

MEMORANDUM OF AGREEMENT
Among the
COUNTY OF HAWAII
and
FEDERAL HIGHWAY ADMINISTRATION
and
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the Keanakolu Road Improvement Project on the
Island of Hawai'i, Hawai'i

WHEREAS, the Federal Highway Administration (FHWA) has determined that the proposed Keanakolu Road Improvement Project from the junction of Keanakolu Road and John A. Burns Way (Observatory Road) and extends to the compound entrance of the Hakalau Forest National Wildlife Refuge will have an effect on the historic Keanakolu Road which by consensus determination appears to meet the criteria for listing on the National Register of Historic Places (NRHP), and have consulted with the Hawaii State Historic Preservation Division (SHPD) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800 regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the SHPD has reviewed and concurred with the evaluations and recommendations provided in the report entitled *Final Cultural Resources Inventory, Evaluation, and Assessment for Proposed improvements to Keanakolu Road, Hawaii: Federal Highway Administration Proposed Undertaking Number HI PLH-DRP HAFO 10(1)* and with the *Data Recovery Treatment Plan, Historic Keanakolu Road, Site 50-10-(15, 24,32)-22939, Island of Hawai'i*, and;

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the Federal Highway Administration has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation, and;

WHEREAS, the SHPD has acknowledged that data recovery of the portions of the historic roadway impacted by the recommended alternative is appropriate mitigation, and;

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) and the Department of Hawaiian Home Lands have been consulted in preparation of this Memorandum of Agreement (MOA), and concur with the stipulations contained herein;

NOW, THEREFORE, the FHWA, County of Hawaii, and SHPD agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The FHWA shall ensure that the following measures are carried out:

1. The FHWA shall implement the Data Recovery Plan for the historic roadway that is consistent with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 CFR 44734-37) and takes into account the Council publication, *Treatment of Archaeological Properties*, and the SHPD minimal standards for archaeological data recovery and interim protection.
2. The FHWA shall ensure that all records are curated by an institution acceptable to the SHPD in accordance with 36 CFR Part 79.
3. The FHWA shall ensure that all signatories to this document will receive a copy of the final data recovery report, and the report will be made available at a local public library. In addition, information gathered shall be made available to the public through interpretive materials in a brochure or panel format.
4. If a previously unknown archaeological site is encountered during project construction, the FHWA shall notify the SHPD immediately. The FHWA shall ensure that all work ceases in the area of the discovery and in any adjacent areas where associated resources are likely to be encountered. The FHWA and SHPD shall then consult on the potential significance of the resource and appropriate treatment measures. The SHPD shall participate in such consultation in an expedited manner consistent with the timely advancement of the project with the intent of minimizing construction delays. When agreement has been reached on data recovery, interim protection, preservation, or interpretive measures and such measures have been implemented, construction may proceed in the area of the discovery.
5. Should any signatory or concurring party to this agreement object to the proposed Data Recovery Plan within 30 days of review of this agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will:
 - Provide the FHWA with recommendations to be considered in reaching a final decision regarding the dispute, or
 - Notify the FHWA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment.

Any Council comment provided in response to such a request will be considered by the FHWA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the response. Any recommendations or comments provided by the Council will be understood to pertain to the subject of the dispute; however, the FHWA's responsibility to carry out all actions under this agreement that are not subject to dispute will remain unchanged.

6. Any party to this MOA may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800 to consider such amendment.

Execution of the MOA and the implementation of its terms evidence that the FHWA has taken into account the effects of the Keanakolu Road Improvement Project on historic properties.

FEDERAL HIGHWAY ADMINISTRATION, CENTRAL FEDERAL LANDS HIGHWAY DIVISION

By: Clarack Conner Date: 10/16/03
Director Program Administration

COUNTY OF HAWAII

By: Sheldon Date: 11/6/03

STATE OF HAWAII'S HISTORIC PRESERVATION OFFICER

By: [Signature] Date: _____

CONCUR:

U.S. FISH AND WILDLIFE SERVICE, REGION 1

By: Carolyn A. Bohan Date: 11/19/03
Acting Regional Chief, NWRS

DEPARTMENT OF HAWAIIAN HOME LANDS

By: Ben Henderson Date: 12/10/03
Ben Henderson
Deputy Director
RECOMMEND APPROVAL:

By: Bruce C. McClure Date: 11/4/03
BRUCE C. McCLURE, P.E., Director
Department of Public Works
County of Hawaii

APPROVED AS TO FORM AND LEGALITY:

By: [Signature] Date: 11/5/03
Deputy Corporation Counsel
County of Hawaii