>d. No change.</p> <p>e. No change.</p>	<p>a. No change.</p> <p>b. Makani Hou expressed concern that RM Towill is not an independent third party.</p> <p>c. Consultation with NPS occurred on 1/30/2017. Invitation list finalized with NPS 4/18/17.</p> <p>d. 7/25/17 Community Meeting #1 held to discuss preliminary considerations for design of the underpasses. 12/7/17 Community Meeting #2 held to discuss Draft Feasibility Study and conceptual design, and design guidelines</p> <p>e. No change.</p>	
11	<p><b>INTERPRETIVE SIGN(S).</b></p> <p>The HDOT shall research, design, and produce mutually agreed upon interpretive sign(s) in consultation with NPS and NHOs relating to the history of the trails identified in the Project ROW near the Kaloko-Honokōhau National Historical Park and how the trails relate to the surrounding community. The sign(s) shall be (1) designed to meet NPS sign standards, (2) produced by HDOT, and (3) installed by the NPS within the boundaries of the Kaloko-Honokōhau National Historical Park.</p>	<ul style="list-style-type: none"> <li>No action in 2015.</li> </ul>	<ul style="list-style-type: none"> <li>No action in 2016</li> </ul>	<ul style="list-style-type: none"> <li>HDOT met with NPS on 2/10/2017 and 4/2017 to review interpretive signage and applicability to project.</li> <li>9/2017 The NPS proposed to FHWA and HDOT that the NPS Harper's Ferry Group design, manufacture and install sign(s). FHWA and HDOT are agreeable.</li> <li>11/2017 NPS staff at Kaloko-Honokohau in discussions with Harper's Ferry group on</li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
				concepts for interpretive panel(s) for the visitor center.	
12	<p><b>AHUPUA'A SIGNS.</b></p> <p>a. The HDOT shall install ahupua'a markers within the project limits following the guidelines of the HDOT's Ahupua'a Marker Program. The markers (ahu or sign on posts) shall be designed and installed in consultation with community groups and NHOs as prescribed by the Ahupua'a Marker Program.</p> <p>b. A notice of the proposed installation shall be published in the West Hawai'i Today newspaper.</p> <p>c. The markers shall be installed as part of the highway widening project.</p>	<p>a. No action in 2015</p> <p>b. No action in 2015</p> <p>c. No action in 2015</p>	<p>a. The HDOT has draft guidelines for the Ahupua'a Marker Program which will serve as the basis for the planned development of the ahupua'a markers. Consultation on installation has not begun.</p> <p>b. Once the design and location is completed, HDOT will comply with this requirement.</p> <p>c. The manufacture and installation of markers will be a change order to the current construction project.</p>	<p>a. HDOT to develop conceptual signage including preliminary specifications and locations for placement within the HDOT ROW using ahupua'a information from the terrain model. Following this step, HDOT will consult with NHOs. At meeting on April 7, 2017 NHOs requested copy of the Ahupua'a Program report once finalized. 12/7/17 HDOT consulted with NHOs on Ahupua'a boundaries at terrain model meeting #3.</p> <p>b. No change.</p> <p>c. Installation of signs scheduled for completion October 2018.</p>	
13	<p><b>HIGHWAY LANDSCAPING.</b></p> <p>The HDOT shall coordinate landscaping plans with the NPS in areas within the ROW fronting the Kaloko-Honokōhau National Historical Park; including intersections. The criteria for landscaping material include: native plant species or appropriate Polynesian-introduced species that require low maintenance and are drought tolerant. The plant species to be planted shall be decided upon jointly between HDOT and the NPS in consultation with the NHOs.</p>	<p>a. HDOT selected landscape designer Joel Kurokawa from Ki Concepts LLC</p> <p>b. In August 2015, HDOT met with NPS to discuss the draft landscape plans. In September 2015 NPS provided comments on landscaping plans.</p>	<p>c. Landscaping plans submitted to NHOs on 12/20/2016.</p>	<ul style="list-style-type: none"> <li>• Comments received 1/28/17 from Kona Hawaiian Civic Club and 2/16/2017 from Makani Hou on replacing bougainvillea with a native plant.</li> <li>• 5/9/17 HDOT confirmed that 450-3 gallon bougainvillea will be replaced with 450-3 gallon naupaka</li> <li>• Construction of landscaping schedule for completion October 2018</li> </ul>	
14	<p><b>RELATIONSHIP BUILDING WORKSHOP.</b></p> <p>a. The FHWA and HDOT acknowledge the need to build upon existing and develop new relationships with NHO and communities statewide. The FHWA and HDOT shall commit to sponsoring an initial statewide (one day) relationship building workshop to provide a forum where discussion and knowledge exchange can occur between the FHWA, HDOT, NHOs, concurring parties, and community representatives in a non-project specific context.</p> <p>b. Other agencies may be invited to participate in this forum as deemed appropriate by a consensus decision between FHWA, HDOT, and OHA, advocating on behalf of NHO interests.</p> <p>c. This workshop shall be held within 24 months following the execution of this MOA.</p> <p>d. The subject of the workshop may cover five (5) major areas: (1) identification of issues, challenges or problems that NHOs and HDOT/FHWA have experienced in consultation with each other; (2) a</p>	<p>No action in 2015</p>	<p>a. Preliminary planning for workshop undertaken.</p> <p>b. Meeting participants identified.</p> <p>c. 24 months from the date MOA was signed (3/17/2015) is 3/17/2017. Workshop is temporarily delayed due to archaeological breaches that need to be addressed prior to selecting a date.</p> <p>d. Draft Agenda developed which will be consulted on with the NHOs.</p>	<ul style="list-style-type: none"> <li>• No change.</li> <li>• No change.</li> <li>• The relationship building workshop was held with Hawaii Island NHOs on 8/29/17. Draft meeting notes distributed 12/28/17.</li> <li>• Agenda finalized and distributed 8/22/17.</li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	<p>technical training about National Historic Preservation Act Section 106, U.S. Department of Transportation Act Section 4(f), National Environmental Policy Act (NEPA), NHO protocols, relevant Hawaiian history or cultural practices, or other relevant laws and practices (mutually sharing information); (3) a problem-solving session to share knowledge about best practices that would assist NHOs, HDOT and FHWA to have productive and effective consultation; (4) to identify NHO and community representatives interested in participating in the next stage of relationship building that may involve a training course sponsored by the FHWA/HDOT that integrates the NEPA/NHPA/U.S. Department of Transportation Act, Section 4(f) decision making processes for transportation projects in Hawai'i; and (5) explore the development of agreement documents that guide NEPA/NHPA consultation for transportation projects in Hawai'i.</p> <p>e. The FHWA and HDOT may sponsor additional phases of the relationship building process and will decide within one year after the conclusion of the first workshop as appropriate and/or necessary.</p>		<p>e. To be decided after the first workshop.</p>	<ul style="list-style-type: none"> <li>Additional workshops will be held in 2018 on Maui and Oahu.</li> </ul>	
15	<p><b>TERRAIN MODEL.</b></p> <p>a. The HDOT shall commission the construction of a terrain model depicting the lands of Kekaha (between Kailua and Anaehoomalu) in consultation with Makani Hou o Kaloko-Honokōhau. The model shall incorporate topographic relief, traditional place names, historic trails, settlement locations, interpretive signs, and other important landmarks, to be determined.</p> <p>b. The model may be housed at the Kaloko-Honokōhau National Historical Park under the auspices of the Hawai'i Pacific Parks Association.</p> <p>c. The model shall be of such scale that it can be transported to other locations and be used as a teaching tool.</p> <p>d. A second digital model will also be developed and include similar information as the terrain model.</p>	<p>a. September 2015 Began terrain model planning for scope and fee for model.</p> <p>b. HDOT will be in compliance with this requirement.</p> <p>c. HDOT will be in compliance with this requirement.</p> <p>d. HDOT will be in compliance with this requirement.</p>	<p>a. No change.</p> <p>b. No change.</p> <p>c. No change</p> <p>d. No change.</p>	<p>a. On 2/10/2017 and 2/21/2017, HDOT consulted with NPS and Makani Ho regarding this item. 4/6/2017 Collected terrain data, physical, and digital model layout information and distributed 3D model to group for comment. 12/7/17 Meeting #3 to confirm physical terrain model content, aesthetics and overall dimensions.</p> <p>b. At April 7, 2017 meeting NHOs suggested putting the terrain model in a higher trafficked location such as Kona International Airport or Palama Niu campus. Although approval in concept given from DOT Director for terrain model placement at Kona airport, it was decided to be undesirable due to limited access. The final location for the terrain model is still undetermined and a potential issue.</p> <p>c. Discussions with NHOs have determined it may no longer be desirable to have a model that is transportable.</p> <p>d. No change.</p>	
16	<p><b>ARCHAEOLOGICAL MATERIALS AND RECORDS.</b></p> <p>All archaeological materials and records discovered as a result of the subject project shall be housed and curated by</p>		<ul style="list-style-type: none"> <li>No change.</li> </ul>	<ul style="list-style-type: none"> <li>At April 7, 2017 meeting, it was suggested the artifacts could be housed with the terrain model.</li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	<p>the HDOT. The location and methods used shall be subject to review and consultation with SHPD and shall be open for review and inspection by the public upon request to HDOT. If at some future date the NPS has space, personnel, and resources to take on this responsibility, the HDOT shall consult with NPS.</p>	<ul style="list-style-type: none"> <li>June 2015 Data recovery of artifacts which are currently curated by Cultural Survey Hawaii.</li> </ul>		<p>A permanent curation/display location is being discussed.</p>	
17	<p><b>POST-REVIEW DISCOVERIES.</b></p> <p>If previously unknown potential historic properties are discovered or unanticipated effects on identified historic properties are found during project construction, the HDOT shall take the actions identified below.</p> <p>The HDOT will immediately notify the SHPO, and immediately stop work at the site of the find until appropriate final mitigation measures are implemented.</p> <p>A. If the discovery or unanticipated adverse effect is located within the ROW, the HDOT will notify SHPO and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA of the findings within 72 hours. If the finding is adjacent to the Park boundary, then the HDOT will also notify the NPS at the same time that the SHPO is notified. All signatories, invited signatories and concurring parties to this MOA shall designate a "point of contact" and contact information for the representative who shall be notified pursuant to this provision or the inadvertent discovery of human skeletal remains as described at 17(C) below.</p> <p>B. The FHWA, the SHPO, and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA shall consult on the potential significance of the discovered property, National Register of Historic Places eligibility and any proposed treatment. Comments on the significance, of the discovered property, National Register of Historic Places eligibility and any proposed treatment or a request for additional time to provide comments shall be provided by the SHPO, signatories, invited signatories, and concurring parties to the FHWA within 48 hours of any notification as described in 17(A) in order to be considered. HDOT to ensure that any recommended treatment measures are implemented; and HDOT shall provide a final report to the SHPO and all signatories, invited signatories, and concurring parties on these actions when they are completed.</p> <p>C. In the event human skeletal remains are inadvertently discovered during project construction, the requirements of Chapter §6E-43.6, HRS, and Chapter 13-300, HAR, shall determine appropriate treatment.</p> <p>In addition to the parties who are notified of inadvertent discoveries pursuant to Chapter 13-300-40(b), HAR, and (c), the FHWA shall ensure all signatories, invited signatories and concurring parties to this MOA are notified of the inadvertent</p>	<p>No new post-review discoveries.</p>	<p>A. On July 28, 2016, HDOT was notified of possible site encroachments during construction at the mauka termini of the mauka-makai trail of Site 10714 Features A and C. HDOT issue a stop work order at this site and requested the Contractor and the Contractor's archaeologist to assess the damaged area.</p> <p>B. SHPO was notified on 8/2/16</p> <p>C. NHOs notified in email 9/30/16 and in meeting and site visit on 12/2/16</p>	<ul style="list-style-type: none"> <li>A site visit was conducted on 5/5/17 with NHOs to expanded APE.</li> <li>NHOs were asked to notify HDOT of any additional sites in SAIS for the expanded APE by 5/19/17. No comments received.</li> <li>Mitigation meeting held with NHOs and other Consulting Parties May 23, 2017 at NELHA.</li> <li>8/23/17 FHWA issued Notification of Adverse Effect for damaged sites.</li> </ul>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	discovery and afforded a reasonable opportunity to comment on appropriate treatment. Comments shall be directed to the SHPD.				
18	<p><b>DISPUTE RESOLUTION.</b></p> <p>Should any signatory, invited signatory, or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:</p> <ol style="list-style-type: none"> <li>a. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FHWA will then proceed according to its final decision.</li> <li>b. Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.</li> <li>c. Be responsible to carry out all other actions, subject to the terms of this MOA that are not the subject of the dispute.</li> </ol>	<ul style="list-style-type: none"> <li>• No formal objections filled with FHWA in 2015.</li> </ul>	<ul style="list-style-type: none"> <li>• No formal objections filed in 2016.</li> </ul>	<ul style="list-style-type: none"> <li>• No formal objections filed in 2017.</li> </ul>	
19	<p><b>MONITORING AND REPORTING.</b></p> <ol style="list-style-type: none"> <li>a. At the end of each calendar year following the execution of this MOA, or until it expires or is terminated, the FHWA, with the assistance of HDOT, shall provide all parties to this MOA and NHOs that participated a summary report (report) detailing work undertaken pursuant to its terms. This report shall summarize the implementation of the plans identified in Stipulation 4 and any other agreed upon mitigation measures detailed in this MOA. Such a report shall also include any scheduling changes proposed, any problems encountered, and any disputes and objections received in HDOT's and the FHWA's efforts to carry out the terms of this MOA.</li> </ol>	<ol style="list-style-type: none"> <li>a. Annual report not completed.</li> </ol>	<ol style="list-style-type: none"> <li>a. Annual report sent out February 24, 2017. Document sent April 28, 2017 broke down report into 2015 Annual Report (2nd column), revised 2016 report (3rd column) and MOA update (4th column). Quarterly tracking of critical tasks will also occur with the first quarterly tracking summary spreadsheet sent out to MOA Contact list May 2017.</li> </ol>	<ol style="list-style-type: none"> <li>A. This document is the 2017 Annual Report. Quarterly tracking of critical tasks will also occur throughout 2018.</li> </ol>	

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	<p>b. A review meeting may be called by the FHWA or HDOT upon request of a signatory, invited signatory or concurring party to this MOA.</p> <p>c. A Final Report shall be prepared and transmitted to the parties to this MOA, and NHOs that participated in consultation at the expiration of the MOA.</p>	<p>b. A review meeting was not requested.</p> <p>c. The final report is required by 3/17/2020.</p>	<p>b. A review meeting was not requested.</p> <p>c. No change.</p>	<p>B. A review meeting has not been requested.</p> <p>C. No change.</p>	
20	<p><b>DURATION.</b></p> <p>The term of this MOA shall apply for a period of five (5) years from the execution of the MOA, unless amended pursuant to Stipulation 21 of this MOA below.</p>	<ul style="list-style-type: none"> <li>MOA execution date 3/17/2015 which means it will expire on 3/17/2020.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	
21	<p><b>AMENDMENTS.</b></p> <p>Any signatory, invited signatory, or concurring party to this MOA may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR Part 800 to consider such amendment. The authority to execute any final amendments shall be with the signatories of this MOA. The amendment will be effective on the last date a copy of it is signed by all of the signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate consultation on the proposed amendment in accordance with Stipulation 22 below.</p> <p>To address minor changes in the projects or the treatment of historic properties affected by the projects, FHWA may propose revisions to the APMP, DRPP, AMP, BTP or Cultural Monitoring Scope of work to the other parties to this MOA.</p> <p>Upon the written concurrence of the signatories and invited signatories, FHWA may revise the plans(s) to incorporate the agreed upon changes without executing a formal amendment to this MOA</p>	<p>a. No amendments proposed to date.</p>	<p>b. No change.</p>	<p>c. Amendment will be required to expand APE to include side roads, to include mitigation for site breaches, to update the date of the relationship building workshop, and to extend the duration of the MOA.</p>	
22	<p><b>TERMINATION.</b></p> <p>If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 21, above. If within thirty (30) days or another time period agreed to by the approving signatories an amendment cannot be reached, any approving signatory may terminate consultation on the proposed amendment to the MOA upon written notification to the other signatories. Other provisions of the MOA shall remain in effect.</p>	<ul style="list-style-type: none"> <li>No amendments proposed to date.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>	
23	<p><b>COUNTERPART SIGNATURES.</b></p>	<ul style="list-style-type: none"> <li>Executed on 3/17/2015. No further action required.</li> </ul>			

No.	Stipulation	Work Undertaken in 2015	Work Undertaken in 2016	Work Undertaken in 2017	
	This MOA may be executed in counterparts. Each signature page shall be incorporated into the MOA and considered a part of this MOA.				
24	This Agreement supersedes in its entirety the MOA dated March 5, 1999, as well as the 1999 Final Archaeological Treatment Plan.	<ul style="list-style-type: none"> <li>• No further action required.</li> </ul>			

**August 13, 2019 Objection to the MOA by Makani Hou and FHWA/HDOT Response**

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
n/a	GENERAL	<p>General-HDOT and FHWA reps are not trained in 106 process. FHWA should hold 2-day training and develop consultation protocols.</p> <p>HDOT, FHWA reps are not trained to plan and conduct respectful, good faith consultations with NHOs. Need to develop more trust, respect, and better relationships among NHOs and HDOT, FHWA staff. HDOT and FHWA staff are not aware and appreciative of the unique history that Hawaiians have with federal and state agencies. and the State of Hawaii and the US Government.</p> <p>RESO. 1. For future consultations, Identify and assign HDOT, FHWA staff who have attended ACHP workshops and are familiar with the ACHP guidelines on consulting with NHOs. 2. Develop a separate MOA to tailor how consultation will be carried out to the satisfaction with NHOs the HDOT and FHWA and file that MOA with the ACHP and SHPO. 3. FHWA should conduct an annual 2-day "Workshop for Communicating with Hawaiians" and contract qualified Hawaiian experts to share their expertise on various forms of Hawaiian history, cultural, beliefs, religion, traditions, language, protocol, etc.- just like the Dept. of Defense did for top-level commanders in Hawaii and those staff assigned to various forms of cultural/natural resource management at all military bases in Hawaii.</p> <p><b>Additional Information from October 25<sup>th</sup> meeting:</b></p> <p>1. Mr. Cachola, who has worked with the Army on consultation protocols, believes that FHWA should develop formal consultation protocols for consulting with Native Hawaiians. These should</p>	<ol style="list-style-type: none"> <li>1. HDOT has hired facilitators for meetings with consulting parties to keep consultation meetings respectful.</li> <li>2. Nationally, FHWA is currently setting up a contract to build an on-line Section 106 tutorial that will include components about Tribal, Native Hawaiian, and Native Alaskan consultation.</li> <li>3. FHWA and HDOT believe the relationship building workshops (Stipulation 14) were invaluable and have stimulated discussions on consulting with Native Hawaiian Organizations, Also, as a result of the relationship building workshops, HDOT held an internal future plan of action meeting to better engage and build relationships with NHO's.</li> <li>4. HDOT has also been attending the Association of Hawaiian Clubs Annual Conventions to present information to NHOs which is a direct result of lessons learned from the Queen K project and relationship building workshops.</li> <li>5. As we discussed in our meeting in October, we agree future MOAs should have more clarity on which stages the consultation shall occur, but a separate MOA for consultation will not be developed at this time.</li> <li>6. Thank you for your other suggestions on how to improve consultation with NHOs such as the two-day workshop and formal consultation protocols. FHWA has taken them under consideration and are having discussions with HDOT.</li> </ol>	

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
		<p>be published and available nationwide, similar to those available for the DOD and the ACHP.</p> <p>2. HDOT should have a separate MOA stipulating how consultation with NHOS will be carried out. This MOA should be between ACHP, FHWA, SHPD, HDOT and NHOs.</p> <p>3. FHWA should conduct an annual 2-day training, similar to the Army, in which Hawaiian experts share their expertise on Hawaiian history, cultural beliefs, religions, traditions, language and protocol. The first day would be for HDOT Admin and the 2nd day for on-the-ground staff.</p>		
4	<p><b>ARCHAEOLOGICAL PRESERVATION AND MITIGATION PLAN (APMP, APRIL 2014), DATA RECOVERY AND PRESERVATION PLAN (DRPP, OCTOBER 2012), ARCHAEOLOGICAL MONITORING PLAN (AMP OCTOBER 2012) and BURIAL TREATMENT PLAN (BTP, OCTOBER 2012).</b></p> <p>a. FHWA will ensure that HDOT complies with the implementation of the APMP, AMP, DRPP, and BTP and its compliance with the conditions of approval stipulated by SHPD.</p> <p>b. The HDOT shall provide the parties to this MOA a copy of the findings of the APMP, AMP and DRPP activities.</p> <p>c. Further, construction, including ground-disturbing activities will not commence until the data recovery fieldwork has been completed and a data recovery end of fieldwork report has been drafted and approved by SHPD.</p> <p>d. The end of fieldwork report shall be submitted to all parties of this MOA and NHOs who participated in the consultation process.</p> <p>e. The Data Recovery Final Report shall be submitted to SHPD for their approval.</p>	<p>Stipulation #4 - Arch. and Preservation and Mitigation Plan - Fieldwork report submitted to NHOS (CPs) ??</p> <p>RESO. Send a copy to NHOs, and all MOA signatories and put on agenda for discussion and review at a future meeting</p> <p><b>Additional information from October 25<sup>th</sup> meeting:</b></p> <p>Cachola wants a paper copy of everything.</p>	<ol style="list-style-type: none"> <li>1. The plans have been previously posted on the sharesite for download on 4/8/17.</li> <li>2. As requested, paper copies were made available at the November 23<sup>rd</sup> 2019 meeting.</li> <li>3. An agenda item has been added for the February 8<sup>th</sup>, 2020 meeting for an open discussion of MOA stipulations.</li> </ol>	

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?	
5B	<p><b>NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION.</b></p> <p>a. The HDOT and the University of Hawai'i at Hilo (UHH) have entered into a Memorandum of Understanding (MOU) to provide cultural programs and education to support Native Hawaiian studies.</p> <p>b. The HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the five year duration of the agreement.</p> <p>c. Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.</p>	<p># 5 - Native Hawaiian Cultural Outreach and Education - NHOs who initiated this mitigation measure were not consulted when the MOA was est. with UH-Hilo and the HDOT; nothing is done in the 5-yr. duration of the MOA. No reports of any kind submitted for the entire 5-yr. period - no communications about HDOT failure to implement this significant mitigation measure - appears to be a blatant disregard of the MOA and any respect for the interest of the NHOs and other signatories. A new MOA is being drafted by HDOT - and again, the NHOs are not consulted - an insult to the NHOs who worked very diligently during the 18-months of negotiating for this item to be one of the stipulations in the MOA.</p> <p>RESO. Include the NHOs in developing the new MOA with UH-Hilo. Some of us are very familiar with sponsoring/est. scholarships for Universities, Colleges, and High Schools. One of us had a 25-year career as the Director of the Kamehameha Schools Extension/Outreach Division for developing educational outreach programs for Hawaiians and Hawaiian communities. None of the HDOT has this kind of extensive educational outreach experience. Some of us have good personal and professional relationships with staff at the UH-Hilo - more so than any of the HDOT staff. One of us initiated the amendment to include the Kohala Education Center to conduct certain community programs in this stipulation. So why are the NHOs completely omitted in developing the new MOA with the UH-Hilo??</p> <p><b>Additional input from October 25<sup>th</sup> meeting:</b></p> <p>Cachola noted that he and Harp initiated this item. Naleimaile, who at that time had a small non-profit, was also involved. Originally, it was thought that scholarship funding could go through Naleimaile's organization. They were not consulted on the end product. Then, nothing</p>	<ol style="list-style-type: none"> <li>1. Yes, this stipulation is late in getting started. The revised MOU between UH and HDOT is the same as the original MOU with the addition of the Kahala Center as you had requested. It also added additional funds.</li> <li>2. Per Makani Hou request at 10/25/19 meeting, UHH (Keiki Kawai'ae'a and Peter Mills) met with Makani Hou on 12/3/19 to discuss the scope of the MOU and the budget.</li> </ol>		

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?	
		<p>happened and there were no annual reports. How are they to know if the education stipulation is being met without having any details. They asked if Peter Mills of UH is still involved.</p> <p>Cachola and Harp want to know what is in the UHH MOU (posted on Website). They would also like to see the detailed work plan and be able to give comments on it.</p>			
8	<p><b>NOISE STUDY.</b></p> <p>a. The HDOT conducted a noise impact study in March 2014 to determine if the roadway improvements planned has the potential for impacting the activities within the National Park. The study was conducted in accordance with 23 CFR 774. The final report is pending.</p> <p>b. The findings will be made available to consulting parties in this MOA.</p>	<p>Stipulation 8-Distribute noise study report and discuss at future meeting. Take current noise measurements.</p> <p>#8 - Noise Study - Again, NHOs were not consulted - nor did we have the findings available to us.</p> <p>RESO. Get a copy to NHOs and all MOA signatories and put this item on the agenda for discussion at a future meeting.</p> <p><b>Additional input at October 25<sup>th</sup> meeting:</b></p> <p>Cachola and Harp said they would like a follow-up decibel reading to see if noise increased or decreased after the road was widened.</p>	<ol style="list-style-type: none"> <li>1. The plans have been previously posted on the sharesite for download on 4/8/17. A hard copy was available at the 6/26/19 meeting and was also emailed on 8/21/19. We will bring another paper copy to the February 8, 2020 meeting.</li> <li>2. An agenda item has been added for the February 8, 2020 meeting for an open discussion of MOA stipulations.</li> <li>3. The noise study is a computer model predicting the noise level in 20 years. Consultation with NHOs during or after the noise study or follow up noise readings are not a requirement of the MOA.</li> </ol>		

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
10B	<p><b>PEDESTRIAN CROSSINGS - UNDERPASS FEABILITY STUDY.</b></p> <p>a. The HDOT shall conduct a feasibility study with the objective of facilitating safe pedestrian access across the Queen Ka'ahumanu Highway at the "Trail to Honokōhau." The study will examine at-grade crossing locations, the installation of a pedestrian tunnel crossing, and the modification of existing culverts for pedestrian-bicycle use. The study shall seek examples and policies regarding use of existing pedestrian tunnels and modified culverts in Hawai'i and other States. Subsurface crossing(s) shall include provisions for a third party organization to take responsibility for maintenance, security and liability for the crossing(s) as has been the policy of HDOT for more than a decade.</p> <p>b. The HDOT shall identify and select a qualified independent third party to conduct the study.</p> <p>c. As part of the study, HDOT shall consult with NPS to identify community organizations who may be invited to participate in the feasibility study. Organizations that may be invited to participate include: signatories to this MOA, NHOs, Peoples Advocacy Trails Hawai'i (PATH), County of Hawai'i, local primary and secondary school officials, universities, community groups, the Royal Order of Kamehameha, and the Association of Hawaiian Civic Clubs.</p> <p>d. As part of the feasibility study the HDOT shall convene a community meeting that has as its objective the development of design guidelines for future Queen Ka'ahumanu Highway expansion projects that includes provisions for trail connectivity and pedestrian crossings under the Queen Ka'ahumanu Highway as well as paralleling the highway.</p> <p>e. The HDOT shall transmit the findings of the feasibility study (inclusive of any documents or written testimony from the community meeting above) to parties participating in the feasibility study prior to the expiration of this MOA.</p>	<p>Stipulation 10B-Provide summary of underpass feasibility study and discuss at future meeting.</p> <p>#10-B Underpass Feasibility Study - After our last meeting on July 26, a copy of this report was "shoved" to an unexpected NHO rep. by an HDOT staff with a snide remark "Here's your study" and he abruptly walked away without a word.. Very rude, disrespectful and unprofessional conduct by the HDOT staff.</p> <p>RESO. Apology warranted from the HDOT staff to NHO. It is a lengthy report. A synopsis/summary should be distributed to all MOA signatories and this item should be on the agenda at a future meeting. Also, before the meeting started on the 26th. this same HDOT staff also made a rude remark to a wife of an NHO rep at the parking lot regarding his expectations for the bad behavior of the NHO rep. at the meeting. RESO - Apology warranted from that HDOT staff to the wife and NHO rep. that he insulted.</p> <p>Additional input from October 25<sup>th</sup> meeting:</p> <p>Cachola would like a synopsis of the study. The CPs wanted an underpass, not an underpass study, so that people can safely walk from Mauka to Makai on the paths of their ancestors. He would like a discussion of the underpass study synopsis at a future meeting.</p>	<p>Again, HDOT and FHWA apologize for any sign of disrespect.</p> <ol style="list-style-type: none"> <li>1. HDOT will provide a summary of the report before the 2/8/20 meeting</li> <li>2. An agenda item has been added for the February 8<sup>th</sup>, 2020 meeting for an open discussion of MOA stipulations.</li> </ol>	

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?	
11	<p><b>INTERPRETIVE SIGN(S).</b></p> <p>The HDOT shall research, design, and produce mutually agreed upon interpretive sign(s) in consultation with NPS and NHOs relating to the history of the trails identified in the Project ROW near the Kaloko-Honokōhau National Historical Park and how the trails relate to the surrounding community. The sign(s) shall be (1) designed to meet NPS sign standards, (2) produced by HDOT, and (3) installed by the NPS within the boundaries of the Kaloko-Honokōhau National Historical Park.</p>	<p>Stipulation 11-Consult with NHOs on interpretive signs.</p> <p>Interpretative Signs - Again the NHOs were not consulted as required in the MOA for the ". . .research, design, of signs and the history of the trails identified in the Project ROW... .and how the trails relate to the surrounding community. The NHOs were not consulted when the HDOT drafted an MOA for the NPS to design, manufacture and install interpretive signs. One of the most important guidance offered by the ACHP to federal agencies is to recognize and acknowledge the expertise of Hawaiians in interpreting their history, cultural beliefs, protocols traditional practices, etc. Some of the NHOs were appointed by the Sec. of Interior to serve on the Na Hoapili Advisory Commission to the Kaloko-Honokohau Nat'l. Historical Park - especially to advise the Park on the planning and conduct of traditional Hawaiians programs and activities at the Park.. So why were the NHO rep. as a signatory for this MOA omitted from any discussion in implementing this MOA?</p> <p>RESO. Stop all the current legal review procedures at the HDOT; distribute all materials, designs, the contest of signs completed by the NPS to NHOs for review and convene a meeting between the NHOs, the NPS and the HDOT for further discussion and consultation. Consider contracting with Hawaiian experts to review and recommend the contest and location for these signs. Again, acknowledging the expertise of Hawaiians to interpret their cultural beliefs and practices.</p> <p><b>Additional information from Oct. 25th meeting:</b></p>	<ol style="list-style-type: none"> <li>1. The NPS requested to design, manufacture and install the interpretive signs with funding from HDOT and FHWA. This information was included in the quarterly reporting. The MOA was legally required to transfer funds to the NPS, otherwise the stipulation remains unchanged.</li> <li>2. NHOs will be consulted on interpretive signs as is required in Stipulation 11 by the NPS.</li> <li>3. The stipulation requires that the signs should be "(3) installed by the NPS within the boundaries of the Kaloko-Honokōhau National Historical Park."</li> </ol>		

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
		There was no consultation on the MOA between NPS, FHWA and HDOT. Signs may not be installed within the NPS.		
12	<p><b>AHUPUA'A SIGNS.</b></p> <p>a. The HDOT shall install ahupua'a markers within the project limits following the guidelines of the HDOT's Ahupua'a Marker Program. The markers (ahu or sign on posts) shall be designed and installed in consultation with community groups and NHOs as prescribed by the Ahupua'a Marker Program.</p> <p>b. A notice of the proposed installation shall be published in the West Hawai'i Today newspaper.</p> <p>c. The markers shall be installed as part of the highway widening project.</p>	<p>#12 Ahupua'a Signs - Again the NHOs were not consulted as required in the MOA when the markers were designed and installed.</p> <p>RESO - HDOT staff meet with NHOs to confirm design and installation/placement of markers.</p> <p><b>Additional information from October 25<sup>th</sup> meeting:</b></p> <p>Honokohau 1 sign should read, "Honokohau Nui," and the Honokohau 2 sign should read "Honokohau Iki</p>	<ol style="list-style-type: none"> <li>1. The Ahupua'a boundaries were a part of the consultation done for the terrain model with NHOs.</li> <li>2. As required in the MOU, an advertisement was run in the West Hawai'i Today paper (copy emailed on 8/21/19).</li> <li>3. HDOT has agreed to change Honokohau signs as requested.</li> <li>4. HDOT checked with Aha Moku regarding the maps they use and noted that maps used by Aha Moku only have Honokohauiki. Would Mr. Harp like to use Ahupua'a from this map, or continue with the 2 Ahupua'a, Honokohau Nui and Honokohau Iki?</li> </ol>	
14	<p><b>RELATIONSHIP BUILDING WORKSHOP.</b></p> <p>a. The FHWA and HDOT acknowledge the need to build upon existing and develop new relationships with NHO and communities statewide. The FHWA and HDOT shall commit to sponsoring an initial statewide (one day) relationship building workshop to provide a forum where discussion and knowledge exchange can occur between the FHWA, HDOT, NHOs, concurring parties, and community representatives in a non-project specific context.</p> <p>b. Other agencies may be invited to participate in this forum as deemed appropriate by a consensus decision between FHWA, HDOT, and OHA, advocating on behalf of NHO interests.</p> <p>c. This workshop shall be held within 24 months following the execution of this MOA.</p> <p>d. The subject of the workshop may cover five (5) major areas: (1) identification of issues, challenges or problems that NHOs and HDOT/FHWA have experienced in consultation with each other; (2) a technical training about National Historic Preservation Act Section 106, U.S. Department of Transportation Act Section 4(f), National Environmental Policy Act (NEPA), NHO protocols, relevant Hawaiian history or</p>	<p>Stipulation 14-Add addendum to summary report for relationship building workshops explaining delay in holding workshops</p> <p>Relationship Building Workshop - Not one of the workshops were completed within 24 months of the execution of the MOA</p> <p>RESO - Add an addendum to the Summary Report to explain the delay and its effects in implementing this stipulation</p>	<ol style="list-style-type: none"> <li>1. We acknowledge that this is one of several stipulations not delivered in a timely manner.</li> <li>2. In an effort to become more accountable, Amendment 2 will include a list of all stipulation time requirements that were not met including the relationship building workshop.</li> <li>3. As a result of this project, HDOT and FHWA are holding a series of internal meetings that will result in new policies and procedures to ensure mitigation is delivered in a timely manner.</li> </ol>	

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
	<p>cultural practices, or other relevant laws and practices (mutually sharing information); (3) a problem-solving session to share knowledge about best practices that would assist NHOs, HDOT and FHWA to have productive and effective consultation; (4) to identify NHO and community representatives interested in participating in the next stage of relationship building that may involve a training course sponsored by the FHWA/HDOT that integrates the NEPA/NHPA/U.S. Department of Transportation Act, Section 4(f) decision making processes for transportation projects in Hawai'i; and (5) explore the development of agreement documents that guide NEPA/NHPA consultation for transportation projects in Hawai'i.</p> <p>e. The FHWA and HDOT may sponsor additional phases of the relationship building process and will decide within one year after the conclusion of the first workshop as appropriate and/or necessary.</p>			
15	<p><b>TERRAIN MODEL.</b></p> <p>a. The HDOT shall commission the construction of a terrain model depicting the lands of Kekaha (between Kailua and Anaehoomalu) in consultation with Makani Hou o Kaloko-Honokōhau. The model shall incorporate topographic relief, traditional place names, historic trails, settlement locations, interpretive signs, and other important landmarks, to be determined.</p> <p>b. The model may be housed at the Kaloko-Honokōhau National Historical Park under the auspices of the Hawai'i Pacific Parks Association.</p> <p>c. The model shall be of such scale that it can be transported to other locations and be used as a teaching tool.</p> <p>d. A second digital model will also be developed and include similar information as the terrain model.</p>	<p>Stipulation 15-There was a failure among RMT staff in consulting with NHOs. Makani Hou envisioned terrain model without contemporary features (i.e. road)</p> <p>#15 Terrain Model - This innovative mitigation measure was initiated by the NHOs and there was a failure among RMToweill staff in consulting with NHOs and a failure with NHOs to consult more effectively with RMTowill in the planning and implementation of this stipulation. It is completed - but not as intended by the NHOs. The NHOs envisioned a terrain model with several "historical layers" of cultural landscapes that could be overlaid on each other to indicate how critical the ancient Ala Kahakai and Mauka/Makai network of trails were to the ahupua'a land and cultural/natural resource management practices among the konohiki of adjoining ahupa'a. The NHOs would have preferred a model of the ancient cultural landscapes as it was in the Kekaha area prior to western contact - unfortunately the completed terrain model shows the Kekaha landscape with all of its current contemporary features, highways, roadways, streets, and other modern elements that simply eliminates the ancient trail</p>	<ol style="list-style-type: none"> <li>1. In addition to phone and email conversations, three face to face meetings were held to consult on the terrain model that was presented at the June meeting. These meetings were held on February 10, 2017 and February 23 2017 and December 7, 2017. HDOT and their consultant RMTowill made extensive efforts in addition to these three meetings to consult with NHOs on this stipulation.</li> <li>2. During this consultation, there was a request to include the roads to provide orientation to the user. The physical terrain model is complete and cannot be modified</li> <li>3. HDOT is exploring the possibility of modifying the digital terrain model to be a historical landscape without modern features. The is dependent on finding a historical base map.</li> </ol>	

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		<p>networks used and constructed and maintained so carefully by our kupuna. Too bad - Hawaiians would call this misconstrued model a "poho" exercise of miscommunication.</p> <p>RESO - Design and construct another model that would show the ancient landscapes and network of trails. Contract with cultural experts and instructors to develop lesson plans to teach about how these trails related to the political, economic, social framework of the ahupua'a land management practices in pre-contact Kekahi area, and use these cultural instructors to accompany this ancient model and be an integral part of the education outreach efforts developed in stipulation #5B</p> <p><b>Additional input from October 25<sup>th</sup> meeting:</b></p> <p>Cachola and Harp do not believe that the terrain model meets what the CPs wanted. Part of complaint is that this was assigned to the wrong consultant. Harp had attended the initial meeting(s), but didn't agree with RMTowill doing the project, so didn't attend future meetings. In future MOAs, minimum qualifications of consultant doing the work should be included. Lebo suggested another improvement for future MOAs would be to explicitly state at which point reviews happen (i.e. 30%, 60%, 90%) and who does the review. Cachola and Harp went to the first meeting, but felt they were not being listened to. Cachola had wanted a model without the road or modern facilities-a cultural landscape and is upset his vision for the model was not understood at the meeting. He sees the model as a tool for teaching children about their culture before the Queen Kaahumanu highway was there. He would like a new model to be built.</p>			
17	<p><b>POST-REVIEW DISCOVERIES.</b></p> <p>If previously unknown potential historic properties are discovered or unanticipated effects on identified historic properties are found during project construction, the HDOT shall take the actions identified below.</p>	<ul style="list-style-type: none"> <li>Stipulation 17-Post Review Discoveries-Destroyed sites swept under the rug and deadlines not met. Palamanui proposal given priority at June, 2010 meeting vs. NHO proposal.</li> </ul> <p>#17 Post Review Discoveries - The 5 sites that were destroyed and the investigations of why?</p>	<ol style="list-style-type: none"> <li>An Adverse Effect Notification to SHPD and ACHP was sent on August 3, 2017.</li> <li>Consultation meetings about the why, when, who, where were held with CPs on 12/3/16 and 4/7/17 and then a mitigation consultation meeting was held on 5/23/17 and 11/26/19.</li> </ol>		

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?
	<p>The HDOT will immediately notify the SHPO, and immediately stop work at the site of the find until appropriate final mitigation measures are implemented.</p> <p>A. If the discovery or unanticipated adverse effect is located within the ROW, the HDOT will notify SHPO and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA of the findings within 72 hours. If the finding is adjacent to the Park boundary, then the HDOT will also notify the NPS at the same time that the SHPO is notified. All signatories, invited signatories and concurring parties to this MOA shall designate a "point of contact" and contact information for the representative who shall be notified pursuant to this provision or the inadvertent discovery of human skeletal remains as described at 17(C) below.</p> <p>B. The FHWA, the SHPO, and the signatories, invited signatories, concurring parties, and consulting NHOs to this MOA shall consult on the potential significance of the discovered property, National Register of Historic Places eligibility and any proposed treatment. Comments on the significance, of the discovered property, National Register of Historic Places eligibility and any proposed treatment or a request for additional time to provide comments shall be provided by the SHPO, signatories, invited signatories, and concurring parties to the FHWA within 48 hours of any notification as described in 17(A) in order to be considered. HDOT to ensure that any recommended treatment measures are implemented; and HDOT shall provide a final report to the SHPO and all signatories, invited signatories, and concurring parties on these actions when they are completed.</p> <p>C. In the event human skeletal remains are inadvertently discovered during project construction, the requirements of Chapter §6E-43.6, HRS, and Chapter 13-300, HAR, shall determine appropriate treatment.</p> <p>In addition to the parties who are notified of inadvertent discoveries pursuant to Chapter 13-300-40(b), HAR, and (c), the FHWA shall ensure all signatories, invited signatories and concurring parties to this MOA are notified of the inadvertent discovery and afforded a reasonable opportunity to comment on appropriate treatment. Comments shall be directed to the SHPD.</p>	<p>when? who? where? have apparently been "swept under the rug" HDOT wants to move forward regardless of whoever should bear the consequences for the damages.at these important sites and major ancient trails. NHOs submitted mitigation measures over 2-years ago - but no follow-up by HDOT until recently when a "great awakening" occurred at Palamanui which promoted immediate attention and a prominent presence at our last minute.- in spite of no action taken to discuss the mitigation proposal submitted by the NHOs two years ago. HDOT seems to be inviting and encouraging a non-consulting entity to submit a proposal for mitigation - and all we have from them so far is their oral presentation at our last meeting.- with no time left for the NHOs to present their proposal. And the HDOT has asked the NHOs twice for their written updates for distribution - but nothing submitted in writing from the Palamanui group. It seems that the HDOT is demanding a written update from the NHOs by- an arbitrary deadline of Aug. 8 - while the Palamanui group has not submitted any written request at all. What's up?? HDOT is distributing the criteria for selecting a mitigation proposal and appears to be the entity to make the selection - but that is not true, the HDOT does not select the mitigation for the destruction at the five sites.. So what's up?? Obviously, the HDOT has a preferred preference for the Palamanui un-written proposal and appears to have a bias against the NHOa proposal which has not been fully presented and discussed since it was submitted two years ago. What's up?</p> <p>RESO - All deadlines established must be explained and justified and not be arbitrary. Have a 2-day meeting in Sept. or Oct. to review, discuss all the complaints and suggested resolutions of the NHOs and allow the NHOs the same amount of time as Palamanui had to present their updated proposal. FHWA should clarify and confirm the criteria for reviewing mitigation proposals and confirm that the FHWA, the SHOPO, and the ACHP are the entities that select the mitigation - not the HDOT.. FHWA should confirm the process for allowing non-signatory party(s) to have a preference over signatory folks in submitting mitigation proposals. HDOT should not be encouraging anyone to proceed with the</p>	<ol style="list-style-type: none"> <li>3. Per Makani Hou request, at the 11/26/19 meeting, HDOT presented details of the damaged sites and the timeline.</li> <li>4. Amendment 2 to the MOA will include the mitigation package.</li> <li>5. Amendment 2 will acknowledge all stipulations that did not meet schedule requirements of the MOA including the notification requirements of post-review discoveries.</li> </ol>	

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?	
		restoration or investigation of any historic site and not be in compliance with the standards of the Sec. of Interior for undertaking any restoration work on historic sites. Confirm with SHPD that the so-called Palamanui Trail is indeed a registered historic site.			
18	<p><b>DISPUTE RESOLUTION.</b></p> <p>Should any signatory, invited signatory, or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:</p> <ul style="list-style-type: none"> <li>a. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FHWA will then proceed according to its final decision.</li> <li>b. Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.</li> <li>c. Be responsible to carry out all other actions, subject to the terms of this MOA that are not the subject of the dispute.</li> </ul>		If these responses do not resolve Makani Hou's objection, all documentation relative to the Stipulations still in dispute will be forwarded to ACHP.		

No.	Stipulation	Makani Hou Objection	FHWA/HDOT Response	Resolved?	
21	<p><b>AMENDMENTS.</b></p> <p>Any signatory, invited signatory, or concurring party to this MOA may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR Part 800 to consider such amendment. The authority to execute any final amendments shall be with the signatories of this MOA. The amendment will be effective on the last date a copy of it is signed by all of the signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate consultation on the proposed amendment in accordance with Stipulation 22 below.</p> <p>To address minor changes in the projects or the treatment of historic properties affected by the projects, FHWA may propose revisions to the APMP, DRPP, AMP, BTP or Cultural Monitoring Scope of work to the other parties to this MOA.</p> <p>Upon the written concurrence of the signatories and invited signatories, FHWA may revise the plans(s) to incorporate the agreed upon changes without executing a formal amendment to this MOA</p>	<p>Stipulation 21-Request early notification and invitation to NHOs in considering amendments.</p> <p>#21 Amendments - Please confirm whether or not this MOA will be amended, why? when? etc. and let us all consult in accordance with 36 CFR Part 800 to consider such amendment. Early notification and invitation to the NHOs in considering the amendments will be appreciated.</p> <p><b>Additional input from October 25<sup>th</sup> meeting:</b></p> <p>Cachola would like a hard copy of the Amendments.</p>	<p>1. Consultation on Amendments is ongoing. Next consultation meeting is scheduled for February 8, 2020.</p>		



Hawaii Division Office

# TRANSPORTATION ALTERNATIVES FUNDING

*Amy Ford-Wagner, FHWA Hawaii Division*



U.S. Department of Transportation  
Federal Highway Administration

# Funding Specifically for Walking, Biking Projects

Hawaii Division Office

Holei Sea Arch in Shadow

- “Transportation Alternatives Set-Aside”
  - aka TAP funds, aka Transportation Enhancements
  - Amount is **set aside** from the larger “Surface Transportation Block Grant” program
  - ~\$1.9M per year, for Hawaii statewide
  - Balance of about ~\$9million
  - Competitive Process
  - Priority to project sponsors with knowledge of federal requirements and procedures



# Who Can Apply for TA Funding?

Hawaii Division Office

Holei Sea Arch in Shadow

- HDOT ***cannot*** use the TA funding for its own projects
- Who Can?
  - Local governments (e.g., Hawaii County)
  - Natural resource or public land agencies (e.g., NPS)
  - Non-profits may partner with an eligible agency to carry out a project



# What Can TA Money Be Used For?

Hawaii Division Office

Holei Sea Arch in Shadow

- Construction, planning, and design of on-road and off-road facilities for pedestrians...
- Community improvement activities, such as historic preservation and **rehabilitation of historic transportation facilities**
- Archaeological activities relating to impacts of surface transportation projects
- Construction of turnouts, overlooks, and viewing areas
- Recreational trails program



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# TA Eligibility of the Coalition Proposal

Hawaii Division Office

Holei Sea Arch in Shadow

Coalition Proposal	Eligible for TAP funding?	Within Ala Kahakai National Historic Trail Comprehensive Management Plan (CMP)?
1. Reconcile trail documentation	✓ (planning)	✓ (page 18 & 30)
2. Repair and stabilize trail	✓ (construction)	✓ (page 4 & 42)
3. Oral history	✗	✓ (page 9)
4. Identify property owners and facilitate meeting	✓ (planning)	✓ (page 44)
5. Creation of a comprehensive community trail plan	✓ (planning)	✓ (page 26)



# TA Eligibility of the Coalition Proposal

Hawaii Division Office

Holei Sea Arch in Shadow

Coalition Proposal	Eligible for TAP funding?	Within Ala Kahakai National Historic Trail Comprehensive Management Plan (CMP)?
6. Mark trails with plants and art	✓ (construction)	✓ (page 72)
7. Construct a Mamalahoa Trail Scenic/Historic Overlook	✓ (overlooks)	✓ (page 51)
8. Map all ahupua'a boundaries and mauka/makai trails bisected	✓ (planning)	✓ (page 30)
9. Install underpass/overpass	✓ (design/construction)	✓ (page 44)
10. HDOT Hire Expert Coordinator with Historic Preservation Expertise	✗	✗



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# TA and Ala Kahakai

Hawaii Division Office

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- Historic trail facilities are eligible
- Phased approach?
  - Master planning to identify steps and priority for implementation
  - Establish baseline information for priority trails
    - metes & bounds studies, property ownership studies, develop engineering, interpretation, construction, etc., guidelines for trails
  - Eventual engineering and construction of trails/trail portions



# Application Process

Hawaii Division Office

Holei Sea Arch in Shadow

- HDOT Application Procedures are online:
  - <https://hidot.hawaii.gov/highways/request-for-tap-project-applications-2/>
  - Competitive Process
  - Priority to project sponsors with knowledge of FHWA requirements and procedures



# Federal Requirements

Hawaii Division Office

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- Environmental Clearances
  - HEPA ≠ NEPA
  - NEPA & Section 106 Clearances/Permitting
    - Bugs & bunnies
    - The built environment
    - Historic & cultural resources
- Procurement
  - Brooks Act



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Period of Performance

# Tell Me About Those Strings...

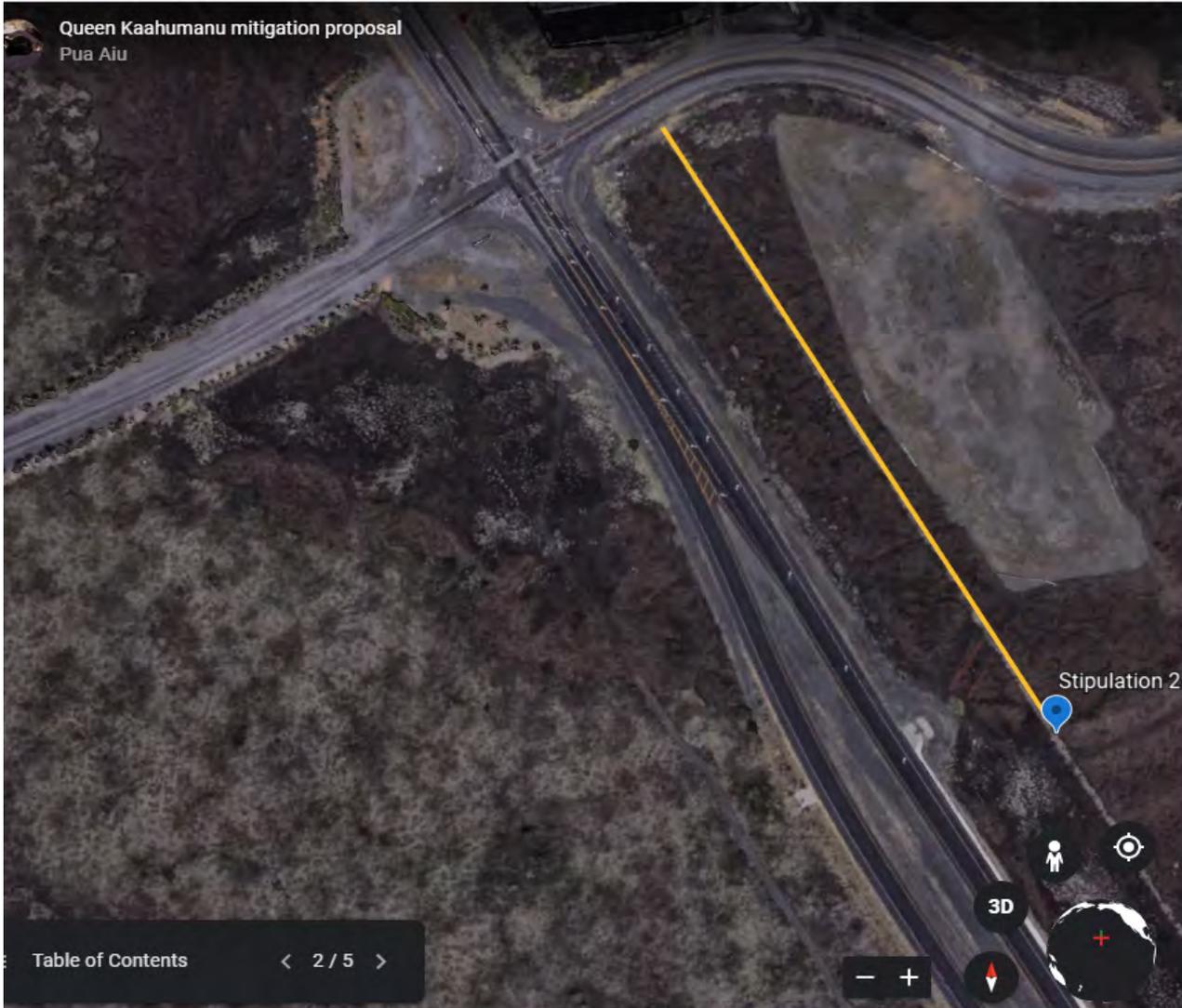
Hawaii Division Office

- Construction
  - Buy America (iron & steel materials)
  - Davis-Bacon (prevailing wages)
- Administrative requirements
  - Prompt payment
  - Reporting/Documenting EVERYTHING
- Period of Performance/Lapsing
  - Federalese for “Use it or lose it”



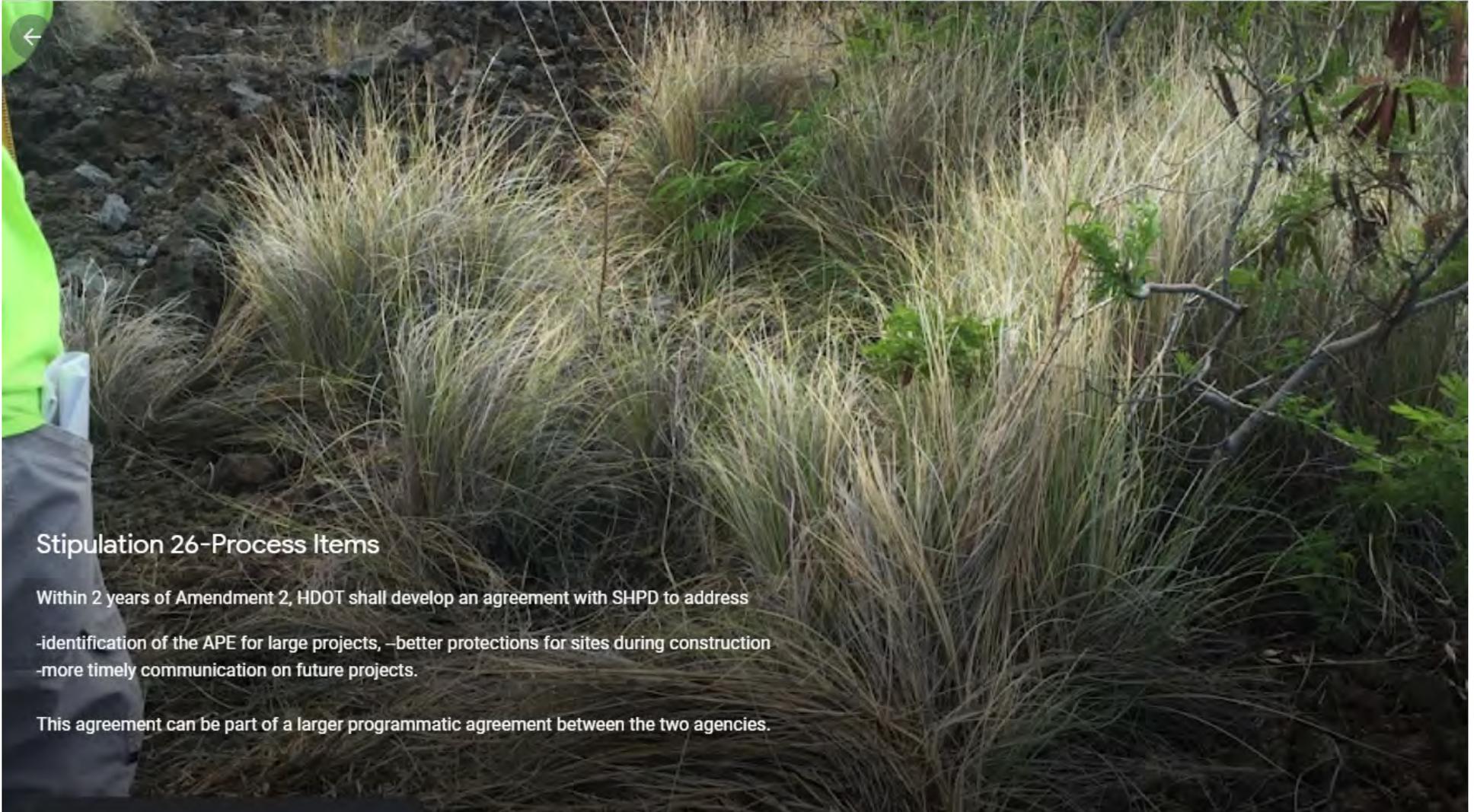


Queen Kaahumanu Mitigation Proposal for Breached Sites



### Stipulation 25-Mamalaho Mitigation Area

1. Document the 20 foot breach at this site.
2. Clear vegetation –discuss best ways -poison, pulling grass, etc.
3. Develop a Preservation and Development Plan for 1,000 feet of the Mamalahoa Trail south of Kealakehe Parkway, within the DOT Right-of way.
  - Provide a brief historic context.
  - Consultation on restoration plans.
  - Maintenance Plan
  - Access plan or protocols for access
  - Site interpretation
  - Permanent Markers (will there be permanent markers or not, if yes, what will they look like)
4. As part of the preservation plan, DOT will document the breaches at the Mamalahoa Trail (Site No 00002) near the entrance to the Kaloko-Honokohau National Park, and the 2 breaches at the Kohanaiki Trail (site 10715)
5. HDOT will restore 1,000 feet of the trail per the restoration plan.



## Stipulation 26-Process Items

Within 2 years of Amendment 2, HDOT shall develop an agreement with SHPD to address

- identification of the APE for large projects, -better protections for sites during construction
- more timely communication on future projects.

This agreement can be part of a larger programmatic agreement between the two agencies.



## Oral History Item

This item will be addressed through the UHH MOU, as suggested in consulting party proposal.