

**PROGRAMMATIC AGREEMENT BETWEEN
THE U.S. ARMY GARRISON HAWAII
AND THE HAWAII STATE HISTORIC PRESERVATION OFFICE
REGARDING THE TRANSFER AND REHABILITATION OF
THE LODGING FACILITIES AT TRIPLER ARMY MEDICAL CENTER, HAWAII
TO REST EASY LLC**

AGREEMENT

WHEREAS, the U.S. Army Garrison, Hawaii (USAG-HI) pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A. Section 2801, which amends 10 U.S.C. 169) by addition of a new Subchapter IV—Alternative Authority for Acquisition and Improvement of Military Housing, codified at 10 U.S.C. § 2871, et seq., has solicited proposals from one or more qualified private entities to construct or renovate, and operate, maintain and manage, all such housing and certain ancillary facilities, through the Privatization of Army Lodging Initiative (PAL); and has determined to privatize existing facilities at Tripler Army Medical Center (TAMC) and Fort Shafter, on the Island of Oahu, Hawaii to accommodate increased demands for lodging facilities, that will involve the rehabilitation of historic properties; and

WHEREAS, USAG-HI had conducted an historic property assessment of TAMC in accordance with Section 110(a) (2) of the National Historic Preservation Act, as amended, (16 U.S.C. 470 et. seq.) and determined that TAMC, which includes the central hospital facility, staff quarters, outbuildings, as well as an historic landscape, is a significant property eligible for inclusion on the National Register of Historic Places, and the Hawaii State Historic Preservation Officer (SHPO) has concurred with this determination; and

WHEREAS, USAG-HI will transfer the use and control of Buildings 220, 222, 226 through a lease of such buildings to Rest Easy LLC (Rest Easy) for a period of 5 years to be managed as a lodging facility at TAMC and the Army will transfer Building 228 to Rest Easy through a lease (Ground Lease) for a term of 50 years to include certain improvements as set forth therein; and Rest Easy will be responsible for the proper maintenance and rehabilitation of the said buildings and grounds during the term of this PA and

WHEREAS, the Areas of Potential Effect (APE) shown in Appendix A identifies the historic properties and ground areas affected by the Undertaking (defined below); and

WHEREAS, USAG-HI, in consultation with the Hawaii State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA), has determined that the Undertaking (defined below) may have an adverse effect upon those properties identified above; and

WHEREAS, Rest Easy will implement the privatization of certain Army lodging and ancillary facilities at TAMC and Fort Shafter under PAL (Undertaking); and

WHEREAS, the stipulations of this Programmatic Agreement (PA) are binding on all signatories and their respective successors and assigns provided that this PA will be incorporated into the Ground Lease as an exhibit such that this PA will become binding upon Rest Easy upon the execution of the Ground Lease; and

WHEREAS, no adverse effect is found on all other properties within the APE eligible for listing in the NRHP as shown in Attachment A when the Secretary of the Interior's Standards for Rehabilitation are applied during the design development, renovation and term of the Ground Lease as stipulated in this PA; and

WHEREAS, one property included in the Undertaking, but located outside the APE, is Building 719 at Fort Shafter, a severely altered property not eligible for listing in the National Register of Historic Places; and therefore is not subject to the terms of this PA; and

WHEREAS, the Army has consulted with the Hawaii State Historic Preservation Officer (SHPO) in accordance with Sections 106, 110 and 111 of the National Historic Preservation Act (the Act), as amended, (16 U.S.C. 470 et. seq.) and the implementing regulations found at 36 CFR Part 800 (2001); and

WHEREAS, the Army has invited the Advisory Council on Historic Preservation (Council) to participate in the resolution of adverse effects to properties eligible for listing in the NRHP pursuant to 36 CFR 800.6(a)(1) and the Council has declined to participate as a consulting party in a letter dated 16 June 2008; and

WHEREAS, Rest Easy has been provided the opportunity to review and comment on the draft language for this PA and has been invited to concur with the agreement document pursuant to 36 CFR 800.6(c)(3); and

WHEREAS, USAG-HI has determined that there are no Native Hawaiians that attach traditional religious and cultural importance to the structures and landscapes within the area of potential effects; and

WHEREAS, previous development, including commercial farming, grading, and leveling within the APE, precludes the potential for significant archeological deposits; and

WHEREAS, the Commander has also consulted with the National Park Service (NPS), the Historic Hawai'i Foundation, the Outdoor Circle, and the National Trust for Historic Preservation on an earlier version of the design and removed a proposal for new construction of a hotel from the Undertaking, the USAG-HI and State Historic Preservation Office have agreed that they will sign as signatories of this PA and the USAG-HI has invited Rest Easy to participate as a concurring party to this PA; and

NOW THEREFORE, the signatories agree that the Undertaking shall be implemented in accordance with the following stipulations that evidences the Army has taken to into account the effect of the Undertaking on historic properties and sought ways to avoid, reduce or mitigate adverse effects as required under Section 106, 110 and 111 of the National Historic Preservation Act (NHPA) of 1966 as amended and to preserve the built environment and landscape values at TAMC:

STIPULATIONS

I. APPLICABILITY, BASELINE INFORMATION, AND PROFESSIONAL QUALIFICATIONS STANDARDS

A. USAG-HI will provide a draft National Register/National Historic Landmark nomination form concerning the Historic Properties subject to this PA to all signatory and concurring parties within one year of the last date this PA was signed. The nomination form will describe the structures, buildings, and historic landscapes that are present within the APE. The Army however will not submit the draft National Historic Landmark nomination to the National Park until such time as Installation Management Command agrees that package submittal to the NPS is in accordance with Army policy.

B. Rest Easy shall document the existing interior and exterior conditions for the historic properties subject to this PA (Buildings 220, 222, 226, & 228) through digital photographs meeting National Register standards. The photo-documentation will be carried out within 90 days of financial closing relating to the Undertaking. A copy of the digital images on an archival gold CD will be provided to the signatory and concurring parties within 120 days of financial closing relating to the Undertaking.

C. USAG-HI Qualified Staff will monitor the Undertaking every six months, at a minimum, or more frequently during any rehabilitation of Historic Properties, to ensure compliance with the stipulations and Exempt Activities set forth in Appendix C of this PA and will invite the signatory parties to visit the buildings and landscapes once per year for the duration of this PA. Rest Easy will provide USAG-HI Qualified Staff access to the Historic Properties subject to this PA as required to fulfill the terms of this PA.

D. All existing parking adjacent to the buildings will remain in the current configuration. Any expansion of parking from the current configuration will be addressed through the standard Section 106 process to take into account the surrounding historic landscape.

E. Any major changes to the surrounding landscape (removal of old growth trees, paving, new walkways or removal of original features) will be addressed through a standard Section 106 review.

F. In the case of an emergency (as defined by 36 CFR 800.12), Rest Easy will perform those actions necessary for the protection of the historic properties with onsite monitoring by Qualified Staff. Rest Easy is not required to consult with USAG-HI in advance of emergency actions affecting historic properties. Where possible, such emergency measures will be

undertaken in a manner that is consistent with this PA. Rest Easy will notify the CRM within 24 hours after taking such emergency actions, who will notify the SHPO within 48 hours, following execution of all emergency measures affecting historic properties. This emergency provision is limited to undertakings responding directly to the emergency and initiated within 30 days of the emergency. If the response to emergency conditions requires no modification of the lease mechanism, Rest Easy must act in conformance with this PA and there is no new federal undertaking requiring separate consultation per 36 CFR Part 800.

F. The US Army Garrison will conduct all Section 106 reviews regarding the properties covered under this PA when standard Section 106 reviews are necessary.

II. CONVEYENCE ACTIVITIES

A. USAG-HI shall ensure that the lease mechanism shall contain such terms and conditions as necessary and appropriate to meet the requirements of Sections 106, 110, and 111. All relevant portions of this PA shall be incorporated into and made part of the lease mechanism.

B. Renewal or any modifications to the lease mechanism shall be subject to consultation among the Signatories to determine whether such renewal or modification will constitute a new Federal undertaking subject to the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

III. HISTORIC PROPERTY MANAGEMENT

A. When conducting rehabilitation or maintenance measures for Historic Properties, Rest Easy will conform to the management standards and guidelines for treatment of Historic Properties established by the Secretary of the Interior in the *Secretary of the Interior's Standards for the Treatment of Historic Properties (Rehabilitation)* and *Secretary of the Interior's Standards for the Treatment of Cultural Landscapes*. Maintenance activities as listed in Appendix C are exempt from further Section 106 review.

B. USAG-HI Qualified Staff and/or the SHPO will review and comment on all plans formulated for the rehabilitation of the existing lodging facilities to assure that the historic integrity of the historic resources are not adversely affected. A copy of the final rehabilitation/construction drawings will also be provided to USAG-HI Qualified Staff and the SHPO upon completion. The USAG-HI Qualified Staff and the SHPO will be given a minimum of 10 business days and no more than 30 days (concurrently) to review and comment on each of these plan iterations, at which time the comments will be considered and where agreed upon shall be incorporated into the final plans. If Rest Easy does not agree with the comments the dispute resolution clause in Stipulation V will be followed. Repair or replacement of any of these features in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties will not be considered an adverse effect. Major changes to the character defining features listed below such as wholesale replacement of windows may be considered adverse effects by either SHPO or USAG-HI. In the event of such a determination, any signatory may challenge such determination pursuant to Dispute Resolution, Stipulation V below.

C. The following are character defining features and qualities that must be retained in any rehabilitation proposal:

1. Exterior Finishes – Stucco finishes; recessed surfaces with defined pilasters; lug sills below window openings.

2. Exterior Features – Deep soffits and awnings; stuccoed brackets; metal railings; open covered breezeways, open balconies/lanais, brackets, columns, exposed rafters and rafter stop profiles; original exterior lighting fixture types.

3. Windows and Doors – Window and door opening width and scale; original window types, casings and moldings; stone sills; wood materials; original door types (multi-lite and paneled doors); hinges and door hardware.

4. Roofs – Hipped roof/jerkinhead profiles; shingles, red clay tile or approved alternative material.

5. Landscape – Open green spaces; the contour of the surrounding land; pathways; circulation systems; native and planted trees and vegetation.

6. Interior Features—Wooden passage doors with stained finish; wooden louvered doors with stained finish; bronze door hardware; wall mounted sinks; door surrounds; smooth wall and ceiling finish; ceiling height; baseboards; window moldings/aprons; contoured crown moldings; wooden hand-rails; original switch-plates; original interior lighting fixture types.

D. Inadvertent Discovery--- If subsurface construction excavations inadvertently discover cultural resources, excavation must stop in the immediate area of discovery and the DPW / ENV Cultural Resources Section and State Historic Preservation Office must be notified within 8 hours.. Rest Easy shall ensure that no unauthorized personnel have access to the site and no further damage is done to the discovery. USAG-HI will comply with 36 CFR 800.13(b) and any other legal requirements. Failure to report such finds shall be interpreted as willful destruction of archaeological properties on federal land. USAG-HI will also follow all applicable laws and regulations as pertains to such discoveries. Data collection and reporting will be undertaken by the archaeologists from the U.S. Army Garrison, Hawaii, DPW / ENV Cultural Resources Program.

IV. FISCAL REQUIREMENTS AND SOURCES

The stipulations of this PA are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. 1341 (1998)). 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 dispute resolution, amendment or termination stipulations as specified in Stipulations V, and VI.

V. DISPUTE RESOLUTION

A. Should any party to this PA object within 30 days to any plans or other documents provided by USAG-HI or others for review pursuant to this PA, USAG-HI in cooperation with

Rest Easy will consult with the objecting party to resolve the objection. If USAG-HI determines it cannot resolve the objection, USAG-HI shall promptly forward to the ACHP all dispute-relevant documentation including a proposed resolution of the objection. Within 45 days after receipt of documentation, the ACHP will either:

1. Provide USAG-HI with recommendations, which USAG-HI will take into account in reaching a final decision regarding the dispute; or

2. Notify USAG-HI that it will or will not comment pursuant to 36 CFR 800.7(c). USAG-HI and Rest Easy will take into account any comment the ACHP provides in response to such request and do so in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

B. Should ACHP choose not to exercise one of the above options within 45 days after receipt of all pertinent documents, USAG-HI may assume the ACHP's concurrence in its proposed response to the objection.

C. Any recommendation or comment the ACHP provides pertains only to the subject of the dispute. USAG-HI's responsibility to carry out all other actions under this PA, other than those disputed will not change.

VI. AMENDMENT AND TERMINATION

A. If a change occurs in the Undertaking that creates new circumstances that USAG-HI must address, or, if USAG-HI determines that it cannot carry out the terms of this PA, USAG-HI will request an amendment. If any Signatory determines that the terms of this PA cannot be or are not being carried out, the Signatories shall consult to seek amendment of this PA. However, only the Signatories may amend this PA in accordance with 36 CFR 800.6(c) (7).

B. Should the Signatories to this PA not agree on an amendment within 45 days, they shall enter into dispute resolution IAW Stipulation V. If this PA is not amended in accordance with Stipulation VI.A, any Signatory may terminate it per 36 CFR 800.6(c) (8). In such an event, USAG-HI shall not execute a Lease that has the potential to adversely affect historic properties until applicable stipulations of this PA are met or it obtains alternative documentation from the ACHP that it has met the requirements of the NHPA.

C. The refusal of an invited Concurring Party to sign this PA does not invalidate this PA per 36 CFR 800.6(c) (3). The terms of this PA apply to all parties listed under the signatories section.

VII. EFFECTIVE DATE, END DATE, APPLICABILITY

A. This PA is effective on the last date that all signatories sign. USAG-HI will comply with all terms and stipulations from that date forward.

B. This PA will be incorporated into the Lease as an exhibit to and will become an integral part of the Lease. This PA will become applicable to Rest Easy upon the execution of the Ground Lease. The lease of buildings 220, 222, and 226 is for a period of 5 years. The transfer of Building 228 is facilitated through a long-term lease for an approximate term of 50 years. This PA will be in effect for five years for Buildings 220, 222 and 226. This PA will be in effect for the time line identified in the lease transferring Building 228, unless previously terminated under the provisions of Section VI above. If the parties to the Lease agree to extend the Lease for Buildings 220, 222 and 226, the parties to this PA will consult on the need to renew or amend this PA at the same time as the Lease is being considered for renewal.

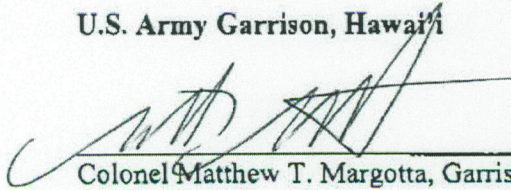
A final copy of the executed PA and supporting documents will be filed with the ACHP. 36 CFR 800.6(b)(1)(iv). Execution of this PA and implementation of its terms evidences that USAG-HI has afforded the ACHP an opportunity to comment on the Undertaking to privatize temporary lodging at USAG-HI, and its effects on Historic Properties, and that USAG-HI has taken into account the effects of the Undertaking on Historic Properties, and execution of this PA satisfies USAG-HI's responsibilities under Sections 106, 110 and 111 of the NHPA.

[Signature page to follow]

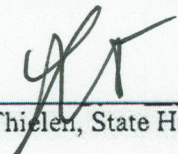
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SIGNATORIES:

U.S. Army Garrison, Hawai'i

 Date 29 April 2009
Colonel Matthew T. Margotta, Garrison Commander

Hawai'i State Historic Preservation Officer

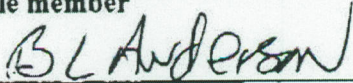
 Date 5/1/09
Ms. Laura H. Thiele, State Historic Preservation Officer

CONCURRING PARTY:

Rest Easy LLC

By: **RE Managing Member LLC**
its managing member

By: **Actus Lend Lease Holdings LLC**
Its sole member

By: 
Name: Bruce Anderson
Title: Senior Vice President - Development Operations
Date:

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Its sole member

By: _____
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Title:
Date:

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U.S. Army Garrison, Hawai'i

Date _____
Colonel Matthew T. Margotta, Garrison Commander

Hawai'i State Historic Preservation Officer

Date _____
Ms. Laura H. Thielen, State Historic Preservation Officer

CONCURRING PARTY:

Rest Easy LLC

By: RE Managing Member LLC
its managing member

By: Actus Lend Lease Holdings LLC
Its sole member

By: B L Anderson
Name: Bruce Anderson
Title: Senior Vice President - Development Operations
Date: 4.28.09

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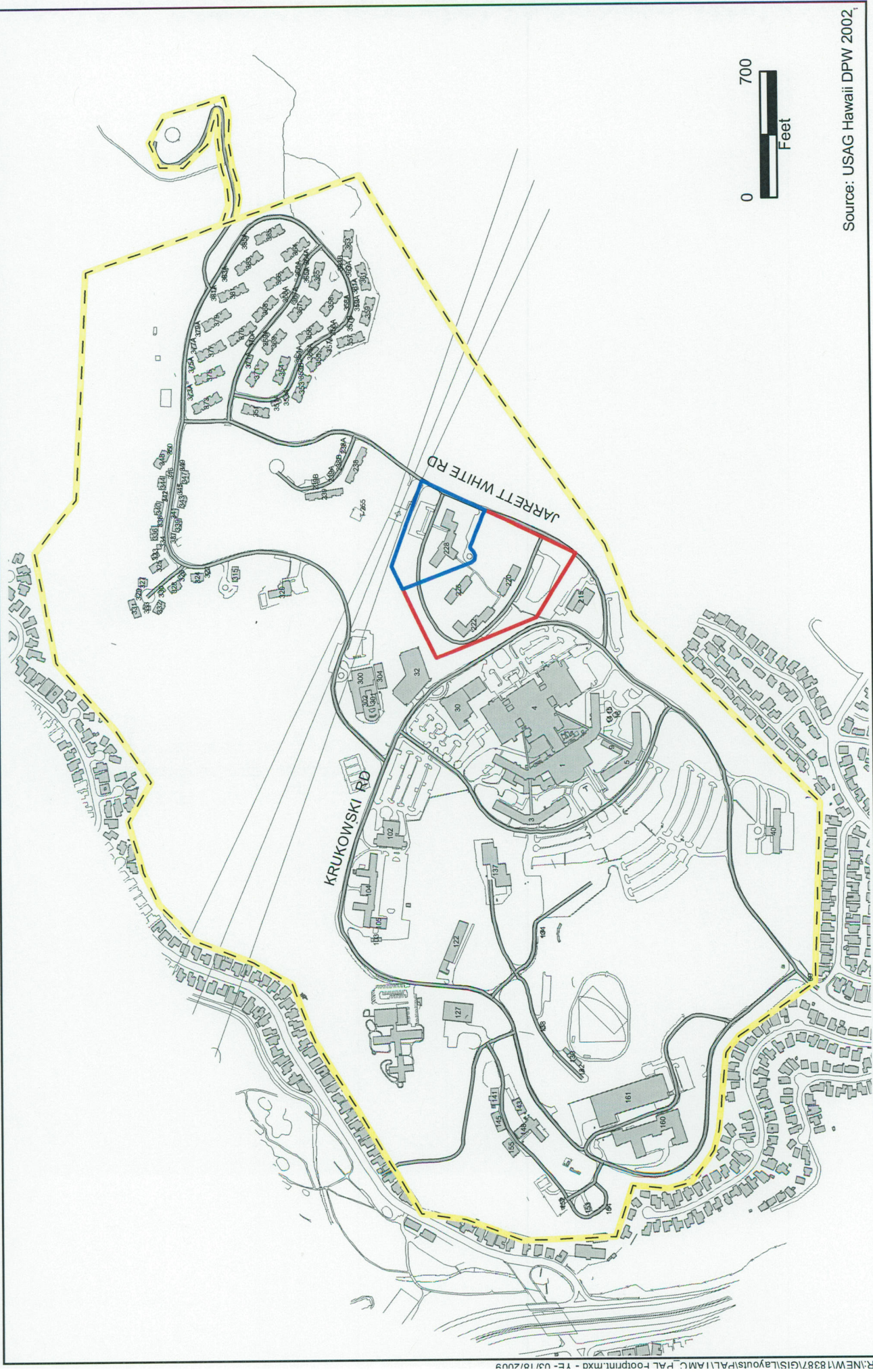
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Name: Bruce Anderson
Title: Senior Vice President - Development Operations
Date: 4-28-09



Tripler Army Medical Center
PAL Footprint
 O'ahu, Hawai'i
Figure 2-2

- Legend**
- Tripler Army Medical Center
 - PAL Boundary - Short-Term Lease
 - PAL Boundary - Long-Term Lease
 - Buildings \ Housing
 - Roads

APPENDIX B

DEFINITIONS

Advisory Council on Historic Preservation – Refers to the Executive agency responsible for ensuring that the requirements of the National Historic Preservation Act and 36 CFR part 800 are met.

Effective Date- The date upon which all of the signatories shall have signed this PA

Federal preservation standards or standards – Refers to “The Secretary of the Interior's Standards for the Treatment of Historic Properties” and the “The Secretary of the Interior's Standards for the Rehabilitation of Historic Properties” (National Park Service, U.S. Department of the Interior).

Historic fabric – Means the original or historic physical exterior and interior aspects of a building that contribute to a building or structure’s historic significance, including roofing, porches, railings, steps, columns, doors, windows; as well as the surrounding grounds to include, open space, trees, plantings, sidewalks, curbs, steps, light standards, and signage.

Historic Preservation Briefs – Refers to a series of technical briefs that addresses a range of preservation issues, with recommendations for appropriate treatments as per federal preservation standards (Briefs 1 – 41, National Park Service, U.S. Department of the Interior).

“In kind” – Refers to the protocol for replacing historic fabric with materials identical to the original, or with alternative materials that simulate original materials with regard to texture, appearance, and performance; and in a manner that replicates the original style, profile, width, depth, and placement of original features according to federal preservation standards.

TAMC – Means the land holdings and real property associated with the Tripler Army Medical Center, to include buildings, structures, and associated landscape.

Qualified Staff—The qualifications outlined in the Secretary of Interior’s Standards for ‘qualified staff’ which is generally defined as a person who possess a BA or preferably a MA in Architectural History, Preservation Studies, Art History with work experience of no less than three years in the field related to historic architecture and landscapes.

APPENDIX C

EXEMPT ACTIVITIES

Each of the following activities will be exempt from further standard Section 106 review provided that these activities which may affect the historic integrity of the buildings and grounds (i.e. only those activities listed here that may alter the physical fabric of the buildings or make significant changes to the landscape features) are coordinated with the USAG-Hawaii, Qualified Staff for approval in writing.

1. Temporary installation of facilities to provide access to the Historic Properties by disabled persons provided the changes make no permanent modification to contributing architectural or landscape elements.
2. Repairs or replacement in-kind of original exterior wall material/finish, siding, trim, or hardware that match original materials and architectural finishes.
3. Replacement of glazing with best available match to existing or original materials and design, including retention of window lights and muntin bars. Not included is changing the visual appearance of the original glazing by replacing with tinted glass or by adding tinted or reflective film.
4. Replacement or installation of caulking and weather-stripping around windows, doors, walls, and roofs.
5. Maintenance and repair without replacement of windows and doors and their frames, transom windows, sashes, jambs, and moldings. Appropriate maintenance actions include surface treatments and preparation to apply finishes, such as cleaning, rust removal, limited paint removal, application of epoxy consolidates and fillers, and reapplication of protective coating systems.
6. Maintenance, repair, and replacement of roofs or parts of a roof that are deteriorated when repair or replacement matches or is compatible with existing or original material and design; maintenance procedures that do not alter the integrity of the original material.
7. Repair of porches/lanais and stairs if work matches historic or existing character, materials, and design.
8. Removal of building additions and mechanical equipment, such as conduit, pipes, wiring, junction boxes, and air conditioners, determined not to be contributing by Qualified Staff.
9. Replacement of exterior lighting when in accordance with the Secretary of the Interior's [Standards for Rehabilitation](#).
10. Maintenance, repair, replacement or installation of screens provided that the materials and design match the existing screens or match the existing window frame materials.

11. Maintenance, repair, replacement or installation of gutters, down spouts or roofing materials provided that the material and design match existing, or are compatible with the building's period of significance and of a type approved by Qualified Staff.
12. Installation of energy conservation materials that are not readily visible or cannot cause harm to the buildings, such as concealed installation of thermal insulation and vapor barrier, or repair of roof ventilation.
13. Removal of existing fixtures, accessories, cabinets determined not to be contributing by Qualified Staff.
14. Installation of interpretive signs or exhibit structures that are not attached to a historic property and that do not visually intrude on a Historic Property. Such signs or exhibits shall be constructed of materials and painted colors that are compatible with the Historic Property and its setting.
15. Maintenance or repair of above ground utilities such as gas, fuel, electrical and telephone lines, provided that no disturbance occurs outside or ground disturbance occurs.
16. Excavation for the repair or replacement of building footings or foundation work within two (2) feet of the existing footings and foundations, if there are no visual effects to above ground structures and their finishes.
17. Maintenance, repair, or replacement of plumbing, electrical, ventilation or air conditioning systems, provided such work takes place in existing chases, access panels, and is approved by Qualified Staff.
18. Replacement of non-original light fixtures in historic interiors with historically compatible types.
19. Interior surface treatments, repaired or replaced in kind, including but not limited to floors, walls, ceilings, woodwork, provided the work is restricted to repainting, refinishing, re-papering, or laying carpet, linoleum, or other recognized floor systems that are compatible for these buildings.
20. Replacement, removal, upgrading of electrical wiring if historic architectural finishes, moldings, switch-plates and millwork are not affected by the electrical work.
21. Painting exterior surfaces when the new paint matches the existing or original color. Damaged or deteriorated paint may be removed to the next sound layer, using the gentlest methods possible, such as hand scraping or hand sanding. Abrasive methods, such as sandblasting, are not covered in this stipulation.
22. Repair and filling of spalling concrete and cracks if patched to hide repairs.

23. Activities that conform to conditions for a Federal historic preservation tax credit that have been approved by the National Park Service.
24. Any changes that have been reviewed by USAG-HI CRMP Qualified Staff to the mechanical systems, kitchen, bathrooms or basement spaces of Historic Properties, as long as such change does not detract from any significant exterior or interior historic character defining elements in other rooms of the historic property.
25. Existing roadway and parking lot repair, resurfacing that take place within the previously maintained roadway or parking lot surface.
26. Maintenance, repair, or replacement in-kind of existing sidewalks and curbs, not including historic pavements such as brick, cobblestone, or lava rock.
27. Routine maintenance including but not limited to landscaping, grass cutting, and minor tree trimming.