

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

WHEREAS, the 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 on Maui; and

WHEREAS, the Hawaii' i Department of Transportation (HDOT) is the project sponsor, and FHWA has invited HDOT to become an invited signatory to this agreement; 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 Hawaii' i Climate Change Mitigation and Adaptation Commission (HCCC)' s Sea Level Rise Exposure Area (SLR-XA); 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 subject to review under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108) and its implementing regulations, 36 C.F.R. Part 800, *Protection of Historic Properties*, as amended; and

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

WHEREAS, the FHWA, in consultation with the Hawaii' i State Historic Preservation Officer (SHPO), is entering into a Section 106 Programmatic Agreement (PA) in accordance with 36 C.F.R. § 800.14(b)(1)(ii) because the Project' s effects on historic properties cannot be fully determined prior to approval of the Project; and

WHEREAS, HDOT intends to use the investigations and documentation prepared for this Project and described in the PA to comply with Hawaii' i Revised Statutes (HRS) § 6E and its administrative provisions at Hawaii' i Administrative Rules (HAR) § 13-275, *Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS*, as described in **Appendix 1**; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP), at the invitation of FHWA, is participating in the Section 106 consultation for this Project and is a signatory to this PA; and

WHEREAS, HDOT, the project sponsor, participated in the consultation, has responsibilities for implementing stipulations under this PA, and is an invited signatory to this PA; and

WHEREAS, the FHWA in coordination with HDOT has consulted with Native Hawaiian Organizations (NHOs) and Lineal and Cultural Descendants listed in **Appendix 3**, for which the Ahupua'a of Olowalu and/or Ukumehame have religious and/or cultural significance and has invited them to be concurring parties to this PA;

WHEREAS, the FHWA in coordination with HDOT held consulting party meetings on March 29 and March 30, 2023, has consulted with the [LIST: Historic Hawai'i Foundation, (other consulting parties)] regarding the effects of the undertaking on historic properties and has invited them to sign this PA as concurring parties; 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 Project alternatives evaluated in the Draft EIS; and

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

WHEREAS, HDOT, in coordination with FHWA, conducted an Ethnographic Survey, Aboveground Archaeological and Architectural Survey, Subsurface Testing Plan, and Cultural Impact Assessment to inform selection of the Project's preferred alternative; and

NOW, THEREFORE, the FHWA, HDOT, SHPO, and ACHP agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

STIPULATIONS

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

I. Roles and Responsibilities

- A. As the lead federal agency, FHWA shall be legally responsible for all Section 106 findings and determinations and shall ensure that the terms of this PA are carried out to complete the Section 106 process. The FHWA shall continue consultation with the individuals and organizations included in Appendix 3 and as described in Stipulation III.
- B. HDOT, as project sponsor, shall coordinate, manage, and oversee implementation of the approved Subsurface Testing Plan (**Appendix 4**) and other monitoring or treatment plans required by this PA 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 I.E and permitted to conduct work in the State of Hawai'i.
- C. The SHPO shall advise and assist the FHWA in carrying out Section 106 responsibilities for the Project. Based on information provided by HDOT on behalf of the FHWA, the SHPO shall provide

comments and/or concurrence within the specified review periods to determine National Register of Historic Places (NRHP) eligibility and consider measures to avoid, minimize, or mitigate any adverse effects on archaeological sites or other historic properties that may be identified through archaeological investigations or unanticipated discoveries.

- D. The ACHP shall provide policy guidance to the FHWA and advise on the resolution of any dispute or objection from a signatory to this PA, a concurring party, or member of the public, as needed.
- E. NHOs will continue to participate in ongoing Section 106 consultation for the identification and evaluation of cultural materials, artifacts, archaeological resources, and any potential human remains.

II. Qualifications

All investigations carried out pursuant to this PA shall be conducted by or under the direct supervision of an individual meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards for Archaeology or Architectural History, as applicable (36 CFR Part 61, Appendix A), and HAR § 13-281, *Rules Governing Professional Qualifications*. Investigations shall meet the requirements of 36 C.F.R. Part 800, *Protection of Historic Properties* and HAR § 13-275, *Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS*.

III. Native Hawaiian Consultation

- A. The FHWA, in coordination with HDOT, shall continue to carry out formal Section 106 consultation with the Maui Lāna'i Islands Burial Council (MLIBC), Lineal and Cultural Descendants, and NHOs included in Appendix 3 for the identification and evaluation of cultural materials, artifacts, and archaeological features encountered during future archaeological investigations and project construction.
- B. The FHWA, in coordination with HDOT, shall carry out consultation with MLIBC, Lineal and Cultural Descendants, and NHOs in Appendix 3 for the identification of any human remains or potential human remains, that may be encountered through archaeological investigations of the preferred alternative. The consultation will include a consideration of measures to avoid or mitigate adverse effects.

IV. Identification and Protection of Archaeological and Unmarked Burial Sites

HDOT, in coordination with FHWA, shall complete the identification and evaluation of archaeological historic properties pursuant to 36 C.F.R. § 800.4(b) and (c). Subsurface archaeological investigations will proceed through the design of the preferred alternative as locations become accessible.

- A. Archaeological Subsurface Inventory Survey
 - 1. The APE for the identification of subsurface archaeological resources is defined as all areas of direct ground disturbance caused by the Project's preferred alternative, comprising a 100-foot buffer along the preferred alternative alignment and including areas designated for utility installation, excavation, grading, parking, connector roads, or construction access and laydown areas.

2. HDOT, in coordination with FHWA, shall use the approved Subsurface Testing Plan (**Appendix 4**) in archaeological investigations completed for this Project.
3. Following approval of the Subsurface Testing Plan and execution of this PA, HDOT, in coordination with FHWA, will complete the subsurface components of an Archaeological Inventory Survey (AIS) within subsurface areas of the archaeological APE as described above for the preferred alternative. The results of both the pedestrian survey completed as part of the project's alternatives analysis and the subsurface testing of the preferred alternative will be included in an AIS report that will follow the requirements set forth in HAR § 13-276, *Rules Governing Standards for Archaeological Inventory Surveys and Reports*. The AIS will include a project overview, historic and cultural contexts, results of archival research and prior archaeological investigations, survey methods, survey and testing results, NRHP evaluations, and recommendations. The AIS will be submitted to consulting parties for a 30-day review and comment period.
4. Subsurface testing fieldwork shall be completed prior to final design so that any archaeological sites or burials discovered may be considered in final design and measures incorporated to avoid and/or minimize adverse effects on historic properties. HDOT, in coordination with FHWA, will inform the SHPO, MLIBC, Lineal and Cultural Descendants, and NHOs in Appendix 3 of the status of archaeological investigations.

B. Archaeological and Cultural Monitoring

Following completion of the AIS, FHWA, in coordination with HDOT, shall develop an Archaeological and Cultural Monitoring Plan for implementation prior to the initiation of project construction. The Monitoring Plan will be developed pursuant to HAR § 13-279, *Rules Governing Standards for Archaeological Monitoring Studies and Reports*, in consultation with the NHOs included in Appendix 2 and submitted to consulting parties for a 30-day review and comment period. The monitoring plan will include a discussion of the proposed work, applicable state and federal laws and regulations, and maps and figures indicating historic property boundaries, limits of project disturbance, and project plans.

1. Archaeological monitoring during construction will be conducted by HDOT and under the supervision of an Archaeologist meeting the Secretary of the Interior's Professional Qualification Standards (36 C.F.R. Part 61, Appendix A).
2. NHOs included in Appendix 3 may provide monitors to participate in archaeological and cultural monitoring during construction in locations specified in the approved monitoring plan, in any additional areas recommended for archaeological monitoring in the AIS, and in any areas within 150 feet should unanticipated discoveries of archaeological properties, cultural objects, including objects of cultural patrimony, sacred objects, and funerary objects, or human remains occur.
3. Each participating archaeological and cultural monitor must prepare a daily log to document compliance. At the conclusion of monitoring, a final monitoring memorandum will be

prepared by HDOT's archaeological monitor to describe the construction activities, duration, and results of monitoring.

C. Pre-Construction Training

1. Prior to construction activities, HDOT, in coordination with FHWA, will conduct pre-construction on-site archaeological and cultural awareness training led by HDOT's archaeological monitor and construction personnel. The training will explain Section 106, conditions and requirements set forth in this PA, procedures to follow if archaeological or cultural remains are found, and roles and responsibilities of HDOT's archaeological monitor, NHOs and their cultural monitors included in Appendix 3 should they chose to participate in monitoring, and construction personnel.
2. HDOT will provide meeting participants with contact information for those required to receive discovery notifications.
3. This PA will be an addendum to the construction contract.

D. Consultation to Avoid, Minimize, or Mitigate Adverse Effects on Archaeological Historic Properties and Burials

1. HDOT, in coordination with the FHWA and in consultation with the SHPO, Lineal and Cultural Descendants, and NHOs, will apply the criteria of adverse effect (36 C.F.R. § 800.5(a)(1)) to archaeological historic properties within the APE, and document its findings.
2. If, as a result of this analysis, the FHWA determines that the Project may have an adverse effect on any archaeological historic property, the FHWA, in coordination with HDOT, will consult with the SHPO, Lineal and Cultural Descendants, and NHOs, to avoid, minimize, or mitigate adverse effects. The FHWA, in coordination with HDOT, will ensure the implementation of any modifications or conditions to avoid or minimize adverse effects, as agreed upon through consultation.
3. In the event that adverse effects cannot be avoided, data recovery excavations may be considered in consultation among the FHWA, SHPO, and HDOT, and including Lineal and Cultural Descendants and NHOs. If it is determined through consultation that data recovery is an appropriate treatment, HDOT will direct the Archaeologist to prepare an archaeological data recovery plan, as appropriate, for each affected archaeological historic property or burial, consistent with HAR § 13-278, *Rules Governing Standards for Archaeological Data Recovery Studies and Reports*, HAR § 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*, and 36 C.F.R. Part 79, *Curation of Federally Owned and Administered Archaeological Collections*. Data recovery plans for more than one individual property may be compiled as a single report for the purpose of review by the SHPO, Lineal and Cultural Descendants, and NHOs.
4. If adverse effects cannot be fully avoided, and data recovery is not determined appropriate, the FHWA, in coordination with HDOT, and in consultation with the SHPO, Lineal and Cultural Descendants, and NHOs, will continue consultation to determine alternate

mitigation such as preservation in place, preservation under fill, or other measures, and will prepare a treatment plan for each affected property. With respect to unmarked Native Hawaiian burials, the development of burial treatment plans will be consistent with HAR § 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*. If MLIBC determines that a burial is to be relocated, FHWA, in coordination with HDOT, will consult with MLIBC to determine appropriate reinterment, which may include relocation to project property in the vicinity of the discovery as appropriate and as determined through consultation.

5. Data recovery and treatment plans for more than one individual site or burial may be compiled as a single document for the purpose of review by the SHPO, Lineal and Cultural Descendants, and NHOs. The FHWA, in coordination with HDOT, will distribute the data recovery plan or treatment plan for a 15-day review and comment by the SHPO, Lineal and Cultural Descendants, and NHOs.
6. The FHWA, in coordination with HDOT, and in consultation with the SHPO, Lineal and Cultural Descendants, and NHOs, will consider all timely comments from reviewing parties in finalizing the data recovery plan or treatment plan. If no reviewing party comments are received within 15 calendar days, FHWA will approve the plan and ensure its implementation.

E. Curation

HDOT, in coordination with SHPO, will curate recovered materials in accordance with applicable laws, including HAR § 13-278, *Rules Governing Standards for Archaeological Data Recovery Studies and Reports* and 36 C.F.R. Part 79, *Curation of Federally Owned and Administered Archaeological Collections*. HDOT shall consult with public and private institutions to pursue opportunities to provide public access to the recovered materials.

V. Identification and Protection of Aboveground Historic Properties

- A. Consultation to Avoid, Minimize, or Mitigate Adverse Effects to Aboveground Historic Properties
 1. The FHWA, in coordination with HDOT, will ensure aboveground historic properties are assessed for NRHP eligibility in accordance with 36 C.F.R. § 800.4(c) for all aboveground properties identified within the APE.
 2. If an individual or organization included in Appendix 3 attaches religious and/or cultural significance to a property within the APE, the individual or organization may request FHWA to obtain a determination of eligibility.
 3. HDOT, in coordination with the FHWA and in consultation with the SHPO and consulting parties, will apply the criteria of adverse effect (36 C.F.R. § 800.5(a)(1)) to aboveground historic properties within the APE, and document its findings.

4. If, as a result of this analysis, the FHWA determines that the Project may have an adverse effect on any aboveground historic property, the FHWA, in coordination with HDOT, will consult with the SHPO and consulting parties to avoid, minimize, or mitigate adverse effects. The FHWA, in coordination with HDOT, will ensure the implementation of any modifications or conditions to avoid or minimize adverse effects, as agreed upon through consultation.

B. Treatments to Resolve Adverse Effects to Aboveground Historic Properties

Pursuant to Stipulation V.A.4, FHWA, in coordination with HDOT and in consultation with the SHPO and consulting parties, has determined that the following treatment measures, either singularly or in combination, may be applied to resolve adverse effects to aboveground historic properties.

1. Public Interpretation

HDOT, in coordination with FHWA and in consultation with SHPO and consulting parties, may develop, as appropriate, an educational public interpretive element. This element may include displays, markers, educational pamphlets, brochures or booklets, posters, websites, or other similar accessible information to educate the public on one or more historic properties within the APE. The interpretive element will use images and maps to the extent feasible to convey information to the public.

2. 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 aboveground 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.

3. Recordation

Prior to any substantial alteration or demolition of an individual aboveground historic property, HDOT, in coordination with FHWA and in consultation with SHPO and consulting parties, may 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.

VI. Changes in Project Scope

In the event of any changes to the Project scope, the following measures shall be implemented in consultation with the signatories and concurring parties to the PA:

- A. The FHWA, in coordination with HDOT and in consultation with the SHPO, shall assess and revise the Project APE as needed to incorporate any additional areas where the Project may have the potential to affect historic properties.
- B. Following established standards and methodologies, HDOT, on behalf of FHWA, shall carry out additional investigations to identify historic architectural and archaeological properties that may be affected by the Project.
- C. The FHWA shall document an assessment of the Project's effects on any new historic properties and explore measures to avoid, minimize, or mitigate effects on these properties in consultation with the SHPO and other Section 106 Consulting Parties.
- D. The FHWA, in coordination with HDOT, shall ensure the preparation of appropriate reports and documents, shall notify Section 106 Consulting Parties as appropriate of any changes in the Project's effect on historic properties, and shall provide an opportunity for review and comment.
- E. If a change in project scope results in adverse effects to previously unidentified historic properties (district, site, building, structure, or object), the FHWA, in coordination with HDOT, shall consult with all Consulting Parties to amend the PA in accordance with Stipulation XI.

VII. Post-Review Discoveries

A. Archaeology

1. If new archaeological properties are discovered or unanticipated effects to 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. In accordance with 36 C.F.R. § 800.13(b)(3), the FHWA, in coordination with HDOT and in consultation with the SHPO, will apply the NRHP Criteria for Evaluation (36 C.F.R. § 60.4) to evaluate any new archaeological properties and consider measures to avoid or mitigate adverse effects on historic properties. Additionally, the FHWA, in coordination with HDOT, will consult pursuant to Stipulation III.
3. HDOT, on behalf of FHWA, will consult with the SHPO and 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 identified artifacts.

B. Human Remains

1. If evidence of burials, human remains, or potential human remains is encountered during construction, HDOT shall suspend all work in the immediate vicinity, protect the remains from further disturbance, and immediately contact the SHPO, FHWA, ACHP, MLIBC, and

parties included in Appendix 3. HDOT, in coordination with FHWA, 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 SHPO, HDOT, FHWA, MLIBC, and parties included in Appendix 3, in accordance with these procedures.

2. HDOT, on behalf of the FHWA, will consult with the SHPO, MLIBC, and 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.
3. If requested by the MLIBC, Lineal Descendants, or NHOs, FHWA and HDOT will assist in the relocation and reinterment of human remains determined or presumed to be Native Hawaiian.

VIII. Confidentiality

Sensitive information concerning the location, character, or ownership of archaeological resources may be withheld from public disclosure in accordance with Section 304 of the National Historic Preservation Act (54 U.S.C. § 307103).

IX. Monitoring and Reporting

Each year following the execution of this PA until it expires or is terminated, FHWA, in coordination with HDOT, shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any issues encountered, any disputes and objections received in the FHWA's efforts to carry out the terms of this PA.

HDOT will submit to FHWA annually, a written status of each stipulation included herein. HDOT will provide written notification to FHWA for concurrence once all stipulations have been completed. Upon FHWA concurrence, the Section 106 process will be deemed completed.

X. Dispute Resolution

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

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

- B. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to this PA and provide them and the ACHP with a copy of such written response.
- C. The responsibilities of FHWA to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XI. Amendments

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

XII. Termination

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 parties to attempt to develop an amendment per Stipulation XI. If an amendment cannot be reached within thirty (30) days, any signatory may terminate the PA upon written notification to the other signatories.

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

XIII. Duration

This PA will be null and void if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XI.

APPENDICES

Appendix 1. HRS § 6E Compliance Memorandum

Appendix 2. Area of Potential Effects Map

Appendix 3: List of NHOs and Lineal and Cultural Descendants

Appendix 4: Subsurface Testing Plan

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI COUNTY, HAWAII**

SIGNATORY

Advisory Council on Historic Preservation

By: _____ Date: _____

Reid Nelson
Executive Director

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI COUNTY, HAWAII**

SIGNATORY

Hawaii State Historic Preservation Division

By: _____ Date: _____

Dr. Alan S. Downer, PhD
Administrator and Deputy State Historic Preservation Officer
State Historic Preservation Division

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI COUNTY, HAWAII**

SIGNATORY

Federal Highway Administration

By: _____ Date: _____

Richelle M. Takara, PE
Division Administrator

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI COUNTY, HAWAII**

INVITED SIGNATORY

Hawaii Department of Transportation

By: _____ Date: _____

[Name]

[Title]

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
HAWAII STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
HONOAPI'ILANI HIGHWAY IMPROVEMENTS,
MAUI COUNTY, HAWAII**

CONCURRING PARTY

[Name/Organization]

By: _____ Date: _____

[Name]

[Title]

- Appendix 1. HRS § 6E Compliance Memorandum**
- Appendix 2. Area of Potential Effects Map**
- Appendix 3: List of NHOs and Lineal and Cultural Descendants**
- Appendix 4: Subsurface Testing Plan**

Appendix 1. HRS § 6E Compliance Memorandum

MEMORANDUM

To: All Signatories, Consulting Parties, and the Public

From: Hawaii Department of Transportation

Re: HRS § 6E Compliance

In a letter dated January 23, 2023, HDOT initiated consultation with the Department of Land and Natural Resources, 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, in accordance with Hawai'i Revised Statutes (HRS) § 6E-8 and Hawai'i Administrative Rules (HAR) § 13-275, HDOT also initiated State Historic Preservation Division (SHPD) review of the proposed project. Although FHWA retains approval authority over Section 106, HDOT has jurisdiction over determining the project's effects under HRS § 6E-8 and its administrative provisions at HAR § 13-275.

To reduce redundancy, HDOT intends to combine Section 106 and HRS § 6E-8 compliance where possible. The HRS 6E-8 project area will coincide with the Preferred Alternative once selected, properties will be evaluated by applying the National Register Criteria for Evaluation (36 C.F.R. § 60.4) and the Evaluation of Significance (HAR § 13-275-6), and project effects will be assessed by applying the Criteria of Adverse Effect (36 C.F.R. 800.5(a)(1) and Determining Effects to Significant Historic Properties (HAR § 13-275-7).

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 state or federal law, HDOT and FHWA are committed to resolving disputes through the Dispute Resolution stipulation provided in the PA.

Appendix 2. Area of Potential Effects Map



		MAP BY: daniel.conn	LEGEND: APE	TIME: 12:30:31 AM
		CHK'D BY: MW		DATE: 6/8/2023
WSP USA Environment & Infrastructure Inc. 690 Commonwealth Center 11003 Bluegrass Parkway Louisville, KY 40299			DATUM: Old Hawaiian	PROJECT #: 7361231386.01
		PROJECTION: Old Hawaiian Transverse Mercator	SCALE: 1 in=4,000 ft	

Appendix 3: List of NHOs and Lineal and Cultural Descendants

Appendix 4: Subsurface Testing Plan