

2002
Cultural Activities
Agreement

APPENDIX B

DAYTIME AND OVERNIGHT ACCESS TO
MÄKUA MILITARY RESERVATION FOR CULTURAL ACTIVITIES

1. HISTORY.

- A. Pursuant to the Settlement Agreement and Stipulated Order dated October 4, 2001 between Mälama Mäkua, Secretary of Defense Donald H. Rumsfeld, and Secretary of the U.S. Department of the Army Thomas E. White (collectively "the Parties"), this document establishes the guidance for daytime and overnight access into the Makua Military Reservation ("MMR") for cultural activities.
- B. The Settlement Agreement and Stipulated Order ("Settlement") provides that members of the Wai'anae Coast community, including Mälama Mäkua, will be allowed daytime access (sunrise to sunset) to 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 at least two additional occasions per year.
- C. The Settlement Agreement further provides that the access is subject to limitations determined by the Department of the Army in consultation with native Hawaiian cultural practitioners, including those from Mälama Mäkua, based on requirements for training, safety, national security, and compliance with applicable laws and regulations.

2. SCHEDULING ACCESS DATES.

- A. The Parties recognize that it is in their mutual interest to set dates for access in advance and to make every attempt not to alter those dates once set. The 25th Infantry Division (Light) & U.S. Army Hawaii ("USARHAW") (collectively "the Army") need advance notice of access dates so they can put in place logistical support for access activities. Mälama Mäkua, the rest of the Wai'anae Coast community, and access participants need certainty with respect to access dates so that they can organize and implement cultural activities. Accordingly, the Army will add a buffer period to its scheduled training in order to avoid conflicts between any delayed training and scheduled access dates, and the Parties agree to notify one another immediately if any access date must be rescheduled for any reason.
- B. Each year, the Parties will confer during the month of March to establish daytime access dates for the months of May through August, during the month of June to establish daytime access dates for the months of September through December, and during the month of September to establish daytime access dates for the months of January through April of the following year. For purposes of the first half of 2002, daytime access for the month of March shall take place on March 9 and 24, 2002, and the Parties conferred during the month of March 2002 to establish daytime access dates for the months of April through August, 2002.

- C. The Parties recognize that overnight access generally requires more advance planning than daytime access. During the meetings described in paragraph 2.B, supra, the Parties will discuss overnight access dates for the following twelve-month period (i.e., the meeting in March will discuss overnight access dates for the period ending in March of the next year; the meeting in June will discuss overnight access dates for the period ending in June of the next year; and so forth). During any planning meeting, Mälama Mākua may ask the Army to confirm overnight access dates for any time during the following twelve-month period, and the Army shall confirm such dates within fifteen (15) working days¹ or no later than six (6) months prior to the requested overnight access date, whichever is later. Mälama Mākua shall provide the Army with a request for overnight access no less than forty-five (45) days prior to the requested overnight access date, unless the Army agrees to accept a request with less notice. During each twelve-month period (measured from October 4th of one year to October 3rd of the next year), the Army shall allow at least two (2) overnight accesses, except that during the first year following the Settlement, Mälama Mākua shall be allowed overnight access on at least one additional occasion, from December 14 through December 15, 2001, for observance of the Makahiki. The second overnight access for this first year shall take place from February 15 through February 16, 2002, to celebrate the closing of the Makahiki season.
- D. The Parties recognize that some access activities may require or benefit from longer-range planning than the processes described in paragraphs 2.B and 2.C, supra, provide. The Army shall make good faith efforts to respond promptly to any requests to confirm daytime or overnight access dates in advance of the meetings described in paragraphs 2.B and 2.C, supra.
- E. Once the dates for daytime and overnight access are established pursuant to paragraphs 2.B through 2.D, the Army will promptly notify the Wai‘anae Coast community of those dates, including, but not limited to, making an announcement at the next meeting of the Wai‘anae Coast Neighborhood Board.

3. DEFINITIONS OF DAYTIME AND OVERNIGHT ACCESS.

- A. Daytime Access is defined as access that commences no earlier than sunrise and concludes no later than sunset.
- B. Overnight Access is defined as access that commences no earlier than two (2) hours before sunset on Day One and concludes no later than two (2) hours after sunset on Day Two.

4. NUMBER OF PARTICIPANTS FOR CULTURAL ACCESS.

- A. As a general rule, the total number of participants that will be allowed access to MMR to conduct cultural activities will not exceed fifty (50) people at any one time. The

¹ Working days exclude Saturdays, Sundays, and federal and Hawai‘i state holidays (see Hawaii Revised Statutes, section 8-1).

observances of the opening and closing of the Makahiki, scheduled for December 14-15, 2001, and for February 15-16, 2002, will not exceed one hundred (100) people at any one time.

- B. The Parties recognize that cultural activities may require or benefit from having more than fifty (50) participants. In the event that an applicant seeking access would like to have more than fifty (50) participants, the applicant should submit its request for additional participants (together with a description of why additional participants are necessary or desired) to the 25th Infantry Division (Light) & USARHAW at least thirty (30) days prior to the date scheduled for the access. The Army will consider all requests for additional participants and, if the Army has any concerns about such a request, will confer with the applicant's point of contact to discuss the request and to try to find a mutually acceptable solution regarding the number of participants. Within ten (10) days of receipt of a request for additional participants, the Army will notify the applicant's point of contact whether the request is granted or denied and will provide an explanation in cases where the Army is unable to accommodate the request.

5. APPLICATIONS FOR ACCESS TO MMR.

- A. Access to MMR for cultural activities is open to all members of the Wai'anae Coast community, including Mälama Mäkua, and their guests. Mälama Mäkua is guaranteed access on all daytime and overnight access dates that the Parties schedule pursuant to this Guidance, subject only to requirements for training, safety, national security and compliance with applicable laws and regulations. The access of any group will not necessarily be exclusive, and other members of the Wai'anae Coast community may be granted access in addition to Mälama Mäkua on scheduled dates ("concurrent access"), if the cultural access activities are mutually compatible.
- B. If the Army receives a request for concurrent access, it will consult with Mälama Mäkua and the applicant for concurrent access to determine the compatibility Mälama Mäkua's access and, if appropriate, to discuss possible alternatives. If, based on this consultation, the concurrent access is determined to be incompatible, Mälama Mäkua will be afforded exclusive access on the date in question, and the Army may consider whether to accommodate the proposed concurrent access on another date.
- C. Nothing in this document prohibits the Army from granting or requires the Army to grant additional access dates (beyond the requirements laid out in the Settlement Agreement) to members of the Wai'anae Coast community if a request for concurrent access cannot be accommodated for any reason.
- D. Members of the Wai'anae Coast community, including Mälama Mäkua, who want daytime or overnight access to MMR shall submit a written request (by U.S. mail or electronic mail) to the 25th Infantry Division (Light) & USARHAW, (Attn: Public Affairs Office, Community Relations), Bldg. 580, Schofield Barracks, HI 96857 (Fax:

655-9290) (email: firstname.lastname@schofield.army.mil). The request must include, at a minimum, the following information:

1. Date(s) of Proposed Access;
 2. Description of Proposed Access and list of proposed activities;
 3. Expected number of participants;
 4. Where the group is seeking access (i.e., specific sites or where group wants to go in the valley);
 5. Point of contact for the group with phone number.
- E. Per the Programmatic Agreement signed by the 25th Infantry Division (Light) on October 12, 2000, applications for access to the Ukanipö Heiau must be submitted for approval by the Ukanipö Heiau Advisory Council.
- F. The Army will notify the applicant's point of contact regarding the Army's decision concerning a request for daytime access no later than ten (10) working days after receipt of the request or thirty-five (35) days prior to the requested access date, whichever is later. The Army will notify the point of contact regarding the Army's decision concerning a request for overnight access no later than thirty (30) days after receipt of the request or three (3) months prior to the requested access date, whichever is later.
- G. The Army may deny a request for access based on requirements for training, safety, national security or compliance with applicable laws and regulations. In addition, for applicants other than Mälama Mäkua, the Army may deny a request for concurrent access based on incompatibility with access by Mälama Mäkua. If the Army denies any request for access, it will promptly confer with the applicant's point of contact in a good faith attempt to resolve any concerns or logistical issues that the Army may have and to find a suitable and mutually acceptable solution to those concerns (e.g., find an alternate date for the access, reach agreement on modifications to the proposed action, etc.). If a mutually acceptable solution is not found, the Army will provide an explanation of the denial to the applicant.
- H. The Army may raise concerns related to cultural issues and may make recommendations for modifications to proposed activities, but shall not deny or otherwise restrict any access pursuant to the Settlement on the ground that, in the Army's view, it is not a traditional cultural practice or is otherwise culturally inappropriate. The Parties may meet to discuss any concerns regarding the Army's recommendations for modifications to the proposed activities. The Army will make the final determination regarding whether the access is consistent with requirements for training, safety and national security, and complies with applicable laws and regulations.
- I. Requests for special logistical support (e.g., vehicles, escorts from the Army's Department of Public Works ("DPW") Cultural Resources Office, portable restroom facilities, etc.) shall be made with a minimum of thirty (30) days advance notice to the Army, unless the Army agrees to accept such a request on shortened time. The Army will make good faith efforts to provide special logistical support for cultural access, subject to

availability and other fiscal constraints. The Army shall receive a minimum of seven (7) working days advance notice of daytime access that does not require special logistical support (e.g., access that requires only grass cutting), unless the Army agrees to accept less advance notice.

6. ACCESS REQUIRING EXPLOSIVE ORDNANCE DISPOSAL ESCORT OR OUTSIDE THE SOUTH FIRE-BREAK ROAD.

- A. Due to safety concerns, there are areas within MMR that are not accessible to civilians without an explosive ordnance disposal (“EOD”) escort (including, but not limited to, areas of restricted access due to improved conventional munitions). No later than March 18, 2002, the Army shall provide Mälama Mäkua with a map and any other necessary information identifying areas of MMR that require EOD escort and areas that do not require EOD escort. The Army shall promptly provide updated information Mälama Mäkua should the status of any area change. In addition, areas identified as not needing EOD escort may require such escort for safety reasons, if grass taller than one foot covers the area on the date of requested access. The Army will make arrangements to have the grass cut for cultural access without EOD escort upon a minimum of seven (7) working days advance notice, as described in paragraph 5.I.
- B. The Army shall receive at least sixty (60) days advance notice of any day or overnight access requiring EOD escort, unless the Army agrees to accept a request for EOD escort on shortened time. The Army shall accommodate any request for EOD escort to the maximum extent practicable. Within ten (10) working days following receipt of notice that EOD escort is required for a scheduled access, the Army shall notify Mälama Mäkua and any community group scheduled for the access in question to confirm whether EOD escort will be made available and, if not, to explain why.
- C. Any requests for access to areas located outside the south fire-break road should be submitted at least sixty (60) days in advance of the requested access date due to unexploded ordnance concerns, unless the Army agrees to accept a request for such access with less notice. Nothing herein commits the Army to allow access to a particular area if there are safety concerns as determined by 25th Infantry Division (Light) & USARHAW personnel. Within ten (10) working days following receipt of a request for access outside the south fire-break road, the Army shall notify the applicant’s point of contact if the Army intends to deny access due to safety concerns. If such a case arises, the Army will discuss the issue with the applicant’s point of contact to determine if there are any alternative, mutually acceptable solutions to the safety concerns. The Army will make the final determination regarding safety concerns.

7. REQUIRED ACTIONS UPON ARRIVAL AT MÄKUA MILITARY RESERVATION.

- A. At least two (2) working days prior to arrival, the names of the participants who will actually attend must be provided to 25th Infantry Division (Light) & USARHAW to establish a roster for access at MMR.

APPENDIX B: DAYTIME AND OVERNIGHT ACCESS TO MÄKUA MILITARY RESERVATION FOR CULTURAL ACTIVITIES

- B. Upon arrival at MMR, the individual will be checked against the access roster by 25th Infantry Division (Light) & USARHAW personnel. The participants will be required to provide at least one form of picture identification prior to entry. Any minors (under the age of 18) who do not have picture identification must be accompanied by an adult participant. Additionally, consistent with current force protection measures, each participant, including any bags, may be subject to search. Upon arrival, all participants will log in at the Mäkuu Range Control office.
- C. At the time of arrival, each participant will be required to sign the waiver of liability (Enclosure 1). Any minor participating in an access shall have the waiver of liability signed by a parent and/or legal guardian.
- D. A safety briefing (Enclosure 2) will be given to the group as a whole before being allowed to move outside the Range Control office area or other designated area by Range Control personnel.
- E. Escorts. The 25th Infantry Division (Light) & USARHAW will provide escorts. Each group accessing MMR will be required to have its own koa (cultural monitors), as appropriate.
- F. All participants must comply with the guidelines described herein or specified in the safety briefing. The 25th Infantry Division (Light) & USARHAW reserve the right to take any appropriate action, to include removal of any participant from MMR who is acting in a disruptive manner. Disruptive behavior includes, but is not limited to, acts that endanger themselves or others, failure to abide by guidance from the escorts, or attempting to enter unauthorized areas of MMR.

8. ACTIVITIES WHILE PRESENT ON MÄKUA MILITARY RESERVATION.

A. USE OF RANGE CONTROL FACILITIES.

- 1. No personal vehicles will be allowed onto the range. Participants will park their vehicles in designated parking locations. Any request for vehicles should be submitted a minimum of thirty (30) days in advance of the requested access date. The Army will make good faith efforts to provide vehicles for access, subject to availability and other fiscal constraints.
- 2. Access to the Range Control Building, except to sign in and out, is by permission of Range Control personnel only. Such permission will not be unreasonably withheld. The Army will provide access to water and toilets.
- 3. The Range Control telephone is for official business only. If a participant needs to make an emergency phone call, the Army will make good faith efforts to provide phone access, subject to availability.

APPENDIX B: DAYTIME AND OVERNIGHT ACCESS TO MÄKUA MILITARY RESERVATION FOR CULTURAL ACTIVITIES

4. The use of alcohol or illicit drugs anywhere on Mäkua Military Reservation is strictly prohibited.
5. Smoking is allowed in the vicinity of the Range Control Building and Tower, but it is not encouraged due to the area fire hazard. Smoking is strictly prohibited on the range east of the red range gate.

B. ACCESS TO AREAS OF MÄKUA MILITARY RESERVATION.

1. Participants, for safety reasons, will not be allowed to roam freely on Mäkua Military Reservation. Participants will be allowed only in specific areas using specific routes. They must remain with escorts at all times and will be allowed access to specific sites using specific routes outlined by Range Control personnel, the Army's DPW Cultural Resources Office, and their escorts. Participants will not touch or pick up any brass, ammunition, or any other item found on the ground. If participants find any item on the ground, they should bring this to the attention of the escort, Range Control personnel or the DPW Cultural Resource Office personnel.
2. Cultural sites will be monitored for damage from access. Any damage may result in restrictions on further access to a damaged site.

C. LIMITATIONS ON ACTIVITIES.

1. The Parties do not intend to limit any reasonable activities associated with cultural activities at MMR. However, no illegal activities or activities that endanger life, the environment, or property will be permitted.
2. Participants will make no modifications to existing cultural sites, to include the adding of or moving of stones at the sites, unless such modifications are authorized by the Army in writing and are carried out pursuant to applicable laws and regulations.
3. At no time will permanent structures be erected within MMR. Any activity by the participants, to include placing stones or other objects at any location on MMR, will not be considered the creation of new cultural sites for purposes of any federal or state law or regulation. Applicants may request permission to leave structures in place temporarily. Within ten (10) working days of receipt of such request, the Army will confer with the applicant and grant the request if it does not interfere with training or safety. The Army will make good faith efforts to avoid damage to any temporary structure placed at MMR pursuant to this paragraph, but takes no responsibility for, and will not be liable for damage to, any such structure. Temporary structures must be removed at the conclusion of each access or at the conclusion of the pre-approved period for the temporary structures.

APPENDIX B: DAYTIME AND OVERNIGHT ACCESS TO MÄKUA MILITARY RESERVATION FOR CULTURAL ACTIVITIES

4. No fires, including torches and kerosene lanterns, will be allowed at MMR, other than fires for food preparation. All light sources should be battery operated or other similar safe method. All fires for food preparation must be approved by Range Control and must be located in the vicinity of the Range Control Building and Tower. All fires are strictly prohibited on the range east of the red range gate.
5. As a general rule, digging and excavation are strictly prohibited. In the event that minor digging is required for a cultural practice, an applicant may request that the Army allow such minor digging. The Army will consider requests for minor digging and, if the Army has any concerns about such a request, will confer with the applicant to discuss the request and to try to find a mutually acceptable solution. Within ten (10) working days of receipt of a request for minor digging, the Army will notify the applicant whether the request is granted or denied and will provide an explanation in cases where the Army is unable to accommodate the request.
6. For overnight accesses, all bivouac (i.e., camping) and tent sites will be set up at the front of Mäkua Valley in the area near the Range Control Tower, or at other locations determined appropriate by the Army.
7. All participants are responsible for bringing their own food and water. Additionally, any trash must be removed at the end of the access period. It is the participants' responsibility to clean up and remove any trash prior to their departure.
8. For safety reasons, covered shoes are required while on MMR, except in the area around Range Control and the Range Control Tower.

9. MODIFICATIONS TO GUIDANCE

The Parties recognize that, over time, additional issues or concerns may arise with respect to this Guidance. To address these issues and concerns, the Guidance may be modified by mutual consent of the Parties.

Executed this 18 Day of June, 2002.



James M. Dubik
Major General, USA
Commanding