

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

December 14, 2018

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST APPROVAL TO RENEW A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE COUNTY OF HAWAII FOR THE PURPOSE OF MANAGEMENT OF THE ALA KAHAKAI NATIONAL HISTORIC TRAIL.

INFORMATION:

The U.S Congress, through legislation, designated the Ala Kahakai National Historic Trail (AKNHT) in the year 2000. This trail is to be administered by the National Park Service (NPS). The proposed 175-mile historic shoreline trail corridor traverses Hawaii Island from Upolu Point, along the western shoreline through the Kohala, Kona, Ka'u, and Puna Districts terminating at the Hawaii Volcanoes National Park's Puna boundary.

Ala Kahakai is the only National Historic Trail designation in Hawaii and one of the 19 National Historic Trail designations in the U.S. Other well-known National Historic Trails include; the Iditarod, the Pony Express, the Trail of Tears, Nez Perce and the Lewis and Clark Trail. The AKNHT is unique to the National Trail System in that the indigenous Hawaiian culture constructed portions of the proposed trail corridors in stone that are still widely used for daily coastal access, recreation and traditional and cultural experiences.

There are numerous proposed sections that traverse private land. In some instances, a trail or unimproved access road alignment may qualify as State owned under Chapter 264-1 HRS. In other locations, an easement or other form of access agreement must be negotiated for authorized public access and the AKNHT designation. For many of the proposed sections, abstract research is still being conducted to determine the disposition of various ancient and historic trails.

The NPS, with the State, County, community groups, and other interested private sector partners is working to conduct trail planning and to establish management capacity in collaboration with adjacent communities. This management is ideally with the participation of native Hawaiian and other families that have significant historic ties to the trail that also have an interest to assist in sustaining and managing associated trail segments. There are a variety of additional management

options where the trail traverses State and County lands. The Final Comprehensive Management (CMP) Plan for the ALKNT was published by the NPS in 2009. It established management guidelines needed to fulfill the preservation and public use goals.

Given the vast scope of this National Historic Trail project and the multiple jurisdictions, there is a critical need to clarify the respective roles of the Federal, State and County regulatory and management functions as they relate to the implementation and administration of the AKNHT. The MOU is intended to establish a coherent template to clarify the respective roles between NPS, the Department and County of Hawaii for implementation, management and future regulation of the AKNHT and appurtenant features.

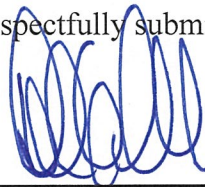
The MOU has been reviewed, commented on and revised as necessary by the appurtenant Department Divisions, legal staff of NPS, and the County of Hawaii.

RECOMMENDATIONS:

The Department recommends that the Board:

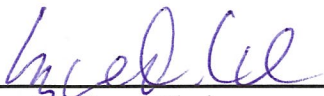
- 1 Approve that the Department may renew the Memorandum of Understanding with NPS and the County of Hawaii for the management of the AKNHT, subject to the Department of the Attorney General's approval.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit A:

Draft Memorandum of Understanding between the NPS, State of Hawaii, and the County of Hawaii for the implementation, management, protection and public use of Ala Kahakai National Historic Trail.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE NATIONAL PARK SERVICE,
UNITED STATES DEPARTMENT OF THE INTERIOR,
STATE OF HAWAII, AND
THE COUNTY OF HAWAII FOR
THE IMPLEMENTATION, MANAGEMENT, PROTECTION AND PUBLIC USE OF
ALA KAHAKAI NATIONAL HISTORIC TRAIL**

This Memorandum of Understanding ("MOU") is entered into, by and between the United States Department of the Interior National Park Service, ("NPS") the State of Hawaii, by its Department of Land and Natural Resources, ("DLNR") and the County of Hawaii ("County") for the purpose of managing the Ala Kahakai National Historic Trail (Trail).

ARTICLE I: BACKGROUND AND OBJECTIVES

WHEREAS, the State of Hawaii, the County of Hawaii, and the NPS have the authority to enter into Agreements that are mutually beneficial and in the interest of the public;

WHEREAS, the National Trails System Act of 1968, as amended, (Act) (16 USC 1244 (a) (22)) established the Trail and placed responsibility for administering the Trail with the NPS;

WHEREAS, the Trail is defined as a system of ancient and historic trails along with modern connecting trail segments including the coastal trails, interior lateral trails, and mauka-makai trails;

WHEREAS, the Trail Corridor is defined as a belt of land connecting the coast to the major roadway that circles the Island as illustrated in Exhibit A;

WHEREAS, SEC. 6 of the National Trail Systems Act of 1968 [16USC1245] allows for connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked by the appropriate Secretary as components of a national recreation, national scenic or national historic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent, or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowners. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary;

WHEREAS, only federal lands are to be administered as initial protection components of the Trail; but the Act authorizes the Secretary of the Interior to encourage and assist state, local, and private entities to manage and protect those segments of the Trail and associated resources that cross nonfederally-owned lands;

WHEREAS, the proposed approximately 175-mile long Trail traverses both federal, state, county, and private land and contains sensitive Hawaiian cultural and natural resources;

WHEREAS, these cultural and natural resources are exceptionally unique, rare and unparalleled compared to any other National Historic Trail in the United States, and require

careful coordination and commitment from the parties to this MOU and general public to insure their sustainability, particularly when exposed to extended public use over time;

WHEREAS, establishing the alignment(s) and effectuating the management, maintenance and regulation of activities along Trail is a complicated and long-term project;

WHEREAS, NPS, DLNR and the County have determined that it is necessary to establish a documented working relationship between the NPS and the Hawaii public agencies that have jurisdiction and legal responsibility for land along the Ala Kahakai NHT;

WHEREAS, DLNR and the County, the public agencies with jurisdiction over some areas of land where the Trail may traverse, support the concept of a properly protected and managed Trail for traditional and recreational access;

WHEREAS, DLNR has jurisdiction and/or ownership of various sections of historic trails that may comprise the Trail through the Divisions of Historic Preservation, Land, Office of Conservation and Coastal Lands, State Parks, Division of Boating and Ocean Recreation, and Forestry and Wildlife-Na Ala Hele Trail and Access Program and Natural Area Reserve System, and their respective applicable Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR);

WHEREAS, several major private landowners have conditions attached to SMA permits, zoning changes, subdivision approvals, or other land use permits administered by the County which require them to allow pedestrian access to and along the shoreline;

WHEREAS, some of these accesses may be suitable for incorporation into the Trail;

WHEREAS, the County continues to receive applications for land use changes from private landowners that may affect the Trail;

WHEREAS, it is essential to coordinate and clarify the jurisdictional, regulatory and management actions and fiduciary responsibilities between the Federal, State and County governments in relation to the management of the Trail to provide a seamless trail experience for the user;

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto desire to cooperate and mutually agree as follows:

ARTICLE II: AUTHORITY

- A. National Trails System Act of 1968, as amended ("the Act")(16 USC 1241-1252),
- B. Hawaii Revised Statutes (HRS) Chapters 6E, 171, 183C, 184, 198D, 205, 205A, and sections 46- 6.5, 226- 11, 264-1
- C. Hawaii Administrative Rules (HAR) Chapters 13- 130, 13-146, 13-221, 13-275 to 13-284, 13-300.
- D. Hawaii County Code, Chapters 25 and 34

ARTICLE III: STATEMENT OF WORK

- A. All of the parties mutually agree to meet, confer, consult, and plan together and to
1. Participate in implementing the Trail Comprehensive Management Plan (CMP) and to manage the Trail's resources as appropriate and feasible.
 2. Establish individual coordinators within each agency for Trail administration activities.
 3. Keep each other informed and consult periodically on management issues pertaining to the Trail.
 4. Collaborate on amendments or modification to this MOU, as needed, to further clarify the jurisdictional and working relationship between the three parties or any additional organizations or agencies.
 5. Work to develop a single set of guidelines regarding administration and management of the Ala Kahakai NHT to avoid inconsistency.
 6. Develop and implement a Programmatic Agreement in accordance with the Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800 .6(a) (C) and 800.14(b), and with the respective agencies to ensure appropriate identification and treatment of historic properties potentially affected by use and management of the Trail and to coordinate federal and state statutory and regulatory authorities regarding historic properties and burial sites.
 7. The parties are not obligated to commit resources or to participate in obtaining funds unless such commitments are a part of a specific, separate agreement. Parties can enter into specific agreements and working plans for implementation of individual projects, hiring of personnel, transfer of funds, purchasing of supplies, and other matters.
- B. NPS agrees to:
1. Act as the lead agency in coordinating activities associated with the implementation of the CMP and this MOU and with administration and management of the Trail.
 2. Review land use permit applications, environmental assessments and impact statements, and other reviews pertinent to the Trail, as requested by parties to this MOU.
 3. Produce and share among the parties Geographic Information System (GIS) maps documenting the historic trail and access data submitted by Na Ala Hele and others, including data generated by the NPS, provided that such information is used in compliance with the terms of the National Historic Preservation Act and the Archaeological Resources Protection Act of 1979.
 4. Subject to any information that may be protected by law, produce and share among parties any NPS data or documents related to cultural and natural resource documentation, planning, and monitoring of resources associated with the Trail.

5. Subject to federal law, cooperate with DLNR and the County in responding to legal issues associated with the Trail.
6. Subject to federal law, consider ways that NPS may be able to accept management responsibilities for state and county owned portions of the historic trail, and non-historic connector trails that become official parts of the Trail or for land owned by private entities that wish to participate in the Ala Kahakai NHT program.
7. Coordinate with the Hawaii Island Na Ala Hele Trail and Access Advisory Council on issues that pertain to the Trail.
8. Provide technical assistance and training regarding historic trail preservation and maintenance to State and County staff and community volunteers.
9. Collaborate with parties on the design of signs and interpretive media and provide technical interpretive assistance along the Trail.

C. DLNR agrees to:

1. Overall:

- a. Coordinate support from the pertinent Divisions and Programs of the department in the form of data sharing and technical expertise.
- b. Inform the Governor, Legislature, and Congress on issues that affect the Trail.
- c. Include the Trail in the review of Conservation District Use applications and other land use permits that affect lands likely to contain ancient and historic trails that might be included in the Trail.

2. Through the Historic Preservation Division (HP):

- a. Continue to provide NPS with historical and archaeological data from the HP database.
- b. Assist with the investigation and classification of unrecorded burial sites and historic properties.
- c. Provide regulatory oversight and guidance on issues associated with burial sites and historic properties.
- d. Provide NPS with opportunity to review and comment on projects requiring archaeological inventory surveys, preservation plans, or cultural impact assessments within the Trail corridor.

3. Through the Office of Conservation and Coastal Lands:

- a. Provide regulatory coordination where the Trail traverses Conservation District lands.

4. Through the Division of State Parks:

- a. Provide management of the Trail consistent with the NPS Comprehensive Management Plan where it traverses State Parks.
 - b. Collaborate on the design of signs and interpretive media and provide technical interpretive assistance along other sections of Trail not owned by State Parks.
5. Through the Land Division:
- a. Upon notification by NPS, allow NPS access to State Lands for the purpose of identifying and documenting existing ancient, historic and contemporary trail routes to be included in Trail design and interpretation; Research, survey, document and assess other cultural and natural resources for preservation, planning, interpretation, and the determination of future potential impacts.
 - b. Consider feasibility of permitting NPS led community based management of sections of the Trail within State Lands.
6. Through the Division of Forestry and Wildlife-Na Ala Hele Trail and Access Program and Natural Area Reserve System:
- a. Continue to provide abstract data that pertains to the Trail corridor.
 - b. Assist with the determination of alignments that qualify for recognition as part of the Trail or for conveyance to NPS.
 - c. Coordinate with the Hawaii Na Ala Hele Trail and Access Advisory Council on issues that pertain to the Trail.
 - d. Provide technical training on trail maintenance to NPS staff and community volunteers.
 - e. Provide input on the Trail management planning process.
 - f. Collaborate on the design of specific signage that identifies the route of the Trail on the ground and other signage, such as signs warning of specific dangerous natural conditions related to rockfall, flash floods, cliffs, and submerged hazards (excluding hazards related to the ocean).
 - g. Provide other pertinent technical information and staff support related to trail management and maintenance if it does not adversely affect other Na Ala Hele projects and existing staff work load.
 - h. Consider the feasibility of adding currently identified State-owned trail segments that traverse private property, with the consent of the landowner, to the Na Ala Hele Program and include these segments under Chapter 13-130, HAR.
 - i. Upon notification by NPS, allow access to Natural Area Reserve System lands within the Trail corridor for the purpose of identifying and documenting existing ancient,

historic and contemporary trail routes to be included in Trail design and interpretation; Research, survey, document and assess other cultural and natural resources for preservation, planning, interpretation, and the determination of future potential impacts.

7. Through the Division of Boating and Ocean Recreation

- a. Work with the Trail staff to determine the Trail route and management consistent with the NPS Comprehensive management Plan where it traverses Division of Boating and Ocean Recreation lands.
- b. Notify NPS on changes to the Trail and management of the Trail.

D. The appropriate County Departments agree to:

1. Through the County Planning Department:

- a. Continue to enforce county and state laws requiring public access to and along the shoreline as a condition of land use approvals and coastal zone management issues. These trails may become official components of the Trail.
- b. Require that permit applicants identify any historic trails and routes that will be required to be preserved as part of the land use permitting process and that may become part of the Trail. Such geospatial information and supplemental documentation shall be in formats utilizing current industry standards for collection, compilation, processing, analysis and archiving (including Federal Geographic Data Committee [FGDC] compliant metadata). This data and information may be made available by the County for incorporation into official Trail records and documentation.
- c. Encourage private landowners who have public access requirements as conditions of a land use approval to execute an agreement with the NPS to include these areas in the Trail, where appropriate.
- d. Work with the NPS to identify public access easements with potential incorporation in the Trail.
- e. Work with the NPS to develop a system whereby project applications determined to have potential impacts on historic trails within the Ala Kahakai corridor are sent to the Ala Kahakai NHT administration for review and comment. The notification system will provide approving agencies and applicants clear guidelines on when the Ala Kahakai NHT should be included in the review process. Such applications include Subdivisions, Special Management Area Assessments and Use Permits, Special Permits, Grading, Project Districts, Rezoning, State Land Use District Boundary Amendments, Leases of State-owned lands, Environmental Assessments, and Environmental Impact Statements. The County agrees to contact the NPS regarding these reviews in a timely manner.

2. Through the County Parks and Recreation Department

- a. Upon notification by NPS, allow NPS access to County Beach Parks for the purpose of identifying and documenting existing ancient, historic and contemporary trail routes to be included in Trail design and interpretation; Research, survey, document and assess other cultural and natural resources for preservation, planning, interpretation, and the determination of future potential impacts.
 - b. Work with the NPS to identify trail segments through county parks for incorporation into the Trail.
 - c. Consider feasibility of permitting NPS led community based management of sections of the Trail within County Beach Parks.
 - d. Provide management of the Trail consistent with the NPS Comprehensive Management Plan where it traverses County Beach Parks.
 - e. Collaborate on the design of specific signage that identifies the route of the Trail, particularly where it traverses County Beach Parks.
3. Through the County Department of Finance – Property Management Division
- a. Upon notification by NPS, allow NPS access to County lands purchased through Public Access, Open Space and Natural Resources Preservation Commission (PONC) for the purpose of identifying and documenting existing ancient, historic and contemporary trail routes to be included in Trail design and interpretation; Research, survey, document and assess other cultural and natural resources for preservation, planning, interpretation, and the determination of future potential impacts.
 - b. Work with the NPS to identify trail segments through County PONC Lands for incorporation into the Trail.
 - c. Consider feasibility of permitting NPS led community based management of sections of the Trail within County PONC Lands.
 - d. Collaborate on the design of specific signage that identifies the route of the Trail, particularly where it traverses County PONC Lands.
 - e. Provide management of the Trail consistent with the NPS Comprehensive Management Plan where it traverses County PONC Lands.

ARTICLE IV: TERM OF MOU

This MOU will remain in effect for ten years, beginning on the date of the last signature below. A meeting at five years from the date of the last signature will be conducted to consider whether any of the terms of this agreement need to be updated or amended. This MOU may be renewed upon mutual agreement between the Parties.

ARTICLE V: KEY OFFICIALS

A. Key officials are essential to ensure maximum coordination and communication between the parties and the work being performed. They are:

For the NPS

Aric Arakaki, Superintendent
Ala Kahakai National Historic Trail
73-4786 Kanalani Street, #14
Kailua-Kona, HI 96740
Telephone: (808) 326-6012
e-mail: aric_arakaki@nps.gov

For DLNR

Mike Millay Statewide Na Ala Hele Program Manager
Department of Land and Natural Resources
1151 Punchbowl Street, Kalanimoku Building
Honolulu, HI 96813
Telephone: (808) 587-4175
e-mail: michael.v.millay@hawaii.gov

For the County

Michael Yee,
Planning Director
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720
Telephone: (808) 961-8288
e-mail: planning@hawaiicounty.gov

Roxcie Waltjen
Director of Parks and Recreation
Aupuni Center
101 Pauahi Street, Suite 6
Hilo, HI 96720
Telephone: (808) 961-8311
e-mail: parks_recreation@hawaiicounty.gov

Deanna Sako
Director of Department Of Finance
25 Aupuni Street, Suite 2103
Hilo, HI 96720
Telephone: (808) 961-8234
e-mail: Deanna.Sako@hawaiicounty.gov

ARTICLE VI: MODIFICATION AND TERMINATION

Upon mutual consent of the parties, this MOU may be modified or amended as necessary to clarify roles, management obligations, regulatory functions, or any other purpose necessary to further the administration of the Trail.

Modifications or amendments to this MOU may be proposed by any Party and shall become effective upon written approval by all parties.

This MOU may be terminated upon 60 days advance written notice given by one of the parties to the others, or it may be terminated earlier by mutual consent of all Parties.

ARTICLE VII: STANDARD CLAUSES

- A. Non-Discrimination – All activities pursuant to this MOU shall be in compliance with the requirements of *Executive Order 11246*, as amended; *Title VI of the Civil Rights Act of 1964*, as amended (78 Stat. 252; 42 U.S.C. §§2000d et seq.); *Title V, Section 504 of the Rehabilitation Act of 1973*, as amended, (87 Stat. 394; 29 U.S.C. §794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S.C. §§6101g seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- B. Lobbying Prohibition – 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by *Public Law 107-273*, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication where prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.
- C. Anti-Deficiency Act – 31 U.S.C. §1341 - Nothing contained in this MOU shall be construed as binding the NPS to expending in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriation.
- D. Publications and Reports – Neither party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to this MOU may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contribution to the publication.

- E. Endorsements – Neither party will publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, still and motion pictures, articles, manuscripts or other publications) which states or implies the other party’s endorsement of a product, service, or position related to this MOU or otherwise without prior written approval.
- F. Communications – Each party will obtain prior approval for any public information release which refers to the other party, their employees, agents, and/or contractors in connection with this MOU. The specific text, layout, photographs, etc., of the proposed release will be submitted for approval to Key Contacts identify in Article VIII. Neither party will use the other party’s logos, emblems, or other intellectual property or Copyright material without prior approval.

Approved as to Form:

For the State of Hawaii Department of Land and Natural Resources

Deputy Attorney General

Date

For the County of Hawaii

Deputy Corporation Counsel

Date

Approved:

For the National Park Service

Katariina Tuovinen,
Deputy Regional Director, Pacific West Region

Date

Aric Arakaki
Superintendent, Ala Kahakai National Historic Trail

Date

For the State of Hawaii Department of Land and Natural Resources

Suzanne Case
Chairperson, Board of Land and Natural Resources

Date

For the County of Hawaii Planning Department

Michael Yee
Planning Director

Date

For the County of Hawaii Parks and Recreation Department

Roxcie Waltjen
Director of Parks and Recreation

Date

For the County of Hawaii Department of Finance

Deanna Sako
Director of Department of Finance

Date

For the County of Hawaii

Harry Kim
Mayor of Hawaii County

Date

For the State of Hawaii

David Y. Ige
Governor

Date

DRAFT

Ala Kahakai National Historic Trail Corridor



Exhibit A