

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

WHEREAS, the Commander Navy Region Hawaii (CNRH) is the Department of the Navy's (Navy) agency official within the Commander, Navy Installations Command (CNIC) responsible for Joint Base Pearl Harbor-Hickam (JBPHH), which includes but is not limited to the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility (PHNSY & IMF); and

WHEREAS, the Deputy Assistant Secretary of the Navy, Environment and Mission Readiness (DASN E&MR) serves as the Secretary of the Navy's senior expert for all environmental issues and serves as the Department of the Navy (DON) Federal Preservation Officer (FPO) supporting all DON mission requirements; and

WHEREAS, the Chief of Naval Operations Installations Division (OPNAV N4I) oversees and resources facilities and environmental readiness requirements; and

WHEREAS, Naval Facilities Engineering Systems Command (NAVFAC) serves as the DON Deputy FPO and Navy's subject matter experts for historic preservation requirements; and

WHEREAS, PHNSY & IMF is an operational command within Naval Sea Systems Command (NAVSEA) responsible for operation of the shipyard, and Program Management Office (PMO 555) is responsible for the operational requirements of shipyard modernization at U.S. Naval shipyards; and

WHEREAS, CNRH fulfills its role as lead Navy official for shipyard modernization in coordination with PMO-555 and NAVSEA to support PHNSY & IMF mission requirements; and

WHEREAS, PHNSY & IMF operations involve highly complex, technical and industrial facilities planning and development to fulfill its Fleet support mission; and

WHEREAS, the U.S. Naval Base, Pearl Harbor was designated as a National Historic Landmark (Pearl Harbor NHL) in 1964 and encompasses a majority of the land at JBPHH and the entire harbor; and

WHEREAS, the 1978 update to the designation describes change as an essential aspect of the Pearl Harbor NHL: *"Man-caused physical change has been since 1902 a continuing process and a necessary attribute of Pearl Harbor as an active naval base. The process of change in physical facilities at Pearl Harbor is part and parcel of the process of change in naval technology."*

National Historic Landmark designation in 1964 recognized an active naval base because of its success in its mission to support the fleet and its related historic role in the expansion of the United States as a Pacific power. The 1941 enemy attack on Pearl Harbor is one result of the effectiveness of its mission and role.”; and

WHEREAS, the statement of significance in the 1978 update recognizes modernization and change as a quality of the NHL: *“Pearl Harbor’s mission is support of the fleet, and for most of this century it has sheltered, armed and repaired naval ships, submarines and aircraft. Its mission will continue as long as the fleet exists, needs a protected harbor and Hawaii remains a strategic location. Construction for the base began in 1902 when a channel was dredged to admit deep-draft vessels to the inland anchorage. The United States Navy has regularly modernized the port to maintain its responsibilities for national defense. As naval technology changes, so changes Pearl Harbor’s water and land uses, its buildings, structures and facilities for services to the fleet.”; and*

WHEREAS, beginning with its 1978 Historic Preservation Plan and continuing to the present day, the Navy has undertaken mission planning for facilities and operations with the goal of minimizing harm to the Pearl Harbor NHL, and consulted with the NPS acting on behalf of the Secretary of the Interior, the Hawaii State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), other interested parties, and the public; and

WHEREAS, CNRH first developed the PHNSY & IMF Facilities Modernization Plan (FMP) in 2008 to begin addressing facilities requirements associated with mission changes through a variety of projects including, but not limited to, harbor dredging, personnel relocation, new construction, rehabilitation, maintenance, repair, and demolition of buildings, structures, facilities, utilities and infrastructure; and

WHEREAS, the FMP is updated periodically to incorporate the results of ongoing engineering analysis and planning, and is under comprehensive revision to be reissued as an Area Development Plan (ADP); and

WHEREAS, CNRH has determined that the shipyard modernization projects under development in the FMP/ADP comprise a complex Undertaking (36 CFR § 800.14(b)(3)) subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, in 2013 the *Programmatic Agreement Among the Commander Navy Region Hawaii, the Advisory Council on Historic Preservation and the Hawaii State Historic Preservation Officer Regarding Undertakings Associated with the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility Facilities Modernization Plan* (2013 PA) was executed in accordance with 36 CFR § 800.14(b)(3) to ensure CNRH took into account potential effects on historic properties of implementing the FMP; and

WHEREAS, CNRH has taken the opportunity to review the 2013 PA and consider updates needed to address the passage of time and current Navy policies, to address Congressionally

mandated shipyard modernization to improve performance of Fleet requirements, and to ensure effects on historic properties continue to be taken into account, and has developed this PA to replace the 2013 PA; and

WHEREAS, CNRH and all Navy offices supporting PHNSY & IMF modernization actions must comply with Executive Order 13556 Controlled Unclassified Information (CUI), 32 CFR Part 2002, and Department of Defense (DoD) Instruction 5200.48 “Controlled Unclassified Information,” and this PA incorporates procedures to balance information security with the documentation requirements of 36 CFR § 800.11; and

WHEREAS, CNRH has established the Area of Potential Effects (APE) for the Undertaking as the areas of JBPHH and PHNSY & IMF shown in Appendix A; and

WHEREAS, CNRH has determined that the Undertaking may have an adverse effect on historic properties as defined by 36 CFR § 800.16(l)(1), including National Historic Landmarks (NHLs); and

WHEREAS, NHLs present within the APE include the Pearl Harbor NHL, the USS Arizona NHL, the USS Bowfin NHL, and the USS Utah NHL; and

WHEREAS, CNRH recognizes that Pearl Harbor has a long history that pre-dates the military and European contact. Also known as Pu‘uloa, this area has long held cultural and spiritual significance to Native Hawaiians. Ancestral guardian sharks, Ka‘ahupāhau and her brother Kahi‘uka, that were believed to have inhabited underwater caves in the harbor are central to Native Hawaiian oral traditions, *mo‘olelo*, and spiritual beliefs about Pearl Harbor. Pre-Contact traditional Hawaiian fishponds once lined the harbor. Loko i‘a Pā‘aiau, which is present in the APE, is credited to Queen Kalanimanui‘a and is a site of importance in Native Hawaiian history and culture; and

WHEREAS, CNRH has consulted with the SHPO and the ACHP, who are signatories to this PA, pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR § 800.10(c), and because of the presence of NHLs within the APE, CNRH has consulted with and requested the NPS Interior Region 12, as the official representative of the Secretary of the Interior, to concur with this PA; and

WHEREAS, CNRH has invited the Historic Hawai‘i Foundation, the National Trust for Historic Preservation, and additional interested parties to participate in this consultation. The following have elected to participate in this consultation: ‘Aiea Community Association, Ali‘i Pauahi Hawaiian Civic Club, Historic Hawai‘i Foundation, O‘ahu Council of Hawaiian Civic Clubs, Office of Hawaiian Affairs, National Trust for Historic Preservation, and Pearl Harbor Aviation Museum. CNRH has invited them to concur with the requirements and procedures in this PA, recognizing that concurrence with this PA does not necessarily imply support for the Undertaking; and

NOW, THEREFORE, CNRH, the SHPO, and the ACHP agree that CNRH shall implement the Undertaking of shipyard modernization as described in the FMP/ADP following these stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

CNRH shall ensure that the following measures are carried out:

I. APPLICABILITY, ROLES AND RESPONSIBILITIES, AND PROFESSIONAL STANDARDS

A. Applicability

1. This PA applies to the shipyard modernization projects identified in the FMP/ADP.
2. CNRH shall notify consulting parties when the FMP is reissued as the ADP.
3. In coordination with the responsible Navy information security officer and SHPO, CNRH shall provide releasable information from the FMP/ADP and updates to the consulting parties, as available, consistent with 36 CFR § 800.11.
4. Reissuance of the FMP as the ADP and future updates will not require amendment of this PA.

B. Roles and Responsibilities

1. CNRH is the agency official within the CNIC chain of command responsible to ensure compliance with the provisions of this PA.
2. In implementing the requirements and provisions of this PA, the Navy Cultural Resources (CR) program is responsible for fully supporting NHPA compliance to ensure all FMP/ADP projects are implemented appropriately. The Navy CR program comprises:
 - a. The Deputy Assistant Secretary for the Navy (Environment & Mission Readiness) and Department of the Navy Federal Preservation Officer (FPO) and Deputy FPO;
 - b. Chief of Naval Operations, Installation Division (OPNAV N4I);
 - c. Navy CR subject matter experts serving in CNIC and the Naval Facilities Engineering Systems Command (NAVFAC) at Headquarters, Pacific, and

Hawaii.

3. Consulting parties are the parties that have participated in the development of this PA to include concurring parties.
4. Additional consulting parties may be added during the implementation of the agreement. Upon request, CNRH shall consider additional consulting parties with a demonstrated interest in the Undertaking, consistent with 36 CFR § 800.2(c)(5).

C. CNRH shall:

1. Designate key personnel to serve as Point of Contact (POC) for the implementation of this PA and notify the consulting parties of any changes. Additionally, a staff member of the Navy CR program shall be identified as a project POC for each project review in accordance with this PA.
2. Assess and update the designation of the Pearl Harbor NHL in accordance with 36 CFR Part 65 in consultation with the parties who participated in the development of this PA in support of ongoing responsibilities for planning to minimize harm to the NHL.
3. To the maximum extent possible, avoid and minimize impacts to NHLs, including contributing resources, consistent with 36 CFR § 800.10(a), by ensuring Navy CR personnel are involved in the development of the FMP/ADP and in specific project planning.
4. Assess and update the inventory of historic properties in coordination with the Integrated Cultural Resources Management Plan (ICRMP). Updates to the ICRMP shall be reported in accordance with Stipulation IV.D.2.
5. Consult with SHPO, NPS, and consulting parties on the findings of inventory updates, in accordance with 36 CFR Part 60 and 36 CFR Part 65 as applicable. In the event of a disagreement between the Navy and the SHPO on the National Register of Historic Places (NRHP) eligibility in the inventory update, CNRH shall forward documentation for a determination of eligibility in accordance with 36 CFR Part 63.

D. Professional Standards

1. All work to meet the Stipulations of this PA shall be carried out by, reviewed by, or conducted under the oversight or supervision of a staff member of the Navy CR program with training and professional qualifications appropriate for the resource(s) involved, who meets the Secretary of the Interior's Historic

Preservation Professional Qualifications Standards (finalized and adopted in 1983 in Federal Register Vol. 48, No. 190, p.44716-44740), to include but not limited to the 1997 proposed changes (Federal Register Vol. 62, No. 119, p.33708-33723); hereinafter “Navy CR personnel.”

- a. Current Department of Interior guidance (<https://www.doi.gov/pam/asset-management/historic-preservation/pqs>) is that the 1983 standards should be followed until such time as they are superseded with revised standards. However, CNRH has elected to incorporate the 1997 proposed changes to the Secretary of the Interior’s Historic Preservation Professional Qualifications Standards for Navy CR personnel implementing the Stipulations of this PA.

II. PROJECT PLANNING AND IMPLEMENTATION

- A. CNRH shall ensure that all projects identified in the FMP/ADP are reviewed for environmental impacts, prior to any authorization to proceed with construction, demolition, excavation, or any activities with the potential to cause effects on historic properties, and throughout the implementation of all projects.
- B. CNRH shall ensure that Navy CR personnel are involved in development of the FMP/ADP and considerations to protect historic properties are incorporated in the planning, analysis of alternatives, and implementation of all shipyard modernization projects, consistent with this PA.
- C. Prior to the authorization to proceed with construction, demolition, excavation, or any activities with the potential to cause effects on historic properties, CNRH shall document consideration to avoid and minimize adverse effects on historic properties.
- D. CNRH shall ensure that project reviews and measures to avoid, minimize, and mitigate adverse effects on historic properties are documented in a Memorandum of Record (MOR) in accordance with Stipulation III.D.6 and III.E.6, prior to the authorization of construction, demolition, excavation, or any activities with the potential to cause effects on historic properties, consistent with this PA. All commitments in the MOR shall be legally binding.
- E. Documentation shall be provided to consulting parties in accordance with review and approval by the Navy information security officer prior to release. As applicable, CNRH shall coordinate with the Navy information security officer and SHPO to provide sufficient documentation to support the review of FMP/ADP projects.
- F. When historic properties may be adversely affected by proposed projects, CNRH shall require the Architect-Engineer or Contractor’s design team to include a professional meeting the qualification standards as cited in Stipulation I.D.1.

- G. Navy CR personnel shall remain engaged with the project through design and construction to ensure compliance with all commitments in any applicable MOR, consistent with this PA.
- H. Changes to project scopes of work shall be reviewed by Navy CR personnel throughout the design and construction process. CNRH shall notify consulting parties if a change to a scope of work may change a finding of effect or resolution of effects, and shall continue consultation in accordance with Stipulation III, as appropriate.

III. PROJECT REVIEW

- A. Initiate Project Review
 - 1. When an FMP/ADP project is proposed for implementation, it shall be subject to review and compliance with the terms of this PA.
 - 2. If Navy CR personnel determine the FMP/ADP project is not the type of activity with the potential to cause effects on historic properties, assuming such properties were present, CNRH shall document this determination for inclusion in the annual report, and has no further obligations under this PA for the project.
- B. Define Project-Specific APE and Identify Historic Properties
 - 1. If Navy CR personnel determine the project is the type of activity with the potential to cause effects on historic properties, Navy CR personnel shall assess and document the project APE.
 - 2. If Navy CR personnel determine that the project APE is located outside the boundaries of the Pearl Harbor NHL and no historic properties are present within the APE CNRH shall document this determination, the project description, and project APE map for inclusion in the annual report, and has no further obligations under this Stipulation for the project.
 - 3. If Navy CR personnel find that historic properties are present within the APE and they may be affected by the project, they shall proceed to Stipulation III.C.
- C. Evaluate Effects of the Project
 - 1. Navy CR personnel shall assess the effects of the proposed project on historic properties, using the criteria of adverse effects (36 CFR § 800.5(a)(1)) and shall make one of the following determinations:

- a. *No Historic Properties Affected:* If Navy CR personnel determine that historic properties present in the APE will not be affected by the project, CNRH shall document this determination, project description, project APE map, and identify the professional(s) meeting the qualification standards as cited in Stipulation I.D.1 responsible for the decision, for inclusion in the annual report, and has no further obligations under this Stipulation for the project.
- b. *No Adverse Effect to Historic Properties:* If Navy CR personnel determine that historic properties present in the APE will not be adversely affected by the project, they shall proceed to Stipulation III.D.
- c. *Adverse Effect to Historic Properties:* If Navy CR personnel determine that historic properties present in the APE will be adversely affected by the project, they shall proceed to Stipulation III.E.

D. Findings of No Adverse Effect

- 1. If Navy CR personnel find that the project will have no adverse effect on historic properties, CNRH shall provide documentation (via email or DoD file transfer system) of the finding of No Adverse Effect to the SHPO and consulting parties, for a 60-calendar day review period, including, but not necessarily limited to, the following:
 - a. Project description;
 - b. APE map showing the location of the project and planned ground disturbance, as applicable;
 - c. Identification of historic properties including but not limited to historic properties identified in the ICRMP and additional inventory updates as applicable;
 - d. Photos and design drawings (typically concept drawings, 35%, or 65%), as applicable; and
 - e. Explanation of the CNRH finding of No Adverse Effect to include consideration of cumulative effects.
- 2. Within 15 calendar days of providing documentation, CNRH shall schedule a meeting with SHPO and the consulting parties to support constructive, meaningful discussion about the project with the goal of reaching agreement.
- 3. CNRH shall consider all written comments received from SHPO and consulting

parties within the 60-calendar day review period.

- a. CNRH shall consider requests to extend the review period. Extensions shall be subject mission constraints.
 - b. Upon completion of the 60-calendar day review period, CNRH shall provide a draft MOR to SHPO and consulting parties for a 15-calendar day review period, to include:
 - 1) Summary of consultation;
 - 2) APE map;
 - 3) Identification of historic properties;
 - 4) CNRH final finding of No Adverse Effect;
 - 5) Concise statement of binding CNRH commitments; and,
 - 6) Projected timeline for completion of the commitments.
 - c. If the CNRH final finding of No Adverse Effect is changed to Adverse Effect, CNRH shall proceed to Stipulation III.E.3.b.
4. Any signatory or consulting party can request participation of the ACHP in a project review during the 60-calendar day review period by submitting a request in writing to the ACHP. ACHP shall notify all signatories and consulting parties of its decision within 15 calendar days.
 5. If CNRH receives written disagreement with the draft MOR from SHPO or any consulting party within 15 calendar days of receipt, CNRH shall proceed to Stipulation III.F.
 6. If CNRH does not receive written disagreement with the draft MOR from SHPO or any consulting party within 15 calendar days of receipt, CNRH shall submit to SHPO (via email or DoD file transfer system) a final MOR signed by CNRH and a copy provided to consulting parties, except ACHP unless it has elected to participate in the project review.
 - a. CNRH shall request SHPO concurrence by signature on the final MOR within 15 calendar days of receipt.
 - 1) If the SHPO responds with concurrence, CNRH shall proceed with the project as defined.

- 2) If the SHPO responds with non-concurrence, CNRH shall proceed to Stipulation III.F.2.
- 3) If no response is received from SHPO within 15 calendar days of receipt, CNRH shall assume concurrence, document it in the administrative record, and proceed with the project as defined.
- b. The signed MOR will be included in the administrative record and a copy provided to consulting parties, except ACHP unless it has elected to participate in the project review.
- c. Upon request and as available, CNRH shall provide 100% design drawings to SHPO for its administrative record.
7. Upon completion of all binding commitments in the MOR, CNRH shall prepare a closeout letter to SHPO and consulting parties that summarizes the commitments and completion dates for each. CNRH will consider all comments received within 30 calendar days of receipt.
8. Should circumstances prevent timely completion of or changes to the binding commitments in the MOR, CNRH shall notify SHPO and consulting parties and continue consultation as appropriate. Notification will be provided to the ACHP only when it has elected to participate in the project review.

E. Findings of Adverse Effect

1. If Navy CR personnel find that historic properties will be adversely affected by the project, CNRH shall provide documentation (via email or DoD file transfer system) of the finding of Adverse Effect to the SHPO and consulting parties for a 60-calendar day review period. Documentation will include, but not necessarily be limited to, the following:
 - a. Project description;
 - b. APE map showing the location of the project and planned ground disturbance, as applicable;
 - c. Identification of historic properties including but not limited to historic properties identified in the ICRMP and additional inventory updates as applicable;
 - d. Photos and design drawings (typically concept drawings, 35%, or 65%), as applicable;

- e. Review of the plans including which historic properties may be affected;
 - f. Explanation of the CNRH finding of Adverse Effect to include consideration of cumulative effects;
 - g. Proposed measures to resolve adverse effects; and,
 - h. Explanation of alternatives considered to minimize harm to NHLs, as applicable.
2. Within 15 calendar days of providing documentation, CNRH shall schedule a meeting with SHPO and the consulting parties to support constructive, meaningful discussion about the project and proposed resolution of adverse effects with the goal of reaching agreement.
3. CNRH shall consider all comments regarding adverse effects on historic properties and measures to resolve adverse effects, and incorporate them as appropriate within the 60-calendar day review period.
- a. CNRH shall consider requests to extend the review period. Extensions shall be subject to mission constraints.
 - b. Upon completion of the review period, CNRH shall provide a draft MOR to SHPO and consulting parties for a 15-calendar day review period, to include:
 - 1) Summary of consultation;
 - 2) APE map;
 - 3) Identification of historic properties;
 - 4) CNRH final finding of Adverse Effect;
 - 5) Concise statement of binding CNRH commitments to include measures to resolve adverse effects; and,
 - 6) Projected timeline for completion of the commitments.
4. Any signatory or consulting party can request participation of the ACHP in a project review during the 60-calendar day review period by submitting a request in writing to the ACHP. ACHP shall notify all signatories and consulting parties of its decision within 15 calendar days.

5. If CNRH receives written disagreement from SHPO or any consulting party on the draft MOR, within 15 calendar days of receipt, CNRH shall proceed to Stipulation III.F.
6. If CNRH does not receive written disagreement with the draft MOR from SHPO or any consulting party within 15 calendar days of receipt, CNRH shall submit to SHPO (via email or DoD file transfer system) a final MOR signed by CNRH and provide a copy to consulting parties, except ACHP unless it has elected to participate in the project review.
 - a. CNRH shall request SHPO concurrence by signature on the final MOR within 15 calendar days of receipt.
 - 1) If the SHPO responds with concurrence, CNRH shall proceed with the project as defined.
 - 2) If the SHPO responds with non-concurrence, CNRH shall proceed to Stipulation III.F.2.
 - 3) If no response is received from SHPO within 15 calendar days of receipt, CNRH shall assume concurrence, document it in the administrative record, and proceed with the project as defined.
 - b. The signed MOR will be included in the administrative record and a copy provided to consulting parties, except ACHP unless it has elected to participate in the project review.
 - c. Upon request and as available, CNRH shall provide 100% design drawings to SHPO for its administrative record.
7. Upon completion of all binding commitments to include measures to resolve adverse effects in the MOR, CNRH shall prepare a closeout letter to SHPO and consulting parties, except ACHP unless it has elected to participate in the project review, that summarizes the commitments and completion dates for each. CNRH will consider all comments received within 30 calendar days of receipt.
8. Should circumstances prevent timely completion of or changes to the binding commitments in the MOR, CNRH shall notify SHPO and consulting parties and continue consultation as appropriate. Notification will be provided to ACHP only when it has elected to participate in the project review.

F. Resolving Disagreements with Findings or Resolution of Effects

1. When CNRH receives written disagreement from SHPO or a consulting party regarding the draft MOR within the 15-calendar day review period under Stipulations III.D.5, or III.E.5, CNRH shall notify SHPO and consulting parties. CNRH shall consult on all written disagreement(s) received during the review period, for up to 15 additional calendar days to attempt to resolve the disagreement(s). The written disagreement must specify the disagreeing party's reasons for the disagreement.
 - a. CNRH shall consider requests to extend the consultation period. Extensions shall be subject to mission requirements.
 - b. If the disagreement is resolved, CNRH shall incorporate changes, as applicable, in the final MOR, and proceed to Stipulation III.D.6.a or III.E.6.a.
 - c. If the parties are unable to resolve the disagreement within 15 calendar days, or other time period agreed upon, CNRH shall notify the consulting parties and proceed to Stipulation III.F.2.
2. If consultation to resolve disagreements is unsuccessful, CNRH shall forward documentation pertinent to the disagreement to the ACHP, including its proposed response to the disagreement and provide a copy to the SHPO and consulting parties.
 - a. Within 30 calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1) Advise CNRH that it concurs with CNRH's proposed response to the disagreement, whereupon CNRH shall take into account the ACHP's opinion in reaching a final decision; or
 - 2) Provide CNRH with recommendations on the proposed response to the disagreement. CNRH shall take into account the ACHP's opinion in reaching a final decision.
3. Should the ACHP not exercise one of the above options within 30 calendar days after receipt of all pertinent documentation, CNRH may make a final decision on the disagreement and proceed accordingly.
4. Once a final decision has been reached, CNRH shall provide consulting parties a written response to the disagreement including the rationale for the decision and evidence of consideration of the ACHP's opinion, and append it to the MOR.

IV. REPORTING

- A. CNRH shall submit a report to the SHPO and the consulting parties annually within 30 calendar days of the anniversary of the execution of this PA.
- B. The annual report shall include:
 - 1. Projects located outside the boundaries of the Pearl Harbor NHL with no historic properties present within the APE to include project description and APE map, in accordance with Stipulation III.B.2;
 - 2. Findings of No Historic Properties Affected to include project description and APE map in accordance with Stipulation III.C.1.a;
 - 3. Summary of Memoranda of Record in accordance with Stipulations III.D and III.E to include APE map and status of binding commitments;
 - 4. Changes to scopes of work that resulted in continued consultation in accordance with Stipulation II.H; and,
 - 5. Post-review discoveries in accordance with Stipulations V.A.3.a, V.A.3.b(1), and V.A.3.b(2)(v).
- C. CNRH shall convene an annual meeting among signatories and consulting parties to review implementation of the terms of this PA and discuss the contents of the annual report.
- D. The annual meeting shall contain briefings of:
 - 1. Findings contained in the annual report;
 - 2. Updates to the ICRMP and inventory of historic properties;
 - 3. FMP/ADP updates including programmed, funded or anticipated future projects. CNRH shall request input from the signatories and consulting parties on the anticipated actions with regard to findings of effect, alternatives to be considered, and avoidance, minimization and/or possible mitigation measures;
 - 4. Status of binding commitments in Memoranda of Record.
- E. CNRH shall consider requests from signatories and consulting parties for additional meetings or updates to address specific issues that may arise during the implementation of this PA.

V. POST-REVIEW DISCOVERIES

- A. If during the performance of any FMP/ADP project, cultural resources that may be eligible for listing on the NRHP are discovered, or unanticipated effects on historic properties are found, then:
1. Construction activities that could adversely affect the resource will be paused within the immediate area, and the appropriate Navy CR personnel meeting the qualification standards as cited in Stipulation I.D.1, shall be notified.
 2. Upon notification, Navy CR personnel shall assess the discovery or unanticipated effect.
 - a. If Navy CR personnel determine that the discovery may include Native American Graves Protection and Repatriation Act (NAGPRA) cultural items, including *iwi kupuna*, (human remains of Hawaiian ancestry) or associated items, work in the vicinity of the discovery shall halt and provisions of NAGPRA shall be followed.
 3. Navy CR personnel shall make a determination of eligibility regarding the resource, and make recommendations to avoid or minimize adverse effects on historic properties.
 - a. If Navy CR personnel find the affected cultural resource does not meet NRHP Criteria as set forth at 36 CFR § 60.4, as amended, they shall document the finding for inclusion in the annual report and work will resume.
 - b. If Navy CR personnel find the affected cultural resource is eligible for the NRHP, they shall assess the situation to identify available options to avoid or minimize adverse effects on the historic property.
 - 1) If the project can be reasonably modified to avoid adverse effects on historic properties, and CNRH can implement the modifications, the project will proceed. Determinations and project modifications made under this stipulation shall be documented for inclusion in the annual report.
 - 2) If adverse effects on historic properties cannot be avoided, then CNRH shall notify the SHPO and Native Hawaiian Organizations that are consulting parties to this PA and may attach religious or cultural significance to the historic properties, via email, as soon as practicable. Navy CR personnel shall prepare a treatment plan (i.e., recordation or data recovery) to resolve the adverse effects, and CNRH shall include the

plan with the notification.

- i. CNRH shall take into account any comments received from the SHPO within 2 business days of CNRH notification.
- ii. If CNRH does not receive disagreement from the SHPO regarding the proposed treatment within 2 business days, CNRH shall implement the treatment plan.
- iii. If CNRH receives disagreement from the SHPO within the 2 business days, CNRH shall consult for up to 2 additional business days to consider input and resolve the disagreement.
- iv. If the disagreement cannot be resolved, CNRH shall consider input received and notify the SHPO of CNRH's decision regarding the discovery within 2 business days, and work on the project will resume.
- v. Notifications, treatment plans, comments received, and resolutions of disagreement shall be summarized for inclusion in the annual report.

VI. EMERGENCIES

- A. In the event that natural disasters, fires, sudden disruptions of utilities service, spill events, or other emergency events occur during the implementation of FMP/ADP projects reviewed under this PA, CNRH may take immediate actions to preserve life and property without having to undergo Section 106 review prior to taking action.
- B. CNRH shall notify the SHPO by telephone and email of the emergency as soon as practicable and follow up with written documentation if any historic properties were discovered or disturbed during the immediate response to emergency events.
- C. In the event Unexploded Ordnance (UXO) is discovered, an Explosive Ordnance Disposal (EOD) detail may take immediate action to preserve life and property, including disposal of the UXO, as they deem appropriate, without having to undergo Section 106 review prior to taking action.

VII. DISPUTE RESOLUTION

- A. Should a signatory to this PA object in writing regarding to the implementation of this PA, CNRH shall consult with the objecting party for no more than 30 calendar days. CNRH shall provide copies of the written objection to other signatories and consulting parties within 5 calendar days of receipt of the written objection. CNRH

shall consider requests to extend the consultation period. Extensions shall be subject to mission requirements.

1. CNRH shall take into account the reasons for the objection and evaluate the solutions suggested by the objecting party.
 2. If, after the 30-calendar day review period, CNRH determines that the objection cannot be resolved, CNRH shall forward all documentation relevant to the dispute, including CNRH's proposed resolution, to the ACHP.
 - a. The ACHP shall provide CNRH 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, CNRH shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and other signatories. CNRH shall provide signatories and consulting parties with a copy of this written response. CNRH shall then proceed according to its final decision.
 - b. If the ACHP does not provide its advice regarding the dispute within the 30-calendar day review period, CNRH may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, CNRH shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the signatories to the PA. CNRH shall provide signatories and consulting parties with a copy of this written response. CNRH shall then proceed according to its final decision.
- B. CNRH's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENT

- A. Any signatory may propose that this PA be amended, whereupon the signatories shall consult to consider such amendment. The amendment process starts when a signatory notifies the other signatories via written notice to include the proposed amendment(s) and the reasons for the proposal. The signatory proposing the amendment shall provide copies to the other signatories and consulting parties.
- B. No amendment shall take effect until it has been agreed upon by all signatories. The amendment will be effective on the date that all signatories have signed. CNRH shall ensure that the signed amendment is filed with the ACHP and copies provided to all signatories and consulting parties.

IX. TERMINATION

- A. If any signatory to this PA 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 VIII. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may notify the other signatories of the intent to terminate the PA.
- B. The termination process starts when a signatory notifies the other signatories of this PA that it wishes to terminate this agreement. A written notice must be sent to all signatories at least 30 calendar days prior to the proposed termination. The written notice must explain in detail the reasons for the proposed termination. If the signatory proposing the termination does not withdraw the proposal by the end of the 30-calendar day period, and a longer period of consultation is not agreed to by the signatories involved, then the PA will be terminated.
- C. Once the PA is terminated, CNRH shall either consult to develop a replacement agreement with the signatories or refer to the ACHP membership for formal comment per 36 CFR § 800.7(a)(1).
- D. In the event of termination, if a project review has been completed in accordance with Stipulation III the project may proceed and any applicable binding commitments shall remain in effect, even if this agreement is terminated.

X. ANTI-DEFICIENCY ACT

- A. The Anti-Deficiency Act, 31 USC § 1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for obligation of funds arising from the terms of this agreement shall be subject to the availability of appropriated funds for that purpose, and that this PA shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.
- B. CNRH shall 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 CNRH's ability to implement the stipulations of this PA, CNRH shall consult with the signatories in accordance with the amendment and termination procedures outlined in Stipulations VIII and IX respectively.

XI. DURATION

- A. This PA will remain in effect until 31 December 2032, with the option to extend the agreement for an additional 10 years, upon written agreement of all signatories in order to support the extended duration of the Undertaking, which has an anticipated

end date of 31 December 2042. If all signatories agree in writing, the PA may be amended, per Stipulation VIII.

- B. Implementation of the terms of this PA will be reviewed annually in accordance with Stipulation IV.C.
- C. Eight years after the date of execution of this PA, CNRH shall convene a focused workshop with all consulting parties to review the stipulations, implementation, and effectiveness of the PA with the intent to develop any amendments that may be needed, and to initiate the process of extending this agreement at the end of the initial 10-year duration.


EXECUTION of this PA by CNRH, the ACHP, and the SHPO, and implementation of its terms, evidences that CNRH has taken the effects of the Undertaking on historic properties into account and afforded the ACHP an opportunity to comment under Section 106 of the NHPA and its implementing regulations.

This PA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Signatory

COMMANDER NAVY REGION HAWAII

By: 
Timothy J. Kott,
Rear Admiral
Commanding Officer Navy Region Hawaii

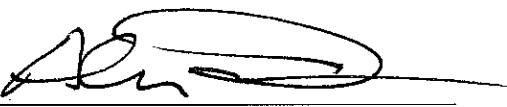
Date: 16 May 2022

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Signatory

HAWAII STATE HISTORIC PRESERVATION OFFICER

By:



Dr. Alan Downer
Administrator
State Historic Preservation Division


Date:

5/20/22

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Signatory

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 


Reid J. Nelson
Executive Director, Acting

Date: 5/25/2022

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

NATIONAL PARK SERVICE

By: **CINDY ORLANDO**  Digitally signed by
CINDY ORLANDO
Date: 2022.06.21
09:07:03 -07'00'

Date: _____

[FOR] Regional Director, Interior Regions 8, 9, 10, 12

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

HISTORIC HAWAI'I FOUNDATION

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

‘AIEA COMMUNITY ASSOCIATION

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

ALI'I PAUAHI HAWAIIAN CIVIC CLUB

By: _____

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SHIPYARD MODERNIZATION
FOR
THE PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY,
JOINT BASE PEARL HARBOR-HICKAM, HAWAII**

Concurring Party

O'AHU COUNCIL OF HAWAIIAN CIVIC CLUBS

By: _____

Date: _____

APPENDIX A
AREA OF POTENTIAL EFFECTS (APE)



APPENDIX B
NHLS IN THE APE

