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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAI‘I

MĀLAMA MĀKUA, a Hawai‘i non-	)	Civil No. 00-00813 SOM-KJM
profit,	)	
	)	PARTIES’ SUPPLEMENTAL
Plaintiff,	)	JOINT STATEMENT AND
	)	STIPULATION RE: QUARTERLY
v.	)	REPORTING
	)	
LLOYD J. AUSTIN III, Secretary	)	
of Defense; and CHRISTINE	)	<u>Judge: Hon. Susan Oki Mollway</u>
WORMUTH, Secretary of the United	)	
States Army,	)	<u>Related to ECF 272</u>
	)	
Defendants.	)	
	)	

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Plaintiff Mālama Mākua and Defendants Lloyd J. Austin III, Secretary of Defense, and Christine Wormuth, Secretary of the United States Army,

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\* Pursuant to Local Rule 10.2(b), the complete list of parties represented is set forth on the signature page.

(collectively, “the Parties”) jointly provide this further statement regarding whether the requirement for Defendants to submit quarterly reports should continue. *See* ECF 272; ECF 274. As previously stated (ECF 273), the Parties agree that periodic reporting serves an important role in promoting Defendants’ compliance with their duty under paragraph 8(b) of the October 4, 2001, Settlement Agreement and Stipulated Order (“2001 Settlement Agreement”) to expand opportunities for cultural access at Mākua Military Reservation (“MMR”) and, thus, should continue. Among other things, periodic reporting preserves institutional knowledge, reminding the local U.S. Army garrison commanders who sign off on the reports—and who rotate approximately every three years—that the Army has a continuing, court-ordered obligation to clear unexploded ordnance (“UXO”) from all twenty-two identified “high priority” sites to permit cultural access. *See* ECF 204-3 at 4 (list of “high priority” sites). Periodic reporting also provides useful updates regarding the Army’s progress in carrying out that important task.

The Parties further agree that it would be appropriate to decrease the frequency of Defendants’ periodic reporting from quarterly to annual. The Parties reach this conclusion in recognition of the Parties’ improved communication and cooperation, which has promoted the sharing of information outside the context of the quarterly reports, and Defendants’ recent decision that they no longer need to

conduct live-fire training at MMR, now or in the future, and, therefore, no new UXO will be added to MMR.

Based on the foregoing, the Parties stipulate, and respectfully ask the Court to order, that:

1. The Amended Order Enforcing 2001 Settlement Agreement (ECF 188) shall be modified to require the U.S. Army to make annual written reports to the Court detailing its compliance with paragraphs 8(b) and 13 of the October 4, 2001, Settlement Agreement.

2. The first annual report will be filed with the Court on January 31, 2024. Subsequent annual report will be filed with the Court on the thirty-first of January of each year, or, if the thirty-first is not a business day, on the first business day after the thirty-first.

3. As this Court required for the quarterly reports (*see* ECF 188 at 30), in each annual report, the Army shall describe its further good faith efforts to refine its plan to clear UXO from the additional “high priority” sites identified in ECF 204-3. Annual reports shall also describe the Army’s attempts over the previous reporting period to secure funding to implement its plan, as well as the Army’s actual efforts to implement its plan to the extent possible. The annual reports shall discuss any change in the timetable or method for clearing a site, explaining why the change is or was necessary.

4. Defendants acknowledge that, to date, the Army has cleared only half of the twenty-two (22) sites that it identified in 2009 as “high priority” for UXO clearance “with a focus on increasing access to cultural sites.” ECF 204-3. The eleven (11) cleared sites are Sites 4536, 4542, 6505, 6506, 6508, 6593, 6596, 6597, 6603, 6613, and 6621. The eleven (11) “high priority” sites that remain to be cleared of UXO include the “Blue Trail” Sites (Sites 4627, 4628, 4629, 4630, 5920, and 9523) and sites located within a designated improved conventional munitions area (Sites 4540, 5587, 5588, 5589, and 5590).

5. Defendants reaffirm the Army’s obligation “to use good faith efforts to develop a plan and secure funding for clearing UXO from [all twenty-two identified] ‘high priority’ sites,” ECF 188 at 2, including contingency plans to clear UXO in the future from high priority sites for which UXO clearance is not currently “reasonable and practicable.” *Id.* at 29.

6. In furtherance of that obligation, the Army will promptly resume the consultation with Mālama Mākua over clearance of UXO from the “Blue Trail” sites (Sites 4627, 4628, 4629, 4630, 5920, and 9523) that began in 2016 but was not completed. *See* ECF 239-1, PageID #2875-76; ECF 241-1, PageID #2886.

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Respectfully submitted on behalf of the Parties this 30th day of November,  
2023.

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