

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

December 9, 2010

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

STATEWIDE

Delegation of Authority to the Chairperson of the Department of Land and Natural Resources to Issue Right-of-Entry Permits to the United States of America to Conduct Environmental Investigations, Remediation, and Response Activities Pertaining to Unexploded Ordnance, Discarded Military Munitions, and Munitions Constituents Occurring on Unencumbered and Encumbered Public Lands in the State of Hawaii in Relation to the Defense Environmental Restoration Program/Formerly Used Defense Sites and Military Munitions Response Program and Other Similar Programs.

LEGAL REFERENCES:

Sections 171-2, 171-6(a)(8) and 171-55, Hawaii Revised Statutes, as amended.

BACKGROUND

The Board of Land and Natural Resources previously delegated to the Chairperson the authority to issue rights-of-entry and other permits for closure of public areas and other activities on unencumbered lands to ensure the safety and welfare of persons or property (BLNR submittals of June 14, 1991, Item F-11; September 28, 2001, Item D-4; August 6, 2005, Item D-14; August 12, 2010, Item D-16). This submittal seeks to clarify and extend that delegation by stating that the Chairperson's delegated authority applies to supporting the removal and remediation of military munitions by the federal government on public lands as defined in Section 171-2, HRS, in the State of Hawaii.

The United States Army Corps of Engineers (USACE) is the executing agency for the Defense Environmental Restoration Program/Formerly Used Defense Sites (DERP/FUDS) Program and the United States Army Garrison is the executing agency for the Military Munitions Response Program (MMRP) administered by the U.S. Department of Defense. Many DERP/FUDS and MMRP projects are located on public lands managed by the Department. The United States requires right-of-entry (ROE) to those lands before site-specific project funding is allocated and work can begin. DERP/FUDS and MMRP activities on these lands will evaluate the presence of MEC (including

unexploded ordnance (UXO) and discarded military munitions (DMM)) and munitions constituents (MC) on the subject properties, and provide appropriate remediation, response and mitigation of hazardous conditions, including UXO (munitions-related definitions attached as Exhibit A).

The Department has responded to ROE requests from the USACE/United States for various DERP/FUDS and MMRP project sites on public lands over the last several years under the Chair's authority to issue ROEs on unencumbered lands for activities such as environmental investigations and for emergency actions (list of ROEs issued to the United States for DERP/FUDS and MMRP projects attached as Exhibit B).

The Department seeks to clarify and extend the Chair's authority to issue such ROEs to the federal government to better support DERP/FUDS munitions investigation and response efforts on public lands.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with §11-200-8A(1), Hawaii Administrative Rules (HAR), and with concurrence from the Office of Environmental Quality Control as summarized in their memo dated October 10, 2010 (copy attached as Exhibit C), activities to respond to and mitigate hazardous conditions from UXO discovered on State lands are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 because they will involve operations, repairs or maintenance of existing facilities and topographical features, which include the mitigation of existing hazards, that involve negligible or no expansion or change of use beyond that previously existing.

In accordance with §11-200-8A(4) & (5), HAR, activities to conduct survey and environmental investigations to evaluate the presence of MEC and MC on the subject property are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 5 because they will involve basic data collection, research, experimental management and resource evaluation activities that will not result in a serious or major disturbance to the environmental resources of the area; and Exemption Class No. 4 because they may also involve minor alterations in the conditions of the land, water, or vegetation in the area.

These exemptions are also summarized in Land Division's Notification of Exemption Form, attached hereto as Exhibit E, and incorporated herein.

REMARKS

Need for munitions cleanup programs. To attain the level of readiness necessary to deter adversaries and defend our nation, the Department of Defense (DoD) must develop, test, and deploy weapon systems and military munitions, and then train its personnel to use and maintain these systems. In Hawaii, since World War II, large areas both onshore and offshore have been used for such military training involving live ammunition. As a

result, some properties are known or suspected to still contain UXO, DMM, and MC (munitions-related definitions attached as Exhibit A) remaining from previous DoD use, and are the subject of a massive, long term remediation effort funded by the DoD today.

The State does not have the funds, expertise, or resources to investigate and mitigate the hazards posed by MEC and UXOs. The costs for these investigation and remediation efforts are tremendous and could not be financed by the State even in the best of economic times. Consequently, in order to protect the health, safety and welfare of the general public, it is in the State's best interest to support and facilitate the DoD's investigation and remediation efforts under its various programs since such State cooperation is critical and mandatory under those programs. The failure or inability to address these hazards previously have resulted in documented fatalities when unsuspecting members of the public inadvertently encountered UXOs.

Regulatory Framework. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980 to address releases or threatened releases of hazardous substances that may endanger public health or the environment. In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA), which amended and strengthened CERCLA.

SARA also renamed its Installation Restoration Program (IRP) as the Defense Environmental Restoration Program (DERP) and expanded the IRP with programs to address environmental cleanup on various types of DoD-used properties. These included Formerly Used Defense Sites (FUDS), real property formerly owned, leased, possessed by, or otherwise under the jurisdiction of the Secretary of Defense prior to 1986. The U.S. Army Corps of Engineers (USACE) was designated as the executing agency for the DERP/FUDS Program. In September 2001, DoD established the Military Munitions Response Program (MMRP) and designated the U.S. Army Garrison (USAG) as the executing agency to manage environmental responses specifically related to UXO, DMM, and MC on FUDS sites.

FUDS/MMRP GOAL

Reduce risk to human health and the environment through implementation of effective, legally compliant, and cost effective response actions

Response actions today are authorized under DERP and SARA Section 211. CERCLA provides the regulatory framework for environmental restoration. A Memorandum of Agreement between the DoD and the State of Hawaii, represented by the State of Hawaii Department of Health Office of Hazard Evaluation and Emergency Response (DOH HEER), assures the DoD of State coordination and support for regulatory matters, however, cooperation by other State agencies to allow access to lands under their control must also be forthcoming.

Since the late 1990's the USACE on behalf of USACE and USAG has requested and been granted permission to enter various FUDS/MMRP-eligible State lands to conduct environmental investigations, remediation, and response work. FUDS/MMRP sites currently owned by the State of Hawaii include unencumbered lands and encumbered lands which may be in park, forestry, agricultural, urban and/or submerged areas. The investigation and/or response work is conducted in phases, according to the FUDS/MMRP process.

FUDS/MMRP PROCESS OVERVIEW

Phase 1—inventory

Phase 2—investigation (site inspection, remedial investigation, and decision document)

Phase 3—response (remedial action and site management)

Right-of-entry requirement. For all FUDS/MMRP projects, commencement of site work **is contingent upon availability of federal funding and landowner consent to right-of-entry.** FUDS/MMRP are voluntary programs so a FUDS/MMRP-eligible site could become ineligible if the landowner does not grant access to the property. Pursuant to USACE guidelines ER 200-3-1 dated May 2004, should a landowner refuse a request for a right-of-entry, the USACE is directed to reclassify the subject property as an ineligible project, and notify the appropriate authorities.

Scope and range of projects requiring ROE. USACE Honolulu District, which includes Hawaii, American Samoa, CNMI, Guam and the Republic of Palau, has 140 FUDS projects which have been projected to cost \$1.99B. Funding levels: FY 09 \$15.02M, FY10 through FY15 \$16.6M/year, whereas national FUDS funding is approximately \$250M/year. At this funding rate, FUDS/MMRP work in this region is projected to extend to the year 2134.

FUDS/MMRP projects on public lands in Hawaii involve thousands of acres of lands. On the island of Hawaii, the former Waikoloa Training Area project site (WTA) alone encompasses over 100,000 acres, three times bigger than the area of Kahoolawe. A training area for the 2nd Marine Division, dubbed Camp Tarawa, was located there in the 1940s, and was WWII's largest staging area used for military training. Today, remaining UXO, DMM, and MC are widespread, with several sections of the WTA rated as high risk and demanding the highest priorities. About 10% cleanup of the WTA has been completed in the first six years, with about 44 years of work remaining (related news article attached as Exhibit D).

Time-critical ROE requests. The federal DERP/FUDS/MMRP programs are currently the sole means to address the important military munitions remediation efforts in Hawaii on a statewide scale. Moreover, right-of-entry access is a prerequisite for programmatic funding allocations on each project site. Experience has shown that, with so many moving parts to be coordinated in each project, the USACE cannot always submit ROE requests far in advance of annual funding opportunities, and delays to ROE issuance can result in loss of funding, as has already happened in sections of the Waikoloa Training Area (though in this case funding has since been restored). Therefore, it is important that

the Department be able to issue ROEs to the USACE in a timely manner to help streamline the approval process wherever possible to support this important work.

Evolution of ROE processing. The Department of Health (DOH) is the State of Hawaii's representative in the Defense and State Memorandum of Agreement (DSMOA) Program administered by the Department of Defense (DoD). The goal of the DSMOA Program is to expedite environmental restoration at past and present DoD installations through partnerships with States and Territories. In July 2009, DOH in its role as State DSMOA representative sponsored a "UXO Information Exchange meeting" to discuss the U.S. Army Corps of Engineers (USACE) munitions investigation and response activities on public lands and identify issues that needed resolution at the time. The meeting was attended by representatives from DOH, DLNR, DHHL (Department of Hawaiian Home Lands), DAG (Department of the Attorney General), USACE, USAG, USAEC (U.S. Army Environmental Command), and USEPA (US Environmental Protection Agency).

The main issue delaying execution of right-of-entry (ROE) permits from DLNR was whether an environmental assessment (EA) should be completed before an ROE could be issued due to the always-present possibility of UXO findings requiring emergency detonations. Though the issue remained unresolved at that time, it was suggested that the munitions cleanup activities be approached bifurcated into separate investigative and emergency actions which could then be addressed via separate ROE authorities.

As a result, standard ROEs were issued for investigative activities under the HAR section 11-200-8 exemption classes 1, 4 and 5, and an emergency action ROE was issued under the Chair's existing authority to address emergency actions in the interest of public health and safety. To expedite the process, all ROE requests received from USACE for munitions clean up on public lands since 2009 have been coordinated by Land Division in consultation with DLNR Division managers to facilitate a more uniform departmental response.

Initially, ROEs were issued at the Department level through the Divisions designated as land managers for the project sites named incorporating each Division's permit form and other permitting requirements as Special Conditions. The ROE requests raised numerous issues, necessitating research and review of regulations and protocols, and resulted in an evolution of the basic ROE template over time.

In April 2010, a FUDS Focus Review within USACE led to a further clarification of USACE policy and revamping of protocols for ROE requests. Since then, DLNR ROEs have been issued at the Department level, coordinated by Land Division and using a template developed in consultation with USACE Real Estate Branch, Honolulu District. Special conditions required by Division land use rules and regulations are handled at the project management level by local DLNR land managers working with designated USACE FUDS or USAG MMRP project managers.

ROE documents are signed by the USACE Real Estate Contracting Officer and the DLNR Chairperson, in that order. Site-specific ROEs were issued for investigatory activities only, and an umbrella Emergency Action ROE that applied to all public lands was executed to cover any action, including blow-in-place (BIP) detonation of UXO,

deemed by USACE as an emergency that must be handled immediately in the interest of public safety.

In October 2010, however, the Office of Environmental Quality Control issued a memorandum of concurrence with DLNR, documenting its agreement that emergency actions relating to munitions occurring on public lands are exempt from Chapter 343, HRS, requirements for environmental review. Henceforth, ROEs can be issued without separating investigatory and emergency actions, simplifying the Department's ROE process.

For each ROE request, Land Division also researches encumbrances on the lands in question, and provides available reference documents and grantee contact information. USACE/USAG has agreed to send out notification letters to grantees explaining planned MMRP activities.

Additional requirements for encumbered lands. For those public lands that are encumbered, prior written concurrence for the proposed activities shall be obtained (by landowner, designated land manager, or the USACE/USAG) from all documented users of the subject property. Such prior concurrence may be waived only in circumstances involving conditions in which a significant and imminent threat to the health, welfare or safety of persons is determined to exist, and the user is not readily available.

Rental fees waiver. Since the right-of-entry permits discussed herein are government-related, and no entity involved intends to profit monetarily from its use, the standard right-of-entry fees shall be waived.

Other comments. No agency or community comments were solicited, as this is an internal matter concerning department policies and procedures.

Request to Land Board. This submittal therefore requests that the Board grant authority to the Chairperson to issue ROEs for DERP/FUDS and any other projects for military munitions cleanup on all unencumbered and encumbered public lands under the jurisdiction of this Department, and also to grant extensions and renewals therefor, as may be required or appropriate.

RECOMMENDATION: That the Board

1. Find the environmental investigations, remediation, and response activities in relation to Defense Environmental Restoration Program/Formerly Used Defense Sites and Military Munitions Response Program and other similar programs of the United States of America conducted on unencumbered and encumbered public lands in the State of Hawaii are exempt from environmental assessment requirements pursuant to Chapter 343, HRS.
2. Confirm and ratify all of the above described right-of-entry permits in Exhibit B, previously issued by the Chairperson since September 15, 2009;
3. Authorize the Chairperson to issue future right-of-entry permits, including extensions and renewals, to the United States of America for environmental investigations, remediation, and response activities on unencumbered and

encumbered public lands in the State of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein, in relation to its Defense Environmental Restoration Program/Formerly Used Defense Sites and Military Munitions Response Program and other similar programs, and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General, as needed; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barbara J. Lee
Project Development Specialist

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

DEFINITIONS*

Discarded military munitions (DMM) means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include UXO, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2))

Explosive hazard means a condition where danger exists because explosives are present that may react (e.g., detonate, deflagrate) in a mishap with potential unacceptable effects (e.g., death, injury, damage) to people, property, operational capability, or the environment.

Military munitions means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants; explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents; chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges; and devices and components of any item thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 101(e)(4))

Munitions and explosives of concern (MEC) distinguishes specific categories of military munitions that may pose unique explosives safety risks, such as UXO, as defined in 10 U.S.C. 101(e)(5); discarded military munitions, as defined in 10 U.S.C. 2710(e)(2); or munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

Munitions constituents (MC) means any materials originating from UXO, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(3))

Munitions response means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, discarded military munitions (DMM), or munitions constituents (MC), or to support a determination that no removal or remedial action is required.

Unexploded ordnance (UXO) means military munitions that:

- (1) Have been primed, fuzed, armed, or otherwise prepared for action;
- (2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and
- (3) Remain unexploded, whether by malfunction, design, or any other cause. (10 U.S.C. 101(e)(5))

*Source: CFR Title 32, Section 179.3 Definitions <http://law.justia.com/us/cfr/title32/32-1.1.1.8.86.0.58.3.html> and <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=0e3d586aa24be8e935acbdde0090c2a7&rqn=div8&view=text&node=32:1.1.1.8.84.0.58.3&idno=32>

**LIST OF ROE PERMITS ISSUED BY DLNR TO USACE
FOR DERP/FUDS/MMRP PROJECTS ON PUBLIC LANDS
September 2009 through September 2010**

EXECUTED	DESCRIPTION
09/15/2009	DACA84-9-09-170: <u>90-day emergency action ROE</u> —Issued through Land Division; applies to all state lands managed by DLNR; allows for emergency actions including UXO BIP detonation. (EXPIRED)
10/08/2009	DACA84-9-10-4: <u>90-day investigatory ROE</u> for geophysical prove-out (GPO) site on a portion of MAKUA TRAINING AREA—Issued through State Parks and Land Division; applies to TMK: (1) 8-1-001:007, 008, and 018 (portion of Kaena Point State Park at Keawaula). (EXPIRED)
11/06/2009	DACA84-9-10-12: <u>1-year Special Use Permit</u> for portion of POHAKULOA TRAINING AREA site—Issued through Division of Forestry & Wildlife (DOFAW); applies to TMK: (3) 2-4-008:001 (portions of Waiakea and Upper Waiakea Forest Reserves), and TMK: (3) 3-8-001:por.001 (Mauna Loa Forest and Game Reserve). (EXPIRED)
11/20/2009	DACA84-9-10-19: <u>1-year Entry Permit</u> for portion of POHAKULOA TRAINING AREA site—Issued through DOFAW; applies to TMK: (3) 3-8-001:por.001 (Kipuka Ainahou Nene Sanctuary). (EXPIRED)
12/29/2009	DACA84-9-10-22: <u>1-year ROE</u> for portion of POHAKULOA TRAINING AREA site—Issued through Land Division on request by Department of Public Safety; applies to TMK: (3) 2-4-008:009 (Kulani Correctional Facility).
12/29/2009	DACA84-9-10-23: <u>1-year Special Use Permit</u> for portion of MAKUA TRAINING AREA site—Issued through DOFAW; applies to TMK (1) 6-9-003:001 (Kuaokala Forest Reserve).
12/29/2009	DACA84-9-10-24: <u>1-year Entry Permit</u> for portion of MAKUA TRAINING AREA site—Issued through DOFAW; applies to TMK (1) 6-9-003:por. 002 (Kuaokala Game Management Area).
12/29/2009	DACA84-9-10-21: <u>1-year Emergency Action ROE</u> —Issued through Land Division; applies to all state lands managed by DLNR; allows for emergency actions including UXO BIP detonation.
01/12/2010	DACA84-9-10-32: <u>1-year ROE</u> for portion of WAIKOLOA TRAINING AREA AND NANSAY SITES on unencumbered lands at Lalamilo, South Kohala. TMKs: (3) 6-2-001:065 and (3) 6-6-002:043.
02/22/2010	DACA84-9-10-41: <u>1-year Special Use Permit</u> for FT. SHAFTER FORMER RIFLE RANGE 1 (TD) site—Issued by DLNR through DOFAW; applies to TMK: (1) 1-1-008:013 (Honolulu Watershed Forest Reserve).

- 03/26/2010** **DACA84-9-10-77:** 1-year ROE for FORMER POPOKI BOMBING RANGE site—Issued by DLNR through Land Division; applies to TMK: (3) 1-5-010:003 (unencumbered lands at Keonepoko Nui and Popoki, Puna, Hawaii).
- 08/26/2010** **DACA84-9-10-102:** 1-year Special Use Permit for portion of MAKUA TRAINING AREA site at Kaena Point State Park at Keawaula, TMK: (1) 8-1-001:007, 008, 018, 023, & 024, (1) 8-2-001:001 & 022; State land in joint use by the USAF and DLNR, TMK: (1) 6-9-003:por.005, and other State-owned land, TMK: (1) 8-2-001: 024. Issued at Department level. Summary of encumbrances and relevant documentation for state lands within the Makua Training Area for which access has been granted through DACA84-9-10-102, DACA84-9-10-23, and DACA84-9-10-24 also provided.
- 09/09/2010** **DACA84-9-10-88:** 1-year Special Use Permit for portion of WAIKOLOA MANEUVER AREA at Hapuna Beach State Recreational Area, TMK: (3) 6-6-002:031, 032, 034, 035, 040, 041, and 042; (3) 6-2-002:001; (3) 6-6-002:002, 006, 007; and (3) 6-9-001:001. Issued at Department level. Summary of encumbrances and relevant documentation also provided for state lands within the Waikoloa Maneuver Area for which access has been granted through DACA84-9-10-88 and DACA84-9-10-32 also provided.
- 09/09/2010** **DACA84-9-10-103:** 1-year Emergency Action ROE for all public lands under management of DLNR pursuant to 171-2, HRS; allows for emergency actions including UXO BIP detonation. Issued at Department level.

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
MEMO OF CONCURRENCE**

(Spelling errors noted: "ordinance" should be "ordnance" wherever it occurs)

RECEIVED
LAND DIVISION

LINDA LINGLE
Governor of Hawaii

2010 OCT 13 A 10: 24



KATHERINE PUANA KEALOHA, ESQ.
Director

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STATE OF HAWAII
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VIA E-MAIL TRANSMITTAL

To: Laura H. Thieleu, Chairperson
Fr: Katherine Puana Kealoha, Eng. 
Dt: October 10, 2010
Re: Request Review and Concurrence of Exemption List Item to Allow Emergency
Detonation of Unexploded Ordinance on State Lands

On October 07, 2010, we received the above-entitled request and began immediate review of the proposed activities. After an extensive review of the proposed activities, as well as the proposed exemption class categories identified in your memorandum, we further discussed this matter with Deputy Attorney General Ted Bohlen. Based upon this review, our discussion with our Deputy Attorney General, extensive research and further inter-departmental discussion in regards to the proposed exemption class history, we concur with the statement that these proposed activities, as identified in your memorandum, fall within the exemption class one. Furthermore, the necessity of these actions clearly rise to the level of health, safety and welfare requirements for the safety and well-being of the general public.

Should you have any further questions or concerns, please feel free to contact me at your convenience.

DEPARTMENT OF LAND AND NATURAL RESOURCES
PROPOSED ACTIVITIES TO ALLOW
EMERGENCY RESPONSE AND PREVENTIVE EMERGENCY MITIGATION ACTIONS
FOR UNEXPLODED ORDINANCE
October 7, 2010

Exemption Class #1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Proposed Activities:

Detonation of Unstable Ordinance

- o Activities to respond to and mitigate hazardous conditions from unexploded ordinance discovered on State lands, including removal or detonation in place of unexploded ordinance that a bomb disposal expert has determined to be too unstable to remove without risking human life, limb or public safety, provided that measures are taken to minimize impacts to land, water, and other natural or cultural resources if detonated in place.

**PRESS RELEASE
U.S. ARMY CORPS OF
ENGINEERS**

October 19, 2010

<http://www.pod.usace.army.mil/>

PHOTO CAPTION:

FUDS Tech Promotion: Big Island Mayor Billy Kenoi (left) and Hawaii's Senior Sen. Daniel K. Inouye promote Marlon Chung to UXO Technician II during a visit to the Waimea area of Hawaii, October 18. Sen. Inouye's wife Irene looks on.



**US Army Corps
of Engineers®**

Public Affairs Office
Honolulu Engineer District
U.S. Army Corps of Engineers
Fort Shafter, Hawaii 96858-5440

Contact: Joseph Bonfiglio
or Dino Buchanan
Telephone (808) 438-9862/8317

FOR IMMEDIATE RELEASE

October 19, 2010

**Sen. Inouye, Mayor Kenoi and Others Join the U.S. Army Corps of Engineers
to Recognize Munitions Clean-up Efforts on Hawaii Island**

By Honolulu District Public Affairs

(FORT SHAFTER, HI NR-25-10) Hawaii's Senior Sen. Daniel K. Inouye and Big Island Mayor Billy Kenoi visited the Waimea area of Hawaii, Oct. 18, to recognize one of the largest ongoing environmental cleanups of unexploded ordnance (UXO) in the United States.

Accompanying Sen. Inouye and Mayor Kenoi were U.S. Army Corps of Engineers Pacific Ocean Division Commander Colonel Edward Kertis and Tony Paresa, U.S. Army Corps of Engineers, Honolulu District, Deputy District Engineer for Programs and Project Management.

Both the senator and mayor said they were pleased with the Corps for employing Native Hawaiian entities to conduct this ordnance removal work. In the past, this highly specialized work went to large mainland based contractors with uniquely qualified ordnance technicians.

In addition, Sen. Daniel Inouye recently announced that the Corps recently awarded a \$8.4 million contract to Alu Like Enterprises/Environet Inc JV, an 8(a) Native Hawaiian Organization, to continue work at the Waikoloa Formerly Used Defense Site (FUDS) on the island of Hawaii.

Under this contract, the Corps awarded the work to a joint venture made up of Alu Like Enterprises and Environet Inc., both Native Hawaiian owned entities. In partnership with the University of Hawaii Community College system, these organizations have trained nearly 60 Hawaii residents to become ordnance technicians and many of them have been hired for entry level positions paying slightly over \$50,000 annually.

- more -

EXHIBIT D (page 1 of 2)

PRESS RELEASE, continued
U.S. ARMY CORPS OF ENGINEERS
October 19, 2010
<http://www.pod.usace.army.mil/>

Many of these individuals were unemployed due to the slowdown in the Big Island's construction industry but now possess highly skilled positions in a unique industry, as a result of the U.S. Army Corps' initiative to hire locally.

Funding for this cleanup comes from the Formerly Used Defense Site Program which is managed by the U.S. Army Corps of Engineers. Sen. Inouye is a strong proponent for these efforts.

Mayor Kenoi was especially pleased with this Army Corps' effort because it helps make the Waimea and Waikoloa communities safer and has a significant economic impact upon the area.

During Monday's visit, Sen. Inouye personally greeted each one of the Environet ordnance technicians and presented promotion certificates to three of them. They are all Hawaii residents.

Owen Sarsona (originally from Makawao, Maui and a veteran of the Kahoolawe cleanup) was promoted to UXO Technician III. Marlon Chung and Clyde Quiniones were also promoted to UXO Technician II. These promotions are significant because it is one of the first known instances where local hires have been promoted to these senior level UXO positions.

Over 65 years ago the Waikoloa and Waimea communities were the home to some 50,000 U.S. servicemen who trained and prepared for many of the historic battles fought in the Pacific during WWII. Training in the former Waikoloa Maneuver Area included artillery and mortar fire, and other live fire training in an area encompassing over 130,000 acres.

The Corps has been removing munitions and explosives of concern at Waikoloa Maneuver Area since 2002, and has cleared approximately 13,600 acres, disposed of over 2,100 items and recycled over 250 tons of former military and munitions debris.

The U.S. Army Corps of Engineers is committed to ensure the health and safety of the local community and the health of the environment and stresses that munitions encountered by the public should never be touched or handled.

If someone should come across unexploded ordnance, the Corps urges them to follow the Three Rs:

- Recognize – that you may have seen ammunition
- Retreat – do not touch it
- Report – tell the police (call 911), a life guard or another authority figure



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 9, 2010

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS, and Chapter 11-200, HAR.

Project Title: Requests for Right-of-Entry from the U.S. Army Corps of Engineers for the Department of Defense, Defense Environmental Restoration Program, Formerly Used Defense Sites/Military Munitions Response Program on Public Lands in the State of Hawaii

Project Location: Various public lands located Statewide

Project Description: Military Munitions Response Program activities on Formerly Used Defense Sites on public lands conducted in up to three phases (inventory, investigation, and response) as determined to be necessary in each location. This will involve evaluation of the presence of munitions and explosives of concern (MEC) (including UXO and DMM) and munitions constituents (MC) on the subject properties, and appropriate remediation, response and mitigation of hazardous conditions, including those from unexploded ordnance (UXO). Appropriate response may involve removal or detonation-in-place of UXO that an explosive ordnance disposal (EOD) expert has determined to be too unstable to remove without risking human life, limb or public safety, provided that measures are taken to minimize impacts to land, water, and other natural or cultural resources if detonated in place.

Ch 343 Trigger: 1. Use of state or county lands or funds other than for feasibility studies or the purchase of raw land

Exemption Class No.: In accordance with §11-200-8A(4) & (5), Hawaii Administrative Rules (HAR), activities to conduct survey and environmental investigations to evaluate the presence of MEC and MC on the subject properties are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 5 because they will involve basic data collection, research,

experimental management and resource evaluation activities that will not result in a serious or major disturbance to the environmental resources of the area; and Exemption Class No. 4 because they may also involve minor alterations in the conditions of the land, water, or vegetation in the area

In accordance with §11-200-8A(1), HAR, activities to respond to and mitigate hazardous conditions from UXO discovered on State lands are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 because they will involve operations, repairs or maintenance of existing facilities and topographical features, which include the mitigation of existing hazards, that involve negligible or no expansion or change of use beyond that previously existing.

The individual projects for which ROE requests will be made are part of a large scale sweep of various FUDS/MMRP project sites on public lands located statewide, with phased actions conducted as necessary at each location. In this regard, the individual projects can collectively be treated as a single action in this analysis since: A. The component actions are phases or increments of a larger total undertaking; B. An individual project may be a necessary precedent for a larger project; and C. An individual project represents a commitment to a larger project, pursuant to §11-200-7, HAR.

The proposed activities, where carried out as phased actions in any single location, pursuant to §11-200-8(b), HAR, will not have a significant cumulative impact, rather, they will remove foreign munitions debris and return the land more closely to its natural condition.

Consulted Parties:

The Office of Environmental Quality Control was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption Class No.1 as identified above is applicable to and appropriate for emergency actions that may be required for the proposed project.

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date: _____