

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

November 14, 2014

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

Land Board Members:

SUBJECT: AUTHORIZATION FOR THE CHAIRPERSON TO NEGOTIATE AND SIGN A MEMORANDUM OF AGREEMENT (MOA) WITH THE STATE OF HAWAI'I, DEPARTMENT OF PUBLIC SAFETY (PSD), FOR ACCESS, CONSERVATION MANAGEMENT, AND MAINTENANCE OBLIGATIONS FOR KULANI CORRECTIONAL FACILITY AND PU'U MAKAK'ALA NATURAL AREA RESERVE, WAIAKEA, SOUTH HILO, TMK: (3) 2-4-08:09.

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE SUBJECT MOA.

This submittal requests the Board to authorize the Chairperson to negotiate and sign a MOA (Exhibit A) between the Board of Land and Natural Resources (BLNR) and the State Department of Public Safety (PSD) for access, conservation management, and maintenance obligations for Tax Map Key: (3) 2-4-08:09, Waiākea, South Hilo, which contains Kūlani Correctional Facility and Pu'u Maka'ala Natural Area Reserve (NAR). The MOA will be pursuant to the terms in Exhibit A and subject to approval by the Attorney General. Additionally, the Division of Forestry and Wildlife (DOFAW) requests approval of a declaration of exemption to Chapter 343, HRS requirements for this MOA.

BACKGROUND:

Kūlani Correctional Facility and Pu'u Maka'ala NAR (Tax Map Key: (3) 2-4-08:09) contains high quality native forest and endangered species, and has been managed by DLNR and partners on a landscape scale since 1994 to protect natural resources through the Three Mountain Alliance (TMA). A portion of this parcel containing an area of 6,623.81 acres was set aside through Executive Order 4338 as an extension of the Pu'u Maka'ala NAR (Exhibit A, Attachment 1). In

2013, the BLNR approved a management plan for the Pu‘u Maka‘ala NAR and a Final Environmental Assessment and Finding of No Significant Impact were issued. A Final Environmental Assessment and Finding of No Significant Impact for the Reactivation of KCF were completed in July 2013.

The BLNR on January 24, 2014, approved item D-4 (Exhibit A, Attachment 2), authorizing the issuance of a revocable permit for approximately 279.76 acres of the subject parcel to PSD, for Kulani Correctional Facility (“KCF”) purposes to provide opportunities for sentenced adult offenders to become productive, responsible and successful citizens, through delivery of programs, services and activities while working towards their reentry into the community. The BLNR approved item D-4 included reservations to DOFAW of access, utility and conservation easements over the PSD revocable permit area as well as the issuance of a right-of-entry to DOFAW for 342.24 acres of another portion of the subject parcel for data collection, survey and conservation purposes while DLNR processes its formal request to include such acreage in the Pu‘u Maka‘ala NAR. DLNR issued a revocable permit to PSD on October 17, 2014 for a portion of Tax Map Key: (3) 2-4-08:09 for the purpose of operating a correctional facility (Exhibit A, Attachment 3).

DLNR and its consultants, contractors and/or persons acting on its behalf, including the TMA, require access over internal roads of the PSD revocable permit area as well as access for conservation management over open and accessible areas within the revocable permit area. In addition, public access to Pu‘u Maka‘ala NAR is allowed for recreational and cultural uses Hawaii Administrative Rules (HAR) §13-209-3 (Exhibit A, Attachment 4).

The BLNR approved item D-4 requires PSD and DLNR to reach an agreement between them regarding access by DLNR over the internal roads of the PSD revocable permit area, conservation management over open and accessible areas within the permit area, the parties’ maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.

DISCUSSION:

DLNR and PSD have prepared a draft MOA (Exhibit A), which has been preliminarily reviewed by the Attorney General. This MOA will allow DLNR and PSD to enter into a mutually beneficial agreement to preserve the natural resources of the subject area for environmental and public benefit and to provide conservation education, service-learning opportunities and vocational training for correctional facility inmates. The MOA addresses the requirements of the BLNR to reach agreement regarding access by DOFAW over the internal roads of the PSD revocable permit area, conservation management over open and accessible areas within the permit area, the parties’ maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The MOA is a mutually beneficial agreement between DLNR and PSD for access procedures, routine conservation management actions and operations and maintenance of the facilities. These are activities which are exempt from the requirements for the preparation of an environmental assessment in accordance with the requirements of Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules (HAR), under the following exemptions:

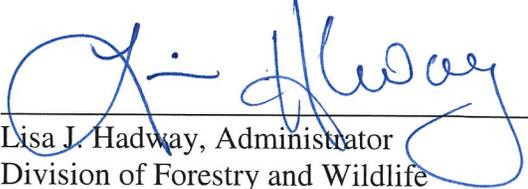
- Exemption Class #1: Operations, repairs or maintenance of existing structures, facilities, equipments or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
- Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

RECOMMENDATIONS:

That the Board:

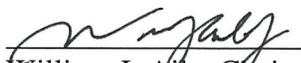
1. Authorize the Chairperson to negotiate and sign a MOA between the BLNR and the PSD for access, conservation management, and maintenance obligations for Tax Map Key: (3) 2-4-08:09, pursuant to the terms in Exhibit A and subject to approval by the Attorney General.
2. Approve a declaration of exemption to Chapter 343, HRS requirements for this MOA.

Respectfully submitted,



Lisa J. Hadway, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



William J. Aila, Chairperson
Board of Land and Natural Resources

Exhibit A: Draft MOA

EXHIBIT A – DRAFT MOA FOR BLNR APPROVAL

MEMORANDUM OF AGREEMENT

DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF FORESTRY AND WILDLIFE

AND

DEPARTMENT OF PUBLIC SAFETY

For Waiākea, South Hilo, Tax Map Key: (3) 2-4-08:09

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made and entered into this _____ day of 2014, by and between the State of Hawai‘i, Department of Land and Natural Resources, Division of Forestry and Wildlife (“DLNR”), by its Board of Land and Natural Resources (“BLNR”), and the State of Hawai‘i, Department of Public Safety (“PSD”). DLNR and PSD are jointly referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Tax Map Key: (3) 2-4-08:09 (“subject parcel”) contains high quality native forest and endangered species, and has been managed by DLNR and partners on a landscape scale since 1994 to protect natural resources through the Three Mountain Alliance (“TMA”) watershed partnership;

WHEREAS, the Governor of the State of Hawai‘i through Executive Order 4338 set aside a portion of the subject parcel as an extension of the Pu‘u Maka‘ala Natural Area Reserve (“NAR”) to the DLNR containing an area of 6,623.81 acres, which is more fully set forth in Attachment 1;

WHEREAS, the BLNR on January 24, 2014, approved item D-4, which is identified as Attachment 2, authorizing the issuance of a revocable permit for approximately 279.76 acres of the subject parcel to PSD, for Kulani Correctional Facility (“KCF”) purposes to provide opportunities for sentenced adult offenders to become productive, responsible and successful citizens, through delivery of programs, services and activities while working towards their reentry into the community;

WHEREAS, the BLNR approved item D-4 included reservations to DLNR of access, utility and conservation easements over the PSD revocable permit area as well as the issuance of a right-of-entry to DLNR for 342.24 acres of the subject parcel for data collection, survey and conservation purposes while DLNR processes its formal request to include such acreage in the Pu‘u Maka‘ala NAR;

WHEREAS, DLNR issued a revocable permit to PSD for a portion of Tax Map Key: (3) 2-4-08:09 for the purposes of operating a correctional facility (Attachment 3).

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WHEREAS, DLNR and its consultants, contractors and/or persons acting on its behalf, including the TMA, require access over internal roads of the PSD revocable permit area as well as access for conservation management over open and accessible areas within the permit area;

WHEREAS, public access to Pu'u Maka'ala NAR is allowed for recreational and cultural uses, as described in Attachment 4 (Hawaii Administrative Rules ("HAR") §13-209-3);

WHEREAS, the BLNR approved item D-4 requires Applicants PSD and DLNR to reach an agreement between them regarding access by DLNR over the internal roads of the PSD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.;

WHEREAS the PSD and DLNR have the common interest to preserve the natural resources of the subject areas for environmental and public benefit and to provide conservation education, service-learning opportunities and vocational training for inmates at Kūlani Correctional Facility; and

WHEREAS, DLNR and PSD wish to enter into a mutually beneficial agreement to accomplish these purposes;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to DLNR and PSD, the parties agree as follows:

A. Maintenance Obligations:

PSD Agrees:

1. PSD will be responsible for maintenance and obligations related to the use and occupancy of the land, including the internal roads, within the PSD revocable permit area (Attachment 3, Exhibit B).

DLNR Agrees:

2. DLNR will be responsible for maintenance and obligations related to the use and occupancy of Tax Map Key: (3) 2-4-08:09 por. within the NAR (Attachment 1) and within the DLNR right-of-entry area proposed addition to the NAR (Attachment 3, Exhibit B).
3. DLNR will provide limited assistance to PSD with the maintenance of the easement over the internal roads in the PSD revocable permit area. Such assistance may include clearing fallen trees from the internal roads, maintenance of gates/fences, removing invasive vegetation from along the internal roads and performing rare species surveys prior to roadwork.

B. DLNR and PSD Access

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PSD Agrees:

1. PSD will provide access to DLNR personnel, vehicles, equipment, and or DLNR contractors, to facility grounds, pending background checks/clearance with 72 hours advance notice, into and onto the PSD revocable permit area, including the main front access gate to the facility in order for DLNR to access DLNR's easement for access and conservation purposes and/or in case of emergency.
2. PSD will provide keys to DLNR to the lower gate lock, for DLNR access to the NAR set aside and other areas in case of emergency.

DLNR Agrees:

3. DLNR will provide keys to PSD to all DLNR locks, for PSD access to the NAR set aside and other areas in case of emergency.
4. DLNR, its consultants, contractors and/or persons acting on its behalf will notify PSD when entering or exiting through main gates in the PSD revocable permit area.

C. Public Access

PSD Agrees:

1. PSD will allow DLNR to maintain a trailhead along Stainback Highway outside the KCF main gate in the PSD revocable permit area to enhance public access to the NAR. Pedestrians using this trailhead will not require permission or approval from PSD to park and use the two trails that enter directly into the NAR (Attachment 5).
2. PSD will permit public pedestrian access to the NAR through the DLNR easement for the internal roads of the PSD revocable permit area on a case by case basis, upon request. Due to PSD concerns about public safety and security, public pedestrian access through the front gate or internal roads of the PSD revocable permit area requires prior written request and approval from PSD and DLNR. Approval shall be requested from the key officials listed in Section K.
3. PSD will allow pedestrian and/or vehicular access through the Kūlani Correctional Facility main gate and easement for the internal roads of the PSD revocable permit area to people with approved DLNR NAR Special Use Permits. DLNR NAR Special Use Permit issuance is guided by HAR §13-209- 5 and typically includes activities such as hiking or nature study with groups larger than ten, research, scientific collecting, gathering (including Native Hawaiian religious and customary gathering rights). Permittees using the Kūlani Correctional Facility main gate and internal roads of the PSD revocable permit area will be required to notify PSD 72 hours prior to requested access, check in at the Kūlani Correctional Facility front gate and show their approved Special Use Permit.

DLNR Agrees:

EXHIBIT A – DRAFT MOA FOR BLNR APPROVAL

4. DLNR will establish, maintain, and repair the trailhead in the PSD set-aside area along Stainback Highway to provide public access for two recommended trails into the NAR (Attachment 5). DLNR will install informational signage at the trailhead explaining the hazards, permitted pedestrian uses and prohibited activities in the NAR.
5. DLNR will improve public pedestrian access to the Kūlani section of the NAR by improving and maintaining trails and recommended access routes in the NAR.
6. DLNR will add boundary, trail and easement signage at the NAR boundary and along the easement for the internal roads of the PSD revocable permit area to reduce incidences of public trespass into the PSD revocable permit area.
7. DLNR will provide PSD with NAR information to distribute to public pedestrians who have received approval from PSD to access the NAR from the front gate or internal roads of the PSD revocable permit area. This information will include a map showing the designated pedestrian access routes to the NAR along main internal roads of easement corridor, permitted pedestrian uses and prohibited activities.
8. DLNR will notify PSD when issuing Special Use Permits for the NAR that require access through the Kūlani Correctional Facility main gate and/or the internal roads of the PSD revocable permit area. Special Use Permits will require permit holders to comply with the terms and conditions in the DLNR Right of Entry (Attachment 4) when using the easement over the internal roads of the PSD revocable permit area. Conditions will be added into the DLNR NAR Special Use Permits that inform permittees of the PSD front gate/easement requirements.
9. DLNR will provide prior notification to PSD when bringing organized groups through the Kūlani Correctional Facility main gate and/or the internal roads of the PSD revocable permit area. DLNR staff will provide periodic guided educational tours of the Kūlani portion of the NAR and/or volunteer service trips for community groups and/or the general public upon prior approval from PSD.

DLNR and PSD jointly agree:

10. Vehicular access through the DLNR access easement for NAR visitation purposes for parties unaffiliated with DLNR staff and its consultants, contractors and/or persons acting for or on its behalf will require written permission on a case-by-case basis, granted by mutual agreement of the PSD and DLNR. Requests of this nature shall be granted from the principal contacts in Section J.
11. Vehicular access along roads within the NAR (Attachment 1) are designated only for management vehicular use by DLNR staff and its consultants, contractors and/or persons acting for or on its behalf. Vehicular access for the PSD, other parties or the public from the easement into the NAR requires

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written approval via a Special Use Permit issued by DLNR or its authorized representative pursuant to HAR §13-209-5. Special Use Permits shall be requested from the DLNR Chairperson or authorized representative (contact information in Section J).

12. The lower gate shall be closed every night from 8:30 PM until 6:00 AM the following morning.

D. Utility Easement Access

DLNR and PSD jointly agree:

1. Vehicular access through the Kūlani Correctional Facility main gate and the DLNR access easement for utility easement access purposes (e.g. Hawaii Electric Light Company, leasees and sub-lessees requiring access to the top of Kūlani Cone, etc) for parties unaffiliated with DLNR staff and its consultants, contractors and/or persons acting for or on its behalf will require written permission on a case-by-case basis, granted by mutual agreement of the PSD and DLNR. Formal easements for this type of access are being developed, but interim procedures will include the same requirements as public vehicular access (See Section C-10).

E. Conservation Management and Other Cooperative Activities

PSD Agrees:

1. PSD will cooperate with and provide DLNR access for conservation management over open and accessible areas within the PSD revocable permit area. Conservation management includes but is not limited to fence inspection and maintenance, invasive species control using approved control methods (chemical, mechanical and biological) and native species protection such as protective barriers, predator control, seed collection and endangered species monitoring, greenhouse work, native plant propagation and research. If such activities conflict with Kūlani Correctional Facility activities, PSD will work with DLNR to determine alternative dates/times for conservation management.
2. PSD recognizes the sensitive natural environment of the PSD revocable permit area as well as the surrounding NAR. PSD will not bring domestic animals (cats, dogs, etc.) into the area, feed feral (e.g. cats, pigs, etc.) or native animals (e.g. nēnē), plant invasive species as landscaping, etc. Trash should be contained so as to not attract feral animals, and vehicles should be cleaned so as to not import weeds, ants, coqui frogs, etc. into the general area.
3. PSD will notify DLNR if feral animals (dogs, pigs, cats, etc.) or other pests (e.g. coqui frogs, ants, wasps, etc.) are spotted in the area or if they notice damage to any fences or gates.

EXHIBIT A – DRAFT MOA FOR BLNR APPROVAL

DLNR Agrees:

4. DLNR will provide prior notification to PSD when planning on doing conservation management in open and accessible areas within the PSD revocable permit area. If planned activities conflict with Kūlani Correctional Facility activities, DLNR will work with PSD to determine alternative dates/times for conservation management.
5. DLNR will assist PSD with conservation management in the PSD revocable permit area including removal of feral animals, coqui frogs, management of endangered species such as nēnē, removal of invasive weeds, planting of native plants as landscaping and other similar management.

PSD and DLNR Jointly Agree:

6. PSD and DLNR will work cooperatively to establish joint programs that provide educational, vocational training and service learning opportunities for Kūlani Correctional Facility staff and inmates as well as conservation benefits to the subject area.

F. General

PSD and DLNR Jointly Agree:

1. DLNR and PSD, their consultants, contractors, and/or persons acting for or on their behalf shall comply with all laws, statutes ordinances, rules and regulations of the Federal, State and County of Hawaii governments affecting the subject area.

G. Liability:

1. Liability relating to claims or incidents within the internal roads of the PSD revocable permit area, including responsibility for responses, processing and/or potential expenses shall be addressed as follows:
 - a. DLNR shall address items involving: DLNR vehicles, equipment or personnel; other vehicles, equipment or personnel associated with entities conducting activities on behalf of or under approval from DLNR; vehicles, equipment or personnel representing the general public who are accessing DLNR-managed lands.
 - b. PSD shall address items involving: PSD vehicles, equipment or personnel; other vehicles, equipment or personnel associated with entities conducting activities on behalf of or under approval from PSD; vehicles, equipment or personnel representing the general public who are accessing the PSD revocable permit area.

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- c. DLNR and PSD shall jointly and equally address items involving the general public whose activities within the easement for the internal roads of the PSD revocable permit area are not directly related to DLNR or PSD operations.
2. Nothing in this MOA shall be construed as an indemnification of one Party or another for liabilities of a Party or third persons for property loss or damage or death or personal injury arising out of and during performance of this MOA. PSD is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of PSD's employees, officers, agents, and others under their supervision. DLNR is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of DLNR's employees, officers, agents, and others under their supervision. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of the MOA.

H. Disputes. Any disputes that cannot be resolved between the identified primary points of contact for the PSD and the Board relating to the terms of this MOA will be brought to the attention of Chairperson of the BLNR for a determination or resolution of the dispute or question.

I. Term, Modification, Termination and Notice:

1. *Term.* This instrument is executed as of the last date show below which shall be the commencement date. This instrument will remain in effect for the duration of the revocable permit after which it is renewable at the option of the Parties.
2. *Modification.* This MOA may be modified at any time by mutual agreement of the Parties. Modifications shall be in writing executed by the authorized officer representing the PSD and the BLNR respectively. For purposes of this modification provision, such authorized officers are the Director Department of Public Safety, and the Chairperson of the BLNR.
3. *Termination.*

Either party, in writing, may terminate this instrument in whole, or in part, at any time before the date of expiration. Unless otherwise by mutual agreement, thirty (30) days advance notice shall be provided prior to termination.

This instrument is terminated if the set-aside and/or revocable permit for either Party, are disapproved, withdrawn, or cancelled, or if either Party abandons its use of the subject area or commitments for a continuous period of one (1) year.

4. *Notice.*

Any written notice required to be given by either Party shall be delivered personally or by United States certified mail, postage prepaid to principal contacts

EXHIBIT A – DRAFT MOA FOR BLNR APPROVAL

listed below. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier.

J. Principal Contacts

- a. DLNR: BLNR Chairperson or authorized representative, Department of Land and Natural Resources, Post Office Box 621, Honolulu, Hawaii 96809.
- b. PSD: Director or Deputy Director for Corrections Department of Public Safety, 919 Ala Moana Blvd. Honolulu, Hawaii 96714

K. Key Officials

- a. DLNR: NARS Manager. Mr. Nicholas R. Agorastos; 19 East Kawili St.; Hilo, Hawaii 96720; Telephone: (808) 640-8176.
- b. PSD: Kulani Correctional Facility Warden, Ms. Ruth C. Forbes; HC01 Stainback Hwy.; Hilo, Hawaii 96720; Telephone (808) 932-4430.

L. Attachments. The attachments to this agreement referenced above and described as follows are incorporated herein:

- Attachment 1. Executive Order 4338
- Attachment 2. BLNR Agenda item D-4
- Attachment 3. Revocable Permit to PSD
- Attachment 4. Rules Regulating Activities within Natural Area Reserves
- Attachment 5. Public Access and DLNR Trails

IN WITNESS WHEREOF, DLNR and PSD have executed this MOA as of the last date written below.

DEPARTMENT OF PUBLIC SAFETY

By:

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

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EXHIBIT A – DRAFT MOA FOR BLNR APPROVAL

DEPARTMENT OF LAND AND NATURAL RESOURCES

By: William J. Aila, Jr.
Chairperson

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

DRAFT

ATTACHMENT 1

and Wildlife, being that parcel of land situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, and identified as "Addition to Puu Makaala Natural Area Reserve," containing a gross area of 7,245.73 acres and a net area of 6,623.81 acres after excluding therefrom Kulani Correctional Facility, Governor's Executive Orders 1225 and 1588 and a 40 Foot Roadway, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, respectively being designated C.S.F. No. 24,992 dated October 5, 2010 and H.S.S. Plat 933-C dated October 7, 2010.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

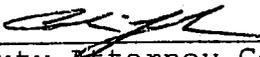
SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 4th day of NOVEMBER, 2010.


Governor of the State of Hawaii

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 10/14/10

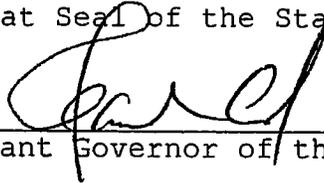


STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of Executive Order No. 4338 setting aside land for public purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant Governor of the State of Hawaii, has hereunto subscribed his name and caused the Great Seal of the State to be affixed.



Lieutenant Governor of the State of Hawaii

DONE in Honolulu, this 4th day of November, A.D. 2010



STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 24,992
H.S.S. Plat 933-C

October 5, 2010

ADDITION TO
PUU MAKAAALA NATURAL AREA RESERVE

Waiakea, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Waiakea.

Beginning at the southwest corner of this parcel of land and on the boundary between the lands of Waiakea and Keauhou, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KULANI" being 13,268.80 feet North and 14,079.83 feet West, thence running by azimuths measured clockwise from True South:-

1. 159° 35' 11" 13,999.70 feet along Royal Patent 4475, Land Commission Award 7713, Apana 11 to V. Kamamalu and Mauna Loa Forest and Game Reserve, Governor's Executive Order 1288;
2. 249° 33' 5005.86 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923;
3. 336° 10' 3849.20 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923;

ATTACHMENT 1

C.S.F. No. 24,992

October 5, 2010

- | | | |
|-----|--------------|---|
| 4. | 285° 40' | 7500.00 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 5. | 339° 33' 30" | 5500.00 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 6. | 285° 52' | 11,493.30 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 7. | 360° 00' | 800.00 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 8. | 56° 11' 30" | 3508.40 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 9. | 360° 00' | 9251.08 feet along Upper Waiakea Forest Reserve, Governor's Proclamation dated October 13, 1913 as modified by Governor's Proclamation dated January 3, 1923; |
| 10. | 63° 20' | 1929.02 feet along Puu Makaala Natural Area Reserve, Governor's Executive Order 3102 to the south side of roadway; |

Thence along the south side of roadway along Puu Makaala Natural Area Reserve, Governor's Executive Order 3102 for the next five (5) courses, the direct azimuths and distances between points along said south side of roadway being:

- | | | |
|-----|----------|---------------|
| 11. | 138° 25' | 753.90 feet; |
| 12. | 113° 40' | 1088.17 feet; |
| 13. | 95° 00' | 880.00 feet; |

ATTACHMENT 1

C.S.F. No. 24,992

October 5, 2010

- 14. 64° 45' 1310.00 feet;
- 15. 0° 30' 1260.00 feet;
- 16. 133° 18' 05" 18,346.90 feet along Kilauea Forest Reserve, Governor's Proclamation dated December 22, 1928 to the point of beginning and containing a GROSS AREA OF 7245.73 ACRES and a NET AREA OF 6623.81 ACRES after excluding therefrom Kulani Correctional Facility, Governor's Executive Orders 1225 and 1588 (614.14 Acres) and 40 Foot Roadway (7.78 Acres) as shown on plan attached hereto and made a part hereof and more particularly described as follows:

KULANI CORRECTIONAL FACILITY
Governor's Executive Orders 1225 and 1588

Beginning at the northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KULANI" being 14,793.94 feet North and 9942.97 feet West, thence running by azimuths measured clockwise from True South:-

- 1. 270° 12' 4708.00 feet;
- 2. 183° 09' 190.40 feet;
- 3. 265° 56' 478.00 feet;
- 4. 279° 46' 1466.90 feet;
- 5. 262° 49' 2150.30 feet;
- 6. 357° 29' 852.10 feet;
- 7. 72° 09' 1673.20 feet;
- 8. 9° 34' 30" 1357.20 feet to the north side of roadway;



ATTACHMENT 1

C.S.F. No. 24,992

October 5, 2010

9. Thence along the north side of roadway, the direct azimuth and distance being:

290° 50' 2472.40 feet;

10. 246° 09' 466.94 feet;

11. 336° 05' 832.12 feet;

12. 250° 04' 444.00 feet;

13. 334° 00' 1117.20 feet;

14. 68° 12' 713.50 feet;

15. 119° 58' 30" 609.00 feet to the east side of roadway;

16. Thence along the east side of roadway, the direct azimuth and distance being:

354° 12' 1012.10 feet;

17. 269° 44' 241.50 feet;

18. 342° 54' 780.80 feet;

19. 0° 14' 296.70 feet;

20. 76° 08' 30" 444.80 feet to fence on the south side of roadway;

Thence along fence on the south side of roadway for the next fifteen (15) courses,
the direct azimuths and distances between
points along said fence on the south side of
roadway being:

21. 142° 27' 569.30 feet;

22. 111° 37' 30" 725.00 feet;

23. 195° 11' 311.80 feet;

24. 107° 33' 399.40 feet;

25. 126° 06' 389.30 feet;

26. 72° 35' 167.20 feet;

27. 112° 36' 310.00 feet;

28. 44° 47' 232.20 feet;

29. 43° 22' 106.00 feet;

30. 87° 22' 423.70 feet;

ATTACHMENT 1

C.S.F. No. 24,992

October 5, 2010

- 31. 119° 40' 459.60 feet;
- 32. 207° 30' 1381.60 feet;
- 33. 113° 03' 543.80 feet;
- 34. 84° 49' 1022.20 feet;
- 35. 173° 13' 808.40 feet;
- 36. 202° 37' 930.10 feet;
- 37. 139° 46' 381.80 feet;
- 38. 149° 33' 703.60 feet;
- 39. 87° 42' 20" 3718.00 feet to fence on the south side of roadway;

Thence along fence on the south side of roadway for the next four (4) courses, the direct azimuths and distances between points along said fence on the south side of roadway being:

- 40. 64° 37' 30" 889.60 feet;
- 41. 81° 58' 361.00 feet;
- 42. 81° 07' 273.40 feet;
- 43. 151° 59' 1199.10 feet;
- 44. 187° 10' 1158.10 feet to the point of beginning and containing an AREA OF 614.14 ACRES.

40 FOOT ROADWAY:

Being a strip of land forty (40.00) feet wide and extending twenty (20.00) feet on each side of the following described centerline:

ATTACHMENT 1

C.S.F. No. 24,992

October 5, 2010

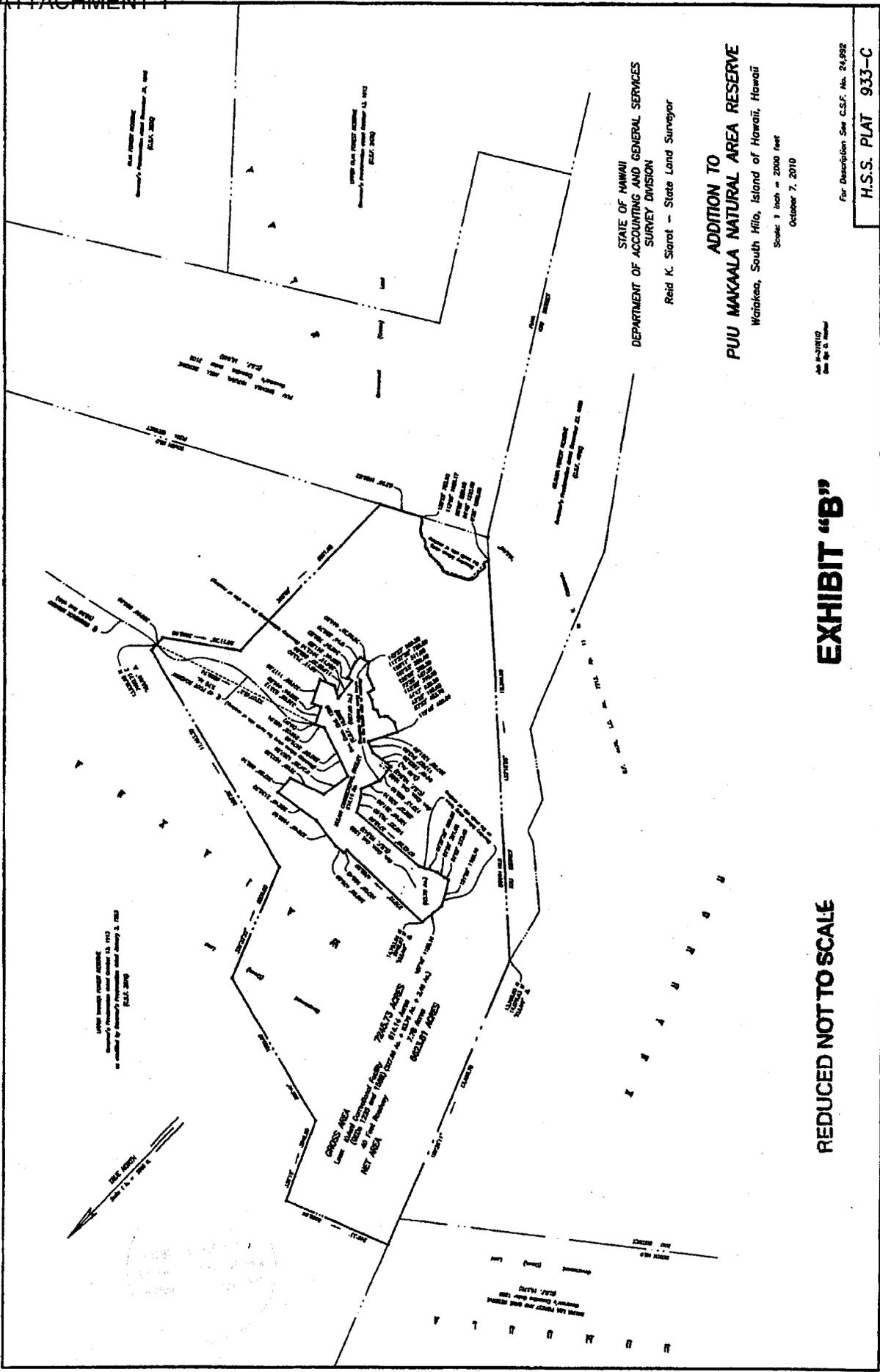
Beginning at the east end of this centerline and at the west end of the centerline of Stainback Highway (80.00 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KULANI" being 13,939.98 feet North and 7480.73 feet East, thence running by azimuth measured clockwise from True South:-

1. Along centerline, the direct azimuth and distance to the west end of this centerline on the east boundary of Kulani Correctional Facility, Governor's Executive Order 1225 being:
73° 07' 42.2" 8029.74 feet and containing an AREA OF 7.78 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor ry

Compiled from field work by
DOFAW and Gov't. Survey Records.



STATE OF HAWAII
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 SURVEY DIVISION
 Reid K. Starot - State Land Surveyor

**ADDITION TO
 PUU MA'ALA NATURAL AREA RESERVE**
 Waialea, South Hilo, Island of Hawaii, Hawaii
 Scale: 1 inch = 2000 feet
 October 7, 2010

REID K. STAROT
 STATE LAND SURVEYOR

EXHIBIT "B"

REDUCED NOT TO SCALE

For Description See C.S.F. No. 24,992

H.S.S. PLAT 933-C

37 1/2" x 40 1/2" N.E.

See Map No. 24-992

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 24, 2014

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

PSF No.: 13HD-195

Hawaii

Cancellation of Revocable Permit No. S-7811, State of Hawaii, Department of Defense, Permittee; Issuance of Revocable Permit to the Department of Public Safety (PSD) for the Kulani Correctional Facility; Issuance of Immediate Construction Right-of-Entry to PSD, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 por.

CONTROLLING AGENCY:

State of Hawaii, Department of Defense

APPLICANT:

State of Hawaii, Department of Public Safety

LEGAL REFERENCE:

Sections 171-13 and -95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-08:09, as shown on the attached map labeled Exhibit A.

AREA:

279.76 acres, more or less (same area covered by Revocable Permit S-7811)

ZONING:

State Land Use District: Conservation
County of Hawaii CZO: Unplanned

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 24, 2014 10.

TRUST LAND STATUS:

Section 5(b) of the Hawaii Admission Act
DHHL 30% entitlement land pursuant to the Hawaii State Constitution: NO

CURRENT USE:

The State of Hawaii, Department of Defense, uses the subject land and improvements thereon for its Youth ChalleNGe Academy.

CHARACTER OF USE:

The area is currently encumbered under Revocable Permit No. S-7811 to the State of Hawaii, Department of Defense (DOD). The DOD will continue to use approximately 279.76 acres of the site for its Youth ChalleNGe Academy until construction of improvements at the Keaukaha Military Reservation in Hilo is completed for the relocation of its program (anticipated to be mid-2014). A construction right-of-entry will be issued to the Department of Public Safety (PSD) so that it may begin the preliminary work required to transition the site back into a correctional facility.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 2013 with a finding of no significant impact (FONSI). An organization known as Ohana Ho'opakele filed an appeal of the FONSI determination in court, and the matter is pending. Additionally, the subject lands are within the Conservation District, General, Resource and Protected Subzones. PSD will be responsible for complying with any Conservation District permit requirements applicable to its project.

APPLICANT REQUIREMENTS:

- 1) PSD and DLNR's Division of Forestry and Wildlife (DOFAW) shall negotiate an agreement between themselves regarding access by DOFAW over the internal roads of the PSD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc. The form of agreement will need to be presented to the Board at a later meeting.

REMARKS:

By memorandum dated November 19, 2013, Dean Seki, Comptroller, Department of Accounting and General Services, requested the issuance of a construction right-of-entry permit and set-aside by executive order of the former Kulani Correctional Facility (KCF) campus on Mauna Loa's windward flank to the Department of Public Safety (PSD), once

the State Department of Defense (DOD) is finished using the site for its Youth Challenge Academy (YCA), which is anticipated to be mid-2014. The construction right-of-entry will allow PSD to begin the preliminary work required to transition the site back into a correctional facility.

By memorandum dated December 26, 2013, Chairperson William J. Aila, Jr. responded that the Department of Land and Natural Resources (DLNR) could not support the set-aside of the site to PSD, but, rather, would recommend that the Board of Land and Natural Resources authorize a construction right-of-entry and approve a revocable permit as the land disposition to PSD.

By way of background, at its meeting of September 9, 2010, Item D-3, as amended, the Board approved the cancellation of the executive orders held by the PSD for the former KCF. The Board additionally approved the set-aside of approximately 600 acres of the KCF lands to the DOD, for the operation of its YCA.¹

Pursuant to the Board approval, Governor's Executive Order Nos. 4339 and 4340 were issued on November 4, 2010. These executive orders canceled Executive Order Nos. 1225 and 1588, respectively, which originally established KCF. Also on November 4, 2010, Executive Order No. 4341 was issued, which set aside approximately 622 acres to DOD for its YCA.

The Governor's authority to set aside lands to an agency by executive order is subject to the conditions set forth in Hawaii Revised Statutes, Section 171-11. That section provides in part as follows:

The power granted to the governor in this section to set aside or withdraw or withdraw and set aside public lands shall be exercised subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by the majority vote of both, in any regular or special session next following the date of the setting aside or withdrawal, or withdrawal and setting aside....

During the 2011 legislative session, the Senate unanimously adopted Senate Concurrent Resolution 14 (SCR 14) on April 5, 2011 disapproving the set-aside of the lands to DOD. SCR 14 requested DOD to find an alternate location for its YCA,² and urged PSD to re-open a prison on the property. SCR 14 did not, however, disapprove Executive Order Nos. 4339 and 4340. Accordingly, the cancellations of the original executive orders for the facility stood, with the result that the 622 acres technically returned to the inventory of

¹ At the same meeting, the Board approved the set-aside of the approximately 6,600 remaining acres of KCF to DOFAW for the inclusion in the Puu Makaala Natural Area Reserve. September 9, 2010, Item C-1.

² DOD indicated that the remoteness of the Kulani site makes the operation of the YCA there too expensive in the long term in any event.

the DLNR as unencumbered land.

Recognizing that it would take some time for DOD to relocate its YCA program, and for PSD to evaluate whether it was feasible to reopen a prison at the former KCF site, the Board at its meeting of October 28, 2011, Item D-15, approved a month-to-month revocable permit to DOD for the transition period. However, the area of the permit was reduced to 279.76 acres covering the main KCF campus because DOD indicated it had no use for the former pasture area comprising the balance of the 622 acres (342.24 acres). Revocable Permit No. S-7811 thereafter issued on December 6, 2012, allowing DOD to continue its operations on the main campus site.

Also at its meeting of October 28, 2011, the Board approved the issuance of a right-of-entry permit to the Division of Forestry and Wildlife (DOFAW) over: (i) the internal roads on the area covered by RP S-7811 for access and utility purposes, as well as over the open and accessible areas under the revocable permit for data collection, survey, and conservation purposes, and (ii) approximately 342.24 acres outside of the area covered by RP S-7811, to conduct data collection, surveys and conservation activities while DOFAW processed a formal request for inclusion of the area in the Puu Makaala Natural Area Reserve (NAR).³ A right-of-entry permit was thereafter issued on November 14, 2011 (copy attached as Exhibit B).

The Board's action of October 28, 2011, Item D-15, further directed DOD and DOFAW to enter into an MOA regarding access by DOFAW over the internal roads of the DOD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc. The Board approved the MOA at its meeting of January 11, 2013, Item C-3, and the parties entered into the MOA on April 18, 2013. A copy of the MOA (less its lengthy exhibits) is attached as Exhibit C. DOFAW anticipates entering into a similar agreement with PSD.

Revocable Permit No. S-7811 to DOD includes a provision requiring DOD to conduct a Phase I Environmental Site Assessment (Phase I) upon the termination of the permit. Staff anticipates that DOD will not want to incur the expense of a Phase I, and that PSD is willing to take control of the property in "as is, where is" condition since PSD is essentially regaining control of its former correctional facility. Accordingly, staff is including a recommendation that the Board waive the Phase I requirement on the condition that PSD accept the property "as is, where is," with all faults and defects.

³ Access over the internal roads of the PSD permit area is important to DOFAW because DOFAW uses the roads to manage the Puu Makaala NAR. In addition to roads and utilities, DOFAW needs access over the open and accessible areas of the land covered by the revocable permit to PSD to allow DOFAW personnel to take measures to assist endangered species and eradicate predators and invasive species. The former pastures at KCF are a habitat for the endangered Nene. In addition, the Kulani area has been selected as a future release site for captive-bred Alala (Hawaiian Crow).

There is no County zoning applicable to the lands affected by the proposed uses. In light of the former use of the area as a corrections facility up until November 2009, staff knows of no alternative highest and best use of the subject land. The requested disposition fully utilizes the land.

No comments were solicited from government agencies as this project went through the environmental review process under HRS Chapter 343. PSD desires to proceed with its request notwithstanding the pendency of Ohana Ho'opakele's appeal of the FONSI determination.

Staff has no objection to the issuance of the construction right-of entry permit or revocable permit to PSD, and is including a recommendation below that the issuance of the right-of-entry and revocable permit be subject to the continuing right-of-entry to DOFAW.⁴

Finally, PSD continues to hold Executive Order No. 1426 for approximately 492.5 acres at the 800-foot elevation of Mauna Loa as an addition to KCF. This land was formerly used for pasture and could be put to productive use in conjunction with a reopened correctional facility at the 279.76-acre main campus site.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permit No. S-7811 to the State of Hawaii, Department of Defense under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
 - A. The effective date of the cancellation shall be determined by the Chairperson in consultation with the Department of Defense;
 - B. The Phase I Environmental Site Assessment required under the permit is waived, provided that the Department of Public Safety agrees to accept the property in "as is, where is" condition with all faults and defects, whether latent or patent; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Subject to the Department of Public Safety fulfilling all of the Applicant

⁴ The right-of-entry states that it shall be effective as to the main campus site until further disposition of the land. In the recommendation section, staff is including language to clarify that the right-of-entry shall remain in effect notwithstanding the cancellation of RP S-7811 and the issuance of a new revocable permit to PSD.

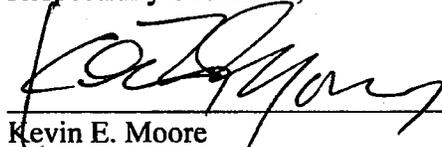
requirements listed above, authorize the issuance of a revocable permit to the Department of Public Safety covering the approximately 279.76 acres of the subject area for purposes of operating its Kulani Correctional Facility under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time; provided, however, that;
 - i. PSD shall accept the land and buildings under the revocable permit in "as is, where is" condition with all faults and defects, whether latent or patent;
 - ii. The permit shall be subject to the right-of-entry dated November 14, 2011 issued to DOFAW (copy attached as Exhibit B), which shall continue in full force and effect notwithstanding the cancellation of RP S-7811 and the issuance of a new revocable permit to PSD;
 - iii. PSD and DOFAW shall negotiate an MOA regarding access by DOFAW over the internal roads of the PSD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc., and return to the Board at later date for approval of the MOA before executing it;
 - B. The revocable permit shall be effective upon the date DOD concludes its operations on the property and vacates the site;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate construction right-of-entry to the State of Hawaii, Department of Public Safety, its consultants, contractors and/or persons acting for or on its behalf, over approximately 279.76 acres of the subject land under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time; provided, however, that:
 - i. The permit shall be subject to the right-of-entry dated November

14, 2011 issued to DOFAW (copy attached as Exhibit B), which shall continue in full force and effect;

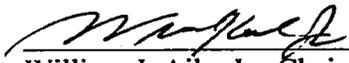
- ii. PSD shall coordinate with DOD on access to and work on the KCF campus;
- B. This construction right-of-entry is effective upon the full execution of the right-of-entry permit and shall continue until the revocable permit is issued; and
- C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

TMK (3) 2-4-08:09

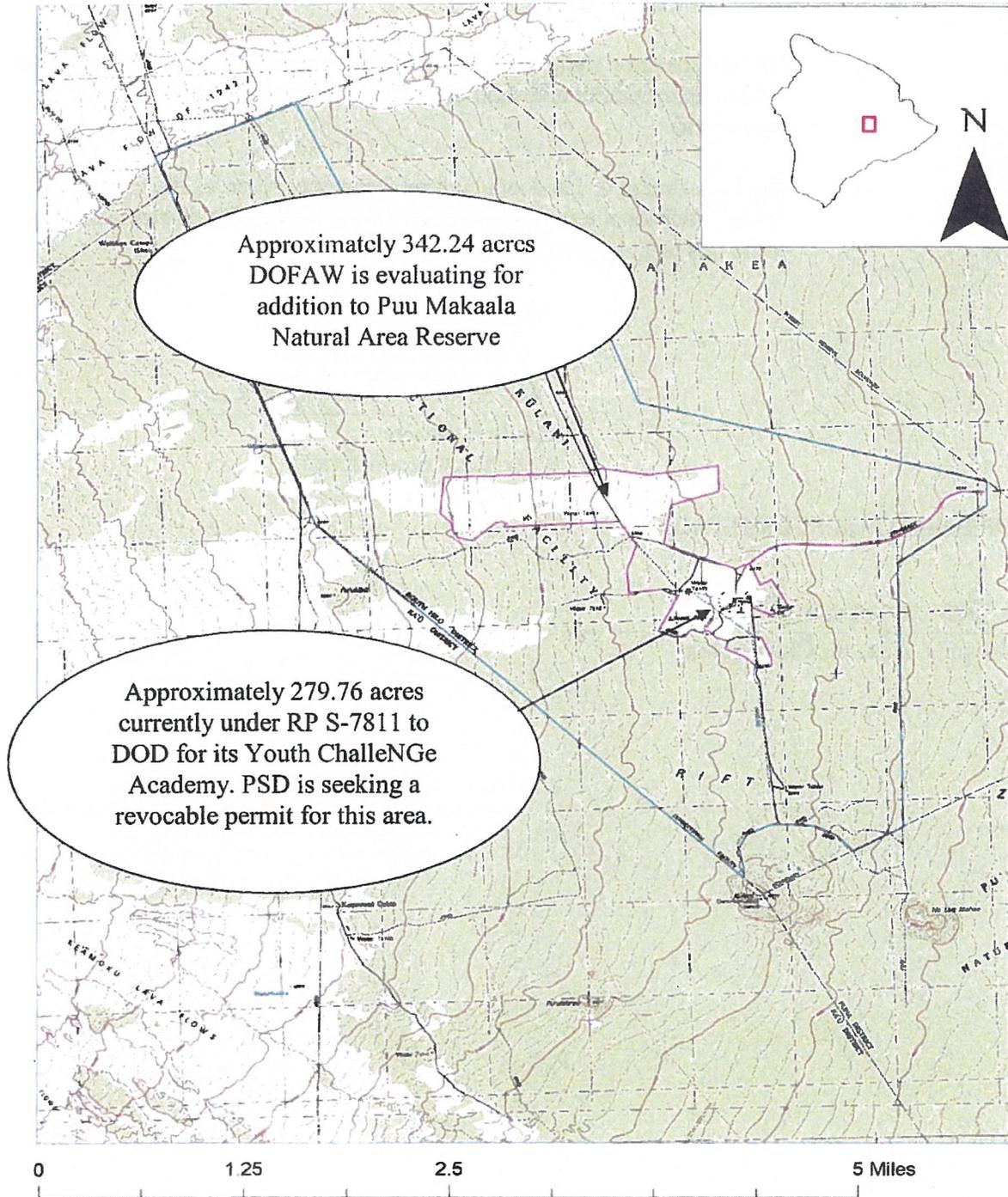


EXHIBIT A

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCABLE PERMIT NO. S-7844

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 17th day of October, 2014, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and the State of Hawaii, DEPARTMENT OF PUBLIC SAFETY, hereinafter called the "Permittee," whose mailing address is 919 Ala Moana Boulevard, Honolulu, Hawaii 96814. The parties agree that commencing on the 19th day of June, 2014, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, tax map key no. (3) 2-4-08:09 por., as indicated in blue shading on the map attached as Exhibit A hereto and made a part hereof, containing an approximate area of 279.76 acres, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

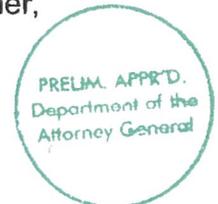
- A. The Permittee shall:
1. Occupy and use the Premises for the following specified purposes only: correctional facility.
 2. Reserved.
 3. Reserved.
 4. Reserved.
 5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
 6. Reserved.
 7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit



applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities.

8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Permittee shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall procure, at their own cost and expense, and maintain in full force and during the entire period of this Permit, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources (Department). The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of Permittee and its consultants, contractors and/or persons acting for or on its behalf.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner,



Permittee shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the Permit term and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Department. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.

The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the Department, the insurance provisions in this Permit do not provide adequate protection for the Department, the Department may require Permittee's consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify Permittee in writing of changes in the insurance requirements and Permittee's consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit the liability of Permittee's consultants, contractors and/or persons acting for or on its behalf under this Permit nor to release or relieve the Permittee's consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee's consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with this Permit of Permittee's consultants, contractors and/or persons acting for or on its behalf. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with insurance policy(s) provided by Permittee's consultants, contractors, and/or persons acting for or on its behalf.

The insurance certificate(s) shall be mailed to:

State of Hawaii



Department of Land and Natural Resources
Land Division
Box 621
Honolulu, Hawaii 96809

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee's consultants, contractors and/or persons acting for or on its behalf (other than condemnation proceedings), the Permittee's consultants, contractors and/or persons acting for or on its behalf shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis on a gratis basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation.
3. Reserved.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit,



or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.

6. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use. By signing this Permit, Permittee hereby accepts the land and buildings under the revocable permit in "as is, where is" condition with all faults and defects, whether latent or patent.
9. The waiver of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
10. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
11. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the



ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
14. Permittee shall ensure its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the Department harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf relating to the use, occupancy, maintenance, or enjoyment of the Premises by Permittee, its consultants, contractors and/or persons acting for or

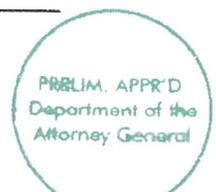
on its behalf; (2) any failure on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf to maintain the Premises and areas adjacent thereto in the use and control of Permittee, its consultants, contractors and/or persons acting for or on its behalf, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf to maintain the Premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of any non-observance or non-performance of any of the terms, covenants, and conditions of this Permit or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments by Permittee, its consultants, contractors and/or persons acting for or on its behalf.

The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

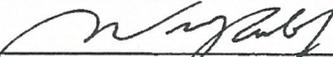


18. In issuing this Permit, the Board reserves to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW): (i) access and utility easements over, across and under the internal roads of the Premises, and (ii) conservation easements over the open and accessible areas of the Premises for data collection, survey and conservation purposes. Pursuant to the Board's action of January 24, 2014, Item D-4, Permittee and DOFAW are required to reach an agreement (Memorandum of Agreement to be referred to as "MOA") between themselves regarding access by DOFAW over the internal roads of the Premises, conservation management over open and accessible areas within the Premises, the parties' maintenance obligations for the internal roads, conditions under which public access will be granted, etc. and return to the Board at a later date for approval of the MOA before executing it.
19. This Permit shall be subject to the right-of-entry dated November 14, 2011 issued to DOFAW (copy attached hereto and made a part hereof as Exhibit B), which shall continue in full force and effect notwithstanding the cancellation of Revocable Permit No. S-7811 and the issuance of this Permit to Permittee.
20. The Permit shall be effective upon the date the State of Hawaii, Department of Defense concludes its operations on the Premises and vacates the Premises.
21. The Permittee will be responsible for complying with any conservation district permit requirements applicable to its project.



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By 
WILLIAM J. AILA, JR.
Chairperson of the Board of Land and Natural Resources

Approved by the Board of Land and Natural Resources at its meeting held on 1/24/2014.

STATE

DEPARTMENT OF PUBLIC SAFETY

APPROVED AS TO FORM:


LINDA L. W. CHOW
Deputy Attorney General

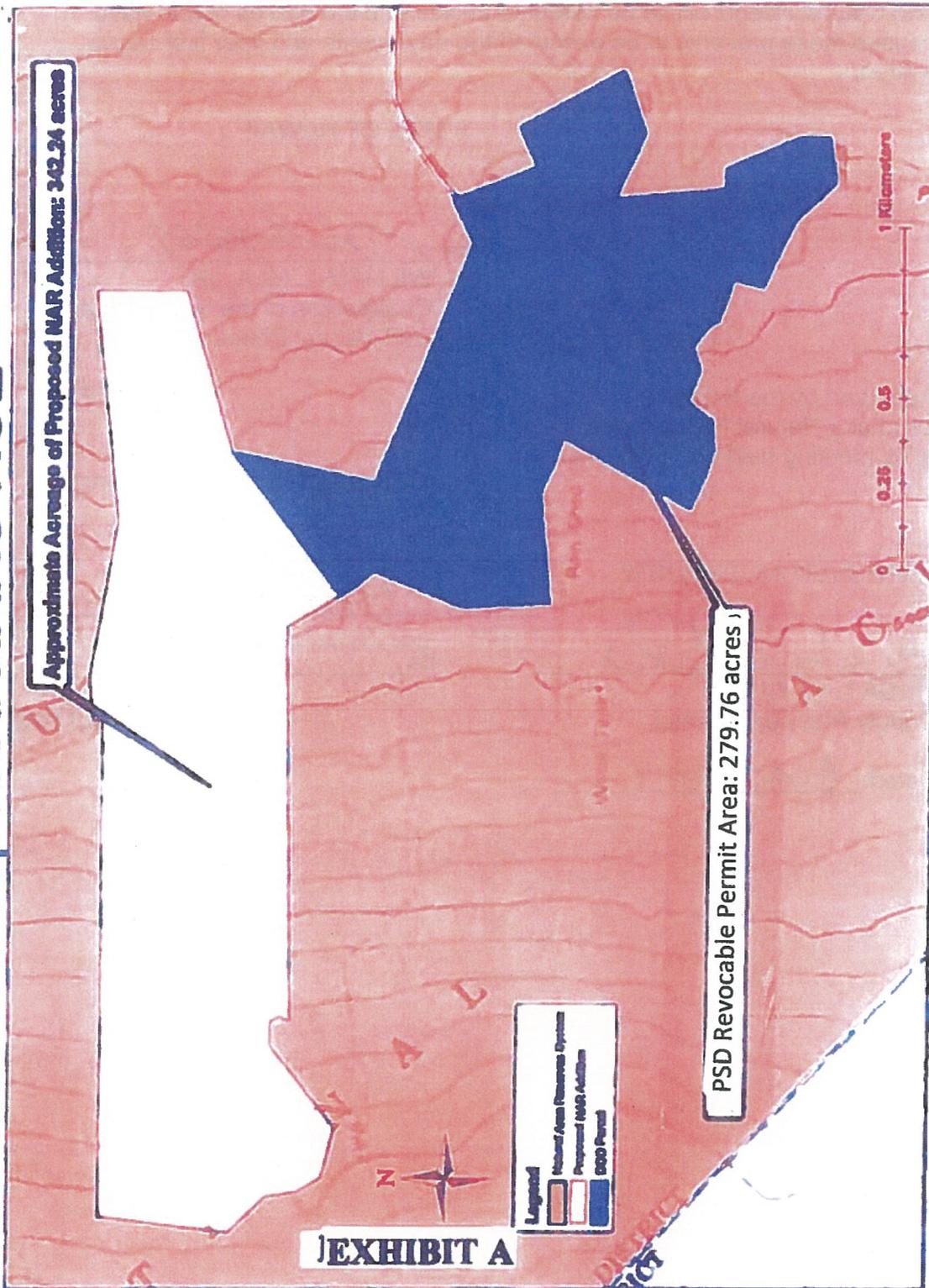
By 
Its _____

PERMITTEE

Dated: Aug. 22, 2014



Proposed NARS ROE



PRELIM. APPR'D.
Department of the
Attorney General

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 14, 2011

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
GUY B. KAHALANUIKUNO
FIRST DEPUTY
WILLIAM H. TANI
SECOND DEPUTY
ADHATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
CONSERVATION AND LAND MANAGEMENT
CONSERVATION AND LANDS ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
HAWAIIAN HERITAGE COMMISSION
LAND
STATE PARKS

2011 DEC -6
RECEIVED
LAND DIVISION
HILO, HAWAII

Ref.: 11HD-113
LD-KM

MEMORANDUM

TO: Paul J. Conry, Administrator
Division of Forestry and Wildlife

FROM: William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

SUBJECT: Issuance of Right-of-Entry to the Division of Forestry and Wildlife, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 pors.

At its meeting of October 28, 2011, Item D-15, the Board of Land and Natural Resources approved the issuance of a revocable permit over a 279.76-acre portion of Tax Map Key: (3) 2-4-08:09 (Parcel 9) at Waiakea, South Hilo, Hawaii, to the State of Hawaii, Department of Defense (DOD), for Youth Challenge Academy Purposes. At the same meeting, the Board approved the issuance of a right-of-entry to the Division of Forestry and Wildlife (DOFAW) over portions of the DOD revocable permit area for access, utilities, and conservation purposes. Additionally, the Board approved the issuance of a right-of-entry to DOFAW over a 342.24-acre portion of Parcel 9 outside of the DOD revocable permit area that DOFAW intends to add to the Puu Makaala Natural Area Reserve (NAR).

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of October 28, 2011, Item D-15, DOFAW, its consultants and/or persons acting for or on its behalf, is hereby granted a right-of-entry permit: (i) over the internal roads on the area covered by the revocable permit to be issued to DOD (shown in blue on Exhibit A attached), for access and utility purposes, as well as over the open and accessible areas under the revocable permit for data collection, survey, and conservation purposes, and (ii) over approximately 342.24 acres outside of the area covered by the DOD revocable permit area (shown in light shading on Exhibit A attached), to conduct data collection, surveys and conservation activities while DOFAW processes a formal request for inclusion of the area in the Puu Makaala NAR, subject to the following terms and conditions.

- 1. This right-of-entry is valid 24 hours a day, and is effective upon our receipt of a copy of this permit countersigned by a duly authorized representative of DOFAW. The right-of-

EXHIBIT B



Paul J. Conry, Administrator
Division of Forestry and Wildlife
November 14, 2011
Page 2

- entry shall remain in effect as to the DOD revocable permit area until such time as the Board approves a further disposition of the land, and as to the 342.24-acre area outside of the DOD permit area until the executive order setting aside the land to DOFAW is issued;
2. DOFAW will need to cooperate with DOD regarding access over the roads within the DOD revocable permit area and conservation management on open and accessible lands within the DOD permit area. As set forth in the approved Board action, a written memorandum of agreement is to be negotiated between DOFAW and DOD regarding access, road maintenance, and conservation within the DOD permit area presented to the Board within three months of October 28, 2011;
 3. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall comply with all laws, statutes, ordinances, rules, and regulations of the Federal, State and County of Hawaii governments affecting the right-of-entry area;
 4. DOFAW, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall be responsible for all expenses, costs and /or fees associated with any work undertaken on the land;
 5. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. DOFAW and its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of DOFAW, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by DOFAW, its consultants, contractors and/or persons acting for or on its behalf, then DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning the best knowledge and belief DOFAW, its consultants, contractors and/or persons acting for or on its behalf regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by DOFAW, its consultants, contractors and/or persons acting for or on its behalf;
 6. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners and the public in general;

Paul J. Conry, Administrator
Division of Forestry and Wildlife
November 14, 2011
Page 3

7. At all times herein, DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition;
8. All equipment shall be placed within the right-of-entry area or premises described above and shown on the attached maps;
9. All vehicles shall park in designated parking areas or safely off of the road right-of-ways and should not obstruct the flow of normal traffic in the area;
10. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the use, maintenance, repair and operation of the right-of-entry area or premises by DOFAW, its consultants, contractors and/or persons acting for or on its behalf, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources' satisfaction the areas affected by such pollution or contamination, all at the cost and expense of DOFAW, its consultants, contractors and/or persons acting for or on its behalf;
11. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall exercise due care to prevent fires. No open burning of any type shall be permitted on the right-of-entry area and/or the surrounding State lands;
12. No alcoholic beverages will be served or permitted in the right-of-entry area or premises;
13. In the event any unanticipated sites, historic properties, burial sites as defined in section 6E-2, Hawaii Revised Statutes, or remains such as bone or charcoal deposits, rock or coral alignments, pavings or walls are encountered, DOFAW, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
14. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein. This right-of-entry is revocable and terminable at any time for any reason in the sole and absolute discretion of the Chairperson;
15. The Department of Land and Natural Resources, Land Division, reserves the right to impose additional terms and conditions, if deemed necessary while this right-of-entry is in force.

PRELIM. APPRD.
Department of the
Attorney General

Paul J. Conry, Administrator
Division of Forestry and Wildlife
November 14, 2011
Page 4

Should you concur with the foregoing terms and conditions, please have an authorized representative of DOFAW acknowledge and return a signed copy of this permit to the Hawaii District Land Office, at 75 Aupuni Street, Room 204, Hilo, Hawaii 96720. If you have any questions, please feel free to call our Hawaii District Land Office at (808) 974-6203.

WE CONCUR:

DIVISION OF FORESTRY AND WILDLIFE



Paul J. Conry
Administrator

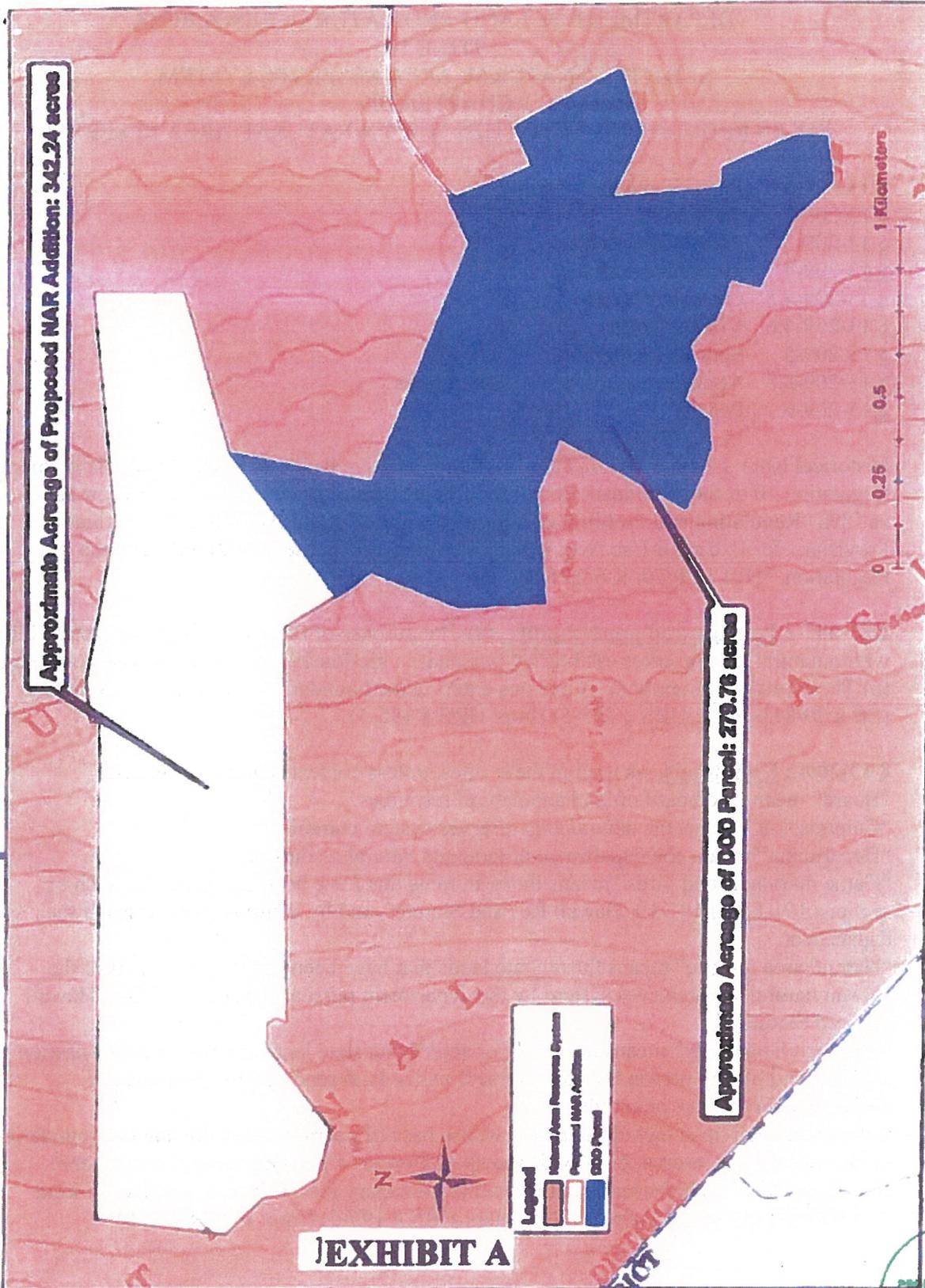


Date

C: Land Board Member
Major General Darryll Wong, Adjutant General
Jodie F. Maesaka-Hirata, Director, Department of Public Safety
DOCARE, East Hawaii



Proposed NARS ROE



PRELIM. APP'XD.
Department of the
Attorney General

ATTACHMENT 4

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
- § 13-209-4.5 Closing of areas
- § 13-209-4.6 Visiting hours
- § 13-209-5 Special-use permits
- § 13-209-5.5 Applications for special-use permits
- § 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 context requires otherwise:

"Board" means 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, 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 of from the natural area reserve.

"Compensation" includes but is not limited to, monetary fees, barter, or services in-kind. [Eff 6/29/81; am 12/9/02; am 7/3/03] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

ATTACHMENT 4

§ 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 and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (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;
- (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;
- (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 Ahihi-Kinai natural area reserve, 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;

ATTACHMENT 4

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

§ 13-209-4.5 Closing of areas. 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. [Eff 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-4.6 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 the posting of 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] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 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) No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits issued to other governmental agencies 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 permittee, the permittee is responsible for eradication by methods specified by the department;

ATTACHMENT 4

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

§ 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;

ATTACHMENT 4

- (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) An application fee of \$50, however, the board or its authorized representative may waive the application fee if, in their opinion, the waiver is in the public interest or benefits the State; and
- (11) 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

ATTACHMENT 4

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] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

§ 13-209-6 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)

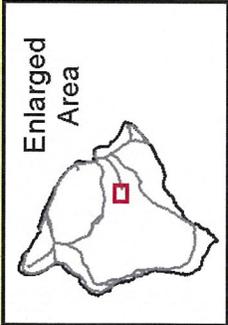
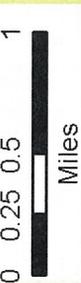
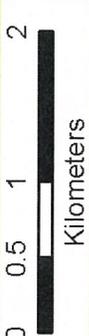
ATTACHMENT 5 - Public Access and Trails

Upper Waiakea FR

Puu Makaala NAR
Kulani

Stainback Highway

DOD Road



Proposed Trail Improvement

Trail Head

Land Ownership

- State DOFAW (Natural Area Reserve)
- State (Proposed Addition to NAR)
- State (DOD-YCA Revocable Permit)
- State DOFAW (Forest Reserves)
- Kamehameha Schools
- 500 Foot Contour

