

1 AMENDMENT TWO TO THE
2 MEMORANDUM OF AGREEMENT

3 Among the
4 ADVISORY COUNCIL ON HISTORIC PRESERVATION
5 FEDERAL HIGHWAY ADMINISTRATION

6 AND THE
7 HAWAII STATE HISTORIC PRESERVATION OFFICER

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

13
14 WHEREAS, the Memorandum of Agreement (MOA) regarding the projects known as Queen
15 Ka'ahumanu Highway Intersection Improvements for the Kaloko-Honokōhau National Historic
16 Park, and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole (collectively the
17 "Projects") was executed on March 17, 2015; and

18 WHEREAS, several stipulations of the MOA were delayed or not completed (summarized in
19 Attachment 1); and

20 WHEREAS, Amendment One to the MOA, was executed on March 5, 2020 to address changes
21 to the Area of Potential Effect (APE) (Stipulation 2), Interpretive Signs (Stipulation 11), and
22 document the adverse effect for trails damaged during construction. It also extended the term of
23 the MOA to March 17, 2021 to allow time to consult on mitigation for the adverse effect; and

24 WHEREAS, relevant history of consultation on the APE, Supplemental Archaeological
25 Inventory Survey (SAIS), Damage to Sites and Buffer Breaches, Amendment One and
26 Amendment Two is summarized in Attachment 2; and

27 WHEREAS, Hawaii Department of Transportation (HDOT) needs more time to implement the
28 cultural programs at the University of Hawaii at Hilo (UHH). In addition, Makani Hou O
29 Kaloko-Honokōhau (Makani Hou) requested to be consulted on implementation of the cultural
30 programs and met with the UHH on December 3, 2019 and November 6, 2020; and

31 WHEREAS, the FHWA and HDOT submitted an after-action analysis scope and schedule as
32 required by Stipulation 26 on May 7, 2020 and FHWA submitted the final after-action analysis
33 report to consulting parties on [DATE TO BE FILLED IN AFTER SUBMITTAL] (Attachment
34 3)

35
36 NOW THEREFORE, in furtherance of the above recitals, the Federal Highway Administration
37 (FHWA), the State Historic Preservation Officer (SHPO), the Advisory Council on Historic
38 Preservation (ACHP), the National Park Service, and HDOT agree that the Projects shall be
39 implemented in accordance with the following amended stipulations in order to take into account
40 the Project's effect on historic properties:

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42 1. **Stipulation 5.B** of the MOA shall be replaced with the following text:

43 NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION. The HDOT and the
44 University of Hawaii at Hilo (UHH) have entered into a Memorandum of Understanding
45 (MOU) to provide cultural programs and education to support Native Hawaiian Studies (See
46 Attachment 4, UHH MOU). The FHWA and HDOT shall ensure that the MOU between
47 HDOT and UHH to provide cultural programs is fully implemented over the duration of the
48 MOU. The MOU includes the Kohala Center, as requested by Makani Hou, to help facilitate
49 the contract and to provide a mechanism to better include local representation. UHH will
50 provide annual reports documenting the activities of the past calendar year. HDOT will
51 make the reports available to all consulting parties. If any activities were not accomplished,
52 UHH will so note, including reasons goals were not met. HDOT and the CPs shall consult
53 with UH on alternative timeframes and means to meet the goals of this stipulation, if the
54 activities could not be accomplished. FHWA will continue to report annual progress of
55 Stipulation 5.B as required in Stipulation 19- MONITORING AND REPORTING of the
56 2015 MOA. By March 31, 2021, the HDOT and the UHH shall provide a timeline for the
57 delivery of the first year of the five project areas of the MOU. The timeline will be
58 distributed to consulting parties. Future timelines will be developed by UHH and HDOT
59 annually to accommodate any need changes to tasks or schedule.
60

61 2. **Stipulation 18** of the MOA shall be replaced with the following text:

62 DISPUTE RESOLUTION. Should any signatory, invited signatory, or concurring party to
63 this MOA object at any time to any actions proposed or the manner in which the terms of this
64 MOA are implemented, the objecting party shall submit its objection in writing to both the
65 Hawaii Division Administrator and the Federal Preservation Officer for FHWA, and also
66 notify all Consulting Parties. Both officials of FHWA shall consult with such party to
67 resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA
68 will:

- 69 A. Forward all documentation relevant to the dispute, including the FHWA's proposed
70 resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the
71 resolution of the objection within thirty (30) days of receiving adequate
72 documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare
73 a written response that takes into account any timely advice or comments regarding
74 the dispute from the ACHP, signatories and concurring parties, and provide them with
75 a copy of this written response. The FHWA will then proceed according to its final
76 decision.
- 77 B. Make a final decision on the dispute and proceed accordingly if the ACHP does not
78 provide its advice regarding the dispute within the thirty (30) day time period. Prior
79 to reaching such a final decision, the FHWA shall prepare a written response that
80 takes into account any timely comments regarding the dispute from the signatories
81 and concurring parties to the MOA, and provides them and the ACHP with a copy of
82 such written response.
- 83 C. Be responsible to carry out all other actions, subject to the terms of the MOA that are
84 not the subject of the dispute.

85 3. **Stipulation 20** of the MOA shall be replaced with the following text:

86 DURATION. The original term of the MOA was for five (5) years from the execution of the
87 MOA with the original term ending March 17, 2020. Amendment 1 extended by a period of
88 one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021. The MOA
89 duration is extended by this Amendment 2 for a period of five (5) years from the March 17,
90 2021 expiration to March 17, 2026, or upon completion of the stipulations, whichever comes
91 first.

92 4. **Stipulation 27** shall be added to the MOA:

93 A. PRESERVE 2,500 FEET OF THE MĀMALAHOA TRAIL (SIHP #50-10-27-00002).

94 1. IDENTIFICATION

95 HDOT shall perform vegetation clearing and preservation activities meeting the
96 Secretary of Interior’s guidelines for preservation for a 2,500 foot portion of the
97 Māmalahoa Trail (SIHP #50-10-27-00002) within its right of way in the area from
98 Kealakehe Parkway south, per the State requirements for a Preservation Plan (PP)
99 outlined below.

100
101 2. BUFFER ZONES

102 HDOT will establish 10-foot buffer zones around the trail. These buffer zones will be
103 depicted on a map using GIS points to locate the buffer. The map shall be of
104 sufficient scale that the trail and buffers can be clearly seen. An archaeologist will
105 draw the buffer along with the trail. Interpretive signs may be placed in the buffer
106 zones, but no additional work or activities will take place in the buffer area without
107 permission from HDOT. Should anyone request to place a permanent marker in the
108 buffer, HDOT will consult with CPs on the appropriateness of the request. HDOT
109 will make one contact by e-mail and a follow up contact by phone if there is no e-
110 mail response. At the end of this MOA, HDOT will use its discretion on whether or
111 not to contact CPs regarding requests to place permanent markers in the buffer.

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113 3. SHORT-TERM PROTECTION MEASURES

114 There are no short-term protection measures for this project.

115
116 4. CONSULTATION PROCESS

117 HDOT shall consult with Native Hawaiian Organizations (NHOs) and Consulting
118 Parties (CP) to this amendment during the development of the PP as follows:

- 119 a. To solicit participants to consult on the development of the PP, HDOT shall
120 attempt to contact NHOs and CPs once via regular mail and twice via email. If
121 no response is received, HDOT will follow up once via phone if a phone
122 number is available. HDOT encourages consulting parties to provide HDOT
123 with information on additional parties to consult.

- 124 b. A timeline for the development of the PP and restoration of the trail will be
125 developed as a part of the consultation. HDOT commits to hiring a
126 consultant, within one year of execution of this Amendment, sooner if
127 possible.
- 128 c. An initial meeting will be held to discuss the preservation plan and solicit
129 ideas and comments. Up to two additional meetings will be held as necessary.
130 Meetings may be held via video conferencing if there are budget or travel
131 restrictions. HDOT shall provide drafts of the plan to CPs and NHOs at the
132 30%, 60%, and 90% stage. These stages need not correspond to the meetings.
- 133 d. HDOT shall provide electronic copies of the drafts for review to the CPs and
134 NHOs who will have 30 days to provide comments to HDOT if no meeting is
135 held, and 15 days to provide any additional comments to those made in a
136 meeting, if a consultation meeting is held.
- 137 e. Comments made during meetings and any written comments received from
138 CPs and NHOs, will be considered when finalizing the PP.
- 139 f. The final PP will be provided electronically to the NHOs and CPs, unless a
140 paper copy is requested
- 141 g. The final PP shall include a list of individuals and organizations consulted and
142 shall summarize their input.

143 5. LONG-TERM PRESERVATION MEASURES

144 HDOT will rehabilitate, restore or reconstruct (as appropriate) the 2,500-foot
145 segment of the Māmalahoa trail identified in the map (Attachment 5). The
146 Preservation Plan (PP) will include the following:

- 147 a. A synthesis of available documentation on the construction, uses,
148 maintenance, vegetation or stories of the Māmalahoa Trail in the Kealakehe
149 and Honokōhau ahupua'a. The SHPD library, the State Archives and the
150 Hawaiian collection at the Hamilton Library will be searched (if accessible)
151 for documentation. Oral history collections talking about these two ahupua'a
152 should also be accessed, if available. The synthesis need not capture the entire
153 Māmalahoa Trail.
- 154 b. Archeological documentation, including drawings of the existing condition of
155 the Māmalahoa Trail (after vegetation clearing) and identification of
156 intersections with other historic trails within the 2,500 foot section, as well as
157 the small piece of trail on the other side of Kealakehe Parkway. Archaeologist
158 will GPS the location of the trail(s) using standard archaeological practices.
- 159 c. A vegetation clearing plan for the 2,500 section of trail.

- 160 d. A maintenance plan for this section of the trail, which will include access,
161 litter control, future impacts and site stability and periodic monitoring of the
162 site for impacts to historic integrity and site significance, and protocols for the
163 State Historic Preservation Division (SHPD) inspections.
- 164 e. HDOT shall develop a gravel parking lot with room for ten cars and one bus
165 in its right of way. The parking lot shall have a paved drive-way to exit and
166 re-enter the Queen Ka'ahumanu Highway.
- 167 f. Interpretation of the site. This will include recognition of the connection of
168 the trail to the North side of Kealakehe Parkway and mauka-makai trails
169 within this 2,500-segment. This could be done through signage or other
170 means. Consulting parties will be invited to consult on the interpretation of the
171 site. Interpretive signs, brochures, or other materials will follow HAR 13-
172 277-7, including getting SHPD approval for any interpretive material.
- 173 g. A plan for permanent markers to identify and interpret the trail such as trail
174 markers, signs or dry-land native vegetation. Up to three markers may be
175 made.
- 176 h. The PP will include revised Preservation Plans for the Māmalahoa Trail
177 (SIHP #50-10-27-00002) near the park entrance and Trail to Kohanaiki
178 (SIHP #50-10-27-10714), and will document their current condition within the
179 APE.
- 180 i. The PP will include a report on the buffer breaches and note that the buffers
181 for SIHP #'s 28811, 28783, and 19947 will remain the same.

182 B. Preservation Plan (PP) Submittals to SHPD

- 183 1. HDOT shall submit the pre-final PP to SHPD for their review and comment.
184 SHPD shall have 30 days to provide comment unless they request more time in
185 writing, including e-mail.
- 186 2. HDOT will address all SHPD comments received within 30 days and submit a
187 final PP for SHPD's written concurrence. SHPD shall respond within 30 days
188 unless it requests additional time in writing. If SHPD does not respond, the
189 HDOT may assume SHPD's concurrence

190 C. Once HDOT receives SHPD's written concurrence HDOT will implement the plan to
191 preserve the trail.

192 D. The section of the Māmalahoa Trail discussed above is considered a public Trail
193 under the Highways Act of 1892. As such, it is already under the jurisdiction of the State
194 Board of Land and Natural Resources, Na Ala Hele Program (HRS, 264-1 (2) (b). At
195 such time when it is feasible for both parties, HDOT shall formally transfer the trail,

196 including maintenance, parking, any structures erected to interpret the trail and any
197 documentation related to the DLNR Na Ala Hele Program.

198 5. This Amendment may be executed in counterparts. Each signature page shall be incorporated
199 into Amendment Two and considered a part of this Amendment.

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201 List of Attachments:

- 202 1. MOA Stipulation Status
- 203 2. History of Consultation Status
- 204 3. After-Action Analysis Report
- 205 4. UHH MOU
- 206 5. Map of the 2,500 feet of trail.

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ADVISORY COUNCIL ON HISTORIC PRESERVATION
FEDERAL HIGHWAY ADMINISTRATION
AND THE
HAWAII STATE HISTORIC PRESERVATION OFFICER
Regarding the projects in the vicinity of the
District of North Kona, Island of Hawaii, State of Hawaii
which are known as the Queen Ka‘ahumanu Highway Intersection
Improvements for the Kaloko-Honokōhau National Historic Park
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

DRAFT

By: _____

Date:

John M. Fowler, Executive Director

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SIGNATORY:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Ralph J. Rizzo, Division Administrator

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SIGNATORY:

STATE HISTORIC PRESERVATION OFFICER (State of Hawai‘i)

By: _____ Date: _____

Suzanne D. Case, State of Hawai‘i Historic Preservation Officer

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INVITED SIGNATORY:

NATIONAL PARK SERVICE

DRAFT

By: _____ Date: _____
Superintendent, Kaloko-Honokōhau National Historical Park

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

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INVITED SIGNATORY:

STATE OF HAWAI‘I DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Jade T. Butay, Director of Transportation

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CONCURRING PARTY:

HISTORIC HAWAI‘I FOUNDATION

DRAFT

By: _____ Date: _____

Kiersten Faulkner, Executive Director

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CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

DRAFT

By: _____ Date: _____

Sylvia Hussey, Ka Pouhana Kūkawā / Chief Executive Officer

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CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKŌHAU

DRAFT

By: _____ Date: _____

Fred Cachola, President