

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**SPECIAL USE PERMIT
GAME MANAGEMENT AREA**

EFFECTIVE: June 1, 2018 - December 21, 2019, on a month-to-month basis only

GAME MANAGEMENT AREA(S): Kuaokala, Oahu, Hawaii, under Executive Order No. 1716

The STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources or its authorized representative, for good and valuable consideration, the receipt whereof, is hereby acknowledged, hereby issues this Permit in accordance with section 171-55, Hawaii Revised Statutes and Hawaii Administrative Rules section 13-104-20, to the United States of America, Department of Defense, Missile Defense Agency, c/o:

Jeff Alford, Persistent Discrimination Radars Team Lead
United States of America, Department of Defense, Missile Defense Agency, Facilities
and Deployments Engineering Directorate
5700 18th Street, Fort Belvoir, Virginia 22060-5573
Phone: (256) 450-2612
E-mail: jeffery.alford@mda.mil

Monte Craven, Project Manager
United States of America, Department of Defense, Missile Defense Agency, Facilities
and Deployments Engineering Directorate, Persistent Discrimination Radars
Phone: (256) 450-1156
E-mail: monte.craven@mda.mil

(hereinafter "MDA" and/or "Permittee"), its employees, consultants, contractors and/or persons acting for or on its behalf, hereby grants a non-exclusive Special Use Permit (hereinafter "Permit") to enter and conduct work in the State of Hawaii Game Management Area(s) listed above, as outlined in MDA's December 1, 2017 "Right of Entry Permissions" letter submitted to the Hawaii Division of Forestry and Wildlife (Attachment A). The portion of State lands is known as Kuaokala Game Management Area (GMA), identified as tax map key (1) 6-9-003:005 (hereinafter "premises" or "property"), and shown on an area map included in Attachment A, attached hereto and made a part hereof.

This Permit allows MDA to conduct the following surveys in the support of MDA's on-going siting study for the Homeland Defense Radar - Hawaii (HDR-H) (hereinafter "project"):

- Geotechnical survey to consist of approximately 10 pipe soil test borings and three auger test borings on the Kuaokala Ridge adjacent to the and Kaena Point Satellite Tracking Station (KPSTS). The borings will be four to six inches in diameter and up to 100 feet deep. The three auger test borings will be completed with a 12-inch or smaller auger boring approximately six feet deep. A detailed execution plan and schedule will be provided after award of the Geotech Engineering service contract.
- Land survey of the KPSTS existing land leases.
- Land and topographic surveys of State of Hawaii-owned land surrounding the KPSTS specifically to identify the boundary lines for land designated for Conservation and Agricultural use.
- Other non-invasive surveys to include, but not limited to, biological resources, archeological resources, and cultural resources surveys.

STANDARD CONDITIONS:

"Board" means the Board of Land and Natural Resources.

"Department" means the Department of Land and Natural Resources.

"DOFAW" means the Division of Forestry and Wildlife.

1. At the Permittee's own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

2. At the Permittee's and Permittee's consultants and contractors own cost and expense, keep any State-owned improvements located on the premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the Department. In the event of loss, damage, or destruction of those improvements, the Department shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the State-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.

3. The Permittee and Permittee's consultants and contractors, shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, general liability insurance, or its equivalent, with an insurance company or companies licensed

or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy of the policy or other documentation required by the State shall be filed with the Department. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises.

Prior to entry and use of the premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the Permit period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or other documentation required by the State thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance policy(s) or other documentation required by the State shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
DOFAW
Box 621
Honolulu, Hawaii, 96809

- a. Permittee may provide evidence that Permittee is self-insured in lieu of procuring an insurance policy(ies).
4. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
5. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the premises.
6. If the Permittee fails to vacate the premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
7. The Board reserves the right for its agents or representatives to enter or cross any portion of the premises at any time.
8. Permittee has inspected the premises and knows the conditions thereof and fully assumes all risks incident to its use.
9. The use and enjoyment of the premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, State, or county law.
10. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like

from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Permittee.

Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, State, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

11. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's consultants, contractors, employees, agents, officers, guest, invitees and/or persons acting for or on its behalf, under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

12. Permittee is solely responsible for ensuring the activities do not negatively impact public access and/or public safety.

13. Permittee shall promptly report to DOFAW any incident resulting in injury or death to persons or damage to property. This report does not relieve the Permittee from the responsibility of making any other report that may be required under federal, State, or county laws, ordinances, rules and regulations.

14. This Permit is not transferable or assignable.

15. This Permit shall automatically be suspended and/or terminated when the Permittee has been informed, orally or in writing, by the Board or its authorized representative, of a violation, or the Permittee has been cited for a violation of a Permit condition or any rule, and the Permit shall automatically terminate upon a determination by the Board that the Permittee committed the violation.

16. Permittee shall immediately notify DOFAW in writing of any changes to its contact person name(s), phone number(s), email address(es) or other contact information.

17. Permittee shall comply with all applicable federal, State and county laws and rules.

18. Permittee shall comply with the all posted signs in the Kuaokala Game Management Area.

SPECIAL CONDITIONS:

1. Permittee must submit a schedule of operations to the Oahu DOFAW with a list of project contractors, consultants, and/or affiliates prior to commencement of work.

2. The removal or injury or any unnecessary disturbance of native flora and fauna and game species is prohibited.

3. Entry is limited to the hours between sunrise and sunset, on weekdays ONLY, exclusive of federal and State holidays.

4. Permittee, its employees, consultants, contractors, guests, invitees, and/or persons acting for or on its behalf, operating under this Permit shall wear highly visible, blaze orange vests or garments when in the Game Management Area.

5. Camping is prohibited.

6. Permittee shall provide a written report or summary of activities, including any significant cultural, historic, and anthropological findings.

7. Permittee, its employees, consultants, contractors, guests, invitees, and/or persons acting for or on its behalf, and other personnel shall not interfere with DOFAW operations, or restrict access to any part of the Game Management Areas

8. Commercial activity is prohibited.

9. If the Permittee violates any of the conditions under this Permit shall be subject to the penalty provisions provided by law. Further, any infractions of this Permit may be cause for revocation of this Permit and/or denial of future permit requests.

10. The Permittee, its employees, consultants, contractors, or person's acting on its behalf, shall be responsible for recovery and removal of any machinery, equipment, or vehicle on the premises upon completion of the project.

11. The Permittee, its employees, consultants, contractors, or persons acting on its behalf, shall be responsible for negotiating and obtaining access through the Kaena Point Satellite Tracking Station.

12. The project area shall be rehabilitated upon completion of the project. The project area shall be rehabilitated to a condition that does not significantly impact the surrounding areas

13. All vehicles, machinery, and equipment shall be removed off site from the premises after each work day.

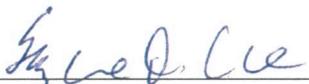
14. The Permittee, its employees, consultants, contractors, or persons acting on its behalf, shall provide a wildfire mitigation plan for the project area and project vehicles, machinery and equipment.

This Permit shall become valid only upon completion of the following:

The issuance of the Permit is contingent upon completion of consultation with the State Historic Preservation Division (SHPD) for the proposed activities with a finding of no adverse effect on historic properties.

The Permittee having read the conditions in this Permit acknowledge the conditions of this Permit by affixing his/her signature hereinbelow.

Upon execution of the Permit by the Permittee, Permittee shall mail an original of this Permit and proof of insurance policy(s) to the DOFAW, Oahu District, located at 2135 Makiki Heights Drive, Honolulu, Hawaii 96822. If you have any questions, please feel free to contact the Oahu District Wildlife Manager at (808) 973-9786 or by email at: Jason.C.Misaki@hawaii.gov.



Suzanne D. Case
Chairperson
Board of Land and Natural Resources
State of Hawaii

June 1, 2018

Date

The undersigned have read, understand and hereby agree to abide by the Permit conditions.



Jeff Alford, Date
Persistent Discrimination Radars Team Lead
United States of America
Department of Defense
Missile Defense Agency
Facilities and Deployments Engineering Directorate

6 JUN 2018

Attachment(s):

Attachment A – MDA’s Request and Area Map of Proposed Activities (dated May 11, 2018)

