

First Modification to Appendix B, Daytime and Overnight Access to Makua Military Reservation ("MMR") for Cultural Access

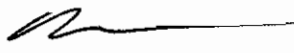
The Parties mutually consent that Appendix B, Section 8 ("Activities While Present on Makua Military Reservation"), Subsection C ("Limitations on Activities"), Item 8 be modified as follows:

"8. For safety reasons, covered shoes are required while on MMR, except in the following areas where the wearing of shoes is optional:

- "a. In the paved and cut grass areas around Range Control and the Range Control Tower (depicted in green on Enclosure "A" hereto);
- "b. In the cut grass areas (i) mauka of Range Control bisected by the centerline road and bounded by the drainage area to the north and by the north firebreak road to the east and by the centerline road to the south; (ii) approximately 10m (33 feet) around the Makua ahu; (iii) at the south firebreak/centerline road junction; and (iv) to the south of the centerline road and leading to the petroglyph rock at site 5926 (limits depicted in yellow on Enclosure "A" hereto);
- "c. To access the petroglyph, well and/or spring features of site 5926 (limits depicted in blue on Enclosure "A" hereto);
- "d. On the north firebreak road, south firebreak road, and centerline road, outside the known improved conventional munitions area (depicted in red on Enclosure "B" hereto); and
- "e. To access the ahu at Kahanahaiki and Ko'iahi (limits depicted in yellow on Enclosure "C" hereto).

"Activities permitted without shoes in the areas described in subparagraphs 8.a through 8.e include, but are not limited to: celebrating Makahiki; offering ho'okupu; offering oli; dancing hula; conducting an 'awa ceremony; and entering spring/well features to clean, collect water, and/or offer ho'okupu."

Executed this 18th day of December, 2008.


Robert M. Lewis
Attorney for Defendants
Army Environmental Law Division
901 North Stuart Street, Suite 400
Arlington, VA 22203
Telephone: (703) 696-1567
Fax: (703) 696-2940

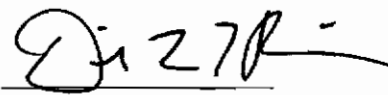

David L. Henkin, Esq.
Attorney for Plaintiff
Earthjustice
223 S. King Street, Suite 400
Honolulu, Hawaii 96813
Telephone: (808) 599-2436
Fax: (808) 521-6841

EXHIBIT "1"

EDWARD H. KUBO, JR. 2499
United States Attorney
District of Hawaii

EDRIC M. CHING 6697
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850-6100
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
E-mail: edric.ching@usdoj.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MALAMA MAKUA, a Hawai'i)	CIVIL NO. 00-00813 SOM LEK
nonprofit corporation,)	
)	NOTICE REGARDING FIRST
Plaintiff,)	MODIFICATION OF CULTURAL
)	ACCESS AGREEMENT, PARAGRAPH
vs.)	8C; CERTIFICATE OF SERVICE
)	
ROBERT M. GATES, Secretary of)	
Defense; and PETE GEREN,)	
Secretary of the Army,)	
)	
Defendants.)	
)	
)	

NOTICE REGARDING MODIFICATION OF CULTURAL ACCESS AGREEMENT
PARAGRAPH 8C

PLEASE TAKE NOTICE THAT, Pursuant to paragraph 13 of the Settlement Agreement and Stipulated Order in Malama Makua v. Rumsfeld, et al., Civ. No. 00-00813 SOM LEK (D. Haw. Oct. 4, 2001) ("2001 Settlement"), Malama Makua, the Secretary of Defense, now Robert Gates, and the Secretary of the Army, now Pete Geren, (collectively "the Parties"), established the protocols for cultural access to Makua Military Reservation

("MMR"), which were set forth in the document entitled "Appendix B, Daytime and Overnight Access to Makua Military Reservation for Cultural Access" (filed July 19, 2002). Paragraph 9 of Appendix B authorizes the modification of the cultural access protocols by mutual consent of the parties.

The Parties mutually consent that Appendix B, Section 8 ("Activities While Present on Makua Military Reservation"), Subsection C ("Limitations on Activities"), Item 8 be modified as set forth in "First Modification to Appendix B, Daytime and Overnight Access to Makua Military Reservation ("MMR") for Cultural Access" attached hereto as Exhibit "1"

The terms of this modification have been negotiated at arm's length among knowledgeable parties represented by experienced counsel. As a result, the rule of "interpretation against draftsman" shall not apply in any dispute over interpretation of the terms of this modification. Should any court with jurisdiction to enforce the 2001 Settlement declare or determine that this modification is illegal or invalid, the validity of the remaining parts, terms, or provisions of Appendix B shall not be affected thereby and said modification shall be deemed not a part of Appendix B.

This modification shall apply to and be binding upon the Parties, their members, delegates, and assigns. The undersigned representatives certify that they are authorized by the Party or

Parties that they represent to enter into this modification of Appendix B, and to execute and legally bind that Party or Parties to the terms and conditions of this modification.


Executed this 18th day of December, 2008, at Honolulu, Hawaii.

EDWARD H. KUBO, JR. 2499
United States Attorney
District of Hawaii

EDRIC M. CHING 6697
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850-6100
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
E-mail: edric.ching@usdoj.gov

ROBERT M. LEWIS
Special Assistant U.S. Attorney
Senior Trial Attorney
U. S. Army Environmental Law Division
Suite 400, 901 N. Stuart Street
Arlington, VA 22203
(703) 696-1567 (phone)
(703) 696-2940 (fax)
Email: Robert.Lewis@hqda.army.mil

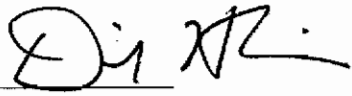
Peter Lee
Office of the Staff Judge Advocate
8th Theater Support Command & U.S.
Army Garrison, Hawaii
Fort Shafter, Hawaii
(808) 438-2291 (phone)
(808) 438-2570 (fax)
Peter.V.Lee@us.army.mil

By 

Robert M. Lewis
Attorney for Defendants

Earthjustice
DAVID HENKIN

Austin Building
223 S. King Street, Ste. 400
Honolulu, HI 96813

By 

David Henkin
Attorney for Plaintiff