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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 18<sup>th</sup> day of December, 2008, at Honolulu, Hawaii.

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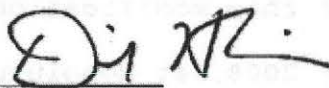
By 

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Honolulu, HI 96813

By



David Henkin  
Attorney for Plaintiff



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

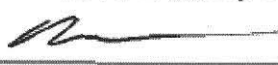
The Parties mutually consent that Appendix B, Section 8 ("Activities While Present on Makua Military Reservation"), Subsection C ("Limitations on Activities"), Item 8 be modified as follows:

"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 18<sup>th</sup> day of December, 2008.

  
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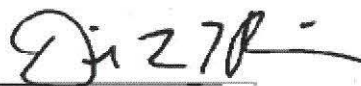
  
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EXHIBIT "1"

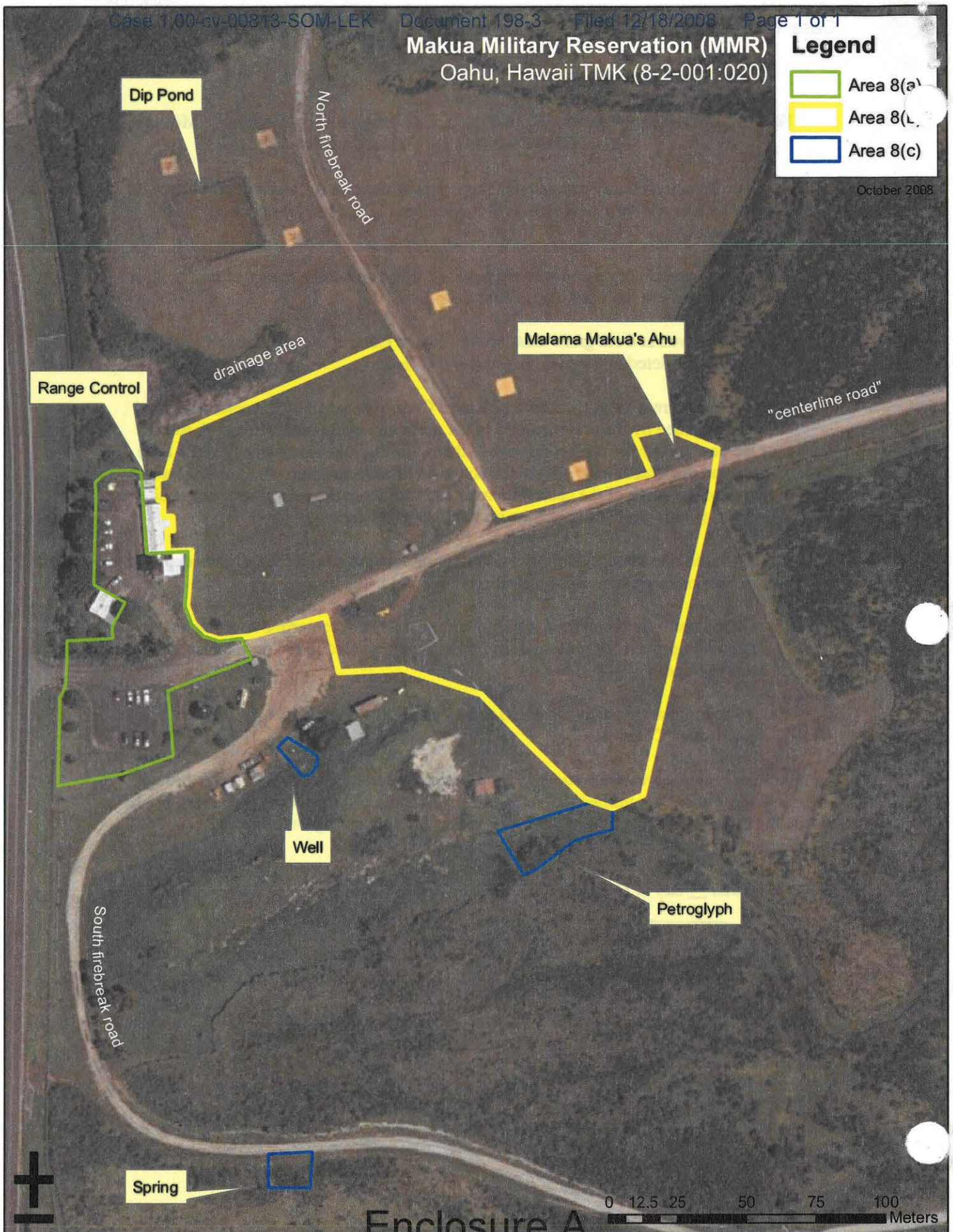


**Makua Military Reservation (MMR)**  
Oahu, Hawaii TMK (8-2-001:020)

**Legend**

-  Area 8(a)
-  Area 8(b)
-  Area 8(c)

October 2008



Enclosure A



**Makua Military Reservation**  
Oahu, Hawaii TMK: (8-2-001-020)  
**Firebreak Road Access**



**Legend**

— Firebreak Road Access

North Firebreak Road

Centertine Road

South Firebreak Road

Meters  
0 165 330 660 990 1,320



Enclosure B





**Legend**

● Malama Makua Ahu

□ Ahu Access

North Firebreak Road

North Ahu

South Firebreak Road

South Ahu

North Ahu

South Ahu

Range Control

Makua Military Reservation (MMR)  
Oahu, Hawaii TMK: (8-2-001:020)

Ahu Access Areas

October 2008



Enclosure C



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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

MALAMA MAKUA, a Hawai'i	) Civil No. 00-00813 SOM LEK
nonprofit corporation,	)
	) CERTIFICATE OF SERVICE RE:
Plaintiff,	) NOTICE REGARDING FIRST
	) MODIFICATION OF CULTURAL
v.	) ACCESS AGREEMENT,
	) PARAGRAPH 8C; EXHIBIT "1";
ROBERT M. GATES, Secretary of	) ENCLOSURES "A" – "C"
Defense; and PETE GEREN, Secretary	)
of the United States Department of the	)
Army,	)
	)
Defendants.	)
_____	)

CERTIFICATE OF SERVICE



The undersigned hereby certifies that on December 18, 2008, a copy of the NOTICE REGARDING FIRST MODIFICATION OF CULTURAL ACCESS AGREEMENT, PARAGRAPH 8C; EXHIBIT "1"; ENCLOSURES "A" – "C" was duly served as follows:

**Served Electronically through CM/ECF:**

THOMAS A. HELPER  
Assistant U.S. Attorney

tom.helper@usdoj.gov

**Served by First Class Mail and Electronic Mail:**

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DATED at Honolulu, Hawai'i, December 18, 2008.

/s/ David L. Henkin  
DAVID L. HENKIN  
ISAAC H. MORIWAKE  
Attorneys for Plaintiff