

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 ~~inadvertently~~ damaged during construction. It also
23 extended the term of the MOA to March 17, 2021 to allow time to consult on mitigation for the
24 adverse effect; and

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

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

32 WHEREAS, the FHWA and HDOT submitted an after-action analysis scope and schedule as
33 required by Stipulation 26 on May 7, 2020 and FHWA submitted the final after-action analysis
34 report to consulting parties on [DATE TO BE FILLED IN AFTER SUBMITTAL] (Attachment
35 3).

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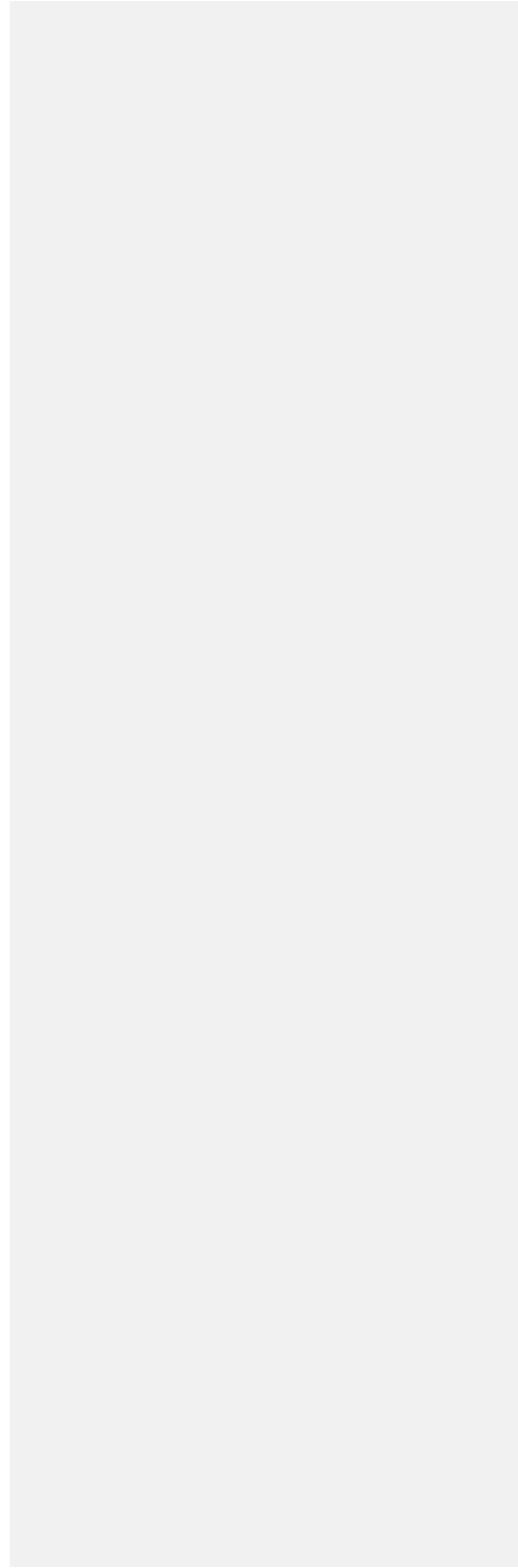
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38 NOW THEREFORE, in furtherance of the above recitals, the Federal Highway Administration
39 (FHWA), the State Historic Preservation Officer (SHPO), the Advisory Council on Historic
40 Preservation (ACHP), the National Park Service, and HDOT agree that the Projects shall be
41 implemented in accordance with the following amended stipulations in order to take into account
42 the Project's effect on historic properties:
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1. **Stipulation 5.B** of the MOA shall be replaced with the following text:

NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION. 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 (See Attachment 4, UHH MOU). The FHWA and HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the duration of the MOU. The MOU includes the Kohala Center, as requested by Makani Hou, to help facilitate the contract and to provide a mechanism to better include local representation. UHH will provide annual reports documenting the activities of the past calendar year, which HDOT will be make the reports 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 in the report. HDOT and the CPs shall consult with UH on alternative timeframes and means to meet the goals of this stipulation, if the activities could not be accomplished. FHWA will continue to report annual progress of Stipulation 5.-B as required in Stipulation 19- MONITORING AND REPORTING of the 2015 MOA. FHWA will include the progress of stipulation 5 B through the annual reporting. Stipulation 19 in 2015 MOA.

By March 31, 2021, the HDOT and the UHH shall provide a timeline for the delivery of the first phase year of the five project areas of the MOU. The timeline will be distributed to consulting parties. Future timelines will be developed by UHH and HDOT annually to accommodate any need changes to tasks or schedule and will be updated as necessary. (See Attachment 4, UHH MOU).
Add a timeline (add blurb from Julian)

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

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, the objecting party shall submit its objection in writing to both the Hawaii Division Administrator and the Federal Preservation Officer for FHWA, and also notify all Consulting Parties. Both officials of 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.

87 B. Make a final decision on the dispute and proceed accordingly if the ACHP does not
88 provide its advice regarding the dispute within the thirty (30) day time period. Prior
89 to reaching such a final decision, the FHWA shall prepare a written response that
90 takes into account any timely comments regarding the dispute from the signatories
91 and concurring parties to the MOA, and provides them and the ACHP with a copy of
92 such written response.

93 C. Be responsible to carry out all other actions, subject to the terms of the MOA that are
94 not the subject of the dispute.

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

96 DURATION. The original term of the MOA was for five (5) years from the execution of the
97 MOA with the original term ending March 17, 2020. Amendment 1 extended by a period of
98 one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021. The MOA
99 duration is extended by this Amendment 2 for a period of five (5) years from the March 17,
100 2021 expiration to March 17, 2026, or upon completion of the stipulations, whichever comes
101 first.

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

103 ~~A. PRESERVE AND RESTORE 2,500 FEET OF THE MĀAMALAHOA TRAIL (SIHP #50-~~
104 ~~10-27-00002). HDOT shall perform vegetation clearing and/or restoration for the portion of~~
105 ~~the Māmalahoa Trail within its right of way (approximately 2,500 feet) in the area from~~
106 ~~Kealakehe Parkway northsouth, per the State requirements for a Preservation Plan (PP)~~
107 ~~outlined below.~~

108 ~~HDOT shall develop a PP that meets the requirements of HAR 13-277, (rules Governing~~
109 ~~Archaeological Site Preservation and Development) for a 2,500-foot section of the Māmalahoa~~
110 ~~Trail located within the HDOT right of way on the south side of Kealakehe Parkway (See~~
111 ~~map).~~

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

118 2. BUFFER ZONES
119 HDOT will establish 10-foot buffer zones around the trail. These buffer zones will be
120 depicted on a map using GIS points to locate the buffer. The map shall be of
121 sufficient scale that the trail and buffers can be clearly seen. An archaeologist will
122 draw the buffer along with the trail. Interpretive signs may be placed in the buffer
123 zones, but no additional work or activities will take place in the buffers area without
124 permission from HDOT. Should anyone request to place a permanent marker in the
125 buffer, HDOT will consult with CPs on the appropriateness of the request. HDOT
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127 will make one contact by e-mail and a follow up contact by phone if there is no e-
128 mail response. At the end of this MOA, HDOT will use its discretion on whether or
129 not to contact CPs regarding requests to place permanent markers in the buffer.

131 3. SHORT-TERM PROTECTION MEASURES

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

134 4. CONSULTATION PROCESS

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

- 137 a. To solicit participants to consult on the development of the PP, HDOT shall
138 attempt to contact NHOs and CPs once via regular mail and twice via email. If
139 no response is received, HDOT will follow up once via phone if a phone
140 number is available. HDOT encourages consulting parties to provide HDOT
141 with information on additional parties to consult.
- 142 b. A timeline for the development of the PP and restoration of the trail will be
143 developed as a part of the consultation. HDOT commits to hiring a
144 consultant, within one year of execution of this Amendment, sooner if
145 possible.
- 146 c. An initial meeting will be held to discuss the preservation plan and solicit
147 ideas and comments. Up to two additional meetings will be held as necessary.
148 Meetings may be held via video conferencing if there are budget or travel
149 restrictions. HDOT shall provide drafts of the plan to CPs and NHOs at the
150 30%, 60%, and 90% stage. These stages need not correspond to the meetings.
- 151 d. HDOT shall provide electronic copies of the drafts for review to the CPs and
152 NHOs who will have 30 days to provide comments to HDOT if no meeting is
153 held, and 15 days to provide any additional comments to those made in a
154 meeting, if a consultation meeting is held.
- 155 e. Comments made during meetings and any written comments received from
156 CPs and NHOs, will be considered when finalizing the PP.
- 157 f. The final PP will be provided electronically to the NHOs and CPs, unless a
158 paper copy is requested
- 159 g. The final PP shall include a list of individuals and organizations consulted and
160 shall summarize their input.

161 5. LONG-TERM PRESERVATION MEASURES

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

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

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~~A timeline for the development of the PP and restoration of the trail will be developed as a part of the consultation. HDOT commits to hiring a consultant, within one year of execution of this Amendment, sooner if possible.~~

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~~An initial meeting will be held to discuss the preservation plan and solicit ideas and comments. Up to two additional meetings will be held as necessary. Meetings may be held via video conferencing if there are budget or travel restrictions. HDOT shall provide drafts of the plan to CPs and NHOs at the 30%, 60%, and 90% stage. These stages need not correspond to the meetings.~~

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~~HDOT shall provide electronic copies of the drafts for review to the CPs and NHOs who will have 30 days to provide comments to HDOT if no meeting is held, and 15 days to provide any additional comments to those made in a meeting, if a consultation meeting is held.~~

~~Comments made during meetings and any written comments received from CPs and NHOs, will be considered when finalizing the PP.~~

~~The final PP will be provided electronically to the NHOs and CPs, unless a paper copy is requested~~

~~The final PP shall include a list of individuals and organizations consulted and shall summarize their input.~~

LONG TERM PRESERVATION MEASURES

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

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~~1. Preservation and Development Plan (PDP)~~

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~~a. A synthesis of available documentation on the construction, uses, maintenance, vegetation or stories of the Māmalahoa Trail in the Kealakehe and Honokōhau ahupua'a. The SHPD library, the State Archives and the Hawaiian collection at the Hamilton Library will be searched (if accessible) for documentation. Oral history collections talking about these two ahupua'a should also be accessed, if available. The synthesis need not capture the entire Māmalahoa Trail.~~

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~~a. Archeological documentation, including drawings of the existing condition of the Māmalahoa Trail (after vegetation clearing) and identification of~~

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201 intersections with other historic trails within the 2,500 foot section, as well as
202 the small piece of trail on the other side of Kealakehe Parkway. Archaeologist
203 will GPS the location of the trail(s) using standard archaeological practices.
204 Research Provide a synthesis of any documentation, in the form of a Historic
205 Context, of the uses of the trail in the Ahupua'a of Kealakehe and Honokōhau.
206 This can include references to the documentation done the National Park
207 section of the trail. The synopsis should also briefly discuss the mauka-makai
208 trail(s) that cross the Māamalahoa in this section.

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209 b.

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211 c. A vegetation clearing plan for the 2,500 section of trail.

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212
213 b. Archeological documentation of the existing condition of the Māamalahoa
214 Trail (after vegetation clearing) including identification of intersections with
215 other historic trails within the 2,500 foot section.

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216 e. A plan to repair or restore a 2,500 foot section of the Māamalahoa Trail
217 (approximately 2,500 feet) within the HDOT right-of-way.

218 d. A vegetation clearing plan for the proposed restoration area, 2,500 foot area of
219 trail.

220 d. A maintenance plan for this section of the trail, which will include access,
221 litter control, future impacts and site stability and periodic monitoring of the
222 site for impacts to historic integrity and site significance, and protocols for the
223 State Historic Preservation Division (SHPD) inspections.

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224 e. HDOT shall develop a gravel parking lot with room for ten cars and one bus
225 in the HELCO lay down area its right of way. The parking lot shall have a
226 paved drive-way to exit and re-enter the Queen Ka'ahumanu Highway.

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228 e.

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229 f. Interpretation of the site. This will include some recognition of the
230 connection of the trail to the south-North side of Kealakehe Parkway and
231 mauka-makai trails within this 2,500--segment. This could be done through
232 signage or other means. Consulting parties will be invited to consult on the
233 interpretation of the site. Interpretive signs, brochures, or other materials will
234 follow HAR 13-277-7, including getting SHPD approval for any interpretive
235 material. See consultation, below.

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g. A plan for permanent markers to identify and interpret the trail such as trail markers, signs or dry-land native vegetation. Up to three markers may be made.

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h. The PDP will include revised Preservation Plans for the Māmalaha Trail (SIHP #50-10-27-00002) near the park entrance and Trail to Kohanaiki (SIHP #50-10-27-10714), and will document their current condition within the APE.

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h.i. The PP will include a report on the buffer breaches and note that the buffers for SIHP #'s 28811, 28783, and 19947 will remain the same.

2. Consultation for the Preservation Development Plan (PDP)

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

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

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~~a. A timeline for the development of the PP and restoration of the trail will be developed as a part of the consultation. HDOT commits to hiring a consultant, within one year of execution of this Amendment, sooner if possible.~~

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~~An initial meeting will be held to discuss the preservation plan and solicit ideas and comments. Up to two additional meetings will be held as necessary. Meetings may be held via video conferencing if the corona virus or budget there are t restricts travel budget or travel restrictions~~

~~b. HDOT shall provide drafts of the plan to CPs and NHOs will be provided opportunities to review and comment on the drafts of the PDP at the 30%, 60%, and 90% stage. These stages may or may not correspond to the meetings times.~~

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~~c. HDOT shall provide electronic copies of the drafts for review to the CPs and NHOs will be provided with electronic copies of the drafts for review and who will have 15 30 days to provide comments to HDOT if no meeting is held, and 15 days to provide any additional comments to those made in a meeting, if a consultation meeting is held.~~

~~d. If Comments made during meetings and any written comments are received from CPs and NHOs, HDOT shall will be considered the comments in when finalizing the PDP.~~

~~e. The final PDP will be provided electronically to the NHOs and CPs, unless a paper copy is requested.~~

B. Preservation ~~and Development~~ Plan (PDP) Submittals to SHPD

1. HDOT shall submit the ~~p~~Pre-~~f~~Final PDP to SHPD for their review and comment. SHPD shall have 30 days to provide comment unless they request more time in writing, including e-mail.
2. HDOT will address all SHPD comments received within 30 days and submit a ~~f~~Final PDP for SHPD's ~~approval~~written concurrence. SHPD shall respond within 30 days unless it requests additional time in writing. If SHPD does not respond, the HDOT may assume SHPD's concurrence

~~C. C.~~ Once the PDP is approved by HDOT receives SHPD's written concurrence from SHPD, HDOT will implement the plan to ~~restore~~ preserve the trail.

~~3.~~

~~C.~~ D. HDOT may transfer ownership of the trail to another entity to better manage the long-term maintenance of the trail. The section of the Māmalahoa Trail discussed above is considered a public Trail under the Highways Act of 1892. As such, it is already under the jurisdiction of the State Board of Land and Natural Resources, Na Ala Hele Program (HRS, 264-1 (2) (b). At such time when it is feasible for both parties, HDOT shall formally transfer the trail, including maintenance, parking, any structures erected to interpret the trail and any documentation related to the DLNR Na Ala Hele Program.

~~5.~~ Stipulation 28 shall be added to the MOA (I am suggesting we take this out and work through AAA recommendations):

APE AGREEMENT BETWEEN SHPD AND HDOT. Within 2 years of the execution of Amendment 2, HDOT shall develop an APE Agreement with SHPD to address identification of the APE for large projects. This agreement can be part of a programmatic agreement between the two agencies.

~~55.~~ This Amendment may be executed in counterparts. Each signature page shall be incorporated into Amendment Two and considered a part of this Amendment.

List of Attachments:

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

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Improvements for the Kaloko-Honokōhau National Historic Park
and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole

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SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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AMENDMENT TWO TO THE
MEMORANDUM OF AGREEMENT
Among the
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

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INVITED SIGNATORY:

NATIONAL PARK SERVICE

DRAFT

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

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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

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By: _____ Date: _____
Kiersten Faulkner, Executive Director

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CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

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By: _____ Date: _____

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Sylvia Hussey, Ka Pouhana Kūkawā / Chief Executive Officer

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CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKŌHAU

By: _____ Date: _____
Fred Cachola, President

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