

MEMORANDUM OF AGREEMENT

WHEREAS, the Federal Highway Administration, Hawaii Division (FHWA) has determined that construction of the proposed Interstate Route H-3, Halawa to Halekou Interchange, and the Kaneohe Loop Interchange, will have an adverse effect upon the Luluku Discontiguous Archaeological District, which has been determined eligible for inclusion on the National Register of Historic Places, and upon any as yet unidentified historic properties within inaccessible, unsurveyed portions of the corridor which may also be likely to be eligible, and has consulted with the Hawaii State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, officials of the State of Hawaii Department of Transportation (Hawaii DOT) and of the Office of Hawaiian Affairs (OHA) participated in the consultation and have been invited to concur in this Memorandum of Agreement (Agreement);

NOW, THEREFORE, the FHWA, the SHPO and the Council agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on the historic properties.

STIPULATIONS

FHWA shall ensure that the following measures are carried out in consultation with the Hawaii DOT, SHPO, OHA and the Council:

- A. Archaeological resource impact mitigations will be implemented in portions of properties within the Luluku Discontiguous Archaeological District that will be affected by highway construction, according to the two-part Mitigation Plan found in Attachment A.
 1. The Data Recovery Plan shall provide for data recovery from sites and/or features directly affected by highway construction to recover significant information from these sites and/or features prior to destruction. Archaeological excavations shall be designed to retrieve information from sites and/o. features to address research questions, which are specified in Attachment A, and provide a basis for future site interpretation.
 2. The Preservation Plan shall specify sites and features proposed for active and passive preservation.

- B. An Interpretive Development Plan will be completed by the Hawaii DOT in consultation with the FHWA, SHPO and OHA, and shall address interpretive development of sites which will be selected after completion of the measures set forth in the Data Recovery Plan.
1. The Interpretive Development Plan shall address provisions for acquisition of access, on-site interpretation, maintenance, appropriate treatment of structural components, acquisition of water rights, financial responsibility and interpretive concerns.
 2. This plan shall be completed within 2 years after the completion of archaeological field work for use thereafter by the Federal, State, or City government which is authorized by law to carry out the activities described in the plan.
 3. Copies of the completed plan will be provided to the Hawaii Department of Land and Natural Resources, the City and County of Honolulu Department of Parks and Recreation, the Pacific Area Office of the National Park Service, and others identified during the development of the plan.
- C. Identification and treatment of historic properties, which may be found in presently unsurveyed portions of the H-3 road corridor, will proceed according to the attached Identification & Treatment Plan (Attachment B).
- D. Through pre-construction meetings and scheduled project personnel meetings, the FHWA and Hawaii DOT shall ensure that State project personnel and the contractors' workforce are sensitive to the cultural and research significance of archaeological properties associated with the H-3 project and are aware of the existence of Federal and State antiquity statutes, to help minimize the possibility of vandalism, inadvertent damage or theft of such properties.
- E. To ensure adequate archaeological monitoring of construction work, the Hawaii DOT shall incorporate Section 107.17(D), Archaeological and Paleontological Findings, State standardized special provisions, in all H-3 construction contracts (Attachment C).
- F. To prepare for the possibility that Native Hawaiian human burials and/or associated funerary objects are uncovered during archaeological or construction work which will require removal and reinterment, OHA shall prepare a Burial Treatment Plan acceptable to FHWA, Hawaii DOT, and the SHPO.

1. OHA agrees to complete this plan within 3 months after Council acceptance of this Agreement.
 2. Should such a plan not be submitted by OHA within the agreed upon time frame, the FHWA may develop and implement a plan in consultation with the SHPO.
 3. The plan shall be the result of a good faith effort to obtain the views of interested persons evincing cultural and traditional ties to the features or to the land in which the features are located. The plan shall provide methods for appropriate treatment of the human remains and associated funerary objects.
 4. All costs for the development of the Burial Treatment Plan will be borne by OHA, and as appropriate, the Hawaii DOT. All costs for the implementation of the plan will be borne by the FHWA and the Hawaii DOT.
- G. All archaeological work performed under this Agreement shall be directed by a professional archaeologist who meets the minimum qualifications set forth in the Department of the Interior's "Professional Qualifications" guide. (See Appendix C of Draft 36 CFR 66, at 42 FR 5382, 1/28/77.)
- H. All final archaeological reports resulting from actions pursuant to this Agreement shall be provided to the signatories to this Agreement and to the National Park Service for possible review in professional journals and possible submission to the National Technical Information Service. All such reports shall be responsive to contemporary professional standards identified in the Council's current Manual of Mitigation Measures and the Department of the Interior's "Format Standards for Final Reports of Data Recovery Programs." Precise locational data may be provided in a separate appendix if it appears that release of such information could jeopardize the integrity of archaeological sites.
- I. The SHPO shall designate an appropriate institution for the proper curation of all recovered materials, field notes and records which result from the actions covered by this Agreement; however, the treatment of uncovered Native Hawaiian burials and/or associated funerary objects will be in accordance with the Burial Treatment Plan provided in Stipulation F.

J. Dispute Resolution

1. At any time during the implementation of the measures stipulated in this Agreement, should an objection be raised by a local government or a member of the public, FHWA shall consult with the objecting party, the SHPO, and, as needed, with the Council to resolve the objection. A record of the objection and FHWA's actions to resolve the objection shall be retained by the FHWA as part of the project files.
2. Should an objection be raised by a signatory to this Agreement (ACHP, the SHPO, Hawaii DOT or OHA) regarding the implementation of the measures stipulated in this Agreement, FHWA shall consult with the objecting party to resolve the objection. A record of the objection and FHWA's actions to resolve the objection shall be retained by the FHWA as part of the project files. If FHWA determines that the objection cannot be resolved, it shall nevertheless seek the recommendations of the objecting party, document its consideration of the objecting party's recommendations in the project files and inform the objecting party and the ACHP of that consideration.

K. Agreement Amendment

Should FHWA, the SHPO or the Council determine that the terms of this Agreement cannot be met, that party will immediately notify the other consulting parties and request consultation to amend this Agreement in accordance with 36 CFR 800.5(e)(5).

Execution of this Memorandum of Agreement evidences that FHWA has afforded the Council an opportunity to comment on the undertaking and its effects on historic properties, and that FHWA has taken into account the effects of its undertaking on historic properties.

Federal Highway Administration, Hawaii Division

By: *William R. Lake* 7/21/87
William R. Lake, Division Administrator (date)

Hawaii State Historic Preservation Officer

By: *William W. Paty* JUL 22 1987
William W. Paty (date)

Advisory Council on Historic Preservation

By: *[Signature]* 12 August 87
(date)

CONCURRING PARTIES:

Office of Hawaiian Affairs

By: *Moses K. Keale, Sr.* 7/29/87
Moses K. Keale, Sr., Chairman (date)
Board of Trustees

Hawaii State Department of Transportation

By: *[Signature]* 7/28/87
Edward Y. Hirata, Director (date)