

**PROGRAMMATIC AGREEMENT (PA)
AMONG
THE COMMANDER NAVY REGION HAWAII,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER, FORD ISLAND
VENTURES LLC, AND THE KALAELOA RENEWABLE ENERGY PARK LLC
REGARDING THE PROPOSED
KALAELOA RENEWABLE ENERGY PARK**

WHEREAS, pursuant to the 07 Dec 2001 Ford Island Programmatic Agreement (Attachment A), Commander Navy Region Hawaii (CNRH) shall initiate consultation under 36 CFR § 800.6 for any undertaking that may have an adverse effect on a property eligible for listing on the National Register of Historic Places; and

WHEREAS, Kalaeloa Renewable Energy Park, LLC (LLC), proposes to sublease roughly twenty (20) acres of land from Ford Island Ventures, LLC (FIV) that FIV leases from the United States Navy pursuant to a lease dated October 6, 2008; and

WHEREAS, CNRH and FIV agrees by their signatures hereto, for themselves and any assignees of their interests under such lease, that such lease from the United States Navy as it applies to such land will be subject to any applicable provisions of this Programmatic Agreement throughout its term; and

WHEREAS, FIV is executing this Programmatic Agreement solely in its status as ground lessee from the United States Navy for the purposes set forth above and solely with respect to any other obligations specific to FIV herein; and

WHEREAS, LLC proposes to construct an approximately 5.91 MW photovoltaic (PV) field at Kalaeloa - Barber's Point (Attachment B – Project Proposal) to generate approximately 8,200,000 kW hours per year of clean electricity which will be sold to local utility Hawaiian Electric Company (HECO) through a long-term power purchase agreement; and

WHEREAS, the proposed PV field and related components will be maintained and operated by LLC for the full useful life of the system, estimated to be a period of approximately twenty (20) years; and

WHEREAS, CNRH has determined the proposed construction constitutes an Undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR § 800; and

WHEREAS, CNRH has established the Undertaking's Area of Potential Effect (APE), as defined in 36 CFR § 800.16(d), and as shown in project site map (Attachment C); and

WHEREAS, CNRH has determined that the Undertaking will have an adverse effect on the Ewa Field Runway and Warm-up Platform (1941), MCAS Ewa Runway #8 (1944), and MCAS Ewa Compass Rose (1944), which are being treated as eligible for the National Register of Historic Places (Register) for Section 106 purposes until a formal Determination of Eligibility has been made by the Keeper of the Register (Keeper); and

WHEREAS, there are no known archaeological resources eligible for the National Register of Historic Places within the areas of potential effect; and

WHEREAS, pursuant to 36 CFR §800.3, Initiation of the Section 106 Process, members of the public have been notified and consulted on the Undertaking through a public information meeting on 19 July 2011 and consultation meetings on 4 August 30 August, (including a site tour), 13 September, 6 October 2011 and 08 November 2011; and

WHEREAS, CNRH has consulted with the Hawaii State Historic Preservation Officer (SHPO) pursuant to 36 CFR §800.6(a); and

WHEREAS, pursuant to 36 CFR §800.6(a)(1), CNRH has notified the Advisory Council on Historic Preservation (ACHP) and invited the ACHP to sign this Programmatic Agreement (PA) as a signatory; and

WHEREAS, pursuant to 36 CFR §800.6(c)(2), CNRH has invited LLC to sign this PA as a signatory, but their refusal to sign does not invalidate the agreement; and

WHEREAS, pursuant to 36 CFR §800.6(c)(3), CNRH has invited all Consulting Parties, identified in Attachment D, to participate in the consultation and to sign this PA as concurring parties; and

NOW, THEREFORE, CNRH and the Hawaii SHPO agree that upon CNRH's decision to proceed with the Undertaking, CNRH shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on the affected historic properties.

Stipulations

CNRH shall ensure that the following stipulations are implemented:

I. KALAELOA RENEWABLE ENERGY PARK

- A. Prohibit activity (e.g., new development) that will result in an adverse effect to historic resources within the 1941 Ewa Field installation boundary or areas with extant MCAS Ewa resources (Ewa Runway #8 and the Compass Rose) until a formal Determination of Eligibility (DOE) has been made by the Keeper.
 - Preliminary and Final Construction documents, including standard installation details, for the proposed undertaking shall be provided to the Navy for a 21 day review/approval prior to the start of construction. Any required changes from the proposal shall be reviewed with the Signatories of the subject PA to ensure that no substantive changes that would result in additional adverse effects would result.
 - Proposals for work outside the scope of the proposed construction shall be reviewed and monitored by SHPO. Activities determined adverse by SHPO will not be permitted within the 1941 Ewa Field installation boundary.

- B. The Navy will initiate preparation of a DOE within six months of execution of this Programmatic Agreement.
- Development of the DOE will include a final proposed Ewa Battlefield boundary.
 - In consultation with SHPO archaeologist and the National Park Service Battlefield Protection Program (NPS-BPP), the Navy will develop a remote sensing testing plan to aid in defining World War II battlefield boundaries and event locations.
 - If determined eligible, the Navy will support nomination (by others) of the Ewa Field Battlefield to the National Register of Historic Places. Support will include providing technical assistance, review of draft nominations and supporting documents, research/documentation assistance, and access to archival materials.
- C. LLC will implement design modifications to minimize physical/visual impacts:
- Use non-penetrating, low profile racking/panel PV system.
 - Use black fencing in lieu of uncoated galvanized fencing.
 - Use golf netting that has low visibility due to color/weave.
 - Align power poles within easements and rights-of-way for existing power lines, where feasible.
 - LLC shall explore agreements with adjacent landowners that may eliminate transmission line crossing of southeast runway corner or better integrate into the utility company's plans for providing service to the greater Kalaeloa area. LLC to report to Signatories in 30 day intervals after execution of this agreement, and prior to initiating construction, summarizing routes evaluated, entities involved, criteria for evaluation, and determination of feasibility. Potential routes to be considered include, but are not limited to, the following:
 - East of the site along Coral Sea Road/(planned) North-South Road Extension
 - East-west along Bismarck Sea Road
 - Essex Road, coordinating with larger area plans for infrastructure/utility development
 - Along existing arterial roads and circulation routes within the extant MCAS Ewa installation
 - Limit height of power poles (currently proposed to be 50 feet) and perimeter fence to minimum acceptable/safety standards (dependent on HECO engineering). Use standard wood power poles (or painted brown/black metal poles if required by building code/HECO engineering standards) and black vinyl-coated fencing.
 - Provide temporary protection of identified historic resources during construction, particularly when work performed is in close proximity (e.g. high voltage line installation near Compass Rose).
 - Use vegetation to visually screen photovoltaic array, particularly adjacent to WWII Revetment district (to the south) and golf course (to the east).

- D. LLC and the Navy will conduct on-site archaeological monitoring for all ground disturbing activities.
- Within 60 days of PA execution, Navy will formulate an archaeological monitoring plan and submit to SHPO for concurrence. The plan shall include a Scope of Work, Research Design, Burial Treatment Plan, and Professional Qualification Requirements.
 - The monitoring plan will clearly identify acceptable and prohibited activities to be included.
 - SHPO review shall occur within 30 days of submission by Navy. Construction shall not commence until SHPO concurrence, not reasonably withheld or delayed, is obtained.
- E. FIV will improve access to the concrete warm-up platform by removing and keeping clear of all vegetation and debris.
- FIV will develop, in collaboration with the Navy and SHPO, a clearing plan that defines methodology for removal and control of invasive vegetation. Procedures for allowing access by volunteer groups to assist with ground clearing shall be included.
 - Clearing shall include removal of above grade trees, stump grinding if necessary, raking of green waste from top of grade, and leveling of mounds left from previous activities (minimal grubbing and grading).
 - Clearing shall be performed with manual labor and small-scale machinery. Large bulldozers will not be used for clearing activities
 - FIV will allow scheduled visitation/use for non-profit groups (that maintain corporate liability insurance) to facilitate interpretation and commemorate activities at the site. Procedures for access shall include requiring an access plan for visiting groups that identifies, at a minimum, in advance the following: group affiliation, number of vehicles/persons visiting, date, time frame, and type/quantity of vehicles.
 - FIV will consult with adjacent landowners of the remainder of the platform to explore means and methods for treating the entire expanse of concrete, including protection of extant strafing marks.
- F. FIV to provide a financial contribution of up to \$20,000 to be used by an “Affiliate Group” for the long-term public interpretation and commemoration of Ewa Field’s history and role in the events of World War II, and particularly the events of December 7, 1941.
- “Affiliate Group” is defined as an organization that possesses, or is contractually affiliated with, a non-profit organization with current 501(c)(3) status with the IRS.
 - Within 60 days of execution of this agreement, Signatories to this PA shall draft criteria for selection of an Affiliate Group that will serve as the lead organization to use the contributed funds for the preservation, interpretation, or commemoration of Ewa Field.

- Draft criteria shall be provided to Concurring Parties of this PA for a 30-day review and comment period.
 - Final criteria for selection of an Affiliate Group shall be developed within 30 days of receipt of Concurring Parties' comments.
 - Within 60 days of selection of an Affiliate Group, \$10,000 in seed money to support an Affiliate Group shall be placed into escrow by FIV.
 - An additional contribution of up to \$10,000 in matching funds shall be made by FIV to support publicly-accessible activities related to interpretation or commemoration of Ewa Field.
 - Within 30 days of selection of the Affiliate Group, a cooperative agreement between the Signatories of this PA and the Affiliate Group shall be executed to memorialize roles and responsibilities of each party, conditions for release of funds, performance standards for evaluating activities funded, reporting requirements, and alternate use of funding in the case of unforeseen conditions and/or if the Affiliate Group is not able to perform to agreed upon standards.
- G. LLC will be responsible for all maintenance of the site and improvements thereto, including access routes.
- H. LLC will remove all installed components (including utility poles) and restore the site to its original condition as deemed satisfactory to Navy at the end of their useful life, when no longer needed, or upon the end of the lease term, whichever occurs first. LLC will establish a bond or escrow fund, in an amount determined by the Navy, which will allow the Navy to implement site restoration in the unforeseen event that the LLC does not carry out this Stipulation.
- I. FIV and the Navy will monitor and report to all parties of this agreement on activities and status of the Stipulations herein.
- Quarterly reporting shall be made for a period of two years after execution of this agreement
 - Annual reporting shall be made for the remainder of time that this agreement stays in effect.

II. PROJECT EXECUTION

- A. FIV may sublease the project site to LLC, and LLC may construct the Kalaeloa Renewable Energy Park thereon, after CNRH filing of this executed PA with the ACHP and with prior written consent of the Navy, which consent shall not be unreasonably withheld or delayed. The LLC and their assignees and transferees shall be entitled to contract with a third party for work involved for the proposed undertaking; and the LLC shall be responsible for ensuring that all necessary permits and performance bonds are obtained.

- B. The terms of the subject PA as well as the terms contained in the 2001 “PA Regarding the Program or Sale or Lease of Certain Navy Properties; and Adoption of a Master Development Plan for Ford Island” shall become a legally enforceable restriction on the lessee and sub-lessees as well as entities to which the lease or sublease is assigned or transferred.
- C. The subject PA shall run with the land; and all sub-lessees, owners and assignees are bound by the agreement.

III. DISCOVERIES

- A. If during the performance of the Undertaking, previously unidentified historic properties are discovered within the APE, or previously unanticipated effects occur to known historic properties within the APE, CNRH shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties. CNRH shall determine actions that can be taken to resolve adverse effects, and notify the Hawaii SHPO and Native Hawaiian organizations as appropriate within 48 hours of the discovery by telephone, followed by notification to be sent by email. The notification shall include an assessment of National Register eligibility and proposed actions to resolve potential adverse effects.
- B. CNRH will take into account recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. Should such actions include archaeological investigations, CNRH shall ensure these actions will be carried out by or under the direct supervision of a person or persons meeting, at the minimum, the Secretary of the Interior’s Professional Qualification Standards (Federal Register, Vol. 62, No. 119, page 33712, June 20, 1997) for Archaeologists. Should such actions include historic structures, CNRH shall ensure these actions will be carried out by or under the direct supervision of a person or persons meeting, at the minimum, the Secretary of the Interior’s Professional Qualification Standards (Federal Register, Vol. 62, No. 119, page 33712, June 20, 1997) for Historical Architects. CNRH shall provide the Hawaii SHPO and Native Hawaiian organizations, as appropriate, a report of the actions when they are completed.

IV. RESOLVING OBJECTIONS

- A. Should any Signatory or Concurring Party to this PA object in writing to CNRH regarding how the proposed Undertaking is being carried out or the manner in which the terms of this PA are being carried out, CNRH shall consult with the objecting party and the SHPO to resolve the objection. All other signatories should be notified in writing that one of signatories is objecting to a specific action in this PA. The notification shall include the reasons for the objection and possible solutions. The objecting party shall do the notifications.

- B. If CNRH and the SHPO determine that the objection cannot be resolved, CNRH shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (ACHP), including CNRH's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP will:
1. Advise CNRH that it concurs with CNRH's proposed response, whereupon CNRH shall respond to the objection accordingly; or
 2. Provide CNRH with recommendations pursuant to 36 CFR § 800.2(b)(2) which CNRH shall take into account in reaching a final decision regarding the dispute; or
 3. Notify CNRH that it will comment pursuant to 36 CFR § 800.7(c) and proceed to comment on the subject in dispute.
- C. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, CNRH may move forward with its proposed response.
- D. CNRH shall take into account the ACHP's recommendation or comment provided in accordance with this stipulation with reference only to the subject objection. CNRH's responsibility to carry out all actions under this PA that are not the subject of the objection shall remain unchanged.

V. AMENDMENTS

- A. Any Signatory or Concurring Party that has signed this PA may propose that this PA be amended, whereupon the Signatories will consult to consider such amendment. A written notice must be sent to all signatories by the party that wishes to amend the PA. The notice will include the proposed amendments and the reasons for proposing them.
- B. No amendment shall take effect until it has been agreed upon by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council on Historic Preservation (ACHP).

VI. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall consult with the other parties to attempt to develop an amendment per Stipulation V (AMENDMENTS), above. If within 60 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this PA upon written notification to the other signatories. The written notice must explain in detail the reasons for the proposed termination.

- B. For elements of the undertaking not covered by Stipulation VI.B above, once the PA is terminated, and prior to work continuing on the undertaking, CNRH must either (a) execute a new PA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. CNRH shall notify the signatories as to the course of action it will pursue.

VII. DURATION

- A. This PA shall expire upon the first to occur of: (1) determination by the Keeper that the project site is not eligible for placement on the Register; (2) completion of the Undertaking, including removal/restoration of the site; (3) completion of all the mitigation measures as stipulated in the PA; and (4) termination pursuant to Stipulation VI (TERMINATION). CNRH shall immediately notify the consulting parties in writing if the PA is terminated or expires.
- B. If CNRH has not obtained funding for any of the mitigation measures as stipulated in the PA within two (2) years from the date of execution of the PA, CNRH shall consult with the Signatories and Concurring Parties that have signed this PA to develop an amendment in accordance with Stipulation V (AMENDMENTS) to establish new time frames for actions that are still required, or establish new replacement actions as necessary and agreed upon by all parties.

VIII. ANTI-DEFICIENCY

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

EXECUTION of this PA together with its submission by CNRH to the Advisory Council on Historic Preservation pursuant to 36 CFR § 800.6(b) (1) (iv) and its implementation, evidences that CNRH has taken into account the effects of this undertaking on historic properties and afforded the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

SIGNATORIES:

COMMANDER NAVY REGION HAWAII

By: _____

Date: _____

RDML F. L. Ponds
Commander, Navy Region Hawaii

COMPTROLLER, NAVY REGION HAWAII

By: _____

Date: _____

Lyle K. Tom
Comptroller, Navy Region Hawaii

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

Mr. John M. Fowler
Executive Director

SIGNATORIES:

STATE HISTORIC PRESERVATION OFFICER

By: _____

Date: _____

Mr. William J. Aila Jr.
State of Hawaii Historic Preservation Officer

SIGNATORIES:

FORD ISLAND VENTURES, LLC

By: _____

Date: _____

Steven W. Colón
Senior Vice President

KALAELOA RENEWABLE ENERGY PARK, LLC
By Scatec Solar North America, Inc. LLC, its Manager

By: _____

Date: _____

Eric Perreca
President and Chief Financial Officer

CONCURRING PARTIES:

EWA BEACH COMMUNITY ASSOCIATION

By: _____

Date: _____

Mr. Glenn Oamilda
President

CONCURRING PARTIES:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

By: _____

Date: _____

Tesha Malama
Director of Planning and Development, Kalaeloa District

CONCURRING PARTIES:

HAWAII AVIATION PRESERVATION SOCIETY

By: _____

Date: _____

Colin Perry
Director

CONCURRING PARTIES:

HAWAII MUSEUM OF MILITARY VEHICLES

By: _____

Date: _____

Norman Wong
President

CONCURRING PARTIES:

HAWAIIAN RAILWAY SOCIETY

By: _____

Date: _____

Robert Yatchmenoff
President, BOD

CONCURRING PARTIES:

HISTORIC HAWAII FOUNDATION

By: _____

Date: _____

Ms. Kiersten Faulkner
Executive Director

CONCURRING PARTIES:

HONOLULU CITY COUNCIL MEMBER

By: _____

Date: _____

Mr. Tom Berg
Councilman, District 1

CONCURRING PARTIES:

MS. MARISSA CAPELOUTO

By: _____

Date: _____

Marissa Capelouto
Individual Consulting Party

CONCURRING PARTIES:

MILITARY STABLES.COM

By: _____

Date: _____

Valerie Van der Veer
Owner/Operator

CONCURRING PARTIES:

NATIONAL PARK SERVICE

By: _____

Date: _____

Christine S. Lehnertz
Director, Pacific West Regional Office

CONCURRING PARTIES:

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____

Date: _____

Mr. Paul Edmondson
Vice President and General Counsel

CONCURRING PARTIES:

NAVAL AIR MUSEUM BARBER'S POINT

By: _____

Date: _____

Brad Hayes
Executive Director

CONCURRING PARTIES:

OAHU ISLAND BURIAL COUNCIL

By: _____

Date: _____

Shad Kane
Ewa Moku Representative

CONCURRING PARTIES:

OFFICE OF HAWAIIAN AFFAIRS

By: _____

Date: _____

Keola Lindsey
Native Hawaiian Historic Preservation Council
Lead Advocate, Culture

CONCURRING PARTIES:

PACIFIC WAR MEMORIAL ASSOCIATION

By: _____

Date: _____

LtG H.C. Stackpole
Chair of Board of Directors

CONCURRING PARTIES:

SAVE EWA FIELD

By: _____

Date: _____

John Bond
Executive Director

ATTACHMENT A

07 Dec 2001 Ford Island Programmatic Agreement

ATTACHMENT B

**Ford Island Ventures Proposal: Kalaehoa Renewable Energy Park
(updated 29 September 2011)**

ATTACHMENT C

Area of Potential Effect

ATTACHMENT D

List of Consulting Parties