

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

September 13, 2013

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

DOFAW Oahu District

Land Board Members:

SUBJECT: Annual Renewal of Right of Entry Permit for Kawainui Marsh State
Wildlife Sanctuary: #OA-459-06; TMK: (1) 4-2-016:015; (1) 4-2-
013:022 and 005 Kailua, Koolauapoko, Oahu

INTRODUCTION:

The Division of Forestry and Wildlife (DOFAW) wishes to renew the Right of Entry Permit issued to Aha Hui Malama I Ka Lokahi (AML).

The purpose of the permit is to allow AML to conduct activities focused on education, ecological restoration, and cultural practices, in Kawainui Marsh. Issuance of the permit was requested by AML for the following activities:

- Conducting educational tours of the marsh area highlighting the wildlife biota of the marsh, the cultural/historical significance of the marsh, the role the marsh plays in the watershed system, and the threats posed to the marsh. All tours must be scheduled and approved ahead of time by Oahu Branch DOFAW, and must not conflict with other management activities underway in the marsh.
- Conservation/restoration actions to reduce the presence of invasive vegetation and increase the presence of native vegetation. All vegetation control activities must be approved in advance by DOFAW.
- Establishment of lo'i kalo for educational and subsistence purposes in areas approved by DOFAW.

The partnership has been beneficial to both parties, the marsh, and the community. Renewal of this permit allows AML to continue to conduct activities pursuant to the previous permit. No changes other than the issue date are proposed for the right of entry.

Attached, for background information is the approved Board Submittal dated May 11th, 2012.

RECOMMENDATION:

That the Board:

- A. Approve the continuation of the management right of entry to Kawainui Marsh State Wildlife Sanctuary, issued to Aha Hui Malama I ka Lokahi, on a one-year period through September 1, 2014. Continuation is subject to the following:
1. The standard terms and conditions of the most current right-of-entry document from, as may be amended from time to time;
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



Roger H. Imoto, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

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

MAY 11 2012

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
1151 Punchbowl St. Rm 325, Honolulu HI 96813

May 11, 2012

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

OAHU

Issuance of Management Right-of-Entry to Ahahui Malama I Ka Lokahi, Kailua,
Koolaupoko, Oahu, Tax Map Key: (1) 4-2-016: 015; (1) 4-2-013: 022 and 005

APPLICANT:

Aha Hui Malama I Ka Lokahi, a domestic nonprofit corporation

LEGAL REFERENCE:

Section 171-13, 43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kailua, Koolaupoko, Oahu, identified by Tax
Map Key: (1) 4-2-016: 015; (1) 4-2-013: 022 and 005, as shown on the attached map
labeled **Exhibit A**.

AREA:

800 acres, more or less.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: P1/P2

TRUST AND LAND STATUS:

Acquired after Statehood, i.e. non-ceded.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

ITEM C-3

CURRNT USE STATUS:

Encumbered by Governor's Executive Order No. 4258 setting aside to the Division of Forestry and Wildlife for Habitat Restoration and Marsh Wildlife Sanctuary purposes.

CHARACTER OF USE:

Right, privilege and authority to enter, remain to conduct restoration, educational and other cooperative management programs with the Division of Forestry and Wildlife

CONSIDERATION:

Gratis. See Remarks Section.

CHAPTER 343 – EVIROMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" (See **Exhibit B**)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIRMENTS: Applicant shall be required to:

1. Provide a summary of proposed action actions. Coordinate actions and activities with DOFAW (**Exhibit C**)
2. Upon issuance of the permit, applicant shall submit a report of activities to DOFAW staff on a monthly basis.

REMARKS:

Aha Hui Malama I Ka Lokahi (AML), a community group based in Kailua, Oahu and whose mission is to aid in the restoration and management of the resources in Kawainui Marsh, is requesting a permit to enter Kawainui Marsh. In 2010, AML entered into a Memorandum of Agreement with the Board of Land and Natural Resources regarding "Cooperative Management Programs at Kawainui and Hamakua Marshes". The MOA (see **Exhibit D**) recognizes AML as a relevant, responsible group, whose mission is applicable to the management of Kawainui Marsh. The MOA also establishes AML's

working relationships with other Divisions, community and school groups as key to the long-term goals for Kawainui Marsh restoration.

The MOA establishes responsibilities for both the BLNR and AML, in order to conduct necessary actions to manage Kawainui Marsh. The proposed Right-of Entry Permit provides the legal document necessary to allow AML to enter and operate on lands owned and managed by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW).

The Division of Forestry and Wildlife, Oahu Branch, has been working with AML to establish programs and protocols as directed to by the MOA. AML's proposed actions are consistent with DOFAW management operations, as it provides assistance and increases DOFAW capabilities to restore the natural, biological, and cultural resources in Kawainui Marsh. The permit will allow AML to conduct ecological restoration by reducing the presence of invasive species, and increasing the presence of native species. AML will also have the ability to conduct educational and outreach programs to school and community groups. They will also provide opportunities to increase cultural awareness and activities appropriate at Kawainui Marsh.

All activities conducted under this permit will be monitored by DOFAW staff to ensure that environmental compliance is followed. Under the terms of the proposed right-of-entry, AML is responsible for consulting with, and following the recommendations of DOFAW staff to ensure environmental compliance protocols are followed. DOFAW staff will meet regularly with AML board to gather information and provide technical assistance on project/work proposals.

RECOMMENDATION: That the Board:

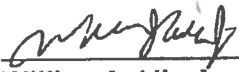
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a management right-of-entry to Ahahui Malama I Ka Lokahi, covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry document from, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

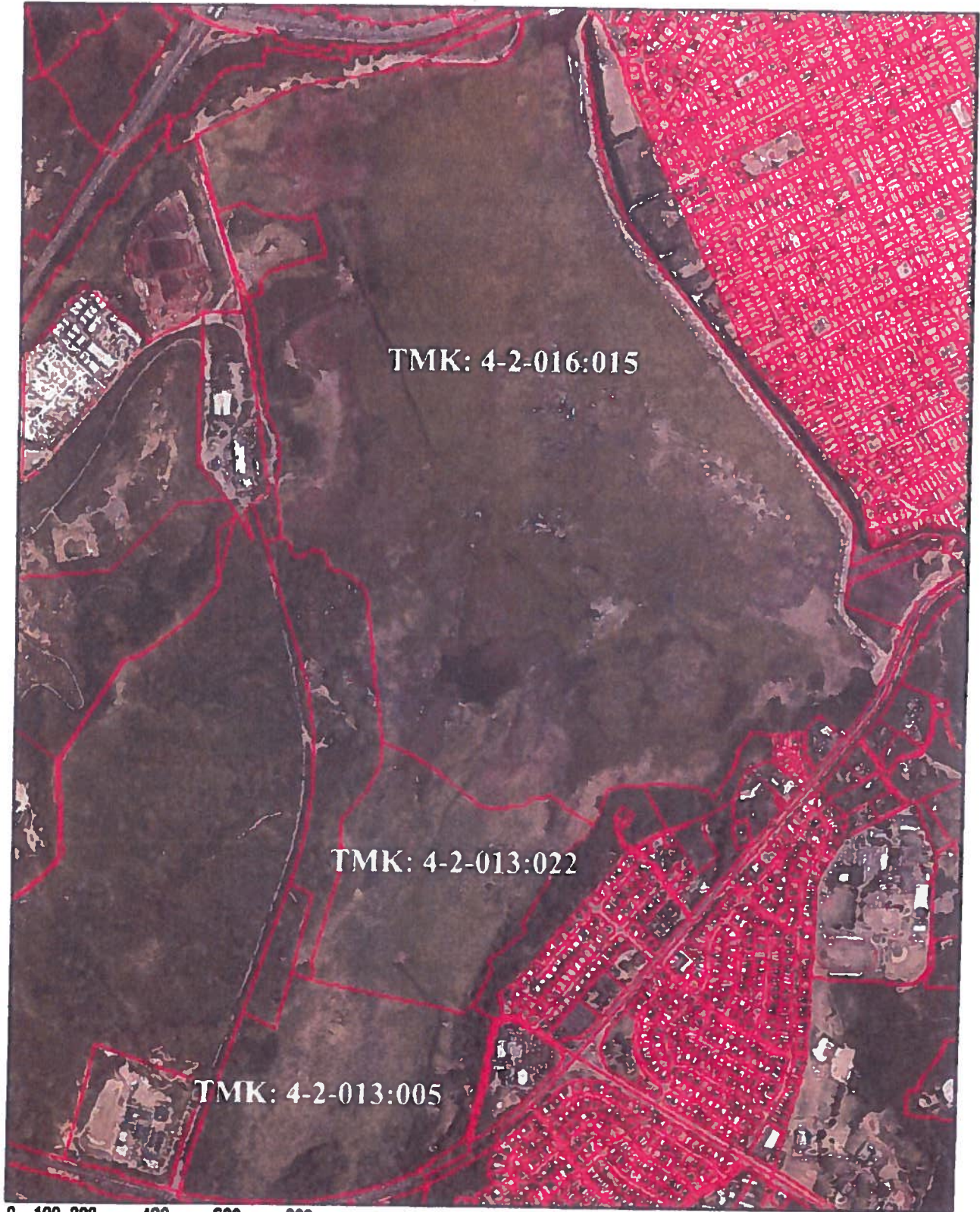


Paul J. Conry, Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



0 100 200 400 600 800 Meters

Kawainui Marsh State Wildlife Sanctuary
DLNR-DOFAW 804-25-2012

EXHIBIT A



EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Ahahui Malama I Ka Lokahi right-of-entry
Project / Reference No.: Not applicable
Project Location: Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-016: 015; (1) 4-2-013: 022 and 005
Project Description: Issuance of right-of-entry
Chap. 343 Trigger(s): Use of State Land
Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991 the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Staff will consult and review any projects undertaken under this right-of-entry. Therefore it is recommended that the subject request be exempted from an environment assessment.

Consulted Parties Not applicable

Exemption Item Description from Agency Exemption List: Not applicable

Recommendation: It is recommended that the Board declare that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila, Jr., Chairperson

Date

EXHIBIT B



BOARD OF DIRECTORS
Charles Isaacs, Co-President
Dr. Charles Burrows, Co-President
Ron Walker, Vice-President
Sandy Adamson, Treasurer
Dr. Sam Gon III, Secretary
Dr. Steve Montgomery, Member at Large
Darcy Oishi, Member at Large

OFFICE
146 Hekill Street, Suite 204A
Kailua, HI 96734

April 11, 2012

Mr. Jason Misaki
Division of Forestry and Wildlife
O'ahu Branch
2135 Makiki Heights Drive
Honolulu, HI 96822

This letter is in response to your letter to the 'Ahaui Mālama i ka Lōkahi (AML) Board of Directors (BOD) dated March 3, 2012. In compliance with the existing Memorandum of Agreement with the Board of Land and Natural Resources in regards to the Kawainui Marsh State Wildlife Sanctuary, we are formally requesting a Right-of-Entry permit to grant us legal access to the Sanctuary and honor our responsibilities as agreed upon by the MOA. This request is being made on behalf of the BOD for the time period of May 1, 2012 to April 30, 2013. We are formally requesting a Right-of-Entry permit to conduct the following work in the Kawainui Marsh State Wildlife Sanctuary:

- Education,
- Conservation and management, and
- Subsistence, traditional and customary practices by native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources

This will be accomplished by:

Conducting period educational tours of the marsh area highlighting the wildlife biota of the marsh, the cultural/historical significance of the marsh, the role the marsh plays in the watershed system, and the threats posed to the marsh. Impacts to native birds and other species will be mitigated by conducting these tours away from nesting sites.

Conservation management will be conducted in the areas near and around Ulupō Heiau and Nā Pōhaku o Hauwahine. This will be done through mechanical and manual removal of weeds infesting the marsh area and, once permitting issues with the Department of Health Clean Water Branch have been resolved, careful application of pesticides in accordance with all applicable Federal, State and County rules and regulations. Removal of the floating weed-grass mud layers will be done to increase the open water and mudflat surface areas of the wetland ponds. All work will be performed with proper protective equipment in compliance with AML's safety protocols. All individuals conducting work in the marsh will sign liability waivers. Potential environmental impacts will be reduced by conducting work within the marsh at sites highlighted in the included

maps. If native birds begin utilizing the area then work will be conducted in a manner that will minimize disturbance of the birds. No work will be conducted in the marsh habitat near nesting birds.

Cleared areas within the marsh in the highlighted areas near Ulupō heiau will be converted into lo'i kalo. The lo'i kalo will be used for education and subsistence. Harvested kalo will not be sold. The lo'i will be constructed from materials dredged from the marsh itself with water supplied from the springs located at Ulupō Heiau which pass through the lo'i kalo and into the marsh.

We have attached maps of the Kawainui Marsh State Wildlife Sanctuary that we intend to work in.

For your information, AML currently has executed Curator Agreements with the DLNR/State Parks for the following locations at Kawainui: 1- Nā Pōhaku o Hauwahine and, 2- Ulupō Heiau.

Mahalo for your consideration

Sincerely yours,



Charles Lehuakona Isaacs Jr

Co-President, AML BOD

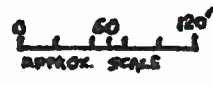
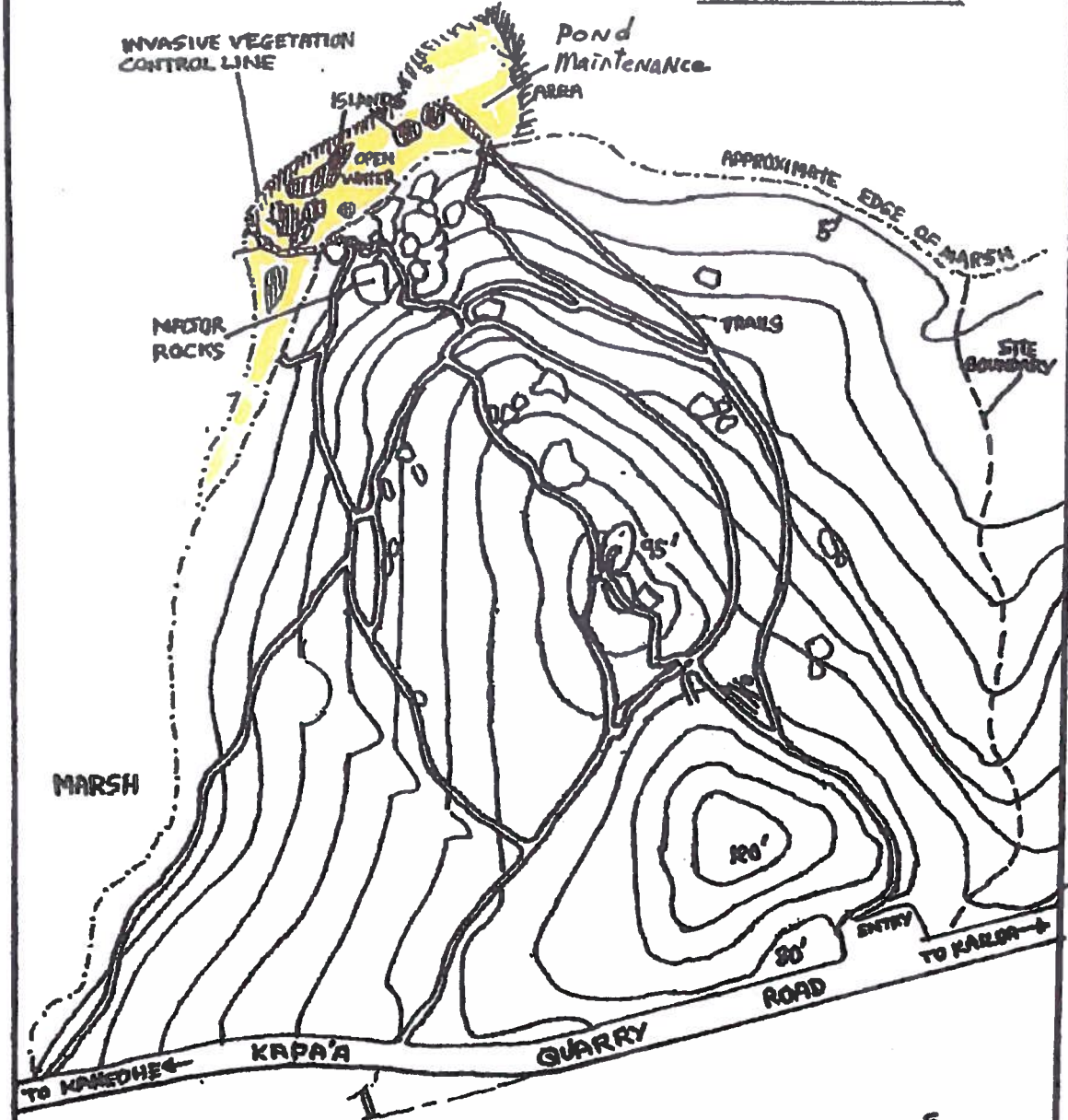


Dr. Charles Burrows

Co-President, AML BOD

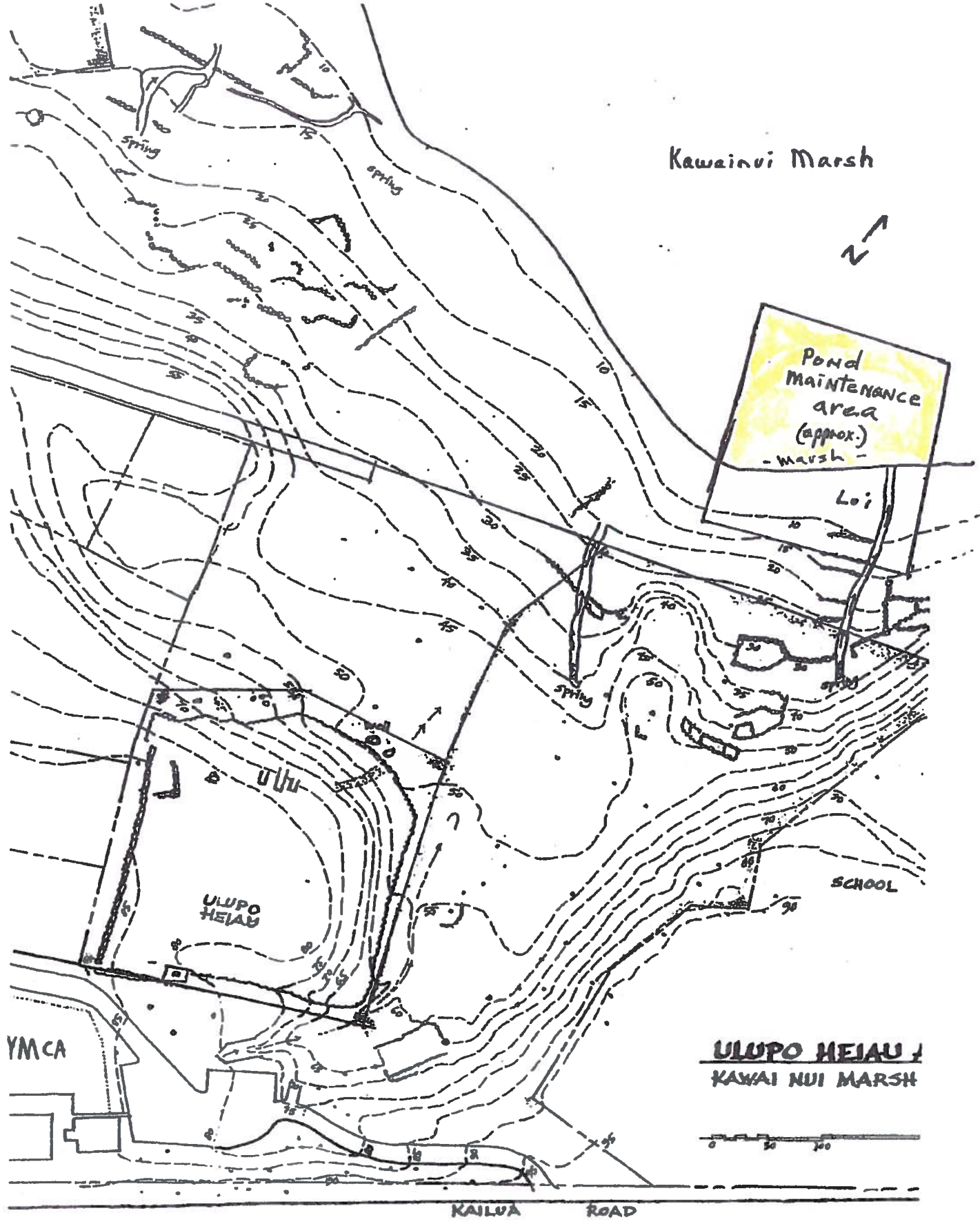
Enclosures: Maps of proposed AML work areas within Kawainui State Wildlife Sanctuary

KAWAINUI MARSH



NA POHAKU O HAWAIIANE





Kawai Nui Marsh

Pond maintenance area (approx.) - marsh -

Loi

ULUPO HEIAU

ULUPO HEIAU / KAWAI NUI MARSH



KAILUA ROAD

YMCA

SCHOOL

**MEMORANDUM OF AGREEMENT
BETWEEN
'AHAHUI MALAMA I KA LOKAHI
AND THE
STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES
REGARDING COOPERATIVE MANAGEMENT PROGRAMS
AT KAWAINUI AND HAMAKUA MARSHES, OAHU**

This Memorandum of Agreement ("Agreement") is made the 3/11/2010 day of 3/11/2010, 2009, by and between 'Ahahui Malama I Ka Lokahi, hereinafter referred to as "AML", and the State of Hawaii, by its Board of Land and Natural Resources hereinafter referred to as the "Board." AML and the Board are jointly referred to as the "Parties."

WITNESSETH

WHEREAS, pursuant to section 183D-2, Hawaii Revised Statutes (HRS), Board is charged with the responsibility of managing and administering the wildlife and wildlife resources of the State; and

WHEREAS, pursuant to section 195D-1, HRS, the Board is charged with the responsibility of insuring "the continued perpetuation of indigenous aquatic life, wildlife, land plants and their habitats for human enjoyment, for scientific purposes and as members of ecosystems"; and

WHEREAS, Kawainui Marsh is one of the largest remaining wetlands in Hawaii, encompassing an area greater than 830 acres, and serves as a critical flood control basin to protect the developed lower-lying areas of urban Kailua as well as the water quality of Kailua Bay. Moreover, the marsh's aesthetic open space is of high value to both the Windward community and the State; providing a variety of recreational and educational opportunities; and

WHEREAS, Hamakua Marsh is a 22 acre wetland historically connected to and immediately downstream of Kawainui Marsh, which possesses many of the same flood control, water quality, open space, recreational and educational opportunities afforded at Kawainui; and

WHEREAS, Kawainui and Hamakua Marshes have been designated a RAMSAR site of international importance due to their important natural and cultural resources, referred to collectively as the *Kawainui and Hamakua Marsh Complex*; and

WHEREAS, Kawainui and Hamakua Marshes support a variety of introduced and indigenous aquatic wildlife as well as providing important habitat for migratory bird species and four endangered species of native Hawaiian waterbirds, the U.S. Fish and Wildlife Service has identified both marshes as water bird recovery areas. In addition, because three prominent heiau (Ulupo, Pahukini, and Holomakani) and numerous significant archaeological sites are located in

Kawainui, the entire Kawainui Marsh has been determined to be eligible for listing in the National Register of Historic Places; and

WHEREAS, approximately 80 acres of Kawainui Marsh were acquired with federal funds from the Land and Water Conservation Fund Program and these lands are now designated 6(f) which requires that outdoor recreation opportunities be provided; and

WHEREAS, the Board is the landowner and is charged with the responsibility of managing lands in Kawainui Marsh (including Wai'auia fka ITT parcel) and Hamakua Marsh; and

WHEREAS, the Board is restoring habitat for endangered endemic water birds such as the Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian gallinule (*Gallinula chloropus sandvicensis*) and Hawaiian coot (*Fulica alai*); and

WHEREAS, AML is a private, non-profit organization whose mission is to develop, promote, and practice a native Hawaiian conservation ethic, relevant to our times, that is responsible to both Hawaiian culture and science. This ethic is protective of native cultural and natural heritage and is expressed through research, education, and active stewardship; and

WHEREAS, AML has a "Curatorship Agreement" with the State of Hawaii Department of Land and Natural Resources – Division of State Parks for the ecological restoration of the cultural site of *Na Pohaku o Hauwahine*; and

WHEREAS, AML has a "Co-curatorship Agreement" along with the Kailua Hawaiian Civic Club with the State of Hawaii Department of Land and Natural Resources – Division of State Parks for the cultural site of *Ulupo Heiau*; and

WHEREAS, AML conducts educational tours for adult community groups and learning activities for school groups from elementary through college of the natural and cultural history of Kawainui Marsh and the Kailua Ahupua'a; and

WHEREAS, AML has successfully worked with the Kailua Bay Advisory Council to assist with the maintenance of the Kawainui Neighborhood Park Best Management Practices (BMP) garden; and

WHEREAS, AML conducts service learning projects involving various community members and student classes from elementary through college in the restoration and conservation of the ecological and cultural sites in Kawainui Marsh,

NOW, THEREFORE, the above parties agree to engage as partners in a cooperative effort to inform the public about the natural and cultural resources of Kawainui and Hamakua Marshes, efficiently and effectively. Both parties hereto deem it mutually advantageous and desirable to cooperate in providing educational, interpretive, and passive recreation opportunities of Kawainui and Hamakua Marshes, and agree to the following provisions.

I. Board Responsibilities:

The Board agrees to undertake the following responsibilities under this Agreement:

- a. Support the efforts of AML to continue to develop educational and interpretive programs in Kawainui and Hamakua Marshes, especially with wetland bird habitat restoration.
- b. Seek consultation and advice from AML in the protection and management of cultural and ecological sites within Kawainui and Hamakua Marshes.
- c. Assist in funding interpretive and educational signage and kiosks about the natural and cultural resources of Kawainui and Hamakua Marshes upon receipt and approval of a proposed design and budget.
- d. Provide appropriate information and resources, as requested, to assist AML in gathering materials to develop educational and interpretive programs and to support AML and community efforts in creating a visitor center and a Hawaiian cultural and environmental center at Kawainui Marsh.
- e. Provide passive recreational opportunities in conjunction with the wildlife sanctuaries, including trails, viewing platforms for bird-watching, and interpretive signs.

All Board activities and support are as funding permits.

II. AML Responsibilities:

AML agrees to undertake the following responsibilities under this Agreement:

- a. Will continue to engage Department of Education district schools, and private schools, i.e. Le Jardin Academy, colleges and interested community groups in the restoration projects and educational programs in Kawainui and Hamakua Marshes.
- b. Will consult with and seek necessary approvals from the Board on any cultural and ecological restoration projects or programs conducted on lands managed by the Board in Kawainui and Hamakua Marshes.
- c. Will provide the Board proposed designs and budgets for interpretive and educational signage and kiosks about the natural and cultural resources of Kawainui and Hamakua Marshes.

III. Joint Responsibilities:

The Board and AML agrees to undertake the following joint responsibilities under this Agreement:

- a. Participation in meetings that direct AML, the Board and other community groups and representatives in the efforts to engage and educate the public about the cultural and natural resources of Kawainui and Hamakua Marshes.
- b. Collaboration to develop projects that mutually benefits both parties missions and goals.
- c. Collaboration to identify suitable areas for cultural restoration.

IV. 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, but no later than five (5) years from the commencement date. 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 AML and the Board respectively. For purposes of this modification provision, such authorized officers are AML, and the Board of Land and Natural Resources for all substantive changes and the Chairperson of the Board for non-substantive changes to facilitate processing such changes.

V. Termination.

Either party, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration. Unless otherwise by mutual agreement, 90 days advance notice shall be provided prior to termination.

VI. Principal Contacts.

The principal contacts for administering this Agreement are:

- A. 'Ahahui Malama I Ka Lokahi

P.O. Box 751
Honolulu, Hawaii 96808

- B. *State of Hawaii/* Department of Land and Natural Resources
Division of Forestry and Wildlife - Oahu Forestry and Wildlife Manager
2135 Makiki Heights Drive
Honolulu, Hawaii 96822

VII. Miscellaneous Provisions.

A. *Disclaimers.* Nothing in this Agreement shall be construed as affecting in any way the delegated authority or responsibilities of the Board of Land and Natural Resources. This Agreement shall not supersede any agreements currently in effect between the State and AML.

B. *Additional Parties.* By modification of this Agreement by the Parties, additional governmental, non-profit organizations, and other entities may be made party thereto on such terms and conditions as the Board and AML may agree.

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

‘AHAHUI MALAMA I KA LOKAHI

By Charles K. Burrows Date 2/24/2010
Name Charles K. Burrows
Title President

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

By Laura H. Thielen Date 03/11/2010
for Laura H. Thielen
Chairperson

Approved by the Board of Land and Natural Resources
at its meeting held on October 23, 2009.

Approval as to Form:

[Signature] Date 11/5/09
Deputy Attorney General