



March 17, 2021

Lisa Powell, P.E.
Transportation Engineer
FHWA-Hawaii Division
300 Ala Moana Boulevard Room 3-306
Honolulu, HI 96850

Ref: *Second Amendment to the 2015 Queen Ka'ahumanu Highway Memorandum of Agreement
Kailua to Ke'ahole, North Kona, Hawaii
ACHP Project Number: 013936*

Dear Ms. Powell:

On March 17, 2021 the Advisory Council on Historic Preservation (ACHP) executed the attached second amendment to the Memorandum of Agreement (MOA) for the Queen Kaahumanu Highway Widening Phase II project. Given the serious challenges the Federal Highway Administration (FHWA) encountered in reaching this agreement and the impediments that may still complicate the implementation of the MOA terms, I am conveying further recommendations to you encouraging FHWA to take all steps necessary to implement this agreement successfully.

The ACHP understands that this project's history demonstrates several missteps by FHWA in the Section 106 process regarding consultation with Native Hawaiian Organizations (NHOs), identification of historic properties, and implementation of the MOA. While FHWA has taken steps to improve its consultation efforts with NHOs and consulting parties in recent years, the ACHP is aware of the ongoing concerns with this project, specifically those of Makani Hou o Koloko Honokohau.

In considering whether to execute the amendment, the ACHP recognized the critical need for this MOA to remain in effect and allow work on implementing the stipulations to continue. The new mitigation item for the trails damaged in construction appears to be commensurate with the impacts to the historic properties. It is essential that FHWA, as the federal agency ultimately responsible for Section 106 compliance and the implementation of the MOA, take all reasonable measures to ensure that its terms are carried out in an open and transparent way with the consulting parties. The ACHP will continue monitoring the implementation of the stipulations to ensure that the requisite consultation is conducted in a manner consistent with our guidance, *Consultation with Native Hawaiian Organizations in the Section 106 Process: A Handbook* (<https://www.achp.gov/sites/default/files/guidance/2020-01/ConsultationwithNHOshandbookupdate29Jan2020final.pdf>).

In general, ACHP agrees with the consulting parties that there is a significant need for FHWA to improve its NHO consultation for projects in Hawaii. We understand that FHWA has committed to formalizing an NHO consultation protocol within the next three years. This protocol, along with the proposed statewide programmatic agreement (PA) for FHWA, will be ineffective if it does not include opportunities for robust and early consultation with NHOs, the State Historic Preservation Division, and other consulting parties, as appropriate, prior to finalization.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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The ACHP looks forward to assisting the FHWA in these efforts. Our staff is committed to contribute in any way possible to the success of this agreement as well as the consultation protocol and statewide PA. Should you have any please contact Mandy Ranslow, at 202-517-0218 or by e-mail at mranslow@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Executive Director, Acting