

September 8, 2020 - Email from ACHP

ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response
Remove inadvertently	Will remove, however, the trails were not intentionally damaged, as some parties claim. Removal of "inadvertent" does not imply intentionality.	Removed. No qualifier.
Whereas clause for UHH Hilo: Why is this item specifically called out in the WHEREAS clauses for needing more time? Don't several items need more time?	Signs within the park and inadvertent discoveries also need more time but those were addressed in Amendment 1. The UHH MOU is a 5-year program, so it is the driver for the 5-year extension.	No change
Stipulation 5B - Native Hawaiian Cultural Outreach and Education		
MR-This is our opportunity to provide more specificity and accountability. Considering the large amount of money for this item, milestones, consulting protocol, reporting and FHWA oversight should be addressed.	FHWA will include stipulation 5b in the annual MOA reporting. The UHH/HDOT MOU is a contract between HDOT and UHH. The MOU identifies an annual reporting requirement for HDOT/UH in each of the five areas funded. In addition, the annual report will show how funds were dispersed, objectives achieved, the identity of recipients and any changes to the proposal for the upcoming year.	The UHH MOU will be added as an attachment to Amendment 2 to detail the accountability and specificity already within the agreement.
MR-What is the outreach plan? Did they create a plan? Do they have a master list of appropriate programs mutually agreed upon with NHOs.	There is no requirement for outreach. UHH will identify appropriate students. They are in the process of developing a plan for outreaching to potential oral history participants and will include consulting parties in this process.	The UHH MOU will be added as an attachment to Amendment 2.
DF-Regarding "to provide cultural programs and education to support Native Hawaiian Studies": Creators must use special expertise of NHOs.	NHO's will be consulted with regard to the cultural practices within the Kekaha region and the oral history aspect of the program.	UHH/HDOT MOU is now attached to Amendment 2
DF-Is this only for students at UHH?	Yes, they are focusing on Masters and Ph.D. students in their system.	No change.
DF-Will information be available to NHO's also?	Not clear what information?	No change.
DF-What are these? Who decides? Must consult with Makani Hou/NHOs for appropriate projects.	The five areas of this project are documented in the original 2015 MOA and were suggested at a meeting with Makani Hou. UHH held consultation meetings with Makani Hou on Dec 3, 2019 and Nov 6, 2020. Additional consultation is planned. Please note, "education to support Native Hawaiian Studies is within the mission of Ka Haka 'ula o Ke'elikolani. UHH will need to have latitude to ensure programs meet the mission of the college.	UHH/HDOT MOU is now attached to Amendment 2.

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Stipulation 18 - Dispute Resolution		
MR-Change concurring party to "consulting" party, re: who can raise objections.	HDOT will retain ACHP boilerplate language.	No change
Stipulation 27 - Preserve and Restore 2,500 Feet of Mamalahoa Trail		
DF-Consult with NHO's on appropriate actions.	Added initial and up to two more meetings.	Included kick-off meeting and option for two additional meetings.
1.a. DF-Is a Historic Context enough, why not an ethnography?	UHH will be doing Oral History studies regarding the trails, which will be for the entire district. An additional ethnography for the trail would not be commensurate for the trails damaged during construction.	Revise to make project scope very specific. Limit to Kealakehe and Honokohau.
1.b. DF-Don't limit documentation to archaeology. Should be used in conjunction with information about properties of religious and cultural significance.	This comment is unclear. As far as we know, while the trail has cultural significance and is significant under A, it does not have religious significance. Nor have any adjacent religious sites been identified. Much of the area was graded prior to this project.	No change
1.e. MR-Shouldn't this maintenance plan then be used for all portions of the Trail in the HDOT ROW? And would it be a useful guide for HDOT in how to maintain Trails on HDOT Row?	The maintenance plan will be limited to the trail we will be restoring. Using a trail maintenance plan developed for a Kona trail as the basis for a statewide trail maintenance plan would not work because of the different trail types and climates across the islands. However, if DOT ever has another trail to maintain, it will look to this maintenance plan as a start.	No change.
1.e. MR-Will the access plan include ensuring access is provided to NHOs and the public (if appropriate)?	HDOT will establish a gravel parking lot with a paved driveway from the Queen Kaahumanu Highway near the Hawaiian telcom area.	Parking lot language added.
1.f. DF-Site interpretation must be done through consultation with NHOs for appropriate cultural information.	Agreed. NHOs will have opportunities to consult on the plan as noted above.	No change.
2. DF-NHOs should have the opportunity to assist drafting the PDP as having the special expertise.	NHOs, as they requested will review and comment on the plans at 30/60 and 90% completion. Clarification on consultation meetings has been added.	Consulting will be done per schedule above.
2.a. DF- Replace "solicit comments" with "consult".		Changed

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2.a. MR-Delete "attempt to"	During consultation regarding the Makani Hou Objection to the MOA, HDOT/FHWA agreed stipulations needed more clarity on what consultation will entail. "Attempt to" defines the effort that will be made and will not continue indefinitely.	No change.
2.a. DF-Delete "twice" from via email	During consultation regarding the Makani Hou Objection to the MOA, HDOT/FHWA agreed stipulations needed more clarity on what consultation will entail. Twice via email defines the effort that will be made and will not continue indefinitely.	No change
2.a. DF-Delete "once" from via phone calls	Once via phone defines the effort that will be made and will not continue indefinitely.	No change
2.b. DF-NHOs should have the opportunity to assist drafting the PDP as having the special expertise.	NHOs will have opportunities to consult on the plan as provided in Amendment 2.	Additional consultation language added.
2.b. DF- Delete "to review and comment on the drafts of the PDP at the 30%, 60%, an 90% stage"	Progress reviews are needed as the PP is developed to ensure all participants agree to the direction being taken. These review times were added at CPs request.	No change
2.c. DF-This could be rethought if NHOs involved in drafting the document. MR- A lot more time than this should be provided to NHOs and consulting parties	Can provide more time.	Changed to: 30 days for comments when there is no meeting, 15 days for additional comments when there is a meeting.
2.d. DF-Not necessary if NHOs (Makani Hou) are involved in drafting/writing document.	Comments made during meetings and in writing are part of the "discussion".	No change
C. DF-Need specific stipulations to continue consultation with NHOs.	This comment is regarding transfer of the trail. See HDOT response below.	No change
C. MR-With some type of preservation covenant? Will SHPD and other consulting parties (if appropriate) have an opportunity to weigh-in?	HDOT is not contemplating a covenant. Currently in discussion with Na Ala Hele. DLNR owns all state trails, so while HDOT has not formally transferred this trail, under state law, Na Ala Hele is the agency that should manage it.	Language changed to note the this section of the trail falls under the 1892 Trails Act, and is thus technically under the jurisdiction of Na Ala Hele.
Stipulation 28 - APE Agreement between SHPD and HDOT		
MR-This would benefit from more clarification on how the agencies will work together to achieve this.	This item will be removed as it is programmatic, rather than related to this project.	Stipulation 28 removed

November 13, 2020 - Discussion with SHPD

SHPD Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Will the trail be preserved in perpetuity? If yes, then need to record easement with BOC and establish metes and bounds.	Yes, it will be preserved in perpetuity. HDOT checked with the Na Ala Hele abstractor regarding and this section of the Mamalahoa falls under the 1892 Trails Act. Will discuss with Na Ala Hele what documentation is needed. Essentially the DLNR has jurisdiction over the trail, should it request the jurisdiction. HDOT is in discussion with Na Ala Hele over future transfer of the trail.	No change
Some clearer definition of what is being preserved. What does preservation mean in the context of a trail that people want to walk on?	This items needs more discussion during consultation on the preservation plan.	No change
Need to document changes to the damaged trail because the original preservation plan for those trails has been changed by the breaches. Where will those changes be documented?	There will be one preservation plan which will include 1) Restoration of the 2,500 feet of trail on the South side of Kealakehe Parkway. 2) Documentation of what remains of the Mamalahoa Trail and Trail to Kohanaiki within the HDOT ROW 3) Clarify that the buffers for the sites with buffer breaches will remain the same. Documentation of the buffer breaches has been provided to SHPD formally through the Intake system and to the CPs on 7/22/20 in preparation for the 8/13/20 Amendment 2 Consultation meeting.	Add language to include report on buffer breaches.
Need to include some flexibility in UHH MOU. Outline a streamlined consultation if UHH not able to meet goals due to COVID, budget cuts, unable to contact specified number of people for oral histories. Prioritize alternatives if unable to do exactly what stipulation specifies, i.e. can research on x number of document substitute for x number of oral histories?	Agree. Will discuss with UHH and add flexibility language.	Added language to provide flexibility.
Add timelines to UHH MOU	UH needs some time to hire a program manager in order to fully implement this program.	Added that UH will provide a timeline by March 31, 2021. MOU will be attached to the amendment.
Who has oversight responsibility for UHH MOU	This is a contract between HDOT and UHH, therefore HDOT has oversight responsibility.	Language modified to indicate "HDOT shall ensure . . ."
Include AAA report as an attachment to Amendment 2	AAA final report will be included as an attachment to Amendment 2.	Added whereas clause referencing AAA. Final report included as an attachment.
Stipulation 28 does not belong.	Stipulation 28 will be removed.	Stipulation 28 removed.

October 15, 2020 - Email from OHA		
OHA Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Whereas, add "and" Line 30		Added
Whereas, Line 20: Remove inadvertently throughout as it is laden with painful emotional trauma and isn't even particularly necessary in this context. Suggest different language, consider mistakenly or due to errors in plotted site locations on project maps or no modifier at all.	Will remove, however, the trails were not intentionally damaged, as some parties claim. Removal of "inadvertent" does not imply intentionality.	Removed. No qualifier.
Stipulation 5B - Native Hawaiian Cultural Outreach and Education		
More detail on how FHWA will ensure these actions. Through annual reporting? Responsible oversight and management? How will progress or management of the program be reported back to NHOs in a timely manner?	FHWA will include stipulation 5b in the annual MOA reporting. The UHH/HDOT MOU is a contract between HDOT and UHH. The MOU identifies an annual reporting requirement for HDOT/UH in each of the five areas funded. In addition, the annual report will show how funds were dispersed, objectives achieved, the identity of recipients and any changes to the proposal for the upcoming year.	Will attach MOU to Amendment 2.
Stipulation 27 - Preserve and Restore 2,500 Feet of Mamalahoa Trail		
FHWA/HDOT may want to consider expanding the linear footage of trail restoration of at least allow for the possibility by changing the language here. Much good advice was offered in consultation meetings on the preservation of this larger segment of the trail related to its potential usability. Suggest "2.500 and potentially the proposed 4,300 ft contiguous stretch of Mamalahoa Trail if additional funding or programs are developed that could contribute to the project during the time period of this Amendment.	FHWA/HDOT expanded from 1,000 LF to 2,500 LF after hearing CP feedback at 4/16/2020 consultation . Almost 20 ft of trail (19.5 ft) is being restored for every foot of trail damaged.	No change
May want to clarify upfront that additional consultation will be conducted to develop the PDP and any actions associated with the plan.	Agree on need to clarify consultation.	Added an initial consultation meeting and up to 2 additional meetings in the section on consultation to 2.b.
A. Add "and through consultation with Makani Hou and other NHO on specific measures outlined within the plan."		See above. Consultation added as 2.b.
A.1.b. Delete "Archaeological"	We will have archeologist document the condition of the trail. Archaeological documentation will include plan drawings, photos, and anything else required under state law of an archeological survey.	No change

October 15, 2020 - Email from OHA		
OHA Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
A.1.b. The term a condition assessment could be included here Documentation and a condition assessment along with proposed bmps for managing vegetation and other preservation measures. This documentation work could include consultation or site visits to discuss the trail while it is being assessed. Information should be shared with NHO in a timely manner following the condition assessment or documentation to allow time for input on preservation measures.	HDOT will follow HAR 13-277, which has similar language.	No change
A. 1.f. Delete "some" as qualifier for recognition	Agreed.	Deleted "some."
A. 1.f. Include consultation for interpretation of site	HDOT will follow HAR 13-277, which has similar language.	No change
A. 1.g. Include consultation for permanent markers	HDOT will follow HAR 13-277, which has similar language.	No change
2. a. Add postal mail.	Agreed.	Postal mail added at 2.a.
A Consultation protocol should be developed that all parties have a chance to review and should include appropriate levels of outreach and communication with all consulting parties	Section reworked.	See above. Consultation added as 2.b.
2.c. Change from 15d to 30d	Can add more time for response.	Rewritten to 30d without meeting, 15d additional days with meeting. Item 2.d.
2.d. This whole section should be re-written	agreed	Rewritten, refer to Item 2.e.
B.1. SHPD should be involved in consultation to develop the document (as opposed to sending for approval).	6E says that SHPD reviews and comments. SHPD will be one of the consulting parties to this Preservation Plan.	No change
Timeline for implementation?	Agreed.	Language to develop timeline through consultation on PP added.
Stipulation 28 - APE Agreement between SHPD and HDOT		
This agreement should also include some level of consultation with NHO. NHO have had many shared experiences dealing with the multitude of problems related to incorrect APE that have resulted in impacts to cultural and natural resources. NHO can help identify consistent and repeated issues as well as less rare instances.	This item will be removed as it is programmatic, rather than related to this project.	Stipulation removed

September 3, 2020 - Email from Paka Harp		
MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Amendment 2 should be another time extension to allow enough consultation time to do the mitigation right.	Per the Amendment 2 Schedule (Stipulation 25), Amendment 2 is scheduled to be finalized December 2020 to allow time for signatures. Amendment 2 will include mitigation for trails damaged during construction. It will also include a 5 year time extension to complete the original MOA and mitigation for the damaged sites. Attachment 2 beginning on Page 2 details the consultation to date on the sites damaged during construction. This consultation began in 2016 and includes 8 consultation meetings.	No change in timing.
Definition of what is commensurate should be negotiated with CPs.	Commensurate mitigation is determined by the lead federal agency (FHWA) per 23CFR771.105(d). This was further detailed in an email from Lisa Powell, FHWA to CPs on 2/7/2020.	No change
October 15, 2020 - Email from Makani Hou O Kaloko Honokohau		
CP Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Replace all five of the WHEREAS clauses with the following:		
<p>New: WHEREAS, the Federal Highways Administration (FHWA) has funded the State of Hawai'i Department of Transportation (HDOT) projects (collectively "Project") and a 2012 Archaeological Inventory Survey prepared for the Project that recommends a Finding of Adverse Effect; and</p> <p>Reviewer Comment: Updates 2015 MOA 1996 FONSI citation with 2012 Adverse Effect. QUESTION: Should the first WHEREAS clause in 2015 MOA be replaced in its entirety as it does not reflect the best available information at that time?</p>	The first whereas clause defines the undertaking, so will stay where it is. The 2015 MOA and Amendment 1 both defined the adverse effect. Since this is an amendment, there is no need to go over the effect determination.	No change
<p>New: WHEREAS, the Project is a federal undertaking under 36 CFR § 800.16 (y) requiring compliance with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, and Section 4(f) of the Department of Transportation Act; and</p> <p>Reviewer Comment: Fact.</p>	Compliance with all of these laws are required, but MOA does not have to address all of the compliance, only mitigation for adverse effects. Also, since this is an amendment, the original MOA notes the funding source.	No change
<p>New: WHEREAS, the State of Hawai'i Historic Preservation Officer (SHOPO) recommended in a March 12, 2013 letter to FHWA that SIHP-06432 be afforded protection under Section 4(f) and, thereafter, FHWA exempted the site from Section 4(f) protection; and</p> <p>Reviewer Comments: Fact. This SHOPO letter was never thoroughly discussed with consulting parties although concerns were repeatedly raised regarding this particular site.</p>	Section 4(f) is complete and is a different process addressed under NEPA. Also, John Nickelson addressed 4(f) questions raised by Makani Hou in a series of e-mails to Mr. Harp prior to finalizing the 2015 MOA. Meesa Otani has also addressed Makani Hou in a separate series of e-mails with Mr. Harp during consultation on Amendment 2.	No change
<p>New: WHEREAS, after seven years of delays due to Project contract bidding challenges and the discovery of 57 additional historic properties in 2012 requiring amendments to the Project's archaeological documents and further Section 106 consultation, a 5-year Memorandum of Agreement (MOA) was hastily drafted and executed on March 17, 2015 between signatories, invited signatories, and concurring parties; and</p> <p>Reviewer Comments: Demonstrates reasons why the process was delayed resulting in a rush to move forward with a hastily written MOA. In addition, multiple HDOT press releases on false construction start dates added public pressure on HDOT to start construction. Numerous unreported historical properties demonstrate the lack of professional standards in early archaeological work</p>	Amendment Two language focuses on moving forward from the original MOA and Amendment 1. Events referenced were prior to 2015 MOA.	No change

September 3, 2020 - Email from Paka Harp

MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
<p>New: WHEREAS, prior to execution of the 2015 MOA, a Memorandum of Understanding (MOU) between HDOT and the University of Hawai'i Hilo (UHH) conveying responsibility for implementation of Stipulation 5.B to UHH was executed with no consultation with the consulting parties, and on September 23, 2019 a second MOU increasing funding and adding the Kohala Center to assist with implementation of Stipulation 5.B. was executed, again with no consultation; and</p> <p>Reviewer Comments: Fact. The questions we have on this matter that were never answered include, 1) Why did the HDOT enter into an MOU with UHH prior to the execution of the MOA with no consultation? And 2) Why did HDOT enter into a second MOU with UHH again without consultation considering the fact that concerns on the lack of consultation was raised on numerous occasions prior to the second MOU?</p>	<p>MOA language focuses on moving forward from the original MOA and Amendment 1. Consultation meetings with UHH on MOU were held on Dec 3, 2019 and Nov 6, 2020.</p>	<p>Will add MOU as an attachment to Amendment 2. It provides more clarity to the questions being raised. Consultation meeting on program was held on Nov 6, 2020.</p>
<p>New: WHEREAS, the 2015 MOA failed to specifically describe each mitigation measure as well as procedures for their implementation thereby causing confusion, misunderstandings, and disagreements among the MOA parties regarding mitigation deliverables while multiple replacements of HDOT and FHWA representatives created further confusion; and</p> <p>Reviewer Comment: Fact.</p>	<p>Amendment Two language focuses on moving forward from the original MOA and Amendment 1. Amendment 1 currently addressed in 3rd Whereas clause. Summary of stipulation status addressed in Attachment 1.</p>	<p>No change</p>
<p>New: WHEREAS, unable to meet its obligations under the 2015 MOA, FHWA proposed Amendment One to extend the 2015 MOA to March 17, 2021 to negotiate mitigation for construction damages to historic properties, conduct an After Action Analysis to determine causes of construction damages and buffer breaches and develop procedures to prevent these impacts in the future, and continue implementation of mitigation measures memorialized in the 2015 MOA; and</p> <p>Reviewer Comment: Fact.</p>	<p>Amendment Two language focuses on moving forward from the original MOA and Amendment 1. Amendment 1 currently addressed in 3rd Whereas clause. Summary of stipulation status addressed in Attachment 1.</p>	<p>Amendment 2 has been revised to include Final After Action Analysis as an attachment.</p>
<p>New: WHEREAS, on August 13, 2019 Makani Hou filed 12 objections on the implementation of the MOA with the FHWA and on May 29, 2020 objections were not resolved and FHWA requested the ACHP's advisory comments pursuant to Stipulation 18 of the 2015 MOA, and on August 10, 2020 the ACHP responded with 27 specific recommendations to assist the FHWA in resolving the objections; and</p> <p>Reviewer Comment: Fact.</p>	<p>The Makani Hou objection is memorialized in Attachment 1 and 2. FHWA and HDOT have agreed to NHO Consultation Protocols. Please note that FHWA has not agreed to further consult on any of the challenged stipulations. FHWA has determined Stipulations 8, 10, 12, 14, 15 and the dispute to be complete.</p>	<p>No change</p>
<p>New: WHEREAS, FHWA proposed Amendment Two to the 2015 MOA to further extend the term of the 2015 MOA as amended from March 17, 2021 to March 17, 2026 to complete requirements memorialized in the 2015 MOA as amended, implement mitigation for construction damages and buffer breaches, develop protocols for consulting with Native Hawaiians, and to resolve objections on the implementation of the MOA; and</p> <p>Reviewer Comment: Fact.</p>	<p>Amendment 2 extends the terms of the 2015 MOA to complete the following: 1) the UHH MOA, 2) the National Park signage (in Amendment 1), 3) the mitigation for the damaged trails. Note that FHWA has finalized its response to objections raised by Makani Hou. NHO Consultation protocols will be Statewide and are separate from this project.</p>	<p>No change</p>

September 3, 2020 - Email from Paka Harp

MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
<p>New: Whereas, a coalition of invited signatories and concurring parties (listed) proposed stipulations to mitigate construction damages of historic properties identified as SIHP 50-10-27-00002 Mamalahoa Trail (a section 4(f) property) at two locations; SIHP 50-10-27-10714, Road to the Sea (a section 4(f) property) at two locations; and to mitigate adverse effects to natural areas adjacent to historic properties caused by breaches to interim protection buffers at SIHP 10-27-28783, Agricultural Complex, SIHP 50-10-27-28811, Pahoehoe Excavation; and SIHP 50-10-27-19947, Pahoehoe Marker; and</p> <p>Reviewer Comment: Fact.</p>	<p>After the coalition had presented its proposal to FHWA and HDOT, leaders of both agencies noted that while the proposal was excellent in its broad scope to address trails in the Kekaha area, it was not commensurate with the damage to the two trails in question. However, recognizing the importance of the overall plan presented, FHWA did a presentation on TAP funding at the Feb 8, 2020 meeting. TAP funding would require county or NPS participation (HDOT not eligible) and must meet federal funding reporting requirements, but would also allow for the completion of the overall plan over time. Other funding options to complete this plan may also be available. FHWA and HDOT note that they requested that the consulting parties either prioritize their list, or come up with one, or possibly 2 items that were most important that it would be possible to fund under this mitigation. However, the consulting parties said they were unable to prioritize the list.</p>	<p>No change</p>
<p>New: WHEREAS, FHWA rejected the coalition's proposed mitigation on the grounds that the requested mitigation measures were not "commensurate" with damages to the above listed historic properties and instead introduced a counter-proposal to perform vegetation clearing "and/or" restoration for the portion of the Māmalahoa Trail within its right of way (approximately 2,500 feet) as well as a maintenance plan that FHWA cannot fund beyond the term of the MOA as amended while no mitigation for breaches of interim protection buffers was considered; and</p> <p>Reviewer Comment: Fact.</p>	<p>See above and MOA focuses on what mitigation is agreed to and which agencies or groups have responsibility to carry out the stipulations.</p>	<p>More detail was added to Attachment 2 to memorialize the 106 consultation process for Amendment 2 and the process to arrive at the proposed mitigation for the damaged trails.</p>
<p>New: WHEREAS, Hawai'i Revised Statutes §264-1(2)(b) declares that all trails, and other non-vehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892 are declared to be public trails under the jurisdiction of the State Board of Land and Natural Resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county; and</p> <p>Reviewer Comment: Fact.</p>	<p>It is interesting to note that the section of trail within the HDOT ROW is a "1892 Trail" and thus technically already belongs to DLNR. Thus, eventual transfer of the trail to Na Ala Hele is part of a logical legal progression. Language re: Highways Act of 1892 is included in Stipulation 27.</p>	<p>Whereas clause unchanged. Included language re: Section of Mamalahoa is a 1892 Trail added to Amendment 2, Stipulation 27, Section 2D.</p>
<p>New: WHEREAS, the State of Hawai'i and Hawai'i County governments continue to sell portions of Hawai'i's historic trails to private entities and destroying portions of Hawai'i's historic trails for public projects while public interest continues to increase for the preservation of Hawai'i's historic public trails for outdoor recreational and educational activities; and</p> <p>Reviewer Comment: Fact.</p>	<p>Outside scope of the MOA</p>	<p>No change</p>
<p>Replace NOW THEREFORE clause with:</p>		
<p>Replace NOW THEREFORE clause with:</p> <p>NOW THEREFORE, in furtherance of the above recitals, the FHWA, the SHOPO, the ACHP, HDOT, and invited and concurring parties agree that the Project shall be implemented in accordance with the stipulations of the 2015 MOA as amended to take into account the Project's adverse effects on Hawai'i's historic properties:</p>	<p>Amendment 2 mitigation is limited to damage to the Mamalahoa Trail and the Trail to Kohanaiki.</p>	<p>No change</p>
<p>Replace all NOW THEREFORE Paragraphs 1 through 5 with the following:</p>		
<p>1. CONSULTATION PROTOCOLS DEVELOPMENT FHWA shall within 9-months of the execution date of this amendment, complete written guidance and protocols for consulting with Native Hawaiians in consultation with the ACHP, Makani Hou, and other interested Native Hawaiians. Established consultation protocols shall be memorialized in the proposed Programmatic Agreement for federally funded projects in Hawai'i.</p>	<p>FHWA/HDOT have agreed to develop NHO consultation protocols outside of the MOA. They will provide a scope and schedule by the end of the year. This was in response to the Makani Hou objection and ACHP advice.</p>	<p>No change</p>

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MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
<p>2. ACHP ADVICE The FHWA shall consider the advice provided by the ACHP on August 10, 2020, in relation to the 12 objections submitted to the ACHP and apply such advice toward resolving outstanding objections.</p>	<p>The FHWA considered the advice provided by ACHP and provided a response on September 2, 2020. Also, a meeting was held with consulting parties on 9/24/2020. The FHWA has provided a final decision on Makani Hou's objection per Stipulation 18. FHWA also determined stipulations 8, 10, 11, 12 and 15 are complete. See Attachment 1 to Amendment 2 for status of stipulations.</p>	<p>No change</p>
<p>3. PROJECT DOCUMENTATION The FHWA shall organized by date and type all Project documentation including meeting minutes and notes and publish such documentation on a publicly accessible website. Whenever possible documentation shall be published in the .PDF format to provide broad public accessibility.</p>	<p>Project documentation for Amendments 1 and 2 is available on the HDOT website, which is available to the public: https://hidot.hawaii.gov/highways/queen-kaahumanu-widening-mitigation/</p>	<p>No change</p>
<p>4. PRE-MITIGATION IMPLEMENTATION CONSULTATION</p>		
<p>A. To insure that the intent of mitigation stipulations will be met, implementation shall be preceded by consultations with parties to the 2015 MOA. Consultation shall include incomplete mitigation stipulations, stipulations deemed complete by FHWA but challenged by one or more parties to the 2015 MOA, as well as mitigation stipulations contained herein.</p>	<p>Consultation will occur with parties to the 2015 MOA for the restoration of the trail as outlined in Stipulation 26. The FHWA has provided a final decision on Makani Hou's objection per Stipulation 18. FHWA determined stipulations 8, 10, 11, 12 and 15 are complete. The status of the stipulations is shown in Attachment A.</p>	<p>No change</p>
<p>B. FHWA shall provide monthly mitigation implementation reports to all 2015 MOA points of contacts and sub-contacts if any. Reports shall also be published on the publicly accessible website discussed under 3.PROJECT DOCUMENTATION above.</p>	<p>Annual reporting is required by the 2015 MOA and will continue until the MOA is complete. HDOT will post annual report to the HDOT website.</p>	<p>No change</p>
<p>5. MITIGATION FOR CONSTRUCTION DAMAGES AND BREACHES</p>		
<p>A. FHWA shall contract professional interpretive planners to develop an Interpretive Plan for the Māmalahoa Trail in consultation with Nā Ala Hele Trail and Access Program, Ala Kahakai NHT, and parties to the 2015 MOA.</p>	<p>HDOT shall follow the requirements of HAR 13-277, which requires interpretation.</p>	<p>No change</p>
<p>B. RECORDATION OF CERTIFIED TITLES FHWA shall contract a Certified Land Title Examiner and have certified land title documents for the Māmalahoa Trail and the Trail to the Sea recorded at the Bureau of Conveyances' Land Court recordation system as well as with the County of Hawai'i's Tax Map Key recordation system.</p>	<p>FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.</p>	<p>No change</p>
<p>C. HISTORIC TRAILS INFORMATION COMPILATION FHWA shall fund the compilation of information on the Māmalahoa Trail and the Road to the Sea.</p>	<p>FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.</p>	<p>No change</p>
<p><u>Implementation:</u></p>		
<p>1) FHWA shall contract reputable professionals to research and compile information regarding the Māmalahoa Trail and the Trail to the Sea including archaeological reports, cultural landscape studies, maps, oral histories, newspapers articles, Hawaiian Kingdom, Territory of Hawai'i, and State of Hawai'i records including information on trail segments sold or otherwise disposed of by the State of Hawai'i and Hawai'i County.</p>	<p>FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.</p>	<p>No change.</p>
<p>2) All products of this stipulation shall digitized and made publicly available through the State of Hawai'i Nā Ala Hele Trail and Access Program website.</p>	<p>FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.</p>	<p>No change</p>
<p>D. HISTORIC TRAILS PUBLIC USE PLAN</p>		
<p><u>Implementation:</u></p>		
<p>1) The Kohala Center in consultation with Nā Ala Hele Trail and Access Program, Ala Kahakai NHT, and parties to the 2015 MOA shall produce a Historic Trails Public Use Plan for the Māmalahoa Trail and the Trail to the Sea.</p>	<p>FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.</p>	<p>No change</p>

September 3, 2020 - Email from Paka Harp

MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
2) Public consultation meetings shall be convened in Kona, Hilo, South Kohala, and Ka'u to discuss development of the Historic Trails Public Use Plan.	FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.	No change
3) Public meeting notifications shall be published in local newspapers and through radio broadcast announcements.	FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.	No change
4) Eight refreshments shall be made available during public meetings.	FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.	No change
5) All products of this stipulation shall be digitized and made publicly available through the State of Hawai'i Nā Ala Hele Trail and Access Program website.	FHWA has stated that these items are not commensurate with the damage to the trails. Alternate sources of funding are available and were provided to the CPs.	No change
E. MĀMALAHOA TRAIL IMPROVEMENTS		
FHWA shall fund an archeological condition assessment and plans for trail restoration and preservation, invasive vegetation clearing, and stabilization where deemed necessary through consultations for the section of the Māmalahoa Trail located between Kealakehe Parkway and Hale Makai Place.	HDOT will follow HAR 13-277, which has similar language.	No Change.
<u>Implementation:</u>		
1) A condition assessment of the Māmalahoa Trail will be carried out and documentation compiled into a restoration and preservation plan for the Trail.	HDOT will follow HAR 13-277, which has similar language, assessment of the trail will be limited to 2,500 feet within the ROW.	No change
2) Vegetation clearing and trail stabilization shall be carried out in accordance with applicable historic preservation laws and Secretary of the Interior standards for Historic Preservation (https://www.nps.gov/tps/standards/four-treatments/treatment-preservation.htm).	HDOT will follow HAR 13-277, which has similar language. Limited to 2,500 feet	No change
3) Prior to vegetation clearing and trail preservation work, consultation with Ala Kahakai NHT, Nā Ala Hele Trail and Access Program, and consulting parties to the 2015 MOA shall be conducted.	Added consultation meetings	Added consultation meetings
F. OFF-STREET PARKING, TRAIL ACCESS, AND SIGNAGE		
FHWA shall establish a paved off-street parking area near the Queen Ka'ahumanu Highway-Kealakehe Parkway intersection with pedestrian access to the Māmalahoa Trail.	FHWA/HDOT reserves the right to establish a gravel parking area where most feasible.	Parking lot language added to Stipulation 27.
<u>Implementation:</u>		
1) FHWA shall establish a paved off-street parking area on HDOT property or on Hawai'i County property under an agreement with Hawai'i County containing a minimum 10 parking stalls including two ADA compliant stalls and two stalls to accommodate school and tour buses.	HDOT will establish a gravel parking lot with a paved driveway from the Queen Kaahumanu Highway near the Hawaiian telcom area.	Parking lot language added to Stipulation 27.
2) FHWA shall install wayside signage at the parking area and at key interpretive features along the Māmalahoa Trail, as determined in the Interpretive Plan under 5.A.	HDOT has not agreed to an interpretive plan for 2,500 feet of trail at this time. Interpretive signs can be discussed with consulting parties during development of the Preservation Plan.	Item to be addressed during consultation on preservation plan.
3) FHWA shall install silhouette figures at the parking area and at key interpretive features along the Māmalahoa Trail, as determined in the Interpretive Plan under 5.A.	Additional silhouette figures are not commensurate. Interpretation of the trail could include silhouette figures and will be discussed with consulting parties during development of the Preservation Plan.	Item to be addressed during consultation on preservation plan.
4) The Māmalahoa Trail is not ADA compliant and ADA compliance can be accomplished by way of virtual web-based interpretive media, recorded phone tours, apps, etc.	HDOT will apply for an ADA waiver. Development of a virtual web-based interpretive media, recorded phone tours, apps, etc. are not commensurate to the trail damage.	No change.
G. PROTECTIVE BUFFER BREACHES		

September 3, 2020 - Email from Paka Harp

MHOKH Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
<p>Wherever protective buffers were breached resulting in disturbance to areas designated for preservation, FHWA shall restore the disturbed area by hand to its natural state and shall require that an archaeological monitor and a cultural monitor will be present to monitor restoration activities.</p>	<p>FHWA determined there were no adverse effects to the sites where buffer breaches occurred since the sites were not impacted. Therefore, there is no mitigation under Section 106. HDOT submitted buffer breach report to SHPD. It was also sent to all CPs as part of a response from HT to PH on 7/22/20.</p>	<p>No change</p>
<p>H. PRE-MITIGATION COMPLETION CONSULTATION</p>		
<p>FHWA shall consult parties to the 2015 MOA and attempt to gain consensus on the completion of all mitigation stipulations contained in the 2015 MOA as amended and mitigation stipulations contained herein prior to making final determinations on satisfactory completion.</p>	<p>FHWA shall take comments of consulting parties into consideration as required by 36 CFR 800. As noted above, the stipulation status is summarized in Attachment 1. The consultation summary of the Makani Hou objection is summarized in Attachment 2.</p>	<p>No change</p>
<p>I. MITIGATION IMPLEMENTATION TIMELINES</p>		
<p>A timeline schedule for implementation of mitigating stipulations shall be established in consultation with parties to the MOA.</p>	<p>Timeline for 5B and trail mitigation</p>	<p>will add language</p>
<p>6. STIPULATION 18. TERRAIN MODEL shall be replaced with the following text: FHWA shall commission the construction of an interactive physical terrain model depicting the lands of Kekaha (between Kailua and 'Anaeho'omalua) in consultation with Makani Hou o Kaloko-Honokohau. The interactive physical model shall incorporate topographic relief, traditional place names, historic trails and settlement locations, interpretive signs and other important landmarks to be determined during consultation. The interactive feature shall provide a visual effect (be it by lighting or other means) to show, at the push of a button, how and where the Queen Ka'ahumanu Highway bisected all mauka-makai trails in the Kekaha region. The physical interactive model shall be of such scale that it can be transported to other locations and be used as a teaching tool. An interactive digital model shall also be developed to include similar information and interactive features as the interactive physical model. The Kaloko-Honokohau National Historical Park (NPS) has expressed renewed interest in accepting the interactive physical terrain model and housing at the NPS Hale Ho'okipa Visitor Center. An agreement transferring ownership of the interactive physical and interactive electronic terrain models to NPS shall be entered into between FHWA and NPS.</p>	<p>Stipulation 18 is complete. Please see Attachment 1 to Amendment 2--MOA stipulation Status. An additional terrain model is not commensurate with the sites damaged during construction.</p>	<p>No change.</p>
<p>7. STIPULATION 20 OF THE 2015 MOA SHALL BE REPLACED WITH THE FOLLOWING TEXT: DURATION. The original term of the MOA was for five years from the execution of the MOA with the original term ending March 17, 2020. Amendment One extended the MOA by a period of one (1) year to March 17, 2021. The MOA duration is extended by Amendment Two by a period of five (5) years from the March 17, 2021 to March 17, 2026, or upon satisfactory completion of the stipulations whichever comes first.</p>		<p>Included some of the clarifying language provided.</p>
<p>8. AREA OF POTENTIAL EFFECT AGREEMENT BETWEEN FHWA AND SHOPO. Within 1 year of the execution of Amendment 2 FHWA shall complete the development of an Area of Potential Effect (APE) Agreement with the SHOPO in consultation with SHPD and HDOT to insure proper identification of the APE for future HDOT projects. This agreement shall be part of a programmatic agreement developed between the FHWA, HDOT, SHOPO, and SHPD.</p>	<p>This item will be removed as it is programmatic, rather than related to this project.</p>	<p>This item will be removed.</p>
<p>9. COUNTERPART SIGNATURES This Amendment may be executed in counterparts. Each signature page shall be incorporated into Amendment Two and considered a part of this Amendment.</p>	<p>Agreed.</p>	<p>Added counterpart language.</p>

August 13, 2020 - Email from Historic Hawaii Foundation

HHF Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Add 3 Whereas clauses (lines 34-38). This will explain the objection and help frame the issue. If a new stip is added to address the resolution of the objection, this would tie in.	This is summarized in Attachment 2	More detail was added to Attachment 2 regarding the MHOKH objection.
1) Whereas, Makani Hou filed a formal objection under Stipulation 18 on (date) concerning the manner in which FHWA and HDOT implemented the MOA; and	The FHWA considered the advice provided by ACHP and provided a response on September 2, 2020. Also, a meeting was held with consulting parties on 9/24/2020. The FHWA has provided a final decision on Makani Hou's objection per Stipulation 18. FHWA also determined stipulations 8, 10, 11, 12 and 15 are complete (see Attachment 1 to Amendment 2). The consultation for the Makani Hou objection is memorialized in Attachment 2.	More detail was added to Attachment 2 regarding the MHOKH objection.
2) Whereas, FHWA referred the objection and proposed resolution to the ACHP for comment on (date);and	This is summarized in Attachment 2	More detail was added to Attachment 2 regarding the MHOKH objection.
3) Whereas, ACHP provided comment and recommendations on (date), and	This is summarized in Attachment 2	More detail was added to Attachment 2 regarding the MHOKH objection.
Stipulation 5B - Native Hawaiian Cultural Outreach and Education		
1. Add: 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 . . .	This is the current language in the MOA.	No change
1. How will HDOT ensure that the MOU is fully implemented.	Annual reports documenting the activities of the past calendar year will be made available to all consulting parties.	Added additional language regarding reports: UHH will provide annual reports documenting the activities of the past calendar year, which will be made available to all consulting parties. If any activities were not accomplished, UHH will so note, including reasons goals were not met and provide corrective action in the annual report.
1. Clarify who will provide the annual reports (UHH or HDOT)	Clarifying language added.	See above.
Stipulation 18 - Dispute Resolution		
Change concurring to consulting party.	FHWA HDOT will continue to use boilerplate language.	No change
Should invite/offer opportunity for other signatories and consulting parties to participate in the consultation to resolve the objection. Don't close the consultation to include only the objecting party. At a minimum, HDOT and SHPD should be involved.	This stipulation is standard language. All consulting parties will be notified, and provided a copy of FHWA's written response. They can provide comments upon being notified, as was done in the dispute resolution for the 2015 MOA.	No change.
Stipulation 27 - Preserve and Restore 2,500 Feet of Mamalahoa Trail		
1. Remove "and Development" to read, "Preservation Plan"		Changed

August 13, 2020 - Email from Historic Hawaii Foundation

HHF Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
1.a. Expand this Stip to include details on the research methodology, table of contents, professional qualifications, and extent of the research. An outline could be an exhibit. This needs to be specific so it is clear from the outset what the extent of the research will be.	Its difficult to have too much detail as this work will be contracted out, and there needs to be some flexibility for contract negotiations. We are planning on following HAR 13-277, which provides a fairly broad outline. FHWA/HDOT agree on need for clarify.	Item to be addressed during consultation on preservation plan.
1.c. Refer to or define what is meant by "restore". Is this a reference to the Secretary of the Interior's Standards for restoration or to a specific standard for Hawaiian trails/this trail or something else? Restoration should address aspects of integrity (location, setting, design, materials, workmanship, association, feeling).	Need to discuss with SHPD and Na Ala Hele for better idea of requirements.	In discussion.
1.e. Maintenance should cover all segments within the HDOT ROW, not only this section.	The maintenance plan will be limited to the trail we will be restoring. Using a trail maintenance plan developed for a Kona trail as the basis for a statewide trail maintenance plan would not work because of the different trail types and climates across the islands. However, if DOT ever has another trail to maintain, it will look to this maintenance plan as a start.	No change
1.e. Does SHPD conduct inspections? Or is this proposing an expansion of the agencies roles and responsibilities	HAR 13-277 requires SHPD inspections.	No change
2. Consultation		
2.a. Is this a review and comment process or a consultation process. Consultation is based on a conversation with give and take.	Will change to have up to 3 meetings. One at the beginning of the process and the others as needed. Other opportunities will be for review and comment.	Changed
2.a. Suggest change to invite consultation rather than to solicit comments.	Will do both. Language now reads "an initial meeting will be held to discuss the preservation plan and solicit ideas and comments.	Language changed to reflect both.
2.a. Many NHOs have listed a mailing address for the POC. HDOT should also send a letter via mail.	Agreed	Will send initial requests to participate in consultation via mail, unless requested otherwise.
2.b. Add "HDOT shall provide drafts of the Plan to the . . .	Agreed	Changed
2.e. Add, HDOT shall provide. . .	Agreed	Changed
B. Submittals to SHPD		
B.1, B.2, B.3. Note wording changes.	Agreed	Changed
Stipulation 28 - APE Agreement between SHPD and HDOT		
5. Add a whereas Clause or introduction as to what is the goal of this stip. What is the purpose or what is meant to be accommodated.	Will remove this item as not related to this MOA. Will continue to work on this with SHPD.	Item removed
Add Stipulation:		

August 13, 2020 - Email from Historic Hawaii Foundation

HHF Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
6. Are there recommendations from the Relationship Building report, the ACHP comment and advice re: resolution of the Makani Hou objection, and /or the After Action Analysis that can/should be added to Amendment 2 as action items to continue to make progress on programmatic agreements?	This item will be removed as it is programmatic, rather than related to this project.	No change

October 15, 2020 - Email from NPS Ala Kahakai		
Ala Kahakai Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
Ala Kahakai concurs with the comments submitted by ACHP for the whole of Amendment 2	Noted	
Concurs with HHF's additional whereas clauses	Noted	
Whereas, changed from 2020 to 2019 (Line 31)		Changed
<p>Inserted: Whereas, FHWA 2015 MOA obligations were not met and proposed the drafting of Amendment One, executed on March 1, 2020, to extend the 2015 MOA by one year to provide time for FHWA to negotiate mitigation from construction damages to historic properties designed for preservation, address objections raised by Makani Hou, initiate an After-Action Analysis, and provide additional time for FHWA to implement mitigation measures memorialized in the 2015 MOA stipulations; and</p>	Amendment 2 language will focus on moving forward from Amendment 1. Summary of consultation is included in Attachment 2. Attachment 1 includes a summary of mitigation measures that are incomplete from the 2015 MOA	More detail was added to the Consultation Summary (Attachment 2). Final After the Action Report will be attached to the Amendment.
<p>Inserted: WHEREAS, on August 13, 2019, Makani Hou filed 12 objections with the FHWA and on May 29, 2020, parties agreed that the objections were not resolved and elevated all documentation relevant to the objections to the ACHP pursuant to Stipulation 18 of the 2015 MOA and on August 10, 2020, the ACHP responded with 27 specific recommendations to assist the FHWA in resolving Makani Hou's objections; and</p>	The FHWA considered the advice provided by ACHP and provided a response on September 2, 2020. Also, a meeting was held with consulting parties on 9/24/2020. This is summarized in Attachment 2. The FHWA has provided a final decision on Makani Hou's objection per Stipulation 18. FHWA also determined stipulations 8, 10, 11, 12 and 15 are complete (see Attachment 1 to Amendment 2).	No Change
<p>Comment: There needs to be a whereas statement that identifies why we are here in this stage of dealing with damages. Under FWHA, HDOT, and contractor previews historic properties were damaged outside of the MOA. The MOA was then breached by failure to report to within 72 hours, damages were not reported until months later.</p> <p>Inserted: Whereas, Amendment Two to the 2015 MOA to extend further the term of the 2015 MOA from the sunset date of Amendment One of March 1, 2021, to March 1, 2026 to provide FHWA more time to complete the above as well as to implement mitigation for construction damages to historic properties designated for preservation, and continue efforts to resolve objections elevated to the ACHP; and</p>	<p>Amendment 2 extends the terms of the 2015 MOA to complete the following:</p> <ol style="list-style-type: none"> 1) the UHH MOA 2) the National Park signage 3) the mitigation for the damaged trails. Attachment 2 to Amendment 2 provides documentation on status of the stipulations. <p>Attachment 1 details failure to report within 72 hours. The Makani Hou objection is separate from the Amendment 2.</p>	No change
WHEREAS, a coalition of invited signatories and concurring parties to the 2015 MOA proposed multiple mitigation stipulations to assuage construction damages to historic properties identified as SIHP 50-10-27-00002, Mamalahoa Trail, a section of 4(f) property (Two Locations); SIHP 50-10-27-10714, Road to the Sea, a Section 4(f) property (two locations); and impacts to natural areas adjacent to historic properties due to breaches of interim protection buffers at SIHP 50-10-27-28783, Agricultural Complex, SIHP 50-10-27-28811, Pahoehoe Excavation; and SIHP 50-10-27-19947, Pahoehoe Marker; and	After the coalition had presented its proposal to FHWA and HDOT, leaders of both agencies noted that while the proposal was excellent in its broad scope to address trails in the Kekaha area, it was not commensurate with the damage to the two trails in question. However, recognizing the importance of the overall plan presented, FHWA did a presentation on TAP funding at the Feb 8, 2020 meeting. TAP funding would require county or NPS participation (HDOT not eligible) and must meet federal funding reporting requirements, but would also allow for the completion of the overall plan over time. Other funding options to complete this plan may also be available. FHWA and HDOT note that they requested that the consulting parties either prioritize their list, or come up with one, or possibly 2 items that were most important that it would be possible to fund under this mitigation. However, the consulting parties said they were unable to prioritize the list.	More detail was added to Consultation Summary (Attachment 2)
WHEREAS, FHWA rejected the coalition's proposal concluding that it was not commensurate with damages and FHWA made a counter proposal to restore 2, 500 feet of Mamalahoa Trail to include vegetation clearing, interpretive signage, identifying mauka-makai trail intersections, and developing a Preservation Development Plan while no mitigation was considered for breaches to the interim preservation buffers; and	FHWA determined there were no adverse effects to the sites where buffer breaches occurred since the sites were not impacted. Therefore, there is no mitigation under Section 106. HDOT submitted buffer breach report to SHPD. At the 2/8/2020 meeting, FHWA stated the coalition proposal was a great vision, but beyond commensurate for the adverse effect for the trails damaged during construction. FHWA presented the Transportation Alternatives Program (TAP) as a possible way to fund the larger CP coalition proposal.	More detail was added to Attachment 2 to memorialize consultation on the damaged sites.

October 15, 2020 - Email from NPS Ala Kahakai

Ala Kahakai Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
WHEREAS, Hawaii Revised Statutes Section 264-1(2)(b) declares that all trails, and other non-vehicular rights of way in the State declared to be public rights-of-ways by the Highways Act of 1892 are declared to be public trails under the jurisdiction of the State Board of Land and Natural Resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county; and	This is not relevant to the MOA. However, it is interesting to note that the section of trail within the HDOT ROW is a "1892 Trail" and thus technically already belongs to DLNR. Thus, eventual transfer of the trail to Na Ala Hele is part of a logical legal progression. Language re: Highways Act of 1892 is included in Stipulation 27.	Language re: Highways Act of 1892 is included in Stipulation 27.
Stipulation 5B - Native Hawaiian Cultural Outreach and Education		
AJC-In the existing MOA, part of the conflict was HDOT believing stipulations were completed when CPs did not. How can this be improved in this stip? Add timelines?	The lead Federal agency, in this case, FHWA, determines when a stipulation is complete.	Added: By March 31, 2021 HDOT and UHH will provide timelines.
MLK-Addition of specific dates (i.e. start of the MOU and duration as well as benchmarks for the process and the outcomes should be identified to provide a clear range of activity and deliverables.	UH needs some time to hire a program manager in order to fully implement this program. Deliverables are stated in MOU.	Added that UH will provide a timeline by March 31, 2021. MOU will be attached to the Amendment.
Change from HDOT to FHWA to read, "...the FHWA shall ensure that the MOU between HDOT and UHH..."	The MOU between HDOT and UHH is a contractual agreement between the two state agencies. FHWA is not a part of the contract but will continue working with HDOT to meet the terms of the stipulation. FHWA will continue annual reporting.	Changed language to indicate FHWA will do annual reporting.
Stipulation 20 - Duration		
MLK-I'd suggest more clarity on the process of the extensions - specifically state that the duration of Amendment 2 to the MOA is extended by a period of 5 years.	Language states that the MOA is extended for five year or until the stipulations are completed, whichever comes first. If all of the stipulations are completed sooner than five years, then the MOA shall be considered complete and closed.	No change
Stipulation 27 - Preserve and Restore 2,500 Feet of Mamalahoa Trail		
Change from "MAMALAHOA" TO "MĀMALAHOA" throughout.		Changed
A.1.b. Inserted phrases noted in quotations to read: Archeological documentation of the existing condition of the Māmalahoa Trail (after vegetation clearing "shall follow Secretary of the Interior Standards for Historic Preservation and Hawaii Administrative Rules", Intersections with other historic trails, "associated features, and areas needing preservation treatment shall be identified and documented."	FHWA/HDOT will follow HAR 13-277, which has similar language. SOI required by HAR13-277.	No change
A.1.c. A plan to implement Preservation treatments in a defined section of the Mamalahoa Trail...	Preservation treatments is vague. If it is a term of art, would need a definition.	No change
A.1.d. Add "and maintenance strategy."	Maintenance is discussed in next paragraph	No change
A.1.e. Add "and protocols for the State Historic Preservation Division Inspections. (AJC concurs with HHF comments)	HAR 13-277 requires SHPD inspection.	No change
A.1.g. add "appropriate native" vegetation	Added dry-land native	Added language
A.1.h. Rename trail to "Road to the Sea" (Trail to Kohanaiki)	HDOT: Deona Naboia, a lineal descendant to the area, states that Trail to Kohanaiki is the appropriate name.	No Change
A.2. Consultation		Consultation added as 2.b.
A.2.a to 2.e AJC - Concur with ACHP comments items	See comments to ACHP	Changed several parts of this section. See ACHP & OHA comments.
A.2.a MLK- Why is there no hard copy mail distribution?	Added hard copy mail distribution to invite consultation	Added hard copy mailout for invitation to consultation.
B.3 RG - Reword to, "Once HDOT receives the SHPD written concurrence..."		Changed several parts of this section. See ACHP & OHA comments.
B.3. RG-Please make item 3 its own subsection C		Changed
C. MLK--Was there discussion about the concept of transferring ownership of the trail - was this intended to be a private non-profit, another government entity, or transfer to an NHO or other community group.	As this trail falls under the 1892 Trails act, it already falls under Na Ala Hele jurisdiction, if they want it. Consulting parties have been part of conversation about transfer to Na Ala Hele.	No change
Stipulation 28 - APE Agreement between SHPD and HDOT		
Stipulation 28 AJC-This needs more description. If any of the large projects invoice FHWA funding, then FHWA should be a signatory. Consultation needs to be a part of the process. MLK - I agree - this stip as written is extremely vague and needs a much stronger level of detail and process identification.	This item will be removed as it is programmatic, rather than related to this project.	Stipulation was removed

October 19, 2020 - Email from NA ALA HELE

Na Ala Hele Comments on Amendment 2	HDOT/FHWA Response	Outcome for Amendment 2
<p>I did not submit separate comments, but I do want to express that I do support the comments/revisions submitted by Makani Hou. Their submission excellently balances the adverse effects to the historic trails due to the widening of the Queen Kaahumanu Highway, while at the same time providing a net-benefitting community assets that these trails truly deserve. I look forward to seeing these into fruition. Thanks to you and your team at DOT and all the consulting parties and partners.</p>		