

1 **PROGRAMMATIC AGREEMENT**
2 **AMONG**
3 **THE FEDERAL HIGHWAY ADMINISTRATION,**
4 **THE HAWAI‘I STATE HISTORIC PRESERVATION OFFICER,**
5 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND**
6 **THE HAWAI‘I STATE DEPARTMENT OF TRANSPORTATION**
7 **REGARDING UNDERTAKINGS AFFECTING THE FORMER O‘AHU**
8 **RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY (ROW)**

9 **WHEREAS**, the State of Hawai‘i Department of Transportation, Highways Division (HDOT)
10 owns the former O‘ahu Railroad and Land Company (OR&L) 40-foot wide railroad right-of-way
11 (ROW) from roughly Ulehawa Stream in the vicinity of Mohihi Street, Nānākuli to Waipahu Depot
12 Street, Central Waipahu (**Figure 1**); and

13 **WHEREAS**, ownership of the 40-foot wide railroad ROW was transferred to HDOT by Deed
14 (Liber No. 14814: 320) (Deed) (**Appendix A**), dated June 5, 1980, by and between the United
15 States of America, acting by and through the Department of Transportation, Federal Highway
16 Administration (FHWA), and HDOT; and

17 **WHEREAS**, the Deed transferred Parcels 2, 3, 4, 6, 7, 8, 9, 10, 11, and 12 to HDOT. These parcels
18 now correspond to the following Tax Map Key numbers (TMKs): (1) 9-1-015:002, (1) 9-1-
19 016:031, (1) 9-1-017:003, (1) 9-1-017:008, (1) 9-1-017:044, (1) 9-1-017:045, (1) 9-1-160:005, (1)
20 9-1-160:011, (1) 9-2-049:005, (1) 9-3-002:019, (1) 9-3-002:020, (1) 9-3-002:021, (1) 9-3-002:022,
21 (1) 9-4-001:011; (1) 9-4-011:104; (**Appendix B**); and

22 **WHEREAS**, Condition 1 of the Deed states, in part, “The GRANTEE, in consideration of the
23 conveyance of said lands, does hereby covenant and agree as a covenant running with the and for
24 itself, its successors and assigns that it will preserve the integrity of the railroad facilities located
25 on said right-of-way including all rails, ties, signals [Railroad Facilities], and appurtenances in
26 their existing condition, natural and unavoidable deterioration excepted...”; and

27 **WHEREAS**, Condition 1 of the Deed also states, in part, “... said railroad facilities may be
28 operated by an assignee as a non-profit historic railroad museum and provided that the operation,
29 maintenance of alteration of said facilities shall be in accordance with State and Federal
30 requirements applicable to facilities listed on the National Register of Historic Places...”; and

31 **WHEREAS**, Condition 4 of the Deed states “the grantee, in consideration of the conveyance of
32 said lands, does hereby covenant and agree that all licenses, permits or easements authorizing the
33 use or occupancy of the 40’ railroad right-of-way will be issued only subsequent to the written
34 approval of the Hawai‘i State Historic Preservation Officer and the written authorization of the
35 Hawai‘i Division Administrator, Federal Highway Administration;” and

36 **WHEREAS**, the FHWA’s written authorization to approve a license, permit or easement for the
37 use and occupancy of the former OR&L ROW is an “undertaking,” as defined by 36 Code of
38 Federal Regulations (CFR) § 800.16(y), which triggers compliance with Section 106 of the

39 National Historic Preservation Act (Section 106), 54 United States Code (U.S.C.) § 306108
40 (formerly 16 U.S.C. § 470f) and its implementing regulations, 36 CFR Part 800; and

41 **WHEREAS**, the FHWA also provides assistance to projects pursuant to the Federal-Aid Highway
42 Program (FAHP) in 23 U.S.C. § 101 et seq. which is considered a federal undertaking and these
43 projects may involve the former OR&L ROW, which is also considered a federal undertaking; and

44 **WHEREAS**, the number, type, and proponents of future requests for use and occupancy licenses,
45 permits or easements, as well as federally funded projects involving the former OR&L ROW is
46 unknown, but may increase due to the continued development of the ‘Ewa area, as envisioned in
47 the City and County of Honolulu’s O‘ahu General Plan (2021)¹, ‘Ewa Development Plan (2013,
48 amended 2020)²; and Kalaeloa Master Plan (2006)³, and

49 **WHEREAS**, the OR&L ROW was listed on the National Register of Historic Places (NRHP) in
50 1975 (Hawai‘i State Inventory of Historic Places Number 80-12-9714) and described as “the
51 longest stretch of narrow-gauge railroad track in Hawai‘i” that had a “tremendous effect on the
52 economic development of O‘ahu and the State of Hawai‘i;” and

53 **WHEREAS**, the Advisory Council on Historic Preservation (ACHP), in coordination with the U.S.
54 Department of Transportation, issued a Program Comment on August 17, 2018 (83 FR 42920),
55 amended on June 28, 2019 (84 FR 31075), to exempt consideration of effects to rail properties
56 within rail rights-of-way from review under Section 106 (**Appendix E**); and

57 **WHEREAS**, the Program Comment established an “activities-based approach, which is a
58 comprehensive list of maintenance, repair, and upgrade activities that are likely to have effects to
59 rail properties that are minimal or not adverse and are therefore exempt from Section 106 review;”
60 and

61 **WHEREAS**, the FHWA published a final rule on October 29, 2018 to similarly exempt railroad
62 and rail transit projects under Section 4(f) of the Department of Transportation Act (23 CFR
63 774.13(a)(2)) for such projects that may cause effects that are likely to be minimal or not adverse,
64 in fulfillment of Section 11504 of the Fixing America’s Surface Transportation Act (FAST Act)
65 requirements; and

66 **WHEREAS**, certain undertakings, which are anticipated to have minimal or no adverse effects to
67 the former OR&L ROW are derived from the Program Comment and herein referred to as “Tier
68 1” undertakings (**Appendix C**); and

69 **WHEREAS**, all other undertakings that are not listed as “Tier 1” are herein referred to as “Tier 2”
70 undertakings and shall not be covered by this PA; and

71 **WHEREAS**, in developing this PA, the FHWA authorized HDOT, pursuant to 36 CFR § 800.2(a),
72 to conduct public outreach to invite interested and/or knowledgeable parties to participate, which
73 consisted of (1) posting a newspaper advertisement, (2) conducting a mass mailing, (3) conducting

¹ https://www.honolulu.gov/rep/site/dpp/pd/pd_docs/RES21-023_CD1_-_11-18-21_ZP.pdf

² https://www.honolulu.gov/rep/site/dpp/pd/pd_docs/Ewa_DP_2013_Amended_2020_Ordinance_20-46.pdf

³ <https://dbedt.hawaii.gov/hcda/files/2013/04/Kalaeloa-Master-Plansmall.pdf>

74 public meetings and small group meetings, (4) document review, and (5) self-identification for
75 continued participation in implementing this PA (**Appendix D**); and

76 **WHEREAS**, in addition to the maintenance, repair, and upgrade activities covered by the Program
77 Comment, there is also a need to address Section 106 compliance for non-maintenance activities
78 that occur with the ROW that have the potential to affect the historic property; and

79 **WHEREAS**, the objective of this Programmatic Agreement (PA) is to provide FHWA, HDOT,
80 the State Historic Preservation Officer (SHPO), the ACHP, and project proponents a means to
81 comply efficiently and systematically with Section 106 when an undertaking, as defined by 36
82 CFR § 800.16(y), involves the former OR&L ROW; and

83 **WHEREAS**, this PA is intended provide protocols for avoiding any cumulative and/or indirect
84 effects to the railroad facilities; and

85 **WHEREAS**, this PA does not apply to new at-grade vehicular crossings, which shall be subject
86 to separate, individual Section 106 processes; and

87 **WHEREAS**, if it is determined that sub-surface non-railroad archaeological resources are present
88 or likely to be present, this PA shall not apply and separate, individual Section 106 and Hawai'i
89 Revised Statutes (HRS) Chapter 6E review processes will identify the appropriate avoidance,
90 minimization, and mitigation measures to be incorporated into the undertaking; and

91 **WHEREAS**, this PA shall not cover any compliance obligations under Hawai'i State law,
92 including but not limited to HRS Chapter 6E; and

93 **WHEREAS**, this PA shall not cover any compliance obligations under Condition 4 of the Deed,
94 and all projects under this PA shall still be required to obtain the written approval of the Hawai'i
95 State Historic Preservation Officer and the written authorization of the Hawai'i Division
96 Administrator, Federal Highway Administration prior to the issuance of any licenses, permits or
97 easements authorizing the use or occupancy of the 40' railroad right-of-way; and

98 **WHEREAS**, all Grants and reservations appended to the Deed shall remain in full effect and are
99 not subject to Section 106 of the NHPA; and

100 **WHEREAS**, FHWA and HDOT utilized information gathered from public outreach efforts to
101 develop this PA; and

102 **WHEREAS**, pursuant to 36 CFR §800.6(c)(3), FHWA invited the Hawaiian Railway Society
103 (HRS), Historic Hawai'i Foundation (HHF), National Trust for Historic Preservation (NTHP)
104 [**PARTIES RESPONDING TO BE CONCURRING PARTIES INVITE ARE LISTED**
105 **HERE**] to participate in consultation and to sign this PA as Concurring Parties; and

106 **WHEREAS**, FHWA has consulted with the SHPO and the ACHP, and the ACHP has elected to
107 participate in consultation; and

108 **WHEREAS**, the HDOT, who owns portions of the former OR&L ROW and implements FAHP
109 projects, has been invited to be a Signatory to this PA; and

110 **WHEREAS**, this PA recognizes that Condition 4 of the Deed requires the SHPO’s separate written
111 approval of licenses, permits or easements authorizing the use or occupancy of the former OR&L
112 ROW; and

113 **NOW THEREFORE**, FHWA, ACHP, HDOT, and SHPO (“Signatories”) agree that, for
114 undertakings involving the former OR&L ROW, initiated after the date of execution of this PA,
115 shall be carried out in accordance with the following stipulations to satisfy FHWA’s Section 106
116 responsibilities.

117 **STIPULATIONS**

118 To the extent of its legal authority, and in coordination with other Signatories, FHWA shall
119 ensure that the following measures are implemented:

120 **I. GENERAL**

121 **A. Purpose of the PA**

122 The purpose of the PA is exclusively as follows:

- 123 1. Fulfill HDOT’s obligation under Condition 1 of the Deed, which is to “preserve
124 the integrity of the railroad facilities located on said right-of-way including all
125 rails, ties, signals, and appurtenances in their existing condition, natural and
126 unavoidable deterioration excepted...”
- 127 2. Develop procedures for Section 106 compliance regarding operation,
128 maintenance, and repair undertakings, which are anticipated to have minimal or
129 no adverse effects to the former OR&L ROW and are included in the list of
130 activities under Tier 1 (**Appendix C**).

131 **B. Applicability**

132 This PA may be utilized for the following:

- 133 3. Operation, maintenance, and repair activities, including but not limited to those
134 conducted by a qualified nonprofit organization authorized by HDOT to operate a
135 non-profit historic railroad, within the former OR&L ROW that are subject to
136 Condition 1 of Deed Liber No. 14814: 321 in which assurances must be made that
137 activities are in accordance with Section 106.
- 138 4. Third party applicants, including but not limited to agencies, utility companies,
139 and other applicants seeking licenses, permits, or easements authorizing the use or

140 occupancy involving the former OR&L ROW that are subject to Condition 4 of
141 Deed Liber No. 14814: 323

142 5. Federal-Aid Highway Program (FAHP) or federal undertakings involving the
143 former OR&L ROW.

144 **C. Exclusions**

145 The PA does not cover the following required approvals by the State Historic
146 Preservation Division (SHPD):

147 1. Compliance with HRS Chapter 6E. Should HDOT and SHPD enter into a separate
148 agreement to address HRS Chapter 6E compliance, that agreement, upon its
149 execution, shall be appended to this PA.

150 2. Written authorization from SHPD as required per the Condition 4 of Deed Liber
151 No. 14814:323. Procedures for obtaining written authorization from SHPD shall
152 be determined by SHPD. Upon execution, that policy shall be appended to this
153 PA.

154 It shall remain the responsibility of HDOT to initiate and comply with approvals
155 excluded from the PA.

156 **D. Professional Qualifications Standards**

157 Actions prescribed by this PA that involve the identification, evaluation, recording,
158 treatment, monitoring, or disposition of historic properties, or that involve the reporting
159 or documentation of such actions in the form of reports, forms, or other records, shall be
160 carried out by or under the direct supervision of a person or persons who meets the
161 Secretary of the Interior's Professional Qualifications Standards (published in 48 FR
162 44738-44739).

163 However, nothing in this stipulation shall preclude FHWA or HDOT or any agent or
164 contractor thereof from using the services of persons who do not meet these qualifications
165 standards, providing their activities are conducted under the direct supervision of a person
166 who does meet the standards and any identification, evaluation, recording, treatment,
167 monitoring, or disposition of historic properties must be reviewed by a person meeting the
168 standards.

169 **E. Roles and Responsibilities of the Signatories**

170 Roles and responsibilities of the Signatories are defined as follows:

171 1. FHWA:

172 a) Consistent with the requirements of 36 CFR § 800.2(a), FHWA remains
173 responsible for ensuring that the terms of this PA are carried out and for
174 all findings and determinations made pursuant to this PA by HDOT under

175 the authority of FHWA. At any point in the Section 106 process, FHWA
176 may inquire as to the status of any project carried out under the authority
177 of this PA and may participate directly in any project at its discretion.

178 b) FHWA shall evaluate the ongoing effectiveness and efficiency in
179 implementing this PA every five years. FHWA will invite Signatories and
180 Consulting parties to participate in this review. FHWA may request to
181 evaluate ongoing effectiveness and efficiency on an as-needed basis.

182 2. SHPO shall review and respond to requests for concurrence with HDOT's
183 findings under the authority of FHWA and provide written response within
184 timeframes identified by this PA.

185 3. HDOT:

186 a) Under the authority of the FHWA, HDOT may carry out the following steps
187 with respect to undertakings covered by this PA. These responsibilities
188 include carrying out the following:

189 (1) Determine whether the undertaking is a Tier 1 activity listed in
190 **Appendix C** of this PA.

191 (2) Prepare notices and findings which include relevant information such as
192 plans, photographs, or materials to support the opinion of whether the
193 activity may be considered exempt (Tier 1).

194 (3) Determine whether an activity has the potential to affect non-rail
195 historic, cultural, or archaeological properties and comply with Section
196 106 with regard to those properties before approving the undertaking.

197 (4) For Tier 2 undertakings, initiate full Section 106 consultation and
198 review.

199 b) As owner of the resource HDOT is obligated to:

200 (1) Meet the conditions of the Deed, and

201 (2) Perform due diligence in the administration of permits, licenses and
202 agreements with assignees or tenants/occupants to ensure compliance
203 with the conditions of the deed.

204 4. ACHP shall participate as-needed in dispute resolution as described in this PA.

205 **F. Roles and Responsibilities of Consulting Parties**

- 206 1. Consulting Parties are those who identified themselves for participation in
207 developing and implementing the PA.
- 208 2. A Consulting party may request to sign the PA to be added as a Concurring Party
209 at anytime.
- 210 3. Consulting Parties will be notified annually of undertakings that seek coverage
211 under this PA in accordance with Stipulation V.2.
- 212 4. The initial list of Concurring Parties is included in **Appendix B**.

213 **II. PROJECT REVIEW**

214 Undertakings shall follow the procedures below for the purposes of compliance with Section 106
215 and fulfillment of approval requirements under the Deed provisions.

216 **A. Tier 1 – Projects Requiring No Further Review of Effects on the OR&L**

217 **Category A** undertakings are operation, maintenance, or repair activities of the Railroad
218 Facilities determined to be exempt activities because they meet the terms described in
219 **Appendix C** of this PA. Such undertakings are deemed to have no adverse effect on the
220 former OR&L ROW.

221 HDOT may enter into a contract or other agreement with a qualified non-profit to
222 support compliance with this PA. Should such an agreement be executed, HDOT
223 shall remain the party responsible for compliance with this PA. Should HDOT
224 assign operation, maintenance or alternation activities to a non-profit historic
225 railroad museum, HDOT may direct the non-profit, under the direction of a SOI
226 qualified professional, to develop best management practices and other appropriate
227 preservation plans to comply with Condition 1 of the Deed. Such documentation
228 shall be reviewed by HDOT and submitted to SHPO for review and approval.

229 **Category B** undertakings are activities unrelated to the Railroad Facilities occurring
230 within the ROW determined to be exempt activities because they meet the terms
231 described in **Appendix C** of this PA. Such undertakings are deemed to have no adverse
232 effect on the former OR&L ROW.

233 The following review process applies for **Category A** and **B** undertakings:

- 234 1. Under the authority of the FHWA, HDOT shall make the determination of
235 whether **Appendix C** applies to the proposed project or undertaking. HDOT will
236 cite the appropriate activity that the proposed project undertaking occurs under
237 (e.g., **Appendix C**, II. Exempted Activities List, A.1.). Sufficient information
238 such as plans, photographs, or material specifications should be included to
239 support the finding.

- 240 2. HDOT will provide consulting parties and SHPO with notification of HDOT's
241 determination when requesting SHPO's concurrence.
- 242 3. SHPO will review and respond to request for concurrence within 30 calendar days
243 of receipt of the determination in HICRIS and provide one of the following
244 responses:
- 245 a) SHPO concurs and provides a written response,
- 246 b) Requests in writing for additional information in which case the time
247 frame of 30 days will recommence from the date of receipt of the
248 additional information in HICRIS, or
- 249 c) Disagrees with HDOT's determination and provides a written response
250 including a reason for their decision.
- 251 4. Should the SHPO fail to respond within 30 days, the FHWA's obligations under
252 this PA and Section 106 are fulfilled.
- 253 5. This PA shall not be applicable to activities potentially exempt under Tier 1 that
254 would impact known, non-rail historic, cultural or archaeological properties, and
255 HDOT shall be responsible for initiating a separate Section 106 review for that
256 undertaking.

257 **B. Tier 2 – Standard Section 106 Review**

258 Activities not explicitly listed within Tier 1 are determined by FHWA, HDOT, or SHPO
259 as beyond the scope of this PA and shall be required to initiate Section 106 consultation
260 in accordance with 36 CFR Part 800 or an applicable program alternative executed
261 pursuant to 36 CFR § 800.14.

262 **III. RECORDATION, DOCUMENTATION, AND MANAGEMENT**

263 **A. Integrity Study**

264 With of the execution of this PA, HDOT shall commission a revision of the Draft
265 Integrity Study that identifies the character-defining features of the OR&L within the
266 parcels subject to the Deed.

267 The following conditions shall apply:

- 268 1. The report must document the industrial archaeology and the historical and social
269 context of the Railroad Facilities.
- 270 2. The study shall be completed and submitted to SHPD for review.
- 271 3. The draft report is to be submitted in its entirety to SHPD for review prior to
272 acceptance by HDOT.

- 273 4. HDOT shall provide copies of the draft report to SHPD and the Consulting parties
274 for review and comment. SHPD and Consulting parties will have 90 days for
275 review.
- 276 5. SHPD shall review and provide comments on the draft report within 90 days of
277 receipt of the draft report. Should SHPD fail to provide comments within the 90
278 days, the HDOT shall move forward with finalizing the report.
- 279 6. HDOT shall provide copies of the final report to the Signatories and Consulting
280 Parties.

281 **B. Management Plan**

282 Upon HDOT acceptance of the study, HDOT shall contract the development of a long-
283 term management plan to preserve the historical integrity of the Railroad Facilities. The
284 following conditions shall apply:

- 285 1. The plan shall identify best management practices to avoid, minimize, and
286 mitigate at-grade vehicular crossings.
- 287 2. The plan shall identify Best management practices for overhead and subsurface
288 utility crossings.
- 289 3. The plan shall identify processes for crossing gates, utility crossings, and other
290 frequent requests.
- 291 4. A plan for Section 4(f) of the Department of Transportation Act (23 CFR
292 774.13(a)(2)) compliance.
- 293 5. The plan shall be compliant with HAR 13-277 and submitted to SHPD for review
294 and acceptance.

295 **IV. POST-REVIEW MODIFICATIONS OR CHANGES TO UNDERTAKING**

- 296 1. HDOT shall monitor Tier 1 undertakings through design and construction to ensure that
297 the project remains consistent with this PA and treatment standards described in
298 **Appendix D**. Project Proponents shall notify HDOT of any modifications to the
299 undertaking involving the OR&L ROW immediately.
- 300 2. In the event that changes are made and HDOT determines that the project no longer
301 qualifies as a Tier 1 undertaking, HDOT will notify FHWA.
- 302 3. If the proposed project no longer meets the Tier 1 requirements, the standard Section 106
303 review process applies.

304 **V. UNANTICIPATED DISCOVERIES AND EFFECTS**

305 If during the performance of the Undertaking, resources that may be eligible for listing on the
306 National Register are discovered or unanticipated effects to historic properties occur, then:

- 307 1. Activities in the immediate area of the find will be halted and FHWA will make a
308 determination on the nature and significance of the find, including the resource’s
309 eligibility for the National Register.
- 310 2. If the resource does not meet National Register of Historic Places (NRHP) criteria in
311 accordance with 36 CFR § 60.4, and is determined not eligible for the NRHP, then the
312 activity may resume.
- 313 3. If the resource is eligible for the NRHP the HDOT will notify the SHPO, any appropriate
314 Native Hawaiian organization (NHO), and Consulting parties within 48 hours of the
315 discovery. Notification will assess NRHP eligibility, and proposed actions to resolve the
316 adverse effects, if applicable. The SHPO, NHOs and Consulting parties shall respond
317 within 48 hours of notification. FHWA shall take into account their recommendations
318 regarding NRHP eligibility and proposed actions. FHWA shall provide the SHPO and
319 NHOs and the ACHP a report of the actions when they are completed. If there is a
320 disagreement over treatment and it cannot be resolved, the disagreement will be resolved
321 utilizing the process described in **Stipulation VIII. Dispute Resolution.**
- 322 4. Should an unanticipated modification or alternation to a known historic property or
323 feature occur, activities in the immediate area of the find will be halted and FHWA shall
324 be notified immediately. FHWA shall be responsible for notifying SHPO within 24 hours
325 of the incident. If the effect potentially affects the eligibility for the NRHP, any
326 appropriate Native Hawaiian organization (NHO), and concurring party will be notified
327 of the potential effect within 48 hours of the discovery. Notification will assess potential
328 adverse effect and proposed actions to resolve the adverse effect(s), if applicable.
329 Possible actions to resolve the adverse effect may include reopening consultation on the
330 undertaking outside this PA and applying Section 106 review separately. The SHPO,
331 NHO and Concurring parties shall respond within 48 hours of notification. FHWA shall
332 take into account their recommendations regarding the effect determination and proposed
333 actions. FHWA shall provide the SHPO and NHOs and the ACHP a report of the actions
334 when they are completed. If there is a disagreement over effect and/or treatment and it
335 cannot be resolved, the disagreement will be resolved utilizing the process described in
336 **Stipulation VIII. Dispute Resolution.**
- 337 5. If human remains are discovered, Hawai‘i Administrative Rules (HAR) §13-300
338 Subchapter 4 “Procedures for Proper Treatment of Burial Sites and Human Skeletal
339 Remains” shall be followed.

340 **VI. REPAIR OF DAMAGE DURING CONSTRUCTION**

- 341 1. If damage to historic properties within the former OR&L ROW within the Area of
342 Potential Effect occurs as a result from the willful or unintentional actions of a project

343 sponsor (HDOT, County, or Third Party Applicant, including any Contractor), the project
344 sponsor shall cease all work in the area and immediately contact HDOT. The project
345 sponsor shall submit proposed plans and schedule for the repairs to HDOT for approval
346 within 7 days of the incident. The repairs shall restore the historic property to a condition
347 that is the same as or better than before the damage occurred in accordance with the
348 Secretary of the Interior’s Standards for the Treatment of Historic Properties (36 CFR
349 68). If the project sponsor does not submit the proposed plans and schedule within 7
350 days, the project sponsor shall cease all work on the project until the proposed plans and
351 schedule are received by HDOT.

352 2. The HDOT shall inform the SHPD, signatories, and consulting parties of the damage
353 within 2 days of the project sponsor’s notification. SHPD will be allowed an opportunity
354 to review the damage. The HDOT shall provide the proposed plans and schedule to
355 SHPD for approval and comments. Any comments by SHPD regarding the proposed
356 repairs shall be transmitted in an official SHPD letter within 14 days of receipt of the
357 proposed plans and schedule. If no comments or approval is received within 14 days,
358 HDOT may approve the project sponsor’s proposed plan and schedule.

359 3. Following approval of the project sponsor’s proposed plans and schedule by HDOT,
360 HDOT will authorize the project sponsor to start the work. HDOT shall inform SHPD
361 when the project sponsor is authorized to start work.

362 4. Following completion of the repairs, HDOT shall provide SHPD a report documenting
363 compliance with the approved plans and allow SHPD an opportunity to inspect the
364 repairs performed on the historic property. At a minimum, the report may be a letter with
365 a written description and photo documentation of the repairs. If SHPD has any concerns
366 with the repairs, either upon receipt of the report or inspection of the repairs, SHPD shall
367 transmit a formal letter within 14 days of notification indicating any concerns. If no letter
368 is received within 14 days, the repairs shall be considered complete.

369 5. If the project sponsor fails to comply with the approved plans and schedule, the project
370 sponsor shall repair, restore and make good all loss or damage.

371 6. Failure by the project sponsor to comply with the terms and conditions of a use and
372 occupancy agreement, the use and occupancy agreement shall be revoked until such time
373 that any damage is remedied.

374 **VII. MONITORING AND REPORTING**

375 1. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this PA.
376 HDOT shall facilitate this review by compiling specific categories of information to
377 document the effectiveness of the Agreement and by making this information available
378 on an annual basis to FHWA, the SHPO, ACHP, and Consulting Parties in the form of a
379 written report. Categories of information can include, but are not limited to, a summary
380 of actions taken under the PA, including all findings and determinations,
381 accomplishments, estimated time and cost savings, public objections, and inadvertent
382 effects or foreclosures. The range and type of information included by HDOT in the

383 written report and the manner in which this information is organized and presented must
384 be such that it facilitates the ability of the reviewing parties to assess accurately the
385 degree to which the PA and its manner of implementation constitute an efficient and
386 effective program alternative under 36 CFR Part 800, and to determine whether this PA
387 should remain in effect, and if so, whether and how it should be improved through
388 appropriate amendment.

389 2. HDOT shall prepare a written report annually on a calendar year basis. The report will
390 provide a description of the number and types of projects that were reviewed during the
391 calendar year. The report will also describe accomplishments/successes achieved over
392 the course of the year as well as suggestions for improvements. HDOT shall submit the
393 annual reports to FHWA, the SHPO, ACHP, and Consulting Parties no later than January
394 31.

395 **VIII. DISPUTE RESOLUTION**

396 1. Should any Signatory or Consulting Party to this PA object in writing to any actions
397 proposed or the manner in which the terms of this PA are being implemented, FHWA
398 shall consult with the objecting Party within thirty (30) days of the objection being filed.

399 2. If during consultation, FHWA determines that the objection cannot be resolved and that
400 further consultation will not be productive, FHWA shall forward all documentation
401 relevant to the objection to the ACHP, including the proposed response to the objection.

402 3. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP
403 shall exercise one of the following options:

404 a) Advise FHWA that it concurs with the proposed response, whereupon FHWA
405 may make a final decision and proceed accordingly; or

406 b) Provide FHWA with recommendations on the proposed response. FHWA shall
407 take into account such recommendations before making a final decision on the
408 matter and proceeding; accordingly, or

409 c) Notify FHWA that the objection will be referred to the ACHP and SHPO
410 membership for formal comment per 36 CFR § 800.7(c). The resulting formal
411 comment shall be taken into account by FHWA in accordance with 36 CFR §
412 800.7(c).

413 4. Should the ACHP not exercise one of the above options within thirty (30) calendar days
414 after receipt of all pertinent documentation, FHWA may make a final decision on the
415 objection and proceed accordingly.

416 5. FHWA shall take into account the recommendations or comments provided by ACHP in
417 accordance with this stipulation with reference only to the subject objection in reaching a
418 final decision regarding the objection. FHWA/HDOT responsibilities to carry out all
419 terms under this PA that are not the subject of the objection shall remain unchanged.

420 6. Once a final decision has been reached, FHWA shall provide all Signatories with a
421 written response documenting the decision.

422 IX. DURATION OF AGREEMENT

423 This PA shall become effective upon execution by all Signatories and shall remain in effect for a
424 period of ten (10) years unless the PA is terminated prior to that in accordance with **Stipulation**
425 **X. Severability and Termination**. If all Signatories agree in writing, the PA may be extended
426 for additional ten (10) year periods.

427 X. AMENDMENT

428 1. Any Signatory may propose that this PA be amended, whereupon the Signatories and
429 Consulting Parties will be consulted to consider such amendment. The amendment
430 process starts when a Signatory notifies the other Signatories and Consulting Parties of
431 this PA that it wishes to amend this agreement. A written notice must be sent to all
432 Signatories and Consulting Parties by the party that wishes to amend the PA. The
433 requests will include the proposed amendments and the reasons for proposing them.

434 2. No amendment shall take effect until it has been agreed upon by all Signatories. The
435 amendment will be effective on the date a copy signed by all of the Signatories is filed
436 with the ACHP and SHPO.

437 XI. SEVERABILITY AND TERMINATION

438 1. In the event any provision of this PA is deemed by a Federal court to be contrary to, or in
439 violation of, any applicable existing law or regulations of the US, only the conflicting
440 provision(s) shall be deemed null and void, and the remaining provisions of the PA shall
441 remain in effect.

442 2. Any Signatory may propose to terminate this PA. The termination process starts when a
443 Signatory notifies the other Signatories and Consulting Parties of this PA that it wishes to
444 terminate this PA. A written notice must be sent to all Signatories and Consulting Parties
445 by the party that wishes to terminate the PA at least sixty (60) calendar days prior to
446 termination. The written notice must explain in detail the reasons for the proposed
447 termination. The Signatories and Consulting Parties will consult during the sixty (60) day
448 period to seek agreement on amendments or other actions that would avoid termination.
449 If the Signatory proposing the termination does not withdraw the proposal by the end of
450 the sixty (60) day period and a longer period of arbitration is not agreed to by the
451 Signatories involved, then the PA will be terminated.

452 3. In the event of termination, the Signatory proposing termination will send a written notice
453 to all Signatories and Consulting Parties that the PA has been terminated. After which
454 FHWA/HDOT will comply with 36 CFR Part 800 for individual Undertakings.

455 4. In the event of termination, for projects unrelated to the reasons for termination and
456 previously reviewed in accordance with **Stipulation II. Project Review**, if all mitigation
457 has been contracted for or completed (if applicable), that project may still proceed even if

458 this PA has been terminated.

459 5. This PA may be terminated by the implementation of a subsequent Agreement, pursuant
460 to 36 CFR § 800.14(b), that explicitly terminates or supersedes this PA, or by FHWA
461 implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

462 XII. CONFIDENTIALITY

463 All parties to this Agreement acknowledge that information about historic properties, potential
464 historic properties, or properties considered historic for purposes of this Agreement are or may be
465 subject to the provisions of Section 304 of the National Historic Preservation Act (NHPA). Section
466 304 allows FHWA to withhold from disclosure to the public, information about the location,
467 character, or ownership of a historic resource if HDOT determines that disclosure may 1) cause a
468 significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a
469 traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement
470 will ensure that all actions and documentation prescribed by this Agreement are, where necessary,
471 consistent with the requirements of Section 304 of the NHPA.
472

DRAFT

473 **SIGNATURES**

474 **A. Signatories/Signatory Parties**

- 475 • FHWA
- 476 • SHPO
- 477 • ACHP
- 478 • HDOT

479 **B. Concurring Parties**

- 480 • To Be Determined Based on Response

DRAFT

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE HAWAI'I STATE DEPARTMENT OF TRANSPORTATION
REGARDING UNDERTAKINGS AFFECTING THE FORMER O'AHU
RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY (ROW)**

SIGNATURES

SIGNATORIES

Richelle M. Takara, P.E.
Division Administrator
Federal Highway Administration

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE HAWAI'I STATE DEPARTMENT OF TRANSPORTATION
REGARDING UNDERTAKINGS AFFECTING THE FORMER O'AHU
RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY (ROW)**

**Dr. Alan S. Downer, PhD
Deputy State Historic Preservation Officer
Hawai'i State Historic Preservation Division**

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE HAWAI'I STATE DEPARTMENT OF TRANSPORTATION
REGARDING UNDERTAKINGS AFFECTING THE FORMER O'AHU
RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY (ROW)**

Reid Nelson
Executive Director
Advisory Council on Historic Preservation

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE HAWAI'I STATE DEPARTMENT OF TRANSPORTATION
REGARDING UNDERTAKINGS AFFECTING THE FORMER O'AHU
RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY (ROW)**

**Edwin Sniffen
Director of Transportation
Hawai'i State Department of Transportation**

Date: _____

CONCURRING PARTIES

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE HAWAI'I STATE DEPARTMENT OF TRANSPORTATION
REGARDING UNDERTAKINGS ASSOCIATED WITH THE FORMER
O'AHU RAILROAD & LAND COMPANY (OR&L) RIGHT-OF-WAY
(ROW)**

**NAME
POSITION
ASSOCIATION**

Date: _____

Figure 1: Limits of the Programmatic Agreement



**APPENDIX A:
DEED**



APPENDIX B:
CONCURRING PARTIES

**APPENDIX C:
TIER 1 EXEMPTED ACTIVITIES -**

2018 ACHP Program Comment (83 FR 42920)

A. Track and Trackbed

1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (i.e., existing subgrade, subballast, ballast, and rails and crossties (track)). These activities must not include alterations to the trackbed that would result in a substantial visual change (i.e., elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.
2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.

B. Bridges and Tunnels

1. In-kind maintenance and repair of bridges and tunnels.
2. In-kind replacement of bridge hardware and mechanical and electrical components (e.g., brackets, rivets, bearings, motors).
3. Maintenance or repair of tunnel ventilation structures and associated equipment (e.g., fans, ducting).
4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.
5. Replacement of tunnel ventilation structures that are located and publicly visible within a previously identified historic district, provided the replaced structures are substantially the same size as or smaller than the existing structures and are visually compatible with the surrounding built environment.
6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.
7. Maintenance, installation, repair, or replacement of lighting, signal and communications systems, railings, and other safety- and security-related equipment or elements located within the interiors of tunnels.
8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.
9. Actions to strengthen or repair deteriorating non-character defining structural components of bridges that are intended to maintain their useful life and safe use and that do not substantially alter the bridge from its existing appearance.
10. The following activity must be performed or supervised by an SOI-qualified professional: In-kind replacement of character-defining structural or nonstructural components of a bridge superstructure or substructure that do not diminish the overall integrity of the bridge. This does not include demolition of a bridge and replacement with an entirely new structure.

C. Railroad and Rail Transit Buildings (e.g., Passenger Stations and Depots, Maintenance and Equipment Buildings, Interlocking Towers) and Boarding Platforms

1. Modifications (e.g., repair, extension, widening, slope adjustments, changes in height) to non-character defining passenger platforms and walkways that are necessary to meet Americans with Disabilities Act (ADA) requirements or other federal or
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- municipal public or life safety codes and standards, provided those changes do not require associated improvements such as relocation of station doors, construction of ramps, etc. When the original material and construction used something other than common concrete or asphalt methods (e.g., decorative brick or tile), new materials (e.g., non-slip) may be used but must visually match the existing decorative pattern.
2. Maintenance or repair of escalators, elevators, or stairs. Repair of decorative (i.e., non-mechanical) elements must be in-kind. Repair of stairs constructed of material other than common concrete (e.g., brick, tile, marble) must be in-kind.
 3. Cleaning, painting, or refinishing of surfaces with a like color and where the products or methods used would not damage the original surface.
 4. Maintenance, repair, or replacement of fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or computer equipment and devices.
 5. Installation of new fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or computer equipment and devices, except within publicly accessible areas of stations or depots. Such new installations must, to the extent feasible and when appropriate, use a minimally obtrusive design; match the color of surrounding paint, wall coverings, finishes, etc.; avoid damaging or removing historic fabric; be attached to non-historic fabric; be concealed within existing enclosures or conduit or behind walls and ceilings; be co-located with existing similar modern equipment, etc.
 6. Maintenance, repair, or replacement of HVAC or electrical systems.
 7. Installation of new HVAC or electrical systems, except within publicly accessible areas of stations or depots. Such new installations must, to the extent feasible and when appropriate, use a minimally obtrusive design; match the color of surrounding paint, wall coverings, finishes, etc.; avoid damaging or removing historic fabric; be attached to non-historic fabric; be concealed within existing enclosures or conduit or behind walls and ceilings; be co-located with existing similar modern equipment, etc.
 8. Minor ADA improvements at passenger stations that do not damage, cover, alter, or remove character-defining architectural spaces, features, or finishes. Examples include the installation of restroom stalls/ partitions, hardware and fixtures such as grab bars, tilt frame mirrors, and sinks and toilets; tactile warning strips on floors, passenger walkways, and platforms; cane detectors; sidewalk curb cuts; automatic door openers; and handrails.
 9. Maintenance, repair, or replacement of previously installed ADA elements.
 10. Maintenance, repair, or replacement of pumps, air compressors, or fueling stations.
 11. Removal of mechanical equipment inside railroad and rail transit facilities not visible to the public. Examples include relay panels, switchgear, and track diagram boards. If the equipment to be removed includes obsolete or outdated technology, the Project Sponsor must contact the SHPO, railroad museums or railroad historical societies, museums, educational institutions, or similar entities to determine if there is an entity that may be interested in purchasing or receiving the equipment as a donation, as appropriate. The Project Sponsor must demonstrate to the federal agency that it has made a good faith effort to contact such parties prior to removal and disposition of such equipment.
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12. Addition of new mechanical equipment in basements, beneath platforms, in designated mechanical equipment areas, or in areas that are otherwise out of public view.
 13. Paving, painting, or striping of existing parking surfaces.
 14. In-kind maintenance or repair of platform boarding canopies and supports.
 15. In-kind maintenance or repair of architecturally distinctive light poles and fixtures.
 16. State-of-good-repair (SOGR) activities not included elsewhere in this section that are necessary to keep a station, depot, or other railroad or rail transit building inhabitable and safe, as required by applicable federal or municipal fire, life safety, or health codes or standards, and in transportation-related use that meet the following conditions: a. Maintenance and repair activities that affect character-defining architectural features (e.g., elevator head houses and portals; roofs; doors; windows; stairs; platform canopies; columns; floors; ceilings) must be in-kind. b. SOGR activities do not include demolition, decommissioning, or mothballing of railroad or rail transit buildings that are not in use, or reconfiguring the interior spaces of passenger stations for a new use (e.g., enclosing a passenger waiting area to create new office, baggage handling, or event space).
 17. Maintenance, repair, or replacement activities that are not included elsewhere on this list and involve non-character-defining non-structural elements, features, systems, hardware, and fixtures in the interior or on the exterior of non-station railroad or rail transit buildings.
 18. In-kind maintenance or repair of original architectural features in the interior or on the exterior of passenger stations (e.g., handrails, ticket counters, mouldings).
 19. In-kind maintenance or repair of character-defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.
 20. Maintenance, repair, or replacement of non-character defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.
 21. The following activities must be performed or supervised by an SOI-qualified professional:
 - a. Replacement of character defining escalators, elevators, or stairs, and decorative elements related thereto.
 - b. ADA improvements at passenger stations that involve the modification or removal of character-defining features such as stairs, floors, ceilings, doors, windows, roofs, platform boarding canopies and supports, benches/seating, or ticket counters; or that involve the addition of new ramps, stairs, escalators, elevators, wheelchair lifts, wheelchair lift enclosures, station identifier and wayfinding signage, and public information display systems (PIDS).
 - c. SOGR activities that include replacement of character-defining architectural features or otherwise require substantial rehabilitation to address deteriorated conditions. As previously indicated, SOGR activities do not include demolition, decommissioning, or mothballing of railroad or rail transit buildings that are not in use, or reconfiguring the interior spaces of passenger stations for a new use (e.g., enclosing a passenger waiting area to create new office, baggage handling, or event space).
 - d. Installation of new fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or
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computer equipment and devices within publicly accessible areas of stations or depots.

- e. Installation of new HVAC or electrical systems within publicly accessible areas of stations or depots.
- f. Replacement of platform boarding canopies and supports.
- g. Replacement of architecturally distinctive light poles and fixtures.
- h. Replacement of original architectural features in the interior or on the exterior of passenger stations (e.g., handrails, ticket counters, mouldings).
- i. Replacement of character-defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.

D. Signals, Communications, and Power Generation

1. Maintenance, repair, or replacement of component parts of signal, communications, catenary, electric power systems, or other mechanical equipment that retains the visual appearance of the existing infrastructure. This includes replacement of individual signal masts or transmission lines, but does not include demolition and replacement of an entire catenary system or signal bridge.
2. Maintenance, repair, or replacement of radio base stations.
3. Maintenance, repair, or replacement of the mechanical components of traction power substations, e.g., transformers, circuit breakers, electrical switches. This does not include demolition and replacement of an entire substation.
4. In-kind maintenance or repair of signal bungalows, signal houses, control houses, instrument houses, and structures of similar function.
5. Installation, repair, or replacement of communications equipment on locomotives and rolling stock that are actively used for intercity passenger rail, rail transit, or freight rail. This does not apply to historic trains used for tourism.
6. The following activities must be performed or supervised by an SOI-qualified professional:
 - a. Replacement of signal bungalows, signal houses, control houses, instrument houses, and structures of similar function.

E. Railroad and Rail Transit/Roadway At Grade Crossings and Grade Separations

1. Maintenance, repair, or rehabilitation of at-grade railroad and rail transit crossings including installation of railroad and rail transit crossing signs, signals, gates, warning devices and signage, highway traffic signal preemption, road markings, paving and resurfacing, and similar safety improvements.
 2. Replacement of at-grade railroad and rail transit crossings on existing railroads, rail transit lines, and roadways, including components such as crossing signs, signals, gates, warning devices and signage, highway traffic signal pre-emption, road markings, paving and resurfacing, and similar safety features.
 3. Expansion of sidewalks, constructed with common concrete or asphalt methods, along the sides of an existing at-grade railroad or rail transit crossing.
 4. In-kind maintenance or repair of grade separated crossings of other transportation modes (highways, local roads, pedestrian underpasses).
 5. In-kind rehabilitation or replacement of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses). This does not
-

- include modifications to existing grade separation structures (e.g., bridges, overpasses) that would result in a substantial increase in height or overall massing or substantial change in appearance. Replacements must be substantially the same appearance and size as existing.
6. Addition of lanes, turning lanes, road widening, and pavement markings at existing at-grade crossings when the crossing does not involve an individual National Register-listed or known historic roadway or a roadway that is a contributing resource to a National Register-listed or known historic district.
 7. Construction of curbs, gutters, or sidewalks adjacent to existing roadway at existing at-grade crossings when the crossing does not involve an individual National Register-listed or eligible roadway or a roadway that is a contributing resource to a National Register-listed or eligible historic district.
 8. The following activities must be performed or supervised by an SOI-qualified professional:
 - a. Addition of lanes, turning lanes, road widening, and pavement markings at existing at-grade crossings when the crossing involves an individual National Register-listed or eligible roadway or a roadway that is a contributing resource to a National Register listed or eligible historic district.
 - b. Construction of curbs, gutters, or sidewalks adjacent to existing roadway at existing at-grade crossings when the crossing involves an individual National Register listed or eligible roadway or a roadway that is a contributing resource to a National Register-listed or eligible historic district.

F. Safety and Security

1. Maintenance, repair, replacement, or installation of the following security and intrusion prevention devices adjacent to tracks or in railyards or rail transit yards: Security cameras, closed captioned television (CCTV) systems, light poles and fixtures, bollards, emergency call boxes, access card readers, and warning signage.
2. Maintenance, repair, replacement, or installation of security and safety fencing, guardrails, and similar intrusion prevention and fall protection measures.
3. Maintenance, repair, replacement, or installation of safety equipment/fall protection equipment on rail bridges, signal bridges, or other non-station structures for the protection of rail workers or the public. Examples include railings, walkways, gates, tie-off safety cables, anchors, and warning signage.
4. Maintenance, repair, replacement, or installation of wayside detection devices.
5. Maintenance, repair, replacement, or installation of bridge clearance/strike beams.

G. Erosion Control, Rock Slopes, and Drainage

1. Placement of riprap and similar bank stabilization methods to prevent erosion affecting bridges and waterways.
 2. Erosion control through slide and slope corrections.
 3. Rock removal and re-stabilization activities such as scaling and bolting.
 4. Maintenance, repair, or replacement of pre-cast concrete, cast iron, and corrugated metal culverts that lack stone or brick headwalls. This does not include culverts such as those built by the Civilian Conservation Corps or those made out of unique materials (e.g., a hollowed log).
-

5. Expansion through horizontal elongation of pre-cast concrete, cast iron, and corrugated metal culverts that lack stone or brick headwalls for the purpose of improved drainage.
6. Embankment stabilization or the reestablishment of ditch profiles.
7. Corrections to drainage slopes, ditches, and pipes to alleviate improper drainage or changing alluvial patterns.
8. In-kind maintenance, repair, or replacement of retaining walls. Replacements must be substantially the same size and appearance as existing.
9. In-kind maintenance or repair of stone or brick culvert headwalls and wingwalls.
10. Maintenance, repair, or replacement of culvert headwalls and wingwalls constructed of concrete.
11. Maintenance, repair, or alterations to the interiors of culverts and related drainage pathways.
12. The following activities must be performed or supervised by an SOI-qualified professional:
 - a. Replacement of stone or brick culvert headwalls and wingwalls.
 - b. Vertical extension of stone or brick culvert headwalls using in-kind materials and design compatible with existing.

H. Environmental Abatement

1. Removal or abatement of environmental hazards such as asbestos, treated wood, and lead or heavy-metal coatings and paintings. Activities that replace coatings, paint, flooring materials, etc. must be of the same color and appearance as the materials that have been removed or abated.
2. Removal of contaminated ballast, subballast, subgrade, and soils.

I. Operations

1. Establishment of quiet zones, including the installation of required warning devices and additional safety measures installed at grade crossings, that do not entail closing of existing roadways.
2. Increased frequency of train or rail transit operations that do not result in noise or vibration impacts. The lead federal agency may, at its discretion, require a noise and vibration study be prepared by a qualified subject matter expert before approving the undertaking.
3. Temporary storage of rail cars or rail transit cars on active rail lines.
4. Maintenance, repair, or replacement of noise barriers. If a replaced noise barrier is to be located and publicly visible within a National Register-listed or eligible historic district, it must be substantially the same size as or smaller than existing and be visually compatible with the surrounding built environment.

J. Landscaping, Access Roads, and Laydown Areas

1. In-kind replacement of landscaping.
 2. Mowing, seeding/reseeding, planting, tree trimming, brush removal, or other similar groundcover maintenance activities.
 3. Maintenance of access roads and laydown areas.
-

K. Utilities

1. Maintenance, repair, or replacement of above-ground and underground utilities (e.g., electrical, sewer, compressed air lines, fuel lines, fiber optic cable).
2. Maintenance, repair, replacement, or installation of utility lines and conduit inside tunnels that does not involve affixing new equipment to the exterior face of tunnel portals.
3. Affixing conduit, repeaters, antennae, and similar small-scale equipment on the exterior masonry face of tunnel portals where the color of the equipment matches the existing masonry in order to limit its visibility and does not damage the masonry construction.

L. Bicycle and Pedestrian Facilities, Shared Use Paths, and Other Trails

1. Maintenance, repair, or replacement of existing bicycle lanes, pedestrian walkways, shared use paths (e.g., bicycle, pedestrian), and other trails intended for non-motorized transportation that are constructed with common materials (i.e., non-decorative concrete, asphalt, pavement, or gravel).
2. Adding lanes to existing shared use paths or other trails constructed with common materials.
3. Adding at-grade crossings for pedestrians and bicycle facilities, shared use paths, or other trails.
4. Maintenance, repair, replacement, or installation of bicycle aid stations, bicycle racks, and bicycle storage sheds, and similar amenities. Installation of new bicycle storage structures must be visually compatible with the surrounding building environment when located adjacent to historic passenger stations or within National Register-listed or eligible historic districts.
5. Maintenance, repair, replacement, or installation of information kiosks or displays, wayfinding signage, and similar amenities for pedestrian, bicyclists, or other path or trail users.
6. Maintenance, repair, or replacement of curbs, gutters, or sidewalks constructed with common materials.

M. Construction/Installation of New Railroad or Rail Transit Infrastructure

For any of the activities listed below, the federal agency shall require the work be performed by or under the supervision of an SOI-qualified professional, based on the scope of work and location of a specific proposal. As with all activities in this Exempted Activities List, but especially important for construction/installation of new railroad or Rail Transit infrastructure, consideration must be given to the potential for effects to non-rail properties within or adjacent to the rail ROW.

1. Minor new construction and installation of railroad or rail transit infrastructure that is compatible with the scale, size, and type of existing rail infrastructure, such as buildings for housing telecommunications equipment, signal instruments, and similar equipment; storage buildings that house landscaping or maintenance of way equipment or specialty vehicles for track repairs or inspections; locomotive and train or rail transit car service and inspection facilities; trailers or temporary structures for housing rail personnel; fueling stations; underground utilities; overhead utilities, transmission lines, and communications poles, and signage. This does not include
-

substantial new construction, such as construction of new passenger stations, railyards or rail transit yards, or tunnels, or demolition of existing structures.

2. Construction of new at-grade crossings.
3. Construction of new erosion control, drainage, or stormwater management infrastructure, such as culverts or retaining walls.



**APPENDIX D:
OUTREACH**



**APPENDIX E:
PROGRAM COMMENT**

