

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

September 11, 2009

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

GL No. S-3849

Hawaii

Amendment of General Lease No. S-3849 to the United States of America for the Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, Tax Map Key: 3rd/ 4-4-15:08; 4-4-16:05; and 7-1-4:07

APPLICANT:

United States of America, by and through its Department of the Army, whose business and mailing address in Hawaii is U.S. Army Corps of Engineers, Honolulu District, Fort Shafter, Hawaii 96858-5440.

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, identified by Tax Map Key: 3rd/ 4-4-15:08; 4-4-16:05; and 7-1-4:07, as shown on the attached maps labeled Exhibit A.

AREA:

22,971 acres, more or less.

ZONING:

State Land Use District:	Conservation, Resource Subzone
County of Hawaii CZO:	Not applicable

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 General Lease No. S-3849 to the United States of America.

CHARACTER OF USE:

Military purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The final Environmental Impact Statement (FEIS) was announced in the Federal Register on May 28, 2004 and in Hawaii's Office of Environmental Quality Control's Environmental Notice on June 8, 2004. A Record of Decision finalized July 2004 presented the selection of the recommended alternatives by the agencies and formalized the mitigation commitments.

DCCA VERIFICATION:

Not applicable. The United States of America is not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain written concurrence of the United States Department of Transportation, Federal Highways Administration, licensee under Land License No. S-353, to the proposed use of the quarry material in the quantity requested.

REMARKS:

By letter dated July 24, 2009, the United States of America (Applicant) requested permission to use approximately 61,000 tons of rock and gravel from the quarry at Pohakuloa Training Area (PTA) in the construction of several Stryker Brigade Combat Team facilities at PTA. The facilities include a Battle Area Complex, a Tactical Vehicle Wash Facility, and Ammunition Holding Area #2. See map attached as Exhibit B.

Pursuant to General Lease No. S-3849 dated August 17, 1964 (a direct negotiation lease), Applicant leases approximately 22,971 acres of State lands as part of the PTA. But in total, PTA encompasses a much larger area, and includes lands set-aside to Applicant by Governor's and Presidential executive orders. See map attached as Exhibit C.

General Lease No. S-3849 reserved mineral rights to the State, but permitted Applicant to use rock and similar materials from the leasehold premises in the construction of roads on the premises. Specifically, the lease provides at Section 22:

The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the [United States] Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use for road construction projects on the demised premises sources of coral, rock and similar materials occurring naturally on the said premises and to use said ground and surface waters for purposes incident to the rights granted by this lease.

Accordingly, the lease as presently worded would not permit Applicant to use rock and other materials from the premises for construction projects other than roads on the lease premises.

Historically, Applicant operated a quarry on the premises from which it extracted road construction materials. At its meeting of October 8, 2004, Item D-6, and July 8, 2005, Item D-9, the Board of Land and Natural Resources approved the issuance of a land license covering the quarry site to the United States Department of Transportation, Federal Highways Administration (USDOT), with Applicant's consent. The purpose of the license was to allow USDOT to quarry material for use in the Saddle Road realignment project. Land License No. S-353 was subsequently issued to USDOT on December 20, 2005.

In December 2005, USDOT and the Applicant, through its Department of the Army, entered into a Consent and Agreement regarding the operation of the quarry on the lease premises. In the Consent and Agreement, USDOT agreed to award a contract to a third party for the operation of the quarry, a rock-crusher and an asphalt plant on the site. The aggregate produced by the quarry operation was to be divided between USDOT and Applicant in accordance with a ratio stipulated in the Consent and Agreement.

Of the three Stryker Brigade facilities Applicant desires to construct at PTA, only the Battle Area Complex is located (partially) within the lease premises. The Tactical Vehicle Wash Facility will be located on lands set-aside to Applicant under Governor's Executive Order No. 1719, and the Ammunition Holding Area #2 will be located on

lands set aside to Applicant under Presidential Executive Order 11167. See Exhibits B and C.

As indicated above, a final environmental impact statement was prepared for the Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawaii (FEIS). The FEIS covers the three facilities that are the subject of Applicant's present request, as well as other aspects of the project. As part of the environmental impact review process, the U.S. Fish and Wildlife Service prepared a Biological Opinion recommending with respect to construction projects at PTA that "[a]ll ongoing and future construction projects . . . utilize rock from onsite locations at PTA to minimize inadvertent transport of invasive plant species." Biological Opinion of the U.S. Fish and Wildlife Service for Routine Military Training and Transformation of the 2nd Brigade 25th Infantry Division (Light) U.S. Army Installations Island of Hawaii at 45. Applicant agreed to follow the terms and conditions of the Biological Opinion. FEIS at page 8-162; Record of Decision at 16.

In light of the existing quarry operation on the lease premises, the issuance of Land License No. S-353 to USDOT for use of quarry materials in the Saddle Road realignment project, and the recommendation of the Biological Opinion for construction projects at PTA to use onsite rock, staff believes that the requested use of quarry material for the Stryker Brigade is reasonable. Staff has included a requirement above that Applicant secure the written concurrence of USDOT to Applicant's requested use of the material in the quantity sought.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated August 10, 2009, staff solicited comments on Applicant's request from three DLNR divisions: Office of Coastal and Conservation Lands, Division of Forestry and Wildlife, and Engineering Division. Comments were also solicited from USDOT. The Engineering Division responded that the quarry site is located in Flood Zone X and that Engineering has no objection to the amendment of the lease. USDOT responded that it has no objection to the amendment of the lease. No other responses were received.

RECOMMENDATION: That the Board:

- A. In view of the publication of the FEIS for the Stryker Brigade Combat Team project, which covers the three facilities Applicant desires to construct at PTA using material from the quarry site on the lease premises, and the existing operation of the quarry under Land License No. S-353, declare that, after considering the potential effects of the proposed disposition as provided by

Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative Rules, the use of rock and gravel from the quarry site on the premises of General Lease No. S-3849 for the construction of a Battle Area Complex, a Tactical Vehicle Wash Facility, and Ammunition Holding Area #2 at PTA will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- B. Subject to the United States of America fulfilling all of the Applicant requirements listed above, authorize the amendment of General Lease No. S-3849 to revise Section 22 of the lease to read as follows:

"The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use coral, rock and similar materials occurring naturally on the said premises for the following construction activities: (a) road projects on the demised premises, (b) the Stryker Brigade Combat Team (SBCT) Battle Area Complex to be constructed partially on the demised premises and partially on lands set aside to the Government by Presidential Executive Order 11167 dated August 19, 1964; (c) the SBCT Tactical Vehicle Wash Facility to be constructed on lands set aside to the Government under Governor's Executive Order No. 1719 dated January 26, 1956; and (d) the SBCT Ammunition Holding Area #2 to be constructed on lands set aside to the Government under Presidential Executive Order 11167 dated August 19, 1964. In addition, the Government shall have the right to use ground and surface waters on, in or under the demised premises for purposes incident to the rights granted by this lease."

- C. The amendment of the lease shall further be subject to the following:
1. The standard terms and conditions of the most current amendment of lease document form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



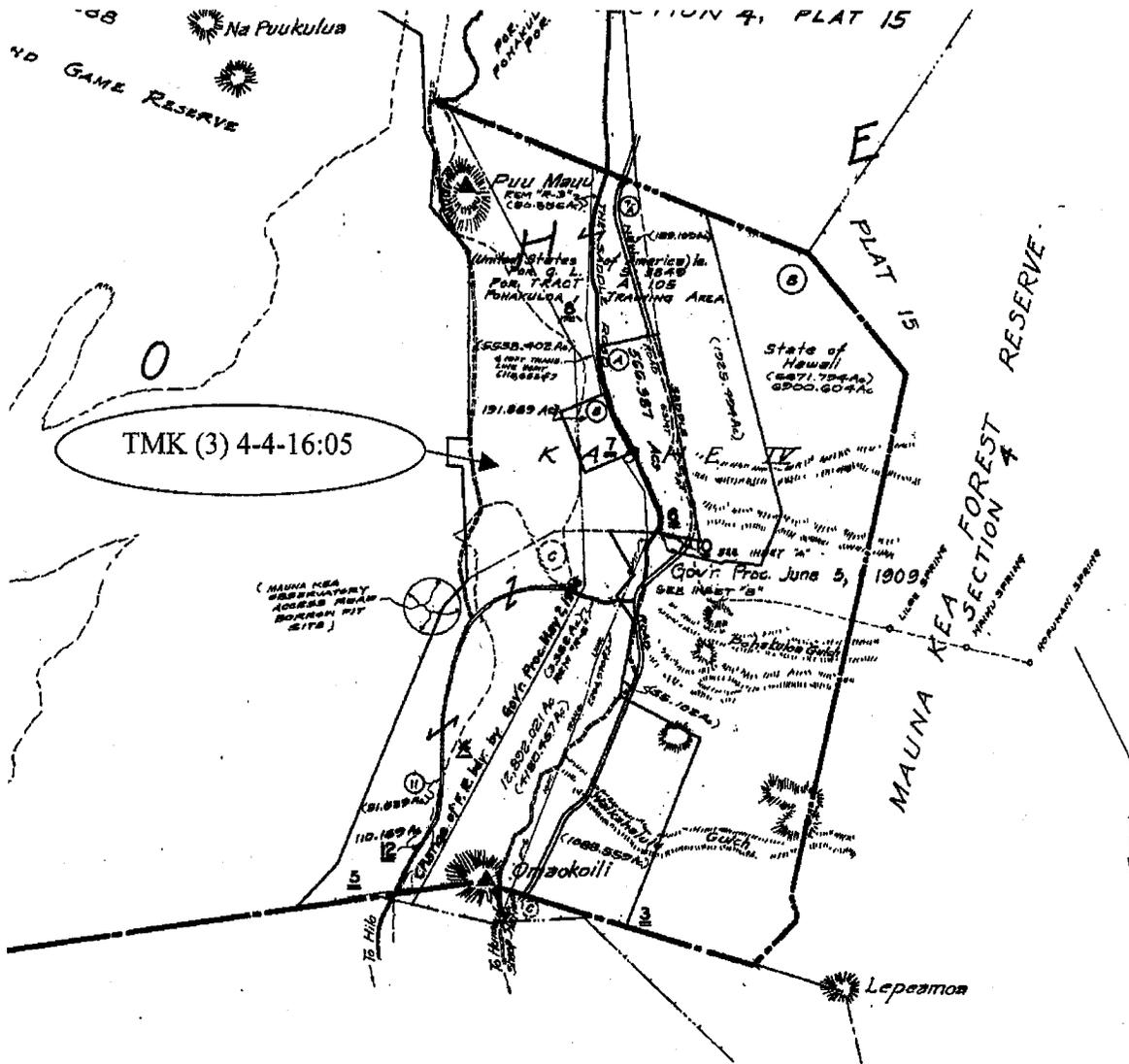


EXHIBIT A

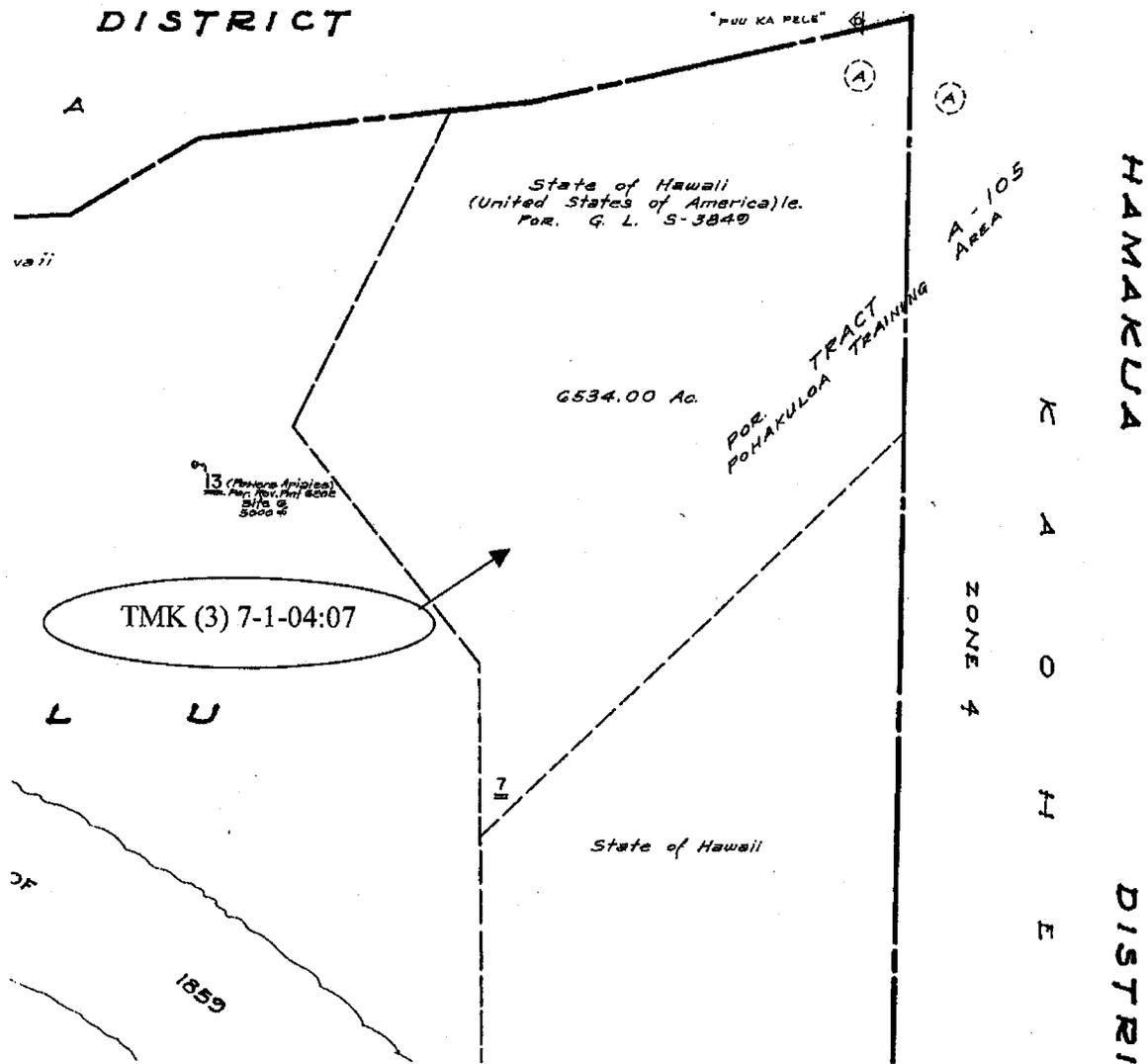


EXHIBIT A

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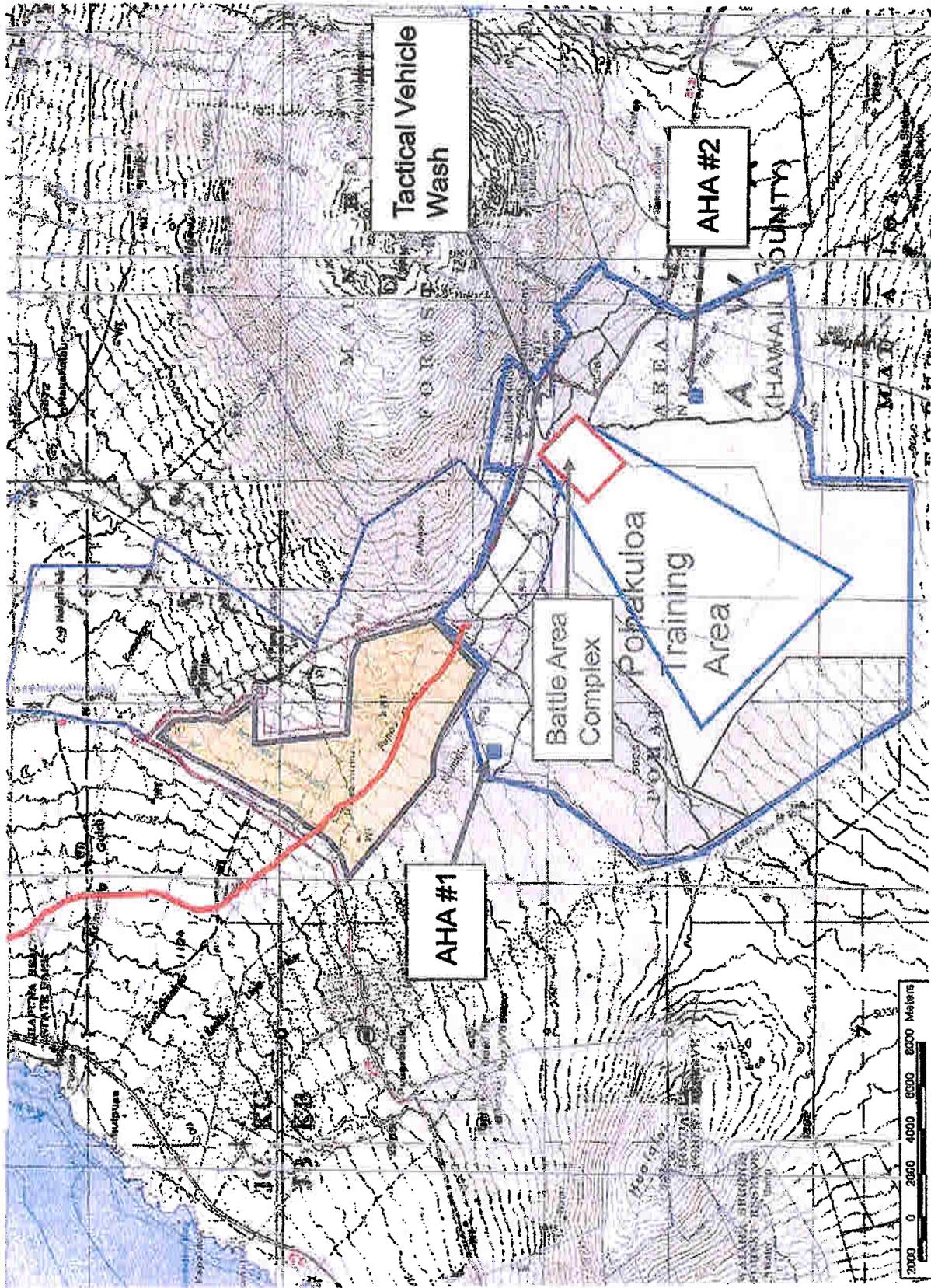


EXHIBIT B

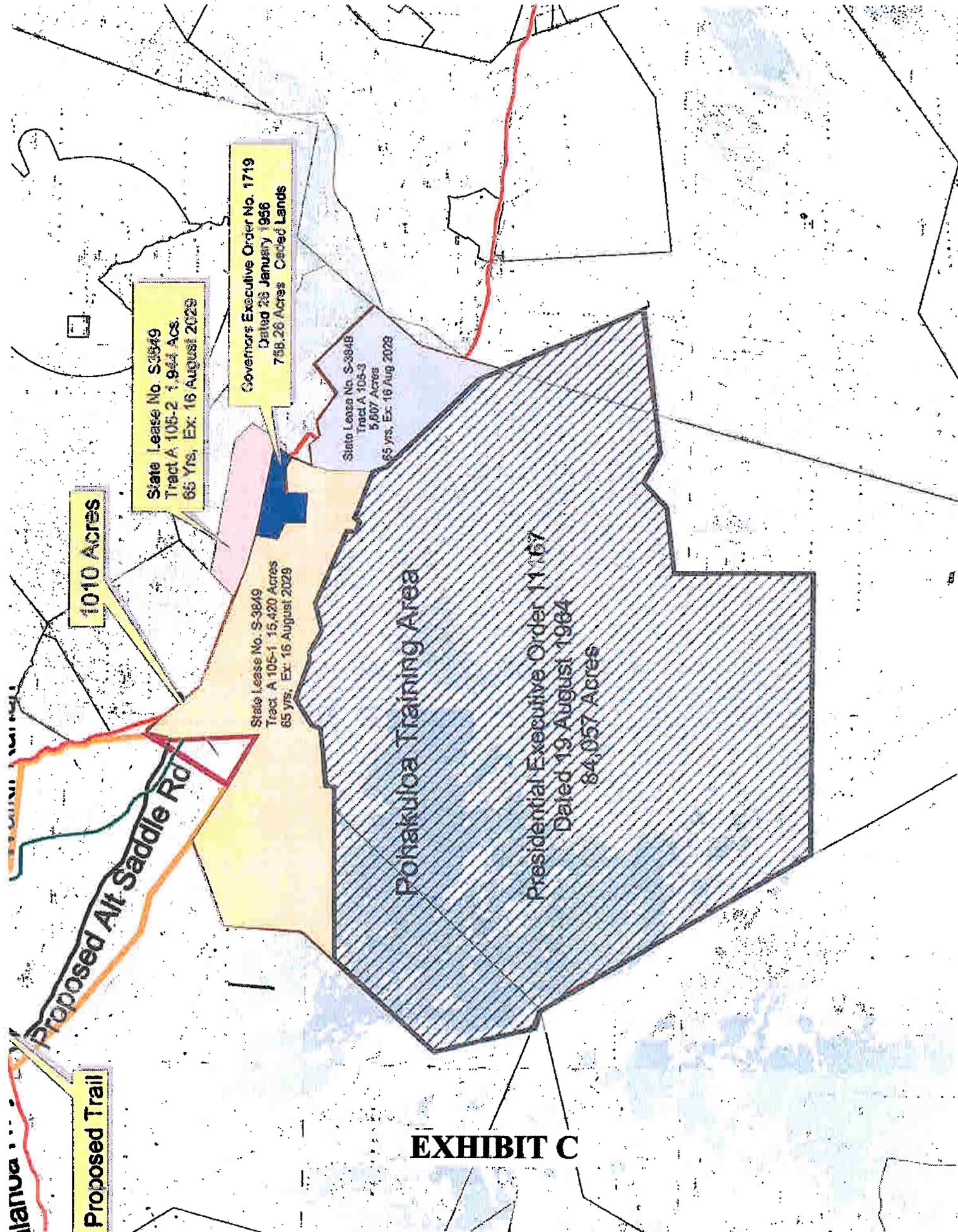


EXHIBIT C