

23 MAR 09-Pre-Final
PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY GARRISON-HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR SECTION 106 RESPONSIBILITIES FOR ROUTINE MILITARY TRAINING AT
MAKUA MILITARY RESERVATION, OAHU ISLAND, HAWAII

WHEREAS, the U.S. Army Garrison-Hawaii (Garrison) has a mission to operate and maintain training areas and ranges in the State of Hawaii in support of the training of military personnel and units; and

WHEREAS, the Garrison has determined that routine training at Makua Military Reservation (MMR), defined in Appendix A of this document, as well as other activities described within Stipulation 3 are undertakings that may have adverse effects upon historic properties; and

WHEREAS, the Area of Potential Effects (APE) for this training is defined as Makua Military Reservation as shown in Appendix B; and

WHEREAS, the Garrison has consulted with the Hawaii State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR Part 800.14(b)(3) and 800.6(a)(1)(i)(C) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (NHPA) to develop this Programmatic Agreement (PA) for the resolution of adverse effects from routine military training at MMR; and

WHEREAS, the Garrison consulted with the Office of Hawaiian Affairs, Hui Malama I Na Kupuna O Hawaii Nei, the Oahu Island Burial Council, members of Aha Kukaniloko/Koa Mana, Malama Makua, Hui Malama O Makua, and other Native Hawaiian families and individuals who attach traditional religious and cultural importance to historic properties within the APE (consulting Native Hawaiian organizations) (Appendix C) and invited them to participate as concurring parties to this agreement; and

WHEREAS, the identification of historic properties in the APE for routine training at MMR have occurred through pedestrian survey, subsurface testing, and a survey of traditional religious and cultural properties survey as documented in Appendices D and E (showing survey) in all areas that do not present a threat to human health and safety pursuant to 36 CFR Part 800.4; and determined that all known and future sites will be treated as eligible for inclusion in the National Register of Historic Places (NRHP) until a formal evaluation determines otherwise; and

WHEREAS, 121 historic properties listed in Appendix F and shown in Appendix B were identified within the APE; and

WHEREAS, this PA will not supersede any legal agreements including, but not limited to, the 2001 Settlement Agreement between Malama Makua and the Army; and

NOW THEREFORE, the Garrison, SHPO, and ACHP (signatories) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The Garrison shall ensure the following:

1. General

a. Should any activity within the APE be proposed that differs from the activities described Appendix A or Stipulation 3, the Garrison shall consult on such undertakings on a case-by-case basis pursuant to Section 106 of the NHPA, as they fall outside the scope of this PA, or seek amendment of the PA pursuant to Stipulation 6 to bring the activity within the scope of this PA.

b. The Garrison will ensure that the treatment actions undertaken pursuant to this PA are performed by or under the direct supervision of the Garrison Cultural Resources Manager (CRM) and in consultation with a person having a minimum of 1 year experience in Hawaiian Archeology as well as familiarity with Native Hawaiian culture.

2. Additional Identification and Evaluation

Further identification and NRHP evaluations may occur as a result of post training monitoring, from discovery situations, or when funds are available to formally evaluate currently known “undetermined” sites. Sites identified through the above mentioned situations will be evaluated against criteria found in 36 CFR Part 60.4 and in consultation with SHPO, Native Hawaiian organizations, groups, families, and individuals who ascribe traditional religious and cultural importance to historic properties at MMR, and other consulting parties. Until formal evaluations are completed, all archeological sites within the APE will be treated as eligible for listing in the NRHP.

3. Treatment.

a. The Garrison will implement the following measures to ensure protection of historic properties within the APE.

b. Pre-training activities:

(1) The Garrison will mark the boundaries of all known historic properties in areas currently used for training with Seibert stakes. These stakes shall establish a buffer zone of no less than 15-20 meters from the exterior boundary of a historic property. Garrison will consult with SHPO and consulting parties regarding appropriate protective measures for sites within the South Fire Break Road. Military personnel will use multiple safety checks, as highlighted in Appendix A, to ensure protection of historic properties. The Garrison will report these efforts pursuant to Stipulation 10.

(2) The Garrison, when placing target objectives and training aids in new locations, will ensure avoidance of historic properties. When placing new targets and training aids without ground disturbance, for example portable containers and mockup targets, a cultural resources staff member will accompany the range personnel to ensure avoidance of historic properties. The Garrison will report on these new locations pursuant to Stipulation 10.

(3) When placement of new targets requires ground disturbance, the Garrison will request an expedited review by consulting parties with a 7 day notification about the location.

(4) Together and within 8 months of the execution of this PA, the Garrison and experts from the community identified by the consulting parties, if available, will update cultural awareness training programs for monitors, contractors and military personnel, which will include: grass cutters, maintenance, range personnel, military personnel, trainers and other parties.

(5) Based on the training programs developed, the Garrison will educate military personnel, and contractors working on MMR in cultural resource awareness and in the protection and avoidance of historic properties. Instruction includes field trips, classroom training, and printed literature. Unit commanders and designated staff who will train at MMR, as well as Range Control personnel, will be briefed by the Cultural Resources staff. The Garrison will report on training given during the year pursuant to Stipulation 10.

(6) The Garrison will provide all relevant offices within the Garrison, including fire fighting personnel and range personnel, information on the site protective measures described in Stipulation 3.b.(1) in place at MMR, maps of site locations, and a summary of their purpose and required actions to ensure their effectiveness.

c. Training Activities:

(1) Garrison training personnel will maintain a record of all artillery and mortar rounds that do not land within the designated impact area.

(2) For unexploded munitions that land outside the designated impact area, the Garrison will identify whether and how the munitions were disposed of. Further details of handling Unexploded Ordnance (UXO) are covered in Stipulation 4.f.

d. Post-training activities:

(1) The Garrison will monitor historic properties within the South Fire Break Road in accordance with Appendix G, Archaeological Site Monitoring Plan. The Monitoring Plan will be carried out by personnel from the Garrison Cultural Resource Program. The monitoring will take place initially every month for the first four months after live fire training commences and then subsequently every two months at appropriate intervals between live fire exercises to assess the effectiveness of the site protection measures and any effects to known or new historic properties. After the first 16 months of live fire training, the Garrison will perform monitoring on a quarterly basis.

(2) The Garrison will provide round out-of-impact area logs and monitoring reports to SHPO and all consulting parties within 21 days of the monitoring schedule reflected in Stipulation 3d(1). In addition, the Garrison will submit monitoring records, round out-of-impact area logs, fire response activities and photographic documentation in each annual reporting in accordance with Stipulation 10.

(3) Whereupon completion of monitoring, the monitor(s) have identified effects to potential historic properties, the CRM shall initiate consultation with consulting parties to determine NRHP eligibility of the property and determine any effects to the values that define the property's significance. If the effects to the historic property are adverse, the Garrison will proceed by following 36 CFR Part 800.6 to resolve any adverse effects.

(4) The Garrison will monitor only in areas determined safe to proceed at the time of monitoring by the Safety Officer. Additionally, there will be no monitoring conducted in terrain that is unsafe for general monitoring or outside the South Fire Break Road except in areas cleared of UXO (Appendix H).

(5) In the event UXO is identified, the Garrison will either remove or detonate the ordnance in accordance with Stipulation 4.f. if applicable. If unable to remove or detonate UXO in accordance with 4.f. the CRM will notify consulting parties and request an expedited (7 days from notification) consultation to determine the appropriate protection of nearby historic properties prior to the activity. Similarly, the CRM will follow the same notification and consultation procedures if other substances or materials (i.e. fuel spills) that pose a threat to human health and safety are discovered and the removal of such substances will require ground disturbance or have a potential to impact known historic properties.

e. Fire Suppression:

In the event that a fire should occur, the Garrison will follow the procedures established in its Fire Management Plan. The Fire Incident Commander/Fire Management Officer (IC/FMO) will notify the CRM. A record of fire occurrences and treatment activities will be provided in the Annual report to consulting parties in accordance with Stipulation 3.d.(2) and Stipulation 10.

4. Exempted Undertakings. Certain routine activities at MMR will be exempt from further Section 106 consultation if the CRM determines, prior to the commencement of the activity, that the activity falls within one of the categories listed below in Stipulation 4.a. through 4.f., and that the proposed activity lacks the potential to adversely affect historic properties. The Garrison shall include information regarding any activity proceeding under this stipulation in the first annual report pursuant to Stipulation 10. Additionally, the Garrison will consult with the Signatories and Concurring Parties regarding the need to continue reporting on exempted undertakings throughout the remaining duration of the PA.

a. Maintenance of previously landscaped areas such as groomed areas and tree trimming, as long as personnel carrying out the activities have received proper training and certification by CRM personnel (Appendix I).

b. Repaving or resurfacing of major firebreak roads, helicopter pads, and dip ponds and internal roads within the South Firebreak Road provided that equipment is restricted to previously disturbed areas and CRM personnel are present to ensure equipment stays within those areas (Appendix J).

c. Maintenance and repair of existing military facilities that are not historically significant, including buildings and parking areas as identified on map, fencing, and emergency repair of water, sewer, telephone, gas and electric utilities (Appendix K).

d. Replacement of existing targets if determined by CRM that the location of the target is not within boundaries of a known historic property.

e. Stockpiling and staging of road repair and paving materials in areas identified through consultation with consulting parties within 6 months of execution of this PA.

f. Removal of UXO or other substances or materials (i.e. surface propane tank) that pose a threat to human health and safety where the removal does not require ground disturbance or detonation at locations where explosive safety radius does not include known historic properties or historic properties already protected by accepted site protection measures.

5. Discoveries. In the event that discoveries of cultural resources are made within the APE, activities related to construction or excavation in the vicinity of the

discovery shall cease and the Range Officer will immediately be notified. Upon notification, the Range Officer will in turn immediately inform the CRM of the discovery. The CRM will investigate the discovery. If the CRM determines the discovery may be a cultural resources, the CRM will contact the SHPO, the Office of Hawaiian Affairs, and consulting Native Hawaiian organizations and groups in accordance with 36 CFR Part 800.13(b) and 800.4(c)(2). Archeological resources identified through discovery situations will be evaluated by the CRM pursuant to criteria found in 36 CFR Part 60.4 and in consultation with the SHPO, Native Hawaiian organizations and other consulting parties. Any disagreement over the eligibility of a discovered cultural resource shall follow the process in 36 CFR Part 800.4(c)(2). Additionally, any discoveries made will be treated subject to applicable laws and federal regulations.

6. Emergency Activities. No requirement of this PA shall delay immediate actions required in an emergency to protect human health and safety or avoid substantial damage or loss of facilities. Reasonable and prudent efforts, in coordination with the CRM, shall be made to avoid or reduce adverse effects to historic properties during the implementation of immediate emergency actions, documented in writing after the fact with documentation submitted to signatories within 30 days as notification of actions taken and included in the PA annual report addressed in Stipulation 10.

7. Amendment. Any signatory to the PA may propose to the Garrison that the PA be amended, whereupon the parties will consult with the signatories and consulting parties to consider such amendment. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

8. Termination. If the Garrison Commander determines that it cannot implement the terms of this PA, or if the SHPO or the ACHP determines that the PA is not being properly implemented, the Garrison, the SHPO or the ACHP may propose to the other signatories of this PA that it be terminated. The party proposing to terminate this PA will notify all signatory and concurring parties to this PA in writing, explaining the reasons for termination and afford the parties thirty (30) days to consult and seek alternatives to termination. Should such consultation fail and the PA be terminated, the Garrison:

- a. Shall comply with 36 CFR Part 800 with regard to each individual undertaking at MMR; and
- b. May consult in accordance with 36 CFR Part 800.14(b)(3) to develop a new PA; and
- c. Shall notify the signatories as to the course of action it will pursue.

9. Duration. This PA shall take effect on the date it is signed by the last signatory and will remain in effect until five years from that date unless terminated pursuant to Stipulation 8. No extension or modification will be effective unless all signatories have agreed in writing pursuant to Stipulation 7.

10. Reports. The Garrison will provide an annual status report to the SHPO and consulting parties. The report will be provided to the ACHP upon request. The report will detail the actions the Garrison has undertaken to fulfill the requirements of this PA including those actions covered under exempt activities in Stipulation 4.

11. Dispute Resolution.

Should any signatory or concurring party to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, the Garrison shall consult with the objecting party(ies) to resolve the objection. If the Garrison determines, within thirty days, that such objection(s) cannot be resolved, the Garrison shall:

a. Forward all documentation relevant to the dispute, including a recommended resolution, to the ACHP. Upon receipt of this documentation, the ACHP shall review and advise the Garrison on the resolution of the dispute within thirty days from the date of ACHP receipt. Any written comment provided by the ACHP, and all comments from the signatories and concurring parties to the agreement, will be taken into account by the Garrison in reaching a formal decision regarding the dispute.

b. If the ACHP does not provide written comments regarding the dispute within the above thirty-day period, the Garrison may render a decision regarding the dispute. In reaching its decision, the Garrison will take into account all written comments it has received regarding the dispute from any signatory or concurring party.

c. During the pendency of any dispute and prior to the resolution of such dispute, the Garrison shall continue to carry out all actions under this agreement that are not subject to or affected by the dispute. The Garrison will notify all signatories and concurring parties in writing of its decision concerning any dispute processed in accordance with this Stipulation at least ten days before implementing such decision. The Garrison's decision will be final.

This stipulation does not preclude a member of the public from notifying the Garrison of any objection and/or dispute they have as to the manner in which this PA is being implemented. The Garrison shall determine whether any action is necessary to respond to the public.

12. Anti-Deficiency Act. The Garrison's obligations under this PA are subject to the availability of funds and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The Garrison will make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Garrison's ability to implement the stipulations of this PA, the Garrison will consult with the SHPO and the ACHP in accordance with the amendment and termination procedures outlined in Stipulations 7 and 8, respectively.

Execution and implementation of this PA evidences that the Garrison has afforded the SHPO and the ACHP a reasonable opportunity to comment on the effects of the undertaking on historic properties. Execution and compliance with this PA fulfills the Garrison's Section 106 responsibilities regarding this undertaking at MMR.

SIGNATORIES

U.S. ARMY GARRISON-HAWAII

_____ Date: _____
Colonel Matthew T. Margotta
US Army Garrison, Hawaii

HAWAII STATE HISTORIC PRESERVATION OFFICER

_____ Date: _____
Laura Thielen
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____ Date: _____
John Fowler
Executive Director

CONCURRING PARTIES

_____ Date: _____
Office of Hawaiian Affairs

_____ Date: _____
Hui Malama I Na Kupuna O Hawaii Nei

_____ Date: _____
The Oahu Island Burial Council

_____ Date: _____
Aha Kukaniloko/Koa Mana

_____ Date: _____
Malama Makua

_____ Date: _____
Hui Malama O Makua