

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

April 10, 2015

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

SUBJECT: Establishment of a Volunteer Agreement with the North Shore Community Land Trust for Pūpūkea-Paumalū State Park Reserve, Ko'olauloa, O'ahu
TMK: (1) 5-9-05: 38, 82 and 5-9-06: 1, 18, 36, 37

At the meeting of the Board of Land and Natural Resources held on February 24, 2012, the Board approved a request to enter into a volunteer agreement with the North Shore Community Land Trust (NSCLT) and the North Shore Trails Association (NSTA) for assistance with the care and management of the Pūpūkea-Paumalū State Park Reserve on the North Shore of O'ahu (Item E-1). The draft agreement was forwarded to the Department of the Attorney for approval as to form and a concern was raised about entering into an agreement with two organizations. After further discussion with NSCLT and NSTA, it was decided that NSCLT would be the party entering into the agreement with the Board of Land and Natural Resources.

The North Shore Community Land Trust (NSCLT) played a key role in the acquisition of 1,129 acres in the ahupua'a of Pūpūkea and Paumalū in 2007 for public outdoor recreation and the protection and preservation of significant natural, cultural, and scenic resources. The park encompasses a large piece of undeveloped land on the slopes mauka of Sunset Beach and to the east of Waimea Valley. The State acquired approximately 1,100 acres as a state park reserve while the City and County of Honolulu purchased the other 30 acres adjacent to Kamehameha Highway for inclusion into the existing Sunset Beach Park.

NSCLT is a 501(c)(3) public benefit organization that was established in 1997 to protect, steward, and enhance the natural landscapes, cultural heritage, and rural character of the ahupua'a of North O'ahu from Kahuku Point to Ka'ena Point. In 2004, NSCLT developed a community vision for Pūpūkea-Paumalū and continued with the development for a formal community plan for the park reserve. NSCLT has the support of over 300 individuals and organizations with their projects.

State Parks has issued Special Use Permits to NSCLT for the past 5 years to assist with community planning, as well as the management and monitoring of the park reserve. Projects have included posting of park signs, managing access points in consultation with the neighboring community, maintaining existing trails for community use, and monitoring the site for inappropriate uses and activities. As a park reserve, the property is not open to active public use but the community has continued to express an interest in assisting with the care and management of the area in the interim and allowing limited, ongoing use of the trails for hiking, mountain biking, and horseback riding.

RECOMMENDATION:

State Parks encourages community involvement and volunteer assistance with the care, management, and maintenance of the resources in the parks. For the past 5 years, the North Shore Community Land Trust has demonstrated a commitment as community volunteers to assist with projects in the Pūpūkea-Paumalū State Park Reserve. State Parks recommends that the Board grant approval to enter into a 5-year agreement with NSCLT subject to the following conditions:

1. Review and approval of the agreement by the Department of the Attorney General.
2. NSCLT will prepare environmental and regulatory documents and obtain approvals and permits prior to conducting any projects where such regulatory requirements apply.
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.

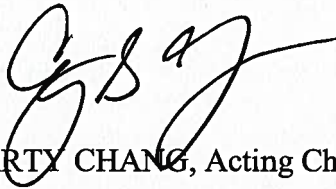
Respectfully submitted,



DANIEL S. QUINN
State Parks Administrator

ER

APPROVED FOR SUBMITTAL:



CARTY CHANG, Acting Chairperson

Attachment: Draft Agreement

**STATE OF HAWAII
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 Hawaii (hereafter "STATE"), whose address is 1151 Punchbowl Street, Honolulu, Hawai'i 96813, and _____ North Shore Community Land Trust _____ (also referred to herein as "NSCLT"), whose address is P.O. Box 1179, Hale'iwa, Hawai'i 96712 _____, for and regarding Pūpūkea-Paumalū State Park Reserve, ahupua'a of Pūpūkea and Paumalū, district of Ko'olauloa, island of O'ahu, State of Hawai'i [TMK: (1) 5-9-05: 38, 82 & (1) 5-9-06: 1, 18, 36, 37].

INTRODUCTION

The State of Hawai'i is the owner of Pūpūkea-Paumalū State Park Reserve (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. NSCLT will perform all duties and responsibilities without pay from the State.

The Pūpūkea-Paumalū State Park Reserve (SPR) was acquired by the State of Hawai'i in 2007 for the purpose of public outdoor recreation and the protection and preservation of significant natural, cultural, and scenic resources associated with the North Shore of O'ahu. The park encompasses approximately 1,070 acres of undeveloped land on the slopes *mauka* of Sunset Beach and to the east of Waimea Valley (Attachment 1). Because of the undeveloped nature of the property, NSCLT will be allowed to access and monitor the property by vehicle, foot, mountain bike, and horseback.

RESPONSIBILITIES OF NORTH SHORE COMMUNITY LAND TRUST (NSCLT)

NSCLT 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 designated areas within Pūpūkea-Paumalū SPR by clearing vegetation from trails and viewing areas, and removing litter from the Park.

5. Develop and implement a written training and safety plan for use of tools, equipment, machinery, and herbicides by volunteers when removing vegetation, installing fencing, planting new vegetation, and maintaining the project area. The following guidelines shall be followed:
 - a. Chainsaws, weed whackers, and other hand tools may be used. The cut debris will be chipped or composed and either used on-site or transported off-site. There is to be no burning within the site area.
 - b. An herbicide with dissipation properties such as Round-up, may be used. All instructions for proper application of such herbicides shall be followed.
 - c. Vegetation removal shall be done with minimal ground disturbance and include steps to minimize erosion and stabilize the ground surface and adjacent sand dune.
 - d. The specifics of the vegetation removal and any use of machinery shall be discussed on-site with the State Parks representative.
 - e. Establish a safety plan, which must be reviewed and approved by State Parks prior to any work at the Park. This plan shall include the use of safety gear and protection of the public when working in the Park. Safety training and briefings are required prior to any work and use of tools by members and/or volunteers.
6. Periodically monitor the condition and integrity of natural resources, historic properties, trails, and their respective settings at the Park. Where possible, attempts shall be made to prevent vandalism and damage. Should any damage be discovered, NSCLT will notify State Parks as soon as possible.
7. NSCLT 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. NSCLT may prepare and install interpretive devices and displays, contingent upon written approval of an interpretive plan by State Parks. If a historic property is involved, written approval by the State Historic Preservation Division (SHPD) in accordance with Chapter 13-277, Hawaii Administrative Rules (HAR) is also required.
9. NSCLT 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. NSCLT may assist State Parks with various management projects, such as the designation of preferred trails through the park for visitors. NSCLT may assist with the installation of regulatory signs that include reference to State law and park rules (Chapter 13-146, HAR) under the guidance and approval of State Parks.

11. NSCLT may install passive park facilities, such as benches, in compliance with an approved park plan if NSCLT receives prior written approval from State Parks and obtains all required permits.
12. With State Parks written approval, NSCLT 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.
13. 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 Hawaii, 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 Hawaii 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, NSCLT 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, NSCLT 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 NSCLT 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 NSCLT 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 NSCLT in writing of changes in the insurance requirements and NSCLT 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 NSCLT of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, NSCLT 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.

14. NSCLT 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 members and volunteers set forth in this Agreement. This provision shall survive the termination of this Agreement.
15. NSCLT, their 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 activities as set forth in this Agreement. This provision shall survive the termination of this Agreement.
16. NSCLT, their 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 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.
17. 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 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.
18. NSCLT may sponsor volunteer projects in addition to their regular maintenance responsibilities, provided that NSCLT notifies State Parks at least five (5) working days in advance of a volunteer project and obtain State Parks approval prior to commencing the volunteer projects. A permit may be required for any activity involving over 25 individuals.

SPECIAL CONDITIONS

The members and volunteers of NSCLT 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 NSCLT on these activities as deemed appropriate by the STATE.
2. State Parks agrees to provide NSCLT 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 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 NSCLT and 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 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.
5. State Parks will monitor the performance of this Agreement by conducting at least two field checks per year.

RESTRICTIONS ON THE ROLE OF NSCLT

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

CHECKS TO ENSURE PROPER CURATION

1. NSCLT 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 regular communication with NSCLT. NSCLT 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 NSCLT in writing of the problem(s) and will provide suggestions to correct the problem(s). NSCLT 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 CO-PARTNERS

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

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 & Natural Resources

(Print Title)

(Date)

NORTH SHORE COMMUNITY LAND TRUST

(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 NORTH SHORE COMMUNITY LAND TRUST 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 _____.

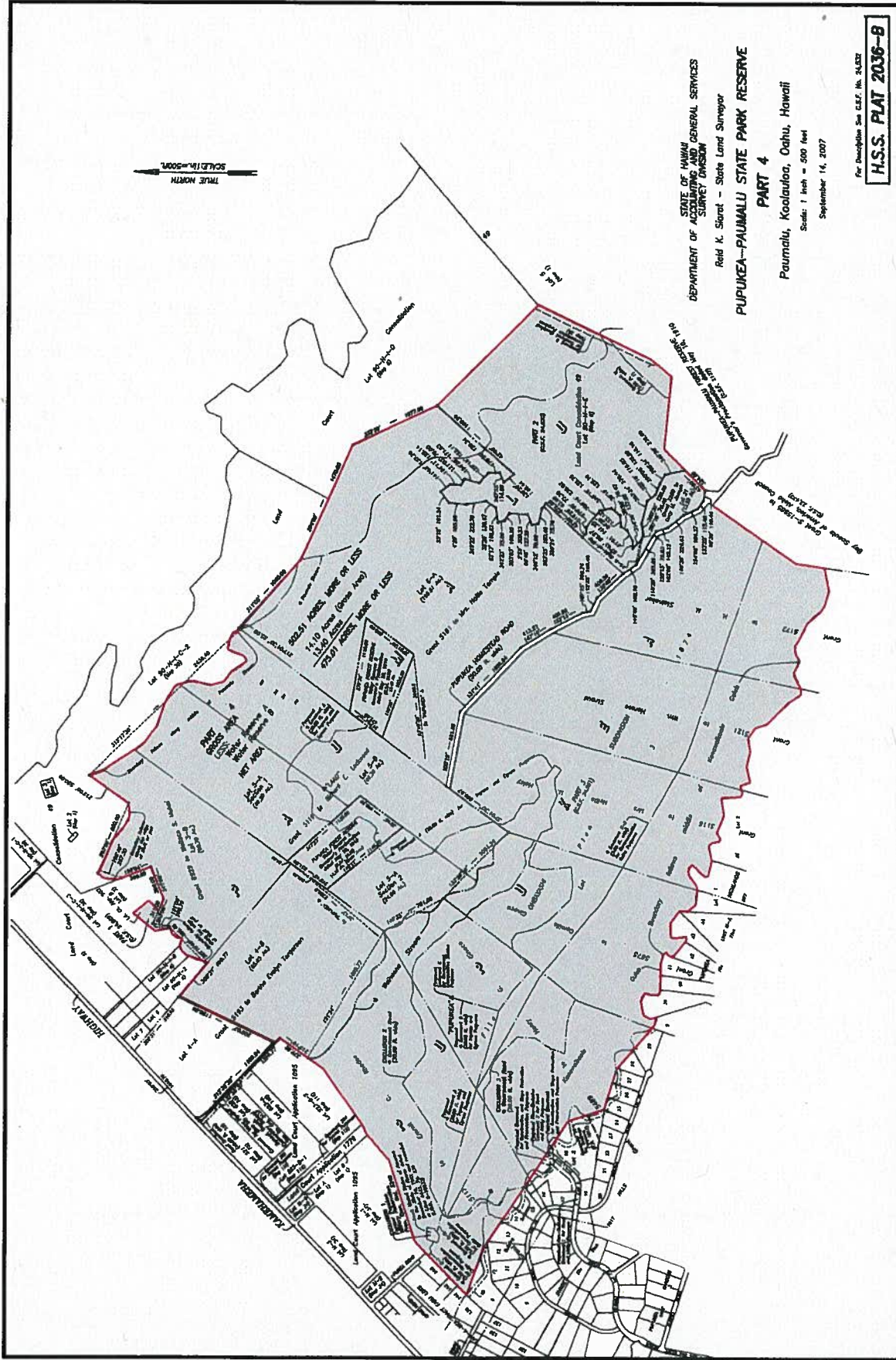
(Signature)

(Print Name)

(Notary Seal)

Notary Public, State of _____

My commission expires: _____



ATTACHMENT 1
 Map of the 1,070 acres that comprise the Pūpūkea-Paumalu State Park Reserve and encompassed within this Agreement.

CURATORSHIP 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 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 Pūpūkea-Paumalū State Park Reserve (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.

I understand and acknowledge that the provisions of Chapter 90, Hawaii Revised Statutes, do not apply to my or my child's activities in the Park.

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): _____