

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

August 9, 2019

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO THE
CHAIRPERSON TO ENTER INTO A MEMORANDUM OF
UNDERSTANDING WITH HIKA`ALANI

SUMMARY

This Board Submittal requests approval to enter into a Memorandum of Understanding (MOU) to establish a written agreement for the maintenance and management of the newly constructed reinterment site located at Waiauia, Kailua, Oahu between the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) and Hika`alani, a 501(c)(3) nonprofit. The agreement will help the parties to manage this reinterment site including curation of currently reinterred "iwi kupuna" within the site and any future remains (iwi kupuna) that need to be repatriated.

BACKGROUND

The Oahu Division of Forestry and Wildlife and the Honolulu Board of Water Supply (BWS) entered into an agreement to allow BWS to construct a reinterment site at Waiauia, Kailua, Oahu in 2017. The authorization to issue a right of entry permit for the project was granted by the BLNR at the meeting held on October 13, 2017. The agreement states that "DOFAW will pursue and enter into a Memorandum of Agreement with the Kailua Native Hawaiian descendant group, Kailua Kau a Ho`oilo (KKAH), for long term care of the site."

The reinterment site construction was completed in 2019, at which time, KKAH recommended to DOFAW that Hika`alani, an organization whose mission is to: "reestablish centers of stewardship and learning at storied places in the ahupua`a of Kailua....." Be tasked to care for the site. KKAH is an advisory group, who works closely with Hika`alani on matters related to reinterment.

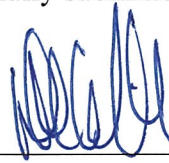
DOFAW will continuously work with KKAH and BWS to ensure that the site is cared for properly. DOFAW will also coordinate activities, grant access, and support long term care for the site as it is an important part of Kailua's history.

RECOMMENDATIONS

That the Board:

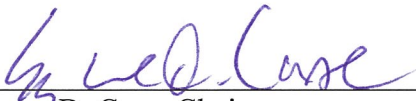
- 1) Authorize the Chairperson to negotiate, enter and sign a Memorandum of Understanding, (draft attached) providing that the Attorney General review and approve the contents of the Memorandum of Understanding to ensure compliance with all State requirements.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

EXHIBIT 1:

Draft MOU between the Department of Land and Natural Resources and Hika`alani

MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES,
AND
HIKA`ALANI

This Memorandum of Understanding, made and entered into on this _____ day of _____, 2019, by and between Hika`alani, a domestic non-profit corporation, hereinafter referred to as "Hika`alani," and the State of Hawaii, by its Board of Land and Natural Resources hereinafter referred to as the "Board." Hika`alani and the Board are jointly referred to as the "Parties."

WITNESSETH

WHEREAS, pursuant to section 183D-2, Hawaii Revised Statutes (HRS)¹, the 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; and 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, Kawainui-Hamakua Marsh Complex supports a variety of introduced and indigenous aquatic wildlife, provides important habitat for migratory bird species and four endangered species of native Hawaiian waterbirds, and the U.S. Fish and Wildlife Service has identified Kawainui-Hamakua Marsh Complex as a waterbird recovery area; and

WHEREAS, three prominent heiau (Ulupō, Pahukini, and Holomakani) and numerous significant archaeological sites are located in Kawainui, and the entire marsh has been determined to be eligible for listing in the National Register of Historic Places; and

¹ The Hawaii Revised Statutes cited in this Agreement are in reference to the authorities and responsibilities of the Hawaii Department of Land and Natural Resources.

WHEREAS, the Board is charged with the responsibility of managing the cultural resources of the Kawainui-Hamakua Marsh Complex; and

WHEREAS, the Board is charged with the responsibility of managing lands in the Kawainui-Hamakua Marsh Complex, which include Wai‘auia, through the Division of Forestry and Wildlife (DOFAW); and

WHEREAS, the Board approved the construction of a burial preserve for the purpose of the reinterment of iwi kūpuna (Hawaiian ancestral remains) at Wai‘auia, as shown on Exhibit “A” attached hereto and made a part hereof; and

WHEREAS, Hika‘alani is a 501(c)(3) community-based non-profit organization founded by Hawaiian cultural leaders of Kailua, Ko‘olaupoko, O‘ahu, to restore cultural identity to places and practices that once defined Kailua as a land of abundance and excellence; and

WHEREAS, the mission of Hika‘alani is to reestablish centers of stewardship and learning at storied places in the ahupua‘a of Kailua where the community can again gather, as Hawaiians did in centuries past, to restore and revive cultural practices; and

WHEREAS, Hika‘alani currently has an Agreement with the Division of State Parks, Department of Land and Natural Resources, to assist with the maintenance, management, interpretation, and restoration of park resources and facilities at Ulupō Heiau State Historical Park, and Hika‘alani has proven itself to be a good steward of the seven acres comprising the Ulupō Heiau State Historical Park; and

WHEREAS, working with Kailua, Kau a Ho‘oilō, a group of recognized Hawaiian cultural descendants that ensures the care and protection of iwi kūpuna of the Kailua ahupua‘a, Hika‘alani has taken on the responsibility of helping in the construction of and overseeing the reinterment of iwi kūpuna in a walled burial preserve at Wai‘a‘ia; and

WHEREAS, Hika‘alani is committed to caring for, maintaining, and managing the specific burial preserve and a thirty-foot perimeter immediate surrounding the burial preserve, collectively called the Wai‘a‘ia Reinterment Site;

NOW, THEREFORE, the Parties agree that partnering in a cooperative effort to manage and maintain the Wai‘auia Reinterment Site will be mutually beneficial and agree to the following provisions.

I. The Board’s Responsibilities:

1. The Board will provide access, a point of contact to coordinate activities, and public support of the efforts of Hika‘alani to manage and maintain the Wai‘auia Reinterment Site.

2. The Board's financial obligation and commitment to make payments or reimbursements of any kind under this Agreement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment or reimbursement.

II. Hika'alani Responsibilities:

1. Hika'alani will manage, maintain, and care for the Wai'auia Reinterment Site.
2. Hika'alani's management, maintenance, and care will include, but will not be limited to, maintaining and repairing the walls of the burial preserve, weeding, pruning, watering, weed-whacking, mowing, and, after consultation with and approval by DOFAW, planting and caring for native species of plants in the Wai'auia Reinterment Site.
3. Hika'alani will regularly report and coordinate activities with DOFAW, Oahu Branch.

III. Joint Responsibilities:

1. The Board and Hika'alani will collaborate and consult in ensuring the best possible plan for managing, maintaining, and caring for the Wai'auia Reinterment Site.

IV. Term, Evaluation And Modification.

- A. *Term.* This Agreement is executed as of the last date shown below which shall be the commencement date. This Agreement 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 Hika'alani and the Board respectively. For purposes of this modification provision, such authorized officers are Hika'alani and the Board 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. Principle Contacts.

The Principle contacts for administering this Agreement are:

A. Hika`alani

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

VII. Miscellaneous Provisions.

A. *Disclaimers.* Nothing in this Agreement shall be constructed 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 Hika`alani.

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 Hika`alani may agree.

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

HIKA`ALANI

By: _____ Date: _____

Title: _____

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

_____, 2019

FOR THE STATE OF HAWAII,
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By: _____ Date: _____
Chairperson, Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

Date



**KAILUA IWI KAPUNA
REINTERMENT KAWAINUI
PROJECT SITE**

2366000

**MAP CREATED: 07/02/2019
DOFAW OAHU BRANCH**

Legend

Kawainui Land

Owner

- City & County HNL
- State
- State-DOFAW
- State-DSP