

	A	B	C
1	Comments from December 17, 2020 Meeting		
2	NHO Consultation Scope and Schedule		
3	Comment	HDOT/FHWA Response	Outcome for NHO Consultation Scope & Schedule
4	Why will the first meeting happen a year from now?	Contracting and developing a scope and schedule with the contractor (based on document reviewed) can take up to six months. After the contractor is brought on board they will need to review the existing NHO consultation protocols (DOD, ACHP) and notes from relationship building, develop a consultation list, develop a invitation to consultation letter, mail the letter out and allow 30 days for responses and plan the first consultation meeting. While this may take less time than planned, HDOT wanted to ensure there is enough time in the plan to accommodate all the different steps that need to take place for the first meeting to happen.	No Change
5	Why are there only three meetings?	Three consultation meetings should be adequate to discuss the NHO consultation if it is built on existing documents. More meetings can be added if necessary, but they will add to the time to finish the project.	No Change
6	Are meetings and consultation the same thing.	Meetings are part of the consultation process. Additional consultation can take place outside of the meetings.	No Change
7	Sending a document out for comment is not consultation	HDOT/FHWA believe that while sending a document out for comment should not be the only form of consultation, it is one form of consultation.	No Change
8	Fred said there needs to be more formal consultation.	Three consultation meetings should be adequate to discuss the NHO consultation if it is built on existing documents. More meetings can be added if necessary, but they will add to the time to finish the project. In addition to meetings, additional consultation will include emails, distribution of documents for review and phone calls	No Change
9	Paka suggested early consultation, involve NHOs when developing the work plan in June.	Review of the NHO Scope and Schedule document is a form of early consultation. After CP comments are included, then HDOT and the consultant negotiate on the Scope Schedule and budget. This negotiation is between HDOT and its contractor.	No Change
10	Fred said there are already good protocols, like the DOD protocols. He doesn't understand why FHWA is taking time and money to develop their own. It should not take two or three years.	HDOT plans to incorporate the DOD draft into their first draft for discussion with NHOs. However, for HDOT/FHWA to have a protocol, there needs to be full consultation with as many NHOs as want to participate. If the initial version, which is planned to combine the DOD and ACHP consultation protocols and the results of the relationship building workshops proves satisfactory to all parties, then its possible that the consultation process will go faster.	No Change
11	Amendment 2		
12	Comments	HDOT/FHWA Response	Outcome for Amendment 2
13	Fred said that the Dec meeting was initiated by UH and Makani Hou and was not a 106 consultation meeting because HDOT was not involved. Julann pointed out that HDOT did request the meeting although they did not participate.	Please refer to email sent by Harry Takiue 1/22/2021 with documentation of HDOT's request for UHH to meet with Makani Hou. This was a result of the October 25, 2019 meeting regarding the Makani Hou objection.	Delete reference to 12/03/19 UHH Meeting.

	A	B	C
1	Comments from December 17, 2020 Meeting		
11	Amendment 2		
12	Comments	HDOT/FHWA Response	Outcome for Amendment 2
14	Paka requested in line 45 that the date of the MOU be added.	Agreed	2019 added.
15	Fred asked why HDOT entered into an MOU with UH without consulting first with the consulting parties. He said that is not consultation.	Noted	No Change
16	Rick recommended buffers be 30 feet on either side.	HDOT reviewed the space on either side of the trail and determined this is feasible.	Updated buffer to 30'
17	Paka asked why the trail was 2,500 feet. Several people said trail preservation should be to Hale Makai St. Several people agreed with Paka. Fred pointed out that FHWA and HDOT are insisting on drawing arbitrary lines and creating limiting boundaries with no recognition of the cultural landscape of this area. Fred said this was a perfect opportunity to restore the whole trail.	2,500 feet is the extent of the HDOT right-of-way. FHWA determined this is commensurate to the adverse effect. FHWA pointed out that there are other funding options such as the Transportation Alternative Program (TAP) for restoring beyond the 2,500 feet, but this would be outside the mitigation for the Queen K project.	No Change
18	Fred asked that there be an ADA accessible path from the parking, through the buffer zone to get as close to the trail as possible.	HDOT can look at the feasibility of this when designing the parking area. Will need to consult with SHPD.	No Change
19	Fred requested removal of the word "attempt" in the section about contacting NHOs.	Pua agreed "attempt" could be removed if other HDOT/FHWA parties agreed.	The word "attempt" was removed.
20	Fred questioned the need for a consultant to do this work and not HDOT. Paka recommended Na Ala Hele or Ala Kahakai be considered to serve as consultants for this work.	HDOT does not have adequate resources to do this project in-house and Jackson, when asked at the meeting, said they do not have enough staff, although he would be happy to participate in developing the preservation plan.	The MOA now references Na Ala Hele involvement.
21	Fred said he was again concerned that there were only three meetings and are these consultation meetings? Fred asked for clarification because "consultation" has formal requirements.	Section 106 is not prescriptive on how many meetings are required, only that NHOs are consulted if an undertaking will affect historic properties of traditional religious and cultural significance to them. Section 106 allows for separate meetings with NHOs. So far, the NHOs in this consultation have asked that other agencies be included in their meetings. Should Makani Hou want separate meetings, the request will be accommodated.	Will add "consultation" in front of "meetings."
22	The group asked to remove the additional sentence on lines 135 and 136.	Agreed	Removed

	A	B	C
1	Comments from December 17, 2020 Meeting		
11	Amendment 2		
12	Comments	HDOT/FHWA Response	Outcome for Amendment 2
23	Paka suggested combing 4 c & d	Agreed	4 c and d combined into one paragraph.
24	Fred commented that the language regarding the ahupua'a is limiting. The stories of trails are not limited by boundaries and wanted to capture the entire Māmalahoa Trail. Fred wanted the synopsis to capture the entire Mamalahoa Trail and all of Kekaha because limiting the synopsis to 2 ahupuaa and only the preserved section of the trail will arbitrarily cut up a cultural landscape that should be treated as a whole.	The mitigation focuses on a specified portion of the Mamalahoa Trail. This is commensurate with the damage.	No Change
25	Paka recommended under 5A on line 148 that "or" should be replaced with "and". This would change the language to "A synthesis of available documentation on construction, uses, maintenance, vegetation AND stories."	Agreed	Language changed.
26	Paka asked that use of the word "if" regarding the closure of Hamilton Library be clarified.	Agreed	A footnote stating that the upper floors of Hamilton Library are closed due to COVID has been added.
27	Fred suggested "Kekaha Region" replace "Honokohau & Kealakehe Ahupua'a." Several agreed.	Limiting it to Honokohau and Kealakehi Ahupua'a is commensurate with damage.	No Change
28	Paka said photographs should be added to the archaeological documentation. Jackson suggested also including photogrammetry, drone footage and GPS documentation. Both Rick and Paka agreed with Jackson.	Photographs, drawings (sketches) and GPS information will be included in the archaeological documentation. However photogrammetry and drone footage are not customarily included in a PP and therefore this additional work is not commensurate to the adverse effect.	No Change
29	Fred wanted ADA to be addressed in regard to the parking lot. Jackson and Paka wanted a paved parking lot.	HDOT will comply with ADA regulations for the parking lot. HDOT agrees to pave the parking area.	Changes will conform to ADA regulations. (Added ADA requirements language and parking area will be paved)
30	Paka requested that parking lot access be on Kealakehe Parkway and not on the highway.	Agreed	Changed to access from Kealakehe Parkway.
31	Fred said 3 signs is arbitrary. Jackson agreed, saying once there is more of an overall plan then the number of signs can be decided upon.	Agreed	Deleted

	A	B	C
1	Comments from December 17, 2020 Meeting		
11	Amendment 2		
12	Comments	HDOT/FHWA Response	Outcome for Amendment 2
32	Paka suggested that the primary interpretive sign be located at the parking lot and include a shaded area. Fred agreed.	Location of signs will be determined during consultation on the PP. Shade structures are not commensurate to the adverse affect.	No Change
33	Jackson asked for the removal of the first mention of Na Ala Hele in Section 5.D, Line 194.	Agreed	First mention of Na Ala Hele removed.
34	Fred suggested they include a cultural landscaping plan to restore native landscaping.	Landscaping not commensurate.	No Change
35	Jackson noted that a metes and bounds is required for the transfer of the land so would like it included in the preservation plan.	Noted. HDOT will do the metes and bounds at the time of the transfer.	No Change
36	Jackson requested that Na Ala Hele be included in the sign consultation.	Agreed	Include Na Ala Hele in consultation.
37	Paka asked Jackson if Na Ala Hele might be willing to be the consultant who creates the preservation plan.	Jackson said they did not have the capacity.	No Change
38	Fred asked if Na Ala Hele could assist FHWA and HDOT in the process to select a consultant.	Agreed	Added
39	Fred expressed concern about not moving forward for over a year. Paka believes Amendment Two will take effect April 2021 so the process won't start until April 2022 and said he would appreciate if this could be expedited as much as possible.	HDOT will expedite to the extent possible.	No Change
40	Jackson asked that the metes and bounds include the 30-ft adjacent to the trail (buffer).	Noted. HDOT will do the metes and bounds at the time of the transfer.	No Change

	A	B	C	D	E
1	ACHP via Email January 8, 2021				
2	September 8, 2020 - Email from ACHP			January 8, 2021 - Letter from ACHP	
3	ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response	ACHP Comments on Amendment 2	HDOT/FHWA Response
4	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.		
5	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		
6	Stipulation 5B - Native Hawaiian Cultural Outreach and Education				
7	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.		
8	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.		
9	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		

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3	ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response	ACHP Comments on Amendment 2	HDOT/FHWA Response
10	DF-Is this only for students at UHH?	Yes, they are focusing on Masters and Ph.D. students in their system.	No change.		
11	DF-Will information be available to NHO's also?	Not clear what information?	No change.	On line 40, the ACHP questioned whether the information produced as a result of the Memorandum of Understanding (MOU) between Hawaii Department of Transportation and the University of Hawaii at Hilo will be shared with Native Hawaiian organizations (NHOs). FHWA has not provided a response	Thank you for the clarification. In addition to the annual report, the oral history project produced as a result of the MOU will be distributed to NHOs.
12	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	UHH/HDOT MOU is now attached to Amendment 2.		
13	Stipulation 18 - Dispute Resolution				
14	MR-Change concurring party to "consulting" party, re: who can raise objections.	HDOT will retain ACHP boilerplate language.	No change	On line 48, 'concurring party' should be utilized in place of 'consulting party.' This change is necessary to ensure that regardless of whether a consulting party signs the amendment, they will continue to be provided with opportunities to participate in the MOA's implementation. Given the undertaking's history, FHWA would benefit from creating as inclusive of a process as possible.	As requested in the original comment, "Concurring party" has been changed to "Consulting party" for Amendment 2 rather than using boilerplate ACHP language.
15	Stipulation 27 - Preserve and Restore 2,500 Feet of Mamalahoa Trail				
16	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.		

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1	ACHP via Email January 8, 2021				
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3	ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response	ACHP Comments on Amendment 2	HDOT/FHWA Response
17	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.		
18	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	On line 87, the ACHP noted that it was important to consider the significance of the Mamalahoa Trail beyond its archaeological value to include its potential significance to NHOs. While FHWA opined that the Trail's significance it limited to Criterion A of the National Register of Historic Properties, it is unclear if FHWA confirmed this opinion with the NHOs participating in consultation.	The archaeological documentation for the Preservation Plan will also include the spiritual and/or cultural significance of the trail (ref. Paragraph 4b).
19	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.		
20	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.		
21	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.		

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2	September 8, 2020 - Email from ACHP			January 8, 2021 - Letter from ACHP	
3	ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response	ACHP Comments on Amendment 2	HDOT/FHWA Response
22	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.		
23	2.a. DF- Replace "solicit comments" with "consult".		Changed	Lines 108-110 note that FHWA will 'attempt to' contact NHOs; however, Section 106 of the National Historic Preservation Act (NHPA) requires consultation, which is more active and engaging. FHWA should clarify how it will meet the good faith effort required by the Section 106 process to consult with NHOs, and revise the draft language to demonstrate those efforts. FHWA should consider discussing with the NHOs what would be appropriate level and method of communication to ensure their active participation in consultation.	Deleted "attempt to" and "once" and "twice" as requested. After dicussions at the consultation meeting on 12/17/2020, this stipulation has been revised to the following: "To solicit participants to consult on the development of the PP, HDOT shall to contact NHOs and CPs via regular mail and via email. If no response is received, HDOT will follow up via phone if a phone number is available. HDOT encourages consulting parties to provide HDOT with information on additional parties to consult."
24	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.		
25	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		
26	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		
27	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.		
28	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		

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1	ACHP via Email January 8, 2021				
2	September 8, 2020 - Email from ACHP			January 8, 2021 - Letter from ACHP	
3	ACHP Comments on Amendment 2	Comments	HDOT/FHWA Response	ACHP Comments on Amendment 2	HDOT/FHWA Response
29	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.	Lines 114-115 stipulate that 15 days will be provided for the consulting parties to review deliverables. FHWA should confirm with NHOs and other consulting parties that this timeframe is reasonable and achievable.	After dicussions at the consultation meeting on 12/17/2020, the stipulation has been revised to a 30 day comment period from when drafts document is distributed.
30	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		
31	C. DF-Need specific stipulations to continue consultation with NHOs.	This comment is regarding transfer of the trail. See HDOT response below.	No change		
32	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.		
33	Stipulation 28 - APE Agreement between SHPD and HDOT				
34	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		

1	Comments from Ala Kahakai via email on January 14, 2021		
2	Amendment 2 - Responses to Ala Kahakai's October 15, 2020 Comments		
3	Comments	HDOT/FHWA Response	Outcome for Amendment 2
4	<p>Previous response to Alakahai's comment on WHEREAS clause was that the Coalition's Proposal was "was not commensurate with the damage to the two trails in question". What specific regulations dictate "commensurate" outcomes when historic poperties are damaged outside an MOA or existing agreement? Why does FHWA decide what is commensurate with the damages it is responsible for? What metrics are used to determine if it is commensurate? Is it a pre-determined price per foot?</p>	<p>As stated in the Comment Table (Attachment B to the 12/17/20 Notes) and email from Lisa Powell of FHWA on 02/04/20 and 02/07/20:</p> <p>Commensurate mitigation is determined by the lead federal agency (FHWA) per 23CFR771.105(d): "Measures necessary to mitigate adverse impacts will be incorporated into the action and are eligible for Federal funding when the Administration determines that:</p> <ol style="list-style-type: none"> 1.The impacts for which the mitigation is proposed actually result from the Administration action; and 2. The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. <p>In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy."</p> <p>The current federal nexus was for the damage during construction of two trails. The referenced email discusses rationale for reaching the mitigation proposed in Amendment 2 that was not based on a pre-determined price per foot.</p>	<p>No change</p>

	A	B	C
1	Comments from Ala Kahakai via email on January 14, 2021		
2	Amendment 2 - Responses to Ala Kahakai's October 15, 2020 Comments		
3	Comments	HDOT/FHWA Response	Outcome for Amendment 2
5	<p>Previous response to Alakahai's comment on WHEREAS clause was that <i>"FHWA determined there were no adverse effects to the sites where buffer breaches occurred since the sites were not impacted."</i></p>	<p>Refer to email sent by Harry Takiue 1/29/21 with documentation for no adverse effect for the buffers:</p> <ul style="list-style-type: none"> - FHWA letter dated 08/03/17: Notification of damage to two sites and breached buffers for three sites without damage; Consultation Overview of the damaged sites; and Request for concurrence of an adverse effect for damage to two sites. - DLNR SHPO letter dated 02/13/20: Concurrence with an adverse effect determination for damage to two sites. - ASM Affiliates Report on Buffer Breaches dated 06/03/20 	No change
6	<p>(A) What is the process that was used to determine that there was no adverse effect? Please provide the documentation for the process Assessment of Adverse Effects (36CFR800.5), and the documentation of consultation for the assessment as required (see below).</p> <p>* 36CFR800.5.a (a) Apply criteria of adverse effect. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.</p>		
7	<p>(B) This action and the buffer breaches had no impact on the site's eligibility for the National Register? Can you provide the How can this be done by FHWA without consultation?</p>		

1	A	B	C
2	Comments from Ala Kahakai via email on January 14, 2021		
3	Amendment 2 - Responses to Ala Kahakai's October 15, 2020 Comments		
3	Comments	HDOT/FHWA Response	Outcome for Amendment 2
8	<p>4. STIP 27 - Archaeological Documentaton FHWA/HDOT responded: SOI required by HAR 13-277.</p> <p>HAR 13-277 does not go into detail on how stabilization should take place on historic properties.</p> <p>The following SOI guidance, with language reflecting the trail, should be included in this Stipulation or as an addendum:</p>	<p>The Secretary of Interior is referenced in Section 1 - Identification. Will add SOI Guidelines to the section on Preservation Measures that includes section on the Archaeological Documentation.</p>	<p>Add reference to SOI Guidelines to the Preservation Measures section and include the SOI Guidelines as an Attachment to Amendment 2.</p>
9	<p>1. Property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.</p> <p>2. The historic character of the property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.</p> <p>3. The historic property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.</p> <p>4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.</p> <p>5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.</p> <p>6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.</p> <p>7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.</p> <p>8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.</p> <p>Preservation as a treatment</p> <p>When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment</p>		

1	A	B	C
2	Comments from Ala Kahakai via email on January 14, 2021		
3	Amendment 2 - Responses to Ala Kahakai's October 15, 2020 Comments		
10	Comments	HDOT/FHWA Response	Outcome for Amendment 2
11	<p>4. STIP 27 - Preservation Treatments FHWA/HDOT response was, "Preservation treatments is vague. If it is a term of art, would need a definition."</p> <p>"Preservation Treatments" is direct language from the Secretary of the Interior's Standards for the Treatment of Historic Properties. See "Preservation as a Treatment" here: https://www.nps.gov/tps/standards/four-treatments/treatment-preservation.htm</p> <p>Also please see Guidelines for the Treatments of Cultural Landscapes here: https://www.nps.gov/tps/standards/four-treatments/landscape-guidelines/index.htm</p> <p>Are there no FHWA/HDOT cultural resource specialists who are familiar with this working on this project?</p>	<p>The Secretary of Interior is referenced in Section 1 - Identification. Will add SOI Guidelines to the section on Preservation Measures that includes section on the Archaeological Documentation.</p>	<p>Add reference to SOI Guidelines to the Preservation Measures section and include the SOI Guidelines as an Attachment to Amendment 2.</p>
11	<p>STIP 27 - Renaming "Trail to the Sea" to "Trail to Kohanaiki" FHWA/HDOT responded, "<i>Deona Naboia, a lineal descendant to the area, states that Trail to Kohanaiki is the appropriate name.</i>"</p> <p>What term do other lineal descendants use? What did they say in consultation?</p>	<p>SIHP 50-10-27-10714 (Feature A) is recorded as part of the Trail System "Road to the Sea" although lineal descendants know the trail as "Trail to Kohanaiki".</p>	<p>Rewrite to refer to both trail names with "Trail to Kohanaiki" being the a.k.a. (also known as).</p>

	A	B	C
1	Comments from Na Ala Hele via email on December 18, 2020		
2	Amendment 2		
3	Comments	HDOT/FHWA Response	Outcome for Amendment 2
4	4. STIP 27, Item A.1 - Identification Attach a map showing the area to be preserved, in relation to the Highway impacts, DOT right of way, archaeological features, 30-ft buffers, etc.	The HDOT Right-of-Way Map will be provided and annotated with the approximate location of the trail and 30-ft buffers in lieu of the Google Earth map previously Amendment 2, Attachment 5.	Replace Attachment 5 with Righ-of-Way maps.
5	4. STIP 27, Item A.2 - Buffer Zones 30 foot is our standard buffer recommendation and is consistent with SHPD buffers	HDOT confirmed that space is available for 30-ft buffers.	Changed buffers from from 10-ft to 30-ft.
6	4. STIP 27, Item A.4.b - Timeline and Consultant Selection Na Ala Hele would like to assist.	Thank you, included Na Ala Hele in the selection of consultant and Na Ala Hele will be consulted as a consulting party for the timeline.	For Item A.4.b, add DLNR Na Ala Hele to the consultant selection process.
7	4. STIP 27, Item A.4.c - Meetings Since Section D (line 192) mentions Na Ala Hele to eventually accept the trail, Na Ala Hele should be involved in this process.	Agreed	Rewrite to have Na Ala Hele participate as a stakeholder for future maintenance rather than the role of a consulting party.
8	4. STIP 27, Item A.5.e - Parking Lot Change from gravel to paved	Agreed	Changed from "gravel" to "paved"
9	4. STIP 27, Item A.5.f - Interpretive Plan Na Ala Hele should be part of this planning process since the intent is to transfer this trail and these amenities to Na Ala Hele.	Agreed	Include Na Ala Hele in consultation.
10	4. STIP 27, Item A.5.g - Interpretive Signs Delete, "Up to three markers may be made."	Agreed	Deleted
11	4. STIP 27, Item D - Jursidiction and Transfer Add "Program" to Na Ala Hele.	Agreed	Added

	A	B	C
1	Comments from Paka Harp via email on January 3, 2021		
2	Amendment 2		
3	Comments	HDOT/FHWA Response	Outcome for Amendment 2
4	Amendment 2 should just extend time for 1-2 years to provide time necessary for discussion of the content contained in the many attachments, to complete negotiation on mitigation, to develop specifications for mitigating stipulations and implementation, etc.	Refer to Amendment 2, Consultation Chart Attachment 2, Page 2. The section on Damage to Sites and Buffer Breaches 2 details the consultation to date on the sites damaged during construction. This consultation began in 2016 and includes 9 consultation meetings.	No change
5	Buffers of additional historic properties were breached resulting in damages to natural areas designated to be avoided, yet no mitigation has been discussed for those impacts	Refer to email sent by Harry Takiue 1/29/21 with documentation for no adverse effect for the buffers: - FHWA letter dated 08/03/17: Notification of damage to two sites and breach of three sites without damage; Consultation Overview of the damaged sites; and Request for concurrence of an adverse effect for damage to two sites. - DLNR SHPO letter dated 02/13/20: Concurrence with an adverse effect determination for damage to two sites. - ASM Affiliates Report on Buffer Breaches dated 06/03/20	No change
6	Portions of 2015 MOA and the Draft Amendment Two are misleading, which must be corrected prior to being considered for adoption. Misleading information contained in the 2015 MOA cannot be ignored and must be corrected by amendment.	Amendment 2 is intended to address ongoing and future MOA stipulations. While HDOT/FHWA recognizes that Makani Hou states that the information in the 2015 MOA was misleading, the process for addressing Makani Hou's objection was through Stipulation 18 - Dispute Resolution and has concluded. Misleading portions of Amendment 2 are being addressed below.	No change
7	<u>1st WHEREAS:</u> The 2015 MOA improperly cited the 1996 Final Environmental Assessment's Finding of No Significant Impact (FONSI), which was very, very misleading. The 2012 AIS in contrast properly recommends a Finding of Adverse Effect. The first and second MOUs between UHH and HDOT (2015 and 2019) also improperly cited the 1996 FONSI. These misleadings should be corrected by amending this WHEREAS clause to reflect the 2012 AIS recommendation. A FONSI would never require the level of mitigation that has been agreed upon, or that being currently considered.	The MOA's reference to the 1996 FONSI is part of the project background, as is the WHEREAS clause that addresses the August 2012 AIS results. Please note that the final WHEREAS clause on Page 3 of the MOA states: <i>WHEREAS, the FHWA and HDOT acknowledge and agree that: a) Historic properties will be impacted through the widening of the highway; and b) mitigation actions will be taken by HDOT. The FHWA shall ensure that HDOT completes the redesign of the southern portions (between Kealakehe Parkway and Hinalani Street) of the proposed improvements, to minimize the impacts of the highway widening.</i> The next clause reads: <i>NOW, THEREFORE, the FHWA, the SHPO, the ACHP, the National Park Service, and HDOT agree that the Projects shall be implemented in accordance with the following stipulations in order to take into account the Projects effects on historic properties.</i> The existing clauses in the original 2015 MOA provide for adverse effects.	No change

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1	Comments from Paka Harp via email on January 3, 2021		
2	Amendment 2		
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8	<p><u>2nd WHEREAS:</u> The reasons stipulations were delayed or have not been completed should be documented in the MOA, not in an attachment – UNLESS all attachments will be signed by the signatories, invited signatories, and consulting parties.</p>	<p>The Attachment 1, MOA Stipulation status is presented in table format for clarity and readability. All attachments are listed on Page 5 of the Second Ammendment.</p>	<p>No change</p>
9	<p><u>3rd WHEREAS:</u> Amendment One was also necessary to address Makani Hou’s objections submitted to FHWA and elevated to the ACHP. Stipulation 18 did not result in resolution of Makani Hou’s objections which may require the judiciary’s involvement to resolve. In other words, FHWA’s non-committal responses to the ACHP’s advice is not satisfactory to the objecting party.</p>	<p>The original MOA Stipulation 18 - Dispute Resolution was a process provided to address disputes. Makani Hou and FHWA followed the Dispute Resolution process.</p>	<p>No change</p>

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2	Comments from Paka Harp via email on January 3, 2021		
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	Comments	HDOT/FHWA Response	Outcome for Amendment 2
10	<p><u>5th WHEREAS:</u> Prior to execution of the 2015 MOA, UHH's Professor Peter Mills informed Makani Hou that the HDOT entered into an MOU with UHH to carryout Stipulation 5.B. and requested a meeting to discuss Makani Hou's intentions for stipulation 5.B. This was the first indication that Makani Hou received that an MOU was entered into prior to the 2015 MOA effective date. Neither HDOT or FHWA informed consulting parties of the MOU prior to it's effective date. UHH's Director of Ka Haka Ula o Keelikolani College of Hawaiian Language at UHH, Keiki Kawai'ae'a invited Makani Hou to meet with her and Dr. Mills on December 3, 2019 to further discuss Stipulation 5.B.. HDOT did not coordinate the previously mentioned meetings. HDOT coordinated the first formal meeting between UHH, The Kohala Center, and consulting parties on November 6, 2020 to discuss Stipulation 5.B. This was 5-years after the fact. (The language at the beginning is underlined to highlight the fact that the MOU between HDOT and UHH was entered into prior the 2015 MOA effective date).</p>	<p>Makani Hou's comment on the 2013 [sic] UHH MOU is noted.</p> <p>Regarding the December 3, 2019 UHH Meeting, please refer to email sent by Harry Takiue 1/22/2021 with documentation of HDOT's request for UHH to meet with Makani Hou. This was a result of the October 25, 2019 meeting regarding the Makani Hou objection.</p> <p>Although HDOT facilitated in arranging the 12/03/19 meeting, HDOT chose to not attend the meeting to encourage the free exchange of ideas for Stipulation 5.B without distraction from the implementation of the MOA.</p>	<p>Delete reference to the 12/03/19 meeting.</p>
11	<p><u>6th WHEREAS:</u> Consulting parties should be provided an opportunity to review and comment of the After Action Analysis report prior to including mention of the AAA it in the Amendment Two Draft. An in-house investigation conducted by the lead agency (FHWA) creates an appearance of the fox guarding the chicken coop. The AAA process was started years after the discovery of construction destroyed portions of trails and breaches of buffers of other sites. The investigation should have been carried out by an independent party rather than the project's primary responsible agency.</p>	<p>The purpose of the AAA was to:</p> <ul style="list-style-type: none"> •Assess the compliance with the National Historic Preservation Act Section 106 and Hawaii Revised Statutes Chapter 6E through design and construction by identifying how the project inadequately protected historic properties adjacent to this project; and •Identify specific steps, procedures, processes, and practices that should be implemented or improved that will ensure protection of historic properties during construction of future projects. This includes establishing methods to monitor and adjust the procedures, processes, and practices toward improving stewardship of historic properties. <p>Reference to the AAA is included in Amendment Two to document its completion enable its inclusion into the MOA as an attachment.</p>	<p>No change</p>

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12	<p><u>STIP 5.B - Native Hawaii Outreach and Education</u></p> <p>Stipulation 5.B. should NOT be REPLACED, but should be AMENDED to increase specificity, which the proposed language clearly fails to accomplish. The language of stipulation 5.B., similar to other mitigating stipulations contained in the 2015 MOA such as the terrain model, are vague and lacking in specifications on both the mitigation stipulation and implementation. FHWA has dictated that certain 2015 MOA stipulations have been completed although consulting parties that negotiated certain mitigating stipulations do not agree. For example, Makani Hou negotiated stipulation 5.B. and remains of the opinion that scholarship funds should be invested into a scholarship endowment program to provide the best and wisest use of federal funds in providing perpetual scholarships for the loss of historic properties for perpetuity. FHWA could delegate responsibility for accountability of an endowment to HDOT who could require annual reports on the endowment from UHH to satisfy what appears to be distrust that federal funds will be honestly applied.</p>	<p>Stipulation 5.B was so heavily edited that amending each phrase would have made the final Stipulation difficult to read. Therefore, Stipulation 5.B is being replaced in entirety. Please note that revised language of the original Stipulation 5.B now includes the following:</p> <ol style="list-style-type: none"> 1. Attaches of the executed UHH MOU, 2019. 2. Requires that the FHWA ensure implementation of the UHH MOU. 3. Adds the Kohala Center to facilitate execution of the UHH MOU and provide a means for additional involvement with Makani Hou and other consulting parties. 4. Provides a means to monitor the completion of activities and requires consultation for alternative timeframes and ways to meet the UHH MOU goals. 5. Requires submittal of a timeline for the five program by March 31, 2021. 6. Reviews and adjusts timelines to for any changes to tasks or schedules. <p>The concept of an endowment was not possible with FHWA funding for mitigation as explained in LIsa Powell's emails on 1/16/20 and 11/9/20. Scholarships will remain in program.</p> <p>Endowments were also discussed at the meeting on 12/17/2020:</p> <p><i>Paka said due to the permanent destruction of properties he feels a permanent endowment program is the best option to make this right. Lisa said their mitigation must be finite and an endowment is not possible. Fred said according to the stipulation, once the money is sent to the UH they are done. They do not need to maintain control of the funds. Lisa said they need to maintain oversight to ensure they meet federal requirements. Fred did not feel this was the best use of federal funds.</i></p>	No change
13	<p>STIP 5B: The MOU between UHH and HDOT should be amended in consultation with interested consulting parties. It was unethical for the HDOT to enter into the 2015 MOU with the UHH without informing consulting parties, and perhaps it could have been unlawful to do so prior to the effective date of the 2015 MOA.</p>	<p>Makani Hou's comment on the 2013 [sic] UHH MOU is noted.</p> <p>There was subsequent consultation on the scope that resulted in the addition of the Kohala Center to assist with the administration of the 2019 MOU. The 2019 MOU is an agreement similar to a contract between HDOT and UHH to provide a transfer of funds.</p>	No Change
14			

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15	<u>STIP 18 - Dispute Resolution</u> Why is STIP 18 being replaced?	Stipulation 18 was amended to include the Federal Preservation Officer in the dispute process. This change will improve fairness and accountability in the dispute process and will be followed should future disputes occur. Also changed "Concurring Party" to "Consulting Party" to create as inclusive of a process possible.	No Change
16	<u>STIP 20 20 - Duration</u> Because much unfinished business remains, such as the UHH MOU, the AAA report, negotiating mitigation for construction damages, etc., AmWhendment Two should be a simple 1-year extension to complete unfinished business. After unfinished business is completed, Amendment Three) should be the next step towards completing this difficult process.	The framework for the MOA, through Amendment 2, provides for consultation for ongoing stipulations, such as the Trail Restoration and the Native Hawaiian Cultural Outreach and Education. Additionally, the UHH MOU will supplement consultation with the added role of the Kohala Center to help administer the MOU, assist in the implementation of the programs and facilitate discussions with the consulting parties. Additional time of five years is proposed to enable stipulations to proceed post haste.	No Change
17	<u>STIP 27, Item 4.A - "Preserve 2,500 Feet..."</u> Delete "2,500 feet". An agreement should be entered into between HDOT and the BLNR to allow the section of trail beyond HDOT's ROW to be included. The BLNR should be receptive to a proposed agreement if the board has an understanding that the entire trail section will be transferred to the Na Ala Hele Trails program after implementation of stipulation 27 is completed.	2,500 feet is the extent of the HDOT right-of-way. FHWA determined this is commensurate to the adverse effect. FHWA pointed out that there are other funding options such as the Transportation Alternative Proogram (TAP) for restoring beyond the 2,500 feet, but this would be outside the mitigation for the Queen K project.	No change
18	<u>STIP 27, Item 4.A.1 - Identification</u> Provide a map showing the Mamalahoa Trail section to be preserved, the areas impacted by construction (destruction and breaches), the HDOT right of way, and the section of trail under the DLNR's control should be identified.	The HDOT Right-of-Way Map will be provided and annotated with the approximate location of the trail and 30-ft buffers in lieu of the Google Earth map previously Amendment 2, Attachment 5.	Replace Attachment 5 with Righ-of-Way maps.

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19	<u>STIP 27, Item 4.A.2 - Buffer Zones</u> In support of a 30-foot buffer as recommended by Jackson Bauer, Na Ala Hele Trails Specialist. A path for handicap persons' access should be included in the buffer either mauka or makai of the Mamalahoa Trail.	HDOT confirmed that space is available for 30-ft buffers.	Changed buffers from from 10-ft to 30-ft.
20	<u>STIP 27, Item 4.A.3 - Short Term Measures</u> Why include this caption if it is not applicable?	Agreed	Delete section titled "Short-Term Preservation Measures" and replace title for "Long-Term Measures" to "Preservation Measusres."
21	<u>STIP 27, Item 4.A.4 - Consultation Process</u> The Preservation Plan should be completed prior to including it in an amendment. Therefore, an additional amendment is necessary beyond this amendment, which should focus specifically on a time extension of one-year – or more if required to complete unfinished business.	The PP is a part of the mitigation package, so will be completed after the execution of the Amendment 2.	No change
22	<u>STIP 27, Item 5 - Long Term Measures</u> As previously mentioned, the "PP" (Preservation Plan) consultation should be completed before inclusion in an MOA amendment. There is much to discuss and negotiate under this section,	Stipulation 27 provides that consultation would execute the details that can be resolved post Amendment 2.	No change
23	<u>General</u> In conclusion, to avoid potential disagreements between HDOT, FHWA, and consulting parties, specifications for mitigating measures and implementation should be included in the amendment. All parties involved for the past several years I'm sure can agree that the ambiguity of the language in the 2015 MOA led to several hurdles, some of which we have yet to overcome.	Acknowledged. The plan to preserve the trail will be completed after Amendment 2 is executed.	No change