**Queen Ka‘ahumanu Highway Widening Project Agenda**

106 Consultation Meeting

April 4, 2020

9:00am to Noon

Faith started the meeting at 9:02am.

1. **Pule**

Kekoa started the meeting off with a pule.

1. **Introductions**

Faith confirmed everyone who was on the phone, and some were also on the computer.

Lisa, David, Mandy, Rick, Juliann, Harry, Rochelle, Lauren, Kiersten, Marshall, Fred, Faith, Anna, Pua, Tanya, Aric, and Kekoa.

Kekoa mentioned he would just be listening. Fred joined and said he will be on the phone and said Paka will not be on the conference call. Fred said he understands under the circumstances a call is all we can do but he just wanted to confirm that it is not best way to communicate. Fred asked for another introduction. Confirmed there were 17 people on the phone.

Faith said we understand, but at this time we have no choice and have to do the best we can and move forward.

1. **Protocol for the meeting**

Faith reviewed the protocol. Just like the previous meetings but with a few new protocols: Kapu Aloha and treat each person with respect. Faith requested those on web application to use the raise hand icon if they would like to speak and for those only on the phone – Faith said she would ask periodically if anyone has comments or questions. Those participants on the computer can also contribute via the Chat box (included in the following notes in italics.)

1. **Update on After Action Analysis (HDOT)**

Pua said that in discussions it has been decided to have a third party undertake this After-Action Analysis (AAA) – likely a few people led by someone from FHWA or HDOT who was not involved in the project.

Pua went through the document that had been emailed to all participants and was being shown on the screen. She decided to review each section of the document since not everyone was able to review prior to the meeting. [A copy of the AAA is attached to the back of this document]

Fred had comments on the **Purpose** section. He expressed that because they haven’t had much time to review, therefore his comments will be off the cuff and random. One thing about the purpose is that talks about damages on only two trails and is limited. Fred said he was glad that the document did not use the word “inadvertent” the same way he would not insist to use the word deliberate. It would not be allowed so they shouldn’t use inadvertent either.

Pua said this document was made in partnership with Federal highways. Lisa said it would be removed after if the study finds it was inadvertent.

Fred wanted it removed now in all documents and added afterwards in the findings if found to be inadvertent. He does not want to include it in the beginning. Fred requested inadvertent be removed until the report is completed. He stated it was too premature to include that word.

Marshall mentioned he is looking at the document and he doesn’t see this word.

Fred restated that it is not included in this document, and he is glad. He wanted to bring it up because of Lisa’s repeated use of the words.

Faith reminded the group to focus on the issues, not specific people, and wanted to move on.

Fred had another comment. He was not happy that this AAA limited the damages to the two trails and didn’t include the damages that occurred at three other sites. Fred said that Makani Hou believes the damages should include the failure to construct the buffers and the other sites there.

Pua says they will take these comments into consideration.

Marshall said the failure to construct the buffer being a mistake is a conclusion that has not been reached yet.

Fred restated that he does not need it to be a conclusion, only that it should include the buffer sites in the report.

Rick agreed with Fred. The buffer breach was a violation and we would want to ensure that doesn’t happen again down the line.

*Kiersten commented “AAAP section 1 (Purpose): final sentence, add date Amendment 1 was executed. Include 2015 MOA and 2020 Amendment as exhibits.”*

Faith requested we move on to Goals.

Pua said more comments can always be sent into them until the 14th or 16th. Reminded the group they didn’t have to say everything at that meeting.

Pua reviewed the **Goals** section.

Faith said the overarching goal seemed to say this would be a broad review and asked if this was good for everyone.

Fred said the concern is compliance with section 4f and section 106. Fred did not understand why the Hawaii statues are ignored. Fred stated that historic preservation in Hawaii should also be included.

Susan clarified that Fred is looking for the compliance to the state statute, 6E, as well.

Fred restated he wanted the Hawaii revised statutes mentioned as well, compliance with Hawaii statute on historic preservation.

Pua stated that FHWA would be doing this and their only responsibility is for federal statutes. Pua said though that they would consider it and that was a good comment.

Kekoa wondered if because it is not included in this, does that mean it can never be addressed?

Lisa said they could consider 6E.

*Lauren commented “add 6E to objective 1.”*

*Rick commented that he agreed, “add 6E.”*

*Aric commented “Add another bullet to Overarching Goal to identify HRS, HAR, SDOT policy and procedures that guides planning and construction that will add language to assure that the steps, etc. developed in the second bullet will be complied with.”*

*Kiersten commented “AARP section 2 (Goal): Add HRS 6E compliance to the analysis. The AAA should be helpful to guide the HDOT environmental/preservation program as a whole, so state compliance is necessary. A comprehensive assessment will help with robust recommendations and program improvements.”*

Susan said even if it is not included here, FWHA is required to make sure HDOT complies. She said that it will still need to be accounted for, either in the action analysis or somewhere else.

*Lauren commented “could add planning to objective 2” and “objective 3 transparency, trust and relationships.”*

Lisa said they understand and wanted to move on.

Pua read through **Scope** and asked for comments.

Fred asked to go back to goals and add or suggest one more bullet. First bullet addressed compliance. The second is about identifying procedures. Fred wanted a third bullet addressing changes in procedures to ensure that an after-action analysis be done whenever damage occurs to historical sites that should have been protected. He asked for this because it had been over five years since the original damage in this case. He said that five years later is unreasonable. Many people who were there are no longer around now and that reduces the accuracy of this analysis by doing it five years later.

Faith said she was not sure that statement belonged in goals, it is more of a result in the report.

Susan said there should be some language on when this occurs as well as the scope, such as including the breaches. There are multiple cases where violations occurred and some resulted in damage while other didn’t so it is necessary to consider those as well to know what factors cause the damages.

Fred reiterated he wanted the line about immediate after-action reports.

Susan recommended that MOAs include this requirement in it.

Fred said he just wants to ensure a 5-year lapse is prevented from happening again.

Susan said she thinks it will be a result of bullet number 2.

Marshall said what he is understanding is that Fred wanted a timeframe on completion of the after-action analysis report. It was clarified by Lisa that Fred meant for future projects, not a timeline for the current.

Fred said yes. He wanted to prevent this from happening again.

Pua said they understand and it will be considered.

Faith wanted to better understand Susan's comment.

Susan said she wanted the analysis to include all areas with violations, because it will better allow them to identify what actions caused damage.

Aric wanted to add a goal bullet that addressed policy changes.

Fred said he couldn’t hear what Aric said and he hopes that it is captured in the notes and that everyone’s comments are also put into writing.

Fred had a concern and wanted to add “and why the protective buffers for three historic sites were not constructed or constructed in the wrong place”.

*Aric commented “for consistency sake, in" Scope of Data Review", Para1, 2nd sentence, please do not limit to breaches of trails. Please include other 2 site buffer breaches. Thank you”*

*Lauren commented “Yes please add buffer breaches to analysis.”*

Faith asked for any other comments on this section, scope of data review.

Fred wanted to know who decided 10 people need to be consulted? Why 10 and who selects who is consulted with?

*Kiersten commented “Section 3 (Scope of date review) second paragraph: Provide guidance on which individuals and/or organizations are “key.” Should include staff at the archaeological firm, cultural and arch monitors, contractors, engineering firm, project managers, HDOT project managers, consulting parties, etc.”*

Pua said it has to be limited due to time constraints, but the final decision on who will be interviewed will be decided upon by the project team.

Fred wanted consulting parties to be able to suggest key project people and consulting parties to interview.

Kekoa stated yes, you want as much input as possible, but he thought it was good that those involved suggest other people but too many people “muddies the water”.

Faith asked for any additional comments.

*Lauren commented “analysis should include; info from interviews as well as AMP and PP compliance.”*

Fred said he was looking at the list of project documents. He said all of the photographs are documents that should be reviewed. He also hoped that other documents could be submitted to the team by consulting parties. Documents they feel should be reviewed.

Pua said they will take that under advisement but if they have anything they want to include to submit them right away.

Marshall said in the spirit of trying to complete this in a timely manner, he asked if the group wanted to set a timeline or deadline. If they are continuing to receive documents, it will make it challenging for the team to complete a review.

Rochelle stated that when FHWA does reports like this that once a team is formed, they will decide the timeline piece for the project.

Marshall wanted to confirm that there is a deadline for review and discovery. It should not go on in perpetuity.

Rochelle said yes. The review team will set those dates and know when they are receiving documents.

Susan wanted to know how the review team will be selected.

Fred said he wants to know too but there is a later section that talks about this and to wait. They agreed to wait.

*Rick wanted to reiterate they wanted all the buffer breaches included.*

Pua moved on to the **Objectives** and reviewed what was written.

Fred suggested Objective #4 should address whether or not what was done violated Hawaii state law.

Susan would like to see HRS 6e included in objective 1.

Marshall asked Fred what the purpose was to figure out whether 6e was violated. This report is about improving processes, not violations.

Fred reiterated that this is just an immediate reaction. But he agrees with Susan. She said the same thing.

Faith wanted to come back to who will be a part of the team.

Marshall said that the team will be people who have not been involved in this project. It will include FHWA and HDOT. He is not certain on the details who will be on the team yet.

Fred commented that if we don’t know it is fine, but he wanted to ensure consulting parties have a chance to contribute to who is selected on the team. Fred wanted to consider that those not in FHWA or HDOT be considered. Fred also wanted team members to have experience in MOA and mitigation and also have familiarity with historical preservation.

*Kiersten commented “Is the team going to consist of only state employees who are assigned to this special project, or is this going to be an RFP to hire an outside consultant?”*

*Lauren commented “shouldn't be only in house” and also “May need to consider extending the completion date b/c of pandemic restrictions.”*

*Kiersten commented “Section 4 (Objectives/Team): Add more information on the overall team subject matter expertise or skills. Include: legal expertise in environmental/preservation laws and regulations, business/government efficiency experts, preservation/archaeology professionals, government contracting and procedures experts, etc.”*

*David commented “Mandy - would ACHP be part of a Team if asked by FHWA and or HI DOT?”*

*Mandy commented “Yes.”*

Kekoa commented that there needs to be someone from the project on the team for accountability. Susan said as she reads it, just the team leader must be someone with no prior role to the project.

Lisa said they started off wanting everyone to be independent from the project but that it is up for discussion based on what folks think.

Fred gave his opinion that he prefers the entire team have no prior relation to the project.

Fred reiterated the concern of limiting the team to only FHWA and HDOT.

Susan stated that if the investigation occurs someone on the team must be familiar with 6e. Susan also asked how many people would be on the team.

Lisa said likely three to four people.

Susan wanted the group to consider workload and timeframe. A lot of work for only three people, especially with all the interviews. Interview skillset and project knowledge is needed.

Marshall said he understood more people would help with the workload but also doesn’t want to have too many people with differing opinions that might slow or delay the process. Marshall also said they have folks who are experienced in this type of work.

Susan wants to know if the report will identify what happened or only make a recommendation for moving forward. Susan wanted this to include a summary of what occurred.

Fred agreed with Susan.

Pua said they will consider this in the next draft.

Fred commented on Objective # 3 about communication. He wanted to know why they specifically list “during the environmental process.”

Pua explained historical preservation is part of this.

Fred wanted it reworded and more specific and to include the entire process. Marshall clarified “entire process”. Fred said this includes the consultation process.

Faith confirmed there was nothing else under objectives and moved on to **Potential Constraints.**

Pua reviewed this section.

Rick wanted to point out that the comments coming up in the chat are very valuable and should be shared to the group.

Faith reviewed the written comments.

*Kiersten commented “Add a new section (Deliverables): include draft and final written reports and draft and final presentation/consultation meeting with consulting parties.” and also, “Add Section re developing and finalizing the report: Example:Within [TIMEFRAME], 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 [TIMEFRAME] 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 [TIMEFRAME] after the consultation meeting on the draft report. FHWA-HDOT shall hold a meeting and further discussion.*

Marshall said the primary intent was to include all processes. He said this seems to be going beyond the original intent and he is concerned with how broad it has become.

David had to drop off the call early and thanked everyone.

Susan said she takes Marshall’s comments seriously and wants a clearer understanding of the intent on the report.

Marshall said their only intent is what is stated in the goals and purpose of this draft.

Faith said the hope was to start this project in May and complete by September. Faith wanted to know if anyone had comments on the timeframe.

Marshall said what he does expect is for there to be an outcome. He wanted there to be a result and focus on bringing closure to this issue by actually doing something to improve their processes.

Susan thought the community input could be included as it was related to process.

Lisa said this will be decided on as things move forward.

Fred said he thinks there should be a standard for how information is shared. Maybe a monthly report. Lisa said that decision can be made once the team is selected.

*Kiersten commented “Schedule: Include interim dates for milestones: when interviews complete, when document review complete, when initial set of recommendations complete, when draft complete, etc.”*

Faith asked if there are any other comments.

Fred said he expected the notes to be shared from today but wants to know who they should send notes and comments to on the draft and encouraged everyone to send in comments.

Notes and comments should be sent to Harry before April 16th.

Faith asked if we should continue to mitigation and Fred suggested not to move on since they had already been talking for two and half hours. Fred felt there was not enough time to discuss the breach sites.

Lisa said another meeting can be scheduled in another two weeks.

Fred said yes, a separate meeting for the proposed mitigation is good. It doesn’t have to be a weekend, whenever anyone is free.

The group discussed the date to schedule the next meeting. Considering April 16 from 1-4pm. Fred will confirm with Paka.

1. **Discussion of proposed mitigation of breached sites presented at Feb. 8th meeting in Draft Amendment 2**

Pushed to next meeting.

1. **Next Steps**

Notes and comments should be sent to Harry before April 16th.

Next meeting April 16th, 2020 from 1-4pm.

1. **Pule**

Kekoa closed the meeting with a pule.

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| AFTER-ACTION-ANALYSIS PLAN |
| **PURPOSE FOR PREPARING THE AFTER-ACTION-ANALYSIS:** |
| The Queen Kaahumahu Highway Widening, Phase 2 Project (NH-01901(038)R) identified 76 historical sites and involved preconstruction activities based upon an Archaeological Inventory Survey and Supplement, US Department of Transportation Act of 1966 Section 4(f) Evaluation, Archaeological Monitoring Plan, Archaeological Preservation and Mitigation Plan, Data Recovery and Preservation Plan, and Burial Treatment Plan. Through execution of the archaeological plans, 74 historical sites were addressed in accordance with the plans however two historical sites, the Mamalahoa Trail and the Trail to Kohanaiki were damaged at two locations each.In consultation with Consulting Parties to the 106 Memorandum of Agreement, the HDOT determined that an After-Action-Analysis will be conducted on processes that contributed to the damage of the historic sites so that similar damages do not happen on future projects. This effort is documented in Amendment 1 to the 2015 MOA.  |
| **Overarching Goal:** |
| This After-Action-Analysis seeks to:* Assess the compliance with Section 4(f) and the National Historic Preservation Act Section 106 through design and construction by identifying how the project inadequately protected the 2 historic properties; and
* To identify specific steps, procedures, processes, and practices that should be implemented or improved that will ensure protection of historic properties during future construction projects. This includes establishing methods to monitor and adjust the procedures, processes, and practices toward improving stewardship of historic properties.
 |
| **Scope of Data Review:** |
| The scope of this review is to examine existing processes, procedures and events that lead to the damage to the historic sites. The analysis will be limited to the 4 breaches to the 2 trails.The team will review project documentation and interview key project people (up to 10) and key consulting parties. The analysis will be based on a review of the following project documentation:* 4(f) Documentation
* Section 106 Documentation
* Design/Build Contract
* Project Plans
* Daily Diaries
* Cultural Monitor Weekly Reports
* Timeline of Events Leading to Breaches
* Letters/emails regarding the 4 breached sites
* Notes from Section 106 consultation meetings
 |
| **Objectives:** |
| Each objective listed below will include **observations and recommendations to:****Objective 1:**Improve processes and procedures for compliance with Section 106 and 4(f).**Objective 2:**Improve communication/ sharing information to ensure historic properties are protected.**Objective 3:**Improve communication with NHO’s during the environmental processThe team performing this After-Action-Analysis will include members from FHWA or HDOT who understand the Section 106 Process and the desired team leader would have no prior role in or relationship to the Queen Kaahumanu Highway Project Phase 1 and Phase 2 Projects.  |
| **Potential Constraints:** |
| Due to the time lapse from when the breaches occurred till the time the after action analysis is completed, some project staff or consulting parties may not be available for interviews.Delays to the schedule may occur due to:* Travel to Kona will be required which may take time to schedule, especially if FHWA utilizes staff from the mainland.
* Interviews with staff or consulting parties cannot be grouped together to meet the needs of travelers from the mainland.
* May need to consider videoconference or teleconference interviews instead of in-person interviews.
 |
| **Team Leader:** |
| TBD |
| **Team Members:** |
| TBD-Team of 3-4 HDOT and/or FHWA Staff |  |  |
|  |  |  |
|  |  |  |
| **Schedule:** |
| **Time Frame:** | 4-6 months | **Starting Date:** | May 2020 | **Estimated****Completion Date:** | October 2020 |