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FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

JUL 19 2002

at 1 o'clock and 56 min. P.M.
 WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

MĀLAMA MĀKUA, a Hawai`i non-profit corporation,)	Civil No. 00-00813(SOM)(LEK)
)	
)	NOTICE REGARDING CULTURAL
Plaintiff,)	ACCESS AGREEMENT; EXHIBIT 1;
)	CERTIFICATE OF SERVICE
)	
v.)	
)	
DONALD H. RUMSFELD, Secretary of Defense; and THOMAS E. WHITE, Secretary of the United States Department of the Army,)	
)	
Defendants.)	
)	

NOTICE REGARDING CULTURAL ACCESS AGREEMENT

WHEREAS, the Settlement Agreement and Stipulated Order ("Settlement") entered herein on October 4, 2001 provides that members of the Wai`anae Coast community, including Mālama Mākua, will be allowed daytime access (sunrise to sunset) to Mākua Military Reservation ("MMR") to conduct cultural activities at least twice a month and will be allowed overnight access (from two hours before sunset on the first day until two hours after sunset on the second day) to MMR to conduct cultural activities on at least two additional occasions per year; and


WHEREAS, the Settlement further provides that "the Parties will establish protocols for this access promptly;"

NOW, THEREFORE, the Parties notify the Court that they have established the protocols for cultural access to MMR. The Parties' agreement regarding cultural access is set forth in the document entitled "Appendix B: Daytime and Overnight Access to Mākuā Military Reservation for Cultural Activities," attached hereto as Exhibit "1."

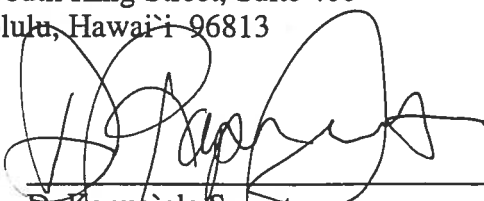
Executed this 18th day of July, 2002.

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ERIN K. MCMAHON, Special Assistant to the United States Attorney
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General Litigation Section
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By: 
Erin K. McMahon
Attorneys for Defendants

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By: 
D. Kapua`ala Sproat
Attorneys for Plaintiff

WAIVER OF LIABILITY

I have been informed of the risks and hazards involved in participating in entering the Ma Mākua Military Reservation, 25th Infantry Division (Light), Schofield Barracks, Hawaii and voluntarily accept the risk associated with entering the Mākua Military Reservation. I am aware that this reservation is used to conduct live fire missions and as such there may be hazardous conditions and ordnance on and under the surface of the Reservation which may cause me serious bodily harm, injury and death. In consideration of permission given to me to enter the Reservation, I hereby agree to the following in the event of death, personal injury, property damage or property loss occurring to me incident to such participation:

a. I will not institute any claim or bring any suit against the United States and its officers, employees, and agents because of said death, personal injury, property damage, or property loss.

b. I hereby agree to save harmless the United States and its officers, employees, and agents due to any award based on a suit or claim presented against it.

c. I hereby release and discharge the United States and its officers, employees, and agents from any and all claims based on said death, personal injury, property damage, or property loss.

d. I understand that nothing in this agreement limits the ability to bring a claim against the United States under the Federal Tort's Claims Act (FTCA) to the extent that said death, personal injury, property damage, or property loss is caused by the negligence on the part of the United States and its officers, employees and agents.

The provisions of this document are binding not only on me, but my agents, heirs, assignees, or any other persons or entities claiming on my behalf.

DATE: _____

Signature

Printed Name

DATE: _____

Witness

Printed Name of Witness

RELEASE OF LIABILITY FOR ACCESS TO MAKUA MILITARY RESERVATION

This document does not constitute authorization to visit the Mākua Military Reservation and PFC Pilila'au Range Complex. Such authorization must be obtained from the Mākua Cultural Access Committee and the Commander, 25th Infantry Division (Light).

I have requested the Department of the Army and the Mākua Cultural Access Committee to allow me to enter the Mākua Military Reservation and PFC Pilila'au Range Complex.

I agree and acknowledge that **MY SAFETY IS MY RESPONSIBILITY** and no one else's.

I fully understand, and by my signature acknowledge that I understand that the Mākua Military Reservation and PFC Pilila'au Range Complex (the "Reservation") is currently being used as a live fire maneuver training area and that the Reservation has been used by the United States as a live fire maneuver training area since 1988; that the **ENTIRE RESERVATION IS DANGEROUS AND UNSAFE** due to the presence of surface and subsurface **UNEXPLODED ORDNANCE**; that there may be hazardous conditions and ordnance on and under the surface of the Reservation; and that unexploded ordnance may explode nearby causing me serious bodily harm, injury and death.

I fully understand, and by my signature acknowledge that I understand that the roads and trails on the Reservation are extremely rough and rugged. I fully understand and by my signature acknowledge that I understand that if I utilize any of these roads or trails, **I MAY BE INJURED**. Knowing that the Reservation is dangerous and unsafe and that the pervasive presence of unexploded explosives presents to me **A RISK OF SERIOUS BODILY HARM OR DEATH**, I nevertheless desire to go to the Reservation. I voluntarily **ASSUME THE RISK OF INJURY OR LOSS** created by the presence of explosives and other hazardous conditions, which exist on the island. I, for my heirs, beneficiaries, executors, administrators, **RELEASE AND AGREE TO INDEMNIFY AND HOLD HARMLESS AND AGREE NOT TO SUE OR FILE ANY CLAIM(S) AGAINST** the United States of America, the Department of the Army, the State of Hawaii and any and all of its officers, agents, and employees, for death or injury to me or damage to or destruction of any of my property resulting from the explosives or hazardous conditions, existing conditions, or acceptance of transportation on or in the Mākua Military Reservation and PFC Pilila'au Range Complex.

In consideration of allowing me the access which I have requested I do for my heirs, beneficiaries, executors' and administrators, **RELEASE AND FOREVER DISCHARGE** the United States of America, the Department of the Army, the State of Hawaii, and any and all of their officers, agents and employees, whether acting in their official capacity or otherwise from any and all claim(s), demand(s), action(s), or cause(s) of action on account of my death or on account of any loss or injury to me or my property which may occur from **ANY** cause during my access to the Mākua Military Reservation and PFC Pilila'au Range Complex or incident thereto.

This release of liability is effective for the access period commencing _____ and ending _____.

NAME (PRINT) _____

(SIGNED) _____

DATE _____

WITNESS (PRINT) _____

(SIGNED) _____

DATE _____

**DEPARTMENT OF DEFENSE SAFETY BRIEF
(FOR CIVILIAN VISITORS)**

MĀKUA SITE VISIT BY MALAMA MĀKUA /WAIANAE COMMUNITY

Aloha, My name is _____. I would like to welcome you to PFC Pilila'au Training Complex on the Mākua Military Reservation. Prior to allowing non-DOD personnel into the range training areas the following safety rules apply:

- No smoking in training area. All smoking will be done in the upper parking lot area around building #120 or #122 (admin/tower). No alcoholic beverages are allowed in MMR and anyone under the influence will be removed from the range.
- Bldg #120 is off limits to non DOD civilian personnel. It will be used only for emergency purposes only (Phone). You may enter the operations work area only when invited by myself or another range escort. No photography is allowed inside the operations workroom.
- You must be on an access roster and have a picture ID to remain on MMR property. Upon entering MMR all persons must sign a waiver of responsibility. Minors are required to have a waiver signed by a parent or legal guardian. According to Force Protection measures, vehicles and or carry-in bags may be subject to search.
- While on the range all visitors must stay within the areas depicted on the map. Deviation will be reported immediately to the range control OIC, and may result in removal from the Mākua Military Reservation.
- It is strongly recommended that all personnel within the MMR wear footwear protection to prevent unnecessary injury from occurring.
- Do not enter into tall grass areas. Dip ponds and areas surrounding the dip ponds are off limits to all personnel. Only enter cultural site areas that have had the grass cut. Only use designated trails to cultural sites.
- While on the cultural sites, do not remove, adjust, or in any way disturb any rocks that may be part of a cultural site. Do not TOUCH any rock structures that may house Petroglyphs. Touching of Petroglyphs may cause crumbling of the foundation around the symbols which would destroy them.
- Do not pick up any metal objects while down range i.e., brass from expended ammo, shrapnel from HE rounds, or any other man made debris.
- Emergency medical attention (MEDEVAC). Emergencies are defined as a danger of loss of life, limb, or eyesight. Any other injury while on the range will be evacuated by land vehicle to the nearest medical facility.
- ***** For EOD Access Only ***** If you are participating in the EOD escorted hike today keep in mind that the EOD team is responsible for your safety and as such they will dictate the safety conditions while you are out there – there are in charge. Please remain

MĀKUA SITE VISIT BY MALAMA MĀKUA /WAIANAE COMMUNITY

in a single file line as you walk into the EOD area and wear the safety equipment provided until directed otherwise.

- Range Control may issue additional instructions when necessary to insure your safety on this range. Failure to follow instructions I just read may constitute your removal from this facility. Are there any questions? Having said all of this, we hope your visit to the MMR will be a pleasant one.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 19, 2002, a copy of the foregoing document was duly served as follows:

Stephen G. Bartell
U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Fax No.: (202) 305-0274

FACSIMILE TRANSMISSION
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Attorneys for Defendants

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Erin K. McMahon, Captain
Office of the Staff Judge Advocate
Department of the Army Headquarters
25th Infantry Division Light &
U.S. Army Hawai'i
Fort Shafter, Hawai'i 96858
Fax No. 438-2570
Special Assistant to the U.S. Attorney

FACSIMILE TRANSMISSION
AND U.S. MAIL
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DATED at Honolulu, Hawai'i, July 19, 2002.



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