

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES ARMY GARRISON HAWAII,
THE ARMY MORALE, WELFARE, RECREATION PROGRAM,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING
OPERATION, MAINTENANCE, AND MODERNIZATION PROJECTS
AT PILILAAU ARMY RECREATION CENTER, WAIANAE, ISLAND OF O’AHU, HAWAII**

WHEREAS, The United States Army Garrison Hawaii (USAG-HI) proposes to coordinate and administer an ongoing program of modernization projects, and routine maintenance and operations, at Piliilaa Army Recreation Center (PARC); and

WHEREAS, PARC, a federally owned and Morale, Welfare, Recreation (MWR) operated facility, plans to carry out modernization projects and routine maintenance and operations, thereby making the projects undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, pursuant to Army Regulation 200-1 6-4d.(1), *Environmental Protection and Enhancement*, the Department of the Army has designated the Garrison Commander to serve as the agency official responsible for compliance with the requirements of Section 106 of NHPA; and

WHEREAS, USAG-HI operates a cultural resources program with a qualified staff of specialists to ensure compliance with applicable laws and regulations; and

WHEREAS, the term “historic properties” includes those prehistoric or historic districts, sites, buildings, structures or objects included in, or eligible for inclusion on the National Register of Historic Places (NRHP), including properties of traditional religious and cultural importance to Native Hawaiian Organizations (NHOs) that meet the National Register Criteria; and

WHEREAS, the area of potential effect (APE) for this Programmatic Agreement (PA) consists of the boundary of PARC; and

WHEREAS, the entirety of PARC has been surveyed for historic properties and numerous archeological investigations indicate that in some areas there is a high probability of intact cultural deposits; and

WHEREAS, one NRHP eligible property (archaeological site # 50-80-07-3998 [-3998]) has been identified within the APE, as documented in Appendix A; and

WHEREAS, properties at PARC that have been determined ineligible for the NRHP in consultation with the Hawaii State Historic Preservation Officer (SHPO) and properties under 50 years old, not considered to be historic properties, are listed in Appendix B; and

WHEREAS, pursuant to consultation conducted under 36 CFR § 800.14(b), the Signatories and Consulting Parties have developed this PA in order to establish an efficient and effective program alternative for taking into account the effects on the historic property resulting from modernization projects and routine maintenance and operations at PARC; and

WHEREAS, undertakings excluded from further Section 106 consultation with SHPO, that may be implemented under this PA are described in Appendix C and include modernization projects and routine maintenance and operations at PARC; and

WHEREAS, USAG-HI shall develop Archaeological Guidelines to guide modernization projects and routine maintenance and operations at PARC; and

WHEREAS, the NHPA (54 U.S.C. § 300314) defines NHOs as “any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians”; and

WHEREAS, USAG-HI recognizes the U.S. Department of Defense Instruction *Consultation Policy with Native Hawaiian Organizations* (DODI 4710.03) and Advisory Council on Historic Preservation *Handbook on Consultation with Native Hawaiian Organizations* as their guiding principles for consulting with NHOs; and

WHEREAS, USAG-HI acknowledges that NHOs possess special expertise in assessing the eligibility of properties to which they attach religious and cultural significance; and

WHEREAS, USAG-HI has consulted with the Office of Hawaiian Affairs (OHA) and other NHOs listed in Appendix D that may attach religious and cultural significance to certain properties at PARC; and

WHEREAS, USAG-HI has invited representatives of local governments, the Historic Hawaii Foundation and other interested parties to consult regarding the effects of the undertaking on historic properties and they **have or / have not** participated in consultation; and

WHEREAS, USAG-HI has provided information on this PA to the public, elected officials, and community leaders; and has posted project-related documents and information on the USAG-HI website; and has sought public comment and input; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), USAG-HI has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effects determination and ACHP is participating in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, USAG-HI, MWR, SHPO, and ACHP agree that the undertakings shall be implemented in accordance with the following stipulations in order to take into account potential effect of the undertakings on historic properties.

STIPULATIONS

USAG-HI Garrison Commander (GC) shall ensure that the following stipulations are implemented.

I. GENERAL

- A.** The USAG-HI Cultural Resource Manager (CRM) is responsible for operational administration of the terms of this PA.
- B.** The USAG-HI Cultural Resources personnel shall meet the professional qualification standards established by the Office of Personnel Management for their respective disciplines in accordance with Section 112 of the NHPA (54 USC §306131).
- C.** The USAG-HI CRM shall ensure that individuals contracted to perform cultural resource management duties shall work under the direction of someone qualified under the Secretary of the Interior's standards for the tasks appointed to them.
- D.** To the extent feasible and prudent, USAG-HI and MWR shall make reasonable and good faith efforts during planning stages to avoid adversely affecting historic properties eligible for or listed on the NRHP. USAG-HI shall give preference to practical alternatives available for accomplishing USAG-HI's mission related needs that allow historic properties to not be adversely affected.
- E.** The GC shall ensure that Garrison project planning documents for PARC are analyzed by the CRM to identify undertakings during revisions, changes, or when a new planning document is developed. Project planning documents for PARC, shall include, but are not limited to, the Master Plan, military construction plans, tenant activities, renovation and demolition plans, Installation Design Guide, and dig permit requests.
- F.** The GC shall ensure that all relevant offices at USAG-HI are informed of the requirements pursuant to this PA.

II. PROJECT REVIEW PROCESS

A. Determine the Undertaking

- 1. The CRM shall determine if the proposed project is an undertaking as defined in 36 CFR § 800.16(y).
 - a. If the CRM determines the proposed project is the type activity that has no potential to cause effects on historic properties, assuming they are present, as defined in 36 CFR § 800.3(a)(1), the CRM shall document this determination for inclusion in the Annual Report, and USAG-HI has no further obligations under this stipulation.
 - b. If the CRM determines the proposed project is an activity with the potential to cause effects on historic properties, assuming they are present, the CRM shall continue project review process.

2. The CRM shall determine if the undertaking is an activity excluded from further Section 106 consultation as listed in Appendix C.
 - a. If the CRM determines the undertaking is an excluded activity listed in Appendix C, the CRM shall document this determination for inclusion in the Annual Report, and USAG-HI has no further obligations under this stipulation.
 - b. If the CRM determines the undertaking is not an excluded activity listed in Appendix C, the CRM shall continue the project review process.

B. Define the Area of Potential Effects and Identify Historic Properties

1. The CRM shall determine and document the undertaking's APE taking into account direct, indirect, and cumulative effects as defined in 36 CFR § 800.16(d).
2. Determine whether historic properties are present in the project APE as defined in 36 CFR § 800.16(l)(1).
 - a. If the CRM does not identify historic properties within the APE or there are historic properties present but the undertaking will have no effect upon them, the CRM shall document a determination of "No Historic Properties Affected" as defined in 36 CFR § 800.4(d)(1) for inclusion in the Annual Report; and USAG-HI has no further obligations under this stipulation.
 - b. If the CRM identifies historic properties that may be directly, indirectly, or cumulatively affected within the APE, the CRM shall continue project review process.

C. Evaluate Effects of the Undertaking

1. The CRM shall assess the effects of the proposed undertaking, to include direct, indirect, and cumulative effects, on historic properties using the criteria of adverse effects 36 CFR § 800.5(a)(1) and will make one of the following determinations:
 - a. "No Adverse Effect to Historic Properties": if the CRM determines that historic properties present in the APE but the undertaking will have no effect upon them or the undertaking has been modified or conditions are imposed to avoid adverse effects, the CRM shall document this determination for those undertakings for inclusion in the Annual Report and document that determination in accordance with 36 CFR § 800.11. USAG-HI has no further obligations under this stipulation.
 - b. "Adverse Effect to Historic Properties": if it is determined that historic properties present in the APE may be adversely affected by the undertaking, the CRM shall:

- (1) Notify the Signatories and Consulting Parties that USAG-HI and MWR will resolve the adverse effects through the implementation of the programmatic mitigation treatments described in Stipulation III.B.
 - (2) Document this determination for inclusion in the Annual Report.
- c. If there are properties needing evaluation (e.g. buildings at 45 years or older) present at PARC, the CRM will evaluate the properties for eligibility to the NRHP and will forward documentation supporting the evaluations to SHPO for review and concurrence.
- (1) The SHPO shall be afforded 30 calendar days to respond to the USAG-HI's determination of eligibility.
 - (2) No reply in 30 calendar days from the SHPO will be understood as agreement with USAG-HI's determination of eligibility.
 - (3) If USAG-HI and the SHPO agree that the properties in the APE are not eligible for inclusion on the NRHP, the CRM shall document this determination for inclusion in the Annual Report.
 - (4) If USAG-HI and the SHPO do not agree on determination of eligibility, the CRM will either resolve the disagreement through further consultation with SHPO or will consult the Keeper of the National Register pursuant to 36 CFR Part 63.4.

III. PROGRAMMATIC RESOLUTION OF ADVERSE EFFECTS

D. Identify Avoidance and Minimization Measures

1. The CRM shall identify and propose avoidance measures to avoid adverse effect in accordance with Stipulation I.D. If avoidance measures are agreed to in writing by the proponent the project may proceed under Stipulation II.C.1.b. Avoidance measures may include but are not limited to:
 - a. Relocate the area of potential effect for the undertaking or portion of undertaking that has the potential for adverse effect.
 - b. Reduce the scope of the undertaking to avoid an adverse effect by either not triggering a cumulative adverse effect or eliminating effects that are destructive to historic properties or character-defining features.
 - c. Design new construction to be compatible with associated historic properties and easily reversible without damage to those properties, in accordance compliance with the Secretary of Interior's Standards and Guidelines for Treatment of Historic Properties.

- d. Introduce buffers that create a visual screen or spatial separation between the new construction and historic properties.
2. If avoidance measures are unachievable the project proponent will abide by the most appropriate minimization measure(s), identified by the CRM, developed in consultation with Signatories and Consulting Parties identified in Appendix D:
 - a. Archeological monitoring for ground disturbing activities in accordance with the Archeological Guidelines on file with USAG-HI cultural resources.
 - b. Cultural Advisors if required in accordance with the adopted Native American Graves Protection and Repatriation Act comprehensive agreement or plan of action.
 - c. Archaeological testing to identify human remains or archaeological artifacts and features associated with the character defining features of Site -3998 at PARC in order to avoid or minimize adverse effects to the extent possible as specified in the Archeological Guidelines on file with USAG-HI cultural resources.

E. Programmatic Mitigation Treatments

1. The following mitigation treatments have been identified as appropriate and in consultation with Signatories and Consulting Parties identified in Appendix D. One or more of the identified mitigation treatments may be implemented over the duration of the PA in order to mitigate adverse effects to historic property(ies).
 - a. Data recovery at the archaeological site guided by a formal recovery plan.
 - b. Install and maintain signage (indoor / outdoor) consisting of sails or interpretive panels / boards identifying native plants, PARC history, petroglyphs, and / or Waianae coast history.
 - c. Name cabins after native plants and offer a guest directory with educational information describing Hawaiian names of plants and traditional uses.
 - d. Decorate cabins with historical photographs of PARC, Waianae, and / or the petroglyphs.
 - e. Install an educational display area in the Lobby at PARC Administration building. As feasible, install rotating (every other year) educational displays, artifacts, memorabilia, and/or Herbert Pililaau video.
 - f. Offer 1 yearly community day / event / open house at PARC.

- g. USAG-HI cultural resources program shall conduct yearly cultural awareness training for employees and tenants at PARC.
- h. USAG-HI cultural resources program shall conduct cultural awareness training for construction personnel before working at PARC.
- i. Ensure access to culturally significant memorials and educational lobby display to the local community as gate access allows (this means that as long as there are no restrictions on the FPCON or other limiting factors).

IV. EMERGENCY SITUATIONS

- A.** If an emergency situation in PARC, as defined in 36 CFR § 800.12, creates a threat to life or property and precludes project review under Stipulation II of this agreement, the CRM shall notify the Signatories and Consulting Parties identified in Appendix D of the emergency situation as soon as possible, no later than the next business day.
- B.** All rescue and salvage operations necessary to preserve life or property may be conducted immediately.
- C.** USAG-HI shall make reasonable and prudent efforts in coordination with the CRM to avoid or minimize effects to historic properties during the implementation of emergency response actions.
- D.** If the nature of the emergency situation allows for such coordination, the SHPO and Consulting Parties identified in Appendix D may provide advice or assistance to the USAG-HI within seven (7) calendar days from notification of the emergency.
- E.** Within 30 calendar days of resolution of the emergency situation, USAG-HI shall submit a report to Signatories and Consulting Parties identified in Appendix D documenting the emergency situation, the actions taken, and any historic properties or potential historic properties affected. Emergency situations shall also be included in the report described in Stipulation VI.E.7.e.

V. UNANTICIPATED DISCOVERIES

- A.** If potential historic properties that the CRM evaluates as not a component of site -3998 (e.g. architectural remnants of previous military construction) are discovered or unanticipated effects on historic properties are found, project-related ground disturbance will cease within 5 meters (m) in all directions of the discovery, with the exception of archaeological documentation.
- B.** The CRM shall investigate and determine if the discovery can be appropriately managed in accordance with the Archaeological Guidelines and if so, shall document this determination for inclusion in the Annual Report; and USAG-HI has no further obligations under this stipulation.

- C. If the CRM determines that the Archaeological Guidelines are not applicable or appropriate to the nature of the discovery, the CRM shall notify the Signatories and Consulting parties by email or letter and propose a course of action. Signatories and Consulting Parties shall have 15 calendar days to comment on the proposed course of action. The USAG-HI GC shall take all timely comments into account, decide on the course of action, and notify SHPO and consulting parties of the decision.
- D. If the discovery includes Native Hawaiian human skeletal remains funerary objects, sacred objects, or objects of cultural patrimony and is located on land owned or controlled by the U.S. Army, USAG-HI shall immediately protect the remains from damage and exposure to the elements and implement the inadvertent discovery regulations of the Native American Graves Protection and Repatriation Act (25 U.S.C. § 32), as specified in 43 CFR § 10.4 or the comprehensive agreement if applicable.

VI. ADMINISTRATIVE STIPULATIONS

A. Duration

1. This PA will be valid for 15 years from the date of its execution, which is the date signed by the ACHP.
2. Prior to expiration of the PA, the Signatories and Consulting Parties may consult to reconsider or renew the terms of the PA and amend it in accordance with Stipulation VI. B.
3. No extensions or modifications will be effective unless all Signatories have agreed in writing.

B. Amendments

1. Any Signatory may propose an amendment to this PA by providing written notification of a proposed amendment to the other Signatories. The notice must provide an explanation of the proposed amendment and a justification of the need for such an amendment.
2. USAG-HI shall notify Consulting Parties identified in Appendix D about any amendments proposed by the Signatories. USAG-HI shall request that Consulting Parties provide input, if any, on the proposed amendment within 30 calendar days of notification, including whether they may feel a consultation meeting is appropriate for consideration of the proposed amendment.
3. A formal amendment to the PA is not required to update appendices. The process for updating appendices is specified in Stipulation VII.
4. USAG-HI will maintain the most current version of the PA and appendices and will provide them to the SHPO and Consulting Parties identified in Appendix D upon request.

5. USAG-HI shall make a version of the PA publically available on the USAG-HI website without historic property location maps and other sensitive information. Information about the nature and location of historic properties, including potential historic properties and properties of traditional religious and cultural importance, shall be protected in accordance with Section 304 of the National Historic Preservation Act and Section 9 of the Archaeological Resources Protection Act as appropriate.

C. Dispute Resolution

1. Should any Signatory object at any time to the manner in which the terms of this PA are implemented, USAG-HI shall consult with such party to resolve the objection. If the GC determines that such objection cannot be resolved, the USAG-HI shall:
 - a. Forward all documentation relevant to the dispute, including USAG-HI's proposed resolution, to ACHP. ACHP shall provide USAG-HI with its advice on the resolution of the objection within 30 calendar days of receiving documentation. Prior to reaching a final decision on the dispute, USAG-HI shall prepare a written response that takes into account previous input from Signatories, any timely advice or comments regarding the dispute from ACHP, and provide all parties with a copy of this written response. USAG-HI will then proceed according to its final decision.
 - b. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, USAG-HI may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USAG-HI shall prepare a written response that takes into account any comments regarding the dispute from the Signatories, and provide all parties with a copy of such written response.
 - c. USAG-HI's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

D. Termination

1. If any Signatory to this PA determines that its terms will not or cannot be carried out, the party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation VI.B. If within 30 calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the PA. The PA will terminate 30 calendar days after written notification to the other Signatories.
2. Should consultation fail and the PA be terminated, USAG-HI shall either:
 - a. Comply with 36 CFR Part 800 subpart B with regard to each undertaking; or
 - b. Execute a Memorandum of Agreement pursuant to 36 CFR § 800.6; or

- c. Request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7.
3. USAG-HI shall notify the Signatories as to the course of action it will pursue.

E. Reporting and Annual Review

1. The CRM shall confirm that USAG-HI's archaeological records are updated to ensure the accuracy of USAG-HI's cultural resource information. If additional information is identified during the implementation of modernization projects and routine maintenance and operations at PARC USAG-HI shall ensure the cultural resource's library, archives, and maps will be updated as new information is acquired.
2. USAG-HI shall provide the Signatories and Consulting Parties, identified in Appendix D, with an annual report on or before February 29 of each year summarizing activities carried out under the terms of this PA.
3. Distribution to Signatories and Consulting Parties may occur by mail, in person, or electronically via email, file transfer, or other means.
4. USAG-HI shall ensure that the annual report is available for public inspection, that interested members of the public are made aware of its availability, and invited to provide comments to USAG-HI, the SHPO, and the ACHP (with the exception of any maps and information with locational and site type information regarding archaeological sites).
5. The Signatories and Consulting Parties to this PA shall review the annual report to recommend revisions or amendments to the PA.
6. The annual report shall address applicable reviews, actions, and other issues over the reporting year, including but not limited to:
 - a. A list of undertakings in which no further consultation was required;
 - b. A list of undertakings in which no historic properties were present, affected, or adversely affected;
 - c. A list of undertakings in which avoidance and minimization measures were implemented to resolve adverse effects;
 - d. A list of undertakings in which programmatic mitigation treatments were implemented to resolve adverse effects;
 - e. A list of unanticipated discoveries or emergency situations and the outcomes;
 - f. USAG-HI's identification of completed or proposed PA amendments or appendix updates;

- g. Updated maps to the PA shall include newly identified historic properties and determinations of eligibilities;
 - h. Any issues that are affecting or may affect the ability of the USAG-HI or MWR to meet the terms of the PA, including any deviations from the PA;
 - i. Summarize the efforts to complete the programmatic mitigation treatments listed in Stipulation III.B.
7. USAG-HI shall host a regular meeting with Signatories and Consulting Parties identified in Appendix H to review the implementation and terms of the PA.
- a. The meeting shall occur annually for (5) years after execution of the PA. During the fourth annual meeting, the parties shall consult to determine the appropriate timeframe for subsequent meetings;
 - b. Each meeting shall occur no earlier than 30 calendar days after distributing the annual report; and
 - c. USAG-HI shall document and distribute meeting notes within 30 calendar days after each meeting.

H. ANTI-DEFICIENCY ACT COMPLIANCE

The stipulations of this PA are subject to the provisions of the Anti-Deficiency Act (31 USC § 1341). If compliance with the Anti-Deficiency Act alters or impairs USAG-HI's ability to implement the stipulations of this PA, USAG-HI will consult in accordance with the amendment and termination procedures per Stipulations VI.B and VI.D.

VII. APPENDICES

A. The following appendices are incorporated with this agreement:

Appendix A – Determination of Eligibility of Site 50-80-07-3998
 Appendix B – Determination of Eligibility of Constructed Properties at PARC
 Appendix C – Exempted Undertakings
 Appendix D – Consulting Parties

B. Appendices may be updated without formal amendment to this agreement.

1. USAG-HI shall, on a quarterly basis, assess the need to update appendices A and B with applicable information about surveys and historic properties based on report reviews completed per Stipulation II.B.1 in the previous quarter.
2. USAG-HI shall distribute the updated appendix to all Signatories and Consulting Parties identified in Appendix D.
3. USAG-HI shall maintain a list of appendix updates to track changes over time and ensure that the most current appendices are available to Signatories and Consulting Parties at their request.

Execution of this PA by USAG-HI, MWR, and SHPO, and the ACHP and implementation of its terms evidences that USAG-HI has taken into account the effects of an ongoing program of modernization projects and routine maintenance and operations and afforded the ACHP an opportunity to comment.