



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA  
**COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

September 19, 2023  
Honolulu, Hawai'i

Request for Preliminary Approval of the Memorandum of Agreement between the State of Hawai'i, Department of Land and Natural Resources, Division of State Parks and the Commission on Water Resource Management Regarding Installation and Maintenance of a Monitoring Well and Related Features at Hāpuna Beach State Recreation Area, South Kohala, Hawai'i Island

SUMMARY OF REQUEST

That the Commission on Water Resource Management (Commission) delegate authority to the Deputy Director to enter into a memorandum of agreement (MOA) with the State of Hawai'i Department of Land and Natural Resources Division of State Parks (State Parks) to allow the installation of a monitoring well within the Hāpuna Beach Recreation Area.

DESCRIPTION OF SERVICES

The purpose of installing the monitoring well is to monitor the health of the Waimea Aquifer System and collect data to assess the current and long-term aquifer conditions that affect water availability based on the location between the Kohala and Mauna Kea basalts in the coastal portion of the Waimea aquifer. The Commission will conduct quarterly visits to collect data and monitor the well and the well site.

The proposed well site and example well shown in Attachments 1, 2, and 3 of the attached MOA (Exhibit 1). The proposed location will be adjacent to an existing baseyard in order to avoid any direct impacts to outdoor recreation, view corridors, and historic properties. The monitoring well will be set within a 4-foot square concrete slab and enclosed within a 10-foot fenced area to deter vandalism. The Commission will select fencing materials and styles that blend in with the surrounding environment and may implement landscaping subject to State Parks approval. Necessary actions will be taken to correct any damage or vandalism.

### TIME OF PERFORMANCE

The MOA shall be executed as of the date of Commission approval for this submittal. The MOA will remain in effect for ten (10) years after which it is renewable at the option of all Parties. The Agreement may be reviewed every 5 years to assess the condition of the well and well site to ensure that the conditions of this MOA are being followed. A record of the evaluation will be appended to the agreement. This Agreement may be modified at any time by mutual agreement of all Parties. Modifications shall be in writing executed by the authorized officer representing the Commission and State Parks respectively.

### CONSISTENCY WITH THE HAWAI‘I WATER PLAN

The proposed MOA will assist the Commission in accomplishing goals identified in the Water Resource Protection Plan (WRPP).

Task 1.8.1 of the WRPP 2019 Update refers to the goal of constructing new deep monitoring wells in critical aquifers to gather and utilize data to identify impacts from pumpage, climate and land use changes, fresh water sustainable yields, and monitor recharge trends. The purpose of installing the monitoring well is to monitor the health of the Waimea Aquifer System by collecting data. Identifying impacts will help to develop and implement a comprehensive statewide ground water monitoring plan.

### KA PA‘AKAI ANALYSIS

In *Ka Pa‘akai O Ka‘aina v. Land Use Commission*<sup>1</sup>, the Hawai‘i Supreme Court recognized that the State has an obligation to protect Hawaiian traditional and customary practices to the extent feasible, and that the proponent of an action must show sufficient evidence that these types of practices are protected, if they exist in the location in question. This “Ka Pa‘akai framework” was created by the Court “to help ensure the enforcement of traditional and customary native Hawaiian rights while reasonably accommodating competing private development interests.” The Commission is obligated to conduct a “Ka Pa‘akai analysis” of a proposed action requiring CWRM approval independent of the entity proposing the action. This analysis should be used to inform any decision on the impact of the proposed action on traditional and customary practices.

Consequently, the Court required an assessment of the following:

(1) “the identity and scope of ‘valued cultural, historical, or natural resources’ in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;”

(2) “the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action;”

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<sup>1</sup> 94 Hawai‘i 31, 7 P.3d 1068 (2000)

(3) “the feasible action, if any, to be taken...to reasonably protect native Hawaiian rights if they are found to exist.”

Commission staff will conduct the Ka Pa‘akai analysis in-house as part of the well construction permit process.

#### LEGAL AUTHORITY

The authority for this MOA/collaboration is established in the State Water Code 174C-5(4), HRS:

*(The Commission) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.*

#### INSTRUMENT TO SECURE SERVICES

The proposed MOA (Exhibit 1) between the Commission and State Parks lists the terms and conditions of the agreement as executed. Staff will use a contract or purchase order to secure the services required to install a monitoring well within the Hāpuna Beach Recreation Area.

RECOMMENDATION

Staff recommends that the Commission delegate authority to the Deputy Director to:

1. Enter into a memorandum of agreement with State Parks to allow the installation of a monitoring well within the Hāpuna Beach Recreation Area and quarterly visits to collect data.

The terms of this and any future MOA amendments will be subject to the availability of funding, permit approvals, and any contracts that would require the approval of the Attorney General's Office.

Ola i ka wai,



DEAN D. UYENO  
Acting Deputy Director

Exhibits

1. Draft Hāpuna DMW Memorandum of Agreement (MOA)

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG  
Chairperson

## EXHIBIT 1

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
STATE OF HAWAI‘I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF STATE PARKS AND  
THE COMMISSION ON WATER RESOURCE MANAGEMENT  
REGARDING INSTALLATION AND MAINTENANCE OF A  
MONITORING WELL AND RELATED FEATURES AT  
HĀPUNA BEACH STATE RECREATION AREA, SOUTH KOHALA, HAWAI‘I ISLAND**

This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the State of Hawai‘i, Department of Land and Natural Resources, Commission on Water Resource Management, hereinafter referred to as the “Commission,” and the State of Hawai‘i, Department of Land and Natural Resources, Division of State Parks, hereinafter referred to as “State Parks.” The Commission and State Parks are jointly referred to as the “Parties.”

### WITNESSETH

WHEREAS, the Commission proposes to install a monitoring well at Hāpuna Beach State Recreation Area (SRA) for the purpose of monitoring the health of the Waimea Aquifer System and to collect data to assess the current and long-term aquifer conditions that affect water availability based on the location between the Kohala and Mauna Kea basalts in the coastal portion of the Waimea aquifer; and

WHEREAS, the Department of Land and Natural Resources (DLNR), Division of State Parks has management jurisdiction over Hāpuna Beach State Recreation Area (SRA) where the well site is proposed as shown in Attachments 1 and 2, and the 526-acre park site is under the requirements of the Land and Water Conservation Fund (LWCF) program based on State Parks prior use of these federal grant funds for prior park development; and

WHEREAS, the Commission and State Parks have agreed upon a location for the monitoring well that is adjacent to the maintenance baseyard which will avoid any direct impacts to outdoor recreation, view corridors, and historic properties; and

WHEREAS, the monitoring well will be set within a 4-foot square concrete slab and enclosed within a 10-foot square fenced area to deter vandalism as shown in Attachment 3 and the Commission shall select fencing materials and styles that blend in with the surrounding environment and may implement landscaping subject to State Parks approval; and

WHEREAS, the Commission will monitor the well and well site on at least a quarterly basis and maintain the monitoring well and related features in a safe and attractive manner and will respond promptly if notified by State Parks that vandalism or other damage has occurred; and

WHEREAS, the Commission will not proceed with the installation until all required permits and approvals have been obtained from the County of Hawai‘i, Department of Health, the State Historic Preservation Division (SHPD), and State Parks; and

WHEREAS, the Commission and State Parks have agreed that there will be no transfer of land right or easements from State Parks that would trigger a conversion under the LWCF requirements; and

WHEREAS, the Commission will consider the installation of interpretive signs or other educational materials to inform the public about the well and its value for monitoring the Waimea Aquifer upon review and approval of the materials by State Parks; and

WHEREAS, the Commission intends to utilize the monitoring well in perpetuity, but the Commission and State Parks will revisit this Memorandum of Agreement (MOA) every 5 years to assess the condition of the well and well site to ensure that the conditions of this MOA are being followed; and

WHEREAS, should the Commission determine that the well site is no longer needed, the Commission shall be responsible for the proper sealing, abandonment, and removing of all the above-ground features including the concrete slab and fencing;

NOW, THEREFORE, the above parties agree to the construction of a monitoring well adjacent to the maintenance baseyard within Hāpuna Beach SRA for a mutual benefit of monitoring the quality of the Waimea Aquifer as an indicator of the water resources and coastal health. Specifically, it is contemplated by the parties that the Commission shall conduct the following work subject to the review and approval of plans and designs by State Parks:

- 1) Install the monitoring well within a 4-foot concrete slab and enclose the well site within a 10-foot square fenced area.
- 2) Maintain the well and well site including the fencing and any landscaping in a safe and attractive manner.
- 3) Conduct quarterly visits to collect data, monitor the well and well site, and take any necessary action to correct any damage or vandalism. This includes removal of graffiti, replacement of rusted or corroded fencing material, replacement of interpretive signs if vandalized or deteriorated, and litter pick-up on a regular basis and in a timely manner. Other maintenance responsibilities may be identified over the term of this agreement and mutually agreed to by the Parties.
- 4) Install and maintain interpretive signs or educational materials at the well site to inform the public about the purpose and value of the well.
- 5) The State shall be responsible for damage or personal injury resulting from acts or omissions of state employees while acting within the scope of their employment to the extent that the State's liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

## II. Term, Evaluation and Modification

- A. *Term.* This instrument is executed as of the last date shown below which shall be the commencement date. This instrument will remain in effect for ten (10) years after which it is renewable at the option of the Parties.
- B. *Evaluation.* This Agreement may be reviewed, evaluated, and updated at any time. A record of the evaluation will be appended to the agreement.
- C. *Modification.* This Agreement may be modified at any time by mutual agreement of the Parties. Modifications shall be in writing executed by the authorized officer representing the Commission and State Parks respectively.

III. Principal Contacts

The principal contacts for administering this Agreement are:

- A. Dean D. Uyeno, Acting Deputy Director  
Commission on Water Resource Management  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 2  
Honolulu, HI 96813
- B. Curt Cottrell, Administrator  
Division of State Parks  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 310  
Honolulu, Hawai'i 96813

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the last date written below.

**COMMISSION ON WATER RESOURCE  
MANAGEMENT**

**DIVISION OF STATE PARKS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Dean D. Uyeno

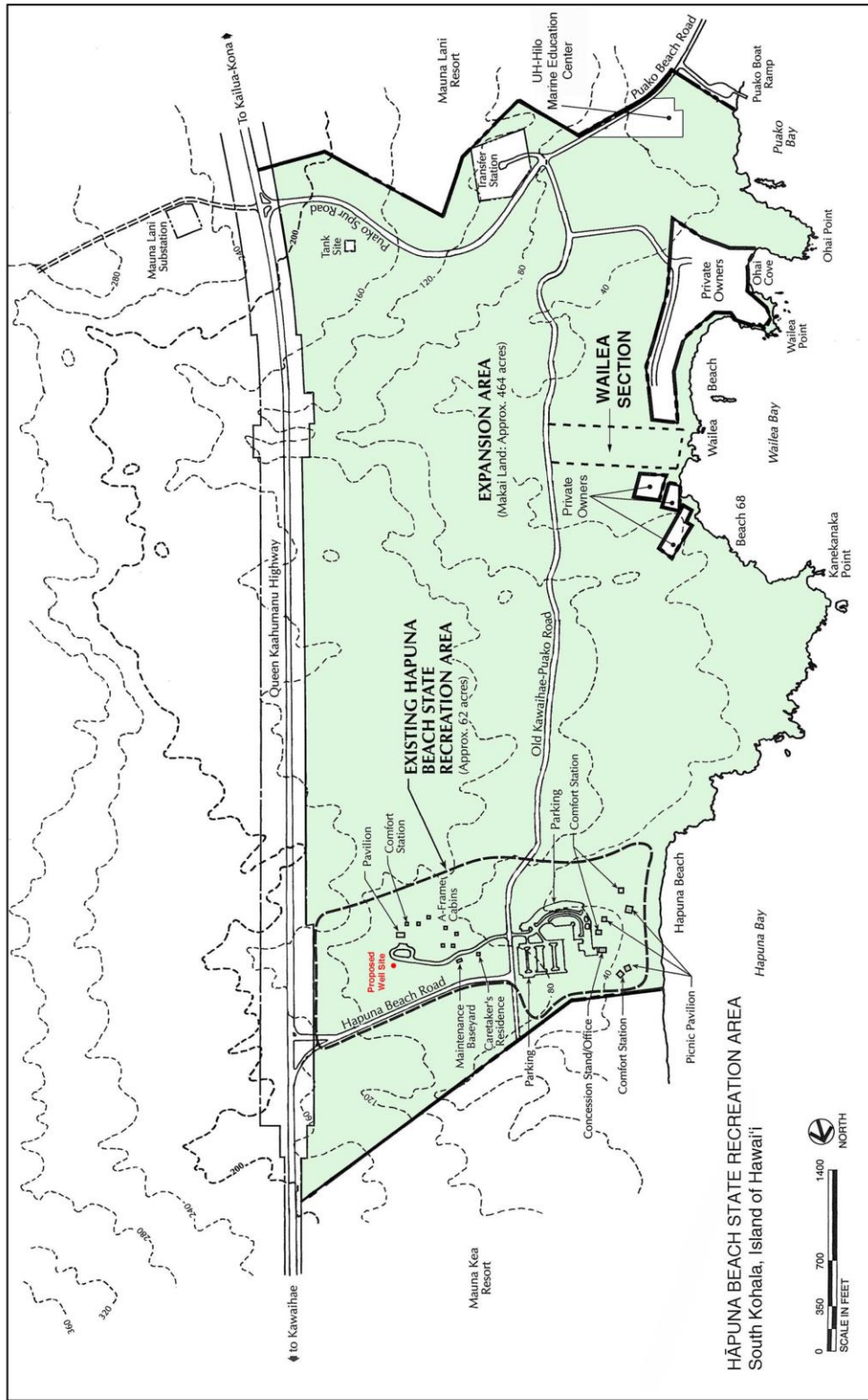
Name: Curt A. Cottrell

Title: Acting Deputy Director

Title: Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_



ATTACHMENT 1

Proposed location of the monitoring well to the east of the park maintenance baseyard within Hāpuna Beach SRA. This map also reflects the park boundaries and park area under LWCF requirements.





ATTACHMENT 2

Monitoring well site is located to the east of the maintenance baseyard and north of the cabin complex.

*Memorandum of Agreement for Monitoring Well at Hāpuna Beach SRA, South Kohala, Hawai'i Island*



ATTACHMENT 3

Example of a well set into a concrete slab and enclosed within a fenced area. A similar installation is proposed for the monitoring well at Hāpuna Beach SRA.