

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

March 13, 2015

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

SUBJECT: Establishment of a Curator Agreement with the Kuamo'o Foundation for
Kukuipahu Heiau State Historic Site, North Kohala, Island of Hawai'i
TMK: (3) 5-6-001: 75

The Curator Program was initiated in 1987 by the State Historic Preservation Division (SHPD) and the Division of State Parks to encourage community involvement in the care and management of historic and cultural sites on State-owned properties. Over the years, the program has expanded to include natural resources in the parks and tasks such as educational programs, interpretation, and site restoration. The volunteer agreements outline the responsibilities of the volunteer organization for a 5-year term.

Kukuipahu Heiau State Historic Site (SHS) consists of a 3-acre parcel encompassing the heiau and a 100-foot buffer. The site is not currently open for public visitation because of its remote location and limited access. The land around the site was subdivided for agricultural lots in the late 1990s, but Parker Ranch continues to run cattle in the area which requires locked gates along the access road to the heiau. The State Parks maintenance crew assigned to the West Hawaii Field Operations Sub-Unit oversees the grounds maintenance of Kukuipahu Heiau SHS.

Kukuipahu Heiau (State Site No. 50-10-02-4135) is listed on both the National and Hawai'i Registers of Historic Places in recognition of its distinctive construction style using cut and dressed stones placed on edge as upright slabs and its significance to the cultural history of the Kohala District. Kukuipahu Heiau is also one of the sites that comprise the Kohala Historical Sites State Monument established in 2005 (§6E-38.5).

A curator agreement between State Parks and the Luhiau 'Ohana was signed in 1999 and renewed in 2010. In 2011, the Kuamo'o Foundation joined the Luhiau 'Ohana as co-curators. The Kuamo'o Foundation is dedicated to practicing and perpetuating the traditions of the Kuamo'o genealogical line. Both of the Luhiau and Kuamo'o families have cultural ties to the Kukuipahu site. Because the Kuamo'o Foundation has recently received their 501(c)(3) status as a not-for-profit organization, the families agreed to having the Kuamo'o Foundation serve as the entity to enter into a new agreement with the State.

ITEM E-2

For the past five (5) years, members of the Luhiau 'Ohana and Kuamo'o Foundation have held monthly workdays to care for the site and the grassed buffer area. The Foundation has also hosted educational and cultural visits to the site. Future plans include developing and implementing a cultural landscape restoration plan with the introduction of Hawaiian plants.

RECOMMENDATION:

State Parks encourages community involvement and assistance with the care, management, and restoration of the resources in the parks. The Kuamo'o Foundation has indicated a willingness to assist with the maintenance of Kukuipahu Heiau in partnership with the Luhiau 'Ohana and State Parks as it has done for the past 5 years. State Parks recommends that the Board grant approval for DLNR to enter into a 5-year agreement with the Kuamo'o Foundation to allow them to care for and restore Kukuipahu Heiau State Historic Site subject to the following conditions:

1. Review and approval of the agreement by the Department of the Attorney General.
2. Kuamo'o Foundation prepares the required environmental and regulatory documents and obtains approvals and permits prior to conducting any restoration work.
3. Amendments and renewals of the volunteer agreement are delegated to the Chairperson.
4. And such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

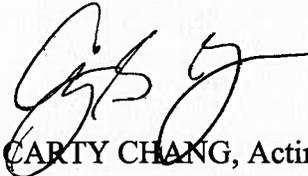
Respectfully submitted,



DANIEL S. QUINN
State Parks Administrator

per

APPROVED FOR SUBMITTAL:



CARTY CHANG, Acting Chairperson

Attachment: Draft Curator Agreement with Kuamo'o Foundation

CURATOR AGREEMENT
KUKUIPAHU HEIAU STATE HISTORIC SITE, HAWAII ISLAND

THIS AGREEMENT, executed on the respective dates indicated below, is effective as of _____, 2015, between the Board of Land and Natural Resources, State of Hawaii (hereafter "STATE"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and Kuamo'o Foundation (also referred to herein as "CURATOR"), whose address is 68-1756 Puwalu Street, Waikoloa, Hawaii 96738, for and regarding Kukuipahu Heiau State Historic Site, located within Kukuipahu ahupua'a, North Kohala, island of Hawaii, State of Hawaii [TMK: (3) 5-6-001: 75].

INTRODUCTION

The State of Hawaii is the owner of Kukuipahu Heiau State Historic Site (hereafter "Park"). This Agreement for assistance with the maintenance, management, interpretation, and restoration of park resources is in the public interest and serves a public purpose. The CURATOR will perform all duties and responsibilities without pay from the State.

Kukuipahu Heiau State Historic Site (SHS) consists of a 3-acre parcel encompassing the heiau and a 100-foot wide around the heiau (Attachment 1). The property is delineated by a fenceline and is accessed from Maliu Road (government road). Kukuipahu Heiau is one of the sites that comprise the Kohala Historical Sites State Monument established in 2005 (§6E-38.5). Management and maintenance of the site is overseen by the Division of State Parks with support provided by the staff assigned to Lapakahi State Historical Park.

THE AIM OF THE STATE OF HAWAII'S CURATOR PROGRAM

The aim of the curator program developed by the Division of State Parks and the State Historic Preservation Division is to:

1. Better maintain significant cultural and natural resources and protect them from vandalism, natural factors, and unintentional human actions that will damage these resources.
2. Provide the public with greater access to view and understand the importance of Hawaii's natural and cultural resources, and their significance to the STATE's past history and natural environment.

RESPONSIBILITIES OF THE CURATOR

1. The CURATOR will coordinate all actions and activities undertaken in the execution of this volunteer agreement with State Parks.
2. If the CURATOR utilizes volunteers to perform some or all of its responsibilities, the CURATOR shall designate a volunteer supervisor(s) who is subject to approval by State

- Parks. The CURATOR shall submit a completed agreement fact sheet (Attachment 2) to State Parks and the CURATOR shall require all participants to submit a completed State Parks' release of liability form (Attachment 3) and provide the completed release of liability forms to State Parks.
3. The CURATOR will submit an annual report of activities and volunteer hours performed under this agreement to State Parks.
 4. The CURATOR will assist with the maintenance of the heiau and buffer within the 3-acre site. Unless otherwise approved, this shall be done with minimal ground disturbance. The following guidelines shall be followed:
 - a. Chainsaws, weed whackers, mowers, and other hand tools may be used. The cut debris will be chipped or composted and either used on-site or transported off-site. There is to be no burning within the site area.
 - b. A herbicide with dissipation properties such as Round-up, may be used. All instructions for proper application of such herbicides shall be followed.
 - c. The removal of trees shall be approved in advance by State Parks and done with minimal ground disturbance. Vegetation removal must include steps to minimize erosion and stabilize the ground surface.
 - d. The specifics of the vegetation removal shall be discussed on-site with the State Parks representative.
 5. The CURATOR will prepare a written training and safety plan for use of tools, equipment, and herbicides that must be reviewed and approved by State Parks prior to work at the Park. This plan shall include the use of safety gear and protection of the public when working in the Park. The CURATOR will give a safety briefing for all volunteers prior to conducting work.
 6. The CURATOR will periodically check the site in an effort to prevent vandalism and damage. Should any damage be discovered, the CURATOR will notify State Parks immediately. One set of keys for the gates to the site will be provided. These keys are not to be duplicated or loaned to anyone outside the curator organization.
 7. The CURATOR may prepare and implement a landscape plan to restore the natural and cultural landscape and stabilize erosion of dirt areas. Any planting or landscaping plan shall be reviewed and approved in writing by State Parks prior to implementation.
 8. The CURATOR may prepare and install interpretive devices and displays, contingent upon written approval of specific interpretive plans by State Parks and because a historic property is involved, approval by the State Historic Preservation Division (SHPD) in accordance with Chapter 13-277, HAR is also required.
 9. The CURATOR may provide educational and interpretive programs in the park, including leading interpretive tours and service projects in the park based on written interpretive

plans, educational curriculum, and other materials that have been approved in writing by State Parks.

10. The CURATOR may sponsor volunteer projects or cultural gatherings in addition to their regular maintenance responsibilities but State Parks must approve and shall be notified 5 working days in advance of large volunteer projects. A permit may be required for any activity involving over 25 individuals.
11. With State Parks written approval, the CURATOR may retain the services of a professional archaeologist for the purposes of conducting archaeological work needed to fulfill the objectives of this agreement or to contribute to State Parks meeting the requirements of the historic preservation project review process (§6E-7 and §6E-8, HRS; Chapter 13-275, HAR). The archaeologist shall meet the professional qualifications established by §13-281-3, HAR, and hold a valid permit to conduct archaeological activities in Hawai'i in accordance with §13-282-3, HAR. If any state funds are applied, all applicable state procurement laws shall be followed.
12. Use of the Park shall be in accordance with all of the Rules and Regulations of the Division of State Parks (Chapter 13-146, HAR) and all other applicable rules and regulations of the Department of Land and Natural Resources as well as all other applicable rules, regulations and permit requirements of the County of Hawai'i, State of Hawai'i and Federal Government, including requirements under HRS Chapter 343 concerning environmental and cultural review prior to any actions that would trigger compliance with this statute.
13. The CURATOR shall defend and indemnify the State of Hawai'i, its officers, employees, agents, and assigns, and hold each of them harmless from any claims and demands from any person(s) arising out of or based on any personal injury, death, or property damage arising directly or indirectly from the activities of the CURATOR and the CURATOR's officers, members and volunteers set forth in this Agreement. This provision shall survive the termination of this Agreement.
14. The CURATOR, its parents, subsidiaries and affiliates, successors, and assigns remise, release, and forever discharge the State of Hawai'i, and its officers, employees, agents, and assigns, acting in their official capacities with due diligence, from any and all claim(s), demand(s), or cause(s) of action on account of the death or injury to its officer(s) or employee(s), of the property of its officer(s) or employee(s), that may be due or attributable to the CURATOR's activities as set forth in this Agreement. This provision shall survive the termination of this Agreement.
15. The CURATOR, its parents, subsidiaries and affiliates, licensees, successors, and assigns assume all risk of bodily injury, wrongful death, and/or property damage that may be due or attributable to the CURATOR's activities as set forth in this Agreement and hereby waive any and all claims against the State of Hawai'i, its officers, employees, agents, and assigns.

16. The CURATOR shall procure, at its own cost and expense, and maintain during the entire period of this Agreement, comprehensive general liability insurance, issued by an insurance company or companies licensed or authorized to do business in the State of Hawai'i, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawai'i as an additional insured and a copy shall be filed with the State of Hawai'i Department of Land and Natural Resources ("DLNR"). The insurance shall cover any and all activities and responsibilities of the CURATOR as set forth in this Agreement.

Prior to or upon execution of this Agreement, the CURATOR shall furnish DLNR with a certificate(s) of insurance showing the insurance policy or policies. If the scheduled expiration date of the current insurance policy is sooner than the specified termination date of this Agreement, the CURATOR shall, upon renewal of the insurance policy or policies, provide DLNR with a copy of the renewed insurance policy certificate(s). This insurance shall not be cancelled, limited in scope or coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to DLNR. DLNR may, at any time, require the CURATOR to provide DLNR with copies of the insurance policy or policies that are or were in effect during this Agreement.

The Chairperson of the Board shall retain the right at any time to review the coverage, form, and amount of insurance required by this Agreement. If, in the opinion of the Chairperson of the Board, the insurance provisions in this Agreement do not provide adequate protection for the State of Hawai'i, the Chairperson may require the CURATOR to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Chairperson'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 Chairperson shall notify the CURATOR in writing of changes in the insurance requirements and the CURATOR shall deposit copies of acceptable insurance policy or policies and certificate(s) thereof, with the CURATOR incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy or policies of insurance shall not be construed to limit the CURATOR's liability under this Agreement nor to relieve or release the CURATOR of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the CURATOR shall be obligated for the full and total

amount of any damage, personal injury, wrongful death, or loss arising out of, or in connection with the CURATOR's activities and responsibilities under this Agreement.

17. The CURATOR may propose amendments to this agreement in writing to undertake other tasks. Any amendment to this agreement must be approved in writing by the Board of Land and Natural Resources or its designee.

SPECIAL CONDITIONS

The members and volunteers of the Kuamo'o Foundation shall not:

1. Conduct or permit commercial activity, including the sale of any items or advertising of commercial products, to be conducted in conjunction with the partnership and maintenance of the site;
2. Undertake or permit fund raising activities at the site;
3. Permit participants to possess, display, use or consume alcoholic beverages or illegal drugs at the site;
4. Permit any temporary or permanent residence to occur at the site;
5. Cause any significant disruption to normal park usage; or
6. Undertake site improvements unless these tasks are covered in this Agreement or in later amendments to this Agreement.

RESPONSIBILITIES OF THE STATE

1. DLNR, in its sole discretion, will continue to manage and be responsible for the area covered by this Agreement and may issue permits, including commercial permits, conduct archaeological and other investigative activities, install interpretive devices and regulatory signs, and implement management plans. DLNR will consult with the CURATOR on these activities as deemed appropriate by the STATE.
2. State Parks agrees to provide the CURATOR with information in its possession relating to the park, including but not limited to archaeological and historical information, surveys conducted of archaeological sites or features which are not of a confidential nature, draft environmental impact assessments and statements, and plans regarding existing or proposed future uses of lands within the park. The information State Parks will provide is limited to information that is not confidential.
3. The assistance of State Parks may be requested by the CURATOR for large clearing and hauling projects. State Parks assistance may be requested for the purchase of supplies and equipment for work conducted at the site, including the purchase and use of herbicides, with the understanding that State resources may be limited or restricted. Such requests should be coordinated between the CURATOR and the State Parks representatives, either the Hawai'i District Parks Superintendent or the Kona Maintenance Supervisor.

4. In accordance with §6E-7 and §6E-8, HRS, and Chapter 13-275, HAR, State Parks shall be responsible for obtaining concurrence from the State Historic Preservation Division to proceed with proposals under this agreement that could have an effect on historic properties in the park and for submitting for review and approval any reports or plans.

RESTRICTIONS ON THE ROLE OF THE CURATOR

1. Tasks not specified in this Agreement may not be undertaken. The CURATOR may propose amendments to this Agreement to undertake other tasks. These proposed amendments must be approved by the Board of Land and Natural Resources or its designee.
2. It must be emphasized that failure to get approval of additional tasks will likely lead to the revoking of this Agreement and the potential imposition of civil or criminal penalties under sections 6E-11, 6E-11.5, and/or 6E-11.6, HRS, if historic properties are damaged or altered without prior approval of the department.
3. It is the role of the CURATOR to help protect the park resources covered by this Agreement and to help provide public access. The CURATOR is not the owner of the park and cannot restrict access.

CHECKS TO INSURE PROPER CURATION

1. The CURATOR and the STATE, through the Division of State Parks, will agree on a schedule for when work will be performed. The STATE will monitor the progress of the work and maintain close communication with the CURATOR. The CURATOR will notify the STATE in writing if a schedule change is necessary and obtain written approval of said schedule change from the STATE.
2. The STATE will make a minimum of two (2) field checks per year to see that proper maintenance is being done. If it is determined that proper maintenance is not taking place, the STATE will notify the CURATOR in writing of the problem(s) and will provide suggestions to correct the problem(s). The CURATOR will be allowed a reasonable time to correct the problem(s) and if they fail to correct the problem(s), the STATE may terminate this Agreement.

INDIVIDUAL MEMBERS AND VOLUNTEERS OF CURATORS

The CURATOR shall be solely responsible for the actions of its members and volunteers who perform the responsibilities of the CURATOR under this Agreement.

TERM & MODIFICATION OF AGREEMENT

The term of this Agreement is for a period of five (5) years beginning on the effective date of the Agreement. Either party may terminate this Agreement after providing the other

party with thirty (30) days written notice. This Agreement may be amended only in writing signed by both the STATE and the CURATOR.

IN WITNESS WHEREOF, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written. By signing, the person indicates they have the requisite authority to enter into this Agreement on behalf of the entity indicated.

STATE

(Signature)

(Print Name)

Chairperson
Board of Land & Natural Resources

(Print Title)

(Date)

KUAMO'O FOUNDATION

(Signature)

(Print Name)

(Print Title & Organization)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

Approved by the Board of Land and Natural Resources at its meeting held on _____

ACKNOWLEDGMENT

STATE OF _____)

: SS.

_____ COUNTY OF _____

On this _____ day of _____, 20____, before me appeared _____, to me known, to be the person described in and, who, being by me duly sworn, did say that he/she is the _____ of the KUAMOO FOUNDATION named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the _____, and acknowledges that he/she executed said instrument as the free act and deed of the _____.

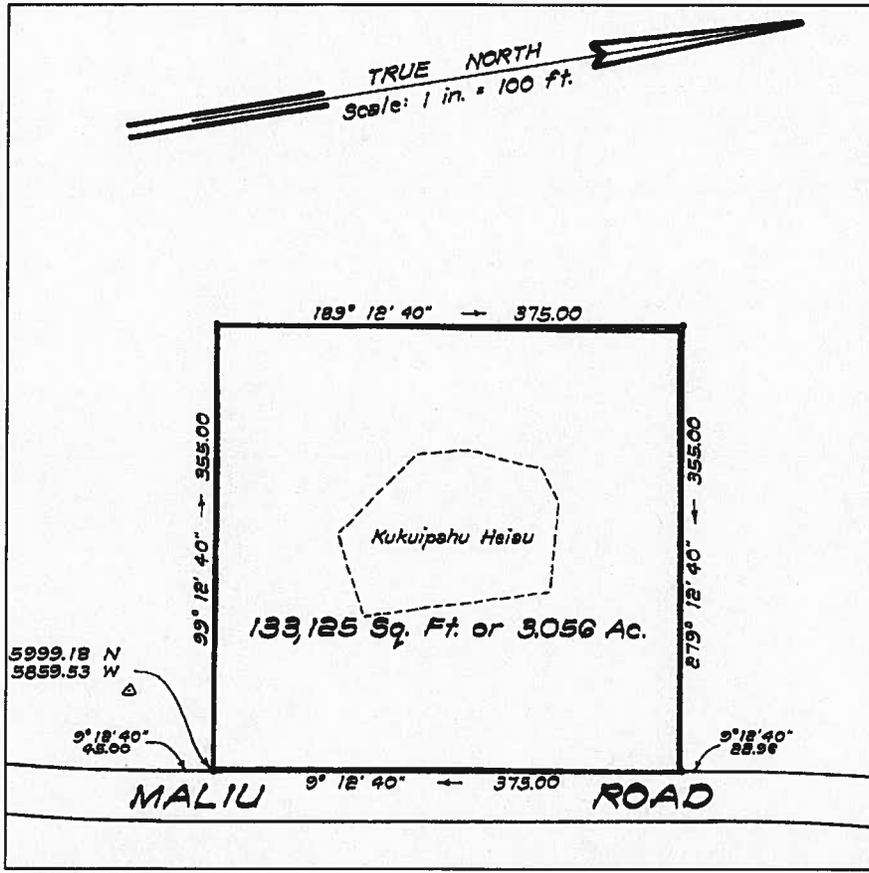
(Signature)

(Print Name)

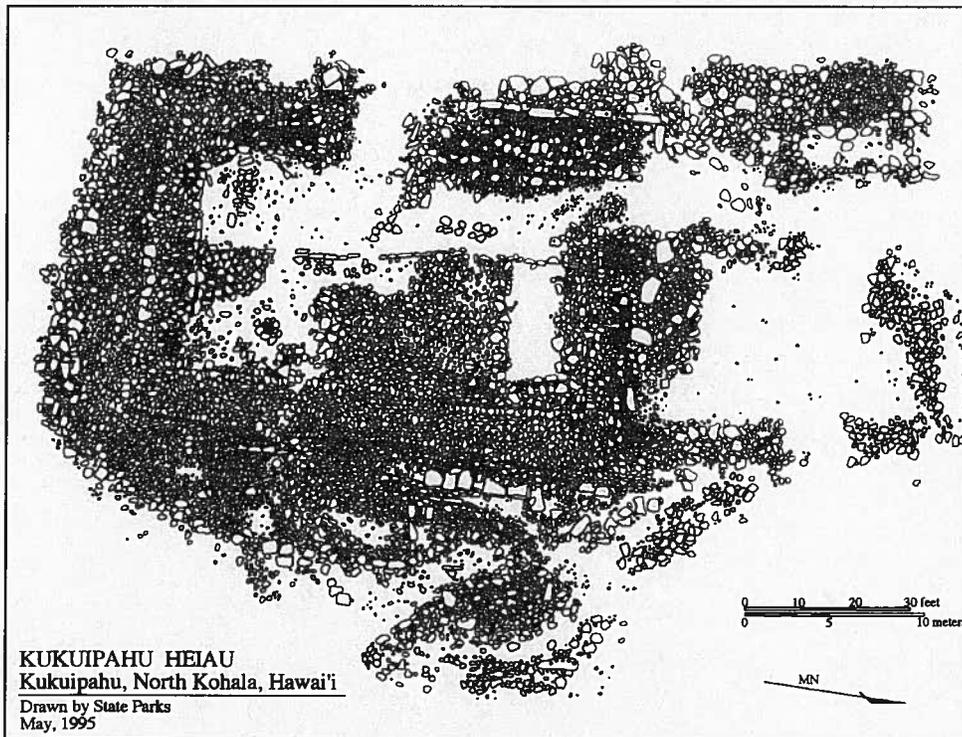
(Notary Seal)

Notary Public, State of _____

My commission expires: _____



Boundaries of Kukuipahu Heiau State Historic Site (TMK: 5-6-001: 75).



Archaeological map of Kukuipahu Heiau.

ATTACHMENT 1

STATE PARKS CURATOR AGREEMENT FACT SHEET

Park/Site: _____

Name of Group or Organization: _____

Designated Volunteer Supervisor(s) and their contact numbers:

1. _____

2. _____

If you are a 501(C-3) non-profit, please include your ID number and date of incorporation:

ID No.: _____ Date: _____

Date of Agreement: _____

List members who are regularly involved in curator activity and titles if applicable:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

Work Schedule:

Emergency Contacts (list names, telephone, pager or cellular numbers, in priority order):

1. _____

2. _____

ATTACHMENT 2



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

Name: _____ **Phone:** _____

Address: _____

I have requested the Department of Land and Natural Resources to allow me or my child to engage in the following activity or activities on State of Hawaii property known as the Kukuipahu Heiau State Historic Site (hereinafter "Park"): (Description of activity) _____

_____ for a period of time starting on _____ and ending on _____. I agree and acknowledge that my or my child's SAFETY is at moderate to high risk and that I accept RESPONSIBILITY. I fully understand, and by my signature acknowledge that:

I recognize and acknowledge that there are certain inherent risks and dangers involved with the above-described activity or activities at the Park involve certain inherent risks including but not limited to risk of possible injury or death and understand that the following conditions, hazards, or dangers may exist:

• gusty winds	• dense, tangled vegetation
• sharp and/or slippery rocks	• thorny plants
• stinging or biting insects and spiders	• work on or near steam and ocean water
• portable or no bathroom facilities	• wet or slippery roads
• no potable drinking water	• herbicides
• steep drop-offs	• paint, fuel, and oil fumes
• rugged terrain	• work in hunting area
• sharp tools	• wild animals
• lack of nearby medical facilities	• flash floods
• steep and slippery trail and river crossings	• lack of reliable communication service (including no telephone service)
• harsh weather conditions (ranging from hot and humid to wet and cold)	• diseases caused by water, air, or animal vectors

To the extent that my activities may involve the use of motorized tools, hand tools, and/or handling of herbicides, I acknowledge that there are certain inherent risks and dangers involved in such activities, which include (but are not limited to) risk of possible serious bodily injury, death, or poisoning.

Knowing that the above-described activity or activities at the Park may present certain risks and dangers to me or my child, including A RISK OF SERIOUS BODILY HARM OR DEATH, I nevertheless permit myself or my child to engage in the above-described activity or activities at the Park. I voluntarily ASSUME THE RISK OF INJURY OR LOSS created by the above-described conditions, hazards, and dangers at the Park.

With full knowledge of said conditions, hazards, and dangers, I RELEASE AND AGREE TO INDEMNIFY AND HOLD HARMLESS the State of Hawaii, and any and all of its officers, employees, and agents, for death or injury to me or my child or damage to or destruction of any of my or my child's property resulting from the conditions, hazards, and dangers listed above.

In consideration for allowing me or my child to engage in the above-described activity or activities at the Park which I have requested, I, for my heirs, beneficiaries, executors, and administrators, REMISE, RELEASE, AND FOREVER DISCHARGE the State of Hawaii, and any and all of its officers, employees, and agents, acting in their official capacities, from any and all claim(s), demand(s), or cause(s) of action on account of my or my child's death or personal injury or on account of any injury to my or my child's property which may occur from my or my child's negligence, hazards listed herein, or an unforeseeable event, during my or my child's activity or activities at the Park described above.

I have read the above waiver and hereby release the State of Hawaii, its officers, employees, agents, and assigns from any and all liability that may result from my above-described activity or activities at the Park.

Signature: _____ Date: _____

Printed Name: _____

Signature of Parent or Legal Guardian: _____

Printed Name: _____ Date: _____

Minor's Name(s): _____