

**QUEEN KA'AHUMANU MOA AMENDMENT TWO
Amendment 2, Attachment 1 - MOA Stipulation Status**

Stipulation	Summary Description	Comment	Responsible Party	Date Due	Due Date Met?	Stipulation Complete?	Issues Encountered	Plan of Action to Complete or Evidence of Completion
1. ON SITE POINT OF CONTACT	The FHWA in coordination with the HDOT shall designate an on-site point of contact (POC) and provide electronic copies of documents upon request by any consulting party to this MOA. 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.		HDOT	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)	The 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, most notably the Mamalahoa Trail.	During investigation of site breaches which occurred in Summer 2016, it was determined the APE did not include work on side roads, outside the 300-ft. HDOT ROW.	HDOT	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 March 4, 2020.
3. PROFESSIONAL STANDARDS	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 and professional standards and guidelines. Work shall be carried out by person or persons meeting the professional qualification for archeology. The HDOT shall provide, upon request, the documents identified in this MOA.	Cultural Surveys Hawaii is performing all work pertaining to the identification and treatment of archeological resources. The President, Principal of Firm, Dr. Hallett Hammatt, meets the professional qualification.	HDOT	N/A	N/A	Complete		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. At the time of the work, they were listed by SHPD as a permitted firm.
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).	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). 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. b. The HDOT shall provide the parties to this MOA a copy of the findings of the APMP, AMP and DRPP activities. 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. d. The end of fieldwork report shall be submitted to all parties of this MOA and NHOs who participated in the consultation process. e. The Data Recovery Final Report shall be submitted to SHPD for their approval.	(1) Copies of the subject plans are available on RMTc share site https://share.rmtowill.com/index.php/s/bjTqGBKwEjB72eC (2) Due to the narrowing of the Highway median, the retaining wall shown in the BTP is no longer required. An Amendment dated January 2019 was submitted and approved by SHPD	HDOT	Prior to construction	Yes	Complete		Copies of subject plans are available on Socrata project site and on the HDOT website under HDOT-Highways, Major projects. Link is https://hidot.hawaii.gov/highways/queen-kaahumanu-widening-mitigation/
5a. PROJECT REDESIGN	Redesign south portion of project to minimize impacts to historic properties.	Project Design - Construction plans for the area between Kealakehe Parkway and Hinalani Street are complete and construction is ongoing.	HDOT	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
5b. NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION	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. 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. c. Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.		HDOT/UH Hilo	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. Makani Hou's requested and consulted with the UHH on December 3, 2019.	Stipulation 5b is addressed as part of Amendment 2, which will extend the MOA to 2026. Based on the 11/06/20 consultation meeting, the UHH will be allowed more flexibility to complete the MOU. Additional program details are needed to determine a fair time extension for the MOU. Therefore, the UHH-HDOT MOU Amendment is now planned for March 2021. The additional time to prepare the MOU Amendment provides an opportunity to refine elements of the MOU to accommodate historic and cultural resource availability.
6. CULTURAL MONITORS	Provide cultural monitors to (a) serve as community liaison, (b) provide cultural education for construction workers, (c) prevent and minimize impacts to historic and cultural resources, (d) monitor construction, and e) prepare daily reports.	Cultural monitoring ongoing with construction	HDOT	03/17/20	YES	Complete		Construction is complete, no need for further monitoring.
7. STREET LIGHTING	Street lighting shall only be provided at signalized intersections. Luminaire will not direct light skyward	Project plans have been completed by the project contractor and reviewed and approved by HDOT. Contractor will install per plan.	HDOT	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	Complete noise impact study and make available to consulting parties of MOA	Noise Study Final Report completed on February 2015 and is within the 4(f) document.	HDOT	03/17/20	YES	Complete		Noise study on file with HDOT - Hawai'i District Office and posted on the RMT SharePoint and HDOT website.

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9. HIGHWAY DRAINAGE	Install drainage control (drywells) from 1,000 feet north of Hinalani Street to immediate south of Kealakehe Parkway Intersection and report of maintenance to NPS/MOA parties and consulting NHO's	Incorporation of filtering devices into the construction plans has been done, the drywells shall be constructed per plan with filtering devices. Reporting requirements will become effective after installation as required.	HDOT	Report Annually Beginning 10/19	YES for Installation NO for annual reporting	Complete Ongoing Annual Maintenance and Reporting	2019 Report delayed due to contractor issues. Drainage filter material delivery was delayed due to COVID-19.	The Final Drainage Report was submitted to the Kaloko-Honokohau National Park on 10/20/20. Annual inspections and filter replacement are scheduled to take place each November with the annual report submitted in December.
10a. PEDESTRIAN CROSSINGS - AT GRADE PEDESTRIAN CROSSINGS	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.	Pedestrian crossings have been designed as required and will be open at the completion of the project, or sooner if feasible from a safety standpoint.	HDOT	03/17/20	YES	Complete		Photo of completed at-grade pedestrian crossings attached to 2018 Annual Report
10b. PEDESTRIAN CROSSINGS. UNDERPASS FEASIBILITY STUDY	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 Honokohau." 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. The HDOT shall identify and select a qualified independent third party to conduct the study. 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. 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. 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.		HDOT	03/17/20	YES	Complete		Final feasibility study including design guidelines (in appendix) distributed at 6/26/19 CP meeting and posted on the RMT SharePoint site.
11. INTERPRETIVE SIGNS	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-Honokohau 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-Honokohau National Historical Park		HDOT	03/17/20	NO	NOT COMPLETE	This Stipulation was 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. In May 2020, the Kaloko-Honokohau Acting Superintendent requested that consultation be postponed until the hiring of a Park Superintendent since the interpretive signs will become permanent.	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 between FHWA, NPS and HDOT is 5/2/21. A consultation meeting was held on 09/17/20 and the possibility of using silhouettes as "interpretive signs" is being explored.
12. AHUPUA'A SIGNS	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. A notice of the proposed installation shall be published in the West Hawai'i Today newspaper. The markers shall be installed as part of the highway widening project.	The current draft of the HDOT Ahupua'a Marker Program will serve as the basis for the planned development of the ahupua'a markers.	HDOT	03/17/20	YES	Complete		Photo of completed Ahupua'a signs attached to 2018 Annual Report. At the request of Paka Harp, signs for Honokohau 1 and 2 were changed to Honokohau Nui and Iki.
13. LANDSCAPING PLANS	Coordinate landscaping plans with the NPS in areas within the ROW fronting the National Historic Park. Consult with NHO's on plant species.	Landscaping plans submitted to and approved by NPS. Plans submitted to NHOs and	HDOT	03/17/20	YES	Complete		Photo of completed landscaping attached to 2018 Annual Report
14. RELATIONSHIP BUILDING WORKSHOP	Statewide one day relationship building workshop within 24 months of the execution of the MOA		HDOT	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 and HDOT Highways, Major Projects website. https://hdot.hawaii.gov/highways/queen-kaahumanu-widening-mitigation/

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15. TERRAIN MODEL	The HDOT shall commission the construction of a terrain model depicting the lands of Kekaha (between Kailua and Anaehoomalua) in consultation with Makani Hou o Kaloko-Honokohau. The model shall incorporate topographic relief, traditional place names, historic trails, settlement locations, interpretive signs, and other important landmarks, to be determined.		HDOT	03/17/20	YES	Complete	The Kaloko-Honokohau National Historical Park under the auspices of the Hawai'i Pacific Parks Association is unable to house the physical terrain model. On 8/24 and 25, 2016 HDOT and SHPD did a site visit and confirmed the breaches.	Final physical terrain model was available for viewing at 6/26/19 CP meeting and digital terrain model posted on the HDOT Socrata site. KMZ file was available for download on RMT Sharepoint site since 06/22/19. Ongoing consultation on a permanent location for the physical terrain model. Kaloko-Honokohau National Park is reconsidering housing the physical terrain model.
16. ARCHEOLOGICAL MATERIALS AND RECORDS	Discoveries as a result of the project housed and curated by HDOT	Archaeological materials under curation by HDOT and are available for viewing by the public upon request. HDOT to continue monitoring and	HDOT	03/17/20	YES	Complete		Archeological materials will be curated by HDOT until another curating/display opportunity becomes available.
17. POST-REVIEW DISCOVERIES	Actions required for previously unknown potential historic properties or unanticipated effects on identified historic properties			Notification of CPs within 72 Hours of discovery	NO	NOT COMPLETE	<ul style="list-style-type: none"> NHOs were not notified in the timeframe required by Stipulation 17. 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. SHPO was notified on 8/2/16 On 8/24 and 25, 2016 HDOT and SHPD did a site visit and confirmed the breaches. NHOs notified in email 9/30/16 and in meeting and site visit on 12/2/16 A site visit was conducted on 5/5/17 with NHOs to expanded APE. NHOs were asked to notify HDOT of any additional sites in SAIS for the expanded APE by 5/19/17. No comments received. Mitigation meeting held with NHOs and other Consulting Parties May 23, 2017 at NELHA. 8/23/17 FHWA issued Notification of Adverse Effect for damaged sites. 	<ul style="list-style-type: none"> 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. FHWA began and will continue as necessary quarterly reporting to help ensure more timely reporting of issues. The APE was revised and a Supplemental Archaeological Inventory was done. This Amendment 2 contains Stipulations to mitigate damaged sites. The FHWA is currently conducting an After-Action Analysis to provide recommendations on ways to improve compliance with Federal and State environmental and historic preservation laws Consultation for the mitigation for damages is ongoing and will be included in Amendment 2.
18. DISPUTE RESOLUTION	DISPUTE RESOLUTION. 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: 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. 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. c. Be responsible to carry out all other actions, subject to the terms of this MOA that are not the subject of the dispute.		FHWA	N/A	N/A	NOT COMPLETE	<ul style="list-style-type: none"> 8/13/19 Fred Cachola of Makani Hou o Kaloko-Honokohau filed objection via email to FHWA. Stipulations 4, 5b, 8, 10b, 11, 12, 14, 15, 17, 18, and 21 are subject to the objection. 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. FHWA responded to the complaint in writing 1/21/19. Meeting held February 29, 2020 for Makani Hou responses. Meeting held May 29, 2020 to discuss stipulation status and close-out memos. 7/8/2020 FHWA determined objection could not be resolved and forwarded to ACHP for advice. 8/10/2020 ACHP responded with advice on the objection. 	The ACHP responded to Makani Hou's 07/09/20 objection on 08/10/20 with its recommendations. FHWA replied to the ACHP advice on 09/02/20 with its final decision and rationale. A follow up meeting was held on 09/24/20 to discuss the ACHP recommendation and FHWA's response to the ACHP advice. The FHWA decision is final and concludes the Dispute Resolution process.
19. MONITORING AND REPORTING	Provide summary report at the end of each calendar year		FHWA	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.

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20. DURATION				03/17/20	NO	NOT COMPLETE	Seven stipulations as outlined above were not completed on time, so the MOA requires extension. Amendment 1 extended the MOA to March 17, 2021.	Amendment 2 will extend MOA to March 17, 2026
25. CONSULTATION SCHEDULE	The HDOT and FHWA shall develop a draft consultation schedule for developing Amendment Two including timelines, tasks, and areas of responsibilities in order to complete consultation and execute Amendment Two no later than March 17, 2021. HDOT /FHWA shall distribute the draft consultation schedule to Signatories and Consulting Parties (hereafter "Parties") via email no later than April 2, 2020. Any comments received by FHWA/HDOT from Parties within fourteen (14) days of date sent by email shall be considered by FHWA/HDOT in developing the final consultation schedule. The consultation schedule will be finalized no later than April 30, 2020.		HDOT/FHWA	Draft = 4/2/20 Final 4/30/20	YES	YES		
26. AFTER-ACTION ANALYSIS SCHEDULE	HDOT and FHWA will provide a draft schedule and scope to develop an "After-Action Analysis" report on how the project failed to protect historic properties and proposed action items to address these issues to Parties via email by April 2, 2020. Any comments on the draft schedule and scope received from Parties within fourteen (14) days of date sent by email shall be considered by FHWA/HDOT in developing the final schedule. The after-action analysis schedule and scope will be finalized no later than May 7, 2020.		HDOT/FHWA	Draft = 4/2/20 Final = 5/7/20	YES	YES		
21. AMENDMENTS	Any signatory, invited signatory, or concurring party to this MOA may request that it be amended.	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.	HDOT/FHWA	N/A	N/A	NOT COMPLETE	Amendment 1 to extend the duration of the MOA, was executed on March 4, 2020.	Discussions on Amendment 2 are on-going. Amendment 2 addresses unfinished stipulations, such as the UHH MOA, and post review discoveries.