

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

August 23, 2013

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT: AUTHORIZATION FOR THE CHAIRPERSON TO NEGOTIATE AND SIGN A MEMORANDUM OF AGREEMENT (MOA) WITH PATH PEOPLES ADVOCACY FOR TRAILS HAWAII (PATH), FOR THE PURPOSE OF COOPERATIVE MANAGEMENT AND MAINTENANCE OF SELECTED TRAILS SUITABLE FOR PUBLIC USE IN THE MAKĀULA - 'O'OMA SECTION OF THE HONUUA'ULA FOREST RESERVE, NORTH KONA DISTRICT, ISLAND OF HAWAII, TMK: (3) 7-3-01:02**

**AND**

**REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE SUBJECT MOA.**

This submittal requests the Board to authorize the Chairperson to negotiate and sign a MOA (Exhibit A) between the Department of Land and Natural Resources (DLNR) and Path Peoples Advocacy For Trails Hawai'i (PATH) for the purpose of cooperative management and maintenance of selected trails suitable for public use in the Makāula - 'O'oma Section of the Honua'ula Forest Reserve, North Kona District, Island of Hawai'i, TMK: (3) 7-3-01:02. Additionally, The Division of Forestry and Wildlife (DOFAW) requests approval of a declaration of exemption to Chapter 343, HRS requirements for this MOA.

**BACKGROUND:**

The Makāula - 'O'oma Section of the Honua'ula Forest Reserve, managed by DOFAW, contains a trail system heavily used by mountain bicyclists and hikers. This trail system is in need of increased management and maintenance.

PATH is a non-profit organization incorporated in accordance with state law to work in community partnerships with public agencies such as DOFAW. One of the main purposes of PATH is to advocate for places to walk, hike and bike on Hawai`i Island. PATH is willing to assist DOFAW with the management and maintenance of selected portions of the trail system in the subject forest reserve, including the coordination of volunteers, surveys of trail users, educational and interpretive signage.

DISCUSSION:

DLNR and PATH have prepared a draft MOA (Exhibit A), which has been preliminarily reviewed by the Attorney General. This MOA will allow DLNR and PATH to enter into a mutually beneficial agreement for maintenance and management of selected trails in the Makāula - 'O'oma Section of the Honua'ula Forest Reserve.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The MOA is a mutually beneficial agreement between DLNR and PATH for maintenance and management of existing trails. These are activities which are exempt from the requirements for the preparation of an environmental assessment in accordance with the requirements of Chapter 343, HRS, and Chapter 11-200-8, Hawai`i Administrative Rules (HAR), under the following exemptions:

Exemption Class #1: Operations, repairs or maintenance of existing structures, facilities, equipments or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

RECOMMENDATIONS:

That the Board:

1. Authorize the Chairperson to negotiate and sign a MOA between the DLNR and PATH for the purpose of cooperative management and maintenance of selected trails suitable for public use in the Makāula - 'O'oma Section of the Honua'ula Forest Reserve, North Kona District, Island of Hawai`i, TMK: (3) 7-3-01:02, pursuant to the terms in Exhibit A and subject to approval by the Attorney General.
2. Approve a declaration of exemption to Chapter 343, HRS requirements for this MOA.

Respectfully submitted,



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Roger Imoto, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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William J. Aila, Chairperson  
Board of Land and Natural Resources

Exhibit A: Draft MOA

**MEMORANDUM OF AGREEMENT**

**FOR MAKĀULA - `O`OMA SECTION, HONUUA`ULA FOREST RESERVE  
BETWEEN  
PATH PEOPLES ADVOCACY FOR TRAILS HAWAI`I  
AND  
STATE OF HAWAI`I, DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE**

THIS Memorandum of Agreement (hereinafter referred to as "MOA") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between PATH PEOPLES ADVOCACY FOR TRAILS HAWAI`I (hereinafter referred to as "PATH") and the STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES through its DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter referred to as "DLNR") for its Division of Forestry and Wildlife (hereinafter referred to as "DOFAW") for the purpose of cooperative management and maintenance of selected trails suitable for public use in the Makāula - `O`oma Section of the Honua`ula Forest Reserve, North Kona District, Island of Hawai`i, TMK: (3) 7-3-01:02 (hereinafter referred to as "Makāula-`O`oma").

**W I T N E S S E T H:**

WHEREAS, DLNR, through DOFAW has management and regulatory authority regarding all lands set aside as Forest Reserves under Hawai`i Revised Statutes (HRS) Chapter 183; and

WHEREAS, DOFAW is responsible for the management of State-owned forests, natural areas, public hunting areas, and plant and wildlife sanctuaries, in addition to program areas involving watershed protection, outdoor recreation, and protection of unique ecosystems and endangered species of plants and wildlife; and

WHEREAS DLNR, through the special land development fund established by HRS section 171-19, may set aside funds from private contributions for the management, maintenance, and development of trails and accesses; and

WHEREAS, DOFAW desires to enter into Agreements with non-profit organizations that are mutually beneficial and in the interest of the public; and

WHEREAS, PATH is a non-profit organization incorporated in accordance with state law to work in community partnerships with public agencies such as DOFAW; and

WHEREAS, one of the purposes of PATH is to advocate for places to walk, hike and bike on Hawai`i Island; and

WHEREAS, Makāula - `O`oma contains a trail system heavily used by mountain bicyclists and hikers (hereinafter referred to as "Trail." Location Map is shown in Exhibit "A" attached hereto and incorporated by reference into this MOA); and

WHEREAS, it is the intent and purpose of this MOA to set forth the relationship between the two parties, which establishes their mutual duties and responsibilities, with respect to cooperation in management and maintenance of the Trail.

NOW, THEREFORE, DOFAW and PATH hereto deem it mutually advantageous and desirable to cooperate and hereby agree to adhere to the following terms, duties and obligations:

PATH will:

1. Assist DOFAW with management and maintenance of the Trail for a minimum of 24 months from the date of this MOA.
2. Designate a liaison to serve as PATH's representative to help interpret the conditions of this agreement, resolve policy questions, expedite decisions, inspect and monitor the work performed, and ensure compliance with applicable laws.
3. Require all PATH volunteers to sign DOFAW's "Agreement for Individual Voluntary Service," prior to performing volunteer work in Makāula -`O`oma under this MOA. Agreement of Individual Voluntary Service is shown in Exhibit "B" attached hereto and incorporated by reference into this MOA.
4. Conduct an initial survey of trail use and user satisfaction and share the findings with DOFAW.
5. Work with DOFAW to identify the best locations and design for public educational signage.
6. Contribute funding for an educational and interpretive sign for the trail head near Makahi Street, up to \$1,500.
7. Perform regular scheduled maintenance of the Trail two times per year, as mutually agreed upon with DOFAW and maintained under the guidelines provided by DOFAW to PATH.
8. Report to DOFAW within two (2) working days upon discovering any unsafe conditions, damage, disrepair, or other concerns.
9. Submit written reports to DOFAW describing the numbers of volunteers and scope and nature of maintenance activities performed.
10. Save and hold harmless the State of Hawai`i, its officers, agents, employees, representatives, successors and assigns, from any and all suits or actions of every nature and kind which may be brought for or in account of any injury, death or damage arising or resulting from activities performed by PATH under this MOA.
11. Maintain current insurance coverage of PATH activities and provide DOFAW with verification of said coverage.
12. Assist in informing the public about proper use of the Trail.

DOFAW will:

1. Designate a liaison to serve as their representative to help interpret the conditions of this agreement, resolve policy questions, expedite decisions, inspect and monitor the work performed, and insure compliance with applicable laws.
2. Assist with GPS mapping of the existing and proposed trail system.

3. Construct and install an educational and interpretive sign for the trail head near Makahi St.
4. Assist in the training of PATH volunteer leaders for maintenance tasks.
5. Require all PATH volunteers to sign DOFAW's "Agreement for Individual Voluntary Service," (Exhibit B) prior to performing volunteer work in Makāula -`O`oma under this MOA.
6. Assist with providing hand tools used in trail maintenance activities.
7. Periodically inspect the Trail and provide direction to PATH to determine necessary maintenance activities.
8. Exercise the authority to require permits to access the Trail during extreme fire hazard conditions, and upon assessment that the Trail conditions are too hazardous for continued open public access, or if damage to the Trail by public use requires restoration (DLNR Rules Regulating Activities Within Forest Reserves §13-104-23).

#### TERM OF MOA

This MOA will remain in effect for 24 months, unless otherwise terminated as set forth below, beginning on the date first written above. This MOA may be renewed upon mutual agreement between the Parties.

#### KEY OFFICIALS

Key officials are essential to ensure maximum coordination and communication between the parties and the work being performed. They are:

##### For DOFAW:

Lisa Hadway, Hawaii Branch Manager  
Division of Forestry and Wildlife  
19 East Kawili Street  
Hilo, HI 96720  
Telephone: 808-974-4221  
Email: [Lisa.J.Hadway@hawaii.gov](mailto:Lisa.J.Hadway@hawaii.gov)

##### For PATH:

Tina Clothier, Executive Director  
P.O. Box 62  
Kailua-Kona, HI 96740  
Telephone: 808-326-7284  
Email: [tina@pathhawaii.org](mailto:tina@pathhawaii.org)

#### PATH and DOFAW agree:

1. This MOA may be modified or amended as necessary in writing to clarify roles, management obligations, regulatory functions, or any other purpose necessary to further the administration of the trail.
2. Modification or amendments to this MOA may be proposed by any Party and shall become effective upon written approval by all parties.

3. This MOA may be terminated upon 60 days advance written notice given by one of the parties to the other, or it may be terminated earlier by mutual consent of all Parties.
4. This MOA does not authorize exclusive use of the Trail, nor does it constitute an exclusive agreement in the use of facilities or ancillary resources.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the date first written above.

For BOARD OF LAND AND NATURAL RESOURCES:

\_\_\_\_\_  
William J. Aila Jr., Chairperson

\_\_\_\_\_  
Date

For PATH PEOPLES ADVOCACY FOR TRAILS HAWAI'I, a Hawai'i Nonprofit Corporation:

\_\_\_\_\_  
Tina Clothier, Executive Director

\_\_\_\_\_  
Date

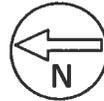
Approved as to Form:

\_\_\_\_\_  
Deputy Attorney General

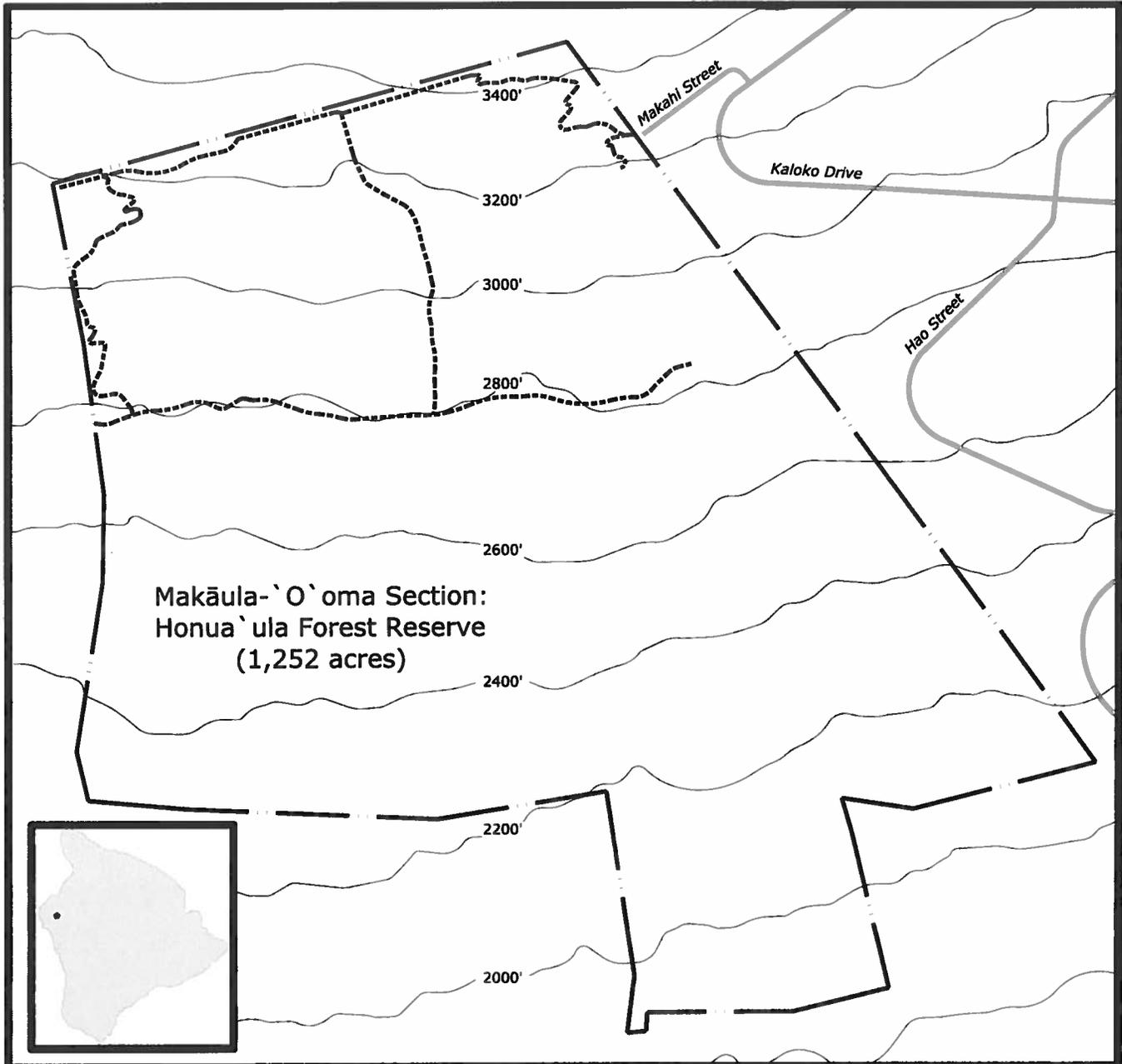
\_\_\_\_\_  
Date

# Exhibit "A"

Location of Trails in the Makāula-`O`oma Section of the Honua`ula Forest Reserve,  
North Kona District, Island of Hawai`i, TMK: (3) 7-3-01:02



- TMK Boundary
- Trails
- ~ Contours



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife

AGREEMENT FOR INDIVIDUAL VOLUNTARY SERVICE

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_

DURATION OF AGREEMENT: START: \_\_\_\_\_ END: \_\_\_\_\_

I understand that I will not receive any compensation for the above work and the volunteers are NOT considered to be employees of the State of Hawaii for any purpose other than tort claims, and I understand that volunteer service is not creditable for leave accrual or any other employee benefits. I also understand that either the State of Hawaii, or I may cancel this agreement at any time by notifying the other party. I acknowledge that there are inherent risks and dangers associated with this activity and in particular have noted those risks listed below.

I understand that I will be assisting the State of Hawaii/Department of Land and Natural Resources/Division of Forestry and Wildlife, in taking care of Hawaii's natural and cultural resources. I will be responsible for my equipment and supplies. I understand that a DOFAW employee will be available to assist with logistics and communications. I will be responsible for all aspects of the actual work project, and the safe use of and proper care of hand tools including, but not limited to: machetes, saws, hand axes, hazel hoes, pulaskis, McCleods, prybars, sledge hammers, bow-saws, and power tools including but not limited to: brushcutters.

I am in good physical shape, and will be self sufficient while at the work project site. I have informed the State of any physical, mental, and/or medical conditions that may increase the risk of harm to myself or others while engaging in the activities described in this document. I understand that I should wear footwear with good traction and should have clothing suitable for work in both rainy, wet, and hot, dry conditions when working in the field. I understand that the duration of the project may be less than eight hours in length, however, in the even of inclement weather the work day may be either shortened or extended at the discretion of the State. I further understand that work projects may occur in remote areas as well as on public or private lands where hunting activities occur and that I may not leave the trail work area without first notifying the State. I am aware that there are inherent risks and dangers associated with field work. They include but are not limited to:

- Gusty winds;
- sharp and or slippery rocks;
- stinging or biting insects and spiders;
- portable or no bathroom facilities;
- steep drop-offs: landslides;
- no potable (drinkable) water;
- rugged terrain;
- sharp tools;
- lack of medicinal facilities;
- wild animals;
- harsh weather conditions ranging from hot and humid to wet and cold;
- diseases caused by water, air, and animal vectors;
- paint, fuel, and oil fumes;
- thorny plants/potentially dense vegetation;
- lack of reliable communication;
- no telephones;
- weapons fire/gunshots
- work on, in, or near water;
- wet and slippery roads.
- herbicides;
- work in a hunting area.
- steep and slippery trail and river crossings.
- flash floods

Liability waiver/Volunteer agreement

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I agree to waive any and all claims against that State of Hawaii and its officers, agents, employees, or volunteers for any injury, property damage, and /or death caused by any negligence on the part of the State of Hawaii, its officers, agents, employees, and other volunteers and agree to hold harmless and indemnify of the State of Hawaii, its officers, agents, employees, and other volunteers from any suits, actions, and claims arising out of or in anyway connected with my activities as a volunteer or the activities of the State of Hawaii, it's officers, agents, employees or other volunteers.

I understand I am also signing on behalf of any minor that is under my care during the duration of the volunteer activity. I further agree that I will be responsible either for personally supervising the minor or for making arrangements for the supervision of the minor be another responsible adult.

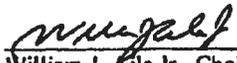
I herby volunteer my services as described above, to assist the State of Hawaii/ Department of Land and Natural Resources in its authorized work.

Signature of Volunteer (or Minor's guardian) - Date

Minor's Name: \_\_\_\_\_

Based upon the above agreement and understanding, the State of Hawaii agrees, while this arrangement is in effect, to accept your services as a volunteer.

Mahalo for your support of Hawaii's natural and cultural resources.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson  
Board of Land and Natural Resources