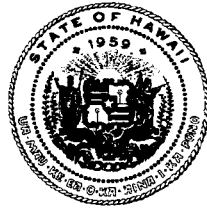


LINDA LINGLE
GOVERNOR OF HAWAII



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DEPARTMENT OF LAND AND NATURAL RESOURCES

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 19, 2009

Mr. Douglas Haigh
Department of Public Works
4444 Rice Street
Mo'ikeha Building, Ste 275
Lihue, HI 96766-1340

Dear Mr. Haigh:

RE: Section 106 (NHPA) Consultation Review
Lydgate-Kapa'a Bike & Pedestrian Path, Project No: STP-0700(49)

Thank you for inquiry regarding the above referenced project, which we received on September 25, 2009. Your inquiry asks for the State Historic Preservation Division (SHPD) to "please let us know how the September 8th (OHA) letter affects the project's MOA. At this stage, what are the County's obligations with respect to federal or state laws on historic and cultural resources?"

SHPD review of OHA Comments

It is unclear as to what OHA is requesting through their letter. At one point they state, "It is with these principles in mind, that OHA would recommend that any proposed pedestrian or bicycle path stay off of and away from the sacred sands of Wailua, and that any such project occur in a more mauka alignment, towards an existing cane haul road" (p. 3). However, in the last paragraph of the letter OHA "ask[s] that the utmost care and sensitivity be afforded this wahi kapu during the planned improvements from planning all the way through implementation" (p. 3).

In general, OHA's comments seem to point out the sacredness of Wailuanuiho'ano and to use those arguments to suggest a more mauka alignment. However, they do not specify a route for a mauka alignment and thus it is difficult to assess any impacts to historic resources. Interestingly, most of the sites that OHA mentions in its letter are located mauka of the current alignment, suggesting impacts to additional historic sites. Despite their request for a change of route, OHA is not asking to revisit the "effect" determination nor do they challenge specific mitigations in the MOA.

Terms of the Memorandum of Agreement

The MOA was developed because all parties concurred that there would be an "effect" to historic properties. The MOA does not specify an Area of Potential Effect (APE) but does reference the routes noted in the *Archaeological Assessment of Alternative Routes Proposed for the Lydgate to Kapa'a Bike and Pedestrian Pathway Project*. OHA declined to sign the MOA as a concurring party.

In a July 12, 2004 letter from SHPD to Federal Highways, SHPD concurred that the bike path had the potential to impact the following sites in the Wailua area:

The Wailua Complex of Heiau (including Hikinaakala, shoreward of Lydgate Park).

Kukui Heiau

Cultural deposits

Inadvertently discovered burial sites.

Specific mitigation measures stipulated in the MOA include an archaeological monitoring plan for the entire route, HAER documentation for the Wailua River bridge, and additional archaeological testing to ensure that the Pae Ki'i Mahu are not affected. Additional stipulations cover burial treatment protocols in the event of inadvertent discoveries of *iwi*, and the creation of a preservation plan addressing interpretive signage for the trail.

Amendment and Termination stipulations are broad enough to accommodate OHA's request should a signatory party wish to re-evaluate the project in light of OHA's letter.

Analysis

It is difficult to address OHA's letter directly because they are unclear about their preferred alignment. For the purposes of this analysis, SHPD presumes that OHA is asking that the path be realigned mauka, although they do not specify a preferred alternative. None of the preferred alternatives in the *Archaeological Assessment of Alternative Routes Proposed for the Lydgate to Kapa'a Bike and Pedestrian Pathway Project* avoid Wailua Beach. Therefore, OHA's proposed realignment would require that 106 and 6E consultation and review be re-opened and additional archaeological surveys and mitigation would be required.

SHPD Position

The SHPD prefers an alignment that avoids going *mauka* of Kuhio Highway in the area of Wailua Beach. Numerous archaeological studies have been done in this area and there are known, significant sites *mauka* of Kuhio Highway, including the Kalaiokamanu birthstone, the *piko* stone, Holoholoku Heiau, known burial sites and a cultural deposit. The Weuweu-Kawai-iki fishponds at Coco Palms are also on the State Register of Historic Sites. With due respect to OHA's concerns, SHPD believes that a *mauka* alignment has greater potential to disturb historic sites than the currently proposed alignment *makai* of Kuhio Highway along Wailua Beach.

Sincerely,



Pua Aiu
Administrator

cc: Mr. Clyde Namu'o, Office of Hawaiian Affairs (711 Kapiolani Blvd, Ste 500, Honolulu, 96813)
Mr. Kai Markell, Office of Hawaiian Affairs (kaim@oha.org)
Mr. Brian Turner, Nation Trust for Historic Preservation (brian_turner@nthp.org)
Mr. Pat Phung, Federal Highways Administration, PJKK Federal Bldg., Box 50206, 300 Ala Moana Blvd., Honolulu, 96850