

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

March 22, 2013

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

Kauai

SUBJECT: Memorandum of Agreement between Board of Land and Natural Resources, Garden Isle Racing Association and the Hawaii Army National Guard for Live Firing on Kekaha Firing Range (KFR), Kekaha, Waimea, Kauai, TMK (4) 1-2-002:040

APPLICANT:

Hawaii Army National Guard

LEGAL REFERENCE:

Section 171-95 (3), 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kauai situated at Kekaha, Waimea, Kauai, TMK (4) 1-2-002:Portion 40, as shown on the attached map labeled Exhibit A.

AREA:

80.5 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Motorized Sports purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." see Exhibit C attached

REMARKS:

Hawaii Army National Guard (HIARNG) originally obtained the property for the Kekaha Firing Range (KFR) in 1957 under Executive Order No. 1794 (approx. 68 acres). Changes in Safety Policy at National Guard Bureau required changes in the management of the KFR. One of those requirements was to set up MOAs for the management of the new Surface Danger Zones that overlap adjacent properties. The uses of the properties have not changed. This MOA request is part of the process to reconcile changes in policy within the NGB and HIARNG.

The purpose of the MOA is to identify the responsibilities of each of Garden Isle Racing Association (GIRA), HIARNG, and the Department of Land and Natural Resources for authorized use of the KFR. This is required due to the overlapping of Surface Danger Zones (map labeled Exhibit "B") from the KFR property onto the property that is currently encumbered by RP S-7805 to GIRA for the "Mana Drag Strip". This MOA enables HIARNG as well as other Department of Defense Agencies and civilian organizations to safely conduct weapons qualification events and matches on the KFR, TMK 4-1-2-002:021. A draft of the MOA is attached as Exhibit "D".

The MOA outlines specific timelines for HIARNG to notify GIRA and DLNR of live fire events. It describes methods and timelines for public notice and rules for safe operation of the range. The MOA includes rules on insurance that meet DLNR's terms and require that GIRA and the State of Hawaii are additionally insured. The document also outlines GIRA's responsibilities to clear the area prior to live fire events and to notify its staff of upcoming events. DLNR is not required to take action to notify the public or secure the area, but will coordinate with HIARNG and GIRA prior to entering the area.


March 22, 2013

RECOMMENDATION:

That the Board approve the MOA, subject to the following:

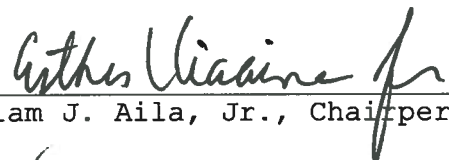
1. Review and approval by the Department of the Attorney General; and
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Milo Spindt
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

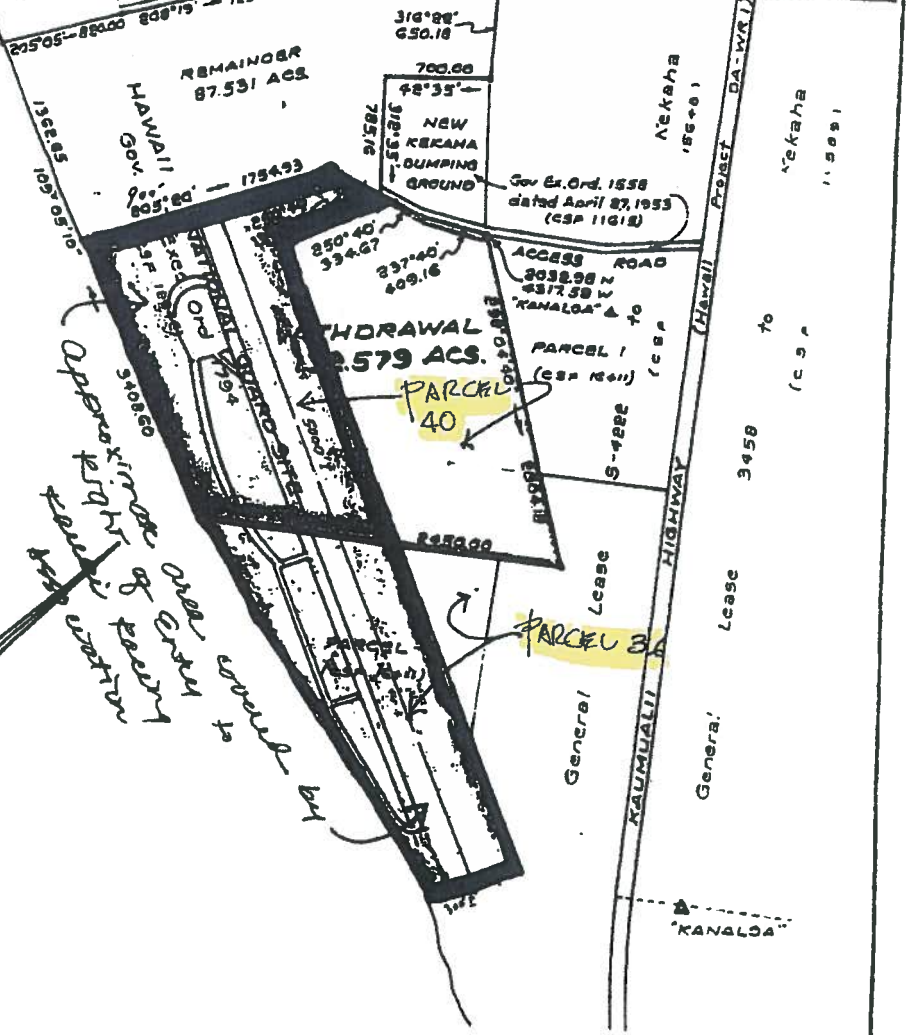


MANA AIRPORT MILITARY RESERVATION
 Governor's Executive Order 945 dated June 10, 1941
 PART 1
 (CSP 9485)

LAE-O-KOKOLE LIGHTHOUSE SITE
 Presidential Proclamation 327 dated Dec. 4, 1908

Road to Lae-o-Kokole Lighthouse Site Pres. Proc. 327 dated Dec 4 1908

Sugar Co., Ltd.
 Sugar Co., Ltd.



S
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 S

TRUE NORTH
 Scale: 1 in. = 1000 Ft.

WITHDRAWAL
 PORTION OF HAWAII NATIONAL GUARD SITE
 (Governor's Executive Order 1794)
 Kekaha, Waimea (Kona), Kauai, Hawaii
 Scale: 1 inch = 1000 feet

JOB K-5237
 C. BK 18M Fid. 1A (KAUAI)

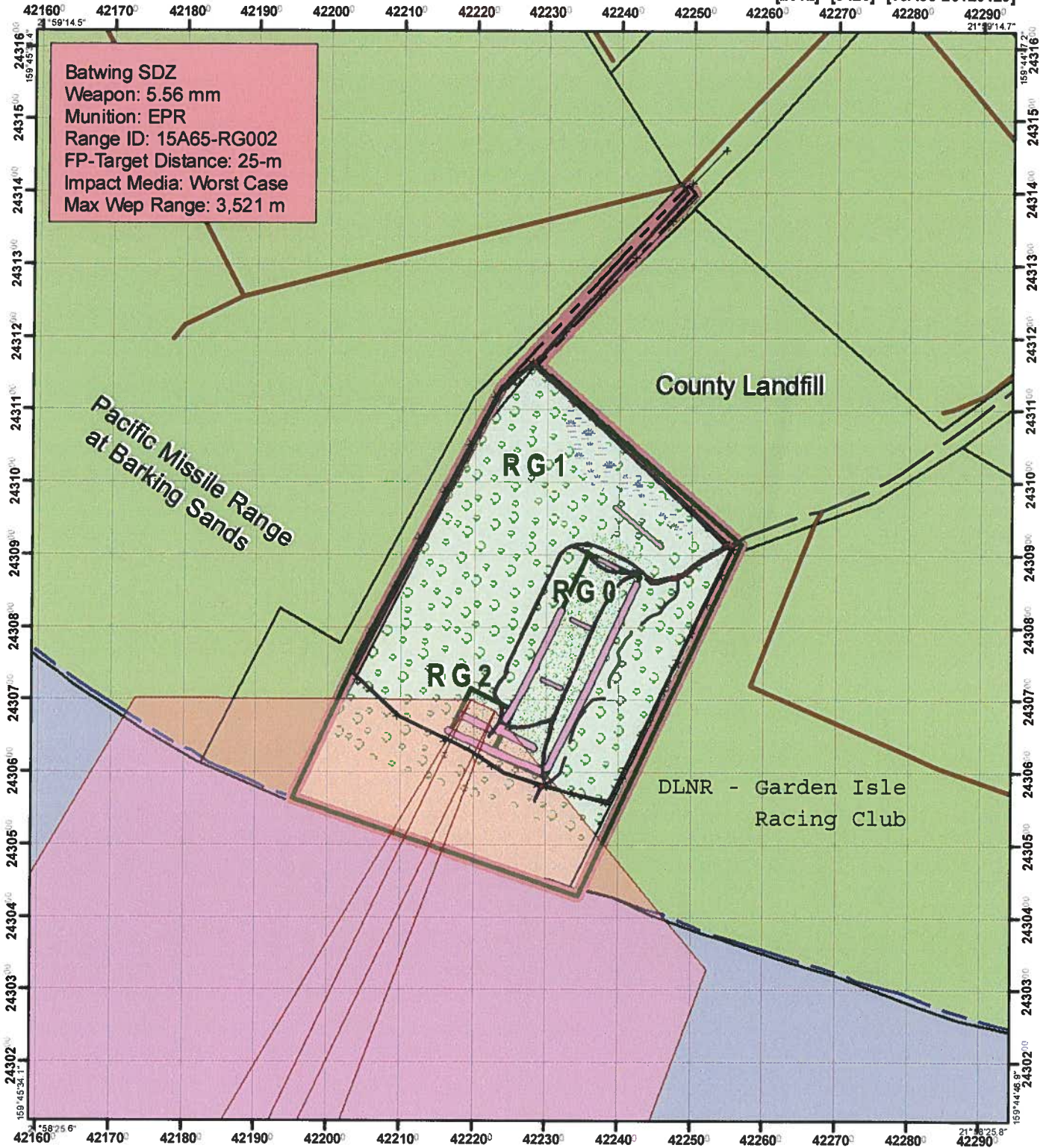
TAX MAP 1-8-04
 C. S. P. No. 16,900

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

RK July 19, 1973

15A65- TS KEKAHA WETS

EDITION SERIES SHEET
 [2012] [0420] [15A65-20120420]



LEGEND

INSTALLATION

- Firing point, Targetpoint
- Fence line
- Building, Ammo storage, Barn
- SDZ area, Containment area
- Range area, Airspace
- Built-up area: dense, sparse

ROADS

- Primary, all weather, hard surface
- Secondary, all weather, hard surface
- Tertiary, track, unpaved

BOUNDARIES

- TMK Parcel
- Coastline
- Reservation, Military

RELIEF

- Spot elevations: Highest, Normal
- Index contour; Interval (100-ft)
- Depression contour

DRAINAGE

- Streams: Perennial, Non-Perennial, Intermittent, Abandoned
- Marsh, Swamp, Wetland

VEGETATION

- Grass, Shrub, Forest

MISCELLANEOUS FEATURES

- Localized object, flagpole
- Mines: Active, Abandoned
- Power line, Pipeline, Comm. line

0 50 100 200 300 400 Meters

1:7,500 NAD 83 / WGS 84



EO 1794
 68 Acres
 TMK
 4-1-2-002.021

INDEX MAP



ISLAND LOCATION



EXHIBIT "B"



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 22, 2013

EXEMPTION NOTIFICATION

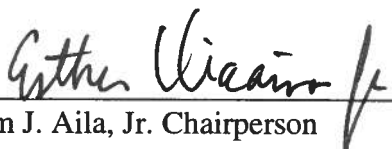
regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

- Project Title:** Memorandum of Agreement (MOA) between Board of Land and Natural Resources (BLNR), Garden Isle Racing Association (hereinafter called GIRA) and the Hawaii Army National Guard (hereinafter called HIARNG) for Live Firing on Kekaha Firing Range (hereinafter called KFR), Kekaha, Waimea, Kauai, TMK (4) 1-2-002:040
- Project Location:** Mana, Kauai
- Project Description:** Memorandum of Agreement among BLNR, GIRA and HIARNG
- Consulted Parties:** None, no changes in use.
- Exemption Class No. and Description:** In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states: "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."
- Exemption Item Description:** It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

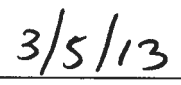
Exhibit C

Recommendation:

It is recommended that the issuance of the MOA to the Applicant will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr. Chairperson



Date



MEMORANDUM OF AGREEMENT
BETWEEN
BOARD OF LAND AND NATURAL RESOURCES
AND
GARDEN ISLE RACING ASSOCIATION
AND
HAWAII ARMY NATIONAL GUARD

DRAFT

SUBJECT: Memorandum of Agreement (MOA) between Board of Land and Natural Resources (BLNR), Garden Isle Racing Association (hereinafter called GIRA) and the Hawaii Army National Guard (hereinafter called HIARNG) for Live Firing on Kekaha Firing Range (hereinafter called KFR)

1. Purpose. The purpose of this MOA is to identify the responsibilities of each party listed above for all Department of Defense agencies' and organizations' authorized use of the KFR located at Kekaha, Kaua'i, Hawaii. This is required due to the overlapping of Surface Danger Zones (SDZ) from the KFR property onto the property located at Kekaha and designated as Tax Map Key No.: 4-1-2-002:040 (the BLNR Parcel). This MOA enables HIARNG as well as other Department of Defense Agencies and Civilian Organizations to conduct weapons qualification events and matches on the KFR designated as TMK No.: 4-1-2-002:021.
2. Background. KFR currently has a 25m Pistol/Rifle Range. The composite SDZ for all ammunition types encroaches onto the BLNR Parcel as referenced in attached map. The BLNR Parcel is currently encumbered by Revocable Permit No. S-7805 to GIRA for motorized sports purposes. In order to minimize the impact outside the KFR boundary, it is important to maintain an agreement with abutting land-owners. The purpose of this range is not only to ensure mission readiness of the Hawaii National Guard and other Department of Defense agencies, but civilian organizations as well. There is no current range located on Kaua'i for this purpose except for KFR. This MOA will not impose any financial responsibility on the part of any party for the expenses of the other party. Each party will be responsible for its expenses incurred to perform its obligations under this MOA. The parties to this MOA are independent of each other and this MOA shall not create a partnership between them or an agency relationship.
3. Responsibilities of the Parties. The following paragraphs identify responsibilities of the organizations involved:
 - a. The Hawaii Army National Guard will:
 - (1) Require and confirm compliance as a pre-condition for use of the live fire range at KFR that both BLNR through its Kauai District Land Office and GIRA have written notification of not less than 14 days prior to a live firing event in order to advise its personnel located on the BLNR Parcel.

EXHIBIT "D"

SUBJECT: Memorandum of Agreement (MOA) between Board of Land and Natural Resources (BLNR), Garden Isle Racing Association (hereinafter called GIRA) and the Hawaii Army National Guard (hereinafter called HIARNG) for Live Firing on Kekaha Firing Range (hereinafter called KFR)

- (2) Require and confirm as a pre-condition for use of the live fire range at KFR that using organizations and agencies submit public notice bulletins no later than 10 days prior to live firing as directed in the HIARNG Range Standing Operating Procedure (SOP).
- (3) Require and confirm as a pre-condition for use of the live fire range at KFR that using organizations and agencies have a certified or trained Range Officer in Charge and Range Safety Officer in order to maintain as safe of environment as feasible and ensure the range is being utilized with the ammunition restrictions as dictated in the HIARNG Range SOP.
- (4) Require and confirm compliance as a pre-condition for use of the live fire range at KFR that the Officer in Charge and Range Safety Officer for the using organizations and agencies are given a range safety and environmental briefing regarding the safety considerations and requirements before conducting live-firing.
- (5) Ensure that any non-governmental organizations or private persons using the KFR for live-firing shall indemnify, defend, and hold the State of Hawaii, BLNR and State of Hawaii, Department of Land and Natural Resources (DLNR) 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 such non-governmental organizations' or private persons' use, occupancy, maintenance, or enjoyment of the KFR and SDZ; (2) any failure on the part of HIARNG or such non-governmental organizations or private persons to maintain the KFR premises and the SDZ, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of HIARNG or such non-governmental organizations or private persons to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of HIARNG's or such non-governmental organizations' or private persons' non-observance or non-performance of any of the terms, covenants, and conditions of this MOA or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
- (6) Notify the Armory Facility Administrator via cell phone, e-mail or other communication hot times and cold times of firing ranges when feasible.
- (7) Give both BLNR through its Kauai District Land Office and GIRA at least 72 hours of prior notification if a scheduled training event is either cancelled or amended, unless mobilization or declaration of an emergency causes a shorter notice period.

SUBJECT: Memorandum of Agreement (MOA) between Board of Land and Natural Resources (BLNR), Garden Isle Racing Association (hereinafter called GIRA) and the Hawaii Army National Guard (hereinafter called HIARNG) for Live Firing on Kekaha Firing Range (hereinafter called KFR)

- (8) Ensure that any non-governmental organizations and private persons who conduct live-firing at KFR to procure, at their own cost and expense, and maintain during the entire period of their use of KFR, 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 public liability insurance or its equivalent, in an amount of at least \$2,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the BLNR. The policy or policies of insurance shall name the State of Hawaii and GIRA as additional insureds and a copy shall be filed with DLNR. The insurance shall cover the entire BLNR Parcel, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the BLNR Parcel. HIARNG shall ensure that non-governmental organizations and private persons who conduct live-firing at KFR shall furnish DLNR with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to DLNR. DLNR shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of DLNR, the insurance provisions in this right-of-entry do not provide adequate protection for DLNR, DLNR may require such non-governmental organizations to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. DLNR'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. DLNR shall notify HIARNG in writing of changes in the insurance requirements and such non-governmental organizations and private persons shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with DLNR incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit the liability of such non-governmental organizations and private persons under this MOA nor to release or relieve the such non-governmental organizations and private persons of the indemnification provisions and requirements of this MOA. Notwithstanding the policy(s) of insurance, the non-governmental organizations and private persons shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of the non-governmental organizations connected with this MOA.

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b. GIRA will:

- (1) Ensure its land north of the beach area within the SDZ is clear of all persons during live firing events by ensuring property is secure.
- (2) Notify its personnel of live fire events and to remain clear of the affected SDZ area until live fire is complete.
- (3) Give the HIARNG at least 72 hours of prior notification if a scheduled training event will interfere with GIRA operations during the scheduled time.

c. As indicated above, the BLNR Parcel is currently encumbered by Revocable Permit No. S-7805 to GIRA. As a result, BLNR and DLNR personnel generally do not enter onto the BLNR Parcel unless for purposes of inspection or to respond to a complaint or emergency. BLNR will ensure that its personnel coordinate with HIARNG and GIRA prior to entering onto the BLNR Parcel during the term of this MOA. BLNR has no responsibility to ensure that SDZ is clear of GIRA personnel, HIARNG personnel, or members of the public, including trespassers.

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4. Signatories.

a. This MOA is at all times subject to the rules and regulations of the Department of Defense, Department of Army, National Guard Bureau (NGB) and the Hawaii National Guard. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

b. This MOA is effective upon the date of the last approving signature and will remain in effect until terminated or modified by mutual written consent of BLNR, GIRA and the HIARNG or within 12 months after notification of intent to modify or withdraw by any party.

c. This MOA is subject to annual review on the anniversary of the effective date or at the request of either party.

d. This MOA is subject to immediate review under mobilization or declaration of an emergency.

DRAFT

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

(Date)

DRAFT

BRYAN E. SUNTHEIMER
COL, IN, HIARNG
Chief of Staff

(Date)

DRAFT

TONY RICCI
Garden Isle Racing Association
President

(Date)