

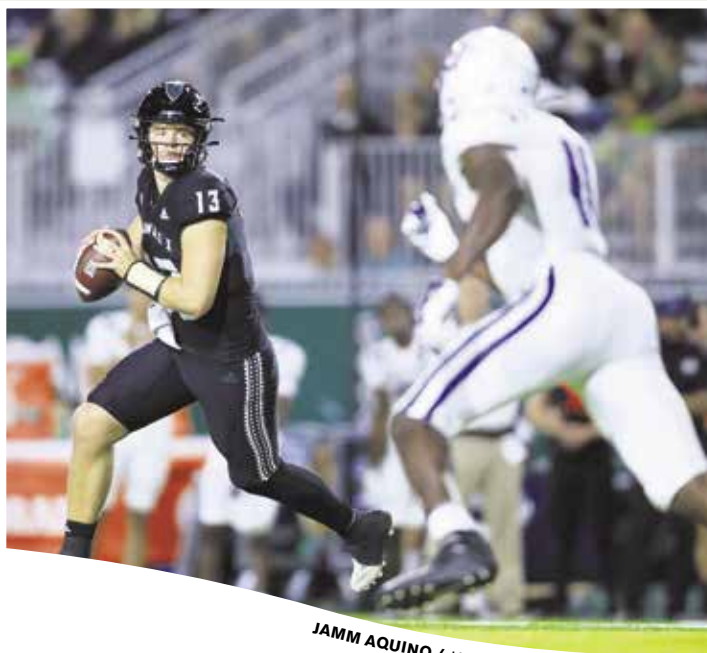
34 HAWAII  41 UTAH STATE

LITTLE TOO LATE

Hawaii scores big in the fourth quarter but can't overtake Utah State

SPORTS / C1

UH quarterback Brayden Schager looked to pass Saturday against Utah State.



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Hawaii sweeps UC Irvine to continue to be No. 1 in Big West Conference

SPORTS / C1

Democrats keep control of the Senate with a crucial win in Nevada



NATION / A4

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The fight for POHAKULOLOA

State officials and Hawaiian activists are increasingly voicing concern over the Army's Big Island training site

By Kevin Knodell
kknodell@staradvertiser.com

POHAKULOLOA TRAINING AREA >>>

The Army is hoping to maintain the Pohakuloa Training Area on Hawaii island as its 65-year lease on a parcel of state land that makes up a key part of the range nears expiration.

PTA sits atop a high plateau between Mauna Kea and Mauna Loa and spans 132,000 acres. With fields of lava and volcanic soil, it's classified as a sub-alpine tropical dryland forest and is a habitat for Hawaii's state bird, the nene, the hoary bat and some species that exist nowhere else on the planet.

"This is one of the rarest ecosystems in the world," said Tiana Lackey, an Army biologist who works at PTA.

The training range includes 23,000 acres of former Hawaiian crown lands, also known as ceded lands, that the state leased to the military in 1964 for just \$1. The state has since designated the leased land as a conservation district. Over the years the Army has faced lawsuits and investigations over its management of the vast area it controls there.

The lease expires in 2029 and the Army is making its pitch to keep it. The state parcel sits between two federally owned pieces of

Please see **POHAKULOLOA**, A14



PHOTOS BY KEVIN KNODELL / KKNODELL@STARADVERTISER.COM

Lena Schnell, senior program manager with Colorado State University's Center for Environmental Management of Military Lands, propagates native plants at Pohakuloa Training Area's greenhouse. The land encompassing the range, below, is classified as a sub-alpine tropical dryland forest — one of the rarest ecosystems in the world.



Problem properties owe city \$130M for violations

There are 274 outstanding fines of over \$100,000, according to official data

By Ashley Mizuo
Honolulu Star-Advertiser

The city is owed over \$130 million for building violations involving Oahu properties with outstanding fines over \$100,000, according to Department of Planning and Permitting data.

At least 274 properties across the island fell into that category as of the end of October.

The largest fine total for a single property — \$15.8 million — was levied on a vacant lot in Kalihi Valley, whose owners were cited for a number of violations but mainly for overgrown weeds. A property in Kahuku racked up \$1.6 million in fines largely due to being an illegal short-term rental.

In both cases, the property owners have not paid any portion of the fines, according to records obtained by the Honolulu Star-Advertiser.

In fact, largely across the board, landowners with outstanding fines over \$100,000 rarely made any payments to DPP. The largest was \$126,000 paid by a Waialua property landowner, who still owes \$3.4 million.

DPP acting Director Dawn Takeuchi said the large fines were allowed to accumulate under former department policies that reduced fines by as much as 90% to 95% if owners agreed to correct the violations.

"When I came in about 22 months ago and we realized that there's this huge number on the books, we had the same question: What is going on?" she said. "The policy was to always use it as an incentive, which is really weird that you would use fines as an incentive, which is a complete paradox, right? You don't use a penalty as an incentive. It should be the opposite."

Before levying fines, DPP first issues a notice of violation to the property owner, who then has 30 days to correct the problem. If the owner does not comply, DPP then issues a notice of order, which is when fines begin accumulating.

Please see **FINES**, A12



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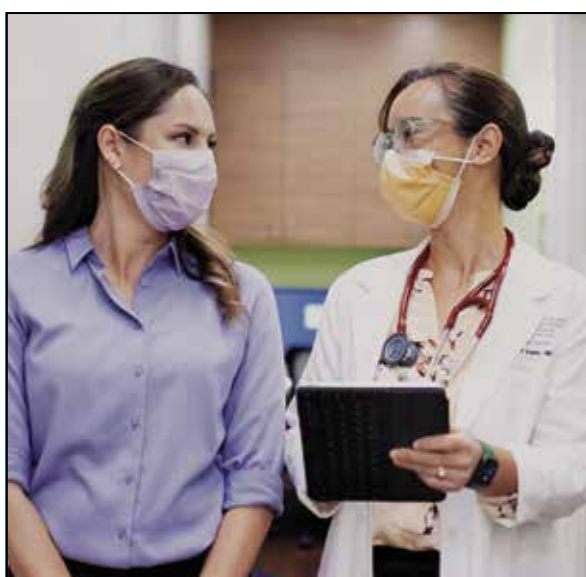
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FINES

Continued from A1

Fines are often charged for each day the violations persist, which is how an initial \$50 daily fine can balloon into hundreds of thousands of dollars.

Takeuchi said the department generally did not have an official policy on how the fines are to be collected after notices of order are sent to property owners, or what next steps should be taken. She said that sometimes DPP would put a lien on the property, but that was done haphazardly.

However, since those issues were brought to light about two years ago, she said DPP established a policy that makes it clear that property owners will be expected to pay 100% of the fines levied against their property.

"We said, 'No more, it's going to be 100% of the fines unless there's some exigent circumstances,' or something that's like, 'OK, it makes sense that you shouldn't be subject to these fines,'" she said. "We also decided that we would have a timeline . . . At least it's standardized as far as what we're going to do."

The DPP timeline now gives landowners two months to pay any

fines once the notice of order has been issued. After that, DPP will send a demand letter. Landowners are given three more months to pay up, and if no payment is forthcoming, DPP will then move to put a lien on the property.

Choon James, a real estate broker and community activist, criticized DPP's previous lack of standard procedures for fine collection. "There is a huge inconsistency. It seems like some people get punished and some get away with it," she said.

She also was wary of any policies mandating foreclosures or liens when property owners don't pay city fines.

"The government should not be of the mindset to punish and to take away private properties . . .," she said. "We know that even with the residents, not everybody is the same. There are a lot of people who are immigrants or who don't understand the process well or how the systems work, while some are so good at it that they know how to . . . take advantage of the loopholes. So there's inequity there."



CINDY ELLEN RUSSELL / CRUSSELL@STARADVERTISER.COM

The owners of 1581 Murphy St. in Kalihi have the highest amount in fines against their property — \$15.8 million. The Honolulu Star-Advertiser was unable to contact the owners.

She pointed to a Hauula property that was the subject of a Honolulu City Council resolution passed in February authorizing foreclosure because the owner had racked up more than \$400,000 in fines for having several unpermitted structures, conducting unpermitted grading and storing construction materials on agricultural land.

Choon, who has been trying to help the landowner, said that although he did violate building codes, she wanted to know why his property was

facing foreclosure while others with higher amounts of unpaid fines were not.

Takeuchi explained that community concerns largely drive how aggressively the department goes after properties with substantial fines.

"It's the level of fines and then . . . it's usually a property owner that's causing a lot of issues for the community, and they're already ignoring our fines and our violations, and they're just a really bad neighbor. So in those cases, we might go after and lien the property or do more," she said.

"But even when you do that, like there's someone we want to go after, then lawyers get involved, then that property owner will get an attorney and it kind of slows down for a while."

City Council Member Heidi Tsuneyoshi, who put the Hauula foreclosure resolution before the Council, said at the time she did so because the violations on the property were so egregious.

THE NUMBER of Oahu properties with outstanding fines over \$100,000 varies

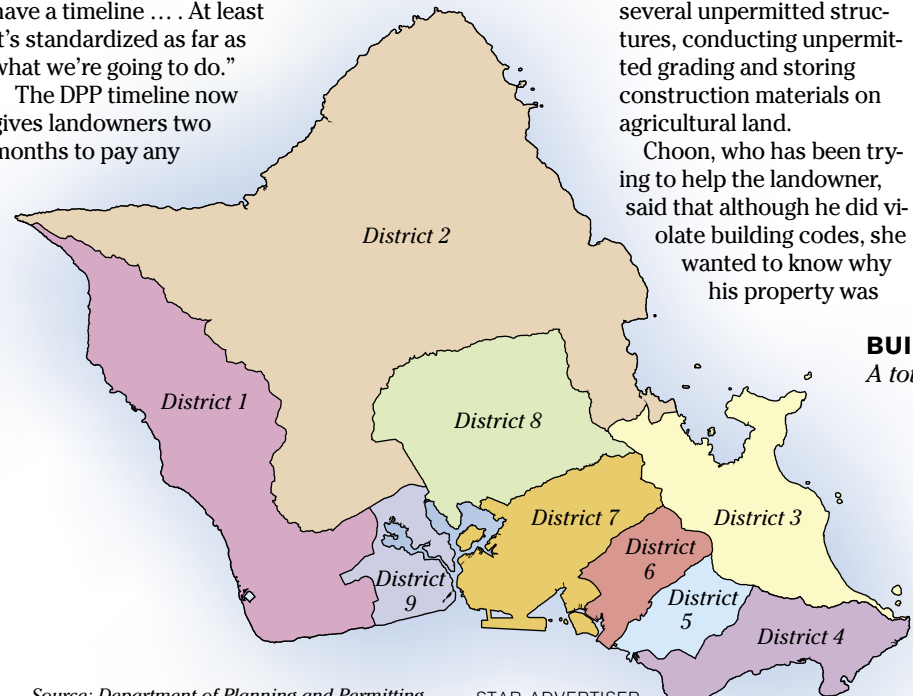
across each district.

According to DPP data, Tsuneyoshi's District 2, which encompasses the North Shore, had 51 properties owing at least \$100,000 for building violations. District 1, which covers the west side of Oahu, had the second-highest number at 41 properties. And District 3 in Windward Oahu had the third highest at 38 properties.

Tsuneyoshi did not have any comment about the high number of properties in her district with large fines, but North Shore Neighborhood Board member Racquel Achiu said she has noticed many illegal structures going up in the community.

"It's overwhelming, the amount of properties," she said. "People are buying (agricultural) lands out here and they buy them deep in the mountain or out in the middle of nowhere where they're kind of not seen. And they just go for it. It's a free-for-all."

Because the city has not



Source: Department of Planning and Permitting STAR-ADVERTISER

BUILDING VIOLATION FINES BY DISTRICT

A total of 274 Oahu landowners owe the city \$130 million.

District	# OF PROPERTIES	AMOUNT OF FINES
District 1	41	\$14,234,500
District 2	51	\$24,123,364
District 3	38	\$26,314,000
District 4	26	\$4,911,200
District 5	34	\$17,187,900
District 6	35	\$27,031,035
District 7	9	\$3,028,550
District 8	23	\$7,445,300
District 9	17	\$5,731,450
Total:	274	\$130,007,299

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been collecting the fines, Achiu said people build their structures illegally because it's less expensive or consequential to pay a fine than to go through the drawn-out permitting process that costs landowners and developers time and money.

"The reason people go for the fines and they don't care is because it's worth it for them to pay a fine than it is to pay for a permit," she said.

THE FINES that DPP collects go into the city's general fund, except for fines for illegal short-term rentals, which go to the department for short-term rental enforcement.

Even though the department now has a stricter policy on fine collections, Takeuchi emphasized the effort has been hampered by a lack of employees. She said the Commercial and Multi-Family Code Enforcement Branch currently has only two staffers after two others left in recent months.

"We have notices of violations from three different divisions: Site Development Division, Building Division and Customer Service Division . . . They're all issuing (notices of violations) and we only have two people that can collect them. So we're trying to add the capacity."

She estimated that having five more workers to do the paperwork to collect fines would dramatically help DPP aggressively go after problem properties. She also pointed to the seven enforcement positions that were created under Honolulu's new short-term rental law enacted this year, portions of which have been put on hold by a court order, as another tool the department will be able to use.

However, those positions are still in the process of being filled, as the city across all departments has had trouble recruiting and retaining workers. Takeuchi

hopes to have people hired by February or March.

Council Chair Tommy Waters said that collecting the large fines could help DPP solve some of its issues.

"It's encouraging to hear that recently the department has been hiring and plans to implement systems and processes to increase efficiency," he said in an email. "We intend to continue to work with DPP so that it can clear its backlog of permits and fines that need collection. The collection of this \$130 million in fines could make a significant difference for the department and the services it provides."

Council member Brandon Elefante, who chairs the Council's Zoning and Planning Committee, said properties that have accumulated large DPP fines have come through his committee for action. He said that in several instances, the main issue was trying to find and contact the property owners, especially in the cases where a family member dies and leaves the property to someone who doesn't live in Hawaii.

This happened to a property in his district that fell into disrepair. He said squatters were living in it and there were multiple fires there. Eventually, a bank got involved and the house was sold at auction, but in the meantime, the surrounding community suffered due to the owner's noncompliance in addressing the violations.

"At the end of the day the city doesn't want to be a caretaker for dilapidated private property because then the city will have to go over the title; it becomes a liability . . . But that's why they do the first approach as compliance," he said.

"That's why we thought of a creative way, 'Why don't we put a lien on these people, on their driver's license or other thing where you're not able to drive or you're

not able to get all these applications, unless you pay your fines or come into compliance."

Takeuchi said the department is now doing this and will attach outstanding fines to driver's license and car registration renewals as part of DPP's compliance system.

She also said the department will again pursue a bill at the state Legislature that would allow the city to do nonjudicial foreclosures on properties when all notices, orders and appeal proceedings are exhausted. Currently, if DPP wants to foreclose on a property it has to go to court, which often takes long periods of time and city legal resources that it may not be able to spare.

Nonjudicial foreclosure would allow the process to be done administratively for particularly troublesome properties.

During the last legislative session, the measure was killed in conference committee late in the session. Opponents of the bill were concerned it would not be fairly executed and could strip away property rights.

Elefante, who just won election to the state Senate after reaching his term limit as a Council member, said it's something the Legislature could revisit but emphasized that nonjudicial foreclosure should be used by the city only as a last resort.

Takeuchi said that in order to solve the problems, DPP will need to demonstrate that it is serious about collecting fines.

"Generally, people will just pay the fine and correct the violation. But then there's just some of those who don't think they're doing anything wrong. They don't see the seriousness of the fines," she said.

"I think we have to show more that we're doing this and people will realize, 'OK, I shouldn't let these things keep accruing and I should do something about it.'"

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POHAKULOA

Continued from A1

land that make up the training area. Army officials call the leased land “the connective tissue” of PTA.

As part of the required environmental review process to renew the lease, the Army issued a draft environmental impact statement regarding its future plans earlier this year and requested feedback. State lawmakers and agencies responded to the draft EIS with scathing assessments, accusing the Army of data gaps regarding the effects of its activities on endangered species, a lack of clarity on ordnance cleanup plans and other concerns.

State Sen. Kurt Fevella, (R, Ewa Beach-Iroquois Point), wrote in an April letter to Army leaders that while he understands national security interests, “we also need to consider the health and safety of our people, land, air, and water quality that has continuously been negatively impacted by military training” and that “it would be detrimental for Native Hawaiians, like myself, to stand idly by and relinquish claims to public lands ... which we believe were taken without consent or proper compensation.”

The draft EIS states that training “may have impacts on soils within the confines of the State-owned land; however, potential impacts to water resources could reach beyond the State-owned land to include the regional aquifers and watersheds.” The report also concluded that “the contaminants detected in site soils have a low likelihood to become mobilized off-site due to the low rainfall in the area, lack of streams and absence of a developed drainage system across the State-owned land.”

In its comments on the draft EIS, the state Office of Conservation and Coastal Lands wrote that “it appears that military training is in direct conflict of the Conservation District designation.”

“The comments are welcome, they’re part of the process,” said Lt. Col. Kevin Cronin, the garrison commander at PTA who oversees day-to-day operations. “The team is absolutely reviewing and going through

each of those comments.”

Cronin said it’s his job to balance environmental and cultural concerns with the need to keep PTA open for troop training. He said it provides “that large-scale crew and collective training that they need to get that they can’t get on Oahu (and really can’t get anywhere else in the Pacific Basin region other than here.”

PTA is the largest contiguous live-fire range and maneuver training area in Hawaii. Military leaders say it’s one of the only places in the islands where they can carry out large-scale land exercises and artillery practice.

The Army also sees it as central to its new Joint Pacific Multi-national Readiness Center, which conducts training in Hawaii and Alaska and in countries around the Pacific region as tensions with China simmer. This month troops from Thailand, the Philippines and Indonesia trained alongside U.S. troops at PTA.

Opponents of continued military use of the land say the state has its own responsibilities to fulfill.

“The state’s obligation is to protect those lands for the benefit of the beneficiaries. There’s nothing that says they’ve got to benefit the dang Army,” said Clarence “Ku” Ching, a former Office of Hawaiian Affairs trustee and community activist. “Nowadays they’re training soldiers from a bunch of foreign countries up at Pohakuloa, which I don’t really care for. These guys can go screw up their own lands instead of screwing up ours.”

Land management

When training isn’t taking place at PTA, only five uniformed soldiers are stationed there. Most of Cronin’s workforce, about 200 people, is made up of Army civilians and contractors. Among them are scientists working to catalog and



Members of the Oahu-based 25th Infantry Division used a lava rock formation as a fighting position during a simulated battle Nov. 2 at the Pohakuloa Training Area on Hawaii island. Discarded trash, inset, lies outside a mock town at a training area.

PHOTOS BY KEVIN KNODELL / KKNODELL@STARADVERTISER.COM

preserve native species living on the base.

Lena Schnell, senior program manager with Colorado State University’s Center for Environmental Management of Military Lands, showed off several native plants at PTA’s greenhouse. Biologists have collected seeds from many native species in hopes of reintroducing them at Pohakuloa.

“What we try to do is we spread those collections out over space and time so that we can try to maximize getting the genetic diversity because the goal is to try and collect all the genetic diversity from the various species out there,” said Schnell.

Lackey, the Army biologist, said the greatest threats to native species are invasive species — both plants and animals — and wildfire. Wild goats and

sheep run rampant at the base. Lackey said that between 1998 and 2013, the Army spent \$10 million on 15 fencing units at PTA totaling 86 miles and protecting more than 37,000 acres of native habitat, and on work to manage dry grass to avoid the spread of wildfires.

Cronin admitted that some fires in the area have been the result of training activities but insisted the

Army works hard to contain them and coordinates closely with other agencies.

PTA’s fire department also assists the Hawaii Fire Department and the state Division of Forestry and Wildlife in battling wildfires beyond Pohakuloa. PTA is also regularly used by other departments for training in wildland firefighting.

Cronin said that through the Defense Community Infrastructure Project, the

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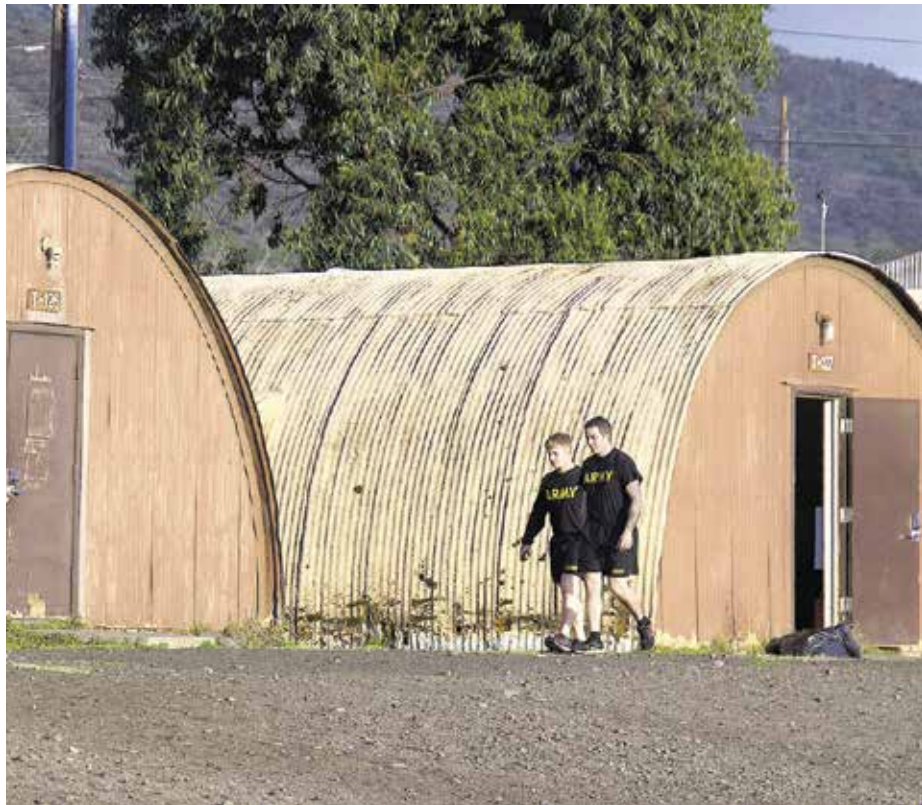
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Soldiers training at Pohakuloa stay in Quonset huts.

military gave the state Department of Land and Natural Resources a \$2.5 million grant for construction of a new facility for island firefighters to conduct operations and keep equipment.

Cronin also noted that through the Pentagon's Readiness Environmental Protection Integration program, the military has given the state \$4.8 million in grants for removal of invasive species, management of dryland areas and protection of cultural resources.

The Army keeps archaeologists on site to preserve and catalogue ancient Hawaiian sites and artifacts. Pohakuloa's grounds contain burial sites, heiau and other cultural sites.

"Soldiers are not allowed to enter caves or lava tubes or anything like that," said Cronin. "That's all in the interest of making sure that ... you're respectful and protective as possible."

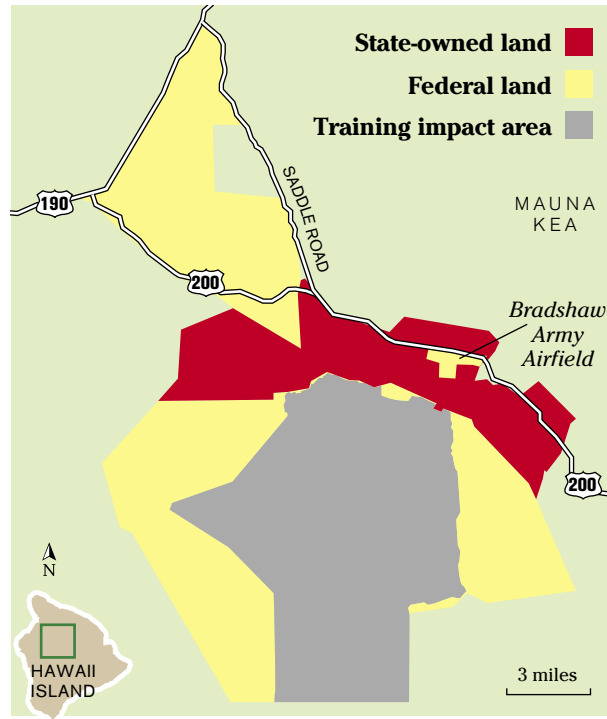
Legal battles

But Army leaders rotate in and out of Pohakuloa. Vari-

ous commanders who have overseen the land in the past haven't always kept their word — or listened to their own experts. In 1989 the Sierra Club sued the Army on behalf of University of Hawaii at Hilo botanist Lani Stemmermann, who had visited an area of dryland forest in PTA in search of research sites to study native plants.

Stemmermann found Army bulldozers leveling native naio and mamane trees for a new training range. A 1993 Army investigation

POHAKULOA TRAINING AREA



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found that while planning the range, officials cut corners during the survey process, intentionally limited access to scientists and ignored recommendations by Army engineers that called for a comprehensive botanical study of the proposed site.

In 2019 the Hawaii Supreme Court ruled against the state in a lawsuit filed by the Native Hawaiian Legal Corp. on behalf of Ching and fellow Hawaiian activist Mary Maxine Kahaulelio. The court found state officials had failed to ensure the military upheld its duties to clean up Pohakuloa and had harmed Hawaiian cultural interests, and that "as

trustee, the State must take an active role in preserving trust property and may not passively allow it to fall into ruin."

When it comes to land that falls within a conservation district, the Army maintains that because training on the leased land is a pre-existing use that pre-dates the conservation district designation, military use of Pohakuloa is lawful under its interpretation of state administrative rules.

Ching countered that because the state, not the Army, owns the land, it should have the final say.

The lease requires the military to "make every reasonable effort to ... remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner."

But what precisely constitutes a "reasonable effort" has been subject to debate. Live explosives are fired only into an "impact area" located on federally owned land rather than on the state parcel. Since the Army considers the impact area an active range, it does not remove unexploded ordinance from that area.

Activists and some researchers have charged that the Army has never done a proper survey of the impact area to see what endangered species or ancient Hawaiian history may exist there.

"The main impact zone is so dangerous they can't get in there and find historic sites," said Ching. "It's not that there aren't any historic sites in there, it's just that they can't safely go in there and clean things up, assess things."

PTA's cultural resources director Heidi Miller said there have been efforts at surveys but that "to date, we don't have any recorded sites in that area. That doesn't mean that as we do more surveys in the future, that you won't find anything. But as of right now we don't have any."

The draft EIS contains a range of options for the lease extension. The Army's preferred option is full access to the 23,000 acres of state land. The Army also proposed retaining access to 19,700 acres, or retaining 10,100 acres along with 11 miles of select roads and trails to continue training.

Its least-preferred option, the "no action alternative," would have the Army's presence at Pohakuloa potentially end when the lease expires in 2029.

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