

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

November 19, 2009

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

PSF No.: 09HD-137

HAWAII

Issuance of Right-of-Entry Permit to U.S. Army Corps of Engineers on Lands Encumbered by Executive Orders No. 1225, 1588, and 3092 to Department of Public Safety for Kulani Correctional Facility, Waiakea, South Hilo, Island of Hawaii, Tax Map Key:(3) 2-4-008:009.

APPLICANT:

U.S. Army Corps of Engineers.

LEGAL REFERENCE:

Sections 171-11 and 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kulani Correctional Facility situated at Waiakea, South Hilo, Island of Hawaii, identified by Tax Map Key: (3) 2-4-008:009, as shown on the attached map labeled Exhibit A.

AREA:

7244.27 acres, more or less.

ZONING:

State Land Use District: Conservation  
County of Hawaii CZO: Forest Reserve

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO  X

CURRENT USE STATUS:

Encumbered by Governor's Executive Orders No. 1225, 1588, and 3092 to the Department of Institutions (now Department of Public Safety) for the Kulani Prison Farm (now Kulani Correctional Facility).

CHARACTER OF USE:

Remedial Investigation/Feasibility Study purposes under the Defense Environmental Response Program, Military Munitions Response Program.

TERM OF RIGHT-OF-ENTRY:

The right-of-entry shall be effective upon the date of acceptance of the terms and conditions stated therein on a month-to-month basis for up to one (1) year, or completion of the investigation, whichever is sooner. However, if the permitted investigation is projected to take longer than one year, the right-of-entry may be allowed to continue on a month-to-month basis for additional one year periods, pursuant to §171-55, Hawaii Revised Statutes, not to exceed three (3) years from the initial effective date of the right-of-entry.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 5, Item No. 1 that states "Permission to enter State lands for the purpose of basic data collection, research, experimental management and resources evaluation activities such as archaeological survey, topographic survey, test borings for soil test, ground cover survey inspection of property for appraisal and development feasibility study purposes."

APPLICANT REQUIREMENTS:

Applicant shall be required to comply with all terms and conditions of the right-of-entry.

REMARKS:

By correspondence dated September 07, 2009, the United States of America, Department of the Army, Corps of Engineers (USACE), requested a right-of-entry onto the subject property under management of the Department of Public Safety to conduct a remedial investigation/feasibility study (RI/FS). The USACE RI/FS project proposed for implementation on the subject property known as the Kulani Correctional Facility site, also referenced by the USACE as an area associated with the nearby Pohakuloa Training Area, is administered under the Defense Environmental Restoration Program/Formerly Used Defense Sites (DERP/FUDS) Program or Military Munitions Response Program (MMRP).

Former military activities in the nearby training area may have left remains of military munitions and/or ordnance in or on the ground in portions of the subject property. Proposed activities by the USACE on the subject properties include environmental investigation and response to address removal of materials which may include munitions, ordnance, waste, hazardous substances, contaminated soils, or other remains from past military activities on or near the subject properties.

Since the proposed RI/FS project activities do not fall within those purposes specified by the Executive Orders that set aside these lands to the Department of Institutions (now the Department of Public Safety, or DPS) to operate the Kulani Prison Farm (now known as the Kulani Correctional Facility), DPS has requested that DLNR issue the requested right-of-entry on behalf of the State of Hawaii as landowner, pursuant to Section 171-11, HRS.

The State of Hawaii benefits from MMRP/FUDS projects not only from reduction of military-caused environmental contamination on State lands, but also at no cost to the State since 100% federal funding covers the extensive costs of environmental investigation, survey work, any associated munitions or ordnance removal and disposal, and other required services.

AGENCY CONCURRENCE. Written concurrence for this right-of-entry request has been received by DLNR from DPS.

CURRENT USE OF SUBJECT PROPERTY. The subject property has been in use by DPS for the Kulani Correctional Facility but this use will not continue after November 20, 2009. At the current time, DPS has closed the Kulani Correctional Facility, removed all inmates, and is contemplating other uses of the facility and site. A caretaker will maintain the facility in the interim until another use for the site has been formally approved.

SPECIAL CONDITIONS. The DPS has helped to maintain the natural ecology of the forest reserve areas of the site through activities such as cultivation of endangered and native plants and maintenance of security fencing which prevents ungulates from

entering protected enclosures and disturbing valuable plantings. Any future activities on the subject property as allowed by the proposed right-of-entry should not disrupt these efforts or any other future authorized uses of the subject property.

OTHER AGENCY COMMENTS. DPS is currently negotiating an agreement with the State Department of Defense (DoD) for a future use of the site. The State DoD has no objections to the proposed ROE for USACE. No comments from other agencies have been solicited.

ROE EXTENSIONS. Due to the nature of the proposed USACE project at the site, it may become necessary to request a time extension for the one-year right-of-entry. As such, staff recommends the Board also authorize the Chairperson the authority to issue extensions to the right-of-entry, as needed, up to three (3) years from initial effective date, to allow the work to continue.

RECOMMENDATION:

That the Board authorize the issuance of a right-of-entry permit to the U.S. Army Corps of Engineers covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Chairperson to issue future right-of-entries to the Applicant in relation to its Remedial Investigation/Feasibility Study purposes under the Defense Environmental Response Program, Military Munitions Response Program.

Respectfully Submitted,



Barbara Lee  
Project Development Specialist

APPROVED FOR SUBMITTAL:



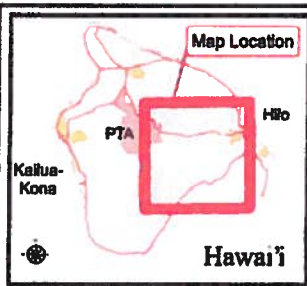
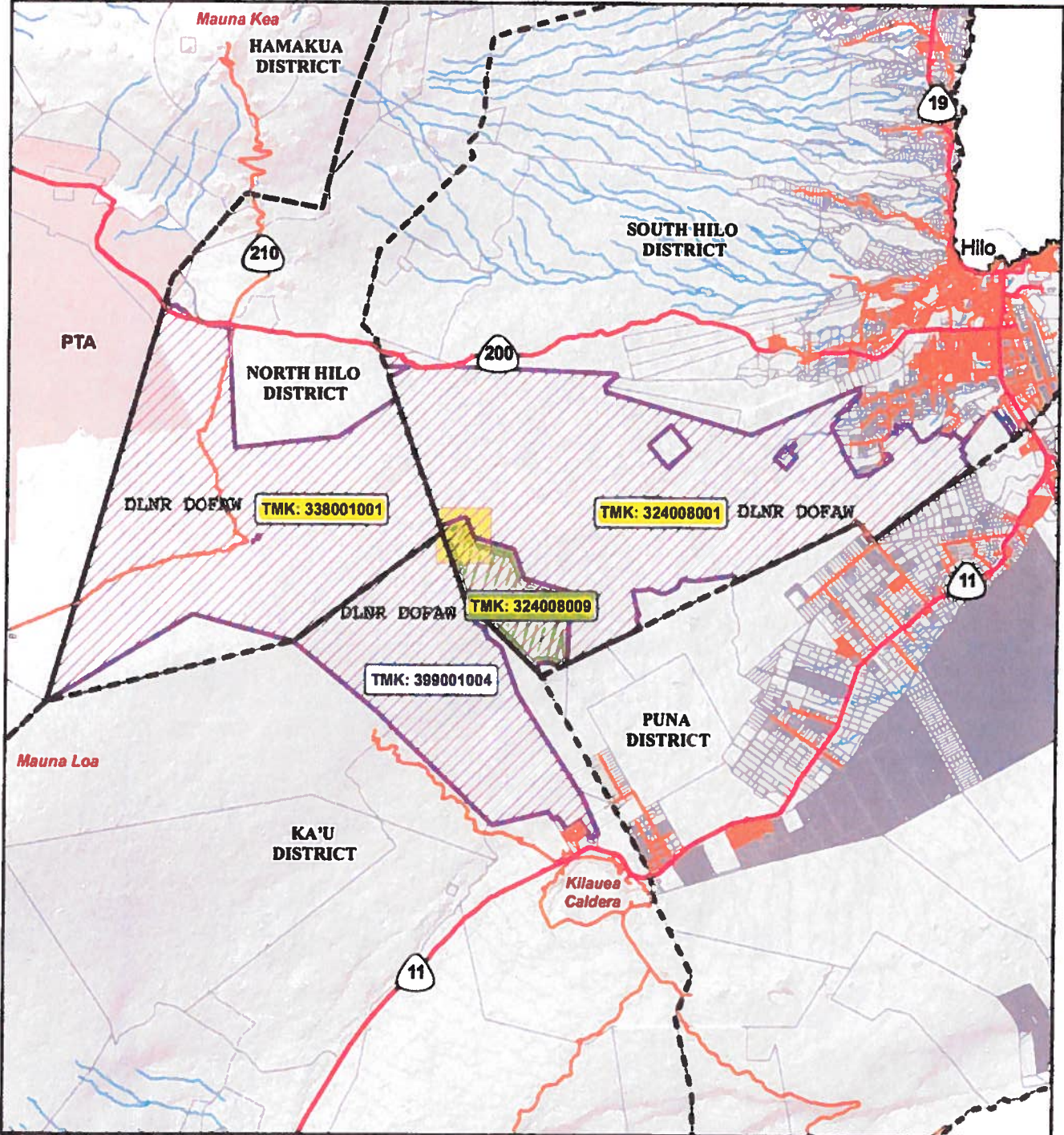
\_\_\_\_\_  
Laura H. Thielen, Chairperson







**Pohakuloa Training Area Munitions Response Sites  
Kulani Boy's Home Tax Map Keys (TMKs)**



- MAP KEY**
- Primary Roads
  - Secondary Roads
  - Streams
  - Contours (100')
  - AOI Land Parcels
  - Other Land Parcels
  - Project Boundary
  - Judicial District
  - PTA

**EXHIBIT A**

NOTE: TMK parcel acreage derived from County of Hawaii tax records