

State of Hawai`i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

October 25, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: ACCEPTANCE OF HEARING MASTER'S REPORT AND REQUEST FOR APPROVAL TO AMEND AND COMPILE TITLE 13, CHAPTER 209, HAWAII ADMINISTRATIVE RULES: RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES (NARS)

The rule amendment can be reviewed online at <http://ltgov.hawaii.gov/the-office/administrative-rules/> or in person at any Division of Forestry and Wildlife district office from 8:00 a.m. to 3:30 p.m., Monday through Friday, except State holidays.

SUMMARY

Various amendments (Exhibit 1) are proposed for the NARS rules to improve consistency with other rules, amend prohibited activities and penalties, allow longer-term special use permits, allow for the collection of parking fees in Keoneo`io, Maui, raise the parking fees for non-resident vehicles, and manage commercial use consistent with Title 13, Chapter 130, Rules for Statewide Trails and Access Program. These proposed rules also seek to extend the closure of areas that have been closed since 2008 at `Ahihi Kina`u NAR on Maui. The Board had previously authorized the Division to conduct public hearings for various amendments to the Natural Area Reserves System (NARS) rules on item C-2 of the October 10, 2022, meeting. Statewide public hearings were conducted for these rules and reviewed by the Deputy Attorney General. Further rule modifications are being proposed, which are different from the version brought to the first public hearing. The Division held a second public hearing on the newest version of the rules. No one attended that hearing.

BACKGROUND

A public hearing was held on the first version of the proposed rule changes on January 23, 2023. Legal ads were published in the Honolulu Star-Advertiser. In addition to the legally required public notices, the Division also published a website with the current and proposed rules, a summary of the proposed changes, and a direct form to submit comments. The Division also sent a letter to various interested parties announcing the public hearings and written comment period, which lasted over two months. The Department also issued a press release on January 5, 2023, and February 7, 2023,

announcing the public hearings and requesting written comments by March 1, 2023. The Division was also holding public hearings on multiple islands for other matters, providing opportunities for comments on the proposed rule revisions. A report of the testimony provided by these hearings is attached as Exhibit 2.

After the hearings, with consultation with the Attorney General, the Division proposed removing the commercial permit amendments. These amendments received testimony in opposition, and it was determined that the Division could process permit applications for commercial activities or concessions through existing rules and statutes. References to parking fees in the Keoneo'io parking lot were removed as that area is not yet designated a Natural Area Reserve. Some additional technical changes were also made.

On March 22, 2024, the Board authorized the Division to hold a public hearing on the rules' second (newest) version. Legal ads were published in the Honolulu Star-Advertiser, and notices were posted on DOFAW's website. The hearing occurred on July 15, 2024. No one from the public attended that hearing.

A summary of the proposed changes and justifications for the newest version of the rules are listed below:

§13-209-2 Definitions.

Amendments to the "Chairperson," "commercial activity," "motorized vehicle," and "vehicle" definitions are proposed to be consistent with the revised definitions for other land designations of the Division of Forestry and Wildlife.

§13-209-4 Prohibited activities.

The existing rules allowed only dogs permitted by hunting rules or service animals in NARs. The proposed change would allow leashed dogs to be on designated trails in the Pahole Natural Area Reserve and clarify that service animals should be trained as guide dogs. Trained guide dogs have a stricter definition than service animals. This is meant to further restrict the type of dogs brought into reserves, particularly popular areas with very sensitive seabird nesting sites like Ka`ena Point.

Additional clarifying language has been added to existing prohibited classes of activities.

A prohibition of launching boats in certain portions of `Ahihi Kina`ū NAR is requested for areas where there is very limited space or where coral reefs exist in shallow launching areas. This prohibition would direct boat launching to focus instead on nearby areas with sandier substrates or where the coral is found in deeper waters.

The prohibition against bringing fishing gear into `Ahihi Kina`ū NAR is proposed to only affect areas where these actions are already prohibited. This would allow the Department to add new areas to the NAR without prohibiting fishing in those newly added areas.

New prohibitions about feeding animals have been added to prevent attracting non-native predators. Additionally, a prohibition against unmanned aircraft is proposed. Unmanned aircraft have been lost in State lands, attracting operators to risk dangerous situations or venture off-trail to recover them. A provision to prohibit entry into snail exclosures has been added. These solid-walled fence exclosures are very small (less than one acre) and are extremely sensitive because they may contain the only wild populations of certain snail species.

§ 13-209-4.1 Animals.

A provision has been added to prohibit the release of animals into the reserves.

§13-209-4.2 Restricted entry.

Access restrictions are proposed for `Ahihi-Kina`ū` to prevent trampling sensitive cultural sites and anchialine pools. The closure also improves the enforcement of no-fishing regulations. The Board has approved consecutive two-year closures of this area since May 2008. This closure was also recommended by the Ahihi Kina`ū/Keoneo`io Advisory Group in 2004 and the Natural Area Reserves System Commission in 2005. The proposed closure would not change the boundaries of the area that has been closed since 2008.

§ 13-209-4.3 Closing of areas.

An amendment is requested to establish how closures or access restrictions can occur and the criteria needed for these restrictions. These amendments are consistent with the closure process in § 13-104-7.5 Rules Regulating Activity in Forest Reserves, effective Jan 16, 2021.

§ 13-209-5 Special use permits.

An amendment is requested to allow permits to be issued for more than one year. This would reduce the effort to process renewals for longer-term activities such as ongoing research projects.

§13-209-5.6 Parking fees.

The parking fees are proposed to be consistent with the \$10.00 non-resident fees in State Parks, per § 13-146, Hawaii State Park System. Parking fees would fund the improved management of the NARS by being deposited into the Endangered Species Trust Fund. The Legislature amended §195D-31 in Act 93, SLH 2019, to specifically allow fees and assessments charged for using public land and waters designated for the fund to be an allowable source of funding for the Endangered Species Trust Fund.

§ 13-209-5.8 Public parking and § 13-209-5.9 Removal of vehicles.

This amendment clarifies the paid parking procedures.

DISCUSSION

The second public hearing did not have any participants. The following discussion includes responses to testimony from the first round of public hearings. Below is a list of the main concerns that were received, as well as DOFAW's response.

1. Concern that the proposed rule changes would open the Natural Area Reserves to commercial activity.
 - a. Commercial activity is prohibited currently and in the proposed rules. If an operator sought to conduct commercial activity in the NARs before and after this rule change, they would be required to seek a special use permit, which would require approval from the Natural Area Reserves System Commission. The revisions to the commercial activity permits have been removed in the newest iteration of the rules.
2. Concern that the definitions are too vague for various items. The vague definition of when the Board decides it is "necessary" to close a Natural Area Reserve was of particular concern.
 - a. The proposed revision follows the definitions and terms of other rules for consistency. The definition of what constitutes a "necessary" closure is deliberately vague to allow the board's discretion to respond to unforeseeable circumstances.
3. Concern that native Hawaiian cultural practitioners would have to divulge secret cultural practices or information that should not be public to apply for a special use permit. Also, there was a concern that practitioners would have the burden of proof to justify why a practice was consistent with the purposes of the natural area reserves system.
 - a. These comments refer to existing rules that are not proposed to be changed. The only proposed change for special use permit applications is to allow permits to be issued for longer than one year. That amendment would simplify the administrative burden for any permittee, including cultural practitioners.
4. Request that native Hawaiian cultural practitioners not be penalized by the rules.
 - a. Anyone violating the rules will be penalized if they have not received a special use permit. A practitioner would need to apply for a special use permit to conduct an activity that is prohibited.
5. A request to ban various items to reduce the impact on natural resources.
 - a. The various items listed are currently banned except for dogs, which are permitted in hunting rules for certain Reserves within hunting areas.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This action before the Board represents approval to amend rules and does not constitute a use of State lands or funds. Therefore, it is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

RECOMMENDATION: That the Board:

- 1) Adopt amendments to Hawai'i Administrative Rules Chapter 13-309 "Rules Regulating Activities Within Natural Area Reserves."

Respectfully Submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson

Attachment

EXHIBIT 1

DEPARTMENT OF LAND AND NATURAL RESOURCES

TITLE 13

SUBTITLE 9 NATURAL AREA RESERVES SYSTEM

CHAPTER 209

RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES

- § 13-209-1 Purpose and applicability
- § 13-209-2 Definitions
- § 13-209-3 Permitted activities
- § 13-209-4 Prohibited activities
- § 13-209-4.1. Animals
- § 13-209-4.2 Restricted entry
- § 13-209-4.5~~3~~ Closing of areas
- § 13-209-4.6~~4~~ Visiting hours
- § 13-209-4.5 - 13-209-4.9 (Reserved)
- § 13-209-5 Special-use permits
- § 13-209-5.1 - 13-209-5.4 (Reserved)
- § 13-209-5.5 Applications for special-use permits
- § 13-209-5.6 Parking fees
- § 13-209-5.7 Public parking closure hours
- § 13-209-5.8 Public parking
- § 13-209-5.9 Removal of vehicles
- § 13-209-6 Penalty

Historical Note: Chapter 209 of Title 13, Administrative Rules, is based substantially upon Regulation 10 of the Administration of the Department of Land and Natural Resources entitled “Regulating and Prohibiting Activities within Natural Area Reserves Including Provisions for Excepted-Use Activities by Permit and Penalties for Violation of the Regulation.” [Eff 5/20/79; R 6/29/81]

§13-209-1 Purpose and applicability. (a) The purpose of these rules is to regulate activity within natural area reserves established pursuant to section 195-4, Hawaii Revised Statutes. (b) These rules shall apply to all persons entering the boundaries of a natural area reserve. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§13-209-2 Definitions. As used in these rules, unless the context requires otherwise:

“Board” means the board of land and natural resources.

“Chairperson” means the chairperson of the board of land and natural resources.

“Commission” means the natural area reserves system commission.

“Department” means the department of land and natural resources.

“Game mammals and birds” means those animals that have been designated as such by sections 191-8 and 191-19, Hawaii Revised Statutes, and by administrative rules of the department.

“Natural area reserve” means those State lands that have been designated as part of the Hawaii natural area reserves system by the department pursuant to section ~~195-4~~ 183D-1, Hawaii Revised Statutes.

“Commercial activity” means ~~the use of or activity on state lands for which compensation is received and by any person for goods or services or both rendered to consumers or participants in that use or activity. Commercial activities include activities whose base of operations are outside the boundaries of the natural area reserve, or provide transportation to or from the natural area reserve.~~ to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes, or the use of liability waivers to provide goods or services. Commercial activity includes activities whose base of operations is outside the boundaries of the program trail or access, but that rent equipment or livestock for use in a natural area reserve or provide transportation to or from a natural area reserve. Commercial activity includes the operation of vehicles licensed or permitted as motor carriers of passengers or property for compensation by the Public Utilities Commission to, from, or within a natural area reserve except for delivery or other service vehicles contracted by the state.

“Compensation” includes but is not limited to, monetary fees, barter, or services in-kind.

“Motorized vehicle” means a motor vehicle of any type, including, but not limited to, automobiles, trucks, off-highway vehicles such as all-terrain vehicles, motorcycles, motorbikes, go-carts, motorcycles, motor scooters, mopeds, electric bicycles, and dune buggies..

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway or highway, including mopeds, but excluding bicycles and devices other than bicycles moved by human power.

[Eff 6/29/81; am 12/9/02; am 7/3/03; am and comp
(Imp: HRS § 195-5)

] (Auth: HRS § 195-5)

§13-209-3 Permitted activities. Hiking and nature study of group size of ten or less are permitted except where restricted pursuant to sections 13-209-4.5 and 13-209-4.6. Hunting is a permitted activity pursuant to hunting rules of the department. [Eff 6/29/81; am 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§13-209-4 Prohibited activities. The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life; except dogs when permitted by hunting rules of the department, leashed dogs on designated trails in Pahole natural area reserve, and service animals trained guide dogs accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances, including but not limited to drilling, placement or installation of hardware or fasteners;

- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;
- (7) To engage in any camping activity or to establish a temporary or permanent residence;
- (8) To start or maintain a fire, including cigarettes;
- (9) To litter, or to deposit refuse or any other substance;
- (10) To operate any motorized or unmotorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use;
- (11) To operate any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, ~~or marine waters~~, except as otherwise provided in the boating rules of the department. In Ahihi-Kinau natural area reserve, no person shall operate, anchor or moor any vessel equipped with mechanical means of propulsion on or in the Ahihi-Kinau ocean waters unless (1) the person is engaged in rescue or law enforcement operations; (2) an emergency arises which requires that such action be taken to prevent loss of life, injury to persons or damage to property; or (3) the person is operating, anchoring or mooring a vessel equipped with mechanical means of propulsion in or on the waters in accordance with the provisions of a permit issued by the Chairperson of the Board of Land and Natural Resources. Notwithstanding any boating rules of the department, it is prohibited to launch or land any boats, including sail boats, row boats, canoes and kayaks within portions of Ahihi-Kinau natural area reserve as shown in Exhibit 1, located at the end of this chapter and by reference made a part hereof. This section shall not apply to surfboards and bodyboards;
- (12) To enter into, place any vessel or material in or on, or otherwise disturb a lake or pond;
- (13) To engage in commercial activities of any kind in a natural area reserve without a written special-use permit from the board or its authorized representative;
- (14) To have or possess the following tools, equipment, or implements: fishing gear or devices within portions of Ahihi-Kinau natural area reserve as shown in Exhibit 1, located at the end of this chapter and by reference made a part hereof, including but not limited to any hook-and-line, rod, reel, spear, trap, net, crowbar, or other device that may be used for the taking, injuring, or killing of marine life; cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life; and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department;
- (15) To hike, conduct nature study, or conduct any activity with a group larger than ten in size;
- (16) To be present in an area closed pursuant to section 13-209-4.5 or after visiting hours established pursuant to section 13-209-4.6;
- (17) To anchor any motorized or nonmotorized water vehicle of any shape or form in the marine waters of Ahihi-Kinau natural area reserve;
- (18) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;

- (19) To conduct any other activity inconsistent with the purpose and intent of the natural area reserves system;
- (20) To use or possess narcotics or drugs except as provided by Federal or State laws. No person shall enter or remain within the premises when under the influence of alcohol or illegal narcotics or drugs;
- (21) To use or possess alcohol, except with the written permission of the board or its authorized representative;
- (22) To feed animals or leave any food that may be consumed by animals;
- (23) For an owner to allow the owner's dog, cat, or other domestic animal to become a stray;
- (24) To operate an unmanned aircraft in or above natural area reserves.
- (25) To enter into any solid-walled enclosures with signage indicating that the area is protected for snails.

[Eff 6/29/81; am 12/9/02; am 7/3/03; am 1/26/07; am and comp
§ 195-5) (Imp: HRS § 195-5)

](Auth: HRS

§ 13-209-4.1 Animals. Any stray dog, cat, or other animal may be seized by officers and employees of the department, or by any other person authorized by law, and shall be disposed of as provided in section 183D-65, Hawaii Revised Statutes. [Eff and comp]

§13-209-4.2 Restricted entry. It is prohibited for any person to land upon, enter or attempt to enter, or remain in any natural area reserve identified in Exhibit 2, , located at the end of this chapter and by reference made a part hereof, except as authorized by permit by the board or its authorized representative. [Eff and comp]

§ 13-209-4.53 Closing of areas. (a) The board or its authorized representative, with the approval of the commission, may close or restrict the public use of all or any portion of a natural area reserve for up to two years, when deemed necessary by the commission for the protection of the natural, geological, or cultural resources of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the board or its authorized representative and the commission. All persons shall observe and abide by the officially posted signs designating closed areas, in the event of an emergency or when deemed necessary for:

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) Management activities, by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to affect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection (a).

[Eff 1/26/07; am and comp

](Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-4.64 Visiting hours. The board or its authorized representative, with the approval of the commission, may establish a reasonable schedule of visiting hours for all or portions of a natural area reserve by posting appropriate signs indicating the hours during which the natural

area reserve may be accessed. All persons shall observe and abide by the officially posted signs designating visiting hours. [Eff: 1/26/07; am and comp] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§§ 13-209-4.5 - 13-209-4.9 (Reserved) [Eff and comp]

§ 13-209-5 Special use permits. (a) The board or its authorized representative, with the approval of the commission or its authorized representative, may issue permits to conduct activities otherwise prohibited by section 13-209-4 for research, education, management, or for any other purpose consistent with chapter 195, Hawaii Revised Statutes.

(b) Unless a special use permit includes a specific duration, the special use permit shall expire one year from the date of issuance. ~~No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits where the board determines such a waiver to be in the best interest of the State.~~

(c) All special-use permits shall be subject to standard conditions, as approved by the board, including but not limited to the following:

- (1) The permittee shall adhere to specifications given in the permit application;
- (2) Disturbance of vegetation and wildlife shall be avoided as much as possible;
- (3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants' clothes, equipment, and vehicles are free of seeds or dirt to lessen the chance of introducing any non-native plants or soil animals. Should an infestation develop attributable to the permittee, the permittee is responsible for eradication by methods specified by the department;
- (4) This permit is not transferable;
- (5) This permit does not exempt the permittee from complying with any other applicable rule or statute;
- (6) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.

(d) The board or its authorized representative may attach special conditions on the special-use permit, including but not limited to reporting requirements, limitations on the size of groups or the length of time for which the permit is valid. Failure to comply with any of these conditions shall render a permit void.

(e) All permittees shall carry the permit with them at all times while in the reserve and shall, upon request, show the permit to any law enforcement officer or the board or its authorized representative.

(f) Permits are not transferable. If the permittee is a partnership, joint venture, or corporation, the sale or transfer of 25 percent or more of ownership interest or stocks by dissolution, merger, or any other means, shall be deemed a transfer for purposes of this subsection and subject to the right of the department to terminate this permit effective the date of the sale or transfer.

(g) The board or its authorized representative may revoke or cancel a permit without prior notice when an emergency is declared by the department or other proper authority or when the special-use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the reserve.

(h) The board or its authorized representative may revoke or cancel any permit with thirty days written notice:

- (1) For any infraction of the terms and conditions of the permit;
- (2) Upon a finding that the special-use threatens to damage the integrity or condition of the natural, geological, or cultural resources in the reserve;
- (3) Upon a finding that the special-use poses a threat to the health, safety, or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the reserve; or
- (4) Upon closure of a reserve pursuant to section 13-209-4.5.

(i) The provisions of this section shall not exempt the applicant from complying with any other applicable rule or statute.

[Eff 6/29/81; am 1/26/07; am and comp] (Auth: HRS § 195-5)(Imp: HRS § 195-5)

§§ 13-209-5.1 - 13-209-5.4 (Reserved) [Eff and comp]

§ 13-209-5.5 Applications for special-use permits. (a) All applications for special-use permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

- (1) Name of applicant, and if relevant, affiliation and title;
- (2) Contact information, including name of primary contact, mailing address, phone number, and if available, email address;
- (3) The period of time for which the permit is requested, not to exceed one year unless seeking a waiver pursuant to section 13-209-5(b);
- (4) The reserve(s) involved;
- (5) A map illustrating the reserve and the location within the reserve of the proposed special-use;
- (6) A description of the proposed special-use;
- (7) A discussion of how the proposed special-use satisfies subsections (b)(1) through (b)(6);
- (8) An assessment of the potential environmental impact the special-use may have on the reserve or the surrounding area;
- (9) Signature of the applicant;
- (10) Any other information as determined by the department.

(b) In evaluating the merits of an application for a special-use permit, the board or its authorized representative shall apply the following criteria:

- (1) The proposed special-use cannot be conducted elsewhere;
- (2) The proposed special-use is consistent with the purpose and objectives of the natural area reserve system;
- (3) The proposed special-use is consistent with the management plan developed for the reserve;
- (4) The proposed special-use provides a benefit (direct or indirect) to the natural area reserve system or to the individual reserve(s) or both;
- (5) The proposed special-use will not damage or threaten to damage the integrity or condition of the natural, geological, or cultural resources in the natural area reserve and adjacent area or region;

(6) The proposed special-use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled “Coastal Zone Management”, where applicable; and

(7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.

(c) The applicant shall have the burden of demonstrating that the proposed special-use is consistent with the criteria in subsection (b).

(d) The board or its authorized representative may hold a public hearing on an application where determined by the chairperson that the scope of the proposed special-use or the public interest requires a public hearing on the application. Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper in the county where the natural area reserve is located.

(e) If within two hundred seventy days after the department’s acceptance of a completed application, the board or its authorized representative shall fail to render a decision thereon, the application for a special-use permit shall be automatically approved with the standard conditions outlined in section 13-209-5(c), provided that the board may revoke this approval pursuant to section 13-209-5(g) and (h). The two-hundred-seventy-day time period provided shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance. The two-hundred-seventy-day time period for decision may be extended for another one hundred eighty days at the request of the applicant to give the board additional time to review and make a decision on the application. [Eff 1/26/07; am] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

§13-209-5.6 Parking fees. (a) The fee for parking a vehicle in the Ahihi-Kinau natural area reserve at the Kanahena lot, shown in Exhibit “1”, in a space designated for such use shall be:

Nonresidents: \$5.00 10.00 per vehicle

Residents: No charge

(b) For purposes of this section, the term “resident” means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver’s license.

(c) All fees collected shall be deposited into the ~~Natural Area Reserve Special~~ Endangered Species Trust Fund. [Eff 9/8/17, am and comp] (Auth: HRS §§ 195-5, 195-9) (Imp: HRS §§ 195-5, 195-9)

§ 13-209-5.7 Public parking closure hours. Ahihi-Kinau natural area reserve parking areas will be closed daily between 8:00 p.m. and 5:00 a.m., including State holidays. [Eff 9/8/17] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

§ 13-209-5.8 Public parking. No vehicle shall enter the Kanahena lot, shown in Exhibit “1”, without payment of parking fees and charges and may only park in areas designated by the department. Within the Kanahena lot, all vehicles, resident and non-resident, must have and clearly display a parking pass on the driver’s side dashboard area so that it can be read from the outside of the vehicle. No vehicle shall be in a parking area within the Ahihi-Kinau natural area reserve when the parking area is closed, except as expressly permitted in writing by the department. [Eff 9/8/17, am and comp] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

§ 13-209-5.9 Removal of vehicles. (a) The department may detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage that may result, any motor vehicle:

- (1) For nonpayment of parking charges, or failure to clearly display a parking permit on the driver's side dashboard when a vehicle is parked in a vehicular parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve; or
- (2) Which has been parked continuously anywhere ~~in a parking area operated by the department or authorized representative~~ in the Ahihi-Kinau natural area reserve for a period exceeding the posted time limits, except where prior arrangements have been made therefor.

(b) The department shall have the authority to detain, tow, move, or cause to be moved any vehicle when the position or location of the vehicle in a parking lot creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department or authorized representative, of any vehicle legally parked, shall not be at the owner's risk and expense. [Eff 9/8/17, am and comp] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

§ 13-209-6 Penalty. Any person violating any of the provisions of these rules shall be penalized as provided in section 195-8, Hawaii Revised Statutes. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-8)

Exhibit 1: Ahihi Kinau Natural Area Reserve

Ahihi Kinau Natural Area Reserve, Maui

Chapter 209, Exhibit 1

State of Hawaii
DLNR, DOFAW

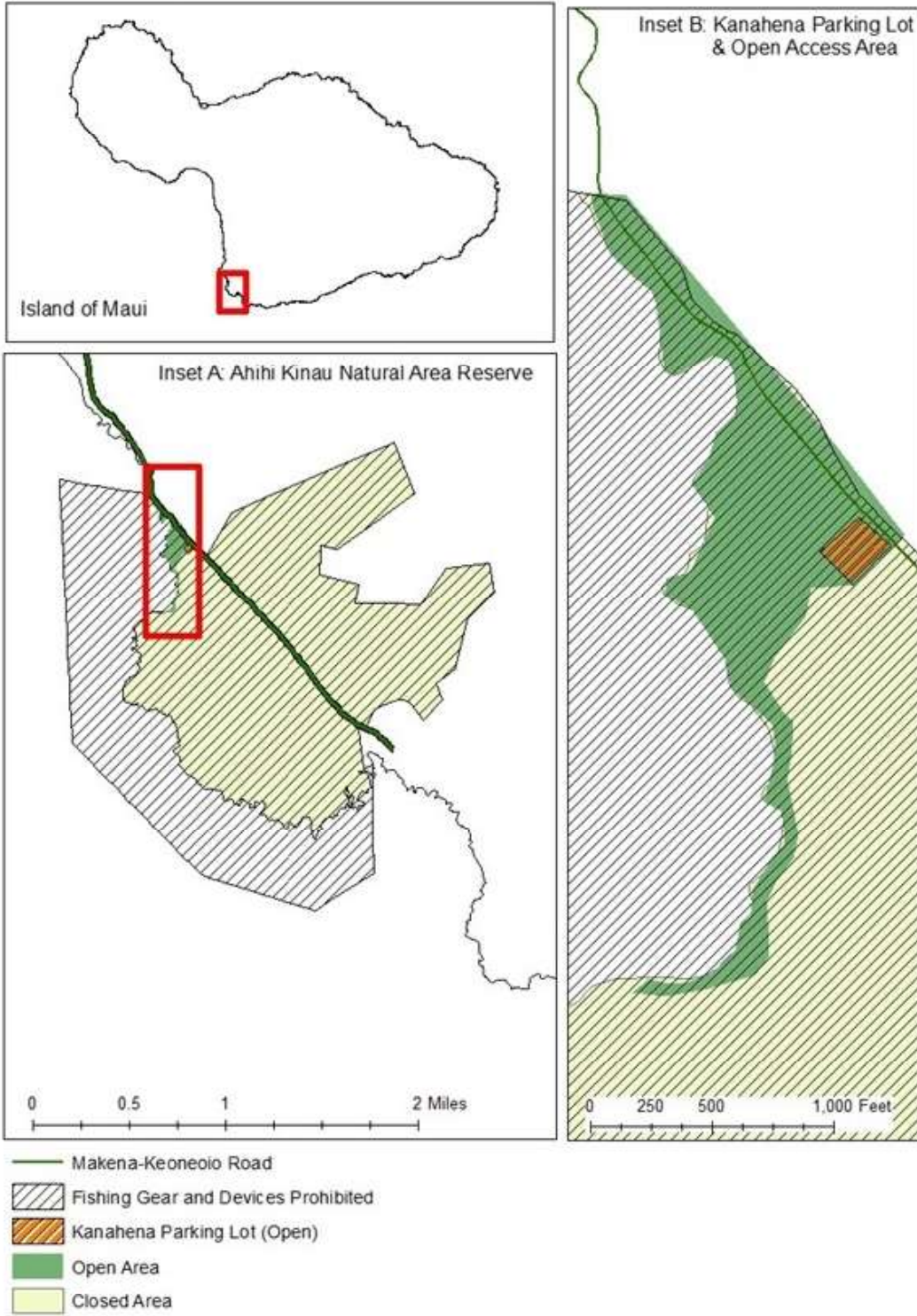


Exhibit 2: List of Restricted Natural Area Reserves

<u>Name</u>	<u>County</u>	<u>Island</u>	<u>Tax Map Key</u>	<u>Restrictions</u>
<u>Ahihi</u>	<u>Maui</u>	<u>Maui</u>	<u>2-1-4:073</u>	<u>See map in Exhibit 1.</u>
<u>Kinau</u>			<u>(Portions) and 2-1-004:113</u>	

DRAFT

Exhibit 2

April 14, 2023

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

Land Board Members:

SUBJECT: MASTER'S REPORT ON PUBLIC HEARING

As authorized by the Bard of natural Resources on November 10, 2022, Notices of Public Hearings were published in the *Honolulu Star-Advertiser* December 22, 2023, I have conducted a public hearing relating to the proposed rule amendments. Below is a report of the statewide (online) hearing held regarding the proposed rules. Additionally, comments about the rules were received in Maui County (online) and Molokai in-person hearings that also were receiving testimony on proposed Reserves.

/S/

Emma Yuen
Natural Resources Mgmt. Program Spec.
Division of Forestry and Wildlife

HEARING MASTER REPORT

Statewide (online) – January 23, 2023: Two members of the public attended..

Maui County (online)- February 15, 2023: Six members of the public attended.

Molokai – Kaunakakai – February 23, 2023: Twenty-nine members of the public attended.

Statewide Public Hearing

Online via Zoom

January 23, 2023

6:00 pm - 6:45 pm

Staff Present: Emma Yuen, Peter Landon

Public Present: Raquel Ahiu, Rob Weltman

Staff Yuen gave an overview of the proposed rule revisions, the opportunities for public comment, as well as the process for finalizing the amendments.

Public Testimony

Rob Weltman: “I have one comment on the commercial activity on NARS. I’m not sure I want to see commercial activity in `Ahihi-Kīna`u. It is so sensitive. The reason why it was blocked off was because they didn’t want people walking, especially in the pools. It’s sensitive.”

Staff Landon and Yuen explained that the proposed rule amendments clarify a process to follow if commercial users applied to operate in Natural Area Reserves. Currently, commercial users can apply for a special use permit, but the rules lack a framework on how those applications would be reviewed. Similarly, the current rules lack a mechanism for how the commercial use could contribute funding for the Reserves, similar to Na Ala Hele. The revisions would establish the framework as well as a funding pathway. Staff Landon acknowledged that there was a large controversy decades ago with the commercial kayaks at `Ahihi-Kīna`u, and there is no intention to bring those back. Also, the rules include a permanent closure for the sensitive pools that have been closed on a temporary basis since 2008.

Raquel Ahiu: “So, special use permits. What types of special use permits are you meaning? I’m trying to figure it out. So, on the Mt. Kaala aspect. We spoke briefly in the past about trying to protect the mountain. I have a ranch on the mountain but our focus is trying to make sure to keep it free from development and to still use it as agriculture. But I know a portion of it isn’t State owned so it didn’t qualify for NAR. So, I guess, I’m concerned when there is a current developer seeking a special use permit. I’m just curious what those permits are? Are those commercial use permits or are those permits to exist on land?”

Staff Yuen explained that the Natural Area Reserves special use permits would not address the issue of development on the mountain since those activities are occurring in the lowland, far away from the Mt. Kaala NAR boundaries in private lands.

Raquel Ahiu: “So, at the very top of Mt. Kaala, that’s part of the NAR? Then it cuts into a conservation district, but it doesn’t come down all the way to the base of the mountain. Is this correct?”

Staff Yuen confirmed that the conservation district boundaries and the NAR boundaries stop high up the mountain, and do not cover the lowlands.

Raquel Ahiu: “Emma, I agree with you. There are some activities that could support whether it be NARS, conservation areas, or parks. Working on the City aspect, it always boils down to education and enforcement in a lot of locations and spaces. I feel like if there is an opportunity to place more attention to education, especially to visitors, I feel like there is a large gap that’s not being filled. With our NARS, people still get access. Being on my ranch there are trespassers, hunters, off trail hikers. I just feel like there’s a huge lack of education if there is some way to have the enforcement part of it. I think we just need more support in that area so that we can protect what we have. What type of penalties or enforcement that exist that can be improved for those types of situations in the trails?”

Staff Yuen explained the criminal and administrative penalty process, as well as the DLNR’s attempt to increase enforcement by hiring more Division of Conservation and Resource Enforcement Officers and also increase education with a revised website and apps that can inform the public if they are hiking off-trail (Outerspatial app).

Raquel Ahiu: “I would just add that I’m getting familiar with NARS and conservation. I’m encouraged by the conversations and the public input. It’s rare for the public or the community to really get strong knowledge on the DLNR or whatever from both on State and City sides. But there is a great need to place a lot of existing lands to keep within our NARS and conservation programs. On the north shore, we are losing a lot of land and so quickly because they aren’t protected. There needs to be great focus on continuing NARS because we are losing so much land and quickly.”

**Public Hearing – Maui County
Online via Zoom**

**Wednesday, February 15, 2023
5:00 pm-7:15 pm**

Staff Present: Scott Fretz, Emma Yuen, Lance DeSilva, Peter Landon, Jeff Bagshaw, Shane DeMattos, John Medeiros

Public Present: Lori Buchannan, Keomailani Hanapi Hirata, Mahina Poepoe, La`a Poepoe, Shane Sinenci, Ka`uiki Lind

Scott Fretz (staff) starts the meeting summarizing the subject of the hearing regarding proposed designations of Reserves and NARS and introduces the staff, Emma Yuen who will be running the meeting, Lance DeSilva, Peter Landon, John Medeiros, Shane DeMattos, and Jeff Bagshaw. In addition to a presentation on the proposed designations, staff Yuen gave another presentation about NARS and its rule revision. The purpose of the rule revision is to make it consistent with the other rules, explain prohibited activities, and allow longer-term use special use permits.

Question and Answers

Lori Buchannan: “In advance of that [upcoming Molokai in-person public hearing] meeting can you send out information on the different designations that the Department is requesting with as much information as you can so we can be very prepared for when you guys come to Molokai.” Staff Yuen responded, “I’ll send you something and you can distribute it to whoever will be interested. Would be happy to do that.”

[A section of the hearing discussed proposed set asides to the Division of Forestry and Wildlife and were covered in a separate submittal].

Ka`uiki Lind: “Would that affect native Hawaiian rights? Hunting and all that stuff?” Staff Yuen responded that these rules would only affect activities within NARS. There is a NARS commission that has expertise representing native Hawaiian culture and can make special access permits to do things on the NARS, if they are currently prohibited.”

Lori Buchannan: “I’m concerned about the process because we have until March 1st to provide [written comments] and it is less than 2 weeks. How come we are hearing about this now?” Staff Yuen responded that there was a press releases and legal advertisements issued.

Mahina Poepoe: “I’m curious, I don’t think in the presentation in the rule changes the scope of commercial activities in the NARS was adequate, I would say, because in the track changes of the rules there is a substantial amount of changes in what kinds of commercial activities would be allowed. I’m concerned that [there is an attempt to say] ‘we can’t regulate all the illegal activities so let's make it legal.’ I don’t agree with that. Including that all of the commercial language maybe it isn’t, but is it starting of trying to set up the green fee program and creating more recreational spaces or green fee spaces and people who pay the fee may traverse and you can explain more.” Staff Yuen responded that there is a NARS Commission that oversees commercial use within NARS and doesn't want to see widespread commercial use. These changes are making a criteria to judge commercial use applications and asserting that there is a

process on getting a permit on commercial activities and making it consistent.” Staff Landon added that there are a lot of unregulated commercial activities in NARS and these rule changes would make it enforceable and more rigid. Staff Fretz further added, the intention for Maui is to improve enforcement.

[The remaining portion of the hearing discussed proposed set asides to the Division of Forestry and Wildlife and were covered in a separate submittal].

Note - since this meeting was online it was possible to transcribe and attribute comments to each person, which was not possible in other hearings that were held in-person.

Public hearing – Molokai

Mitchell Pau`ole Center, Kaunakakai, Molokai

Thursday, February 23, 2023

5:00 pm – 7:30 pm

Staff Present: Emma Yuen, James Espaniola, Jon Brito, Peter Landon, Justin Luafalemana

Members of the public present:

Raymond Pettigrew, Nani`ioana Kuahuia, Walter Rawlins, D. Aflis (?), Iwalani Kadowaki, Judy Caparita, Gina Kuahuia, Katherine Coelho, Palmer Naki, Walter Naki, Raymond Naki, Tammy Ross, Juanita Reyher-Colon, Kathy Tachibana, Russell K. Phifer, Kimolee K. Reeves, Keomailani Hanapi Hirata, Eddie Tanaka, G.R. (Hui Aloha Aina o Mana`e/Mahina Hou), Kristen Coelho, Kalani Johnston Sr., Barbara Kalipi, Jesica Parker, Heather Place, Ruth Yolanda Tanielu, Ruth Ann Howden, Walter Ritte, Lori Buchanan, Eddie Tanaka

The meeting opened with prayers from community members. Staff Yuen provided a powerpoint presentation on the proposed Reserves designation and gave an overview of the proposed NAR Rule changes.

[The majority of the meeting was dedicated to the other item on the agenda which was the proposed Reserves. Other discussion and testimony regarded the proposed Reserves which were presented in a separate submittal].

Public Testimony

[All public testimony received in the meeting referred to the proposed Reserves, except for the following testimony from Ms. Buchanan, which combines comments about the set asides as well as the NAR rule revisions.]

Lori Buchanan: “Aloha, my name is Lori Buchanan from the island of Molokai. Thank you for the opportunity to provide testimony. With what was provided to me, the paraphernalia, I was able to retrieve that submittal to the Board and the rules for the NARS and the proposed rule changes but nothing for forestry. I tried clicking on all the online stuff. I oppose the exemption of Chapter 343, citing that it was *de minimis* and an EA was not required. I disagree because it minimizes the public input – another step. I also disagree with the EA not being required in lieu with the NAR Commission has not had meetings since prior covid and only 1 or 2 after with request from the NARS Commission with the disposal of the NARS Commission. That also adds the layer of no opportunity of the public to comment. And the lands are ceded lands, for the beneficiaries, and the two processes have been thwarted. And giving me not the opportunity but for today to respond. I testify that the Department needs to expand the comment period and reschedule the board meeting of March 24 because of due process not being met. We requested in the online meeting that the GIS map that includes all the holdings of the DLNR meetings and NARS, but it doesn’t reflect all the areas for the land meeting by the next public meeting was not met.

“There was other gray areas but it clearly does not reflect all of the holdings that are currently in NARS or in the Forest Reserve. In 13-209-1 the purpose and applicability my testimony is to add and insert and cite the laws that recognize the rights and privileges of Native Hawaiians right up in the front to preface of the...all of the whatever are guys are trying to do in all of the rest of Title 13 or Chapter 13, whatever. So that will help I think put into the perspective the rest of the rules. There is no page numbers for easy reference. So under commercial activity, I understand that the stricken is stricken out, is that correct? And the line is the new verbiage. So in the new verbiage almost to the end under commercial activity, well I guess in the middle. It says that commercial activity includes activities whose base of operations outside of the boundaries of the program or access. I want more defined what that means because it’s vague and I don’t understand it. At the end of that, it says commission to from or within a NAR except for the delivery of other service vehicle contracted by the State. I would also like to expound on that.

“Under compensation motorized vehicle the end it says ‘but excluding bicycles and devices from other than bicycles moved by human power.’ If that’s an exclusion where does that cover needing to explain? Under 13-209-4 prohibited activities under number 2 ‘to plan to introduce any form of plant or animal life except dogs when permitted by hunting rules.’ What does that mean? And if there needs to be a citation. Under 13-209-4 prohibited activities item number 3 to remove damage or disturb any geological features or paleontological features or substances and then underlined new verbiage including but not limited to drilling, placement, or installation of hardware or fasteners. What does that mean and how does that talk about fencing? Number 8 please add it says number 8 ‘to start or maintain a fire’ and what’s underline new verbiages including cigarettes can you expand that to say other whatever the language is because there’s

marijuana and other things that you can smoke and other incendiary smoking types of whatever that is what I propose I hope you guys can include. I know these rest is specific to `Ahihi Kīna`u.

“In that number 11 under number 3 new language that person is operating anchoring and it goes on and on it says ‘Accordance with the provisions of a permit issued the Chairperson of the Board of Land and Natural Resources.’ What is the process? Can you please cite the process that the Chairperson is using for the permits? And maybe that’s premature and in 13-209-4.2 restricted entry it says, ‘it is prohibited for any person...’ Please insert the language again 13-204-1 is amended 13-209-4.53 ‘Closing of Areas: The Board...’ This whole section I have concerns the Board or its authorized representative they close or restrict the public use of all or any portion of the Natural Area Reserve in the event of an emergency or deemed necessary the verbiage of when deemed necessary. I know it’s written to be vague if you’re gonna keep it in there then I need a definition of what is necessary or something that the Department refers to find out what is necessary. Also in item (b) ‘The Chairperson is authorized to effect the given closure or restriction’ under subsection what? That might be a typo it goes on to say ‘(a) The Board is authorized to affect closure as deemed necessary’ again there’s the double language again. The comments on the ambiguity of that is also inserted there. Also a citation to what is the process under which the Chair and Board has authority. 13-209-5 special use permits under item (c) ‘All special use permits shall be subject to the standard conditions as approved by the Board including to but not limited to the following, item number...’ You know what it is number 3, should an infestation develop attributable to the permittee the permittee is responsible for eradication by methods specified by the Department - is stupid and unenforceable. I can’t believe that the AG approved that language but it’s good for me though. The special use permits in that is a notice to the public like the ‘*Aha Kiole*, so that’s what I want notice to the public. 13-209-5.5: this is a new section. Is this a new section? It’s not underlined, isn’t it an existing section?”

Staff Yuen responds, “It is existing.” Lori Buchannan adds, “Number 6, a description of the proposed special, you guys should have an in-house discussion about how cultural practice is affected by forcing practitioner who may have a secret practice. What would be their mitigation to describe their proposed special use and what would be acceptable to the Board. Under number 10 I would also say that it’s too vague and you might want to insert language there if you guys extend your guys’ period. Any other information is determined by the Department. Hell no, ambiguity. I oppose item (c), I know it’s not new language but I would hope the Department can relook at that item (c), the applicant should have the burden of demonstration the proposed special uses consistent with the criteria in subsection (b). If given the additions in 13-209-1 that might cover about the rights and privileges of Native Hawaiians their right to practice culture and religion and then item (c), I strongly oppose this. So I hope you guys go back and look at this if you guys - I know you have to do it in hearing. I wanted to bring it to your attention the application of a special use permit ‘shall be automatically approved with the standard conditions of minus section 13-209-5-(c) provided that the Board may revoke this approval’ dadada..

Automatic approvals are never a great thing to have in your document because that's how a lot of things get slide by and there's no oversight for that. I know why it's there but I hate it. Thank you. So 13-209-6 and 13-209-6-1 is confusing, so is 13-209-6.2,6.3, specificity it's confusing. You might wanna read it again under 13-209-6 underscore 7 penalty, please reiterate the clause to protect the rights of native Hawaiians and practitioners so it's clearly that they should not suffer any penalties by the restrictions within the NARS. Kay that's it for now. For DOFAW's I gotta read DOFAW's one. Can I ask a question? Oh the forestry, I couldn't find anything online. Are there any proposed rules for the forestry portion?" Staff Yuen replies no. Lori Buchannan adds "That's why I never find nothing only addition of the forestry stuff and rule proposes are for the NARS, got it. Okay, so yeah there's actually a lot I hope that the Department does try to minimize that there are not a lot of new language and I hope my testimony will help you guys try to add and revisit. I don't know if it's too late in the process but that's going to be our proposal if the Department moves forward with the March 24."

[The remainder of the testimony was about the set asides and was presented in a separate submittal.]

Written Testimony

Name
Maui resident
Input
Cultural access is hard to get and needed. I would like to show my kids the area and walk the coasts trails and connect with my kupuna. I like that tourist get charged and are limited to certain areas. Not allowing kanaka maoli into the area is something I don't support. Need to make access protocols easier to obtain if a permit is needed to walk on the trails in closed to tourist areas. Disappointing that can't provide jobs to locals by letting them provide paid state guided hikes identifying natural resources. Don't close the area to all, students from Maui need to know what's in their back yard so they can learn how to help manage resources in the future. Please consider access for culture and education and how to incorporate into rule changes.

Name
BEAU BASSETT
Input
<p>I read through the pdf and had some difficulty understand the change, seemed to mostly be regarding NAR and commerical activity. I will say though, there really needs to be more access and or more clarity to puu o umi natural area reserve for instance.</p> <p>On your website (the outerspatial trail app) there lists several access way and many are private, owned by parker ranch. Also south of Hawi the areas are all only accessed by commercial tours. It does not make sense for a NAR yet its inaccessible to the public. It needs to be more easier and clear for the public to enter into these areas and or for the state to find more routes. It would help tremendously if there was more clear instructions on access to some of these areas, perhaps a separate webpage etc. Aloha</p>

Name
Lucas V
Parcel
199011002
Input
<p>I would like to see the Proposed Forest Reserves around the H3 Freeway be given to the DLNR so the land can be protected. I hope that native plants and animals that are living in that parcel can be protected and invasive species be removed quickly. There are so many invasive species that are here because not enough is being done to prevent them from spreading so quickly.</p> <p>I think it is good to upgrade from service animals to only Trained Guide Dogs at Ka'ena Point. Anyone attempting to cheat the law by bringing their untrained pet should be held responsible and pay high fines for any harm to protected wildlife.</p>

Name
Leilani M Luis Wilson
Input
<p>Ban day and overnight camping. Ban any and all fire fueled equipment, including fire pits, camping stoves and/or similar fire equipment. Ban mountain bikes. Ban electrified bikes. Ban motorized/electric vehicles, including motorbikes, scooters, and similar transportation. Ban owners' dogs, leashed and not leashed. Allow only hiking by pedestrians on foot. Allow horses with riders who have obtained officially been issued a dated pre-approved day-use permit.</p> <p>These measures will prevent degradation and destruction, disturbance, harrassment of these lands and wildlife, preserve wildness character of these lands, prevent fires, increase safety, reduce need for emergency responses, save money on use of emergency facilities and personnel.</p> <p>Keep Hawaii wild and environmentally clean and pure.</p>