Comments

was speaking so fast that the people who are doing the recording asked me to remind you to speak a little slower. So just a little reminder so your testimony can get recorded.

The next person is Vince Dodds followed by David Henkin.

MR. DODGE: Vince Dodge. Aloha kakou. My name is Vince Kanae Dodge, and I'm a community member of Waianae. I had a lot of time today to think about what is going on here. And thank you for having this meeting.

I think the first thing is I'm not well prepared to speak on the EIS. There hasn't been enough time to study such a large and complicated document.

T10-1 And so my first request is that there be more time to study this document. If we really want to have a serious dialogue about the contents, then we need more time.

And as I reflect back on how we got to this place, this community was promised for years and years by the U.S. Army that they would do some kind of environmental study about the cumulative effects of over 60 years of training, of use, of abuse of the valley. And, you know, we had to sue the Army to get them to keep their word.

Over here today -- and we have a document -- I think, also, we just need to say that, for me, there's no

Responses

T10-1
The Army extended the public review period from 60 days to 75 days. In response to comments, an additional 60 days were provided to the community to review the Draft EIS and associated studies related to marine resources and archaeological surveys, from February 2 to April 3, 2007. The technical experts retained on behalf of Malama Makua were provided 76 days for review of the marine resources study, archaeological study, and Draft EIS.

Comments

us and them. You know, it's like we're all in this together. I'm a taxpayer. I pay you folks. You are my Army, and I am your citizenry. And I think that if you look back, if you take the time to look back at what this community has been saying very consistently for a number of years is that this valley needs to come back. This valley is coming back. The Army needs to keep its promise that it made in 1941 in the original agreement to use the valley and to return it.

T10-2

That agreement said they would return it within six months of the end of World War II, and that it would be clean. That's a long ways. Many years have passed since the end of World War II. And the cleanup of the valley has begun, and I think that this is a crucial time to continue that.

The lease now expires in 2029. That's not that many years away. It's going to come upon us very quickly. And there's a tremendous amount of work to be done in that valley to bring it back. And, yes, it can come back.

It almost appears that the level of contamination, from the little research that I was able to do with the document, said that the valley is not all that contaminated. That may be a good thing for us. Because we look at that valley as a source of food, at the ocean in front of Makua as a source of sustenance and food, an

Responses

T10-2
The Army thanks you for your comment and appreciates your participation in this public review process. Your comment has been considered and has been included as part of the administrative record for this process.

Comments

important source.

So the purpose of this community demanding -- having to demand that we have this document, this study, was for us to be able to see the effects of years and years of training, especially in a time where the Army -- where there were no environmental considerations. They just did what they did, and that's the way it was. You bombed and destroyed, and you burned, you used, you destroyed. Things are changing. You know, we're in this together. It's changing because the people, the citizenry, is saying it's got to change. It's got to change.

So as a citizen, I appreciate that change is being made. I also understand that we have to keep pushing. We cannot stop pushing. It seems like that's the way that change comes about, you know.

T10-3 This document is big. This document is complicated. Is it a document that people in Waianae can read and understand? No, it's not. And I think, in that regard, the document has failed. It's very difficult to understand.

You know, again, we're in this together. So you need us to understand this document unless your agenda is that you really don't want us to understand this document because you want to do it is that you want to do in that

Responses

T10-3
The Army has funded technical experts to provide the community with the support needed to understand the technical issues associated with this project and to provide substantive input into the impact analysis process. In addition, the Army has provided information on the proposed action and alternatives and their effects on the environment in various forms throughout the Draft EIS (executive summary, tables provide concise data on the project and resources, and summary tables that provide brief overviews of the expected impacts).

Comments

valley, which would be a corruption of the process.

I did have a chance to look at the information regarding the testing of water samples, and I was surprised to notice that the dates of the testing for the wells -- and I believe that this is in Table 319 in the Appendix G2 -- let's see, there were 41 water samples that were taken and tested for a variety of toxins. Thirty of those 41 samples were dated December of 2000, which was before this EIS was started.

T10-4

Now, there were a number of new wells drilled in the valley for the very purpose of testing the water and the water table because that has been a serious concern of this community, water. And so for only 11 samples, it appears that only one of those new wells was taken in December of 2003. It seems to me that there is a big gap in information here that -- what happened to the rest of the samples? Why weren't the other wells tested? This is a critical issue for us. We need this information.

T10-5

I agree with the speakers before me that talked about the incompleteness of the cultural surveys. And the Army had promised to take make a good-faith effort. I think that, you know, as decent people that we all are, we desire to trust each other. And so the Army said that they would make a good-faith effort to get the necessary waivers to open the back of the valley, which has been off

Responses

T10-4
Table 3-19 is a table of hydraulic conductivity data. Well data were collected during 2002 to 2003. The Army is not aware of any data collected during 2000. All of the collected sample data are listed in the EIS.

T10-5
Surface surveys have been completed for the entire area within the south firebreak road except for those areas containing improved conventional munitions. Surface surveys have also been undertaken for the majority of the surface danger zone of the 105mm round. Surface surveys have also been undertaken for the Ukanipo Heiau complex, Koiahi Gulch and almost all of Kahanahaiki Valley. This coverage is reflected in Figures 3-24 and 3-25 in the Draft EIS.

Subsurface testing has been undertaken in Sites 4243, 4244, 4245 and 4246. This testing showed there is a subsurface component to these sites; however, this limited testing resulted in protests from two Native Hawaiians due to the invasive and destructive nature of the testing.

An additional subsurface archaeological survey was conducted in November and December of 2006. The results of this survey have been incorporated into Section 3.10, and the survey report is included as Appendix G-9.

Comments

limits purportedly because ICMs, improved conventional munitions, which are antipersonnel bombs, bombs that were seen in the valley in a certain area.

And that process of getting those waivers so that the staff of the EIS, Tetrotech, the archaeologists, community members could go back to the back of the valley, that process never really got off the ground. It has come to our attention that those letters never left this island. That's been over three years. That's not a good faith effort. That is a failure.

T10-6

So there's a huge chunk of the valley, the back of the valley, that has not even been looked at because right now it's been off limits for the personnel that could carry out those tests.

You know, hunters have been hunting in Makua forever. And I don't know how recently they've been in there, but I have had friends that have hunted up through 2001. In those areas where these ICM bombants were said to have been, they were observed in the hundreds, I think, was what was quoted. And there's never been any accidents. Nobody has seen them. No dogs have been injured. No people have been injured.

I was on one of the sweeper crews two summers ago, as part of the unexploded ordinance cleanup. And in the area across from the OBOD site at the base of the center

Responses

T10-6
The Army's waiver request (dated May 5, 2006) was rejected by Army Headquarters on December 21, 2006, as stated in a Deputy Assistant Secretary of the Army memorandum, dated January 10, 2007.

Comments

raised in Makua Valley, we came across these ICMs. They were Vietnam era. They were part of a demolition. And they were all in various stages of being destroyed. Perhaps this is what the gentleman, who said he saw the ICMs, had run across in the past.

I share this information because it appears that road blocks are thrown up for us to be able to get a clear picture of what is going on in that valley. And, again, you know, as people that live here and are going to be here, have raised our kids here, have our grandchildren here, this is of critical importance.

We need to get that information. Otherwise, this EIS has failed us again. And it is incomplete.

Thank you very much.

FACILITATOR GOMES: The next person is David Henkin of Earthjustice, followed by Ikaika Hussey.

MR. HENKIN: Aloha Kakou.

My name is David Henkin. I'm an attorney with Earthjustice. And for the last seven years, I've had the pleasure of working with members of the Waianae community, more specifically Malama Makua, my client, in an effort to secure a full disclosure of the environmental impacts of military training at Makua, and an examination of alternate locations where the military might achieve its goals, conduct training that it believes is necessary to

Responses

Comments

fulfill its mission, without the need of causing further damage to a valley that is full of cultural resources; that within the areas threatened by live fire training and associated military-caused fires are 50 federally listed, endangered and threatened species, some found almost exclusively at Makua. Precious resources that this community has made clear are essential to its sense of being; and that really should be carefully protected and alternatives should be carefully examined.

Before I get into some of the specifics on the Environmental Impact Statement draft, and I do want to clarify that the purpose of my being here and the purpose of the various people testifying from the community being here, is to help ensure that the final product, the final EIS, is full, is complete and is adequate, and provides the community with what they have long asked for, and what, by law, they are entitled to.

So I hope the Army will take my comments in that context. The hope here is to make for a better final document, so we can get closure, at least, on this chapter of the issue.

One thing that I would like to point out to those in the public, particularly those who have concerns about the difficult technical nature of this document, or at least a lot of the parts of the document.

Responses

Comments

Under the settlement agreement that Malama Makua entered into with the Army in October of 2001, there is a Technical Assistance Fund that has been established in order to secure for the people of the Waianae Coast and the people of the rest of the state, technical expertise to help understand a lot of the dense material in this EIS and help people understand whether their questions about contamination affects the cultural sites or other issues have been adequately addressed.

I would encourage people to take advantage of that technical fund. Malama Makua and Earthjustice have already gathered together a team of experts that are currently reviewing the document. And if you have questions that you would like to have them answer, I encourage you to e-mail me at Dhenkin@Earthjustice.org, that's D-h-e-n-k-i-n, so I can forward it on to the expert.

In addition, if there are people that you believe should be retained as technical assistants to help in understanding the documents, there are additional funds available to provide for qualified people to give that service to the community.

Now to focus on some specific comments on the draft EIS.

T11-1 First, I would echo the concerns that have been

Responses

T11-1
The Army extended the public review period from 60 days to 75 days. In response to comments, an additional 60 days were provided to the community to review the Draft EIS and associated studies related to marine resources and archaeological surveys, from February 2 to April 3, 2007. The technical experts retained on behalf of Malama Makua were provided 76 days for review of the marine resources study, archaeological study, and Draft EIS.

Comments

expressed by the community about the need for additional time to review this very voluminous document.

T11-1 It took the Army nearly four years to prepare this draft from the entry of the October 2001 Settlement Agreement, and the people are asked to review it in two months.

As I just mentioned, there are funds available for technical experts to review this study to make sure that it's accurate and provide feedback to the Army. Many of these folks have provided their services at reduced or no charge to the community. They need more time in order to review the document, and they asked me to communicate that to the Army tonight.

In order to help them prepare their comments and perform their tasks, on August 4th, I submitted a list of nine documents that are listed in the Reference section of the draft Environmental Impact Statement, so the experts could have some of the underlying documents, rather than

T11-2 merely looking at the summaries provided in the draft EIS. That was submitted to Mr. Shirakata, and I have not yet received the documents. So one month into the public comment period, the technical assistants don't even yet have the data that they would need in order to provide informed commentary on the draft.

T11-3 On August 2nd, I submitted a Freedom of

Responses

T11-2
The requested documents were forwarded on August 24, 2005.

T11-3
The Army responded to Earthjustice's FOIA request on the following dates: September 7, 2005 (correspondence); December 2, 2005 (document production); December 8, 2005 (document production); April 13, 2006 (document production); and May 19, 2006 (written response).

Comments

Information Act request for documents related to the Army stated purpose and need, and its analysis of why places other than Makua would not be adequate to meet that purpose and need.

T11-3 Under Army Freedom of Information Act regulations, 32CFR, Section 518-62A, I was supposed to receive a response within ten working days of that August 2nd request. We're now over a week late. So one month into the process, I don't have the documents that I need to perform my review.

T11-1 So we respectfully ask for additional time. The 120 days that the community is requesting seems to me quite reasonable in terms of the scope of the other documents; and, in fact, a modest request that we hope that you would meet.

T11-4 The second major point I would like to make is that the Environmental Impact Statement is incomplete. Other speakers have mentioned this, and I would like to emphasize, by citation, some of the specifics in the 2001 Settlement Agreement.

We entered into a Settlement Agreement with the Army because the community had many questions that have long gone unanswered. And as part of that Settlement Agreement, the Army committed not only to preparing an Environmental Impact Statement, but committed to

Responses

T11-4
The EIS was prepared in accordance with the National Environmental Policy Act with applicable federal and Army regulations. Review of the Draft EIS by the US Environmental Protection Agency found the document to be adequate. Sediments collected from the different muliwai were analyzed for various compounds including metals and explosives. Analytical results did not identify any chemicals of potential ecological concerns since the levels found are low (either non-detected, or barely above detection limits), and infrequent (i.e. only 1 sample out of 54 showed RDX at 0.23 milligrams per kilogram). A detailed discussion of the analytical data collected for the muliwai is included in Appendix G-3 of the Draft EIS. Further testing for contaminants in ecological receptors at the muliwai (e.g., fish and limu) was undertaken in August 2006 and is addressed by the investigation report in Appendix G-8.

Surface surveys have been completed for the entire area within the south firebreak road except for those areas containing improved conventional munitions. Surface surveys have also been undertaken for the majority of the surface danger zone of the 105mm round.

Surface surveys have also been undertaken for the Ukanipo Heiau complex, Koiahi Gulch and almost all of Kahanahaiki Valley. This coverage is reflected in Figures 3-24 and 3-25 in the Draft EIS. Subsurface testing has been undertaken in Sites 4243, 4244, 4245 and 4246. This testing showed there is a subsurface component to these sites; however, this limited testing resulted in protests from two Native Hawaiians due to the invasive and destructive nature of the testing.

An additional subsurface archaeological survey was conducted in November and December of 2006. The results of this survey have been incorporated into Section 3.10, and the survey report is included as Appendix G-9.

Comments

performing specific studies to inform its analysis of the impacts of training at Makua.

We did not want to leave to debate over the adequacy of the document or to the discretion of the Army whether to perform these studies, so they are included and spelled out in the Settlement Agreement, which was entered as a court order.

In paragraph 6a of the Settlement Agreement, "The Army must undertake studies of resources off of Makua Military Reservation, including the testing of fish, limu and other marine resources, on which area residents rely on for sustenance and the testing of the Muliwai for contamination, if there is evidence that any contamination is getting off of Makua Reservation outside the boundaries of the reservation and into these areas."

T11-4 I've only heard preliminary responses from our experts regarding the adequacy of the hydrological, geological and contamination studies that have been done. The indication, unfortunately, means that these studies today have been inadequate to provide any assurance to the public about the level of contamination that is getting into the Muliwai, that is getting into the near shore areas.

And these experts, if given adequate time, will provide full explanations of their concerns and their

Responses

Comments

findings. But even these inadequate studies have confirmed that there is contamination getting off the reservation; that there has in the past; and that there will be in the future. And, therefore, the Army under the Settlement Agreement, must perform these additional studies as part of the Environmental Impact Statement process.

T11-4

They must provide a 60-day public comment period on the scope and protocol of these studies. And they must do all of that as part of the draft EIS because under the National Environmental Policy Act, having the public be able to review the document, having the experts be able to review the document and point out its weaknesses, to give the Army the opportunity to do what the law requires and what the Settlement Agreement and court order requires is a crucial part of the entire process. They cannot go from this draft to a final EIS without first putting these studies out for public review and comment.

T11-5

I would encourage you, if you believe that time is of the essence, to do that sooner rather than later. And we have written to your attorneys to that effect.

In paragraph 6c of the Settlement Agreement, the Army committed to completing surface and subsurface archaeological surveys of all areas within the company combined arms training area, circumscribed by the

T11-4

Responses

T11-5
Consistent with the settlement agreements between Malama Makua and the Army, the Army has made both the study protocols and the study reports available for public review and comment for a minimum of 60 days. The Army recently made the marine resources survey report and subsurface archaeological survey report, as well as the Draft EIS, available for public review from February 2 to April 3, 2007. The technical experts retained on behalf of Malama Makua were provided 76 days for review of these documents. The results of these studies have been incorporated into the EIS.

Comments

T11-4

Southfire Break Road, and surface archaeological surveys of all surface danger zone areas, as shown in Figure 2-2 of the Supplemental Environmental Assessment.

You have not done this. If you look at Figure 3-24 of your draft EIS, it identifies the area at Makua that the Army claims have been surveyed for archaeological resources. Initially, I would note that this is misleading because those areas have not been

T11-6

subjected to thorough and complete surveys. At most, these areas have had surface archaeological surveys, but the Settlement Agreement and court order calls for examination of subsurface archaeological resources, such as Imu and others. This has not been done.

In addition, there are vast areas that have not been surveyed at all, again, even though the Army

T11-4

committed, in October of 2001, to conduct these studies and to get them out to the public as part of the EIS process. They have to be done.

And as Vince Dodge mentioned, part of the commitment that the Army made was that the areas that are suspected of containing improved conventional munitions,

T11-7

the Army, in this case the 25th Infantry Division, would make good-faith efforts to secure a waiver from the Department of the Army to allow them to conduct the archaeological surveys.

Responses

T11-6
Please see the response to Comment T1-4.

T11-7
The Army's waiver request (dated May 5, 2006) was rejected by Army Headquarters on December 21, 2006, as stated in a Deputy Assistant Secretary of the Army memorandum, dated January 10, 2007.

Comments

We question, as a matter of law, whether a waiver is needed. But we don't need to resolve that legal issue to know that the Army has not acted in good faith. Because even though it signed the agreement in October of 2001, and even though that agreement contemplated that the EIS would be completed by October of 2004, the Army did not even put together a waiver request until May of 2004, less than six months before it was supposed to be done with the EIS. So for two-and-a-half years, it did nothing.

T11-7

Then, that waiver request never made it past the U.S. Army of the Pacific because the U.S. Army Pacific determined that it was sufficient, and I believe, in March of this year, returned it back to the 25th Infantry Division.

So it's never actually been formally submitted to the Pentagon, as the Army admitted that it would in October of 2001. And to the best of my knowledge, even though they got it back in March of 2005, they still have not revised it and submitted it. So there has been absolutely no effort to secure a waiver to allow you to carry out archaeological surveys in the ICM area.

The EIS is incomplete. It needs to be supplemented with the additional contamination and archaeological studies, and put back out for public

T11-8

Responses

T11-8
The findings from the marine resources study and the subsurface archaeological study have been incorporated into the EIS. The EIS was prepared in accordance with the National Environmental Policy Act with applicable federal and Army regulations. Review of the Draft EIS by the US Environmental Protection Agency found the document to be adequate.

Comments

T11-8

comment, as a revised draft Environmental Impact Statement.

Now, I'm going on to the body of the text. And, actually, I would like to -- I apologize. (Brief interruption re: tape change)

I believe it's important -- I believe it's an important part of the process to put it on the record and to present orally these concerns. But I also recognize that it's, you know, going to be late for people. And I have no problem with stopping and letting other people speak, and then picking up for anyone that wants to hear me later on.

The first issue that I want to address has to go to the purpose and need for the proposed action. And the proposed action here is training at Makua. The purpose or the need, as identified in the EIS, is to allow for the 25th Infantry Division, and other military units, to maintain the combat readiness of those units.

T11-9

The response that the Army has to that need is limited to an examination of what I would define as alternative one, which is training at Makua; alternative two, which is yet more training at Makua; and alternative three, which is yet even more training at Makua.

And I would respectfully submit that is not the universe of reasonable alternatives that is available to

Responses

T11-9
The EIS considered other alternatives in Section 2.5. The EIS now includes evaluation of an alternative in which training proposed for MMR would be conducted at the Pohakuloa Training Area, island of Hawaii (See Chapter 2 for a description of this alternative). This alternative was added in response to public comments received on the Draft EIS. Use of MMR, however, remains the preferred alternative.

Comments

T11-9

the Army to accomplish what it perceives its needs are.

The Army, unlike its sister federal agencies, is rarely starved for funds. It usually gets what it asks for. And we have seen an example of that with the recent decision to proceed with Striker transformation, to the tune of one-and-a-half billion dollars here in Hawaii. There are many more alternatives that are available to the Army to accomplish its purpose and need.

But, first, I want to focus on the underlying premise of the EIS, which is that Makua is necessary in order to allow the military to maintain its combat readiness. Please bear in mind that the Army wants to conduct up to 242 days of training per year, and up to 50 company-level wild fire exercises, far more than it has ever done in the past, with no showing that any training at Makua is needed at all.

The Army, apparently, thinks that if it says often enough that training at Makua is vital, the public will

T11-10

eventually buy their argument. But facts speak louder than rhetoric. And the facts prove that training at Makua, especially at the levels the Army proposes, is not needed now and never has been.

Through the previous litigation -- I'm sorry. How's my time on your tape?

FACILITATOR GOMES: Five minutes.

Responses

T11-10

Training requirements are constantly changing based on lessons learned in combat, training events, new equipment, and new commanders. Convoy live-fire training, for example, has become an essential component in training units based on the experiences in Iraq and Afghanistan. Using historical data to assess future needs is faulty logic. Times of war, such as now, drastically change training requirements. Combat readiness, moreoever, is an assessment based on a Commander's experience and training, and therefore is a matter of discretion.

Training requirements are constantly changing based on lessons learned in combat, training events, new equipment, and new commanders. Using historical data to assess future needs is faulty logic. Times of war, such as now, drastically change training requirements. While units have been assessed in the past as ready for combat without conducting live-fire training exercises at MMR, the Army was forced to undertake training work-arounds to include training at locations outside of the state of Hawaii. These work arounds were both time consuming and costly. Additionally, the lack of home-based live-fire training capability has an impact on Soldier morale as more time is spent away from family, which is not quantifiable in Unit Status Reports.

Comments

MR. HENKIN: Thank you.

Through the previous litigation, we have secured from the Army records of their past training at Makua. And, remember, the proposal is 242 training days a year.

In 1988, they trained at Makua 142 days. In 1989, they trained at Makua 105 days. I want to clarify that. When I say, "they," I mean the U.S. Army and every other military branch, including, in 1988, the Girca Army. So this is all military training, whether U.S. non-U.S., Army or other. 1989, 105 days. And this is with no litigation restrictions; this is them doing what they want to do. 1994, 173 days. 1991, 136 days. 1992, 122 days. 1993, 180 days. 1994, 143 days. 1995, 126 days. 1996, the high water mark of military training, 213 days. Still 30 days shy of what they're shooting for now. 1997, 152 days. 1998, 81 days.

T11-10

During that time, we trained for the first Gulf War in a variety of other military actions. At the beginning of that period, we were still engaged in the Cold War. This is the time when the military trained as much as it wanted to, and never did it train the number of days that it now says it needs to train at Makua.

I will be submitting with my written comments this document, which is Tab No. 45, in the binder having to do with training from the last round of the Makua litigation.

Responses