

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawai'i 96813

October 27, 2023

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Hawai'i & O'ahu

NON-ACTION ITEM:

Informational Briefing on Army Training Land Retention Efforts for the Pōhakuloa Training Area on the Island of Hawai'i and for Kahuku, Kawaihoa-Poamoho, and Mākua Training Lands on the Island of O'ahu

APPLICANT:

U.S. Army Garrison-Hawai'i

LOCATION¹:

| | |
|---------------------------------|---|
| Pōhakuloa Training Area: | (3) 4-4-015:008, 4-4-016:005, and 7-1-004:007 |
| Kahuku Training Area: | (1) 5-8-002:002 and 5-9-006:026 |
| Kawaihoa-Poamoho Training Area: | (1) 7-2-001:006 |
| Mākua Military Reservation: | (1) 8-1-001:007(por.), 008, and 012 (por.), and 8-2-001: 001, 022, 024, & 025 |

AREA²:

| | |
|---------------------------------|----------------------------|
| Pōhakuloa Training Area: | 22,570 acres, more or less |
| Kahuku Training Area: | 1,150 acres, more or less |
| Kawaihoa-Poamoho Training Area: | 4,390 acres, more or less |
| Mākua Military Reservation: | 782 acres, more or less |

¹ This information has been provided by the Army and has not yet been verified by the Department.

² This information has been provided by the Army and has not yet been verified by the Department.

ZONING:

State Land Use District:

| | |
|---------------------------------|--|
| Pōhakuloa Training Area: | Conservation District |
| Kahuku Training Area: | Conservation and Agricultural District |
| Kawailoa-Poamoho Training Area: | Conservation District |
| Mākua Military Reservation: | Conservation District |

County of Hawaii / City and County of Honolulu Zoning Designation:

| | |
|---------------------------------|--|
| Pōhakuloa Training Area: | Open and Forest Reserve |
| Kahuku Training Area: | Preservation (P-1) and Agricultural (AG-2) |
| Kawailoa-Poamoho Training Area: | Preservation (P-1) |
| Mākua Military Reservation: | Preservation (P-1) |

PROJECT BACKGROUND AND SUMMARY:

This informational briefing is a non-action item on the Board’s agenda. A representative from the U.S. Army (Army) is present to provide an update to the Board regarding the project.

Pōhakuloa Training Area (PTA):

PTA is located between Mauna Loa, Mauna Kea, and Hualālai on the island of Hawai’i (see Exhibits A and B). PTA is comprised of a total of 132,000 acres of which 109,000 acres are owned/managed by the Federal Government. The Army currently leases approximately 22,971 acres from the State under GL3849. The 65-year lease is set to expire on August 16, 2029. The Army is proposing to retain up to approximately 22,570 acres of State-owned land in support of continued military training. The retention is meant to preserve maneuver area, provide austere environment training, enable access between major parcels of U.S. Government-owned land, retain infrastructure investments, and maximize use of the impact area (located on U.S. Government-owned land). The proposed action is an administrative action that is restricted to a real estate transaction which does not involve any construction or change in training operations at the site.

For PTA, the Army is considering three (3) action alternatives: full land retention, modified retention, and minimum retention (see Exhibits C, D, and E); and a no action alternative where the land would revert back to the State. Full retention considers retaining all the State-owned land (approximately 22,570 acres) at PTA. The Army would continue to manage and use all the State-owned land; have unrestrained access between the three U.S. Government-owned parcels at PTA; conduct Army ongoing activities, and continue natural and cultural resources management actions. The Army would also continue to permit and coordinate ongoing activities on all the State-owned land by other PTA users.

Under the modified retention alternative, the Army would look to retain approximately 19,700 acres of State-owned land at PTA. Additionally, the Army would retain all U.S. Government-owned utilities and associated access throughout the State-owned land to enable continued safe operation of the U.S. Government-owned land and retained State-owned land at PTA.

Under the minimum retention alternative, the Army would retain approximately 10,100 acres and 11 miles of select roads and training trails within the State-owned lands at PTA. Additionally, the Army would retain all U.S. Government-owned utilities and associated access through the State-owned land; firebreaks/fuel breaks and associated access along most of the 11 miles of select roads and training trails proposed for retention.

Kahuku Training Area (KTA):

KTA is located in Ko'olauloa (Waiale'e) on the northeastern side of the island of O'ahu (see Exhibit F). KTA is comprised of a total of 9,480 acres of which 8,330 acres are owned/managed by the Federal Government. The Army currently leases approximately 1,150 acres from the State under GL3850. The 65-year lease is set to expire on August 16, 2029. The Army is proposing to retain up to 1,150 acres of State-owned land in support of continued military training. The State-owned leased lands are comprised of two tracts: Tract A-1 and Tract A-3.

Tract A-1 is used for maneuver and helicopter flight training by the Army during the weekdays as well as other users such as the USMC and the HIANG. Tract A-1 contains integral maneuver areas as well as the U.S. Government-owned X-Strip (helicopter landing zone) and an access gate (Alpha Gate #2). U.S. Government owned infrastructure within Tract A-1 also includes range roads and firebreaks. The U.S. Government does not own utilities within Tract A-1. Tract A-1 is also used for public recreation purposes on weekends and on holidays under Revocable Permit (RP) 7570 to the Hawai'i Motorsports Association which operates the Kahuku Motocross Park.

Tract A-3 has supported limited ground training activities such as reconnaissance and restricted maneuver training, but has not been used for such in the recent past and is not currently scheduled for training. U.S. Government-owned facilities and infrastructure within Tract A-3 include three access gates (Chain, Golf, and Fox), a range road, and recreational trails. Seasonal hunting for wild pigs, goats, and game birds is permitted in the northwestern section. Also, a portion of the Kaleleiki ecological management unit (MU) is partially within Tract A-3 and is fenced to protect endangered plant species managed by the State. The U.S. Government does not own utilities within Tract A-3.

For KTA, the Army is considering two action alternatives: full retention and modified retention (see Exhibits G and H); and a no action alternative where the land would revert back to the State. Full retention considers retaining all of the State-owned land currently leased within KTA. This would allow the Army to continue to manage and use Tract A-1 and Tract A-3 and allow them to have access to conduct current levels, types, and tempo

of training. The Army would continue to manage facility and infrastructure maintenance and repair activities and continue natural and cultural resource management actions. The Army would also continue to permit and coordinate training on the State-owned land by other potential government users.

Under the modified retention alternative, the Army would retain Tract A-1, but not Tract A-3. Under this alternative, the Army would no longer have access to approximately 700 acres of maneuver area in Tract A-3. Tract A-3 has no facilities and minimal infrastructure, and is used for limited military training; therefore, current levels, types and tempo of military training would not be substantially modified under this alternative. The Army would continue existing training on the retained State-owned land (Tract A-1) without interruption, and the Army would continue to manage facility and infrastructure maintenance and repair activities and continue natural and cultural resource management actions. The Army would continue to have access to Drum Road under an existing easement and would continue to maintain the Tract A-3 gates along Drum Road (Chain, Golf, and Fox gates).

Kawailoa-Poamoho Training Area (Poamoho):

Poamoho is located in central O‘ahu, just east of Wahiawā and is a part of the ‘Ewa Forest Reserve (refer to Exhibit F). The Army currently leases approximately 4,390 acres from the State under GL3846. The 65-year lease is set to expire on August 16, 2029. The Army is proposing to retain up to 4,390 acres of State-owned land in support of continued military training. The State-owned leased lands are comprised of two tracts: the Poamoho Tract and the Proposed Natural Area Reserve (NAR) Tract.

The eastern portion of the parcel makes up the proposed NAR Tract while the remaining western portion comprises the Poamoho Tract. The area is primarily used by the Army for helicopter aviation training consisting of low-altitude technical operations. There are no U.S. Government-owned facilities, utilities, or infrastructure features within Poamoho. State-owned infrastructure includes unimproved roads and hiking trails that run along portions of the northern and southern boundaries of the training area. Public hiking and hunting are allowed on weekends and holidays through a permit process administered by the Department of Land and Natural Resources (Department).

For Poamoho, the Army is considering two action alternatives: full retention and modified retention (see Exhibits I and J); and a no action alternative where the land reverts back to the State. Full retention considers retaining all the State-owned land currently leased within Poamoho. The Army would continue to manage and use the State-owned land; conduct current levels, types, and tempo of training without interruption; and continue current natural and cultural resources management actions. Alternative 1 would allow the Army to continue military training and other activities without interruption.

Under the modified retention alternative, the Army would retain the Poamoho Tract but not the proposed NAR tract. Under this alternative, the Army would no longer have access

to various roads and training trails in the proposed NAR Tract, however, because of training restrictions in the proposed NAR and the dense vegetation and rugged mountainous terrain, the proposed NAR Tract is not currently used for military training; therefore, current levels and types of training would not be affected under this alternative. The modified retention alternative would allow the Army to continue to manage and use the Poamoho Tract; conduct natural and cultural resources management actions; continue military training and other activities without interruption; and permit the Army to access the proposed NAR Tract for wildfire prevention and firefighting activities. The Army would continue to coordinate training at current levels and other activities by other potential government users on the Poamoho Tract.

Mākua Military Reservation (MMR):

MMR is located on the Wai‘anae coast on the island of O‘ahu (refer to Exhibit F). MMR is comprised of a total of 4,190 acres of which 3,408 acres are owned/managed by the Federal Government. The Army currently leases approximately 782 acres from the State under GL3848. The 65-year lease is set to expire on August 16, 2029. The Army is proposing to retain up to 782 acres of State-owned land in support of continued military training. The State-owned leased lands are spread across four tracts that include: Makai Tract, North Ridge Tract, Center Tract, and South Ridge Tract.

The lands are currently used for maneuver and aviation training. U.S. Government-owned facilities within MMR include a portion of the Company Combined Arms Assault course (a training course that contains objectives and non-live-fire firing points) and ranges for mounted, dismounted, and aviation training. MUs are present but are fenced for natural resources management and to protect endangered plant species. U.S. Government-owned infrastructure includes range roads and firebreaks.

For MMR, the Army is considering three action alternatives: full retention, modified retention, and minimum retention (see Exhibits K, L, and M); and a no action alternative where the lands would revert back to the State. Full retention considers retaining all the State-owned land currently leased within MMR. The Army would continue to manage and use the State-owned land; have access to roads and firebreaks; conduct current levels, types and tempo of training and facility, utility, and infrastructure maintenance and repair activities without interruption; and continue natural and cultural resources management actions. The Army would continue to permit and coordinate training and other activities on the State-owned land by other government users at current levels.

Under the modified retention alternative, the Army would retain approximately 572 acres of State-owned land at MMR, including the North Ridge Tract, Center Tract, and South Ridge Tract, but not the Makai Tract (see Exhibit J). This alternative would allow the Army to continue to manage and use the North Ridge Tract, Center Tract, and South Ridge Tract as well as maintain access to the remainder of MMR; conduct current levels, type and tempo of military training without interruption; conduct facility, utility and infrastructure maintenance and repair activities; conduct natural and cultural resources management

actions; retain much of its substantial investment in facilities, utilities and infrastructure; permit Army to access the Makai Tract for wildfire prevention and firefighting activities; and enable typical upgrade and modernization of the facilities, utilities and infrastructure within the North Ridge Tract, Center Tract, and South Ridge Tract. The Army also would continue to permit and coordinate training at current levels by other U.S. Government users of the North Ridge Tract, Center Tract, and South Ridge Tract.

Under the minimum retention alternative, the Army would retain approximately 162 acres of State-owned land in the Center Tract. This alternative would allow the Army to continue to use training and support facilities and associated maneuver land that cannot be relocated within U.S. Government-controlled land at MMR, as well as maintain and repair U.S. Government-owned utilities and infrastructure in the Center Tract including firebreak roads and range roads.

HAWAI'I REVISED STATUTES (HRS), CHAPTER 343 COMPLIANCE:

For all of the currently leased State-owned lands by the Army, the Army is considering two principal methods of land retention: fee simple acquisition or a new State land lease. As a new lease from the State is being considered, the Department has determined that compliance with Chapter 343, HRS will be required through either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The Army has notified the Department that they will be preparing an EIS for PTA and another EIS that will encompass KTA, Poamoho, and MMR into one comprehensive document.

For PTA, the EIS Preparation Notice (EISPN) was published in the September 8, 2020 edition of *The Environmental Notice* and a Draft EIS was published in the April 8, 2022 edition. Currently, to Staff's knowledge, the Army is working on revising the Draft EIS and responding to comments accordingly. The Draft EIS for PTA can be found online at:

VOLUME 1:

https://files.hawaii.gov/dbedt/erp/Doc_Library/2022-04-08-HA-DEIS-Army-Training-Land-Retention-at-Pohakuloa-Training-Area-Vol-I.pdf

VOLUME 2:

https://files.hawaii.gov/dbedt/erp/Doc_Library/2022-04-08-HA-DEIS-Army-Training-Land-Retention-at-Pohakuloa-Training-Area-Vol-II.pdf

For KTA, Poamoho, and MMR, the EISPN was published in the July 23, 2021 edition of *The Environmental Notice*. The Draft EIS is anticipated sometime before the end of this year. The EISPN for KTA, Poamoho, and MMR can be found online at:

https://files.hawaii.gov/dbedt/erp/Doc_Library/2021-07-23-OA-EISPN-Army-Training-Land-Retention-on-Oahu.pdf

PROJECT BARRIERS:

Through the EIS processes for both projects, the Army has identified two specific issues that affect the critical path for both the PTA and the O'ahu Land Retention efforts.

Fee Acquisition

The first issue is the probability of being able to obtain the currently leased State lands in fee. It should be noted that the Department does not consider this to be an option at this time due to the negative impact it would have on the public trust corpus. In addition, it is the Department's policy that State-owned lands not be sold, except for remnants as defined under §171-52, HRS.³

Another way for the Army to obtain the land in fee would be through condemnation proceedings and paying fair market value for the land. The U.S. Government has indicated that they are not currently pursuing this option. In addition, fee simple ownership could also be accomplished through an exchange of lands between the U.S. Government and the State pursuant to §§171-50 and/or -95, HRS.

Conformance with the State Land Use Conservation District

The second issue is the ability for the Army training practices to conform with State Land Use Conservation District rules and regulations as outlined in Chapter 183C, HRS and Chapter 13-5, Hawai'i Administrative Rules (HAR). It should be noted that majority of the leased State-owned lands are located within the State Land Use Conservation District (see Exhibits N, O, and P). The Office of Conservation and Coastal Lands (OCCL) has gone on record via comments they submitted in response to the Draft EIS for PTA stating that *"military training is in direct conflict of the Conservation District designation to conserve, protect, and preserve the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare."*

There are two potential options in which the Army could seek to rectify the inconsistency issue, however both processes are time intensive and can lead to further delays in the State land leasing process thus potentially impacting the continuation of Army training until the issues can be resolved.

³ However, in the event the Department's policy of not recommending the fee simple sale of public land changes, §171-64.7, HRS might require the Army to seek prior legislative approval by supermajority vote (i.e., approval by at least a two-thirds majority vote of both houses). Staff notes that HRS 171-95 is silent on any prior approval requirement for dispositions to government agencies, public utilities or renewable energy producers.

Rule Amendment

The first would be through an administrative rule amendment pursuant to §13-5-16, HAR that would be subject to final approval by the Governor. The rule amendment would involve the Army submitting a petition proposing that the Army leased training lands within the Conservation District be placed within a “Special subzone”. It should be noted though that the objective of the Special subzone is to provide for sustainable use of areas possessing unique developmental qualities that complement the natural resource of the area.

Pursuant to §13-1-26, HAR anyone “*may petition the board for the adoption, amendment, or repeal of any rule.*” The Board has 30 days following the filing of the petition to either deny the petition in writing or initiate the public rulemaking procedures pursuant to §13-1-22, HAR and the procedures to be followed are set forth in §91-3, HRS; and §13-1-21 and §13-1-22, HAR. Rulemaking initiation can proceed should “*the board determine that the petition discloses sufficient reasons in the support of the relief requested to justify the institution of public rulemaking proceedings.*” Should the board initiate rulemaking, a public hearing shall be held with public notice given at least 30 days prior to the hearing date. In addition, pursuant to §13-1-22(c), HAR, should the Board deem it warranted, a second public hearing can be held following proper public notice. At the close of the final public hearing, the board shall either announce the date when its decision shall be rendered, or the Board can also make the decision at the public hearing.

Should the Board and ultimately the Governor approve the rule amendment and a person or party disagree with the decision, pursuant to §91-3(f), HRS, “*Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.*”

Section 91-7, HRS states:

“(a) *Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) herein by bringing an action against the agency in the circuit court or, if applicable, the environmental court, of the county in which the petitioner resides or has its principal place of business. The action may be maintained whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.*

“(b) *The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions, or exceeds the statutory authority of the agency, or was adopted without compliance with statutory rulemaking procedures.*”

State Land Use District Boundary Amendment

The second option would be to pursue a District Boundary Amendment (DBA) which is obtained by petition through the Land Use Commission (LUC) housed under the State Department of Business, Economic Development, and Tourism (DBEDT). Amendment of a district boundary requires approval by at least six of the nine Commissioners. It should be noted that on petitions to redistrict Conservation lands, compliance with Chapter 343, HRS is required before the petition to reclassify Conservation land can be officially accepted as a proper filing and acted upon by the Commission.

A petition must meet the requirements of content and format as outlined in §15-15, HAR before it is considered properly filed and accepted for processing. Upon acceptance of a properly filed petition, the Commission must hold a hearing on the island on which the subject property is situated, within not less than 60 days and not more than 180 days. This hearing can be before the entire Commission or an appointed Hearing Officer. The hearing may be continued or reopened by the Commission when necessary, provided that proper notice is given pursuant to §92-7, HRS and that the continued or re-opened hearing shall not extend beyond 365 days from the date the petition is deemed properly filed, unless a time extension is requested by motion by any party, by stipulation, or by the Commission on its own motion, so long as two-thirds of the Commission votes affirmatively on the motion or stipulation. The time extension shall not exceed 90 days beyond the 365 days from the date the petition is deemed properly filed.

The Commission must decide upon the request within 365 days after the petition is deemed a proper filing unless otherwise ordered by a court, or a time extension was granted. The Commission may approve, approve with conditions, or deny the petition. If a district boundary is amended with conditions, the conditions must be recorded with the Bureau of Conveyances, as these conditions will run with the land and shall be binding upon the petitioner and subsequent persons with any interest in the land.

Should a party wish to appeal the Commission's decision, pursuant to §15-15-75, HAR, "*Parties to proceedings to amend land use district boundaries may obtain judicial review as provided in section 205-19, HRS*", which is a contested case proceeding.

DISCUSSION:

Due to the barriers the land retention efforts are facing, the Army has proposed the concept of a potential land exchange in which the Army would acquire fee simple title to the State-leased lands in exchange for lands currently owned by the U.S. Government conveyed to the State. As this is a new proposal, Staff felt that it warranted a discussion by the Board and the public for further consideration.

Respectfully submitted:



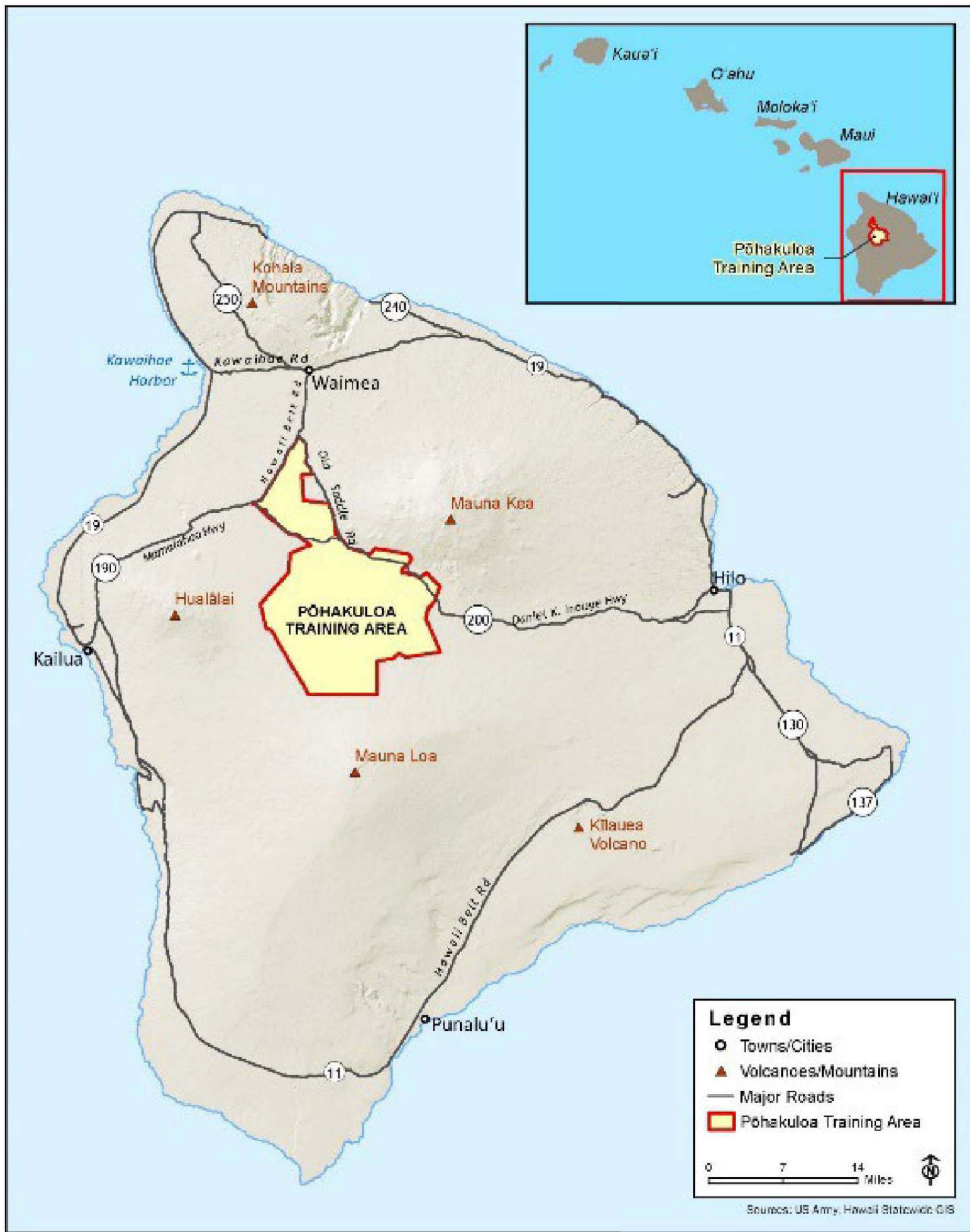
Lauren Yasaka
Planner

APPROVED FOR SUBMITTAL:

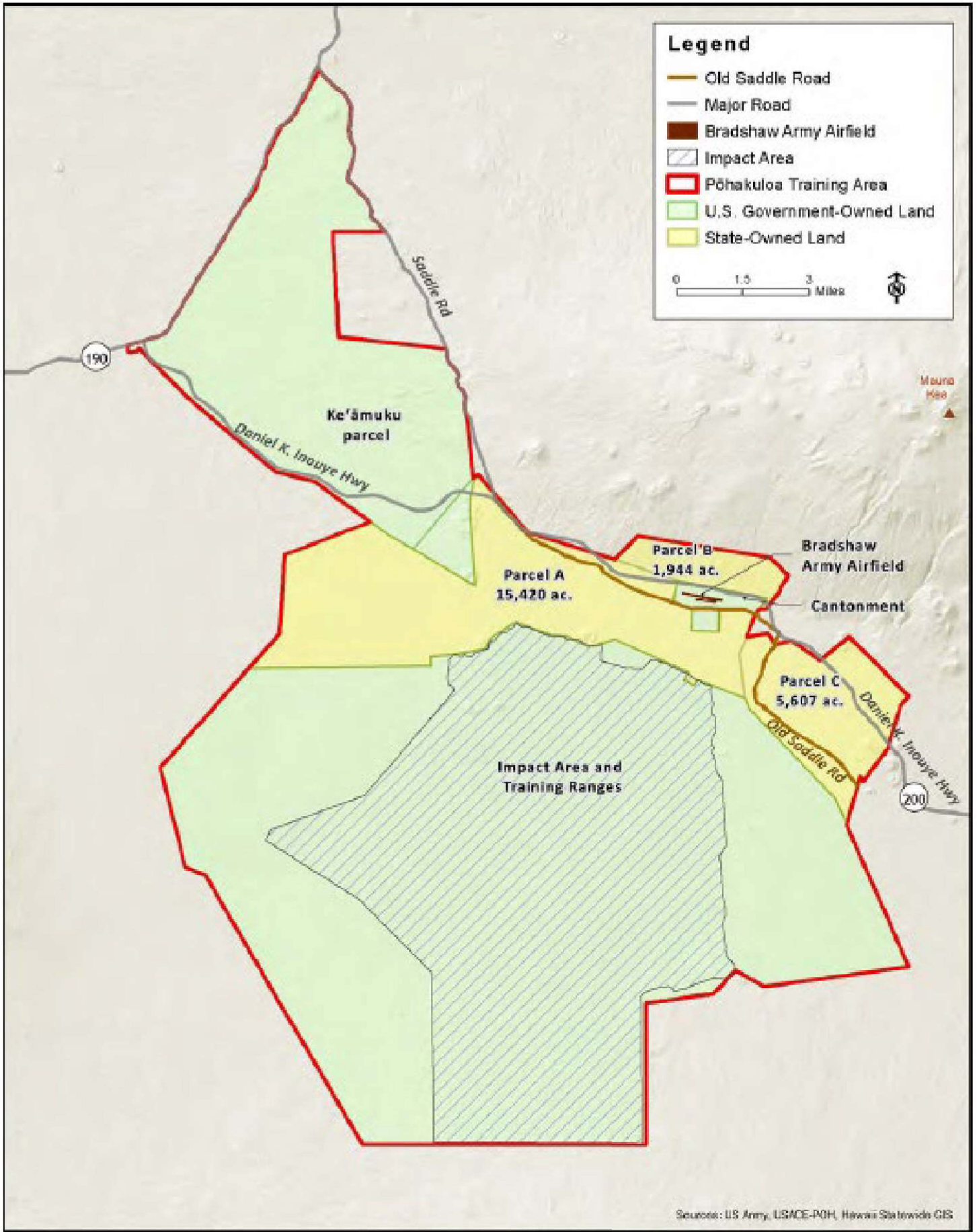


Dawn N.S. Chang, Chairperson

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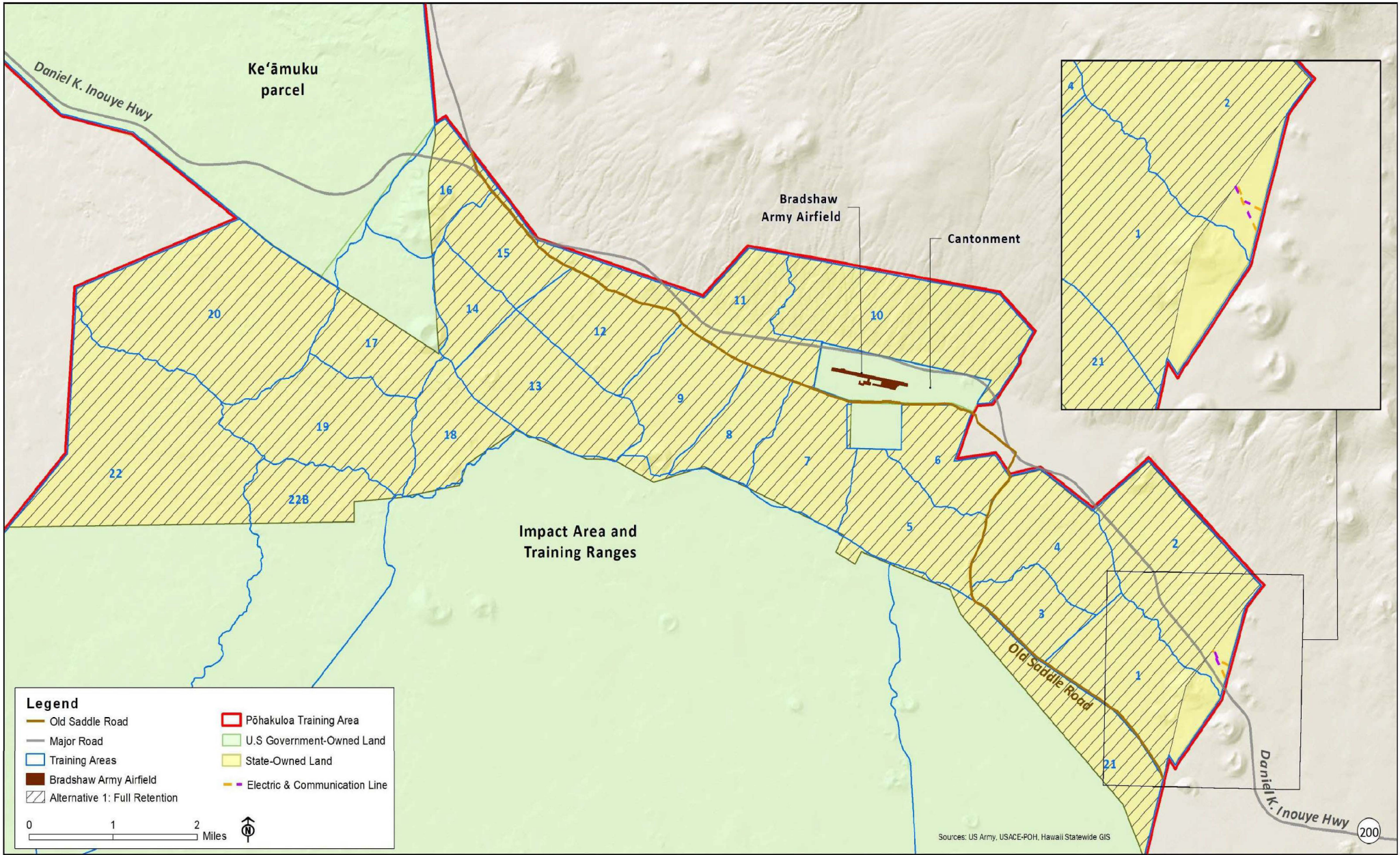


LOCATION MAP
PŌHAKULOA TRAINING AREA



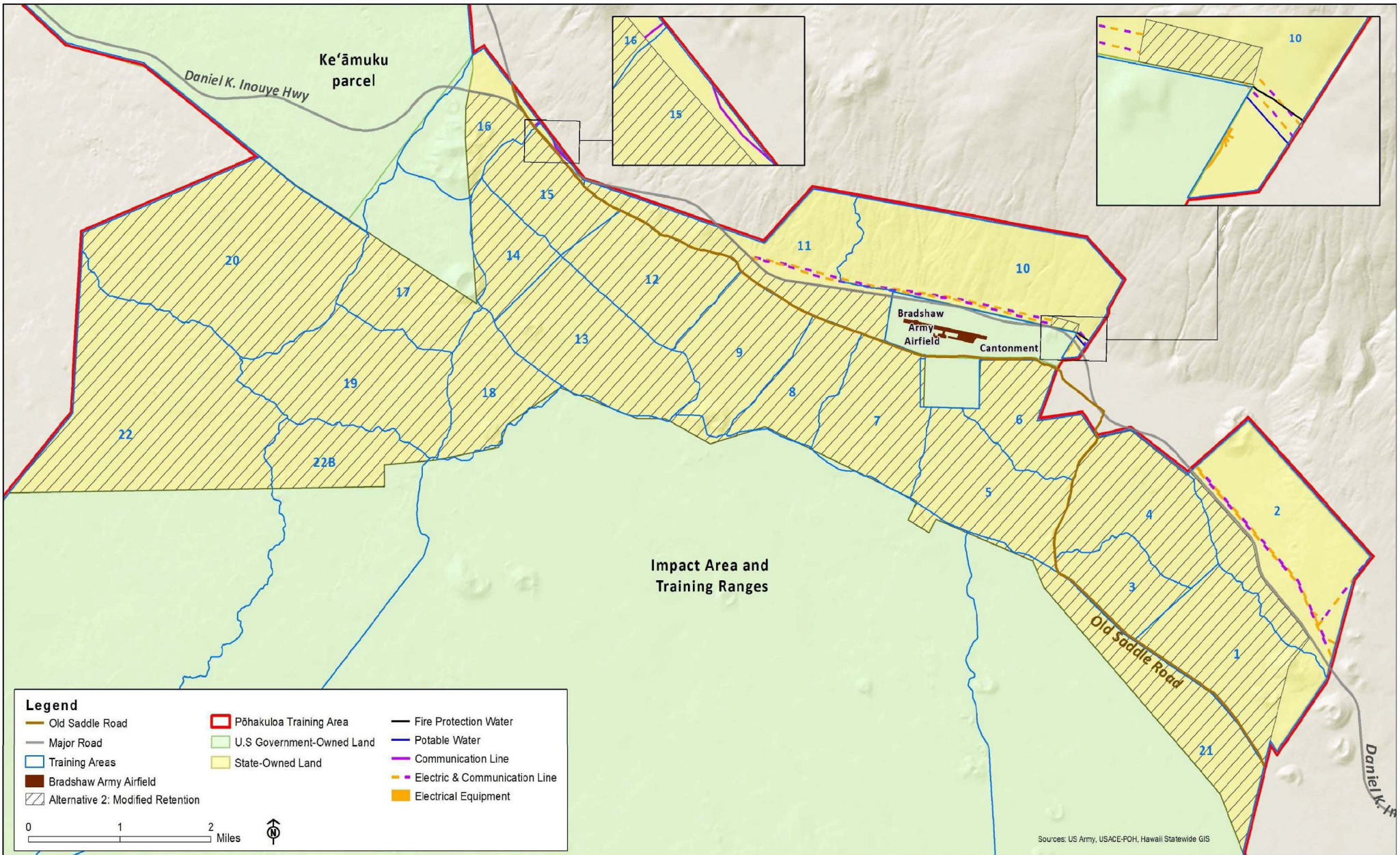
SITE LAYOUT
PŌHAKULOA TRAINING AREA

EXHIBIT
B



FULL RETENTION ALTERNATIVE
PŌHAKULOA TRAINING AREA

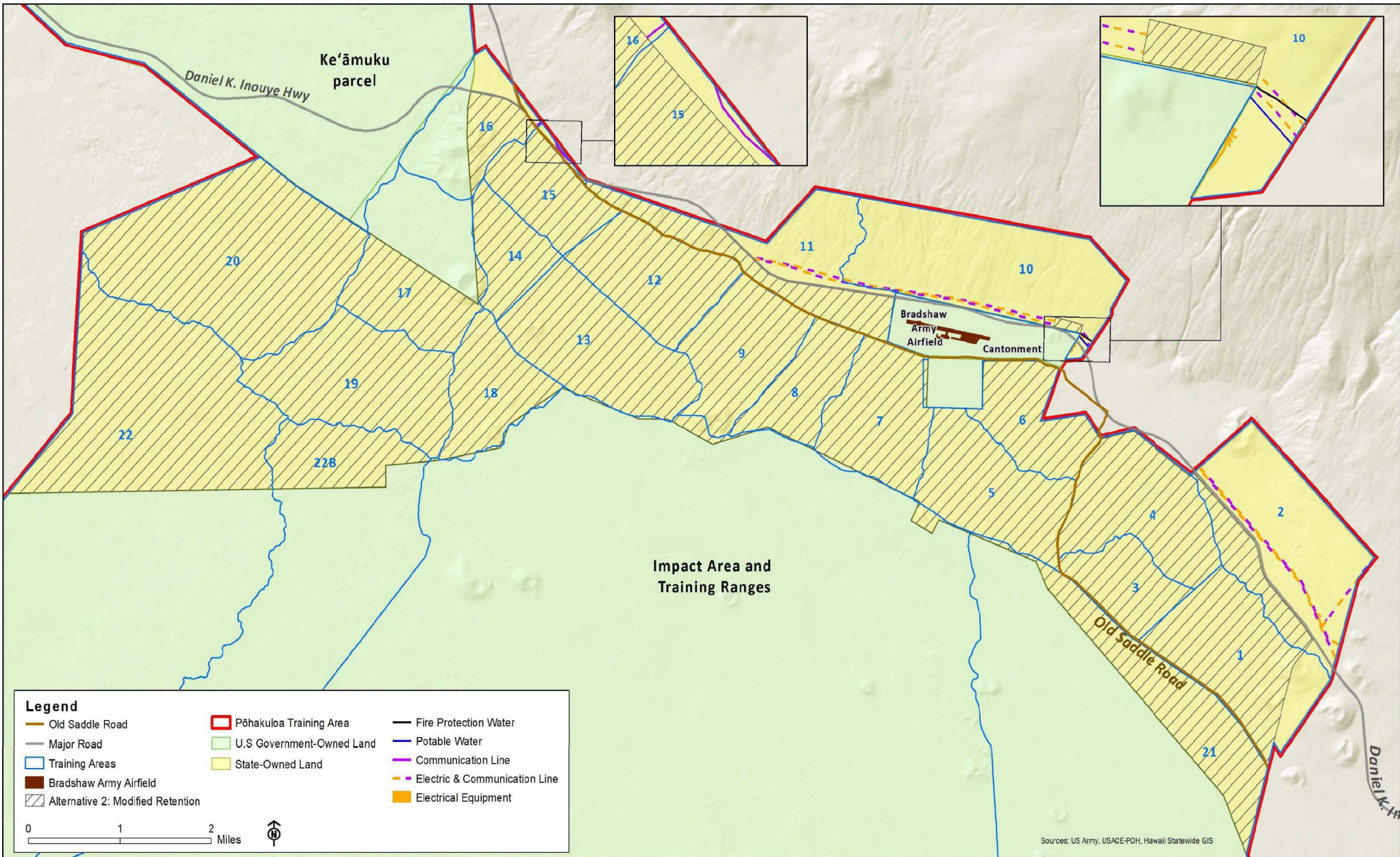
EXHIBIT
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MODIFIED RETENTION ALTERNATIVE

PŌHAKULOA TRAINING AREA

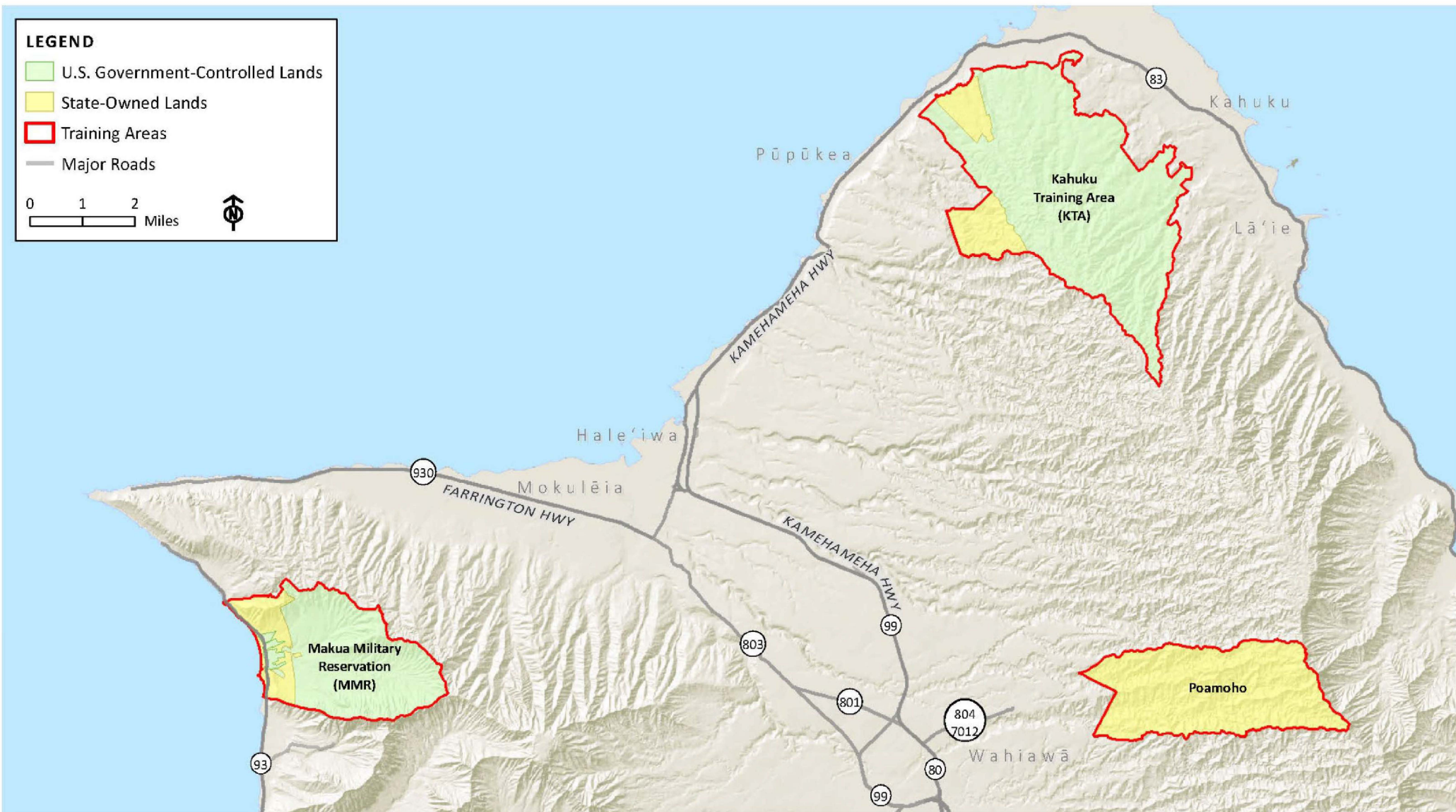
**EXHIBIT
D**



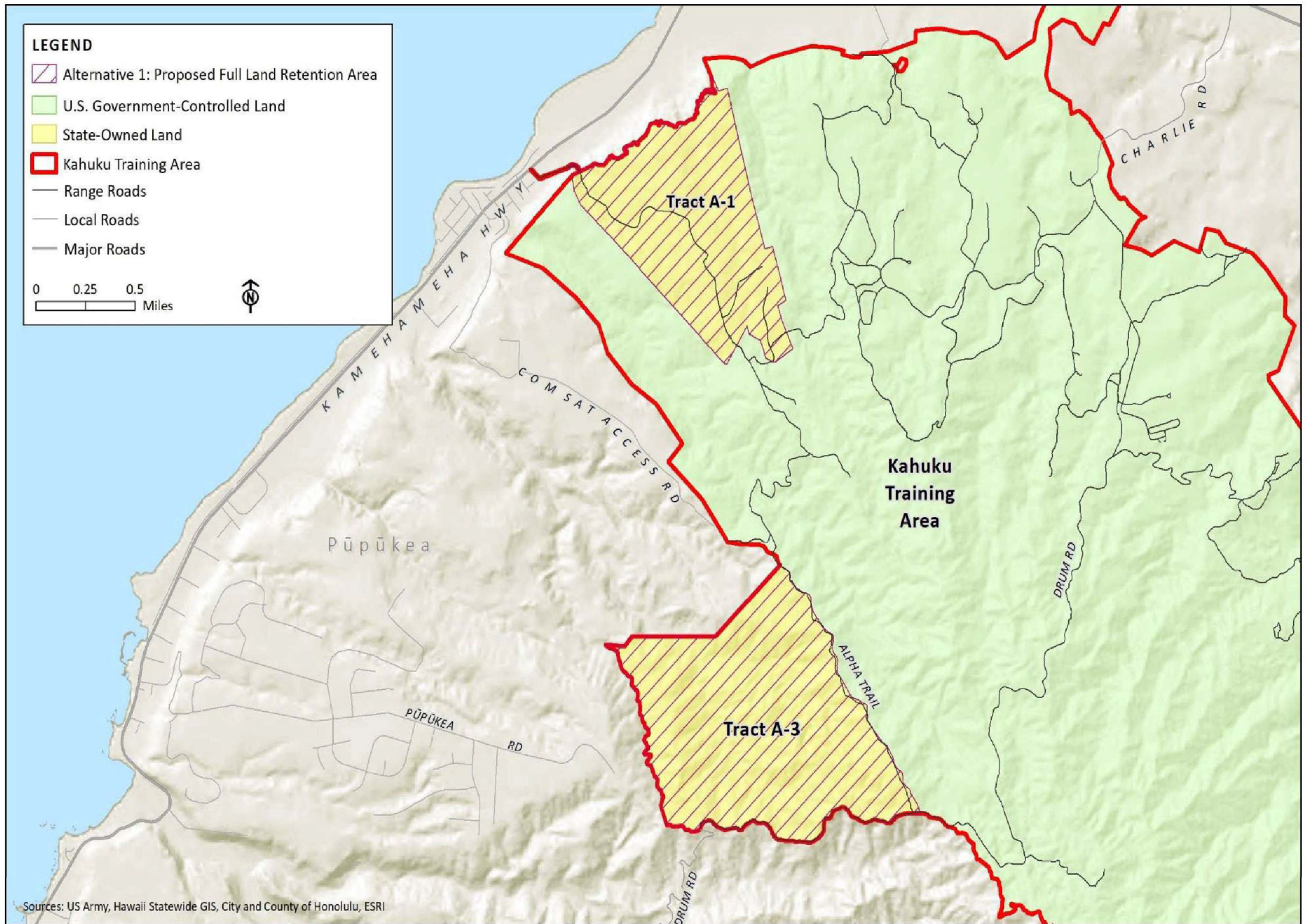
MINIMUM RETENTION ALTERNATIVE

PŌHAKULOA TRAINING AREA

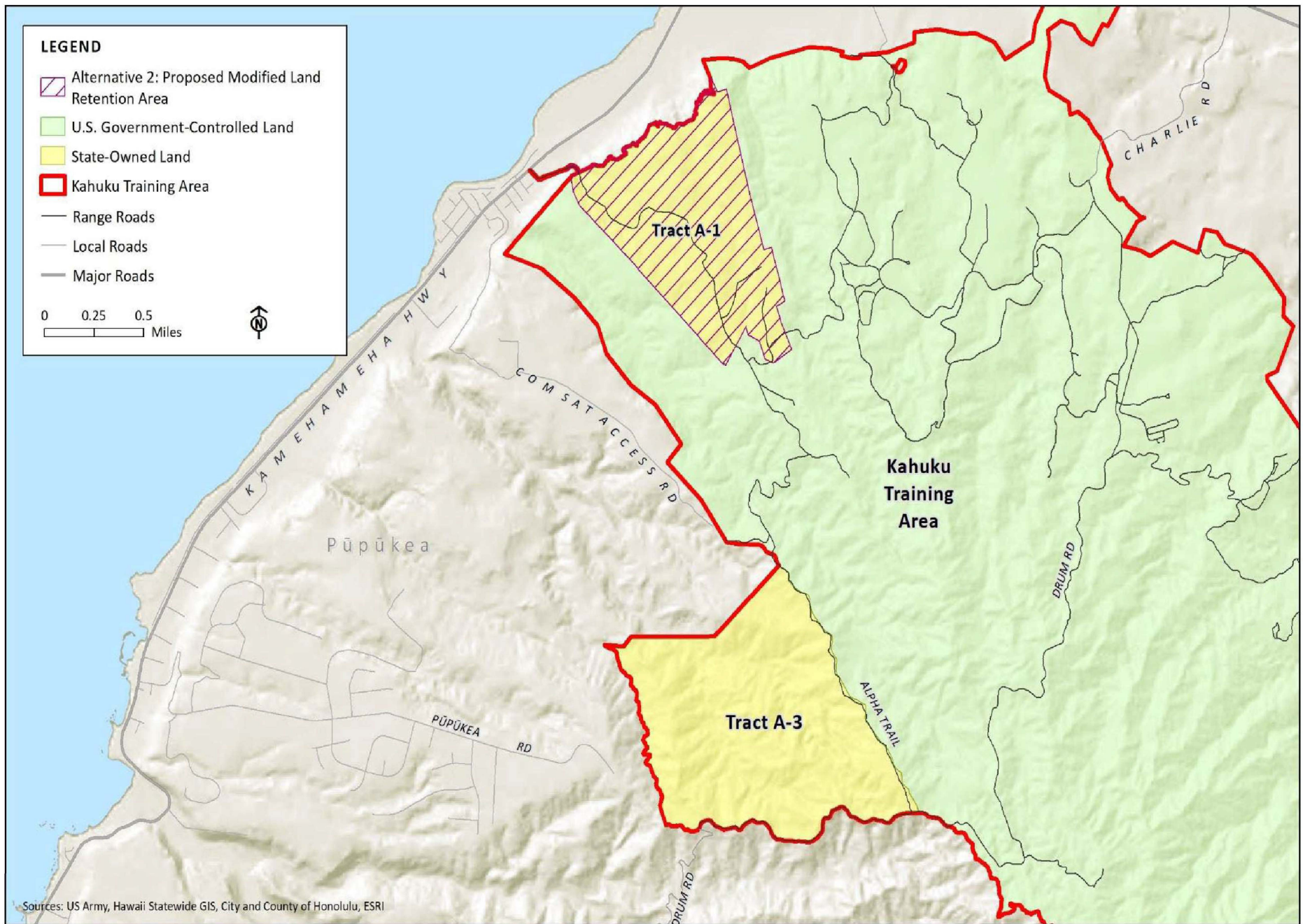
EXHIBIT
E



LOCATION MAP
 KAHUKU, KAWAILOA-POAMOHO, AND MĀKUA TRAINING LANDS

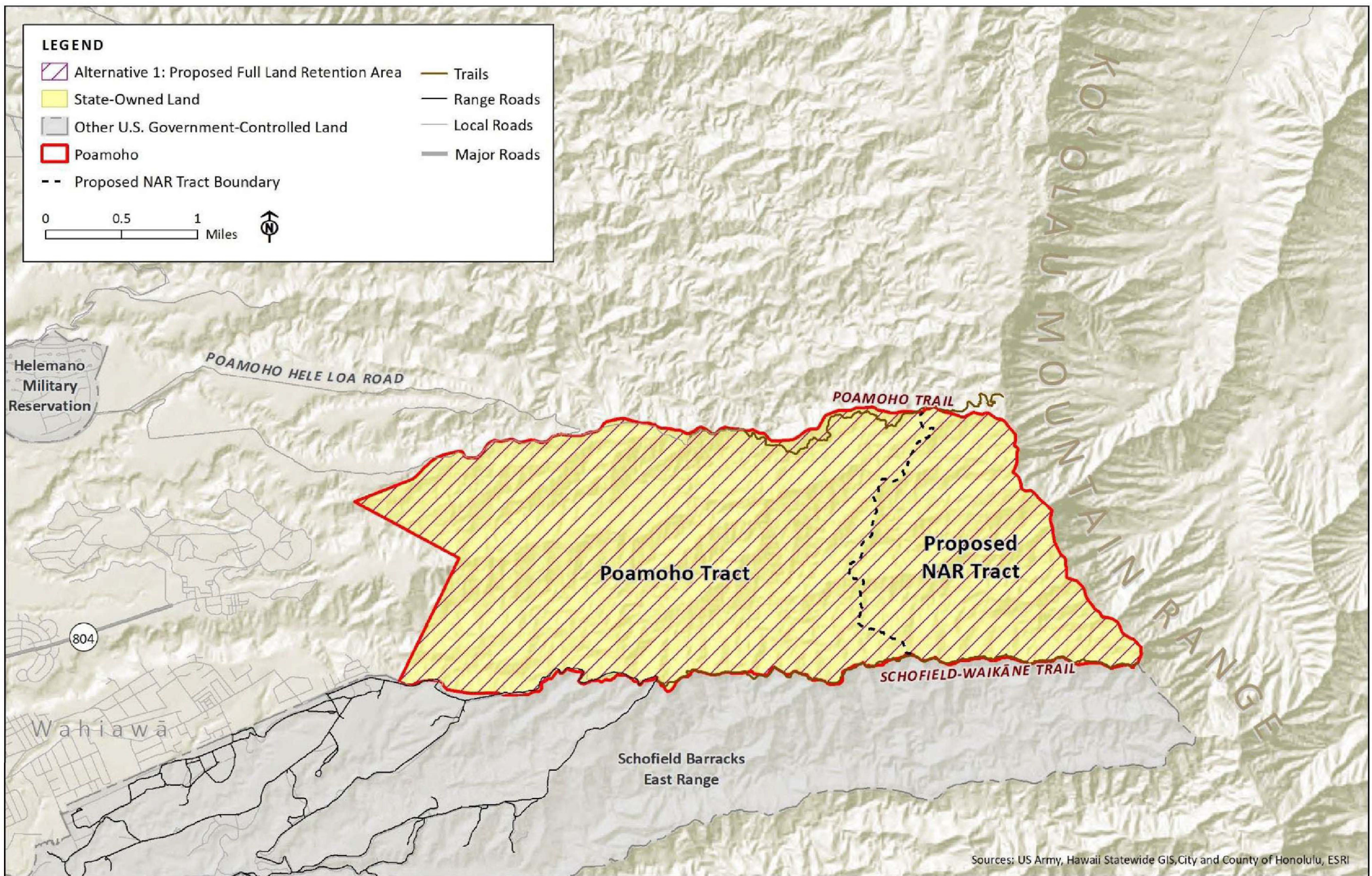


FULL RETENTION ALTERNATIVE
KAHUKU TRAINING AREA

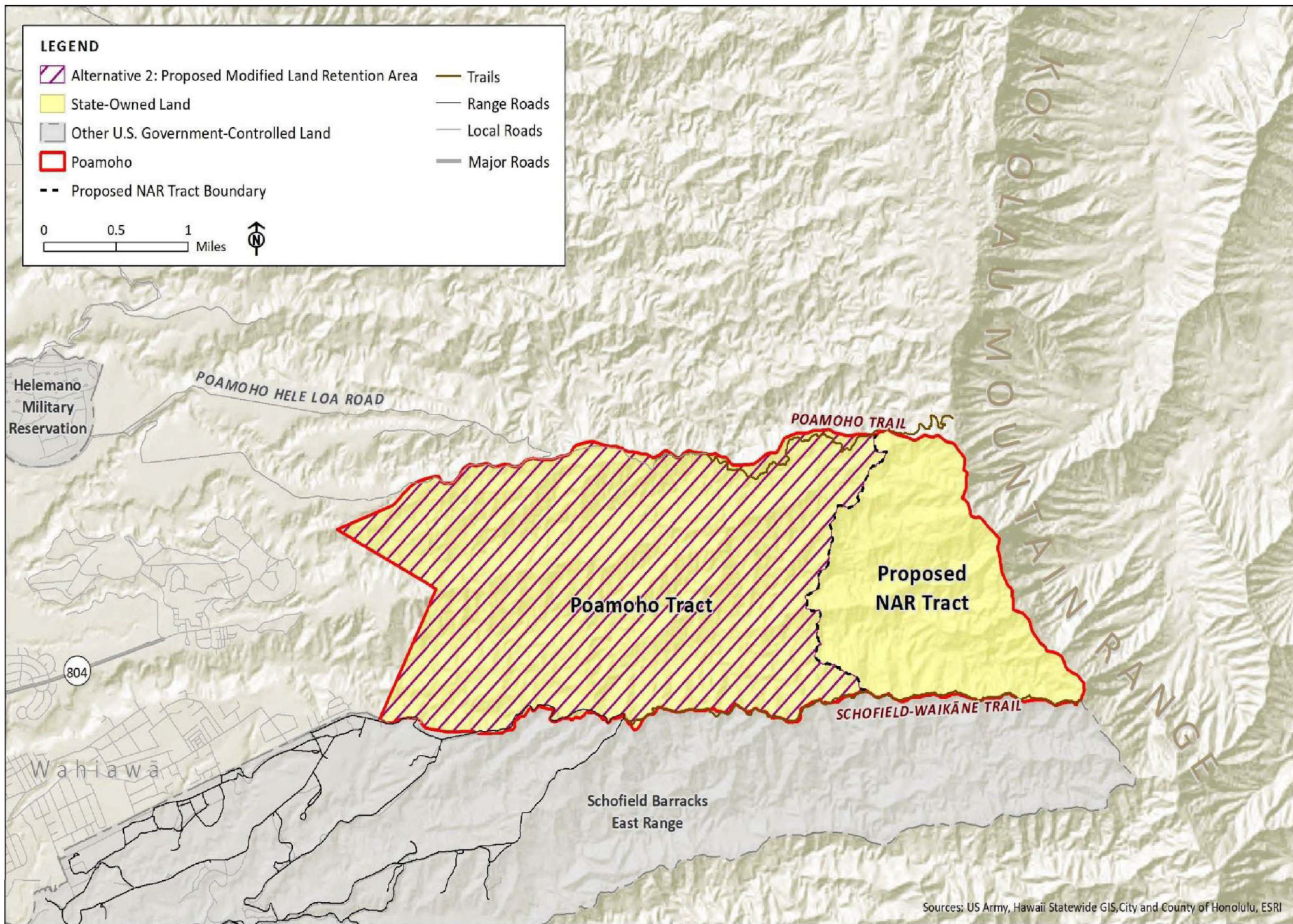


MODIFIED RETENTION ALTERNATIVE
KAHUKU TRAINING AREA

EXHIBIT
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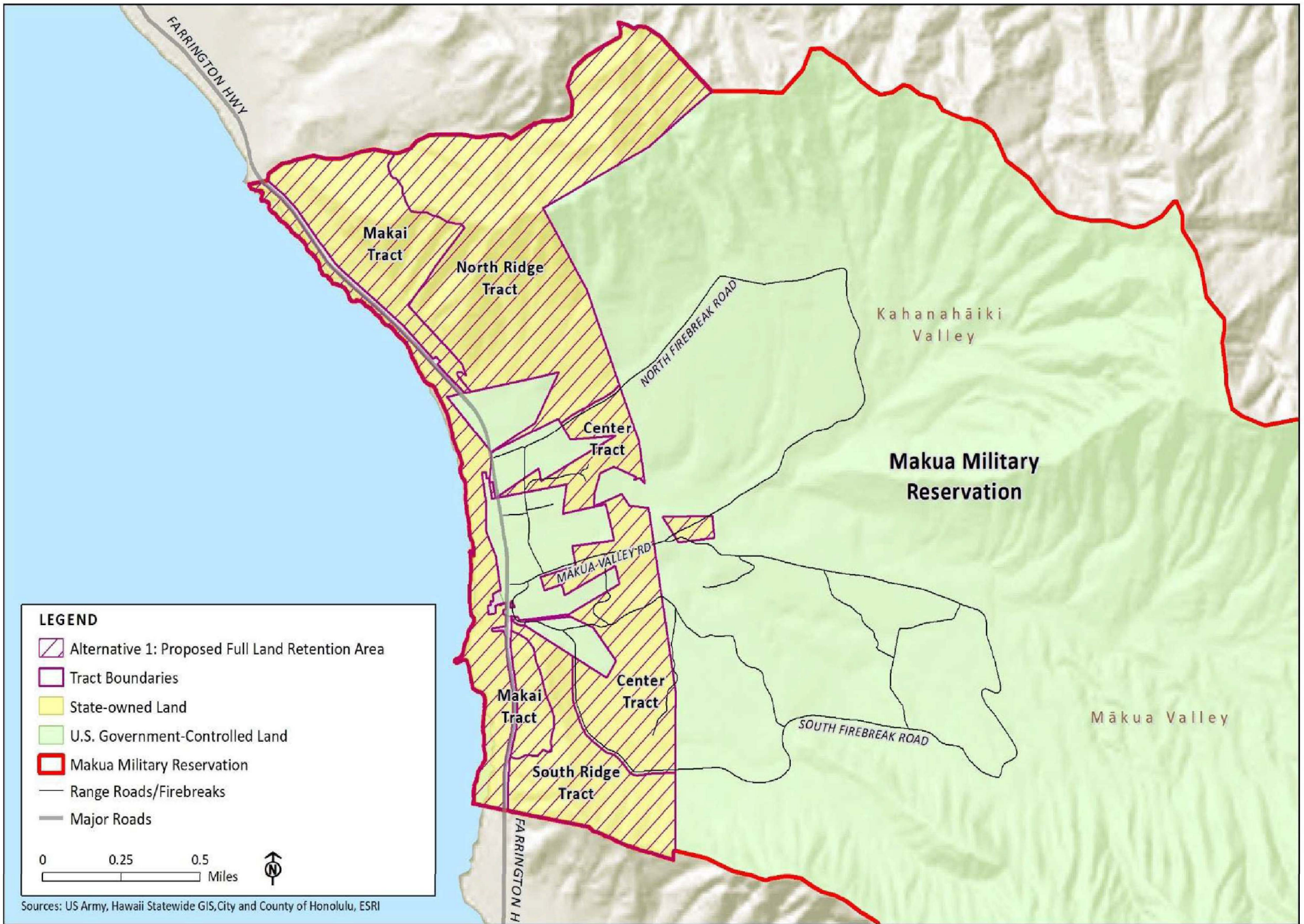


FULL RETENTION ALTERNATIVE
 KAWAIILOA - POAMOHO TRAINING AREA

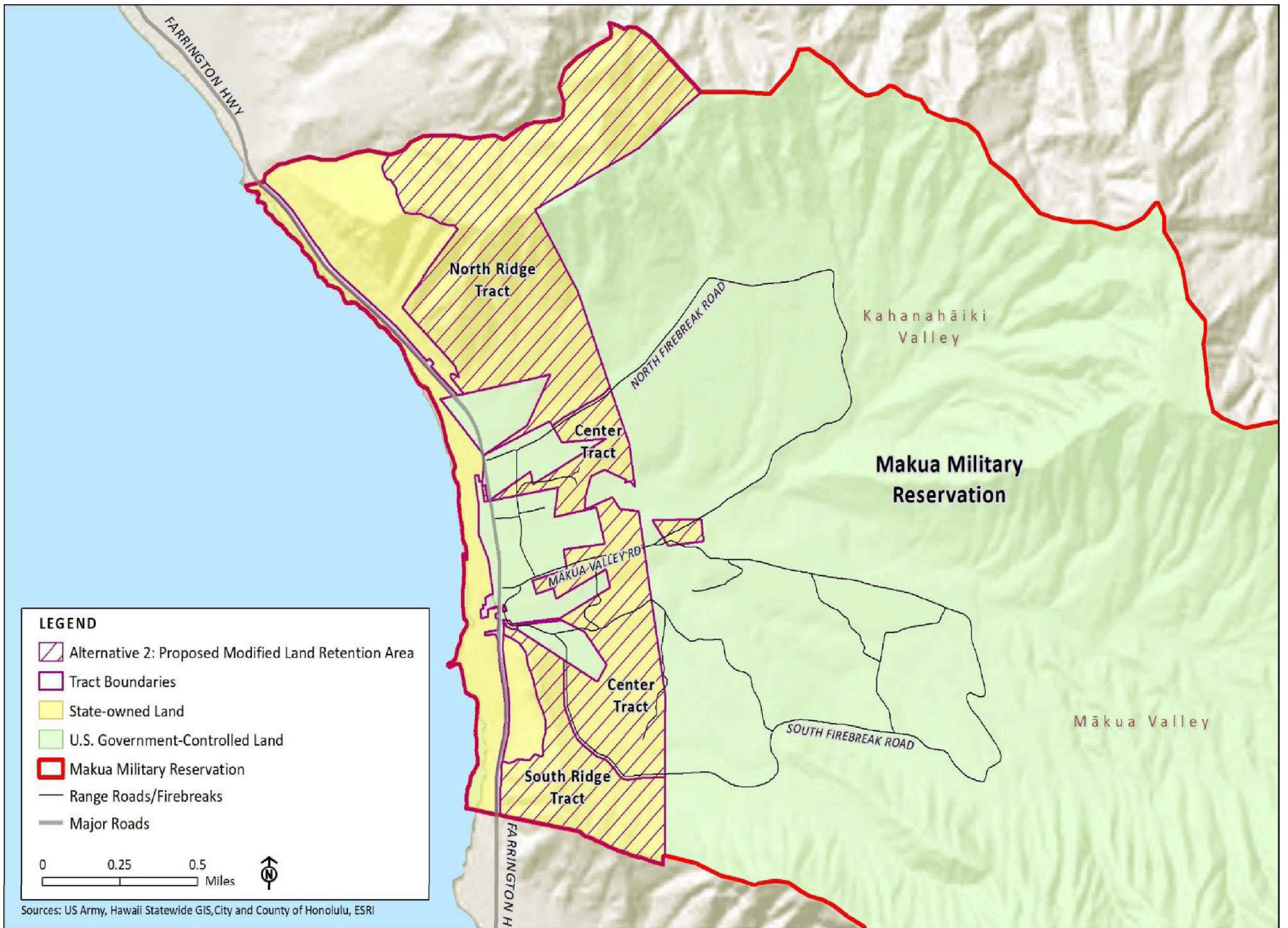


MODIFIED RETENTION ALTERNATIVE
KAWAILOA - POAMOHO TRAINING AREA

EXHIBIT
J

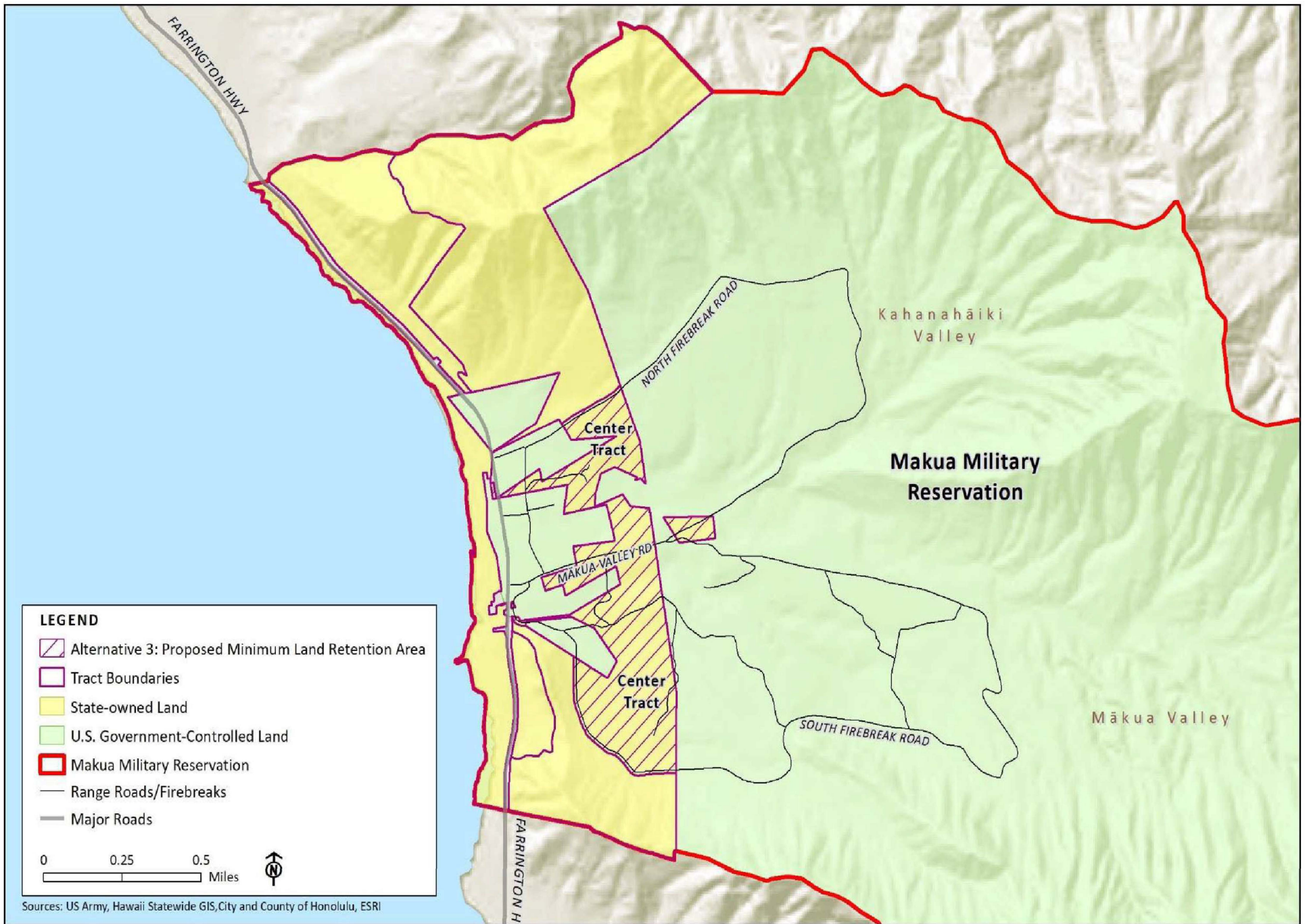


FULL RETENTION ALTERNATIVE
MĀKUA MILITARY RESERVATION



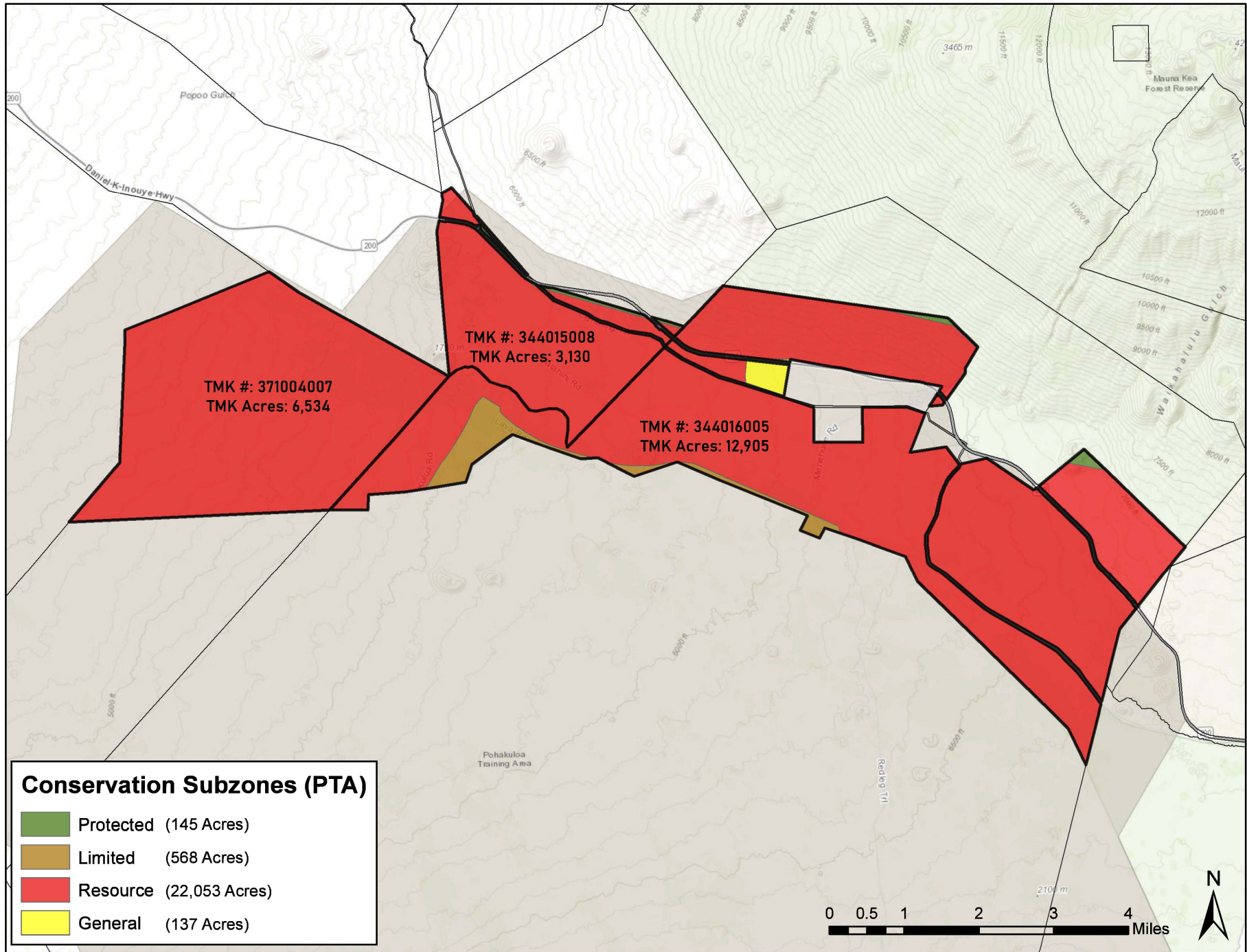
MODIFIED RETENTION ALTERNATIVE

MĀKUA MILITARY RESERVATION



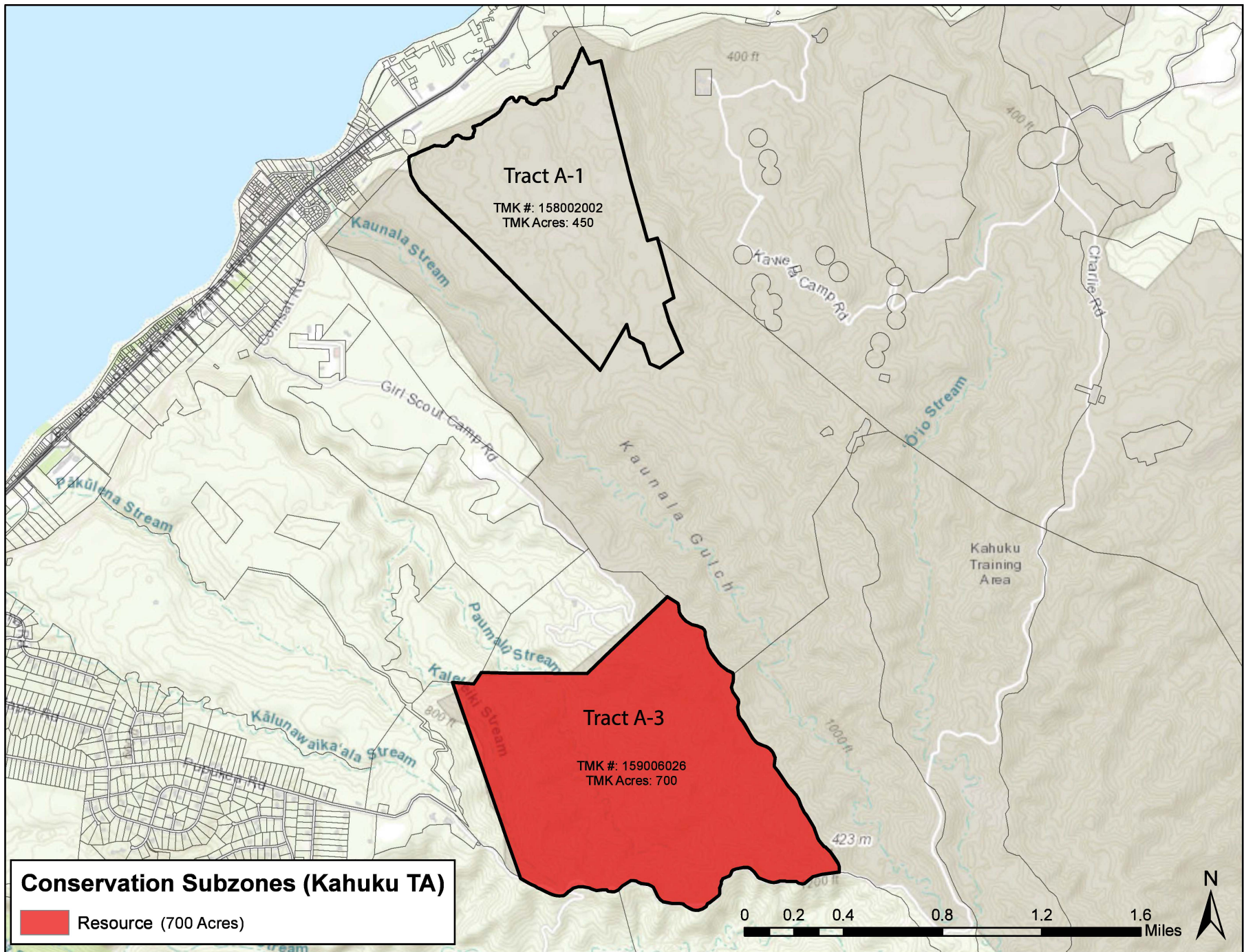
MINIMUM RETENTION ALTERNATIVE
MĀKUĀ MILITARY RESERVATION

EXHIBIT
M

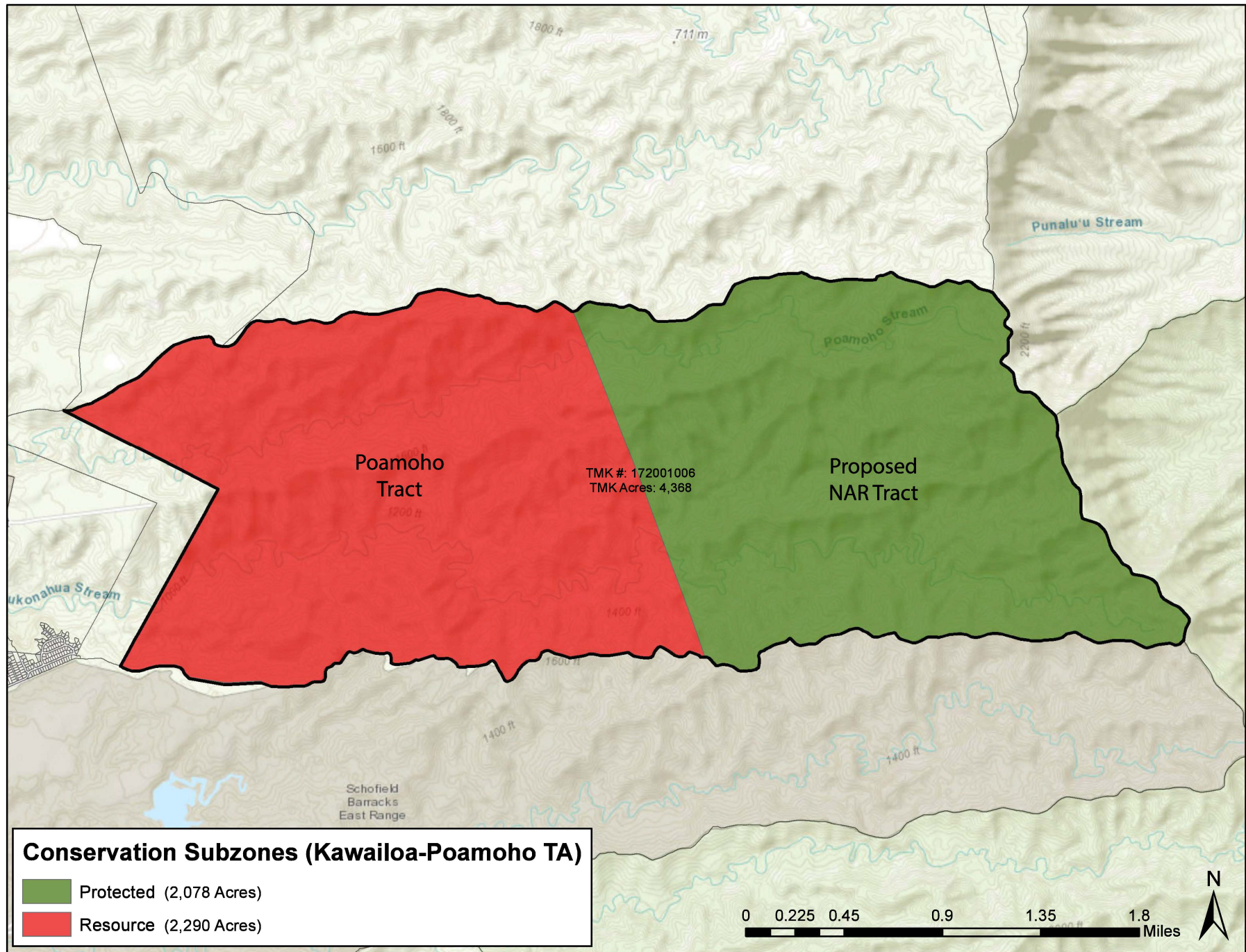


CONSERVATION DISTRICT MAP
 PŌHAKULOA TRAINING AREA

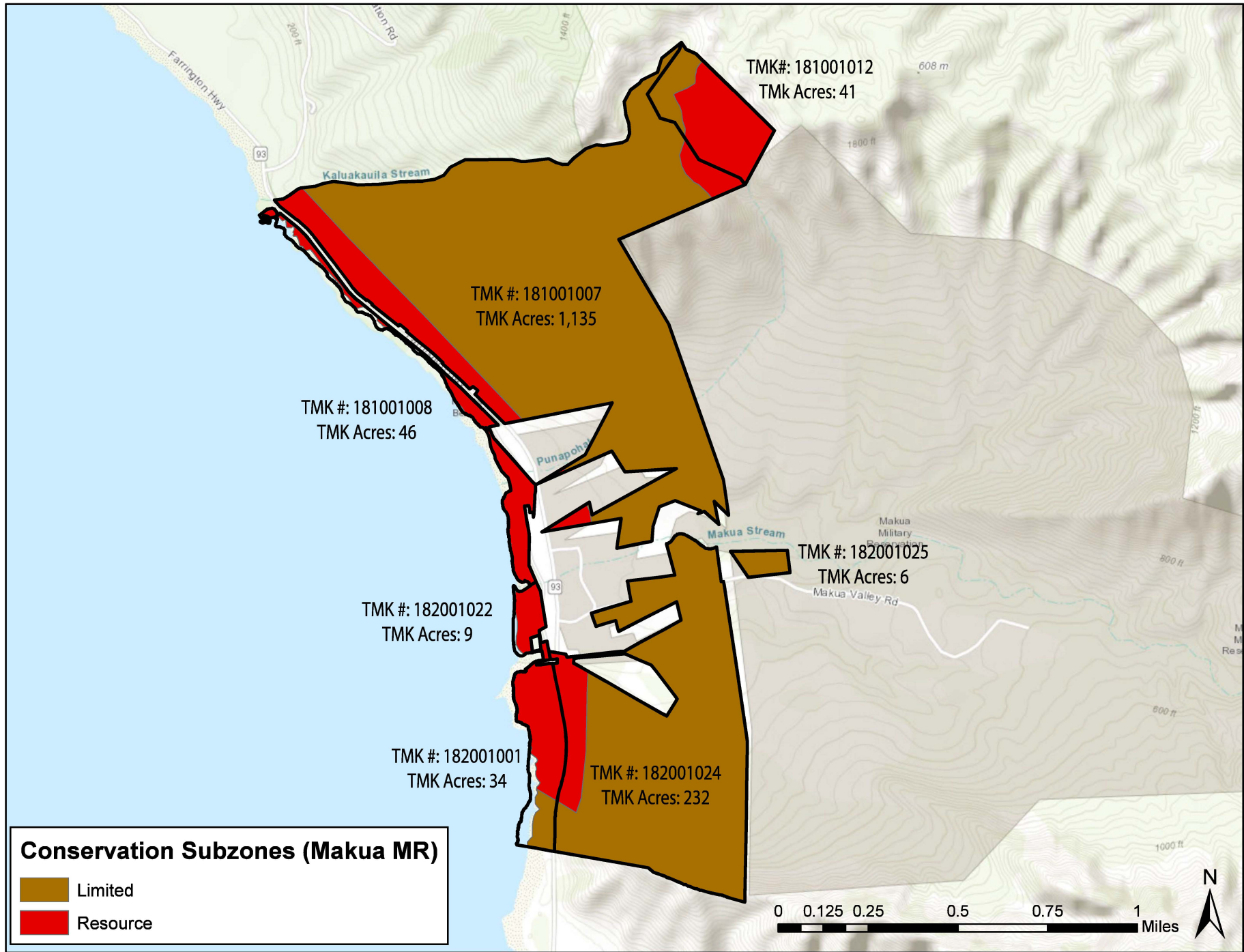
EXHIBIT
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CONSERVATION DISTRICT MAP
 KAHUKU TRAINING AREA



CONSERVATION DISTRICT MAP
KAWAILOA-POAMOHO TRAINING AREA



CONSERVATION DISTRICT MAP
 MĀKUA MILITARY RESERVATION

EXHIBIT
Q