

**PRE-FINAL 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  
ROUTINE OPERATION, MAINTENANCE, AND MODERNIZATION PROJECTS  
AT PILILAAU (PILILĀ'AU) ARMY RECREATION CENTER, WAI'ANAE, ISLAND OF O'AHU,  
HAWAI'I**

**WHEREAS**, The United States Army Garrison Hawaii (USAG-HI) proposes to coordinate and administer an ongoing program of routine operation, maintenance, and modernization projects at Pililaaau (Pililā'au) Army Recreation Center (PARC); and

**WHEREAS**, PARC, operated by Army Morale, Welfare, Recreation (MWR), is a federally owned facility on land managed by the USAG-HI thereby making modernization projects and routine maintenance and operations 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**, proponents for routine operation, maintenance, and modernization projects include, but are not limited to, USAG-HI and MWR; and

**WHEREAS**, routine operation, maintenance, and modernization projects include, but are not limited to, existing and new PARC buildings and pavilions, infrastructure, utilities, landscaping, roads, sidewalks, and lifeguard facilities; and

**WHEREAS**, the replacement of below ground surface portions of the seawall is beyond the scope of routine operation, maintenance, and modernization projects, and shall subject to the standard NHPA Section 106 review;

**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 to ensure compliance with applicable laws and regulations; and

**WHEREAS**, the term "historic properties" includes prehistoric or historic districts, sites, buildings, structures or objects included on, 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 NRHP Criteria; and

**WHEREAS**, the area of potential effects (APE) for this Programmatic Agreement (PA) consists of the boundary of PARC, as documented in Appendix A; and

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

**WHEREAS**, one historic property (State Inventory of Historic Places # 50-80-07-3998 [-3998]), determined eligible for inclusion on the NRHP in consultation with consulting parties and the Hawaii State Historic Preservation Officer (SHPO), has been identified within the APE, as documented in Appendix A; and

**WHEREAS**, properties at PARC that have been determined ineligible for inclusion on the NRHP in consultation with the SHPO and properties under 50 years old are listed in Appendix B; and

**WHEREAS**, undertakings that would have no effect on historic properties are excluded from further Section 106 consultation and may be implemented under this PA are described in Appendix C; and

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

**WHEREAS**, USAG-HI shall develop Archaeological Guidelines, as part this PA (Appendix E), to minimize and mitigate adverse effects to historic properties during routine operation, maintenance, and modernization projects. Signatories and Consulting Parties identified in Appendix D shall have 15 calendar days for review after this PA is executed; 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 provided information on this undertaking and development of this PA to interested parties, the public, elected officials, and community leaders; and has posted PA 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 finding of adverse effect and the 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 projects shall be implemented in accordance with the following stipulations in order to take into account potential effects 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's Directorate of Public Works (DPW), Environmental Division (ENV), Cultural Resources Section (CRS) 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 U.S.C. §306131).
- C.** The USAG-HI shall provide Archaeological Guidelines to the SHPO and Consulting Parties identified in Appendix D, for review and comment within fifteen (15) calendar days of execution of this agreement. The Archaeological Guidelines shall describe procedures to be conducted during archaeological testing and archaeological monitoring. USAG-HI shall consider comments before finalizing the document. USAG-HI shall distribute the final Archaeological Guidelines to the SHPO and Consulting Parties identified in Appendix D, including a response to comments and with a rationale for how each comment was, or was not, incorporated into the document.
- D.** The USAG-HI CRM shall ensure that individuals contracted to perform cultural resource management duties shall work under the direction of someone who meets the Secretary of the Interior's qualification standards for the tasks appointed to them.
- E.** USAG-HI's preference is to avoid adverse effects to historic properties whenever feasible. This will be accomplished through measures to avoid and minimize specified in Stipulation III.A
- F.** 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.
- G.** The GC shall ensure that all relevant offices at USAG-HI are informed of the requirements pursuant to this PA.
- H.** USAG-HI has developed procedures to take into account historic properties during operations when responding to emergencies as specified in Stipulation IV.
- I.** USAG-HI will communicate with Signatories and Consulting Parties identified in Appendix D, via email. Hardcopies will be mailed as requested.

## 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. The CRM shall determine whether historic properties are present in the undertaking's APE as defined in 36 CFR § 800.16(l)(1).
  - a. If the CRM identifies 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 are 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 inclusion in the Annual Report and document the 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, as stated in Stipulation I.I, the Signatories and Consulting Parties identified in Appendix D, and 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 at PARC needing evaluation (e.g. buildings at 50 years or older) the CRM will evaluate the properties for eligibility to the NRHP and will forward documentation supporting the evaluations to the SHPO and Consulting Parties identified in Appendix D for review.
    - (1) The SHPO shall be afforded 30 calendar days to respond to the USAG-HI's determination of eligibility.
    - (2) If the SHPO fails to respond in 30 calendar days of receipt per CFR § 800.3(c)(4) USAG-HI will move forward to the next step and the CRM shall document the determination for inclusion in the Annual Report.
    - (3) If USAG-HI and the SHPO agree on determination of eligibility, 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 the SHPO or will consult the Keeper of the National Register pursuant to 36 CFR Part 63.4 and the CRM shall document this determination for inclusion in the Annual Report.

### **III. PROGRAMMATIC RESOLUTION OF ADVERSE EFFECTS**

#### **A. Identify Avoidance and Minimization Measures**

1. The CRM shall select and propose measures to the project proponent to avoid adverse effects in accordance with Stipulation I.E. If the proponent implements avoidance measures the undertaking may proceed under Stipulation II.C.1.a. The avoidance measures listed below were developed in consultation with Signatories and Consulting Parties identified in Appendix D:
  - a. Relocate the APE 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 adverse effects or eliminating effects that are destructive to historic properties or character-defining features.
  - c. Introduce buffers that create a visual screen or spatial separation between the undertaking and historic properties.
2. If avoidance measures are unachievable USAG-HI and MRW shall abide by the most appropriate minimization measure(s), selected by the CRM. The minimization measures listed below were 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.
  - b. Cultural Advisors for ground disturbing activities in the event that human remains are encountered.
  - c. Archeological 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.

#### **B. Programmatic Mitigation Treatments**

1. The following mitigation treatments have been identified as appropriate in consultation with Signatories and Consulting Parties identified in Appendix D. One or more of the identified mitigation treatments shall be implemented by MWR and / or USAG-HI over the duration of the PA in order to mitigate adverse effects to historic properties. Responsible parties for each mitigation are identified at each mitigation treatment.
  - a. USAG-HI: Data recovery of archaeological features when encountered, guided by the Archeological Guidelines.
  - b. MWR: 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. MWR: Name cabins after native plants and offer a guest directory with educational information describing Hawaiian names of plants and traditional uses.
- d. MWR: Decorate cabins with historical photographs of PARC, Waianae, and / or the petroglyphs.
- e. MWR: 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 Piliā'au video.
- f. MWR: Offer 1 yearly community day / event / open house at PARC.
- g. MWR and USAG-HI: shall work in coordination on the development of PARC specific cultural awareness training and the CRM shall provide a draft outline to the SHPO and Consulting Parties identified in Appendix D for a 30 calendar day review period before finalizing the training.
- h. MWR: Conduct yearly cultural awareness training for employees and tenants at PARC.
- i. USAG-HI: Conduct cultural awareness training and as needed for construction personnel before working at PARC.
- j. MWR: 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 Force Protection Condition status 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 by email of the emergency situation as soon as possible.
- 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 investigation.
- 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 identified in Appendix D, as stated in Stipulation I.I, of the proposed course of action. Signatories and Consulting Parties identified in Appendix D, shall have 15 calendar days to comment. The USAG-HI GC shall take all timely comments into account, decide on the course of action, and notify the Signatories and Consulting Parties identified in Appendix D, 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 plan of action / 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 identified in Appendix D, 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. Consulting Parties identified in Appendix D, may provide input 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 Signatories 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 the ACHP. The 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 the 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 routine operation, maintenance, and modernization projects 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 shall occur as stated in Stipulation I.I.
4. USAG-HI shall ensure that the annual report is publically available on the USAG-HI website (with the exception of any maps and information with locational and site type information regarding archaeological sites).
5. The Signatories and Consulting Parties, identified in Appendix D, to this PA may 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. A list of completed or proposed PA amendments or appendix updates;
  - g. Updated maps to the PA shall include newly identified historic properties;
  - 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 D, 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 Signatories and Consulting Parties identified in Appendix D, 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 – List of Constructed Properties at PARC
- Appendix C – Excluded 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 identified in Appendix D, 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 routine operation, maintenance, and modernization projects and afforded the ACHP an opportunity to comment.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

**SIGNATORIES:**

**U.S. Army Garrison, Hawaii**

\_\_\_\_\_ Date: \_\_\_\_\_  
Colonel Daniel Misigoy, U.S. Army, Commanding

**U.S. Army Family and Morale, Welfare and Recreation**

\_\_\_\_\_ Date: \_\_\_\_\_  
Ms. Lori King, Director of Family and Morale, Welfare and Recreation

**Hawaii State Historic Preservation Officer**

\_\_\_\_\_ Date: \_\_\_\_\_  
Ms. Suzanne D. Case, Chairperson, Department of Land and Natural Resources

**Advisory Council on Historic Preservation**

\_\_\_\_\_ Date: \_\_\_\_\_  
Mr. Reid Nelson, Executive Director