

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

January 27, 2017

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

SUBJECT: Approval to Renew Volunteer Agreement for Hā'ena State Park, Kaua'i
[TMK: (4) 5-9-008: 001]

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.

The volunteer agreement with Hui Maka'āinana o Makana (Hui) expired in December 2016 and the volunteers have requested to continue to assist State Parks with the care, management and interpretation of the cultural resource within Hā'ena State Park, Halele'a, Kaua'i. Established in 1998, the Hui is a non-profit 501(c)3 organization established to protect and preserve the resources and cultural traditions of the Hā'ena area. The first agreement between State Parks and the Hui was executed in 2000 to address restoration of several lo'i kalo as an interpretive and education feature of the park for visitors, schools, and cultural groups.

Since 2000, the role of the Hui has expanded to include restoring and caring for additional sites in the park, assisting with the master planning for Hā'ena State Park, and serving as an active advocate for the Hā'ena Community Based Subsistence Fishing Area located offshore of the park. The Hui has hosted numerous educational and cultural groups from Hawai'i and the Pacific, received several awards for their service and restoration projects, and continue to donate over 6,000 volunteer hours annually to the restoration and maintenance of the cultural sites in the park. In addition, the Hui recently entered into an agreement with the County of Kaua'i for curatorship of the Kauluapāoa Heiau complex, which is a separate parcel within Hā'ena State Park.

This agreement is for a 5-year period. The responsibilities of the Hui proposed for the renewal of their volunteer agreement with State Parks include:

- Sponsor regular volunteer workdays to maintain the existing restored lo'i kalo and 'auwai system, and open an additional six (6) lo'i. The kalo raised in these lo'i are used in cultural programs at the park and in the community.

- Assist with the repair and restoration of two historic housesites in the park. Referred to as the Allerton Caretaker's Cottage and the Montgomery House, it is proposed that these buildings be adaptively used for park operations.
- Maintain the historic cemetery and foundation of the poi mill within the park.
- Provide educational programs and interpretive tours upon request.
- Collaborate with State Parks to initiate plans for a cultural gathering area in the park as detailed in the Park Master Plan.

RECOMMENDATION:

State Parks encourages community involvement and assistance with the care, management, interpretation, and restoration of the resources in the parks. The Hui has successfully partnered with State Parks for the past 16 years. They have demonstrated a dedication to their park site by providing volunteer time, materials, visitor services, and park improvements with little financial support from State Parks. State Parks recommends that the Board grant approval to renew this agreement for another 5-year term subject to the following conditions:

1. Review and approval of the agreement by the Department of the Attorney General.
2. The Hui will be responsible for any required environmental and regulatory documents and obtain approvals and permits prior to conducting any restoration work.
3. Amendments and future 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

**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 Hui Maka‘āinana o Makana (also referred to herein as "Hui"), a Hawai‘i nonprofit corporation, whose address is 169 Lihau Street, Kapa‘a, HI 96746, for and regarding portions of Hā‘ena State Park ("Park"), ahupua‘a of Hā‘ena, district of Halele‘a, island of Kaua‘i, State of Hawai‘i [TMK: (4) 5-9-008:001].

INTRODUCTION

The STATE is the owner of Hā‘ena State Park. This Agreement specifically addresses the lo‘i kalo and ‘auwai, historic buildings, and historic properties under the jurisdiction of the Division of State Parks (Attachment 1).

RESPONSIBILITIES OF (ORGANIZATION)

The Hui 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, restore, and interpret the cultural sites within the Park by clearing alien vegetation, maintaining the restored lo‘i kalo and ‘auwai, maintaining the historic cemetery and foundation of the poi mill, assisting with repair and restoration of historic buildings under the direction of State Parks, implementing educational and interpretive programs, and planting native plants as part of the cultural landscape restoration.

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 Park. The following guidelines shall be followed:
 - a. Removal of weeds and vegetation debris from the Park. 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 Park.
 - 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 river/marsh/ocean 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 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 of the Park. Where possible, attempts shall be made to prevent vandalism and damage. Should any damage be discovered, the Hui will notify State Parks as soon as possible.
7. The Hui may prepare and implement a landscape plan to expand or alter plantings within the Park. Any planting or landscaping plan shall be reviewed and approved in writing by State Parks prior to implementation.
8. The Hui 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. The Hui 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 Hui may install passive park facilities in the Park, such as benches, in compliance with an approved plan if the Hui receives prior written approval from State Parks and obtains all required permits.
11. With State Parks written approval, the Hui 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, the Hui 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 Hui 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 the Hui 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 Hui 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 Hui in writing of changes in the insurance requirements and the Hui 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 the Hui of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the Hui 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. The Hui 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. The Hui, 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. The Hui, 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 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), 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. The Hui 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. The Hui will perform all duties and responsibilities without pay from the STATE.

SPECIAL CONDITIONS

The Hui 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 Hui 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 Kaua'i 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 (ORGANIZATION)

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

CHECKS TO ENSURE PROPER CURATION

1. The Hui 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 Hui. The Hui 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 Hui in writing of the problem(s) and will provide suggestions to correct the problem(s). The Hui 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 (ORGANIZATION)

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

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)

ORGANIZATION

(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 _____

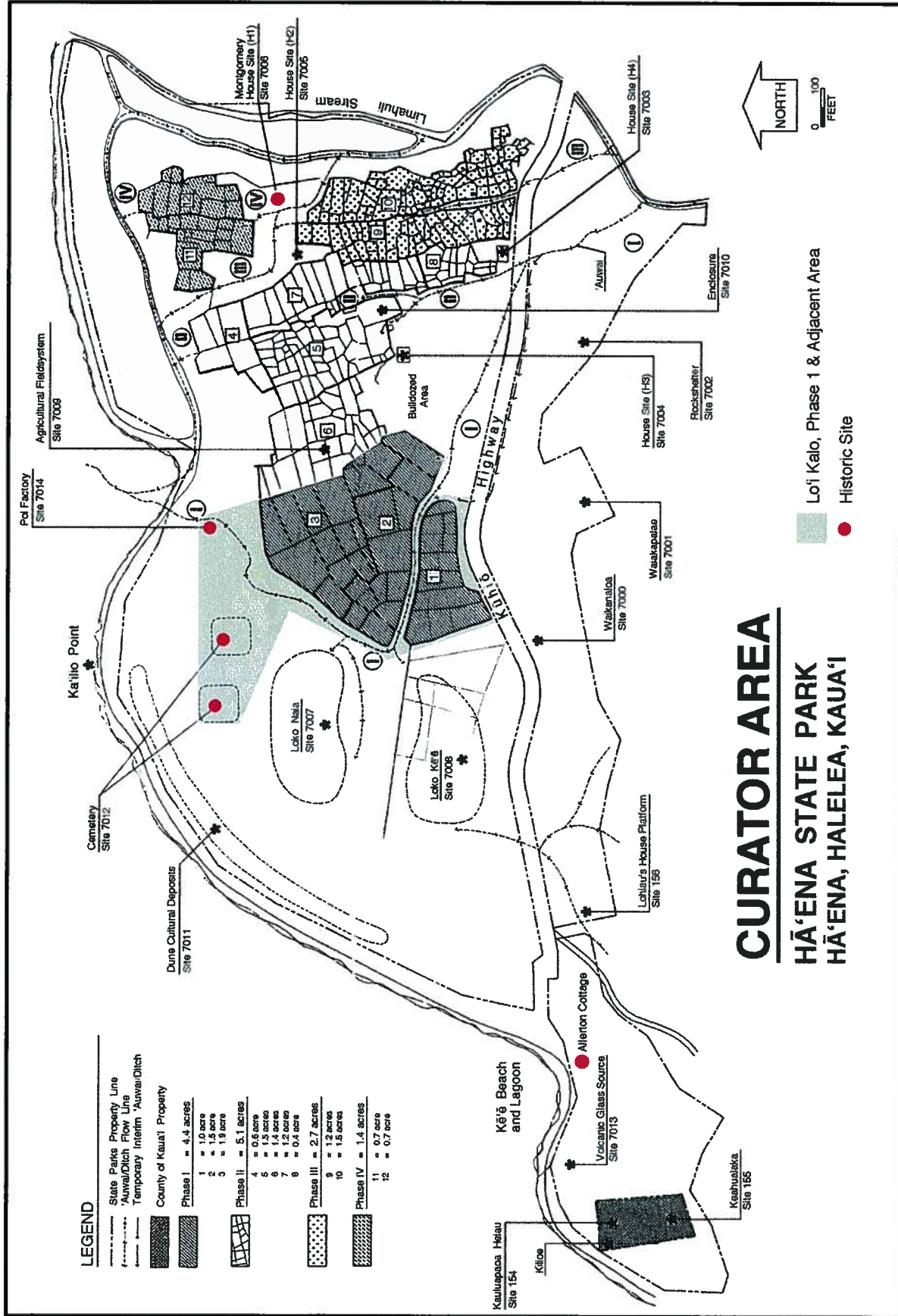
On this _____ day of _____, 20____, before me appeared _____, to me known, to be the person described in and, who, being by me duly sworn, did say that he/she is the _____ of _____, the party named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the _____,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

(Signature)

(Print Name)

(Notary Seal)

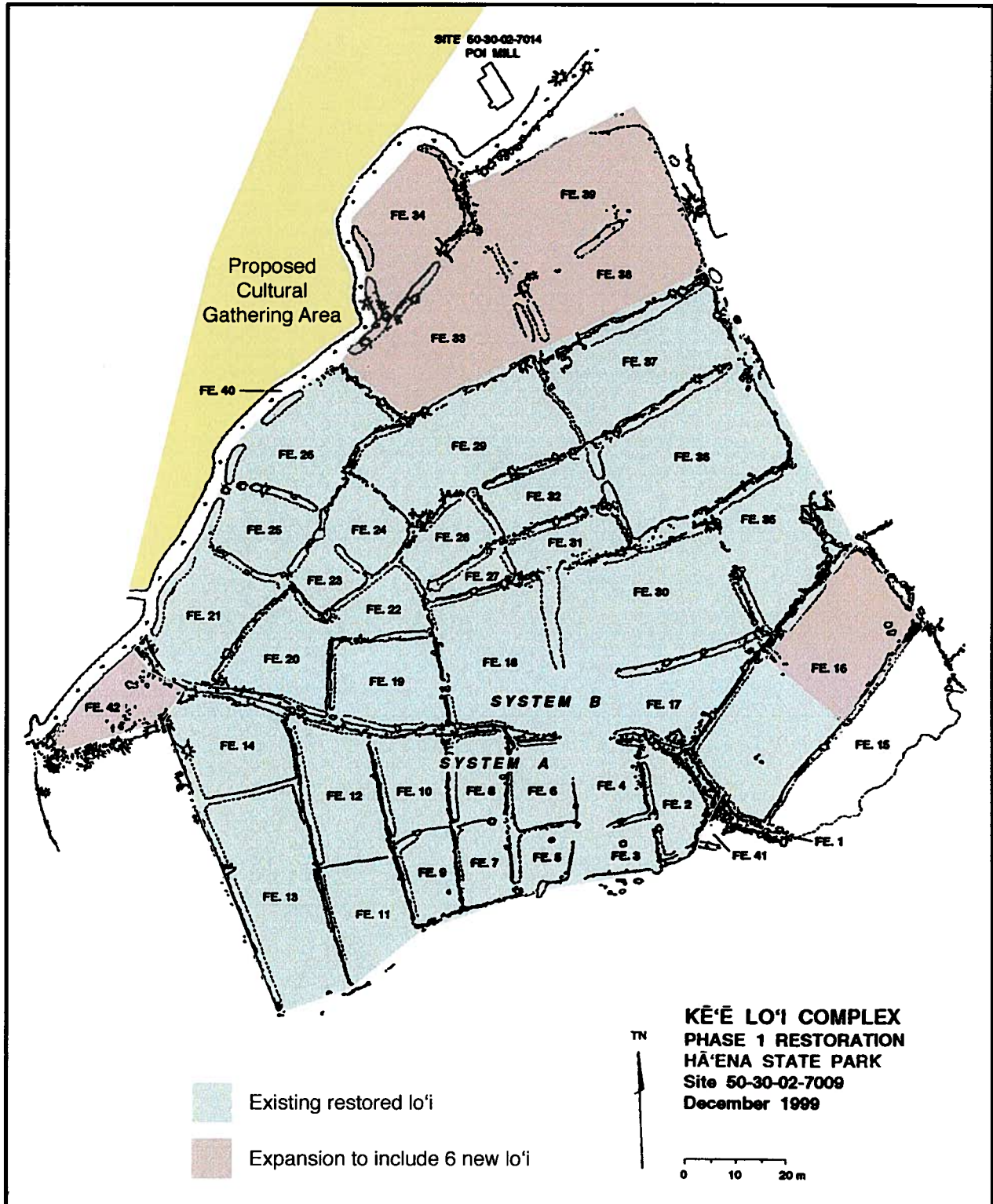
Notary Public, State of _____
My commission expires: _____



CURATOR AREA

HĀ'ENA STATE PARK HĀ'ENA, HALEALEA, KAUA'I

ATTACHMENT 1a – Park area and sites covered under this agreement.



ATTACHMENT 1b
Detail of the Phase 1 lo'i system and the proposed cultural gathering area.

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 _____ (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): _____