

**PROGRAMMATIC AGREEMENT AMONG
THE UNITED STATES ARMY GARRISON-HAWAII,
THE UNITED STATES ARMY GARRISON-PŌHAKULOA,
THE UNITED STATES ARMY PACIFIC,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE DEVELOPMENT AND OPERATION OF THE
INFANTRY PLATOON BATTLE COURSE
AT PŌHAKULOA TRAINING AREA, KA‘OHE AHUPUA‘A, HĀMĀKUA DISTRICT,
HAWAI‘I ISLAND, COUNTY OF HAWAI‘I, HAWAI‘I**

WHEREAS, the United States (U.S.) Army Pacific (USARPAC) proposes to fund the construction and operation of a new Infantry Platoon Battle Course (IPBC) training range at Pōhakuloa Training Area (PTA), which encompasses 132,000 acres and is managed and operated by U.S. Army Garrison-Pōhakuloa (USAG-Pōhakuloa), to include targetry, structures, access roads, electrical and communications infrastructure, other support structures, earth softening, and removal of unexploded ordnance (UXO) (Project) because the current IPBC is too small to meet current standards and has obsolete targetry, and cannot be expanded in place due to proximity to the improved conventional munitions area in the PTA Impact Area; and

WHEREAS, USAG-Pōhakuloa and its direct reporting Garrison, U.S. Army Garrison-Hawaii (USAG-HI) plan to carry out the Project using U.S. Army Military Construction (MILCON) funds thereby making the Project an Undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, USAG-Pōhakuloa has identified the Area of Potential Effect (APE) as depicted in Attachment A, covering an area of about 2,800 acres, to include all considerations for the location of the IPBC (known as the Western Range Alternative and Charlie’s Circle Alternative); and

WHEREAS, USAG-Pōhakuloa has determined that the Undertaking may have adverse effects on historic properties, which are eligible for listing in the National Register of Historic Places (NRHP), and has devised a phased approach to identify and evaluate historic properties in conjunction with the design and construction of the IPBC, and has consulted with the Hawai‘i State Historic Preservation Office (SHPO), known as the State Historic Preservation Division (SHPD), pursuant to 36 C.F.R. Part 800; and

WHEREAS, USAG-Pōhakuloa has provided material on the project and invited the following Native Hawaiian Organizations (NHO) to join the consultation: the Aha Wahine, Au Puni o Hawai‘i, Brian Kaniela Nae‘ole Naauao, Flores-Case ‘Ohana, Council for Native Hawaiian Advancement, Hawai‘i Island Burial Council, the Hawai‘i Island District Council of Hawaiian Civic Clubs, Hui Huliau, Hui Kao‘o ‘Āina Ho‘opulapula, Hui Malama I Na Kupuna o Hawai‘i Nei, I Mua Group, Kahu Ku Mauna, Kanu o ka ‘Āina Learning ‘Ohana, La‘i ‘Opua 2020,

Machado-Akana-Aona-Namakaeha 'Ohana, Maku'u Farmers Association, Mauna Kea Anaina Hou, Na Ku'auhau 'o Kahiwakaneikopolei, Native Hawaiian Education Council, Office of Hawaiian Affairs (OHA), Office of Mauna Kea Management, 'Ohana Keaweamaahi, 'Ohana Kapu, 'Ohana Medeiros, 'Ohana Kala'i, Aloha 'Aina Educational Center and the Royal Order of Kamehameha, for which PTA has religious and cultural significance; and

WHEREAS, the Flores-Case 'Ohana, Mauna Kea Anaina Hou, OHA, 'Ohana Keaweamaahi, 'Ohana Kapu, 'Ohana Medeiros, 'Ohana Kala'i, Aloha 'Aina Educational Center and the Royal Order of Kamehameha have notified USAG-Pōhakuloa of their interest in consultation and have participated in the consultation, and been offered the opportunity to sign the Programmatic Agreement (Agreement) as concurring parties; and

WHEREAS, USAG-Pōhakuloa has provided information about the project to the USAG-Pōhakuloa Cultural Advisory Committee (PTA CAC) that advises the PTA Commander on the stewardship of the lands and the cultural landscape at Pōhakuloa, Hawai'i Volcanoes National Park (National Park Service), and the Kawaihae community regarding the effects of the Undertaking on historic properties; and

WHEREAS, USAG-Pōhakuloa has discussed the Undertaking with the PTA CAC members on November 19, 2010; January 14, 2011; March 25, 2011; July 15, 2011; September 16, 2011; December 2, 2011, January 20, 2012; April 20, 2012; and August 31, 2012; and received input from the PTA CAC regarding the Undertaking and the Agreement, and the PTA CAC has chosen not to be a consulting party on this project or to sign the Agreement as a concurring party; and

WHEREAS, USAG-Pōhakuloa has conferred with USARPAC regarding the effects of the Undertaking on historic properties and has invited them to sign this Agreement as an invited signatory; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), USAG-Pōhakuloa has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, USAG-Pōhakuloa determined that the development of an Agreement, in accordance with 36 C.F.R. § 800.14(b)(3), was warranted for this complex Undertaking in order to allow for a phased approach to identify and evaluate historic properties and to resolve and mitigate identified adverse effects in conjunction with the design and construction of the IPBC; and

WHEREAS, in March 2011 USAG-Pōhakuloa initiated Section 106 consultation for an Infantry Platoon Battle Area (IPBA) for the construction of targetry, structures, access roads, electrical and communications infrastructure and other developments to the IPBA such as an IPBC, a live-fire shoot house, and a Military Operations on Urban Terrain (MOUT) facility. In October 2012 USAG-Pōhakuloa revised the Undertaking to focus on the IPBC, and modified the APE to

include the alternative locations for the IPBC and supporting infrastructure because the live-fire shoot house and the MOUT facility are not currently approved or funded; and

WHEREAS, pursuant to 36 CFR § 800.2(d), public notices of the consultation for this project were posted on the SHPD web site in April 2011 and in newspapers statewide in November 2012; and

WHEREAS, the APE is within the PTA Impact Area which contains UXO making the detonation of the UXO a necessary pre-requisite before the IPBC construction; and

WHEREAS, access to Impact Areas is restricted in accordance with Army regulations to government personnel (including both federal and state government employees) and government contractors, under escort from explosive ordnance technicians and using required personal protective equipment, due to the presence of UXO; and

WHEREAS, USAG-Pōhakuloa completed field work for the identification of potential historic properties and Traditional Cultural Properties (TCPs) in the Western Range Alternative portion of the APE in December 2010, and the field work for the identification of historic properties and TCPs in the Charlie Circle Alternative portion of the APE was completed in December 2012; and

WHEREAS, USAG-Pōhakuloa has identified three archaeological site types within the APE: (1) pāhoehoe excavated pit sites; (2) lava tube sites; and (3) surface archaeological sites (which includes but are not limited to mounds or cairns and stone foundations); and

WHEREAS, USAG-Pōhakuloa has identified a lava tube site, T-092812-02, that contains human remains within the Charlie Circle Alternative, and treatment of the human remains is being addressed by USAG-Pōhakuloa under the Native American Graves Protection and Repatriation Act (NAGPRA); and

WHEREAS, the mountain lands of Hawai'i Island, within which PTA is located, are of religious and cultural importance to Native Hawaiians, and the significance of some areas such as Mauna Kea have been well documented; and

WHEREAS, USAG-HI and USAG-Pōhakuloa conducted an oral history study of PTA to identify TCPs or properties of religious and cultural significance to Native Hawaiians in 2002; due to contractual issues the report remains in draft form and will never reach final form, however the transcripts of interviews remain a source of information; and

WHEREAS, USAG-HI and USAG-Pōhakuloa conducted an ethnographic study of PTA to identify TCPs and properties of religious and cultural significance to Native Hawaiians at PTA in 2012, and the final report was released and distributed to interested parties in December 2012; and

WHEREAS, the 2002 oral history study, the 2012 ethnographic study and the 2010 IPBC historic property identification survey did not identify specific TCPs and properties of religious

and cultural significance to Native Hawaiians within PTA; such properties may be identified and evaluated for NRHP eligibility in the future as additional information becomes available; and

WHEREAS, USAG-Pōhakuloa has provided all currently known cultural resource location data to the U.S. Army Corps of Engineers, Hawaii District, and their contractors regarding the IPBC range design for consideration in the range layout, and revisions to the IPBC range design have occurred as a result of the presence of cultural resources; and

WHEREAS, due to the density of cultural resources, the topography, and the nature of the Undertaking, avoidance of all NRHP-eligible historic properties is not possible; and

WHEREAS, USAG-Pōhakuloa requested assistance from SHPD and OHA, in an October 2011 letter, in identifying NHOs that may assign significance to PTA in general and within the APE for this undertaking specifically; and

WHEREAS, USAG-Pōhakuloa representatives attended a meeting of Kahu Ku Mauna, the cultural advisory committee for the Office of Mauna Kea Management, on December 6, 2011 to present information about the undertaking, answer questions and seek comments; and

WHEREAS, the SHPD Hawai'i Island Archaeologist was invited to visit the project area and did so in January 2011, and the PTA Archeologist met with SHPD archaeologists to discuss the undertaking and proposed mitigations on November 2, 2011; and

WHEREAS, the OHA requested and was hosted by USAG-Pōhakuloa in a visit to the APE on April 9 and 10, 2012; and

WHEREAS, USARPAC and USAG-HI are preparing an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the IPBC construction and operation; and

NOW, THEREFORE, USAG-HI, USAG-Pōhakuloa, USARPAC, SHPD, and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of this Undertaking on historic properties.

STIPULATIONS

USAG-Pōhakuloa shall ensure that the following Stipulations are carried out:

I. PRE-CONSTRUCTION ACTIVITIES

A. NRHP-DETERMINATIONS OF ELIGIBILITY FOR CULTURAL RESOURCES WITHIN THE SELECTED ALTERNATIVE

USAG-Pōhakuloa shall ensure that determinations of eligibility for the NRHP of all cultural resources identified within the portion of the APE that corresponds to the selected alternative are completed prior to earth disturbing activities within the APE.

1. The determinations of eligibility (DOE) for the NRHP will conform to *National Register Bulletin: How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, 1990, revised 2002) and at a minimum shall include:

- a) resource size and boundary;
- b) description of the resource;
- c) integrity and condition of resource features;
- d) resource functions;
- e) age and cultural affiliation; and
- f) criteria for evaluation.

2. USAG-Pōhakuloa shall provide SHPD, and OHA, with the DOEs for all identified cultural resources, to include the corresponding Phase II reports, within 90 calendar days of execution of this Agreement.

3. SHPD shall respond in writing within 30 calendar days after receipt of the DOEs with their concurrence, a request for specific additional information, or questions or concerns regarding the DOEs. No response within 30 calendar days shall be understood to indicate concurrence with the determinations.

4. USAG-Pōhakuloa will notify all other Consulting Parties, except the ACHP, that the DOEs are available within seven calendar days of providing SHPD with the DOEs and will provide a hard copy of the DOEs upon written request not more than 30 calendar days after receipt of notice of availability.

5. Consulting Parties are under no obligation to provide comments on the DOEs; however, if they wish USAG-Pōhakuloa to consider their comments regarding the DOEs, Consulting Parties should submit comments in writing within 30 calendar days of receipt of the DOEs, to include identification of TCPs or properties of religious and cultural significance to Native Hawaiians.

6. Within 21 calendar days of receiving all comments, USAG-Pōhakuloa shall provide a response to SHPD if additional information is requested or questions posed.

7. SHPD shall respond in writing within 30 calendar days of receipt of the additional information with their concurrence or disputes on eligibility.

8. USAG-Pōhakuloa shall spend no more than 21 calendar days to resolve disputes on eligibility with SHPD.

9. In the event that disputes with SHPD concerning eligibility cannot be resolved within those 21 calendar days, USAG-Pōhakuloa shall provide documentation to the Keeper of the National Register with a request for a determination of eligibility in accordance with 36 C.F.R. Part 63.

10. In the event that there is a dispute over NRHP-eligibility, USAG-Pōhakuloa shall provide protection measures to the cultural resource in question in accordance with Stipulation II(A) until the dispute is resolved.

B. FINALIZATION OF IPBC DESIGN

1. USAG-Pōhakuloa shall consider avoidance as the first form of mitigation for all of NRHP eligible sites during the finalization of the IPBC design as practical and feasible within the constraints of the requirements of the range and the limitations of the topography. Avoidance shall include, but not be limited to, the designation of “no-go” areas in planned ground softening portions of the construction footprint. “No-go” areas will not be ground softened and will be incorporated as off-limits areas during training activities in the IPBC.

a) If the Charlie Circle Alternative is the selected alternative, USAG-Pōhakuloa shall avoid Site T-092812-02.

2. USAG-Pōhakuloa Archeologist shall participate, and coordinate with the U.S. Army Corps of Engineers, Hawai’i District, and their contractors, in all range design discussions until the IPBC design is finalized.

3. USAG-Pōhakuloa shall provide the U.S. Army Corps of Engineers, Hawai’i District, and their contractors with information on the location of cultural resources prior to NRHP determinations, to include those cultural resources identified pursuant to Stipulation I(C), and identified historic properties within seven calendar days of receiving SHPD concurrence pursuant to Stipulation I(A)(7) and (8) and Stipulation I(C)(3)(g) and (h).

4. Upon consensus of eligibility to the NRHP in accordance with Stipulation I(A) and Stipulation I(C) as appropriate, USAG-Pōhakuloa shall provide SHPD and Consulting Parties, except the ACHP, with information about (a) those historic properties that can be avoided by the final design of the IPBC, (b) those historic properties that will be protected in accordance with Stipulation II(A), and (c) those historic properties that cannot be avoided. In the event that unresolved eligibility determinations are sent to the Keeper of the National Register in accordance with Stipulation I(A)(9) or Stipulation I(C)(3)(i), those cultural resources will be protected in accordance with Stipulation II(A) until the Keeper renders a decision.

5. SHPD shall respond in writing within 30 calendar days of receipt of the information with their concurrence, a request for specific additional information, or questions or concerns regarding historic property avoidance. No response shall be understood to indicate concurrence.

6. Consulting Parties are under no obligation to provide comments on the information provided; however, if they wish for their comments to be taken into account by USAG-Pōhakuloa in the finalization of the list of historic properties to be avoided, Consulting Parties should submit comments in writing within 30 calendar days of receipt of the information.

7. USAG-Pōhakuloa shall provide SHPD and Consulting Parties, except the ACHP, a final list of historic properties to be avoided and protected by the IPBC design as well as those that will not be avoided in writing within 14 calendar days of finalizing the list based on responses from SHPD and Consulting Parties.

C. PRE-CONSTRUCTION CULTURAL RESOURCES SURVEY

After the construction plans are finalized and prior to the beginning of construction activities in the APE, USAG-Pōhakuloa shall ensure that a pre-construction cultural resources survey of the project area is conducted by developing a work plan to specify the methodology of the survey within 180 calendar days of execution of this Agreement. The goal of this survey is to evaluate the final design for the IPBC relative to historic properties, and to ensure that no unidentified historic properties are within the project area.

1. The survey shall
 - a) Be carried out with transects oriented at a 90° angle to the transects used in the original identification survey.
 - b) Thoroughly cover the project area but the survey will not exceed more than 30 calendar days.

c) Include documentation of cultural resources for evaluation of NRHP eligibility.

2. USAG-Pōhakuloa shall develop the work plan in the following manner:

a) Provide the Consulting Parties, except the ACHP, 14 calendar days' notice by email, and phone if necessary, to determine the Consulting Parties' interests in participating (hereafter referred to as Interested Parties) in the development of the work plan. No response within 14 calendar days shall be understood to mean that the party is not interested in the development of the work plan and they will not receive any additional information concerning the work plan;

b) Provide the Interested Parties the draft of the work plan by email, and hard copy if requested, two calendar days after completing Stipulation I(C)(2)(a);

c) Provide the Interested Parties a 30 calendar day opportunity to review and comment by email on the draft work plan;

d) USAG-Pōhakuloa shall consider all comments received within the 30 calendar day review period in developing the final work plan;

e) No response by an Interested Party within 30 calendar days shall be understood to mean that the Interested Party does not have any concerns or comments on the work plan;

f) USAG-Pōhakuloa shall finalize the work plan within 14 calendar days of receiving all comments in accordance with Stipulation I(C)(2)(c); and

g) USAG-Pōhakuloa shall distribute a copy of the final work plan to the Interested Parties by mail within 14 calendar days of finalizing the work plan.

3. If previously unidentified cultural resources are found during the survey, USAG-Pōhakuloa shall finalize DOEs in the following manner:

a) The DOE for the NRHP will conform to *National Register Bulletin: How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, 1990, revised 2002) and at a minimum shall include:

(1) resource size and boundary;

- (2) description of the resource;
- (3) integrity and condition of resource features;
- (4) resource functions;
- (5) age and cultural affiliation; and
- (6) criteria for evaluation.

b) USAG-Pōhakuloa shall provide SHPD, and OHA, with the DOEs for all identified cultural resources, including the corresponding inventory report, within 14 calendar days of the survey's completion.

c) SHPD shall respond in writing within seven calendar days of receipt of the DOE with their concurrence, a request for additional information, or questions or concerns regarding the DOEs. No response shall be understood to indicate concurrence with the determinations.

d) USAG-Pōhakuloa will notify all other Consulting Parties, except the ACHP, that the DOEs are available within two calendar days of providing SHPD with the DOEs and will provide a hard copy of the DOEs upon written request not more than seven calendar days after receipt of notice of availability.

e) Consulting Parties are under no obligation to provide comments on the DOEs; however, if they wish USAG-Pōhakuloa to consider their comments regarding the DOEs, Consulting Parties should submit comments in writing within seven calendar days of receipt of the DOEs, to include identification of TCPs or properties of religious and cultural significance to Native Hawaiians.

f) Within three calendar days of receiving all comments, USAG-Pōhakuloa shall provide a response to SHPD if additional information or questions are requested and provide that information to SHPD.

g) SHPD shall respond in writing within five calendar days of receipt of the additional information with their concurrence or disputes on eligibility. No response shall be understood to indicate concurrence with the determinations.

h) USAG-Pōhakuloa shall spend no more than three calendar days to resolve disputes on eligibility with SHPD.

i) In the event that disputes with SHPD concerning eligibility cannot be resolved within those three calendar days, USAG-Pōhakuloa shall provide documentation to the Keeper of the National Register with a request for a determination of eligibility in accordance with 36 C.F.R. Part 63.

j) In the event that there is a dispute over NRHP-eligibility, USAG-Pōhakuloa shall provide protection measures to the cultural resource in question in accordance with Stipulation II(A) until the dispute is resolved.

4. SHPD and OHA shall be provided the opportunity to accompany the cultural resources management firm during the survey upon written request to the USAG-Pōhakuloa Garrison Commander.

D. DATA RECOVERY PROGRAM AND STANDARDIZED SITE SIGNIFICANCE STANDARDS

For those historic properties that USAG-Pōhakuloa determines avoidance is not possible upon finalization of the IPBC design, in accordance with Stipulation I(B), USAG-Pōhakuloa shall implement a data recovery program on a sample of the affected historic properties.

1. The data recovery program shall be designed to refine and standardize site significance standards to be used by USAG-Pōhakuloa and other federal agencies with stewardship responsibilities on Hawai'i Island. The data recovery program shall:

a) Be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation;

b) Include a synthesis of previous studies focusing on (1) pāhoehoe excavated pit sites, (2) lava tube sites, and (3) surface archaeological sites (which includes but is not limited to mounds or cairns and stone foundations) (hereafter collectively referred to as site types) that are the focus of the program;

c) Collect quantitative and qualitative data that will be used to refine the existing significance standards for the site types that are the focus of the program;

d) Select a sample of the site types affected by the final design of the IPBC.

2. USAG-Pōhakuloa shall develop the data recovery program in the following manner:

- a) Provide the Consulting Parties, except the ACHP, 14 calendar days' notice by email, and phone if necessary, to determine the Parties' interests (hereafter referred to as Interested Parties) in the development of the data recovery program. No response within 14 calendar days shall be understood to mean that the party is not interested in reviewing the research design and they will not receive any additional information concerning the data recovery program; and
- b) Develop a research design that at a minimum shall:
 - (1) identify the site types affected by the Undertaking;
 - (2) identify the site types that will be the subject of data recovery, and the reason for choosing those historic properties;
 - (3) include a discussion of research objectives in addition to refining significance standards;
 - (4) describe the methodology for field investigations that will be employed for each of the site types;
 - (5) describe the data collection and analysis methodology and techniques.
- c) Provide the Interested Parties the draft research design by email, and hard copy if requested, two calendar days after completing Stipulation I(D)(2)(a); and
- d) Provide the Interested Parties a 20 calendar day opportunity to review and comment by email on the draft research design; and
- e) USAG-Pōhakuloa shall consider all comments received within the 20 calendar day period in developing the final research design; and
- f) No response by an Interested Party within the 20 calendar day review period shall be understood to mean that the Interested Party does not have any concerns or comments on the draft research design; and
- g) USAG-Pōhakuloa shall distribute a copy of the draft final research design to the Interested Parties by email within 30 calendar days of receiving comments on the draft research design; and
- h) Provide the Interested Parties 15 calendar days to review and comment by email on the draft final research design; and

- i) No response by an Interested Party within the 15 calendar day review period shall be understood to mean that the Interested Party does not have any concerns or comments on the draft final research design; and
 - j) USAG-Pōhakuoloa shall include an appendix with all comments or questions received on the draft final research design including responses in the final research design; and
 - k) USAG-Pōhakuoloa shall finalize the research design within 14 calendar days of receiving comments in accordance with Stipulation I(D)(2)(h);
 - l) USAG-Pōhakuoloa shall distribute a copy of the final research design to the Interested Parties by mail within 14 calendar days of finalization.
3. A draft report and draft site significance standards shall be completed within two years of execution of this Agreement. USAG-Pōhakuoloa shall:
- a) Provide the Consulting Parties, except for the ACHP, 14 calendar days' notice by email, and phone if necessary, to determine the Parties' interests (hereafter referred to as Interested Parties) in the development of the report and site significance standards. No response within 14 calendar days shall be understood to mean that the party is not interested in participating in the development of the report and site significance standards and they will not receive any additional information concerning the report and site significance standards; and
 - b) Provide the Interested Parties the draft of the report and site significance standards by email, and hard copy if requested, two calendar days after completing Stipulation I(C)(3)(a); and
 - c) Provide the Interested Parties a 30 calendar day opportunity to review and comment by email on the draft report and site significance standards; and
 - d) USAG-Pōhakuoloa shall consider all comments received within the 30 calendar day period in developing the final report and site significance standards; and
 - e) No response by an Interested Party within the 30 calendar day review period shall be understood to mean that the Interested Party does not have any concerns or comments on the draft report or site significance standards; and

- f) Distribute a copy of the draft final report and site significance standards to the Interested Parties by email within 45 calendar days of receiving comments on the draft report and site significance standards; and
- g) Provide the Interested Parties 30 calendar days to review and comment by email on the draft final report and site significance standards; and
- h) No response by an Interested Party within the 30 calendar day review period shall be understood to mean that the Interested Party does not have any concerns or comments on the draft final report and site significance standards; and
- i) Include an appendix with all comments or questions received on the draft final report and site significance standards including responses in the final report; and
- j) Distribute a copy of the final report and site significance standards to the Interested Parties by mail within 21 calendar days of finalization.

4. USAG-Pōhakuloa shall provide the results of the data recovery program and standardized site significance standards to SHPD and other federal agencies with stewardship responsibilities on Hawai'i Island, in an electronic format, within 180 calendar days of completion.

E. PROCEDURES FOR REMOVAL OF UXO

When UXO is identified in the APE that must be removed, USAG-Pōhakuloa shall follow these steps in order to consider the presence of historic properties which may be affected by the UXO removal:

1. USAG-Pōhakuloa Archeologist shall determine, based on prior surveys, if historic properties are present within the blast radius of the UXO.
2. In the event that historic properties are within the blast radius of the UXO, removal of the UXO to a location where no historic properties are present so that it can be detonated without adverse effect shall be considered.
3. In the event that the UXO cannot be safely moved, steps such as placement of sand bags and directing the force of the detonation will be taken to minimize effects on historic properties within the blast radius of the UXO.

4. If minimization measures are not possible due to human health and safety concerns, USAG-Pōhakuloa Cultural Resources Section will conduct a condition assessment of the effected historic properties after the detonation if safety measures allow for access.

5. USAG-Pōhakuloa will report on any UXO removal affecting historic properties, or cultural resources, to include condition assessments, in the Annual Report in accordance with Stipulation IV(C).

F. ACCESS TO THE IPBC

1. USAG-Pōhakuloa shall provide an opportunity for Consulting Parties to see the APE for the IPBC during pre-construction activities.

2. The first opportunity to visit the APE shall be the third Saturday following submittal of the DOEs in accordance with Stipulation I(A)(4). The cover letter accompanying the DOEs shall include an invitation to visit the project area. Consulting parties shall notify the USAG-Pōhakuloa Garrison Commander of intent to attend in writing no less than seven calendar days prior to the visit.

3. Following the first visit, the next opportunity for a visit shall be on the first Friday of the first following month, followed by the first Saturday of the second following month, and the first Friday of the third following month. Consulting parties shall notify the USAG-Pōhakuloa Garrison Commander in writing 30 calendar days prior to the proposed access of intent to attend.

II. CONSTRUCTION ACTIVITIES

A. HISTORIC PROPERTY PROTECTION MEASURES

1. USAG-Pōhakuloa shall ensure that all construction personnel are educated about cultural resources in the APE through a briefing and educational materials prior to commencement of earth-disturbing activities from the USAG-Pōhakuloa Cultural Resources Section.

2. USAG-Pōhakuloa shall update construction maps with identified historic properties in the IPBC that are to be avoided following completion of Stipulation I(A)(10), Stipulation I(B)(7), and/or Stipulation I(C)(3)(j) as appropriate, and prior to the beginning of earth disturbing activities in the APE. The updated construction maps will be provided in the first Annual Report in accordance with Stipulation IV(C).

3. USAG-Pōhakuloa shall install protective measures around identified historic properties within 25 meters of the construction footprint that are to be avoided, pursuant to Stipulation I(A)(10), Stipulation I(B)(7), and/or Stipulation I(C)(3)(j) as appropriate, in advance of earth disturbing activities. These protective measures will consist of orange construction fencing or other highly visible markings. The construction personnel shall also be made aware of these areas.

a) If the Charlie Circle Alternative is the selected alternative, USAG-Pōhakuloa shall protect Site T-092812-02.

4. Construction personnel shall contact the USAG-Pōhakuloa Cultural Resources Section immediately upon encountering a previously unidentified cultural resource pursuant to Stipulation IV(B)(3).

5. In the unanticipated event that earth-disturbing activities in the APE begin prior to resolution of NRHP-eligibility determinations pursuant to Stipulation I(A) and Stipulation I(C), USAG-Pōhakuloa shall ensure that identified cultural resources are protected until NRHP-eligibility determinations and documentation are completed.

III. POST CONSTRUCTION ACTIVITIES

A. OPERATIONAL MONITORING

1. Within 180 calendar days of target arrays being established, USAG-Pōhakuloa shall select three target arrays, based on factors such as proximity to historic properties and munitions type use at the target, at which effects of training activities on historic properties shall be evaluated within 25 meters of the array in the following manner:

a) Provide the Consulting Parties, except for the ACHP, 14 calendar days' notice by email, and phone if necessary, to determine the Parties' interests (hereafter referred to as Interested Parties) in the selection of the three target arrays for historic properties monitoring. No response within 14 calendar days shall be understood to mean that the party does not wish to be further involved in reviewing operational monitoring material and they will not receive any additional information concerning operational monitoring;

b) Provide the Interested Parties (a) the location of the target arrays, (b) the reason why they were chosen, and (c) how historic properties within 25 meters of the arrays will be evaluated by email, and hard copy if requested, two calendar days after completing Stipulation III(A)(1)(a);

- c) Provide the Interested Parties a 10 calendar day opportunity to review and comment by email on the chosen target arrays and the evaluation plan;
 - d) USAG-Pōhakuloa shall consider all comments received within the 10 calendar day period before finalizing the target array selection and evaluation plan;
 - e) No response by an Interested Party within 10 calendar days shall be understood to mean that the Interested Party does not have any concerns or comments on the selection of the target arrays or evaluation plan;
 - f) USAG- Pōhakuloa shall distribute a map of the final selected target arrays and the evaluation plan to the Interested Parties by mail within 14 calendar days of the decision.
2. USAG-Pōhakuloa shall ensure that the target locations are visited after the first three training rotations using the evaluation plan.
3. A report documenting the site visit to the select target arrays and evaluation shall be included in the Annual Report in accordance with Stipulation IV(C). This report shall include an assessment annually of the state of historic properties monitored and any effects of training at the selected target arrays.
4. Any proposed changes to the operational monitoring shall be submitted in writing to the Consulting Parties, except for the ACHP, for review and comment within 30 calendar days of receipt. No response within that 30 calendar day review period shall be understood to constitute concurrence with the proposed changes.
5. At the end of five years after the selection of the target arrays USAG-Pōhakuloa and SHPD shall assess the state of historic properties and any effects of training at the selected target arrays. USAG-Pōhakuloa and SHPD shall determine at that time if the monitoring shall continue at a selected target array and identify the goals of continued evaluations that were not satisfied in the previous years of monitoring.

B. CURATION

Any artifacts or other material remains collected as a result of measures discussed above shall be curated at the PTA curation facility which meets the standards in 36 C.F.R. Part 76. All records, including but not limited to field notes, photographs and site forms related to the measures discussed above shall be maintained at the PTA curation facility. The status of the curated items will be included in the Annual Report in accordance with Stipulation IV(C).

C. ACCESS TO THE IPBC

1. USAG-Pōhakuloa shall provide an opportunity for Consulting Parties to see the completed IPBC before it goes live.
2. USAG-Pōhakuloa Garrison Commander shall invite Consulting Parties within 30 calendar days of construction completion to view the completed IPBC.
3. Consulting Parties shall respond in writing confirming attendance at the visit upon receipt of the invitation from the USAG-Pōhakuloa Garrison Commander, no later than seven calendar days prior to the visit.

D. NRHP-DETERMINATIONS OF ELIGIBILITY FOR CULTURAL RESOURCES WITHIN THE UNSELECTED ALTERNATIVE

1. The DOE for the NRHP will conform to *National Register Bulletin: How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, 1990, revised 2002) and at a minimum shall include:
 - a) resource size and boundary;
 - b) description of the resource;
 - c) integrity and condition of resource features;
 - d) resource functions;
 - e) age and cultural affiliation; and
 - f) criteria for evaluation.
2. USAG-Pōhakuloa shall provide SHPD, and OHA, with the DOEs for all identified cultural resources, to include the corresponding Phase II reports, in the unselected area within 180 calendar days of the IPBC going live.
3. SHPD shall respond in writing within 30 calendar days after receipt of the DOEs with their concurrence, a request for specific additional information, or questions or concerns regarding the DOEs. No response within 30 calendar days shall be understood to indicate concurrence with the determinations.
4. Consulting Parties are under no obligation to provide comments on the DOEs; however, if they wish USAG-Pōhakuloa to consider their comments regarding the DOEs, Consulting Parties should submit comments in writing within 30 calendar days of receipt of the DOEs, to include identification of TCPs or properties of religious and cultural significance to Native Hawaiians.

5. Within 21 calendar days of receiving all comments, USAG-Pōhakuloa shall provide a response to SHPD if additional information is requested or questions posed.
6. SHPD shall respond in writing within 30 calendar days of receipt of the additional information with their concurrence or disputes on eligibility.
7. USAG-Pōhakuloa shall spend no more than 21 calendar days to resolve disputes on eligibility with SHPD.
8. In the event that disputes with SHPD concerning eligibility cannot be resolved within those 21 calendar days, USAG-Pōhakuloa shall provide documentation to the Keeper of the National Register with a request for a determination of eligibility in accordance with 36 C.F.R. Part 63.
9. USAG-Pōhakuloa will report on the submission of the DOEs in the Annual Report in accordance with Stipulation IV(C).

IV. ADMINISTRATIVE STIPULATIONS

A. ROLES AND RESPONSIBILITIES

1. The USAG-Pōhakuloa Garrison Commander has command and control authority for PTA. The USAG-Pōhakuloa Garrison Commander has oversight of all PTA staff and is responsible to ensure that military training proceeds at PTA.
2. The USAG-Pōhakuloa Cultural Resources Section implements the cultural resources program for the Department of the Army on Hawai'i Island to ensure compliance with all applicable federal and state laws. At the time of the signing of this Agreement the section consists of one government Archeologist and six archaeologists through a cooperative agreement. The staff provides day to day support for required cultural resources actions and support to the USAG-Pōhakuloa Archaeologist.
3. The USAG-Pōhakuloa Archaeologist, a government employee, oversees and coordinates the USAG-Pōhakuloa Cultural Resources Section, including administrative requirements, compliance with all legally binding agreements, and consultations in compliance with federal laws.
4. The USAG-HI Cultural Resources Manager has oversight management of US Army Cultural Resources programs in Hawaii, and provides reach-back support for USAG-Pōhakuloa Cultural Resources Section under the status of USAG-Pōhakuloa as an indirect Garrison to USAG-HI.

5. USAG-Pōhakuloa may acquire the services of qualified professionals to carry out the work stipulated in this Agreement. USAG-Pōhakuloa shall ensure that all work pursuant to this Agreement is carried out by, or under the direct supervision of, a person or persons meeting the appropriate qualifications set forth in “Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated].”

6. At the time of the signing of this Agreement, Consulting Parties include OHA, the Royal Order of Kamehameha I, Flores-Case ‘Ohana, ‘Ohana Kala‘i, Aloha ‘Aina Educational Center, Kelley Uyeoka, Mauna Kea Anaina Hou, ‘Ohana Keaweamahi, ‘Ohana Medeiros, ‘Ohana Kapu, ‘Ohana Keliinoi, ‘Ohana Kawainui, ‘Ohana Kaleikini, and ‘Ohana Huihui. Other parties that wish to participate in the Agreement as Consulting Parties shall submit a request in writing to the USAG-Pōhakuloa Garrison Commander to be added to the Consulting Parties under this Agreement.

B. INADVERTENT AND POST REVIEW DISCOVERIES

1. If human remains, associated and/or unassociated funerary objects, sacred objects, and/or objects of cultural patrimony (Cultural Items) are encountered by any employee (or contractor in the employ of) USAG-Pōhakuloa, USAG-HI or USARPAC during the implementation of the Undertaking, all activity in the vicinity of the discovery will cease and USAG-Pōhakuloa Cultural Resources Section will be contacted immediately. In this circumstance USAG-Pōhakuloa shall follow the stipulations under the NAGPRA. Earth moving activity shall not resume until the USAG-Pōhakuloa Archeologist or USAG-HI Cultural Resources Manager advises that work may proceed.

2. If previously unidentified cultural resources are encountered by any employee (or contractor in the employ of) USAG-Pōhakuloa, USAG-HI or USARPAC during the implementation of the Undertaking, all activity in the vicinity of the discovery will cease and USAG-Pōhakuloa Cultural Resources Section will be contacted immediately. Earth moving activity shall not resume until the USAG-Pōhakuloa Archeologist or USAG-HI Cultural Resources Manager advises that work may proceed.

3. In accordance with Stipulation II(A)(4), construction activities shall be suspended within 300 feet of any previously unidentified cultural resource that is encountered by construction personnel and USAG-Pōhakuloa Cultural Resources Section shall be notified immediately. Earth moving activity shall not resume until the USAG-Pōhakuloa Archeologist or USAG-HI Cultural Resources Manager advises that work may proceed.

4. In the event of an inadvertent discovery as described in Stipulations IV(B)(1-3), archeologists from USAG-Pōhakuloa Cultural Resources Section shall

- a) Within three working days of notification of the discovery evaluate the discovery to determine if the find may be an historic property under NHPA or Cultural Item under NAGPRA;
- b) Notify SHPD and Consulting Parties, except for the ACHP, within five working days of the discovery by email and phone if necessary if the discovery is a resource that may be eligible for the NRHP; and
- c) Notify SHPD, OHA and Hui Malama I Na Kupuna O Hawai'i Nei in accordance with NAGPRA if human remains and/or Cultural Items are associated with the discovery; and
- d) Ensure that the site is protected until consultation concludes; and
- e) Document any site that may be an historic property so that a DOE can be submitted to SHPD; and
- f) Submittal and review of DOEs shall follow the procedure in Stipulation I(C)(3); and
- g) In the event that it is determined that the site cannot be avoided by the final project, USAG-Pōhakuloa shall ensure that data recovery is conducted on the site in accordance with the methodology established in Stipulation I(D); and
- h) A report of these activities shall be included in the Annual Report as described in Stipulation IV(C).

5. All construction contractors and subcontractors shall be informed of the conditions of Stipulations II(A) and IV(C) at the pre-construction meeting, in cultural resources briefs, and in all printed material that is distributed.

C. ANNUAL REPORTING

1. USAG-Pōhakuloa will provide a written Annual Report (period covered February 1 through January 31) to consulting parties annually, no later than March 15 of each year during the implementation of this Agreement, via email; and hard copy by request. The report will be provided to the ACHP upon request. The first Annual Report shall be submitted in 2014.

2. The report will include the necessary and appropriate information to include, but is not limited to, Stipulation I, II, III, IV(B), IV(D), and IV(E).

D. AMENDMENTS

This Agreement 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.

E. DISPUTE RESOLUTION

Should any signatory or Consulting Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, USAG-Pōhakuloa shall consult with such party to resolve the objection. If USAG-Pōhakuloa determines that such objection cannot be resolved, USAG-Pōhakuloa will:

1. Forward all documentation relevant to the dispute, including USAG-Pōhakuloa's proposed resolution, to the ACHP. The ACHP shall provide USAG-Pōhakuloa with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USAG-Pōhakuloa shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USAG-Pōhakuloa will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, USAG-Pōhakuloa may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USAG-Pōhakuloa shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

3. USAG-Pōhakuloa's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

F. TERMINATION

1. If any signatory to this Agreement 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 IV(D), above. If within 30 calendar days (or another time period agreed to by all signatories) agreement on an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

2. Once the Agreement is terminated, and prior to work continuing on the Project, USAG-Pōhakuloa must either (a) execute an agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. USAG-Pōhakuloa shall notify the Consulting Parties as to the course of action it will pursue.

G. ANTI-DEFICIENCY ACT

All requirements set forth in the Agreement requiring expenditure of Department of Army funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341). No obligation undertaken by the Department of the Army, USAG-HI, USAG-Pōhakuloa, or USARPAC under the terms of this Agreement shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose. If the Department of the Army, USAG-HI, USAG-Pōhakuloa, or USARPAC cannot perform any obligation set forth in this Agreement because of unavailability of funds, that obligation must be renegotiated among USAG-HI, USAG-Pōhakuloa, USARPAC, SHPD, and the ACHP.

H. DURATION

1. This Agreement will take effect on the date it is signed by the last signatory and will remain in effect for eight years from that date.
2. If after eight years, portions of this Undertaking have not been completed due to changes in timeline associated with construction, USAG-Pōhakuloa shall initiate consultation with consulting parties six months prior to expiration of the Agreement to extend the Agreement for an appropriate amount of time in accordance with Stipulation IV(D).

I. PROJECT POSTPONEMENT

1. In the event that the Undertaking is postponed, USAG-Pōhakuloa Garrison Command shall notify Consulting Parties in writing within 60 days of postponing the Undertaking to include any known information as to when the Undertaking will be reinitiated and which stipulations, if any, will be delayed.
2. If the Undertaking is postponed, USAG-Pōhakuloa will implement Stipulations I(A), III(D) and IV(C) regardless of a postponement.
3. USAG-Pōhakuloa will report on any issue relating to the Undertaking's postponement in the Annual Report in accordance with Stipulation IV(C).

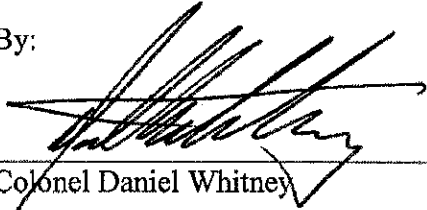
EXECUTION of this Agreement by the USAG-HI, USAG-Pōhakuloa, USARPAC, SHPD, and the ACHP and implementation of its terms evidence that USAG-HI, USAG-Pōhakuloa, and USARPAC has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**PROGRAMMATIC AGREEMENT AMONG
THE UNITED STATES ARMY GARRISON- HAWAII,
THE UNITED STATES ARMY GARRISON-PŌHAKULOA,
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AT PŌHAKULOA TRAINING AREA, KA'OHE AHUPUA'A, HĀMĀKUA DISTRICT,
HAWAI'I ISLAND, COUNTY OF HAWAI'I, HAWAI'I**

SIGNATORY PARTIES:

UNITED STATES ARMY GARRISON, HAWAII

By:



Colonel Daniel Whitney

Date:

07 MAR 2013

Garrison Commander

UNITED STATES ARMY GARRISON-PŌHAKULOA

By:



Lieutenant Colonel Eric P. Schwedo

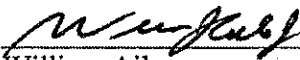
Date:

06 MAR 2013

Garrison Commander

STATE HISTORIC PRESERVATION OFFICER

By:



William Aila

Date:

6/21/13

State Historic Preservation Officer

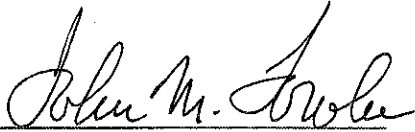
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SIGNATORY PARTIES. CONTINUED:

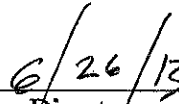
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:

Date:



John M. Fowler



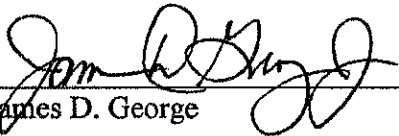
Executive Director

INVITED SIGNATORY:

UNITED STATES ARMY PACIFIC

By:

Date:



James D. George

11 MAR 2013

Director, MSE-HI, USARPAC

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HAWAI'I ISLAND, COUNTY OF HAWAI'I, HAWAI'I**

CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

By:

Date:

Kamana'opono M. Crabbe, Ph.D.

Ka Pouhana, Chief Executive Officer

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CONCURRING PARTY:

MAUNA KEA ANAINA HOU

By:

Date:

Kealoha Pisciotta

President

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CONCURRING PARTY:

ROYAL ORDER OF KAMEHAMEHA

By:

Date:

Sir William Roback

Ali'i Nui, Heiau O Na Ali'i

**PROGRAMMATIC AGREEMENT AMONG
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CONCURRING PARTY:

FLORES- CASE 'OHANA

By:

Date:

E. Kalani Flores

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CONCURRING PARTY:

ALOHA 'AINA EDUCATIONAL CENTER

By:

Date:

Moani K. Akaka

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CONCURRING PARTY:

'OHANA KAPU

By:

Date:

JR Keonekapu Williams

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CONCURRING PARTY:

'OHANA MEDEIROS

By:

Date:

James Medeiros

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CONCURRING PARTY:

‘OHANA KEAWEAMAHI

By:

Date

Ka'anohi Kaleikini

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CONCURRING PARTY:

'OHANA KALA'I

By:

Date

Kamuela Kala'i

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CONCURRING PARTY:

‘OHANA KELIINOI

By:

Date

Kalahikiola Keliinoi

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CONCURRING PARTY:

‘OHANA KAWAINUI

By:

Date

Aliikaua Kawainui Kaleikini

**PROGRAMMATIC AGREEMENT AMONG
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CONCURRING PARTY:

‘OHANA KALEIKINI

By:

Date

Kala Waahila Kaleikini

**PROGRAMMATIC AGREEMENT AMONG
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CONCURRING PARTY:

'OHANA HUIHUI

By:

Date

Mana Kaleilani Caceres

Attachment A

Area of Potential Effect

