

**MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES ARMY GARRISON, HAWAII
AND THE
HAWAII STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE HIGH MAST LIGHTING PROJECT AND THE
INTERSECTION REPAIR PROJECT AT KĀLIA ROAD AND MALUHIA ROAD,
WITHIN FORT DERUSSY MILITARY RESERVATION, O‘AHU, HAWAII**

WHEREAS, United States Army Garrison-Hawaii (USAG-HI) plans to authorize or carry out two repair and maintenance projects at Fort DeRussy Military Reservation (the undertakings); and

WHEREAS, the undertakings include improving the intersection at Kālia and Maluhia Roads, and repairing the high mast lighting system by removing existing light poles and wires and installing new light poles and wires; and

WHEREAS, the Intersection Repair Project is a federal undertaking that will be funded and conducted by USAG-HI, a federal agency, on land managed jointly by USAG-HI and the Hale Koa Hotel; and

WHEREAS, the High Mast Lighting Project is a federal undertaking that will be funded and conducted by the Hale Koa Hotel, a federal agency, on land managed jointly by the USAG-HI and the Hale Koa Hotel; and

WHEREAS, the area of potential effects (APE), as depicted in Appendix 1 - Figure 1, consists of 38 acres and includes the surface and subsurface working areas at the intersection project, the general area encompassing all existing and proposed high mast lighting system components, and the contractor staging and storage areas. Less than 2 acres of the 38-acre APE will be subject to ground disturbing activities; and

WHEREAS, USAG-HI has identified a buried archaeological district in the APE beneath the modern urban landscape of Fort DeRussy, and has determined the district is eligible for the National Register of Historic Place under Criterion D because of important information associated with traditional Hawaiian and historic-period occupation and subsistence until 1909, prior to the development of Fort DeRussy.

WHEREAS, USAG-HI has determined that the undertakings may have an adverse effect on the National Register-eligible Archaeological District at Fort DeRussy, and has consulted with the Hawaii State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS pursuant to 36 CFR 800.2(c), the term “consulting parties” includes the State Historic Preservation Officer, Native Hawaiian Organizations, applicants for Federal approval, and individuals or organizations with a demonstrated interest in the undertakings; and

WHEREAS, USAG-HI has invited the Office of Hawaiian Affairs (OHA) and other Native Hawaiian Organization (NHOs) listed in Appendix 2 to participate in consultation regarding the effects of the undertakings on the Archaeological District, which includes Native Hawaiian human remains and items of traditional religious and cultural significance; and

WHEREAS, USAG-HI has invited the Historic Hawaii Foundation to participate in consultation regarding the effects of the undertakings on historic properties because of their demonstrated interest in the effects of the undertakings on the Archaeological District at Fort DeRussy; and

WHEREAS, the Hale Koa Hotel, as an applicant for Federal approval, is a consulting party with specific responsibilities for the High Mast Lighting Project as specified in the stipulations, and is an Invited Signatory to this agreement; 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 effect determination with specified documentation and the ACHP has chosen **not** to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, the signatories have the sole authority to execute, amend or terminate the agreement and the term “signatories” in this agreement includes the USAG-HI Garrison Commander, the Hawaii State Historic Preservation Officer, and the General Manager of the Hale Koa Hotel, an Invited Signatory; and

WHEREAS, USAG-HI has afforded the public an opportunity to review the information about the undertakings and the effects on the historic property and has sought public comment and input on this agreement. Public notice was given by media release and the documents were made available for review on May 6, 2020.

WHEREAS, in accordance with Section 112 (a)(1)(A) of the National Historic Preservation Act (54 U.S.C. § 306131) and 36 CFR § 800.2(a)(1) of the Section 106 regulations, Army personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management and USAG-HI shall ensure that all actions taken by employees or contractors of the Army to execute the terms of this agreement meet professional standards under regulations developed by the Secretary of the Interior.

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

STIPULATIONS

USAG-HI shall ensure that the following measures are carried out:

I. ARCHAEOLOGICAL TREATMENT PLAN

- A. The USAG-HI shall provide an archaeological treatment plan to consulting parties for review and comment within fifteen (15) calendar days of execution of this agreement. The archaeological treatment plan shall describe the procedures to be conducted during archaeological testing and construction monitoring. Consulting parties shall have fifteen (15) calendar days of receipt of the plan to review it and provide any comments.
- B. USAG-HI shall consider any timely comments before finalizing the plan. USAG-HI shall distribute the final plan to consulting parties including a response to the comments and with a rationale for how each comment was, or was not, incorporated into the plan.
- C. In the event that human remains or other cultural items, as defined by the Native American Graves Protection and Repatriation Act (NAGPRA), are identified during testing or monitoring, USAG-HI and the Hale Koa Hotel will protect the remains from further damage and exposure to sunlight and the provisions of NAGPRA (43 CFR 10) will be carried out in accordance with the NAGPRA Comprehensive Agreement for Fort DeRussy.
- D. The designated reburial area at Fort DeRussy will be available for reinterment of human remains and associated cultural items discovered as a result of the undertakings, if requested by the NAGPRA claimant(s) pursuant to the NAGPRA Comprehensive Agreement identified in Stipulation I.C.
- E. All archaeological information and material collected during archaeological testing will be documented, cataloged, and curated at the USAG-HI curation facility at Schofield Barracks in accordance with Army policy, unless the material is a considered to be a cultural item pursuant to the NAGPRA Comprehensive agreement identified in Stipulation I.C.

II. ARCHAEOLOGICAL TESTING

A. High Mast Lighting Project

1. The Hale Koa Hotel, through a contract for archaeological services with the U.S. Army Corps of Engineers, shall conduct manual archaeological testing at each of the proposed high mast light pole installation points as illustrated in Appendix 1, Figure 2.
2. The archaeological contractor shall prepare the portion of the archaeological treatment plan associated with the High Mast Lighting project and submit it to USAG-HI for review. USAG-HI shall provide a copy of the plan to consulting parties for review and comment after execution of this MOA per Stipulation I.A.
3. The purpose of the testing is to identify human remains or archaeological artifacts and features associated with the Archaeological District at Fort DeRussy before light pole installation begins in order to avoid or minimize adverse effects to the extent possible.
4. Archaeological testing shall consist of a shovel test pit, at least 30cm wide and will follow procedures specified in the archaeological treatment plan identified in Stipulation I.A. Any artifacts found during testing will be documented, collected, and curated at the USAG-HI curation facility in accordance with Army policy.
5. If any features associated with the Archaeological District are identified during archaeological testing, the archaeologist conducting the work shall notify the USAG-HI Cultural Resources Manager (CRM) and the Hale Koa Hotel Project Manager, who will then work with the lighting construction contractor to identify an alternate location(s) for the installation point in the immediate vicinity. That location will likely be on the opposite side of the existing light post and archaeological testing shall be conducted at the alternate location(s).
6. If human remains are discovered, testing at that installation point shall cease immediately and the USAG-HI and the Hale Koa Hotel shall treat the remains in accordance with Stipulation I.C. The USAG-HI CRM shall inspect the discovery, and notify consulting parties by email or phone as soon as practical, but no later than two business days.

7. If after testing at least three alternate locations around the proposed installation point, there is no way to avoid the archaeological features associated with the Archaeological District at the location, the USAG-HI CRM shall decide which of the tested installation locations will best minimize the adverse effects to the historic property. The archaeological contractor shall excavate and document the archaeological material in accordance with the plan specified in Stipulation I.A.
8. USAG-HI will provide a summary of testing results by mail or email to consulting parties within 30 days from the end of each of phase of the High Mast Lighting Project. There are currently seven proposed phases based on the seven independent electrical circuits controlling different areas of the High Mast Lighting system at Fort DeRussy.
9. USAG-HI will provide a final report by mail or email to consulting parties within 120 days from the end of the final phase of the lighting installation.

B. Kālia-Maluhia Intersection Project

1. USAG-HI shall conduct manual archaeological testing at the eastern-most directional drill pit, located in Kuroda Field. The three other directional drill pits are located in constructed and paved areas and archaeological testing is not possible at those locations.
2. The purpose of the testing is to identify human remains or archaeological artifacts and features potentially associated with the Archaeological District at Fort DeRussy before drill pit construction begins in order to avoid or minimize adverse effects to the extent possible.
3. Archaeological testing shall consist of a shovel test pit, at least 30cm wide and will follow procedures as specified in the archaeological treatment plan in Stipulation I.A. Any artifacts found during testing will be documented, collected, and curated at the USAG-HI curation facility in accordance with Army policy.
4. If any features associated with the Archaeological District are identified during archaeological testing, archaeologists will excavate the feature prior to drill pit construction, or the USAG-HI Project Manager will relocate the drill pit, if possible, and additional testing will be conducted at the revised location, if feasible.

5. If human remains are discovered, testing at the drill pit location shall cease immediately and USAG-HI shall treat the remains in accordance with Stipulation I.C. The USAG-HI CRM shall inspect the discovery, and notify consulting parties by email or phone as soon as practical, but no later than two business days.
6. USAG-HI shall provide a summary of the testing results to consulting parties by mail or email within 15 calendar days of conducting the testing.

III. ARCHAEOLOGICAL MONITORING

A. High Mast Lighting Project

1. Archaeologists shall monitor ground-disturbing construction activity associated with the High Mast Lighting Project, including drilling of all light pole installation holes, and excavation of all trenches for powerline removal and installation.
2. The Hale Koa Hotel shall implement the archaeological monitoring for the high-mast lighting project through a contract for archaeological services with the U.S. Army Corps of Engineers.
3. The archaeological contractor shall prepare the portion of the archaeological treatment plan associated with archaeological monitoring of the ground-disturbing construction activities for the High Mast Lighting Project and submit that plan to USAG-HI for approval.
4. USAG-HI shall provide a copy of the approved plan to consulting parties for review and comment after execution of this MOA, per Stipulation I.A.
5. If human remains are discovered during construction monitoring, the ground disturbing activity at that location shall cease immediately and the USAG-HI and the Hale Koa Hotel shall treat the remains in accordance with Stipulation I.B. The USAG-HI CRM shall inspect the discovery, and notify consulting parties by email or phone as soon as practical, but no later than two business days.
6. USAG-HI shall provide a summary of monitoring results in a letter by mail or email to consulting parties within 30 days from the end of each of phase of the High Mast Lighting Project. There are currently seven proposed phases based on the seven independent electrical circuits controlling different areas of the High Mast Lighting system at Fort DeRussy.

B. Kālia-Maluhia Intersection Project

1. Archaeologists from USAG-HI shall monitor excavation of directional drill pits and the directional drilling activity for the intersection conduits.
2. USAG-HI shall prepare the portion of the archaeological treatment plan associated with archaeological monitoring of the ground-disturbing construction activities for the Kālia-Maluhia Intersection Project and provide it to consulting parties for review and comment after execution of this MOA, per Stipulation I.A.
3. USAG-HI shall provide a summary of the monitoring results to consulting parties in a letter by mail or email within 15 days of completion of the monitoring activity.

IV. CULTURAL MONITORING

- A. A cultural monitor shall accompany the archaeological monitor during all ground disturbing activity for the High Mast Lighting Project as described in Stipulation III.A.1.
- B. In the event that human remains are discovered, the cultural monitor shall conduct appropriate cultural protocols pursuant to the NAGPRA Comprehensive Agreement for Fort DeRussy specified in Stipulation I.C.
- C. The cultural monitor shall assist the archaeological monitor with identifying artifacts and features that may be of traditional religious and cultural significance to Native Hawaiian Organizations pursuant to the National Historic Preservation Act, and cultural items pursuant to NAGPRA.

V. POST-REVIEW DISCOVERIES

- A. If a potential historic property is identified in the APE that the USAG-HI CRM evaluates as not a component of the Archaeological District at Fort DeRussy as a (e.g. architectural remnants of previous military construction), project-related ground disturbance will cease within 5 meters in all directions of the discovery, with the exception of archaeological documentation.
- B. The USAG-HI CRM shall investigate and determine if the discovery can be appropriately managed in accordance with the archaeological treatment plan, and if so, shall allow the project to proceed accordingly.

- C. If the USAG-HI CRM determines that the monitoring and data recovery plan is not applicable or appropriate to the nature of the discovery, the CRM shall notify the SHPO and consulting parties by email or letter and propose a course of action. SHPO and consulting parties shall have fifteen (15) calendar days to comment on the proposed course of action.
- D. The USAG-HI Garrison Commander shall take all timely comments into account, decide on the course of action, and notify SHPO and consulting parties of the decision.

VI. COMPILATION OF TRADITIONAL NATIVE HAWAIIAN CULTURAL COMPREHENSION

- A. In consideration of the ideas and concerns expressed by Native Hawaiian Organizations during the consultation process, the USAG-HI CRM will work with consulting parties to conduct research and assemble information about the traditional Native Hawaiian comprehension of the area that is now Fort DeRussy.
- B. USAG-HI will request that the State Historic Preservation Division provide copies of all records in their possession that may be pertinent to aspects of Native Hawaiian history and understanding of the area, along with a statement annotating the pertinence of the records provided.
- C. This effort to gather the cultural information of the area may include exploring the importance of the area to the Kingdom of O'ahu and to the families who lived there. It will include researching place names to understand the associations with the *ali'i* of O'ahu and potential connections to other islands, and understanding the changes in land uses and subsistence practices over time.
- D. USAG-HI will initiate this effort within three (3) months of the execution of this agreement by scheduling a meeting with consulting parties to develop a plan, outline, and schedule for the research.

VII. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, USAG-HI may consult with other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation X, below.

VIII. REPORTING

- A. As specified in the previous stipulations, USAG-HI shall provide a summary notice by mail or email to the consulting parties when:
 - 1. any human remains are discovered;
 - 2. the testing has been completed for the Intersection Project;
 - 3. the testing has been completed for each phase of the High Mast Lighting Project;
 - 4. the monitoring has been completed for the Intersection Project;
 - 5. the monitoring has been completed for each phase of the High Mast Lighting Project;
 - 6. a potential historic property is identified in the APE that the USAG-HI CRM evaluates as not a component of the Archaeological District at Fort DeRussy and for which the archaeological treatment plan is not applicable.
- B. USAG-HI shall submit two final project reports to consulting parties; one report for the High Mast Lighting Project and one report for the Intersection Project.
 - 1. The reports shall, at a minimum, document the archaeological activity, including the locations where archaeological testing and monitoring occurred, any discoveries during the projects, and relevant stratigraphic observations.
 - 2. Each report shall be submitted within one (1) year of the completion of archaeological fieldwork for the respective project. If that timeframe cannot be met due to the nature of the discoveries, the complexity of the report, other unforeseen issues, USAG-HI shall provide a mail or email notice to consulting parties explaining the reason for the delay and providing an estimation of when the report will be submitted.
- C. USAG-HI shall prepare a report on the efforts to research and assemble information about the traditional Native Hawaiian comprehension of the area that is now Fort DeRussy as specified in Stipulation VI.
 - 1. The schedule for research and reporting will be developed in consultation with consulting parties pursuant to Stipulation VI.D.

2. USAG-HI will distribute the report to consulting parties for review and comment in accordance with the schedule developed pursuant to Stipulation VI.D.
3. Keeping in mind the concerns raised during consultation about the confidentiality of sensitive information, USAG-HI will work with consulting parties to make results of the research publically available for educational and interpretive efforts.

IX. DISPUTE RESOLUTION

- A. Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the objecting party shall send the objection in writing to the USAG_HI Garrison Commander. USAG-HI shall notify all signatories of the objection and consult with the objecting party in an attempt to resolve the objection. If USAG- HI determines that such objection cannot be resolved, USAG-HI will:
 1. 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 thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USAG-HI shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. USAG-HI will then proceed according to its final decision.
 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USAG-HI may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USAG-HI shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- B. USAG-HI's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

X. AMENDMENTS

- A. This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

- B. USAG-HI shall provide a copy of the signed amendment to all consulting parties for their information and records.

XI. TERMINATION

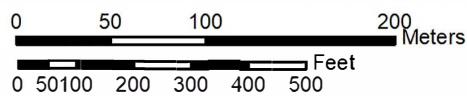
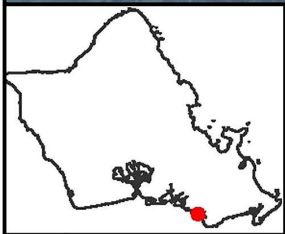
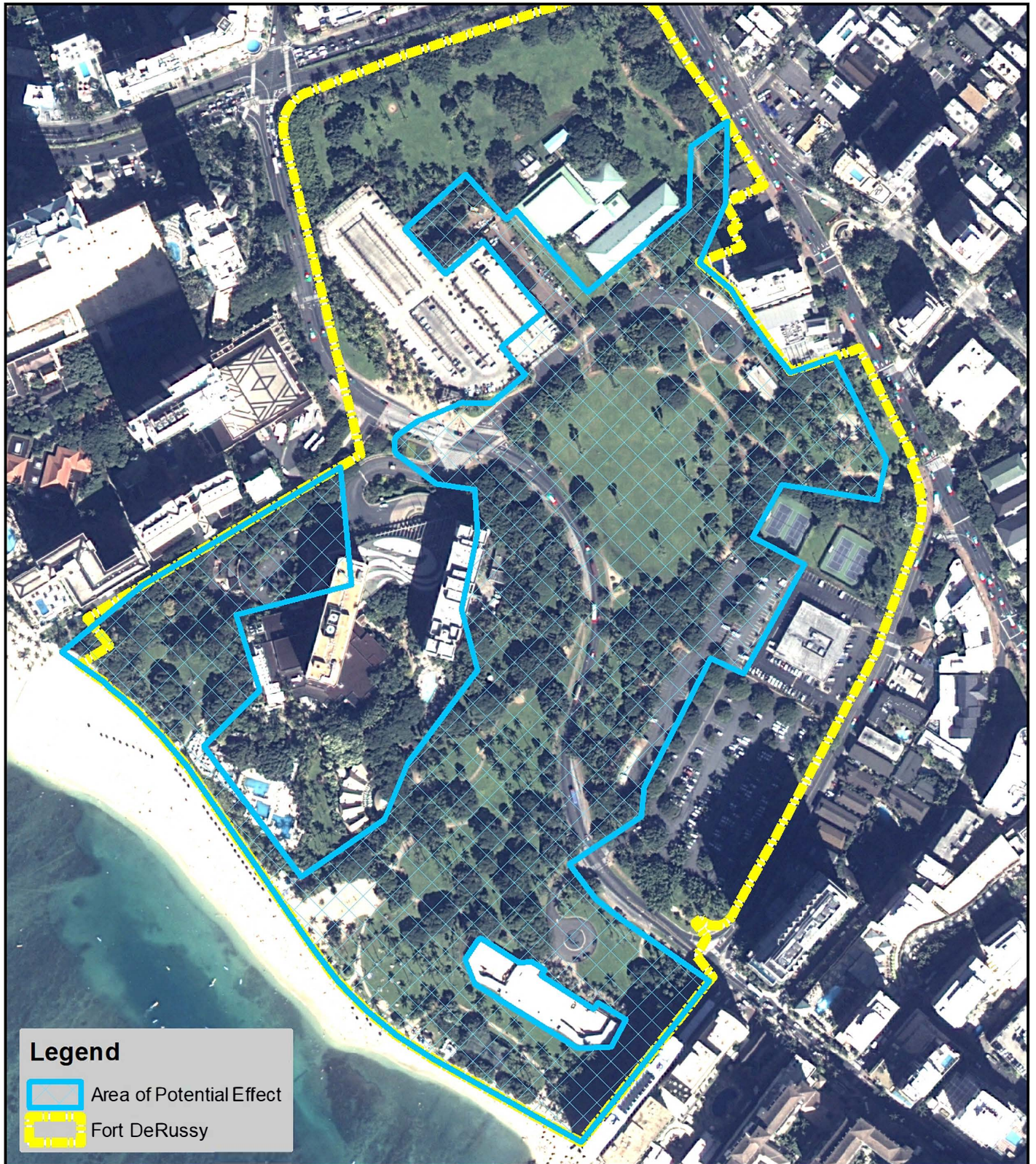
- A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation X, above. If within thirty (30) calendar days an amendment cannot be reached, that signatory may terminate the MOA upon written notification to the other signatories.
- B. Once the MOA is terminated, and prior to work continuing on the undertakings, USAG-HI must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. USAG-HI shall notify the other signatories as to the course of action it will pursue.

XII. ANTI-DEFICIENCY ACT

- A. The USAG-HI obligations under this MOA are subject to the availability of appropriation or funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. § 1341). USAG-HI shall make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety.
- B. If compliance with the Anti-Deficiency Act alters or impairs USAG-HI's ability to implement the stipulations of this MOA, USAG-HI shall consult in accordance with the amendment and termination procedures found in Stipulations X and XI of this agreement.

Execution of this MOA by USAG-HI and the Hawaii SHPO and implementation of its terms evidence that USAG-HI has taken into account the effects of these undertakings on historic properties and afforded the ACHP an opportunity to comment.

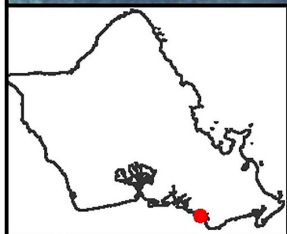
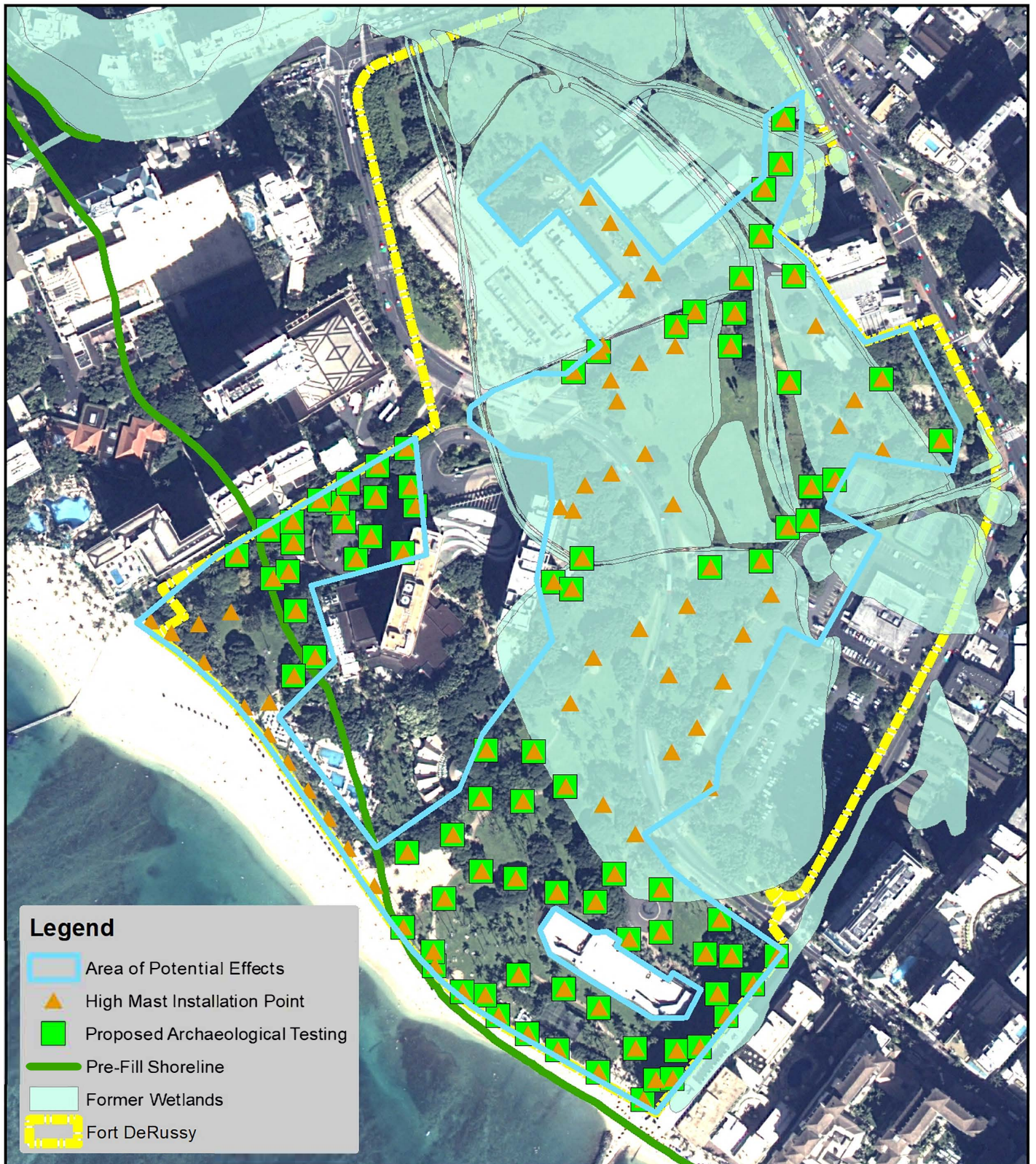
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USAG-HI DPW ENV
Cultural Resources
D. Crowley
03/10/2020

Appendix 1, Figure 1 - Area of Potential Effects
MOA for High-Mast Lighting and Kalia/Maluhia Intersection Projects
Fort DeRussy Military Reservation, Waikiki Ahupua'a, O'ahu, Hawai'i
TMK: (1)2-6-005:001





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USAG-HI DPW ENV
Cultural Resources
D. Crowley
03/10/2020

Appendix 1, Figure 2 - Manual Archaeological Testing Locations
MOA for High-Mast Lighting and Kalia/Maluhia Intersection Projects
Fort DeRussy Military Reservation, Waikiki Ahupua'a, O'ahu, Hawai'i
TMK:(1)2-6-005:001



APPENDIX 2

Native Hawaiian Organizations Invited to Participate in Consultation

Mr. Halealoha Ayau	Mr. Norman Mana Kaleilani Cáceres 'Ohana Huihui
Mr. Hailama Farden Association of Hawaiian Civic Clubs	Ali'i Sir Nathan Grace Royal Order of Kamehameha I Moku 'o Kōhala
Dr. Ha'aheo Guanson Pacific Justice and Reconciliation Center Native Hawaiian Church	Ms. Dana Naone Hall
Mr. Cy Harris Ohana Kekumano	Mr. William Aweau Ho'ohuli 'Ohana Ho'ohuli
Dr. Sylvia Hussey Office of Hawaiian Affairs	Mr. Kyle Kajihira Ms. Terrilee Keko'olani Hawai'i Peace and Justice
Mr. Ali'ikaua Kaleikini 'Ohana Kawainui	Ms. Tuahine Punahele Kanekapolei Kaleikini 'Ohana Mahi
Mr. Shad Kane Preservation of Historic Sites & Cultural Properties Committee O'ahu Council of Hawaiian Civic Clubs	Mr. Kalahikiola Keliinoi 'Ohana Keliinoi
Ms. Kilinahe Keliinoi 'Ohana Kahekilinuiahumanu	Mr. Kepo'o Keli'ipa'akaua
Ms. Emalia Keohokalole	Ms. Lani Ma'a Lapilio Ma'a 'Ohana
Mr. Tom Lenchanko Kahuakai Ola Ko Laila Waha Olelo 'Aha Kūkaniloko Ko'a Mana Mea Ola Kanaka Maui Hoalii Iku Pau	Ms. Carolyn Keala Norman
Ms. Nalani Olds	Mr. Richard Likeke Papa, Jr.
Dr. Kahu Kaleo Patterson Pacific Justice and Reconciliation Center	Mr. Thomas Shirai, Jr. Kawaihāpai 'Ohana
Mr. Melvin K. Soong The I'Mua Group	Ms. Kēhaulani Souza
Mr. Harry Wasson Hui Malama 'Aina 'O La'ie Mahi'ai, Ki'ai	Mr. JR Keoneakapu Williams 'Ohana Kapu