



DEPARTMENT OF THE ARMY
U.S. ARMY INSTALLATION MANAGEMENT COMMAND-PACIFIC
HEADQUARTERS, UNITED STATES ARMY GARRISON, POHAKULOA TRAINING AREA
P. O. BOX 4607
HILO, HAWAII 96720-0607

SUBJECT: ACHP Review of National Historic Preservation Act Section 106 Consultation for Ke'āmuku Maneuver Area Grazing Lease No. 2, Pōhakuloa Training Area, Hawai'i Island, Hawai'i.

Mr. Christopher Koepfel
Acting Director of the Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, District of Columbia 20001

Dear Mr. Koepfel,

As commander of the U.S Army Garrison-Hawaii (USAG-HI) Pōhakuloa Training Area (PTA), in accordance with 36 CFR § 800.4(d)(1)(ii), I am requesting the Council's review of the USAG-HI finding of 'no historic properties affected' and the Hawaii State Historic Preservation Division's (SHPD) subsequent objection for a proposed undertaking to establish a second agricultural grazing lease in the Ke'āmuku Maneuver Area (KMA) of PTA on Hawai'i Island, Hawai'i (Enclosure 1)

On April 13, 2023, the USAG-HI initiated consultation with the Hawaii SHPD about the subject undertaking, including evaluations of National Register eligibility for several properties in the area of potential effect (APE) that had not been previously evaluated. Evaluations conducted on these previously unevaluated properties did not result in finding of historic properties. Based on the USAG-HI determination that the National Register criteria are not met for any of the properties in the APE, the USAG-HI proposed a finding of 'no historic properties affected' and submitted all information required by 36 § CFR 800.11(d). On April 17, 2023, the USAG-HI provided the same information to Native Hawaiian Organizations (NHOs) who attach religious and cultural significance to historic properties at PTA and other interested parties who have requested to participate in National Historic Preservation Act (NHPA) Section 106 consultation.

Neither the SHPD, nor any other consulting party objected to the finding of 'no historic properties affected' within 30 days of receipt of the adequately documented undertaking. Members of one NHO requested to meet with representatives of the USAG-HI and PTA to discuss issues unrelated to the Ke'āmuku Maneuver Area Grazing Lease No. 2. That meeting was held on May 18, 2023 and the Native Hawaiian organization did not discuss NHPA Section 106, historic properties, or the potential effects of the proposed grazing lease on properties of religious and cultural significance to Native Hawaiians.

On May 16, 2023, 33 days after receiving the adequately documented consultation information, SHPD archaeologist Stephanie Hacker spoke with the USAG-HI archaeologist, Dr. Heidi Miller, via telephone and requested an extension until May 19 to provide a response to the NHPA Section 106 finding, to which Dr. Miller agreed. By close of business on Friday, May 19, 2023, SHPD had not provided any comments and the USAG-HI sent a letter to the SHPD providing notice that Section 106 was concluded. In addition to the notice concluding Section 106, the USAG-HI provided the SHPD with a courtesy copy of the notes from the meeting held

May 18, 2023 so that they could see that there was no further discussion about NHPA Section 106 and no concerns about the undertaking from Native Hawaiian Organizations.

The Hawai'i SHPD sent a letter dated May 30, 2023 to the USAG-HI and the Council (Enclosure 3) in which they disagreed that the USAG-HI has met its NHPA Section 106 requirements and stating that "the USAG-HI has foreclosed on the SHPD's ability to comment" because they believe that consultation with NHOs must occur prior to the Army making its determination of eligibility and effect and that they believe consultation with NHOs occurred after the Army made determinations and sought SHPD's concurrence." The USAG-HI strongly disagrees with SHPD's opinion for the following reasons:

- A. The USAG-HI has not foreclosed on SHPD's ability to comment because, a) there is no mechanism for "foreclosure" on SHPD and b) SHPD had sufficient opportunity (more than 30 days) to object or otherwise comment on the adequately documented finding per 36 § CFR 800.4(d)(1)(i) and they did not. Furthermore, the SHPD has not provided any comments about the grazing lease undertaking of the National Register evaluations in their follow-up emails or the letter dated May 30, 2023, 45 days after the review period started.
- B. The SHPD incorrectly assumes that the Army did not consult with NHOs prior to applying the National Register criteria to the unevaluated properties in the APE. During previous consultations with NHOs to develop the Island of Hawai'i NHPA Section 106 Programmatic Agreement for actions in the training areas, NHOs identified traditional Hawaiian sites as the types of properties to which they might attach religious or cultural significance. There are no traditional Hawaiian sites in the project APE – only historic-period sites related to ranching and grazing. Although NHOs do not consider ranching-related sites to be properties of potential religious and cultural significance, all documentation about the National Register evaluation of the properties was still provided to NHOs and they expressed no disagreement. In addition to the Island of Hawai'i Programmatic Agreement, a previous Programmatic Agreement for training activities associated with the Stryker Brigade as well as the undertaking to purchase the KMA also resulted in consultations with NHOs regarding sites in the KMA.
- C. The SHPD incorrectly states that the Army must consult with NHOs prior to making a finding of effect. In accordance with 36 § CFR 800.4(d)(1), after finding that the undertaking will have no effect on historic properties because there are no historic properties present, the next step is to provide the documentation of finding to the SHPD and notify all consulting parties, including NHOs. The documentation required for a finding of 'no historic properties affected' is specified at 36 § CFR § 800.11(d). This documentation was provided to NHOs on April 17, 2023.
- D. The SHPD incorrectly states that consultation with NHOs about eligibility and effect occurred after seeking SHPD's concurrence. There was no input or objection from NHOs to the Army's National Register evaluations or the NHPA Section 106 finding of effect and no request from NHOs to consult about the NHPA Section 106 process for this undertaking. USAG-HI respects the views and concerns of our Native Hawaiian partners, recognizes the importance of open dialogue, and is willing to meet and consult with NHOs about any of their concerns, even if they are unrelated to NHPA Section 106. The USAG-HI consulted with members of a NHO on May 18 2023 and discussed issues unrelated to NHPA Section 106. Consultation about matters unrelated to NHPA Section 106 is irrelevant to the Section 106 process and the SHPD.

- E. There is no requirement for the Army to consult with NHOs prior to consulting with SHPD. The Army's requirement to consult with NHOs (DODI 4710.03) is independent of the requirement to consultation with SHPD. The agency official is required to consult with both the SHPD and with NHOs who might attach religious and cultural significance to a property. The agency official is required to consider the input received from SHPD and NHOs independently. Native Hawaiian Organizations provide their input independent of the SHPD's opinion and, as a representative of all citizens of the State, the SHPD should be able to provide a reasoned opinion independent of other consulting parties.
- F. In an email dated May 19, 2023, SHPD Archaeologist Stephanie Hacker claimed that providing courtesy meeting notes that confirm that there were no Section 106 concerns "restarts" the review timeline. The Army strongly disagrees with this opinion and finds no basis for this claim in either law or regulation. In the regulations at 36 § CFR Part 800, there is no provision for "restarting" the 30-day SHPD review period under 800.4 (or 800.5). Either the undertaking is adequately documented as required by 36 § CFR 800.11 and the 30-review period starts upon receipt, or the undertaking is not adequately documented and the review period does not start. Providing notice to the SHPD that the 30-day period has elapsed and there was no input from any consulting parties does not change the documentation requirements. For a finding of no historic properties affected pursuant to 36 § CFR 800.11(d), the required documentation includes: a description of the undertaking, a description of the steps taken to identify historic properties; and the basis for determining that no historic properties are present or affected. Input from consulting parties, or lack thereof, is not a required information for an undertaking to be considered adequately documented.

My cultural resource staff and I are unable to resolve this dispute with the Hawaii SHPD. In accordance with 36 CFR § 800.4(d)(1)(ii), I am requesting that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of 36 CFR § 800.4. Enclosed with this request is all supporting documentation including all information required per 36 § CFR 800.11(d), the close-out notice, the responses from the SHPD, and a Memorandum from my archaeologist, Dr. Heidi Miller, regarding all correspondence and discussions surrounding this Section 106 consultation for this undertaking. I appreciate you and your staff's time and effort providing a response.

If you have any questions, or require clarification, please contact Dr. Heidi Miller, USAG-HI PTA Archaeologist, at 808-787-7802 or via email at heidi.e.miller10.civ@army.mil. All consulting parties will be notified of this request and the request documentation will be made available to the public on the USAG-HI website.

Sincerely,



Digitally signed by
ALVARADO.TIMOTHY.L.127143
3588
Date: 2023.08.21 11:09:04 -10'00'

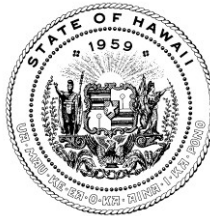
Timothy L. Alvarado
LTC, SF
Commanding

Enclosures

- Enclosure 1: Section 106 Documents Provided to SHPD
Enclosure 2: Non-concurrence Letter from SHPD
Enclosure 3: Disagreement Letter from SHPD
Enclosure 4: MFR and Supporting Documents

JOSH GREEN, M.D.
GOVERNOR | KE KIA'AINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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M. KALEO MANUEL
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LAND
STATE PARKS

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

May 30, 2023

Lieutenant Colonel Kevin E. Cronin
Special Forces, Commanding
Department of the Army
U.S. Army Installation Management Command-Pacific
Headquarters, United States Army Garrison, Pōhakuloa Training Area
P.O Box 4607
Hilo, Hawai'i, 96720-0607
Email Reply to: usarmy.hawaii.crpm@mail.mil
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2023PR00470
Doc. No.: 2305SH05
Archaeology

Dear Lieutenant Colonel Kevin E. Cronin:

SUBJECT: **National Historic Preservation Act (NHPA) Section 106 Review –
Initiation of Consultation and Request for Concurrence with Effect Determination
Ke'āmuku Maneuver Area Grazing Lease No. 2 Pōhakuloa Training Area
U.S. Army Garrison Project No. CRS-22-095
Waikoloa Ahupua'a, South Kohala District, Island of Hawai'i
TMK: (3) 6-7-001:042**

The State Historic Preservation Division (SHPD) received a letter dated April 12, 2023 from the United States Army Garrison-Hawai'i (USAG-HI) to initiate the Section 106 historic preservation process and to request the State Historic Preservation Officer's (SHPO's) concurrence with the effect determination for the Ke'āmuku Maneuver Area Grazing Lease No. 2 at Pōhakuloa Training Area (PTA) on the island of Hawai'i. The letter was submitted along with a Department of the Army Honolulu District, U.S. Army Corps of Engineers Real Estate Branch Grazing Lease and accompanying documents as well as supporting cultural resource reports from the area. The SHPD received this submittal on April 13, 2023 (HICRIS Submission No. 2023PR00470.001). On May 16, 2023, the SHPD requested an extension to respond to the subject letter by close of business May 19, 2023; the USAG-HI agreed and stated a consultation meeting for the subject project is scheduled to be held on May 18, 2023, at which time SHPD staff noted Section 106 was therefore not concluded (Telephone Correspondence; Heidi Miller [USAG-HI PTA] and Stephanie Hacker [SHPD]).

The commander of the U.S. Army Garrison-Hawaii (USAG-HI) Pōhakuloa Training Area initiated Section 106 of the NHPA for a project to authorize a livestock grazing lease to Parker Ranch in the Ke'āmuku Maneuver Area (KMA) at PTA. The grazing lease requires a permit from the U.S. Army Corps of Engineers and will occur on land owned by the federal government. Therefore, the proposed lease is a federal undertaking as defined in 36 CFR 800.16(y) and was determined to require compliance with Section 106 of the NHPA.

On May 19, 2023 the USAG-HI submitted to the SHPD the meeting minutes for the Section 106 consultation meeting held on May 18th, as well as a letter on USAG-HI letterhead to provide notice that the United States Army Garrison, Hawaii (USAG-HI) believes it has completed the requirements to provide an opportunity for the State Historic Preservation Division (SHPD) to comment under Section 106 of the National Historic Preservation Act on the federal undertaking for the proposed livestock grazing lease in the Ke'āmuku Maneuver Area (KMA) at PTA.

Lieutenant Colonel Kevin E. Cronin

May 30, 2023

Page 2

The SHPO does not agree the USAG-HI has met its Section 106 requirements. Consultation with Native Hawaiian Organizations (NHO) must occur *prior* to the Army making its determinations of eligibility and effect. Consultation with Native Hawaiian Organizations occurred after the Army made those determinations and sought the SHPO's concurrence. The USAG-HI has foreclosed on the SHPO's ability to comment.

Please submit any forthcoming information and correspondence related to the subject project to SHPD via HICRIS under Project No. 2023PR00470 using the Project Supplement option.

The USAG-HI and Army Corps of Engineers are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

Aloha,

Alan Downer

Alan S. Downer, PhD

Administrator, State Historic Preservation Division

Deputy State Historic Preservation Officer

cc: David Crowley, USAG-HI (david.m.crowley22.civ@army.mil)
Heidi Miller, USAG-HI (heidi.e.miller10.civ@army.mil)
Reid Nelson, Advisory Council on Historic Preservation (rnelson@achp.gov)
Megan Borthwick, Advisory Council on Historic Preservation (mborthwick@achp.gov)

ENCLOSURE 1



DEPARTMENT OF THE ARMY
U.S. ARMY INSTALLATION MANAGEMENT COMMAND-PACIFIC
HEADQUARTERS, UNITED STATES ARMY GARRISON, POHAKULOA TRAINING AREA
P. O. BOX 4607
HILO, HAWAII 96720-0607

12 April 2023

SUBJECT: National Historic Preservation Act Section 106 Consultation for Ke'āmuku Maneuver Area Grazing Lease No. 2, Pōhakuloa Training Area, Hawai'i Island, Hawai'i TMK (3) 6-7-001:003, (3)6-7-001:042, and (3) 6-7-001:045. Project# CRS-22-095: Archaeology Review.

Dr. Alan Downer
Deputy State Historic Preservation Officer
State Historic Preservation Division
Department of Land and Natural Resources
Kakuhihewa Building, Room 555
601 Kamōkila Boulevard
Kapolei, Hawai'i 96707

Dear Dr. Downer:

As commander of the U.S Army Garrison-Hawaii (USAG-HI) Pōhakuloa Training Area (PTA), I am initiating consultation in accordance with Section 106 of the National Historic Preservation Act (NHPA) regarding an undertaking to authorize a livestock grazing lease in the Ke'āmuku Maneuver Area (KMA) at PTA. This grazing lease will benefit the local livestock industry and is intended to reduce vegetation fire fuels in the KMA that pose a wildland fire risk to military training, the protected environment, and the adjacent Waiki'i community. The grazing lease requires a permit from the U.S. Army and will occur on land owned by the Federal Government. Therefore, it is considered a federal undertaking with the potential to cause effects on historic properties pursuant to 36 CFR 800.3(a).

Enclosure 1 contains the proposed grazing lease and development plan. Enclosure 2 contains all information required by 36 CFR § 800.11, including a detailed description of the undertaking with a map of the APE, the steps taken to identify historic properties along with National Register evaluations, and the basis for determination of the effects.

The area of potential effect (APE) for this undertaking is 4642 acres (18.8 square kilometers). The undertaking consists of a five-year lease of the APE, with the option of one five-year renewal. The lease will allow installation of roughly 28 miles (45 kilometers) of fence, 10 miles (16 kilometers) of above-ground water lines, four 450-gallon water troughs, and two 2000-gallon water storage tanks. Subsurface disturbance within the APE will include approximately 21.82 acres of scraping and grubbing for perimeter fencing installation and fence line access trails.

The entire APE has been previously surveyed for cultural resources. Nine historic-period sites have been identified in the proposed grazing lease area. Six are associated with historic-period ranching activities, two are associated with historic or modern military training, and one is associated with recent road construction. One of the sites, 50-10-21-22933 (Doc No. 1510SL08), was previously determined not eligible for listing in the National Register of Historic Places (NRHP) in 2015. The remaining eight sites are evaluated as not eligible for the NRHP in Enclosure 2. No site monitoring or protection measures will be required.

Based on the information presented in enclosure 1, I find that the undertaking will result in no historic properties affected because no historic properties are present in the APE. I respectfully request your review of the undertaking and agreement with the National Register evaluations and finding of effect within 30 days of receipt of this letter. If you disagree with the finding of effect or NRHP evaluations, please reply in writing with specific reasons for the disagreement. Enclosure 3 is a list of all consulting parties who have been notified of this undertaking.

Should there be any questions about this undertaking, or the National Register evaluations, please contact Dr. Heidi Miller, USAG-HI PTA Archaeologist, at heidi.e.miller10.civ@army.mil or 808-787-7802, or Mr. David Crowley, USAG-HI Cultural Resources Manager at david.m.crowley22.civ@army.mil or 808-655-9707.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin E. Cronin', with a stylized flourish at the end.

Kevin E. Cronin
LTC, SF
Commanding

Enclosures

Enclosure 1: Proposed Grazing Lease and Development Plan

Enclosure 2: 36 CFR § 800.11 Requirements

Enclosure 3: Consulting Parties

**DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REAL ESTATE BRANCH
230 OTAKE STREET, FORT SHAFTER, HAWAII 96858**

GRAZING LEASE

Invitation No. DACA84-9-22-0726

DATE: July 7, 2022

The U.S. Army Corps of Engineers, Honolulu District is soliciting approximately 5,402 acres at the Pohakuloa Training Area, Hawaii County, Hawaii.

Lease Name: Keamuku Maneuver Area (KMA) Grazing Lease No. 2 The purpose is to reduce existing vegetation fire fuels that pose a wildfire risk to military training, the protected environment, and the adjacent Waikii community.

Sealed bids in SINGLE/ONE COPY, subject to the terms and conditions set forth herein, for the leased area listed in this invitation, will be received until the time and date, and at the place indicated below, and then publicly opened.

Bids are to be submitted by mail or hand delivered to:

**Ms. Erica Labeste,
Chief, Real Estate
Real Estate Contracting Officer
Honolulu District, U.S. Army Corps of Engineers
Building 230, 1st floor, Room 103
Fort Shafter, Hawaii 96858**

TIME OF OPENING: 2:30 P.M., Hawaii Standard Time

DATE OF OPENING: August 8, 2022

Only bid packages that comply with the instructions provided will be accepted. Written bids must be submitted on **EXHIBIT A**

Minimum bid deposit shall be by certified check, cashier's check, or postal money order in the amount of 10% of the total amount of the bid. Checks payable to USACE.

The information below must appear in the lower left corner of bid envelope:

Sealed Bid for Grazing Lease

To be opened:

Time: 2:30 p.m.

Date: August 8, 2022

INVITATION NO: DACA84-9-22-0726

POC: Any questions should be directed to Ms. Brittney Haupert, Real Estate Specialist, Honolulu District at 808-835-4620 or by email at Brittney.J.Haupert@usace.army.mil

Exhibit A

**INVITATION FOR BIDS, BID AND ACCEPTANCE FOR LEASING GRAZING LANDS
OF THE UNITED STATES POHAKULOLOA TRAINING AREA, HAWAII**

1. GENERAL INFORMATION

A. Grazing Lease.

1. Location and Description. Approximately 5,402 acres at the Pohakuloa Training Area, Hawaii. There are 3 different units; Unit 1 Waikii expansion approximately 1,567 acres, Unit 2 Northern Units approximately 1,393 acres and Unit 3. Southern Units approximately 2,532 acres. **Maps are enclosed as Exhibit B. The bidder does not need to bid on all three of the Units.**

Unit 1. Waikii expansion is from the existing 1000 feet Waikii buffer boundary to extend another 1000 feet buffer of approximately 1,567 acres.

Unit 2. Northern Units.

a. North A: 2000 ft buffered extension west from the Old Saddle Road (HWY 190), and bounded by the lower (south) Papapa Trail in the north, and north boundary of the Waikii expansion area in the south approximately 267 acres.

b. North B: from the North A west boundary, extend west till north-south Waikii Trail Road that connects the southeast corner of Puu Papapa to the northwest corner of the Waikii expansion area; and bounded by the lower (south) Papapa Trail in the north, and the north boundary of the Waikii expansion area in the south approximately 218 acres.

c. North C: from the North B west boundary, extend west till the north-south Main Supply Route (MSR) Road, and bounded by the Uncle and Hollister Drop Zones south and west, and the west boundary of the Waikii expansion area in the east approximately 832 acres.

Unit 3. Southern Units.

a. South A: 2000 feet buffered extension west from the HWY 190; and bounded by the southeast corner boundary of the Waikii expansion in the north, and the north boundary of South B in the south, which is delineated by an unnamed ephemeral drainage way approximately 207 acres.

b. South B: 2000 feet buffer extension west of a portion of HWY 190 and then west from the shared PTA and State of Hawaii property boundary west of the Girl Scout Camp (note: does not follow HWY 190 entirely to the HWY 19 and HWY 200 intersection); and bounded by an unnamed ephemeral drainage way in the north, and bounded by both an

existing firebreak road and a portion of the Daniel K. Inouye Highway (HWY 200) in the south approximately 511 acres.

c. South C: from the South A west boundary, extend west till the southwest corner of the Waikii expansion area, and bounded by the south boundary of the Waikii expansion area in the north, and the existing "2.9 Mile East trail" and MSR road in the south approximately 1,800 acres.

2. Description Approximate. The above description of the allocation rights is believed to be correct, but any error or omission in the description of the rights shall not constitute any ground or reason for nonperformance of the provisions and conditions of the lease or claim by the grantee for any refund or deduction from the rental.

B. Purpose of Leasing. Reduce existing vegetation fire fuels that pose a wildfire risk to military training, the protected environment, and the adjacent Waikii community.

C. Authority of Law. The authority of law for the granting of this lease is Title 10, United States Code, Section 2667.

D. Terms and Conditions of Leasing.

1. Form of Lease. The successful bidder will be required to enter into a lease with the United States similar to the draft shown in **Exhibit C** attached hereto (conditions subject to change). It is the responsibility of the bidder to make sure that all lease provisions are understood, and the condition of the premises proposed for lease are known. Prior to execution of the lease by the government, the Lessor will conduct a pre-lease conference with the applicants. At this conference the lease will be reviewed, Lessor policies will be discussed, and, at the conclusion, the lessee will be required to sign an acknowledgement attesting to the conference and the information provided therein.

2. Term. Five years, with an option to renew for five additional years.

3. Development plan should be provided to the Lessor prior to issuing a lease. No work or improvements are allowed until the plan has been reviewed and approved by the Lessor. The development plan must outline and describes the lessee's basic operation goals and objectives, which shall be consistent with NRCS soil conservation standards, and include conservation measures/mitigation, and contingencies especially for areas that are vulnerable to erosion or other degradation. The plan shall also include the proposed type, amount, location, duration/rotation, etc. of grazing that would occur in leased areas, including any structures, infrastructure, and/or other improvements needed for function and operate grazing activities (i.e., type, placement of fencing, gates, corrals, roads, trails, etc. features, and associated structures).

Invitation For Bid No. DACA84-9-22-0726

4. Lessee will build and maintain fencing at its expense to secure livestock within the leased premises. Prior to installing fence, the Lessee will coordinate with PTA to keep their animals contained and away from training activities. If fencing or some other means to contain animals is utilized, it should avoid issues with having to share space/contain them/be a training issue.

5. Keep grass grazed to 4 inches in general or as prescribed by the Lessor depending upon the type of vegetation present in the area.

6. All Lessee's structures built in support of grazing (i.e. watertanks, storage tanks, or equipment) positioned on Lessors lands must be approved prior to construction. They should be included in the development plan.

7. The Lessee may have additional environmental and cultural consideration after the Government reviews the development plans.

8. Construction, installation, or modification of fences or structures within the proposed lease area is not authorized until they have been reviewed and approved by the Lessor and appropriate federal review and consultation requirements (i.e., Sec 106 NHPA) is completed.

9. Construction of fences/structures that exceed 1 acre of total disturbance will require a NPDES permit. Any construction or improvement activities undertaken will utilize appropriate sediment and erosion control BMPs to prevent sediment and other debris from entering streams/drainages. In addition, it should be determined if this operation meets the definition of an Animal Feeding Operation (AFO). If an AFO is also considered a Confined Animal Feeding Operation (CAFO) by U.S Environmental Protection Agency (EPA) and DOH, then a separate NPDES permit must be obtained for the duration of this lease. Generally, pasture feeding operations are not considered an AFO/CAFO, but if animals are confined or concentrated where manure accumulates, then those areas may meet the definition of an AFO/CAFO.

10. A Section 404/401 and/or a Section 10 permit may be required depending on HDOH's definition of the streams and drainage areas on site. If these streams and/or drainage areas are considered intermittent or perennial then a Section 404, Section 401 and/or Section 10 may be required. Recommend obtaining a Jurisdictional Determination (JD) from the Honolulu U.S. Army Corps of Engineers (USACE) Regulatory Office. A Section 401 permit is issued by DOH and may be required even if a Section 404 is not required by USACE.

11. Fire Prevention and Mitigation. Avoid activities that could result in causing a wildfire (i.e., driving in tall, dry grass; use of open fires for cooking or other activities). Employ preventative measures (wetting down areas, work during low wind speeds/outside of dry season, etc.) and have readily available fire suppression equipment (fire extinguisher, water, sand) when conducting maintenance work (welding) that could cause fire.

12. Prior to conducting any grazing or construction activities, the areas shall be surveyed and photographed to established pre-impact site conditions. All impacted areas shall be monitored and managed accordingly to prevent or minimize cover degradation to make sites vulnerable to erosion, dust, or other issues resulting from grazing or other related activities. The lessee will be responsible for restoring and rehabilitating eroded sites caused by erosion to original condition.

2. PAYMENTS OF RENTAL: Rental will be paid in advance as stated below. The first payment, less the deposit, will be made at the time of delivery of the lease to the grantee.

3. INSTRUCTIONS TO BIDDERS

A. Bids Subject to These Terms.

1. All bids submitted shall be deemed to have been made with full knowledge of all the terms herein contained. The Government makes no guarantee or warranty, either expressed or implied, with respect to the allocated rights.

2. Notice of acceptance or rejection of bids, notice of authority to proceed with removal of the purchased property, and any other notices hereunder shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder or his or her duly authorized representative at the address indicated in the bid.

3. Any property of the United States damaged or destroyed by a bidder will be promptly repaired or replaced by the bidder to the satisfaction of the said District Commander or his or her authorized representative, or in lieu of such repair or replacement the bidder will, if so required by the said District Commander or his or her authorized representative, pay to the United States money in an amount determined by the said District Commander or his or her authorized representative, to be sufficient to compensate for the loss sustained by the United States.

4. This Invitation for Bid, including all the instructions, terms, and conditions set forth herein, and the bid, when accepted by the Government, shall constitute a contract between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statement or representations made by, for, or ostensibly on behalf of either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

5. No member of, or delegate to the Congress or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

6. **ELIGIBILITY OF BIDDERS.** The bidder certifies that he or she is not: (1) under 21 years of age; (2) a civilian employee of the Department of Defense or the United States Coast Guard whose duties include any function or supervisory responsibility for or within the Defense Property Disposal Program; (3) a member of the Armed Forces of the United States, including the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program; (4) an agent, employee or immediate member of the household of personnel in (2) and (3) above.

B. Bid Form. Sealed bids must be executed and submitted on **Exhibit A** Bid Forms. Bids shall be filled out in ink or typed, with all erasures, strikeouts, and corrections initialed in ink. Additional copies of the bid form may be obtained from the POC.

C. Execution of Bids. Each bid must give the full address of the bidder and be signed with the bidder's usual signature. Any additional sheets shall be identified with the bidder's name. A bid executed by an agent on behalf of the bidder shall be accompanied by any authenticated copy of the power of attorney, or other evidence of authority. If the bidder is a corporation, the CERTIFICATE OF CORPORATE BIDDER must be executed. If the bid is signed by the secretary of the corporation, the CERTIFICATE must be executed by another officer of the corporation. In lieu of the CERTIFICATE OF CORPORATE BIDDER, records of the corporation which show the authority of the officer signing, and which the secretary or assistant secretary, under the corporate seal, certifies to be true copies, must be attached.

D. Deposit Required. No bid will be considered without a deposit approximately equal to and not less than ten (10) percent of the rental offered, to guarantee that the bidder will enter into a written lease and pay the balance of the rental due within ten (10) days after receipt of written notice of acceptance of his or her bid and a draft of lease for execution. Such guaranty must be in the form of a certified check, cashier's check, or postal money order, payable to the USACE. The deposits of unsuccessful bidders will be returned as promptly as possible after rejection. However, in the event of default by any bidder, that bidder's deposit may be applied by the Government to any Government loss, cost and expense occasioned thereby, including any incurred in leasing the property and any difference between the rental for another lease, if the latter amount is less. The bidder is liable for the full amount of damages sustained by the Government because of his or her default; such liability is not limited to the amount of the bidder's deposit.

E. Submission of Bids. It will be the duty of each bidder to have the bid delivered by the time and at the place prescribed in the Invitation. Bids will be securely kept, unopened. No responsibility will be attached for the premature opening of a bid not properly addressed and identified.

F. Late Bids, Modifications or Withdrawals of Bids. The person whose duty it is to open the bids will decide when withdrawals of a bid will be considered. Bids may be modified or withdrawn only by written or electronic requests received from bidders prior

Invitation For Bid No. DACA84-9-22-0726

to 2:30 p.m. on **August 8, 2022**. Negligence in preparing the bids confers no right to withdraw the bid after the closing time for acceptance of bids. Bids, modifications, or withdrawals received after 2:30 p.m on **August 8, 2022**, and before award is made will be considered if sent by registered mail or delivery system prior to the date specified for receipt of the bids and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

G. Opening of Bids. Bids will be opened at 3:00 p.m. on August 8, 2022, bid contents will be made public. Any information submitted in support of the bid will, upon request, be held in strict confidence by the United States, if disclosure might tend to subject the bidder to a competitive business disadvantage.

H. Award of Lease. The Lease will be awarded to the highest bidder whose bid, conforming to the invitation of bids, and fulfills all of the bid submission requirements provided that the bidder is responsible, the bid is reasonable, and it is in the interest of the United States to accept it.

I. Acceptance of Bids. Notice of award will be given as soon as practicable to the successful bidder personally, to a duly authorized representative, or in writing to the bidder at the address indicated in the bid.

J. Disputes. Except as otherwise provided in this Invitation, any dispute concerning a question of fact arising under this Invitation which is not disposed of by agreement shall be decided by the District Commander who shall mail or otherwise furnish a written copy of the decision to the bidder. The decision of the District Commander shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the bidder mails or otherwise furnishes to the District Commander a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his or her duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the bidder shall process diligently with the performance of the contract and in accordance with the District Commander's decision. This condition does not preclude consideration of questions of law provided that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

K. Rejections of Bids. The right is reserved, as the interests of the Government may require, to reject at any time any and all bids, to waive any informality in bids received, and to accept or reject any items of any bid unless such bid is qualified by specific limitation.

Invitation For Bid No. DACA84-9-22-0726

L. Default. In the event that the successful bidder fails to enter into a lease within ten (10) days after receipt of Government notification that his or her bid has been accepted and receipt of a draft lease for execution, or in the event that the successful bidder fails to otherwise comply with the terms of this Invitation, the Government may declare the bidder in default and retain the deposit as liquidated damages.

M. Additional Information and Copies. Any additional information may be obtained from Honolulu District, U.S. Army Corps of Engineers, ATTN: CEPOH-PP-R, Building 230, Room 103, Honolulu, HI 96858, or by telephone (808) 835-4620.

N. Marking and Sealing Bids. This invitation number and bid-opening time must be plainly marked on the left side of the sealed envelope in which bids are submitted. It is shown on page 1 or below of this Invitation for Bid.

Return Address

Postage

Sealed Bid for Grazing Lease

To be opened:

Time: 2:30 p.m.

Date: August 8, 2022

INVITATION NO: DACA84-9-22-0726

To: US Army Corps of Engineers

Attn: Chief, Real Estate

230 Otake Street

Fort Shafter, HI 96858

4. SUCCESSFUL BIDDER

A. The successful bidder will assume all responsibility for the care and protection of the property. The successful bidder will bear all expense involved in accomplishment of work required hereunder.

B. The successful bidder warrants that he or she has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give the Government the right to annul the contract without liability or at its option to recover from the successful bidder the amount of such commission, percentage, brokerage, or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies," has been construed to include licensed real estate brokers engaged in the business generally.

C. The successful bidder will assume responsibility and liability for all injuries to persons or damages to property directly or indirectly due to, or arising out of, the operations of the successful bidder under this contract and the successful bidder agrees to indemnify and hold the United States harmless against any and all claims of whatsoever kind and nature due to, or arising out of this contract.

Invitation For Bid No. DACA84-9-22-0726

D. One signed bid on the bid form accompanying this Invitation for Bids, Bid and Acceptance, or on exact copies thereof, with bid deposit, is acceptable. Additional copies of the bid form may be obtained at any time from the offices and addresses appearing on pages 1 of this announcement.

E. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his or her Power of Attorney or other evidence of his or her authority to act on behalf of the bidder. If the bidder is a corporation, the CERTIFICATE OF CORPORATE BIDDER must be executed. If the bid is signed by the secretary of the corporation the CERTIFICATE must be executed by some other officer of the corporation under the corporate seal. In lieu of the CERTIFICATE OF CORPORATE BIDDER, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary under the corporate seal, to be true copies.

F. In connection with the performance of work under this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the District Commander or his or her authorized representative setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employment placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.

3. The contractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the District Commander or his or her authorized representative, advising the said labor union or workers representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to the employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order No. 11246 of 24 September 1965, as amended by Executive Order No. 11375 issued 13 October 1967, and of the rules, regulations and relevant orders of the President's Committee on Equal Employment created thereby.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of 24 September 1965, as amended, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his or her books, records and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of the said rules, regulations or orders, this contract may be canceled in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of 24 September 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

7. The contractor will include the provisions of the foregoing paragraphs (1 through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on 24 September 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to a subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

5. General Submittal Information

A. Envelope in which Bid is mailed is addressed and marked exactly as specified on page 1 of this Invitation for Bid and further identified on **Page 6, Condition 4. N.**

B. Bid is signed and the amount of deposit filled in on the Bid form as provided in paragraph **Page 6, Condition 4. D.**

C. Provide name, address, and telephone number and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the bidder during the course of the project.

D. Plan of Operation and Development

1. Proposed operational goals and objectives shall be consistent with NRCS soil conservation standards, and include conservation measures/mitigation, and contingencies especially for areas that are vulnerable to erosion or other degradation.

2. Proposed construction and location of any improvements to include fences, gates, roads, developed trails and other structures or infrastructure required for grazing like water tanks and equipment sheds.

3. The plan shall also include the type of grazing, number of animals, location (if bidding on multiple areas), duration/rotation, etc.

E. Financial capability

1. Bank references or financial statement

F. Experience and background

1. Current or previous work with the Federal Government
2. Business or personal references

6. Enclosures

- A. Exhibit A. Bid Form
- B. Exhibit B. Locations
- C. Exhibit C. Lease Draft- Subject to change

**EXHIBIT A - BID
FOR GRAZING LEASE
AT POHAKULOA TRAINING AREA, HAWAII**

TO: Real Estate Contracting Officer

DATE:

ADDRESS: U.S. Army Corps of Engineers,
Honolulu District
ATTN: CEPOH-PPR (Room 103)
230 Otake St.
Fort Shafter, HI 96858-5440

INVITATION NO. DACA84-22-0726

The undersigned, _____, a corporation existing
under the laws of the State of _____, or, a partnership
consisting of (names of all partners)

_____, or, an individual trading as _____, in
accordance with the above-named Invitation, a copy of which is attached hereto, and
subject to all of the conditions and requirements thereof, which, insofar as they relate to
this bid, are made a part of it, proposes:

1. To enter into a lease and hereby agrees to pay the rental set out below.

DESCRIPTION

AMOUNT BID

Unit 1. Waikii expansion 1,567 grazing acres

Unit 2. Northern Unit -1,393 grazing acres

Unit 3. Southern Unit- 2,532 grazing acres

2. To execute a lease containing the terms and conditions included in Exhibit C per attached at red tab to the Invitation within ten days after it is presented to me (us) by the Lessor.

3. To warrant that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the bidder for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul the lease without liability, or, in its discretion, to require the grantee to pay the full amount of such commission, percentage, brokerage, or contingent fee in addition to rental.

Invitation For Bid No. DACA84-9-22-0726

4. Enclosed is a certified check, cashier's check, or postal money order payable to: USACE, HONOLULU, in the amount of \$_____ (at least 10% of rental) to cover the deposit required in paragraph 4. D of the Instruction to Bidders. This deposit shall apply to the purchase price if this bid is accepted, but is to be returned, without interest, if this bid is rejected.

NAME: _____

ADDRESS: _____

TELEPHONE: _____

MUST BE SUBMITTED AND SIGNED

CERTIFICATE OF CORPORATE BIDDER

I,

—
certify that I am the _____ of the Corporation
named as bidder herein; that _____ who signed this
bid on behalf of the bidder, was then _____ of said Corporation
by authority of its governing body, and is within the scope of its corporate powers:

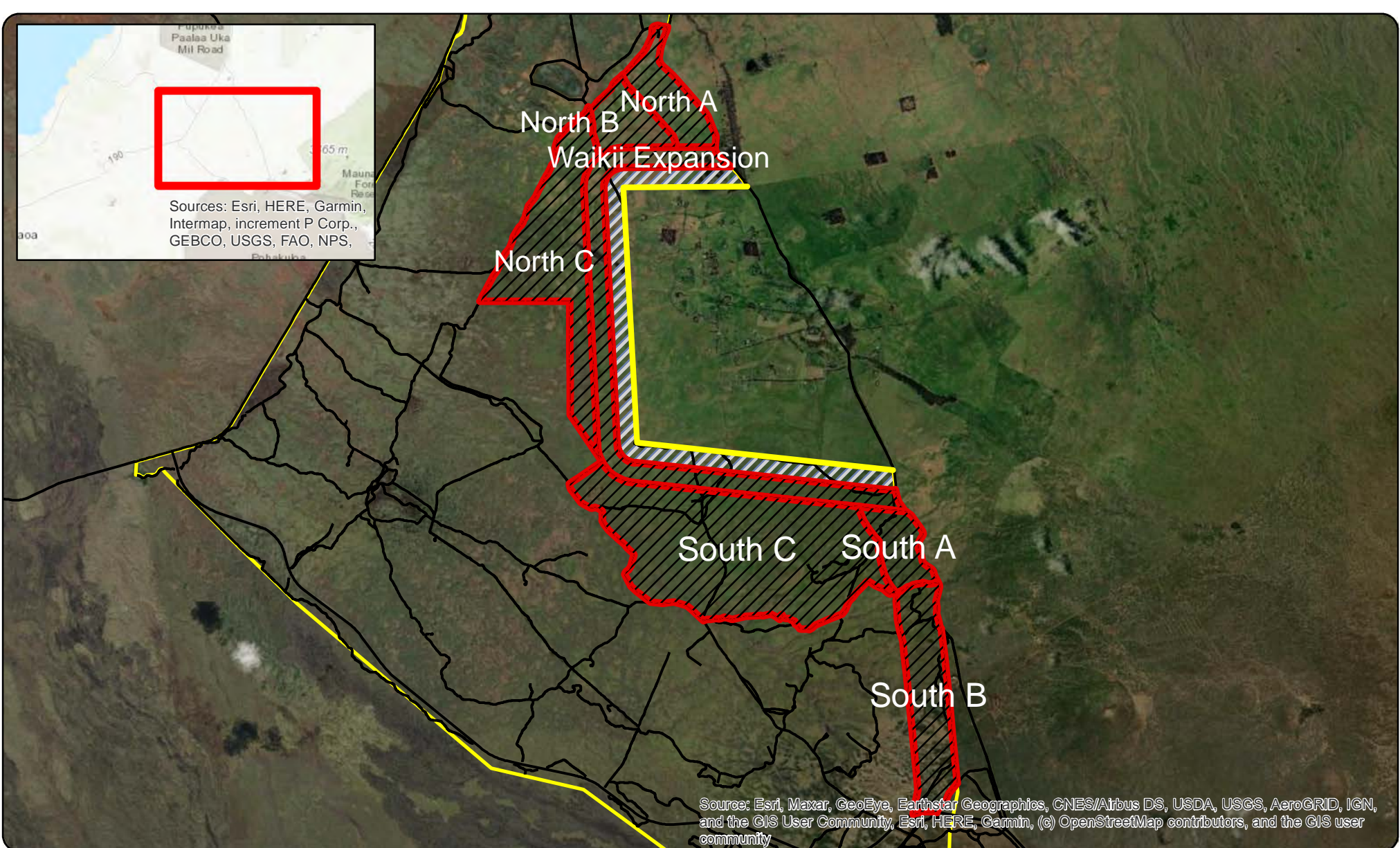
SEAL _____

ACCEPTANCE BY THE GOVERNMENT

The foregoing bid is hereby accepted by and on behalf of the United States this _____
day of _____, 2022.

(Name) _____

(Title) _____

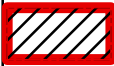



Grazing Lease

5,402 Acres



U.S. Army Corps
of Engineers
Honolulu District

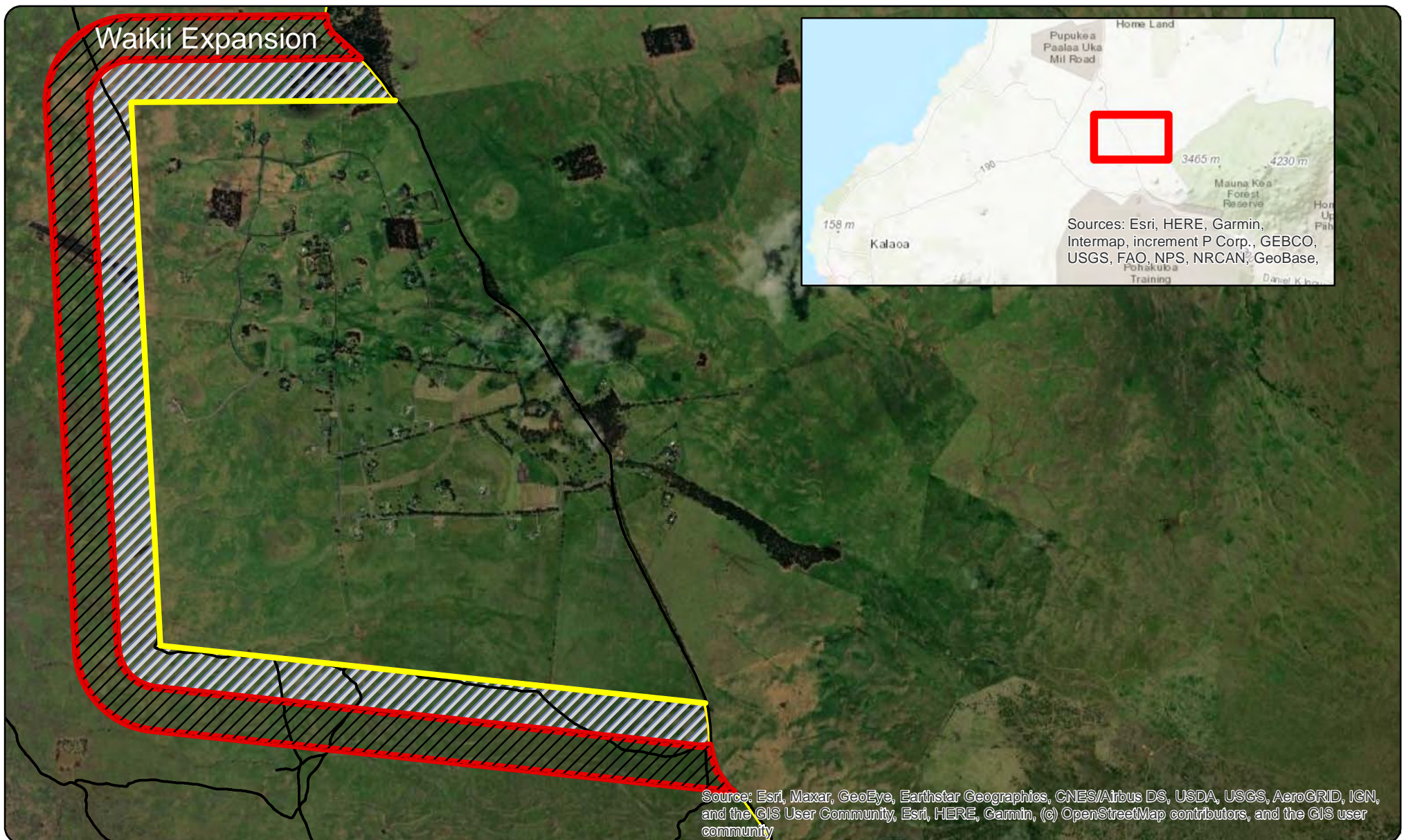
- Roads
- Boundary
-  USACE Outgrant Areas
-  Current Leased Area

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:85,098.74

Exhibit B

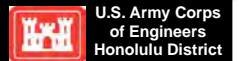


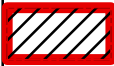



Waikii Expansion

1,567 grazing acres

Exhibit A



- Roads
- Boundary
-  USACE Outgrant Areas
-  Current Leased Area

POHAKULOA TRAINING AREA
Tract No. 200

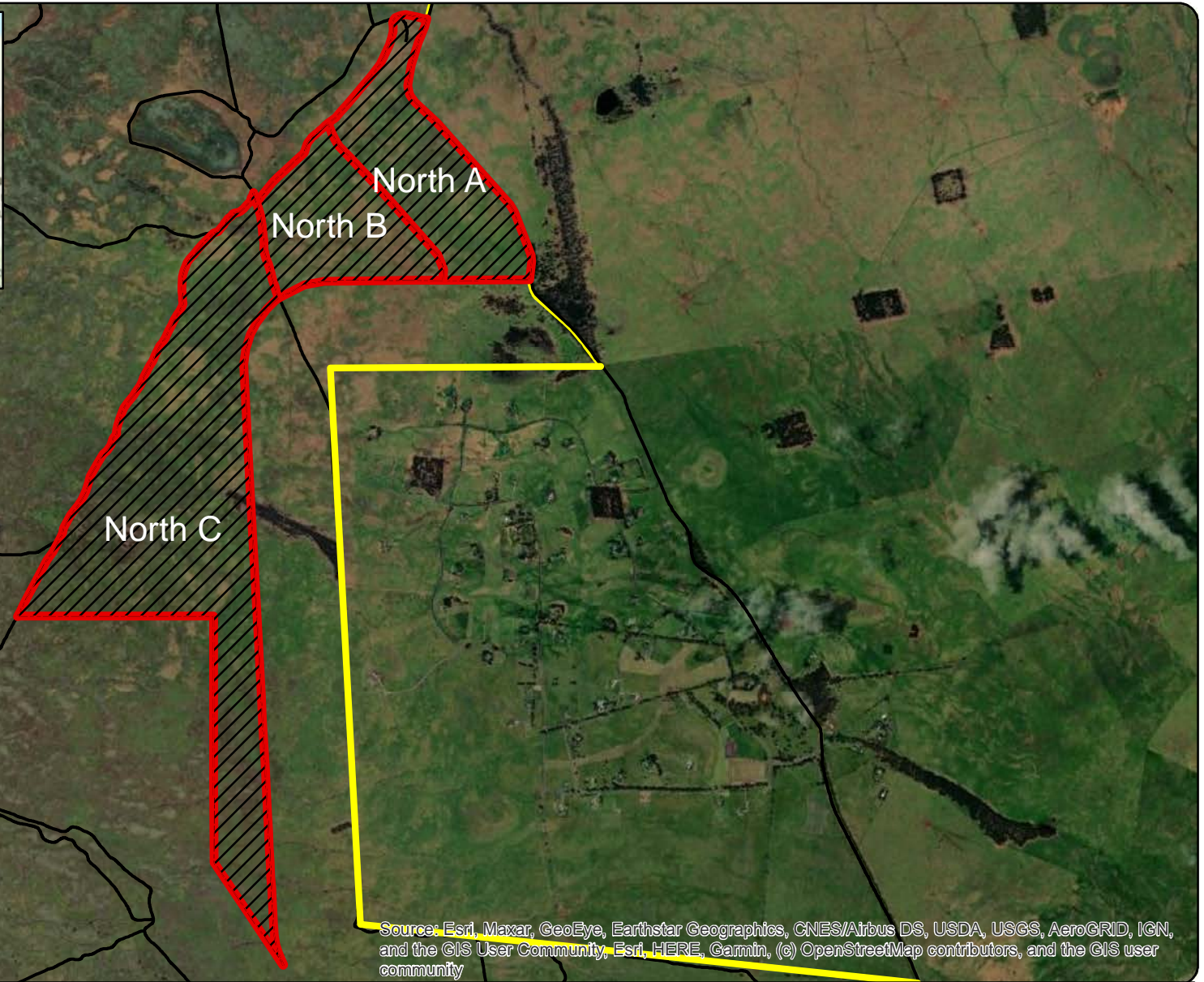
Scale 1:40,000

Exhibit B





Sources: Esri, HERE, Garmin,
Intermap, increment P Corp.,
GEBCO, USGS, FAO, NPS,

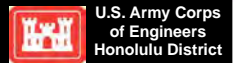


Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Grazing Lease- North Units

1,393 grazing acres

Exhibit B



— Roads

— Boundary

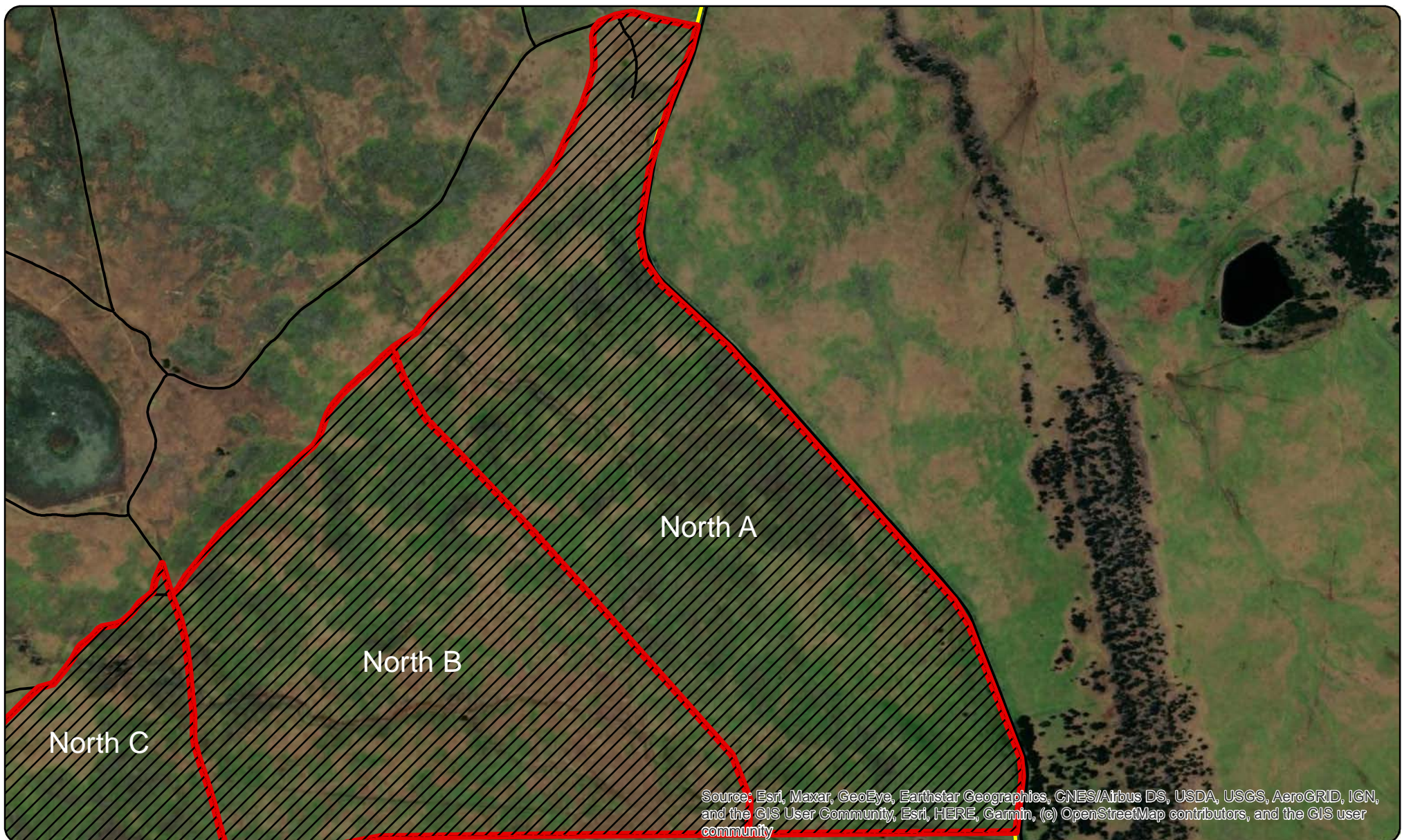
 USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:45,800

Exhibit B





Grazing Lease- North Units

267 Acres

Exhibit B-1



U.S. Army Corps
of Engineers
Honolulu District

— Roads

— Boundary



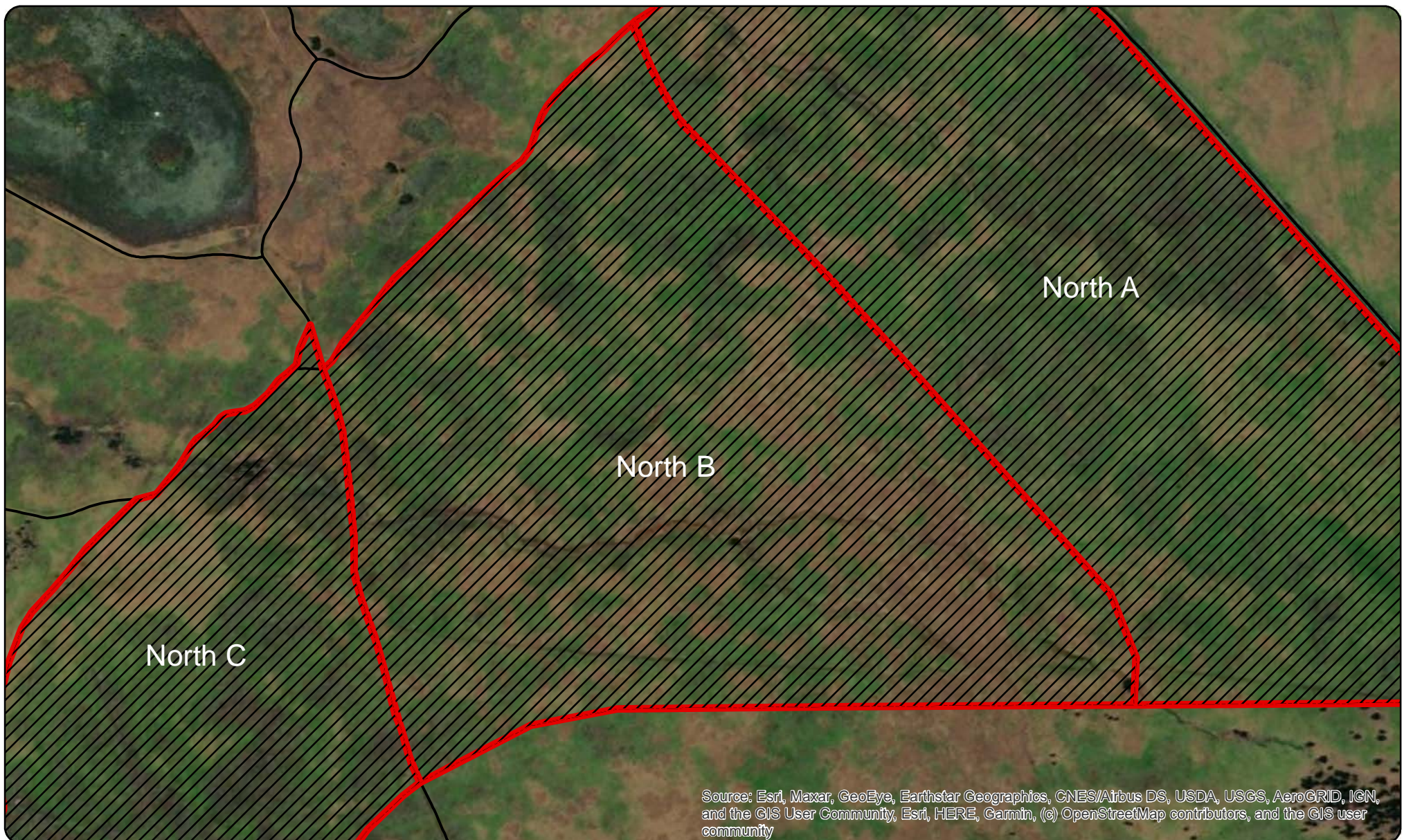
USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:12,638.04



Exhibit B



Grazing Lease- North Units

218 acres

Exhibit B-2



U.S. Army Corps
of Engineers
Honolulu District

— Roads

— Boundary



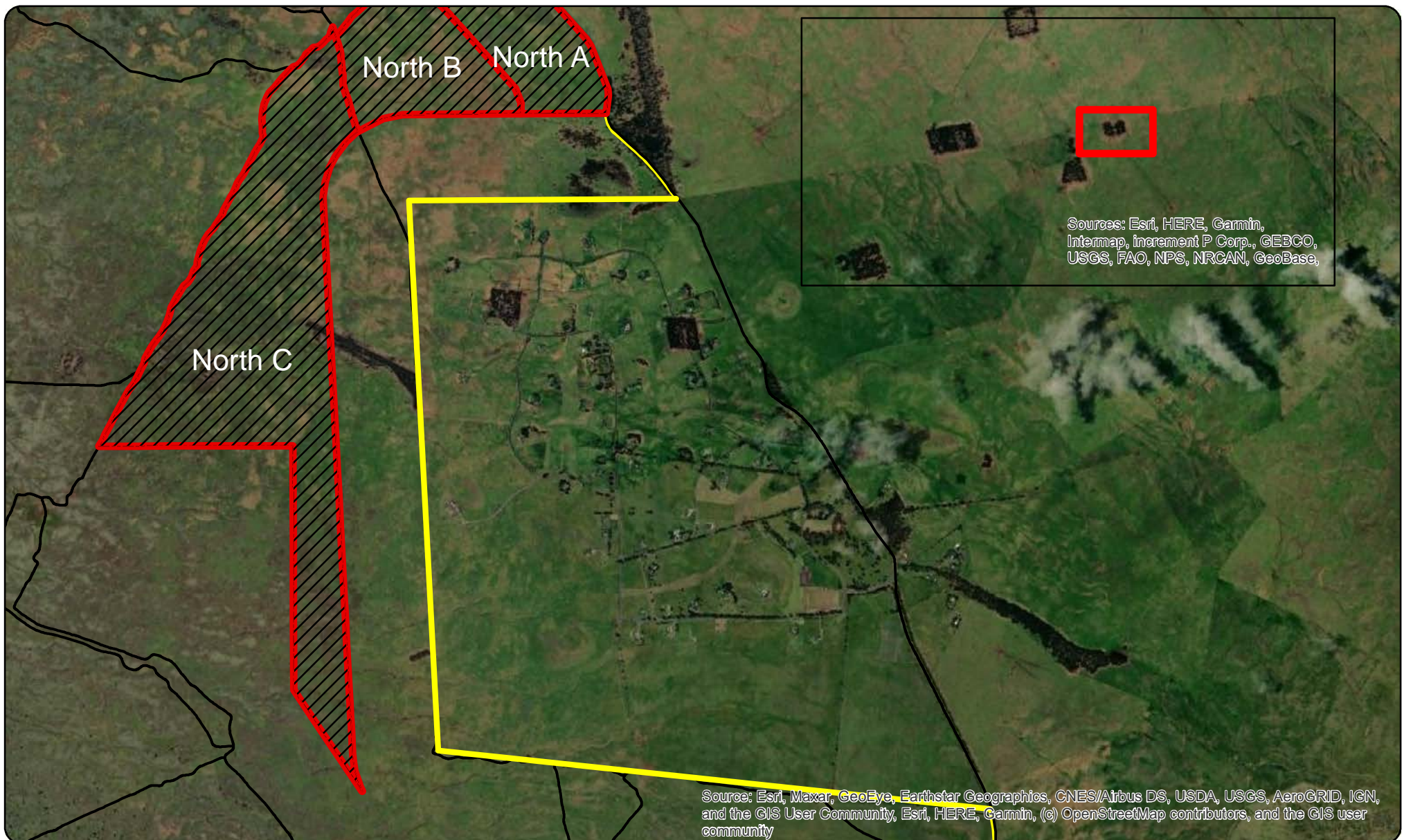
USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:9,000



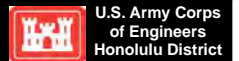
Exhibit B




Grazing Lease- North Units

832 Acres

Exhibit B-3



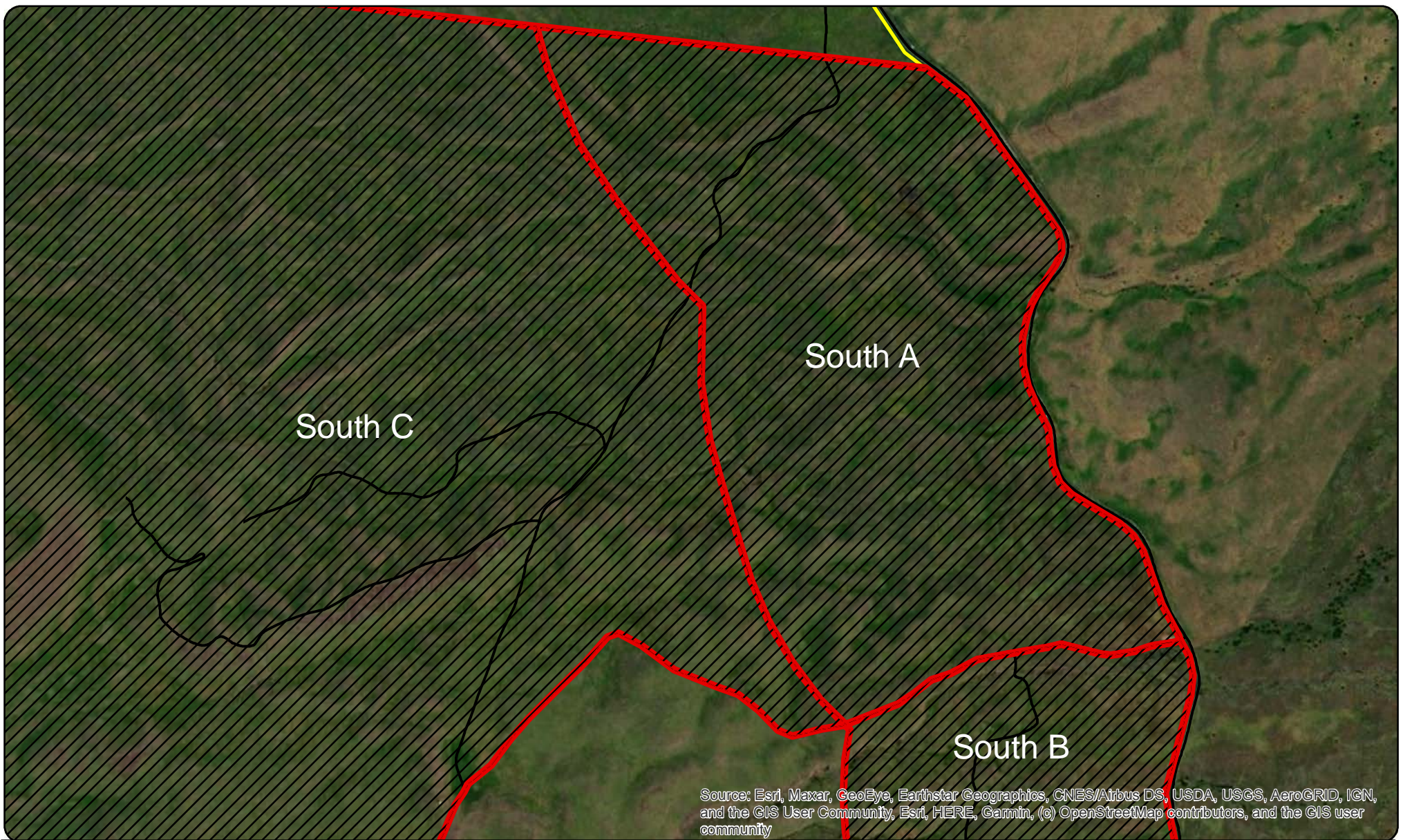
- Roads
- Boundary
-  USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:39,500

Exhibit B





Grazing Lease- South Units

207 acres

Exhibit C-1



U.S. Army Corps
of Engineers
Honolulu District

— Roads

— Boundary



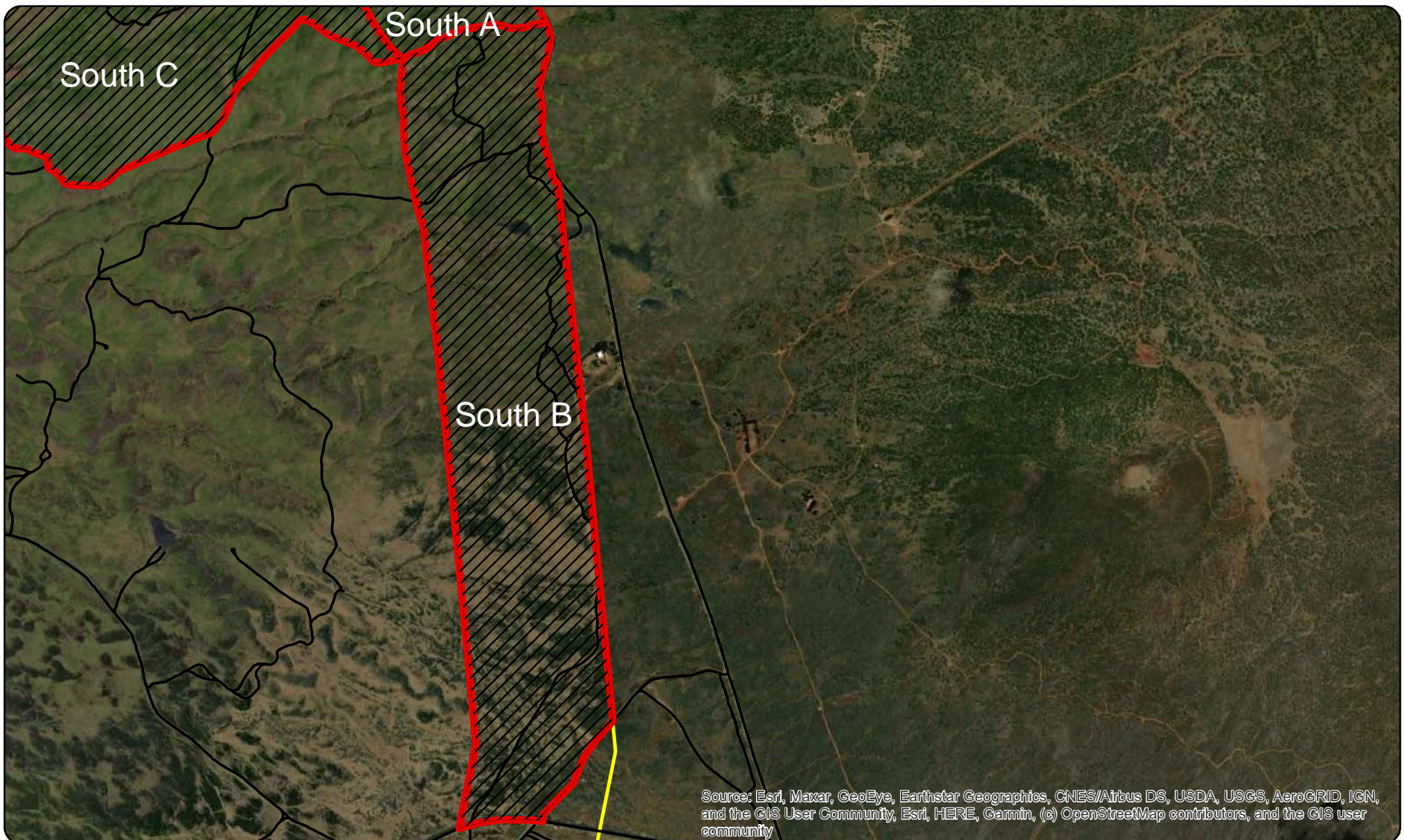
USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:10,500



Exhibit B



Grazing Lease- South Units

511 acres

Exhibit C-2



U.S. Army Corps
of Engineers
Honolulu District

— Roads

— Boundary



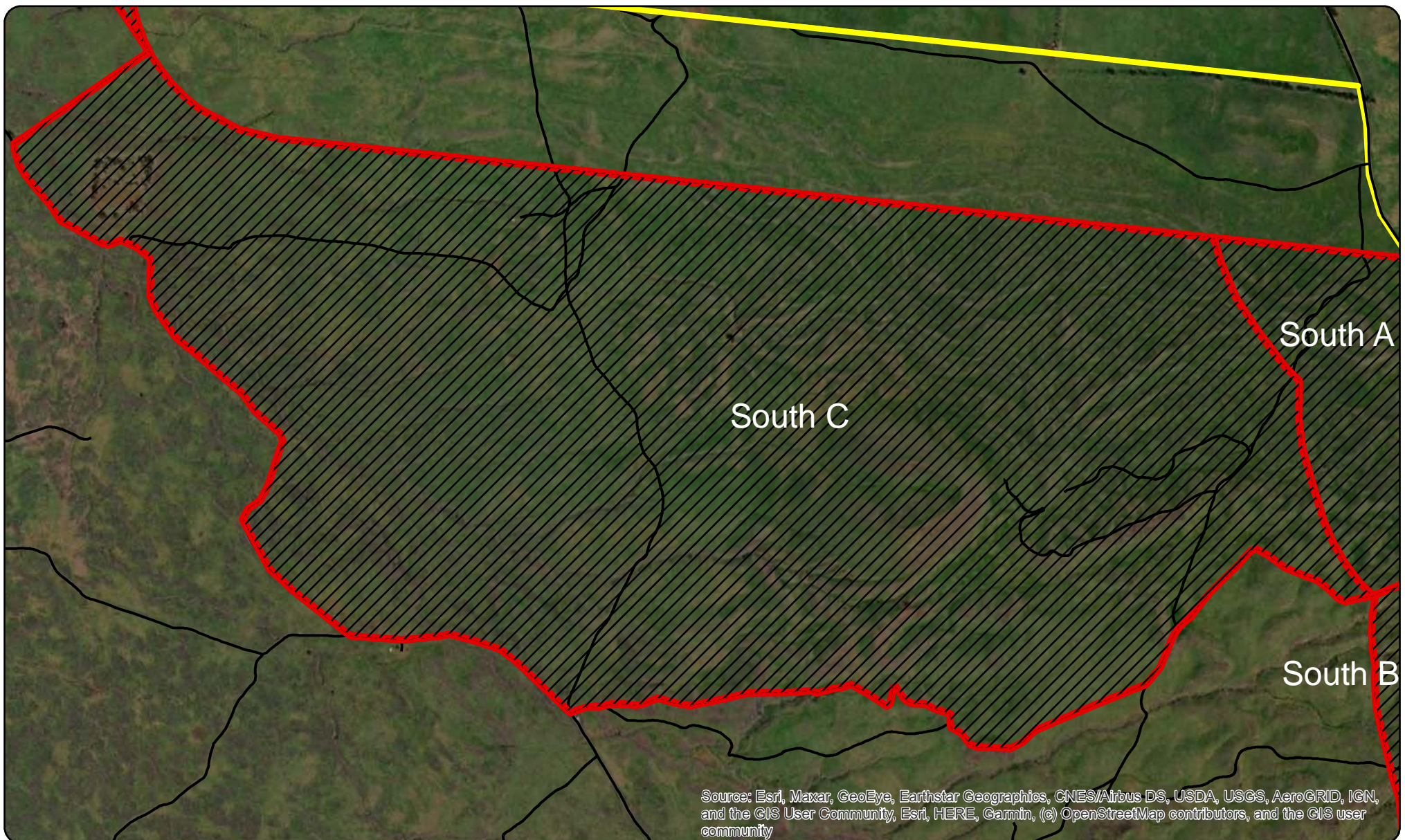
USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:24,500



Exhibit B



Grazing Lease- South Units

1,800 acres

Exhibit C-3



U.S. Army Corps
of Engineers
Honolulu District

— Roads

— Boundary



USACE Outgrant Areas

POHAKULOA TRAINING AREA
Tract No. 200

Scale 1:20,500

Exhibit B



DEPARTMENT OF THE ARMY LEASE

POHAKULOA TRAINING AREA (PTA)

HAWAII COUNTY, HAWAII

TRACT NO. 200

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, acting by and through the Real Estate Contracting Officer, Real Estate Branch, U.S. Army Corps of Engineers, Honolulu District, hereinafter referred to as the Lessor, and <<Company Name>>, with its principal address at <<ADDRESS>>, <<CITY, STATE, ZIP>>, hereinafter referred to as the Lessee.

WITNESSETH:

That the Lessor finds that this Lease is advantageous to the United States, that the terms and conditions are considered to promote the national defense or to be in the public interest; that the Premises are under the control of the Lessor; that the Premises are not needed for the Term below for public use by the Lessor; and that the property is not excess property.

That the Lessor, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee a portion of the Keamuku Maneuver Area (KMA) at Pohakuloa Training Area (PTA) the property is identified in **EXHIBIT A -Map** attached hereto and made a part hereof, hereinafter referred to as the Premises, for grazing purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said Premises are hereby leased for a term of five (5) years, beginning Month Day#, Year and ending Month Day#, Year, unless earlier terminated pursuant to the condition on **TERMINATION**.

2. CONSIDERATION

a. The Lessee shall pay rental in advance to the Lessor in the amount of _____ **DOLLARS (\$_____)**.
The Lessee shall pay this amount *annually on the anniversary of the beginning date of this Lease*.

b. All rent and other payments due under the terms of this Lease must be paid on or before the date payments are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982 (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges, and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. SUPERVISION BY THE LESSOR

a. The use and occupation of the Premises incident to the exercise of the privileges and purposes hereby granted shall be subject to the supervision and approval of the Lessor and to such general rules and regulations as the Lessor may from time to time prescribe.

b. The Premises shall be under the general supervision and subject to the approval of the Lessor, who is the officer with operational control over the Premises, hereinafter referred to as said officer. The Lessee's use of the Premises shall be accomplished in such manner as not to endanger personnel or property of the said officer or obstruct travel on any road or other thoroughfare.

c. Lessee acknowledges and recognizes that:

(1) The Premises are located on an active U.S. Army installation which may be subject to temporary closings and identification and/or routing requirements due to the occurrence of unannounced events, actual or simulated, including, but not limited to: mobilization, extreme weather conditions, security, anti-terrorist force protection

measures, or police, medical or fire-related emergencies; the occurrence of a national emergency declared by the President or Congress; or due to planned military training exercises affecting the site. Lessor shall provide Lessee with at least seven (7) days' written notice prior to planned military training exercises affecting the Premises when reasonably possible.

(2) Said officer exercises command and control over the: (i) Premises, including traffic control, security, force protection, law enforcement, fire protection, activities performed thereon, and command and control matters, and (ii) military personnel that may be at or otherwise present on the Premises from time to time.

4. COST OF UTILITIES

The Lessee shall pay the cost, as determined by the said officer, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the said officer.

5. NOTICES

a. All notices and correspondence to be given pursuant to this Lease shall be addressed, if to the Lessee, to <<NAME>>, <<ADDRESS>>, <<CITY>>, <<STATE>>, <<ZIP CODE>>; and if to the Lessor, to the Real Estate Contracting Officer, Attention: Chief, Real Estate, Honolulu District, (Room 103), 230 Otake Street, Fort Shafter, Hawaii 96858; or as may from time to time otherwise be directed by the parties.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses listed in above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery. Use of an express delivery service will not substitute for this requirement.

c. Communications other than notices required under this Lease may be sent by means other than certified mail, return receipt requested, including electronic mail." Such communications include routine matters of coordination and informal exchange of information.

6. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army", "Real Estate Contracting Officer", "Lessor", "said officer", or "Chief, Real Estate Division" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, licensees, assignees, transferees, successors, and their duly authorized representatives.

7. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS, AND FORMS

Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program, or form.

8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, State, county, and municipal laws, ordinances, and regulations wherein the Premises are located.

b. The Lessee shall be solely responsible for obtaining at its cost and expense any permits or licenses required for its operations under this Lease, independent of any existing permits or licenses held by the Lessor.

c. The Lessee understands and acknowledges that the granting of this Lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or Section 408 (33 U.S.C. § 408) or any other permit or license which may be required by Federal, State, interstate, or local laws, regulations, and ordinances in connection with the Lessee's use of the Premises.

d. The Lessee shall promptly report to the Lessor any incident for which the Lessee is required to notify a Federal, State, or local regulatory agency or any citation by a Federal, State, or local regulatory agency of non-compliance with any applicable law, ordinance, or regulation.

e. The Lessee shall comply with the Land Use Regulations attached hereto as **EXHIBIT __**. Will be provided in final lease.

9. DISCLAIMER

This Lease is effective only insofar as the rights of the United States in the Premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights.

10. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the Lessor, the Lessee shall not transfer or assign this Lease, sublet the Premises or any part thereof, or grant any interest, privilege, or license whatsoever in connection with this Lease. Failure to comply with this paragraph shall constitute a breach for which the Lessor may immediately terminate the Lease.

11. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

12. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements, whether of record or not, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the Lessor, interfere with the use of the Premises by the Lessee.

13. SUBJECT TO MINERAL INTERESTS

This Lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, the Lessee understands and acknowledges that such interests may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), Department of the Interior which has responsibility for mineral development on federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

14. PROTECTION OF PROPERTY

a. For the purposes of this condition, the term "Lessee" shall include Lessee's employees, officers, agents, invitees, contractors and subcontractors, assigns, licensees, subleasees, subgrantees, and other affiliates.

b. The Lessee shall keep the Premises in good order and repair and in a decent,

clean, sanitary, and safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this Lease and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to the Lessor, or at the election of the Lessor, reimbursement made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the Lessor.

c. The Lessee shall immediately notify the Lessor upon discovery of any hazardous conditions on the Premises that present an immediate threat to health and/or danger to life or property. The Lessor, upon discovery of any hazardous conditions on the Premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee. In addition to the rights of termination for noncompliance or at will (for any reason at any time), upon discovery of any hazardous conditions on the Premises by the Government, or upon notice of Lessee's discovery of such conditions, the Government shall close, or cause the Lessee to close the affected part or all of the Premises to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the Lessor will have the option to: (1) correct the hazardous conditions and collect the cost of repairs and any other resulting damages, including consequential damages and loss in value to the premises from the Lessee, if the conditions were caused by Lessee; or, (2) revoke the Lease for noncompliance or at will (for any reason at any time) and the Lessee shall restore the Premises in accordance with the Condition on **RESTORATION**. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition on **PROTECTION OF PROPERTY**. Hazardous conditions not caused by the Lessee will be dealt with at the discretion of the Lessor, but the Lessee will nonetheless be responsible for closing the area as directed by the Lessor or complying the Lessor's closing of the area, as applicable, in accordance with this condition.

15. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to remove timber or other material, except property of the Lessee, and/or to make any other use of the Premises or portion(s) thereof as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

16. TITLE TO IMPROVEMENTS

The demolition, renovation, and construction of improvements by the Lessee are private undertakings, and during the term of this Lease title to all such improvements vest and remain in Lessee. The improvements shall remain real property for the duration of this Lease. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee during the term of the Lease. Upon expiration, revocation, or termination of the Lease, disposition of such improvements shall be accomplished in accordance with the condition on **RESTORATION**.

17. DESTRUCTION BY UNAVOIDABLE CAUSALITY

If the Premises or improvements thereon shall be destroyed or be so totally damaged by fire or other unavoidable casualty so as to render the Premises untenable, wholly or in part, then payment of rent shall cease and either party may forthwith terminate this Lease by written notice to that effect, notwithstanding the condition on **TERMINATION**. If part of the Premises or the improvements were rendered untenable, rental payment may be apportioned to reflect the part remaining usable to Lessee. In the event the Lease is not terminated, the Lessor shall diligently proceed to return the Premises and improvements to operation and resume payment of rent in a manner and in a timeframe satisfactory to the Lessor.

18. RENTAL ADJUSTMENT

In the event the Lessor revokes this Lease or in any other manner materially reduces the Premises or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this Lease. Any adjustment of rent shall be evidenced by a written supplemental agreement, executed by the Lessor; PROVIDED, however, that none of the provisions of this condition shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this Lease.

19. INSURANCE

a. Except where the Lessee is a self-insured Federal, State, local, tribal, or territorial entity, at the commencement of this Lease, the Lessee, shall obtain, from a reputable insurance company, or companies, as defined below, commercial general liability insurance and any other insurance consistent with sound business practices for the use authorized. The liability insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this Lease. Such policy or policies shall name the United States of America as an additional insured. The Lessee shall require its insurance company to furnish to the Lessor a copy

of the policy or policies, or if acceptable to the Lessor, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the Lessor every three years or upon renewal or modification of this Lease.

b. The insurance policy or policies shall be a comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services, and activities involved. All liability policies shall be primary and non-contributory to any other insurance. The Lessee shall require that the insurance company give the Lessor thirty (30) days written notice of any cancellation or change in such insurance. The Lessor may require closure of any or all of the Premises during any period for which the Lessee does not have the required insurance coverage.

c. Each insurance policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Lessor or any other person and will provide that the insurer will have no right of subrogation against the United States of America. Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the Lessor arising out of this Lease.

d. For the purposes of this condition on **INSURANCE**, “reputable insurance company” shall mean a company licensed to do business in the state in which the property is located, with general policyholder’s ratings of at least A- and a financial rating of at least VIII in the most current Best’s Insurance Reports available on the date the Lessee obtains or renews the insurance policies, unless otherwise agreed to by the Lessor, in its discretion. If the Best’s ratings are changed or discontinued, the Parties shall agree to an equivalent method of rating insurance companies.

20. PROHIBITED USES

a. The Lessee shall not permit gambling on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Premises.

b. The Lessee shall not construct or place any structure, improvement, or advertising sign on the Premises, or allow or permit such construction or placement without prior written approval of the Lessor.

21. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this Lease shall protect the Premises against pollution of its air, ground, and water. At its sole cost and expense, the Lessee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, State, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited. Compliance with such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate, or local governmental agency are hereby made a condition of this Lease. The Lessee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, State, interstate, and local laws and regulations. The Lessee must obtain approval in writing from the said officer having operational control over the property before any pesticides or herbicides are applied to the Premises.

c. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities the Lessee shall be liable to restore the damaged resources.

d. The Lessee shall not use the Premises for the storage or disposal of non-Department of Defense-owned hazardous or toxic materials, as defined by 10 U.S.C. § 2692, unless authorized under 10 U.S.C. § 2692 and properly approved by the said officer.

22. RECORD OF ENVIRONMENTAL CONSIDERATION

A Record of Environmental Consideration (REC) documenting the known history of the property with regard to environmental and cultural considerations which includes the location and protection of sites and species and storage, release, or disposal of hazardous substances thereon, is attached hereto and made a part hereof as **EXHIBIT B**. Upon expiration, revocation, or relinquishment of this Lease another REC shall be prepared which will document the environmental condition of the property at that time. A comparison of the two reports will assist the Lessor in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

23. EXCAVATION RESTRICTIONS AND NOTIFICATION

In the event that the Lessee discovers unexpected buried debris or a foreign, potentially unsafe or hazardous substance, the Lessee will immediately cease work in the affected area, immediately notify the said officer, and protect the affected area and the

material from further disturbance until the said officer gives clearance to proceed. Such abeyance of activity in the affected area shall not constitute a default of the Lessee's obligation under this Lease.

24. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Premises, the Lessee shall immediately notify the Lessor and protect the site and the material from further disturbance until the Lessor gives clearance to proceed.

25. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the Lessor, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the Lessor, at the Lessee's sole cost and expense.

26. NATURAL RESOURCES

The Lessee shall cut no timber; conduct no mining operations; remove no sand, gravel, or kindred substances from the ground; commit no waste of any kind; or in any manner substantially change the contour or condition of the Premises except as authorized in writing by the Lessor.

27. FORCE PROTECTION STANDARDS

Any facilities constructed on the Premises may be constructed using commercial standards in a manner that provides force protection safeguards appropriate to the activities conducted in, and the location of, such facilities.

28. RESTORATION

a. Upon expiration, revocation, or termination of this Lease, the Lessee shall vacate the Premises, remove its real property improvements and personal property (Lessee's property) from the Premises unless otherwise agreed by the Lessor, and restore the Premises to a condition satisfactory to the Lessor. Such restoration shall include restoration of all property of the United States on the Premises and environmental restoration as determined based on the condition on **RECORD OF ENVIRONMENTAL CONSIDERATION**.

b. In the event this Lease is terminated or revoked by the Lessor for any reason, the Lessor may grant the Lessee a non-exclusive revocable license to use the Premises to vacate, remove Lessee's property therefrom, and restore the Premises to the required condition. Such license shall generally be for a period not to exceed ninety (90) days.

c. If the Lessee shall fail or neglect to remove Lessee's property and restore the Premises as required in this condition on **RESTORATION**, the Lessor may cause restoration work to be performed, including but not limited to removal of Lessee's property from the Premises. The Lessee shall have no claim for damages against the United States or its officers or agents related to or resulting from any removal of Lessee's property or any restoration work. The Lessee shall pay the United States on demand any sums which may be expended by the United States after expiration, revocation, or termination of the Lease to remove Lessee's property and to restore the Premises.

d. Upon written agreement by the Lessor, any or all of the Lessee's property may be surrendered to the United States in lieu of removal, with title vesting in the United States without additional consideration therefore. The Lessee grants the Lessor power of attorney to execute any deed, bill of sale, or other documents to clear title to such real property improvements or personal property which the Lessor has agreed shall not be removed from the Premises. The Lessor may provide appropriate evidence of title in the Lessee to all property being removed by Lessee.

29. TERMINATION

a. The Lessor may terminate this Lease at any time (i) if the Lessee fails to comply with any term or condition of this Lease, or (ii) at will (i.e. at any time for any reason).

b. The Lessee may terminate this Lease at any time by giving the Lessor at least thirty (30) days' notice in writing, provided that no refund by the United States of any rent due and paid shall be made, and provided further, that Lessee shall be responsible to pay any and all rent set forth in the condition on **CONSIDERATION** that becomes due and payable prior to the effective date, as defined in the condition on **NOTICES**, of such notice.

30. FAILURE OF LESSOR TO INSIST UPON COMPLIANCE

a. The failure of the Lessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of the Lessor's right to the current or future performance of any such terms, covenants, or conditions and the Lessee's obligations in respect to such performance shall continue in full force and effect.

b. No remedy herein or otherwise conferred upon or reserved to Lessor shall be

considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at or in equity, regulation, or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

31. DISPUTES

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7109) (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c.

(1) A Claim by the Lessee shall be made in writing and submitted to the Lessor for a written decision. A claim by the Government against the Lessee shall be in the form of a written decision by the Lessor.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that—

(i) the claim is made in good faith;

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Government is liable.

(iv) the certifier is authorized to certify the claim on behalf of the Lessor.

(3) The individual signing on behalf of the Lessee must be authorized to certify the claim on behalf of the Lessee and shall be:

(i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by an individual authorized to certify on behalf of the entity who is –

(A) a senior company official in charge of the Lessee's location involved;

or

(B) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the Lessor must, if requested in writing by the Lessee, render a decision within sixty (60) days of receipt of the request. For Lessee-certified claims over \$100,000, the Lessor must decide the claim or notify the Lessee of the date by which the decision will be made within sixty (60) days of receipt of the request.

e. The Lessor's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the Lessor or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Lessor received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Lessor receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the Lessor.

32. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein

granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors. Notwithstanding any other provision of this Lease, any provision that purports to assign liability to the United States Government shall be subject to and governed by Federal law, including but not limited to the Contract Disputes Act of 1978 (41 U.S.C. Sections 7101-7109 (2012)), the Anti-Deficiency Act (31 U.S.C. Sections 1341 and 1501), and the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq.).

33. NO INDIVIDUAL LIABILITY OF UNITED STATES OFFICIALS

No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee, or representative of the United States, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute, or rule of law or by the enforcement of any assessment or penalty, or otherwise.

34. ANTI-DEFICIENCY ACT

Nothing in this Lease shall obligate the Lessor to obligate appropriated funds in violation of the Anti-Deficiency Act 31 U.S.C. §§ 1341-1351. Notwithstanding the foregoing, nothing contained in this Lease shall limit, diminish, or eliminate any rights that the Lessee or its successors or assigns may have against the Lessor under applicable statutes, rules, or regulations.

35. TAXES

Any and all taxes imposed by the State or its political subdivisions upon the property or interest of the Lessee in the Premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the Lease shall be renegotiated.

36. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Lessor shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay to the

Lessor, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

37. SEVERAL LESSEES

If more than one Lessee is named in this Lease the obligations of said Lessees herein contained shall be joint and several obligations.

38. MODIFICATIONS AND CONSENTS

a. This Lease contains the entire agreement between the parties hereto with regard to the Lease, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing and signed by the parties to be bound or by a duly authorized representative. This provision shall apply to this condition as well as all other conditions of this Lease.

b. The provisions of this Lease may only be superseded, modified, or repealed pursuant to a written amendment or supplemental agreement to this Lease.

39. MERGER

This Lease and any other agreement shall not merge. In the event the terms and conditions of this Lease conflict with the terms and conditions of any other agreement, the terms and conditions of the Lease shall prevail.

40. NOT PARTNERS

Nothing contained in this Lease will make, or will be construed to make, the Lessor and the Lessee hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Lessor and the Lessee under this Lease is that of landlord and tenant with respect to the Premises.

41. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the Premises, because of race, color, religion, sex, sexual orientation, gender identity age, handicap, or national origin pursuant to Executive Order 13672, 21 July 2014. The equal opportunity clauses set forth at 41 C.F.R. 60-1.4(a) are hereby incorporated by reference in this Lease and the Lessee shall comply with such clauses. Any reference in such clauses "contractor" shall mean the Lessee, any reference to "contract" shall mean the Lease, and any reference to "subcontract" shall mean the any sublease or contract for services required under the Lease. If the Lessee believes it is exempt from compliance with such clauses in whole or in part pursuant to 41 C.F.R. 60-1.5, the Lessee shall provide to the

Government information necessary to determine the applicability of such clauses. The Lessee shall comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

42. LABOR, MATERIAL, EQUIPMENT, AND SUPPLIES

Lessee shall bear the sole responsibility for furnishing and paying for all labor, materials, equipment, and supplies used in conjunction with the exercise by the Lessee of any right granted hereunder, unless specifically absolved from said responsibilities elsewhere within this Lease.

43. DETERMINATION REGARDING EXECUTIVE ORDER 13658

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. Executive Order 13658. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR Part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages.

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2018 and December 31, 2018 shall be \$10.35 per hour. The minimum wage shall be adjusted each time the Secretary of Labor’s annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Orders beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

c. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR Part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR Part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

e. The contractor may not discharge any part of its minimum wage obligation

under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. Nothing herein shall relieve the contractor of any obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.35 (or the minimum wage as established each January thereafter) to any worker.

g. Payroll Records.

(1) The contractor shall make and maintain for three years of records containing the information specified in paragraphs f(1)(i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representative of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and social security number.

(ii) The worker's occupation(s) or classification(s).

(iii) The rate or rates of wages paid.

(iv) The number of daily and weekly hours worked by each worker.

(v) Any deductions made; and

(vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR Part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representative of the Wage and Hour Division to conduct investigation, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its

implementing regulation; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

i. Certification of Eligibility.

(1) By entering into this contract, the contractor (an officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee received at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

k. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR Part 10, or has testified or is about to testify in any such proceeding.

l. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

m. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

n. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suites, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the

contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

44. DETERMINATION REGARDING EXECUTIVE ORDER 13706

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. Executive Order 13706. This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

b. Paid Sick Leave.

(1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

c. Withholding. The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any and/or benefits denied or lost be reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the

contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

e. The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wages or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

f. Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

g. Recordkeeping.

(1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and Social Security number of each employee;

(ii) The employee's occupation(s) or classifications(s);

(iii) The rate or rates of wages paid (including all pay and benefits provided);

(iv) The number of daily and weekly hours worked;

(v) Any deductions made;

(vi) The total wages paid (including all pay and benefits provided) each pay period;

(vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2);

(viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;

(ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);

(x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3);

(xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;

(xiii) The relevant covered contract;

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)(i) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time they asked to use paid sick leave.

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must keep records or other proof of the verifiable information

on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use their paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirement, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirement of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The contractor shall permit authorized representative of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658,

their respective implementing regulations, or any other applicable law.

h. The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

i. Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person of firm who has an interest in the contractor's firm is a person of firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to received Federal contracts currently maintained on the System for Award Management Web site, <http://www.SAM.gov>.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Interference/Discrimination.

(1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification of other documentation provide to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13;

(iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

k. Waiver. Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

l. Notice. The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

m. Disputes concerning labor standards. Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

45. ENVIRONMENTAL SITE-SPECIFIC CONDITIONS

a. Grazing Development Plan. Prior to introducing livestock on the lease area, the lessee will develop an ag grazing development plan that outlines and describes the lessee's basic operational goals/objectives, which shall be consistent with NRCS soil conservation standards, and include conservation measures/mitigation, and contingencies, with emphasis on areas that are vulnerable to erosion or other degradation. The plan shall also include the proposed type, amount, location, duration/rotation, etc. of grazing that would occur in leased areas, including any structures, infrastructure, and/or other improvements needed for function and operate grazing activities (i.e., type, placement of fencing, gates, corrals, roads, trails, etc. features, and associated structures). The plan shall be submitted to the Lessor prior to starting any construction, improvements, placement of livestock, or other work to ensure proper coordination and regulatory compliance for any activity proposed receives the required approvals.

b. The Lessee will build and maintain at their own expense fencing to secure livestock within the leased premises. Construction, installation, or modification of fences or

structures within the proposed lease area is not authorized until project plans are received, reviewed, and approved by the Lessor and appropriate federal review and consultation requirements (i.e., Sec 106 NHPA) is completed.

c. Construction of fences/structures that exceed 1 acre of total disturbance will require a NPDES permit. Any construction or improvement activities undertaken will utilize appropriate sediment and erosion control BMPs to prevent sediment and other debris from entering streams/drainages. In addition, it should be determined if this operation meets the definition of an Animal Feeding Operation (AFO). If an AFO is also considered a Confined Animal Feeding Operation (CAFO) by U.S Environmental Protection Agency (EPA) and DOH, then a separate NPDES permit must be obtained for the duration of this lease. Generally, pasture feeding operations are not considered an AFO/CAFO, but if animals are confined or concentrated where manure accumulates, then those areas may meet the definition of an AFO/CAFO.

d. A Section 404/401 and/or a Section 10 permit may be required depending on HDOH's definition of the streams and drainage areas on site. If these streams and/or drainage areas are considered intermittent or perennial then a Section 404, Section 401 and/or Section 10 may be required. Recommend obtaining a Jurisdictional Determination (JD) from the Honolulu U.S. Army Corps of Engineers (USACE) Regulatory Office. A Section 401 permit is issued by DOH and may be required even if a Section 404 is not required by USACE.

e. Fire Prevention and Mitigation. Avoid activities that could result in causing a wildfire (i.e., driving in tall, dry grass; use of open fires for cooking or other activities). Employ preventative measures (wetting down areas, work during low wind speeds/outside of dry season, etc.) and have readily available fire suppression equipment (fire extinguisher, water, sand) when conducting maintenance work (welding) that could cause fire.

f. In case of livestock getting loose outside the leased premises, the Lessee will have 48-hours from being notified by the Lessor to recover such livestock. The Lessee will bear the costs of any recovery by the Lessor after the 48-hour notification.

46. LANDSCAPE CONSERVATION SITE-SPECIFIC CONDITIONS

a. Grasslands and ground cover will be grazed to within 4 inches in height to maintain existing vegetation groundcovers.

b. Prior to conducting any grazing or construction activities, the areas shall be surveyed and photographed to established pre-impact site conditions. All impacted areas shall be monitored and managed accordingly to prevent or minimize cover degradation to make sites vulnerable to erosion, dust, or other issues resulting from grazing or other related activities. The lease will be responsible for restoring and rehabilitating eroded sites caused by erosion to original condition.

c. Monitor areas where livestock tend to concentrate (water sources, travel lanes and loafing areas). It may be necessary to reseed these areas to increase ground cover and prevent erosion.

d. Report to the Lessor any area that has been impacted by fire, flood, drought, pest, etc. where soil/banks become unstable and vulnerable to erosion.

47. THREATENED AND ENDANGERED SPECIES AND HABITAT SITE-SPECIFIC CONDITIONS

a. At **pu'us Nohono o hae and Papapa**, conduct regular fence inspections and monitor the condition to ensure fence and underlying foundation is secure and free from damage and degradation to prevent livestock to breach and entry with the fenced conservation area. (An additional map will be provided)

b. For Hawaiian goose (Nene) and Hawaiian short-eared owl (Pueo), survey area prior to conducting grazing activities to determine the presence of nesting/foraging birds. If Nene or Pueo are flushed from the ground, contact the Lessor within 24 hours to notify the of the discovery, and avoid activities within 100 ft of the area to determine if nests are present. Nene/pueo and their nests, if discovered, will be avoided.

e. For Hawaiian hoary bats, barbed wire is a bat entanglement threat. Therefore, it's use on fences and other structures is prohibited. No trees or shrubs greater than 15 ft tall shall be cut or trimmed during the bat pupping season is 1 June to 15 September. Tree stands and shrub vegetation shall be conserved and monitored for signs of livestock damage and to prevent bat habitat degradation. Modify and adapt grazing activities to avoid and minimize impacts bat roosting habitat degradation.

48. INVASIVE SPECIES SITE-SPECIFIC CONDITIONS

a. General. Any work/activities proposed in leased lands will be conducted and adhere to the Lessors Invasive Species Prevention requirements (**Exhibit C**), which in measures that require vehicles, machinery, equipment, and supplies be free of soil, debris, and invasive species prior to entry on Lessors lands. For any proposed improvement and construction work that requires the import of fill material (i.e., rock, aggregate, sand, soil, and concrete) sourced from off-installation locations to Keamuku Maneuver Area (**KMA**) requires coordination, inspection, and approval prior to entry/placement in lease areas.

b. Twolined Spittlebug (TLSB). Care shall be exercised to prevent the introduction and spread of the TLSB to the lease lands. Vehicles, equipment, and supplies shall be inspected for TLSB and cleaned prior to moving and placing any materials on lease lands. The leasee will routinely inspect and inspect for TLSB signs in actively grazed areas, and

immediately report to the Lessor any grasslands that appear to be degraded and/or affected TLSB damage.

c. Tree Tobacco (*Nicotiana glauca*). Tree tobacco is a noxious weed species that readily spreads in disturbed areas, and is a nuisance that attracts and is host for the federally-protected Blackburn's sphinx moth (BSM). Disturbed areas such as roads, corrals, operational areas, etc., shall be monitored for Tree tobacco, and plants under 3 ft tall shall be controlled/removed to prevent the germination and spread, including inadvertently attracting federally protected species.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this ____ day of _____, 20__.

District Chief, Real Estate Division
Real Estate Contracting Officer

THIS LEASE is also executed by the Lessee this ____ day of _____, 20__.

AUTHORIZED REPRESENTATIVE

BY:

TITLE: _____

[

RECORD OF ENVIRONMENTAL CONSIDERATION

U.S. Army Garrison-Hawaii, Directorate of Public Works, Environmental Division

REC #: 4872

REC CHECKLIST
(Check before submitting)

<input checked="" type="checkbox"/>	Detailed Project Description
<input checked="" type="checkbox"/>	Location Map and Plans
<input checked="" type="checkbox"/>	Date of Proposed Action
<input checked="" type="checkbox"/>	Reason for Categorical Exclusion
<input checked="" type="checkbox"/>	Impact Analysis Checklist

1. DATE: 08-Apr-2022

2. SUBMITTED BY THE PROPONENT:

Joy Anamizu for Ben Grodjesk, PTA Fire

Name, Organization

808.469.2447

Phone Number

ANAMIZU.JOY.N P.1258456366Digitally signed by ANAMIZU.JOY.N P.1258456366
Date: 2022.04.08 15:04:20 -10'00'

Signature

3. DESCRIPTION OF PROPOSED ACTION:

PTA KMA Ag Grazing Lease No. 2

KMA, PTA

N/A

Installation

Project Title

Location/Bldg No.

FEWR #

Project Basics:

WHO: USAG-P, Fire via Integrated Wildland Fire Manager, G. Grodjesk

WHAT: Ag Grazing Lease No. 2., @ KMA, PTA (see attached SOW)

WHERE: KMA, select areas (see attached figure and SOW for details)

WHEN: 5-year term lease to be executed before FYE22

WHY: To reduce existing vegetation fire fuels in the KMA that pose an wildland fire risk, and have the potential to negatively impact military training and protected environmental (NR and CR) in the KMA, and the adjacent Waikii residential community.

HOW: Process and issuance of new (2nd) Ag Grazing Lease via livestock grazing, which expands current ag grazing operations in the KMA. -- i.e., administrative process and land condition management/resource tool.

4. ESTIMATED START DATE & DURATION OF PROPOSED ACTION: Before FYE22; 5 years

5. THIS ACTION HAS BEEN COORDINATED WITH THE FOLLOWING OFFICES/AGENCIES:

Office/Agency	Name(s)	Concur/Non-Concur
USAG-HI Real Estate	Jim Livingston	Concur
RE/USACE	Brittney Hauptert	Concur
TSS	David Shaffer/Howard Killian	Concur

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4872

ENVIRONMENTAL IMPACT ANALYSIS (Any "YES" or "MAY" answers need to be explained in the "Discussion" section at the end of this checklist.)

YES NO MAY

1. AIR QUALITY

- | | | | |
|---|--------------------------|-------------------------------------|--------------------------|
| a. Will the proposal cause air emissions such as smoke, dust, suspended particles, or air pollutants during construction or operations? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b. Will the proposal involve the removal, modification, or addition of an air emitting device (e.g., boilers, generators, or refrigerant containing equipment)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

2. WATER QUALITY

- | | | | |
|--|--------------------------|-------------------------------------|-------------------------------------|
| a. Is the total disturbance of land over one acre? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Is the total area of new impervious surface over 5,000 square feet? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. Does the project involve an individual wastewater system (e.g., septic tank) or pretreatment unit (e.g., oil-water separator or grease trap)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

3. TOPOGRAPHY AND SOILS

- | | | | |
|---|--------------------------|--------------------------|-------------------------------------|
| a. Will there be any land/ground disturbance (e.g., excavating, coring, digging, trenching, grubbing, dredging, excavation, or fence installation)? <i>Please specify total land disturbance acreage below in "Discussion."</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|

4. NATURAL RESOURCES

- | | | | |
|---|--------------------------|-------------------------------------|-------------------------------------|
| a. Will the proposal affect undeveloped areas, affect endangered or threatened species or their habitat, occur in areas with known invasive species infestations, or affect plant or animal critical habitat? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Will the proposal require removal or trimming of trees? <i>Please provide map of tree location below in "Discussion."</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. Does the project involve soil importing/exporting? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

5. CULTURAL RESOURCES

- | | | | |
|---|--------------------------|-------------------------------------|-------------------------------------|
| a. Will the proposed action involve alterations of existing buildings or structures? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Will the proposed action be located within or adjacent to a historic district? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. Will the proposed action involve ground disturbance or occupancy in or near a known archaeological site? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i. If yes/may, will archaeological work be needed? (Permit required) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4872

ENVIRONMENTAL IMPACT ANALYSIS (Any "YES" or "MAY" answers need to be explained in the "Discussion" section at the end of this checklist.)

YES NO MAY

6. LAND USE

- | | | | |
|---|--------------------------|--------------------------|-------------------------------------|
| a. Will the proposal result in a change in operations, activities, or land use occurring at the site or facility? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|

7. NOISE ENVIRONMENT

- | | | | |
|---|--------------------------|-------------------------------------|--------------------------|
| a. Will there be any changes to the numbers, types, and operations of aircraft, vehicles, or weapon systems that could affect noise levels? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|-------------------------------------|--------------------------|

8. TRAFFIC

- | | | | |
|---|--------------------------|-------------------------------------|--------------------------|
| a. Will the proposal generate or increase vehicular traffic? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b. Will there be a requirement to construct, reroute or alter roadways? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

9. HAZARDOUS MATERIALS/WASTE OR TOXIC SUBSTANCES

- | | | | |
|--|--------------------------|-------------------------------------|--------------------------|
| a. Will the proposal result in the disturbance of lead containing paint or asbestos containing material? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b. Will the proposal result in the use, storage, or disposal of hazardous materials? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. Will the proposal involve pesticide application (e.g., herbicide or insecticide)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

10. UTILITIES SYSTEMS

- | | | | |
|---|--------------------------|-------------------------------------|--------------------------|
| a. Will the proposal require disposal or alterations to existing utility systems or drainage systems (e.g., power, drinking water, waste water, storm water)? <i>Please specify type of utility affected in "Discussion."</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|-------------------------------------|--------------------------|

11. FLOODPLAIN

- | | | | |
|--|--------------------------|-------------------------------------|--------------------------|
| a. Will the proposed action take place within the 100 year floodplain? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|-------------------------------------|--------------------------|

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4872

DISCUSSION (*Annotate items answered "YES" or "MAY" and provide a brief explanation of the potential impacts and mitigation measures to be implemented. Provide answers to the questions of how much, whom, where, when, and how? Contact the DPW Environmental Division at usarmy.hawaii.nepa@mail.mil if assistance is needed.*)

Required Discussion: 2a 3a 4a 5a 5c 5ci 6a

2a. 5,402 acres of existing training area land (manuver) will be used for grazing vegetation till 4 in height. Current use is open and available training area, occasionally used for bivouac.

3a. It is anticipated that the leasee will be responsible for installation of fencing and/or other structures as needed for grazing operations, which would be coordinated and approved by the Army. At current, it is unknown fencing details (type, distance, etc) will be needed by the leasee.

4a. Most TES spp. and habitat fall outside of the proposed 2nd Ag Grazing Lease footprint, however, there is a single TES plant location proximate to South C footprint, which mitigative measures need to be identified and put in place to protect the individual.

5a Not sure and CR review and eval needed to identify if any protected CR may be affected by proposed 2nd lease and future ag grazing activities.

5c/5ci. See 5a above.

6a. Area will SHARE usage with training, ENV programs (NR/CR survey/monitoring), and recreational public hunting.

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4872

THIS SECTION TO BE COMPLETED BY ENVIRONMENTAL DIVISION:

The Environmental Impact Analysis checklist was reviewed and potential impacts on the quality of the environment have been considered. It has been concluded that this action is not segmented and no extraordinary circumstances exist that would preclude the use of the applicable categorical exclusion identified in section below.

This document does not relieve the proponent from compliance with other applicable federal, state and local environmental laws and regulations.

REASON FOR USING RECORD OF ENVIRONMENTAL CONSIDERATION:

☐ Is adequately covered in the following EA/EIS titled:

Dated: _____

The EA/EIS may be reviewed at:

Or,

☒ Is categorically excluded under Appendix B, Section II, paragraph (f)(1) of 32 CFR Part 651 for the following reason (See 32 CFR Part 651, Environmental Analysis of Army Actions):

Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use.

RECORD OF ENVIRONMENTAL CONSIDERATION

REC# 4872

REVIEW AND CONCURRENCES *(For Environmental Division use):*

	YES	WITH CMNT	NO	
ANAMIZU.JOY.N P.1258456366 <small>Digitally signed by ANAMIZU.JOY.N P.1258456366 Date: 2022.05.31 11:51:06 -10'00'</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>31-May-2022</u>
Natural Resources Program				Date
See MFR + ENCL 1. - REQUIRED NR MEASURES FOR INCLUSION AS LEASE CONDITIONS.				
CROWLEY.DAVID.M.1512306469 <small>Digitally signed by CROWLEY.DAVID.M.1512306469 Date: 2022.05.18 16:05:27 -10'00'</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>18-May-2022</u>
Cultural Resources Program				Date
See MFR. FENCE & STRUCTURE INSTALLATION/CONSTRUCTION/MOD IS NOT AUTHORIZED (discussion 3a)				
CUADERNO.LOUIE.ANDRES.1398697053 <small>Digitally signed by CUADERNO.LOUIE.ANDRES.1398697053 Date: 2022.04.15 08:04:20 -10'00'</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>15-Apr-2022</u>
IRP/MMRP Program				Date
OGMAN.MICHELLE.ROBIN.1593763257 <small>Digitally signed by OGMAN.MICHELLE.ROBIN.1593763257 Date: 2022.04.27 12:23:29 -10'00'</small>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>27-Apr-2022</u>
Clean Water Program				Date
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Clean Air/Safe Drinking Water Program				Date
KANEHISA.DALE.TSUTAYE.1267370296 <small>Digitally signed by KANEHISA.DALE.TSUTAYE.1267370296 Date: 2022.04.25 09:57:07 -10'00'</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>25-Apr-2022</u>
Recycling Program				Date
BUTH.BUNNARITH.PRESTON.1240651030 <small>Digitally signed by BUTH.BUNNARITH.PRESTON.1240651030 Date: 2022.04.25 10:47:03 -10'00'</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>25-Apr-2022</u>
Hazardous Waste Program				Date
DECAPRIO.KIMBERLY.C.1234587591 <small>Digitally signed by DECAPRIO.KIMBERLY.C.1234587591 Date: 2022.05.10 14:27:00 -10'00'</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>10-May-2022</u>
TSCA/SPCC/EPCRA Program				Date
CUADERNO.LOUIE.ANDRES.1398697053 <small>Digitally signed by CUADERNO.LOUIE.ANDRES.1398697053 Date: 2022.04.15 08:02:49 -10'00'</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>15-Apr-2022</u>
Other ENV Staff as needed				Date

APPROVED BY:

BRIXIUS.DAVID.KENNETH.1237035719 Digitally signed by BRIXIUS.DAVID.KENNETH.1237035719
Date: 2022.06.01 11:41:41 -10'00'

Environmental Coordinator

01-Jun-2022

Date

☒ **Concurrence is contingent upon compliance with comments provided.**

U.S. ARMY GARRISON, POHAKULOA TRAINING AREA

AGRICULTURE GRAZING LEASE [#2]

V2. EXPANDED SCOPE

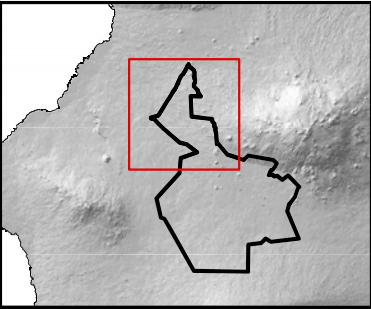
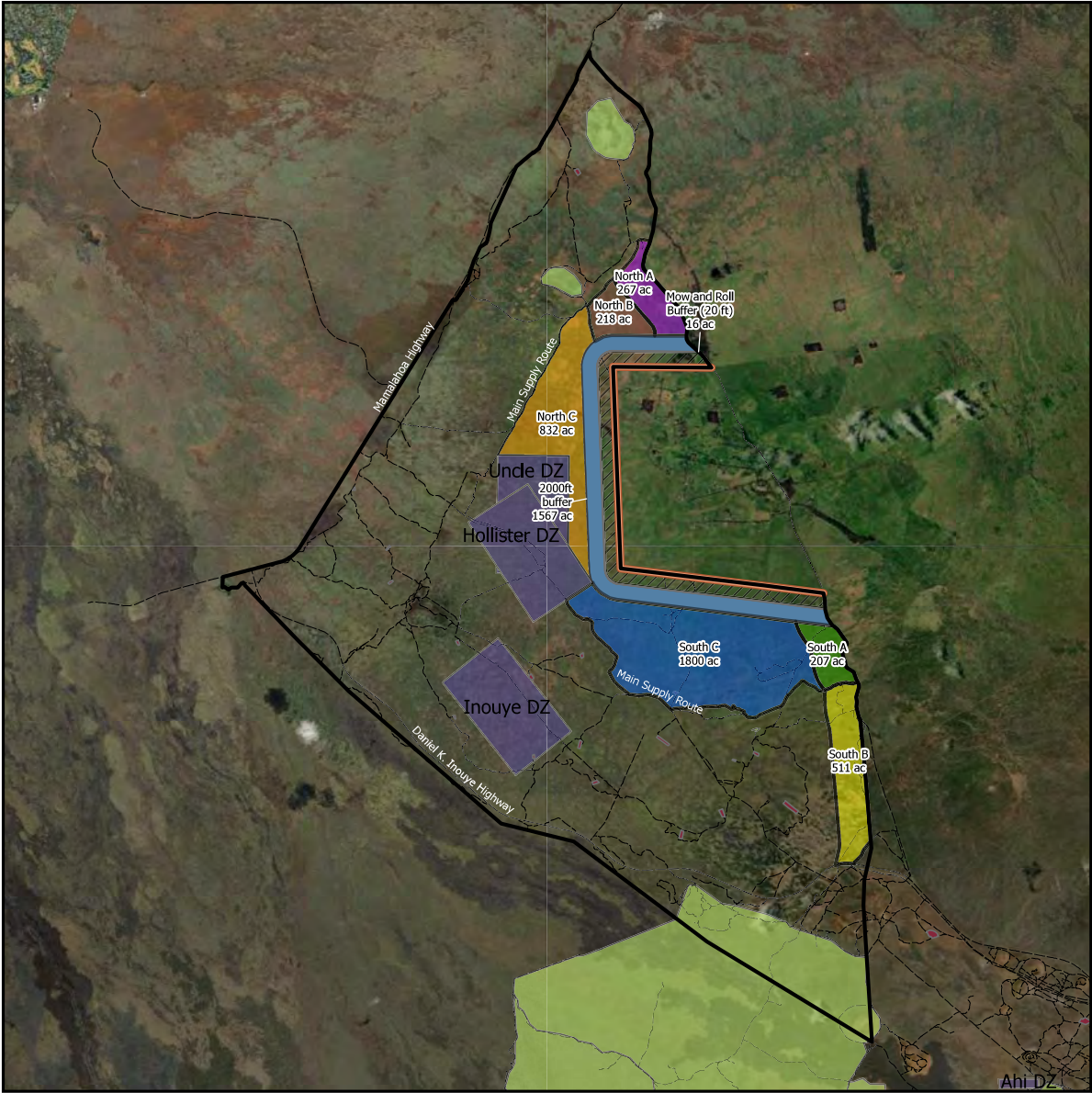
TO REDUCE WILDLAND FIRE FUEL LOADS AND REDUCE WILDLAND FIRE RISKS

AT

KEAMUKU MANUVER AREA, POHAKULOA TRAINING AREA

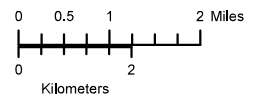
BASIC SCOPE: Descriptions of various footprints for the proposed 2nd KMA ag grazing lease. Total acres: 5,402 ac. ***Note: Includes the 20-ft buffer “roll and mow” area from Lease No. DACA84-1-16-233 (16 ac).*

1. **WAIKII EXPANSION:** From the existing 1000-ft Waikii buffer boundary, Lease No. DACA84-1-16-233, extend another 1000-ft buffer. Approx. acres: 1567 ac. ***Note: Includes the 20-ft buffer “roll and mow” area from Lease No. DACA84-1-16-233 (16 ac).*
2. **NORTHERN UNITS:**
 - a. **North A:** A 2000-ft buffered extension west from the Old Saddle Road (HWY 190), and bounded by the lower (south) Papapa Trail in the north, and north boundary of the Waikii Expansion area in the south. Approx. Acres: 267 ac.
 - b. **North B:** From the North A west boundary, extend west till north-south Waikii Trail road that connects the SE corner of Puu Papapa to the NW corner of the Waikii Expansion area; and bounded by the lower (south) Papapa Trail in the north, and the north boundary of the Waikii Expansion area in the south. Approx. Acres: 218 ac.
 - c. **North C:** From the North B west boundary, extend west till the north-south Main Supply Route (MSR) Road, and bounded by the Uncle and Hollister Drop Zones south and west, and the west boundary of the Waikii Expansion area in the east. Approx. Acres: 832 ac.
3. **SOUTHERN UNITS:**
 - a. **South A:** A 2000-ft buffered extension west from the HWY 190; and bounded by the SE corner boundary of the Waikii Expansion in the north, and the north boundary of South B in the south, which is delineated by an unnamed ephemeral drainageway. Approx. Acres: 207 ac.
 - b. **South B:** Another 2000-ft buffered extension west of a portion of HWY 190 and then west from the shared PTA and State of Hawaii property boundary west of the Girl Scout Camp (Note: Does not follow HWY190 entirely to the HWY19 and HWY200 intersection); and bounded by an unnamed ephemeral drainageway in the north, and bounded by both an existing firebreak road and a portion of the Daniel K. Inouye Highway (HWY 200) in the south. Approx. Acres: 511 ac.
 - c. **South C:** From the South A west boundary, extend west till the SW corner of the Waikii Expansion area, and bounded by the south boundary of the Waikii Expansion area in the north, and the existing “2.9 Mile East Trail” and MSR Road in the south. Approx. Acres: 1800 ac.



Legend

- Roads
- Waikii Boundary
- KMA Boundary Line
- LZs
- DZs
- Mow and Roll (20 ft)
- Ungulate Exclusion Fences
- Waikii Grazing Buffer North A
- Waikii Grazing Buffer North B
- Waikii Grazing Buffer North C
- Waikii Grazing Buffer South A
- Waikii Grazing Buffer South B
- Waikii Grazing Buffer South C
- Existing Grazing Buffer (1000ft)
- Proposed Grazing Buffer (2000ft)



Map Produced 4/7/2022 by CEMML for U.S. Army Garrison, PTA

DPW Environmental Program Comments

Concurrence is contingent upon compliance with the following comments.

The following programs have comments:

Pōhakuloa Training Area
Invasive Pest Prevention Standard Operating Procedures (SOPs)
July 2018

This document lists protocols for preventing the introduction of harmful invasive pests including, but not limited to reptiles, amphibians, invertebrates, weeds, and rapid 'ōhi'a death (ROD) into Pōhakuloa Training Area (PTA). It is the responsibility of the project leader and/or contractor to ensure compliance with these protocols.

1. **All Contractors shall comply with the USAG-P Memorandum For Record for “Best Management Practices to prevent negative impacts to natural resources from construction activities” dated 25 February 2015.**
2. **All work vehicles, machinery, and equipment must be clean and free of debris prior to entering and before departing the PTA.**
 - a. Vehicles going down range, and all machinery, and equipment must be thoroughly pressure washed and visibly free of mud, dirt, plant debris, reptile and amphibian eggs (e.g., coqui frog eggs), insects and other debris. A hot water wash is preferred. Areas of particular concern include bumpers, grills, hood compartments, areas under the battery, wheel wells, undercarriage, cabs, and truck beds.
 - b. The interior and exterior of vehicles, machinery, and equipment must be free of rubbish and food. Vacuum clean the interiors of vehicles and the cabs of machinery. Sanitize floor mats with a solution of 70% isopropyl alcohol or a freshly mixed 10% bleach solution to minimize ROD transmission.
 - c. All work vehicles, machinery, and equipment may be subject to inspection.
 - d. Any vehicles, machinery, and equipment that do not pass inspection will be turned away.
 - e. Vehicles, machinery, and equipment leaving the PTA for any reason must be cleaned prior to re-entry into the PTA, and may require re-inspection.
3. **Inspection of work vehicles, machinery, and equipment for invasive ants prior to entering the PTA.**
 - a. Test for invasive ants on work vehicles, machinery, and equipment prior to entry into the PTA (Policy Memorandum USAG-HI-71, Avoidance of Little Fire Ant Introduction). To expedite the process, make sure vehicles, machinery, equipment, and staging areas used are clean as described in (1) above.
 - b. To test, place chopsticks baited with a dab of peanut butter and jelly for 30 minutes to 1 hour throughout the equipment being tested. Use approximately 6 chopsticks to test most personnel vehicles and trucks; however, larger vehicles and heavy machinery may require up to 10-20 baits. Place baits in shady locations inside the cab, engine compartment, and truck bed if applicable. Do not leave baits in the vehicle for over 1 hour as this may attract ants from beyond the area of concern. Baits are only good for detection and do not control ants.
 - c. If ants are found, the equipment will not be allowed to enter the PTA until it is sanitized and re-tested following a resting period. Sanitize infested vehicles following recommendations by the Hawaii Ant Lab (<http://www.littlefireants.com/>) or other ant control expert and in

accordance with all State and Federal laws. Treatment is the responsibility of the equipment or vehicle owner and control records will be required to confirm treatment.

- d. Also test building materials and other equipment such as portable buildings entering PTA with the same method; however, place baited chopsticks every 10-20 feet around the area, in the shade, and search the immediate surrounding area for 2 minutes for ants. Retrieve the bait after 1 hour and collect any ants found for identification.
- e. The PTA NRO reserves the right to conduct additional tests for ants at any time during the course of the project.

4. Auxiliary construction support sites (ACSS) and staging areas within the PTA must be kept free of invasive pests

- a. Coordinate with the PTA NRO if additional ACSSs are located outside the established construction footprint.
- b. ACSSs and staging areas may be inspected for invasive pests at the beginning of the project.
- c. Project vehicles or equipment stored outside of a base yard or staging area, such as a private residence, should be kept in a pest-free area. Such vehicles or equipment may be subject to additional inspection as described (in 1c) above and will be turned away if infested.
- d. PTA NRO will coordinate access to ACSSs, staging areas, and construction sites for quarterly inspections.

5. All cutting tools must be sanitized to prevent Rapid ‘Ōhi‘a Death (ROD)

- a. All cutting tools, including machetes, chainsaws, and loppers must be sanitized to remove visible dirt and other contaminants prior to entry into the PTA, and when moving to a new project area in the PTA. Tools may be sanitized using a solution of 70% isopropyl alcohol or a freshly mixed 10% bleach solution. One minute after sanitizing, you may apply an oil based lubricant to chainsaw chains or other metallic parts to prevent corrosion.
- b. Only dedicated tools and chainsaws will be used to sample known or suspected ROD infected trees.
- c. Avoid wounding non-target ‘ōhi‘a trees when cutting other vegetation to minimize chance of infection by the ROD fungus.
- d. Vehicles, machinery, and equipment must be cleaned as described in (1) above.

6. Landscaping

- a. New construction and land management projects will use native Hawaiian plants for landscaping to the extent practical (Policy Memorandum USAG-HI 63, Landscaping with Native Plants).
- b. Non-invasive, non-native plants may be used only after submitting a justification memorandum to the PTA Natural Resources Office and receiving concurrence.
- c. For information on suitable native Hawaiian species or non-invasive, non-native species suitable for landscaping at PTA, contact the PTA Natural Resources Office.
- d. Do not transport ‘ōhi‘a trees or wood, as well as soil or plants from an ‘ōhi‘a forest as they may contain spores of the ROD fungus.

- e. Use materials from an NRO-approved nursery or source. NRO may inspect source and/or materials prior to entry onto PTA.

7. Use of off-site aggregate material for PTA construction projects

- a. The project proponent/lead will follow requirements outlined in the Protocol for Optional Use of Off-Site Aggregate for Infrastructure Construction at PTA and KMA (22 Sep 2010) for quarry inspections and mitigation of risks of introducing invasive species to PTA and KMA.

8. Briefing for project personnel

- a. All project personnel, including subcontractors, must receive a PTA NRO briefing or review NRO-provided briefing materials prior to project implementation. The project lead or contractor may be required to document records of personnel training.

Scheduling an equipment inspection for an approved project:

Projects may be required to provide their own trained equipment inspectors and to document records of inspection. Requests for equipment inspections should be made via email to Rogelio Doratt (redoratt@rams.colostate.edu) or Pamela Sullivan (pamelas@rams.colostate.edu) and should include the project lead and contracting officer. Requests must be made a minimum of 3 business days prior to inspection. We may be unable to accommodate requests made on shorter notice. Please make sure to also copy your PTA project lead on this correspondence.

Alternative Contacts:

- 1) Lena Schnell (lschnell@rams.colostate.edu) – (808) 315-0300
- 2) PTA NRO Main Office phone – (808) 315-1340

- 9. How will the off-site aggregate be used and distributed at the project site? (Will it be spread across existing substrate? Buried? How deep? etc.)**

Click or tap here to enter text.

- 10. List the target date(s) for proposed delivery for the off-site aggregate to the project site.**

Click or tap here to enter text.

- 11. List the point of entry to PTA for off-site aggregate deliveries.**

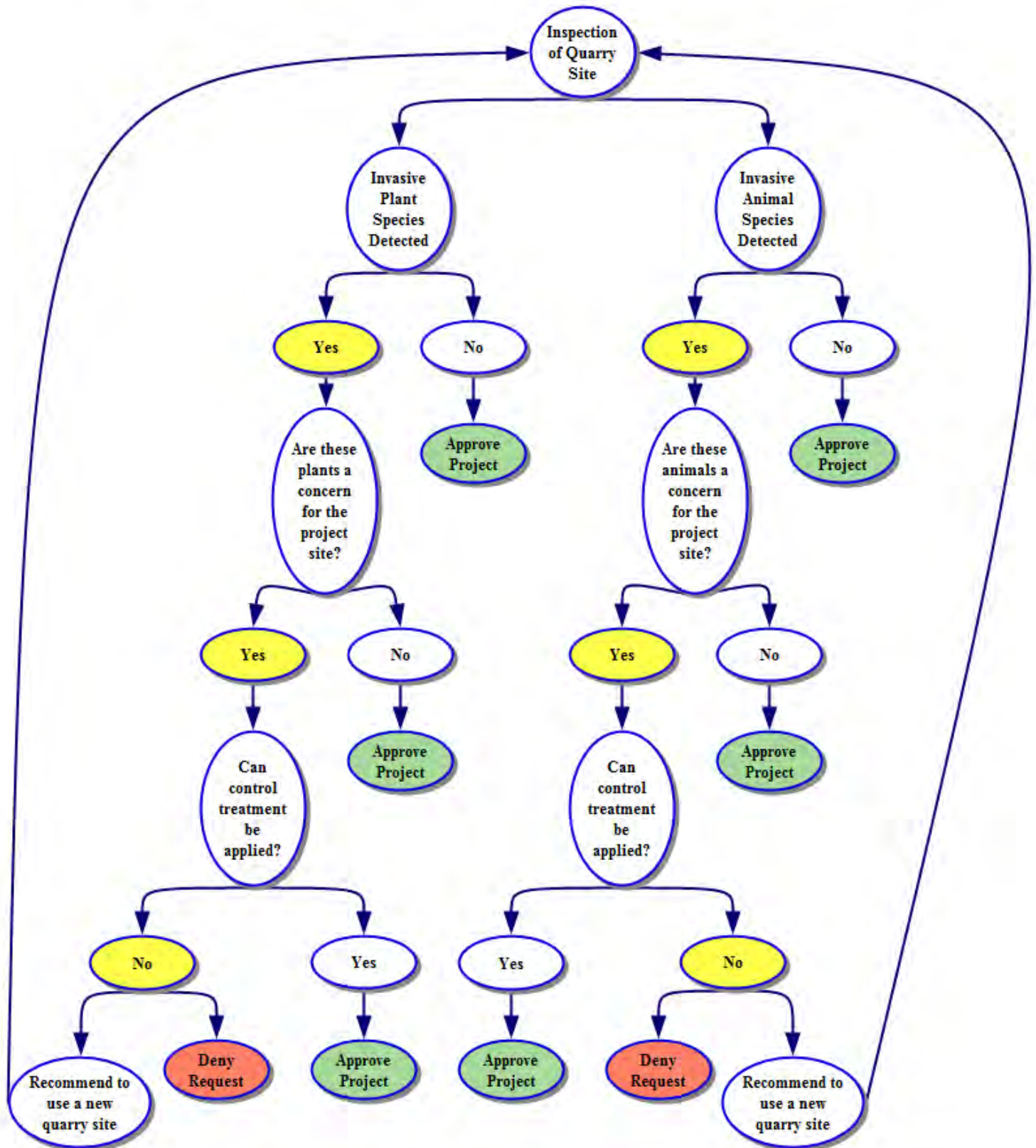
Click or tap here to enter text.

- 12. List the scheduled project completion date.**

Click or tap here to enter text.

PTA NRO

Inspection of Quarry Site Process Flow Chart



Pohakuloa Training Area Natural Resources Office Off-site Aggregate Use Request Form

The contractor requesting the use of off-site aggregate submits a request via this form to the PTA Army Biologist in the Natural Resources Office (NRO) 60 days prior to proposed delivery of material to the PTA project site. PTA NRO requires 2 weeks prior notice to inspect quarry and project sites, if deemed necessary, for invasive species. Please plan accordingly.

1. Project Name: [Click or tap here to enter text.](#)

2. Contact Information

Primary Company/organization: [Click or tap here to enter text.](#)

Contact Name: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Phone: [Click or tap here to enter text.](#)

3. Subcontractor (add additional subs on separate sheet)

Subcontractor Company/ Organization: [Click or tap here to enter text.](#)

Contact Name: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Phone: [Click or tap here to enter text.](#)

4. Army/DoD Contact

Contact Name: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Phone: [Click or tap here to enter text.](#)

5. Off-site Aggregate Source/Quarry Information

Name (if applicable): [Click or tap here to enter text.](#)

Location (address, city, etc.): [Click or tap here to enter text.](#)

Contact Name: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Phone: [Click or tap here to enter text.](#)

6. Project location on PTA. Provide map with delineation of project site.

[Click or tap here to enter text.](#)

7. Why is off-site aggregate necessary? Include availability, impacts to project schedule, costs, etc.

[Click or tap here to enter text.](#)

8. List the quantity, type, and size gradation of off-site aggregate proposed for the project.

[Click or tap here to enter text.](#)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY INSTALLATION MANAGEMENT COMMAND, PACIFIC REGION
HEADQUARTERS, UNITED STATES ARMY GARRISON, HAWAII
745 WRIGHT AVENUE, BUILDING 107, WHEELER ARMY AIRFIELD
SCHOFIELD BARRACKS, HAWAII 96857-5000

IMHW-PW

20 January 2017

MEMORANDUM FOR All Military Personnel and Department of Defense Civilian Employees within United States Army Garrison, Hawaii (USAG-HI) Installations

SUBJECT: Avoidance of Little Fire Ant Introduction

1. References.

- a. Army Regulation (AR) 200-1, Environmental Protection and Enhancement, 13 Dec 07.
- b. Sikes Act, 16 USC 670a-670o, as amended through Public Law 118-84, Enacted 28 Oct 09.
- c. Department of Defense Instruction (DODI) 4715.03, 18 Mar 11.
- d. Executive Order 13112, Invasive Species, 3 Feb 99.
- e. USAG-HI Integrated Natural Resources Management Plan, 2010-2014.

2. Applicability. This policy applies to all Soldiers, Civilians, Family members, contractors, and any other person, ("covered person"), who installs landscaping on any U.S. Army installation, facility, housing area, or work site in the State of Hawaii, ("covered area"). This policy also applies to all products sold at the Army and Air Force Exchange Service, including but not limited to: plants, mulch, and wood products.

3. Policy.

a. Protecting our environment is one of the most important aspects of accomplishing the USAG-HI mission. USAG-HI is committed to reducing the spread of invasive species that harm the local Hawaiian environment. Invasive species are often unintended hitchhikers on cargo and other trade conveyances. Still more species are deliberately introduced as pets, ornamental plants, crops, food, or for recreation, pest control or other purposes. Most non-native species, including most of our sources of food and fiber, are not harmful, and many are highly beneficial. A small percentage of non-native species cause great harm to the environment, the economy or human health. Non-native species that cause harm are collectively known as invasive species.

b. USAG-HI aims to ensure that the Little Fire Ant (LFA), *Wasmannia punctata*, an invasive species that was recently introduced to the State of Hawaii, does not become established on U.S. Army installations. LFA has the potential to infest homes and cause painful stings on both adults and children. The LFA also stings pets, such as dogs or cats on their eyes, which has the potential to cause blindness.

c. Pursuant to a Biological Opinion with the U.S. Fish and Wildlife Service, USAG-HI must monitor invasive species and develop methods to eradicate invasive species. To achieve this end, all new USAG-HI landscaping projects must be sourced from LFA free nurseries. For confidentiality reasons, the Hawaii Department of Health has not published a formal list of nurseries that are not fire ant free. However, the agency has disclosed that these nurseries are located in the Waimanalo area on the Windward coast of Oahu. Therefore, it is *strongly* recommended that the covered persons not purchase or install any landscaping products purchased from the Waimanalo area until further notice.

d. Any individual who proposes or initiates a new landscaping project is required to contact the Directorate of Public Works Natural Resource Program (NRP), at 655-9189 or 655-9191, to obtain an approval certificate for the project prior to purchasing the landscaping materials.

e. Once the landscaping materials are installed, the project proponent must provide NRP personnel access to survey and inspect the newly landscaped sites. The purpose of the inspection is to look for LFA. If LFA are found, the project proponent or contractor who installed the plants must provide the labor and funding to remove the LFA. Under these circumstances, the responsible party may only use pest management controls that comply with the current USAG-HI Pest Management Plan and obtain approval from the Installation Pest Management Coordinator (IPMC) prior to any treatment. A copy of the Pest Management Plan may be obtained at Building 104 on Wheeler Army Airfield from the Pest Management Program Manager, 656-3093. The IPMC can provide guidance on how to comply with the Pest Management Plan.

f. The enclosures to this policy memorandum contain additional information about LFA and how to test plants for their presence.

g. This policy memorandum supersedes Policy Memorandum USAG-HI-71, SAB, 24 Jul 15, is effective immediately and remains in effect until cancelled or superseded in writing.

IMHW-PW

SUBJECT: Avoidance of Little Fire Ant Introduction

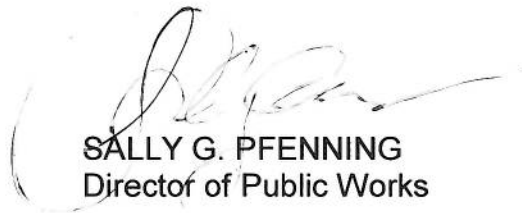
4. The proponent for administration of the Avoidance of Little Fire Ant Introduction policy is the DPW Environmental Division, at 655-9189 or 655-9191.

FOR THE COMMNADER:

2 Encls

1. Little Fire Ant Brochure

2. Little Fire Ant Testing Brochure



SALLY G. PFENNING
Director of Public Works

What is the Little Fire Ant?

Little FireAnts (LFA) are a new, invasive stinging ant that will spread across the Hawaiian islands if we don't take action now.

LFA infest yards, houses, farms and forests. Their powerful stings harm people and wildlife. LFA sting the eyes of pets, leading to blindness. LFA damage crops, food production, and the economy everywhere they have spread. LFA alter (or impact) people's lives because their stings are unavoidable.



Hawaii Island LFA infested areas (2014)

LFA was discovered in the Puna area of Hawaii Island in 1999 and has since spread, hidden in plants, logs, greenwaste, gravel, and even cars. Interisland spread has been somewhat limited by plant treatment and inspection, but LFA continue to spread.

In December 2013, LFA were discovered in hapuu logs at nurseries and garden shops on Oahu and Maui, and in landscaping on Lanai. Many of the hapuu sold to the public remain unaccounted for. There are many other pathways that LFA may be transported and introduced to other islands.

A multi-agency response has been launched to survey and treat potential LFA locations not found on Hawaii Island. Everyone needs to test their homes and yards and report possible LFA. We need your kokua.

Detect - Report - Stop the Little Fire Ant

DETECT

HDOA locations for dropping off or mailing samples:

Kauai: 4398A Pua Loke Street
Lihue, HI 96766

Oahu: 1428 S. King St
Honolulu, HI 96814

Maui: 635 Mua Street
Kahului, HI 96732

Molokai: (call 643-PEST for instructions)

Hawaii Island: Hawaii Ant Lab / HDOA
16 E. Lanikaula St
Hilo, HI 96720

REPORT

Immediately report suspected LFA to any of the following places:

**Hawaii Department of Agriculture
Statewide Hotline: 643-PEST (7378)**

Kauai Invasive Species Committee: 821-1490

Oahu Invasive Species Committee: 266-7994

Maui Invasive Species Committee: 573-6472

Molokai Invasive Species Committee: 553-5236

Big Island Invasive Species Committee: 933-3340

Hawaii Ant Lab: 315-5656 (Hawaii Island)

LEARN MORE

For more information about LFA, visit:
www.littlefireants.com or www.LFAHawaii.org

Partners and Contributors: Hawaii Department of Agriculture, Department of Land and Natural Resources, US Fish & Wildlife Service, Hawaii Ant Lab, Hawaii Invasive Species Council, Coordinating Group on Alien Pest Species, the Invasive Species Committees of Hawaii, College of Tropical Agriculture and Human Resources, University of Hawaii, The Nature Conservancy, Oahu Army Natural Resources Program, Pacific Cooperative Studies Unit, City and County of Honolulu.

Little Fire Ant

Wasmannia auropunctata



Detect - Report - Stop Little Fire Ant!

Encl 1
p 1 of 2

Protect Your Family

DETECT

Supplies: peanut butter, disposable chopsticks, zip top bags, and a pen.



1. Place sticks with a *thin* smear of peanut butter* every few feet in and around plants in your yard, garden, and lanai. Focus on shady, moist areas, the bottoms of pots, and where plants' leaves meet the stem.

**Regular peanut butter, not natural or fat free.*

***For those with a peanut allergy, use pieces of luncheon meat.*



2. Leave the sticks in place for **1 hour** during the cool part of the day.



3. Check sticks without moving them. Collect the stick if:
 - The ants are uniformly orange/red and VERY small.
 - You are unsure about the ants.

4. Very carefully place it directly into the bag (so ants don't fall off).

5. Seal the bag, label it with your name, address and phone number, and put it in your freezer overnight to kill the ants.

*View *How to Survey for LFA* video at <http://vimeo.com/97558997>

REPORT

Call the Hawaii Department of Agriculture (HDOA) statewide **pest hotline at 643-PEST** to report that you might have LFA. Drop off (or mail) the sample (zip top bag with frozen ants) at any HDOA office (see back for locations).

HDOA will contact you when the ants are identified. **Do not disturb the ants and do not control or treat the area.** This will make the nests difficult to find and possibly spread them further.

If HDOA confirms you don't have LFA, congratulations and thank you! Remain vigilant. **Always quarantine and test any new plants,** cut flowers, plant materials, mulch, soil and other items.

If you do have LFA, call HDOA about what to do next. We can help you control it, but we need your help to map and control every location of LFA to help prevent it from spreading.



How to identify LFA:

- Tiny ants: $\frac{1}{16}$ inch, as long as a penny is thick
- Orange-red in color
- Slow-moving



Look-alike: Tropical fire ant

- Common larger stinging ant
- Widespread
- Builds ground nests in sunny, dry areas
- Nests have distinct openings



An entire LFA colony can fit in macadamia nut shell

- LFA don't form mounds
- Nests don't have distinct openings
- Nests in moist, shady areas, in trees, under tree bark, under rocks, within logs & in leaf litter



Little Fire Ants are on the move, and could be in your plants or yard. Find out today using this simple test.



1. Smear a very thin coat of peanut butter on disposable chopsticks. Place them every few feet in and around plants in shady, moist areas, and up in banana leaf axles. Be sure peanut butter is in contact with surface of test site. (You can substitute spam or lunch meat for peanut butter.)
2. Leave the peanut butter chopsticks out for an hour during the day.
3. Check all chopsticks. If the ants you see are any one or more of the of the following, they are NOT LFA;
-black -large head with a small body
-fast-moving -more than one color
4. If you are unsure about the ants, or if you find orange or red ants that are VERY small, about as long as a penny is thick, you may have LFA, but a positive identification will require help.
5. Place the chopstick with ants into a zip-top bag, label it with your contact information, and place it in the freezer overnight to kill the ants.
6. The next day, deliver or mail your sample to the nearest Hawai'i Department of Agriculture (HDOA) office. You can also call the HDOA pest hotline at 643-PEST (643-7378), or the Oahu Invasive Species Committee at 266-7994 to make a report and get help. DO NOT move or spray infested materials, and do not move live ants! You are seeing the workers, and we need them alive to help us get to the queens.
7. Always quarantine and test your new plants and plant materials and other items from infested areas, because LFA will continue to be a threat to ALL our islands.

On Oahu, mail or drop off your samples at:

HDOA Plant Pest Control	OR	HDOA Plant Quarantine Branch
1428 S. King Street		1849 Auiki Street
Honolulu, HI 96814		Honolulu, HI 96819



Little Fire Ants are on the move, and could be in your plants or yard. Find out today using this simple test.



1. Smear a very thin coat of peanut butter on disposable chopsticks. Place them every few feet in and around plants in shady, moist areas, and up in banana leaf axles. Be sure peanut butter is in contact with surface of test site. (You can substitute spam or lunch meat for peanut butter.)
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SPREAD THE WORD, NOT THE PEST!!

For more information visit: www.LFAHawaii.org
or www.littlefireants.com

EARLY DETECTION IS OAHU'S GREATEST CHANCE OF CONTROLLING LITTLE FIRE ANT.

- Little Fire Ants (LFA) are new to Oahu.
- Arrived in December 2013 on hapuu logs from Hawaii Island.
- Unknown how many hapuu logs were sold before LFA were detected.
- LFA are one color...orange.
- LFA are tiny, about 1/16th of an inch...that's the thickness of a penny.
- LFA are very slow-moving and don't cling to surfaces very well.
- LFA live not only on the ground, but also in the trees.
- LFA fall from trees, stinging whomever happens to be underneath.
- LFA deliver painful stings that can look like a rash and last for days.
- LFA can sting animals in their eyes, causing pain and blindness.
- LFA farm agriculture pests such as mealy bugs and scale, causing decreased crop production.
- Large LFA infestations are difficult and expensive to control.



Cas Vanderwoude

OISC



Cas Vanderwoude



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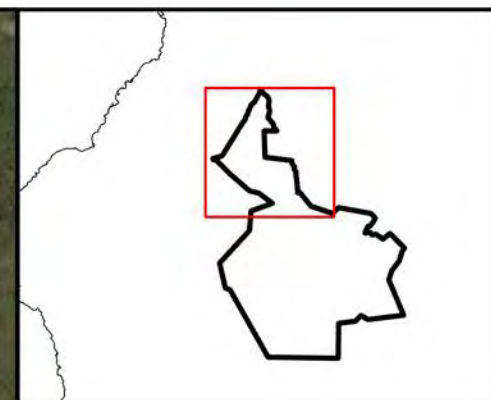
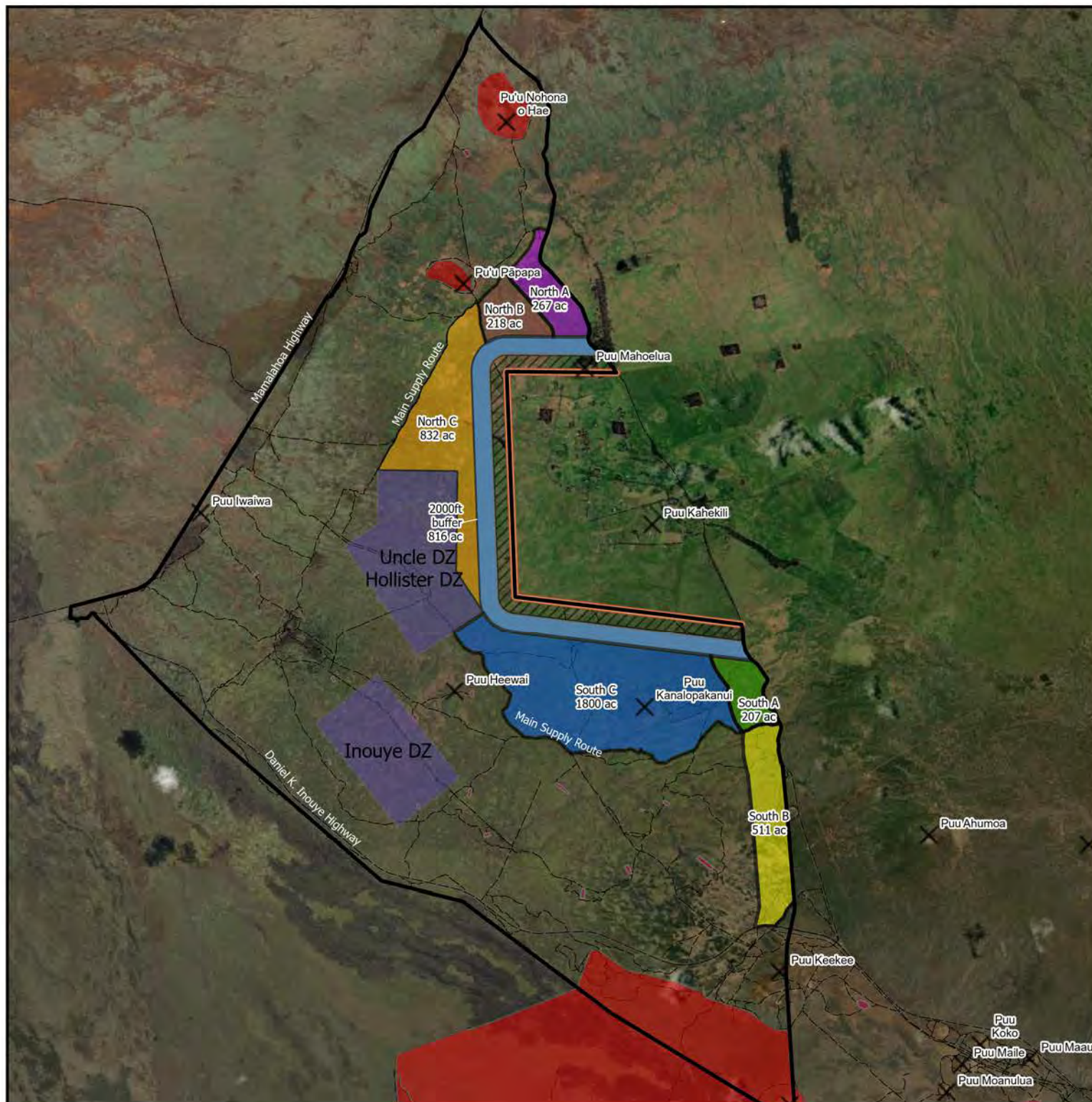
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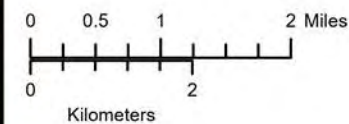
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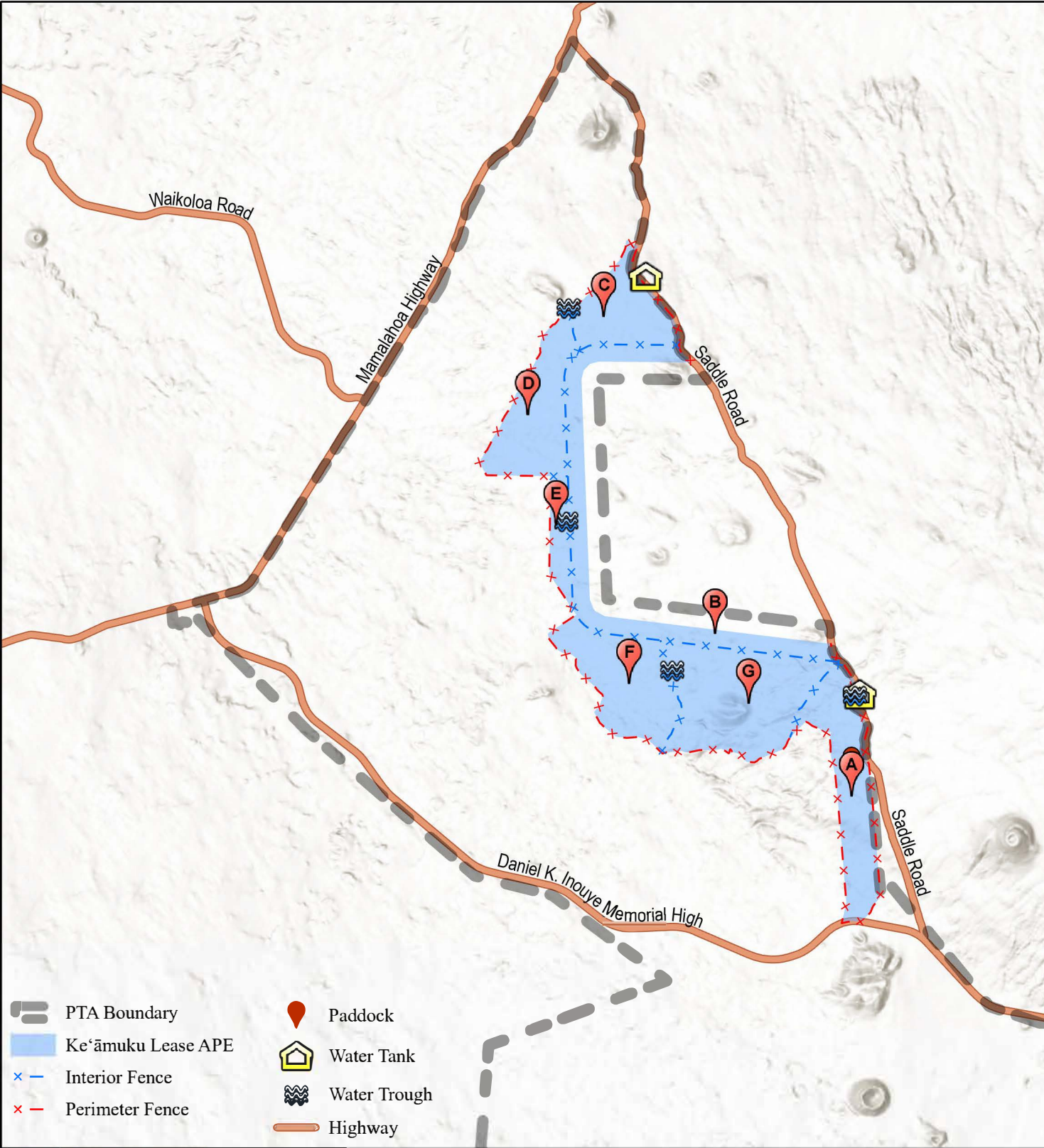




Legend

- ✕ Cinder Cones (Pu'u)
- Roads
- Waikī Boundary
- KMA Boundary Line
- LZs
- DZs
- Ungulate Exclusion Fences
- Ag Grazing North A, 267 ac
- Ag Grazing North B, 218 ac
- Ag Grazing North C, 832 ac
- Ag Grazing South A, 207 ac
- Ag Grazing South B, 511 ac
- Ag Grazing South C, 1800 ac
- ▨ Existing Ag Grazing Buffer, 762 ac
- 2nd 1000-ft Ag Grazing Buffer, 816 ac





USAG-HI DPW ENV
Cultural Resources
K. Adam Thomas
3/7/2023

Figure 1 - KMA Grazing Lease Development Plan
CRS-22-095 - Ke'āmuku Maneuver Area Grazing Lease No. 2
Installation, Pōhakuloa Training Area, Hawai'i
TMK (3) 6-7-001:003, (3)6-7-001:042, and (3) 6-7-001:045



SUBJECT: CRS-22-095 Livestock Grazing Lease No. 2, KMA
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Description of the Undertaking per 36 CFR § 800.11(d)(1)

The undertaking involves leasing 4642 acres of the Ke'āmuku Maneuver Area (KMA) to Parker Ranch for cattle grazing to support vegetation management and fire prevention in the area.

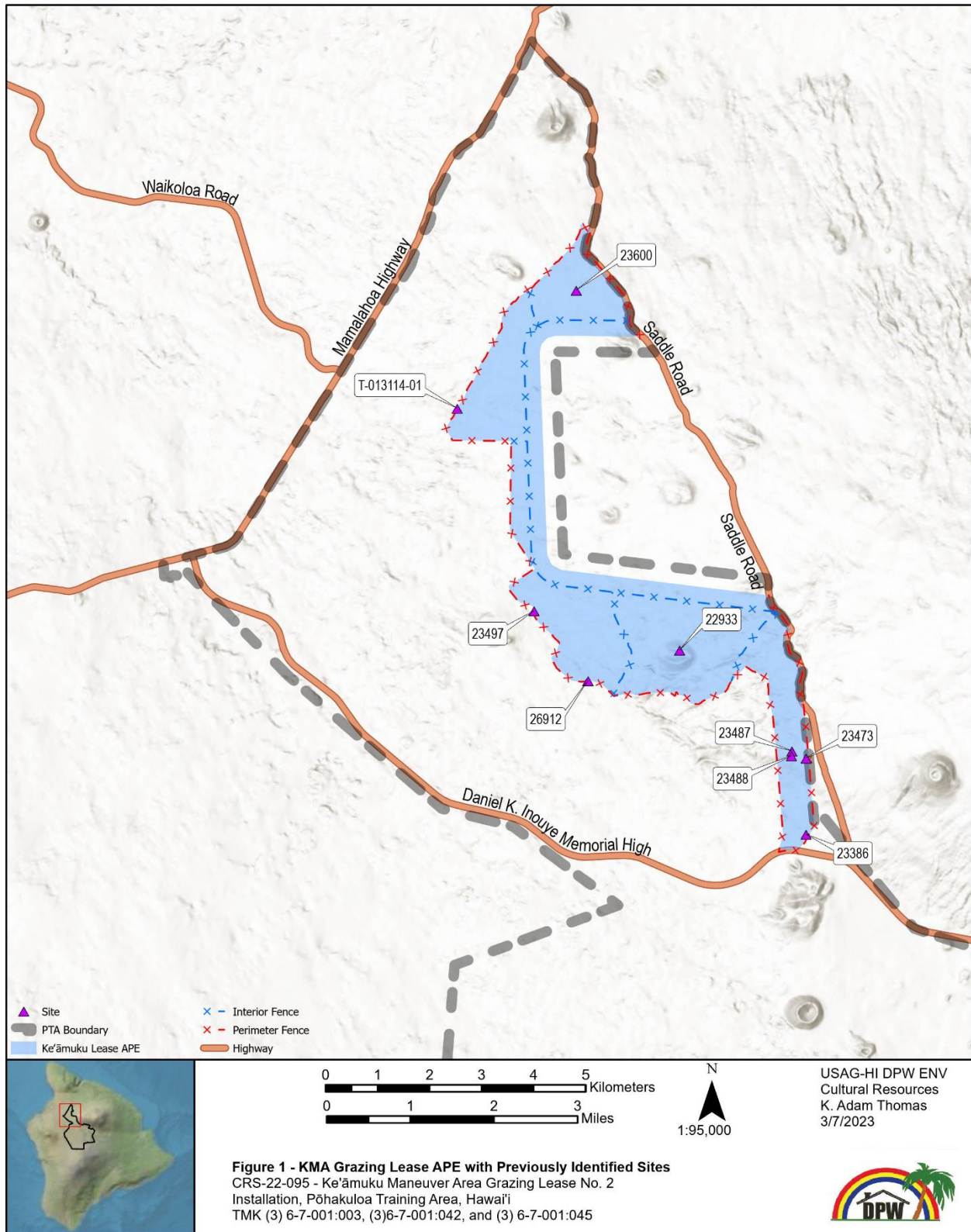
The area of potential effect (APE) for this undertaking (Figure 1) is 4642 acres (18.8 square kilometers). The lease will be for a term of five years with the option to extend for an additional 5 years. The lessee will construct and maintain approximately 18 miles of fence line on the lease perimeter using 6 ft.-6in. tall galvanized steel T-posts, 8 ft. tall galvanized schedule 40 pipe and brace posts, and hog wire. The posts will be spaced every 12-15 ft. for a total of approximately 7920 posts, and driven down to a depth of two feet. An area approximately ten feet wide on the interior of the perimeter fence will be scraped and grubbed for a total of approximately 21.82 acres. This provides vehicle access along the fence line and to enable the hog fence to lay flat to prevent pigs from digging under the fence and entering the area. The lessee intends to construct seven paddocks of varying sizes, by installing single strand electric fencing. Approximately 10 miles of electric fence will be constructed with 6ft.-6in. tall T-posts placed every 30 feet for a total of roughly 1760 posts, driven down to a depth of two feet. Cattle will be rotated through the paddocks to avoid erosion issues and ensure adequate feed. Exact numbers of cattle and length of time in each paddock will be based on size of paddock and height of vegetation. In order to provide adequate water within the lease area, the lessee will install 10 miles (16 kilometers) of above-ground high-density polyethylene water lines, four 450-gallon water troughs, and two 2000-gallon water storage tanks.

Description of the Steps Taken to Identify Historic Properties [36CFR § 800.11(d)(2)]

Background and archival research about the APE found that the Parker Ranch has a long history of cattle and sheep ranching in the area, having acquired the Ke'āmuku parcel as part of the purchase of Waikoloa from the heirs of George Hueu Davis in 1901. Farming operations at Waiki'i Village, adjacent to the Ke'āmuku parcel, began as early as 1902, where they focused on growing corn, beekeeping, and orchards. Farming activities, including mechanical plowing, occurred across the APE until the middle of the 20th century. In the 1950s, Waiki'i Village was closed and many of the buildings moved to Waimea due to failed crops caused by drought (Roberts et al. 2004) as well as changes in transportation methods (Maly & Maly 2002). Since then, the Waiki'i Village area has been developed for private residences.

The Army purchased the Ke'āmuku parcel from Parker Ranch in 2006 and designated it the Ke'āmuku Maneuver Area (KMA). Ranching continued in the APE until 2010 when Army training began in the KMA. After the 2006 purchase, the Army and the Waiki'i Homeowners Association agreed to create a buffer area around the perimeter of the Waiki'i Village where no training would occur. In 2016, cattle were reintroduced to the KMA in the buffer around Waiki'i Village as part of a grazing lease to reduce the vegetation fuel load and protect the Waiki'i community from wild fires.

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Previous inventory efforts in the APE include seven archaeological surveys that are considered adequate for this undertaking (Table 1; Figure 2). Six of the surveys identified sites within the APE for the proposed undertaking. With the number of archaeological surveys previously conducted, no future identification efforts were determined necessary

Table 1. Archeological Surveys in the APE

Survey	Reference	Survey Type	Year	Sites within Proposed APE
Phase I Archaeological Reconnaissance Survey of 1,010 Acres of Pu'u Ke'eke'e Lands	Desilets and Roberts 2005; Brown, et al 2008	Pedestrian	2002	22933, 23386, 23473
Archaeological Surveys of Proposed Training Areas for the Stryker Brigade Combat Team	Roberts, et al 2004; Robins, et al 2007	Pedestrian	2004	22933, 23473, 23487, 23488, 23490, 23497, 23600
Archaeological Survey of Trail to West Side of Ke'amuku Sheep Station	Taomia & Luscomb 2008	Pedestrian	2008	26912
Archaeological Survey of the He'ewai Mauka Trail in Ke'amuku Maneuver Area for Trail Improvement Project	Syrop and Curdts 2013	Pedestrian	2010	23497
Cultural Resources Survey of the Waiki'i Wild Fire Management Area in Priority Area 1 & 3 for the Proposed Improvements in the Ke'amuku Maneuver Area	Head 2012	Pedestrian	2011	None
Phase I Cultural Resources Survey of Target Locations for the Proposed Repairs to Ke'e Ke'e Road and the Main Supply	Crowell 2011	Pedestrian	2011	26912

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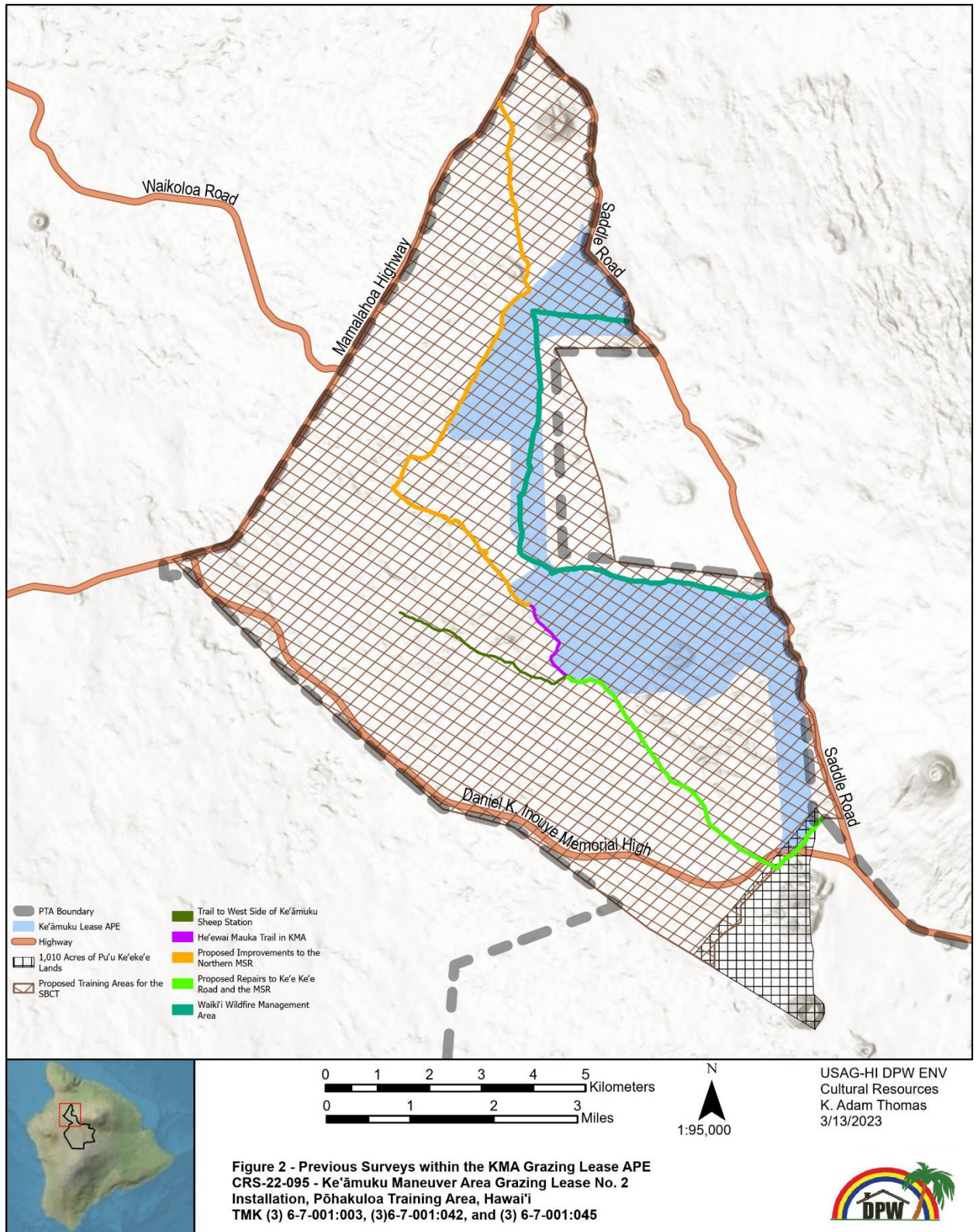
Route in Priority Area One of the Ke'āmuku Maneuver Area at Pōhakuloa Training Area				
Cultural Resources Survey of the Northern Portion of the Proposed Improvements to the Main Supply Route (MSR) Trail in Priority Areas Two and Three of the Ke'āmuku Maneuver Area	Yamauchi 2014	Pedestrian	2013	T-013114-01,

Site 23386 is a modern stone alignment located adjacent and parallel to a modern northeast-southwest oriented fence line (Desilets and Roberts 2005, Brown et al 2008). The alignment is constructed of loosely piled 'a'ā boulders and cobbles with an average width of 1.2 m. No artifacts or other cultural resources were observed in the vicinity of the stone alignment. The site was initially interpreted by Desilets and Roberts (2005) as a former livestock fenceline associated with sheep and cattle grazing, but after closer inspection it is evident that the stones have been aligned by heavy machinery sometime in the 20th century and the alignment is a result of landscape clearing performed in preparation for fenceline installation. In addition, this site is not historically significant and does not qualify for listing in the National Register of Historic Places (NRHP).

Site 23473 consists of two mound features constructed of local 'a'ā lava rock located on top of a west facing slope approximately 25 m west of a 4x4 road (Roberts et al. 2004; Robins et al. 2007). Feature 1 measures 2.3 m long x 1.8 m wide with a height of 0.6 m and was noted in 2007 by Robins and colleagues as being in poor condition. Feature 2 is a 0.7 m diameter circular mound comprised of approximately 10 cobbles piled 0.5 m high. It is located 30 m south of Feature 1. The north-south alignment of the mounds suggests they are markers for the adjacent north-south oriented road. Based on the lack of cultural material associated with the site and the poor condition of the features, this site does not qualify for inclusion in the NRHP.

Site 23487 is a roughly 3 m diameter circular enclosure measuring 0.6 m high (Robins et al 2007, Rumsey 2009). It is comprised of loosely stacked boulders and cobbles with the walls resting directly on the ground surface. It is in poor condition and appears to be hastily constructed (Rumsey 2009). Military debris and gun casings were recovered adjacent to the southwest wall with bullet casing headstamp indicating a 1952 manufacture date. This site was determined to be military in origin and used as a small defensive position/gun emplacement during training activity. Based on the recent military origin of the site and its poor condition, this site lacks integrity and historical significance and does not qualify for inclusion in the NRHP.

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Site 23488 is a low, triangular mound located on the nose of a ridge (Robins et al 2007, Rumsey 2009). The site is approximately 1.5 m long x 1.5 m wide x 0.3 m high and is constructed of approximately 12 'a'ā boulders. A small pile of machine gun casings were found approximately 3.7 m northwest of the mound. The headstamp on the casings was dated to 1952. This site was determined to be military in origin and likely used as a gun emplacement for a bipod or tripod mounted machine gun during training actions. Based on the recent military origin and apparent hasty construction, this site lacks integrity and historical significance and does not qualify for inclusion in the NRHP.

Site 23497 consists of 3 features situated atop a high point just south of a gorge with a two-track access road bisecting the site (Robins et al 2007, Lewis & Tejeda, 2017). Feature 1 is a 4 m x 3 m L-shaped structure constructed of basalt cobbles and boulders piled 1 to two 2 courses high. No associated cultural materials were recovered during survey or subsequent testing. Feature 2 is a 3 m x 1.8 m x 0.5 m tall C-shaped structure located approximately 14 m southeast of Feature 1. It is constructed of basalt cobbles and boulders, including some rough facing, and is piled five courses high with an associated soil floor. No associated cultural materials were recovered during survey or subsequent testing. Feature 3 is a 4 m x 3 m x 0.6 m tall C-shaped structure located approximately 3 m southeast of Feature 2 and is situated on the edge of a ridgeline. The structure is constructed of basalt cobbles and small boulders in association with *in situ* boulders and an associated soil floor. The walls are 1 to two 2 courses high. Initial (Robins et al 2007) and subsequent (Lewis & Tejeda, 2017) testing recovered military rubbish in association with Feature 3. Based on the recent military origin and apparent hasty construction, this site lacks integrity and historical significance and does not qualify for inclusion in the NRHP.

Site 23600 is a 2.5 m long x 1 m wide x 0.7 m high mound located on a small rocky knoll (Roberts et al 2004, Robins et al 2007). It is constructed of loosely piled small boulders and has been interpreted as a likely land clearing pile associated with pasture improvement activities. No cultural materials have been observed in association with the mound and it was noted in fair condition. Due to the poor integrity, lack of associated cultural materials, and unlikelihood that the site will yield additional information regarding local cattle ranching activities, the site lacks historical significance and does not qualify for listing on the NRHP.

Site 26912 is a 4 m long x 4 m wide x 3 m tall collapsed wooden water tank complex located south of Pu'u Kanalopakanui (Taomia and Luscomb 2008). The water tank is constructed of milled redwood planks placed atop several cement pillars and bound by adjustable metal bands. An associated wooden ladder, galvanized pipe, and a float were also documented. In addition, a fence post enclosure surrounds the tank and water pipes extend out from the tank and across a nearby stream bed. In 2010, nearby construction activities shut off water to the tank causing a loss of structural integrity (Tejeda et al. 2014). The absence of water in the tank caused the boards to dry and shrink; the metal bands to loosen; and, eventually, the collapse of the structure into a heap. In addition, destruction by ungulates has also occurred, including to the surrounding barbed wire fencing. Due the severe loss of structural integrity and subsequent destruction by ungulates, this site does not qualify for listing in the NRHP.

SUBJECT: CRS-22-095 Livestock Grazing Lease No. 2, KMA
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Site T-013114-01 is a 185 square-meter historic-era ranching complex consisting of four features: a remnant wooden fence, a steel water trough, a ground surface border of welded pipe and rebar, and a length of galvanized pipe (Yamauchi 2014). The three fence posts are positioned at the boundary of the complex and were likely part of a fence enclosure, as evidenced by u-nails still embedded in the fence posts. All posts were noted to be in good condition. The large rectangular galvanized steel water trough most likely received water from upslope and has a three-inch galvanized steel pipe connected to a feed system covered by a rectangular galvanized steel cover. The trough was noted to be in excellent condition. A ground surface border comprised of welded water pipes and bent rebar is in excellent condition. Finally, a galvanized pipe extends 1.2 m perpendicular to the trough and is buried into the ground surface. No associated cultural materials have been recovered from the site. This site likely functioned as a watering area during Parker Ranch's tenure of the Ke'āmuku parcel. The site has experienced some impacts by the natural elements and a degradation of features means the site no longer retains its integrity. Due to the lack of associated cultural materials, loss of integrity, and unlikelihood that the site will yield additional information regarding local cattle ranching activities, the site does not qualify for listing on the NRHP.

Basis for Determining that No Historic Properties Are Affected per 36 CFR § CFR 800.11(d)(3)

The sites distinctly lack integrity of design, material, and workmanship as result of expedient rudimentary construction. While the sites remain on the ground, at least mostly, where they were constructed does not merit integrity, and setting, feeling, association have been degraded to the point the sites and objects cannot convey their importance. As the sites and objects show a lack of integrity and do not convey their importance, the USAG-HI PTA Garrison Commander has determined that the seven sites are not eligible to the NRHP.

None of the sites identified in the APE retain historical significance and integrity that would make them eligible for inclusion in the NRHP and therefore, they are therefore not considered to be historic properties for the purposes of the National Historic Preservation Act. Because there are no historic properties in the APE, no historic properties will be affected by the proposed undertaking.

SUBJECT: CRS-22-095 Livestock Grazing Lease No. 2, KMA
Enclosure 2

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SUBJECT: CRS-22-095 Livestock Grazing Lease No. 2, KMA

Enclosure 2

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ENCLOSURE 3

SUBJECT: National Historic Preservation Act Section 106 Consultation for Ke'āmuku Maneuver Area Grazing Lease No. 2, Pōhakuloa Training Area, Hawai'i Island, Hawai'i TMK (3) 6-7-001:003, (3)6-7-001:042, and (3) 6-7-001:045. Project# CRS-22-095. Archaeology Review

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ENCLOSURE 3

SUBJECT: National Historic Preservation Act Section 106 Consultation for Ke‘āmuku Maneuver Area Grazing Lease No. 2, Pōhakuloa Training Area, Hawai‘i Island, Hawai‘i TMK (3) 6-7-001:003, (3)6-7-001:042, and (3) 6-7-001:045. Project# CRS-22-095. Archaeology Review

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Ms. Taffi Wise Kanu o Ka 'Aina Learning 'Ohana	Mr. William Young House of Nobles

Enclosure 3

[URL Verdict: Neutral][Non-DoD Source] RE: End of Section 106 Consultation Period for CRS-22-095 Ag Grazing Lease at KMA, PTA

Downer, Alan S <alan.s.downer@hawaii.gov>

Wed 5/24/2023 12:38 PM

To: Miller, Heidi E CIV USARMY IMCOM PACIFIC (USA) <heidi.e.miller10.civ@army.mil>; Hacker, Stephanie <stephanie.hacker@hawaii.gov>

Cc: Crowley, David M (Dave) CIV USARMY IMCOM PACIFIC (USA) <david.m.crowley22.civ@army.mil>; Cronin, Kevin E LTC USARMY IMCOM PACIFIC (USA) <kevin.e.cronin.mil@army.mil>; Gamez, Adrian CIV USARMY IMCOM PACIFIC (USA) <adrian.gamez.civ@army.mil>; Cho, Jessica CSM USARMY IMCOM PACIFIC (USA) <jessica.cho.mil@army.mil>; Anamizu, Joy N CIV USARMY IMCOM PACIFIC (USA) <joy.n.anamizu.civ@army.mil>; Ana.Tejada@colostate.edu <Ana.Tejada@colostate.edu>; mborthwick@achp.gov <mborthwick@achp.gov>; Gilda, Laura L CIV USARMY IMCOM PACIFIC (USA) <laura.l.gilda.civ@army.mil>; McGunegle, Steven B COL USARMY IMCOM PACIFIC (USA) <steven.b.mcgunegle.mil@army.mil>; Skasik, Brandi G CIV USARMY IMCOM PACIFIC (USA) <brandi.g.skasik.civ@army.mil>; Wise, Derek Glenn CSM USARMY IMCOM PACIFIC (USA) <derek.g.wise.mil@army.mil>; Schmidt, Mary E CIV USARMY HQDA DCS G-9 (USA) <mary.e.schmidt37.civ@army.mil>; West, Katherine J CIV USARMY IMCOM (USA) <katherine.j.west5.civ@army.mil>; usarmy.hawaii.crmp@mail.mil <usarmy.hawaii.crmp@mail.mil>; Alvarado, Timothy L LTC USARMY SOCOM HQ SOCOM (USA) <timothy.l.alvarado.mil@army.mil>; mborthwick@achp.gov <mborthwick@achp.gov>; Reid Nelson <rnelson@achp.gov>; david.b.guldenzopf.civ@mail.mil <david.b.guldenzopf.civ@mail.mil>

Aloha Dr. Miller: As explained below, I object to the PTA's arbitrary 'closing' of consultation on the referenced undertaking.

Any fair reading of 36 CFR Part 800 makes it clear that consultation with Native Hawaiian Organizations (NHO) must occur *prior* to the Army making its determinations of eligibility and effect. Making such determinations prior to consultation violates the purpose of those consultations. Your own administrative record makes it plain that consultation with NHOs occurred after the Army made those determinations and sought the SHPOs concurrence. Indeed those consultations occurred after what would have been the end date for the SHPO to respond to your initial submission.

The 'clock' on SHPO response starts when the SHPO receives a completely documented submission that provides the SHPO with sufficient information to reach an independent conclusion regarding the adequacy of the effort to identify historic properties, the Army's evaluation of the properties identified, and the Army's determination of effect, etc. Consultation with NHOs is essential to informing all of the Army's determinations on each of those. 'Consulting' NHOs after the Army has reached its conclusions robs both the Army and the SHPO of information essential to the conclusions reached and our ability to have confidence in them.

In this specific instance, the Army cannot start and stop the process and force SHPO to respond in accordance with the Army arbitrary determination of the start of the consultation process. Part 800 is clear on its face that the SHPOs consultation period begins once the SHPO has all of the information required by the Part 800. It does not start when the Army submits an incomplete information package. The SHPO's review period began on May 19, 2023, when the Army submitted its 'notes' on the consultation meeting with NHOs.

By copy of this email, I am inviting the Advisory Council on Historic Preservation to comment on the timing question.

If you have any questions, need clarification or wish to discuss any of this, please do not hesitate to contact me.

Mahalo, Alan

From: Miller, Heidi E CIV USARMY IMCOM PACIFIC (USA) <heidi.e.miller10.civ@army.mil>
Sent: Wednesday, May 24, 2023 9:17 AM
To: Hacker, Stephanie <stephanie.hacker@hawaii.gov>; Downer, Alan S <alan.s.downer@hawaii.gov>
Cc: Crowley, David M (Dave) CIV USARMY IMCOM PACIFIC (USA) <david.m.crowley22.civ@army.mil>; Cronin, Kevin E LTC USARMY IMCOM PACIFIC (USA) <kevin.e.cronin.mil@army.mil>; Gamez, Adrian CIV USARMY IMCOM PACIFIC (USA) <adrian.gamez.civ@army.mil>; Cho, Jessica CSM USARMY IMCOM PACIFIC (USA) <jessica.cho.mil@army.mil>; Anamizu, Joy N CIV USARMY IMCOM PACIFIC (USA) <joy.n.anamizu.civ@army.mil>; Ana.Tejada@colostate.edu; mborthwick@achp.gov; Gilda, Laura L CIV USARMY IMCOM PACIFIC (USA) <laura.l.gilda.civ@army.mil>; McGunegle, Steven B COL USARMY IMCOM PACIFIC (USA) <steven.b.mcgunegle.mil@army.mil>; Skasik, Brandi G CIV USARMY IMCOM PACIFIC (USA) <brandi.g.skasik.civ@army.mil>; Wise, Derek Glenn CSM USARMY IMCOM PACIFIC (USA) <derek.g.wise.mil@army.mil>; Schmidt, Mary E CIV USARMY HQDA DCS G-9 (USA) <mary.e.schmidt37.civ@army.mil>; West, Katherine J CIV USARMY IMCOM (USA) <katherine.j.west5.civ@army.mil>; usarmy.hawaii.crmp@mail.mil; Alvarado, Timothy L LTC USARMY SOCOM HQ SOCOM (USA) <timothy.l.alvarado.mil@army.mil>
Subject: [EXTERNAL] Re: End of Section 106 Consultation Period for CRS-22-095 Ag Grazing Lease at KMA, PTA

Good morning Ms. Hacker and Dr. Downer,

Thank you for your interest and consideration of this project.

A review request and supplementary documentation were provided to SHPD on Thursday 13 APR 2023 regarding the proposed Ag Grazing Lease in KMA (CRS-22-095; HICRIS 2023PR00470). Based on this submission date, the end of the 30-day comment period was slated for Monday, 15 MAY 2023. As Ms. Hacker indicated, I spoke with her on the phone on Tuesday, 16 MAY 2023 and agreed to provide SHPD until COB Friday, 19 MAY 2023 to provide comments. PTA Cultural Resources hosted a consultation meeting with consulting parties on Thursday, 18 MAY 2023. The notes from this meeting were provided to SHPD at COB on Friday, 19 MAY 2023 along with a notice alerting the end of the consultation period.

This notice of the end of the consultation period and associated meeting notes were provided as a courtesy to SHPD to alert them of the end of the consultation period and document the lack of comments regarding cultural resources. Based on 36 CFR 800, this alert and meeting minutes are not a requirement and do not reset the 30-day window. There is nothing in 36 CFR 800.5 or 800.11 stating that alerting SHPD of a lack of comments constitutes new information and resets the 30-day window.

Since PTA CR received no comments regarding NHPA or cultural resources concerning the proposed project within the extended time frame, we are moving forward with the project as stated.

We appreciate the time you spent reviewing this project and your involvement in the consultation process.

Respectfully,

Heidi Miller, PhD, RPA
Archaeologist
USAG-Pōhakuloa
heidi.e.miller10.civ@army.mil
808-787-7802

From: Hacker, Stephanie <stephanie.hacker@hawaii.gov>
Sent: Friday, May 19, 2023 3:13 PM
To: Miller, Heidi E CIV USARMY IMCOM PACIFIC (USA) <heidi.e.miller10.civ@army.mil>; Downer, Alan S

<alan.s.downer@hawaii.gov>

Cc: Crowley, David M (Dave) CIV USARMY IMCOM PACIFIC (USA) <david.m.crowley22.civ@army.mil>; Cronin, Kevin E LTC USARMY IMCOM PACIFIC (USA) <kevin.e.cronin.mil@army.mil>; Gamez, Adrian CIV USARMY IMCOM PACIFIC (USA) <adrian.gamez.civ@army.mil>; Cho, Jessica CSM USARMY IMCOM PACIFIC (USA) <jessica.cho.mil@army.mil>; Anamizu, Joy N CIV USARMY IMCOM PACIFIC (USA) <joy.n.anamizu.civ@army.mil>; Ana.Tejada@colostate.edu <Ana.Tejada@colostate.edu>; mborthwick@achp.gov <mborthwick@achp.gov>; Gilda, Laura L CIV USARMY IMCOM PACIFIC (USA) <laura.l.gilda.civ@army.mil>

Subject: [Non-DoD Source] Re: End of Section 106 Consultation Period for CRS-22-095 Ag Grazing Lease at KMA, PTA

Hello Heidi,

We just spoke Tuesday regarding the Section 106 process for this project. I asked if the Army would still accept a SHPO response letter this week and you stated yes and that there was a consultation meeting to be held this Thursday. In response, I noted that with the upcoming meeting, the Section 106 process was still then open. With receipt of the consultation notes you have provided in your email today, regardless of outcome (i.e. whether objections or additional information was received), the review timeline restarts.

Stephanie

Stephanie Hacker, M.A.

Archaeologist IV

Hawaii State Historic Preservation Division

Kakuhihewa Building

601 Kamokila Blvd., Suite 555

Kapolei, Hawaii 96707

All submissions for SHPD review must be submitted through SHPD's intake system at <https://shpd.hawaii.gov/hicris>. Individual SHPD staff are not responsible for processing intake of materials for review. Please do not mail hard copy documents to our office.

SHPD initiated "I MUA MONDAYS" in April 2019. Every Monday, SHPD is closed to the public, allowing staff to focus exclusively on project reviews. Staff will not accept meetings, phone calls, emails, or "walk-ins" on Mondays. The SHPD Library will be closed to the public. This policy has been approved at the highest levels in the Administration.

From: Miller, Heidi E CIV USARMY IMCOM PACIFIC (USA) <heidi.e.miller10.civ@army.mil>

Sent: Friday, May 19, 2023 2:37 PM

To: Downer, Alan S <alan.s.downer@hawaii.gov>; Hacker, Stephanie <stephanie.hacker@hawaii.gov>

Cc: Crowley, David M (Dave) CIV USARMY IMCOM PACIFIC (USA) <david.m.crowley22.civ@army.mil>; Cronin, Kevin E LTC USARMY IMCOM PACIFIC (USA) <kevin.e.cronin.mil@army.mil>; Gamez, Adrian CIV USARMY IMCOM PACIFIC (USA) <adrian.gamez.civ@army.mil>; Cho, Jessica CSM USARMY IMCOM PACIFIC (USA) <jessica.cho.mil@army.mil>; Anamizu, Joy N CIV USARMY IMCOM PACIFIC (USA) <joy.n.anamizu.civ@army.mil>; Ana.Tejada@colostate.edu <Ana.Tejada@colostate.edu>; Gilda, Laura L CIV USARMY IMCOM PACIFIC (USA)

<laura.l.gilda.civ@army.mil>

Subject: [EXTERNAL] End of Section 106 Consultation Period for CRS-22-095 Ag Grazing Lease at KMA, PTA

Dear Dr. Downer:

Please find attached the letter closing the Section 106 Consultation Period for Ke'āmuku Maneuver Area Grazing Lease No. 2, Pōhakuloa Training Area, Hawai'i Island, Hawai'i TMK (3) 6-7-001:003, (3)6-7-001:042, and (3) 6-7-001:045. Project# CRS-22-095.

USAG-HI PTA uploaded the Section 106 consultation letter and required documentation transmitting the finding of "no historic properties affected" to SHPD's HICRIS on April 12, 2023. The 30 day review period has now closed. USAG-HI PTA did not receive an objection from the State Historic Preservation Officer (SHPO) within the review period and has received no objections regarding cultural resources from any of the consulting parties.

Also attached are the Memorandum for Record and Meeting Minutes from the consultation meeting held 18 May 2023 on Oahu.

If you have any questions, please contact Dr. Heidi Miller, USAG-HI PTA Archaeologist, at heidi.e.miller10.civ@army.mil or 808-787-7802, or Mr. David Crowley, USAG-HI Cultural Resources Manager at david.m.crowley22.civ@army.mil or 808-655-9707.

respectfully,

Heidi Miller, PhD, RPA
Archaeologist
USAG-Pōhakuloa
heidi.e.miller10.civ@army.mil
808-787-7802

Enclosure 4

AMIM-HIP-PE

8 June 2023

MEMORANDUM FOR RECORD

SUBJECT: Communication with Hawaii State Historic Preservation Division regarding the proposed 2nd Agricultural Grazing Lease in Ke'āmuku Maneuver Area, Pōhakuloa Training Area, Hawai'i Island, Hawai'i (CRS-22-095).

1. On 13 April 2023, I submitted a Section 106 consultation packet (letter dated 12 April 2023) to the State Historic Preservation Division (SHPD), the State Historic Preservation Office (SHPO) for Hawai'i, through SHPD's Hawai'i Cultural Resource Information System (HICRIS) online portal and via email to Ms. Stephanie Hacker, SHPD Inter-Island Archaeologist, and Dr. Alan Downer, SHPD Administrator. The same packet was provided to our National Historic Preservation Act (NHPA) Consultation Parties on Monday 17 April 2023 via either email or United States Postal Service (dependent on their preferred method of communication). The submission of this packet marked the start of the 30-day comment period as outlined in the NHPA 36 CFR 800 designating its closure on Monday 15 May 2023 with a consultation meeting for those interested scheduled for Thursday 18 May 2023.

2. On Tuesday, 16 May 2023, Ms. Hacker called me on the phone and requested a consultation period extension until the end of the week. I agreed to provide SHPD until close of business on Friday, 19 May 2023 to provide comments. Myself and Dave Crowley, U.S. Army Garrison Hawai'i (USAG-HI) Cultural Resources Manager (CRM) hosted a hybrid in-person/Teams consultation meeting with interested Native Hawaiian Organizations (NHOs) and the public on Thursday 18 May. On Friday, 19 May, I provided an End of Consultation Notice to SHPD via email and the HICRIS portal. I included a copy of the meeting minutes from our consultation meeting with the Notice as a courtesy to SHPD. We received no comments regarding cultural resources either during the meeting or the consultation period. This same Notice was provided to our consulting parties on Friday 26 May 2023. The Notices were not sent at the same time due to an issue with the Notice sent to consulting parties which had to be resigned by my Commander.

3. Ms. Hacker from SHPD responded to the End of Consultation Notice on Friday, May 19 stating that receipt of the meeting minutes from the consultation meeting was new information and restarted the SHPD response timeline. At this time, SHPD began to loop in the Advisory Council on Historic Preservation (ACHP) by cc'ing Ms. Megan Borthwick on the email chain. On Wednesday 24 May, I responded to Ms. Hacker's email stating that the meeting minutes were provided as a courtesy to them and did not constitute new information. I informed them that we were continuing the project as planned. Dr. Downer responded later that day stating that consultation with NHOs must occur prior to the Army making Determination of Eligibility. He further stated that the submission of the meeting minutes completed the information package and marked the beginning of the SHPD response period.

4. On Thursday, 25 May, Ms. Borthwick of the ACHP contacted me via email requesting a phone conversation. We spoke over the phone later that day and Ms. Borthwick explained to me that she was gathering information on the project and associated discussions between the USAG-HI cultural resources team and SHPD. I provided her a quick description of the project and a rundown of the conversations and correspondence up to that point. Ms. Borthwick asked me to provide her with a copy of the Section 106 packet, which I sent her by email later that day.

I also provided her with the End of Consultation Notice and Consultation Meeting Minutes. Ms. Borthwick told me she was also planning to speak with Ms. Hacker and, once she had gathered all the information, she would discuss the issue with the rest of the ACHP team and provide us with some guidance. I thanked her for her time and told her I would wait for her guidance before making any further moves.

5. On Tuesday 30 May, SHPD responded to the 12 April 2023 request for concurrence with a non-concurrence letter. In the letter, SHPD stated that they did not believe the USAG-HI met its Section 106 requirements and that the USAG-HI foreclosed on SHPO's ability to comment. On 2 June, I spoke with Ms. Mary Schmidt, Army Deputy Preservation Officer, concerning the project and subsequent correspondence with SHPD. Ms. Schmidt advised USAG-HI to submit a formal request for intervention to the ACHP.

6. I disagree with SHPD's assessment that the USAG-HI did not meet its Section 106 requirements and that we foreclosed on SHPO's ability to comment. Per 36 CFR 800.2(a)(4) consulting parties were involved in the findings as indicated by the letter sent to consulting parties, the provided consultation period, and the consultation meeting. No determinations of eligibility were made at this time because none of the sites in the area of potential effects (APE) were considered eligible, thus the finding of 'no historic properties affected.' In addition, 36 CFR 800.3(g) states that consultation may address multiple steps so long as consulting parties have adequate time to express their views. The way the USAG-HI submitted the Section 106 packet for this undertaking is standard practice for a project of this scope and SHPD has accepted this practice in the past. Consulting parties were provided adequate time to express their views and no comments on cultural resources were received during the comment period, which extended beyond the 30-day requirement. Furthermore, under 36 CFR 800.2(a)(4)(c), SHPD is a separate entity from the NHOs and is supposed to provide advice and assistance to the federal agency regarding historic properties independently from NHOs. Finally, according to 36 CFR 800.9(b), agency foreclosure refers specifically on the ACHP's ability to comment: it does not apply to SHPD and SHPD can not make this claim.

7. The point of contact for the memorandum is the undersigned at heidi.e.miller10.civ@army.mil or (808)787-7802.

Heidi Miller, PhD, RPA
USAG-HI Archaeologist