

**From:** [Jim Albertini](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Concerning Pohakuloa  
**Date:** Thursday, October 26, 2023 8:03:13 AM

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## **Written testimony to DLND concerning Pohakuloa lease.**

**Some community concerns expressed about PTA include the following:**

- 1. What possible toxins are blowing in the dust, wind, and smoke off PTA from more than 75 years of bombing and shelling, including the use of Depleted Uranium (DU) radiation rounds at PTA? It has been suggested that an independent authority install air filters 360 degrees surrounding the base at government expense to see what might be coming off the base. What is your evaluation of PTA's lack of response to Hawaii County Council's resolution 639-08 passed in July 2008 by a vote of 8-1 calling on 8 actions to be taken by PTA.**
- 2. There are growing concerns about spreading wildfires started at PTA from bombing and shelling. Is PTA, located in the dry, windy center of Hawaii Island, our "Lahaina" fire waiting to happen?**
- 3. There are growing concerns, in light of Military Red Hill fuel contamination of the the aquifer on Oahu about toxins from PTA possibly contaminating the drinking water of Hawaii Island. Were military toxins found in the two water wells drilled at PTA 10 years ago? Were the water wells tested for a wide range of military toxins? Why aren't those wells being used by PTA instead of paying \$2 million yearly to haul water to PTA?**
- 4. What are the military plans for clean up of all the Unexploded Ordnance (UXO) and other toxins on the entire 133,000- acres of PTA? I note that maps of PTA say "All of PTA should be considered a Dud Hazard Area."**
- 5. It's been reported that less than half of PTA has been surveyed for cultural sites in 75 years. Why the delay in doing cultural surveys for the entire base?**
- 6. There are growing community concerns about not renewing or canceling the State lease of 23,000 acres for 65 years at a total cost of \$1 and the rescinding of the US presidential executive order in 1964 that seized 84,000 acres of Hawaiian crown and government lands indefinitely for zero costs.**
- 7. What are the current number of live-rounds, and listing of all the various types of rounds, fired at PTA. Is it 15 million, 20 million, 25 million? The last figure I believe released about 20 years ago noted 14.8 million live rounds fired annually at PTA. What other rounds, besides live rounds, have been fired at PTA?**

**Jim Albertini, president**

**of Malu 'Aina**

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aina.org](http://www.malu-<br/>aina.org)

**From:** [george.cutright](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] LAND BOARD SUBMITTALS – 10/27/23  
**Date:** Thursday, October 26, 2023 7:55:37 AM

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Hello,

I'm writing in regards to leases held by the military on Hawaiian land. I strongly encourage the DLNR to not renew any leases for the military. These lands should be in the hands of the people. The military has consistently shown that they are not good caretakers of the 'āina. How many spent munitions are we expected to tolerate on our land? The courts have found that the military has not cleaned up Pohakuloa. They have not demonstrated that this will change in the future. These are grounds to not renew the military leases. I urge you to not renew. Let the people care for the 'āina.

Thank you,  
George Cutright



October 25, 2023

*Via Electronic Mail*

Board of Land and Natural Resources  
Hawai'i Department of Land and Natural Resources  
[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Re: October 27, 2023, Board of Land and Natural Resources Meeting; **Agenda Item D-11**; Informational Briefing on Army Training Land Retention Efforts for the Pōhakuloa Training Area on the Island of Hawai'i and for the Kahuku, Kawailoa-Poamoho, and Mākua Training Lands on the Island of O'ahu

Dear Chair Chang and Members of the Board of Land and Natural Resources,

Mahalo for this opportunity to comment on the U.S. Army's efforts to retain use of State-owned lands within Mākua Military Reservation on O'ahu beyond the 2029 expiration of the existing lease, including the Army's recent proposal to acquire fee simple title to those lands in exchange for lands currently owned by the U.S. Government, which would be conveyed to the State. For decades, Earthjustice has advocated for the Army to return to the people of Hawai'i military-occupied lands in the ahupua'a of Mākua, Kahanahāiki, and Ko'iahi. When the Army seized these lands for military training in 1942, it promised to return them within six months of the end of World War II. Nearly seven decades later, it is long past time to hold the Army to that promise. The Board should refuse any proposal that continues the Army's occupation and use of these sacred lands.

We attach for the Board's consideration the comments Earthjustice submitted on the scope of the environmental impact statement the Army is preparing for its proposal to secure long-term military use of State-owned lands at Mākua, Kahanahāiki, and Ko'iahi. For purposes of today's discussion, the most salient points are:

- Continued military occupation and use of the sacred lands at Mākua, Kahanahāiki, and Ko'iahi is *hewa*; those activities must cease immediately.
- Any decision about the future ownership and use of the lands at Mākua, Kahanahāiki, and Ko'iahi must consider the United States' involvement in the illegal overthrow of the Hawaiian Kingdom, which Congress acknowledged in Public Law 103-150 (commonly known as the "Apology Resolution") (attached). Among other things, the illegal overthrow resulted in the United States—and, subsequently, the State of Hawai'i—taking title to crown, government, and public lands of the Kingdom of Hawai'i—

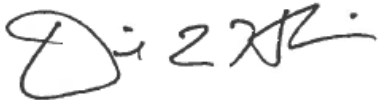
including the lands at Mākua, Kahanahāiki, and Koʻiahi—“without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.” Pub. L. 103-150, 107 Stat. 1510, 1512 (Nov. 23, 1993). Continued military occupation, degradation, and desecration of those lands would inflict severe cultural and psychological harm on the Native Hawaiian people, who were unlawfully dispossessed of those lands.

- In deciding the fate of the State-owned lands at Mākua, Kahanahāiki, and Koʻiahi, the Board must consider the substantial benefits that would come from freeing them—and the public-trust resources found there—from continued military occupation, putting an end to further training-related degradation, contamination, and destruction. The mere fact that the Army holds leases for these lands has largely put them off-limits to beneficial use by the public for generations. The Army severely limits access for cultural, subsistence and recreational purposes and often suddenly (and unilaterally) shuts down public access altogether. *See, e.g., Complaint, Mālama Mākua v. Carter*, Civ. No. 16-00597 (D. Haw. Nov. 7, 2016) (attached) (notwithstanding court-ordered settlement, Army unilaterally shut down cultural access). Allowing the lease to expire without renewal or transfer to the Army would reopen these lands to Hawaiʻi’s people, conferring substantial benefits from increased public access for cultural, subsistence and recreational purposes and allowing these lands to return to culturally appropriate uses.
- The Board should also bear in mind that decades of military occupation of and training on these lands have exacted their toll, with documented destruction of imperiled species, extensive erosion and sedimentation, noise blanketing surrounding areas, and contamination with unexploded ordnance (“UXO”). Ending the leases and requiring the Army to return these lands would confer substantial benefits by preventing further degradation and harm. It would also trigger the Army’s obligation to “remove weapons and shells used in connection with its training activities.” 1964 Mākua Military Reservation Lease (attached) ¶ 26. Removing UXO would reduce threats to the public outside the gates of the Army’s training installations (*e.g.*, potential for accidental detonations, with the blast radius extending across Farrington Highway to Mākua Beach; offsite migration of contaminants) and would increase opportunities for cultural, subsistence and recreational activities conducted on lands currently leased to the Army.
- Due to litigation that Earthjustice brought on behalf of Mālama Mākua, the Army has not used the lands within Mākua Military Reservation for any live-fire training since June 2004; the military has not fired a single bullet there for over 19 years ago. Even though the military has long been able to carry out its national security mission without live-fire training at Mākua Military Reservation, the Army nonetheless reserves the option to “propose the resumption of live-fire training ... in the future.” Environmental Impact Statement Preparation Notice (July 2021) at 2-2, *available at* [https://files.hawaii.gov/dbedt/erp/Doc\\_Library/2021-07-23-OA-EISPN-Army-Training-](https://files.hawaii.gov/dbedt/erp/Doc_Library/2021-07-23-OA-EISPN-Army-Training-)

[Land-Retention-on-Oahu.pdf](#). The Board should take that option off the table once and for all by declining to renew the Army's lease or to convey ownership of State-owned lands at Mākua, Kahanahāiki, and Ko'iahi.

We appreciate your consideration of our testimony. We urge the Board to require the Army to return the State-owned lands at Mākua, Kahanahāiki, and Ko'iahi when the current lease expires in 2029, or sooner, if possible. The Board should also hold the Army to the terms of the current lease, which mandate removal of all "weapons and shells used in connection with its training activities." 1964 Mākua Military Reservation Lease ¶ 26.

Regards,

A handwritten signature in black ink, appearing to read "DLH", with a stylized flourish extending to the right.

David L. Henkin  
Senior Attorney, Earthjustice

DLH/tt  
Attachments



August 31, 2021

*Via Electronic Mail*

O'ahu ATLR EIS Comments  
usarmy.hawaii.nepa@mail.mil

Re: Scoping for Environmental Impact Statement for Army Training Land Retention of State Lands at Kahuku Training Area, Poamoho Training Area, and Makua Military Reservation, Island of O'ahu, Hawai'i, 86 Fed. Reg. 39,007 (July 23, 2021), 86 Fed. Reg. 43,230 (Aug. 6, 2021)

To Whom It May Concern:

Earthjustice submits these comments on behalf of Mālama Mākua in response to the U.S. Army's request for public input on the proper scope of the environmental impact statement ("EIS") on the Army's proposal to secure long-term military use of State-owned lands at Kahuku Training Area ("KTA"), Poamoho Training Area ("Poamoho"), and Makua Military Reservation ("MMR") on O'ahu, for which current leases expire on August 16, 2029. *See* 86 Fed. Reg. 39,007 (July 23, 2021); 86 Fed. Reg. 43,230 (Aug. 6, 2021). The Army is preparing this EIS pursuant to the National Environmental Policy Act ("NEPA") to inform the Army's own decisions regarding whether to continue occupying and training on State-owned lands and also pursuant to the Hawai'i Environmental Policy Act ("HEPA") to inform the State of Hawai'i Board of Land and Natural Resources' ("BLNR's") decisions regarding the public trust resources under its care. *See* Environmental Impact Statement Preparation Notice ("EISPN") (July 2021) at 1-9 to 1-10, available at [http://oeqc2.doh.hawaii.gov/Doc\\_Library/2021-07-23-OA-EISPN-Army-Training-Land-Retention-on-Oahu.pdf](http://oeqc2.doh.hawaii.gov/Doc_Library/2021-07-23-OA-EISPN-Army-Training-Land-Retention-on-Oahu.pdf). Please note that, while Mālama Mākua's mission focuses on safeguarding the sacred lands at Mākua, Kahanahāiki and Ko'iahi that lie within MMR, these comments apply equally to the EIS's analysis of the Army's proposal to retain training lands at KTA and Poamoho.

As a threshold matter, we emphasize that Mālama Mākua considers continued military occupation and use of MMR, KTA and Poamoho for military training to be *hewa*, which should cease immediately. Accordingly, Mālama Mākua strongly supports the "no action" alternative, under which "the Army would not retain any of the State-owned land on KTA, Poamoho, or MMR after the current lease expiration." EISPN at 2-12.

While Mālama Mākua opposes any continued military occupation or use of MMR, KTA and Poamoho, it understands that the purpose of the EIS process "is to require disclosure of relevant

environmental considerations that were given a ‘hard look’ by the agency, and thereby to permit informed public comment on proposed action and any choices or alternatives that might be pursued with less environmental harm.” *Lands Council v. Powell*, 395 F.3d 1019, 1027 (9<sup>th</sup> Cir. 2005); *see also* Haw. Rev. Stat. §§ 343-1, 343-2. Mālama Mākua offers its comments to assist the Army and BLNR in complying with their duties under NEPA and HEPA.

### Impacts Associated with Illegal Overthrow of Hawai‘i

The EIS’s analysis of the impacts of any alternative that proposes continued military occupation of and training on State-owned lands at MMR, KTA or Poamoho must take into account the United States’ involvement in the illegal overthrow of the Hawaiian Kingdom, which Congress acknowledged in Public Law 103-150 (commonly known as the “Apology Resolution”) (attached). Among other things, the illegal overthrow resulted in the United States—and, subsequently, the State of Hawai‘i—taking title to crown, government and public lands of the Kingdom of Hawai‘i—including lands at MMR, KTA and Poamoho—“without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.” Pub. L. 103-150, 107 Stat. 1510, 1512 (Nov. 23, 1993). Continued military occupation, degradation and desecration of Kingdom lands, including the “State-owned” lands at MMR, KTA and Poamoho that are the subject of the EIS, inflict severe cultural and psychological harm on the Native Hawaiian people, who were unlawfully dispossessed of those lands.

### Analysis of the “No Action” Alternative Must Consider the Substantial Benefits of Terminating Military Occupation and Use of State-Owned Lands.

In analyzing the “no action” alternative, the Army must consider the substantial benefits that would come from freeing the State-owned lands at MMR, KTA and Poamoho—and the public-trust resources found there—from continued military occupation and from putting an end to further training-related degradation, contamination, and destruction.

The mere fact that the Army holds leases for these lands has largely put them off-limits to beneficial use by the public for generations. The Army severely limits access for cultural, subsistence and recreational purposes and often suddenly (and unilaterally) shuts down public access altogether. *See, e.g.*, EISPN at 2-1 to 2-2 (only portions of KTA and Poamoho open for recreation or hunting and such access is permitted only “on weekends and holiday” or seasonally); Complaint, *Mālama Mākua v. Carter*, Civ. No. 16-00597 (D. Haw. Nov. 7, 2016) (attached) (notwithstanding court-ordered settlement, Army unilaterally shut down cultural access at MMR). Allowing the leases to expire without renewal would reopen these lands to Hawai‘i’s people, conferring substantial benefits from increased public access for cultural, subsistence and recreational purposes and allowing these lands to return to culturally appropriate uses.

The decades of military occupation of and training on these lands have exacted their toll, with documented destruction of imperiled species, extensive erosion and sedimentation, noise blanketing surrounding areas, and contamination with unexploded ordnance (“UXO”) confirmed at MMR and likely at KTA. *See* EISPN at 3-5. Ending the leases would confer substantial benefits by preventing further degradation and harm. It would also trigger the Army’s obligation to “remove weapons and shells used in connection with its training activities.” 1964 MMR Lease (attached) ¶ 26; 1964 KTA Lease (attached) ¶ 29; 1964 Poamoho Lease (attached) ¶ 29. Removing UXO would reduce threats to the public outside the gates of the Army’s training installations (*e.g.*, potential for accidental detonations, with the blast radius extending into public areas; offsite migration of contaminants) and would increase opportunities for cultural, subsistence and recreational activities conducted on lands currently leased to the Army.

#### Analysis of Alternatives Must Consider Measures to Minimize Impacts of Continued Military Occupation and Use of State-Owned Lands

The Army claims in its EISPN that it is only “following acceptance of the EIS” that BLNR may need to consider “[w]hat methods would be used to allow Army retention of the State-owned lands, and what terms would be associated with the selected methods.” EISPN at 1-10. The Army misstates the legally mandated procedures. Under Hawai’i law, the EIS must evaluate “reasonable alternatives that could attain the objectives of the action,” with “particular attention ... given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks of the action.” Haw. Admin. R. § 11-200.1-24(h). Alternatives should examine “different designs or details of the proposed action that would present different environmental impacts.” *Id.* § 11-200.1-24(h)(1). Federal law similarly requires the alternatives analysis in an EIS to “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1502.14(e). Accordingly, under both state and federal law, the EIS itself, not some analysis performed following completion of the NEPA/HEPA process, must evaluate alternatives that incorporate measures to minimize the impacts of continued military occupation and use of any portion of MMR, KTA or Poamoho (*e.g.*, lease conditions) that the Army proposes to retain.

Reasonable conditions for any continued military occupation/use of State-owned lands that the EIS must evaluate include, but are not limited to: (1) a prohibition on any live-fire training; (2) provision for community observers to monitor military activities; (3) an ongoing obligation to clear all UXO; and (4) guarantees of adequate opportunities for cultural, subsistence and recreational access. These are discussed in greater detail below.



*Prohibition on Live-Fire Training*

As the Army notes in its EISPN, “[n]one of the State-owned land at any of the three training areas is currently used for live-fire training or storage of live munitions.” EISPN at 3-13. The Army has not fired a single shot at MMR since June 2004, more than 17 years ago, and it has never conducted live-fire training at Poamoho. *See id.* Even though the military has long been able to carry out its national security mission without live-fire training at MMR, KTA or Poamoho, the Army nonetheless wants to reserve the option to “propose the resumption of live-fire training in some form in the future on State-owned lands.” *Id.* at 2-2. The EIS should evaluate alternatives that take that option off the table.

Specifically, the EIS should evaluate alternatives that prohibit live-fire training on any State lands that the military retains after August 16, 2029. Such alternatives would ensure against the significant harm to public trust resources associated with any future resumption of live-fire training. Harms that such alternatives would avoid or minimize include, but are not limited to, training-related fires that destroy native habitat, kill imperiled species, pollute the air, and result in contaminated runoff from burned lands; destruction of cultural resources; restrictions on cultural, subsistence, and recreational access by the public to training lands; hazards related to unexploded ordnance; noise impacts to surrounding communities and to areas used for recreation and/or subsistence hunting and fishing; and rendering the land unfit for future, beneficial, civilian use. *See, e.g.,* Final EIS for Military Training Activities at MMR (June 2009).

The 1964 leases that are currently in effect for MMR, KTA and Poamoho confirm that alternatives that prohibit live-fire training activities on state lands are both reasonable and feasible. All three leases contain conditions that prohibit the military from using “any portion of [leased state lands] as an impact area for explosive or incendiary munitions of any type.” 1964 MMR Lease ¶ 8; 1964 KTA Lease ¶ 15; 1964 Poamoho Lease ¶ 15. The leases for KTA and Poamoho further “limit firing on the premises to weapons not larger than .50 caliber.” 1964 KTA Lease ¶ 15; 1964 Poamoho Lease ¶ 15. Going forward, the prohibition on live-fire training on State-owned lands should be extended to prohibit the firing of *any* weapons either *on* leased State lands or *from* leased State lands *into* federally held training areas, which would confer protection (and, thus, significant benefit) to public trust resources on land that is currently under federal ownership. Notably, the Army’s stated need for continued military use of State-owned land at MMR, KTA and Poamoho “is to allow the military to **sustain current training and combat readiness requirements** on Army-managed lands in Hawai’i.” EISPN at 1-8 (emphasis added). As discussed, current training does not include any live-fire training at any of these facilities.

*Community Observers to Monitor Military Activities*

To minimize the impacts associated with military use of State-owned land, adequate monitoring of the Army's compliance with lease terms is vital. In *Ching v. Case*, 145 Hawai'i 148, 449 P.3d 1146 (2019), the Hawai'i Supreme Court held that the BLNR had breached its trust duties to monitor the Army's compliance with the terms of its lease for State-owned land located within Pōhakuloa Training Area on Hawai'i Island. To help ensure adequate monitoring of the Army's compliance with the conditions and limitations included in any new lease or other agreement for continued military occupation and use of State-owned lands at MMR, KTA or Poamoho, the EIS should examine alternatives that provide for community observers to monitor all military activities that take place on, or otherwise affect, leased lands.

The court-ordered settlement currently in effect for MMR confirms the reasonableness, feasibility and importance of imposing a community observer requirement. That agreement provides that "[a]t least one member of Mālama Mākua will be allowed access as an observer to each live-fire training exercise at MMR, post-training UXO cleanup, and post-training evaluation of damage to cultural sites." Settlement Agreement and Stipulated Order, *Mālama Mākua v. Rumsfeld*, Civ. No. 00-00813 SOM LEK, at ¶ 12 (D. Haw. Oct. 4, 2001) ("2001 Settlement") (attached). The settlement further provides for "[o]ther members of the Wai'anae Coast community" to serve as observers. *Id.* In consultation with Mālama Mākua, the Army established detailed protocols for monitoring by community observers. See Access by Members of Mālama Mākua and/or Members of the Wai'anae Coast to Observe Training at Mākua Military Reservation (Nov. 2, 2001) (attached).

During the limited period (from October 2001 to June 2004) when live-fire training occurred at MMR, Mālama Mākua and Wai'anae Coast community observers witnessed, flagged and prevented numerous violations by the Army of limitations on live-fire training imposed by the U.S. Fish and Wildlife Service to ensure compliance with the Endangered Species Act (*e.g.*, unit commanders attempting to continue training exercises when the burn index was too high and mortar rounds fired outside the firebreak roads). Conditioning any lease renewal on the Army allowing community observers would likewise help ensure compliance with lease terms that seek to prevent harm to the human environment.

*Comprehensive Removal of Unexploded Ordnance*

As noted above, the current leases for MMR, KTA and Poamoho oblige the Army, upon expiration or other termination of the leases, to "remove weapons and shells used in connection with its training activities." 1964 MMR Lease ¶ 26; 1964 KTA Lease ¶ 29; 1964 Poamoho Lease ¶ 29. All three leases, however, limit the Army's obligation to clean up UXO to only "expenditures for removal of shells [that] will not exceed the fair market value of the land." 1964 MMR Lease ¶ 26; 1964 KTA Lease ¶ 29; 1964 Poamoho Lease ¶ 29. Moreover, while the

Army is obliged to “make every reasonable effort ... to remove or deactivate all live or blank ammunition upon completion of a training exercise,” the current leases impose no clear duty on the Army, prior to the leases’ termination, to remove any UXO that its “reasonable” efforts may have missed. 1964 KTA Lease ¶ 9; 1964 Poamoho Lease ¶ 9; *see also* 1964 MMR Lease ¶ 8 (same).

UXO on Army training lands poses grave threats to the public now, not just when leases end. That threat extends to members of the public outside of Army training facilities because shrapnel from UXO that accidentally detonates does not magically stop at the military training area’s fence line. To minimize threats to the public, the EIS should examine alternatives that mandate the Army to conduct ongoing, comprehensive clearance of UXO from all leased State-owned lands, as well as from any “ceded” lands claimed by the federal government where UXO might threaten the public when conducting activities on leased lands or on lands outside of military training areas. The Army should be obliged to continue UXO clearance until all UXO is removed, with no funding limitation.

The Army has also used the presence of UXO on military training lands as a justification for restricting public access to those lands to conduct cultural, subsistence and recreational activities, inflicting significant harm on neighboring communities and cultural practitioners. To minimize such harms in the future (and to mitigate the harm that military occupation and use of these lands has inflicted in the past), the EIS should examine alternatives that condition any lease renewal on the Army’s commitment to clear UXO from *all lands* at MMR, KTA and Poamoho (whether leased from the State or claimed as “ceded” by the federal government), which would remove obstacles to cultural, subsistence and recreational access.

The court-ordered settlement for MMR confirms the reasonableness and feasibility of such lease conditions. To reduce the risk to members of the public using Mākua Beach and Farrington Highway (*i.e.*, conducting activities outside MMR), the settlement requires the Army to clear UXO from “the area within MMR extending 1,000 meters mauka (towards the mountains) from Farrington Highway.” 2001 Settlement ¶ 8(a). The settlement also requires the Army to clear UXO from “additional, high priority areas at MMR” in order to “increas[e] access to cultural sites.” *Id.* ¶ 8(b); *see also* High Priority Site List for UXO Clearance (June 12, 2009) (attached).<sup>1</sup> The settlement obliged the Army to “make good faith efforts to secure the necessary funding” for this UXO clearance, without placing any cap on the required expenditures. 2001 Settlement ¶ 8(a); *see also id.* ¶ 8(b).

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<sup>1</sup> While the 2001 Settlement obliges the Army to clear UXO from twenty-two sites to allow for cultural access, scores of other cultural sites at MMR remain off-limits to cultural access due to the presence of UXO. *See* Site List and Terrain Analysis for the Identification of Public Access Priorities, Makua Military Reservation, Oahu, Hawaii (Feb. 2009) (attached).

### *Cultural, Subsistence and Recreational Access*

For many decades, military occupation of and training on lands at MMR, KTA and Poamoho have inflicted significant harm on the community by severely limiting—and often completely prohibiting—public access for cultural, subsistence and recreational purposes. The EIS should evaluate alternatives that would minimize these harms by ensuring that, should the Army be permitted to continue its occupation and use of any State-owned lands, the public will have adequate opportunities for access on both State-owned lands and “ceded” lands claimed by the federal government. The prohibition on live-fire training and mandate to conduct comprehensive UXO removal (discussed above) will create better conditions for such access to occur.

The court-ordered settlement for MMR confirms the reasonableness and feasibility of such lease conditions. The settlement requires the Army to give members of the Wai‘anae Coast community “daytime access (sunrise to sunset) to MMR to conduct cultural activities at least twice a month” and to allow “overnight access (from two hours before sunset on the first day until two hours after sunset on the second day) to MMR to conduct cultural activities on at least two additional occasions per year.” 2001 Settlement ¶ 13. The Army agreed to provide this cultural access at a time that it contemplated conducting live-fire training exercises at MMR. *See id.* ¶¶ 2-3. Given that no live-fire training currently occurs at MMR, KTA or Poamoho, it is both reasonable and feasible for the Army to provide more frequent public access to these training areas for cultural—as well as subsistence and recreational—purposes.

### Funding for Community Peer-Review of Army Studies

“NEPA’s public comment procedures are at the heart of the NEPA review process.” *California v. Block*, 690 F.2d 753, 770 (9<sup>th</sup> Cir. 1982). To effectuate “the paramount Congressional desire ... to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision[,] ... NEPA requires not merely public notice, but public participation in the evaluation of the environmental consequences of a major federal action.” *Id.* at 771.

The communities that are most directly affected by the Army’s proposal to retain State-owned lands for military training are struggling economically. According to the most recent census data, nearly one-quarter of the residents in Wai‘anae, where MMR is located, live in poverty. *See* <https://www.census.gov/quickfacts/fact/table/waianaecdphawaii/LND110210>. These data predate the COVID-19 pandemic, which has hit the Wai‘anae Coast community particularly hard. To enable struggling communities to participate actively and effectively in the NEPA process, the Army should provide technical assistance funds that the community can use to hire experts to peer review and supplement the studies the Army prepares as part of its draft EIS. Access to technical assistance will help communities provide informed comments regarding

August 31, 2021

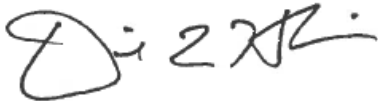
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their concerns and will also increase public understanding of the information generated during the NEPA process.

Twenty years ago, the Army agreed to provide members of the Wai'anae Coast community with \$50,000 of technical assistance to "help them better understand the technical issues and study protocols to be used during the NEPA process at MMR." 2001 Settlement ¶ 9(a). The Army should provide similar funds again. Given that costs have gone up in the intervening decades and that the Army's current proposal directly affects three separate communities, we urge the Army to contribute at least \$250,000 for technical assistance in reviewing and commenting on the draft EIS.

Thank you for your consideration of these comments. If you have any questions or would otherwise like to discuss these comments, please feel free to contact me via email ([dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org)) or telephone (808-599-2436).

Regards,

A handwritten signature in black ink, appearing to read "D. L. Henkin". The signature is stylized and cursive.

David L. Henkin  
Senior Attorney

DLH/tt  
Attachments

Public Law 103-150  
103d Congress

## Joint Resolution

Nov. 23, 1993  
[S.J. Res. 19]

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian

people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law; Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands."

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred

- to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy;
- Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;
- Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;
- Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;
- Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;
- Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;
- Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;
- Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;
- Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;
- Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;
- Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;
- Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;
- Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;
- Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;
- Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;
- Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;
- Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;
- Whereas the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own



spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. ACKNOWLEDGMENT AND APOLOGY.**

The Congress—

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

#### **SEC. 2. DEFINITIONS.**

As used in this Joint Resolution, the term "Native Hawaiian" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

**SEC. 3. DISCLAIMER.**

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993.

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**LEGISLATIVE HISTORY—S.J. Res. 19:**

SENATE REPORTS: No. 103-126 (Comm. on Indian Affairs).  
CONGRESSIONAL RECORD, Vol. 139 (1993):

Oct. 27, considered and passed Senate.  
Nov. 15, considered and passed House.

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAI‘I

MĀLAMA MĀKUA, a Hawai‘i non-	)	Civil No. 16-597
profit,	)	
	)	COMPLAINT FOR
Plaintiff,	)	DECLARATORY JUDGMENT
	)	AND INJUNCTIVE RELIEF RE:
v.	)	DEFENDANTS’ DENIAL OF
	)	ACCESS TO CULTURAL SITES
ASHTON CARTER, Secretary	)	AND OTHER AREAS AT MĀKUA
of Defense; and ERIC FANNING,	)	MILITARY RESERVATION
Secretary of the United States Army,	)	
	)	
Defendants.	)	
	)	

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COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE  
RELIEF RE: DEFENDANTS’ DENIAL OF ACCESS TO CULTURAL  
SITES AND OTHER AREAS AT MĀKUA MILITARY RESERVATION

Plaintiff Mālama Mākua complains of Defendants as follows:

### INTRODUCTION

1. Beginning in June of 2014, the United States Army began to prevent Plaintiff Mālama Mākua and other members of the Wai‘anae Coast community from accessing cultural sites at Mākua Military Reservation (“MMR”). By July 2014, the Army had prohibited access to all cultural sites at MMR, a blanket ban that remains in place to this day. Beginning in April of 2015, the Army extended the ban to other areas at MMR where Mālama Mākua and other members of the Wai‘anae Coast community previously had routinely conducted cultural activities, including, but not limited to, most of MMR’s firebreak road network and the Mākua ahu, which the community constructed in 2001 for the annual celebration of the Makahiki at MMR.

2. This action seeks an order compelling compliance by the Secretary of Defense and the Secretary of the United States Department of the Army (hereinafter referred to collectively as “Defendants”) with obligations they voluntarily assumed when they entered into the Settlement Agreement and Stipulated Order in Mālama Mākua v. Rumsfeld, Civ. No. 00-00813 SOM LEK (D. Haw. Oct. 4, 2001) (“2001 Settlement”). Specifically, Plaintiff Mālama Mākua seeks compliance with Defendants’ duty to allow members of the Wai‘anae Coast community, including Mālama Mākua, to access cultural sites and other areas at

MMR to conduct cultural activities. See 2001 Settlement ¶¶ 8(b), 13. Moreover, to the extent Defendants claim that the presence of unexploded ordnance (“UXO”) renders cultural access to any area at MMR unsafe, Mālama Mākua further seeks compliance with Defendants’ duty to clear UXO to permit cultural access. See id. ¶ 8(a), (b).

3. Mālama Mākua seeks a declaratory judgment that Defendants have violated and are violating the aforementioned obligations by (1) prohibiting members of the Wai‘anae Coast community, including Mālama Mākua, from accessing any of Mākua’s cultural sites, as well as other areas at MMR, to conduct cultural activities and (2) failing to make good faith efforts promptly to clear any UXO that Defendants contend precludes safe cultural access. Mālama Mākua respectfully asks the Court to issue an order compelling Defendants to remedy these violations by (1) promptly reopening access to Mākua’s cultural sites and other areas and (2), if Defendants contend that the presence of UXO renders access to any area at MMR unsafe, promptly to develop a plan and secure funding for clearance of such UXO.

#### JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over the claims for relief in this action pursuant to 28 U.S.C. § 1346 (United States as defendant); 28 U.S.C. § 1361 (actions to compel an officer of the United States to perform his duty); and 28

U.S.C. §§ 2201-02 (power to issue declaratory judgments in cases of actual controversy). See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994); Mālama Mākua v. Gates, Civ. No. 00-00813 SOM LEK, 2008 WL 976919, at \*7 (D. Haw. Apr. 9, 2008).

5. Venue lies properly in this judicial district by virtue of 28 U.S.C. § 1391(e) because this is a civil action in which officers or employees of the United States or an agency thereof are acting in their official capacity or under color of legal authority, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and Plaintiff Mālama Mākua resides here.

### PARTIES

#### A. Plaintiff

6. Plaintiff Mālama Mākua is a Hawai‘i nonprofit corporation, whose members consist primarily of residents of the Wai‘anae District of O‘ahu. The organization’s goals include restoration of the land at MMR, return of the land to appropriate traditional and cultural uses, and protection of the public from adverse impacts associated with military training-related activities at MMR. Members of Mālama Mākua include native Hawaiian practitioners, community leaders, and educators who are actively involved in the land-use issues associated with MMR.

7. Mālama Mākua and its members are committed to the preservation and perpetuation of native Hawaiian culture, traditional and customary Hawaiian practices, cultural sites and resources in the Mākua region, including at MMR.

8. Mālama Mākua and its members work to protect and restore Hawaiian cultural sites at MMR, as well as to increase opportunities for cultural access to those sites. For example, in negotiating the 2001 Settlement, Mālama Mākua secured Defendants' commitments to permit regular cultural access to MMR and to clear UXO to increase opportunities for cultural access. Mālama Mākua returned to court in 2008 and 2009 to enforce the Army's obligations with respect to cultural access.

9. Following the entry of the 2001 Settlement as a court order, Mālama Mākua and its members regularly accessed cultural sites and other areas at MMR to conduct cultural activities, until Defendants began imposing the restrictions on access complained of herein.

10. Mālama Mākua has attempted to work cooperatively with the Army to secure the reopening of cultural sites and other locations at MMR, so that cultural practices may resume. Despite Mālama Mākua's best efforts, Defendants have refused to reopen access to any of MMR's cultural sites or to other areas where Mālama Mākua and others previously conducted cultural activities.

11. Mālama Mākua and its members intend to continue their efforts to protect and restore Mākua and, whenever possible, to increase and expand their use of MMR. The above-described religious, spiritual, cultural, aesthetic and educational interests of Mālama Mākua and its members, have been, are being, and, unless the relief prayed herein is granted, will continue to be adversely affected and irreparably injured by Defendants' continued refusal to permit cultural access to cultural sites and other locations at MMR, as is more fully set forth below. The individual interests of Plaintiff's members as well as its organizational interests are thus directly and adversely affected by Defendants' unlawful actions.

B. Defendants.

12. Defendant Ashton Carter is the Secretary of Defense, and is sued herein in his official capacity. He has the ultimate responsibility to ensure that the Army's actions conform to the requirements of the 2001 Settlement. If ordered by the Court, Secretary Carter has the authority and ability to remedy the harm inflicted by Defendants' noncompliance with the duties they voluntarily assumed when they entered into the 2001 Settlement.

13. Defendant Eric Fanning is the Secretary of the United States Department of the Army, and is sued herein in his official capacity. He has the responsibility to ensure that the Army's actions conform to the requirements of the 2001 Settlement. If ordered by the Court, Secretary Fanning has the authority and



ability to remedy the harm inflicted by the Army's noncompliance with the duties it voluntarily assumed when it entered into the 2001 Settlement.

### BACKGROUND FACTS

A. The 2001 Settlement Guarantees Cultural Access To MMR And Requires Defendants To Clear UXO To Permit Access To Cultural Sites.

14. On December 20, 2000, Mālama Mākua filed a lawsuit in this Court, entitled Mālama Mākua v. Rumsfeld, Civ. No. 00-00813 SOM LEK, alleging that Defendants' failure to prepare an environmental impact statement for military training activities proposed for MMR violated the National Environmental Policy Act.

15. On October 4, 2001, the parties signed and this Court approved a settlement resolving Mālama Mākua's claims.

16. Paragraph 13 of the 2001 Settlement Agreement guarantees that "[m]embers of the Wai'anae Coast community, including Mālama Mākua, will be allowed daytime access (sunrise to sunset) to MMR to conduct cultural activities at least twice a month." It further provides that, "[a]dditionally, members of the Wai'anae Coast community, including Mālama Mākua, will be allowed overnight access (from two hours before sunset on the first day until two hours after sunset on the second day) to MMR to conduct cultural activities on at least two additional occasions per year."

17. The 2001 Settlement allows Defendants to impose limitations on cultural access, but only if limitations are “based on requirements for training, safety, national security, and compliance with applicable laws and regulations.” 2001 Settlement ¶ 13. Moreover, before imposing any limitation on access, Defendants must consult native Hawaiian cultural practitioners, including those from Mālama Mākua.

18. Paragraph 13 of the 2001 Settlement further provides that Mālama Mākua and Defendants “will establish protocols for [cultural access] promptly.” Id. The parties did so, lodging their Cultural Access Agreement with this Court on July 18, 2002.

19. The Cultural Access Agreement reiterates the 2001 Settlement’s provision that Defendants may limit cultural access only “based on requirements for training, safety, national security or compliance with applicable laws and regulations.” Cultural Access Agreement ¶ 5(G). It also requires Defendants, if they have concerns regarding a request for access, promptly to “confer with the [cultural access] applicant’s point of contact in a good faith attempt to resolve any concerns or logistical issues that [Defendants] may have and to find a suitable and mutually acceptable solution to those concerns (e.g., find an alternate date for the access, reach agreement on modifications to the proposed access, etc.).” Id.

20. At the time the parties entered into the 2001 Settlement, they were aware that UXO at MMR poses a potential safety risk to cultural access participants. To reduce that risk, Paragraph 8(a) of the 2001 Settlement obliges Defendants to develop “a plan for UXO clearance for the area within MMR extending 1,000 meters mauka (towards the mountains) from Farrington Highway” and to complete “clearance activities in this area ... as soon as practicable.”

21. Paragraph 8(b) of the 2001 Settlement Agreement further requires Defendants to “identify additional, high priority areas at MMR for UXO clearance, with the focus on increasing access to cultural sites.” After Defendants identify these “additional, high priority sites,” they must “make good faith efforts promptly to develop a plan and secure specific funding for the clearance of UXO from these areas to provide safe, controlled access to identified cultural sites.” 2001 Settlement ¶ 8(b).

22. Soon after the entry of the 2001 Settlement, Mālama Mākua began exercising its cultural access rights, with Mālama Mākua’s first access taking place in November 2001. From then until the middle of 2014, Mālama Mākua routinely accessed cultural sites at MMR during the bimonthly daytime accesses guaranteed under Paragraph 13 of the 2001 Settlement. Defendants also routinely allowed Mālama Mākua to access other locations at MMR for cultural purposes, including MMR’s firebreak road network (with the exception of the area identified as

containing improved conventional munitions) and the Mākua ahu, which the community constructed in 2001 for the annual celebration of the Makahiki at MMR.

23. Pursuant to Paragraph 8(b) of the 2001 Settlement, Defendants cleared UXO from, and routinely allowed Mālama Mākua access to, ten high priority cultural sites located mauka of 1,000 meters from Farrington Highway: Sites 4536, 4542, 6505, 6506, 6508, 6596, 6597, 6603, 6613 and 6621. Pursuant to Paragraph 8(a) of the 2001 Settlement, Defendants also periodically cleared UXO to allow Mālama Mākua to access sites located within 1,000 meters of Farrington Highway, including, but not limited to, Sites 4537, 4542, 4546, 5456 and 5926.

B. In Mid-2014, Defendants Impose A Blanket Ban On Access To MMR's Cultural Sites.

24. On or about May 24, 2014, the Programmatic Agreement Among The U.S. Army Garrison-Hawaii, The Hawaii State Historic Preservation Officer, And The Advisory Council On Historical Preservation For Section 106 Responsibilities For Routine Military Training At Makua Military Reservation, Oahu Island, Hawaii (“Programmatic Agreement”) expired. Among other things, the Programmatic Agreement – which had been adopted pursuant to the National Historic Preservation Act (“NHPA”) – governed the maintenance of vegetation on trails leading to and within cultural sites at MMR.

25. During the twelve and one-half years prior to May 24, 2014 that cultural access at MMR pursuant to the 2001 Settlement had taken place, there were no documented instances of damage to any cultural site from vegetation management. Despite that fact, following the expiration of the Programmatic Agreement, Defendants decided that no vegetation management for cultural access could take place until a new memorandum of agreement (“MOA”) pursuant to the NHPA was finalized.

26. On June 7, 2014, members of Mālama Mākua arrived at MMR for a regularly scheduled daytime access. In compliance with the Cultural Access Agreement, Mālama Mākua had provided Defendants with its access request on May 23, 2014, more than the required seven (7) working days’ advance notice. Mālama Mākua’s advance notice requested access to, inter alia, Site 4546 to permit participants to visit and to offer ho‘okupu (ceremonial gifts) at the site’s heiau (temple).

27. With no prior consultation, on the very day of the June 7, 2014 access, Defendants denied Mālama Mākua access to Site 4546 on the grounds that, due to the lack of vegetation management, the height of the grass at the site, as well as a portion of the trail leading up to the site, was too long to allow safe access.

28. By July 2014, Defendants had imposed a ban on access to all of MMR's cultural sites (including the trails leading to those sites), claiming that, due to the lack of vegetation management, the grass was too high for safe access.

29. Mālama Mākua is informed and believes, and on the basis of that information and belief alleges, that, following the Programmatic Agreement's expiration, the Army expedited its NHPA compliance to allow vegetation management related to military training to resume. In contrast, Defendants dragged their feet in complying with the NHPA with respect to vegetation management related to cultural access. The MOA for vegetation management for cultural access was not finalized until September 11, 2015, more than a year after Defendants cut off all access to MMR's cultural sites.

C. Defendants Extend The Ban On Cultural Access.

30. Completion of the vegetation management MOA in September 2015 did not end Defendants' ban on access to MMR's cultural sites. On or about April 6, 2015, two Army-contracted grass cutters (who were maintaining vegetation for training, not cultural access) were injured by UXO. Defendants promptly banned all cultural access at MMR, prohibiting Mālama Mākua and other access participants from even entering MMR's gates, while Defendants conducted an investigation of the accident.

31. The complete ban on cultural access continued until November 2015. At that time, Defendants partially lifted the ban, strictly limiting access to only a few locations, none of which is a cultural site: the paved parking area at the entrance to MMR, a pavilion located near the parking area and the area immediately adjacent to it, the ahu at Kahanahāiki and Ko‘iahi the community uses for the annual celebration of the Makahiki at MMR, and the portion of the firebreak road network between the pavilion and the Kahanahāiki and Ko‘iahi ahu.

32. Defendants did not allow access to the Mākua ahu to resume, due to the discovery of nearby “anomalies” that might indicate the presence of UXO.

33. Defendants continued the ban on access to all cultural sites at MMR, claiming that it needed to await the completion of a report from the U.S. Army Technical Center for Explosives Safety (“USATCES”) making recommendations for cultural access at MMR. Defendants took this position despite the facts that: (1) USATCES already prepared a report with such recommendations in 2005; (2) no live-fire training has taken place at MMR since June 2004, and, consequently, no UXO has been introduced to MMR since USATCES prepared its 2005 report and recommendations; (3) until mid-2014, Defendants had been implementing the 2005 USATCES recommendations to allow cultural access for nearly a decade; and (4), during the nearly decade and a half of cultural access at MMR, no cultural

access participant at MMR has ever been hurt, either prior to or after implementation of the 2005 USATCES recommendations.

D. Defendants Refuse To Lift The Ban On Cultural Access.

34. On or about April 8, 2016, USATCES finalized its second report with recommendations for cultural access at MMR. These latest recommendations are virtually identical to the recommendations USATCES made in its 2005 report.

35. Mālama Mākua is informed and believes, and on the basis of that information and belief alleges, that Defendants have been implementing the September 2015 MOA for vegetation management for cultural access, cutting grass on the trails leading to cultural sites and within the sites.

36. Mālama Mākua is informed and believes, and on the basis of that information and belief alleges, that, during the summer of 2016, Defendants cleared the anomalies from the vicinity of the Mākua ahu.

37. The only allegedly safety-based reasons Defendants have ever given for their near total ban on cultural access at MMR (including their blanket ban on access to cultural sites) are (1) the lack of a vegetation management MOA to allow the grass to be cut within and on trails leading to cultural sites and (2) the alleged need for USATCES to prepare a second report with recommendations for cultural access. Despite the fact that the vegetation management MOA was completed in September 2015 and the USATCES report was completed in April 2016, removing



any arguable safety-based justification for restricting cultural access, Defendants persist in refusing to reopen cultural access.

38. Despite Mālama Mākua's repeated requests, Defendants have refused to open any of the currently closed areas at MMR – including, but not limited to, any cultural site – to cultural access, to commit to a schedule for doing so or, even, to commit to any deadline for making a decision on whether or when to reopen such access.

39. Mālama Mākua is informed and believes, and on the basis of that information and belief alleges, that, despite Mālama Mākua's repeated requests, Defendants have refused to implement the USATCES recommendations to allow access to MMR's cultural sites to resume, to commit to a schedule for doing so or, even, to commit to any deadline for making a decision on whether to implement the USATCES recommendations.

40. Despite Mālama Mākua's repeated requests, Defendants have refused to state whether they currently contend that the presence of UXO currently renders access to any area at MMR unsafe. To the extent that Defendants contend that the presence of UXO currently renders cultural access unsafe, Mālama Mākua is informed and believes, and on the basis of that information and belief alleges, that, with the possible exception of the removal of the anomalies near the Mākua ahu (which may not have included any actual UXO), Defendants have failed to remove

any UXO to allow for cultural access at MMR to resume since closing access to all cultural sites in mid-2014.

41. Pursuant to Paragraph 15(b) of the 2001 Settlement, Plaintiff Mālama Mākua provided Defendants with written notice of the violations detailed herein more than ten (10) days before filing this action.

42. In subsequent negotiations, Defendants denied that any violations have occurred and refused to take any steps to address Mālama Mākua's concerns.

#### FIRST CLAIM FOR RELIEF

(Violations of Paragraph 13 of 2001 Settlement)

43. Plaintiff Mālama Mākua realleges, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

44. Defendants' ongoing, near total ban on cultural access at MMR (including their blanket ban on access to cultural sites) violates Paragraph 13 of the 2001 Settlement because it is not "based on requirements for training, safety, national security, [or] compliance with applicable laws and regulations."

#### SECOND CLAIM FOR RELIEF

(Violations of Paragraph 8(b) of 2001 Settlement)

45. Plaintiff Mālama Mākua realleges, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

46. Defendants' blanket ban on access to high priority cultural sites located mauka of 1,000 meters from Farrington Highway and their failure to "make good faith efforts promptly to develop a plan and secure specific funding for the clearance of [any] UXO from these areas" that Defendants contend precludes "safe, controlled access" violate Paragraph 8(b) of the 2001 Settlement.

### THIRD CLAIM FOR RELIEF

(Violations of Paragraph 8(a) and (b) of 2001 Settlement)

47. Plaintiff Mālama Mākua realleges, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

48. To the extent that Defendants claim the presence of UXO renders cultural access to any area at MMR unsafe, Defendants' failure to make good faith efforts promptly to clear UXO to permit cultural access to such areas to resume violates Paragraphs 8(a) and 8(b) of the 2001 Settlement.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mālama Mākua prays for relief as follows:

1. For a declaratory judgment that:
  - (a) Defendants' ongoing, near total ban on cultural access at MMR (including their blanket ban on access to cultural sites) violates Paragraph 13 of the 2001 Settlement;

- (b) Defendants' blanket ban on access to high priority cultural sites located mauka of 1,000 meters from Farrington Highway and their failure to make good faith efforts promptly to clear any UXO from these areas that Defendants contend precludes safe, controlled access violate Paragraph 8(b) of the 2001 Settlement; and
- (c) To the extent that Defendants claim the presence of UXO renders cultural access to any area at MMR unsafe, Defendants' failure to make good faith efforts promptly to clear UXO to permit cultural access to such areas to resume violates Paragraphs 8(a) and 8(b) of the 2001 Settlement.

2. For an order establishing a schedule for Defendants promptly to reopen access to MMR's cultural sites and other areas where Mālama Mākua and other members of the Wai'anae Coast community previously had conducted cultural activities.

3. For a further order establishing prompt deadlines for Defendants to develop a plan and secure funding to clear UXO from any area at MMR where Defendants contend the presence of UXO renders unsafe the cultural access that Mālama Mākua and other members of the Wai'anae Coast community had previously conducted.

4. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein.

5. For such additional judicial determinations and orders as may be necessary to effectuate the foregoing.

6. For an award of Plaintiff's costs of litigation, including reasonable attorneys' fees; and

7. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiff and Defendants.

DATED: Honolulu, Hawai'i, November 7, 2016.

EARTHJUSTICE  
David L. Henkin  
850 Richards Street, Suite 400  
Honolulu, Hawai'i 96813

/s/ David L. Henkin  
DAVID L. HENKIN  
Attorneys for Plaintiff Mālama Mākua

RECORDATION REQUESTED BY:  
U. S. Army Engineer Division,  
Pacific Ocean

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

AFTER RECORDATION, RETURN TO:

U. S. Army Engineer Division,  
Pacific Ocean  
Phone: 542986

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/s/ M. Adachi

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RETURN BY: MAIL ( ) PICKUP (X)

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE GENERAL LEASE NO. S-3848  
U. S. LEASE, CONTRACT NO. DA-94-626-ENG-79

1. THIS LEASE, made and entered into this 17<sup>th</sup> day of August, in the year one thousand nine hundred and sixty-four, by and between the STATE OF HAWAII, represented by its Board of Land and Natural Resources, whose address is P. O. Box 621, Honolulu, Hawaii, 96809, and whose interest in the property hereinafter described is that of fee simple owner, for itself, its administrators, successors, and assigns, hereinafter called the "Lessor", and THE UNITED STATES OF AMERICA, hereinafter called the "Government":

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government two (2) parcels of land described on Exhibit "A" attached hereto and hereby made a part hereof, all to be used for the following purpose: Military purposes.

3. TO HAVE AND TO HOLD the said premises for a term of sixty-five (65) years beginning August 17, 1964, and ending August 16, 2029; subject, however, to the rights

of the Lessor and the Government respectively to terminate this lease in accordance with provisions 6 and 13 hereof.

4. The Government shall pay the Lessor rent at the following rate: ONE DOLLAR (\$1.00) for the term of the lease, the receipt and sufficiency whereof is hereby acknowledged.

5. The Government shall have the right, during the existence of this lease, to attach fixtures, and erect structures or signs, in or upon the premises hereby leased, which fixtures and structures or signs, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. In addition, the Government shall post and maintain signs on roads and trails entering dangerous areas to provide a warning of any dangerous or hazardous activities; provided, that the information placed on the posted signs anywhere within the demised premises shall not be incompatible with the terms of this lease and, in those instances where joint use of an area is permitted, the information placed on the signs may include the permitted joint activities.

6. The Government may terminate this lease at any time by giving thirty (30) days' notice in writing to the Lessor.

7. The Lessor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Federal Government in connection with the Federal Government's use of the premises described herein.

8. Except as otherwise provided herein, the Government shall have unrestricted control and use of the demised premises, including the right to fire all combat weapons therefrom into the designated Makua Impact Area; provided, however,

the Government shall not use any portion of the demised premises as an impact area for explosive or incendiary munitions of any type and, in recognition of public use of the demised premises, upon completion of a training exercise or prior to entry thereon by the general public, whichever is sooner, the Government shall make every reasonable effort to stockpile supplies and equipment in an orderly fashion and away from established roads or trails and to remove or deactivate all live or blank ammunition from the areas where the general public is permitted under the terms of this lease.

9. The Government shall obtain the written consent of the Lessor prior to constructing any road or building of the type for which design and construction plans are normally required; provided, however, that such consent shall not be arbitrarily withheld. The Government agrees that its training roads which provide primary access within or across the demised premises will be maintained to normal standards for training area roads with due regard for preventing unnecessary erosion; provided, however, that the Government shall be under no obligation to maintain roads during periods when the necessary engineer troops are absent from Oahu.

10. The Government shall take every reasonable precaution to prevent the start of any fire in the areas herein demised and shall take immediate and continuing action to extinguish any and all fires started by or resulting from Government activities. Further, the Government shall establish and at all times maintain a standard operating procedure for fighting fires within or adjacent to the subject leased property resulting from Government training activities during its use and occupancy of the premises; provided, further, that Government



personnel actually using the premises shall be familiar with said standard procedure including the means of implementation.

11. In recognition of the limited amount of land available for public use, of the importance of forest reserves and watersheds in Hawaii, and of the necessity for preventing or controlling erosion, the Government hereby agrees that, commensurate with training activities, it will take reasonable action during its use of the premises herein demised to prevent unnecessary damage to or destruction of vegetation, wildlife and forest cover, geological features and related natural resources and improvements constructed by the Lessor, help preserve the natural beauty of the premises, avoid pollution or contamination of all ground and surface waters and remove or bury all trash, garbage and other waste materials resulting from Government use of the said premises.

12. Except as required for defense purposes in times of national emergency, the Government shall not deliberately appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument.

13. In the event that the leased property is not used by the Government for a period of three (3) consecutive years, this lease may be terminated upon ninety (90) days' written notice from the Lessor to the Government, provided, however, that if prior to the expiration of the aforesaid 90-day period the Secretary of the Army shall find and determine that the leased property is required for military purposes and shall notify the Lessor in writing of this finding and determination, this lease will continue in effect; provided, further, that periods during which a national emergency has been declared by the President or the Congress of the United States and periods

during which major combat elements are temporarily deployed away from the State of Hawaii shall not be included in the said three-year period. During such period of temporary deployment the parties hereto shall discuss and give consideration to and provide for the additional public use of the demised premises compatible with then existing military training requirements. The Government will assure that current military standards concerning adequate utilization are applied to these premises and will assure that such use is known and is a matter of record and available to the Lessor upon request.

14. That portion of the demised premises situate between the ocean and the beach road (Farrington Highway extension) or any realignment thereof approved by the Government agency exercising control of the training area shall be fully available for use by the general public, except during periods when the public will interfere with training activities or training will endanger the said public, whereupon the Government shall publish a notice in two papers of general circulation at least three (3) days prior thereto except when prohibited therefrom due to overriding military contingencies, post necessary signs, other markings and/or guards, and shall have the right to restrict public use of the premises and to control traffic access over the said beach road during all periods of danger. In connection with such public use of the premises, the Lessor shall have the right to construct or place thereon public sanitary facilities, picnic tables, etc., provided that such construction is planned, sited and completed as agreed to by the local military commander having control and accountability of said leased premises, and, provided further, that notwithstanding any other provision of this lease to the

contrary, the Government hereby accepts the responsibility and liability for repairs of any damage which can be demonstrated to have been the direct result of military activities, to improvements constructed by the Lessor subsequent to the date of this lease; provided, however, that the Lessor shall be responsible for exercising proper control of the public during periods when public use is permitted and the Government shall have no liability for maintaining grounds used by the public except for removing any litter, refuse or trash resulting from Government activities.

15. The Lessor hereby agrees that, commensurate with the public use of the premises herein demised, it will take reasonable action during the use of the said premises by the general public, to remove or bury trash, garbage and other waste materials resulting from use of the said premises by the general public.

16. The Government shall have the right to fire over and maneuver across Farrington Highway and, in the interest of public safety, the right to interrupt traffic thereon during such training activities; provided, however, that the Government shall minimize interference with traffic by limiting stoppages thereof to 15-minute periods except when prohibited therefrom due to overriding military operations.

17. In connection with public use of the beach area, the Lessor shall also have the right to develop and use for public purposes Kaneana Cave, commonly called Makua Cave, together with an access foot trail thereto and a parking area adjacent to Farrington Highway.

18. Subject to obtaining advance clearance from the plans and training office of the Government's controlling agency,

or any other designated Government agency, officials and employees of the Lessor and any person or persons duly authorized by the Lessor shall have the right to enter upon the demised premises at all reasonable times to conduct any operations that will not unduly interfere with activities of the Government under the terms of this lease; provided, however, that such advance clearance shall not be unreasonably withheld.

19. All persons legally entitled under the provisions of this lease to be on the said premises shall have a nonexclusive right to use all Government roads and trails except when such use will interfere with the training activities of the Government or said roads and trails have been restricted, by a duly posted sign, as security or danger areas by the Government.

20. The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use for road construction projects on the demised premises sources of coral, rock and similar materials occurring naturally on the said premises and to use said ground and surface waters for purposes incident to the rights granted by this lease.

21. The Government will not be responsible for any loss, liability, claim or demand for any property damage, property loss, or personal injury, including but not limited to death, arising out of injury or damage caused by or resulting from any act or omission of the Lessor or the general public in connection with their use of the premises described herein.

22. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at P. O. Box 621, Honolulu, Hawaii, 96809, and if given by the Lessor shall be addressed to the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Building 96, Fort Armstrong, Honolulu, Hawaii, Attention: Real Estate Division, or at such location and to such other agency as may be mutually agreed upon by the parties hereto.

23. The Government hereby agrees that the use and enjoyment of the land herein demised shall not be in support of any policy which discriminates against anyone based upon race, creed or color.

24. The Government shall not sublease or grant any interest in the demised premises; provided, however, that the Government shall have the right to grant the use of portions of the premises for temporary activities of Governmental agencies or their contractors in which case any land rental derived from such use of the premises shall be covered into the Treasury of the State of Hawaii.

25. Subject to obtaining the prior approval of the Government, the Lessor reserves the right to grant rights or privileges to others not inconsistent with the terms of this lease affecting the whole or any portion of the demised premises.

26. The Government shall surrender possession of the premises upon the expiration or sooner termination of this lease and, if required by the Lessor, shall within sixty (60) days thereafter, or within such additional time as may be mutually agreed upon, remove its signs and other structures; provided that in lieu of removal of structures the Government may abandon

them in place. The Government shall also remove weapons and shells used in connection with its training activities to the extent that a technical and economic capability exists and provided that expenditures for removal of shells will not exceed the fair market value of the land.

27. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Honolulu, Hawaii, hereinafter referred to as said officer, who shall within a reasonable time reduce his decision and the reasons therefor to writing and mail or otherwise furnish a copy thereof to the Lessor. The decision of the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessor mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(b) This condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) That all appeals under this provision shall be processed expeditiously.

28. The Government's compliance with all obligations placed on it by this lease shall be subject to the availability of funds.

29. The Lessor's compliance with any obligations which may be placed on it by this lease shall be subject to the availability of funds and/or personnel.

30. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purposes of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

31. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

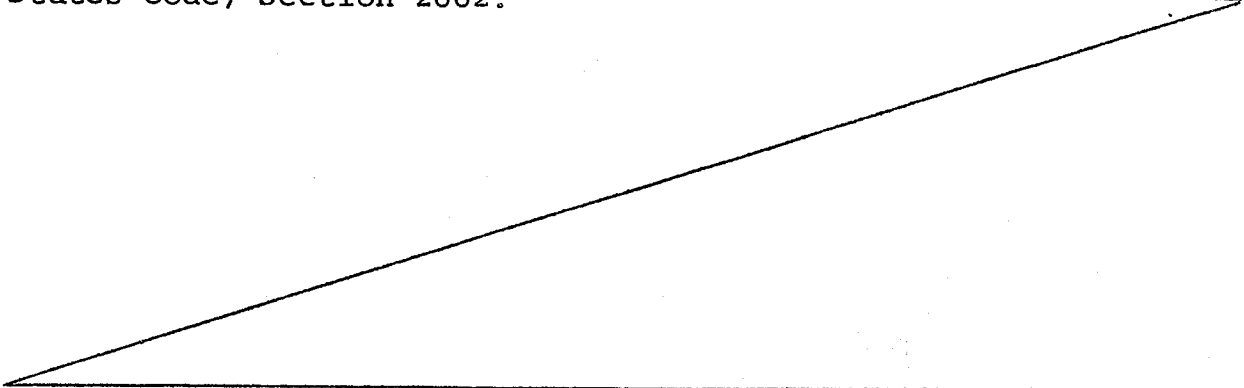
32. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or

representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such lease; provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three or more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

33. This lease is not subject to Title 10, United States Code, Section 2662.





IN WITNESS WHEREOF, the parties hereto have hereunto  
subscribed their names as of the date first above written.

STATE OF HAWAII

By: *Jim R. Long*  
Chairman and Member  
Board of Land and Natural Resources

And By: *R. L. Summers*  
Member  
Board of Land and Natural Resources

THE UNITED STATES OF AMERICA

By: *Eugene H. Merrill*  
Eugene H. Merrill  
Deputy Assistant Secretary of the Army (I&L)  
(Installations)

APPROVED AS TO FORM:

*Bert T. Kobayashi*  
BERT T. KOBAYASHI  
Attorney General  
State of Hawaii

*Peter C. Lewis*  
PETER C. LEWIS  
Deputy Attorney General  
State of Hawaii

EXHIBIT "A"

TRACT 26, MAKUA MILITARY RESERVATION

PARCEL "A"

Being a portion of the Government Lands of Makua, Kahanaiki and Keawaula, Waianae, Oahu, Hawaii.

Beginning at Government Survey Triangulation Station "MAKUA 2" on the boundary between Makua and Ohikilolo District, thence running by azimuths measured clockwise from True South:

1. 100° 20' 1,900.00 feet along the land of Ohikilolo;  
Thence along the seashore in a northwesterly direction, the direct azimuth and distance being:
2. 157° 45' 9,483.40 feet;  
Thence along the sea beach at highwater mark, the approximate direct azimuth and distance being:
3. 142° 45' 30" 5,756.30 feet;
4. 215° 20' 2,955.93 feet along the remainder of Government Land of Keawaula to the southwesterly boundary of Kaena Point Missile Tracking Station Site;
5. 293° 52' 30" 2,561.82 feet along Parcel C of Kaena Point Missile Tracking Station Site;
6. 258° 33' 540.47 feet along Parcel C of Kaena Point Missile Tracking Station Site to the main Waianae Range on the boundary between the districts of Waianae and Waialua;  
Thence along the main Waianae Range for the next 11 courses the direct azimuths and distances being:
7. 300° 57' 10" 406.36 feet along Parcel C of Kaena Missile Tracking Station Site and the Government Land of Kuaokala;

- 8. 301° 26' 598.70 feet along Kuaokala Forest Reserve;
- 9. 298° 24' 883.70 feet along Kuaokala Forest Reserve;
- 10. 304° 50' 2,055.20 feet along Kuaokala Forest Reserve;
- 11. 336° 17' 935.50 feet along Kuaokala Forest Reserve;
- 12. 230° 15' 820.00 feet along the remainder of Kuaokala Forest Reserve;
- 13. 270° 35' 510.00 feet along the remainder of Kuaokala Forest Reserve;
- 14. 331° 40' 530.00 feet along the remainder of Kuaokala Forest Reserve;
- 15. 33° 13' 30" 224.10 feet along the remainder of Kuaokala Forest Reserve;
- 16. 299° 44' 545.60 feet along Kuaokala Forest Reserve;
- 17. 315° 56' 1,268.80 feet along Kuaokala Forest Reserve;
- 18. 50° 00' 1,100.00 feet along Makua Military Reservation Impact Area;
- 19. 62° 51' 40" 1,991.74 feet along Makua Military Reservation Impact Area;
- 20. 329° 28' 1,438.00 feet along Makua Military Reservation Impact Area;
- 21. 339° 36' 2,440.00 feet along Makua Military Reservation Impact Area;
- 22. 351° 08' 3,856.00 feet along Makua Military Reservation Impact Area;
- 23. 0° 30' 2,360.00 feet along Makua Military Reservation Impact Area to the boundary between Makua and Ohiki-lolo Districts;

Thence along the land of Ohiki-lolo, along the ridge, the direct azimuth and distance being:

- 24. 105° 31' 30" 1,560.10 feet to the point of beginning and containing a gross area of 1,725 ACRES, more or less.

Excluding from the above area the following, leaving a NET AREA OF 1,509.171 ACRES, more or less:

Federal lands	136.36 acres
Private lands	21.31 acres
Farrington Highway Extension	21.00 acres

STATE OF VIRGINIA }  
COUNTY OF ARLINGTON } SS

On this 17<sup>th</sup> day of August, 1964, before me appeared Eugene H. Merrill, to me personally known who, being by me duly sworn, did say that he is the DEPUTY ASSISTANT SECRETARY OF ARMY and that the seal affixed to (I&L) Installations said instrument is the seal of the Department of the Army and that the said instrument was signed and sealed in behalf of said United States of America under the authority therein mentioned, and said Eugene H. Merrill acknowledged said instrument to be the free act and deed of said United States of America.

In witness whereof I have hereunto set my hand and official seal.

My Commission Expires November 5, 1966

Howard V. Kempter  
NOTARY PUBLIC  
Arlington County, Virginia

FORM 314 Certificate of Official Character.

Commonwealth of Virginia }  
County of Arlington } to wit:

I, H. BRUCE GREEN, Clerk of the Circuit Court of the County aforesaid in the State of Virginia, the same being a Court of record, do certify that Howard V. Kempter whose genuine signature is attached to the foregoing certificate is, and was at the time of signing the same, a Notary Public in and for the said County, duly commissioned and qualified, residing in said County and duly authorized, by virtue of his office, to take acknowledgements to deeds and other writings, and to administer oaths under the laws of this State. I further certify that the official acts of the said Howard V. Kempter are entitled to full faith and credit; that I am well acquainted with the handwriting of the said Howard V. Kempter and verily believe his signature to the foregoing proof or acknowledgment to be genuine; and that his attestation is in due form of law. I further certify that the laws of Virginia do not require the imprint of the Notary's seal to be filed with the authenticating officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 17<sup>th</sup> day of August, 1964, and in the 189th year of the Commonwealth.

H. Bruce Green, Clerk.

Canadian Telecommunication Station Site	2.999 Acres
Kaena Point Missile Tracking Station Site	12.00 Acres
Kaena Point Missile Tracking Station Site	<u>22.16 Acres</u> <i>Road</i>
Total Exclusions	215.829 Acres

SUBJECT TO rights-of-way now used and occupied by Hawaiian Telephone Company, Limited, and The Hawaiian Electric Company, Limited, under rights-of-entry granted by the State of Hawaii.

PARCEL "B"

Land situated at Makua, Waianae, Oahu, Hawaii

Being all of the land quitclaimed to the Territory of Hawaii by the United States of America dated 26 January 1943, pursuant to Public Law 781-77th Congress dated 2 December 1942, and also being Tract 1 of the Makua Military Reservation.

Beginning at the southeast corner of this piece of land, from which the azimuth (measured clockwise from True South) and distance to Government Survey Triangulation Station "LOLO" is 335° 26' 07" 6519.82 feet.

Thence from said point of beginning by azimuths and distances:

1. 84° 04' 35" 610.00 feet;
2. 144° 59' 00" 460.10 feet;
3. 269° 02' 30" 832.85 feet;
4. 353° 23' 00" 330.00 feet to the point of beginning and containing an AREA OF 5.95 ACRES, more or less.

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

RECORDATION REQUESTED BY:

U. S. Army Engineer Division,  
Pacific Ocean

AFTER RECORDATION, RETURN TO:

U. S. Army Engineer Division,  
Pacific Ocean  
Phone: 542986

LIBER 4821 PAGES 445 TO 462

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/s/ M. Adachi

INDEXED /i/ EK REGISTRAR

RETURN BY: MAIL ( ) PICKUP (X)

SPACE ABOVE THIS LINE FOR  
REGISTRAR'S USE

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE GENERAL LEASE NO. S-3850  
U. S. LEASE, CONTRACT NO. DA-94-626-ENG-77

1. THIS LEASE, made and entered into this 17<sup>th</sup>  
day of AUGUST, in the year one thousand nine hundred  
and sixty-four by and between the STATE OF HAWAII, represented  
by its Board of Land and Natural Resources, whose address is  
P. O. Box 621, Honolulu, Hawaii 96809, and whose interest in  
the property hereinafter described is that of fee simple owner,  
for itself, its administrators, successors, and assigns, here-  
inafter called the "Lessor", and THE UNITED STATES OF AMERICA,  
hereinafter called the "Government":

WITNESSETH: The parties hereto for the consideration  
hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government  
two (2) parcels of land described on Exhibit "A" attached  
hereto and hereby made a part hereof, all to be used for the  
following purpose: Military purposes.

KAHUKU

3. TO HAVE AND TO HOLD the said premises for a term of sixty-five (65) years beginning August 17, 1964 and ending August 16, 2029; subject, however, to the rights of the Lessor and the Government respectively to terminate this lease in accordance with provisions 6 and 19 hereof.

4. The Government shall pay the Lessor rent at the following rate: ONE DOLLAR (\$1.00) for the term of the lease, the receipt and sufficiency whereof is hereby acknowledged.

5. The Government shall have the right, during the existence of this lease, to attach fixtures, and erect structures or signs, in or upon the premises hereby leased, which fixtures and structures or signs, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. In addition, the Government shall post and maintain signs on roads and trails entering dangerous areas to provide a warning of any dangerous or hazardous activities; provided, that the information placed on the posted signs anywhere within the demised premises shall not be incompatible with the terms of this lease and, in those instances where joint use of an area is permitted, the information placed on the signs may include the permitted joint activities.

6. The Government may terminate this lease at any time by giving thirty (30) days' notice in writing to the Lessor.

7. The rights herein granted to the Government for use of the above-described Parcel 1 are subject to grazing rights held by J. J. Cambra, Jr., under Revocable Permit No. 868 dated 28 April 1963; consequently, the Government shall exercise caution when firing in Parcel 1. In addition, the Lessor reserves the right to outlease joint use of Parcel 1 hereof for grazing purposes; provided, however, that the Lessor hereby agrees to cancel any such grazing lease within sixty (60) days after receipt of written notice from the Government that grazing activities on the premises are contributing to excessive erosion or are seriously interfering with training activities.

8. The Lessor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Federal Government in connection with the Federal Government's use of the premises described herein.

9. In recognition of public use of the demised premises, the Government shall make every reasonable effort to stockpile supplies and equipment in an orderly fashion and away from established roads and hiking trails and to remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner.

10. The Government shall obtain the written consent of the Lessor prior to constructing any road or



building of the type for which design and construction plans are normally required; provided, however, that such consent shall not be arbitrarily withheld. The Government agrees that its training roads which provide primary access within or across the demised premises will be maintained to normal standards for training area roads with due regard for preventing unnecessary erosion; provided, however, that the Government shall be under no obligation to maintain roads during periods when the necessary engineer troops are absent from Oahu.

11. The Government shall take every reasonable precaution to prevent the start of any fire in the areas herein demised and shall take immediate and continuing action to extinguish any and all fires started by or resulting from Government activities. Further, the Government shall establish and at all times maintain a standard operating procedure for fighting fires within or adjacent to the subject leased property resulting from Government training activities during its use and occupancy of the premises; provided, further, that Government personnel actually using the premises shall be familiar with said standard procedure including the means of implementation.

12. In recognition of the limited amount of land available for public use, of the importance of forest reserves and watersheds in Hawaii, and of the necessity for preventing or controlling erosion, the Government hereby agrees that, commensurate with training activities, it will take reasonable action during its use of the premises herein demised to prevent

unnecessary damage to or destruction of vegetation, wild life and forest cover, geological features and related natural resources and improvements constructed by the Lessor, help preserve the natural beauty of the premises, avoid pollution or contamination of all ground and surface waters and remove or bury all trash, garbage and other waste materials resulting from Government use of the said premises.

13. Except as required for defense purposes in times of national emergency, the Government shall not deliberately appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument.

14. In the event at some future date it is deemed necessary by the Lessor to use ground or surface water on the premises herein demised as a source of public water supply, the area providing said ground or surface water shall be withdrawn from military use upon request of the Lessor and with the Government's concurrence.

15. The Government shall not use any portion of the demised premises as an impact area for explosive or incendiary munitions of any type and shall limit firing on the premises to weapons not larger than .50 caliber provided, however, the Government may also fire inert 3.5-inch rockets or weapons of similar size or purpose as long as such training will not cause fires.

16. When the demised premises or any part thereof is not scheduled for Government training purposes from dusk Friday to midnight Sunday and from dawn to midnight on national holidays, the said premises shall be available to the Lessor which may open them to the general public who shall be subject to the laws of the State of Hawaii during their

presence on the premises which shall be for such limited or unlimited purposes as may be designated by the Lessor; provided, that the Lessor may declare the whole or any portion of the demised premises during such open periods as a public shooting or fishing ground, and the Lessor shall have the right to issue written permits to hunters and fishermen, subject to rules and regulations issued by the said Lessor; and, provided further, however, that permitted hunting and fishing activities shall be coordinated with the training activities of the Government on the demised premises and the Lessor shall obtain from such permittees written releases which will hold the Government and the Lessor harmless from any accidental injuries or deaths suffered by the holders of such permits; and, provided still further, that the Government shall make an effort to schedule its training exercises in such a manner as to enable the general public to use the subject area during the periods hereinabove mentioned and shall publish a notice in two papers of general circulation at least three (3) days prior to each said weekend or holiday on which the premises or any portion thereof will be used for training exercises except when prohibited therefrom by overriding military contingencies. The Government shall not be responsible for the control or safety of the general public, nor shall the Government be responsible for the correction of unsanitary conditions due to general public use of the demised premises.

17. The Lessor hereby agrees that, commensurate with the public use of the premises herein demised, it will take reasonable action during the use of the said premises by the general public; to remove or bury trash, garbage and other waste material resulting from use of the said premises by the general public.

18. The Lessor shall have the right to erect signs and construct capital improvements within the leased property at locations mutually agreed upon by the parties hereto, in connection with water conservation, public water consumption, forestry, recreational and related purposes, said capital improvements including but not limited in any way to the construction, maintenance and/or improvements of roads and trails; provided, however, that notwithstanding any other provisions of this lease to the contrary, the Government hereby accepts the responsibility and liability for repairs of any damage which can be demonstrated to have been the direct result of military activities, to improvements constructed by the Lessor subsequent to the date of this lease.

19. In the event that the leased property is not used by the Government for a period of three (3) consecutive years, this lease may be terminated upon ninety (90) days' written notice from the Lessor to the Government, provided, however, that if prior to the expiration of the aforesaid 90-day period the Secretary of the Army shall find and determine that the leased property is required for military purposes and shall notify the Lessor in writing of this finding and determination, this lease will continue in effect; provided, further, that periods during which a national emergency has been declared by the President or the Congress of the United States and periods during which major combat elements are temporarily deployed away from the State of Hawaii shall not be included in the said three-year period. During such period of temporary deployment the parties hereto shall discuss and give consideration to and provide for

the additional public use of the demised premises compatible with then existing military training requirements. The Government will assure that current military standards concerning adequate utilization are applied to these premises and will assure that such use is known and is a matter of record and available to the Lessor upon request.

20. Subject to obtaining advance clearance from the plans and training office of the Government's controlling agency, or any other designated Government agency, officials and employees of the Lessor and any person or persons duly authorized by the Lessor shall have the right to enter upon the demised premises at all reasonable times to conduct any operations that will not unduly interfere with activities of the Government under the terms of this lease; provided, however, that such advance clearance shall not be unreasonably withheld.

21. All persons legally entitled under the provisions of this lease to be on the said premises shall have a nonexclusive right to use all Government roads and trails except when such use will interfere with the training activities of the Government or said roads and trails have been restricted, by a duly posted sign, as security or danger areas by the Government.

22. The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use for road construction projects on the demised premises sources of coral, rock and similar

materials occurring naturally on the said premises and to use said ground and surface waters for purposes incident to the rights granted by this lease.

23. The Government will not be responsible for any loss, liability, claim or demand for any property damage, property loss, or personal injury, including but not limited to death, arising out of injury or damage caused by or resulting from any act or omission of the Lessor or the general public in connection with their use of the premises described herein.

24. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at P. O. Box 621, Honolulu, Hawaii 96809, and if given by the Lessor shall be addressed to the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Building 96, Fort Armstrong, Honolulu, Hawaii, Attention: Real Estate Division, or at such location and to such other agency as may be mutually agreed upon by the parties hereto.

25. The Government hereby agrees that the use and enjoyment of the land herein demised shall not be in support of any policy which discriminates against anyone based upon race, creed or color.

26. The Government shall not grant any interest in the demised premises; provided, however, that the Government shall have the right to grant the use of portions of the premises for temporary activities of Governmental agencies or their contractors in which case any land rental derived from such use of the premises shall be covered into the Treasury of the State of Hawaii

27. Subject to obtaining the prior approval of the Government, the Lessor reserves the right to grant rights or privileges to others not inconsistent with the terms of this lease affecting the whole or any portion of the demised premises.

28. The Government agrees to reforest areas, as expeditiously as practicable and within a period mutually agreed upon, where it can be demonstrated that substantial forest cover, including trees, has been destroyed as a direct result of Government activities; provided, however, that the Lessor shall obtain advance Government approval of all future plantings proposed by the Lessor

29. The Government shall surrender possession of the premises upon the expiration or sooner termination of this lease and, if required by the Lessor, shall within sixty (60) days thereafter, or within such additional time as may be mutually agreed upon, remove its signs and other structures; provided that in lieu of removal of structures the Government may abandon them in place. The Government shall also remove weapons and shells used in connection with its training activities to the extent that a technical and economic capability exists and provided that expenditures for removal of shells will not exceed the fair market value of the land.

30. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Honolulu, Hawaii, hereinafter referred to as said officer, who shall within a reasonable time reduce his decision and the reasons therefor to writing and mail or otherwise furnish a copy thereof to the Lessor. The decision of

the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessor mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) That all appeals under this provision shall be processed expeditiously.

31. The Government's compliance with all obligations placed on it by this lease shall be subject to the availability of funds.

32. The Lessor's compliance with any obligations which may be placed on it by this lease shall be subject to the availability of funds and/or personnel.

33. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide



employees or bona fide established commercial or selling agencies maintained by the Lessor for the purposes of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

34. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

35. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such lease; provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor

as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three or more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

36. This lease is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

STATE OF HAWAII

By *Jim P. Steyer*  
Chairman and Member  
Board of Land and Natural  
Resources

And By *R. L. Summers*  
Member  
Board of Land and Natural  
Resources

THE UNITED STATES OF AMERICA

APPROVED AS TO FORM:

*Bert T. Kobayashi*  
Bert T. Kobayashi  
Attorney General  
State of Hawaii

*Peter C. Lewis*  
Peter C. Lewis  
Deputy Attorney General  
State of Hawaii

By *Eugene H. Merrill*  
Eugene H. Merrill  
Deputy Assistant Secretary of the Army (I&L)  
(Installations)

STATE OF VIRGINIA )  
COUNTY OF ARLINGTON ) SS

On this 17<sup>th</sup> day of August, 1964, before me appeared Eugene H. Merrill, to me personally known who, being by me duly sworn, did say that he is the DEPUTY ASSISTANT SECRETARY OF ARMY (I&L)-Installations, and that the seal affixed to said instrument is the seal of the Department of the Army and that the said instrument was signed and sealed in behalf of said United States of America under the authority therein mentioned, and said Eugene H. Merrill acknowledged said instrument to be the free act and deed of said United States of America.

In witness whereof I have hereunto set my hand and official seal.

My Commission Expires November 6, 1966

Howard V. Kempter  
NOTARY PUBLIC  
Arlington County, Virginia

FORM 314 Certificate of Official Character.

Commonwealth of Virginia }  
County of Arlington } to wit:

I, H. BRUCE GREEN, Clerk of the Circuit Court of the County aforesaid in the State of Virginia, the same being a Court of record, do certify that Howard V. Kempter, whose genuine signature is attached to the foregoing certificate is, and was at the time of signing the same, a Notary Public in and for the said County, duly commissioned and qualified, residing in said County and duly authorized, by virtue of his office, to take acknowledgements to deeds and other writings, and to administer oaths under the laws of this State. I further certify that the official acts of the said Howard V. Kempter are entitled to full faith and credit; that I am well acquainted with the handwriting of the said Howard V. Kempter and verily believe his signature to the foregoing proof or acknowledgment to be genuine; and that his attestation is in due form of law. I further certify that the laws of Virginia do not require the imprint of the Notary's seal to be filed with the authenticating officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 17<sup>th</sup> day of August, 1964, and in the 189th year of the Commonwealth.

H. Bruce Green, Clerk.

EXHIBIT "A"

KAHUKU TRAINING AREA

PARCEL 1

A parcel of land situate at Waialeale and Pahipahialua, Koolauloa, Oahu, Hawaii, and being the mauka portion of the Government (Crown) Land of Waialeale and a portion of the land of Pahipahialua (R.P. 5688, L.C.Aw. 8559-B, Apana 37 Part 1 to W. C. Lunalilo), conveyed to the Territory of Hawaii by Trustees of the Estate of James Campbell by deed dated May 19, 1910, recorded in Book 327 on Page 464. (Land Office Deed 1651.)

Beginning at a pipe in concrete marked 22 at the west corner of this parcel of land and at the top of the pali on the west side of Kupahu Gulch, on the boundary between the lands of Waialeale and Kaunala, and at the end of Course 7 of Land Court Application 1095, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Waialeale" being 435.25 feet South and 2,395.43 feet West, and running by azimuths measured clockwise from true South:

1. 246° 51'                      555.6 feet across Kupahu Gulch to the top of the pali on the east side of Kupahu Gulch;  

Thence along the top edge of the pali to the boundary between the lands of Waialeale and Pahipahialua, the traverse between points on the top edge of said pali being:
2. 246° 51'                      500.0 feet to a pipe;
3. 242° 48'                      714.90 feet to a pipe;
4. 227° 23'                      603.20 feet to a pipe;
5. 237° 04'                      174.70 feet to a pipe;
6. 272° 09'                      305.70 feet to a pipe;
7. 297° 09' 30"                  253.60 feet to a pipe;
8. 218° 32'                      1,541.22 feet to the boundary between the lands of Waialeale and Pahipahialua;
9. 335° 23'                      400.00 feet along the land of Pahipahialua (Land Court Application 1095);
10. 254° 05'                      248.90 feet along the land of Pahipahialua (Land Court Application 1095);

11. 346° 58' 896.30 feet along the land of Pahipahialua (Land Court Application 1095);
12. 346° 19' 1,757.20 feet along the land of Pahipahialua (Land Court Application 1095) to a pipe in concrete marked 5;
13. 344° 27' 1,312.00 feet along the land of Pahipahialua (Land Court Application 1095);
14. 253° 48' 213.50 feet along portion of the land of Pahipahialua (Land Court Application 1095);
15. 344° 33' 1,329.30 feet along portion of the land of Pahipahialua (Land Court Application 1095);
16. 59° 59' 252.90 feet along portion of the land of Pahipahialua (Land Court Application 1095);
17. 346° 55' 270.60 feet along the land of Pahipahialua (Land Court Application 1095);
18. 337° 16' 808.20 feet along the land of Pahipahialua (Land Court Application 1095);
19. 55° 45' 583.00 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095);
20. 113° 45' 219.00 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095);
21. 161° 55' 456.00 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095);
22. 116° 00' 341.00 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095);
23. 166° 10' 273.00 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095);

24. 30° 57' 1,136.50 feet along Grant 5277 to Trustees of the Estate of James Campbell (Land Court Application 1095), to a pipe in concrete marked 17 on the boundary between the lands of Waialeale and Kaunala;
25. 135° 33' 3,759.00 feet along the land of Kaunala (Land Court Application 1095);
26. 134° 14' 1,623.00 feet along the land of Kaunala (Land Court Application 1095);
27. 152° 04' 365.00 feet along the land of Kaunala (Land Court Application 1095);
28. 170° 26' 322.30 feet along the land of Kaunala (Land Court Application 1095);
29. 193° 06' 86.10 feet along the land of Kaunala (Land Court Application 1095) to the point of beginning and containing an AREA OF 449.72 ACRES, more or less; together with a perpetual, assignable easement and a right-of-way to use, maintain and repair the existing access road across adjoining ceded land of the State of Hawaii.

PARCEL 2

A parcel of land situated at Koolauloa, Oahu, Hawaii.

Beginning at an inch pipe on a hill in the ridge bounding the lands of Paumalu and Kaunala and at the East corner of Lot 23 of the Pupukea-Paumalu Homesteads, from which pipe the true azimuth and distance to Government Survey Trig. Station "Waialeale" is 162° 43' 30" 10244.0 feet, as shown on Government Survey Registered Map No. 2252, and running by true azimuths;

1. Up along the ridge along the land of Kaunala to "Puu Moa" a point in the ridge at the head of the Paumalu Gulch, the direct azimuth and distance being: 328° 00' 6785.0 feet;
2. Thence down the ridge along the land of Waimea to "Puu Ki" a point in the ridge at the head of the land of Pupukea, the direct azimuth and distance being: 86° 10' 6660.0 feet;
3. 162° 00' 500.00 feet along the remainder of Pupukea-Paumalu Forest Reserve to the center of Kaleleiki Stream;

4. Thence along the center of Kaleleiki Stream to the boundary of Lot 21 of Pupukea-Paumalu Homesteads, the direct azimuth and distance being: 159° 30' 4117.00 feet;
5. 275° 30' 507.00 feet along Lot 21 of Pupukea-Paumalu Homesteads to an iron pipe;
6. 219° 37' 300.00 feet along same to an iron pipe;
7. 270° 01' 30" 2,218.00 feet along same down bluff to the center of the Paumalu Stream, and up bluff along Lot 22 to an iron pipe;
8. 225° 46' 2,417.00 feet along Lots 22 and 23 and across the Aimuu Gulch to the point of beginning and containing an AREA OF 700 ACRES, more or less.

LOT 368 PAHIPAHIALUA

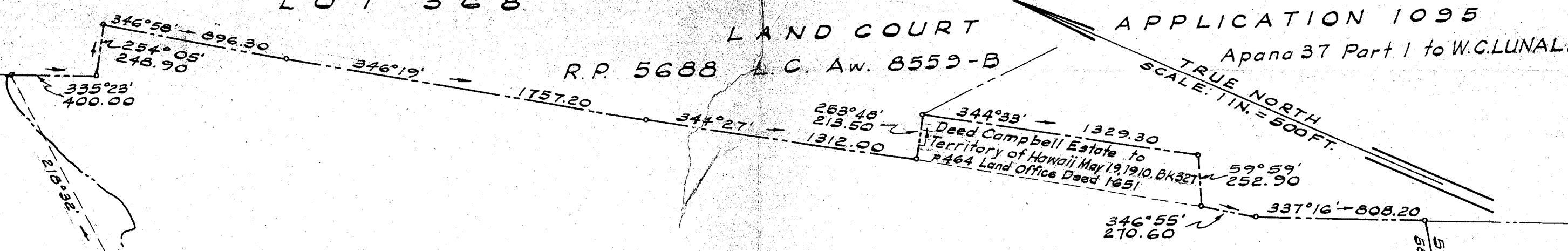
LAND COURT

R.P. 5688 L.C. Aw. 8552-B

APPLICATION 1095

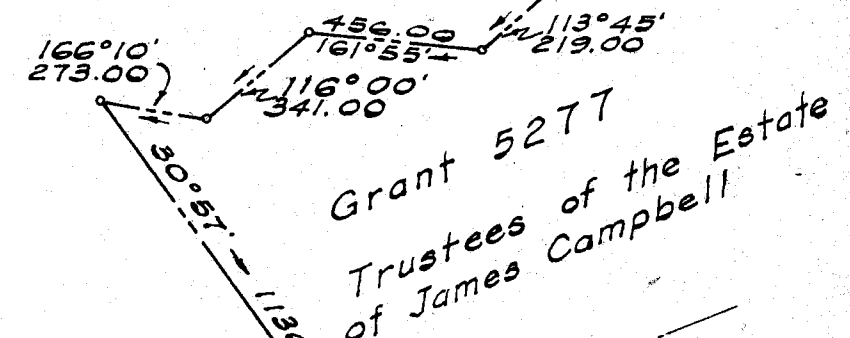
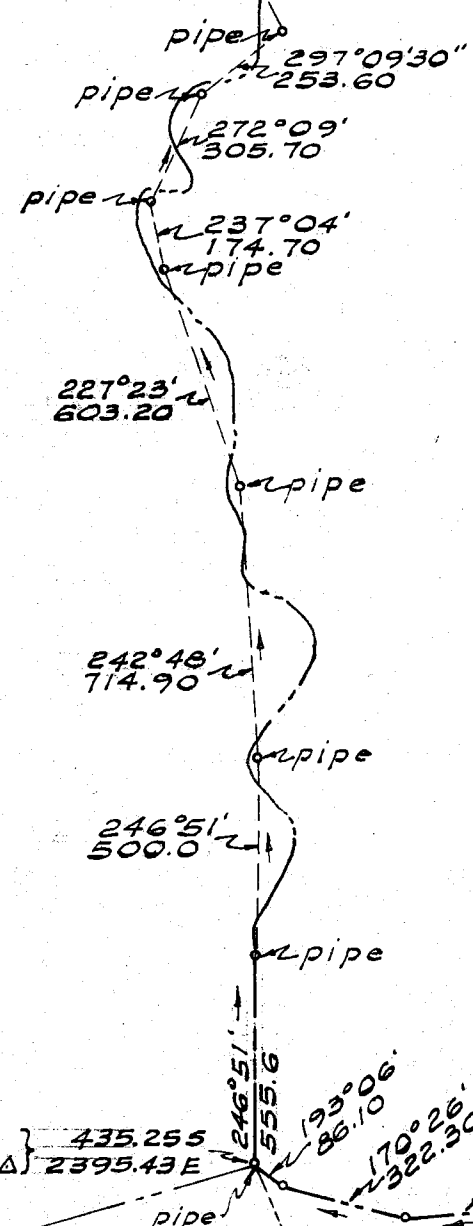
Apana 37 Part 1 to W.C.LUNALILO

TRUE NORTH  
SCALE: 1 IN. = 500 FT.



PARCEL 1  
449.72 ACRES

WAIALEE



Grant 5277  
Trustees of the Estate  
of James Campbell

LOT 373

KAUNALA

Apana 1 to

S. KAAPUIKI  
KAHUKU TRAINING AREA  
WAIALEE & PAHIPAHIALUA, KOOLAULO  
OAHU, HAWAII

U.S. ARMY ENGINEER DIVISION PACIFIC OCEAN  
REAL ESTATE DIVISION

R.P. 5689 L.C. Aw. 5235

FROM } 435.255  
"WAIALEE" Δ } 2395.43 E

21 OCT 1964

SCALE: 1 IN. = 500 FT.



RECORDATION REQUESTED BY:  
U. S. Army Engineer Division,  
Pacific Ocean

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

AFTER RECORDATION, RETURN TO:  
U. S. Army Engineer Division,  
Pacific Ocean  
Phone: 542986

LIBER 4821 PAGES 394 THRU 408

'64 AUG 20 PM 1:37

/s/ M. Adachi

INDEXED /i/ EK REGISTRAR

RETURN BY: MAIL ( ) PICKUP (X)

SPACE ABOVE THIS LINE FOR  
REGISTRAR'S USE

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE GENERAL LEASE NO. S-3846  
U. S. LEASE, CONTRACT NO. DA-94-626-ENG-78

1. THIS LEASE, made and entered into this 17<sup>th</sup>  
day of AUGUST, in the year one thousand nine hundred  
and sixty-four by and between the STATE OF HAWAII, represented  
by its Board of Land and Natural Resources, whose address is  
P. O. Box 621, Honolulu, Hawaii 96809, and whose interest in  
the property hereinafter described is that of fee simple owner,  
for itself, its administrators, successors, and assigns, here-  
inafter called the "Lessor", and THE UNITED STATES OF AMERICA,  
hereinafter called the "Government":

WITNESSETH: The parties hereto for the consideration  
hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government a  
parcel of land described on Exhibit "A" attached hereto and  
hereby made a part hereof, all to be used for the following  
purpose: Military purposes.

3. TO HAVE AND TO HOLD the said premises for a  
term of sixty-five (65) years beginning August 17, 1964  
and ending August 16, 2029; subject, however, to the  
rights of the Lessor and the Government respectively to  
terminate this lease in accordance with provisions 6 and 19  
hereof.

KAWAILOA

4. The Government shall pay the Lessor rent at the following rate: ONE DOLLAR (\$1.00) for the term of the lease, the receipt and sufficiency whereof is hereby acknowledged.

5. The Government shall have the right, during the existence of this lease, to attach fixtures, and erect structures or signs, in or upon the premises hereby leased, which fixtures and structures or signs, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. In addition, the Government shall post and maintain signs on roads and trails entering dangerous areas to provide a warning of any dangerous or hazardous activities; provided, that the information placed on the posted signs anywhere within the demised premises shall not be incompatible with the terms of this lease and, in those instances where joint use of an area is permitted, the information placed on the signs may include the permitted joint activities.

6. The Government may terminate this lease at any time by giving thirty (30) days' notice in writing to the Lessor.

7. This lease is subject to that certain Water License dated March 5, 1951, issued to Castle & Cooke, Inc.

8. The Lessor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Federal Government in connection with the Federal Government's use of the premises described herein.

9. In recognition of public use of the demised premises, the Government shall make every reasonable effort to stockpile supplies and equipment in an orderly fashion and

away from established roads and hiking trails and to remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner.

10. The Government shall obtain the written consent of the Lessor prior to constructing any road or building of the type for which design and construction plans are normally required; provided, however, that such consent shall not be arbitrarily withheld. The Government agrees that its training roads which provide primary access within or across the demised premises will be maintained to normal standards for training area roads with due regard for preventing unnecessary erosion; provided, however, that the Government shall be under no obligation to maintain roads during periods when the necessary engineer troops are absent from Oahu.

11. The Government shall take every reasonable precaution to prevent the start of any fire in the areas herein demised and shall take immediate and continuing action to extinguish any and all fires started by or resulting from Government activities. Further, the Government shall establish and at all times maintain a standard operating procedure for fighting fires within or adjacent to the subject leased property resulting from Government training activities during its use and occupancy of the premises; provided, further, that Government personnel actually using the premises shall be familiar with said standard procedure including the means of implementation.

12. In recognition of the limited amount of land available for public use, of the importance of forest reserves and watersheds in Hawaii, and of the necessity for preventing or controlling erosion, the Government hereby agrees that, commensurate with training activities, it will take reasonable

action during its use of the premises herein demised to prevent unnecessary damage to or destruction of vegetation, wild life and forest cover, geological features and related natural resources, and improvements constructed by the Lessor, help preserve the natural beauty of the premises, avoid pollution or contamination of all ground and surface waters and remove or bury all trash, garbage and other waste materials resulting from Government use of the said premises.

13. Except as required for defense purposes in times of national emergency, the Government shall not deliberately appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument.

14. In the event at some future date it is deemed necessary by the Lessor to use ground or surface water on the premises herein demised as a source of public water supply, the area providing said ground or surface water shall be withdrawn from military use upon request of the Lessor and with the Government's concurrence.

15. The Government shall not use any portion of the demised premises as an impact area for explosive or incendiary munitions of any type and shall limit firing on the premises to weapons not larger than .50 caliber provided, however, the Government may also fire inert 3.5-inch rockets or weapons of similar size or purpose as long as such training will not cause fires.

16. When the demised premises or any part thereof is not scheduled for Government training purposes from dusk Friday to midnight Sunday and from dawn to midnight on national holidays, the said premises shall be available to the Lessor which may open them to the general public who shall be subject to the laws of the State of Hawaii during their

presence on the premises which shall be for such limited or unlimited purposes as may be designated by the Lessor; provided, that the Lessor may declare the whole or any portion of the demised premises during such open periods as a public shooting or fishing ground, and the Lessor shall have the right to issue written permits to hunters and fishermen, subject to rules and regulations issued by the said Lessor; and, provided further, however, that permitted hunting and fishing activities shall be coordinated with the training activities of the Government on the demised premises and the Lessor shall obtain from such permittees written releases which will hold the Government and the Lessor harmless from any accidental injuries or deaths suffered by the holders of such permits; and, provided still further, that the Government shall make an effort to schedule its training exercises in such a manner as to enable the general public to use the subject area during the periods hereinabove mentioned and shall publish a notice in two papers of general circulation at least three (3) days prior to each said weekend or holiday on which the premises or any portion thereof will be used for training exercises except when prohibited therefrom by overriding military contingencies. The Government shall not be responsible for the control or safety of the general public, nor shall the Government be responsible for the correction of unsanitary conditions due to general public use of the demised premises.

17. The Lessor hereby agrees that, commensurate with the public use of the premises herein demised, it will take reasonable action during the use of the said premises by the general public; to remove or bury trash, garbage and other waste material resulting from use of the said premises by the general public.

18. The Lessor shall have the right to erect signs and construct capital improvements within the leased property at locations mutually agreed upon by the parties hereto, in connection with water conservation, public water consumption, forestry, recreational and related purposes, said capital improvements including but not limited in any way to the construction, maintenance and/or improvements of roads and trails; provided, however, that notwithstanding any other provisions of this lease to the contrary, the Government hereby accepts the responsibility and liability for repairs of any damage which can be demonstrated to have been the direct result of military activities, to improvements constructed by the Lessor subsequent to the date of this lease.

19. In the event that the leased property is not used by the Government for a period of three (3) consecutive years, this lease may be terminated upon ninety (90) days' written notice from the Lessor to the Government, provided, however, that if prior to the expiration of the aforesaid 90-day period the Secretary of the Army shall find and determine that the leased property is required for military purposes and shall notify the Lessor in writing of this finding and determination, this lease will continue in effect; provided, further, that periods during which a national emergency has been declared by the President or the Congress of the United States and periods during which major combat elements are temporarily deployed away from the State of Hawaii shall not be included in the said three-year period. During such period of temporary deployment the parties hereto shall discuss and give consideration to and provide for

the additional public use of the demised premises compatible with then existing military training requirements. The Government will assure that current military standards concerning adequate utilization are applied to these premises and will assure that such use is known and is a matter of record and available to the Lessor upon request.

20. Subject to obtaining advance clearance from the plans and training office of the Government's controlling agency, or any other designated Government agency, officials and employees of the Lessor and any person or persons duly authorized by the Lessor shall have the right to enter upon the demised premises at all reasonable times to conduct any operations that will not unduly interfere with activities of the Government under the terms of this lease; provided, however, that such advance clearance shall not be unreasonably withheld.

21. All persons legally entitled under the provisions of this lease to be on the said premises shall have a nonexclusive right to use all Government roads and trails except when such use will interfere with the training activities of the Government or said roads and trails have been restricted, by a duly posted sign, as security or danger areas by the Government.

22. The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use for road construction projects on the demised premises sources of coral, rock and similar

materials occurring naturally on the said premises and to use said ground and surface waters for purposes incident to the rights granted by this lease.

23. The Government will not be responsible for any loss, liability, claim or demand for any property damage, property loss, or personal injury, including but not limited to death, arising out of injury or damage caused by or resulting from any act or omission of the Lessor or the general public in connection with their use of the premises described herein.

24. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at P. O. Box 621, Honolulu, Hawaii 96809, and if given by the Lessor shall be addressed to the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Building 96, Fort Armstrong, Honolulu, Hawaii, Attention: Real Estate Division, or at such location and to such other agency as may be mutually agreed upon by the parties hereto.

25. The Government hereby agrees that the use and enjoyment of the land herein demised shall not be in support of any policy which discriminates against anyone based upon race, creed or color.

26. The Government shall not grant any interest in the demised premises; provided, however, that the Government shall have the right to grant the use of portions of the premises for temporary activities of Governmental agencies or their contractors in which case any land rental derived from such use of the premises shall be covered into the Treasury of the State of Hawaii



27. Subject to obtaining the prior approval of the Government, the Lessor reserves the right to grant rights or privileges to others not inconsistent with the terms of this lease affecting the whole or any portion of the demised premises.

28. The Government agrees to reforest areas, as expeditiously as practicable and within a period mutually agreed upon, where it can be demonstrated that substantial forest cover, including trees, has been destroyed as a direct result of Government activities; provided, however, that the Lessor shall obtain advance Government approval of all future plantings proposed by the Lessor

29. The Government shall surrender possession of the premises upon the expiration or sooner termination of this lease and, if required by the Lessor, shall within sixty (60) days thereafter, or within such additional time as may be mutually agreed upon, remove its signs and other structures; provided that in lieu of removal of structures the Government may abandon them in place. The Government shall also remove weapons and shells used in connection with its training activities to the extent that a technical and economic capability exists and provided that expenditures for removal of shells will not exceed the fair market value of the land.

30. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Honolulu, Hawaii, hereinafter referred to as said officer, who shall within a reasonable time reduce his decision and the reasons therefor to writing and mail or otherwise furnish a copy thereof to the Lessor. The decision of

the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessor mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) That all appeals under this provision shall be processed expeditiously.

31. The Government's compliance with all obligations placed on it by this lease shall be subject to the availability of funds.

32. The Lessor's compliance with any obligations which may be placed on it by this lease shall be subject to the availability of funds and/or personnel.

33. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide

employees or bona fide established commercial or selling agencies maintained by the Lessor for the purposes of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

34. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

35. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such lease; provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor

as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three or more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

36. This lease is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

STATE OF HAWAII

By

*Jim P. Lacey*  
Chairman and Member  
Board of Land and Natural  
Resources

And By

*R. L. Summers*  
Member  
Board of Land and Natural  
Resources

THE UNITED STATES OF AMERICA

By

*Eugene H. Merrill*  
Eugene H. Merrill  
Deputy Assistant Secretary of the Army (I&L)  
(Installations)

APPROVED AS TO FORM:

*Bert T. Kobayashi*  
Bert T. Kobayashi  
Attorney General  
State of Hawaii

*Peter C. Lewis*  
Peter C. Lewis  
Deputy Attorney General  
State of Hawaii

STATE OF VIRGINIA }  
COUNTY OF ARLINGTON } SS

On this 17<sup>th</sup> day of August, 1964, before me  
appeared Eugene H. Merrill, to me personally known  
who, being by me duly sworn, did say that he is the \_\_\_\_\_  
DEPUTY ASSISTANT SECRETARY OF ARMY  
(I&L)-Installations, and that the seal affixed to  
said instrument is the seal of the Department of the Army and that the  
said instrument was signed and sealed in behalf of said United States  
of America under the authority therein mentioned, and said Eugene H. Merrill  
\_\_\_\_\_ acknowledged said instrument to be the free act and  
deed of said United States of America.

In witness whereof I have hereunto set my hand and official seal.

My Commission Expires November 6, 1966

Howard J. Kempter  
NOTARY PUBLIC  
Arlington County, Virginia

Commonwealth of Virginia

County of Arlington

} to wit:

I, H. BRUCE GREEN, Clerk of the Circuit Court of the County aforesaid in the State of Virginia, the same being a Court of record, do certify that Howard V. Kempter

whose genuine signature is attached to the foregoing certificate is, and was at the time of signing the same, a Notary Public in and for the said County, duly commissioned and qualified, residing in said County and duly authorized, by virtue of his office, to take acknowledgements to deeds and other writings, and to administer oaths under the laws of this State. I further certify that the official acts of the said Howard V. Kempter

are entitled to full faith and credit; that I am well acquainted with the handwriting of the said Howard V. Kempter

and verily believe his signature to the foregoing proof or acknowledgment to be genuine; and that his attestation is in due form of law. I further certify that the laws of Virginia do not require the imprint of the Notary's seal to be filed with the authenticating officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 17th day of August, 1964, and in the 189th year of the Commonwealth.

*H. Bruce Green*

, Clerk.

EXHIBIT "A"

KAWAILOA TRAINING AREA

PARCEL 1

Land situate at Wahiawa, Oahu, Hawaii, and being a portion of the Land of Wahiawa.

Beginning at U. S. Military Reservation Monument No. 54 at the southeast corner of this piece of land, the northeast corner of the crown land of Waianae-Uka, on the west boundary of the Ahupuaa of Kahana and at the junction of the spur ridge (which divides the land of Wahiawa and the Ahupuaa of Waianae) with the Koolau Range, thence running by azimuths measured clockwise from true South:

In a westerly direction along the top of the ridge between the lands of Wahiawa and Waianae-Uka (U. S. Military Reservation of Schofield Barracks, Presidential Executive Order No. 2800 dated February 4, 1918) for the first eleven courses, the direct azimuths and distances being:

1. 91° 02' 23" 6,172.1 feet to U. S. Military Reservation Monument No. 53;
2. 86° 58' 47" 5,793.5 feet to U. S. Military Reservation Monument No. 52;
3. 85° 30' 15" 9,325.2 feet to U. S. Military Reservation Monument No. 51;
4. 94° 41' 42" 1,102.1 feet to U. S. Military Reservation Monument No. 50;
5. 84° 44' 51" 696.7 feet to U. S. Military Reservation No. 49;
6. 103° 01' 53" 964.8 feet to U. S. Military Reservation No. 48;
7. 137° 23' 13" 347.7 feet to U. S. Military Reservation Monument No. 47;
8. 85° 49' 16" 538.7 feet to U. S. Military Reservation Monument No. 46;
9. 74° 44' 22" 266.8 feet to U. S. Military Reservation Monument No. 45;
10. 60° 45' 55" 225.4 feet to U. S. Military Reservation Monument No. 44;
11. 104° 36' 38" 472.0 feet to U. S. Military Reservation Monument No. 43;
12. 205° 33' 4,800.0 feet along the remainder of the Land of Wahiawa;
13. 118° 35' 4,010.0 feet along the same;

14.

Thence along the Ahupuaa of Paalaa, along the top of the dividing ridge between the Paalaa and Wahiawa Water Sheds to the summit of Koolau Range, the direct azimuth and distance being:  $262^{\circ} 11' 30''$  22,301.6 feet;

15.

Thence along the Ahupuaas of Punaluu and Kahana, along the summit of the Koolau Range in a southeasterly direction to the point of beginning and containing an AREA OF 4,390 ACRES, more or less.



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 THEODORE G. MEEKER, Assistant United States Attorney  
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 General Litigation Section  
 Environment & Natural Resources Div.  
 U.S. Department of Justice  
 P.O. Box 663  
 Washington, D. C. 20044-0663

RECEIVED  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

OCT 4 2001

at 10 o'clock and 30 minutes M.  
 WALTER W. CHAMBERLAIN, CLERK

Attorneys for Defendants

PAUL H. ACHITOFF #5279  
 DAVID L. HENKIN #6876  
 D. KĀPUA 'ĀLA SPROAT #7182  
 EARTHJUSTICE LEGAL DEFENSE FUND  
 223 South King Street, Suite 400  
 Honolulu, Hawai'i 96813

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

MĀLAMA MĀKUA, a Hawai'i non-profit  
 corporation,

Plaintiff,

v.

DONALD H. RUMSFELD, Secretary of  
 Defense; and THOMAS E. WHITE, Secretary  
 of the United States Department of the Army,

Defendants.

Civil No. 00-00813 SOM-LEK

SETTLEMENT AGREEMENT  
 AND STIPULATED ORDER

SETTLEMENT AGREEMENT AND STIPULATED ORDER

WHEREAS, plaintiff Mālama Mākua filed this action alleging that the failure of defendants Donald H. Rumsfeld, Secretary of Defense, and Thomas E. White, Secretary of the United States Department of the Army, to prepare an environmental impact statement (“EIS”) for military training activities proposed for the Mākua Military Reservation (“MMR”) violates the National Environmental Policy Act of 1969 (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations;

WHEREAS, on July 16, 2001, this Court, upon plaintiff’s motion for preliminary injunction, enjoined defendants from conducting live-fire military training at MMR, pending the Court’s final disposition of this case;

WHEREAS, the parties have agreed to enter into this Settlement Agreement (“Agreement”), without any admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in this action; and,

WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve the issues in this action without protracted litigation;

NOW, THEREFORE, the parties to this Agreement (“Parties”) agree, and the Court orders, as follows:

1. Defendants will commence preparation and diligently pursue completion of an EIS in accordance with NEPA and its implementing regulations. The EIS will address, among other things, the potential direct, indirect and cumulative environmental impacts associated with the proposal to resume military training activities at MMR.
2. Prior to completion of the EIS required under this Agreement and the publication in the Federal Register of a Record of Decision (“ROD”) regarding the proposal to resume

military training at MMR, the U.S. Army and other Department of Defense (“DoD”) components will be permitted to carry out:

- a. Up to a total of sixteen (16) Company Combined Arms Live-Fire Exercises (“CALFEXs”) at MMR in the first twelve (12) months immediately following this Court’s approval of this Agreement;
- b. Up to a total of nine (9) CALFEXs at MMR in the second year (the following twelve (12) months); and
- c. Up to a total of twelve (12) CALFEXs at MMR in the third year (again, the following twelve (12) months).

3. The CALFEXs authorized pursuant to paragraph 2 will be as described in section 2 of the May 15, 2001 Supplemental Environmental Assessment for Routine Training at Makua Military Reservation and PFC Pilila`au Complex (“SEA”), with the following restrictions: all training will cease in the event of (1) any training-related fire outside the south firebreak road that surrounds the Company Combined-Arms Assault Course (“CCAAC”), or (2) any training-related damage to any archeological or cultural site. Defendants shall report any training-related damage to cultural sites to the State Historical Preservation Officer (“SHPO”) and may resume training only after reporting the damage to the SHPO and implementing all mitigation measures required by the Programmatic Agreement, executed by the 25<sup>th</sup> Infantry Division (Light) (“25<sup>th</sup> ID (L)”) and the U.S. Army, Hawaii on July 24, 2000. If a training-related fire starts outside of the south firebreak road, defendants shall reinitiate consultation with the U.S. Fish and Wildlife Service (“FWS”) pursuant to Endangered Species Act (“ESA”) section 7, 16 U.S.C. § 1536, as required by the Biological Opinion, dated July 23, 1999, and may resume training only after completing that consultation and in compliance with any conditions, excluding

recommendations, FWS may impose. Defendants shall promptly report any training-related fire outside the south firebreak road or any training-related damage to any archeological or cultural site to plaintiff's counsel, Earthjustice Legal Defense Fund, in writing (at 223 South King Street, Suite 400, Honolulu, Hawai'i 96813).

4. a. Defendants will complete the EIS as soon as possible. Defendants shall promptly notify plaintiff's counsel, Earthjustice Legal Defense Fund, in writing (at 223 South King Street, Suite 400, Honolulu, Hawai'i 96813), when they complete the EIS required by this Agreement and shall promptly deliver copies of the EIS and ROD prepared pursuant to this Agreement.

b. In the event defendants fail to complete the EIS and publish in the Federal Register a ROD within three years from the date this Court approves this Agreement, no live fire training shall be conducted at MMR until defendants complete the EIS and publish a ROD.

c. The Parties reserve the right to seek to modify the limitations on training set forth in this Agreement due to changed circumstances. In the event that the Parties do not reach agreement on a proposed modification, either Party may bring a motion to modify the training limitations. Any such motion brought by defendants will be subject to the standards for injunctive relief in cases where a NEPA violation has been found. The provisions in this paragraph do not limit the Parties' right to seek relief under Federal Rule of Civil Procedure 60.

5. Defendants will hold public meetings both as part of the NEPA scoping process and to receive comments on the draft EIS. These meetings will provide meaningful opportunities for the public to ask questions, raise concerns, and make comments. Meetings will be scheduled at times (i.e., evenings and weekends) and places (i.e., on the Wai'anae coast) that are convenient for the working people of the Wai'anae Coast. All oral comments and testimony

offered at these meetings will be transcribed by a court reporter. Defendants will make good faith efforts to obtain the services of a court reporter who is capable of transcribing the Hawaiian language. In the event a court reporter can be retained who is capable of transcribing the Hawaiian language, all oral comments and testimony offered at these meetings will be transcribed in English or Hawaiian, depending on the language used by the speaker. In the event defendants are unable to retain a court reporter who is capable of transcribing the Hawaiian language, all oral comments and testimony offered at these meetings will be audiotape recorded for later transcription and translation of comments and testimony offered in Hawaiian. At a minimum, one copy of the transcript of each meeting (including English translations of any comments or testimony offered in Hawaiian, provided a translator can be retained who is capable of transcribing the Hawaiian language) will be provided promptly and free of charge to plaintiff's counsel for the use of Mālama Mākua, with an additional copy made available promptly and free of charge to the public at the Wai`anae public library.

6. As part of the preparation of the EIS for military training activities at MMR, the defendants, by and through the 25<sup>th</sup> ID (L), shall:

a. Complete studies of potential contamination of soil, surface water, and ground water, and of potential impacts on air quality, associated with the proposed training activities at MMR. These studies will evaluate whether there is the potential for any contamination to be transported beyond the boundaries of MMR that may contaminate the muliwai, or any marine resource or wildlife on or near Mākua Beach. If the studies reveal the likelihood that such contamination is occurring or has occurred, defendants shall undertake additional studies of these resources (e.g., testing of fish, limu and other marine resources on which area residents rely for subsistence; testing of the muliwai for contamination). Defendants shall provide a 60-day

public comment period on the scope and protocol of these studies. The public comment periods on study protocols shall take place after the scoping process required pursuant to 40 C.F.R. § 1501.7 and shall be publicized pursuant to 40 C.F.R. § 1506.6.

b. Complete a Traditional Cultural Places (“TCP”) Survey, as defined by federal law, that follows the State of Hawai`i Office of Environmental Quality Control’s Guidelines for Assessing Cultural Impacts (Nov. 19, 1997). The contractor performing the TCP survey shall be chosen from the Office of Environmental Quality Control’s Directory of Cultural Impact Assessment Providers (Aug. 26, 1998).

c. Complete (1) surface and subsurface archeological surveys of all areas within the CCAAC training area circumscribed by the south firebreak road and (2) surface archaeological surveys of all the Surface Danger Zone (“SDZ”) areas, as shown in Figure 2-2 of the SEA, located outside the south firebreak road. There will be no archaeological surveys of areas suspected of containing Improved Conventional Munitions (“ICMs”) without the appropriate waiver from the Headquarters, Department of the Army (“HQDA”). The 25<sup>th</sup> ID (L) shall make good faith efforts to secure waivers from the HQDA to perform archaeological surveys of areas suspected of containing ICMs. The surface survey outside the south firebreak road will take place only after the area has been burned and surveyed for unexploded ordnance (“UXO”), and will be subject to any limitations imposed by FWS in ESA section 7 consultation and any limitations on clearance of UXO based on technical feasibility. If the surface archaeological survey or information from remote sensing or other sources indicates the likely presence of a subsurface archaeological site outside the south firebreak road, the 25<sup>th</sup> ID (L) shall conduct a subsurface survey of that potential site, subject to issuance of any required ICM waiver, technical feasibility, specific funding for UXO clearance (which the 25<sup>th</sup> ID (L) shall

make good faith efforts to secure and defendants shall provide to the maximum extent practicable), and any limitations imposed by FWS in ESA section 7 consultation. No archaeological subsurface surveys will be conducted under conditions that an Army Explosive and Ordnance (“EOD”) Safety Officer determines are too dangerous. The EOD Safety Officer will be the final arbiter on the matter of safety.

7. If the studies described in paragraph 6a, supra, reveal the potential for off-site soil, air, ground water or surface water contamination, defendants, through the 25<sup>th</sup> ID (L), shall undertake a long-term program to monitor such contamination. The scope and duration of the monitoring program will be addressed in the protocols as developed by defendants. Defendants shall provide a 60-day public comment period on the scope of, and protocol for, such monitoring.

8. Defendants, through the 25<sup>th</sup> ID (L), shall address UXO at MMR in the following manner:

a. In order to reduce the risk to individuals on Mākua Beach and Farrington Highway, the 25<sup>th</sup> ID (L) shall finalize and submit to HQDA for approval a plan for UXO clearance for the area within MMR extending 1,000 meters mauka (towards the mountains) from Farrington Highway. The 25<sup>th</sup> ID (L) shall continue to make good faith efforts to secure the necessary funding for this phase of UXO clearance, beginning with a request for funding in Fiscal Year 2002. Subject to specific funding for UXO clearance, safety requirements and any limitations imposed by FWS in ESA section 7 consultation, clearance activities in this area shall be completed as soon as practicable.

b. In addition, within one year of the date of settlement, the 25<sup>th</sup> ID (L) shall identify additional, high priority areas at MMR for UXO clearance, with the focus on increasing access to cultural sites. The 25<sup>th</sup> ID (L) shall provide meaningful opportunities for the people of

the Wai`anae Coast to participate in identifying and prioritizing these areas, including releasing draft plans for public review and holding meetings at which the public will have the chance to ask questions, raise concerns and make comments and suggestions. After identifying these additional, high priority areas, the 25<sup>th</sup> ID (L) shall make good faith efforts promptly to develop a plan and secure specific funding for the clearance of UXO from these areas to provide safe, controlled access to identified cultural sites. The clearance plan and activities are subject to any limitations imposed by FWS in ESA section 7 consultation, safety requirements, available funds specifically for UXO clearance, and available and appropriate technologies and methods.

c. Beginning on the first anniversary of this Agreement, and every year thereafter on the anniversary of this Agreement, the 25<sup>th</sup> ID (L), or any successor U.S. Army command, shall provide to the people of the Wai`anae Coast an annual report describing its progress in clearing UXO from MMR. At a minimum, one copy of each annual progress report will be provided promptly and free of charge to plaintiff's counsel for the use of Mālama Mākua, with an additional copy made available promptly and free of charge to the public at the Wai`anae public library.

9. Defendants shall provide Mālama Mākua and other members of the Wai`anae Coast community with technical assistance, at a cost not to exceed fifty thousand dollars (\$50,000), to facilitate public participation in the NEPA process, as described below.

a. Purpose: The intent of this provision is to provide technical assistance to Mālama Mākua and other members of the Wai`anae Coast community to help them better understand the technical issues and study protocols to be used during the NEPA process at MMR. This assistance shall be provided by a technical assistant or assistants, who will review the technical issues and study protocols to be used during the preparation of the EIS and provide



input to Mālama Mākua, other members of the Wai`anae Coast community and defendants regarding same. The technical assistant(s) will seek to help Mālama Mākua and other members of the Wai`anae Coast community understand the issues involved during the EIS process in order to facilitate and inform public participation and comment in the scoping process and in the public comment periods for the EIS study protocols (discussed in paragraph 6a, supra) and for the draft EIS. This assistance will be limited to facilitating and informing the public's participation and comment concerning technical issues during the scoping process and public comment periods on the EIS study protocols and the draft EIS.

b. Technical Assistant(s). Within thirty (30) days following the Court's approval of this Agreement, the Parties will establish mutually agreed upon qualifications for such assistant(s). Thereafter, Mālama Mākua and other members of the Wai`anae Coast community may submit applications nominating individuals who meet those qualifications for contract, with a copy of each application promptly provided to plaintiff's counsel on behalf of Mālama Mākua. Within ten (10) working days of the date an application for technical assistance is received, the Parties shall raise any objections thereto (e.g., disagreement with the qualifications or appropriateness of a nominated individual or the compensation to be paid for the proposed scope of services). If there is no objection to an application, it shall be promptly granted. If either Party objects to an application, the Parties and the person or organization that submitted the application ("Applicant") will promptly meet and confer in a good faith attempt to resolve any objections (e.g., reach agreement on the person nominated, find a suitable and mutually acceptable replacement, or modify the compensation to be paid). Final action on any application will be taken within fifteen (15) days of receipt, unless the Applicant and the Parties agree to a

longer period of time. No application for technical assistance will be granted if, following the informal resolution process described in this paragraph, any Party still objects.

10. The Parties agree that plaintiff is entitled to an award of reasonable attorneys' fees and costs incurred in this litigation and will attempt to reach agreement as to the amount of such award. If the Parties are unable to do so, plaintiff may file an application with this Court for the recovery of fees and costs no later than November 16, 2001.

11. Defendants shall transport explosives, grenades, mines, artillery rounds, anti-tank rounds, and mortar rounds to MMR by airlift, provided such airlift is available and weather permits. When airlift is unavailable or weather does not permit, defendants agree that any transport of such munitions and ordnance by way of Farrington Highway will avoid the hours from 5:00 a.m. to 7:00 p.m. Further, defendants agree that transport of all other munitions and ordnance by way of Farrington Highway will avoid peak traffic hours and times when children are traveling to or from school (i.e., from 5:30 a.m. to 8:30 a.m. and from 12:30 p.m. to 6:30 p.m.).

12. At least one member of Mālama Mākua will be allowed access as an observer to each live-fire training exercise at MMR, post-training UXO cleanup, and post-training evaluation of damage to cultural sites. Defendants shall provide written notice to plaintiff's counsel, Earthjustice Legal Defense Fund, at least five (5) working days prior to each live-fire training exercise at MMR. The extent and terms of the access, including the maximum number of observers allowed, will be determined by defendants, in consultation with Mālama Mākua, based on requirements for training, safety, national security and compliance with applicable laws and regulations. Other members of the Wai`anae Coast community seeking access as observers shall

make their requests to the 25<sup>th</sup> ID (L), as established by protocols to be developed by defendants within thirty (30) days following the Court's approval of this Agreement

13. Members of the Wai`anae Coast community, including Mālama Mākua, will be allowed daytime access (sunrise to sunset) to MMR to conduct cultural activities at least twice a month. Additionally, members of the Wai`anae Coast community, including Mālama Mākua, will be allowed overnight access (from two hours before sunset on the first day until two hours after sunset on the second day) to MMR to conduct cultural activities on at least two additional occasions per year. During the first year following the Court's approval of this Agreement, Mālama Mākua will be allowed overnight access on at least one additional occasion -- from December 14 through December 15, 2001 -- for observance of the Makahiki. Access to the Ukanipō Heiau is subject to the Ukanipō Heiau Advisory Council per the Programmatic Agreement signed by the 25<sup>th</sup> ID (L) on October 12, 2000. The cultural access provided for in this paragraph will be subject to limitations determined by defendants in consultation with native Hawaiian cultural practitioners, including those from Mālama Mākua, based on requirements for training, safety, national security, and compliance with applicable laws and regulations. The Parties will establish protocols for this access promptly, with the first daytime access taking place no later than sixty (60) days following the Court's approval of this Agreement and the first overnight access taking place no later than the December 14-15, 2001 Makahiki observance described above.

#### FUNDING

14. Nothing in this Agreement relieves defendants of the obligation to act in a manner consistent with applicable federal, state or local law, and applicable appropriations law. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement

that defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

#### ENFORCEMENT OF THIS AGREEMENT

15. a. This Court has jurisdiction to enforce the terms of this Agreement. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).

b. This Agreement may be modified by the Court upon good cause shown by written stipulation between the Parties filed with and approved by the Court, or upon written motion filed by either Party and granted by the Court. In the event that either Party seeks to modify the terms of this Agreement, including any of the deadlines for any action set forth herein, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either Party believes that the other Party has failed to comply with any term or condition of this Agreement, the Party seeking the modification, raising the dispute or seeking enforcement, shall provide the other Party with written notice of the claim. The Parties agree that they will meet and confer (in-person not required) at the earliest possible time in a good faith effort to resolve the claim before bringing any matter to the Court. If the Parties are unable to resolve the claim within ten (10) days after the notice, either Party may bring the claim to the Court. The requirement to wait ten (10) days before bringing a claim to the Court shall not prohibit plaintiff from immediately seeking a temporary restraining order if plaintiff alleges that defendants have violated the limitations on training set forth in paragraph(s) 2 or 3.

#### USE OF AGREEMENT

16. a. This Agreement was negotiated and executed by the Parties in good faith to avoid expensive and protracted litigation and is a settlement of claims and defenses which were vigorously contested, denied and disputed. This Agreement shall not constitute an admission or

adjudication with respect to any allegation made by any Party. Moreover, this Agreement shall not constitute an admission of any wrongdoing, misconduct or liability on the part of the defendants. Further, this Agreement shall not constitute an acknowledgment by plaintiff that there was no wrongdoing, misconduct or liability.

b. Plaintiff reserves its right to bring subsequent actions challenging the adequacy of the EIS that defendants will prepare pursuant to this Agreement. This Agreement shall not constitute an admission by plaintiff that defendants' compliance with the Agreement satisfies their obligations under NEPA.

DISMISSAL OF THIS ACTION & DISSOLUTION OF PRELIMINARY INJUNCTION

17. a. This case shall be dismissed with prejudice, except for plaintiff's claim for an award of attorneys' fees and costs, which is left for resolution through future negotiation or motion practice. Judgment shall not be entered in this case prior to entry of an order resolving plaintiff's claim for an award of attorneys' fees and costs.

b. The preliminary injunction entered by the Court on July 16, 2001 is hereby dissolved.

AUTHORIZATION TO SIGN

18. This Agreement shall apply to and be binding upon the Parties, their members, delegates and assigns. The undersigned representatives certify that they are authorized by the Party or Parties they represent to enter into the Agreement and to execute and legally bind that Party or Parties to the terms and conditions of this Agreement.

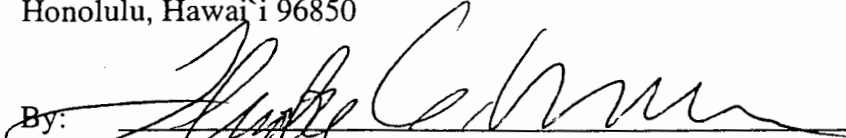
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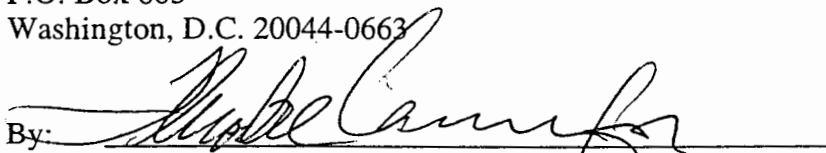
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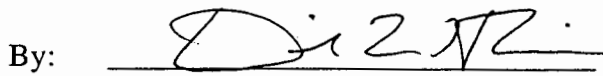
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Mālama Mākua v. Rumsfeld, et al., Civil No. 00-00813 SOM-LEK (D. Haw.); SETTLEMENT  
AGREEMENT AND STIPULATED ORDER

APPROVED AND SO ORDERED:

Dated:

SUSAN OKI MOLLWAY

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SUSAN OKI MOLLWAY  
UNITED STATES DISTRICT JUDGE

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Mālama Mākua v. Rumsfeld, et al., Civil No. 00-00813 SOM-LEK (D. Haw.); SETTLEMENT  
AGREEMENT AND STIPULATED ORDER

GUIDANCE ON PUBLIC ACCESS TO MAKUA MILITARY RESERVATION FOR  
OBSERVATION OF TRAINING, DAY/NIGHT ACCESS, AND THE DECEMBER 14-15, 2001  
OBSERVANCE OF THE MAKAHIKI

1. References:

- a. Settlement Agreement and Stipulated Order, *Malama Makua v. Dept. of the Army*, dated 4 October 2001.
- b. 25<sup>th</sup> ID(L) & USARHAW Regulation 210-6, Ranges and Training Areas, 23 March 1999.
- c. Policy Memorandum, Training Areas and Operational Guidelines for Entry Into Hazardous Areas, Enclosure 1
- d. HQDA Letter 385-01-1, Improved Conventional Munitions and Submunitions, Enclosure 2
- e. Programmatic Agreement, Ukanipo Heiau, 12 October 2000
- f. Interim Guidance on Observation of Training by Members of Malama Makua and/or Members of the Wai`anae Coast, dated 12 October 2001
- g. Access Policy for Makua Military Reservation (MMR) (*Draft*), 18 October 2001

2. Purpose.

a. On 4 October 2001, the settlement agreement between Malama Makua and the Department of the Army [hereinafter, 25<sup>th</sup> Infantry Division (Light) & USARHAW] provides that at least one member of Malama Makua will be allowed access as an observer to each live-fire training exercise at Makua Military Reservation (MMR), post-training Unexploded Ordnance (UXO) cleanup, and post-training evaluation of damage to cultural sites. The extent and terms of access by members of Malama Makua, will be determined by The Department of the Army, in consultation with Malama Makua, based on requirements for training, safety, national security and compliance with applicable laws and regulations.

b. The agreement further provides that other members of the Wai`anae Coast community seeking access may request to attend training by submitting a request to 25<sup>th</sup> Infantry Division (Light) & USARHAW.

c. Members of the Wai`anae Coast community, including Malama Makua, will be allowed daytime access (sunrise to sunset) to MMR at least twice a month. Access to specific cultural sites will be subject to limitations determined by 25<sup>th</sup> Infantry Division (Light) & USARHAW, in consultations with native Hawaiian cultural practitioners, including those from Malama Makua, based on training, safety, national security, and compliance with applicable laws and regulations. The first daytime access will take place no later than sixty (60) days following the Settlement Agreement, which is 3 December 2001.

d. Further, members of the Wai`anae Coast community, including Malama Makua, will be allowed overnight access (two hours before sunset on the first day until two hours after sunset on the second day) on at least two additional occasions per year. On 14-15 December 2001, Malama Makua will be allowed an additional overnight access for observance of the Makahiki. Access to specific cultural sites will be subject to limitations determined by 25<sup>th</sup> Infantry Division (Light) & USARHAW, in consultation with

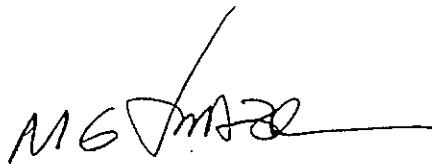


SUBJECT: Guidance on Public Access to Makau Military Reservation for Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

native Hawaiian cultural practitioners, including those from Malama Makua, based on training, safety, national security, and compliance with applicable laws and regulations. The first overnight access will take place no later than the 14-15 December 2001 Makahiki observance.

3. The protocol regarding public access to observe training is set forth in Appendix A. The protocols for day and night public access are set forth in Appendix B (TBD).

4. Any requests to supplement or change the protocols will be submitted in writing to Commander, 25<sup>th</sup> Infantry Division (Light) & USARHAW, ATTN: Office of the Staff Judge Advocate. The Staff Judge Advocate, or his or her designee, will staff the request through the appropriate personnel within 25<sup>th</sup> Infantry Division. Once complete, the Staff Judge Advocate will provide notice of the requested supplement or change to Malama Makua, through EarthJustice Legal Defense Fund, for consultation consistent with the settlement agreement. As with these protocols, Commander, 25th Infantry Division (Light) & USARHAW will make the final decision regarding any supplement or change.

A handwritten signature in black ink, appearing to read 'M G Dubik', with a long horizontal line extending to the right.

JAMES M. DUBIK  
Major General, USA  
Commanding

SUBJECT: Guidance on Public Access to Makua Military Reservation . Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

## APPENDIX A

### ACCESS BY MEMBERS OF MALAMA MAKUA AND/OR MEMBERS OF THE WAI'ANAE COAST TO OBSERVE TRAINING AT MAKUA MILITARY RESERVATION

#### 1. REQUIRED ADVANCE NOTICE OF LIVE-FIRE TRAINING EXERCISE.

A. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will provide written notice (by U.S. mail or facsimile transmission) to Malama Makua, through its counsel Earthjustice Legal Defense Fund (at 223 South King Street, Suite 400, Honolulu, Hawai'i 96813; fax: (808) 521-6841), so that notice is received at least five (5) working days prior to each live-fire training iteration (including any artillery or mortar registration) at Makua Military Reservation (MMR).

B. The notice shall also include a schedule for the planned live-fire training iteration, including expected start and end times for the artillery or mortar registration, blank fire, and the live-fire exercise, unexploded ordnance (UXO) clean-up, and cultural site evaluation. It is understood that actual start times for the training events may slip for various reasons. An updated schedule will be made available on a daily basis to Malama Makua.

C. If, for any reason, training times and events must be rescheduled following notice described in paragraph 1.A., supra, the 25<sup>th</sup> Infantry Division (Light) & USARHAW will promptly notify Malama Makua, through its counsel, Earthjustice Legal Defense Fund. Finally, whenever the schedule is updated or modified, a copy will be faxed to Earthjustice Legal Defense Fund at (808) 521-6841. In addition, if Malama Makua has already provided a list of observers pursuant to paragraph 4.A., infra, the 25<sup>th</sup> Infantry Division (Light) & USARHAW will make good faith efforts to notify those observers of the need to reschedule.

#### 2. NUMBER OF OBSERVERS FOR MALAMA MAKUA.

A. The total number of observers from Malama Makua will not exceed five (5) persons at any one time. This number does not include invited members of the media or other invited guests by the 25<sup>th</sup> Infantry Division (Light) & USARHAW, including any members of the Wai'anae Coast community observing pursuant to paragraph 3, infra.. No minors (under the age of 18) are allowed. Malama Makua may invite individuals who are not members of Malama Makua to participate as observers, and any such individuals will count against Malama Makua's total number of observers. Malama Makua may arrange for observers to substitute for one another during the day of observation, provided that Malama Makua provides advance notice, pursuant to paragraph 4.A., infra, of all individuals who will observe on that day.

B. In the event of an unusual occurrence or situation, Malama Makua may request permission from the 25<sup>th</sup> Infantry Division (Light) & USARHAW to have more than five observers. The request will set forth the reason for the additional observers. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will consider each request and decide whether to grant permission for the additional observers.

#### 3. NUMBER OF OBSERVERS FOR MEMBERS OF WAI'ANAE COAST. The total number of observers for members of the Wai'anae Coast who are not affiliated with Malama Makua will not exceed five (5) persons at any one time. This number does not include invited members of the media or other invited guests by the 25<sup>th</sup> Infantry Division (Light) & USARHAW. No minors (under the age of 18) are allowed.

SUBJECT: Guidance on Public Access to Makau Military Reservation . . Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

4. REQUIRED ADVANCE NOTICE OF ATTENDANCE.

A. When notice is provided in accordance with paragraph 1.A, supra, Malama Makua will provide written notice (email is considered written notice) to the 25<sup>th</sup> Infantry Division (Light) & USARHAW, (Attn: Staff Judge Advocate), Bldg. 580, Room 100, Schofield Barracks, HI, 96857-6000 (Fax: (808) 655-8740)(email: [sjaadmin@schofield.army.mil](mailto:sjaadmin@schofield.army.mil) or [firstname.lastname@schofield.army.mil](mailto:firstname.lastname@schofield.army.mil)), with the names and phone numbers of the observers no later than 48 hours prior to the start of the day of the training-related event the observers want to see. The phone number is requested in case the scheduled training is delayed or rescheduled on short notice due to weather or other event. If the scheduled training is delayed or rescheduled due to weather or other conditions, Malama Makua will provide written notice of observer attendance as soon as possible after receiving notice of the new training schedule.

B. Members of the Wai`anae Coast, who are not affiliated with Malama Makua, will submit a written request (email is considered written notice) to the 25<sup>th</sup> Infantry Division (Light) & USARHAW, (Attn: Public Affairs Office, Community Relations), Bldg. 580, Schofield Barracks, HI 96857 (Fax: 655-9290)(email: [Amy.Lutey@schofield.army.mil](mailto:Amy.Lutey@schofield.army.mil) or [firstname.lastname@schofield.army.mil](mailto:firstname.lastname@schofield.army.mil)). The request will include the names and phone numbers of the observers, as well as a point of contact no later than 48 hours prior to the start of the training the observers want to see. The Public Affairs Office will notify the point of contact upon receipt and coordinate for observation of training with the point of contact.

C. Escorts. The 25th Infantry Division (Light) & USARHAW will provide one escort for every five (5) observers. Any personnel designated as an escort will receive a briefing from Range Control Personnel prior to assuming escort duties.

5. REQUIRED ACTIONS UPON ARRIVAL AT MAKUA MILITARY RESERVATION.

A. Upon arrival at MMR, the observers will be required to provide at least one form of picture identification prior to entry. Additionally, consistent with current force protection measures, each observer, and any of their bags, may be subject to search. Upon arrival, the observers will log in at the Makua Range Control office. Any observer who arrives to substitute for an observer as described in para. 2.A., supra, must also log in at Makua Range Control office.

B. At the time of arrival, each observer will be required to sign the waiver of liability (Enclosure).

C. Range Control personnel will give a safety brief to each observer prior to their observation of training. The presentation of the safety brief will, to the extent practicable, be timed to allow observers to observe the entirety of each training-related event (generally, they will be scheduled approximately 15 minutes prior to the start of the scheduled event). However, no training-related event will be held up or suspended because the safety brief is not complete.

D. The Army will provide an escort to stay with observers and answer questions as appropriate. To the extent practicable, observers will be provided an overview of the training events that are occurring during their visit.

E. If requested, a copy of the burn index worksheet will be provided to Malama Makua when its observer(s) sign in. At the conclusion of the training exercise, if requested, another copy will be provided to Malama Makua.

SUBJECT: Guidance on Public Access to Makau Military Reservation for Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

F. All observers must comply with specified Army guidelines described herein or specified in the safety briefing. The Army reserves the right to take any appropriate action, to include removal of any observer from MMR who is acting in a disruptive manner. Disruptive behavior includes, but is not limited to, acts that endanger themselves or others, failure to abide by guidance from the escorts, or attempting to enter unauthorized areas of MMR.

## 6. LOCATION FOR OBSERVATION OF TRAINING.

### A. LOCATION OF OBSERVATION FOR DRY, BLANK, AND LIVE-FIRE TRAINING.

1. The authorized area for observation of dry, blank, and live-fire exercise is the Range Control area from the fenced area around the Range Control buildings and the Observation Tower. The primary location for observation of training during the live-fire exercise will be the Range Control Tower.
2. Those observers who for any reason are unable to climb the Range Control Tower will be provided an alternate location to observe training, such as the ground level at the base of the Tower.
3. No more than eight (8) personnel, to include the training unit's three (3) fire-watchers, will observe training from the Tower Deck at one time. An escort will also be present during any observation. Accordingly, a maximum of four (4) observers will be able to observe from the Tower Deck at any one time. Other observers must remain at the lower level. To the extent both members of Malama Makua and other members of the Wai'anae Coast community are present for training, the number of observers on the Tower Deck will be, the extent practicable, evenly split between the various groups. At least one member of Malama Makua observer, to the extent possible, will be allowed on the Tower Deck during the dry, blank and live-fire training. The Range OIC, consistent with safety considerations, is the final authority on personnel in the Range Tower.

### B. LOCATION OF OBSERVERS FOR UXO CLEARANCE.

1. During the survey phase of UXO clearance, observers will taken, with an escort, to an area, such as the fire-break road, for observation of the UXO sweep by EOD personnel. The actual location will be determined in accordance with the minimum safe distance requirements as determined by 25<sup>th</sup> Infantry Division (Light) & USARHAW.
2. If UXO from the live-fire exercise is found during the survey, EOD will mark the location of the UXO. Then, one Malama Makua observer will be escorted to observe the location where the UXO was found. The location will be determined in accordance with the minimum safe distance requirements as determined by 25<sup>th</sup> Infantry Division (Light) & USARHAW.
3. Upon discovery of UXO from the live-fire exercise, EOD will either remove the UXO to a central location on MMR for demilitarization at a later time or will demilitarize the UXO at that site. During any demilitarization, for the safety reasons, all observation will be done from Range Control area, including the Range Control Tower, subject to restrictions set forth in paragraph 6.A.3, supra. At no time will observers be allowed onto the range until cleared to do so by Range Control personnel.
4. If the decision is made to conduct demilitarization of UXO from the live-fire exercise at a later time, the 25<sup>th</sup> Infantry Division (Light) & USARHAW shall ensure that Malama Makua has the opportunity to observe the demilitarization. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will

SUBJECT: Guidance on Public Access to Makau Military Reservation . . . Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

notify Malama Makua, through its counsel, Earthjustice Legal Defense Fund, of the date and time for such observation.

5. After EOD has completed the demilitarization and declared the range safe, observers will be allowed to go, with escorts, to view the site of the demilitarization.

#### C. LOCATION OF OBSERVERS FOR OBSERVATION OF POST-TRAINING EVALUATION OF DAMAGE TO CULTURAL SITES.

1. Following each live-fire training iteration, Malama Makua observers shall be allowed access to observe the post-training evaluation of cultural sites. Range Control personnel and DPW Cultural Resources office will determine the schedule for visits to the cultural sites.

2. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will, to the extent practicable, make a vehicle available to facilitate the observance of the Army's post-training evaluation of the cultural sites. If a specific concern about one or more cultural sites arose during the live-fire training, Malama Makua may identify the site(s) and ask the 25<sup>th</sup> Infantry Division (Light) & USARHAW to conduct the post-training evaluation of any such site(s) first. The 25<sup>th</sup> Infantry Division (Light) & USARHAW shall accommodate such requests to the maximum extent practicable.

3. Observers, for safety reasons, will not be allowed to roam freely. They must remain with escorts at all times and will be allowed access to specific sites using specific routes outlined by Range Control Personnel, DPW Cultural Resources Office, and their escorts. Observers will not touch or pick up any brass, ammunition, or any other item found on the ground. If observers find any item on the ground, they should bring this to the attention of the escort, Range Control personnel or the DPW Cultural Resource office personnel.

4. If needed, the 25<sup>th</sup> Infantry Division (Light) & USARHAW will provide Malama Makua or other observers with appropriate protective gear, such as kevlar helmets and/or body armor, to allow them to observe post-training evaluation of cultural sites.

5. Entry into any improved conventional munitions (ICM) area is strictly prohibited unless a properly issued waiver is obtained.

#### 7. PROCEDURE FOR SUBMITTING CONCERNS ABOUT TRAINING.

A. If during any training-related event, an incident occurs that causes concern to Malama Makua or other observers, such as an errant round, suspected fire, or other incident, the observer will use the following method to bring this to the attention of the 25<sup>th</sup> Infantry Division (Light) & USARHAW:

1. At the end of each training-related event, any concerned observer, shall submit, in writing, his or her concern about any event that occurred during the training. As completely as possible, the observer will describe what occurred that caused them concern.

2. A computer and printer will be made available at Range Control to allow the observer to write their concerns. The statement will be signed by the observer and submitted to Range Control personnel. A copy will be provided to the observer.

SUBJECT: Guidance on Public Access to Makau Military Reservation ... Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

3. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will provide a written response to Malama Makua, through Earthjustice Legal Defense Fund, addressing the concern(s) raised by the observer as expeditiously as possible.

4. Observers are strongly encouraged to submit their concerns prior to leaving the Makua Military Reservation at the end of the day. If observers submit their concerns at any other time, the failure to timely submit the concern may prevent the 25<sup>th</sup> Infantry Division (Light) & USARHAW from being able to properly respond to the concern raised by the observer.

#### 8. USE OF RANGE CONTROL FACILITIES.

A. No personal vehicles will be allowed onto the range. Observers will park their vehicle in designated parking locations. The 25<sup>th</sup> Infantry Division will provide the necessary vehicles for use on the range during UXO clearance and post-training examination of cultural sites. To the extent necessary, and subject to safety considerations, the Department of the Army will provide any appropriate protective gear, such as kevlar helmets and/or body armor, if needed.

B. Access to the Range Control buildings during range operations is limited to the latrine area to include the watercooler. Observers may also use the conference room when invited Range Control personnel. Observers may not enter the working area of the building unless invited by Range Control. If, during range operations, Malama Makua observers would like to check the burn index, Range Control personnel will either bring it outside to the observer or it will be posted outside.

C. There is no photography or videotaping allowed inside the Range Control Building.

D. The Range Control telephone is for official business only. To the extent that observers need to make a phone call, it will be brought outside the Range Control Building. Observers should limit their calls to a maximum of five (5) minutes.

#### 9. MISCELLANEOUS.

A. The use of alcohol on MMR is strictly prohibited.

B. Observers are encouraged to bring any food or drinks they will desire with them. The 25<sup>th</sup> Infantry Division (Light) & USARHAW will have water available.

C. Smoking is allowed in the vicinity of the Range Control Building and Tower, but it is discouraged due to the area fire hazard. Smoking is strictly prohibited on the range east of the red range gate.

D. There will be medical personnel on the range. However, Army Regulations provide that medical care may be provided only in emergency situations. It is requested that observers notify their escorts of any special medical needs in the event an emergency occurs, to allow for proper treatment.

E. Observers are free to use binoculars, take any photos or video they desire while viewing training-related events, subject to the following restrictions:

1. During the hours of darkness, no flash photography;

2. Observers are encouraged to ask questions of the escorts, but not allowed to conduct any formal interviews with any soldiers;

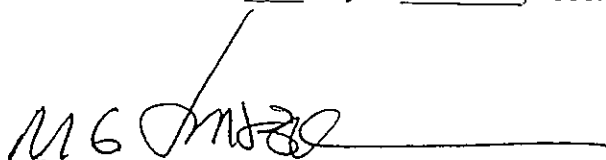
SUBJECT: Guidance on Public Access to Makau Military Reservation for Observation of Training, Day/Night Access, and the December 14-15, 2001 Observance of the Makahiki

3. If an observer is a member of the media or broadcasting a media event, the observer will coordinate with the Public Affairs Office just as all other media outlets are required to do; and,
4. As set forth above, photos and video are prohibited inside the Range Control building.

F. It is recommended that observers wear flat shoes and comfortable clothing to facilitate the climb to observation tower as well as their movements during the post-training phases. For safety reasons, covered shoes are required while on MMR, except the area around Range Control and the Range Control Tower.

10. This guidance will remain in effect until such time as modified by the Commander, 25<sup>th</sup> Infantry Division (Light) & USARHAW, in consultation with Malama Makua. Modifications to this guidance may occur due to changes on requirements for training, safety, national security and compliance with applicable laws and regulations.

Executed this 2<sup>nd</sup> Day of November, 2001.

A handwritten signature in black ink, appearing to read 'J M Dubik', is written over a horizontal line. A vertical line extends upwards from the signature to the word 'November' in the date above.

JAMES M. DUBIK  
Major General, USA  
Commanding



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**HEADQUARTERS, UNITED STATES ARMY GARRISON, HAWAII**  
**851 WRIGHT AVENUE, WHEELER ARMY AIRFIELD**  
**SCHOFIELD BARRACKS, HAWAII 96857-5000**

Office of the Commander

12 JUNE 2009

## HIGH PRIORITY SITE LIST FOR UXO CLEARANCE

### 1.0 INTRODUCTION

Pursuant to paragraph 8(b) of the October 4, 2001 Settlement Agreement in the action entitled *Malama Makua v. Rumsfeld*, and the April 9, 2008 Amended Order by the United States District Court for the District of Hawaii in the action entitled *Malama Makua v. Gates*, the United States Army Garrison Hawaii (USAG-HI) hereby publishes this list (ENCLOSURE 1) of sites deemed “high priority” for unexploded ordinance (UXO) clearance with a focus on increasing access to cultural sites.

### 2.0 PUBLIC COMMENT

During the process of identifying these sites, USAG-HI provided meaningful opportunities for the people of the Wai’anae Coast to participate in identifying and prioritizing these areas.

Community input was solicited and received at multiple community meetings. USAG-HI also provided contact information for anyone who wished to provide input at a time or place outside of the community meetings. USAG-HI relied heavily on this community input when creating this list, along with considerations of safety to human health and environmental concerns.

### 3.0 CLEARANCE

The finalized list is intended to represent the priority in which USAG-HI, based on community input, will conduct UXO clearance. The clearance is subject to the availability of funds, safety concerns, environmental law requirements and available and appropriate technologies and methods. The numerical listing is not intended to represent a value judgment as to the relative



importance of any individual site as opposed to any other site, but is merely an administrative tool to expedite the greatest degree of cultural access in the shortest amount of time, as the public requested.

#### 4.0 FUNDING

While USAG-HI cannot guarantee funding will be available in sufficient amounts to clear every site, USAG-HI will make a good faith effort to secure funding, and will award contracts for clearance based on Department of the Army guidelines for such awards.

#### 5.0 ICM AREA SITES

Sites 4540, 5587, 5588, 5589, and 5590 are at the bottom of this list, as they are in the Improved Conventional Munitions (ICM) area, and are deemed too dangerous to clear. If, at some point in the future, technology improves and we are able to clear ICM sites, USAG-HI will make a good faith effort to do so. However, at this time, due to safety concerns, those five sites cannot be cleared.

#### 6.0 CONCLUSION

USAG-HI recognizes the cultural importance of each and every feature contained within the sites on this list. USAG-HI will perform good faith efforts to provide safe and controlled access to these areas as envisioned by the 2001 Settlement. It is conceivable that UXO clearance at some sites will be insufficient to allow safe and controlled access, although USAG-HI will make good faith efforts to do so.



MATTHEW T. MARGOTTA  
COL, US Army  
Commanding

Enclosure

## Enclosure 1

1. Site 6603
2. Site 6596
3. Site 4536
4. Site 4542
5. Site 6613
6. Site 6621
7. Site 6593
8. Site 6597
9. Site 6505
10. Site 6508
11. Site 6506
12. Site 4627
13. Site 4628
14. Site 4629
15. Site 4630
16. Site 5920
17. Site 9523
18. Site 4540
19. Site 5587
20. Site 5588
21. Site 5589
22. Site 5590

Sites 12 – 17 are the “Blue Trail” Sites.

Sites 18 – 22 are located within an ICM area.

# **Site List and Terrain Analysis for the Identification of Public Access Priorities**

## Makua Military Reservation

### Oahu, Hawaii

USAG-HI, Directorate of Public Works  
Environmental Division  
947 Wright Avenue, WAAF  
Schofield Barracks, HI 96857-5013

February 2009

**Site List and Terrain Analysis for the Identification Of Public Access Priorities  
Makua Military Reservation**

Site ID: 50-80-03-xxxx	Number of Features	Site Description (feature types)	Petroglyphs? (y/n)	Site Size (meters)	General Site Location on Map	Elevation at Site (feet)	Slope at Site (degrees)	Distance from Road to Site (meters)	*Number of Drainage Crossings (pedestrian access from road to site)	*Is a Gulch or Drainage Crossing Located Within the Site Area? (y/n)	Vegetation Description at Site	**UXO Clearance Required? (y/n/partial/within the ICM area)	Source
177	n/a	cave	no	n/a	Outside Installation Boundary	80	1	<5	0	no	n/a	no	McAllister 1933
178	n/a	sand platform	see 5926	14 x 24.5	Within South Firebreak	20	3	<5	0	no	light (<1 foot high, groomed) guinea grass	partially cleared to depth of 1-foot	Thrum 1906
179	n/a	platform	no	17 x 11	Outside Installation Boundary	10	1	130	0	no	n/a	no	McAllister 1933
180	n/a	platform	no	24.5 x 24.5	Outside South Firebreak	20	3	50	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Thrum 1906
182	n/a	modified spring	no	n/a	Outside Installation Boundary	10	1	60	0	n/a	n/a	no	McAllister 1933
183	n/a	platform	no	3 x 3	Outside Installation Boundary	40	10	70	0	no	moderate (>4 feet high) guinea grass/koa haole	no	McAllister 1933
4536	3	walls, stone lined well	no	60 x 45	Within South Firebreak	400	16	90	0	no	light (<1 foot high, groomed) guinea grass	partially cleared to depth of 1-foot	Eble et al. 1995
4537	14	mounds, terrace, wall, platform	no	253 x 200	Within South Firebreak	200	8	<5	0	no	light-moderate (partially groomed to >4 feet high) guinea grass/koa haole	partially cleared to depth of 1-foot	Eble et al. 1995
4538	3	enclosure, c-shapes	no	60 x 45	Within South Firebreak	80	10	90	1	no	light (<1 foot high, groomed) guinea grass	yes	Eble et al. 1995
4539	1	wall	no	15 x 5	Within South Firebreak	240	16	250	0	no	light (<1 foot high, groomed) guinea grass	yes	Eble et al. 1995
4540	22	terraces, walls, enclosures, platforms, c-shapes	no	120 x 80	Within the ICM Area	400	6	195	0	yes	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Eble et. al 1995
4541	11	walls, enclosures, c-shapes	no	370 x 340	Within South Firebreak	40	3	<5	0	yes	light-moderate (partially groomed to >4 feet high) guinea grass/koa haole	yes	Eble et al. 1995
4542	77	mounds, terraces, walls, enclosures, platform, C-shapes, caches	no	460 x 150	Within South Firebreak	400	9	<5	0	yes	light-heavy (partially groomed to >6 feet high) guinea grass/koa haole	partially cleared to depth of 1-foot	Eble et al. 1995; Zulick and Cox 2001
4543	52	mounds, terraces, walls, enclosures, C-shapes, fire pit	no	665 x 200	Within South Firebreak	200	7	100	1	yes	light-heavy (partially groomed to >6 feet high) guinea grass/koa haole	yes	Eble et al. 1995; Williams et al. 2002

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4544	29	mounds, terraces, enclosures, alignments, C-shapes, petroglyph	yes	240 x 150	Within South Firebreak	160	8	200	1	no	light (<1 foot high, groomed) guinea grass	yes	Eble et al. 1995; Williams et al. 2002
4545	4	mounds, wall	no	156 x 115	Within South Firebreak	120	8	40	0	no	light (<1 foot high, groomed) guinea grass	yes	Eble et al. 1995
4546	22	mounds, terraces, walls, enclosures	no	325 x 125	Within South Firebreak	40	7	90	1	yes	light-heavy (partially groomed to >6 feet high) guinea grass/koa haole	partially cleared to depth of 1-foot	Eble et al. 1995; Williams and Patolo 2000
4547	4	mounds, wall, enclosure	no	40 x 30	Within South Firebreak	360	7	100	0	no	light (<1 foot high, groomed) guinea grass	yes	Eble et al. 1995; Williams et al. 2002
4627	25+	mounds, terraces, enclosure	no	120 x 50	Blue Trail Area	1200	26	1900	10+	no	heavy (>6 feet high) kukui/java plum/christmas berry	yes	Carlson et al. 1996
4628	3+	mound, terraces, cache	no	n/a	Blue Trail Area	1240	26	1750	8+	no	heavy (>6 feet high) kukui/java plum/christmas berry	yes	Carlson et al. 1996
4629	3+	mounds	no	n/a	Blue Trail Area	1280	26	1650	7+	no	heavy (>6 feet high) guinea grass/koa haole	yes	Carlson et al. 1996
4630	5	terraces, wall, spring	no	20 x 22	Blue Trail Area	1120	26	730	5+	yes	heavy (>6 feet high) strawberry guava/java plum	yes	Carlson et al. 1996
5456	11	earth ovens ( <i>imu</i> )	no	540 x 160	Within South Firebreak	280	4	<5	1	no	light (<1 foot high, groomed) guinea grass	partially cleared to depth of 1-foot	Williams and Patolo 2000
5587	4	mound, terrace, enclosures	no	75 x 25	Within the ICM Area	440	10	300	1	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Williams and Patolo 2000
5588	2+	terraces	no	15 x 9	Within the ICM Area	440	10	260	1	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Williams and Patolo 2000
5589	2+	terrace, platform	no	18 x 18	Within the ICM Area	480	10	200	1	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Williams and Patolo 2000
5590	3+	terrace, mound, modified boulder (pecked)	yes	35 x 8	Within the ICM Area	480	10	155	1	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Williams and Patolo 2000
5595	3+	walls, enclosure	no	220 x 100	Outside South Firebreak	600	16	<5	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Williams et al. 2002

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5734	1	enclosure	no	3 x 2	Outside South Firebreak	360	39	125	0	no	light-moderate (<1 foot - 4 feet high, groomed) mixed grass	yes	Williams et al. 2002
5735	1	lithic scatter	no	5 x 3	Outside South Firebreak	320	31	120	0	no	light-moderate (<1 foot to 4 feet high) mixed grass	yes	Williams et al. 2002
5920	20-30	mounds, walls, modified boulder (pecked)	yes	180 x 70	Blue Trail Area	1200	12	1970	10+	yes	heavy (>6 feet high) kukui/java plum/christmas berry	yes	Zulick and Cox 2001
5921	5	mounds, terrace, alignment	no	250 x 50	Blue Trail Area	840	9	375	3+	no	moderate-high (4 to >6 feet high) java plum/strawberry guava/guinea grass/koa hoale	yes	Zulick and Cox 2001
5922	6	mound, alignment, modified outcrop	no	130 x 30	Blue Trail Area	840	13	300	3+	yes	heavy (>6 feet high) strawberry guava/java plum/koa hoale	yes	Zulick and Cox 2001
5923	37	mounds, terraces, walls, enclosures, platforms, alignments, c-shape, uprights, modified outcrop	no	135 x 110	Outside South Firebreak	680	13	130	0	yes	heavy (>6 feet high) kukui/guinea grass/koa hoale	yes	Zulick and Cox 2001
5924	2	alignments	no	15 x 15	Outside South Firebreak	800	11	360	0	no	heavy (>6 feet high) kukui/guinea grass	yes	Zulick and Cox 2001
5925	20+	walls	no	220 x 220	Outside South Firebreak	80	46	160	0	no	moderate ( >4 feet high) mixed grass	no	Zulick and Cox 2001
5926	13	wall, upright slabs, modified outcrop, well, dike fed spring, petroglyph	yes	390 x 280	Within and Outside South Firebreak	20	3	<5	0-1	yes	light-heavy (partially groomed to >6 feet high) guinea grass/koa haole	partially cleared to depth of 1-foot	Zulick and Cox 2001
5927	13	walls, enclosure, alignment	no	725 x 210	Within and Outside North Firebreak	20	7	<5	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Zulick and Cox 2001
5928	1	wall	no	2 x 2	Outside North Firebreak	± 1000	± 31	± 275	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Zulick and Cox 2001
5929	3	bunker, gun emplacement, platform	no	30 x 30	Outside North Firebreak	60	39	25	0	no	heavy (>6 feet high) guinea grass/koa haole	no	Zulick and Cox 2001
5930	2	platforms	no	25 x 25	Outside North Firebreak	60	26	30	0	no	heavy (>6 feet high) guinea grass/koa haole	no	Zulick and Cox 2001

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5931	1	wall	no	70 x 1	Outside North Firebreak	80	12	70	0	no	heavy (>6 feet high) guinea grass/koa haole	no	Zulick and Cox 2001
5932	1	path with retaining wall	no	1080 x 65	Outside North Firebreak	40	31	15	0	yes	heavy (>6 feet high) guinea grass/koa haole	no	Zulick and Cox 2001
9518	1	trail	no	n/a	C-Ridge Area	300	19	175	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Rosendahl 1977
9520 (reassigned to 5775-5778 in Robins et al. 2005)		Ukanipo Heiau Site Complex											Rosendahl 1977
9521 (reassigned to 6607 in Robins et al. 2005)		see 6607											Rosendahl 1977
9522 (reassigned to 6601, 6596, 6598 in Robins et al. 2005)		see 6601, 6596, 6598											Rosendahl 1977
9523 (reassigned to 4627-4629,5920 in Robins et al. 2005)		see 4627, 4629, 5920											Rosendahl 1977
9524 (reassigned to 4542, 4547, 5923 in Robins et al. 2005)		see 4542, 4547, 5923											Rosendahl 1977
9525	1	wall	no	190 x 75	Outside South Firebreak	200	31	<5	0	no	moderate-heavy (4 to >6 feet high) guinea grass/koa haole	yes	Rosendahl 1977
9526 (reassigned to 5926 in Robins et al. 2005)		see 5926											Rosendahl 1977

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9533	1	terrace	no	16 x 12	Outside North Firebreak	80	31	25	0	no	moderate-heavy (4 to >6 feet high) guinea grass/koa haole	no	Rosendahl 1977
6499	12	mounds, terraces, walls, enclosures	no	115 x 25	Within North Firebreak	640	15	30	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6500	3+	mounds, terraces	no	40+ x 18	Within North Firebreak	680	15	30	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6501	9	mounds, terraces	no	63 x 25	C-Ridge Area	440	15	150	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6502	1	mound	no	1 x 1.3	Within North Firebreak	400	16	180	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6503	2	terraces	no	12 x 7	Within North Firebreak	800	16	90	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6504	5	terraces, enclosure, c-shape, u-shape	no	115 x 80	Within North Firebreak	680	15	10	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6505	39	mounds, terraces, enclosures, platforms, walls, u-shapes	no	240 x 360	Within North Firebreak	440	11	130	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6506	3	walled terrace	no	8 x 8	Within North Firebreak	320	16	185	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6507	1	wall	no	4 x 1	Within North Firebreak	200	16	170	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6508	2	mound, terrace	no	30 x 10	Within North Firebreak	400	10	300	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6509	2	enclosure, wall	no	6 x 5	Within North Firebreak	330	10	360	2	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6510	2	mound, enclosure	no	75 x 30	Within North Firebreak	420	11	50	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6511	4	mounds, terrace	no	16 x 8	Within North Firebreak	200	11	290	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6512	3	terraces	no	11 x 7	Within North Firebreak	240	11	250	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6513	13	mounds, terraces, enclosures, walls	no	150 x 70	Within North Firebreak	260	11	120	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005

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6514	1	enclosure	no	3.5 x 2.5	Within North Firebreak	360	11	85	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6525	1	enclosure	no	11 x 7	Within North Firebreak	400	11	25	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6526	3	enclosures	no	18 x 9	Within North Firebreak	360	11	50	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6527	1	c-shape	no	3.5 x 1.8	Within North Firebreak	80	3	55	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6528	3	mounds	no	10 x 3	Within North Firebreak	80	0	240	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6593	4	terraces, petroglyph	yes	45 x 20	C-Ridge Area	400	16	185	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6594	1	mound	no	6.6 x 3.6	C-Ridge Area	480	16	340	2	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6595	6	terraces, upright	no	50 x 20	C-Ridge Area	600	19	430	2	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6596	12	mound, terraces, walls, petroglyphs	yes	52 x 45	Outside North Firebreak	400	16	40	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6597	21+	mounds, terraces, enclosures, walls, C-shape, petroglyph	yes	280 x 60	Outside North Firebreak	600	19	30	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6598	6	mounds, terraces, walls, C-shape, L-shape	no	138 x 25	Outside North Firebreak	480	19	275	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6599	1	C-shape	no	3.2 x 2.5	Outside North Firebreak	440	13	200	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6600	15	mounds, terraces, walls, enclosures	no	270 x 35	Outside North Firebreak	800	16	80	1	no	heavy (>6 feet high) kukui/java plum/guinea grass/koa haole	yes	Robins et al. 2005
6601	1	enclosure	no	2.5 x 1.8	Outside North Firebreak	440	13	155	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6602	28	mounds, terraces, enclosures, walls, modified outcrop	no	311 x 20	Outside North Firebreak	640	11	240	2	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6603	21	mounds, terraces, enclosures, petroglyphs	yes	156 x 34	Outside North Firebreak	720	16	280	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005

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6604	1	terrace	no	8.5 x 4	Outside North Firebreak	800	31	400	2	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6605	10+	mounds, walls	no	70 x 30	Outside North Firebreak	720	16	350	2	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6606	94+	mounds, terraces, enclosures, U-shapes	no	325 x 350	Outside North Firebreak	760	13	<10	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6607	33	mounds, terraces, walls, enclosures	no	520 x 80	Outside North Firebreak	440	13	<10	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6608	1	enclosure	no	1.2 x 1.3	Outside North Firebreak	1040	25	500	1	no	heavy (>6 feet high) kukui/java plum/guinea grass/koa haole	yes	Robins et al. 2005
6609	1	wall	no	40 x 3	Outside North Firebreak	1000	35	400	1	yes	heavy (>6 feet high) kukui/java plum/guinea grass/koa haole	yes	Robins et al. 2005
6610	3	terraces, wall	no	47 x 40	Outside North Firebreak	920	31	340	1	no	heavy (>6 feet high) kukui/java plum/guinea grass/koa haole	yes	Robins et al. 2005
6611	3	mounds, enclosures	no	21 x 8	Within the ICM Area	360	10	90	0	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Robins et al. 2005
6612	7	mounds, terraces, walls, alignment	no	66 x 30	C-Ridge Area	280	11	90	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6613	6	terraces, petroglyph, grinding stone	yes	100 x 60	C-Ridge Area	260	10	160	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6614	1	terrace	no	2 x 3.6	C-Ridge Area	360	16	210	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6615	19	mounds, terraces, walls	no	107 x 28	Within the ICM Area and C-Ridge Area	360	11	165	1	no	heavy (>6 feet high) guinea grass/koa haole	partially within the ICM area	Robins et al. 2005
6616	12	terraces, enclosures, walls, petroglyphs	yes	94 x 80	Within the ICM Area	400	10	60	0	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Robins et al. 2005
6617	2	terrace, c-shape	no	11 x 9	C-Ridge Area	120	3	<10	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6618	6	mounds, terrace, enclosure, L-shape	no	49 x 15	C-Ridge Area	140	3	30	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005

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6619	3	walls	no	90 x 20	C-Ridge Area	160	3	120	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6620	7	mounds, walls	no	187 x 88	C-Ridge Area	260	8	115	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6621	9	mounds, walls, enclosures, C-shapes, petroglyph	yes	165 x 56	C-Ridge Area	200	11	250	2	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6622	1	mound	no	4 x 4	C-Ridge Area	200	5	200	2	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6623	6	terraces, enclosure, alignment	no	30 x 30	C-Ridge Area	165	4	100	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6624	4	mounds	no	21 x 3	C-Ridge Area	320	22	50	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6625	2	terraces	no	30 x 9	C-Ridge Area	320	11	120	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6626	6	mounds	no	10 x 15	Within the ICM Area	360	13	170	0	no	heavy (>6 feet high) guinea grass/koa haole	within the ICM area	Robins et al. 2005
6627	1	concrete basin gun emplacement	no	23 x 20	C-Ridge Area	120	10	9	0	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6628	9	terraces, enclosure, ramp	no	23 x 20	Outside North Firebreak	640	18	200	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6629	4	mound, terraces	no	40 x 15	Outside North Firebreak	740	18	275	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6630	3	mound, terrace, enclosure	no	5 x 5	Outside North Firebreak	660	18	125	1	no	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
6631	1	wall	no	42 x 1	Outside North Firebreak	1160	19	440	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	Robins et al. 2005
DPW32	1	terrace	no	10 x 10	Within South Firebreak	120	15	60	0	no	moderate (>4 feet high) guinea grass/koa hoale	yes	DPW 2005
DPW33	2	enclosure, alignment	no	30 x 8	Within South Firebreak	80	10	<5	0	no	moderate (>4 feet high) guinea grass/koa hoale	yes	DPW 2005

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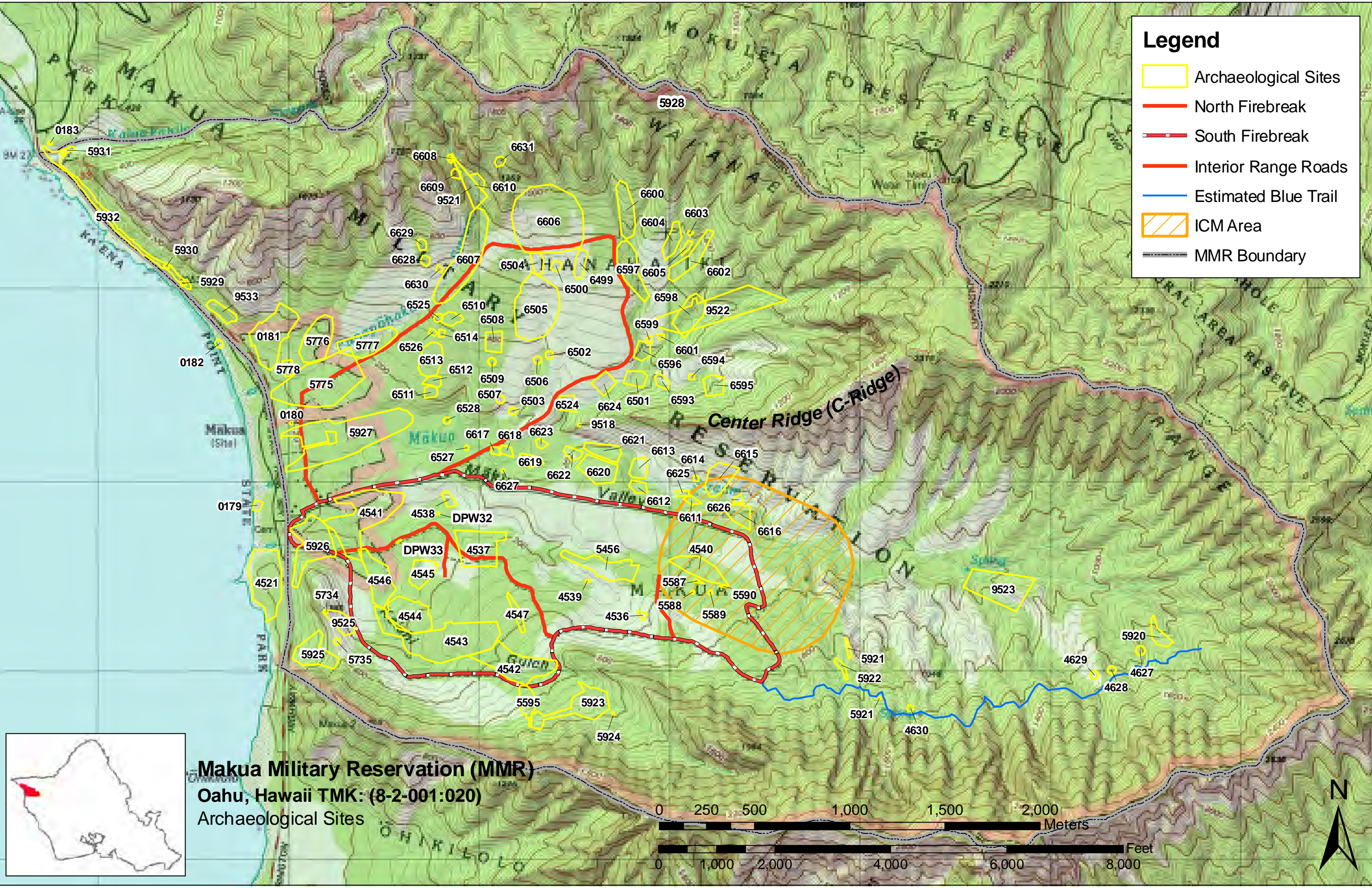
Site ID: 50-80-03-xxxx	Number of Features	Site Description (feature types)	Petroglyphs? (y/n)	Site Size (meters)	General Site Location on Map	Elevation at Site (feet)	Slope at Site (degrees)	Distance from Road to Site (meters)	*Number of Drainage Crossings (pedestrian access from road to site)	*Is a Gulch or Drainage Crossing Located Within the Site Area? (y/n)	Vegetation Description at Site	**UXO Clearance Required? (y/n/partial/within the ICM area)	Source
Unrecorded site identified during 2006 DPW-ENV subsurface survey	3+	mounds, terraces	no	n/a	Within South Firebreak	280	10	250	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	DPW 2007
Unrecorded site identified during 2006 DPW-ENV subsurface survey	n/a	mounds, terraces	no	n/a	Within South Firebreak	200	4	270	1	yes	heavy (>6 feet high) guinea grass/koa haole	yes	DPW 2007
Unrecorded site identified during 2006 DPW-ENV subsurface survey	n/a	kiawe fence posts, wire fencing	no	150+ x 1	Within South Firebreak	320	12	235	0	yes	heavy (>6 feet high) guinea grass/koa haole	yes	DPW 2007

\* Stream crossings would require UXO clearance after every major rain event

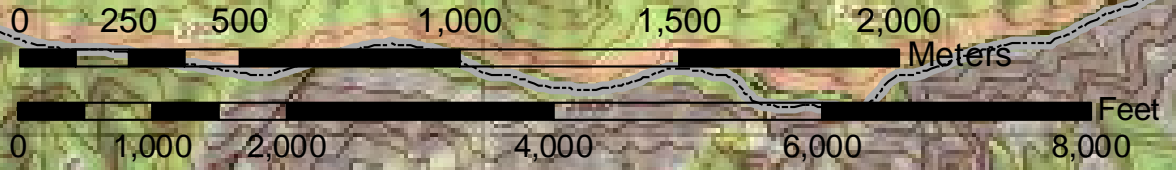
\*\* Other than areas cleared to a depth of 1-foot, we must assume UXO is present. Sites within ICM area cannot be cleared due to extreme hazard.

### Legend

-  Archaeological Sites
-  North Firebreak
-  South Firebreak
-  Interior Range Roads
-  Estimated Blue Trail
-  ICM Area
-  MMR Boundary

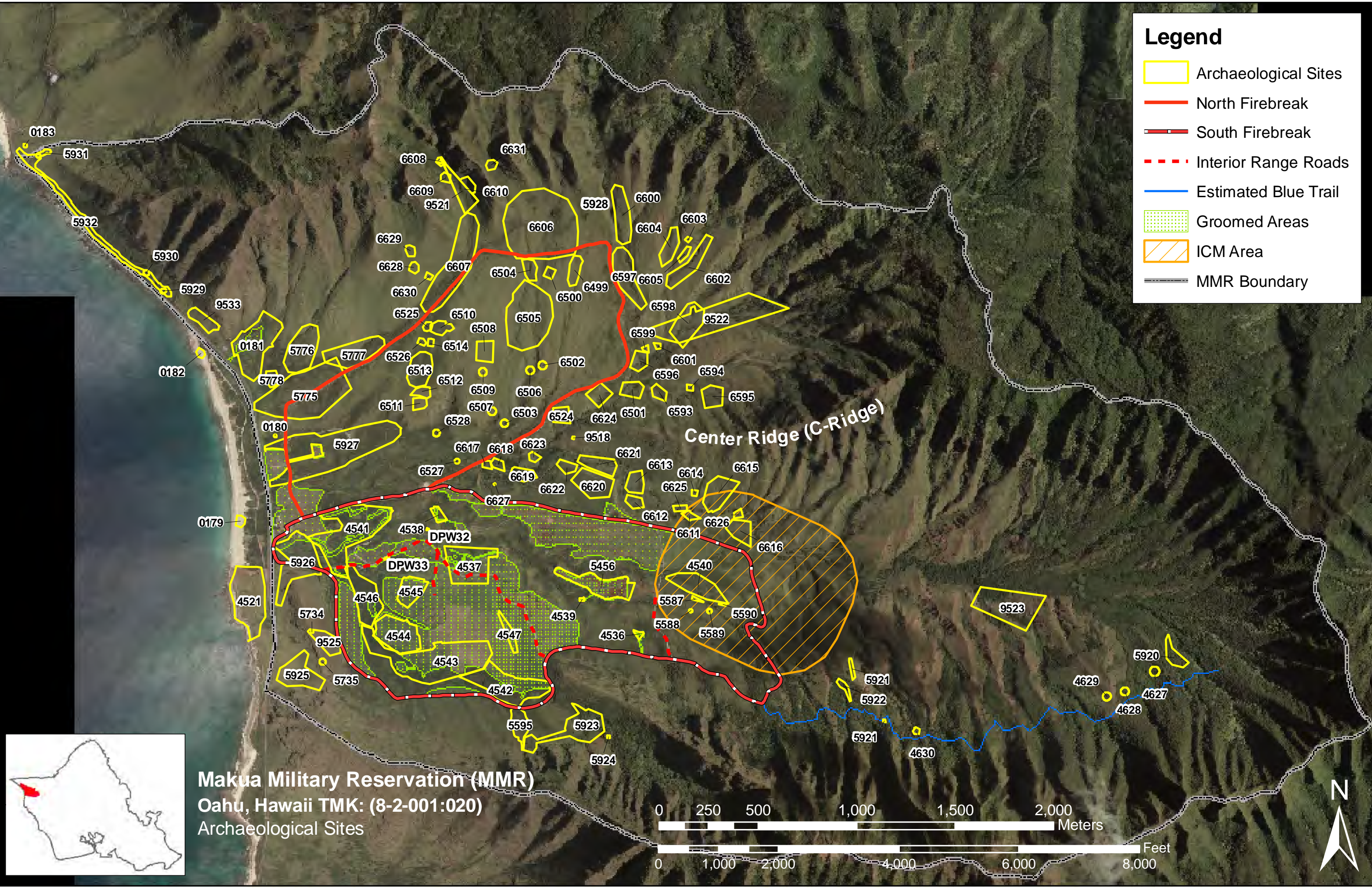


**Makua Military Reservation (MMR)**  
**Oahu, Hawaii TMK: (8-2-001:020)**  
 Archaeological Sites



### Legend

-  Archaeological Sites
-  North Firebreak
-  South Firebreak
-  Interior Range Roads
-  Estimated Blue Trail
-  Groomed Areas
-  ICM Area
-  MMR Boundary



**Makua Military Reservation (MMR)**  
 Oahu, Hawaii TMK: (8-2-001:020)  
 Archaeological Sites



**To:** [REDACTED] [DLNR.BLNR.Testimony](#)  
**Subject:** FW: [EXTERNAL] Friday's Discussion of Military Leases  
**Date:** Wednesday, October 25, 2023 4:05:21 PM

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-----Original Message-----

From: David Kimo Frankel <davidkimofrankel@gmail.com>  
Sent: Tuesday, October 24, 2023 2:28 PM

[REDACTED]  
Subject: [EXTERNAL] Friday's Discussion of Military Leases

Aloha [REDACTED]

On Friday, you will be providing the BLNR an informational briefing on land retention efforts for various military leases. You may not know this, but DLNR has been inspecting Pōhakuloa to ensure that the Army is complying with the terms of the lease. It would be very helpful if you were able to provide the board members the inspection reports. I think that Gordon Hite may have gone on those inspections. As did Dan Morris from the AG's office.

It is my understanding that the most recent inspection revealed a lot of shells on the ground — in contravention of the lease. That kind of information needs to be provided to BLNR.

**From:** [Gambla](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] I oppose military land swap Agenda Item D 11: Briefing on Land Retention for Pohakuloa Training Area...  
**Date:** Saturday, October 21, 2023 10:49:24 PM

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Thank you for soliciting comments regarding the topic of the Army proposing 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.

It is my understanding that access to the Federal Lands at Pohakuloa is only available through Hawaii State Lands -- upon which the U.S. Army has build considerable and critical infrastructure over the past decades.

With all of the Planning elements and resources the U.S. Army maintains, this was either a very calculated move and/or a pathetic one. Either way, I do not support trading any Federal Lands for State Lands especially when one considers the U.S. Army has not lived up to its commitment to clean Pohakuloa of ordnance as per the lease agreement.

If the transfer were to happen, would Hawaii be responsible for cleaning the firing ranges of all ordnance from the last 60 or so years?

If the U.S. Government would like to simply cede the lands to Hawaii without an exchange, I would still be reticent to take over the lands due to the neglect exhibited by the U.S. Government over the past 5 or 6 decades, however, I would support taking it under consideration pending perhaps federal funding commitment for the cleanup.

Additionally, if the only access to the current Pohakuloa site is through State land, and if that State land were transferred over to the federal government, how would Hawaii access that new land?

All in all, I don't think there is any cogent reason from what I can see to transfer land. Instead, I would encourage the U.S. Army to redploy to Alaska, Wyoming, Montana or some other location in New Mexico or Nevada for example.

Respectfully,

Len Gambla  
Papaikou HI



**From:** [Janice Glennie](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D 11: briefing on Land Retention for Pohakuloa Training Area, Kahuku, Kawaihoa-Poamoho, and Makua Training Lands  
**Date:** Monday, October 23, 2023 1:44:55 PM

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Aloha Board members,

Mahalo for this opportunity to speak around a topic that I've considered mind-boggling for decades (aka the use and abuse of state and federal lands in Hawai'i for environmentally devastating military purposes). In particular, this bill sounds like it holds nothing beneficial for Hawai'i's people and/or lands nor does it diminish, and likely increases, the use of irreplaceable lands from more unnecessary and wildly misplaced destruction.

There are many issues that I'm not aware of except for those related to access and environment — both huge to me, my 'Ohana, and especially the native people of Hawai'i. Because the rules are quite complicated, it's easy to imagine decades of squabbles and even legal battles as the public and other entities figure out who can access where and when. (Especially without adding more ugly fencing and signs which both continue to mar the land and view planes). Again, what's the point —and compensation — for the State to agree to go through this kind of rigamarole?

We also have many good reasons not to trust that the military will do, or be required to do, whatever is necessary to make the lands in question safe for public access, cultural use, including native species. (See Red Hill and Pohakuloa ordnance.) Who knows what health dangers are left on those lands? How much will it cost to find out, no less clean it up?

This seems like a no-brainer "no deal" for the State. Please say deny fruition of this proposal land swap.

Mahalo and sincerely,  
Janice Palma-Glennie

P.O. Box 4849  
Kailua-Kona, Hawai'i 96745

**From:** [Regina Gregory](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oct. 27 agenda item D.11  
**Date:** Monday, October 23, 2023 10:04:06 AM

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Continued military use of our land is not in the public interest. Besides not renewing the leases, Hawai'i should demand the return of lands taken by executive order 5 days before the leases were signed.

Regina Gregory



# Hawai'i Island Chamber of Commerce

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October 25, 2023

## **Testimony to the State of Hawaii Board of Land & Natural Resources**

**Friday, October 27, 2023 at 9:15 am**

**DLNR Boardroom, Kalanimoku Building, 1151 Punchbowl St., Room 132**

### **RE: Army Training Land Retention Efforts for the Pōhakuloa Training Area on the Island of Hawai'i**

Aloha Chair Chang, First Deputy Ka'akua and members of the Board:

The Hawai'i Island Chamber of Commerce fully supports the U.S. military's training mission at Pōhakuloa Training Area (PTA). Our organization represents over nearly 350 member businesses, non-profit organizations and professionals on the Island of Hawai'i.

The Army is proposing to retain up to approximately 22,570 acres of State-owned land in support of continued military training. The state-owned parcel is a narrow strip of land that provides access between the federally owned 777-acre cantonment area and the 84,000-acre maneuver and impact area. Our Chamber supports PTA's retention of this leased land.

Properly training soldiers for their crucial deployments is a paramount responsibility for the U.S. Army and our Nation. The high-desert, high-elevation environment at PTA provides an unparalleled venue to accomplish this goal and prepare our soldiers to the highest standard for the challenges they will face when sent to counter regional threats to American citizens and our national interests or to support our allies in the Pacific theater. Training saves lives and we owe it to these 13,000 brave men and women who annually arrive at PTA to receive instruction and training.

There is a local aspect as well that demonstrates the importance of training at PTA. Many of our local men and women in uniform, including Hawai'i Army National Guard personnel, Army Reserves, local law enforcement officers and fire department personnel are trained at PTA. There is no other facility for the Hawaii County Fire Department to train for innumerable situations other than the hospitality of the "fire box" located at PTA. The Hawaii County Police Department benefits from the shooting range opportunities as well as local hunters who can sharpen their skills in a training situation. In the spirit of being a community partner, PTA Fire and Rescue team members are the first responders along the Saddle Road/DKI Highway corridor. This makes them the first responders handling emergencies in the first critical minutes with fire trucks and other emergency equipment at their disposal. In addition to the DKI corridor responsibility they provide the same critical service to the Mauna Kea Access Road area which includes the telescope employees & visitors on the summit which may include air support. Ultimately, they save lives and the community counts on them.



# Hawai'i Island Chamber of Commerce

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Outside of the first responder role the trusted relationship that exists between the US Army in Hawaii but especially at PTA has been the dry land wildfire response. Hawaii island is a big, Big Island! The distance land vehicles must traverse to fight fires can be overwhelming to even the finest fire department. Just within the past 2 years the ability for the army to deploy equipment lacking within our civilian Hawaii County Fire Department made the difference by providing helicopters with water drop buckets that aided in fighting brush fires which burned nearly 70,000 acres of forest and ranchland.

As part of its stewardship of the land, the Army manages the preservation and care of 26 endangered plants and animals, which includes propagating rare native plants and stocking a remarkable seed bank. The Army manages more than 1,200 archeological sites with site monitoring, site preservation, and surveying to find additional areas. Coping with the invasive wildlife offers a unique "sharing" by allowing the community to hunt the unwelcome ungulates that are challenging to control by offering hunting on a safe schedule. Units visiting PTA are briefed on arrival and are required to adhere to natural and cultural restrictions on base and leave the area clear of training debris after each training exercise. To this end, the units are inspected prior to departing to ensure compliance.

Financially, the military provides a financial boost of approximately \$74 million annually to the local (Hawaii Island) economy through military contracts with Hawai'i Island-based companies, community services and support for non-profits, and patronage of local businesses by soldiers and their families. Of the 230 personnel that work at PTA year-round, only five are active-duty military members, while the others are civilians who live in and raise their families in the neighboring communities.

PTA is also an active community partner and participates with the local community at parades, festivals, school excursions, and even base tours. Each unit that trains at PTA is required to volunteer in the local community on projects ranging from playground builds to beach clean-up events. Recent projects include helping to overhaul and refurbish the local Girl Scout Camp "Kilohana" in preparation for a GS Summer Camp and clearing 2-years' worth of debris from Waimea Town riverbeds. We would be remiss if we did not acknowledge the "soul" value of the trust that exists between our government administrations and the US Army. The Commander at PTA is the link that enables a level of trust with Aloha that enabled opening a section of PTA to provide access away from the 60 mph DKI highway where all viewers were at risk to view the February 2023 Mauna Loa flow when she surprised us with quite a show. If PTA and the U.S. Army had not worked so diligently on a quality relationship the county may have been forced to close the very important cross-island access road when it meant so much to so many to better understand our Lady Mauna Loa by observing the flow.

Our Chamber supports the mission of Pōhakuloa Training Area and recognizes the services and benefits PTA and the U.S. Military bring to our island, our state and our country.

**From:** [fred hofer](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Army training land retention efforts  
**Date:** Thursday, October 26, 2023 7:19:42 AM

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Aloha mai kākou, thank you for the opportunity to input to this issue

I strongly oppose all the proposals.

Instead, want to direct your attention to grave violations of the conditions of the existing lease by the lessee, the us military. And a possible solution.

1.

The original 65 year lease mandates a clean up after each maneuver, each shelling, each bombing, each setting off of artillery, each poisoning of the lands. So far we have seen NO CLEAN UP.

So please do urge the lessee to now stop the wargames and start living up to the conditions of the lease, start cleaning up after themselves

2.

All the lands now poisoned, bombed & defiled by the us military are "conservation lands" "preservation lands" "open and forest reserve"

Being used for war exercises, bombed shelled, littered with ordinance and other poisons - is completely contrary to the spirit of conservation, of preservation. The US military and its "bases" is the single biggest polluter on this planet.

Please Google "us military bases & pollution"

3.

The issue of creating "special subzones"

The objective of a special subzone is to provide for sustainable use of areas possessing unique developmental qualities that complement the natural resource of the area. Pohakuloa, lets talk about pohakuloa, yet that applies to all the lands now being defiled by the "lessee"

Sustainable use. For 59 years now the US military has shelled, bombed, poisoned and defiled these lands, wrecking damages in the billions, maybe even trillions.

All that for 1 \$ per year. In total \$ 59.

For 59\$ total, fifty nine dollars in lease moneis paid, the us military has caused damages that go into billions. The only sustainable use for these areas that i can see now - is to research into how a clean up can even be done, how these damages wrecked can be reverted, how the land can be healed.

That is the unique possibility that these defiled areas represent - practice cleaning up.

Sustainably. Healing the lands - not worsening the problems, not bringing more machines and carting off the poisoned dirt to be a new problem in some developing country or for mother ocean. Install worm farms to clean the earth, the forests, the lands.

Proposed solutions:

Learn how to clean these lands, invest into  
Learning how to undo the damage. Softly!

There is no other way to remedy the economic & ecological disaster that these leases to the us  
military represent.

So, please urge the lessee to NOW LIVE UP to the conditions of the original 65 year lease

ABSTAIN from renewal of a lease that has turned out to be an ecological and economic  
disaster for this country.

ABSTAIN from sacrificing even another square inch if these lands to the Moloch, the US  
military.

RESEARCH how the necessary clean up can be done now ecologically and economically  
viable not just for this country  
For the whole planet.

There is a lot of "clean up" & healing to be done  
Lets start

With all due respect,  
Fred Hofer,  
A living, breathing, (womb)man  
Living on the slopes of Mauna Loa

**From:** [Kupuna Moopuna](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [Kupuna Moopuna](#)  
**Subject:** [EXTERNAL] BLNR Meeting 10.27.2023 - Agenda Item D,11. STRONG OPPOSITION  
**Date:** Thursday, October 26, 2023 8:10:04 AM

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## Kūpuna for the Mo‘opuna

*committed to the well-being of Hawai‘i for the next generations to come*

[kupuna4moopuna@gmail.com](mailto:kupuna4moopuna@gmail.com)

October 26, 2023

Via Electronic Mail to the Board of Land and Natural Resources:

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Re: BLNR Meeting, Friday, October 27, 2023

**Agenda Item D, 11. Non-Action Item: Informational Briefing on Army Training Land Retention Efforts for the Pōhakuloa Training Area on the Island of Hawai‘i and for the Kahuku, Kawailoa-Poamoho, and Mākua Training Lands on the Island of O‘ahu.**

Aloha,

We, Kūpuna for the Mo‘opuna, a hui of Hawaiian Homes Commission Act kūpuna beneficiary farmers from Pana‘ewa, Hawai‘i, testify in **STRONG OPPOSITION to Army Training Land Retention Efforts** for the Pōhakuloa Training Area on the Island of Hawai‘i and for the Kahuku, Kawailoa-Poamoho, and Mākua Training Lands on the Island of O‘ahu.

**We Do Not Support Military Retention Efforts. HEWA!**

**We Strongly Urge Return of these State-Owned Lands. PONO!**

We strongly urge the Board to require the Army to return the State-owned lands at Mākua, Kahanahāiki, and Ko‘iahi when the current lease expires in 2029, or sooner, if possible. The Board should also hold the Army to the terms of the current lease, which mandate removal of all “weapons and shells used in connection with its training activities.” 1964 Mākua Military Reservation Lease ¶ 26.

Mahalo.



# Native Hawaiian LEGAL CORPORATION

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Testimony to the  
BOARD OF LAND AND NATURAL RESOURCES  
October 27, 2023  
**Relating to Agenda Item D-11**

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 Makua Training Lands on the Island of O'ahu

October 27, 2023

9:15 am

BLNR Boardroom

Aloha e Chair Chang and members of the Board of Land and Natural Resources,

The Native Hawaiian Legal Corporation (“NHLC”), counsel for Maxine Kahalelio and Kū Ching, offers the following comments on Agenda Item D-11 of the October 27, 2023 Board of Land and Natural Resources meeting agenda, which addresses the future of ceded lands used by the Army for training exercises. Although no specific action is before you today, it is premature to discuss allowing the Army to continue its use of state lands given its history of noncompliance with the terms of its lease and continued failure to clean up its mess at Pōhakuloa. Consistent with the state’s high fiduciary duties to mālama these lands, the Board must do more to ensure compliance before considering any proposal authorizing the use of this land.

Mrs. Kahalelio and Mr. Ching are the named plaintiffs<sup>1</sup> in *Ching v. Case*, 145 Hawai'i 148, 449 P.3d 1146 (2019), which reaffirmed the state’s trust duty to preserve, protect, and maintain the public land trust and concluded that the state breached its trust duties by failing to reasonably monitor or inspect the 22,900 acres of land at Pōhakuloa. *See id.* at 152, 162, 449 P.3d at 1150, 1160. According to the Hawai'i Supreme Court:

an essential component of the State’s duty to protect and preserve trust land is an obligation to reasonably monitor a third party’s use of the property, and that this duty exists independent of whether the third party has in fact violated the terms of any agreement governing its use of the land. To hold otherwise would permit the State to ignore the risk of impending damage to the land, leaving trust beneficiaries powerless

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<sup>1</sup> Mrs. Kahalelio and Mr. Ching have engaged in Native Hawaiian cultural practices within the Pōhakuloa Training Area, and they are beneficiaries of the ceded lands trust who are adversely impacted adversely by actions that devalue and/or damage the lands at Pōhakuloa.



to prevent irreparable harm before it occurs.

*Id.* at 152, 449 P.3d at 1150.

Consistent with the Court's decision, an April 20, 2021 Court Ordered Management Plan ("COMP") was created "to assess compliance with Lease requirements for appropriate removal of unexploded ordnance . . . and debris associated with ongoing military training" and "ensure compliance with the Lease." COMP at 2. Pursuant to the lease, the Army

- must "make every reasonable effort to . . . remove and deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the public, whichever is sooner." (paragraph 9); and
- agrees to "take reasonable action during its use of the premises herein demised to prevent unnecessary damage to or destruction of vegetation, wildlife and forest cover, geological features and related natural resources" and to "avoid pollution or contamination of all ground and surface waters and remove or bury all trash, garbage and other waste materials resulting from the United States use of the said premises." (paragraph 14)

*Ching*, 145 Hawai'i at 152-53, 449 P.3d 1150-51 (internal brackets removed)(format altered).

The COMP requires periodic inspections of the recommended 500 acres of leased area at recommended intervals of "at least once a year[,]" *id.* at 3, with high priority on certain areas "to see if military debris remains in these areas." *Id.* at 4. The COMP also authorizes NHLC to designate two observers to join the Department of Land and Natural Resources ("DLNR") and the Army on these inspections. *See id.* at 6.

- The first inspection of on June 24, 2022 included "four cultural sites . . . with a focus on locating the sites and inspecting the areas leading to and surrounding the site in order to see if military debris remains there." 6-24-22 Inspection Report GL S-3849 at 3-4. As noted in DLNR's inspection report, "**some small items of trash were observed and removed by military personnel, and there were a small number of spent ordnance (i.e., spent shell casings) that were observed in the staging areas for the inspection.**" *See id.* at 4 (emphases added). According to NHLC's two observers, Mrs. Kahalelio and Kealoha Pisciotto, approximately 50 spent rounds were observed. DLNR's inspection report recommended, among other things, that "the additional cultural sites in the initial inspection area be located with more precise GPS coordinates, and the surrounding area inspected for any trash or debris" and "[a]ny such trash or debris should be removed and properly disposed of." *Id.* at 4. It further stated, "[c]onsistent with the requests of the two representatives of [NHLC], future inspections should confirm completion of cleanup activities in areas of concern identified in prior inspection report(s)." *Id.* at 5.

- The second inspection on August 16, 2023 focused on different areas, including two mock village sites and a former bazooka range. As one of NHLC’s observers at this inspection (along with Mrs. Kahalelio), I observed shell casings at every site, particularly at the former bazooka range, where it was difficult not to step on them as I walked onto the viewing area to observe the adjacent lava field target area – an area of important habitat that contains both protected habitat and species. Based on my observations, DLNR staff also noticed these spent rounds. However, no inspection report has yet been made available to NHLC.

These reports and personal observations are critical not only to your decision-making but also to your actions as trustees of the public trust to address these lease violations. As documented by the *Ching* case, DLNR knew of military debris left over from training exercises at Pōhakuloa but breached its duty by failing to take any action to address it. *See Ching*, 150 Hawai‘i at 152, 160-61, 449 P.3d at 1150, 1158-59. Neither DLNR nor this Board can or should ignore the fact that military debris has not yet been cleaned up.

It is contradictory to the Board’s high trust duties – and very premature – to even begin to consider any land disposition to a lessee who has by all accounts failed to use reasonable efforts “to remove . . . all . . . blank ammunition” and “remove or bury all trash” at Pōhakuloa. The 500 acres “covered” by an annual inspection is a mere two percent of the entire leased area, and the area physically walked by DLNR and NHLC observers is even smaller than that. All that to say, if these observations were made within a fraction of two percent of the leased area in areas anticipated for inspection, it begs the question--what else is out there? And what is this Board going to do to ensure the Army does what it is supposed to do?

These foundational questions must be addressed before taking any steps toward authorizing future use under the full, modified, or minimum retention options let alone beginning to consider the Army’s extreme proposal of a potential land exchange to acquire fee simple title in state ceded lands, which in and of itself presents complicated legal issues. Indeed:

Under the Hawai‘i Constitution, all public natural resources are held in trust by the State for the common benefit of Hawai‘i’s people and the generations to come. Additionally, the constitution specifies that the public lands ceded to the United States following the overthrow of the Hawaiian Monarchy and returned to Hawai‘i upon its admission to the Union hold a special status under our law. These lands are held by the State in trust for the benefit of Native Hawaiians and the general public. Accordingly, our constitution places upon the State duties with respect to these trusts much like those of a common law trustee, including an obligation to protect and preserve the resources however they are utilized.

*Ching*, 145 Hawai‘i at 152, 449 P.3d at 1150; Haw. Const. Art. XII, § 4. Until all reasonable efforts have been made to remove ordnance, trash, and debris and return the Pōhakuloa Training Area to acceptable condition, no consideration should be given for any continued use of the land by the United States. This goes for all public lands leased to the military.

While the Board cannot undo damage to the lands at Pōhakuloa, it can take seriously its kuleana to mālama 'āina by doing its due diligence and conducting as many inspections as necessary to confirm whether the Army is a good partner and steward of these sacred lands.

Mahalo for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Obrey', written in a cursive style.

Ashley K. Obrey  
Senior Staff Attorney  
Native Hawaiian Legal Corporation

**From:** [Lynda Lovon](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony for October 27 agenda item D – 11  
**Date:** Thursday, October 26, 2023 8:56:33 AM

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Aloha,

My name is Lynda Williams, and I am a resident of Hawaii living in Hilo. My professional background is I'm trained as a physicist in my research area is weaponization of space and missile defense. I am writing to urge DLNR2 not approved. Any extension of leases to the US Army in Hawaii, and to most definitely not award a "fee, simple" property transfer to the army in exchange for government lands.

It is time for the US Army to surrender Hawaii state lands, and pay for the restoration and healing of the Aina. It is especially urgent that McCullough valley be returned and cleared of unexploded ordinances. Pohakuloa should not be used for military training and immediately undergo environmental restoration. It is too close to Mauna Loa, which is very active.

It is time for the United States to stop Bombing, Hawaii, and pay for environmental restoration and return of lands.

Mahalo.

Lynda Williams, Hilo