

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

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.

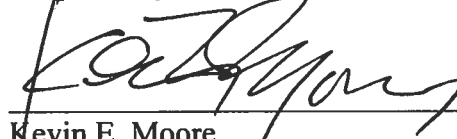
requirements listed above, authorize the issuance of a revocable permit to the Department of Public Safety covering the approximately 279.76 acres of the subject area for purposes of operating its Kulani Correctional Facility under the terms and conditions cited above, which are by this reference incorporated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

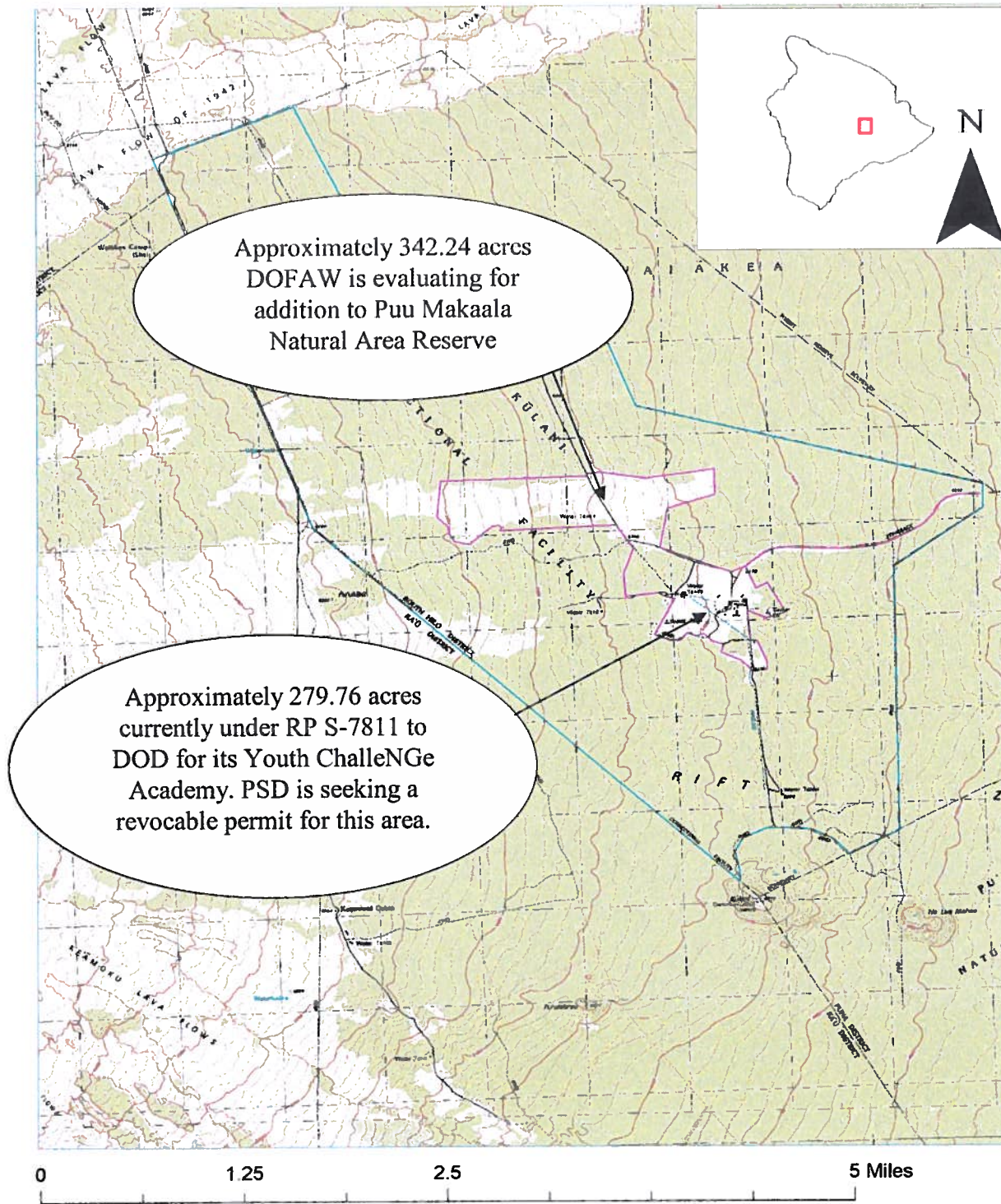


EXHIBIT A

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. KAULIKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
COASTAL ZONING AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
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: *WJA* William J. Aila, Jr., Chairperson *WJA*
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

- 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;

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.

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



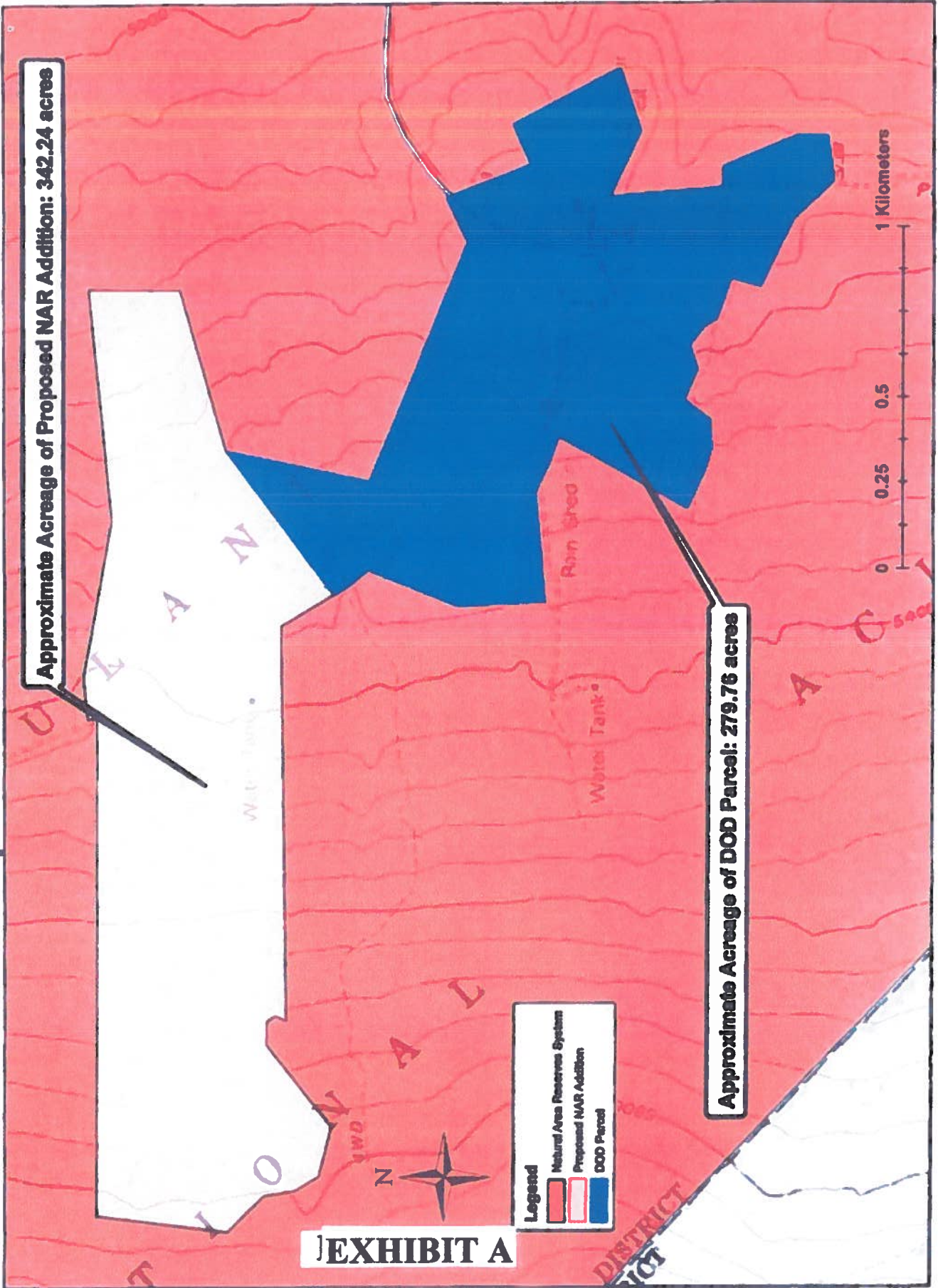
Paul J. Conry
Administrator



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



MEMORANDUM OF AGREEMENT

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

AND

DEPARTMENT OF DEFENSE
YOUTH CHALLENGE ACADEMY

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

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into this 4/18 day of 2013, 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 Defense ("DOD") for its Youth Challenge Academy, by its Adjutant General. DLNR and DOD are jointly referred to as the "Parties."

WITNESSETH:

WHEREAS, the former Kūlani Correctional Facility lands (Tax Map Key: (3) 2-4-08:09 por.) ("subject parcel") contain high quality native forest and endangered species, and have 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 October 28, 2011, approved item D-15, which is identified as Attachment 2, issuing a revocable permit for approximately 279.76 acres of the subject parcel to DOD, for Youth Challenge Academy ("YCA") purposes to provide opportunities for at-risk, non-traditional students to learn life skills to become productive, responsible and successful citizens, while working towards their high school diploma;

WHEREAS, the BLNR approved item D-15 included reservations to DLNR of access, utility and conservation easements over the DOD 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 (Attachment 2);

WHEREAS, DLNR and its consultants, contractors and/or persons acting on its behalf, including the TMA, require access over internal roads of the DOD revocable permit area

EXHIBIT C

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 6 (Hawaii Administrative Rules ("HAR") §13-209-3);

WHEREAS, the BLNR approved item D-15 requires Applicants DOD and DLNR to reach an agreement between them regarding access by DLNR 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.;

WHEREAS the DOD 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 youth at the YCA; and

WHEREAS, DLNR and DOD 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 DOD, the parties agree as follows:

A. Maintenance Obligations:

DOD Agrees:

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

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 (Attachment 4).
3. DLNR will provide limited assistance to DOD with the maintenance of the easement over the internal roads in the DOD revocable permit area (Attachment 3). 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 DOD Access

DOD Agrees:

1. DOD will allow DLNR to install DLNR locks to the main gates to the DOD revocable permit area, including the main front access gate to the YCA facility in

order for DLNR to access DLNR's easement for access and conservation purposes and/or in case of emergency. DLNR will place DLNR locks on all gates in the internal roads in the easement corridor that it requires for access and conservation purposes. The easement for DLNR, its contractors, consultants, and/or persons acting for or on its behalf is valid 24 hours a day for any duration and does not require that prior notice be provided.

DLNR Agrees:

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

C. Public Access

DOD Agrees:

1. DOD will allow DLNR to establish and maintain a trailhead along Stainback Highway outside the YCA main gate in the DOD revocable permit area to enhance public access to the NAR. Pedestrians using this trailhead will not require permission or approval from DOD to park and use the two trails that enter directly into the NAR (Attachment 5).
2. DOD will permit public pedestrian access to the NAR through the DLNR easement for the internal roads of the DOD revocable permit area on a case by case basis, upon request. Due to DOD concerns about safety of students in YCA programs and security of YCA facilities, public pedestrian access through the front gate or internal roads of the YCA revocable permit area requires prior written request and approval from DOD and DLNR. Approval shall be requested from the principal contacts listed in Section J.
3. DOD will allow pedestrian and/or vehicular access through the YCA main gate and easement for the internal roads of the DOD 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 YCA main gate and internal roads of the DOD revocable permit area will be required to notify DOD 24 hours prior to requested access, check in at the YCA front gate and show their approved Special Use Permit.

DLNR Agrees:

4. DLNR will establish, maintain, and repair the trailhead in the DOD 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 Kulani 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 DOD revocable permit area to reduce incidences of public trespass into the DOD revocable permit area.
7. DLNR will provide DOD with NAR information to distribute to public pedestrians who have received approval from DOD to access the NAR from the front gate or internal roads of the YCA 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 DOD when issuing Special Use Permits for the NAR that require access through the YCA main gate and/or the internal roads of the DOD 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 DOD revocable permit area. Conditions will be added into the DLNR NAR Special Use Permits that inform permittees of the DOD front gate/easement requirements.
9. DLNR will provide prior notification to DOD when bringing organized groups through the YCA main gate and/or the internal roads of the DOD 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.

DLNR and DOD 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 DOD 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 DOD, other parties or the public from the easement into the NAR requires 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).

D. Utility Easement Access

DLNR and DOD jointly agree:

1. Vehicular access through the DOD main gate and the DLNR access easement for utility easement access purposes (e.g. Hawaii Electric Light Company, leasees and sub-leasees 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 DOD 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

DOD Agrees:

1. DOD will cooperate with and provide DLNR access for conservation management over open and accessible areas within the DOD 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 YCA activities, DOD will work with DLNR to determine alternative dates/times for conservation management.
2. DOD recognizes the sensitive natural environment of the DOD revocable permit area as well as the surrounding NAR. DOD 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. DOD 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.

DLNR Agrees:

4. DLNR will provide prior notification to DOD when planning on doing conservation management in open and accessible areas within the DOD revocable permit area. If planned activities conflict with YCA activities, DLNR will work with DOD to determine alternative dates/times for conservation management.

5. DLNR will assist DOD with conservation management in the DOD 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.

DOD and DLNR Jointly Agree:

6. DOD and DLNR will work cooperatively to establish joint programs that provide educational, vocational training and service learning opportunities for YCA staff and students as well as conservation benefits to the subject area.

F. General

DOD and DLNR Jointly Agree:

1. DLNR and DOD, 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 DOD 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. DOD shall address items involving: DOD vehicles, equipment or personnel; other vehicles, equipment or personnel associated with entities conducting activities on behalf of or under approval from DOD; vehicles, equipment or personnel representing the general public who are accessing the DOD revocable permit area.
 - c. DLNR and DOD shall jointly and equally address items involving the general public whose activities within the easement for the internal roads of the DOD revocable permit area are not directly related to DLNR or DOD 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. DOD is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of DOD'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.

II. Disputes. Any disputes that cannot be resolved between the identified primary points of contact for the DOD and the DLNR 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 DOD and the BLNR respectively. For purposes of this modification provision, such authorized officers are the Adjutant General, 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 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

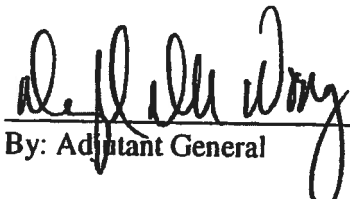
- a. DLNR: BLNR Chairperson or authorized representative, Department of Land and Natural Resources, Post Office Box 621, Honolulu, Hawaii 96809.
- b. DOD: Adjutant General or authorized representative, Department of Defense, 3949 Diamond Head Road, Honolulu, Hawaii 96816.

K. 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 D15
- Attachment 3. Revocable Permit to DOD
- Attachment 4. Right of Entry to Division of Forestry and Wildlife, Waiākea, South Hilo, Hawai'i, Tax Map Key (3) 2-4-08:09
- Attachment 5. DOD Public Parking and DLNR Trails
- Attachment 6. Rules Regulating Activities within Natural Area Reserves

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

DEPARTMENT OF DEFENSE


By: Adjutant General

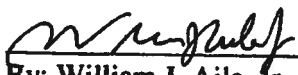
APR 10 2013
Date

APPROVED AS TO FORM:


Deputy Attorney General

APR - 3 2013
Date

DEPARTMENT OF LAND AND NATURAL RESOURCES


By: William J. Aila, Jr.
Chairperson

4/18/13
Date

APPROVED AS TO FORM:


Deputy Attorney General

1/18/13
Date