

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

May 27, 2016

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

SUBJECT: Establish a Volunteer Agreement with Ke Kahua o Kūali'i at Kawainui State Park Reserve, Ko'olaupoko, O'ahu [TMK: (1) 4-2-13: por. 10].

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 volunteer program has expanded to include natural resources in the parks and projects such as educational programs, interpretation, and site restoration. The agreements developed between the organization and the Department of Land and Natural Resources (DLNR) outline the responsibilities of the volunteer organization for a 5-year term.

The Kawainui State Park Reserve (SPR) was established in 2005 and is comprised of two sections of fastland along the north and west sides of Kawainui Marsh. The Park Reserve, along with Ulupō Heiau State Historical Park on the eastern side of Kawainui, were set-aside to the Division of State Parks to preserve, protect, and interpret the significant cultural sites of Kawainui and provide opportunities for passive outdoor recreation. The large 800-acre wetland of Kawainui is under the jurisdiction of the Division of Forestry and Wildlife and designated the Kawainui Wildlife Sanctuary.

The Nā Pōhaku o Hauwahine Section of Kawainui SPR (Parcel 10) consists of 48 acres along Kapa'a Quarry Road on the western side of Kawainui Marsh. This volunteer agreement addresses a 14-acre portion of Parcel 10 referred to as Pōhakea, the ili name for this area. The site was previously used for pasture and ranching activities and all the structures were removed when the previous tenant vacated the property in 2014. Much of the site has a dense growth of vegetation, including monkeypod and Java Plum trees, koa haole, and a weedy understory.

Ke Kahua O Kūali'i is a 501(c)(3) organization formed in 2010 to promote a Hawaiian place of culture at Kawainui where the community can learn about the cultural history of Hawai'i and cultural traditions can be perpetuated. The members of Ke Kahua O Kūali'i have been based at the Pōhakea site for the past 2 years under a Special Use Permit issued by State Parks. They are seeking to revitalize the cultural significance of Kawainui by constructing a traditional pole and thatch hālau, sponsoring monthly volunteer workdays, and hosting cultural events such as Makahiki. The organization has prepared a 5-year plan for the site with a goal of establishing a traditional Hawaiian kauhale (grouping of dwellings and household structures) that consists of pole and thatch structures, stacked rock walls, and gardens of native and Polynesian-introduced plants.

Federal grant funds from the Land and Water Conservation Fund (LWCF) program were used in 1985 to purchase these lands around Kawainui Marsh. A requirement of this program administered by the National Park Service is to provide public access and opportunities for outdoor recreation. State Parks and Ke Kahua O Kūali'i have been collaborating to ensure these requirements are being met. The 5-year plan includes public trails, traditional Hawaiian game areas, and interpretation of the kauhale features. It is also important that Ke Kahua O Kūali'i's plan conforms to the Master Plan being developed by DLNR for the Kawainui-Hāmākua Complex. In the Master Plan, an educational center with parking and restrooms is being proposed at the Pōhakea site. The kauhale, game areas, and plantings will incorporate a cultural theme into an educational program to be offered at this center. DLNR is also preparing an Environmental Impact Statement (EIS) for the Draft Master Plan, including elements proposed by Ke Kahua O Kūali'i. No new structures will be built until the EIS has been accepted.

RECOMMENDATION:

State Parks encourages community involvement and assistance with the care, management, and interpretation of the resources in the parks. Ke Kahua O Kūali'i has indicated a willingness to assist with the care of Pōhakea within the Nā Pōhaku O Hauwahine Section of the Kawainui State Park Reserve in coordination with State Parks. State Parks recommends that the Board grant approval for DLNR to enter into a 5-year agreement with Ke Kahua O Kūali'i to allow them to care for the 14 acres of Kawainui SPR referred to as Pōhakea subject to the following conditions:

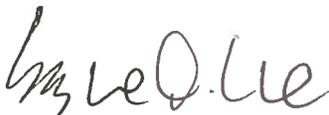
1. Review and approval of the agreement by the Department of the Attorney General.
2. Ke Kahua O Kūali'i agrees to meet the requirements of the LWCF Program for public access and outdoor recreation in compliance with Section 6(f) of the LWCF Act of 1965.
3. Amendments and renewals of the volunteer agreement 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,



CURT A. COTTRELL
State Parks Administrator

APPROVED FOR SUBMITTAL:



SUZANNE CASE, Chairperson

Attachment: Draft Agreement with Ke Kahua O Kūali'i

**STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS**

AGREEMENT

THIS AGREEMENT, executed on the respective dates indicated below, is effective as of _____, 201__, between the Board of Land and Natural Resources, State of Hawai‘i (hereafter "STATE"), whose address is 1151 Punchbowl Street, Honolulu, Hawai‘i 96813, and Ke Kahua O Kūali‘i (also referred to herein as "Ke Kahua"), a Hawai‘i nonprofit corporation, whose address is P.O. Box 1324, Kailua, Hawai‘i 96734, for and regarding Pōhakea site within Kawainui State Park Reserve ("Site"), ahupua‘a of Kailua, district of Ko‘olaupoko, island of O‘ahu, State of Hawai‘i [TMK: (1) 4-2-13: por. 10].

INTRODUCTION

The STATE is the owner of Kawainui State Park Reserve. This Agreement specifically addresses the 14-acre area referred to as Pōhakea within the Kawainui State Park Reserve under the jurisdiction of the Division of State Parks. This Site is adjacent to the Nā Pōhaku o Hauwahine Site within Kawainui State Park Reserve (Attachment 1). Present on the Site is a pole and thatch hālau structure with stacked rock wall.

RESPONSIBILITIES OF KE KAHUA O KŪALI‘I

Ke Kahua shall:

1. Coordinate all actions and activities undertaken in the execution of this Agreement with State Parks.
2. Designate a project coordinator(s) who shall coordinate all work projects on-site and ensure that all participants complete State Parks' volunteer and release of liability forms (Attachments 2 and 3) and provide the completed waiver forms to State Parks.
3. Submit an annual report of activities and volunteer hours performed under this Agreement to State Parks.
4. Maintain the Site by removing selected vegetation and replanting with native plants; maintain the thatched hālau and associated rock wall features; and establish parking areas and trails for public visitation.

5. Develop and implement a written training and safety plan for the use of tools, equipment, machinery, and herbicides by volunteers when removing vegetation, planting new vegetation, and maintaining the Site. The following guidelines shall be followed:
 - a. Removal of weeds and vegetation debris from the Site. Vegetation removal shall be done with minimal ground disturbance and include steps to minimize erosion and stabilize the ground surface.
 - b. Cut debris will be chipped and either used on-site in the park or transported off-site. There is to be no burning within the Site.
 - c. Weed-eaters, machetes, lawnmowers, chainsaws, and other hand tools may be used when and where appropriate.
 - d. An herbicide with dissipation properties such as Round-up, may be used to control weeds and vegetation growth. Any herbicide used near the marsh shall comply with Department of Health, Clean Water Branch requirements.
 - e. Establish a safety plan, which must be reviewed and approved by State Parks prior to any work at the Site. This plan shall include the use of safety gear and protection of the public when working in the Site. Safety training and briefings are required prior to any work and use of tools by members and/or volunteers.
6. Periodically monitor the condition of the Site. Where possible, attempts shall be made to prevent vandalism and damage. Should any damage be discovered, Ke Kahua will notify State Parks as soon as possible.
7. Ke Kahua may prepare and implement a landscape plan to expand or alter plantings within the Site. Any planting or landscaping plan shall be reviewed and approved in writing by State Parks prior to implementation.
8. Ke Kahua may prepare and install interpretive devices and displays, contingent upon prior written approval of an interpretive plan by State Parks. If a historic property is involved, prior written approval by the State Historic Preservation Division (SHPD) in accordance with Chapter 13-277, HAR is also required.
9. Ke Kahua 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. Ke Kahua may install passive park facilities at the Site, such as benches, in compliance with an approved plan if Ke Kahua receives prior written approval from State Parks and obtains all required permits.
11. With State Parks written approval, Ke Kahua 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. Procure, at their 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 set forth in this Agreement.

Prior to or upon execution of this Agreement, Ke Kahua 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, Ke Kahua shall, upon renewal of the insurance policy or policies, provide DLNR with a copy of the renewed insurance policy or policies. 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 Ke Kahua 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 Ke Kahua 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 Ke Kahua in writing of changes in the insurance requirements and Ke Kahua shall deposit copies of acceptable insurance policy or policies and certificate(s) thereof, with incorporated 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 liability under this Agreement nor to relieve or release Ke Kahua of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, Ke Kahua 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 activities and responsibilities under this Agreement.

13. Ke Kahua 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 its officers, members, volunteers, and contractors set forth in this Agreement. This provision shall survive the termination of this Agreement.
14. Ke Kahua, their parents, subsidiaries and affiliates, successors, assigns, and members 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 activities as set forth in this Agreement. This provision shall survive the termination of this Agreement.
15. Ke Kahua, their parents, subsidiaries and affiliates, licensees, successors, assigns, and members assume all risk of bodily injury, wrongful death, and/or property damage that may be due or attributable to the 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. Use of the Site 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 City and County of Honolulu, 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.
17. Ke Kahua may sponsor volunteer projects 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.
18. Ke Kahua will perform all duties and responsibilities without pay from the STATE.

SPECIAL CONDITIONS

Ke Kahua 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 amendments thereto, if any.

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 Ke Kahua on these activities as deemed appropriate by the STATE.
2. State Parks agrees to provide 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, environmental assessments and environmental impact 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 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 with the State Parks O'ahu District Parks Superintendent.
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 (SHPD) 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 KE KAHUA O KŪALI'I

1. Tasks not specified in this Agreement may not be undertaken. Ke Kahua 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 Ke Kahua to help protect the Park resources covered by this Agreement and to help provide public access for the park's visitors. Ke Kahua is not the owner of the Site and cannot restrict access.

CHECKS TO ENSURE PROPER CURATION

1. Ke Kahua 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 Ke Kahua. Ke Kahua 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 Ke Kahua in writing of the problem(s) and will provide suggestions to correct the problem(s). Ke Kahua 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 KE KAHUA O KŪALI'I

Ke Kahua shall be solely responsible for the actions of its members and volunteers who perform the responsibilities of Ke Kahua 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 Ke Kahua.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date first written above.

STATE

(Signature)

(Print Name)

Chairperson
Board of Land and Natural Resources

(Print Title & Organization)

(Date)

KE KAHUA O KŪALI'I

(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 party 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 _____.

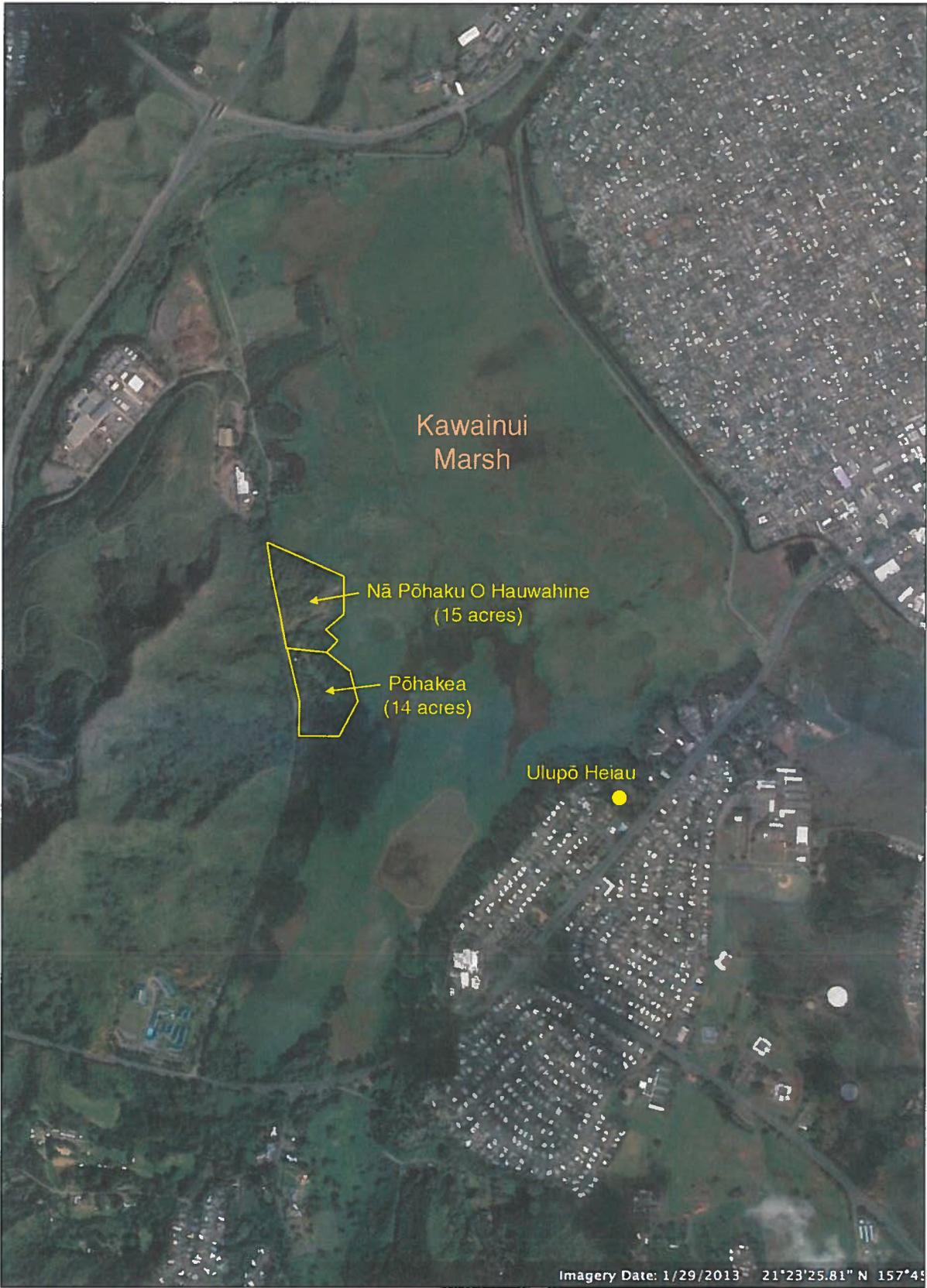
(Signature)

(Print Name)

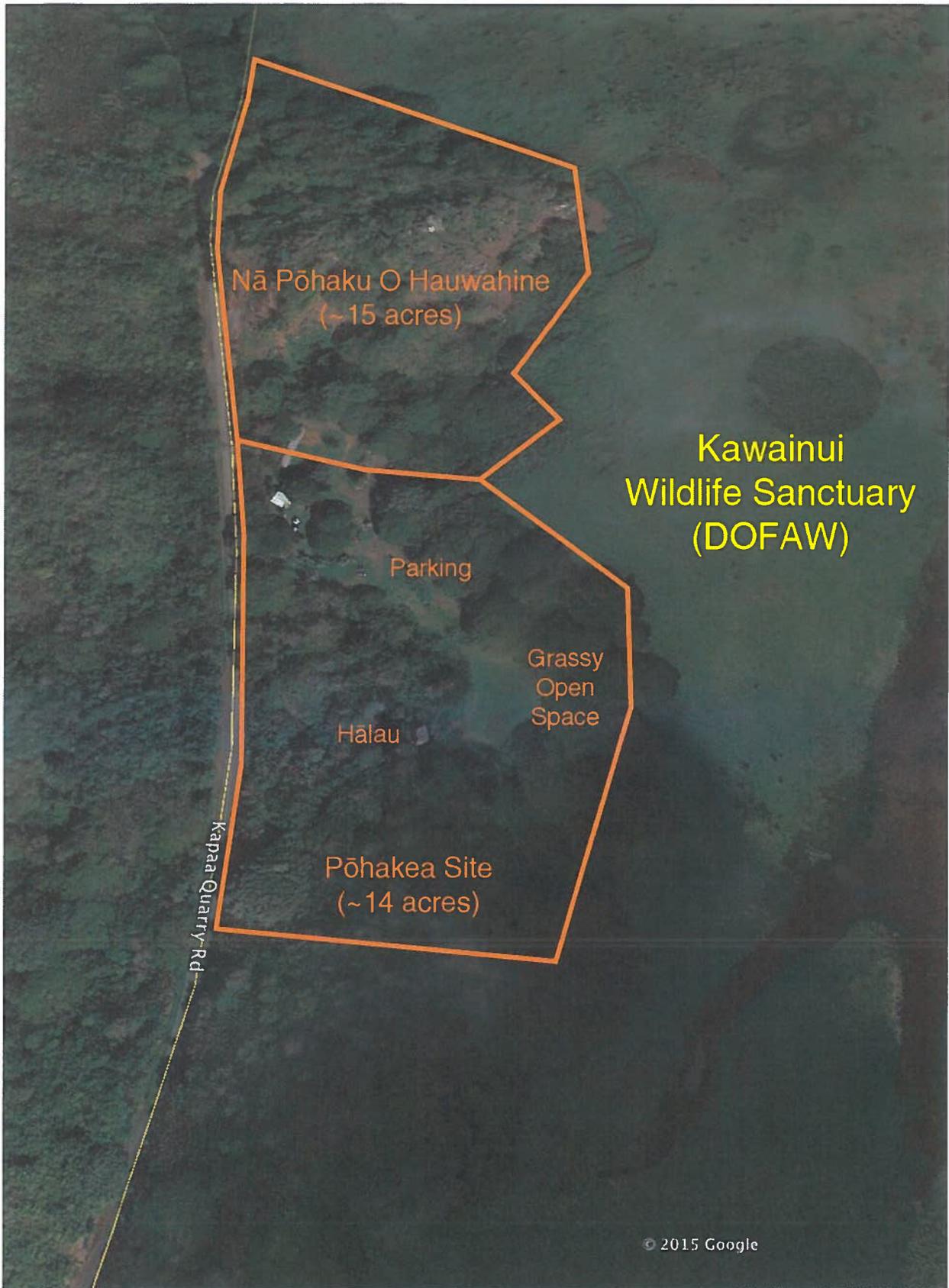
(Notary Seal)

Notary Public, State of _____

My commission expires: _____



ATTACHMENT 1a
Location of the Pōhakea Site within Kawainui Marsh.



ATTACHMENT 1b

Detail of the 14-acre site covered under the agreement (TMK: 4-2-13: por. 10).

AGREEMENT FACT SHEET & VOLUNTEER WAIVER

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. _____



**STATE OF HAWAI'I
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 Hawai'i property known as the _____ (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 understand and acknowledge that the provisions of Chapter 90, Hawaii Revised Statutes, do not apply to me or my child's activities at the Park.

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): _____