

1 MEMORANDUM OF UNDERSTANDING  
2 Between the  
3 THE STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION AND  
4 THE UNIVERSITY OF HAWAI'I for the Benefit of Ka Haka 'Ula O Ke'elikōlani College of  
5 Hawaiian Language and Anthropology Department ("Contractors")  
6 Regarding Impact Mitigation For the  
7 QUEEN KA'AHUMANU HIGHWAY WIDENING PROJECT, PHASE 2  
8

9 This Memorandum of Understanding (hereafter "MOU"), made and entered into this  
10 23<sup>rd</sup> day of September, 2019, but effective as of 10/1/19 (hereafter the  
11 "Effective Date") by and between the STATE OF HAWAI'I (hereafter "HDOT"), by its Director  
12 of Transportation, whose business and mailing address is the Ali'i'aimoku Building, 869  
13 Punchbowl Street, Honolulu, Hawai'i 96813 and the UNIVERSITY OF HAWAI'I, a body  
14 corporate and public corporation, whose business and mailing address is Bachman Hall, 2444  
15 Dole Street, Honolulu, Hawai'i 96822 (hereafter the "University").

16  
17 WITNESSETH THAT:

18 WHEREAS, the Federal Highway Administration ("FHWA") has funded the HDOT  
19 highway projects known as Queen Ka'ahumanu Highway Intersection Improvements for the  
20 Kaloko-Honokōhau National Historical Park (hereafter the "Kaloko Intersection Project"), and  
21 the Queen Ka'ahumanu Highway Widening, Kailua to Keāhole (hereafter the "Queen K  
22 Project") (Kaloko Intersection Project and Queen K Project are collectively the "Projects") and  
23 described in a May 1996 Final Environmental Assessment ("FEA") which contains a FHWA  
24 Finding of No Significant Impact determination dated June 10, 1996 ("FONSI"); and

25 WHEREAS, the HDOT initiated and successfully completed the first phase of the  
26 Queen K Project between Henry Street and Kealakehe Parkway in 2009; and

27 WHEREAS, the HDOT initiated and successfully completed the Kaloko Intersection  
28 Project in 2018; and

29 WHEREAS, the HDOT initiated and successfully completed the second phase of the  
30 Queen K Project between Kealakehe Parkway and the Keāhole Airport Access Road in 2018;  
31 and

32 WHEREAS, the HDOT commissioned a supplemental Archaeological Inventory Survey  
33 titled "*Archaeological Inventory Survey for the Proposed Queen Ka 'ahumanu Highway*  
34 *Widening Phase 2 Project, Kalaoa, Kaloa-'O'oma, 'O'oma 2, Kohanaiki, Kaloko, Honokōhau 1-*  
35 *2 and Kealakehe, North Kona District, Hawai'i Island (2012) ("AIS")* in response to concerns  
36 raised by the National Park Service (NPS) and certain Native Hawaiian Organizations; and

37 WHEREAS, the FHWA, in association with HDOT, consulted with NPS officials at  
38 Kaloko-Honokōhau National Historical Park, the Ala Kahakai National Historic Trail, the  
39 Historic Hawai'i Foundation, Royal Order of Kamehameha, Kona Hawaiian Civic Club, Office  
40 of Hawaiian Affairs and Makani Hou o Kaloko Honokōhau regarding the impacts of the  
41 Projects; and

42 WHEREAS, partly as a result of such consultations, the FHWA and HDOT agreed that  
43 the adverse effect of the Projects will require HDOT to consider implementing measures that will  
44 promote educational and other activities ("Education Program") that will mitigate such adverse  
45 effect and help perpetuate the Hawaiian culture; and

46 WHEREAS, the Advisory Council on Historic Preservation (ACHP), the FHWA, and the  
47 Hawaii State Historic Preservation Office (SHPO) entered into a Memorandum of Agreement  
48 (MOA) in 2015; and

49 WHEREAS, this MOU is to complete stipulation 5B of the MOA; and

50 WHEREAS, in discussions with the University, HDOT, FHWA, and Consulted Parties  
51 (CP) identified the Kohala Center as an entity capable of helping to administer the MOU and to  
52 assist with of the Education Program, and

53 WHEREAS, implementation of these measures requires the specialized expertise of the  
54 University or other capable entity, and

55 WHEREAS, the HDOT agrees that the Kohala Center is a capable entity and adds value  
56 to the Program, and

57 WHEREAS, the University has also determined that the Kohala Center is a capable  
58 entity, is agreeable to utilize the Kohala Center to assist in the implementation of the Education  
59 Program, and has determined the Kohala Center to be eligible as a second-tier sub-recipient, and

60 WHEREAS, HDOT has identified its desire to implement the following programs to  
61 mitigate the adverse effect of the Projects (collectively the "Program"):

- 62 a. Native Hawaiian archaeology/anthropology. Fund and support continuing education in  
63 the study of Native Hawaiian archaeology and/or anthropology;
- 64 b. Native Hawaiian studies scholarship program. Fund scholarships, fellowships, or research  
65 activities of undergraduate or graduate work in Native Hawaiian Studies at the University  
66 of Hawai'i;
- 67 c. Hawaiian immersion/charter school support. Fund and support local Hawaiian immersion  
68 and charter schools on the island of Hawai'i;
- 69 d. Recording of oral histories. Fund and support the recording of oral histories in the  
70 Kekaha region; and

71 e. Cultural programming support. Fund and support cultural programming that captures and  
72 interprets the Native Hawaiian culture in the Kekaha region; and

73 WHEREAS, the University and the Kohala Center is identified as entities that could assist  
74 with implementing the Program;

75 NOW, THEREFORE, the HDOT and the University agree to implement the Program in  
76 accordance with the following terms and conditions as part of the HDOT's efforts to mitigate the  
77 impact of the Projects on historic properties:

78 1. HDOT responsibilities. HDOT shall be responsible for the following:

79 a. Furnish Program funding. Furnish to the University \$1,250,000 to accomplish the  
80 goals of the program which shall be expended over a period of five years.

81 b. Assist in obtaining additional Funding. If it appears that there will not be a sufficient  
82 amount of Available Funding to continue the Programs for the remainder of the term  
83 of this MOU, HDOT will assist the University in obtaining other additional  
84 governmental funding to continue the Programs or consider the Program as  
85 completed.

86 c. Continue the Programs. If HDOT and the University agree that it will be of mutual  
87 benefit and in the public interest to continue the Programs beyond the term of this  
88 MOU, HDOT and the UH agree to cooperate and work together to obtain additional  
89 governmental funding to so continue the Programs beyond the term of this MOU.

90 2. University responsibilities. Subject to and limited by the Available Funding and the  
91 University's Funding Limitation (as defined herein), the University shall be responsible  
92 for receiving and using the Available Funding received from HDOT for the following  
93 Programs:

94 a. Native Hawaiian archaeology/anthropology. The University shall initiate or integrate  
95 into an existing curriculum a continuing education curriculum emphasizing the study  
96 of Native Hawaiian archaeology and/or anthropology. The objective of this  
97 curriculum is to advance knowledge of the Native Hawaiian culture on the Big Island,  
98 particularly the Kekaha region of West Hawai'i. The University shall identify an  
99 individual to lead this effort. A curriculum plan or course outline shall be prepared to  
100 incorporate the Native Hawaiian archaeology/anthropology curriculum into the  
101 University's existing curriculum in accordance with the University's usual and  
102 customary practices. The UH shall provide an annual report at the end of each fiscal  
103 year for the term of this MOU detailing enrollment and course and program  
104 evaluation. This report can be incorporated into and made a part of the University's  
105 annual report to the HDOT described in subparagraph 2 below.

106 b. Native Hawaiian studies scholarships. The University shall establish scholarships,  
107 fellowships, and/or research grants for undergraduate or graduate students at the  
108 University specializing (majoring) in Native Hawaiian Studies. The objective of this  
109 scholarship program is to advance knowledge of the Native Hawaiian culture on the  
110 island of Hawai' i, particularly the Kekaha region of West Hawai' i, by providing  
111 learning opportunities. The University shall report the names of the individuals

- 112 receiving support as part of the scholarship program to the Director of Transportation  
113 at the end of each fiscal year during the term of this MOU. This report can be  
114 incorporated into and made a part of the University's annual report to the HDOT  
115 described in subparagraph 2f below.
- 116 c. Hawaiian immersion/charter schools support. Within the parameters of the  
117 University's mission and to the extent permitted by applicable laws, the University  
118 shall, with Available Funding, provide youth in local Hawaiian immersion and  
119 charter schools on the island of Hawai'i with education enrichment and similar  
120 program opportunities for a period of five (5) years.
- 121 d. Recording of oral histories. The University shall fund and support the recording of  
122 oral histories in the Kekaha region of the island of Hawai' i. These oral histories  
123 program shall be carried out over a period of five (5) years, at an average of five (5)  
124 individuals within each consecutive biennium period over the period of five years.  
125 The oral histories program should be directed towards capturing and describing the  
126 life of persons who have lived and/or worked in the Kekaha area for many years. The  
127 documentation shall be made via audio recording and digital video. Verbatim  
128 transcripts are required. The University shall obtain the prior written consent of the  
129 interviewee to participate in the interview. A copy of the completed interview shall be  
130 transmitted to the Kailua-Kona Public Library, the Kaloko- Honokōhau National  
131 Historic Park, and the Oral History Program at the University of Hawai'i at Mānoa.
- 132 e. Cultural programming support. Within the parameters of the University's mission and  
133 to the extent permitted by applicable laws, the University shall, with the Available  
134 Funding, support cultural programming in the Kekaha region of the island of Hawai'i  
135 for the West Hawaii community. The focus of the cultural programming shall be  
136 directed to the arts and media (visual, tactile, auditory, and sensory, etc.) that capture  
137 and interpret Native Hawaiian culture in the Kekaha region. The University shall  
138 solicit academic year proposals for such programming prior to the start of each year  
139 during the term of this MOU. Up to five candidates shall be commissioned to  
140 implement their proposals.
- 141 f. Annual Report. The University shall prepare and submit to HDOT an annual report at  
142 the close of each fiscal year showing how the funds made available by HDOT and  
143 FHWA were dispersed, objectives achieved, the identity of the recipients, and any  
144 changes to the proposal for the upcoming year. The report shall be transmitted to the  
145 Director of Transportation.
- 146 3. Unused funding. The University shall implement and carry out the Program, including  
147 the above described component parts, within the five (5) year term. The University shall  
148 return to HDOT all funding not used, committed, or spent within 90 days at the end of  
149 this MOU.
- 150 4. Amendments. Any signatory to this MOU may request that it be amended, whereupon the  
151 other party shall consult with the proposing party to discuss the nature of such  
152 amendment. Amendments to this MOU shall be in writing and signed by HDOT and the  
153 University.

- 154 5. Termination. If any signatory to this agreement determines that its terms will not or  
155 cannot be carried out, that party shall immediately consult with the other signatory to  
156 attempt to develop an amendment per Stipulation 5, above. If within thirty (30) days or  
157 another time period agreed to by the approving signatories an amendment cannot be  
158 reached, any party to this agreement may terminate the agreement upon written  
159 notification to the other signatory.
- 160 6. Assignment. Neither party may assign or otherwise transfer any interest, right, or  
161 obligation under this Agreement without the prior written consent of the other party.
- 162 7. Contact. The University's point of contact (POC) for communications under this MOU is  
163 Keiki Kawai'ae'a, who can be reached by e-mail at keiki@hawaii.edu. HDOT's POC for  
164 communications under this Agreement is Julann Sonomura, Design Engineer, 50  
165 Makaala Street, Hilo, HI 96720. Phone 808-933-8866. E-mail:  
166 [julann.m.sonomura@hawaii.gov](mailto:julann.m.sonomura@hawaii.gov). The University POC shall maintain digital copies of all  
167 documents relative to the MOU and provide copies to HDOT upon request. The  
168 University POC shall be responsible for receiving and transmitting annual reports to the  
169 HDOT POC for distribution to appropriate government agencies. The parties to this  
170 MOU shall exchange contact information for the University POC and the HDOT POC  
171 and shall keep each other informed of any changes in either POC.
- 172 8. Funding limitation. To the extent that the University is (1) obligated to perform under this  
173 MOU, (2) obligated to make any payments under this MOU, or (3) deemed liable under  
174 this MOU, the University's obligation and liability under this MOU, and the University's  
175 ability to perform hereunder, particularly to pay any amount of monies, is limited to that  
176 which is permitted by law, and is subject to the precondition that funds appropriated,  
177 allotted or otherwise properly made available for the purpose of such performance or to  
178 cover such liability, which under this MOU is \$1,250,000 made available to the  
179 University by HDOT and FHWA (hereafter the "University's Funding Limitation"). The  
180 University shall not be obligated to pay any more of the University's Funding Limitation  
181 toward any obligation under this MOU than was actually made available to the  
182 University by HDOT and the FHWA through Task Order.
- 183 9. Entire agreement. This MOU constitutes the entire agreement between the parties hereto,  
184 with respect to the subject matter hereof, and supersedes all other prior or concurrent oral  
185 or written letters, agreements, and understandings.
- 186 10. No third party rights. The parties to this MOU agree that this MOU shall not be deemed  
187 to run to the benefit of any third party.
- 188 11. Governing law. This MOU shall be governed by and construed and interpreted in  
189 accordance with the laws of the State of Hawai'i.
- 190 12. Severability. If any provision of this MOU shall be adjudged by a court of competent  
191 jurisdiction to be void, invalid, illegal, or unenforceable for any reason, the same shall in  
192 no way affect (to the maximum extent permissible by law) any other provision of this  
193 MOU, the application of any such provision under circumstances different from those  
194 adjudicated by the court, or the validity or enforceability of this MOU, as a whole, and to

195 the extent necessary, this MOU shall be construed as if such void, invalid, illegal, or  
196 unenforceable provision had never been contained herein.

197 13. Counterpart signatures. The delivery of a signed copy of this MOU by facsimile or by  
198 email shall be as effective as the delivery of a signed original. This MOU may be signed  
199 in counterparts, each of which shall be deemed an original, and said counterparts shall  
200 together constitute one and the same agreement, binding all of the parties hereto,  
201 notwithstanding all of the parties are not signatory to the original or the same  
202 counterparts. For all purposes, including, without limitation, recordation, filing, and  
203 delivery of this MOU, duplicate unexecuted pages of the counterparts may be discarded  
204 and the remaining pages assembled as one document.

205 14. Conflict. In the event of a conflict between the terms and conditions of this MOU and the  
206 terms and conditions of any of the exhibits attached to this MOU, the terms of this MOU  
207 shall govern and control.

208 15. Waiver. Any waiver of the terms, conditions, or provisions of this MOU or a party's  
209 rights or remedies under this MOU must be in writing to be effective. Failure, neglect, or  
210 delay by a party to enforce the terms, conditions, or provisions of this MOU or such  
211 party's rights or remedies at any time, will not be construed as a waiver of such party's  
212 rights under this MOU prejudice and such will not party's in any right way to take affect  
213 any the validity subsequent of the action. whole No or any exercise part or of this  
214 enforcement MOU or by any party of that party's rights or remedies under this MOU will  
215 preclude the enforcement by such party of any of its other rights or remedies that are  
216 available under this MOU or by law.

217 16. Headings. The headings and captions used herein are for convenience of reference only  
218 and are not to be used to construe, interpret, define, or limit the paragraphs to which they  
219 may pertain.

220 17. Authority. HDOT the University acknowledge and agree that the University may be  
221 required to obtain the approval of the University's President and the University's Board  
222 of Regents to enter into this MOU. If such approvals are not obtained, HDOT and the  
223 University agree to engage in negotiations to amend this MOU to address such non-  
224 approval.

225 18. Sub-award to the Kohala Center: The University shall provide funding to the Kohala  
226 Center under a sub-award agreement, with the University as a recipient and a pass-  
227 through agency, in accordance with applicable provisions of CFDA 20.205. The  
228 University shall administer, monitor and manage all work performed by the Kohala  
229 Center, for all agreed scope of work, schedule, and budget defined in a sub-agreement  
230 between the University and the Kohala Center.

231 Copies of the sub-agreement and sub-award documents shall be provided to the HDOT  
232 for review prior to execution, and final executed copies shall be furnished to the HDOT.  
233 The work to be implemented by the University and the Kohala Center shall be clearly  
234 defined and described in the sub-agreement document.

235 IN WITNESS WHEREOF, the parties hereto have cause this MOU to be signed as of the  
236 day, month, and year first above written, to be effective as of the Effective Date.

237

238 STATE OF HAWAI'I, by its Director of Transportation

239

240 By:   
241 Jade T. Butay, Director of Transportation

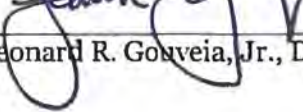
Date: 9/23/19

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243

244 UNIVERSITY OF HAWAI'I

245

246 By:   
247 Leonard R. Gouveia, Jr., Director, Office of Research Services

Date: JUL 23 2019

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