

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into on October 31, 2008, by and among THE OFFICE OF HAWAIIAN AFFAIRS ("OHA"), on the one hand, and on the other hand ROBERT GATES, Secretary of Defense and PETE GEREN, Secretary of the United States Department of the Army, in their official capacities (together, "ARMY" and/or "Federal Defendants"). All parties are hereafter referred to collectively as "the Settling Parties."

RECITALS

1. On November 14, 2006, OHA filed a complaint against the U.S. ARMY in the United States District Court for the District of Hawai'i in a matter entitled The Office of Hawaiian Affairs v. Robert Gates, et al., civil no. 06-00610 (the "Litigation"), alleging violations by the ARMY of Section 106 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 et seq., and the Native American Graves Protection and Repatriation Act ("NAGPRA"), 25 U.S.C. §§ 3001 et seq. related to the transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in the State of Hawai'i.

2. The ARMY maintains that it has complied with the NHPA, NAGPRA and the Programmatic Agreement and denies that it has violated any law as alleged in OHA's complaint.

3. The Settling Parties wish to resolve their dispute in an amicable manner without the expense and time associated with litigation and without admitting liability or fault or conceding any issue of fact or law.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and representations contained herein, the Settling Parties agree as follows:

I. DEFINITIONS

A. "Burial Council" shall mean any of the Burial Councils established pursuant to Hawaii Revised Statutes §6E-43.5.

B. "Cultural Items" has the meaning set forth in NAGPRA, 25 U.S.C. § 3001.

C. "Effective Date" means the date upon which this Agreement has been signed by all parties hereto.

D. "Historic Properties" has the meaning set forth in the NHPA, 16 U.S.C. § 470w(5).

E. "Programmatic Agreement" or "PA" means the Programmatic Agreement entered into on or about January 30, 2004 regarding the Army Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team (SBCT).

F. For purposes of this Agreement only, "survey" shall mean the physical inspection, examination and/or review of designated areas, sites or items by OHA's representatives under the terms of this Agreement.

II. PROVISION OF INFORMATION TO OHA BY THE ARMY

Within twenty-one (21) days of the Effective Date, the ARMY shall deliver to OHA:

A. To the extent and in the format such information currently exists, Geographic Information Systems (GIS) data points and layers in electronic format showing the location of discovery for each of the actual and/or potential Historic Properties and Cultural Items identified by the ARMY and/or its representatives, employees, agents and/or contractors in the areas

identified in Appendix A to the Programmatic Agreement;

B. Information, except that which is privileged or the release of which is prohibited by law or regulation, in the possession, custody or control of the U.S. Army Garrison, Hawai'i (USAG-HI), its representatives, employees, agents and/or contractors reflecting only the location and description of Historic Properties and Cultural Items and/or artifacts identified in the October 2006 survey of the Schofield Barracks BAX that has not been previously provided to OHA, including but not limited to disclosure of the present location and description of items retrieved by the ARMY from Kamo'a Quitevis on May 22, 2007.

C. A general schedule of anticipated SBCT-related construction and Stryker-specific training activities that will take place within the Survey Areas during the 210 to 240 day survey period. The schedule will include a description of the planned construction and training activities and the anticipated commencement date or timeframe.

D. The ARMY may mark any of the information identified in Sections II.A or II.B of this Agreement, which it is authorized by federal law, rule or regulation to withhold from public disclosure, as "Protected Pursuant to Settlement Agreement dated October 2008 ("Protected Information"). OHA agrees that any information provided by the ARMY pursuant to Sections II.A or II.B of this Agreement that is marked by the ARMY as Protected Information and information obtained during the surveys described in Section III, which the ARMY represents it is authorized by federal law, rule or regulation to withhold and therefore to require OHA to withhold from public disclosure, will be kept confidential and disclosure to the public or a third party is prohibited until such time as the ARMY has made the information available to the public. Before releasing any such information to the public or a third party, OHA will obtain confirmation in writing from the ARMY that the information or any portion thereof has been

made available to the public. The ARMY agrees to respond to OHA's confirmation requests within a reasonable period of time. If OHA desires to use such information in future mediation or a court proceeding, OHA shall seek leave of Court to file such information under seal unless written confirmation has been provided to OHA from the ARMY that the information has been made available to the public. If a legal or administrative proceeding is instituted by a third party to disclose the information provided pursuant to Sections II.A or II.B or obtained during the surveys described in Section III of this Agreement, OHA will immediately notify the ARMY and provide the ARMY with an opportunity to prevent disclosure. If disclosure is ordered by a court of competent jurisdiction or administrative body, OHA shall notify the ARMY before any disclosures are made and provide the ARMY an opportunity to prevent disclosure of the information provided to OHA if the ARMY so desires.

III. ACCESS TO AREAS FOR SURVEYS

A. Surveys. The ARMY agrees to grant access during daylight hours to up to five (5) OHA employees, agents, consultants and representatives (including archaeologists) (collectively, "OHA representatives") at a time, who would constitute and work together as a single survey team led by a mutually acceptable Archeologist meeting Secretary of the Interior standards (hereinafter "Lead Archeologist"). Access shall be granted for no more than a total of fifty (50) days and shall occur in accordance with the schedule established by the Settling Parties pursuant to Section III.B. below. At OHA's expense, except for the cost of the Lead Archeologist, which shall be borne equally by the Settling Parties, surveys of the following locations (each hereinafter referred to as a "Survey Area") shall be permitted:

1. The Schofield Barracks Battle Area Complex (BAX). Notwithstanding the schedule as set forth in Sections III.A. and III.B. of this Agreement, the Army agrees to work

with OHA to facilitate completion of the OHA surveys at the BAX expeditiously, consistent with safety concerns and the Army's training requirements. To facilitate OHA's review of the Schofield BAX, the Army agrees that reasonable efforts will be made to provide initial access to Schofield BAX prior to November 8, 2008. OHA acknowledges that any additional reviews of the Schofield BAX after November 8, 2008 will be contingent upon the Settling Parties' abilities to agree on available dates and times that will not interfere with construction, training and/or other operational and safety requirements.

2. Pohakuloa Training Area Ranges 1, 8, 10 and 11T.
3. QTR1
4. QTR2
5. Kole Kole Ranges 3, 4, 5 and 6
6. Kahuku Training Area.

B. Access Protocol.

1. Initial Proposed Survey Schedule. On or before thirty-five (35) days from the Effective Date, OHA shall provide written notice to the ARMY, through the Commander, USAG-HI of OHA's proposed comprehensive schedule for all survey days which (1) identifies the specific Survey Areas to be surveyed and/or examined; (2) identifies the OHA representatives who will be performing the survey of each specified Survey Area; and (3) specifies the dates on which OHA wishes to conduct its survey of the specified Survey Areas, the first of which, except for surveys which may occur prior to November 8, 2008 in the BAX, shall not be before forty-five (45) days after the Effective Date ("OHA's Schedule"). The dates of all of OHA's proposed survey days shall be within the period of 210 days from the Effective Date. For each proposed date, three alternative Survey Areas will be identified in order of

OHA's preference to facilitate agreement on a schedule with the ARMY.

2. Accepted Survey Schedule. Within twenty-one (21) days of the ARMY's receipt of OHA's initial proposed survey schedule, the ARMY shall provide its response to OHA's Schedule in writing, seeking, in good faith, to accommodate the specific dates scheduled for specified Survey Areas to the extent practicable without undue interference with the ARMY'S operations and, in any event, not altering the number of days OHA has designated for surveys in a specified Survey Area. If OHA disagrees with the ARMY's response, OHA shall notify the ARMY's primary contact within five (5) days of its receipt of the ARMY's response, and the Settling Parties agree that they shall meet-and-confer in person or if necessary by telephone to resolve their differences within three (3) business days thereafter. If no notification of disagreement is delivered by OHA within said period, the schedule contained in the ARMY's response shall be the mutually accepted survey schedule ("Accepted Schedule"), it being expressly understood by the Settling Parties that the Accepted Schedule may be subject to change based on previously unknown safety issues, operational requirements, necessary changes to the ARMY's schedule of training or maintenance, and/or other legitimate causes of unavoidable delay on either Settling Party's part not known to the Settling Party requesting the change at the time of the Accepted Schedule. If necessary, the Accepted Schedule may extend beyond 210 days from the Effective Date, but in no event shall the ARMY's accepted schedule contain survey dates more than 240 days from the Effective Date. In other words, it is the Settling Parties' intention and agreement that OHA's surveys shall take place within 240 days, at the very latest, from the Effective Date.

3. Contact For Coordination Of Survey Activity. The ARMY shall designate one individual as its primary survey contact with whom OHA shall conduct all of its scheduling

(including scheduling changes), coordination and communications relating to the survey activity to be undertaken pursuant to this Agreement, as well as a separate individual as a secondary contact for such coordination when the primary contact is unavailable. OHA shall likewise designate a primary survey contact with whom the ARMY shall conduct all of its scheduling, coordination and communications relating to the survey activity, and a secondary contact with whom the ARMY shall coordinate in the event the primary contact is not available. Such designations shall be provided by each party to the other in writing, together with the address, email, facsimile and telephone numbers for each said contact, upon execution of this Agreement. The contacts designated under this Agreement shall be required to coordinate with all related branches, departments, divisions, units, authorities and entities of the party for whom it is the contact for in responding to the other party, it being the intention and agreement of the Settling Parties that a party need only deal with the other party's primary (or secondary, as the case may be) contact in order to coordinate all survey-related activity under this Agreement. Nothing in this Agreement shall be construed to affect any obligation OHA may have under federal law to notify, provide information to, and/or seek authorization from, a federal agency or official in matters unrelated to coordinating survey activities as provided in Section III of this Agreement.

4. Changes By ARMY To The Survey Schedule. If, for the reasons noted in Section III.B.2 above, the ARMY must change the Accepted Schedule, the ARMY shall notify OHA's primary and secondary survey contacts in writing via email and facsimile of the change at least five (5) days before the scheduled survey date, unless a shorter notice period is required by urgent circumstances. In its schedule change notice, the ARMY shall disclose which alternative Survey Areas are available to be surveyed in place of the scheduled Survey Area and/or if no alternative Survey Areas are available on the scheduled survey date, the ARMY shall propose

the earliest available alternate survey date that is within 240 days of the Effective Date, if practicable. If the earliest alternative survey date falls outside the 240 day survey period, the survey period will be extended to accommodate all surveys contained within the Accepted Schedule.

5. Changes By OHA To Survey Schedule. If, for the reasons noted in Section III.B.2 above, OHA must change the Accepted Schedule, OHA shall notify the ARMY's primary and secondary survey contacts in writing via email and facsimile of the change at least five (5) days before the scheduled survey date, unless a shorter notice period is required by urgent circumstances, and the Parties shall promptly confer with each other in a good faith effort to reach agreement on alternate dates on which the previously scheduled survey(s) can be accomplished, subject to the limitations of Section III.B.2 above.

6. Prohibited Areas. No surveys will take place in areas that pose a danger, including dangers posed by UXO, to ARMY personnel and/or OHA representatives as determined by the Commander, USAG-HI, or his designated representative. The ARMY shall notify OHA in writing of the locations of any such prohibited areas within the Survey Areas and the basis for prohibiting access to said prohibited areas at the same time that the ARMY's response to OHA's Schedule is delivered to OHA.

7. ARMY Participation; OHA Conduct. ARMY representatives shall accompany OHA representatives for purposes of ensuring compliance with applicable law and protecting the participants and users of the areas being surveyed, as well as the cultural sites and items being surveyed, from physical harm but shall not otherwise interfere with the surveys conducted by the OHA representatives. OHA representatives shall not engage in conduct that is contrary to good order and discipline in conducting the surveys, including but not limited to, the

removal of, or alteration to, cultural items or sites without advance permission in writing by the ARMY. Violations will be subject to administrative and/or criminal proceedings as provided by law.

8. The ARMY acknowledges its commitment regarding access to Stryker-related ARMY facilities in Stipulation III.C. of the Programmatic Agreement, which provision shall remain in effect, subject to the alternative dispute resolution provision in Stipulation VI.C. of the Programmatic Agreement, until Stryker transformation projects identified in Appendix A to the Programmatic Agreement are completed or cancelled. The Army also acknowledges its commitment to provide Native Hawaiians access to traditional religious and cultural properties as reflected in mitigation measure 44, Table ES-22 of the May 2004 SBCT EIS.

9. Requests For Ground Clearance Or Aerial Reconnaissance. Before or during the survey process, OHA may request the ARMY's assistance with limited ground cover clearance (e.g. controlled burns), aerial reconnaissance and/or other activities intended to make the Survey Areas more readily visible and/or accessible to OHA's representatives. All costs associated with implementing such requests will be borne by OHA, who will obtain services from commercial providers when available including but not limited to aerial reconnaissance. OHA acknowledges, however, that activities such as prescribed burns often take months to plan and implement and would not constitute grounds for extension of the survey period. Consistent with the foregoing language of this section and to the extent OHA's requests can be implemented in compliance with applicable law and with appropriate controls to minimize harm or injury to persons, flora or fauna protected by the Federal Endangered Species Act, and/or Historic Properties or Cultural Items, the Army will work in good faith to accommodate OHA's request(s).

C. Training of OHA Representatives. OHA acknowledges that its representatives must receive UXO Identification training in order to access any of the identified Survey Areas. Additionally, OHA must receive HAZWOPPER and First Aid/CPR training for access to the BAX, QTR1, Kole Kole Ranges 3-6, and PTA Ranges 1, 8, 10 and 11T. Within ten (10) days of the Effective Date, the ARMY will inform OHA of any additional safety or other training that is reasonably required for OHA representatives in connection with the surveys to be undertaken in the Survey Areas, and shall work cooperatively with OHA to schedule and facilitate the completion of any Army-sponsored training, e.g., specific range safety briefings, for OHA representatives as soon thereafter as appropriate and in any event in sufficient time to meet the Accepted Schedule. OHA shall be responsible for scheduling and funding any non-Army sponsored training that may be reasonably required, such as HAZWOPPER, First Aid/CPR and/or UXO identification training. OHA shall also be responsible for scheduling and funding explosive ordnance disposal (EOD) escorts, which are required for access to the BAX, QTR1, Kolekole Ranges 3-6, and PTA Ranges 1, 8, 10 and 11T. EOD escorts are recommended for KTA.

D. Survey Results Relating To Potential Historic Properties.

1. Within thirty (30) days of OHA's completion of the last of its surveys, OHA shall deliver its analyses, surveys, and all related information and documents relied upon and considered by OHA to the Lead Archeologist and ARMY. The Army may also submit analysis and supporting documentation within this timeframe for consideration by the Lead Archeologist. Primary findings and analysis will then be determined by the Lead Archeologist, who will prepare a report that will be submitted to the Army and OHA within ninety (90) days of completion of the last survey. Within fifteen (15) days of receipt of the Lead Archeologist's

report, OHA may submit supplemental findings and analysis if it disagrees with the Lead Archeologist's findings and conclusions. After receipt of the Lead Archeologist's report and any supplemental documentation submitted by OHA regarding potential Historic Properties, the ARMY shall, if requested by the Lead Archeologist and/or OHA, promptly evaluate the historic significance of the potential Historic Properties identified by OHA in accordance with 36 C.F.R. 800.4(c). Based on the results of this evaluation, the ARMY will then follow applicable provisions of 36 C.F.R. Part 800 to complete the evaluation, assessment and treatment process.

2. If, in the course of OHA's reviews of the survey areas, OHA discovers facts that were not previously disclosed to it, which reasonably lead OHA to conclude that Historic Properties or Cultural Items located on one or more other Stryker-related training facilities have been improperly identified or may be endangered, then the ARMY will accept and consider written comments from OHA regarding the identification and treatment of Historic Properties or Cultural Items on the other Stryker-related training facility or facilities. With respect to initial surveys at the Schofield BAX occurring on or before November 8, 2008, OHA may provide written comments to the Army regarding the identification and treatment of Historic Properties or Cultural Items at this location. Within 30 days of the ARMY'S receipt of OHA's written comments as provided pursuant to this paragraph, the ARMY will provide a written response to OHA, which will, at minimum, acknowledge receipt of OHA's concern(s) and a substantive response will be provided as soon as circumstances permit.

E. Survey Results Relating To Cultural Items. If in the course of its surveys, OHA identifies Cultural Items, as confirmed by the Lead Archeologist, which were not previously disclosed to OHA by the ARMY, OHA will comply with the procedures in 43 C.F.R. § 10.4 for inadvertent discoveries and give immediate telephone notice of any discovery to the Army's

Cultural Resource Manager, Dr. Laurie Lucking, at telephone number 808-656-6790. OHA will also mail written confirmation of its discovery to the Army's Cultural Resource Manager, Dr. Laurie Lucking at the earliest possible time. The ARMY shall respond to OHA's written notification within the time frame and in the manner required by NAGPRA's implementing regulations, 43 C.F.R. §§ 10.4, 10.5 and 10.6. In the course of the execution of this Agreement, the Army may reach conclusions, regarding whether items are "Cultural Items," that differ from the conclusions that are reached by OHA and confirmed by the Lead Archeologist. Any such differing conclusions regarding whether an item is a "Cultural Item" will be referred to the NAGPRA Review Committee of the National Park Service in accordance with its standard dispute procedures. While the dispute process is pending, the ARMY agrees that it will take reasonable efforts to protect the potential Cultural Items from harm.

IV. PROGRAMMATIC AGREEMENT

The Settling Parties agree that they shall negotiate in good faith with each other and with other necessary parties regarding revisions to the PA, including but not limited to reformation of the PA's provisions concerning Cultural Monitors, and to seek agreement among the Settling Parties and other necessary parties relating to the scope and nature of the Cultural Monitors' duties.

V. DISMISSAL OF LITIGATION WITH PREJUDICE

A. OHA agrees to dismiss with prejudice the lawsuit currently pending in the United States District Court for the District of Hawai'i entitled The Office of Hawaiian Affairs v. Robert Gates, et al., civil no. 06-00610 (the "Litigation").

B. OHA waives the right to bring future lawsuits under the NHPA and/or NAGPRA based upon facts that are known or reasonably should be known to OHA on or before the

Effective Date concerning the identification, evaluation, treatment and/or assessment of, and consultation relating to, indigenous Native Hawaiian historic or cultural resources and/or Cultural Items located in any of the Survey Areas identified in Part III, above, or other areas where Stryker Brigade Combat Team training or construction will take place in the State of Hawai'i.

C. OHA waives the right to bring future lawsuits under NEPA based upon facts that are known or reasonably should be known on or before the Effective Date concerning the transformation, training and stationing of 2/25 SBCT in Hawai'i.

D. OHA retains the right to pursue future litigation against the ARMY under the NHPA, NEPA or NAGPRA based upon newly discovered information resulting from the surveys after the survey findings are presented to the ARMY, the ARMY has an opportunity to process the survey findings in accordance with the Agreement and, if necessary, the dispute resolution process as set forth in Section VI.K of this Agreement is complete. In any future litigation under NHPA, NEPA and NAGPRA based upon newly discovered information resulting from the surveys, OHA may seek relief only with respect to the specific training range or facility upon which the subsequent discovery from the survey findings is made. The foregoing is not intended to limit any other remedies to which OHA may be entitled except as otherwise provided herein.

E. Both parties agree to pay their own costs and attorneys' fees related to the current lawsuit and settlement of the claims asserted in the current lawsuit.

VI. MISCELLANEOUS

A. Notices. Except as otherwise expressly provided for above, all notices, approvals, consents, demands, requests or other communications which may or are required by

this Agreement to be given by one party to the other party shall be in writing and shall be deemed to have been duly given or made when delivered by e-mail. In addition to e-mail, a hard copy of the writing shall be delivered by hand, facsimile or U.S. mail, addressed as follows (or at such other place, and to such other persons, as either party may from time to time designate by notice to the other party; no other method of notification shall be effective):

To OHA: Clyde Nāmu‘o, Administrator
Office of Hawaiian Affairs
711 Kapi‘olani Boulevard, Suite 500
Honolulu, Hawai‘i 96813
Facsimile: (808) 594-1865
E-mail: clyden@oha.org

Kai Markell, Director of the Native Rights, Land and Culture Division
Office of Hawaiian Affairs
711 Kapi‘olani Boulevard, Suite 500
Honolulu, Hawai‘i 96813
Facsimile: (808) 594-1865
E-mail: kaim@oha.org

With copies to:

Ernest Kimoto, Esq., Senior Staff Attorney
Office of Hawaiian Affairs
711 Kapi‘olani Boulevard, Suite 500
Honolulu, Hawai‘i 96813
Facsimile: (808) 594-1965
E-mail: erniek@oha.org

Sheryl L. Nicholson, Esq.
Paul, Johnson, Park & Niles
1001 Bishop Street
ASB Tower, Suite 1300
Honolulu, Hawai‘i 96813
Facsimile: (808) 528-1654
E-mail: snicholson@pjpn.com

and

Colin A. Yost, Esq.
Cruise & Yost

Dillingham Transportation Building
735 Bishop Street, Suite 433
Honolulu, Hawai'i 96813
Facsimile: (808) 356-3299
E-mail: colin@cruisevost.com

To ARMY:

Commander
U.S. Army Garrison, Hawai'i
851 Wright Avenue, WAAF
Schofield Barracks, Hawai'i 96857
Facsimile: (808)656-3740
E-mail: matthew.margotta@us.army.mil

Directorate of Public Works
Environmental Division
ATTN: Cultural Resource Manager (Dr. Lucking)
947 Santos Dumont Avenue
Wheeler Army Airfield, Hawai'i 96857-5013
Facsimile: (808)656-1039
E-mail: laurie.lucking@us.army.mil

With copies to:

Office of the Staff Judge Advocate
ATTN: Mark Katkow
718 Carter Drive
Building 718
Ft. Shafter, Hawai'i 96818
Facsimile: (808) 438-2750
E-mail: katkowm@shafter.army.mil

and

Headquarters, Dept. of the Army
Environmental Law Division
ATTN: Robert M. Lewis
Suite 400, 901 N. Stuart Street
Arlington, VA 22203
Facsimile: (702) 696-2940
Email: Robert.lewis@hqda.army.mil

B. This Agreement contains the entire agreement among the Settling Parties and supersedes all prior oral and written agreements, representations, negotiations, and correspondence with

respect to the Litigation.

C. The Settling Parties hereto agree to cooperate in good faith with one another in executing any further documents and taking any additional actions that may be reasonably necessary and appropriate to carry out the terms, covenants, conditions and intent of this Agreement.

D. Each of the Settling Parties has been independently advised by counsel, and each has cooperated and participated in the drafting and preparation of this Agreement. Accordingly, the rule that any ambiguity in a document shall be construed against the party drafting the document shall not apply to this Agreement. The Settling Parties shall jointly be deemed to be the drafters of the Agreement and agree that this Agreement shall not be construed or interpreted in favor of or against any party by virtue of the identity of any alleged preparer.

E. This Agreement is executed by the Settling Parties freely and each of the Settling Parties has had a full opportunity to review the agreement and to seek assistance of counsel. The Settling Parties acknowledge that the terms of this Agreement have been negotiated at arm's length among themselves.

F. In this Agreement, the captions and headings of paragraphs and subparagraphs are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit, nor affect any provision of this Agreement.

G. Nothing in this Agreement shall be construed as an admission of any liability, fault, negligence, breach of duty, breach of any agreement or contract, or violation of any statute, ordinance, rule, or regulation (all of which are expressly denied). This Agreement and its contents are to be construed strictly as a compromise and settlement among the Settling Parties for the purposes of avoiding further controversy, litigation and expense.

H. This Agreement shall not be altered, amended, modified, or otherwise changed, in any respect or particular whatsoever, except by a writing duly executed by the Settling Parties to this Agreement. The Settling Parties hereby acknowledge and agree that they will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever.

I. The Settling Parties hereby expressly warrant and represent that they are the owners of all claims, demands, and causes of action described herein, that they have not assigned or otherwise transferred any such claims, demands, and causes of action released herein, and that they have the authority to bind and do so bind themselves to the terms of this Agreement by signing below.

J. This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and shall constitute one and the same instrument, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

K. Except as provided in Section III.E, above, if a dispute should arise between the Settling Parties arising out of or relating in any manner to the terms of this Agreement, the party initiating the dispute shall provide written notice in accordance with Section VI.A of this Agreement and a request for informal negotiation to the other party within thirty (30) days of the disputed event. The Settling Parties agree to meet and confer within thirty (30) days of the delivery of any such notice (Notice Date), in order to make a good faith effort to resolve the dispute. If the Settling Parties fail to resolve such a dispute within sixty (60) days of the Notice Date, the Settling Parties agree to submit the unresolved dispute to non-binding mediation and to each pay fifty (50) percent of the costs, expenses, and/or fees of the mediator, provided OHA

acknowledges that the ARMY's commitment to pay a mediator's costs, expenses or fees for the mediation is subject to the appropriation of funds by Congress that are available for this purpose, the apportionment of such funds by the Office of Management and Budget, the approval of expenditure of such funds for this purpose by the federal agency providing the funds, and any other limitations or requirements under federal law. The Settling Parties will make good faith efforts to obtain approval for the payment of the costs, expenses and fees of the mediator. The Settling Parties further agree to exchange names of unbiased mediators and in good faith attempt to reach an agreement on the potential mediator to be used for the non-binding mediation within sixty (60) days of the Notice Date.

If the Settling Parties cannot resolve the dispute through good faith negotiation or non-binding mediation within one hundred twenty (120) days from the Notice Date, or upon notice delivered to OHA by the ARMY that the ARMY cannot participate in mediation due to lack of approval for the payment of the mediator's costs, expenses and fees a party may seek a provisional court remedy, including temporary or preliminary injunctive relief, subject to the limitations provided in this Agreement, including Section V.D. No party may seek such a remedy unless and until the procedures required by Section IV.K. have been exhausted. In addition, each party in any proceeding to enforce this Agreement shall pay their respective attorneys' fees and costs incurred therein.

Notwithstanding the foregoing, if OHA believes, in good faith, based on information discovered after the Effective Date, that irreparable harm to Historic Properties or Cultural Items is imminent due to the ARMY's alleged non-compliance with this Agreement, the Settling Parties agree, upon OHA's request, to participate in an expedited, non-binding mediation process whereby the Settling Parties would meet with an agreed upon mediator at the earliest mutual

availability of the Settling Parties and the mediator. However, before any expedited non-binding mediation process occurs, the Settling Parties agree that OHA will provide written notice of any alleged non-compliance with this Agreement to the ARMY and the ARMY will have seven (7) days within which to meet and confer with OHA or respond in writing in order to make a good faith effort to amicably resolve the dispute.

L. The Settling Parties agree that the settlement, covenants, promises, and dismissal without prejudice provided for in this Agreement were agreed to in good faith.

M. Nothing in this agreement shall be construed to commit federal funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, or any applicable appropriations law.

APPROVED AS TO FORM:




SHERYL L. NICHOLSON
COLIN A. YOST
Attorneys for
The Office of Hawaiian Affairs

AGREED TO AND APPROVED:

OFFICE OF HAWAIIAN AFFAIRS


By: 
CLYDE W. NAMU'O
Its Administrator

APPROVED AS TO FORM:


10-31-08


ERNEST M. KIMOTO
Senior Staff Attorney
The Office of Hawaiian Affairs

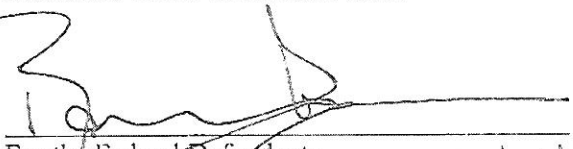
APPROVED AS TO CONTENT:


10-31-08
KAI MARKELI
Director of the Native Rights, Land and Culture
Division
Office of Hawaiian Affairs

APPROVED AS TO FORM:

AGREED TO AND APPROVED:


BARRY WEINER
SARA E. COSTELLO
JAMES D. GETTE
Attorneys for The Federal Defendants,
ROBERT GATES, Secretary of the United
States Department of Defense and PETE
GEREN, Acting Secretary for the United
States Army


For the Federal Defendants,
RAYMOND V. MASON
Major General
Commander, U.S. Army Hawai'i

10/31/08