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**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE STATE OF HAWAI‘I DEPARTMENT OF TRANSPORTATION,
AND THE
THE HAWAI‘I STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
HONOAPI‘ILANI HIGHWAY IMPROVEMENTS,
MAUI KOMOHANA, MAUI COUNTY, HAWAI‘I**

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA) plans to fund the Honoapi‘ilani Highway Improvements Project (Undertaking), pursuant to Pub.L. 116-260, FY 2021 Appropriations Act, known as the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grants and through an earmark in the 2022 Infrastructure Investment and Jobs Act (Pub.L. 117-58), which would realign Honoapi‘ilani Highway between Ukumehame and Launiupoko in Maui Komohana (West Maui); and

WHEREAS, the State of Hawai‘i Department of Transportation (HDOT) is the sponsor of the Undertaking, and the FHWA has invited HDOT to become an invited signatory to this Programmatic Agreement (PA); and

WHEREAS, the FHWA’s action requires review under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.) and is considered an Undertaking as defined by 36 C.F.R. 800.16(y) and is subject to review under Section 106 of the National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. § 306108) and its implementing regulations, 36 C.F.R. Part 800, *Protection of Historic Properties*, as amended; and

WHEREAS, the Undertaking is intended to address existing coastal erosion and flooding, as well as future coastal erosion and flooding caused by anticipated sea level rise, as delineated by the Hawai‘i Climate Change Mitigation and Adaptation Commission (HCCC)’s Sea Level Rise Exposure Area (SLR-XA); and

WHEREAS, the FHWA has coordinated NHPA Section 106 compliance with the NEPA process and is preparing an Environmental Impact Statement (EIS); and

WHEREAS, the FHWA, in consultation with the Hawai‘i State Historic Preservation Officer (SHPO), is entering into this Section 106 PA in accordance with 36 C.F.R. § 800.14(b)(1)(ii) because the Undertaking’s effects on historic properties cannot be fully determined prior to approval of the Record of Decision; and

WHEREAS, the FHWA in coordination with HDOT, and in consultation with the SHPO, established an Area of Potential Effects (APE) (**Appendix 2**) in accordance with 36 C.F.R. § 800.4(a)(1) to consider potential direct and indirect effects associated with each of the Undertaking’s alternatives evaluated in the Draft EIS; and

47 **WHEREAS**, due to the size of the APE, limited access, and number of alternatives under consideration,
48 the FHWA and HDOT, in consultation with the SHPO, agreed to phased identification, pursuant to 36
49 C.F.R. § 800.4(b)(2), as provided in this PA; and

50
51 **WHEREAS**, HDOT intends to use the historic properties identification efforts and documentation
52 prepared for this Undertaking and as described in this PA (Stipulation III) to comply with Hawai'i Revised
53 Statutes (HRS) § 6E and its administrative provisions at Hawai'i Administrative Rules (HAR) § 13-275,
54 *Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under*
55 *Sections 6E-7 and 6E-8, HRS*, as described in **Appendix 1**. The State Historic Preservation Division (SHPD)
56 therefore has the authority to determine whether or not any report generated under HRS § 6E and its
57 administrative rules is adequate; and

58
59 **WHEREAS**, the Advisory Council on Historic Preservation (ACHP), was invited to participate in the
60 Section 106 consultation and the development of this PA and has declined to participate; and

61
62 **WHEREAS**, the FHWA in coordination with HDOT has consulted with Native Hawaiian Organizations
63 (NHOs) listed in **Appendix 3**, for which the Ahupua'a of Launiupoko, Olowalu, and/or Ukumehame have
64 religious and/or cultural significance and has invited them to be Concurring Parties to this PA; and

65
66 **WHEREAS**, the FHWA in coordination with HDOT held multiple Consulting Party meetings (listed in
67 **Appendix 4**), has consulted with Consulting Parties, including NHOs, listed in **Appendix 3** regarding the
68 effects of the Undertaking on historic properties and has invited them to sign this PA as Concurring
69 Parties; and

70
71 **WHEREAS**, historic properties were found during an archaeological reconnaissance study located within
72 the Department of Land and Natural Resources (DLNR) Lands, and the FHWA has invited DLNR to be an
73 invited signatory to this PA.

74
75 **NOW, THEREFORE**, the FHWA, HDOT, SHPO, agree that the Undertaking shall be implemented in
76 accordance with the following stipulations to take into account the effect of the Undertaking on historic
77 properties.

78
79 **STIPULATIONS**

80
81 The FHWA, in coordination with HDOT, shall ensure that the following measures are carried out.

82
83 **I. Roles and Responsibilities**

84
85 A. The FHWA is the agency official legally responsible for all Section 106 findings and
86 determinations and shall ensure that the terms of this PA are carried out to complete the
87 Section 106 process. The FHWA shall continue consultation with the NHOs, individuals and
88 organizations included in Appendix 3 and as described in this PA.

89
90 B. HDOT, as the Undertaking sponsor, will assist the FHWA in the implementation of this PA,
91 including the coordination, management, and overseeing of the implementation of the SHPD-
92 approved plans and reports including the Archaeological Inventory Subsurface Survey Plan
93 (AISSP) and any necessary mitigation plans (e.g., archaeological monitoring plan, burial
94 treatment plan) required by this PA for continuing archaeological investigations of the preferred

95 alternative through final design and construction of the Undertaking with the assistance of
96 individuals meeting the requirements of Stipulation II.
97

- 98 C. The SHPO, individually or through staff at SHPD, shall advise the FHWA in carrying out Section
99 106 responsibilities for the Undertaking. Based on information provided by the FHWA or by
100 HDOT, on behalf of the FHWA, the SHPO, individually or through staff at the SHPD, shall respond
101 to requests for comments and/or concurrence within the specified review periods regarding the
102 FHWA's National Register of Historic Places (NRHP) eligibility evaluations and proposed
103 measures to avoid, minimize, or mitigate any adverse effects on archaeological historic
104 properties that may be identified.
105

106 **II. Qualifications**

107

108 All investigations carried out pursuant to this PA shall be conducted by or under the supervision of an
109 individual meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards for
110 Archaeology or Architectural History, as applicable, pursuant to 36 CFR Part 61, Appendix A, and
111 pursuant to HAR § 13-281, "Rules Governing Professional Qualifications," and HAR § 13-282, "Rules
112 Governing Permits for Archaeological Work" in the State of Hawai'i.
113

114 **III. Identification and Evaluation of Historic Properties**

115

- 116 A. The FHWA, in coordination with HDOT, will ensure all historic properties (both above ground
117 and below ground) identified within the APE are assessed for NRHP eligibility in accordance with
118 36 C.F.R. § 800.4(c). The FHWA will consider information provided by an individual or
119 organization included in Appendix 3 who attaches religious and/or cultural significance to a
120 property within the APE in making determinations of eligibility.
121
- 122 B. HDOT, in coordination with the FHWA, completed the identification and evaluation of
123 architectural historic properties pursuant to 36 C.F.R. § 800.4(b) and (c). A Reconnaissance Level
124 Architectural Inventory Survey (RLS) report was completed that identified and assessed 40
125 architectural properties within the APE. Three architectural properties were determined to be
126 individually eligible for listing in the NRHP and ten were determined to be contributing
127 resources to a NRHP-eligible historic district, referred to in the RLS as the Olowalu Sugar
128 Plantation Historic District. SHPD concurred with these eligibility determinations in a letter
129 dated July 9, 2024.
130
- 131 C. HDOT, in coordination with the FHWA, has completed the identification and initial evaluation of
132 archaeological properties pursuant to 36 C.F.R. § 800.4(b) and (c). This identification and
133 evaluation effort involved an archaeological reconnaissance surface survey comprising each of
134 the four proposed alternatives within the APE. The archaeological survey area was defined by a
135 300-foot-wide corridor along the centerline of each proposed alternative. The archaeological
136 survey area totaled approximately 464 acres and included both 100% pedestrian survey and
137 targeted drone flyovers. The results of the archaeological survey were provided in a document
138 titled *Honoapi'ilani Archaeological Complex Site Descriptions and Significance Evaluations*.
139 Twenty-eight (28) archaeological historic properties were identified and evaluated within
140 Ukumehame Ahupua'a, seven (7) in Olowalu Ahupua'a, and three (3) in Launiupoko Ahupua'a.
141

- 142 D. HDOT’s archaeologist, on behalf of HDOT and the FHWA, evaluated all 38 archaeological historic
143 properties as individually eligible for listing in the National Register of Historic Places. SHPD
144 concurred with eleven (11) of these eligibility determinations in a letter dated October 11, 2024,
145 and provided no response on the remaining twenty-seven (27) archaeological historic
146 properties. HDOT’s archaeologist also noted that the sites in each ahupua’a extended beyond
147 the archaeological survey boundaries. Because the horizontal and vertical extents of a potential
148 historic district could not be determined based on a reconnaissance survey, no historic district
149 has been identified by the FHWA at this time, pending additional investigations as described in
150 this PA.
151
- 152 E. HDOT, in coordination with the FHWA, will complete an archaeological inventory survey (AIS) for
153 any areas not previously surveyed within the preferred alternative. Additionally, subsurface
154 archaeological testing will proceed through the design of the preferred alternative as locations
155 become accessible.
156
- 157 F. HDOT, in coordination with the FHWA, will ensure an AISSP is prepared and implemented as
158 part of the identification and evaluation of archaeological historic properties pursuant to 36
159 C.F.R. § 800.4(b) and (c) and HAR § 13-276.
160
- 161 G. HDOT intends to use the identification and documentation of historic properties prepared for
162 this Undertaking to meet the requirement of HRS § 6E-8. SHPD shall have authority to
163 determine the adequacy of the AISSP pursuant to HAR § 13-275 and HAR § 13-276. SHPD’s
164 written approval will be provided to all Signatories, Concurring and Consulting Parties.
165

166 **IV. Archaeological Inventory Subsurface Survey**

167 The area for subsurface archaeological survey is defined as the Undertaking’s preferred alternative and
168 includes the proposed roadway right-of-way (ROW) and areas designated for utility installation,
169 excavation, grading, connector roads, or construction access and laydown areas.
170

171 A. Archaeological Inventory Subsurface Survey Plan

- 172
- 173 1. The AISSP will be developed by HDOT’s archaeologist in consultation with the
174 Engineering Design Team, as well as Signatories, Concurring and Consulting Parties.
175
- 176 2. HDOT will provide the initial draft of the AISSP to SHPD, Signatories, Concurring and
177 Consulting Parties for a 30-calendar-day review and comment period.
178
- 179 3. The written comments on the AISSP will be shared with SHPD for consideration in
180 preparing SHPD’s review comments to HDOT and the FHWA. SHPD shall have an
181 additional 15-calendar-day review period (total 45-calendar days) upon receipt of all
182 written comments received by HDOT and the FHWA from Signatories, Concurring and
183 Consulting Parties.
184
- 185 4. HDOT will share SHPD’s comments with Signatories, Concurring and Consulting Parties.
186 The comments may be posted to the Honoapiilanihighway.com website.

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- 5. If SHPD does not respond within any 45-calendar-day review period, HDOT, in coordination with the FHWA, may assume SHPD’s concurrence and move forward accordingly. HDOT, in coordination with the FHWA, will implement the AISSP.
- 6. Subsurface survey fieldwork shall be completed to the extent practicable prior to final design so that any unanticipated discoveries (i.e., archaeological sites or human burials) may be considered in final design and measures incorporated to avoid and/or minimize potential effects on historic properties and/or human burials.
- 7. HDOT, in coordination with the FHWA, will provide a status update to the Signatories, Concurring and Consulting Parties of the status of archaeological investigations on a quarterly basis via email and, when requested, via meeting. Once HDOT’s archaeologist sends an end-of-fieldwork notice to SHPD, these reports will stop.

B. Archaeological Inventory Survey Report

- 1. The AIS report will be submitted to SHPD for their concurrence on adequacy will contain results of the above ground pedestrian survey of the preferred alternative and subsurface survey.
- 2. The initial draft of the AIS report will be provided to SHPD, Signatories, Concurring and Consulting Parties for a 30-calendar-day review and comment period. The reports may be posted to Honoapiilanihighway.com.
- 3. The written comments received on the draft AIS report will be shared with SHPD for consideration in preparing SHPD’s review comments to HDOT and the FHWA. SHPD shall have an additional 15-calendar-day review period (total 45-calendar days) upon receipt of all written comments received by HDOT and the FHWA from Signatories, Concurring and Consulting Parties.
- 4. If SHPD does not respond within the 45-calendar-day review period, HDOT, in coordination with the FHWA, may assume SHPD’s concurrence and move forward accordingly.

V. Application of the Criteria of Adverse Effect for Historic Properties

- A. The FHWA, in coordination with HDOT and in consultation with the SHPO, Signatories, and Concurring and Consulting Parties, will apply the criteria of adverse effect (36 C.F.R. § 800.5(a)(1)) to historic properties within the APE, and document its findings.
- B. If, as a result of this analysis, the FHWA determines that the Undertaking may have an adverse effect on any historic property, the FHWA, in coordination with HDOT, will consult with the SHPO, Signatories, and Concurring and Consulting Parties to avoid, minimize, or mitigate adverse effects.

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- C. The FHWA, in coordination with HDOT, will implement any of the Undertaking’s scope or design modifications or conditions in order to avoid, minimize or mitigate adverse effects, as agreed upon through consultation.

VI. Treatments to Resolve Adverse Effects to Historic Properties

The FHWA, in coordination with HDOT and in consultation with the SHPO, Signatories, and Concurring and Consulting Parties, has determined that the following treatment measures, either singularly or in combination, may be applied to resolve adverse effects to historic properties:

- A. Educational Interpretation. This educational interpretation may include displays, markers, educational pamphlets, brochures or booklets, posters, websites, or other similar accessible information to educate members of the public on one or more architectural and/or archaeological historic property within the APE. The interpretive element will use images and maps to the extent feasible to convey information to the public.
- B. Photogrammetry. HDOT may hire a consultant to conduct historic property documentation through the use of photogrammetry, which requires taking high-resolution digital images to construct 3-D models of above ground resources including individual structures and buildings or landscape features. Using a high-resolution camera affixed to a drone, digital images will be taken at multiple angles and aligned to extract spatial and visual data to create a digital 3-D model. Data will be extracted from the model, including precise measurements and dimensions, colors, textures, and close-up historic details of the historic property. The model will then be made available for public viewing, if appropriate.
- C. Recordation of Architectural Historic Property. Prior to any substantial alteration or demolition of an individual above ground architectural historic property, documentation may be undertaken to record the adversely affected property through a digital photography package or Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER)/Historic American Landscapes Survey (HALS) Level III recordation (68 Fed. Reg. 43159), as appropriate.
- D. Recordation of Archaeological Historic Property without Data Recovery. Prior to any substantial alteration or demolition of an individual above ground archaeological historic property, documentation may be undertaken to record the adversely affected property through digital photography, scaled plan view, profile drawings, and narrative descriptions meeting the archaeological documentation specified in HAR § 13-276 pertaining to AIS investigations.
- E. Archaeological Data Recovery. Data recovery excavations may be considered in consultation among the FHWA, HDOT, SHPO, Signatories, Concurring and Consulting Parties. If it is determined by the FHWA through consultation that archaeological data recovery is an appropriate treatment, HDOT will ensure that HDOT’s archaeologist prepares an archaeological data recovery plan (Archaeological DRP) that includes each affected archaeological historic property.

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1. If possible, a single Archaeological DRP will be prepared for the Undertaking.
2. HDOT will provide the initial draft of the Archaeological DRP to SHPD, Signatories, Concurring and Consulting Parties for a 30-calendar-day review and comment period.
3. The written comments received will be shared with SHPD for consideration in preparing SHPD’s review comments to HDOT and the FHWA. SHPD shall have an additional 15-calendar-day review period (total 45-calendar days) to take comments provided in writing by other Consulting Parties into consideration in preparing SHPD’s written review comments.
4. If SHPD does not respond within the 45-calendar-day review period, HDOT, in coordination with the FHWA, may assume SHPD’s concurrence with the Archaeological DRP, and move forward accordingly following written notification to SHPD, Signatories, Concurring and Consulting Parties.
5. HDOT, in coordination with the FHWA, shall ensure the archaeological data recovery excavations are carried out in accordance with the approved Archaeological DRP and all data recovery fieldwork is completed prior to initiation of construction.
6. HDOT’s Archaeologist will prepare an Archaeological Data Recovery Report summarizing the archaeological data recovery results.
7. HDOT will provide the Archaeological Data Recovery Report to SHPD, Signatories, Concurring and Consulting Parties for a 30-calendar-day review and comment period.
8. The written comments received will be shared with SHPD for consideration in preparing SHPD’s review comments to HDOT and the FHWA. SHPD shall have an additional 15-calendar-day review period (total 45-calendar days), to take comments provided in writing by other Consulting Parties into consideration in preparing SHPD’s written review comments.
9. Following receipt of comments, HDOT, in coordination with the FHWA and in consultation with SHPD, Signatories, and Concurring and Consulting Parties, will finalize and approve the Archaeological Data Recovery Report.

VII. Native Hawaiian and Consulting Parties Section 106 Consultation

- A. The FHWA, in coordination with HDOT, shall continue to carry out Section 106 consultation with the Maui Lāna’i Islands Burial Council (MLIBC), Signatories, Concurring and Consulting Parties for the identification and evaluation of historic properties identified according to the terms of this PA.

321 B. The FHWA, in coordination with HDOT, shall carry out consultation with MLIBC, recognized
322 descendants and NHOs, Signatories, Concurring and Consulting Parties for any unanticipated
323 discoveries. The consultation will include identification, evaluation as to whether a discovery
324 meets the definition of a historic property, and consideration of measures to avoid, minimize, or
325 mitigate adverse effects.

326
327 **VIII. Applicability of this PA to Changes in Undertaking Scope**

328
329 This PA satisfies the FHWA’s responsibilities under Section 106 and is based on information about this
330 Undertaking as defined in the EIS. It is the FHWA’s responsibility to notify the SHPO, Signatories,
331 Concurring and Consulting Parties of any changes to the Undertaking’s design, scope, or footprint and,
332 through consultation, to determine whether any changes to the design, scope, or footprint invalidate
333 both the environmental commitments made in the Final EIS and Record of Decision, including those
334 made in this PA. In the event the FHWA chooses to re-open Section 106 consultation for this
335 Undertaking, the FHWA shall implement the following measures:

- 336
337 A. If the change is within the current APE, then the FHWA shall notify the SHPD of any changes to
338 design or scope in writing. The SHPD shall respond within 30 calendar days of receipt of the e-
339 mail or letter. Receipt is the date of the e-mail or the date received in HICRIS.
340
341 B. If the change is outside the current APE, the FHWA, in coordination with HDOT and in
342 consultation with the SHPO, shall assess and revise the APE as necessary to incorporate any
343 additional areas not previously considered under this PA.
344
345 C. The FHWA shall consult the Signatories to this PA to determine if the provisions of this PA
346 should be applied to the additional areas, and if this PA should be applied, whether this PA
347 needs to be amended in accordance with Stipulation XIII to include those areas.
348

349 **IX. Post-Review Discoveries**

- 350
351 A. In accordance with 36 C.F.R. § 800.13(b)(3), the FHWA, in coordination with HDOT and in
352 consultation with the SHPO, will apply the NRHP Criteria for Evaluation (36 C.F.R. § 60.4) to
353 evaluate any newly identified historic properties and consider measures to avoid, minimize or
354 mitigate adverse effects on historic properties. Additionally, the FHWA, in coordination with
355 HDOT, will consult pursuant to Stipulation III.
356
357 B. The FHWA shall forward their evaluation of the newly identified historic properties to the SHPO
358 for review and concurrence.
359
360 C. If SHPD does not respond within the 30-calendar day review period, the FHWA may assume
361 SHPD’s concurrence with the eligibility determinations.
362
363 D. If evidence of burials, human remains, or potential human remains is encountered during
364 construction, HDOT shall suspend all work in the immediate vicinity, protect the remains from
365 further disturbance, and immediately contact the SHPO, the FHWA, , MLIBC, Maui Police
366 Departments, Signatories, Concurring and Consulting Parties.
367

- 368 E. HDOT’s initial notification may be via phone but must be followed by written notification via
369 email. In addition to email, HDOT’s notification to the SHPO must include written notification to
370 HICRIS Project No. 2023PR00135 and include date, time, and identification of all parties who
371 were notified.
372
- 373 F. Identification, documentation, and treatment of all burials, human remains, or potential human
374 remains encountered during construction will be carried out in accordance with State laws
375 (Appendix 1).
376

377 **X. Confidentiality**
378

379 Sensitive information concerning the location, character, or ownership of archaeological resources and
380 properties on which burials, human remains, or potential human remains are identified may be withheld
381 from public disclosure in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).
382

383 **XI. Monitoring and Reporting**
384

385 Each year following the execution of this PA until it expires or is terminated, HDOT will submit to the
386 FHWA a written status of each PA stipulation.
387

388 The FHWA, in coordination with HDOT, shall provide all parties to this PA a written annual summary
389 report detailing work undertaken pursuant to its terms and associated findings. Such report shall include
390 any scheduling changes proposed or implemented, any issues encountered relating to historic or
391 cultural sites, any disputes and objections received in the FHWA’s efforts to carry out the terms of this
392 PA. Additionally, the annual summary report shall include the status of the PA stipulations provided by
393 HDOT to the FHWA.
394

395 HDOT will provide written notification to the FHWA for concurrence once all stipulations have been
396 completed. Upon the FHWA’s concurrence and the FHWA’s notification therein to all parties to this PA,
397 the Section 106 process will be deemed completed.
398

399 **XII. Dispute Resolution**
400

401 Should any Signatory, Concurring or Consulting Party to this PA object at any time to any actions
402 proposed or the manner in which the terms of this PA are implemented, the FHWA shall notify all
403 parties and initiate consultation to resolve the objection. If the FHWA determines that such objection
404 cannot be resolved, the FHWA will:
405

406 A. Forward all documentation relevant to the dispute, including the resolution proposed by the
407 FHWA, to the ACHP. The ACHP shall provide the FHWA with its advice on the resolution of the
408 objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final
409 decision on the dispute, the FHWA shall prepare a written response that takes into account any
410 timely advice or comments regarding the dispute from ACHP, Signatories, and Concurring
411 Parties and provide them with a copy of this written response. The FHWA will then proceed
412 according to the final decision.
413

414 B. If the ACHP does not provide its advice regarding the dispute within the 30-calendar-day review
415 period, the FHWA may make a final decision on the dispute and proceed accordingly. Prior to

416 reaching such a final decision, the FHWA shall prepare a written response that takes into
417 account any timely comments regarding the dispute from the Signatories and Concurring Parties
418 to this PA and provide them and the ACHP with a copy of such written response.
419

420 C. The responsibilities of the FHWA to carry out all other actions subject to the terms of this PA
421 that are not the subject of the dispute remain unchanged.
422

423 **XIII. Amendments**
424

425 This PA may be amended when such an amendment is agreed to in writing by all Signatories. The
426 amendment will be effective on the date a copy signed by all signatories is filed with the ACHP.
427

428 **XIV. Termination**
429

430 If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall
431 immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII. If
432 an amendment cannot be reached within 30 calendar days, any Signatory may terminate the PA upon
433 written notification to the other Signatories.
434

435 Once the PA is terminated, and prior to work continuing on the Undertaking, the FHWA must either (a)
436 execute an agreement pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to
437 the comments of the ACHP under 36 C.F.R. § 800.7. The FHWA shall notify the Signatories as to the
438 course of action they will pursue.
439

440 **XV. Duration**
441

442 This PA will be null and void if its terms are not carried out within fifteen (15) years from the date of its
443 execution. Prior to such time, the FHWA may consult with the other Signatories to reconsider the terms
444 of the PA and amend it in accordance with Stipulation XIII.
445

446 Execution of this agreement by the FHWA, SHPO, and HDOT, and implementation of its terms is
447 evidence that the FHWA has taken into account the effects of this Undertaking on historic properties
448 and has afforded the ACHP an opportunity to comment.
449
450

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452 **AMONG**
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454 **THE STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION,**
455 **AND THE**
456 **THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER**
457 **REGARDING THE**
458 **HONOAPI'ILANI HIGHWAY IMPROVEMENTS,**
459 **MAUI KOMOHANA, MAUI COUNTY, HAWAI'I**

460
461 **SIGNATORY**

462
463 State of Hawai'i Department of Land and Natural Resources (DLNR)

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465
466 By: _____ Date: _____

467 Dawn N. S. Chang, Esq.

468 DLNR Chairperson

469 State Historic Preservation Officer

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HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI KOMOHANA, MAUI COUNTY, HAWAI'I**

SIGNATORY

Federal Highway Administration

By: _____ Date: _____

Richelle M. Takara, PE
Division Administrator

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494 **THE STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION,**
495 **AND THE**
496 **THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER**
497 **REGARDING THE**
498 **HONOAPI'ILANI HIGHWAY IMPROVEMENTS,**
499 **MAUI KOMOHANA, MAUI COUNTY, HAWAI'I**

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501 **INVITED SIGNATORY**

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503 State of Hawai'i Department of Transportation
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507 By: _____ Date: _____
508 Edwin Sniffen, Director
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MAUI KOMOHANA, MAUI COUNTY, HAWAI'I**

INVITED SIGNATORY

State of Hawai'i Department of Land and Natural Resources

By: _____ Date: _____

Dawn Chang
Chairperson

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**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION,
AND THE
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI KOMOHANA, MAUI COUNTY, HAWAI'I**

CONCURRING PARTY

[Name/Organization]

By: _____ Date: _____

[Name]

[Title]

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Appendix 1. HDOT's Hawai'i Revised Statutes (HRS) § 6E Compliance

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Memorandum

To: All Signatories, Concurring and Consulting Parties, and the Public

From: State of Hawai'i Department of Transportation (HDOT)

Re: Hawai'i Revised Statutes (HRS) § 6E Compliance

The Programmatic Agreement (PA) for this project incorporates references to both Federal and State laws and regulations to allow these review processes to work in tandem to the extent possible. Should compliance issues arise under Federal or State law, HDOT and FHWA are committed to resolving disputes through the Dispute Resolution stipulation provided in the PA (Stipulation XII).

In a letter dated January 23, 2023, HDOT initiated consultation with the State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (NHPA) of 1966 and its implementing regulations at 36 C.F.R. Part 800. In addition, HDOT initiated Hawai'i Revised Statutes (HRS) § 6E and Hawai'i Administrative Rules (HAR) § 13-275 historic preservation review with the State Historic Preservation Division (SHPD) for the proposed project. Although the Federal Highway Administration (FHWA) retains approval authority over Section 106, HDOT has jurisdiction over determining the project's effects under HRS § 6E-8 and its administrative provisions in HAR § 13-275.

To reduce redundancy, HDOT intends to combine Section 106 and HRS § 6E-8 compliance where possible.

Roles and Responsibilities

HDOT, as project sponsor, in coordination with the FHWA, will be responsible for the management and development of the SHPD-approved plans and reports including the Archaeological Inventory Subsurface Survey Plan (AISSP) and any necessary mitigation plans (e.g., archaeological monitoring plan, burial treatment plan) required for continuing archaeological investigations of the preferred alternative through final design and construction of the project with the assistance of individuals meeting the requirements of Stipulation II.

The SHPD shall advise HDOT in carrying out its State Historic Preservation Review responsibilities for the project. Based on information provided by HDOT, the SHPD shall respond to requests for comments and/or concurrence within the specified review periods.

Qualifications

All historic properties investigations and documentation carried out pursuant to this Memorandum shall be conducted by or under the supervision of an individual meeting the HAR § 13-281, *Rules Governing Professional Qualifications*, in their respective professional discipline. Historic properties investigations and documentation shall meet the requirements of HAR § 13-275 and the appropriate HAR for specific types of studies. Archaeologists will have a permit to do archaeological work in Hawaii per HAR § 13-282. HDOT will identify an osteologist who can be available on an as-needed basis in the event the ethnicity of a burial is needed, or bone fragments cannot be positively identified as human by the on-site archaeologist.

599 **Project Area**

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601 The HRS § 6E-8 Project Area will coincide with the Preferred Alternative, once selected.

602

603 **Identification and Evaluation of Historic Properties**

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605 HDOT intends to use the investigations and documentation of historic properties prepared for this
606 project and as described in the PA (Stipulation III) to comply with HRS § 6E and its administrative
607 provisions in HAR § 13-275, *Rules Governing Procedures for Historic Preservation Review for*
608 *Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS*. HDOT will evaluate potential historic
609 properties for integrity and significance in accordance with HAR § 13-275-6.

610

611 **Phased Archaeological Inventory Survey and Archaeological Subsurface Survey Plan**

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613 HDOT, in coordination with FHWA, intends to conduct a phased identification and evaluation of
614 archaeological historic properties for this project. The first phase, consisting of an above-ground
615 archaeological reconnaissance survey, is described in Stipulation III of the PA, as mentioned above. For
616 the second phase, an AISSP will be developed and implemented as described in the PA, Stipulation IV. A
617 final AIS report will be prepared that includes the results of the archaeological surface reconnaissance
618 survey and the archaeological subsurface survey and provided to SHPD for concurrence on adequacy.

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620 **Determining Effects to Historic Properties**

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622 HDOT, in coordination with FHWA, will determine the effects to significant historic properties within the
623 preferred alternative consistent with HAR § 13-275-7. One of the following effect determinations will be
624 made for each significant historic property or group of significant historic properties:

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626 1. No historic properties affected.

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628 2. Effect with proposed mitigation commitments.

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630 The effect determinations shall be sent to SHPD for review and concurrence and posted on
631 honoapiilanihighway.com with notification to Signatories, Concurring and Consulting Parties of the PA
632 for their comments. After 30 calendar days, HDOT shall send all comments received to SHPD. SHPD
633 shall provide its approval, or non-approval with comments, within 45 calendar days of receipt of an
634 HDOT request for agreement on its effect determinations. Receipt date shall be the date a letter is
635 received in HICRIS.

636

637 **Mitigation Measures**

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639 Following SHPD's written acceptance of the AIS report and effect determinations, HDOT will provide
640 mitigation measures to SHPD pursuant to HAR § 13-275, 277, -278, and -279.

641

642 *Archaeological and Cultural Monitoring*

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644 Per HAR § 13-279-3, Archaeological monitoring may be a mitigation measure.

645

646 Following completion of the AIS, HDOT shall oversee the development of an Archaeological and Cultural
647 Monitoring Plan (Monitoring Plan) for implementation prior to the initiation of project construction. The
648 Monitoring Plan will be developed pursuant to HAR § 13-279, *Rules Governing Standards for*
649 *Archaeological Monitoring Studies and Reports*, in consultation with the PA’s Signatories, Concurring and
650 Consulting Parties and submitted for a 30-calendar-day review and comment period.

- 651
- 652 1. Archaeological monitoring during construction will be conducted by HDOT and under the
653 supervision of an Archaeologist meeting the qualifications stated above in the Qualifications
654 Section.
655
 - 656 2. HDOT, through its archaeologist, may hire cultural monitors at the request of NHOs listed in
657 Appendix 3. Cultural monitor responsibilities will be defined in the Monitoring Plan.
658
 - 659 3. The relationship between the construction crew and the cultural monitors will be defined in
660 the monitoring plan. For example, if bones are found or a historic site is breached, the
661 cultural monitor will have the authority to stop all work within 100 feet of the find.
662
 - 663 4. HDOT shall contract with an on-call osteologist who can be in the field within 24 hours
664 should additional expertise be needed to identify bones found in the Project Area. The Lead
665 Archaeologist, in consultation with SHPD, will make the call as to whether an osteologist is
666 needed on-site.
667

668 *Pre-Construction Training*

- 669
- 670 1. Prior to construction activities, HDOT, in coordination with the FHWA, will conduct pre-
671 construction on-site archaeological and cultural awareness training led by HDOT’s
672 archaeological monitor and cultural monitors. The training will explain HDOT’s approach to
673 HRS § 6E-8 compliance, conditions and requirements set forth in this PA, procedures to
674 follow if archaeological or cultural remains are found, and roles and responsibilities of
675 HDOT’s archaeological and cultural monitors.
676
 - 677 2. HDOT will provide meeting participants with contact information for those required to
678 receive discovery notifications.
679
 - 680 3. This Memorandum will be an addendum to the construction contract.
681

682 **Data Recovery**

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684 In the event that adverse effects cannot be avoided, data recovery is the only mitigation option provided
685 in HAR § 13-275-8. Data recovery of sites will follow HAR § 13-278.
686

687 HAR § 13-275-8(2) requires that for properties evaluated as significant under criterion “e” the agency
688 must consult with ethnic organizations or members of the ethnic group for whom the properties have
689 significance. For this project, all sites significant under criterion “e” are significant to Native Hawaiians,
690 and HDOT has consulted with NHOs listed in Appendix 3 to seek their views on proposed forms of
691 mitigation in the event adverse effects cannot be fully avoided and data recovery is considered
692 insufficient.

- 693
- 694 1. HDOT in consultation with the SHPD and NHOs, will continue consultation to determine if
- 695 alternate mitigation under HAR § 13-275-8(2) is appropriate.
- 696
- 697 2. With respect to unmarked Native Hawaiian burials, the development of burial treatment
- 698 plans will be consistent with HAR § 13-300, *Rules of Practice and Procedure Relating to*
- 699 *Burial Sites and Human Remains*. If MLIBC determines that a burial is to be relocated, HDOT
- 700 will consult with MLIBC to determine appropriate reinterment, which may include relocation
- 701 to project property in the vicinity of the discovery as appropriate and as determined
- 702 through consultation.
- 703
- 704 3. *Curation*. HDOT, in coordination with SHPD, will curate recovered materials in accordance
- 705 with applicable laws, including HAR § 13-278, *Rules Governing Standards for Archaeological*
- 706 *Data Recovery Studies*. HDOT shall consult with public and private institutions to pursue
- 707 opportunities to provide public access to the recovered materials.
- 708
- 709 4. *Access*. HDOT will ensure NHOs have access to sites they wish to steward. Access will
- 710 include safe parking areas for up to ten vehicles, areas to store rocks or tools, and an area to
- 711 gather before or after accessing the site. Access does not presume any improvements to
- 712 access sites.
- 713
- 714 5. *Stewardship*. HDOT will ensure that NHOs have an opportunity to remove the rocks from
- 715 sites that will be impacted by construction of the Project. This will include allowing adequate
- 716 time to gather the rocks and providing a location to store the rocks. NHOs will provide
- 717 HDOT with point-of-contact (POC) information to coordinate this activity.
- 718
- 719 6. Most of the Archaeological sites are located on Department of Land and Natural Resources
- 720 (DLNR), Land Division Lands and will be transferred to the DLNR Division of Forestry
- 721 sometime after the relocated highway is built. HDOT has invited DLNR to be an invited
- 722 signatory to this agreement and to develop a stewardship agreement with interested NHOs.
- 723 Failure to finalize an agreement prior to signing this document will not affect
- 724 implementation of the final document.
- 725
- 726 7. The design team will work with NHOs to use rocks affected by the construction of the
- 727 project, in retaining walls or other parts of the project, where appropriate. NHOs will
- 728 provide HDOT with POC information to coordinate these activities.
- 729
- 730 8. *Burials*. HDOT shall provide a burial relocation site, to be chosen in consultation with the
- 731 MLIBC and recognized descendants, in each of the three (3) ahupua'a affected by the
- 732 project. MLIBC and recognized descendants will work with HDOT on the design, materials,
- 733 and construction of each burial site. If the land chosen belongs to another state agency,
- 734 HDOT will facilitate agreements regarding access and use of the land. DLNR-SHPD will have
- 735 long-term management of the site, including decisions on whether additional burials from
- 736 other projects will be allowed to be interred at these sites.

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Post-Review Discoveries

Archaeology

1. If new archaeological properties are discovered or unanticipated effects to significant archaeological historic properties are identified during construction, and there is no archaeologist present at the discovery location to conduct monitoring as described in Stipulation IV.B, HAR § 13-280, *Rules Governing General Procedures for Inadvertent Discoveries of Historic Properties During a Project Covered by the Historic Preservation Review Process*, shall apply.
2. HDOT will consult with the SHPD, Signatories, Concurring and Consulting Parties regarding the need to expand the areas identified for archaeological monitoring during construction to include locations where the project would involve excavation within 150 feet of identified artifacts.

Human Remains

1. If evidence of burials, human remains, or potential human remains is encountered during construction, HDOT shall suspend all work within 20 feet of the remains, protect the remains from further disturbance, and immediately use the contact protocols in Appendix 5. HDOT will implement the procedures at HAR § 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*, for inadvertent discoveries of human remains. Construction activities in the location of the discovery will be suspended pending notification to and consultation among the SHPD, HDOT, MLIBC, and parties included in Appendix 4, in accordance with these procedures. Notification will be by e-mail, unless an alternative method is specifically requested.
2. HDOT will consult with the parties included in Appendix 3 regarding the need to expand the areas identified for archaeological monitoring during construction to include locations where the project would involve excavation within 150 feet of the unanticipated discovery of human remains.