

# Queen Ka'ahumanu Highway Widening Project

106 Consultation Meeting on Makani Hou Objections

September 24, 2020

1:00 pm to 3:00 pm

## Meeting Minutes

### **In Attendance:**

Meesa Otani (FHWA)  
Lisa Powell (FHWA)  
David Clarke (FHWA)  
Ralph Rizzo (FHWA)  
Harry Takiue (HDOT)  
George Abcede (HDOT)  
Julann Sonomura (HDOT)  
Pua Aiu (HDOT)  
Mandy Ranslow (ACHP)  
Jamie Loichinger (ACHP)  
Bill Dancingfeather (ACHP)  
Rick Gmirkin (Ala Kahakai)  
Lauren Morawaski (OHA)  
Susan Lebo (SHPD)  
Fred Cachola (MHOKH)  
Paka Harp (MHOKH)  
Ashley Obrey (Native Hawaiian Legal Corporation)  
Amanda Johnson-Campbell (NPS)  
Jeff Zimpfer (NPS)  
Anna Pacheco (SMS)

### **1. Pule**

Fred started the meeting with a pule at 1:06 pm.

### **2. Introductions**

Lisa reviewed who was on the line and introduced Ralph Rizzo from FHWA, who thanked everyone for attending.

Lisa introduced Jamie Loichinger from ACHP, who then introduced their team.

### **3. Review protocols for the meeting**

Lisa reviewed protocols for the meeting.

## **Discussion of ACHP Advice and FHWA Comments:**

### **4. General Objections**

Lisa reviewed this section.

Jamie said while she appreciates FHWA's willingness to work on the NHO processes, she wondered why FHWA is setting three years as the timeline for getting this done.

Lisa said they can work on a more detailed schedule, but they don't want to commit to something unrealistic due to staffing and logistical needs, like coordinating with NH organizations.

Ralph said he understands the concern but in setting that timeline they imagine starting the consultation sooner than 2 years. Using other similar efforts on the mainland as a precedence, it does take time.

Susan was concerned with the timeline as well. Over the course of three years many other projects may come online then and having the protocols developed before new work begins would be beneficial.

Paka referenced his comments that were sent in advance. He said much of the content from FHWA could be taken from other government entities' processes and that Makani Hou would be willing to help facilitate reviews of existing policies.

Fred said while he recognizes formalizing these protocols can take time, but he wanted to know what to expect right now.

Lisa said Fred is encouraged to submit recommendations.

Ralph said there is still Section 106 to be adhered to and anything developed will be additional. They are also waiting on the after-action analysis to come out that will have recommendations on procedures. He reiterated that the process begins much sooner than three years, they are just considering their resource limitations in setting a timeline.

Fred said the Section 106 protocols have not been effective. He appreciates they will develop additional protocols but finds it unacceptable that the next two years will rely on the old protocols. He recommended referring to something existing.

Lauren commented that "it may also be helpful to have discussions with DoD about the efficacy and outcomes of consultation protocols in the handbook."

David Clarke said the federal government has many protocols for native tribes on the mainland and they will be considered while moving forward.

Susan brought up the vagueness of the language regarding milestones and timeline and deliverables. She explained something more like an overall timeline, for example “at six months this will be done, at one-year that will be done” would be more effective.

Ralph said he felt a detailed timeline could be put together by the end of the year, 2020. He asked George to confirm for HDOT. George agreed.

Lisa confirmed and moved on.

Fred brought up that he wanted the process of NH consultation done in two years or less.

Ralph said that was possible but not guaranteed.

## **5. Stipulation 3 – Professional Standards**

Lisa reviewed this section. Lisa said professional standards are part of the consultant selection process.

Fred said that professional standards were not met for experts on the project.

Susan said under the HRS 6E there are stipulation for principle investigators and with respect to this project and other, the person who met these standards for this project was not necessarily on site. She wanted to ensure that those on site have sufficient knowledge and expertise as expected for the project. When engaging in these contracts there should be certain standards for an accountable person in the field.

Fred agreed. There may be standards, but the standards must be met and implemented. They have not been met on this project and they want assurances they will be in the future.

Paka said there were only 17 identified historic properties identified by the archeological survey, but NPS and NH orgs reviewed the project area and they found an additional 59 historic properties. He said this is obviously an indication that professional standards were not met.

Lisa wanted to move on as she felt this related to processes and procedures of the next stipulation.

Susan wanted to reiterate that those assigned on the project need to meet these professional standards and not just someone at the company. The person on site will be responsible to the fieldwork being done. For example, inexperienced staff with limited local experience may be making decisions on site which is unacceptable.

Jackson commented “I concur with Susan's statement.”

Lisa thanked Susan and moved on.

## **6. Stipulation 4 – Archeological Preservation and Mitigation Plan**

Lisa reviewed this section.

Jamie said while she appreciated the after-action analysis, why were the damages reported on within 72 hours because moving forward this needs to be done on current projects.

David said that is exactly why they are doing to analysis to identify where the issues were in communication. Susan said that what David said should be added into the FHWA response because it does not say how the after-action analysis will address how to meet notification deadlines.

David said that is intended.

Jamie asked what HDOT and FHWA are doing now to make sure the unanticipated effects of other current projects are being addressed being that it failed on this project.

David said they are using this as a learning experience to identify where additional oversight is needed.

Fred said it appeared as if this is the first-time damages have ever occurred on a project.

Pua said archeological finds during construction happen often with burials but the process works well on other projects, so they need to identify what was different about this project.

Fred said there is no acknowledgement of the additional lack of report distribution, not just the damages.

Susan asked for the after-action analysis to look to 6E rules related to notifications and timing that should be considered.

Paka asked Lauren to share anything on issues related to the H-3 freeway on Oahu.

Lauren said the issues are similar to those being addressed in this meeting. Timelines, deliverables, staff qualifications, accountability, quality control, outreach and consultation prior. Lauren said it was time to work together and make this process more equitable. She recommended dedicated staff within HDOT and FHWA to manage historic preservation and mandatory training.

## **7. Stipulation 5A – Project Redesign**

Lisa reviewed this section.

Paka said their proposal to narrow the median was rejected with no explanation.

Fred agreed and reiterated what Paka said.

Jamie highlighted that the response does not respond to whether or not FHWA considered if additional work would be needed to identify sites.

Ralph said no one from FHWA is present now that was there but he does acknowledge they did not have much experience with this type of project at the time. He also said they know that and are working on this and communication issues especially.

David said this is also being looked at in the after-action analysis.

Susan hoped there was an administrative record regarding whether that occurred. She also mentioned that section 4(f) compliance was required as well.

Paka said turnover at FHWA and HDOT has been a problem.

Fred said that Sterling was a great liaison, but he did not stay. He said because of the turnover it was challenging for Makani Hou to inform newcomers. He encouraged a more in-depth orientation process internally. It was frustrating for Makani Hou.

## **8. Stipulation 5B – Native Hawaiian Cultural Outreach and Education**

Lisa reviewed this section.

Fred said the ACHP was making excellent recommendations that consulting parties should be included. He said the conduct or not including them was unprofessional, unethical, and unacceptable.

Jamie said this is grounded in Section 106 consultation so this mitigation measure would have ensured NH organizations had the opportunity to engage and participate.

Harry said the scope of work will include five areas: Native Hawaiian anthropology and archeology, Native Hawaiian studies scholarship program, Hawaiian immersion charter school support, recording of oral history in the Kekaha region, and cultural programming support in the Kekaha region. Harry listed other specific project elements.

Fred said 60% of what Harry said was directly taken from a Makani Hou proposal. He is happy to see it but said the conduct in unethical and unprofessional as they weren't involved even though it was their idea. Fred said there is still opportunity to meet and make things right to meet and discuss and he wants to know why that cannot occur.

Susan wanted more specifics included on timeline and deliverables.

Harry said there will be two meetings: November 6 and November 13.

Paka wanted to reiterate a request for a scholarship endowment fund.

Lisa said FHWA previously responded that endowments are not possible. FHWA must be able to close out their commitments and cannot make permanent financial oversight on something like an endowment.

Fred asked if they were invited to the meetings.

Harry said yes.

Fred asked for an invitation and agenda.

Harry said yes, they would send something out.

## **9. Stipulation 6 – Cultural Monitors**

Lisa reviewed this section.

Susan referenced HART protocols that may be helpful to guide decisions.

Lisa said they would check the HART protocols.

Fred said it is unacceptable that this is all future promises without current changes or a timeline. There are projects right now that need these protocols now.

Ralph said this process takes time and he understands what Fred is saying but it takes time to wrap many needed changes up into one package.

Fred said waiting for one package in the future is unacceptable because they are needed now.

Paka said as already mentioned there are examples to use now. They could adopt the HART model while they work out their approach.

## **10. Stipulation 8 – Noise Study**

Lisa reviewed this section.

No comments.

## **11. Stipulation 10B – Underpass Feasibility Study**

Lisa reviewed this section.

Paka said he wanted to clarify that the underpass was intended for public use. He also requested if the state had an example of transferred ownership or an underpass, because the example sent was from 1959.

Lisa said this is the policy of HDOT and that they did not get a response from the AG because the AG doesn't respond to third party requests.

Paka and Fred clarified that they wanted to hear from HDOT that they confirmed with the AGs office. It should be an HDOT request. Paka wanted to know why that was being refused.

Jamie said it would be helpful for specifics on the liability issue. She said much like others, the vagueness in the stipulation is the reason this is a problem. The language on what is agreed upon needs to be clearer.

Paka said the underpass is intended for foot transportation use and quoted from the feasibility study that only non-transportation uses need to have transferred liability.

Fred said to reference why this was included. The project bisected more than eight trails, they wanted one complete trail to continue the practices of the ancestors and Kupuna and HDOT is preventing that.

## **12. Stipulation 12 – Ahupua'a Signs**

Lisa reviewed this section.

Fred said they were not consulted on wording, spelling, placement and installation. HDOT had to redo two signs. We asked for an archeologist, who is more familiar, to check the boundaries.

Fred and Paka have researched O'oma and discovered that it was originally 1 ahupuaa. It was divided by the Kingdom gov into O'oma 1 and O'oma 2 so they are okay with leaving the O'oma signs as is. However, they continue to request that a native Hawaiian archeologist be retained to confirm the boundary signs are in the proper location.

### **13. Stipulation 14 – Relationship Building Workshop**

Lisa reviewed this section.

Fred said again he is disappointed with the future vague promises and no direct action or assurances. There on no details on where, when and how.

Jamie reiterated the lack of specification in the document and lack of tracking of achievable outcomes.

### **14. Stipulation 15 – Terrain Model**

Lisa reviewed this section.

Jamie reiterated the negative effects of the lack of specificity.

Paka said the lack of cultural awareness and sensitivity on the intent of the terrain model. He thanked Harry for the past meeting minutes, but mentioned those notes were not comprehensive so they cannot be reviewed.

Fred said they should have been more deliberate, and they could have been clearer with what was needed. The ambiguity of the MOA is a problem. He also said they need more clarification on the current models plan. He wants to meet specifically on this issue to really resolve this issue. The idea of “completeness” needs to be made clear. He said this is not complete.

Paka asked if there was a hard deadline on comments for Amendment 2.

Lisa said the deadline was yesterday, but it can be extended to the 30<sup>th</sup> of September.

Paka said thank you.

### **15. Stipulation 17 – Post-Review Discoveries**

Lisa reviewed this section.

Fred said again he is disappointed with the future vague promises and no direct action or assurances. He said they keep being expected to wait. He is disappointed the FHWA did not respond with action or clarity on any of the ACHP recommendations. They want to see something happening now.

Paka said they are still waiting on a response to their interviewee request list for the after-action analysis.



David said they are asking for interviews from some of the people who are no longer on the projece but they cannot force people who don't work for HDOT or FHWA to be interviewed.

Paka said the interviews should be required because they may have broken the law and if they will not submit to an interview there may be a reason why.

Lisa asked for any closing comments.

Ralph thanked everyone.

Jamie thanked everyone.

Paka thanked everyone, especially those on the East Coast up late.

Fred thanked everyone and said it is great to be consulting with the group. He is glad that at least their objections maybe better understood.

## **16. Pule**

Fred closed the meeting with a pule.

The meeting was ended at 3:29 pm.