

1 AMENDMENT TWO TO THE
2 MEMORANDUM OF AGREEMENT

3 Among the
4 ADVISORY COUNCIL ON HISTORIC PRESERVATION
5 FEDERAL HIGHWAY ADMINISTRATION
6 AND THE
7 HAWAII STATE HISTORIC PRESERVATION OFFICER

8 Regarding the projects in the vicinity of the
9 District of North Kona, Island of Hawaii, State of Hawaii
10 which are known as the Queen Ka'ahumanu Highway Intersection
11 Improvements for the Kaloko-Honokōhau National Historic Park
12 and the Queen Ka'ahumanu Highway Widening, Kailua to Ke'āhole
13

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

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

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

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

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

31 WHEREAS, the FHWA and HDOT submitted an after-action analysis scope and schedule as
32 required by Stipulation 26 on May 7, 2020 and FHWA submitted the final after-action analysis
33 report to consulting parties on January 29, 2021 (Attachment 3).
34

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

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

41 NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION. The HDOT and the
42 University of Hawaii at Hilo (UHH) have entered into a Memorandum of Understanding
43 (MOU) to provide cultural programs and education to support Native Hawaiian Studies (See
44 Attachment 4, UHH MOU, 2019). The FHWA and HDOT shall ensure that the MOU
45 between HDOT and UHH to provide cultural programs is fully implemented over the
46 duration of the MOU. The MOU includes the Kohala Center, as requested by Makani Hou,
47 to help facilitate the contract and to provide a mechanism to better include local
48 representation. UHH will provide annual reports documenting the activities of the past
49 calendar year. HDOT will make the reports available to all consulting parties. If any
50 activities were not accomplished, UHH will so note, including reasons goals were not met.
51 HDOT and the CPs shall consult with UH on alternative timeframes and means to meet the
52 goals of this stipulation if the activities could not be accomplished. FHWA will continue to
53 report annual progress of Stipulation 5.B as required in Stipulation 19- MONITORING AND
54 REPORTING of the 2015 MOA. By March 31, 2021, the HDOT and the UHH shall provide
55 a timeline for the delivery of the first year of the five project areas of the MOU. The timeline
56 will be distributed to consulting parties. Future timelines will be developed by UHH and
57 HDOT annually to accommodate any need changes to tasks or schedule.
58

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

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

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

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

3. **Stipulation 20** of the MOA 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. Amendment 1 extended by a period of one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021. The MOA duration is extended by this Amendment 2 for a period of five (5) years from the March 17, 2021 expiration to March 17, 2026, or upon completion of the stipulations, whichever comes first.

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

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

1. IDENTIFICATION

HDOT shall perform vegetation clearing and preservation activities meeting the Secretary of Interior's (SOI) guidelines and Hawaii Administrative Rules (HAR) §13-277 for preservation for a 2,500-foot portion of the Māmalahoa Trail (SIHP #50-10-27-00002) (See attachment 5) within its right of way in the area from Kealahou Parkway south, per the HAR requirements for a Preservation Plan (PP) outlined below.

2. BUFFER ZONES

HDOT will establish one 30-foot-wide buffer zone around the 2,500-foot portion of the trail to be preserved. This buffer zone will be depicted on a USGS map using GPS data mapping. The map shall be of sufficient scale that the trail and buffer can be clearly seen. On the map, the trail and buffer zones will be depicted as one polygon with the trail as a feature within the polygon. Interpretive signs may be placed in the buffer zone, but no additional work or activities will take place in the buffer zone without written permission from HDOT and SHPD. Should anyone request to place a permanent marker in the buffer HDOT will consult with SHPD and the CPs as to the appropriateness of the request and, if determined appropriate, the location, size, appearance, and content.

3. CONSULTATION PROCESS

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

- a. To solicit participants to consult on the development of the PP, HDOT shall 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 and, if such parties are identified, HDOT shall contact them following the same process.

- b. A timeline for the development of the PP and preservation of the trail will be developed as a part of the consultation. HDOT, with the assistance of DLNR Na Ala Hele, commits to hiring a consultant within one year of execution of the Amendment, sooner if possible, to develop the PP and, if necessary, any agreed-upon preservation (e.g., stabilize, rehabilitate, reconstruct).
- c. HDOT, with the assistance of DLNR Na Ala Hele, will conduct consultation meetings. An initial consultation meeting will be held to discuss the PP and solicit ideas, comments, and recommendations. Up to two additional consultation meetings will be held, as necessary. Meetings may be held via video conference if there are travel restrictions or if the CPs agree to video conferencing. HDOT shall provide electronic copies of the drafts for review to the CPs and NHOs who will have 30 calendar days to provide comments to HDOT. Comments made during consultation or other, informal meetings and any written comments received from CPs and NHOs, will be considered when finalizing the PP.
- d. The final PP will be provided electronically to the NHOs and CPs, unless a paper copy is requested.
- e. The final PP shall include a list of individuals and organizations consulted and shall summarize their input.

4. PRESERVATION MEASURES

HDOT will preserve (e.g., stabilize, rehabilitate, reconstruct) as appropriate and as agreed to within the PP, the 2,500-foot segment of the Māmalahoa trail identified in the map (Attachment 5) in accordance with SOI guidelines and with HAR §13-277 and the approved PP. During development of the PP, HDOT will consult with SHPD and other CPs on the long-term preservation measures specified in HAR §13-277-6, including, but not limited to provisions regarding access to the site, use of the site for cultural purposes, approaches to interpret and inform the public about the site, permanent markers, and monitoring site integrity.

The Preservation Plan (PP) will include the following:

- a. A synthesis of available documentation on the periods, materials, and methods of construction, uses, maintenance, vegetation, stories, and cultural significance of the Māmalahoa Trail and its interconnectedness with other trails in the Kealakehe and Honokōhau ahupua‘a. The SHPD library, the Hawaii State Archives and the Hawaiian collection at the Hamilton Library will be searched for documentation, and other appropriate repositories

157 identified by HDOT and the CPs. Oral history collections talking about these
158 two ahupua‘a should also be accessed.

- 159 b. Archeological documentation within the 2,500-foot Māmalahoa Trail ROW
160 area will include digital photography, before during and after vegetation
161 clearing for the Māmalahoa Trail and any connecting trails. A detailed plan
162 view will be completed for all trails within the buffer zone, including details
163 about where and how the Māmalahoa Trail connects with other trails. For
164 connecting trails, documentation will extend to the edge of the 30-foot buffer.
165 Similar documentation will be done for the small section of trail on the other
166 side of Kealakehe Parkway up to the construction staging area. The
167 archaeologists will GPS the location of the trail(s) within both the 2,500-foot
168 Māmalahoa Trail ROW and the small section of trail on the other side of
169 Kealakehe Parkway using a GPS unit with sub-meter or finer accuracy,
170 including datapoints and/or polygons for all features identified within both
171 locations. The PP will also include HRS 6E (HAR§ 13-275-6) and NHPA 106
172 assessments of integrity and significance (following National Register
173 eligibility criteria), as well as assessments of religious and/or cultural
174 significance of the trail(s). HDOT shall consult with SHPD and CPs regarding
175 these assessments.
176
- 177 c. A vegetation clearing plan for the 2,500- foot section of the Māmalahoa Trail.
- 178 d. A maintenance plan for the 2,500-foot section of the Māmalahoa Trail, which
179 will include access, litter control, future impacts and site stability and periodic
180 monitoring of the site for impacts to historic integrity and site significance,
181 and protocols for the SHPD inspections.
- 182 e. HDOT shall develop a paved parking lot with room for ten cars and one bus in
183 its right of way. The parking lot shall meet Americans with Disabilities Act
184 accessibility requirements and have a paved driveway to exit and re-enter the
185 Kealakehe Parkway. When this project is ready, HDOT will consult with
186 SHPD as required under HRS 6E-8.
- 187 f. Interpretation of the site. This will include recognition of the interconnection
188 between trails in the ahupua‘a of Kealakehe and Honokōhau, including
189 portions of the Māmalahoa Trail to the North side of Kealakehe Parkway and
190 at the entrance to the Kaloko-Honokōhau National Park, and mauka-makai
191 trails within the 2,500-foot segment and in other parts of the two ahupua‘a,
192 including the Kohanaiki/Trail to the Sea. Interpretation could be done through
193 signage or electronic means. The existing interpretive map, which identifies
194 significant traditional resources of the area, including trails, may be used as a

195 resource by HDOT and CPs in the development of interpretive materials. The
196 SOI guideline (Attachment 6) also provides guidance on interpretation. Na
197 Ala Hele and CPs will be invited to consult on the interpretation of the site.
198 The interpretive signs, apps, or other materials to be developed will be
199 identified in the PP, in accordance with HAR §13-277-7, including SHPD's
200 review and approval of the interpretive materials.

201 g. A plan for permanent markers to identify and interpret the trail such as trail
202 markers, signs, or dry-land native vegetation.

203 h. The PP will also include preservation provisions for the portion of the
204 Māmalahoa Trail (SIHP #50-10-27-00002) near the park entrance and for the
205 Road to the Sea, also known as Trail to Kohanaiki, (SIHP #50-10-27-10714)
206 and will document their current condition and preservation buffers within the
207 APE. This PP will supersede all other preservation plans for these two sites.

208 i. The PP will also include a report on the buffer breaches and note that the
209 buffers for SIHP #'s 50-10-27-19947, -28783 and -28811 will remain the
210 same.

211 B. Preservation Plan (PP) Submittals to SHPD

212 1. HDOT shall submit the pre-final PP to SHPD for their review and comment.
213 SHPD shall have 30 calendar days to provide comment unless SHPD requests
214 more time in writing, including e-mail.

215 2. HDOT will address all SHPD comments received within 30 calendar days and
216 submit a final PP for SHPD's written concurrence. SHPD shall respond within 30
217 calendar days unless it requests additional time in writing. If SHPD does not
218 respond within the agreed upon period, the HDOT may assume SHPD's
219 acceptance of the PP.

220 C. Once HDOT receives SHPD's acceptance of the PP, HDOT will implement the PP
221 provisions for preserving the 2,500-foot section of the Māmalahoa Trail and the
222 portion of the Māmalahoa Trail (SIHP #50-10-27-00002) near the park entrance and
223 for the Road to the Sea, also known as Trail to Kohanaiki, (SIHP #50-10-27-10714).

224 D. The section of the Māmalahoa Trail discussed above is considered a public Trail
225 under the Highways Act of 1892. As such, it is already under the jurisdiction of the
226 State of Hawaii Board of Land and Natural Resources (BLNR). At such time when it
227 is feasible for both parties, HDOT shall formally transfer the trail, including
228 responsibility for compliance with the PP, parking, any structures erected to interpret
229 the trail and any related documentation to the Department of Land and Natural
230 Resources (DLNR) Na Ala Hele Program. A metes and bounds survey of the trail,
231 buffers, and any appurtenant structures (including parking) will be done and recorded

232 with the Bureau of Conveyances as a part of the transfer to Na Ala Hele, along with a
233 copy of the PP.

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

236

237 List of Attachments:

238 1. MOA Stipulation Status

239 2. History of Consultation Status

240 3. After-Action Analysis Report

241 4. UHH MOU

242 5. Map of the 2,500-foot section of the Māmalahoa Trail (SIHP #50-10-27-00002

243 6. SOI Guidelines

244

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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

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:




Date: March 17, 2021

~~John M. Fowler, Executive Director~~
Reid J. Nelson, Executive Director, Acting

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279 SIGNATORY:

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281 U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION
282

283
284 By:  Date: Mar 1, 2021
285 _____
286 Ralph J. Rizzo, Division Administrator
287

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305 SIGNATORY:

306
307 STATE HISTORIC PRESERVATION OFFICER (State of Hawai'i)
308
309

310 *Alan Downer*
311 By: _____ Date: Mar 2, 2021 _____

312 Alan S. Downer, State of Hawai'i Deputy State Historic Preservation Officer
313
314

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INVITED SIGNATORY:

NATIONAL PARK SERVICE

JOHN

Digitally signed by
JOHN BROWARD

BROWARD

Date: 2021.03.10
11:06:08 -10'00'

By: _____ Date: _____

John Broward, Superintendent, Kaloko-Honokōhau National Historical Park

ARIC ARAKAKI

Digitally signed by ARIC
ARAKAKI
Date: 2021.03.10 10:57:38
-10'00'

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: Feb 26, 2021
Jade T. Butay, Director of Transportation

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381 CONCURRING PARTY:

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383 HISTORIC HAWAI'I FOUNDATION
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387 By: Kiersten Faulkner
388 Kiersten Faulkner, Executive Director
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Date: March 4, 2021

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CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

By: _____ Date: _____

Sylvia Hussey, Ka Pouhana Kūkawā / Chief Executive Officer

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FC
~~CONCURRING~~ ^{CONSULTING} PARTY:

MAKANI HOU O KALOKO-HONOKŌHAU

By: Fred Cachola

Date: March 16, 2021

Fred Cachola, President

Makani Hou is signing Amendment 2 as a Consulting rather than a Concurring Party; with these following caveats:

1. That the ACHP recommendations to the FHWA regarding Makani Hou objections of 2019 and the FHWA response to those recommendations be included as an Attachment.
2. That a stipulation accounting for the possible violations of 4f procedures and HRS 6E be included
3. That Stipulation 27 is a prominent item (5 of 7 pages in the Amendment); and therefore be prefaced to clearly state that its addition to the MOA is a mitigation measure proposed by Makani Hou for the damages to two historic trails and breaches to three historic sites.
4. That the sentence on line #65 be amended to add "...or an objecting party" after FHWA
5. That the sentence on line #201 be amended with this additional phrase at the beginning of the sentence; "The PP will also include a plan for a canopy structure for visitors and protection for permanent markers to identify. . ."
6. That substantive previously expressed concerns could be addressed directly through further amendments (Amendment 3) to the 2015 Moa.