

AMENDMENT ONE 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

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

WHEREAS, the MOA is for a period of five (5) years from the execution of the MOA unless amended pursuant to Stipulation 21 of the MOA; and

WHEREAS, the Area of Potential Effect (APE) as defined in the 2015 MOA did not include intersection stub out improvements, two staging areas, and the connection of Phase 1 and Phase 2 of the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole; and

WHEREAS, the Federal Highway Administration (FHWA) delineated and the State Historic Preservation Officer (SHPO) concurred with the revised APE for the Queen Ka'ahumanu Highway Widening, Phase 2 Kealakehe Parkway to Ke'āhole Airport Road on January 6, 2017 (Attachment 1), and State Historic Preservation Division (SHPD) requested a Supplemental Archaeological Inventory Survey (SAIS) during construction which the Hawaii Department of Transportation (HDOT) commissioned; and

WHEREAS, the SAIS dated March 2017 was accepted as final by the SHPO on March 19, 2017; and

WHEREAS, the National Park Service (NPS) has offered to design and install the interpretive signs within the boundaries to the Kaloko-Honokōhau National Historical Park, as required by Stipulation 11, and the FHWA and the NPS have executed a MOA on May 2, 2019 transferring funds to allow the NPS to complete this stipulation; and

WHEREAS, several stipulations of the MOA have not been completed or need further discussion and will be addressed in Amendment Two; and

WHEREAS, inadvertently, two known historic trails (SIHP# 50-10-27-00002 and SIHP# 50-10-27-10714) were damaged during construction and three site buffers were breached (SIHP# 50-10-27-19947, SIHP# 50-10-27-28783, SIHP# 50-10-27-28811); and

WHEREAS, FHWA determined that the damage to SIHP# 50-10-27-00002 and SIHP# 50-10-27-10714 are an adverse effect in a letter to the SHPO and the Advisory Council on Historic Preservation (ACHP) dated August 3, 2017 and the SHPO concurred in a letter dated February 13, 2020; and

WHEREAS, relevant history of consultation on APE, SAIS, Amendment One, inadvertent damage to the two known historic trails, and inadvertent breach to three site buffers is summarized in Attachment 2; and

WHEREAS, consultation to address mitigation for the adverse effect to the Māmalahoa Trail (SIHP# 50-10-27-00002) and the Trail to Kohanaiki (mauka-makai) (SIHP# 50-10-27-10714) is on-going; and

WHEREAS, during the one (1) year afforded by this Amendment (Amendment One), the Signatories and Consulting Parties agree to work in good faith to complete Amendment Two. Amendment Two will include Stipulations to mitigate the adverse effect to the two damaged sites (SIHP# 50-10-27-00002 and SIHP# 50-10-27-10714), a six-year extension to allow for the completion of Stipulation 5.B Native Hawaiian Cultural Outreach and Education, and will address necessary modifications to other Stipulations;

NOW, THEREFORE, in furtherance of the above recitals, the FHWA, the SHPO, the ACHP, the NPS, and HDOT agree that the Projects shall be implemented in accordance with the following amended stipulations in order to take into account the effect of the Projects on historic properties:

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

AREA OF POTENTIAL EFFECT. The Area of Potential Effect (APE) for the Queen Ka'ahumanu Highway Widening, Phase 2 Kealakehe Parkway to Ke'āhole Airport Road Project (Attachment 1) includes the following:

- a. The 300-foot Right-of-Way (ROW) of the Queen Ka'ahumanu Highway;
- b. The Honokōhau Settlement National Historic Landmark;
- c. The Kaloko-Honokōhau National Historic Park;
- d. Trails that are immediately adjacent to and traverse the Queen Ka'ahumanu Highway Widening, Phase 2 Kealakehe Parkway to Ke'āhole Airport Road project

area that have been identified as significant to the Ala Kahakai National Historic Trail corridor (Attachment 2 of 2015 MOA), including the Māmalahoa Trail

- e. All improved intersections and stub-outs [A-F1, F2, G, I, J, K, and L];
- f. Staging Areas (portions of areas C and K); and
- g. Construction Office (Area H)

2. **Stipulation 11** of the MOA shall be replaced with the following text:

INTERPRETIVE SIGN(S). The HDOT shall fund the NPS to research, design, and produce mutually agreed upon interpretive signs in consultation with NHOs relating to the history of the trails identified in the Queen Ka‘ahumanu Highway Widening, Phase 2 Kealakehe Parkway to Ke‘āhole Airport Road Project ROW near the Kaloko-Honokōhau National Historic Park. The NPS will install these signs within the boundaries of the Kaloko-Honokōhau National Historic Park and will also consult with NHOs on location.

3. **Stipulation 20**, in accordance with Stipulation 21, shall be replaced with the following text:

DURATION. The original term of the MOA was for five (5) years from the execution of the MOA with the original term ending March 17, 2020. The duration is extended by a period of one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021.

4. **Stipulation 25** shall be added to the MOA:

CONSULTATION SCHEDULE: The HDOT and FHWA shall develop a draft consultation schedule for developing Amendment Two including timelines, tasks, and areas of responsibilities in order to complete consultation and execute Amendment Two no later than March 17, 2021. HDOT/FHWA shall distribute the draft consultation schedule to Signatories and Consulting Parties (hereafter “Parties”) via email no later than April 2, 2020. Any comments received by FHWA/HDOT from Parties within fourteen (14) days of date sent by email shall be considered by FHWA/HDOT in developing the final consultation schedule. The consultation schedule will be finalized no later than April 30, 2020.

5. **Stipulation 26** shall be added to the MOA:

AFTER-ACTION ANALYSIS SCHEDULE. HDOT and FHWA will provide a draft schedule and scope to develop an “After-Action Analysis” report on how the project failed to protect historic properties and proposed action items to address these issues to Parties via email by April 2, 2020. Any comments on the draft schedule and scope received from Parties within fourteen (14) days of date sent by email shall be considered

by FHWA/HDOT in developing the final schedule. The after-action analysis schedule and scope will be finalized no later than May 7, 2020.


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SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:   
John M. Fowler, Executive Director

3/5/20  
Date

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SIGNATORY:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

BY:   
\_\_\_\_\_  
Ralph J. Rizzo, Division Administrator

2/26/2020  
\_\_\_\_\_  
Date

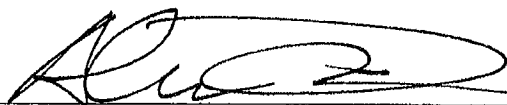
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SIGNATORY:

HAWAII STATE HISTORIC PRESERVATION OFFICER

BY:  2.26.20  
Suzanne D. Case, Hawaii State Historic Preservation Officer Date


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INVITED SIGNATORY:

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

BY:   
\_\_\_\_\_  
Jade T. Butay, Director of Transportation

Feb 26, 2020  
\_\_\_\_\_  
Date



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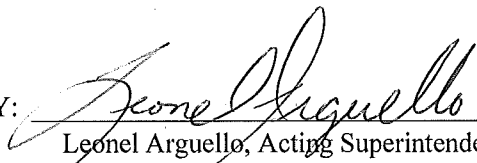
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INVITED SIGNATORY:

KALOKO-HONOKŌHAU NATIONAL HISTORIC PARK

BY:

  
Leonel Arguello, Acting Superintendent

March 3, 2020

Date


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INVITED SIGNATORY:

ALA KAHAKAI NATIONAL HISTORIC TRAIL

BY:   
Aric Arakaki, Superintendent

3/4/2020  
Date

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CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

BY: \_\_\_\_\_  
Sylvia Hussey, Ka Pouhana Kūkawā/CEO

\_\_\_\_\_  
Date

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CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKOHAU

BY: *Fred Cachola*  
Fred Cachola, President

*March 10, 2020*  
Date

Makani Hou is signing Amendment 1 as a concurring party to extend the original MOA by one-year with the caveat that Makani Hou does not agree with use of the term "inadvertent" as used in Amendment 1. We provide below a brief explanation of why we disagree with use of the term "inadvertent" in Amendment 1.

During our December 6, 2016 consultation meeting held at the NELHA conference room in Kona, the consulting parties were notified of damages to two trails and breaches to three buffers that occurred during construction in mid to late 2015, over a year earlier! Since December 6, 2016, Makani Hou has made numerous requests for evidence to prove that the damages and breaches were in fact inadvertent. We have never received any information or evidence to prove the claim of inadvertent is valid.

One of our burning questions since December 2016, which we never received a response to is why were the retaining walls not installed prior to grading to prevent the damage and encroachments? We received various excuses but nothing that makes us believe that the retaining walls were intentionally left out to expedite the project, which was years behind schedule.

Here are a few quotes extracted from the December 6, 2016 meeting minutes.

- 1) Question: What was the cause of the disturbances at the Mamalahoa and Road to the Sea Trails? S. Chow responded that the reasons for the disturbances varied by site.
- 2) Question: Were buffers located around the trail sites? S. Chow responded that buffers were located there, but the main reason for the disturbances was that the sites were not located correctly on the plans.
- 3) During the evaluation of the disturbed sites and buffer encroachments it was determined that selected retaining walls required redesign to ensure the future protection of the sites. The retaining walls were designed to avoid the sites.

4) HDOT is committed to working with the contractor to alter the sequence of work in order to resume construction wherever possible. However, redesign of the retaining walls will need to be completed prior to paving work.

5) HDOT personnel and CSH conducted a thorough survey and assessment to ensure that all sites and buffers were accurately verified in the field and identified in the plans and reports. Buffers were shifted in the field to accurately reflect the locations. Retaining walls are currently being redesigned to ensure protection of specific sites.

6) Sounds like buffers were placed on old maps that did not include measures to avoid the sites. Is this the case for the entire project? Answer: S. Chow responded that it applies only to the two trails. The archaeological document originally indicated that a portion of the trail could be disturbed, and was not modified to include the requirement to entirely avoid the trail.

7) When did the disturbances occur along Mamalahoa Trail? Answer: About the end of Nov. 2015.

8) When did the disturbances occur along the Road to the Sea Trail? Answer: Before the disturbances to Mamalahoa Trail.

9) What is the protocol for disturbances? Wouldn't you check for other disturbances as well? Concern is to prevent this from happening again. Answer: S. Chow responded that interim fences were installed before starting grading work, around March or May 2015. During the grading work, HDOT started the process of laying out the retaining walls. This prompted the investigation to reconcile the discrepancies. Timing was about July or August 2015. By then, fences were in place and grading work was done.

10) Is it possible to repair the damaged sites? Answer: S. Chow responded that sites cannot be repaired because they no longer exist.

11) Who does the double checking? Answer: S. Chow responded that personnel from HDOT's environmental section on Oahu, who have background in historic resources, conducted the site assessment to verify locations and site distances.

We hope that by what we have provided here, all parties can understand our reluctance to agree that the damages and breaches were in fact inadvertent. We believe they were intentionally damaged and breached to expedite the project completion.

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CONCURRING PARTY:

HISTORIC HAWAI'I FOUNDATION

BY: Kiersten Faulkner  
Kiersten Faulkner, Executive Director

3/5/2020  
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CONCURRING PARTY:

KONA HAWAIIAN CIVIC CLUB

BY: 

Kekoa Nazaka, President

*CELEB KEKOA NAZAKA*

3/11/2020

Date