



REPORT TO THE LEGISLATURE ON THE MANAGEMENT OF THE KAHO‘OLawe ISLAND RESERVE

Report to the Twenty-Second Legislature
Regular Session of 2004



Prepared by:



**Kaho‘olawe Island Reserve Commission
State of Hawai‘i**

March 2004

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FORWARD

The Kaho‘olawe Island Reserve Commission offers and submits the enclosed report on the management of the Kaho‘olawe Island Reserve to the 2004 Session of the Twenty-Second Legislature. The report is intended to provide policy-makers with an overview of the issues facing the State and Commission during the next 12-18 months as Kaho‘olawe moves through the transition from U.S. Navy control to State management.

As we move through this period, we thank the Legislature for its support of the return of Kaho‘olawe to the people of Hawai‘i and interest in matters concerning the island. We further appreciate the Legislature’s recognition of the cultural significance of Kaho‘olawe and the importance of maintaining the island and surrounding waters as a valuable resource not only for future generations, but for the future Native Hawaiian sovereign entity as well.

Mahalo,

Kaho‘olawe Island Reserve Commission:

Noa Emmett Aluli, M.D., Chairperson
Colette Y. Machado, Vice-Chairperson
Peter T. Young, Commissioner
Gilbert Coloma-Agaran, Commissioner
Robert J. Lu‘uwai, Commissioner
Charles P.M.K. Burrows, Ed.D., Commissioner
Burt Sakata, Commissioner

Stanton K. Enomoto, Acting Executive Director

TABLE OF CONTENTS

Preface i

Section 1: Timing 1

Section 2: Vision and Purposes of the Reserve 3

Section 3: Statutory Framework and Rules 6

Section 4: Safety and Risk Management Practices 8

- Access to the Reserve 8
- On-Island Access 10
- Access Guides 14
- Monitoring 14
- Response to Newly Discovered UXO 17
- Institutional Controls 17

Section 5: Program and Financial Planning 19

- Five-Year Strategic Plan 21
- Financial Planning 21

Contact Information 23

Attachment: Procedural Agreement Regarding the Means for Regular Interval Clearance and Removal of Newly Discovered Previously Undetected Ordnance

References

PREFACE

During the 2003 Legislative Session, a bill (S.B. 463) was introduced that requested the Kaho'olawe Island Reserve Commission (KIRC) to submit a "master plan, describing the commission's intentions for managing the Reserve upon the transfer of administrative control of the island to the commission from the United States Navy."

Although S.B. 463 did not pass into law, the Commission recognizes the importance of keeping all policy makers apprised of the status of the Reserve as the island transitions to a new place in Hawaii's history. This report is submitted in the spirit of this transition.

SECTION 1: TIMING



UXO Detonation
Honokanai'a, Kaho'olawe
Photo: U.S. Navy

The Commission and staff formally began their planning for the transition of the management of Kaho'olawe in 1999. A conceptual framework was established, and considerable work was invested, especially in the development of an Access and Risk Management Plan (ARMP). However, procedures and programs could not be established until the State had detailed knowledge of (1) the island's on-the-ground condition upon transfer; and (2) the terms under which the U.S. government would continue its responsibilities for clearance of newly discovered unexploded ordnance after the end of the Cleanup Project.

As it turned out, the terms for post-2003 responsibilities were not finalized and agreed to by the parties until the first week of November 2003.

On November 11, 2003, the control of access to the island was transferred automatically by federal statute from the U.S. government to the State of Hawaii. The Navy, however, has (with the concurrence of the State) retained responsibility for range control functions until the contractor has completed demobilizing equipment, unexploded ordnance (UXO) and other scrap gathered during the Cleanup Project, and other close-out activities. The demobilization is expected to continue into the spring of 2004. At that time, the control of the range will be transferred to the State.

Details of on-the-ground conditions will become known over time as KIRC staff increases their management presence. The documents and database detailing archaeological, environmental, ordnance, natural resource, clearance, and other information are being transmitted to the State over the course of 2004. By federal law, the Navy has until November 2004 to submit what should be the final document(s): notice(s) of areas in which UXO were found, and were not cleared.

Information on the conditions of the island will increase over time. Actual conditions will change with weather, and the nature of human presence. The Reserve's management procedures – whether they are to mitigate risk, or to promote the culturally appropriate use of the island – will need to continuously adapt to new information, and changing conditions.

This Report provides a view of the management practices for the next 12-18 months, which will be marked by the following major events:

1. Completion of the demobilization activities of the U.S. Navy and its contractors;
2. Increased management presence and responsibilities of the KIRC staff and contractors;
3. Transfer of information on the conditions of the island and the cleanup; and
4. A gradual increase in the cultural, rehabilitation, and educational purposes of the Reserve.

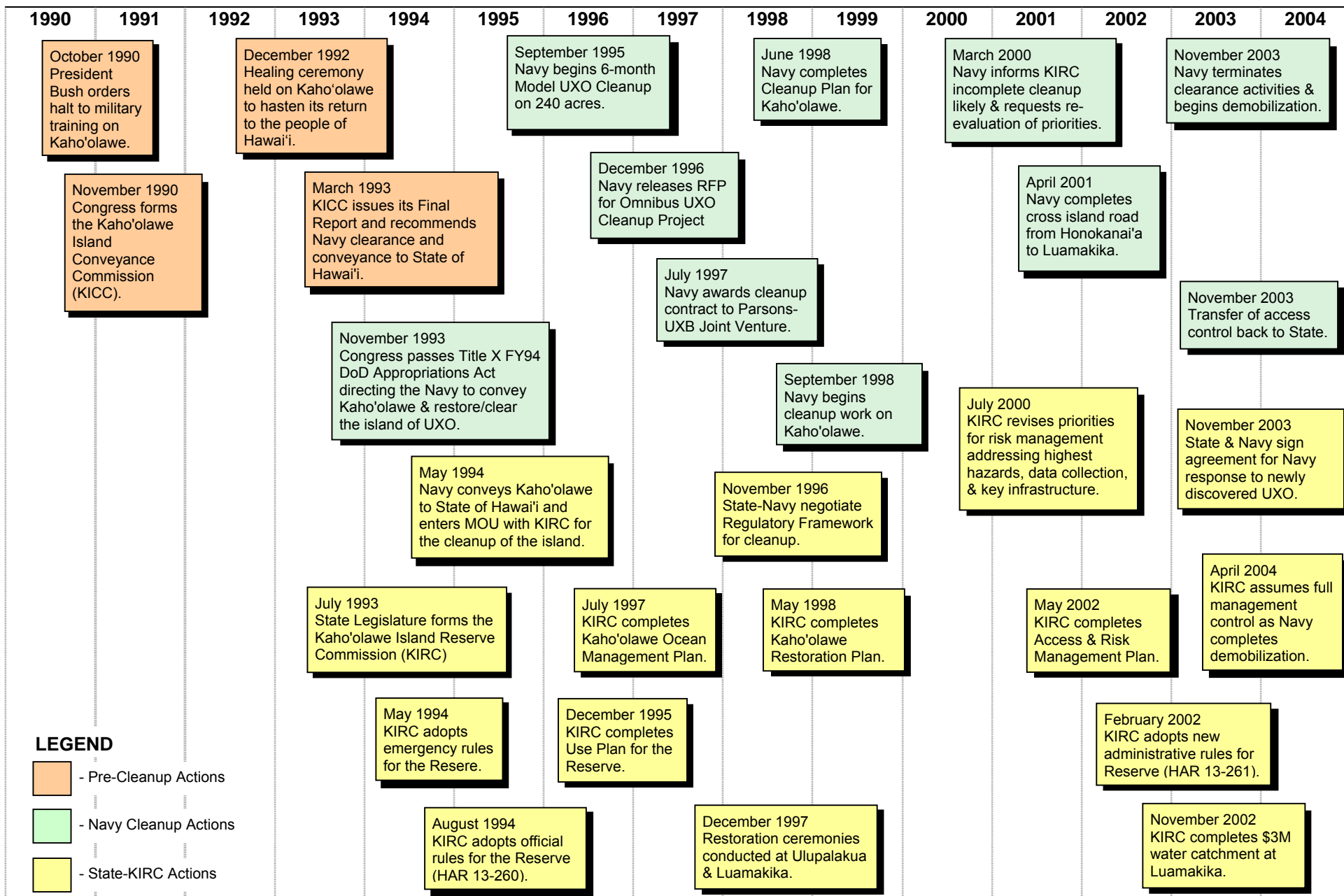
From a historical perspective, a graphic depiction of some of the major events regarding Kaho‘olawe over the past 15 years is provided below. Within the graphic, events occurring prior to the establishment of the KIRC as well as Navy/Cleanup related and State/KIRC events are provided.

SECTION 2: VISION AND PURPOSES OF THE RESERVE

Hawai‘i Revised Statutes, Chapter 6K-3, says that “The Kaho‘olawe Island Reserve shall be used solely and exclusively for the following purposes:

1. Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes; Preservation and protection of its archaeological, historical, and environmental resources;

KAHO'OLAWE TIMELINE



LEGEND

- Pre-Cleanup Actions
- Navy Cleanup Actions
- State-KIRC Actions

2. Rehabilitation, revegetation, habitat restoration, and preservation; and
3. Education.” [Emphasis added.]

Fishing is a permitted action in the Reserve, as circumscribed by rules set by the Commission.

Further, the law says that commercial uses are strictly prohibited.

The purposes enumerated under state law mirror the purposes described in the federal law that returned Kaho‘olawe to the State, authorized and funded the 10-year Cleanup Project, and continuing federal responsibility for environmental restoration, remediation, “or corrective action”. Under federal law, the Cleanup and other federal actions are authorized in order “to recognize the cultural and humanitarian value of assuring meaningful, safe use of the island for appropriate cultural, historical, archaeological and educational purposes as determined by the State of Hawai‘i...”

The restoration, cultural and environmental use of an entire island and its waters in modern times is a very unique opportunity for Hawai‘i’s people. In keeping with the spirit of the opportunity and the law, the Commission adopted the following vision statement for the Reserve in 1994:



Kaukaupapa, Kaho'olawe
Photo: KIRC

“The kino (body) of Kanaloa is restored. Forests and shrublands of native plants and other biota clothe its slopes and valleys. Pristine ocean waters and healthy reef ecosystems are the foundation that supports and surrounds the island.”

Na po'e Hawai'i (The Hawaiian people) care for the land in a manner which recognizes the island and ocean of Kanaloa as a living spiritual entity. Kanaloa is a pu'uhonua (refuge) and wahi pana (sacred place) where Native Hawaiian cultural practices flourish.

The piko of Kanaloa is the crossroads of past and future generations from which the Native Hawaiian lifestyle spreads throughout the island.”

SECTION 3: STATUTORY FRAMEWORK AND RULES

Kaho'olawe is the only island in the State that is wholly and comprehensively covered by uniform laws and administrative rules. The groundwork for the uniformity was laid in 1993, when the State Legislature adopted Chapter 6K, HRS, and combined jurisdictions that would normally have crossed over several State departments, and between the state and Maui county governments. Further discussion is occurring with the U.S. Navy to ensure that the remnants of federal laws that apply to Kaho'olawe will be administered in ways that would avoid jurisdictional disputes between the state and federal governments.

The following table summarizes the laws and rules.

Government Level	Title	Description
Federal	<p>“Title X”</p> <p>Title X of PL 103-139, 107 Stat. 1418, Department of Defense Appropriations Act, FY 1994</p>	<ul style="list-style-type: none"> • Authorizes conveyance of Kaho’olawe to the State • Authorizes cleanup • Establishes responsibilities • Appropriates funding <p>Note: Certain sections of Title X remain in effect</p>
Federal	<p>“Federal Danger Zone”</p> <p>Title 33, Navigation and Navigable Water, Chapter II, Corps of Engineers, Department of the Army, Part 334 – Danger Zone and Restricted Area Regulations, Section 334.1340(a)(2)</p>	<ul style="list-style-type: none"> • Provides that no person or vessel can enter or remain in the area approximate to two miles from the shoreline except as authorized by the Commander, Naval Base Pearl Harbor • Establishes a physical demarcation of a “danger zone” in all navigation maps <p>Note: The State and the Navy are in discussion on the terms under which the Navy would designate the State as an enforcing agency.</p>
Federal	<p>“Navy Access Rules”</p> <p>Title 32, National Defense Chapter VI Department of the Navy, Part 763, Rules Governing Public Access.</p>	<ul style="list-style-type: none"> • Pertains to portion of Kaho’olawe reserved for Naval purposes. • Establishes restriction and provisions for access. <p>Note: Rule not applicable given transfer of title and access control, and Navy is seeking its revocation.</p>
State	<p>“Chapter 6K – Kaho’olawe Island Reserve”</p> <p>Chapter 6K, Hawaii Revised Statutes (1993)</p>	<ul style="list-style-type: none"> • Establishes the Reserve • Defines reservation of uses • Establishes Commission (composition, selection, responsibilities) • Permits fishing • Establishes penalties • Creates a trust fund • Provides for transfer of Kaho’olawe and its waters to the sovereign native Hawaiian entity upon recognition of the entity by the U.S. and the State
State	<p>“Conclusive Presumption, unexploded ordnance on Kaho’olawe and in the ocean adjacent to Kaho’olawe”</p> <p>Chapter 662-18, HRS (2002)</p>	<ul style="list-style-type: none"> • Establishes a duty to warn of the dangers posed by UXO • Provides conclusive presumptive protection if procedures are followed
State	<p>“Kaho’olawe Administrative Rules”</p> <p>HAR 13-261</p>	<ul style="list-style-type: none"> • Defines restricted area • Defines prohibited uses • Defines permitted uses • Defines penalties <p>Adopts the Access and Risk Management Plan</p>
State	<p>“Kaho’olawe Island Rules”</p> <p>KIRC Adopted Policy</p>	<ul style="list-style-type: none"> • Rules of appropriate behavior by contractors and associated personnel to protect the historical, archaeological, cultural and religious sites

SECTION 4: SAFETY AND RISK MANAGEMENT

General provisions of the access and risk management practices are described in this section. For more detail, readers are encouraged to review the “Access and Risk Management Plan” available from the KIRC’s website: www.kahoolawe.hawaii.gov and/or to call KIRC to arrange for an in-depth briefing.

Risk management is essential for the safe and reasonable use of Kaho’olawe. There are four elements anchoring the risk management plan:

1. Management of access to the Reserve;
2. Monitoring of hazards and ground conditions;
3. Response to newly discovered UXO; and
4. Maintenance of institutional controls -- education, markers, rules.

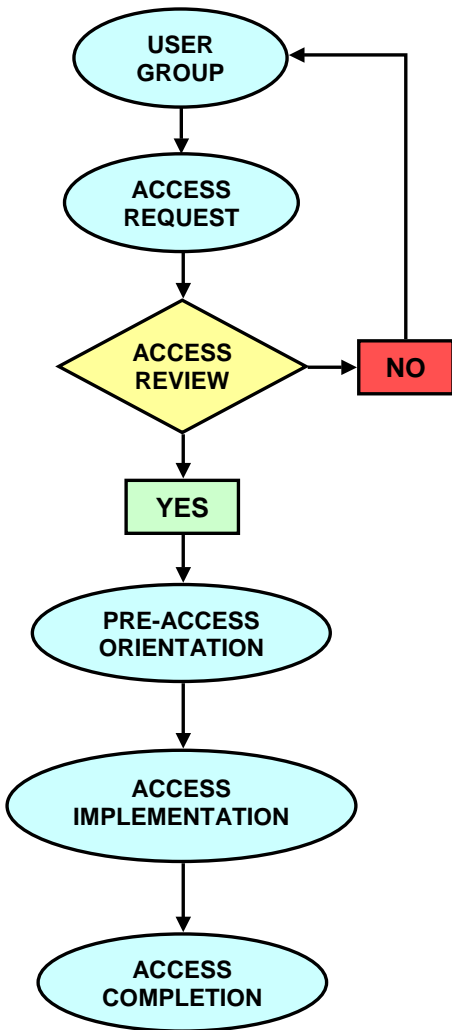
ACCESS TO THE RESERVE

Access to the island and its waters (2 miles from the shoreline) is restricted, and permitted only for the purposes allowed under State law. Until the Navy and its contractors are completely demobilized – estimated mid-March 2004 – access will be severely limited in order to expedite the demobilization process and to protect the safety of everyone.

During the last full year of the Cleanup Project, approximately 500 people not associated with the cleanup visited Kaho’olawe for the purposes of cultural and religious practices, revegetation and other natural resource management and monitoring activities, cultural site restoration, and education. For the first six to eight months of 2004, it is expected that the number of persons granted

access, and for the purposes they're granted, will remain at current or reduced levels.

The general public is encouraged to participate in the access of a steward organization, such as the Protect Kaho'olawe 'Ohana, or one of the KIRC programs, such as a revegetation project. Individual access requests by the general public are discouraged.



Procedurally, requests for access include:

- Applicant's name and contact information;
- Date and location of requested access;
- Description of purposes and activities associated with the access;
- Number, names, and ages of persons who will be included in the activities;
- A safety and logistics plan for transportation to and from the island;
- If applicable, information as to the applicant's claim to exercise traditional and customary rights; and
- A signed liability release waiver acknowledging and accepting full risk and responsibility for exposure to all natural and man-made hazards within the Reserve, including the presence and potential contact with UXO and other hazardous debris.

The criteria for review of the access request include:

- Alignment of the stated purposes of the access with the purposes allowed in State law;

- Safety considerations, including the impact on any demobilization activity and/or incidental removal of newly discovered UXO;
- Activities that provide services in support of Reserve management and restoration objectives;
- Approval of a logistics plan and ocean safety plan;
- No expense to the KIRC; and
- Provisions for Native Hawaiian access under Article XII, Section 7 of the State Constitution regarding customary and traditional rights.

All organizations and persons approved for access must comply with the following pre-access procedures and requirements:

- Completion of an approved liability release waiver, including parental or legal guardian signatures for any minor children;
- Completion of a medical emergency notification form (to be kept confidential and used solely in the event of a medical emergency);
- Mandatory attendance at a pre-access orientation on UXO hazards, UXO reporting procedures, natural and cultural resource protection, personal safety and logistics, emergency communication protocol, emergency response and first aid, water safety, helicopter safety (if applicable), and history of the Reserve;





ON-ISLAND ACCESS

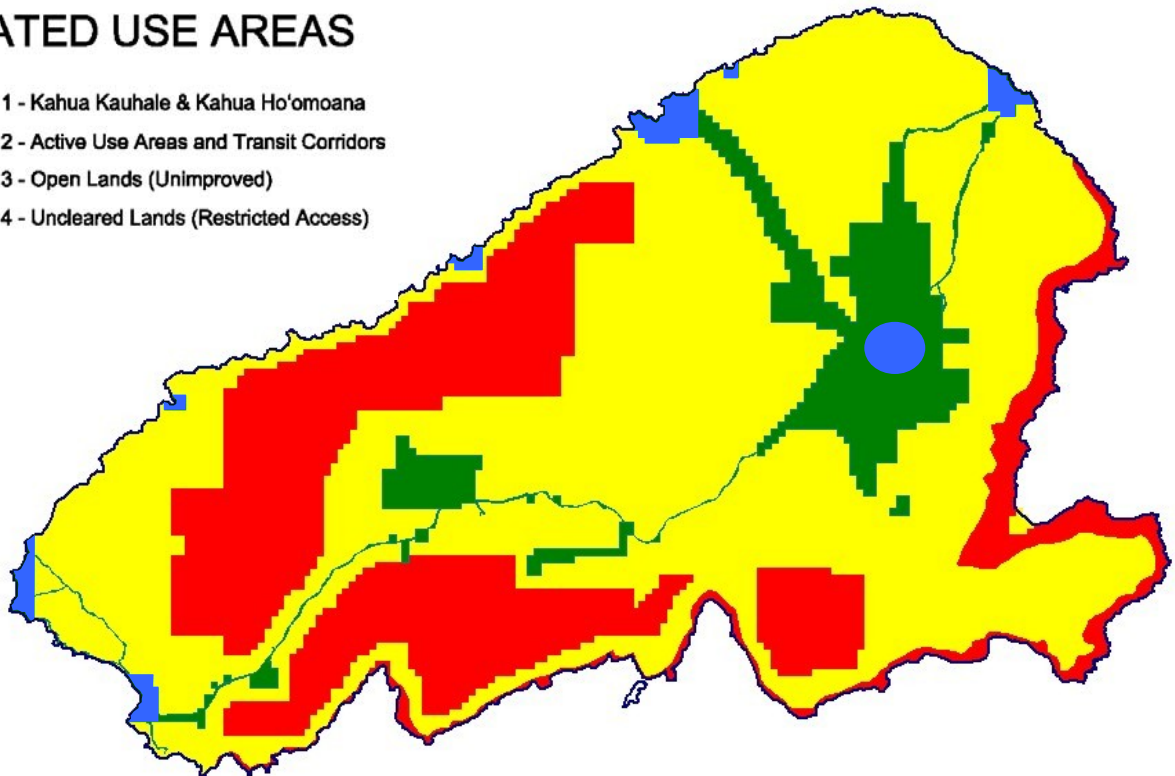
Persons authorized to access Kaho'olawe are allowed only to the specific areas identified in their approved itinerary. Depending on the risk-level assigned to an area, the

person/group will be circumscribed by the type of activity that can be safely performed in an area, and whether or not the group will require an escort and/or hazards' monitoring and pre-clearance in an area.

A map depicting the various use levels on the island is provided below. As can be seen, select areas along the coast and interior of the island as well as connecting trails and roads provide for the greatest amount of use (Levels 1 and 2), while the open lands (Level 3) primarily allow for limited surface activities. Access into the areas that remain uncleared (Level 4) is generally restricted to very limited activities and specific precautions must be undertaken to enter into these areas. Additionally, a table outlining the specific use levels is also provided below for reference.

DESIGNATED USE AREAS

-  Level 1 - Kahua Kauhale & Kahua Ho'omoana
-  Level 2 - Active Use Areas and Transit Corridors
-  Level 3 - Open Lands (Unimproved)
-  Level 4 - Uncleared Lands (Restricted Access)



DESIGNATED USE AREAS	Kaho'olawe Island			
	Level 1	Level 2	Level 3	Level 4
Cultural Centers – Kahua Kauhale	X			
Overnight Campsites – Kahua Ho'omoana	X			
Constructed Trails		X		
Constructed Roads		X		
Helicopter Landing Zones		X		
Select Restoration Areas & Nursery		X		
Select Cultural Sites		X		
Unspecified Surface Restoration Areas			X	
Open Land			X	
Unspecified Cultural Sites			X	
Uncleared Lands & Exception Areas				X
Hazardous Infrastructure (EHA, OSA, etc.)				X

The Access & Risk Management Plan further establishes general conditions for access levels in the Reserve. Capacity guidelines have also been established for the various areas.

In addition, the U.S. Navy's Cleanup Certification for each area provides guidelines as to the mitigation measures needed in order for specific activities to be conducted in any given area. The KIRC staff reviewing an itinerary will use these two documents -- along with the most current monitoring information for hazards and ground conditions --

to review and establish conditions for an itinerary. A sample of the mitigation measures from the Certification are provided below for reference:

“Sample Information from the Luamakika Certification”

“The UNITED STATES considers the following uses as reasonably safe...”

(1) Areas cleared to the Tier I Standard...

(2) Areas cleared to the Tier II Standard to Four Feet Depth...

Human habitation such as an overnight campsite or work camp. No intrusive activities deeper than one foot.

Suitable uses requiring no intrusive activities deeper than one foot may include: cooking area/kitchen; storage areas or sheds; sleeping areas or structures; central gathering area or structure. Resting places or overnight campsites when traversing between shoreline destinations or between coastal and upland destinations.

Intrusive activities deeper than one foot which may include ground fires, or other high impact activities such as construction of designated cooking areas, fire pits (imus), pit toilet (lua), post holes, wells, water catchments/reservoir, or underground piping will not be undertaken with implementation of ordnance avoidance procedures under the direction of qualified UXO

Technicians for the specific footprint of the soil intrusion. Additional detection and clearance to four feet below the planned intrusive activity depth must occur before such uses are implemented.

Once on Kaho’olawe, the access leader and his/her group will be monitored by on-island access guides, and the Reserve Operations Center (a.k.a. “range control”). Coordination with the Center is required for any movement of the group from area to area.

ACCESS GUIDES

Trained access guides will be required for all areas of the Reserve, except for waters greater than 30 fathoms deep, and within the boundaries of certain designated, improved cultural centers and campsites.

MONITORING

Under the Memorandum of Agreement signed by the Navy and the State, the State (i.e. KIRC) is responsible for developing and executing a monitoring program for UXO hazards. Areas will be monitoring at a frequency based both on the usage or activity occurring with the area as well as the weather or other natural conditions that may affect the area.

In general monitoring frequency will occur on a semi-annual to annual basis, as shown in the table below. The levels that are referenced correspond the levels of use areas shown in the map above.

UXO MONITORING FREQUENCY	Kaho'olawe Island			
	Level 1	Level 2	Level 3	Level 4
Semi-Annual Monitoring	X			
Annual Monitoring		X		
Access-Specific Monitoring			X	X
Post-Environmental Event Monitoring	X	X		



BLU-77 Submunition
Kealialalo, Kaho'olawe
Photo: KIRC

When monitoring, specially trained UXO technicians will inspect trails, roads, restoration planting areas and other areas methodically using a sweep line. The technicians will walk side by side in a line and visually inspect the ground for the presence of ordnance. On occasion, metal detectors may be used when visual observations may be obscured, as in the case of tall grass or vegetative overgrowth.

If ordnance is found, KIRC's UXO technician will record the location of the ordnance, mark it with a warning (flag), and initiate on-the-ground protocols to keep persons at a safe distance. The "safe distance" will be dependent on a preliminary assessment of the nature of the ordnance.

RESPONSE TO NEWLY DISCOVERED UXO

The procedures for response to a newly discovered UXO are November 2003. A copy of the MOA is attached.

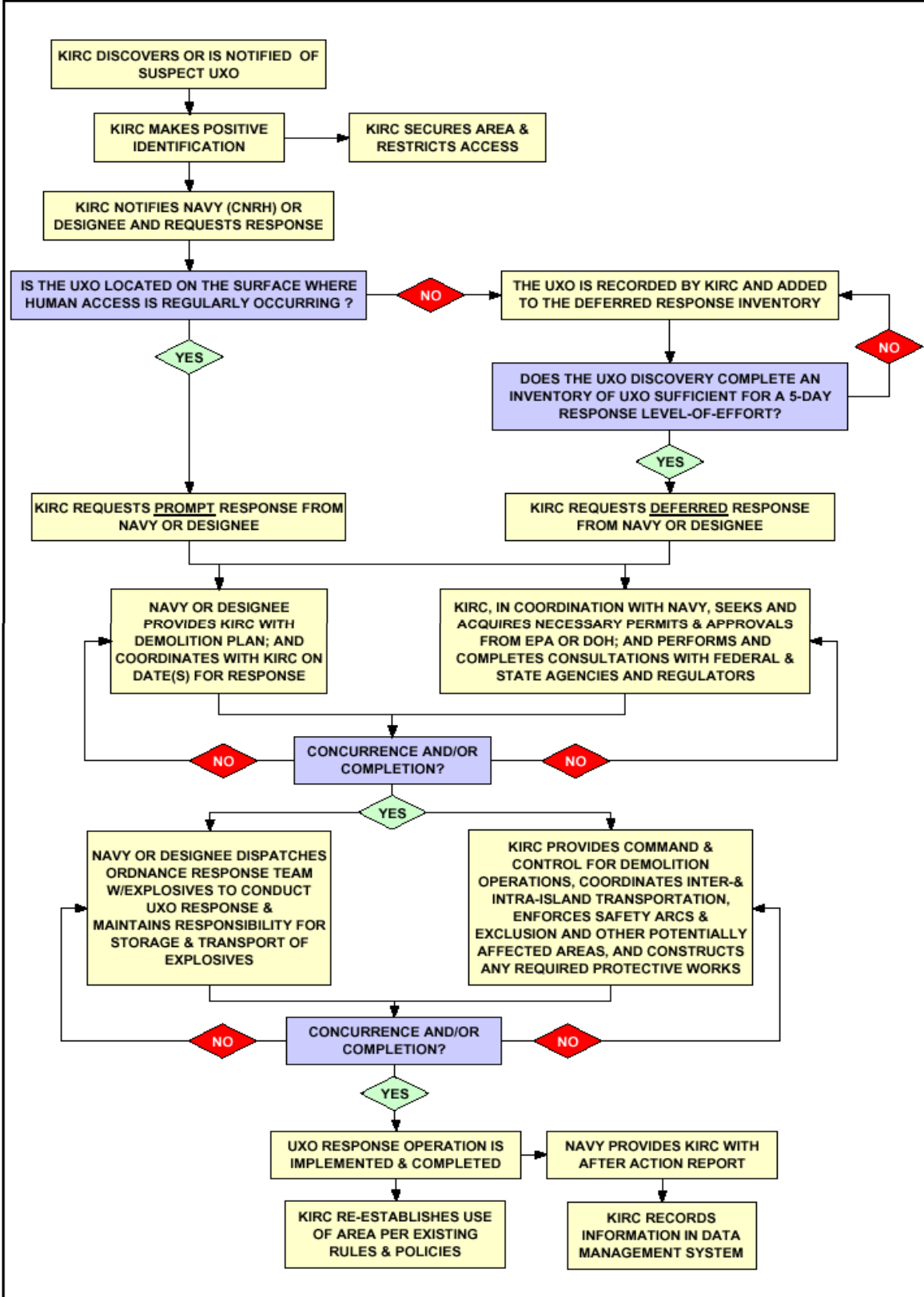


UXO Detonation
Pu'u Kamama, Kaho'olawe
Photo: U.S. Navy

Ordnance discovered in the course of project activity, or as a result of the monitoring program, fall into two categories of response. A prompt response category covers ordnance found in an area where human access occurs regularly and a quicker response is necessary to ensure human safety. All other ordnance found on the surface, or within a subsurface area that had been previously cleared, is covered within the deferred response category. The cleanup intervals for the deferred response category are dependent on having a sufficient critical mass to warrant a 5-day level of effort by an ordnance response team. A flow diagram or decision-tree that outlines this process is provided below for reference.

UXO RESPONSE DECISION TREE

(PROCEDURES FOR THE REGULAR INTERVAL CLEARANCE AND REMOVAL OF NEWLY DISCOVERED, PREVIOUSLY UNDETECTED ORDNANCE)



rev. October 2, 2003

INSTITUTIONAL CONTROLS

A well-informed public is necessary in order to ensure safety and appropriate activity on Kaho'olawe. It is critical for there to be broad-based knowledge of the ongoing dangers as a result of UXO in the Reserve, as well as the reservation of uses for cultural, educational, and rehabilitation purposes.

Toward that end, the KIRC in 2003 implemented a public education and awareness campaign targeted towards increasing public knowledge of the Reserve. The campaign includes the development of quarterly newsletters, updating the KIRC's website, production of an informational brochure and DVD and other interactive media, postings through government agencies, and outreach and education to schools and community organizations.

Additionally, Act 218 of the 2002 Legislature specified that signs or other devices warning of the dangers posed by UXO on the island or in the adjacent ocean shall be conclusively presumed to be legally adequate to warn of those dangers if the State posts the signs or devices on the island; and that the design and placement of the signs or other devices are approved by the KIRC.

Pursuant to the requirements of Act 218, the KIRC formed an advisory Task Force to provide recommendations on the design and placement of such warning signs. In August 2003, the KIRC approved the Task Force recommendations for the placement of two types of warning signs at 34 locations around Kaho'olawe. A sample of these signs and map depicting their locations is provided below. Signage fabrication and installation is currently in progress.

Once on island, a system of signs, markers and trails delineate areas that are cleared or uncleared. Some of these engineering controls, as shown, were installed by the Navy's contractors. Others are being installed by KIRC, who will also implement a maintenance and replacement program.



Clearance Boundary Marker
Luamakika, Kaho'olawe
Photo: KIRC

SECTION 5: PROGRAM AND FINANCIAL PLANNING

Over the past nine years, the KIRC has been developing and implementing various plans and programs for the Reserve. Four plans provide the framework for these programs:

1. The Kaho'olawe Use Plan (completed in December 1995) provides an overall vision for the island and its waters, and identifies appropriate uses and specific activities consistent with that vision. The Use Plan was a basis for identifying areas in the Navy's Cleanup Plan.
2. The Kaho'olawe Environmental Restoration Plan (completed in May 1998) provides a general assessment of environmental restoration needs, including soil erosion control, soil reclamation, elimination of invasive species,



'Aweoweo, *Chenopodium oahuense*
Luamakika, Kaho'olawe
Photo: KIRC

revegetation, and habitat restoration. Certain aspects of the Plan began implementation during the Cleanup phase, including the reestablishment of native plants. More specific program planning will begin as the staff gains on-the-ground experience.



Hinālea lauwiki, *Thalassoma duperrey*
Kaho'olawe Island Reserve
Photo: KIRC

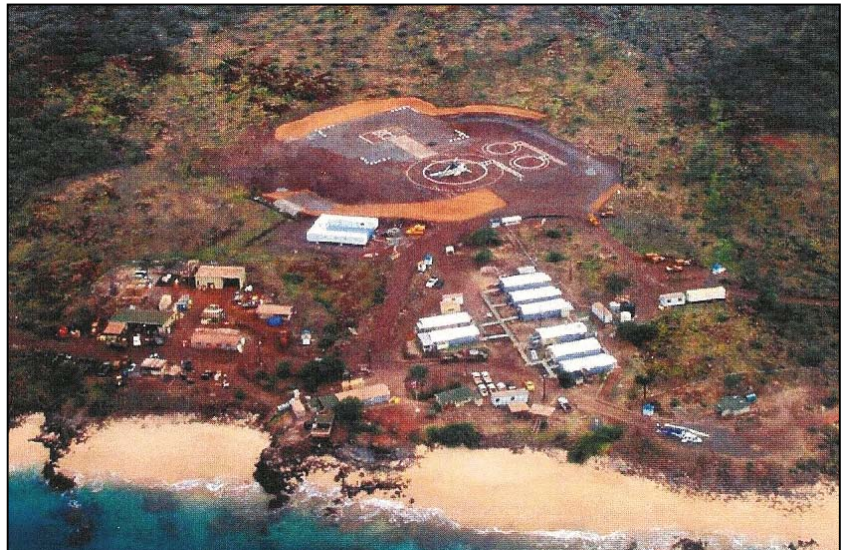
3. The Kaho'olawe Ocean Resources Management Plan (completed in July 1997) describes the KIRC objectives and goals for the management of the two-miles of waters surrounding Kaho'olawe Island. Developed in consultation with cultural practitioners and resource managers, the plan contemplates the integration of a cultural and traditional approach towards marine resource sustainability.

4. The Access and Risk Management Plan (completed in May 2002) outlines the risk management programs necessary to protect the public, and the policies and programs for providing safe access and use of the Reserve.

As the State enters the active management phase of its responsibilities, staff will be focusing on developing the details for certain program and operational plans, including:

1. A Reserve Operations Center at the former Navy Base Camp at Honokanai'a will be needed to perform three primary functions: (a) coordinating the movement of all persons into and out of the Reserve; (b) overseeing the operation and maintenance of on-island support facilities, engineering controls, and logistics; (c) coordination and

central information point for UXO monitoring, access monitoring, and natural and cultural resource monitoring. A “hot turnover” of range control operations from the Navy’s contractor to the State will need to occur at the end of the demobilization period in mid-March.



Former Navy Base Camp
Honokanai'a, Kaho'olawe
Photo: PUXB-JV

2. The Access Guide training program began in mid-2003 with the training of 12 individuals comprised of KIRC staff and members of the Protect Kaho'olawe 'Ohana. These individuals received training in: ordnance hazards and recognition, safety procedures, natural and cultural resource protection, and communication protocol. Training was accomplished both in the classroom as well as in the field on Kaho'olawe. In addition to the training, individuals will need to complete an in-field observation period before becoming qualified as an access guide.



Access Guide Training - UXO Recognition
Honokanai'a, Kaho'olawe
Photo: KIRC

3. Public information and outreach has already begun, but will need to accelerate in both its scope and reach.

4. KIRC's organizational structure will need to change to reflect the shift from a planning and monitoring organization, to a resource management/enforcement and program organization. The nature of the Reserve will require a team capable of operating on a 24-hour, 7-days per week basis.

FIVE-YEAR STRATEGIC PLAN

KIRC is developing a strategic plan to establish principles and strategic directions for the next five years. The plan is intended to focus priorities in recognition of the enormity of the task, the condition of the island and its surrounding waters, and the limitations of safety and money. Public meetings will be held in February and March, and the plan is scheduled for adoption by the Commission in April 2004.

FINANCIAL PLANNING

Funding for KIRC activities comes principally from 11 percent of all federal funds appropriated to the Navy for the Cleanup Project, and deposited into the Kaho'olawe Rehabilitation Trust Fund established in Chapter 6K, HRS. Small grants have been obtained for specific programs and projects.

- Trust fund balance as of December 2003: \$33 million
- FY 2004 budget: \$4.432 M
- Estimated balance as of 7/1/2004: \$33 million*

*(Incl. funds from the Cleanup's final appropriation, and estimated interest income o/a 4% per annum)

The Commission has been reviewing its budget policies to provide for management of the Reserve, while living in a reality of no additional funding for large-scale UXO clearance

operations. Some of the strategies being considered include converting the Reserve's capital improvement projects from Trust Fund cash financing to G.O. bond and/or federal grant financing; and, establishing absolute core functions to be funded out of the Trust Fund, with all other programs and projects operating on the availability of specific appropriations, grants, or donations. The idea of capturing certain operational expenses of the Reserve through access or user fees would need to be carefully balanced with the legal prohibition against any commercial activity.

CONTACT INFORMATION

Additional information or other resources regarding Kaho'olawe and its surrounding waters may be obtained from the KIRC by contacting:

Kaho'olawe Island Reserve Commission
811 Kolu Street, Suite 201
Wailuku, Maui, Hawai'i 96793

Phone: (808) 243-5020

Fax: (808) 243-5885

Website: www.kahoolawe.hawaii.gov

Email: administrator@kirc.hawaii.gov

ATTACHMENT PROCEDURAL AGREEMENT REGARDING
THE MEANS FOR REGULAR INTERVAL
CLEARANCE AND REMOVAL OF NEWLY
DISCOVERED PREVIOUSLY UNDETECTED
ORDNANCE.

PROCEDURAL AGREEMENT REGARDING THE MEANS FOR REGULAR
INTERVAL CLEARANCE AND REMOVAL OF NEWLY DISCOVERED
PREVIOUSLY UNDETECTED ORDNANCE
PURSUANT TO TITLE X OF THE FISCAL YEAR 1994 DEPARTMENT OF
DEFENSE APPROPRIATIONS ACT, PUBLIC LAW 103-139, 107 STAT. 1418

I. PARTIES AND INTRODUCTION

- A. The parties to this agreement are the United States Department of the Navy and the State of Hawai'i.
1. "The Navy," as referred to herein, means the United States Department of the Navy.
 2. "The State," as referred to herein, means the State of Hawai'i.
 3. "The KIRC," as referred to herein, means the Kaho'olawe Island Reserve Commission, on behalf of the State.
 4. "Commander, Navy Region Hawai'i," as referred to herein, shall include any person the Commander designates to act on the Commander's behalf with respect to matters covered by this agreement.
- B. Title X of the Fiscal Year 1994 Department of Defense Appropriations Act, Public Law 103-139, 107 Stat. 1418 (referred to herein as "Title X"), was enacted into law on November 11, 1993.
- C. Sections 10001(a) and (b) of Title X provided for the United States of America, through the Secretary of the Navy, to convey and "to return to the State of Hawai'i the Island of Kaho'olawe."
- D. On May 9, 1994, the "Quitclaim Deed from the United States of America to the State of Hawai'i for the Island of Kaho'olawe, Hawai'i" was recorded with the State of Hawai'i Bureau of Conveyances as Document No. 94-076277 (referred to herein as "the deed").
- E. Title X also required the Secretary of the Navy to transfer "the control of access to the State of Hawai'i within no more than ten years from the date of enactment of this Act or when activities required by this Act, including ordnance clearance or removal activities and environmental remediation activities are completed, whichever comes first."
- F. As indicated on page 4 of the deed, the United States of America reserved unto itself the "right in perpetuity of access to the island for the purpose of

ordnance clearance, removal or environmental restoration activities involving newly discovered previously undetected ordnance and to carry out any obligations arising out of any responsibilities and liabilities of the United States under the MOU and Title X of Public Law 103-139."

- G. Section 10002(a)(2) of Title X directed the Secretary of the Navy to enter into a Memorandum of Understanding with the State of Hawai'i and required that the Memorandum of Understanding address, among other subjects, the "terms and conditions" of "the means for regular interval clean-ups and removal of newly discovered previously undetected ordnance by the Navy. Under any such terms and conditions, the Secretary shall be assured full and necessary access to carry out the obligations of the Secretary arising out of the responsibilities and liabilities of this title."
- H. On May 6, 1994, the "Memorandum of Understanding between the United States Department of the Navy and the State of Hawai'i Concerning the Island of Kaho'olawe, Hawai'i" was recorded with the State of Hawai'i Bureau of Conveyances as Document No. 94-075038 (referred to herein as "the MOU").
- I. Section XI of the MOU states: "The Navy and the KIRC, on behalf of the State, shall develop an agreement by May 9, 1998, regarding procedures by which the Navy may conduct regular interval clearance and removal of newly discovered, previously undetected ordnance." The parties informally agreed to delay development and execution of this agreement. This document is the agreement described in Section 10002(a)(2)(vi) of Title X and Section XI of the MOU.
- J. Pursuant to Section VI of the MOU, the KIRC submitted a Use Plan to the Navy upon which the Navy developed a Cleanup Plan. Section VI.C of the MOU states that the "Navy's cleanup plan shall consist of a two-tiered standard of ordnance clearance or removal and environmental restoration" and describes the Tier I and Tier II standards.
- K. On June 30, 1998, the Navy published its Kaho'olawe Island Reserve UXO Clearance Project Cleanup Plan, prepared by Parsons-UXB Joint Venture for the Pacific Division of the Naval Facilities Engineering Command (referred to herein as "the cleanup plan").
- L. Documents to be recorded with the State Bureau of Conveyances will provide metes and bounds, or a suitable substitute, descriptions of the lands that the Navy cleared to the Tier I or Tier II standards between 1998 and 2003.

- II. PROCEDURES FOR THE REGULAR INTERVAL CLEARANCE AND REMOVAL OF NEWLY DISCOVERED PREVIOUSLY UNDETECTED ORDNANCE
- A. As provided below, the Navy shall conduct regular interval clearance and removal of newly discovered, previously undetected ordnance on the island of Kaho'olawe.
- B. Navy actions: Following November 11, 2003, the Navy will respond to newly discovered, previously undetected ordnance located by the KIRC on the island of Kaho'olawe.
1. Commander, Navy Region Hawai'i will provide a response to ordnance found on (a) the surface of the island of Kaho'olawe and/or (b) the subsurface if the subsurface item is within an area and depth recorded as having been cleared to the Tier II standard.
 2. Commander, Navy Region Hawai'i will advise the KIRC in writing of the entity to be contacted when ordnance is located and a response is requested. Commander, Navy Region Hawai'i, Director of Operations, Code N3 will be the KIRC's point of contact until advised otherwise.
 3. Prompt response: Commander, Navy Region Hawai'i will, in response to a KIRC notification and request, provide a prompt response when ordnance has been found on the surface within an area in which human access occurs regularly and a prompt response to the ordnance is necessary to ensure human safety.
 4. Deferred response: Commander, Navy Region Hawai'i will, as a regular interval clearance and removal of newly discovered previously undetected ordnance, provide a deferred response when Commander Navy Region Hawai'i, in consultation with the KIRC, determines that a sufficient number and types of ordnance have been located by the KIRC to warrant the mobilization of an 3 or 4-member ordnance response team to Kaho'olawe for a 5-day level of effort.
 5. For a response under subparagraphs B.3 or B. 4 above, Commander, Navy Region Hawai'i will:
 - i. provide KIRC with a demolition plan;
 - ii. provide and transport to Kaho'olawe an ordnance response team with explosives and explosives devices necessary to conduct the response;

- iii. maintain responsibility for the safe storage and transport of explosives and explosive devices necessary to conduct the response;
 - iv. coordinate with the KIRC the dates for response; and
 - v. provide an after action report to the KIRC.
- C. KIRC Actions: After November 11, 2003, the KIRC will take the following actions to facilitate the Navy's response to newly discovered previously undetected ordnance.
- 1. The KIRC will record and visually mark the location of any ordnance, conduct a preliminary review of the nature of the ordnance, and insure all persons are kept a safe distance from the ordnance until a response is accomplished.
 - 2. The KIRC will notify Commander, Navy Region Hawai'i or the point of contact identified pursuant to subparagraph II.B.2 above of newly discovered, previously undetected ordnance including information regarding the nature of the ordnance and its location, and request a response.
 - i. The KIRC will provide a prompt notification when the KIRC finds ordnance on the surface within an area where human access occurs regularly.
 - ii. The KIRC will provide a deferred notification when the KIRC has identified a sufficient number and types of ordnance to warrant the mobilization of a 3 or 4- member ordnance response team to Kaho'olawe for a 5-day level of effort.
 - 3. The KIRC will, in coordination with the Navy, seek and acquire any permits or approvals required for these response actions by the United States Environmental Protection Agency and/or the State Department of Health.
 - 4. The KIRC will, in coordination with the Navy, perform and complete any consultations required for these response actions with Federal or State agencies and regulators, including but not limited to the State Historic Preservation Division; the National Marine Fisheries Service; and the United States Fish and Wildlife Service.

5. The KIRC will undertake any and all actions to allow the response to be conducted, including any action required as a result of any permit or consultation conducted pursuant to subparagraph C.4 above, such as, but not limited to, any construction of protective works necessary to protect against explosive risk to persons, natural resources or archaeological resources; any required monitoring; and any required post-action reporting.
 6. The KIRC will support the ordnance response team's safe access to the island, including but not limited to:
 - i. coordinating the dates when the response can be scheduled by Commander, Navy Region Hawai'i to prevent interference with the responders' ability to perform the response;
 - ii. coordinating helicopter entry into air space and identifying safe landing locations on the island;
 - iii. transporting the response team to the site(s);
 - iv. insuring that all persons are kept or removed from the potentially affected area during an ordnance response and that the public is not allowed access to the island when deferred response demolition operations are being conducted;
 - v. enforcing explosive arc and fragmentation exclusion areas; and
 - vi. providing command and control communications for demolition operations.
 7. The KIRC will enter into its data system the information provided to the KIRC by the Commander, Navy Region Hawai'i in the after-action report.
- D. At any time, the Commander, Navy Region Hawai'i's ordnance response team or the KIRC representative may choose not to proceed with a response if either party determines safety has been or will be compromised. The operation will not proceed until both agree that the safety issue has been resolved.
- E. Between November 11, 2003 and March 12, 2004, the procedures described in Section II, including but not limited to those in subparagraphs II.C.6. i – vi, may be modified by mutual agreement.

III. NAVY ACCESS AFTER NOVEMBER 11, 2003

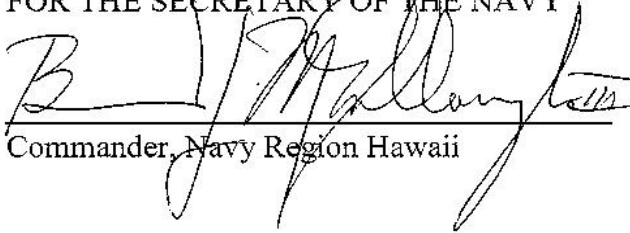
- A. On November 11, 2003, in accordance with Title X, control of access to Kaho'olawe passes from the United States to the State of Hawai'i.
- B. To allow the Navy and its contractor to address as many acres as possible before November 11, 2003, ordnance clearance, demobilization and inspection of the work will continue past that date but be completed no more than 120 days thereafter. The parties agree that, if necessary, demobilization activities may be conducted beyond March 12, 2004.
 - 1. The Navy and its contractor are authorized access to the island of Kaho'olawe and its surrounding waters specifically from November 11, 2003 through March 12, 2004, for the purposes of continuing the initiated work, ordnance clearance, contract close-out, quality assurance/quality control activities under the contract, and the development of materials for required documents to be recorded with the State Bureau of Conveyances.
 - 2. Between November 11, 2003 and March 12, 2004, all existing Navy contractor standard operating procedures will remain in effect. The island will remain an active industrial work site until demobilization is complete. The KIRC will abide by the contractor's Range Control standard operating procedures during this period and will require that, as a condition of being allowed access, anyone to whom the KIRC grants access will abide by those procedures. The KIRC will limit the granting of access during this period taking into account the required safety separation between the work and any visitors.
 - 3. The parties may extend or amend this access approval as necessary.
- C. The KIRC will require no additional documents from the Navy, its contractors or its agents in accessing the island for the purposes and procedures described in the MOA, except as provided for in this document.
- D. The State will establish reasonable criteria for access by the Navy or its agents for purposes under Title X that are not specifically covered in this document.
- E. Nothing in this document limits or modifies the rights reserved by the United States in the deed.

IV. MOU IMPLEMENTATION

- A. The parties agree that this document fulfills any requirements of Section 10002(a)(2)(vi) of Title X and/or Section XI of the MOU.
- B. Nothing in this document shall be constructed as obligating funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.
- C. Nothing in this document is intended to modify any provision of Title X, the MOU, or the deed.
- D. If a dispute cannot be resolved between the Chair of the KIRC and the Commander, Navy Region Hawai'i, the parties will attempt to resolve it through mutual agreement of the Governor of the State of Hawai'i and the Assistant Secretary of the Navy (Installations & Environment) or their designated representatives. This provision does not waive any legal remedy or right available to either party.
- E. This MOA may be amended by the mutual agreement of the parties.

SIGNATURES IN AGREEMENT

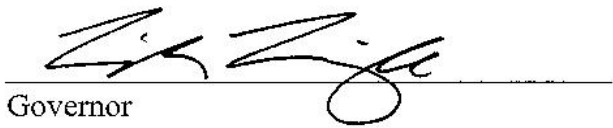
UNITED STATES DEPARTMENT OF THE NAVY
FOR THE SECRETARY OF THE NAVY



Commander, Navy Region Hawaii

28 Oct 03
Date

STATE OF HAWAII



Governor

Nov. 11, 2003
Date



Chair, Kaho'olawe Island Reserve Commission

NOV 06 2003
Date

REFERENCES

1. Bristol Environmental & Engineering Services Corp. for the Kaho'olawe Island Reserve Commission. Access & Risk Management Plan for the Kaho'olawe Island Reserve, Wailuku, 2002.
2. Congress of the United States of America. Title X, Fiscal Year 1994 Department of Defense Appropriations Act, Public Law 103-139, 107 Stat. 1418, Washington D.C., 1993.
3. Dames and Moore for the Kaho'olawe Island Reserve Commission, State of Hawai'i. Ola I Ke Kai O Kanaloa, Kaho'olawe Ocean Management Plan, Honolulu, 1997.
4. Kaho'olawe Island Conveyance Commission. Kaho'olawe Island: Restoring a Cultural Treasure, Final Report of the Kaho'olawe Island Conveyance Commission to the Congress of the United States, Wailuku, 1993.
5. Parsons-UXB Joint Venture for the Naval Facilities Engineering Command Pacific Division. Cleanup Plan, UXO Clearance Project, Kaho'olawe Island Reserve, Hawai'i, Contract No.: N62742-95-D-1369, Task Order: 0002, Honolulu, 1998.
6. PBR Hawaii, Inc. for the Kaho'olawe Island Reserve Commission, State of Hawai'i. Palapala Ho'onohonoho Moku'aina O Kaho'olawe, Kaho'olawe Use Plan, Honolulu, 1995.
7. Social Science Research Institute, University of Hawai'i at Mānoa for the Kaho'olawe Island Reserve Commission, State of Hawai'i. Ho'ōla Hou I Ke Kino O Kanaloa, Kaho'olawe Environmental Restoration Plan, Honolulu, 1998.
8. State of Hawai'i. Hawai'i Revised Statutes, Title 1, General Provisions, Chapter 6K, Kaho'olawe Island Reserve, Honolulu, 2001.
9. State of Hawai'i. Hawai'i Administrative Rules, Title 12, Department of Land and Natural Resources, Subtitle 13, Kaho'olawe Island Reserve Commission, Chapter 261, Kaho'olawe Island Reserve, Honolulu, 2001.
10. State of Hawai'i and United States Department of the Navy. Memorandum of Understanding Between the United States Department of the Navy and the State of Hawai'i Concerning the Island of Kaho'olawe, Hawai'i, Honolulu, 1994.
11. State of Hawai'i and United States Department of the Navy. Procedural Agreement Regarding the Means for Regular Interval Clearance and Removal of Newly Discovered Previously Undetected Ordnance Pursuant to Title X of the Fiscal Year 1994 Department of Defense Appropriations Act, Public Law 103-139, 107 Stat. 1418, Honolulu, 2003.
12. United States Department of the Navy. Notice and Certification by the United States of America to the State of Hawai'i Regarding Portions of the Island of Kaho'olawe, Hawai'i, Lua Makika Parcel, Honolulu, 2003.
13. United States Department of the Navy. Quitclaim Deed from the United States of America to the State of Hawai'i for the Island of Kaho'olawe, Hawai'i, Honolulu, 1994.