

AHUPUA‘A ‘O KAHANA STATE PARK

BACKGROUND INFORMATION AND RECENT PLANNING INITIATIVES

**Department of Land and Natural Resources
Division of State Parks
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PREFACE

[By Curt Cottrell]

EXECUTIVE SUMMARY

This report on AHUPUA‘A ‘O KAHANA STATE PARK is a collection of maps, data lists, Kahana stories, recent (2015 to 2017) survey data and issues analyses. This collection of information is intended to provide DLNR decision makers and State Legislators with an overview of the Kahana community and an understanding of actions that need to be taken in the near future for the betterment of the Kahana community and State Parks’ management of this very special ahupua‘a.

Summary of Near-Term Actions Needed for Kahana

1. Natural and Cultural Resources Management

State Parks should continue to work with Kahana families on important natural and cultural resource management programs, including the restoration of Huilua Fishpond, community-based management of the ocean resources of Kahana Bay, restoration of lo‘i and ‘auwai, and restoration of the free flow of Kahana Stream. In the longer term, State Parks and the Kahana community need to work together toward a comprehensive program for the ongoing management and stewardship of the natural and cultural resources of this 5,249-acre ahupua‘a.

2. Property Management

State Parks plans to create a position for a full-time property manager for Kahana – as distinct from the current part-time cultural programs manager position. As Kahana lessees have clearly and repeatedly stated, it will be essential for the Kahana property manager to have strong and proven “people skills,” and to have the ability to *work with* Kahana lessees and families to help them to address and solve community and family problems, large and small.

3. Leases for the Six Families Awaiting Leases

State Parks plans to continue to work with the six families that are awaiting Kahana leases. State Parks first needs to obtain funding and Department of Health approval for the construction of wastewater vaults for the six house sites. State Parks will also need to work with the Board of Land and Natural Resources (BLNR) to amend the 1979 Conservation District Use Permit. The application for that permit, dated June 8, 1979, stated that: “No dwelling units will be constructed in hazard (flooding, tsunami) prone areas.” However, the six families that are awaiting Kahana leases plan to live in houses that are within the coastal flood plain. Once these actions have been completed, leases for the six Kahana families can be executed. Note: These six leases should include revisions to Kahana leases that need to be made to further the economic well-being of Kahana lessees.

4. Amending the Kahana Leases

State Parks plans to work with Kahana lessees to revise and amend the Kahana leases in order to provide more economic flexibility and potential economic benefits to lessees. Changes to the terms of the Kahana leases may include an option of nominal monetary lease rents in lieu of the currently required 25 hours per month of participation in cultural programs for each Kahana family. This lease amendment process will also further explore the possibility of lease to fee conversion as an option for Kahana lessees. State Parks will retain expert legal counsel to assist with this lease amendment process.

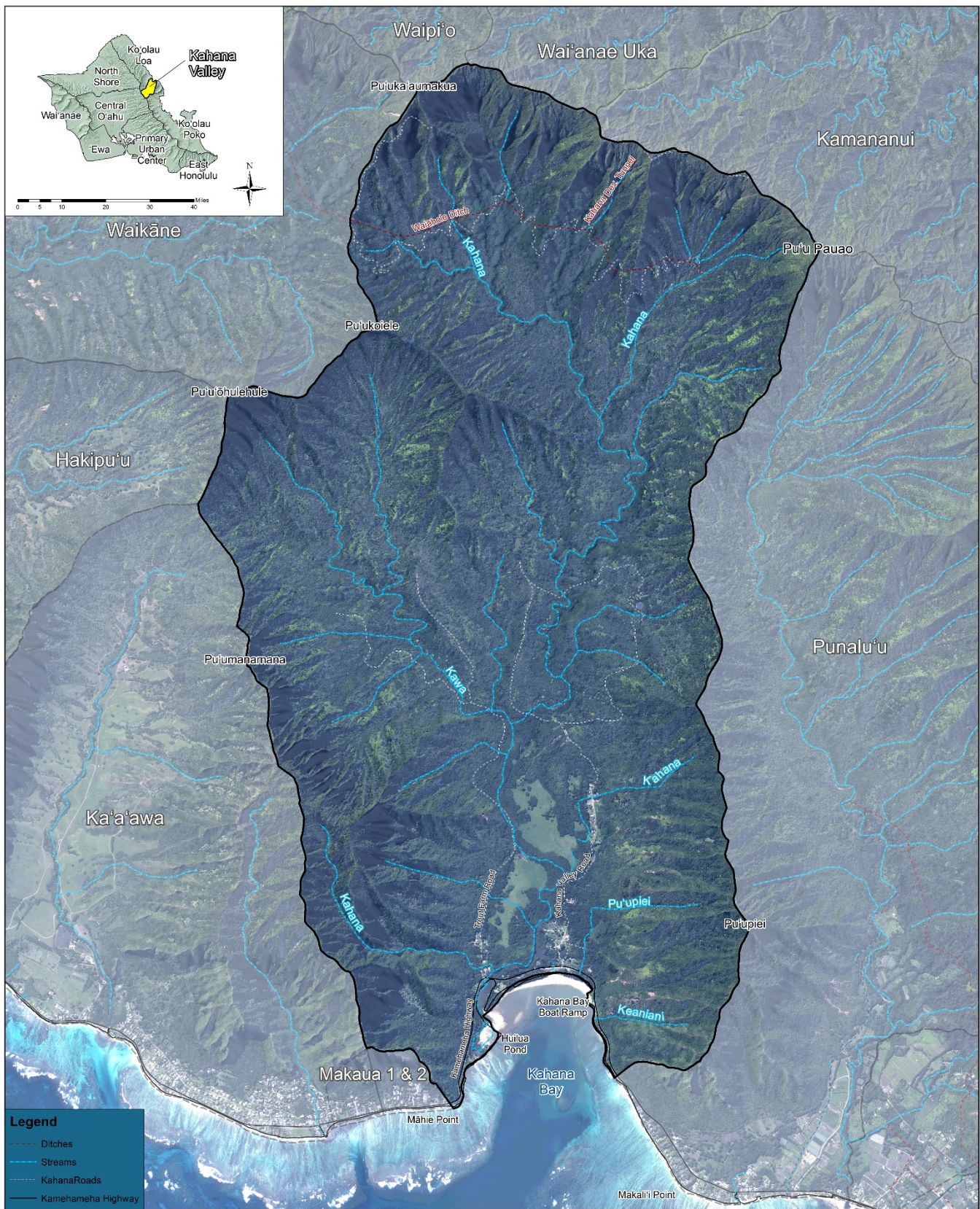
5. Changes State Land Use Designation “Conservation” to State Land Use “Agricultural”

The existing residential and small-scale agricultural uses within Ahupua'a 'O Kahana State Park are not permitted uses within the State “Conservation” District. Technically, such residential and agricultural uses require a Conservation District Use Permit before these uses can be implemented. State Parks is considering the submittal of an application to the State Land Use Commission to change the Kahana residential and small-scale agricultural areas from “Conservation” lands to “Agricultural.”

1 SOME BACKGROUND MATERIAL

1.1 Ahupua‘a ‘o Kahana State Park - Profile

LOCATION:	District of Ko‘olau Loa, Island of O‘ahu. TMKs 52002001:0000; (1) 5-2-001: 001 (portion); (1) 5-2-002: 001 to 008; and (1) 5-2-005: 001, 003, 020, and 021.
SIZE:	5,249 acres; 8.2 square miles
STATE LAND USE:	CONSERVATION
LAND TENURE:	Land Commission made 34 Kahana kuleana awards in 1851 totaling 96 acres. 5,000+ acres of Kahana were awarded to the high ali‘i Keohokālōle. The KAHANA HUI with 47 members purchased Kahana in 1874. Mary E. Foster had acquired 97% of Kahana by 1920. The State of Hawai‘i acquired the Kahana Ahupua‘a in 1970 for \$5 million.
NATURAL RESOURCES:	Kahana today is one of the last undeveloped ahupua‘a on the island of O‘ahu. The average annual rainfall of about 75 inches per year at the shoreline to 300 inches per year in the mountains, supports dense forests and perennial streams. Kahana Bay has been an important local fishing area for hundreds of years.
PRE-CONTACT:	Archaeologists have estimated that the population of Native Hawaiians in Kahana before western contact numbered more than 1,000 people.
THE “LIVING PARK”	In 1971 the Hawai‘i State Legislature enacted a Resolution that created the concept of a “Living Park.” The DLNR Division of State Parks adopted the “Living Park” concept for Kahana State Park in that same year.
CDUP APPROVAL:	In 1979, the BLNR approved a Conservation District Use Permit that provided for the creation of residential lots in two separate areas of Kahana, and also precluded construction of new homes within the coastal floodplain area.
KAHANA FAMILIES 2018:	As of December 2017, there were 28 lessees of Kahana residential lots, 27 of whom lived at Kahana. There were also six families living at Kahana who were awaiting State leases per decision of the BLNR in 2013.
RECENT LEGISLATION:	In 1987, the Hawai‘i State Legislature enacted ACT 5, authorizing 65-year residential leases for Kahana families and requiring lessees to participate in the “interpretive program” of the park. In 2009, the Legislature enacted ACT 15 which included a 2-year moratorium on evictions, authorized DLNR to issue additional residential leases for Kahana and established the Kahana Planning Council to develop a Master Plan for Kahana.



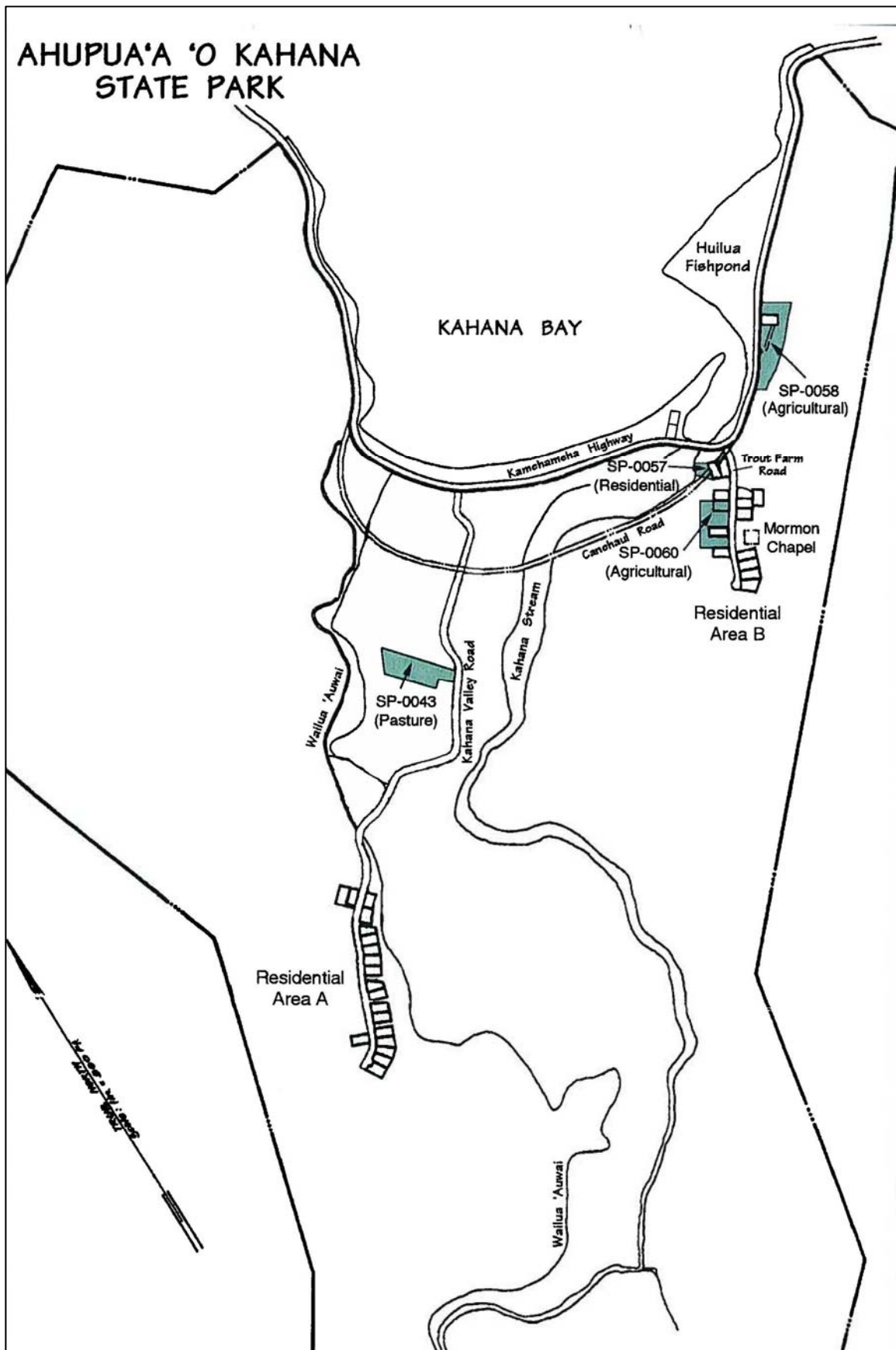
Ahupua'a 'O Kahana

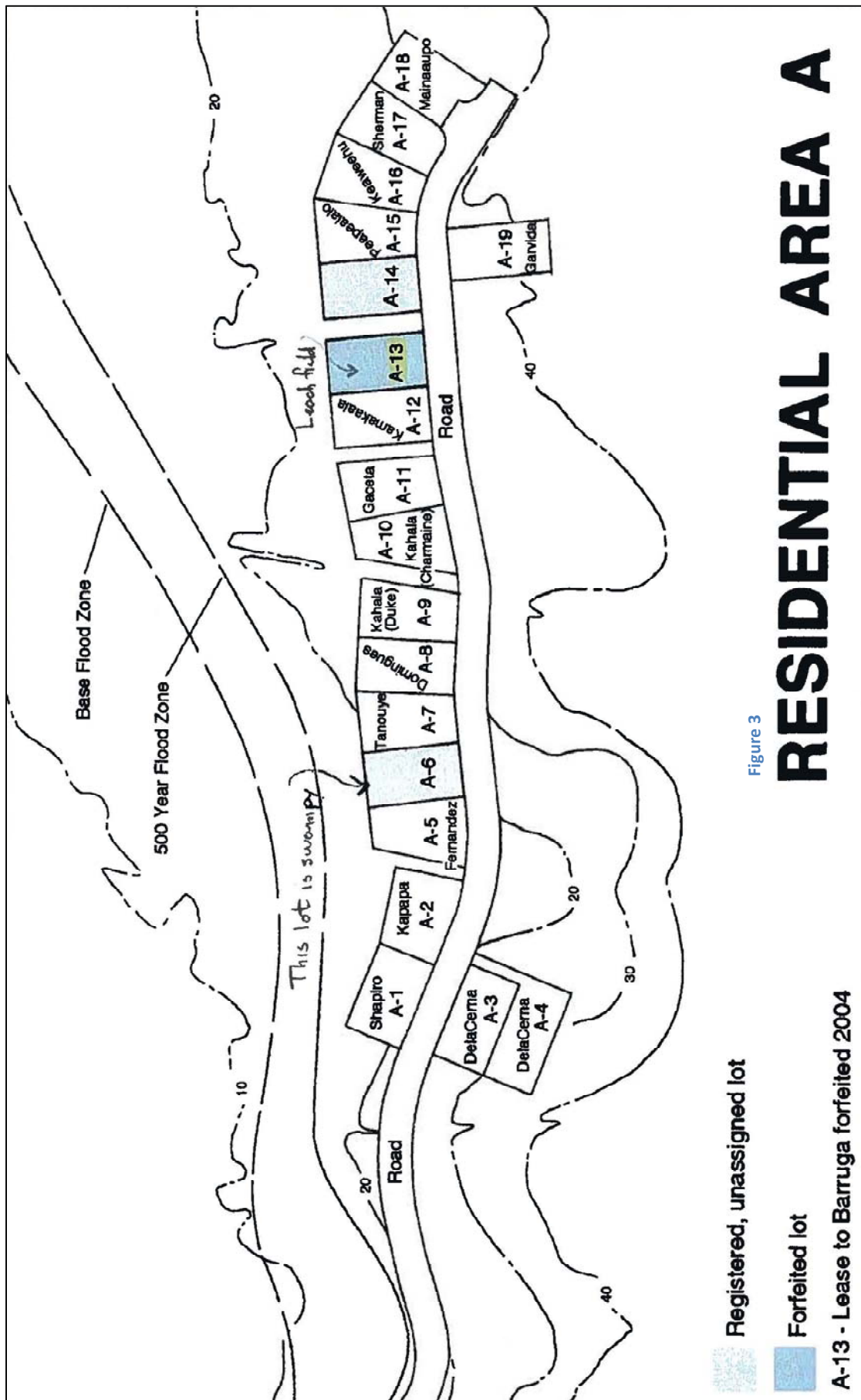
Figure 1 Kahana Ahupua'a Map

0 1,000 2,000 3,000 4,000 5,000 Feet



Figure 2 Ahupua'a 'o Kahana State Park Leased Areas





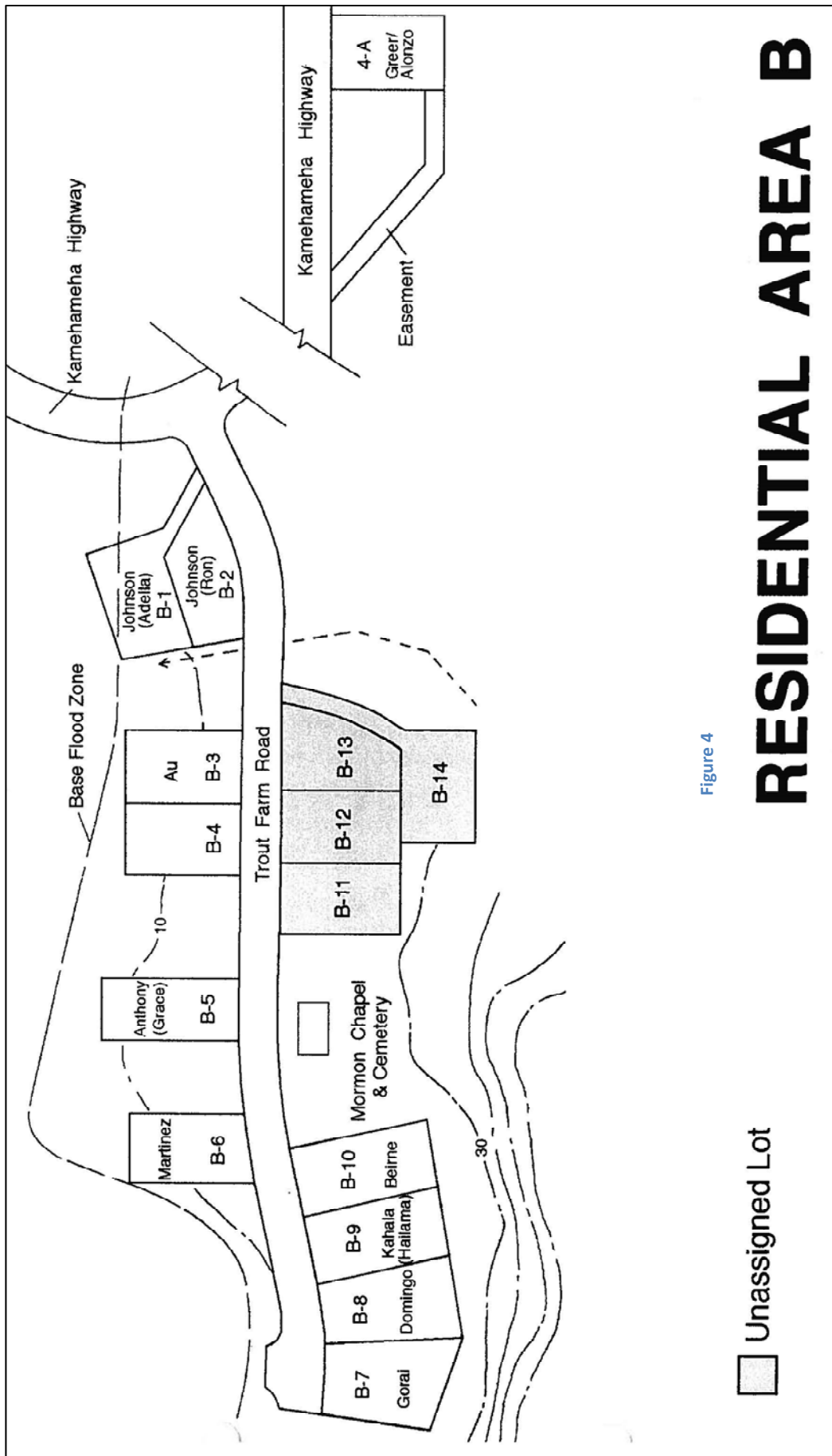


Figure 4

RESIDENTIAL AREA B

□ Unassigned Lot

1.2 Kahana Stories

1.2.1 The Anthony 'Ohana: Our Story

By Jim Anthony, PhD, his story and that of his wife, Grace Vaiove'a Anthony and that of some of their 'ohana.

February 23, 2018

"First of all stories are the key sources for a person's understanding. It is now accepted wisdom backed by a great deal of empirical evidence, that narratives are the most important way that humans learn about their world.

Give folks a boatload of well--documented statistics, put them up against a story, and the story wins almost every time."

--- Neal Milner, Retired Professor of Political Science,
University of Hawai'i, Manoa, Civil Beat, 9/14/2017

Grace came to Hawaii (specifically to Kahana) from Samoa with her then husband, Sam George. The year: 1986. Grace was in her mid-30s. She had left three of her youngest six children behind in Samoa. It would take five years for those three children to be reunited with her: five heart breaking years during which she tried, as best as she could, to make her way through the tangled web of U.S. immigration formalities.

The house that Grace came to in Kahana in 1986 was dilapidated, termite ridden. The roof was in disrepair; it leaked. The land around the house was overgrown, a tangled mess of undergrowth. When Grace left Samoa to come to Kahana she had no idea what she was getting herself into, but she quickly sized up what she was confronted with and got to work. With not much more than a machete (and a file to keep it sharp) she began clearing the brush around what passed for a home. At the same time, she began job hunting.

In the ensuing five years she went from one minimum wage job to the next. With barely a completed high school formal education there wasn't much else that she could qualify for. Sam worked intermittently. Grace became the newly arrived principal bread winner as she held down one full time, minimum wage job after another and worked steadily at the same time on hacking away at what was literally a jungle around her.

Grace worked her way up until she got Nurses' Aide credentials. Her first job as a Nurse's Aide was at a Private Care Home—long hours, poor working conditions and not all that much money. But she hung in there. The three left behind children finally joined her. There were school arrangements that had to be made, adjustment problems to face, three more mouths to feed. Grace had never owned a car and still didn't have one. She did not have a driver's license and did not (yet) know how to drive. She took the

bus. It would take a full ten years after she arrived for her to learn to drive, buy a second-hand car, get a driver's license. The newly arrived children were put to work on helping with "yard" cleaning—raking, removing cut brush, digging soil to plant trees of one kind or another—coconut trees, ulu, miscellaneous fruit trees, flowers. Grace, for her increasing part of carrying the family's growing financial load took a range of care giving and other jobs to help make ends meet.

In 1993 when 31 families signed 65-year terminal leases issued by the State for residential lots in Kahana, Grace had little to go by in the way of getting much of an understanding as to what this meant. Her husband, Sam, signed off on the lease. They now had, finally, after many years of wrangling with the State, some security of tenure. The State offered a \$50,000, 30-year loan to build a house, but Sam and Grace could not qualify. One of the provisions of the lease was that each lessee would have to do 25 hours of 'cultural living park related work' a month in lieu of paying a monetary lease rent. More work. Grace and her three children now had more work to do. The lease mandated 25 hours of work a month came to be known as "hours"—they had to be done and recorded and a form had to be filled out every month to meet and record this requirement. Even though "hours" could not be accumulated and held, say, in an 'hours bank', Grace and her children faithfully did not just 25 hours of work a month but many more, hundreds of hours more. The face of their residential lot and land around it for which they had a Revocable Permit, began to change: what was untended, overgrown bush in 1986 began to be reshaped—some of the ornamental plants began to bloom, coconut, banana and ulu trees reached maturity and began to bear fruit, several lawns began to emerge. The house, however, continued to deteriorate. The roof continued to leak but it was still a roof over their heads. There were always buckets in the living room to catch leaking water when it rained. Despite the fact that Grace had a steady but modest income from a full-time job she had to supplement that income with a range of part time jobs which meant little quality time for the children growing up into adolescence. There was a growing family to feed, clothes to be bought, a growing, steady stream of "other expenses" to be met—and miscellaneous, never ending problems with the State to be dealt with. But Grace, now firmly established as the sole income earning family member plodded on.

By the turn of the century (the year 2000) the 3 children who had finally made it to Kahana to join Grace had become teenagers. They would all make their way through High School. Two of them would join "the Military"—one, the US Army, the other one joined the US Air Force. The youngest went to College on a Volleyball scholarship supplemented by loans. Grace learned to drive, got a Driver's License, bought a used car. Sam died (in December 2002) a broken man, a man whose spirit had been broken after many battles with the State bureaucracy (Ralston Nagata, Dan Quinn, Al Rogers, to name a few of them).

By the time of Sam's death in 2002 the foundations had been laid for the 10,000 sq. feet residential lot (for which there was a 65-year lease in place) and about 2 acres of land around it (for which year to year revocable permits were in place) the foundation had been laid for a stand-alone mini cultural living park.

In July 2004, Grace, with my help, set out in writing, a Statement of Principles for what she called the SAM LEIALOHA GEORGE MEMORIAL ORGANIC FARM. I quote from that document's Statement of Principles:

In launching Stage II of our integrated, sustainable farm project, building on 25 years of farm infrastructure which we have built as a family, we are committed to

- *Soil restoration without pesticides or chemical fertilizers of any kind believing that good, healthy, natural soil is the primary foundation for all agriculture;*
- *Botanical biodiversity and to permaculture;*
- *Reusing all green "waste" on the land as part of our commitment to soil restoration;*
- *Rain catchment as a water conservation measure;*
- *Reuse of all grey water if permitted;*
- *Bird habitat enhancement and protection;*
- *Restoring native plants and forests.*

It went on:

We believe that land is sacred space and that as humans we should live in harmony with it and not seek to dominate or subdue it;

We believe that a sense of the importance of place is important as we design and create a sustainable life style;

We believe in the sanctity and importance of water and to using it with care keeping in mind the needs of at least the next seven generations;

We believe in 'green building' as a means of creating environmentally safe and healthy living space;

We believe in clear air;

We strongly believe in downsizing our lives and delinking from the supermarket economy;

We believe in eating good, healthy, organic food and in food self sufficiency;

We believe in the importance of ritual (the occasional sharing of 'awa, for example, because it is through ritual that we renew and reaffirm our connection to all life and to each other, to our ancestors, their spirits and the ancient spirits of the land, water and the sea around us;

We believe that living in a diverse cultural living park, as Kahana was meant to be, means that each resident does what is dictated by his or her vision of what is culturally appropriate and relevant to living in harmony with nature.

To all of these ends we have created our own ahu (altars) as special gathering places for family, friends and neighbors and others to honor the land and water which give us life and where we can gather together in efforts to create and sustain a common sense of community.¹

I submitted the document to then Director of the Division of State Parks, asked for a meeting to discuss the document and hear us out on what we planned to do next. We never heard back. We finally gave up in disgust but continued to lay more foundations, develop, plan and execute other initiatives that we had in mind. Our motivation was simple: we had a contract with the State (the 65-year lease) to be a part of a cultural living park. We were committed to fully honoring our contract. The work that Grace had done since 1986, and the work that her children had done with her since they joined her in Hawaii about five years later, was too important a foundation to be squandered even in the face of enormous bureaucratic insensitivity and indifference.

Before I turn to the other steps that we took after 2004 to make Lot 5 and the land immediately around us into a stand-alone mini cultural living part, there are some other initiatives that I took that ought to be briefly recorded here. These are stories within this larger story.

In late April 1993 the late Keith Ahue, the Chair of the Land Board wrote to me as Executive Director of the Hawai'i—La'ieikawai Association, the non-profit for which then worked. Mr. Ahue applied for a grant of \$80,000 to fund a project in Kahana. We had several discussions about the grant application but before we could bring the matter to closure, Mr. Ahue passed away. His successor showed no interest in Mr. Ahue's initiative and it died with him.

In January 1995 the Hawai'i—La'ieikawai Association commissioned a study called The Pu'uhonua Project: A proposal for the restoration of the Ahupua'a of Kahana, 50 pp. I tried to get the attention of the Division of State Parks and the Chair of the Board of Land and Natural Resources in an effort to get them to discuss the report with me. We were open to making a substantial investment in the cultural living park in Kahana on a matching funds basis. The State bureaucrats showed no interest.

In September 2005 I conducted a survey of Kahana Lessees at the behest of the Kahana Community Association. **It was in that survey that almost 92% of the 24 lessees polled who said that they would be interested in lease to fee conversion if someone would tell them how much it would cost.** Nothing was done with my work product. No steps were ever taken to find out how much lessees would have to pay for them to purchase the fee interest in their long-term leases.

In January 2009, I did the outline of a comprehensive study of Kahana with a string of policy recommendations for Kahana. This too went nowhere.

As I sit here at our dinner table in Kahana writing this story there's a pile of documents to my left at least six inches high comprising reports, hard copies of eMail messages, letters—all of them have fallen on bureaucratic deaf ears.

¹ These are merely quotes from the document. I have not reproduced all of the text here.

State bureaucrats have played ‘ring around the rosies’ with Kahana for a long time: their story has been the story of one big vicious cycle after another. The Lessees blame the State, the State blames the lessees—political ping pong. This has been going on since at least 1968 when Kahana was acquired by the State and became ‘public land’. 1968 is now 50 years ago.

In any event, I return to 2004 where I left off on this narrative.

We decided that the old, dilapidated house had to go. We found the money we needed to build a new house, got the necessary approval from DLNR and took the \$50,000 loan offered by HHFDC and completed the house building in 8 months. The year: 2007.

As part of our continuing plans to set ourselves up as a mini cultural living park we built a Samoan fale and a platform from which children might view stars at night. We strengthened the structural foundation of the imu house. We have now built several ahu (altars) of unhewn stone, two incense shrines and a very small and compact meditation house (8' x 4').

On the food production front, we started growing *kalo* in about 2010. We have 23 lo'i and a larger single area where we grow *kalo*. *Last year's harvest was between 1,500 and 2,000 pounds. This year and the next will be more if we keep up our work pace.* We now have ten producing *ulu* trees. We grow some tapioca and a few Samoan yams. We have at least six fully producing avocado trees. We grow herbs and chillie peppers and Pacific island spinach (*bele*). We grow flowers: ginger, *ohai ali'i*, *bird of paradise*, a variety of ferns. *We have lemon and tangerine trees. We have been experimenting with high end bamboo – black bamboo (bambusa lako) in particular. We are growing high end edible ginger. We produce a substantial portion of the bananas we eat. We have lemon and tangerine trees which have been in production for the last ten years. We have at least 20 coconut trees in production and at least a dozen more close to bearing fruit.*

We plan to open our mini cultural living park to the public after certain other steps are taken. We plan to incorporate (LLC) and begin seeking grants—again, if certain formalities are successfully completed. Much hangs in the balance of cooperation between the State and us and what changes are made to the lease. The end result of the lease to fee conversion issue is very important to us.

Grace and I have multiple anxieties over the matter of the current terminal lease. We look at the number of dwindling years remaining on the lease with great apprehension – this has enormously important consequences for us, our children of this generation and the next generation and the one after that and the one after that—anxiety and stress in several layers. Our family, like all families in Kahana, has grown: The three children who were separated from Grace for 5 years now have 7 children of their own. The three children who came from Samoa to join their mother after five years of separation have all applied for leases. They have all been waiting to hear for close to ten years. Grace's oldest son has been living with us for the last dozen years. He is now an American citizen and is the mainstay of the work force which keeps the land we have use of productive and well kept.

We have done more than our fair share of making the cultural living park concept work. We have been committed to it in the past, are committed to it now and more than likely we will continue to be committed to it in the future. We agree with the proposition that the cultural living park program is broken but there are at least a couple of bright spots and we think we can safely say that ours is one of the 'bright spots.' Our relative success has not come easily: it has been the result of hard work and the expenditure of a considerable amount of the little money that we have had.

The central demoralizing fact of our lives in Kahana is the terms of the lease. It is an instrument that tethers us to intergenerational poverty. We seek relief from that. As the number of years on the lease declines our equity also declines. To put it more graphically: the terms of the present lease are a cancerous growth that is devouring our lives and the lives of our children and grandchildren. What applies to us, also applies to every other lessee in Kahana. We—and every other lessee in Kahana—lost 8 solid years of equity value because of the failure of the Kahana Planning Council to do what it was mandated to do under Act 15. And the State is complicit in this failure as it continues with its single-minded failure to act. Ralston Nagata failed to act. So did Dan Quinn. Peter Young failed to act. Laura Thielen acted to evict some lessees, got severely burned, and returned to her office to brood there and to ignore Kahana. William Aila failed Kahana—another case of failure to act. Suzanne Case is now in the fourth year of tenure as Director of DLNR, she has not even visited Kahana once since her appointment. Some 70% of our fellow lessees are now in default of their leases to the tune of 50,000 hours of work that they should have done but have not. This massive story of failure is a part of our story. We are caught in the middle of this. When the State finally acted about two years or so ago to seek advice from Townscape, its draft report said that the concept of the cultural living park had failed. We pointed out that it was not the concept which had failed but the failure of the parties (the State and lessees) to do what each should have done and didn't. All of this is the bigger story in which our smaller story is embedded.

If our story is anything it is the story of collective hard work. We have long looked to the State to do the "right thing" but little has come of our patience.

The telling of our story as set out here is a companion piece to the paper I was invited to write on HRS 516. That was sent to Townscape yesterday. All of this material is only useful to the extent that someone in the vast machinery of the State will read it allow us and others to enter into a conversation designed to fix what is broken.

The State acquired Kahana fifty years ago, in 1968. It took the State 25 years (1968 – 1993) to finally issue leases. And from 1993 till now is another 25 years. Every story has at least one message. The message of our story is that it is about time for the State (this means the Division of State Parks, the Chair of the Board of DLNR and the Board itself) to act after a full and free conversation with stakeholders—"stakeholders" means us, lessees, all who want to be a part of framing a solution rather than remaining as victims and as part of the on-going problem.

Grace's experience in and with Kahana, particularly over the past 25 years and more (since she came to Kahana in 1986) is driven by uncertainty. And uncertainty in the lives of people is something that we know about from literature, biography, psychology and broadly from the social sciences and the humanities. Uncertainty demeans, diminishes and corrodes the human spirit especially that of the poor, those who struggle against the tide of poverty. Sam George was a case in point.

Grace is now in her mid-sixties. The weight of uncertainty weighs more heavily on her now than when she was younger. The same is true for other lessees in Kahana. For many the weight and the corrosiveness of uncertainty demean and diminish their lives and they internalize all of this stress. And this internalization poisons their insides, their innards. In the face of State (i.e. government's) indifference the helplessness of victims deepens. This is a part of Grace's story, to a lesser extent, mine too. We're in this together. We're all in the same canoe with our 'ohana, headed for a reef—well, maybe. William Aila once told me that the only thing that would solve Kahana's problems was death. This from a guy who is not known for the quality of his intellect. He seems to belong to the same school as Mike Chun who has recently been reported to have said (when interviewed about the sexual predation which had gone on at Kamehameha School for a long time: "Sometimes, to do nothing, is to do something." Yes Mike, yes William, doing nothing does sometimes get you into \$80 million of very hot water.

This is a summary of our story and we are sticking to it. We hope that someone reads it and asks us some questions about it so that we might have a conversation about it. We hope. That is no small part of what Grace (and many others in Kahana) have been doing over the last 25+years.: Hope. For Grace it has been hope and an enormous amount of work—"blood, sweat, toil and tears."

1.2.2 'Ululani Bierne

Trekking to Kamehameha Schools

<https://ululanimanaokahana.wordpress.com/author/ululanimanaokahana/>

My sister Dannette and I attended Kamehameha Schools, McNeil Campus off Dillingham Boulevard to start our education. We rode with our Dad from Kahana Valley to Honolulu, on his big Military Weapons Carrier through the Nu'uaniu Pali Highway and back to Kahana Valley every day the same route. Many times it was cold and windy, but we had lots of blankets to keep us warm, lots of military blankets, bought at the Surplus Store on base at Pearl Harbor where Dad worked at Shop 08. It was in the year of 1943/1944 because she was 5 and I was 4 years old. Sometimes Dad was late to pick us kids up so we were late getting to Kahana Bay....

We lived across the beach area, right in the middle of the Bay. My sister Dannette was in the first Grade when I started in Kindergarten at 4 years old since school started in September and my birthday was in November, so I was still a baby, a real cry baby at that. As soon as she went to her class, I screamed so loud and not gracious at all till she had to leave her class to "malama" me. I was my sister's shadow, followed her all over, and got to know all her friends.

Eventually, our Mama got really tired of us coming home so late getting up so early so she pulled us out of Kamehameha School and enrolled us in Ka'a'awa Elementary School, close to home. Sista, Dannette was in 4th Grade by then, and I was a Third Grader, so we had been trekking to Kamehameha School for a good four years or so.... Ka'a'awa was great, it was close to Kahana Bay, close to the kahakai/beaches and close to our Mama too. And, yes our friends too because we had to walk to school from Kahana and we had to walk home from school from Ka'a'awa. There were no school buses, there was no such thing as 7 Eleven Store, only Anzai Store across Swanzy Park and Bonnie's Store across Ka'a'awa Park. We had a treat once in a "blue moon" but mostly we learned real early how to husk a coconut for the coconut water to quench our thirst and how to pound kamani for its crunchy nuts. We learned early to be survivors.

Dad and Mom were very active in the P.T.A. and also the 4-H club with Edith Anzai as the leader. Sister Dannette and I had to join because we were farmers and we were taught how to raise and care for animals. We also entered the Hawai'i Farm Fair when we had a nice pig or cow to enter and took home many Blue Ribbons. We also learned how to scramble the best eggs, Japanese style, really "da best," so light and fluffy, because Edith used the fork to beat the eggs in the frying pan as it cooked on medium heat, I'm sharing that because eggs never come out right if you use high fire and rush...I think she talked to her eggs because they were perfect and delicious!!!!

Our Dad really got involved with the community and the parents, joined the Lions Club and even the Hawaiian Civic Club, never knew that till I found his Certificates. Eventually, Ka'a'awa Elementary Schools had Bazaars and planned activities to include Canoe Races, (that is Tin Canoe Races) that my Dad made out of tin roof/piula and hau ama's and iako's. Then there were the bicycle races by the miles, and age groups and tug-a-wars, and swimming competitions, it was really fun living in the country, we all loved it!!!

On April 1st, 1946, the big TIDAL WAVE hit the Ko'olauloa coastline, and Kahana Valley was devastated with the loss of Mamo Ha'aheo Kanakanui's three babies. Houses were lifted off its foundations and carried across the streets in Punalu'u and other areas along the coastline.

My sister Puanani attended school late, she remembers joining us in 2nd grade because she said Mama was lonely by herself. Then of course our Brother Francis Daniel Beirne joined us in 1947 and won all the canoe races, back then we had Tommy and Larry Price all paddling. They had a beautiful home up in the Ka'a'awa Hills, the mauka lands.

Dad hunted for pigs up mauka a lot so we had eight hunting dogs, chickens, ducks, geese and we raised pigs. I remember our dog "Palooka" was always chasing Tsuneo's Gorai's chicken so one day, he was so pissed, he shot our dog. Well, my Tutu Lady of Kahana, treated our 'ilio with hawaiian herbs, gathering the "hauhi" plant and pounded it to a pulp, mixed with hawaiian salt/pa'akai and our mimi and used la'au lapa'au to treat Palooka. Our dog survived the bullet that went right through his head. He was a survivor, like us he was family/'ohana, love that dog. God is GOOD!!! Mahalo Ke Akua.



(Trophies for Tin canoe race; left to right Front Row, Tommy Price, Ululani, Puanani and Brada Beirne and Jonah Kekipi; 2nd Row two haole boys, I forgot their names; Third Row Third person Sista Beirne, 5th person, LARRY PRICE, FAMOUS TV SPORTS REPORTER and Raymond from Kualoa, forgot last name)

1.2.3 My Vision for Kahana by Aunt May Au

	Lessee: \$5308	May L. Au PO Box 636 Kahana, HI 96730 237-8361
	<u>MY VISION FOR KAHANA</u>	
	1. Making maximum use of resources:	
	LAND, WATER, CULTURE (Curatorship/Ag leases)	
AG	a) Acres of farms: Kalo, coconut, wlu, sweet potato, bananas	
PLANTS	b) Culturally important plants: wauke, olona, māmaki, ie'ie, kaula, kōkō, etc. Medicinal Garden	
RIVER	c) Protect our river, stream, springs, wetlands	
	d) 1) Restoration by clearing hāe overgrowth along Kahana River. Will need to establish methods for green waste, invasive species &	
	2) Marine management: river, ocean	
COMM/ PROGRAMS	e) Build a community center where programs can be shared with public / Education	
	• Comm. Kitchen - Teaching, making products	
	• Poi Factory/Mill for Kalo to eat, sell, etc	
	• Hall large enough for dance, comm. gathering, hula, hāle	
	h) Establish camp site / mauka	
	• Include computer room for education	
	• Include music room for instruction, practices, etc. Record oral histories	
	i) Remove hooked animals from land	
	• Punana Leo / Olelo Hawai'i	
	f) Restore Huaihua Loko I'a to full function	
	• Caretakeers Hale	
	g) Restore Church Bldg (Front Farm Rd) Cemetery Trail	
	To achieve the above, DLNR needs to maximize lease land that's available. Objectives above cannot be achieved without partnerships of outside help.	

1.3 Overview of Kahana State Parks

- 1969 State acquisition
- Residents placed on month-to-month permits
 - State informs residents of plans to relocate them outside the park
 - A number of residents choose to move rather than face eviction
- 1970 Governor's Task Force created
- Others stayed and organized under Hui O Kanani O Kahana. They staged a demonstration and asked the Legislature for the right to stay and reside in Kahana
 - Task Force develops concept of "cultural living park"
 - Park plan developed (Mogi's Plan)
- 1971 BLNR adopts "living park" concept
- 1977 Hawai'i State Legislature adopts Senate Resolution 264, defining a "living park"
- "The purpose of a 'living park' in Hawaii is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways, and that in such a living park, the individuals living there shall participate in the purposes of the park by helping in the education of the public and by incorporating into the structure of their daily lives such values and ways."*
- 1978 Environmental Impact Statement (EIS) prepared based on 1974 revised plan by Mogi
- 1979 AG opinion that State money could not be used for resident's housing
- The 'Ohana Unity Council is formed by residential and community representatives and it drafts a set of proposed revisions to the 1978 EIS, popularly referred to as the "People's Plan." Park supporters also petition for the Advisory Council, as called for in the EIS, to be formed. The informal plan is one of two documents (the other is the 1985 plan) named by Section 6 of Act 15 (2009) to serve as interim guiding plans until adoption of a Kahana master plan.
- 1979-1981: \$1.2m spent by the State through the Capital Improvement Project (CIP) budget for initial development of park facilities and infrastructure.
- Construction of Orientation Center
 - Construction of comfort stations (3) and shelters
 - Parking lot at Coconut Grove
 - Entry road improvements
- 1984 Kahana Advisory Council (KAC) formed
- Advisory Council formed for Kahana, consisting of 120 representatives, with 8 committee chairs, 17 board members, and 6 officers, from all Kahana families, all non-governmental organizations with connections to Kahana, and all government agencies at the County and State levels involving Kahana.
 - KAC produces a census (1985) of residents that affirms 24 families with tenure back to the State's acquisition of Kahana (and leading to the departure of 2 families without that tenure).
 - KAC also develops the Kahana State Park Development Plan (1985), the second of two documents (the other is the 1979 plan) named by Section 6 of Act 15 (2009) to serve as interim guiding plans until adoption of a Kahana master plan.
 - Senate receives two status reports, as called for in the prior year's Senate Resolution, one by the Office of Hawaiian Affairs and the other written privately by supporters of the park. Both call for establishment of the Advisory Council. The Senate and House concurrently reaffirm their commitment to the park, based on the ahupua'a concept.
- 1987 Act 5 authorizes long-term (65 years) residential leases at Kahana, sets out criteria for persons given leases, exempts Kahana from subdivision and zoning requirements, and requires lessees to participate in the park interpretive program.

- 1989 State hires “Park Manager.”
- 1992 Survey of residents by Beverly Rodrigues for interpretive program noted gap between interest and performance.
- 1993 31 leases signed by State and Lessees.
- 35 lots, each around 10,000 square feet, subdivided.
 - Two residential areas created – Kahana Valley Road and Trout Farm Road.
 - Most lessees relocated from old house sites to new lot but a few on Trout Farm Road allowed to remain on existing house lot.
- 1995 Mortgages available and house construction begins.
- 1996 Interpretive hours commitment begins.
- 1999 Kahana Advisory Committee completed their recommendations for the Interpretive Program.
- 2001 AG’s opinion that DLNR had authority to issue new lease to replace defaulted lease.
- 2003-5 Three leases forfeited and one leased auctioned due to foreclosure.
- 2003 State Parks accepts applications for new leases subject to applicant being qualified according to Act 5 and having the financing to construct a new house on a subdivided lot.
- 2005 BLNR adopts preference categories for new leases based on Act 5 qualifications (28 applicants of which 12 were determined to qualify).
- 2008 AG advises DLNR that they do not have authority to issue new leases at Kahana
- June – DLNR notifies six families without permits or leases that they need to vacate and offers transition assistance
 - October – Scheduled eviction stopped by DLNR due to public protests and to give families more time to move
 - November – Stay on evictions and matter of new leases to be considered by 2009 legislature.
- 2009 Act 15 enacted by State Legislature on July 15.
- Two-year moratorium on evictions
 - Authorized DLNR to issue long-term residential leases
 - Establishes Kahana Planning Council to develop a master plan (meetings begin in October)
- 2010 Kahana Planning Council provides status report to Legislature.
- 2015 State Parks contracts with local planning company Townscape, Inc. to do an assessment of current community issues and environmental conditions at Kahana, and to develop a SCOPE for a comprehensive MASTER PLAN for Ahupua’a O Kahana State Park. The final report identified “three critical, overarching issues for Kahana”: (1) the concept of the cultural “living park,” (2) the 65-year leases, (3) the entity or entities that can best manage the residential leases and the recreational, cultural and natural resources of Kahana.
- 2016 State Parks contracts with Townscape, Inc. to develop alternative strategies and possible solutions for the “three critical, overarching issues for Kahana.” This planning process was designated as “Phase 1A,” with the deliverable defined as a “Progress Report” which would serve as a basis for more definitive recommendations that would be developed in a “Phase 1B.”

- Prepared by State Parks 11/2008 and Updated 11/2016

1.4 List of Kahana Documents

Documents in State Parks for Ahupua‘a ‘O Kahana State Park

(rev. 7-25-2012)

Report Covering the Proposed Park Development of Kahana Valley, John J. Hulten, March 17, 1965.

Preliminary Planning and Research for the Proposed Kahana Valley State Park, Tongg Associates, Inc., January 1970.

Archaeological Survey of Kahana Valley, Ko‘olaupia District, Island of O‘ahu, Robert Hommon & William Barrera, Jr., April 1971.

Sedimentology of Kahana Bay, O‘ahu, Hawai‘i, William Coulbourn, Hawai‘i Institute of Geophysics, December 1971.

Diadromous Macrofauna and the Kahana Stream-Estuary Ecosystem, John Maciolek, March 1972.

Preliminary Wildlife Management Plan for Kahana Valley Living State Park, Ron Walker, September 27, 1972.

Learning About Living, Kahana Valley Living State Park, An Educational Program plan prepared by the DOE for DLNR, Div. of State Parks, November 1, 1972.

Trophic Ecology and Macrofauna of Kahana Estuary, O‘ahu, Amadeo Sembrano Timbol, December 1972.

Socio-Cultural Research: Kahana Valley Living Park, Liliuokalani Trust, Queen Liliuokalani Children’s Center, December 22, 1972.

Excavations in Kahana Valley, O‘ahu, 1972, Robert Hommon & Robert Bevacqua, Feb. 1973.

Kahana Valley Botanical Survey, William Theobald and Nengah Wirawan, Dept. of Botany, UH, March 1973.

Kahana Valley State Park, O‘ahu, Hawai‘i, H. Mogi-Planning and Research, Inc., 1974.

Culture and Education Committee (Misc. Reports), Hui o Kanani o Kahana

Soils Investigation Report Kahana Valley State Park Housing and Orientation Center, Fewell Geotechnical Engineering, October 1978.

Revised EIS for H. Mogi-Planning and Research, Inc., October 30, 1978.

An Assessment of Soils Erosion and Sedimentation Hazards and Recommended Temporary Erosion Control Plan for Kahana Valley State Park Phase I and II at Kahana, Ko‘olaupia, O‘ahu, Hawai‘i; TMK: 5-2-02, William Hee & Associates, Inc., March 1979.

The Living Park Plan of Kahana’s People, ‘Ohana Unity Council, 1979.

An Hawaiian Heritage Living-Culture Plan for Kahana Valley State Park and the Tourist-Oriented Plans of the State of Hawai‘i -- A Comparison--, ‘Ohana Unity Council, May 1979.

Traffic Impact Assessment for Kahana Valley State Park, H. Mogi Planning and Research, Inc., June 1980.

- Biological Survey of Kahana Stream System, Kelly Archer, Amadeo Timbol, and James Parrish, September 1980.
- Prestabilization Survey of Huilua Fishpond, The Oceanic Institute for DLNR, Sept. 10, 1980.
- Draft Proposal for Historical, Environmental, and Cultural Interpretation/Education Programs, Kahana Valley State Park Program Advisory Committee, August 27, 1981.
- Environmental Features and Macrofauna of Kahana Estuary, O'ahu, Hawai'i, J.A. Maciolek and A.S. Timbol, Bulletin of Marine Science, 1981.
- EIS for Kahana Valley Water Development Project, R.M. Towill Corporation, October 1981.
- Revised EIS for Kahana "315" Reservoir Project, R.M. Towill Corporation, July 1983.
- Office of Hawaiian Affairs Status Report on Kahana Valley State Park for the Twelfth Legislature, Regular Session of 1984.
- Report on Residents of Kahana Valley, Kahana Advisory Council, May 8, 1985.
- Kahana Bay Navigation Improvements O'ahu, Hawai'i, Draft Detailed Project Report and EIS, U.S. Army Corps of Engineers, September 1985.
- Kahana State Park Development Plan, Kahana Advisory Council, Draft 7, Dec. 1985.
- Land Tenure in Kahana, Hawai'i, 1846 – 1920, Robert H. Stauffer, May 1990.
- Soils Investigation Kahana Valley State Park Subdivision Kahana, O'ahu, Hawai'i, Ernest K. Hirata & Associates, Inc. for Gray, Hong, Bills & Associates, Inc., July 25, 1990.
- Feasibility Study and Implementation Plan for Huilua Fishpond, Carol Araki Wyban, November 5, 1990.
- Kahana Valley, Hawai'i, A Geomorphic Artifact: A Study of the Interrelationships Among Geomorphic Structures, Natural Processes, and Ancient Hawaiian Technology, Land Use, and Settlement Patterns, Patricia Price Beggerly, Dec. 1990.
- Interpretive Plan for Huilua Fishpond, Kahana, O'ahu, Carol Araki Wyban, July 22, 1991.
- Archaeological Survey: Proposed Housing Areas in Kahana Valley State Park, Kahana, Ko'olauloa, O'ahu, Aug. 1991 and June 1992.
- Kahana Valley State Park Agricultural Feasibility, James Koshi, August 2, 1991.
- Preliminary Report on Archaeological Investigations at Huilua Fishpond, Kahana Valley, Ko'olauloa, O'ahu, Draft, Martha Yent and Alan Carpenter, Div. of State Parks, 1992.
- Prep Notice : Supplemental EIS for Kahana Valley State Park, April 1992.
- Interpretive Materials for Huilua Fishpond, Kahana Valley State Park, Carol Araki Wyban for the Div. of State Parks, May 20, 1992.
- Kahana Valley Program Participation Report and Community Organization Surveys, Beverly D. Rodrigues, June 1992.
- Supplemental Draft EIS for Kahana Valley State Park, Div. of State Parks, July 1992.

- Supplemental FEIS for Kahana Valley State Park, Bill Gorst, September 1992.
- A Plan for the Renovation of the Mormon Chapel at Kahana Valley State Park, Kauahikaua & Chun,/Architects for the Div. of State Parks, May 25, 1993.
- Archaeological Investigations at Huilua Fishpond, Kahana Valley, Ko'olauloa, O'ahu, TMK: 5-2-05: 21, Alan Carpenter & Martha Yent, Dec. 1993.
- Concerning the Construction of a Hale Kupuna in Kahana Valley and to Establish Rules and a Plan with Kahana Valley Residents Regarding Their Participation in Ahupua'a O Kahana, Prepared by the Div. of State Parks in response to HCR No. 164, H.D.1, S.D.1, 1994 Session, November 1994.
- EA and Restoration/Revitalization Plan for Huilua Fishpond, Kahana Valley State Park, Ko'olauloa, O'ahu, Carol Araki Wyban, Dec. 1995.
- Water Quality Monitoring in Support of the Restoration of Huilua Fishpond, Kahana Bay, State Park, O'ahu, Final Report, Prepared for the Div. of State Parks by Richard Brock, Sept. 1997.
- A Vision for Kahana Valley State Park for Review by the Kahana Advisory Committee, December 1997.
- Oli O Kahana, Al Rogers, 1998.
- Ahupua'a 'O Kahana: The Struggle Continues (1917 – 1997), Historical Accounts as Documented in the Honolulu Advertiser and the Star-Bulletin, Erlene "Sunny" Alonzo Greer, 1998.
- Ahupua'a O Kahana, The study of the history, the people, the land and the administrative influences towards the development of a cultural living park in Kahana Valley, Tracie Farias, Claude "Keek" Hottendorf, Wayne Nojiri, and Janelle West, May 1998.
- Restoration of Huilua Fishpond, Chie Takahashi, received May 11, 1999.
- Kahana: What Was, What Is, What Can Be, Susan Jaworowski, Legislative Reference Bureau, December 2001.
- Hau Workshop, Reference Materials, June 29, 2002.
- Biological Assessment of Kahana Stream, Island of O'ahu, Final Report, J. Michael Fitzsimons, James Parham, Lori Benson, and Mark McRae for DAR and CWRM, September 2002.
- Cultural Impact Assessment for the Kamehameha Highway, South Kahana Stream Bridge Replacement Project, Kahana Ahupua'a, Ko'olauloa District, Island of O'ahu, : TMK: (1) 5-2-05: 03 AND 5-2-02: 01, Aulii Mitchell and Hallett Hammatt, Cultural Surveys Hawai'i for Wilson Okamoto Corporation, January 2006.
- Section 6E-8, HRS: Request for "Effect, with Proposed Mitigation" Determination and Concurrence to Proceed with the Demolition of the Mormon Chapel; TMK: 5-2-02: por. 01, Memo from the Div. of State Parks to State Historic Preservation Division, May 30, 2007.
- Investigation on Kahana Wells, Prepared for DLNR by Marc Siah & Associates, Inc., Sept. 2009.
- Na Mo'o Akua O Kahana, The Legends Concerning the Gods of Kahana, Al Rogers, no date.

NOTE: This list was compiled from documents in the State Parks and Interpretive Branch Libraries.

1.5 State Board of Land and Natural Resources Conservation District Use Permit Action

June 26, 1979

REF. NO.: CPO-533
FILE NO.: OA-12/26/78-1116
180-Day Exp. Date: 6/24/79

Mr. James J. Yamashiro
State Parks Administrator
Division of State Parks, Outdoor
Recreation & Historic Sites
Department of Land and Natural
Resources
1151 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Yamashiro:

Subject: Conservation District Use Application for
Public Recreational Use at Kahana Valley, Oahu

We are pleased to inform you that the Board of Land and Natural Resources at its meeting of June 22, 1979, under agenda Item H-4, approved your application with modifications on the Phase I development of Kahana Valley, subject to the following conditions:

1. Compliance with applicable provisions of Sections 6a and 6D of Departmental Regulation No. 4, as amended (attached);
2. Inclusion of hold harmless condition in favor of the State of Hawaii for all agreements with eventual Kahana Valley residents and for all work that may be awarded to private contractors;
3. Other terms and conditions as prescribed by the Chairman;
4. That the applicant comply with all applicable Public Health Regulations;

Mr. James J. Yamashiro

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June 26, 1979

5. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
6. In the event unanticipated historical or archaeological remains are encountered by the effectuation of the proposed use, the applicant shall immediately contact the Historic Preservation Office at 548-6408;
7. A fire contingency plan acceptable to the Division of Forestry shall be developed and implemented during and after the completion of the State park;
8. Subject to the approval of the Board, all existing activities, including hunting and commercial activities, shall be allowed to continue under the control and management of the applicant, provided that such commercial activities shall be defined with respect to historic practice by the applicant;
9. In that the development plan for Kahana Valley State Park is specific only to the first phase and conceptual on later phases and that unforeseen circumstances could occur in the future to cause change, the applicant shall be given the flexibility of adapting such plans and programs as necessary to cope with such changes subject to Land Board review and approval;
10. The applicant shall be responsible for the protection of groundwater resources, native flora and fauna, and historic and archaeological resources of Kahana Valley;
11. That this application is for Phase I land use only, and that any land disposition requirements be addressed by the Division of Land Management in consultation with the applicant and the Attorney General's Office, particularly with respect to housing;
12. That a full Conservation District Use Application (CDUA) for Phase 2 and 3 be submitted for approval; and

Mr. James J. Yamashiro
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13. That the applicant continue to pursue the unresolved issues listed as Part 13, Summary of resolved issues on page 122 of the EIS, prior to returning to the Board of Land and Natural Resources (BLNR) for the Phase II and Phase III development.

Should you have any questions on any of these conditions, please feel free to contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

/s/SUSUMUONO

SUSUMU ONO, Chairman
Att. Board of Land and Natural Resources

cc: Oahu Board Members
Oahu Land Agent
U. S. Fish and Wildlife
U. S. Corps of Engineers
Department of Health
OEQC/EQC
C&C/Dept. of Land Utilization
C&C/Board of Water Supply

bcc: Land Management
DOWALD
Fish & Game
Forestry
NARS

RCE:ayo

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621 File No. : OA-12/26/78-1116
HONOLULU, HAWAII 96809 180-Day Exp. Date: 6/24/79
June 8, 1979

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

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

Gentlemen:

Conservation District Use Application for
Public Recreational Use at Kahana Valley, Oahu

APPLICANT: Division of State Parks, Outdoor Recreation and Historic Sites

USE REQUESTED: Multi-Phasal Recreational Development.

LOCATION: TMK's 5-2-01: 1, 5-2-02: 1, 5-2-05: 1, 20, 21

AREA OF PARCEL/
USE: Approximately 5260 Acres.

SUBZONE: Protective and Resource (See Exhibit "A" attached).

DESCRIPTION OF AREA:

A revised Environmental Impact Statement, entitled "Kahana Valley State Park" was prepared for the project and was accepted by the Governor on January 2, 1979. As such, the substance of this report will include excerpts of information as well as pertinent exhibits from the accepted EIS.

Located along the windward coast of Oahu, Kahana Valley is a large "U-Shaped" land feature at the southern end of the district of Koolauloa earlier acquired by the State of Hawaii for park purposes. Except for small isolated areas along Kamehameha Highway and the existing County park, much of the Valley now belongs to the State of Hawaii. The lateral boundaries of the Valley are physically identified by two ridges running in a northeast to southwest axis. To the southwest, the Valley rises over 2700' above sea level to the crest of the Koolau Mountain Range.

Kahana Bay, whose Konohiki rights were purchased along with the acquisition of the Valley, is the seaward extension of Kahana Valley. With its seaward extent demarcated as a line drawn between Makalii point to the northwest and Puumahia Point to the southeast, Kahana Bay is about 314 miles long and varies between 2400 to 4000' in width. The waters within and in the estuary of Kahana Bay have been designated class AA, the most restrictive classification, by the water quality standards of the Department of Health. While much of the Bay is less than 18' deep, there are a few places where the depth reaches 35'.

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The main natural watercourses within the Valley are the Kahana and Kawa Streams which merge at a point slightly more than one mile inland of the Bay. In addition, archaeological surveys of the Valley have determined the existence of twelve auwais (ditches) which connect to either stream. At above the 800' elevation, on the slopes of the Koolau Mountain Range, is the Waiahole Ditch/Kahana Development tunnel which provides water to the sugarcane and pineapple fields in Central Oahu. Well facilities and appurtenances managed by the Board of Water Supply are also located in the Valley, on the lower portions northwestern ridge. Surveys by the U. S. Soil Conservation Service were conducted in the Valley. Fifteen different soil series and 17 soil types were determined by the Service. Slope analysis show that much of the Valley consists of slopes of over 30%, followed by approximately equal amount of acreage in the 10-30% and 0-10% slope class.

Vehicular access to the Valley is immediate from Kamehameha Highway located near the coastline. While the Valley can be entered via the existing Kahana Valley Road, internal road systems within are minimal and substandard with mauka portions restricted to 4-wheel drive vehicles or foot traffic.

Studies have identified thirteen major plant communities in the Valley, ranging from native Kukui forests in the gulches and ohia stands in back portions to cultivated fields and artificially maintained pasture in makai areas. The greater portion of the Valley is in forest reserve or open space. Prolific growth of certain types of vegetation has reclaimed areas formerly cultivated or in other usage. Archaeological surveys and published reports articulate usage of Valley portions for the cultivation of wet and dry land taro, sweet potatoes with later cultivation of rice.

With the exception of feral pigs, whose population is checked by hunting, there are relatively few animals in the Valley that are of specific interest to prospective park users. There are no game fish, e.g. trout, in the streams, but species of forage fish such as guppies, sword tails and gobies are present. Mullet and milkfish are commonly found in the lower reaches of the stream estuary and were formerly raised in Huilua Pond.

Briefly about Huilua Pond which is makai of Kamehameha Highway and south of the mouth of Kahana Stream, it has been designated as a National Historic Landmark pursuant to the National Historic Preservation Act of 1966. Because of its place on the National Historic Register, Huilua Pond is eligible for reconstruction and restoration grant-in-aid funding with the approval of the Advisory Council on Historic Preservation. As the most imposing archaeological site in Kahana Valley Huilua Pond, a loko kaupa or enclosed seashore fishpond, was used for the fattening and storage of food fish rather than fish culture and also as a source of fish under temporary kapu.

Other archaeological sites found in Kahana Valley are identified by exhibits attached.

Native and introduced waterbirds such as the black-crowned night heron and cattle egret can occasionally be found in lower

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areas of the Valley. Two endangered species, the Hawaiian coot and the Hawaiian gallinule, are recorded annually in Huilua Pond. Throughout mid-elevation areas where exotic vegetation is typical, introduced species of birds such as the Kentucky cardinal, California linnet, mynah, white-eye, house sparrow and rice-bird are common. Native songbirds such as the apapane and amakihi are likely to exist in the upper Valley, along the crest of ridges. It is possible that a few Oahu creepers, a rare and endangered species, may be found in the ohia forests.

Hiking and hunting are conducted in the Valley with about 20-40 hunting permits issued annually. Approximately 15 hunters each month enter the Valley.

Existing land uses include approximately 12 acres of State and County owned lands in Kahana currently being utilized for park purposes. This includes the makai beach park portions as well as the area mauka of Kamehameha Highway in the coconut grove section of the Valley. Facilities include a comfort station, boat launching ramp, parking area and lifeguard station in the makai portion and picnic tables and a parking area mauka of the highway. The City and County of Honolulu currently have jurisdiction over the beach park area. Entry into the sections of the park mauka of the picnic area is by Department of Land and Natural Resources' permit only.

Portions of the Valley are currently occupied by homes. The majority of the residents live in the makai portion of the Valley. Most families grow fruits and vegetables and raise chickens, ducks, geese. A few raise pigs and cattle. Most of the existing housing in the Valley is in very poor condition. Not a single unit passed inspection for compliance with the City's building code.

Residents are now served by the Hawaiian Electric Company, Hawaiian Telephone Company and some by the Board of Water Supply. Sewage disposal is by means of individual cesspools at each residence.

The Valley, according to historic data, is subject to annual flooding to a depth of 12" and tsunami inundation. While localized flooding can occur at any time during the year, it is more likely to occur during the period of heavy winter rains. Actual damage by tsunami, generated from the direction of South America, is likely to be confined to areas seaward of Kamehameha Highway.

DESCRIPTION OF PROPOSED USE:

According to the EIS, Kahana Valley State Park is conceived as a low-intensity multi-purpose park that incorporates compatible aspects of the following elements: Hawaiian cultural programs; low-density, resource based recreation activities; research activities; environmental education programs and an operation and maintenance program that will involve the close working relations between the State Parks Division and the Valley residents. The park will place particular emphasis on an environment where Hawaiian values and culture will be embodied in a "living park" concept.

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For the purpose of definition, a "living park" is:
"nature and foster native Hawaiian culture and spread
knowledge of its values and ways...in such a living
park, the individuals living there shall participate
in the purposes of the park by helping in the education
of the public and by incorporating in the structure of
their daily lives such values and ways."

Kahana Valley State Park is part of the State's park system
and is designed to meet the goals of this system which are:

1. Conserving and preserving outstanding examples of the State's natural and cultural resources for the inspiration and benefit of the public; and
2. Providing non-urban recreation opportunities for the State's citizens and visitors that are normally beyond the responsibilities of the State's political subdivisions.

The first phase development plan addresses the elements of the park's overall physical development that allows for opening the park for general recreation use and the initial phase of the cultural program. Within this phase of the park's development the following development areas are addressed: resident housing, infrastructure development, trail development, overnight and picnic areas development, interpretive signs and graphics, program facilities, multi-purpose structure, storage area and surface drainage improvements.

Hazard areas, natural features, historical areas and areas that would cause minimal environmental impact were considered in siting the various activity areas. The development areas are discussed individually within the EIS noting the various planning considerations, intent of the proposed development and the anticipated environmental impacts.

The following considerations are applicable to the entire park development:

1. In areas subject to local flooding, structures and activity areas will be raised off the ground or placed on mounds above grade;
2. Materials used for construction will be "natural" and where man-made materials are used, care will be taken to disguise them;
3. Ground cover will be of such nature as to withstand moderate to heavy traffic;
4. Majority of the vegetation will be plants indigenous or endemic to Hawaii;
5. Paved roads will be kept to a minimum;
6. No dwelling units will be constructed in hazard (flooding, tsunami) prone areas;
7. Buildings to be open to take advantage of the outdoor environment;

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8. If archaeological phenomena are discovered during construction, they will be completely evaluated and either salvaged, the construction area moved, plans adjusted so as not to pose a threat to these resources, or, the construction will proceed. The last course of action will be taken only if the resources are judged to be of so little significance that no other course is warranted.

Future development focuses on development of the Ka'a'awa side of the Valley, improvement and development of trails in the back of the Valley and further development and expansion of the park's recreational and cultural programs. The following represent a proposed scheme for future development.

Phase 2. Physical and Program Development

1. Develop on-going cultural education programs for park visitors. The program may include classes, demonstrations and participatory programs in Hawaiian crafts, horticultural practices, water related activities and cultural awareness;
2. Second phase of resident quarters development with appropriate infrastructure improvements for the remainder of Valley participants;
3. Development of demonstration areas and structures on the Ka'a'awa side of the Valley;
4. Provide for parking area(s) for this increment of development;
5. Development of beach access and water related activity areas on the Ka'a'awa side of Kahana Stream and beginning process of integrating Kahana Beach Park into overall plan;
6. Improvement and construction of loop trails in the mauka portions of the Valley which would connect to the Phase 1 trails;
7. Coordinate circulation systems within the first two phases of development;
8. Integrate restoration and/or stabilization of Huilua Fishpond into cultural programs;
9. Begin work on auwai (irrigation) systems
10. Provide, by or in cooperation with Department of Transportation, for acceleration and deceleration lanes for ingress and egress from the park. Provide for a left-turn storage land from the Ka'a'awa approach. Provision for appropriate safety signs and lighting of the intersection; and,
11. Provision for pedestrian movement across the highway.

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Phase 3. Physical and Program Development

1. Continue expansion of cultural education programs in the Valley;
2. Development of support facilities for demonstration areas;
3. Expansion of agricultural fields;
4. Restoration of agricultural auwai;
5. Expansion of hiking trails system that would provide connections to Kualoa Regional Park, Waikane Trail, Koolau Summit Trail and Punaluu Valley;
6. Development of special trails to specific locations, such as heiau sites, fishing shrines, areas of historic sites concentration;
7. Coordination of circulation systems throughout the Valley;
8. Improvement of access roads;
9. Development of environmental monitoring systems; and,
10. Development of flood control measures.

The proposed programs and activities are further detailed within the accepted EIS, a copy of which is appended to the basic file.

COMMENTS RECEIVED:

U. S. Army Corps of Engineers: Based on additional information received from Mr. Ernest Heen, the project consultant, it was determined that no Department of Army permit will be required.

Department of Health: No objections as no major adverse environmental effects are foreseen from the proposed use.

Department of Transportation: Development plans should include adequate provisions (setbacks, etc.) for future highway improvements to avoid future compliance requirements of the Federal Government. Access connection to the existing highway should be coordinated with the Land Transportation Facilities Division to ensure satisfaction of safety design requirements.

Board of Water Supply: The requested use is acceptable. However, sewage disposal plans must be submitted to the Sanitation Branch, Department of Health for approval.

✓ Fish and Game: No objections. Care should be taken in developing bottom lands so as to provide stable habitat for Hawaiian coot, gallinule, stilt and koloa. Field inspection was conducted on February 15, 1979. Until hunting issue is resolved, approval should be only for the 1st phase of development.

Forestry: Approval of the application is recommended with the following considerations:

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1. All proposed development in the Valley should be of a design or selection of materials to minimize the decrease in water percolation and recharge of the groundwater system.
2. The report stresses the need to minimize impact in the more sensitive areas in the mauka lands and to maintain the integrity of the area. Even trail construction in such areas need to be carefully developed in order not to detract from water quality and disturbance to the native flora. The mentioned permit system would provide controlled use of such areas.
3. Although the area is lush in a high rainfall belt, and within minutes of the nearest fire station, a fire contingency plan with fire fighting tools should be available during and after all phases of development.

Land Management: No objection. Documentation of land set aside to the applicant is in process.

DOWALD: No objection.

NARS: No objections. However, it should be noted that the NARS Commission has selected the cloud forest at the head of the Valley, above the 1200-1400' elevation and the Wailoa Ditch Tunnel, to be part of a proposed Natural Area Reserve leeward of the Koolau Summit. Inclusion of the Kahana area as part of the proposed Natural Area Reserve would place a contiguous windward and leeward native cloud forest unit within the forest reserve.

ANALYSIS:

Following the acceptance of the applications for processing of the application, the applicant, by letter dated January 24, 1979, was notified that:

1. The proposed park development involves both permitted and conditional uses of the Resource (R) Subzone of the Conservation District according to Departmental Regulation No. 4, as amended; no development is to occur within the Protective (P) Subzone;
2. No public hearing pursuant to Section 183-41, HRS, as amended, will be required in this instance since the proposed use is non-commercial in nature;
3. The EIS for Kahana Valley State Park was accepted by the Governor on January 2, 1979.

The project was granted a Shoreline Management Permit by the City Council, City and County of Honolulu, on March 6, 1979.

As proposed, the Kahana Valley State Park is to achieve and realize the purpose for which acquisition of the lands is meant:

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Phased development of each program component and associated improvements will, of course, depend on the availability of public funds from both Federal and State sources. Development of the State Park will be conducted over the ensuing years with appropriate measures to temper construction of visitor attractions and recreational facilities with sensitive environmental and cultural (archaeological and historical) resources.

After consulting the applicant, it was learned that the issue of hunting is not completely resolved. For the time being, hunting will be allowed provided the hunter has secured a hunting license and a permit from the applicant to enter the State park. The EIS however, recommends that hunting be confined to one weekend day per month when the area would be closed to other users as a means to resolve the hunting issue.

The EIS further proposes the exploration of the feasibility of establishing an agricultural park within Kahana Valley following the general theme of the park. Such a prospect if economically and programmatically feasible would be aligned with the agricultural directives of the State of Hawaii.

In light of the preceding paragraph, it was earlier requested by the Division of Fish and Game that consideration be given to the incorporation of a fish hatchery and rearing facilities in the Kahana Valley State Park plans. The request stems from preliminary surveys which indicate that the Valley possesses: (1) ample water of suitable quality; and (2) adequate land with the right topography and soil, two of the primary requirements for the establishment and operation of a fish propagation facility.

The applicant noted that the marketing of cultivated products such as bananas, papayas and vegetables are a matter of historic precedence. Like the cultivation of taro and rice in earlier times, such activities are compatible and should be permitted to continue but controlled and managed so as to not conflict with the primary purposes of the State park.

Staff believes that the proposed recreational use, including its myriad of programs and associated facilities and improvements is consistent with the objectives of the Protective Subzone (where only maintenance of the Koolau Summit trail is contemplated) and the Resource Subzone. Intensive research accented by judicious planning and management will enhance the many assets of the Valley in the interests of public recreation.

RECOMMENDATION:

Approval of the ^{Phase 1} multi-phased development of Kahana Valley for public recreational uses is recommended with the following conditions:

1. Compliance with applicable provisions of Sections 6A and 6D of Departmental Regulation No. 4, as amended;
2. Inclusion of hold harmless condition in favor of the State of Hawaii for all agreements with eventual Kahana Valley residents and for all work that may be awarded to private contractors;

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3. Other terms and conditions as prescribed by the Chairman;
4. That the applicant comply with all applicable Public Health Regulations;
5. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
6. In the event unanticipated historical or archaeological remains are encountered by the effectuation of the proposed use, the applicant shall immediately contact the Historic Preservation Office at 548-6408;
7. A fire contingency plan acceptable to the Division of Forestry shall be developed and implemented during and after the completion of the State park;
8. Subject to the approval of the Board, all existing activities, including hunting and commercial activities, shall be allowed to continue under the control and management of the applicant, provided that such commercial activities shall be defined with respect to historic practice by the applicant;
9. In that the development plan for Kahana Valley State Park is specific only to the first phase and conceptual on later phases and that unforeseen circumstances could occur in the future to cause change, the applicant shall be given the flexibility of adapting such plans and programs as necessary to cope with such changes subject to Land Board review and approval; and
10. The applicant shall be responsible for the protection of groundwater resources, native flora and fauna, and historic and archaeological resources of Kahana Valley.


Respectfully Submitted

Phase I

Leonard Bautista
Staff Planner

11. That this Application is for Phase I only. Any land disposition requirements be addressed by the Div of Land Mgmt in consultation w/ the Applicant & the Ag Office, particularly w/ respect to housing.

APPROVED FOR SUBMITTAL:


 SUSUMU ONO, Chairman
 of the Board

12. That a Full CDV for Phase II & III be Submitted for Approval
12. That the Applicant be allowed to Return to the Board for Phase II & Phase III Development as an incremental basis rather than through modification of this CDV.
13. That the Applicant Continue to Pursue the unresolved Issues Listed on Part 13-g Summary of Unresolved Issues on Page 122 of the SLS Plan to Return to the Board for Phase II & Phase III development

1.6 Act 5

ACT 5

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that Kahana Valley State Park possesses unique historical and natural resources and persons long associated with Kahana Valley who are knowledgeable and qualified to interpret for the general public the significance of these resources for the public's benefit and enjoyment. Accordingly, the purpose of this Act is to authorize the department of land and natural resources to directly issue long-term residential leases to those qualified persons now residing in Kahana Valley on the condition that these qualified persons participate in Kahana Valley State Park's interpretive programs for the public.

SECTION 2. The department of land and natural resources is hereby authorized to negotiate and enter into long-term residential leases not to exceed sixty-five years in duration with persons who meet the following criteria:

- (1) Persons who at the time of enactment of this Act reside in Kahana Valley on land acquired for Kahana Valley State Park and have lived continuously on this land since before 1970; or
- (2) Persons who on the effective date of this Act have permits issued by the department of land and natural resources allowing them to reside on designated parcels of land acquired for Kahana Valley State Park.

SECTION 3. In exchange for the State's long-term leases, all qualified persons shall agree to be an essential part of the interpretive programs in Kahana Valley State Park as directed by the department of land and natural resources. The department of land and natural resources is required to establish a monitoring system and enforcement mechanism to insure compliance with these agreements.

SECTION 4. The lands eligible for long-term residential lease negotiations under the provisions of this Act are limited to those located in tax map key parcels 5-2-01:1, 5-2-02:all, and 5-2-05:1 and 21, situate at Kahana Valley and as further determined by the board of land and natural resources.

SECTION 5. The department of land and natural resources is authorized to subdivide and provide for the creation of a residential subdivision in Kahana Valley for persons who receive long-term leases under the provisions of this Act, which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, the development and improvement of land, and the construction of units thereon; provided that the department of land and natural resources finds the project is consistent with the findings and purpose of this Act and the project meets minimum requirements of health and safety; and provided further that no state funds shall be expended in the relocation or construction of these residences authorized under the provisions of this Act.

SECTION 6. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire (1) when leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in this Act, or (2) on January 1, 1992, whichever occurs first.

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ACT 3

ACT 3

S.B. NO. 376

A Bill for an Act Relating to Act 145, Session Laws of Hawaii 1984.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature has heretofore authorized special purpose revenue bonds pursuant to Act 145, Session Laws of Hawaii 1984, for the purpose of assisting Kamakani Ikaika, Inc., or a partnership in which such company is a general partner, in the establishment of a wind energy farm and related facilities. It is in the public interest and for the public health, safety and general welfare to amend said Act to expressly provide that the output of the wind energy farm approved by said Act 145 shall be made available for use by members of the general public by its sale to Hawaii Electric Light Company, Inc.

SECTION 2. Section 2 of Act 145, Session Laws of Hawaii 1984, is hereby amended to read as follows:

"**SECTION 2.** Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$12,000,000 in one or more series for the purpose of assisting Kamakani Ikaika, Inc., a California corporation, or a partnership in which Kamakani Ikaika, Inc., is a general partner, in the generation of new capital for the establishment of a [5 megawatt] wind energy farm and related facilities. The electrical output of such facilities shall be made available to members of the general public by sale thereof to Hawaii Electric Light Company, Inc. The legislature finds and determines that the activity and facilities of Kamakani Ikaika, Inc., constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval retroactive to May 24, 1984.

(Approved April 6, 1987.)

ACT 4

S.B. NO. 887

A Bill for an Act Relating to State Resort Camps and Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 184, Part II, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved April 9, 1987.)

ACT 5

H.B. NO. 1494

A Bill for an Act Relating to Public Lands.

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ACT 6**SECTION 7. This Act shall take effect upon its approval.**

(Approved April 13, 1987.)

ACT 6

H.B. NO. 312

A Bill for an Act Relating to Decisions of the Commissioner of Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 403-25, Hawaii Revised Statutes, is amended to read as follows:

"§403-25 Hearing and investigation; ruling of commissioner. Upon the hearing of the application the commissioner shall make investigation of the facts and conditions referred to in the application or pertinent thereto, and hear any objections thereto. At any hearing the burden of proof shall be upon the applicants. The commissioner may prescribe rules and regulations for the proceedings in connection with the hearing.

If the result of the hearing satisfies the commissioner:

- (1) That the proposed bank is to be formed for legitimate objects as contemplated by this chapter;
- (2) That the character, financial responsibility, and general fitness of the persons named in the application are such as to command the confidence of the community in which the proposed bank is to be located and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;
- (3) That the proposed directors and officers are competent to successfully manage a banking business;
- (4) That the organization of the proposed bank is justified; and
- (5) That the public convenience and advantage will be promoted by the opening of the proposed bank;

then the commissioner shall approve the application, and shall endorse on each of the duplicate original applications the date and the word "approved" over the commissioner's official signature.

If the commissioner is not satisfied or believes that the public interest will be endangered or that the approval of the application is not otherwise advisable the commissioner shall endorse with the date the word "disapproved" thereon. One of the duplicate original applications shall be filed in the commissioner's office and the other returned by mail to the applicants. [The commissioner may grant a conditional approval of any application requiring the applicants to make such additional showing or such changes in the proposed bank as the commissioner may consider advisable.] Any decision of the commissioner adverse to the applicants shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91."

SECTION 2. Section 404-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If the commissioner disapproves an agreement, the commissioner shall state the commissioner's objections [and give an opportunity to the merging banks to amend the merger agreement to obviate the objections]. Any decision of the commissioner adverse to the merging banks shall be

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ACT

reviewable upon appeal to the circuit court of the first judicial circuit provided in chapter 91."

SECTION 3. Section 406-3, Hawaii Revised Statutes, is amended to read as follows:

"§406-3 Conditions precedent to qualification. No corporation joint-stock company shall become qualified to do business as a trust company, and the certificate provided for in section 406-1.5 shall not be issued any corporation or joint-stock company, until the commissioner is satisfied with or without a hearing on the application: (1) that the proposed trust company is to be qualified for legitimate objects as contemplated by this chapter; (2) that the character, financial responsibility, and general fitness of the officers and the directors of the proposed trust company are such as to command the confidence of the community in which the proposed trust company is to be located and to warrant the belief that the business of the proposed trust company will be honestly and efficiently conducted; and (3) that data and facts submitted support reasonable assurances of the probability of the operation of the proposed trust company. The commissioner may prescribe rules and regulations for the implementation of this chapter including rules and regulations governing proceedings in connection with any hearing or investigation. Any decision of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91. [The court shall hear the appeal *novo* without a jury.]"

SECTION 4. Section 407-13, Hawaii Revised Statutes, is amended to read as follows:

"§407-13 Investigation by commissioner; allowance or disallowance of application. Upon the filing of the application, if the commissioner upon investigation finds (1) that the financial responsibility, experience, character, and general fitness of the applicants and of the officers or members thereof are such as to command the confidence of the community and warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter; (2) that allowing the applicants to engage in this business will promote the convenience and advantage of the locality or community in which the business of the applicants is to be conducted; and (3) that capital stock in excess of \$25,000 has been subscribed for and ten per cent paid to the applicants in cash; the commissioner shall write upon the face of the application the fact that the commissioner has approved the same, together with the date, and affix the commissioner's signature. The application shall then be returned to the applicants who shall upon receipt of the approved application transmit the same within ten days to the commissioner, together with the articles of association, and pay to the commissioner the corporation and other filing fees required by law.

No application shall be disapproved except after the applicants have had notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the commissioner shall, within two days thereafter, prepare and keep on file in the commissioner's office, written order [or] of denial thereof, which shall contain the commissioner's findings with respect thereto and the reasons supporting the denial, a copy of which shall be served upon the applicants a copy thereof. Within ten days after the receipt of the copy the applicants may appeal from the order of denial to a board consisting of the director of commerce and consumer affairs, controller, and director of taxation by filing with the comptroller a notice of appeal. After notice by mail to the applicants and after a hearing at which the

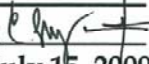
1.7 Act 15

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

VETO
H.B. NO. 1552
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT **VETO OVERRIDE**

RELATING TO PUBLIC LANDS.

Act No. **15**
Approved: 
Dated: July 15, 2009

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state living parks
2 possess unique historical and cultural value. In state living
3 parks, individuals reside on lands located within the living
4 park and are an essential part of the purpose of the park for
5 the benefit of the public. As set forth in Senate Resolution
6 No. 264, S.D. 1, Regular Session of 1977, the purpose of a
7 living park is to nurture and foster native Hawaiian culture and
8 spread knowledge of its values and ways.

9 Kahana valley state park is an example of a living park.
10 Between 1965 and 1969, the State condemned the ahupuaa o Kahana
11 for use as a state park, making it the only landowner in the
12 State of Hawaii, other than the owners of Niihau, to own an
13 intact ahupuaa. An ahupuaa, a triangular slice of land running
14 from the mountains to the ocean, was the major land division
15 used by pre-contact Hawaiians.

16 Families living in Kahana at the time of condemnation were
17 of varied ethnic backgrounds, and the people of Kahana generally
18 lived a simple, subsistence lifestyle in harmony with native

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1 Hawaiian values and traditions. In 1970, a governor's task
2 force proposed the concept of a living park as a way in which
3 the residents could continue to live in the park and participate
4 in the park for the benefit of the public.

5 To effectuate the living park concept, Act 5, Session Laws
6 of Hawaii 1987, authorized the department of land and natural
7 resources to issue long-term residential leases to individuals
8 who had been living on the land. In 1993, the department of
9 land and natural resources entered into sixty-five-year leases
10 with thirty-one qualifying families and required that all
11 lessees be an essential part of the interpretive programs by
12 contributing at least twenty-five hours of service each month to
13 benefit the park. To provide lessees with money to construct
14 new houses, Act 238, Session Laws of Hawaii 1988, appropriated
15 funds to provide low-interest home construction and mortgage
16 loans for Kahana valley state park lessees. The appropriation
17 was sufficient for twenty-six lessees to receive loans in the
18 amount of \$50,000 each.

19 Since 1993, three leases have been terminated by the
20 department of land and natural resources for noncompliance with
21 lease conditions. Other families living in Kahana valley have
22 sought to obtain long-term leases, but the department of land

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1 and natural resources refuses to issue any further leases,
2 relying on the attorney general's opinion issued on March 24,
3 2008, asserting that Act 5, Session Laws of Hawaii 1987,
4 expired.

5 Since 1970, Kahana residents and the greater community
6 proposed numerous plans to the board of land and natural
7 resources. However, the board of land and natural resources
8 never adopted a master plan for Kahana valley state park. As a
9 result, there has been a lack of clarity, vision, goals, and
10 policies directing the residents and the department of land and
11 natural resources in the development and management of Kahana
12 valley state park.

13 The management of a living park requires that the
14 department of land and natural resources have the authority to
15 negotiate and enter into long-term residential leases, a clear
16 master plan, and the resources to support the living park,
17 including the establishment of a land manager position akin to a
18 konohiki.

19 The purpose of this Act is to:

- 20 (1) Establish a two-year moratorium on evictions of
21 persons who at the time of the enactment of this Act,
22 reside in Kahana valley state park, have participated

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1 in interpretive programs for Kahana valley state park,
2 and have continuously lived there since before 1987 or
3 hold or have held a long-term lease or permit to
4 reside there;

5 (2) Authorize the department of land and natural resources
6 to issue long-term residential leases to qualified
7 persons; and

8 (3) Establish a living park planning council to develop a
9 master plan for each state living park that will
10 provide the framework, proposed rules, measurements
11 for success, and planning process to ensure that the
12 living park achieves its purpose and goals.

13 SECTION 2. As used in this Act, "living park" means a
14 state park where individuals residing on lands located within
15 the state park are an essential part of the purpose of the park,
16 for the benefit of the public.

17 SECTION 3. (a) Notwithstanding any other law to the
18 contrary, including chapter 171, Hawaii Revised Statutes, there
19 is established a two-year moratorium from the effective date of
20 this Act on the eviction of persons who at the time of the
21 enactment of this Act:

22 (1) Reside in Kahana valley state park;

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1 (2) Have participated in interpretive programs for Kahana
2 valley state park; and

3 (3) Have:

4 (A) Continuously lived there since before 1987; or

5 (B) Held a long-term lease or permit to reside there.

6 (b) Notwithstanding any other law to the contrary,
7 including chapter 171, Hawaii Revised Statutes, the department
8 of land and natural resources is authorized to negotiate and
9 enter into long-term residential leases for sites in state parks
10 with acreage greater than five thousand acres but not more than
11 six thousand acres, with the following qualified persons:

12 (1) Persons who at the time of enactment of this Act
13 reside in a state living park and are contributing at
14 least twenty-five hours of service each month to
15 benefit the state living park; and

16 (2) Other qualified persons who may be identified in a
17 living park master plan approved by the board of land
18 and natural resources.

19 SECTION 4. (a) For each state living park there shall be
20 established a living park planning council to be placed within
21 the department of land and natural resources for administrative
22 purposes. The planning council shall consist of five voting

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1 members, appointed in the manner and to serve for the terms
2 provided in section 26-34, Hawaii Revised Statutes, and two ex
3 officio nonvoting members.

4 (b) The voting members of the living park planning council
5 shall be as follows:

6 (1) One member shall be a representative of the department
7 of land and natural resources;

8 (2) Three members shall be representatives of families who
9 reside in the state living park, selected from a list
10 of resident nominees provided by the president of the
11 park's community association; and

12 (3) One member shall be a representative of the general
13 public.

14 (c) The ex officio nonvoting members of the planning
15 council shall be appointed in equal numbers by the state senator
16 and the state representative representing the district in which
17 the state living park is located. Each nonvoting member of the
18 planning council shall possess general knowledge of at least one
19 of the four strategic areas listed below:

20 (1) Land use laws or land use planning;

21 (2) Community-based planning;

22 (3) The environment; or

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- 1 (4) Native Hawaiian culture.
- 2 (d) The council shall select a chairperson by a majority
3 vote of its voting members; provided that no member may serve as
4 chairperson for more than three consecutive years.
- 5 (e) Council members shall serve without compensation but
6 shall be reimbursed for actual expenses, including travel
7 expenses, incurred in the performance of their official duties.
- 8 (f) Any action taken by the planning council shall be
9 approved by a majority of its voting members. Three voting
10 members shall constitute a quorum to conduct business.
- 11 (g) The first meeting shall be held on the third Tuesday
12 in July, beginning in 2009.
- 13 SECTION 5. The development of a master plan for a state
14 living park shall rest with the living park planning council.
15 The master plan shall be reviewed and updated as needed. In
16 developing the master plan, the council, among other things,
17 shall:
- 18 (1) Establish goals and objectives to ensure the living
19 park reaches its full potential;
- 20 (2) Set forth standards, timelines, and other measurements
21 to ensure the living park achieves its goals and
22 objectives;

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- 1 (3) Identify programs that enhance educational
- 2 opportunities and cultural awareness in the living
- 3 park;
- 4 (4) Develop plans to secure funding for a land manager, a
- 5 housing fund, and any other financial needs identified
- 6 in the living park master plan;
- 7 (5) Seek out and consult with all residents of the living
- 8 park, kupuna, community groups adjacent to the living
- 9 park, and organizations that have knowledge that may
- 10 benefit the living park;
- 11 (6) Advise the department of land and natural resources on
- 12 any matter relating to the living park;
- 13 (7) Propose agreements that will establish the full
- 14 authority of the planning council to implement the
- 15 master plan, including whether the planning council
- 16 can hire a land manager, establish a nonprofit
- 17 organization, or enter into contracts;
- 18 (8) Establish criteria, policies, and controls governing
- 19 the management of the living park leases, including:
- 20 (A) Selection of persons for leases; provided that
- 21 preference is given to persons residing in the
- 22 park who contribute twenty-five hours of service

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- 1 each month to benefit the living park and are
2 actively seeking a lease in the living park;
3 (B) Designation of lands to be leased;
4 (C) Terms and conditions of leases;
5 (D) Monitoring and enforcement of lease terms and
6 conditions;
7 (E) Treatment of persons residing in a living park
8 without a lease; and
9 (F) Assignment and renewal of leases;
10 (9) Maintain, promote, and perpetuate the aloha spirit as
11 defined in section 5-7.5, Hawaii Revised Statutes; and
12 (10) Develop protocols and proposals to encourage the
13 caring for kupuna and the sharing and perpetuation of
14 kupuna knowledge.
15 SECTION 6. The living park planning council shall submit a
16 proposed master plan to the board of land and natural resources
17 no later than one year following the first meeting of the
18 planning council. Within ninety days after submission of the
19 proposed master plan, the board of land and natural resources
20 shall either adopt the proposed master plan or deny the proposed
21 master plan. If it denies the proposed master plan, the board
22 of land and natural resources shall submit to the living park

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1 planning council, in writing, its reasons for denying the
2 proposed master plan. The living park planning council shall
3 revise the proposed master plan and resubmit the revised
4 proposed master plan to the board of land and natural resources
5 until a final master plan is adopted.

6 The living park master plan shall become effective upon its
7 adoption by the board of land and natural resources. Pending
8 adoption of the living park master plan, the department of land
9 and natural resources and the residents of the living park shall
10 be guided by existing plans developed by the residents of the
11 living park. For example, in Kahana valley, the Kahana state
12 park development plan, dated December 1985, and the living park
13 plan of Kahana's people, dated 1979, shall be guiding documents
14 for Kahana valley state park.

15 SECTION 7. Until the living park master plan is adopted
16 pursuant to this Act and a long-term residential lease
17 application has been acted upon, persons currently residing in a
18 living park at the time of enactment of this Act shall not be
19 evicted on the grounds that they lack a valid lease; provided
20 that they are contributing at least twenty-five hours of service
21 each month to benefit the living park.

HB1552 CD1 HMS 2009-4066



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H.B. NO. 1552
H.D. 2
S.D. 2
C.D. 1

1 SECTION 8. The department of land and natural resources
2 shall submit to the legislature an initial progress report,
3 including any proposed legislation, regarding the implementation
4 of this Act not later than twenty days prior to the convening of
5 the regular session of 2010 and a final progress report,
6 including any proposed legislation, not later than twenty days
7 prior to the convening of the regular session of 2011.
8 SECTION 9. This Act shall take effect on July 1, 2009.

HB1552 CD1 HMS 2009-4066



1.8 DLNR Action on Six New Leases for Kahana

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

March 22, 2013

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

File No.: SP13AKSP01

O'ahu

Issuance of Six (6) Direct Leases to the following: Ervin H. Kahala and Lucretia I. Kahala, Thoran Fawn Evans, Moses Mahealani Kahala and Dorothy Laniola Kahala, Dutchess K. Malepe and Aviu Malepe, Lena Puanani Soliven and Darryl James Soliven, and Sherri Lynn Leimomi Johnson for Residential Purposes, Ahupua'a 'O Kahana State Park, Ko'olauloa, O'ahu, Tax Map Key: (1) 5-2-002:001 (por.)

APPLICANTS:

<u>Parcel ID</u>	<u>Proposed Lessee</u>
Lease Lot 1	Ervin H. Kahala and Lucretia I. Kahala
Lease Lot 2	Thoran Fawn Evans
Lease Lot 3	Moses Mahealani Kahala and Dorothy Laniola Kahala
Lease Lot 4	Dutchess K. Malepe and Aviu Malepe
Lease Lot 5	Lena Puanani Soliven and Darryl James Soliven
Lease Lot 6	Sherri Lynn Leimomi Johnson

LEGAL REFERENCE:

Act 15, SLH 2008 and relevant sections of Chapter 171, Hawai'i Revised Statutes

LOCATION:

Portion of Government lands of Kahana Valley State Park situated at Kahana, Ko'olauloa, O'ahu, identified by Tax Map Key: (1) 5-2-002:001 (por.), as shown on the attached descriptions and maps labeled Exhibit A.

ITEM E-1

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

MAR 22 2013

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BLNR - Issuance of Kahana Leases

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AREA:

<u>Parcel ID</u>	<u>Area</u>
Lease Lot 1 (E. Kahala)	11,845 s.f., more or less
Lease Lot 2 (Evans)	13,956 s.f., more or less
Lease Lot 3 (M. Kahala)	11,874 s.f., more or less
Lease Lot 4 (Malepe)	12,559 s.f., more or less
Lease Lot 5 (Soliven)	12,907 s.f., more or less
Lease Lot 6 (Johnson)	12,502 s.f., more or less

Subject to confirmation by the Department of Accounting and General Services, Survey Division and described in Exhibit A.

ZONING:

State Land Use District: Conservation, Resource Subzone
County of Honolulu CZO: Preservation

TRUST LAND STATUS:

The properties were acquired after 1959 and are not ceded land.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO **X**

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3518 setting aside land for Kahana Valley State Park and occupied by the applicants without documented agreement.

CHARACTER OF USE:

Living park/residential purposes.

LEASE TERM:

Beginning approximately June 1, 2013 and Ending November 30, 2058

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

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BLNR - Issuance of Kahana Leases

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ANNUAL RENT:

In lieu of monetary rent, Lessee shall contribute in-kind services to the Department by participating in the interpretive programs at the Park in the amount of 25 hours per month for a total of 300 hours per year.

METHOD OF PAYMENT:

N/A.

RENTAL REOPENINGS:

N/A.

PERFORMANCE BOND:

N/A.

PROPERTY CHARACTERISTICS:

Utilities – Electricity and telephone. No water/sewer. Staff notes that no wastewater infrastructure is provided and the Department of Health advises no cesspools or individual wastewater systems are currently permitted on any of the lots. Lessee's are responsible for their own wastewater solutions, if any, and shall comply with all relevant governmental regulation.

Slope - Mostly level.

Elevation - Less than 50' MSL

Rainfall - Less than 100" and subject to flooding

SCS Soil Series - Mokuleia Clay Loam and Jaucas Sand

Land Study Bureau – Types C and D

Legal access to property – Staff has verified that there is legal access to the property off of Kamehameha Highway and Kahana Valley Road.

Subdivision – Staff has verified that the subject property is not a legally subdivided lot and will be described in the lease via metes and bounds legal description. No subdivision is planned.

Encumbrances – Staff has verified that the following encumbrances exist on the property Governor's Executive Order No. 3518

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Attached Exhibit B - Exemption Notification

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BLNR - Issuance of Kahana Leases

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DCCA VERIFICATION:

Not required as applicants are individuals not required to register with DCCA.

APPLICANT REQUIREMENTS:

None.

REMARKS:

Kahana Valley State Park, now known as Ahupua'a 'O Kahana State Park, was acquired by the State through condemnation between 1965 and 1969 as a way to prevent a proposed resort development and to retain the open space a rural character of Windward O'ahu.

Each of the six lots described in this submittal is located in the Ahupua'a 'O Kahana State Park. This request is to issue leases to the residents described herein in similar form and substance to those previously issued to other lessee's in Kahana Valley.

In 1979, The Department of Land and Natural Resources (Department) completed a Revised Environmental Impact Statement (EIS) which planned for residential use of 18 lots mauka of the community building along Kahana Valley Road and in 1992, then Governor Waihe'e accepted a Final Supplemental EIS (Supplement) for the Kahana Valley State Park which included an additional 14 residential lots along Trout Farm Road. Both the EIS and the Supplement referenced residents living in the front portions of the park and recommended they re-locate to areas further back in the valley to avoid being in the flood plain and so the front areas of the park could be used for day use and interpretive purposes. During this period, however, the front areas were used for residential purposes.

Act 5, SLH 1987, authorized the Department to issue long term residential leases to individuals who had been living on the lands and provided authorization for a residential subdivision in Kahana Valley. The law granted the Department relief from regulation regarding subdivision entitlements and construction standards. In 1993, the Department entered into 65 year leases covering 31 residential properties.

Pursuant to the terms of the leases, the residents are required to contribute at least twenty-five hours of service each month in lieu of rent. Act 238, SLH 1988, appropriated funds sufficient for 26 of the lessees to receive loans to build homes.

Since the completion of the homes and the issuance of the leases, other families have sought to obtain long term leases but the Department has been unable to issue them because Act 5 had expired. Over time, 3 of the 31 leases were forfeited due to defaults

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and the issuance of new leases for these properties was delayed while legal and other issues were being evaluated.

Because of considerable controversy surrounding the Department's plans to evict occupants who remained on the property fronting the park, the Legislature enacted Act 15, SLH 2008, which prevented the Department from any evictions in Kahana for a period of two years. The law authorized the Department to negotiate and enter into long-term residential leases for sites in state parks under certain conditions. Act 15 also created the Living Park Planning Council (Council), placed within the DLNR for administrative purposes. The purpose of the Council was to create a master plan and advise the Department of matters pertaining to the park.

In a letter dated January 17, 2011 from Ralph K. Makaiau, Jr., Chair of the Hawai'i State Kahana Valley Living Park Planning Council, to Chairperson Aila, Mr. Makaiau recommended the Board approve granting six (6) new leases to each of the individuals named in this submittal based on 1), the Council's role pursuant to Act 15 and 2), a vote taken at the Council's December 15, 2010 meeting authorizing the letter. The six (6) proposed lessees had occupied the property prior to Act 15 and remain there today.

The locations of the six (6) lots were originally planned for park and interpretive use and residents were encouraged to locate homes further mauka. The State Parks discouraged the use of these lands for residential purposes because the use was not consistent with existing plans and because there would be permitting challenges due to being in a floodplain. Because of this, the lots were not subdivided. Despite the recommendation, however, the residents held to their desire to remain in their present locations.

State Parks recommends the Board approve the issuance of the leases and although the location of the lots is not ideal, leases would afford residents the ability to remain in their homes and continue being an integral part of the living park concept. The leases would simply document a use that has been in place for many years and no new changes and/or construction are contemplated for this area of the park.

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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, HAR, this project 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 direct leases to the residents described in this submittal covering the subject area 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 lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Delegate the authority to the Chairperson to determine the precise boundaries of the lots and other terms and conditions necessary to complete the lease agreements.

Respectfully Submitted,


DANIEL S. QUINN
Administrator

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

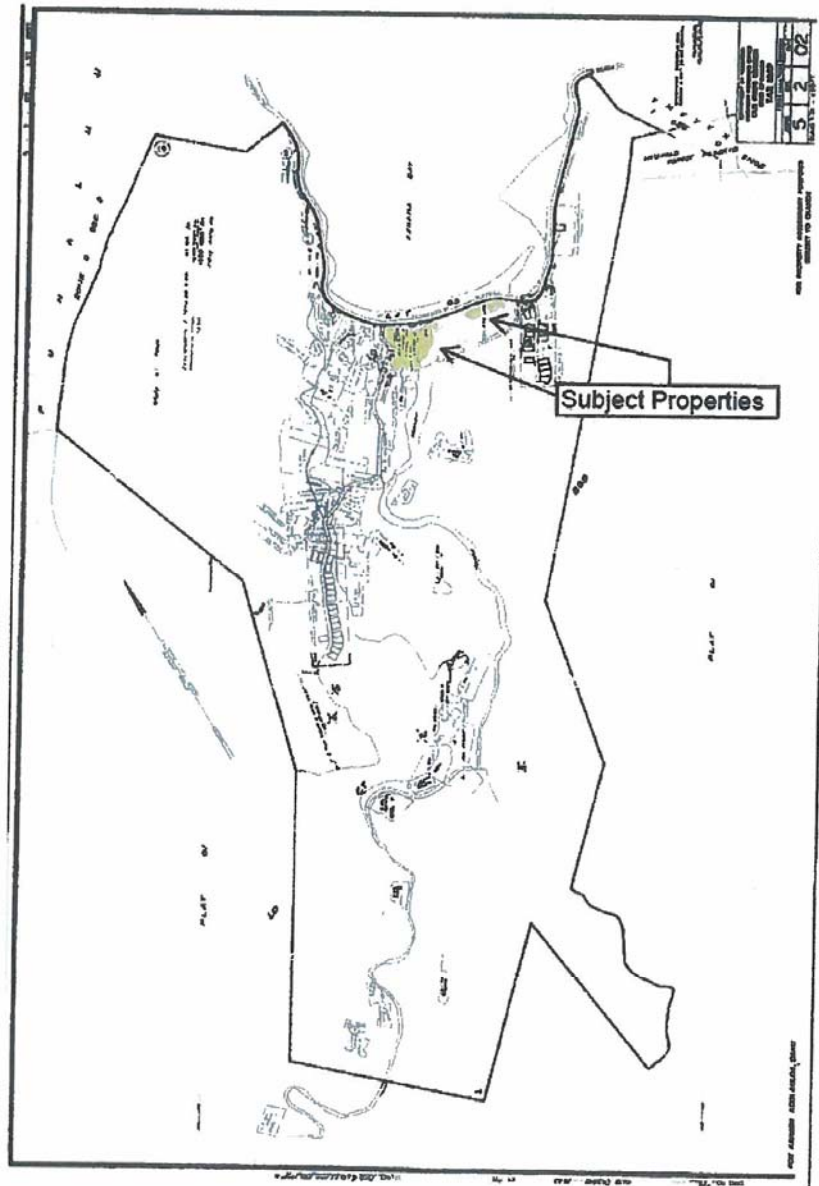
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BLNR - Issuance of Kahana Leases

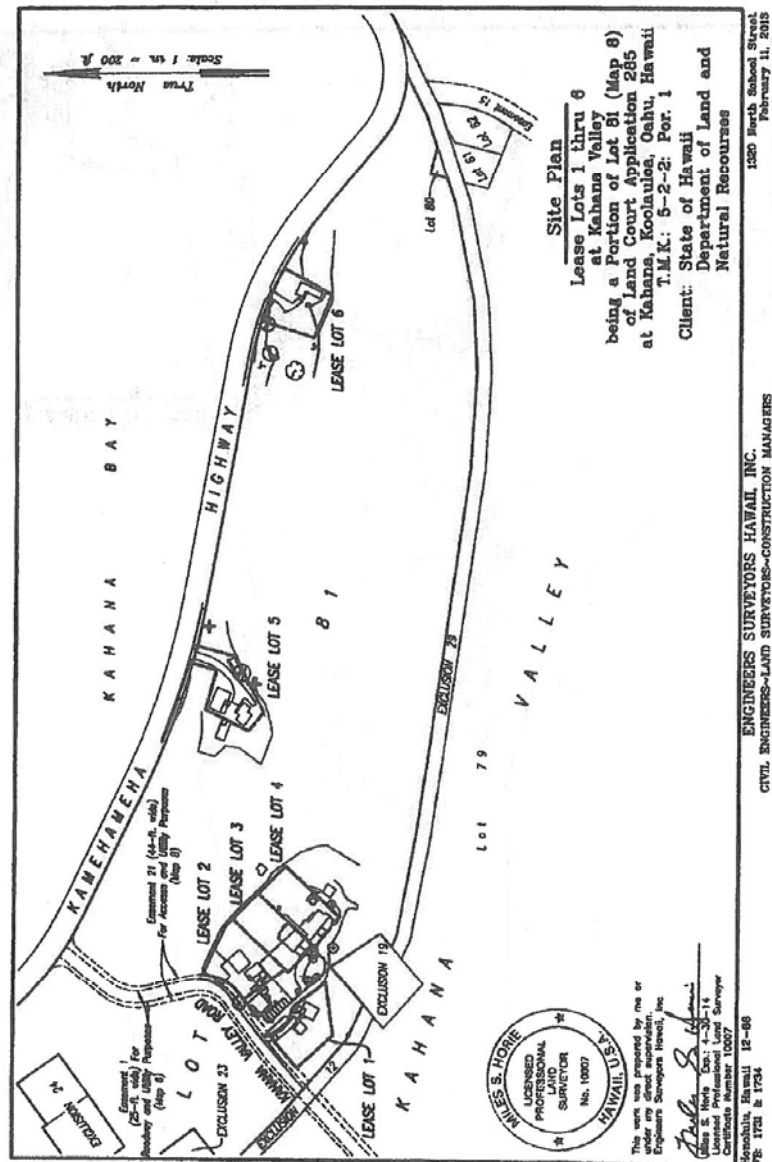
Page 7

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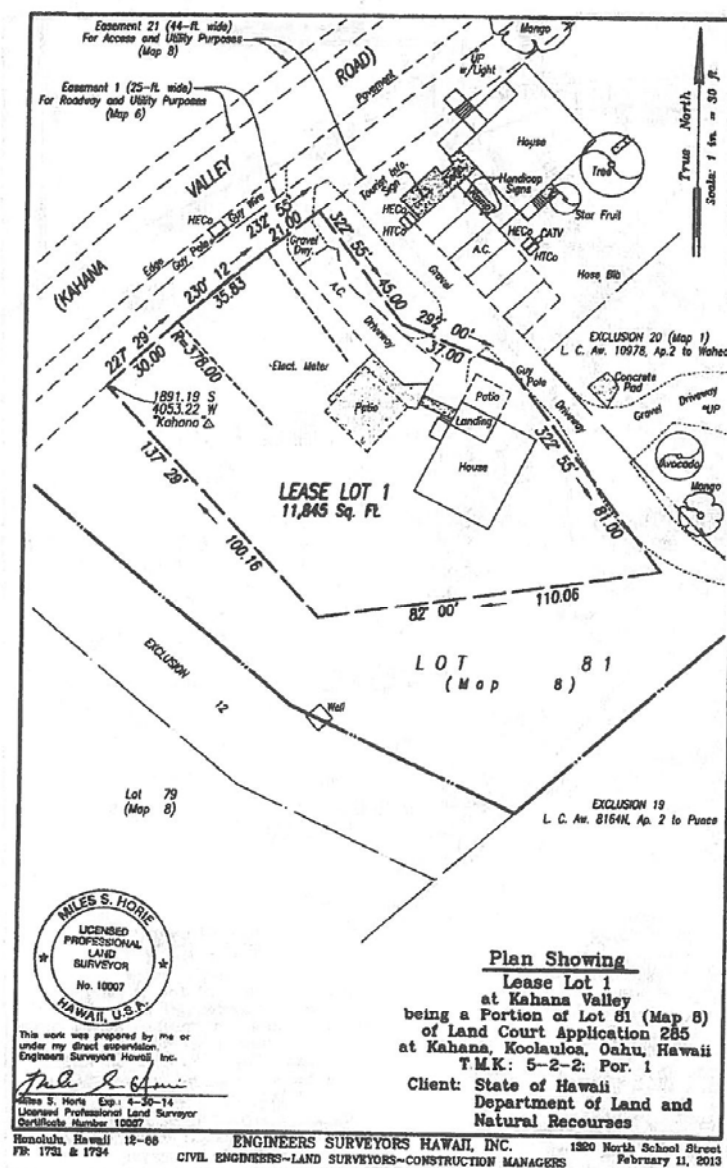
EXHIBIT A – Tax Map Key and Lot Maps



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(rev. 02/2010)

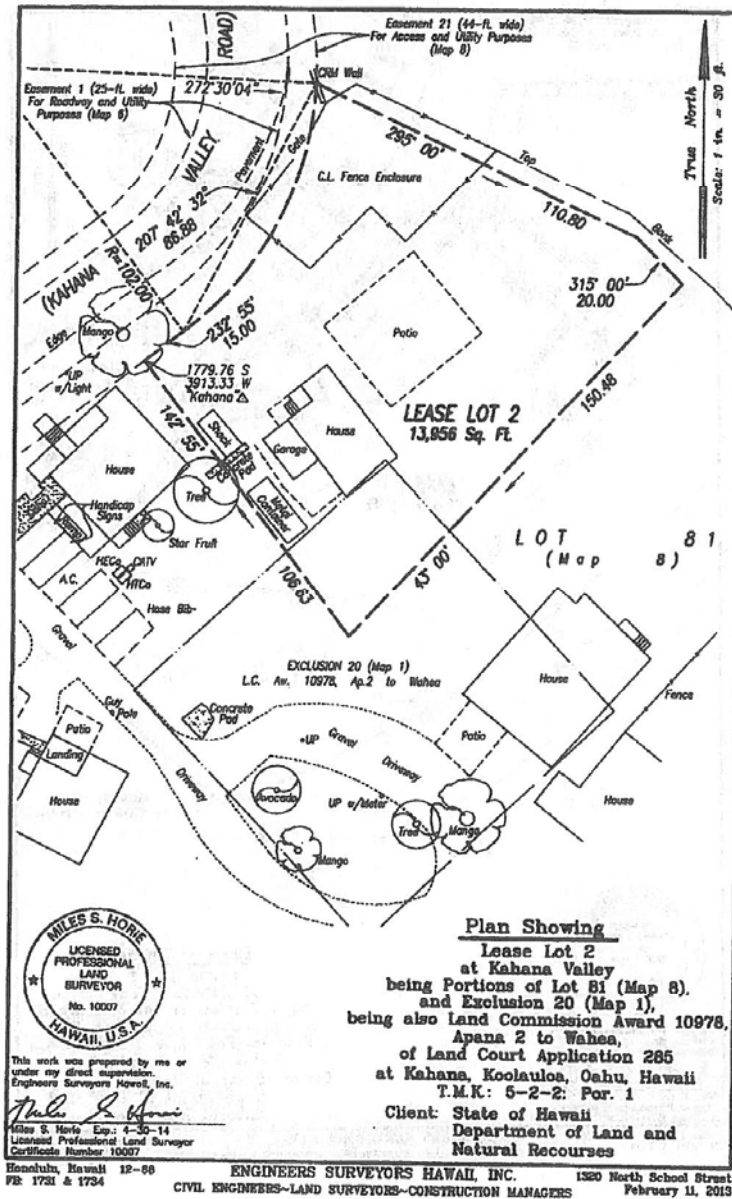


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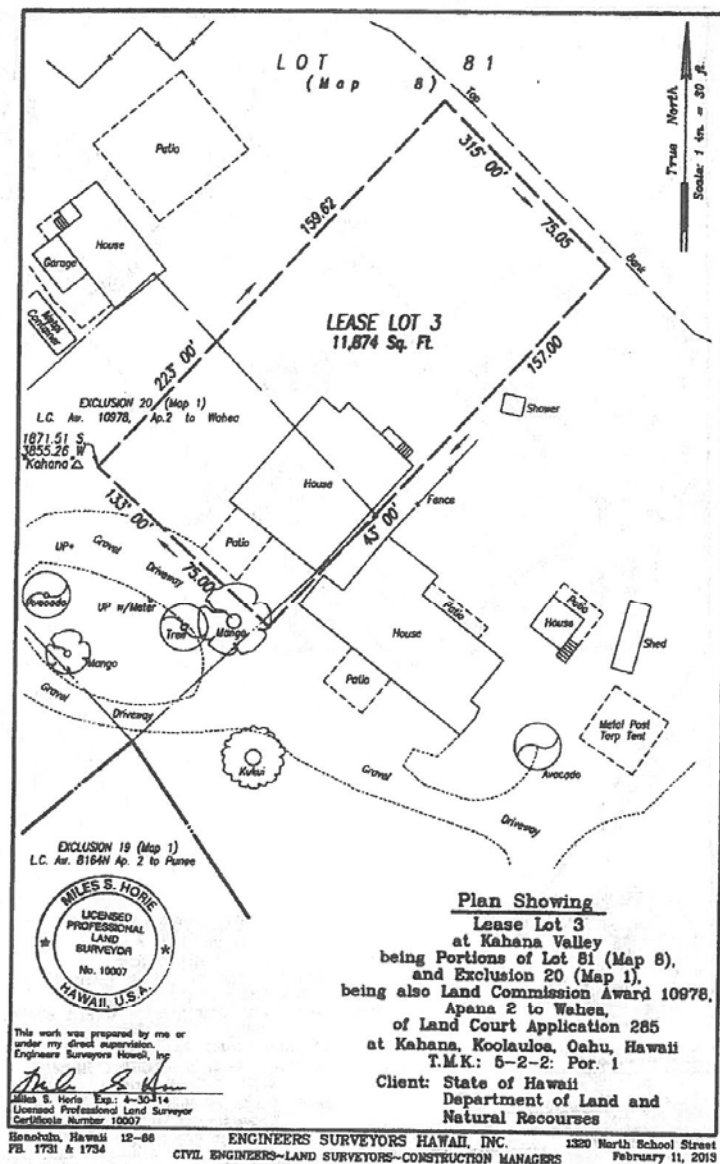
BLNR - Issuance of Kahana Leases

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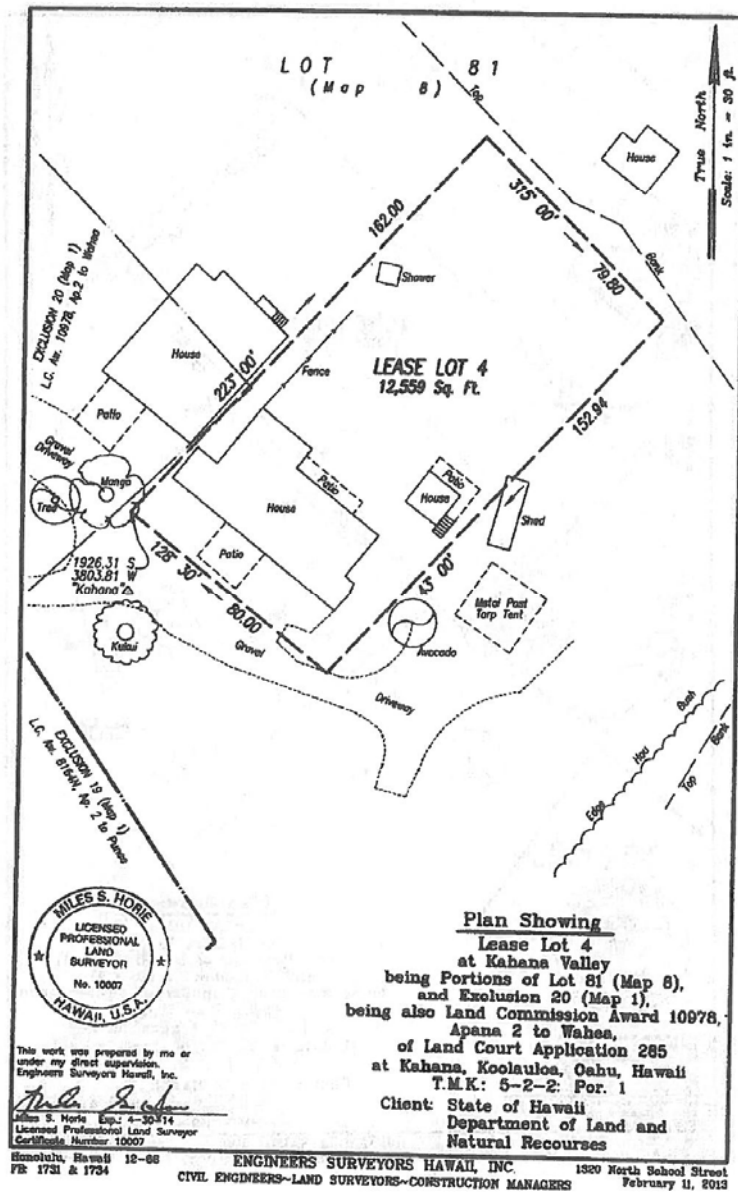


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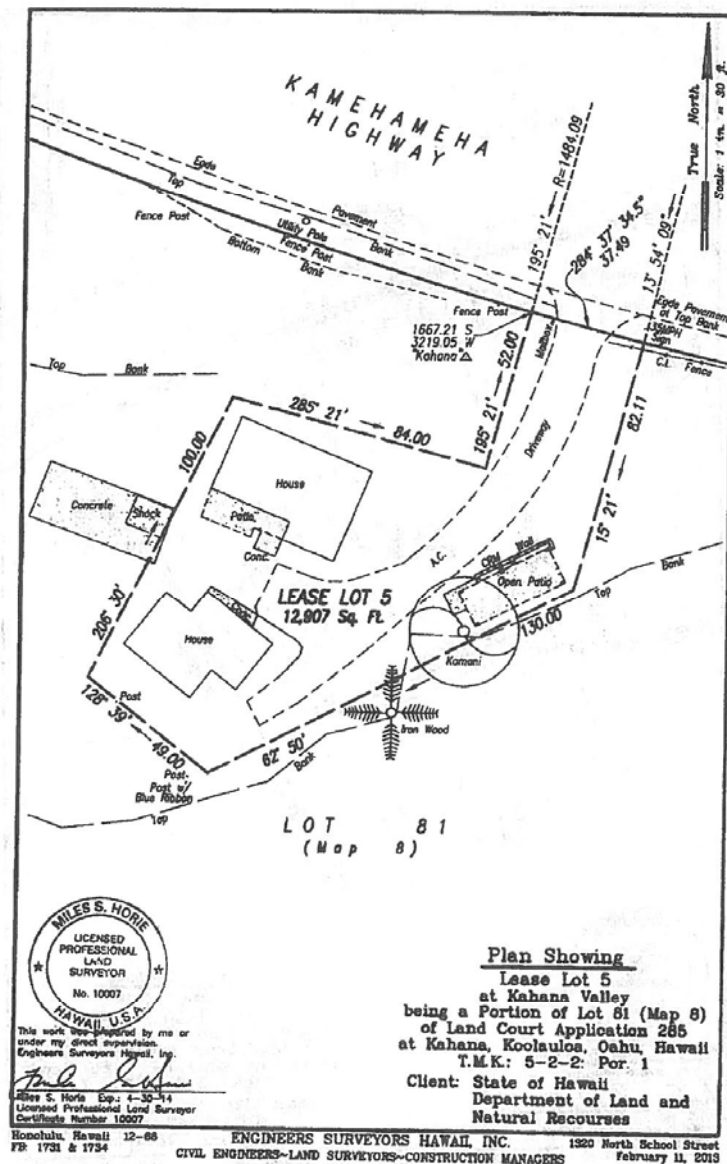


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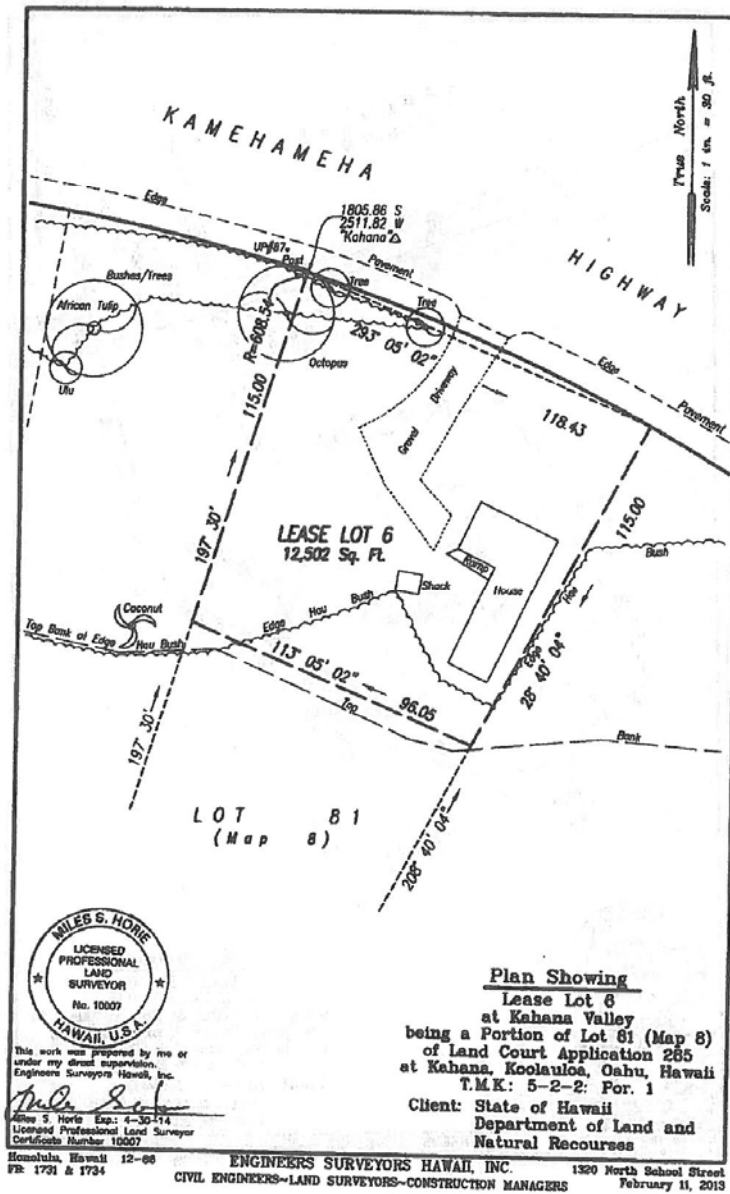


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EXHIBIT B – Exemption Notification



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. ALA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PAUL J. CONEY
INTERDISCIPLINARY CENTER

WILLIAM M. TAMM
DEPUTY DIRECTOR - U.S.A.T.S.

AQUATIC RESOURCES
BOATING AND OCCASIONAL FISHING
ATWATER RECREATION
CONTINUATION OF WATER RECREATION
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RECREATION OF COASTAL
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KADONLAH ISLAND RESERVE COORDINATOR
LAND
LIFE PAPER

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, H.A.R.

Project Title: Issuance of Six (6) Direct Leases to the following: Ervin H. Kāhala and Lucretia I. Kāhala, Thoran Fawn Evans, Moses Mahealani Kāhala and Dorothy Laniola Kahala, Dutchess K. Malepe and Aviu Malepe, Lena Puanani Soliven and Darryl James Soliven, and Sherri Lynn Leimomi Johnson for Residential Purposes, Ahupua'a 'O Kahana State Park, Ko'olauloa, O'ahu, Tax Map Key: (1) 5-2-002:001 (por.)

Project / Reference No.: SP13AKSP01

Project Location: Portion of Government lands of Kahana Valley State Park situated at Kahana, Ko'olauloa, O'ahu, identified by Tax Map Key: (1) 5-2-002:001 (por.),

Project Description: Kahana Valley Leases for Six (6) Families

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Number 3 of the State Parks Exemption List which states "Cabins, pavilions, picnic and trail shelters, utility buildings and shed -- within developed, maintained portions of State Parks [February 5, 1976] and Exemption Class 4 which exempts minor alteration in the conditions of land, water, or vegetation [HAR Section 11-200-8(a)(4)].

Consulted Parties: DLNR/Land Division

Recommendation: It is recommended that the Board find 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

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1.9 State Parks Data on Kahana Visitors and Activities

[State Parks to provide]

1.10 State Parks Data on Kahana Cultural Programs

[State Parks to provide]

2 RECENT PLANNING INITIATIVES FOR KAHANA

2.1 Master Plan Scoping: Townscape, Inc. Report

AHUPUA‘A ‘O KAHANA STATE PARK

ASSESSMENT: SCOPE, PROCESS AND COST FOR A MASTER PLAN

DELIVERABLE NO. 4: FINAL SCOPE

December 12, 2015

INTRODUCTION

This FINAL SCOPE is the fourth and final deliverable of our contract with DLNR for the development of “an ASSESSMENT of the SCOPE AND COST for a future MASTER PLAN for AHUPUA‘A ‘O KAHANA STATE PARK,” as described in our fee proposal dated July 2, 2015. This FINAL SCOPE is an edited and updated version of the DRAFT SCOPE, dated October 15, 2015. The FINAL SCOPE incorporates comments on the DRAFT SCOPE that we received from State Parks staff and from Kahana Valley residents. The PRELIMINARY DRAFT SCOPE and the DRAFT SCOPE were developed through a review of relevant reports and plans for Kahana, discussions with State Parks staff, and through interviews with Kahana families and “outside” community members who have had extensive experience working with Kahana families and Kahana issues.

We are submitting this FINAL SCOPE to the DLNR State Parks Division, the Kahana Planning Council, the Kahana Community Association, and to Kahana Valley families for their follow-up and action.

Ahupua‘a ‘O Kahana State Park is unique: it is the only state park in Hawai‘i that has long-term residential leases with families who live within the park boundaries. Kahana is also the only largely intact ahupua‘a on the island of O‘ahu that is in public ownership.

Designated by the State Legislature as a “cultural living park,” Kahana and the Kahana community have experienced many challenges and difficulties during the 46 years since the State of Hawai‘i acquired the land. These challenges and difficulties are documented in a number of studies on Kahana, including the report by the Hawai‘i Legislative Reference Bureau entitled “Kahana: What Was, What is, What Can Be” (Susan Jaworowski, 2001), and we will not attempt to summarize these issues in this introduction to the Master Plan scope. However, given the unique nature of this state park and its resident population, **it should be clear to**

State Parks personnel, to Kahana community leaders, and to the Kahana community that Kahana needs more than a traditional Park Master Plan that focuses primarily on physical resources and outdoor recreational facilities and activities.

Over the past 40+ years, there have been a number of “master plans” developed for Kahana. Plans developed in the early to mid-1970s were commissioned by the state. From 1979 on, there were a number of plans developed by Kahana residents. Some of these plans were more or less traditional park plans that focused on physical resources and facilities; several plans also addressed cultural resources and programs. None of these plans were approved by DLNR, and none of these plans addressed the most critical issues that make this state park unique – and often difficult to manage. These overarching critical issues are:

1. **The CULTURAL LIVING PARK concept** – How was this concept originally developed and defined? How is this concept understood today – by State Parks and by State legislators? Is this concept still valid for Kahana and the Kahana community? If not, then is there an alternate concept that would be the “right” overall concept for Kahana?
2. **The 65-Year Leases** that dictate the terms under which Kahana families are permitted to live in the valley – some of the terms of these leases need to be reviewed and may need to be amended.
3. **Overall MANAGEMENT of Ahupua‘a ‘O Kahana** – Is State Parks Division the best, most appropriate MANAGER for this park and its resident community? If not State Parks, then WHAT ENTITY OR ENTITIES could/should manage Kahana?

These issues are inter-related; no one issue is more important than the others. **Our overall conclusion in this “assessment” is that these three critical, overarching issues must be addressed and must be resolved at least in principle BEFORE a meaningful physical resources and facilities master plan can be developed and implemented.** By agreement “in principle,” we mean that the Kahana community and State Parks will need to reach a consensus on solutions to these three critical issues, but that implementing details for these three issues, including action by the State Legislature and/or the development of appropriate Administrative Rules, would still need to be worked out and finalized.

The SCOPE for a master plan for Kahana presented in this report therefore organizes the planning process into TWO PHASES: PHASE 1 will focus on the three overarching critical issues and PHASE 2 will develop the Management Plan for Kahana resources, facilities and programs. This “2 Phases” approach will facilitate decision-making and funding for this plan. Funding will potentially be provided through state Grants-in-Aid and/or through DLNR Capital Improvement Projects (CIP) funds.

This Assessment was designed to develop the SCOPE and COST for a Kahana Master Plan. In addition to scope and cost, however, the **planning process** will be of great importance. The plans for Kahana in the early 1970s were developed by “experts” with little regard for Kahana families and their ideas and needs. Going forward, what is needed is a **community-based planning process**, a process through which State decision-makers, State Parks staff, and technical consultants partner with the Kahana community to develop a Master Plan and implementation program that are strongly grounded in community traditions, values and needs.

At the same time, the planning process must also respect and address the State’s commitment and responsibility to provide public access and public recreational opportunities at Ahupua’a ‘O Kahana State Park. Kahana Valley is state-owned land that is available for the use and enjoyment of the people of Hawai’i and our visitors.

Another set of events that may influence plans for Kahana Valley is the current process for electing delegates to an ‘aha council that would establish the structure for a sovereign Hawaiian nation.

The resolution of six new leases for house lots near Kahana Bay, consistent with the requirements of HRS Chapter 343 and with Act 15 (2009), will also be an important factor as the planning work moves forward.

Given the above discussion on critical issues and on a community-based planning process, we recommend that the term “Master Plan” be replaced with the term “AHUPUA'A 'O KAHANA MANAGEMENT PLAN.” Our intent is that the term “MANAGEMENT PLAN” includes addressing and resolving, at least in principle, the three overarching critical issues noted above.

Progress briefings and presentations to the Board of Land and Natural Resources will undoubtedly be required during this planning process. This scope of work does not specifically identify when these briefings and presentations may be needed.

This FINAL SCOPE OF WORK includes a summary of planning deliverables and an estimate of time and cost for each of the major elements of the planning process. Cost ranges are provided here as it is difficult to define exact costs for many of these planning elements. Finally, reviewers of this SCOPE OF WORK should understand that this document is intended to be a guide for future planning for Ahupua’a ‘O Kahana, but that, like all planning guides, this SCOPE OF WORK is subject to future revisions and refinements as may be required.

AHUPUA‘A ‘O KAHANA MANAGEMENT PLAN – SCOPE OF WORK

NOTE: Planning tasks described in this Scope of Work are to be performed by the lead planning consultant unless otherwise noted. The budget figures provided below do not include additional costs for a project website or for printing, travel and space rentals, hand-outs and refreshments for large community meetings. An estimate for these additional costs is provided in the summary of costs at the end of this FINAL SCOPE document.

PHASE 1: ADDRESS THE THREE OVERARCHING CRITICAL ISSUES FOR KAHANA

WORK ELEMENT NO. 1.1: ORGANIZE THE PHASE 1 PLANNING PROCESS

- 1.1.1 The planning consultant will meet with State Parks staff, the Kahana Planning Council (KPC), the Kahana Community Association (KCA), and the general Kahana community to confirm overall scope, process and schedule for Phase 1 of the Plan.
- 1.1.2 In consultation with State Parks and the Kahana community develop a draft plan for the participation of the Kahana community in the Phase 1 planning process, and for consultation with the greater community at-large, including those outside Kahana who have historical and cultural ties to the place. This community-based planning process shall include consultation with KPC and KCA, meetings with individual Kahana families as may be needed, and opportunities for Kahana families to comment on elements of the plan through informal talk story sessions with the planning team. The planning process shall also include joint meetings involving representatives of State Parks and Kahana community leaders. These joint meetings should be held at critical points in the planning process, including at the beginning of the planning work.
- 1.1.3 Establish a website for the AHUPUA‘A ‘O KAHANA MANAGEMENT PLAN. This website will be used to provide ongoing project data and information to the public, and to announce Kahana planning meetings and other related events.
- 1.1.4 Consult with the Department of the Attorney General, and contract with legal counsel that will be needed to help address the complex legal issues of Ahupua‘a ‘O Kahana State Park, including the 65-Year Lease issues.
- 1.1.5 Develop an overall WORK PLAN AND SCHEDULE for Phase 1 of the Ahupua‘a ‘O Kahana Management Plan and review the Work Plan and Schedule with State Parks and the Kahana community.

Work Element No. 1.1 Deliverables: Work Plan & Schedule

Draft Community Participation Plan

Work Element No. 1.1 Time & Cost: 2 months; \$15,000 to \$20,000

WORK ELEMENT 1.2: ADDRESS THE 3 MOST CRITICAL ISSUES

- 1.2.1 **Critical Issue #1: Is the “Cultural Living Park” concept still a valid concept for Kahana?** The definition of a “living park” was provided by Senate Resolution 264, adopted by the 1977 State Legislature:

“The purpose of a ‘living park’ in Hawaii is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways, and that in such a living park, the individuals living there shall participate in the purposes of the park by helping in the education of the public and by incorporating into the structure of their daily lives such values and ways.”

Discuss the pros and cons of this concept with State Parks, the KPC, the KCA, and Kahana families and document the pros and cons of the “cultural living park” concept in a working paper of 5 to 10 pages. Include in the working paper a draft description of one or more alternative overall concept(s) for Ahupua’a ‘O Kahana, together with an analysis of how these alternative concepts might be more effective for both the Kahana community and State Parks. Present this working paper to the Kahana community and to State Parks, and work towards reaching an agreement in principle on the preferred overall concept for Ahupua’a ‘O Kahana.

- 1.2.2 **Critical Issue #2: Evaluation of the Terms of the 65-Year Leases.** Issues include: extension beyond the 65-year term, the requirement of “25 hours per month of interpretive services” in lieu of lease rent for each lessee, inability of residents to sell or mortgage their homes at fair market value or to rent or sublet their homes, and the possibility of “Ohana units” or additional leases/residential lots to accommodate adult children of Kahana lessees. These and other lease issues will be analyzed by the planner and by the consulting legal counsel, in consultation with State Parks staff and the Kahana community. The work will include discussions with Kahana families to identify lease terms that are especially difficult from the community point of view. The planner/legal counsel team will develop a working paper of 20 to 30 pages documenting the lease issues and potential policies and lease amendments that would address these issues. The working paper will include an analysis of other relevant land tenure models in Hawai‘i.

The team will present and discuss this working paper with State Parks, the KPC, the KCA, and with the general Kahana community and will seek to reach a consensus on amendments to the 65-Year Leases. All agreements to changes to the 65-Year Lease terms will be documented in a revised/final working paper on this subject. Further legislative action or official Administrative Rule-making will probably be needed to finalize agreed upon changes to the 65-Year Leases.

- 1.2.3 Critical Issue #3: What Entity or Organization should manage Ahupua'a 'O Kahana, and what should they manage – the residential leases, the public recreational resources, the natural resources?** In consultation with State Parks, the KPC, the KCA, and the Kahana community, develop an analysis of the varied MANAGEMENT FUNCTIONS that are required for managing Kahana – including the management of residential leases, public recreational facilities and natural and cultural resources. Identify and develop a preliminary analysis of alternative managing entities that might be able to provide at least some of the management expertise that Kahana requires, including but not limited to: a special branch of State Parks, a special unit within DLNR with personnel from State Parks, DOFAW, DAR, DOBOR and DOCARE, the Office of Hawaiian Affairs (OHA), the Department of Hawaiian Home Lands (DHHL), the Hawai'i Housing Finance Development Corporation (HHFDC), one or more existing state public agencies, one or more existing non-profit organizations, a newly created non-profit entity, a quasi-public single purpose entity. Analyze the pros and cons of the various alternative managing entities, including options for 2 or more entities managing different elements of the ahupua'a (residential, public recreational, natural resources) and document this analysis in the form of a working paper of 15 to 20 pages.

Present initial findings on potential managing entities to State Parks, the KPC, the KCA, and the general Kahana community and reach a preliminary consensus on the preferred managing entity or entities for Ahupua'a 'O Kahana, including the relationship of the managing entity with the Kahana community. This discussion will likely require multiple meetings; these meetings will be facilitated by the planning consultant. Document consensus reached on the preferred management entity or entities and outline steps needed to implement the preferred management strategy in an updated working paper.

- 1.2.4 Summary of Consensus on the Three Critical Issues.** The planning consultant will produce a draft report summarizing the work performed to address the three most critical Kahana issues, and presenting the conclusions that were reached on these issues. The report will also describe the steps and actions, including action(s) by the State Legislature, that will still be needed to implement and fund agreed upon changes to the Living Park concept, the 65-Year Leases and the management structure.
- 1.2.5 Report to State Parks and to the Kahana Community.** Present the draft report on the 3 critical issues to State Parks, the KPC, the KCA, and to the general Kahana community and receive comments. In addition, do individual meetings with any Kahana families that may be unable or unwilling to participate in the meetings with the KPC, the KCA or the larger Kahana community. Based on these comments, revise and finalize the report.
- 1.2.6 Report to the At-Large Community.** Schedule, advertise, organize, facilitate and record a general meeting for the at-large community to present the report on the three critical issues for Kahana and to hear their comments on these issues.

Work Element 1.2 Deliverables:	Working Paper – Overall Park Concept Working Paper – 65-Year Leases Working Paper – Management of Kahana Report: Consensus on the 3 Critical Issues Record: At-Large Community Meeting
Work Element 3 Time & Cost:	6 months; \$150,000 to \$180,000 (including legal counsel)

NOTE: Follow-up Time and Cost to resolve detailed and definitive solutions to the 3 overarching critical issues are not included in this estimate and may need to be under a separate contract.

NOTE: If a consensus cannot be reached on how to resolve the three overarching critical issues for Kahana, further work on the Kahana Management Plan should be deferred or cancelled.

PHASE 2: DEVELOP THE AHUPUA'A 'O KAHANA MANAGEMENT PLAN

Once agreements are reached in principle (see definition of “agreement in principle” in section 1.2.1 of this FINAL SCOPE) on the three most critical Kahana issues, including agreements on how to implement meaningful changes for these critical issues, work on the Management Plan can proceed at a more technical level. The Management Plan will include the entire ahupua'a of Kahana, including Kahana Bay.

The planning consultant will review background documents and data for Kahana Valley resources and facilities. Some field reconnaissance will also be required at this time. Special subconsultants may be needed in the areas of marine resources, stream resources, botany, biology and archaeology.

HOWEVER, the scope for PHASE 2 of the Kahana Management Plan assumes that archival and field research will be limited to a total of about 600 to 800 hours of professional time, and that this research effort will NOT BE EXHAUSTIVE IN NATURE.

The assumption here is that the archival and field research will be sufficient to identify major opportunities and constraints, and provide a foundation for a Management Plan that describes general strategies and programs for the management of natural resources, physical facilities, community programs and public recreational resources. The Management Plan will also include a more detailed description of a near-term “Action Plan” that focuses on 3 to 5 priority projects. The Management Plan will NOT attempt to provide exhaustive details on all projects and programs, as the details for the various projects and programs should be developed through the actual organization and implementation of these projects and programs.

WORK ELEMENT 2.1: ORGANIZE THE PHASE 2 PLANNING PROCESS

- 2.1.1 The planning consultant will meet with State Parks staff, the Kahana Planning Council (KPC), the Kahana Community Association (KCA), the staff of other management entity or entities that may have been identified in Phase 1 as having a potential role in Kahana (hereinafter referred to as “other relevant management entity(ies)”) and the general Kahana community to confirm overall scope, process and schedule for Phase 2 of the Plan.
- 2.1.2 In consultation with State Parks, other relevant management entity(ies), KPC, and KCA, update as needed the plan for the participation of the Kahana community in the Phase 2 planning process.
- 2.1.3 Develop an overall WORK PLAN AND SCHEDULE for Phase 2 of the Ahupua'a 'O Kahana Management Plan and review the Work Plan and Schedule with State Parks, other relevant management entity(ies), KPC, and KCA.

Work Element No. 2.1 Deliverables: Work Plan & Schedule
Updated Community Participation
Plan

Work Element No. 2.1 Time & Cost: 1 month; \$5,000 to \$10,000

WORK ELEMENT 2.2: CONTINUED COMMUNITY CONSULTATION AND REVIEW OF BACKGROUND MATERIAL

- 2.2.1 Review relevant reports, records of meetings, documents, etc. and summarize important findings in a working paper of 15 to 20 pages. Pay particular attention to key earlier planning documents, including The Living Park Plan of Kahana's People (1979), Kahana State Park Development Plan (Kahana Advisory Council 1985), and Kahana: What Was, What Is, What Can Be (State Legislative Reference Bureau 2001).
- 2.2.2 Meet with State Parks, other relevant management entity(ies), the KPC, and the KCA to discuss and confirm critical planning issues. Preliminarily discuss with each entity their LONG-RANGE VISION for Kahana Valley and their OVERALL MISSION STATEMENT.
- 2.2.3 Meet individually with any Kahana families that may be unable or unwilling to participate in the meetings with the KPC and the KCA. Begin a dialogue with the community that focuses on the need to identify **positive common goals** for the future of Ahupua'a 'O Kahana and the Kahana community.

- 2.2.4 Identify a number of projects and/or programs that can be implemented while the planning process is still ongoing, in order to create some credibility and positive energy for the planning process, and proceed with the organization and implementation of these projects and programs. Potential near-term action projects include: work on Huilua fishpond wall, clearing of hau from the streams, and start of the 'ulu orchard.
- 2.2.5 Schedule, advertise, organize, facilitate and record a general meeting for the at-large community to present the scope and schedule for the Ahupua'a 'O Kahana Management Plan and to hear and record issues and concerns of the larger community.
- 2.2.6 Establish a "Kahana Planning Office" in the Orientation Building. The Planning Office will be a place where community members can "stop by to talk story" with the planning consultants about their concerns and ideas and about the evolving planning process.

Work Element No. 2.2 Deliverables: Summary of relevant background material
Summary of At-Large Community meeting

Work Element No. 2.2 Time & Cost: 3 months; \$40,000 to \$50,000

WORK ELEMENT 2.3: RESEARCH AND DOCUMENT EXISTING CONDITIONS, OPPORTUNITIES AND CONSTRAINTS: NATURAL RESOURCES, PHYSICAL FACILITIES, COMMUNITY RESOURCES AND PROGRAMS, RECREATIONAL RESOURCES

Research work shall include, but not be limited to the following:

- 2.3.1 Ocean Resources – including an assessment of the health of Kahana Bay, the feasibility of restoring Kahana's Konohiki fishery, the feasibility of establishing a community-based subsistence fisheries management area, and the need to limit and control the use of motorized water craft within the Bay.
- 2.3.2 Huilua Fishpond - including an assessment of work still needed to restore the fishpond to a productive status and development of guidelines for the long-term management of the fishpond and equitable sharing of fish and other fishpond products.
- 2.3.3 Stream Systems – including a program for clearing hau and other plants from streams, mitigation of flooding, and outline of an ongoing program for stream management and maintenance.
- 2.3.4 'Auwai Systems – develop maps of the traditional 'auwai and identify opportunities for restoration and maintenance.

- 2.3.5 Groundwater Systems – assess the amount of groundwater that is being drawn from the Kahana Aquifer by the Board of Water Supply and by the Wai‘ahole Ditch system, and address the impact that these withdrawals may be having on stream flows and nearshore water quality.
- 2.3.6 Opportunities for Farming – through analysis of NRCS soils maps, reference to the “kalo model for O‘ahu” developed by the Nature Conservancy, and consultation with Kahana people who have farming experience, develop a map and description of areas that could be productive for various kinds of traditional and contemporary food crops.
- 2.3.7 Forest Resources and Management of Mauka Lands – through consultation with DOFAW personnel and knowledgeable Kahana people, identify and map important biocultural zones in the mauka lands and outline appropriate management programs, including measures for the control of feral pigs and rats.
- 2.3.8 Historical and Cultural Structures, Sites and Resources – based on available information, create a map that generally documents important historical and cultural resources.
- 2.3.9 Community Facilities needs – inventory and document existing community facilities like the Kam Mon Store “Visitor Center” and the “Orientation Center.” Identify and generally describe other community facilities that community members have identified as needed, like a community kitchen and a computer center.
- 2.3.10 Opportunities for Kahana families to generate income from sale of food or craft items – review the current system that requires families to obtain a revocable permit from State Parks in order to sell food or craft items, and identify other systems, including possibly a weekly farmers market that might provide families with more opportunities to earn some supplementary income.
- 2.3.11 Opportunities for Kahana residents to be employed within the Ahupua‘a – identify park management and resource management jobs that could be done by Kahana residents, and address programs for training and qualifying Kahana people to do these jobs.
- 2.3.12 Public Recreational Programs and Facilities – identify needed upgrades and additions to public recreational programs and facilities at Kahana, including opportunities for ecotourism and participation of visitors in farming and fishing, and in Kahana cultural events.
- 2.3.13 Park Operations and Facilities – evaluate existing office space, baseyard, management of green waste, bathrooms, wastewater disposal and identify needs for improvements and upgrades.

The documentation of existing conditions will include consultation with State Parks personnel, other relevant management entity(ies), Kahana Community members and various “outside” resource experts. The analysis of existing conditions will be submitted to State Parks and to other relevant management entity(ies), the KPC, and the KCA in the form of a Resources Profile Report not to exceed 50 pages. The Profile Report will later be included as one of the Appendices to the Management Plan.

Work Element 2.3 Deliverables:	Ahupua'a 'O Kahana Resources Profile Report (not to exceed 50 pages)
Work Element 2.3 Time & Cost:	6 months, \$100,000 to \$120,000

WORK ELEMENT 2.4: AHUPUA'A 'O KAHANA MANAGEMENT PLAN – PRELIMINARY DRAFT

- 2.4.1 Meet with State Parks, other relevant management entity(ies), the KPC, and the KCA to revisit and discuss their thoughts on the overall VISION for Kahana Valley and the Kahana community, the MISSION of each of these entities, and shared GOALS and OBJECTIVES for Kahana. Goals for Kahana should include the preservation and restoration of the important cultural and natural resources of the ahupua'a. Document the Vision, Mission(s), Goals and Objectives in draft form.
- 2.4.2 Using the Kahana Resources Profile report as the information base, develop a SET OF PLANNING STRATEGIES, PROJECTS and PROGRAMS for the management of Kahana's natural, historical, cultural, community and recreational resources. This step in the planning process will be the critical synthesizing step that will integrate Vision, Mission, Goals, Objectives, Opportunities, Constraints, and Resources Data into a PRELIMINARY DRAFT MANAGEMENT PLAN. The Preliminary Draft Plan will include information on WHAT needs to be done, by WHOM and at what COST.
- 2.4.3 Consult with State Parks, other relevant management entity(ies), the KPC, the KCA, and with Kahana families throughout the development of the PLANNING STRATEGIES. Consult with the Department of the Attorney General, as appropriate.
- 2.4.4 Document the work described in sections 2.4.1 through 2.4.3 above in the form of a PRELIMINARY DRAFT MANAGEMENT PLAN for Kahana, not to exceed 50 pages in length. The Preliminary Draft will include sections on permit requirements, funding needs and potential funding sources. This page limit is suggested in order to keep the Plan clear and concise. Supplementary technical information, including the report on the three Critical Elements and the Resources Profile Report, can be included as Appendices to the Plan. Submit the Preliminary Draft to State Parks, the KPC, the KCA, and to Kahana families for review and comment.

The Preliminary Draft Plan will include the following sections:

1. Introduction
2. The Planning Process: Public Agencies, the Community, the Ahupua‘a
3. Vision Statement for Kahana
4. Plan Goals and Objectives
5. Brief Summary of Past Plans and Studies
6. Summary of Existing Conditions
7. Opportunities and Constraints Analysis
8. Consensus on the three critical overarching issues
9. Projects, Programs and Strategies
10. Implementation Guidelines, Phasing and Funding
11. 5-Year Action Plan

APPENDICES

Work Element 2.4 Deliverables:	Ahupua‘a ‘O Kahana Management Plan – Preliminary Draft
Work Element 2.4 Time & Cost:	4 months, \$50,000 to \$60,000.00

WORK ELEMENT 2.5: AHUPUA‘A ‘O KAHANA MANAGEMENT PLAN – DRAFT

- 2.5.1 Receive and review comments on the Preliminary Draft Plan from State Parks, other relevant management entity(ies), the KPC, the KCA, and the Kahana community. Meet with each of the reviewing entities to discuss major comments, as needed. Also meet with any Kahana families that were not able to participate in the review meetings held with the KPC, the KCA, or the general Kahana community.
- 2.5.2 Do further archival research, field work and other studies, as may be needed, to respond to comments and concerns raised by the reviewing entities.
- 2.5.3 Revise the Preliminary Draft Management Plan and produce the “official” AHUPUA‘A ‘O KAHANA DRAFT MANAGEMENT PLAN. The Draft Plan will include an “Action Plan” section that provides more details on 3 to 5 priority projects that can be organized and implemented during the next 3 years. Other resource management projects will be organized in phases to provide for incremental implementation. The Action Plan will have to reflect the conclusions and recommendations for the “3 overarching issues” that were analyzed in Work Element 3 of this scope. The planning consultant will meet with State Parks, other relevant management entity(ies), the KPC, the KCA, and with Kahana families as needed during the revision process.

- 2.5.4 Meet with State Parks, other relevant management entity(ies), the KPC, and the KCA, together or separately, and with the general Kahana community to present the Draft Management Plan to them and to receive their initial comments. Consult with the Department of the Attorney General, as appropriate. Coordinate with State Parks to have the DRAFT MANAGEMENT PLAN posted on the DLNR website and on the project website.
- 2.5.5 Schedule, advertise, organize, facilitate and record a general meeting for the at-large community to present the DRAFT MANAGEMENT PLAN and to hear their comments on the DRAFT MANAGEMENT PLAN.

Work Element 2.5 Deliverables: Ahupua'a 'O Kahana Management Plan - Draft
Record of Comments on the Draft Plan from
State Parks, other relevant management
entity(ies), the KPC, and the KCA
Record of Comments on the Draft Plan from the
general Kahana community
Record of Comments on the Draft Plan from
the At-Large Community

Work Element 2.5 Time & Cost: 3 months, \$30,000 to \$40,000

WORK ELEMENT 2.6: AHUPUA'A 'O KAHANA MANAGEMENT PLAN – FINAL

- 2.6.1 Review comments received from State Parks, other relevant management entity(ies), the KPC, the KCA, and the Kahana community and revise the DRAFT MANAGEMENT PLAN as needed.
- 2.6.2 Submit a “ready to print” MANAGEMENT PLAN to State Parks, other relevant management entity(ies), the KPC, and the KCA for their final review.
- 2.6.3 Make any final edits to the MANAGEMENT PLAN and submit final electronic and hard copies of the PLAN to State Parks, other relevant management entity(ies), the KPC, and the KCA.
- 2.6.4 The final AHUPUA'A 'O KAHANA MANAGEMENT PLAN will have to be formally approved by State Parks, other relevant management entity(ies), the Kahana Planning Council and the Kahana Community Association. Approval by the Board of Land and Natural Resources may also be required.

Work Element 2.6 Deliverables: AHUPUA'A 'O KAHANA MANAGEMENT
PLAN

Work Element 2.6 Time & Cost: 3 months, \$20,000 to \$30,000

SUMMARY OF TIME AND COST FOR THE AHUPUA‘A ‘O KAHANA MANAGEMENT PLAN

<u>Plan Phase and Element</u>	<u>Time</u>	<u>Cost</u>
PHASE 1: ADDRESS THE THREE OVERARCHING CRITICAL ISSUES FOR KAHANA		
1.1 Organize the Phase 1 Planning Process	2 months	\$ 15,000 to \$ 20,000
1.2. Address the Three Overarching Critical Issues	6 months	\$150,000 to \$180,000
Design and maintain Project Website:	months 1-8	\$ 10,000 to \$ 15,000
<u>Subtotal: Phase 1 Estimated Time & Cost:</u>		<u>8 months</u> <u>\$175,000 - \$215,000</u>
Add: Budget for travel, printing for one At-Large Community Mtg:		\$ 10,000
<u>PHASE 1 ESTIMATED TIME & COST:</u>		<u>8 months</u> <u>\$185,000 - \$225,000</u>

PHASE 2: DEVELOP THE AHUPUA‘A ‘O KAHANA MANAGEMENT PLAN

2.1. Organize the Phase 2 Planning Process	1 month	\$5,000 to \$10,000
2.2. Community Consultation, Review Background Information	3 months	\$40,000 to \$50,000
2.3. Document Existing Conditions	6 months	\$100,000 to \$120,000
2.4 Preliminary Draft Management Plan	4 months	\$ 50,000 to \$60,000
2.5 Draft Management Plan	3 months	\$ 30,000 to \$40,000
2.6 Final Management Plan	3 months	\$ 20,000 to \$30,000
Management of the Project Website:	months 1-20	\$ 20,000 to \$30,000
<u>Subtotal: Phase 2 Estimated Time & Cost:</u>		<u>20 months</u> <u>\$265,000 to \$340,000</u>
Add: Budget for travel, printing for two At-Large Community Mtgs:		\$ 20,000
<u>PHASE 2 ESTIMATED TIME & COST:</u>		<u>20 months</u> <u>\$285,000 - \$360,000</u>

TOTAL ESTIMATED TIME AND COST PHASES 1 & 2: 28 MONTHS \$470,000 - \$585,000**PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT**

The use of state lands and state funds for the development of this Management Plan will “trigger” the need for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Given the complex and long-range nature of the Management Plan that is described in this SCOPE outline, it seems likely that a PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT will be required.

The scope of work for a Programmatic EIS will generally have to follow the guidelines of the state Office of Environmental Quality Control (OEQC). Our estimate for the time and cost of a Programmatic EIS for the Ahupua'a 'O Kahana Management Plan is: 18 to 24 months, \$150,000 to \$200,000. These costs are not included in the estimate above.

NOTE: This estimate of Time and Cost for the Management Plan does not include time and cost for the detailed resolution, including drafting and enactment of legislation and/or Administrative Rules, of the three overarching issues for Kahana. The estimate of Time and Cost above also does not include Time and Cost for permits that may be required to implement various elements of the Management Plan, like Conservation District Use Permits (CDUP) or Special Management Area Permits (SMP).

2.2 Phase 1A Planning and Analysis Methods

The planning methodology for Phase 1A of the Kahana planning process focused on Kahana community issues and problem-solving – not on past plans and documents. The planning work thus included:

- a. Meetings and discussions with State Parks staff, both as a group (eight meetings) and individually (six meetings);
- b. Meetings and discussions with Kahana community leaders (total of eight meetings);
- c. Attendance and participation in meetings of the KAHANA PLANNING COUNCIL (five meetings) and of the KAHANA COMMUNITY ASSOCIATION (four meetings);
- d. In-house planning sessions of the consultant team (approximately 20 working meetings);
- e. Development of “ALTERNATIVE STRATEGIES” for the three critical Kahana issues;
- f. Summary and analysis of the SURVEY QUESTIONNAIRE for Kahana lessees that was developed, distributed and collected by State Parks;
- g. “One on one” meetings and discussions with Kahana lessees (20 meetings);
- h. Review of relevant documents, especially documents relating to the Kahana 65-Year leases and leases for other State-owned lands at Maunalaha, Miloli‘i, and Waiāhole.
- i. Development and submittal to State Parks of “Working Papers” on each of the three critical Kahana issues. The “Working Papers” were intended to be progress memos summarizing preliminary findings by the consultant on the three critical Kahana issues;
- j. Discussions with the State Parks Administrator regarding a legislative strategy for Kahana for the 2018 Session of the State Legislature;
- k. Consultation with the Office of the State Attorney General regarding certain clauses in the Kahana leases;
- l. Preparation for and participation in a KAHANA COMMUNITY MEETING, which was held on Saturday morning, September 9, 2017;
- m. Preparation of a DRAFT PROGRESS REPORT.
- n. Provided material for a BRIEFING to the BOARD OF LAND AND NATURAL RESOURCES.

2.3 Overview of Current Critical Issues

In the “Master Plan Scoping” process, the consultant identified three critical, overarching issues for Kahana:

1. **The “Living Park” concept** – How was this concept conceived, developed and defined? How is this concept understood today – by State Parks, by Kahana residents, and by State Legislators? Is this concept still valid for this State Park and for people residing in the Park? Are there any alternative concepts that would be appropriate for Kahana today?
2. **The 65-Year Leases** that dictate the terms under which Kahana families are permitted to live in the valley. Are these terms still appropriate today? Do some of these terms need to be reviewed and amended?
3. **Overall management of Ahupua'a 'O Kahana State Park** – Is State Parks the appropriate manager for this park and its resident community? What entity or entities would be more appropriate?

Some other critical issues emerged during the planning process:

Six Families and house lots without leases: There are six (6) house lots that are currently occupied by Kahana families that do not have leases with State Parks. These six house lots are located in the coastal flood zone. The six house lots and other Kahana coastal houses were scheduled to be abandoned in 1993 when long-term leases were offered to Kahana families for residential lots outside of the floodplain. Most of the Kahana families moved to the new residential lots, as they had agreed. However, some members of six families chose to remain in houses located in the floodplain. Upon pending eviction action by DLNR, the six families obtained political support that led to the enactment of Act 15, Session Laws of Hawai'i (SLH) 2009. Act 15 included a 2-year moratorium on eviction of the six families.

Arrears of Interpretive Hours: The Kahana leases require lessees to contribute 25 hours per month of services related to scheduled interpretive programs in Kahana in lieu of monthly rent. Over 70% of the Kahana lessees are currently in arrears of their required interpretive hours. As of September 2016, an analysis by State Parks of the status of Kahana families' conformance with the requirement of “(25) hours per month of services related to scheduled interpretive programs” showed that:

- eight of the 28 families (28.6%) with leases had a small to significant + balance of hours (+35 to +482),
- three families (10.7%) were in arrears by -375 to -635 hours (15 to 25.4 months in arrears), and
- 17 families (60.7%) were in arrears by 1150.5 to 4248.5 hours (46 to 170 months) in arrears.

2.4 Alternative Strategies for the Three Critical Issues

During the period July through August 2016, the consultant met and talked with State Parks staff, the Kahana Planning Council, the Kahana Community Association, Kahana Leaders and Kahana Young Leaders. Based on these meetings and in-house working sessions, the consultant developed a summary of ALTERNATIVE STRATEGIES relating to the three critical issues for Kahana.

The ALTERNATIVE STRATEGIES that were developed are presented on the next two pages of this Progress Report. The tabular format for these ALTERNATIVES includes an evaluation of the probable impacts of each ALTERNATIVE for five important considerations:

- “FREES” State Parks from management of Residential Leases
- EVICTIONS of families who are in default of lease terms (would be required)
- Kahana families would benefit FINANCIALLY
- PUBLIC RECREATIONAL BENEFITS remain the same or are increased
- Action by the HAWAI‘I STATE LEGISLATURE would be required

For each of the ALTERNATIVES/PROBABLE IMPACTS, the analysis provided a basic “score”: scores of “YES/NO/POSSIBLY” for four of the five IMPACTS, and scores of “DECREASE/SAME/INCREASE” for “PUBLIC RECREATIONAL BENEFITS.” The scores for the PROBABLE IMPACTS were discussed and eventually resolved through several planning team working sessions.

Each of the ALTERNATIVES was also given a score of “LOW” or “MODERATE” for “OVERALL POLITICAL FEASIBILITY” of each Alternative Strategy. The planning team agreed that any alternative that would require evictions of Kahana families would have a LOW Political Feasibility.

Table 1 Alternative Strategies for the Future of Kahana Families and Kahana Natural, Cultural, and Recreational Resources

ALTERNATIVE STRATEGIES	PROBABLE IMPACTS OF EACH ALTERNATIVE STRATEGY					OVERALL POLITICAL FEASIBILITY of each Alternative Strategy*
	"FREES" State Parks from management of residential leases	EVICTIONS of families who are in default of lease terms	Kahana families would benefit FINANCIALLY	PUBLIC RECREATIONAL BENEFITS remain the same or are increased	Action by the HAWAI'I STATE LEGISLATURE would be required	
1. The concept of the "Cultural Living Park"						
<u>ALT 1A</u> : Implement the "Living Park" concept, but modify the leases to provide more flexibility and some economic benefits for lessees	NO	NO	YES	SAME	NO	LOW
<u>ALT 1B</u> : Implement the "Living Park" concept by replacing families who are in violation of lease terms with new families that will engage in cultural practices	NO	YES	NO	INCREASE	NO	LOW
<u>ALT 1C</u> : Rescind the "Living Park" concept, but allow families to continue to live in Kahana on land removed from State Parks ownership.	POSSIBLY	NO	POSSIBLY	INCREASE	YES	MODERATE
2. The 65-Year Leases						
<u>ALT 2A</u> : Implement the "Living Park" concept, but modify the residential leases to provide flexibility and economic opportunities for lessees.	NO	NO	YES	SAME	NO	LOW
<u>ALT 2B</u> : Implement the "Living Park" concept with heightened enforcement of the terms of the leases, including replacing families who are in violation of lease terms, with new families that will engage in Kahana cultural practices.	NO	YES	NO	INCREASE	NO	LOW
<u>ALT 2C</u> : Rescind the "Living Park" concept and offer to Kahana families new affordable monetary leases or affordable fee simple ownership of the residential lots.	POSSIBLY	NO	YES	INCREASE	YES	MODERATE

*Any alternative that will require evictions of Kahana families is considered to have a LOW Political Feasibility.

Table 1: Alternative Strategies for the Future of Kahana Families and Kahana Natural, Cultural, and Recreational Resources (Continued)

ALTERNATIVE STRATEGIES	PROBABLE IMPACTS OF EACH ALTERNATIVE STRATEGY					OVERALL POLITICAL FEASIBILITY of each Alternative Strategy
	"FREES" State Parks from management of Residential Leases	EVICTIONS of families who are in default of lease terms	Kahana families would benefit FINANCIALLY	PUBLIC RECREATIONAL BENEFITS remain the same or are increased	Action by the HAWAII STATE LEGISLATURE would be required*	
3. Management of Kahana mauka, makai, recreational, and residential areas <u>ALT 3A:</u> To implement Alts. 1A and 2A, State Parks continues to manage all four areas of Kahana with supplemental funds for qualified management staff. <u>ALT 3B:</u> To implement Alts. 1B and 2B, State Parks continues to manage Kahana mauka, makai, and recreational areas, and contracts with a for-profit or non-profit entity to manage the residential leases, with supplemental funds. <u>ALT 3C:</u> To implement Alts. 1C and 2C, State Parks continues to manage Kahana mauka, makai, and recreational areas, in partnership with other DLNR Divisions, and converts residential area to affordable monetary leases or affordable fee simple ownership for Kahana families.	NO	NO	POSSIBLY	SAME	NO	LOW
	YES	POSSIBLY	POSSIBLY	INCREASE	NO	MODERATE
	POSSIBLY	NO	POSSIBLY	INCREASE	YES	MODERATE
	YES	POSSIBLY	POSSIBLY	INCREASE	NO	LOW
<u>ALT 3D:</u> State Parks continues to manage Kahana recreational areas, but relinquishes management of the mauka, makai, and residential areas to one or more other entities.**	YES	POSSIBLY	POSSIBLY	INCREASE	NO	LOW
<u>ALT 3E:</u> State Parks removes itself completely from Kahana, and turns over leases to the management of the four areas to one or more entities.**	YES	POSSIBLY	POSSIBLY	INCREASE	NO	LOW

*Any alternative that will require evictions of Kahana families is considered to have a LOW Political Feasibility

** State Parks could lease its Kahana recreational assets to a non-profit entity, like in He'eia. There could then be an opportunity for community-based management, perhaps a KONOHIKI-type system.

2.5 State Parks Survey of Kahana Lessees

State Parks staff determined that a survey of Kahana Lessees’ positions on critical issues and alternatives for the future of Kahana was needed. The surveys were intended to provide initial responses of Kahana Lessees, with “one on one” follow-up interviews that would provide lessees an opportunity to discuss these issues in more detail. Two surveys were developed: one questionnaire (**Figure 5**) focused on the three critical Kahana issues and was sent to all Kahana lessees and to the residents of the six unleased house lots. The second questionnaire (**Figure 6**) was sent only to the residents of the six unleased house lots and was focused on their willingness/ability to comply with current floodplain regulations and funding of required improvements to their structures and lots.

There were 34 survey questionnaires mailed to the 28 Kahana lessees plus the six families who are awaiting leases. A total of 20 questionnaires were filled out or partially filled out and returned to State Parks. All of the six families who are awaiting a Kahana lease filled out and returned the special questionnaire.

Figure 5 Letter and Survey Form Sent to Kahana Lessees

**POSTAL MAIL AND HAND DELIVERED*****Aloha Ahupua'a O Kahana State Parks Resident,***

As you are aware, efforts to create a realistic Master Plan for Kahana have been in process for the last 8 years - with insubstantial success. Because of this, the Division of State Parks redirected some of its Capital Improvement Program funds to attempt to complete the community planning effort. **This letter contains a very critical survey that needs your input to continue with the planning effort.**

Due to these challenges, the "***Ahupua'a 'o Kahana State Park Assessment: Scope, Process, and Cost for a Master Plan***" was developed in December, 2015, and identified the three overarching issues that need to be addressed before an actual Master Plan can be developed. The three issues are:

1. **Determination if a Cultural Living Park is still a realistic and valid concept:**
 - Identify alternative concepts for Kahana
2. **Assessment of the provisions and options relating to residential leases:**
 - Identify changes that can legally be made to the lease agreement
3. **Identify appropriate alternative management entities for Kahana in regards to:**
 - Residential leases
 - Park facilities
 - Cultural and natural resources.

You should have received all updated planning information (see below), which were distributed to you via mail. This information is helpful for you to understand where the planning process is; where the process is moving towards; as well as assisting you in providing valuable information for the survey and interview with Townscape, Inc.

- 2016 Ahupua'a 'o Kahana State Park Assessment: Scope, Process & Cost for a Master Plan (December 2015).
- Ahupua'a 'O Kahana history and background of the Master Plan Preparation Process (see attached)

Figure 6: Letter and Survey Form Sent to Kahana Lessees (Continued)

As part of the next phase of the planning process, Townscape, Inc. will be scheduling interviews with the head of the household or family representative at your availability. To help with this process, **please fill out the attached survey and return it to us by February 15, 2017.** The survey is a series of yes and no questions. The interviews will provide you the opportunity to expand on and explain your survey responses. As this is an important action to determine the feasibility of interpreting the park, response is essential:

- ***Your participation for the completed survey and interview will be noted for 25 interpretive hours, however,***
- ***No interpretive hours will be credited if there is no participation with the survey and interviews.***

Also, “no participation” will be interpreted that you do not want to participate in further planning efforts and that you will support what is finally worked out for the future management of this unique park.

State Parks has trained staff to manage both natural and cultural resources areas for access and recreation. However, State Parks staff lacks the training, expertise and overall mandate to manage a residential community. To highlight this challenge, there are 34 families on record in Kahana who are required to provide monthly interpretive program hours and, currently, there are 9 families that are not in default of providing hours for their interpretive programs. As of November 2017, there is a total of 42,024 interpretive hours in arrears and due per the lease. Efforts to encourage participation are not working – so there needs to be another management model - or - modification to this relationship of residents residing within the State Park.

Townscape will be available from February 16, 2017 through March 16, 2017 to conduct the one-on-one interview with you. Bruce Tsuchida will contact you to schedule your interview appointment.

Mahalo in advance for your participation, it is my sincere hope that your answers will guide us all to a plan that is equitable for this storied, unique and intact ahupua'a.



Curt A. Cottrell, Administrator
Division of State Parks

C: DLNR Chair Suzanne Case
DLNR First Deputy Kekoa Kaluhiwa

Figure 6: Letter and Survey Form Sent to Kahana Lessees (Continued)

RESIDENT INFORMATION

Lessee name(s):

Address:

Telephone number:

Cultural Living Park Concept: Residences have been allowed to remain and be further developed within Ahupua'a 'O Kahana State Park, provided that the residents/occupants perform 25 hours per month of interpretive activities as part of a park program in lieu of monetary rent. There is a significant amount of interpretive hours in areas by a majority of the current lessees. Because of this and other issues:

	Yes	No	
1)	<input type="checkbox"/>	<input type="checkbox"/>	Do you still support the current 65-year lease arrangement with the required 25 hours/month interpretive hours?
a)	<input type="checkbox"/>	<input type="checkbox"/>	Do you want other activities to be accepted for the required hours in addition to Appendix C?
2)	<input type="checkbox"/>	<input type="checkbox"/>	Should new leases be issued to families with authentic ties to Kahana that are willing to comply with the 25 hours/month requirement?
a)	<input type="checkbox"/>	<input type="checkbox"/>	Should the number of leases for these new lessees be limited to the existing 36 subdivided lots?
65-year Leases: State Parks is experiencing significant difficulties due to a lack of skill and capacity to manage both the leases and insuring compliance with the residents. As a result of this:			
3)	<input type="checkbox"/>	<input type="checkbox"/>	Do you support the idea of the current lease arrangement being changed to a monthly monetary rent at a rate to be determined and eliminate the 25 hours/month requirement?
4)	<input type="checkbox"/>	<input type="checkbox"/>	Do you want additional changes to the lease to allow you to benefit from improvements made on the property?
Management of Kahana mauka, makai, and recreational areas: The Division of State Parks has the skill and capacity to manage these areas, as it reflects our staff's training, mission and objectives to manage recreational, environmental and cultural areas.			
6)	<input type="checkbox"/>	<input type="checkbox"/>	Are you satisfied with State Parks managing the residential lease lots?
a)	<input type="checkbox"/>	<input type="checkbox"/>	If not satisfied, do you think the residential leases and residents be managed by another agency or entity?
7)	<input type="checkbox"/>	<input type="checkbox"/>	If State Parks does not manage the residential lease lots, do you think State Parks should continue to manage the recreational, environmental and cultural resources and activities in Kahana?
8)	<input type="checkbox"/>	<input type="checkbox"/>	Do you support the management of the entire Ahupua'a be managed by another entity such as a non-profit, or other non-governmental agency?

The following is a summary of the survey results:

1. "Do you still support the current 65-year lease arrangement with the required 25 hours per month interpretive hours?"
 YES: 10 NO: 4 BLANK: 5 COULDN'T TELL: 1
 - 1a. "Do you want other activities to be accepted for the required hours in addition to Appendix C?"
 YES: 17 NO: 2 BLANK: 1
2. "Should new leases be issued to families with authentic ties to Kahana that are willing to comply with the 25 hours/month requirement?"
 YES: 14 NO: 5 BLANK: 1
 - 2a. "Should the number of leases for these new lessees be limited to the existing 36 subdivided lots?"
 YES: 6 NO: 13 BLANK: 1
3. "Do you support the idea of the current lease arrangement being changed to a monthly monetary rent at a rate to be determined and eliminate the 25 hours/month requirement?"
 YES: 6 NO: 6 BLANK: 6 "DEPENDS": 2
4. "Do you want additional changes to the lease to allow you to benefit from improvements made on the property?"
 YES: 16 NO: 3 BLANK: 1
6. Are you satisfied with State Parks managing the residential leases?*"
 - 6a. "If not satisfied, do you think the residential leases and residents should be managed by another agency or entity?"
 YES: 10 NO: 6 BLANK: 3 "Depends": 1
7. "If State Parks does not manage the residential lease lots, do you think State Parks should continue to manage the recreational, environmental and cultural resources and activities in Kahana?"
 YES: 10 NO: 10 BLANK: 0
8. "Do you support the management of the entire ahupua'a be managed by another entity such as a non-profit, or other non-governmental entity?"
 YES: 13 NO: 6 BLANK: 1

***Note: There was no question #5 in the survey.**

2.6 State Parks Survey of the Six Families Awaiting Leases

There were four questions in the special questionnaire that was sent to the six families who are awaiting leases (**Figure 6**). As mentioned previously, all six families returned completed surveys. These questions, and a summary of the answers of the six families, are provided below:

Figure 6 Survey Form Sent to the Six Kahana Families Awaiting Leases

RESIDENT INFORMATION

Primary Resident (pending lease issuance) name(s):

Address:

Telephone number:

In order to obtain a lease, the Board of Land and Natural Resources (BLNR) will need to accept and approve the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and an amendment of the Conservation District Use Permit (CDUP) to allow you to reside in your current location. A CDUP was approved by the BLNR years ago for the other 28 residential lease areas. Due to Department of Health violations placed upon the cesspools servicing your bathrooms and toilets, the facilities must be discontinued and closed in 2018, unless replaced by an approved sewer system prior to this date.

	Yes	No	
1)	<input type="checkbox"/>	<input type="checkbox"/>	With the possible, but still uncertain BLNR approval of both the EA/FONSI and CDUP, would you comply with the following requirements: all structures and improvements are required to comply with current City and County of Honolulu building codes and flood plain regulations; all toilets, sinks, showers/bathing units, outdoor sinks will need to be connected to a sewer system; upgrade water and wastewater systems to comply with EPA, State and CCH requirements including an Aerobic Treatment Unit (ATU) and pumps to treat and dispose of the wastewater; monitoring and annual maintenance of the ATU by a certified water system operator; the increase in electrical cost from the ATUs; the cost of water service provided by the Board of Water Supply; and all utility costs must be paid by you. Renovation or new construction in its current location will need to comply with current flood plain requirements, including raising the structure above ground. Compliance of the above will be the responsibility of the lessee/occupant.
2)	<input type="checkbox"/>	<input type="checkbox"/>	With BLNR approval of both the EA/FONSI and CDUP, would you have the ability to pay for the compliance requirements described above? All costs will be the responsibility of the lessee/occupant.
3)	<input type="checkbox"/>	<input type="checkbox"/>	Would you be able to finance the following: home renovations and new constructions that must comply with current building codes and regulations; sewer improvements must be approved by CCH and DOH; home renovations and new construction will need to meet CCH flood plain requirements such as raising the structures above ground; and new water lines. All cost will be the responsibility of the lessee/occupant.
4)	<input type="checkbox"/>	<input type="checkbox"/>	If the BLNR denies either the EA/FONSI or CDUP, or no action by the Board, and if house design and construction support was provided by the Habitat for Humanity or additional Legislative funding was provided, would you consider an alternate lot in Kahana that does not incur the amount of all of the costs described above? A septic tank and leachfield system in these lots was estimated to cost approximately \$25,000 vs \$900,000 for a system in the current location.

The following is a summary of the survey results:

1. With the possible, but still uncertain BLNR approval of both the EA/FOSI and CDUP, would you comply with the following requirements: all structures and improvements are required to comply with current City and County of Honolulu building codes and flood plain regulations; all toilets, sinks, showers/bathing units, outdoor sinks will need to be connected to a sewer system; upgrade water and wastewater systems to comply with EPA, State and CCH requirements including Aerobic Treatment Unit (ATU) and pumps to treat and dispose of the wastewater; monitoring and annual maintenance of the ATU by a certified water system operator; the increase in electrical cost from the ATUs; the cost of water service provided by the Board of Water Supply; and all utility costs must be paid by you. Renovation or new construction in its current location will need to comply with current flood plain requirements, including raising the structure above ground. Compliance of the above will be the responsibility of the lessee/occupant.

YES: 0

NO: 6

BLANK: 0

2. With BLNR approval of both the EA/FONSI and CDUP, would you have the ability to pay for the compliance requirements described above? All costs will be the responsibility of the lessee/occupant.

YES: 0

NO: 6

BLANK: 0

3. Would you be able to finance the following: home renovations and new constructions that must comply with current building codes and regulations; sewer improvements must be approved by CCH and DOH; home renovations and new construction will need to meet CCH flood plain requirements such as raising the structures above ground; and new water lines. All costs will be the responsibility of the lessee/occupant.

YES: 5

NO: 1

BLANK: 0

4. If the BLNR denies either the EA/FONSI or CDUP, or no action by the Board, and if house design and construction support was provided by the Habitat for Humanity or additional Legislative funding was provided, would you consider an alternate lot in Kahana that does not incur the amount of all of the costs described above? A septic tank and leachfield system in these lots was estimated to cost approximately \$25,000 vs. \$900,000 for a system in the current location.

YES: 0

NO: 1

BLANK: 5

2.7 Lessee Interviews by Townscape

The State Parks consultant met with Kahana lessees/Families from February 21, 2017 through March 7, 2017. Most of these meetings were with ONE lessee/family at their home. One of the meetings was with one lessee plus three of the six families that are awaiting leases – a “joint meeting” at the request of those families. Each of these “one on one” meetings lasted about one hour. From February 21, 2017 through March 7, 2017, the consultant interviewed a total of 15 of the current 28 lessees, plus five of the six families who are awaiting a lease. On March 8, 2017, the consultant also met with a group of six Kahana young people who are active in Kahana community programs.

In order of occurrence, the consultant interviewed the following Kahana individuals:

1. Ululani Beirne
2. May Au
3. Puanani Martinez
4. Anigan Kahala
5. Duke Kahala
6. Olepa Malepe (for Duchess Kahala)
7. Thoren Evans
8. Ron and Anita Johnson
9. Norman Shapiro
10. Sheila Sherman
11. Carol Soga
12. Kaipō Gorai
13. Blanch Soga
14. Brumell Gaceta
15. Charmaine Kahala
16. Sherri Johnson
17. Lena Soliven
18. Lisa and Vanny Kamaka'ala
19. Sunny Greer
20. Jim Anthony

The Kahana young adults that participated in the March 8, 2017 meeting were: Shaelene Kamaka'ala, Kahiau Wallace, Kaipō Soares, Leelen Garvida, and Shaunny Keawe'ehu. Community worker Laulani Teale also participated in this meeting.

Following is a summary of these Kahana lessee/family meetings. As the consultant had promised the Kahana families, the thoughts in this summary are not attributed to specific individuals. This summary has been organized by general TOPIC. These TOPICS generally relate to the QUESTIONS that were listed in the recent SURVEY FORM that State Parks mailed and hand-delivered to all Kahana families. However, these discussions with Kahana lessees/families were deliberately broader in nature, as compared to the “YES/NO” format of the Survey.

For the very important questions dealing with the “Living Park,” “25 hours vs. monetary lease rents” and “Should State Parks continue to manage Kahana?” the answers from the 20 interviews were generally as follows:

- The concept of the Living Park: The majority of the 20 people that were interviewed had no specific thoughts on the “Living Park” concept. Several people said that they believed this was a good concept BUT that Kahana today is not at present a “Living Park” because most of the Kahana residents are not interested in engaging in cultural practices or “interpretive services” for the Park.
- 25 hours of interpretive services vs. monetary lease rents: nine people said the 25 hours per month requirement was manageable; six people said it would be good for people to have the option of either doing 25 hours or paying monetary lease rents; five people did not have an opinion on this question.
- Should State Parks continue to manage Kahana? Without exception, all 20 interviewees said that State Parks has “never” done a good job of managing Kahana and that State Parks needs to hire qualified park personnel who know how to work with a rural community like Kahana. Seven people basically said that State Parks was not a good manager but that they could not think of an entity that could replace State Parks. Six people said NO, State Parks should not continue to manage Kahana. However, only ONE of these people had a suggestion on an entity that could/should manage Kahana. That person suggested that a SINGLE PURPOSE ENTITY like the Kaho‘olawe Island Reserve Commission (KIRC) should manage Kahana. The Kahana Young adults group advocated for management of the Kahana Ahupua‘a “by the Kahana community.”

The SCOPE OF WORK for Phase 1A of the Kahana planning process was organized to address the “THREE CRITICAL, OVERARCHING ISSUES” for Kahana: (1) the Concept of the “Living Park,” (2) the 65-Year Leases, (3) Future Management of the Kahana Ahupua‘a. This summary of the one on one meetings has therefore been organized under these three general headings.

2.7.1 The Concept of the Living Park

Thoughts of the interviewed lessees on the subject of the “Living Park” included the following:

- The “living park” concept was valid at the time that it was adopted for Kahana; the kūpuna at that time really did live and understand Hawaiian culture.
- State Parks made a big mistake when they forced Kahana families to relocate to new lots away from their traditional home sites, their ‘āina. The relocation of Kahana families destroyed any hope for a viable “Living Park.”
- There are a lot of opportunities to do interpretive programs at the Kam Mon Store, but at present there are only three people who are active at the Store.
- State Parks wants us to participate in interpretive programs, but they don’t organize enough cultural programs for us to participate in: 34 families X 25 hours per family each month = 850 hours per month of organized programs would be needed.

- Why put a cap on the number of house lots? The LIVING PARK needs lots of residents to be alive!
- There is A LOT OF WORK that could/should be done in Kahana, including keeping the river clear/clean, clearing the trails, keeping the pig population under control, etc. etc. Maybe young people over the age of 21 who are living with their parents or grandparents in Kahana should be required to contribute 25 hours per month of ahupua‘a maintenance work.
- The “GARDEN” is a highlight area of Kahana that visitors enjoy.
- Maybe have each family responsible for a specific area of Kahana – whether garden, lo‘i, fishpond or other – so that they had clear responsibilities, and also it would be easy to see if they are doing the needed work.
- Could do away with the “living park” idea and just let people live here.

2.7.2 The Terms of the 65-Year Leases

Thoughts on the leases included the following:

- The 65-year leases gave Kahana families some longer-term security, but these individual leases destroyed the COMMUNAL SPIRIT of Kahana.
- 25 hours per month of interpretive services is easy to do – don’t understand why some Kahana folks are complaining about this requirement.
- The 25 hours per month is OK because this allows us to continue to live in Kahana.
- State Parks never set up a system for cultural activities.
- Our young people are putting in hours of interpretive services, but they don’t get those hours recorded.
- Monetary lease rents instead of the 25-hour per month of interpretive services could be an option.
- Monetary lease rents probably better for kūpuna – who in their old age are having a hard time doing 25 hours per month of interpretive services.
- We should be able to accrue more than the 150 hours that is currently the limit. We could use accrued hours if we get sick and can’t put in hours for a period of time, or if we need to take a long trip or if we want to contribute some hours to a family that is having a hard time keeping up with their required hours for some reason.
- “I have 3000 recorded ‘volunteer hours’ but none of those hours can be used against my ‘hours in arrears.’”
- I am against monetary lease rents – that would negate the entire concept of Kahana families participating in interpretive programs for the living park!

- If the value of the interpretive services hours is at least \$10/hour, then monetary lease rents of \$250 per month (25 hours X \$10/hour) would be reasonable.
- Something like \$600 per month lease rent would be fair.
- Kahana families paid \$60 per month for the earlier REVOCABLE PERMITS.
- Monetary lease rents would open up Kahana to the general public.
- Kahana lessees should have the right to obtain loans against the value of their on-site improvements and on the value of the remaining years of their lease.
- The clause in the leases that says that Kahana lessees can only sell their house to the State, and that the State will only pay \$65,000 for a Kahana lessee's house is totally unreasonable. The City Tax Department assesses my house at a value of \$450,000! I should be able to sell my house at market value!
- This requirement of "must sell back to the state" constitutes an ILLEGAL TAKING. We need a written opinion from outside legal counsel on the legality of this requirement.
- Lease to Fee conversion needs to be an option for Kahana lessees.
- These leases would never hold up in court!
- Many Kahana families are in arrears on their hours because the State Parks Coordinator has not been consistent in working with families to make up for their required hours.
- Regarding Kahana families that are in arrears on their interpretive hours: may be best to "wipe out" the hours that are "owed" and start everybody fresh.
- Alternate view: Kahana families that are in arrears on their interpretive hours should be evicted. State Parks does not enforce the terms of the leases – and that is at the root of management problems for Kahana.
- Evictions could work – IF people and organizations outside Kahana were given facts about why the evictions were necessary.
- Would like to be able to rent out room(s) in our house. Related point of view: Kahana folks should NOT be allowed to rent rooms to outsiders but OK to rent to family members.
- What about allowing for ADUs – Accessory Dwelling Units – similar to the recently enacted City ordinance?
- Kahana senior citizens should be allowed to live here "rent free" – no required hours OR monetary rents.
- More leases should be considered – for young folks with children. But not sure that these young folks will be able to afford mortgage loans, insurance, property taxes, utilities, maintenance, etc.
- "Any changes to the leases requires the agreement of all Kahana lessees." (Need to check if this provision is in the leases.)
- The provisions of the Kahana leases should stay the same, and the leases should be extended beyond the current lease term of 65 years.

- The current leases are not perfect, but could be worse! Overall, the current leases are good for Kahana folks.
- We're doing fine here – the State won't evict any more people.
- We should have about ½ acre lots so that there would be enough space for adult children with families to build a house.
- Members of our extended families should be allowed to camp on our lots from time to time.
- Maybe we need to look at a different land tenure model – more like the “community contract” and bylaws that were established back in the late 19th Century by the HUI that owned Kahana.

2.7.3 Future Management of the Kahana Ahupua'a

Thoughts on the future management of Kahana included the following:

- State Parks should suck it up and manage Kahana the way it should be managed!
- State Parks has NEVER UNDERSTOOD how to manage Kahana. State Parks did not want to have to manage Kahana from the start!
- State Parks has never trained their people how to manage Kahana and Kahana families.
- Managing Kahana is a tough job for anyone!
- Kahana needs a Konohiki type manager who will work WITH Kahana families.
- The right kind of manager could make things work for Kahana!
- Need a Park Manager with really good PEOPLE SKILLS!
- State Parks needs to find a person who has HUMAN RESOURCES (HR) MANAGEMENT experience – someone who is really qualified to work with people.
- Need a park manager who lives nearby so they don't have to “go home at 3:00 p.m.”
- The “9 to 5 – Monday thru Friday only” mentality DOES NOT WORK for a Kahana Park Manager – especially since most of the visitors to Kahana come on the weekends!
- The current State Parks Manager for Kahana favors some individuals/families; does not like others – not a good way to manage.
- State Parks not doing a good job managing Kahana. Look at all the junk cars and trash on some of the Kahana Valley Road lots! State Parks should enforce the rules – but they don't.
- State Parks doesn't do anything about illegal campers or homeless people who are living in the bushes near the beach.
- State Parks doesn't manage the access roads and the grass, bushes and trees adjacent to the roads – yet won't recognize the hours that Kahana residents devote to maintaining the road corridors.
- State Parks should continue to be the manager for Kahana – but Kahana needs a manager person who is both flexible and fair.

- The Park Manager should be an ADVOCATE for Kahana families!
- The Park Manager needs to be able to issue and enforce citations and fines to Kahana folks who are violating the terms of their lease – junked cars and trash, etc.
- State Parks should not be the landlord. (But when the interviewer asked: “Well – what agency or entity could or should manage Kahana?” all but one of the Kahana folks had no suggestions.)
- State Parks needs a Plan that will create JOBS for Kahana families. How about developing a COMMERCIAL KITCHEN, a CULTURAL CENTER, a SOLAR FARM, a WINDFARM? These kinds of projects would provide management and maintenance jobs for us.
- If State Parks decides to turn over the management of the leases to a private property management company, would that company know how to manage the “25 hours of interpretive services per month” requirement?
- Management of the natural resources of Kahana is the key!
- Kahana is not just “a public park” – this ahupua’a is a special resource that needs special management.
- What Kahana needs is a “single purpose entity” whose SOLE MISSION AND FUNCTION is to manage the resources of the Kahana Ahupua’a with and for the people of Kahana and for the benefit of the state of Hawai’i overall.
- Things are NOT WORKING for Kahana families and for State Parks. State is always interfering in our lives. It may be simplest to “excise” the residential lots from the State Park and just let Kahana families go on with their lives – “get the State off of the people’s backs.”
- Kahana needs a HEALING PROCESS.

2.7.4 Other Issues

- Kahana folks just don’t understand the concept of COMPROMISE!
- There should be more opportunities for outside groups and organizations to participate in cultural programs and activities in Kahana.
- The Kahana Community Association is not a functioning entity – there are only a few dues paying members, and few people attend the meetings.
- It has now been eight years since the passage of ACT 15, and there is STILL no progress on the issues that ACT 15 identified to be addressed.
- The KPC has never clearly understood their function. They should be a CONDUIT for planning ideas from the Kahana community, not the ORIGINATOR of a Plan for Kahana.
- Regarding the stance of the six families who are still waiting for a lease: “This is OUR PLACE. Other families chose to move. We do not choose to move.”
- The six families who are waiting for leases need a HOUSING FUND to help them to finance construction of new homes. Small homes would be ok.

- The six families “just want what is fair.”
- Wastewater treatment is a big issue: there is no way that the six families can afford the expensive wastewater treatment system that the State says they would have to install to continue living in the flood zone.
- If the flood zone is such a big problem, why did State Parks build the new Store in the flood zone?
- State Parks was supposed to knock down all of the old houses in the flood zone, but left some standing. So then some people stayed in those houses. State Parks is responsible for this problem.
- Former DLNR Chair William Aila, Jr. sent us a letter confirming that we would receive leases for our sites in the makai area of the Park.
- There are night marchers in the makai area of the Park.
- Any future planning for Kahana will have to look at KULEANA ISSUES – how to make things pono for former kuleana land owners.
- There used to be big prawns in the river but now the water is bad and the prawns are gone.
- There have been many, many studies done for Kahana over the years, and ALL of this material should be considered and incorporated into the Kahana Master Plan.
- State Parks should report on Kahana at every LAND BOARD meeting.
- State Parks should provide some maintenance tools, trash bags, etc. to Kahana families so that the families can help to maintain public areas of the Park.
- There are more and more commercial kayakers using Kahana waters.
- Kahana could participate in planning for the return of HŌKŪLE‘A later this year – this event could bring people together.
- Hōkūle‘a Visits – Kahana families were expected to provide food to the crew out of their own pockets. Why won’t State Parks help with providing food?
- Is there an Environmental Assessment on file for the planned new bridge?
- The Kahana Pier is in terrible shape! Can’t DLNR do SOMETHING about this???
- There have been a lot of conflicts within the Kahana community over the years, but even so there are now a lot of families that work well together.
- There is a new book coming out soon about the life of Mary Ward Foster.

2.8 Analysis: The “Living Park” Concept

Critical Issue #1: Is The “Cultural Living Park” Concept Still A Valid Concept For Kahana?

The State of Hawai'i completed acquisition of the 5,249 acres of the Ahupua'a of Kahana in 1970. During the 1970s and early 1980s, the State sponsored several “Master Plans” for Kahana which were focused on large scale, costly plans for visitor attractions and which all included eviction of the long-time residents of the ahupua'a. The Kahana residents appealed to the State Legislature and to then Governor Burns for the right to continue living in Kahana. The “living park” concept was conceived as a means of allowing families to continue living within the boundaries of a State Park. The resident families would, in effect, become a cultural resource for the park and park visitors. Kahana is the only State Park in Hawai'i where families are permitted to live, by means of long-term residential leases.

The definition of a “living park” was provided by Senate Resolution 264, adopted by the 1977 Hawai'i State Legislature:

“The purpose of a ‘living park’ in Hawaii is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways, and that in such a living park, the individuals living there shall participate in the purposes of the park by helping in the education of the public and by incorporating into the structure of their daily lives such values and ways.”

It should be noted that Senate Resolution 264 explicitly states “native Hawaiian culture.” Some Kahana residents have said that the purpose of the “Kahana Living Park” is to express the many cultures that are represented by Kahana families, including Samoan, Filipino, Chinese and Japanese. However, the language of the 1977 Senate Resolution does not include this “multi-cultural” concept.

An earlier document, a letter dated December 2, 1971, addressed to Mr. Alan Sanborn, Chairman, Kahana Valley Task Force and signed by Sonia Faust, Deputy Attorney General, states that:

“This is in response to your request for an opinion as to whether the creation of the Kahana Valley living park would be legal.

We are of the opinion that the creation of such a park would be legal.

We understand the relevant facts to be the following: Kahana Valley has been condemned for park purposes by the State. The Governor appointed your task force to plan the park. The task force has determined to create a living park at Kahana. That is, the present residents, or some of them, comprising the approximately twenty-three households in the valley, would continue to reside in the park in some form of employment with the State to preserve, portray and perpetuate the unique life style which exists in the valley.”

According to Robert Stauffer, author of the book “Kahana – How the Land was Lost,” the original “Living Park” concept envisioned by the State Legislature was a Pacific version of the “historic” village of Williamsburg, Virginia, where tourists can view homes and farms designed in the style of American Colonial times, staffed by people dressed in 18th Century costumes.

Documents describing the traditional cultural activities of Kahana families during the early years of the Kahana “living park” – 1970s and 1980s – (see “Ahupua’a O Kahana: The Struggle Continues (1917-1997) – Historical Accounts as Documented in the Honolulu Advertiser & the Star Bulletin” by Erline “Sunny” Alonzo Greer) suggest that traditional Hawaiian culture and customs were indeed being “lived” by some Kahana individuals and families in the 1970’s. However, during the nearly 40 years since the 1977 Senate Resolution was passed, both State Parks and the Kahana community have experienced many difficulties in their efforts to make the “living park” concept a reality. Impediments to the success of the “living park” concept have included:

- Generational changes – with the loss, through the years, of Hawaiian kūpuna who had knowledge of Hawaiian cultural practices that they could share with visitors. Today, none of the original group of kūpuna are still living.
- Gradual changing of the cultural backgrounds of Kahana families during the past 40 years, through the loss of kūpuna and through marriages, such that families with strong native Hawaiian cultural knowledge are today a minority of the 34 families living in Kahana;
- The requirement for each family to provide “for in-kind payment of the lease rent...twenty-five (25) hours per month of services related to scheduled interpretive programs” per the terms of the 65-year leases that were put into effect starting in 1993;
- Ongoing disagreements and tensions between Kahana families and park managers regarding “eligible” activities that are included in the list of approved “scheduled interpretive programs,” and disagreements regarding recording of cultural activities hours, accrual of hours and related details of this key lease requirement;
- Resentment on the part of some Kahana residents that they are REQUIRED to practice and/or demonstrate their culture rather than just being allowed to live their culture in a natural way.
- Reluctance on the part of State Parks to enforce the terms of the 65-Year leases by evicting families that are in serious default on the terms of their lease. This lack of enforcement by State Parks has resulted in an attitude of indifference to lease requirements on the part of many Kahana residents.

2.8.1 Current Status of the “Living Park” Concept

Based on the State Parks consultant’s recent (July 2016 through February 2017) discussions with Kahana residents and with the State Parks Manager for cultural programs at Kahana, there are still a number of Kahana people who are actively pursuing Hawaiian cultural activities, including cultivation of kalo and other traditional food crops, restoration of Huilua Fishpond, and developing community-based management protocols for the fisheries of Kahana Bay. However, these cultural practitioners – reportedly fewer than a dozen in number - are a small minority of the Kahana population, which today numbers 34 families (28 families that hold 65-Year Leases plus 6 families that have requested leases) and about 300 people. According to the State Parks Manager and several long-time residents, the majority of current Kahana families have neither the knowledge nor the interest to participate in or demonstrate Hawaiian cultural practices.

As of September 2016, an analysis by State Parks of the status of Kahana families’ conformance with the requirement of “(25) hours per month of services related to scheduled interpretive programs” showed that eight of the 28 families (28.6%) with leases had a small to significant + balance of hours (+35 to +482), three families (10.7%) were in arrears by -375 to -635 hours (15 to 25.4 months in arrears), and 17 families (60.7%) were in arrears by 1150.5 to 4248.5 hours (46 to 170 months) in arrears.

Based on these numbers, as well as the long history of friction between the Kahana community and State Parks staff, the State Parks Administrator has concluded that the “living park” concept for Kahana as defined in the 1977 Resolution of the Hawai’i State Legislature is a “broken” concept. The question then might be: “Can this broken concept be repaired?”

2.8.2 Recent Interviews with Kahana Families

In 2015, the State Parks consultant conducted “one on one” interviews with 25 of the 28 Kahana families with leases and three of the six families that have requested new residential leases. The consultant also interviewed a number of individuals who had worked for many years with the Kahana community. In 2016 and early 2017, the consultant completed follow-up interviews with 20 Kahana families as well as interviews with State Parks staff. Based on these interviews, the consultant found that the attitude of Kahana families relative to the “cultural hours requirement” varied from indifference to “that’s a small price to pay for the right to live in this beautiful valley” to “yes, it’s important to me to be able to practice and share my culture.” However, this last, positive kind of statement was only expressed by three individuals.

It should be noted that the Kahana-based non-profit organization Ho’āla ‘Āina Kūpono has been actively engaged in several Hawaiian cultural programs during the last 3 to 4 years. Ho’āla is currently the “curator” of the Kam Mon Store. They are the lead entity for the restoration and care of Huilua, the historic fishpond at Kahana. Ho’āla has also created the “Kahana Kilo Kai” program – a grass-roots ocean monitoring program that has an “Adopt-A-Harbor” agreement with the DLNR Division of Boating and Ocean Recreation (DOBOR) to take care of and provide maintenance for the Kahana boat ramp and pier, among other things. Ho’āla also organizes and sponsors annual Lawai’a ‘Ohana summer camps to help build community and provide a space to pass on traditional fishing and resource knowledge from

kūpuna to mākua and keiki. The non-profit organization “Friends of Kahana” is also involved in the ongoing maintenance work at Huilua.

2.8.3 General Conclusions and Alternative Strategies

Based on all of the above information, the State Parks consultant’s conclusion is that the “living park” concept is no longer a valid overall concept for Ahupua’a O Kahana State Park.

IF THE “LIVING PARK” CONCEPT IS NO LONGER VALID FOR KAHANA, THEN WHAT ARE THE ALTERNATIVE CONCEPTS FOR AHUPUA'A O KAHANA STATE PARK? The Alternatives to the “living park” concept for Kahana appear to be:

- **ALTERNATIVE A: ATTEMPT TO REVALIDATE AND REINVIGORATE THE LIVING PARK CONCEPT** by evicting families that are in violation of the terms of their leases and bringing in new families who have ancestral ties to Kahana and who will make a firm commitment to fulfilling the “cultural hours requirement” of the 65-year leases.
- **ALTERNATIVE B: RESCIND THE LIVING PARK CONCEPT** but allow Kahana families to continue to live in Kahana under the terms of modified 65-Year Leases that will: (1) require nominal monetary lease rent payments instead of the 25 “cultural hours” per month – “nominal” being no more than \$400 per annum; (2) allow lessees more economic flexibility than do the existing leases, including the right to sell food products that are grown on their lots and crafts items that they may make with their own skills. The lease clause that restricts Kahana lessees’ ability to sell their homes also needs to be revised.

Our analysis of ALTERNATIVE STRATEGIES for the three critical Kahana issues included a preliminary analysis of the overall “political feasibility” of each alternative (see **Table 1 Alternative Strategies for the Future of Kahana Families and Kahana Natural, Cultural, and Recreational Resources**).

ALTERNATIVE A was rated “LOW” for political feasibility, because this Alternative would **require the eviction of some Kahana families**. Even though eviction of some families may be legally justified due to their non-compliance with the terms of their leases, past experience with attempted evictions of several Kahana families has shown that such actions by State Parks would almost certainly result in political protests, demonstrations and possibly worse by “activists.”

ALTERNATIVE B was rated “MODERATE” for political feasibility, as this alternative would NOT require eviction of non-complying Kahana families. ALTERNATIVE B was not rated “HIGH” for political feasibility for a number of reasons, including:

- In a letter dated August 20, 1986, addressed to then Chairperson of the Board of Land and Natural Resources Susumu Ono, and signed by Dona L. Hanaïke, Deputy Attorney General, Ms. Hanaïke wrote that: *“The valley residents are allowed to live in Kahana only because they will be an integral part of the interpretive programs. The residents have no vested rights to the park. If they are not a part of the interpretive programs, they cannot reside in the park.”*

- Given the language contained in the above-referenced legal opinion by Deputy Attorney General Hanaïke, implementation of Alternative B would require action by the Hawai‘i State Legislature that would allow Kahana families to continue to live in the park even if the families will no longer be “*an integral part of the interpretive programs.*” The new action by the Legislature could include a provision whereby Kahana families can participate in “interpretive programs” on a voluntary basis.
- It may be that some individuals – including possibly some State Legislators – will insist that the DLNR continue to adhere to the August 20, 1986 opinion of Deputy Attorney General Hanaïke, and who will maintain that deleting the “25 hours of cultural activities” requirement from Kahana leases will mean that Kahana families “cannot reside in the park.”

2.9 Analysis: The 65-Year Leases

2.9.1 Brief Background of the Kahana Residential Leases

The State of Hawai‘i completed acquisition of the Ahupua‘a ‘O Kahana in 1970. The residential leases that are currently in force for 28 Kahana families were issued in 1993 – 23 years = one generation after the acquisition process was finalized.

The process/history by which these 65-year leases were created is a complex story that can be only briefly summarize here. In the years following acquisition of Kahana by the State, master plan(s) were developed that envisioned the transformation of Kahana into a major destination for visitors. These plans recommended the relocation of Kahana families who had been living in the ahupua‘a under short-term license agreements with the former private land owner, together with the small number of Kahana families who had owned Kahana land but had lost their land by 1970 through eminent domain action by the State. The Kahana families appealed to then Governor Burns to be allowed to continue living in Kahana. Through a complex negotiation process, it was determined that it would be legal for families to live within the boundaries of a state park; that the families could continue to live in Kahana if they participated in “interpretive activities” in a “living park;” and that long-term, 65-year leases should be issued to Kahana families.

The State offered the 65-year leases to Kahana families on the condition that many of the families agree to move from their traditional home sites near the coast to two new subdivisions that the State would create: on Trout Farm Road and on Kahana Valley Road. The kūpuna of each of the affected Kahana families agreed that their ‘ohana would move to the new locations. The State provided funds for the construction of roads and utilities for the two new subdivisions, and also provided low-interest \$50,000 mortgage loans to each family to purchase materials for construction of their new houses.

2.9.2 The Provisions of the 65-Year Leases

It is instructive to review the provisions of the Kahana 65-Year leases in some detail, and to compare those provisions with other residential leases for State-owned lands in several other areas, namely MAUNALAHA and WAIĀHOLE on O‘ahu and MILOLI‘I on Hawai‘i Island.

2.9.2.1 Kahana Leases – Table of Contents

The TABLE OF CONTENTS for the Kahana leases is as follows (See Appendix A for full copy of the lease):

TERM OF LEASE

AUTHORITY

ANNUAL RENTAL

I. RESERVATIONS:

1. Mineral and waters
2. Prehistoric and historic remains

II. AGREEMENTS AND COVENANTS BETWEEN PARTIES:

1. Performance of rental obligation
2. Taxes, assessments, etc.
3. Utility services
4. Covenant against discrimination
5. Sanitation, etc.
6. Waste and unlawful, improper or offensive use of premises
7. Compliance with laws
8. Inspection of premises
9. Improvements
10. Repairs to improvements
11. Liens
12. Character of use
13. Dwelling restriction
14. Assignments; restrictions
15. Lessor's right to purchase
16. Successorship
17. Subletting
18. Indemnity
19. Costs of Litigation
20. Liability insurance
21. Mortgage
22. Breach
23. Bond performance
24. Condemnation
25. Right to enter
26. Performance of rental obligation not a waiver
27. Waiver, modification, reimposition of bond and liability insurance provision
28. Quiet enjoyment
29. Surrender
30. Non-warranty
31. Withdrawal
32. Fire and extended coverage insurance
33. Building requirement
34. Amendment to lease

III. SPECIAL TERMS AND CONDITIONS:

1. Plan of operation
2. Dispute resolutions
3. Misrepresentation
4. Commercial operations
5. Garbage, refuse and abandoned vehicles
6. Ingress and egress
7. Use of park by general public
8. Fires, etc.
9. Cutting of trees, etc.
10. Dangerous animals
11. Prevention and control of exotic plants

DEFINITIONS

SIGNATURE PAGE

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EXHIBITS A THROUGH D

2.9.2.2 Other State Leases of Interest

The State Parks consultant's research included an analysis of selected leases that are in effect between the State of Hawai'i and other communities, including the leases for:

- Maunalaha (DLNR Land Division)
- Miloli'i (DLNR Land Division)
- Waiāhole Valley Residential and Agricultural Lots (Hawai'i Housing Finance Development Corporation - HHFDC)

Most of the lease terms in the Maunalaha and Miloli'i leases are standard DLNR Land Division requirements. Provided below a summary of some of the relevant provisions of these leases, as follows:

Maunalaha Leases

The Maunalaha Community story in brief, from the Introduction to the "Maunalaha Community Center – HUD Environmental Report," Spring 2000, by the UH Mānoa Department of Urban and Regional Planning "Community Planning" class:

"Maunalaha Valley encompasses approximately 2000 acres and is surrounded by Manoa Valley on the east and Pacific Heights Ridge on the west. Its upper boundary approaches the summit of the Koolau Mountains, while the makai boundaries lie adjacent to the Makiki Heights and Lower Tantalus residential communities.

The community of Maunalaha is comprised of approximately thirty lots that house from 100 to 120 residents. The valley's community is a historic one settled several generations ago, and has

been mostly untouched by development since that time. Because of this, the community shares close ties with one another and a true sense of community spirit.

While the valley is designated a Conservation District by the State, residents in the valley were granted long-term leases in 1981 by the Department of Land and Natural Resources (DLNR) as they were descendants of the original settlers of the valley. For example, the current Community Association President is a 6th generation descendant in the valley."

Maunalaha Lease Terms that may be of interest to State Parks and to Kahana lessees:

- Authority: Act 225 of the Session Laws of Hawaii, 1981 and Act 40 of the Session Laws of Hawaii, 1982.
- Lease Term: 65 years, "commencing on the 1st day of December, 1983, up to and including the 30th day of November, 2048."
- Lease Payments: "For the first twenty-five (25) years, the sum of SIXTY AND 00/100 DOLLARS (\$60.00) every six months, for a total of ONE HUNDRED TWENTY AND 00/100 DOLLARS (\$120.00) per year."
- Reopen annual rent amount "at the expiration of the twenty-fifth (25th) and forty-fifth (45th) years.
- Reserved to the Lessor: Minerals and waters, prehistoric and historic remains.
- Lessee to pay taxes, assessments and utility services.
- Any improvements on the premises require prior approval of the Chairman or his authorized representative.
- One dwelling unit may be constructed on premises; a second family dwelling unit may be constructed with approval of the Board
- Transfer or assignment of the lease only permitted to descendant or heir
- Subletting or renting of the premises not permitted.
- Lessee shall procure homeowner's liability insurance.
- Lessee may mortgage the premises, but only with the approval of the Board.

Miloli'i Leases

Miloli'i is an unincorporated coastal community located on State lands in the District of South Kona, Island of Hawai'i, about 33 miles south of Kailua-Kona. The village site is where the 1926 lava flow from Mauna Loa volcano entered the ocean. Sometimes referred to as "the last Hawaiian fishing village," Miloli'i has no electrical power lines or County water. Families here provide for their own electricity with solar panels and for their water with catchment systems.

Miloli'i Lease Terms that may be of interest to State Parks and to Kahana lessees:

- Authority: Act 362 of the Session Laws of Hawaii, 1987, as amended by Act 68, Session Laws of Hawaii 1989, and Act 86, Session Laws of Hawaii 1991.
- Lease Term: 65 years, “commencing on the 1st day of June, 1992, up to and including the 31st day of May, 2057.”
- Lease Payments: “For the first twenty-five (25) years, the sum of SIXTY AND 00/100 DOLLARS (\$60.00) every six months, for a total of ONE HUNDRED THIRTY-TWO AND NO/100 DOLLARS (\$132.00) per year.”
- Reopen annual rent amount “at the expiration of the twenty-fifth (25th) and forty-fifth (45th) years of the term.
- Reserved to the Lessor: Minerals and waters, prehistoric and historic remains.
- Lessee to pay taxes, assessments and utility services.
- Any improvements on the premises require prior approval of the Board.
- One dwelling unit may be constructed on premises; a second family dwelling unit may be constructed with approval of the Board
- Transfer or assignment of the lease only permitted to descendant or heir
- Subletting or renting of the premises not permitted.
- Lessee shall procure homeowner’s liability insurance.
- Lessee may mortgage the lease, but only with the approval of the Board.
- Lease shall be subject to the applicable conditions of the Conservation District Use Application (“CDUA”) HA-1/12/84-1653.

Waiāhole Residential Leases

In the 1970s, small tenant farmers in Waikāne and Waiāhole Valleys were engaged in a community effort to prevent the development of these agricultural valleys for subdivisions and golf courses. The fight against development ended in 1977, when the state purchased the land from Elizabeth Marks, heir to the McCandless Estate. The state paid \$6 million to Marks for 600 acres where the state planned to develop the Waiāhole Agricultural Park.

The initial funds for acquisition came from the Hawai'i Housing Agency (HHA), now known as the Hawai'i Housing Financing and Development Corporation (HHFDC). For this reason, HHA and, later, HHFDC, took the lead in planning for the ag park, negotiating long term leases with the Waiāhole-Waikāne Community Association, which represents most of the farmers in the valley, and developing the infrastructure required to support the farm lots and residential lots.

As of June 2016, there were 62 Residential Lots in Waiāhole Valley totaling 38.18 acres. There were also 42 Agricultural Lots totaling 354.14 acres. The structure and terms of the Waiāhole Valley Residential

Leases differ from the terms of the Maunalaha and Miloli'i leases because HHA, the original lessor, had their own format for leases.

Waiāhole Valley Residential Lease Terms that may be of interest to State Parks and Kahana Lessees:

- Lease Years 1-15, lease rent is \$500.00 each year for up to 7,500 Square Feet of land plus additional \$0.035 per year for each Square Foot over 7,500 Square Feet;
- Lease Years 16-25, lease rent is \$600.00 each year for up to 7,500 Square Feet of land plus \$0.035 per year for each Square Foot over 7,500 Square Feet;
- Rent amounts reopen at the end of the 25th year of the Lease and at the end of the 40th year of the lease.
- Lessee to pay taxes, liability insurance and fire insurance for all buildings constructed on the lot
- Only one residential dwelling permitted on the premises
- Diversified agricultural activities are permitted
- After 50 years, the lease may be extended for a term of 20 years or such other period of time that the parties shall agree to
- Lessee may assign the lease to another party
- Lessee may mortgage the lease, with the approval of HHFDC
- Lessee waives the right to purchase Fee Simple interest in the premises
- HHFDC may terminate the lease if lessee fails to pay rent or violates other terms of the lease.

2.9.3 Comparison of the Kahana Leases with Other State Leases

A “side by side” comparison of the Kahana leases with the leases for Maunalaha, Miloli'i and Waiāhole shows that most of the provisions of the four leases are nearly identical, more or less “standard language” for State leases except for the provisions relating to Lease Rents, Mortgage Loans and sale of improvements. These differences may be summarized as follows:

- The Kahana leases are, of course, the only example within the State of Hawai'i of residential leases within a State Park.
- **Lease Rents** - Of the four types of leases summarized in this Working Paper, the Kahana leases are the only leases that require “In lieu of monetary rent, Lessee shall contribute in-kind services to the Department by participating in the interpretive programs at the Park, in the amount of 25 hours per month...” The monetary lease amounts for Maunalaha, Miloli'i and Waiāhole are small amounts that would generally be considered “nominal lease rents.”
- **Mortgage Loans** - The other three leases allow the lessee to obtain loans against both the value of their leases and the improvements on their residential lots, subject to the approval of the lessor. The Kahana leases allow the lessee to “pledge the premises or any portion thereof of this lease or any interest therein,” but only with the “written approval of the Chairperson” and “may only assign this lease to the Housing Finance and Development Corporation.”

- **Sale of Improvements** - Clause #15 in the Kahana leases “Lessor’s right to purchase” does not appear in the other three leases. This clause states as follows:

15. Lessor’s right to purchase. If Lessee wishes to transfer its leasehold interest in the premises, Lessor shall purchase the leasehold interest except where the Lessor consents to the transfer to a qualified assignee or successor.

The purchase price of Lessee’s interest in the premises shall be the value of Lessee’s interest in the premises derived below, less the outstanding mortgage loan amount:

- (i) The cost to Lessee of the initial improvements to the premises which have been approved and certified by Lessor;*
- (ii) “Sweat” equity in the form of labor contributions during the development period to be established and agreed to by the Lessor upon completion of the dwelling unit in an amount not to exceed FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) and*
- (iii) The cost of any subsequent improvements, which have been approved and certified by Lessor (excluding labor), added to the premises by Lessee.*

It should be noted that this “Lessors right to purchase” clause has been specifically criticized by a number of the interviewed Kahana lessees. The interpretation of this clause by these lessees is that, if they desire to sell their house they must sell it to the State, and that the State will only pay them an amount equal to the original mortgage loan from the State (\$50,000.00) plus “sweat” equity of \$15,000.00 = a maximum amount of \$65,000.00 – WHEREAS, as several lessees have pointed out, their houses are taxed by the City and County of Honolulu at an assessed value that is much higher than \$65,000.00 – a value of \$450,000 according to one lessee.

However, this criticism of this particular lease clause notwithstanding, it should be pointed out that paragraph *iii* above includes “the cost of any subsequent improvements, which have been approved and certified by Lessor (excluding labor), added to the premises by Lessee.” Thus, for example, if a Kahana lessee used the original \$50,000 loan provided by the State to construct a portion of their house, and subsequently spent personal funds or other loan funds to complete construction of their house, and those additional improvements were “*approved and certified*” by the State, then this additional amount – “excluding labor” – would be added to the value of the improvements. Based on our interviews with Kahana lessees, however, it appears that the lessees are not aware of this clause, and we have not heard of any lessee that has attempted to apply this clause to their improvements. It should also be noted that this clause does NOT address the issue of **appreciation** of the value of the improvements which, especially for a high value real estate market like O’ahu, is a significant “wealth building” factor for families.

The Kahana leases are substantially similar to the leases examined for Maunalaha and Miloli’i when it comes to the control of selling/transferring the leases. For Maunalaha and Miloli’i, lessees may sell (i.e., transfer or assign) their lease, with apparently no control on the transfer/sale price, but this transfer/sale right is limited to lessee descendants or heirs, and must have been approved by the Land Board, with certain additional restrictions.

For Kahana, the lease may be transferred/sold, but such transfer or sale must be approved by the Land Board and the recipient must be a descendant or other member of the lessee's family; no limit seems to be set on the sale price.

2.9.4 Amending the Kahana Residential Leases

There are several alternatives to amending the existing 65-Year Leases for Kahana families, including:

- a) Amend the existing leases by deleting the “25 hours per month of interpretive activities” requirement and replacing that requirement with “nominal lease rents” similar to the nominal monetary lease rents currently being paid by Maunalaha and Miloli'i residents. Also amend the leases to allow Kahana families to apply for loans against the value of their houses, and to be able to sell their houses to the State at a more favorable price. Some other amendments and additions could be made, including provisions to permit Kahana families to sell food products or craft items that they may produce.
- b) Design completely new leases if/when a different entity assumes responsibility for managing the residential areas of Kahana – e.g., a new non-profit entity (as has been previously proposed), or an existing non-profit entity, or a different public agency, or a private sector management company that would manage residential leases under a services contract with State Parks or directly with DLNR.

The design of amended or entirely new leases may require action by the State Legislature.

It should be noted that an opinion of Deputy Attorney General Dona L. Hana'ike, in a letter dated August 20, 1986 addressed to the Honorable Susumu Ono, Chairperson of the Board of Land and Natural Resources, stated that: **“The valley residents are allowed to live in Kahana only because they will be an integral part of the interpretive programs. The residents have no vested rights to the park. If they are not part of the interpretive programs, they cannot reside in the park.”**

This legal opinion clearly links the participation of Kahana families in “interpretive activities” for the “living park” to the right of these families to continue to live in Kahana. By this legal logic, if the State were to implement a “nominal monetary rent” provision for Kahana leases and cease to require each Kahana family to provide “25 hours of interpretive activities per month” in lieu of monetary lease rents, Kahana families would NO LONGER BE PERMITTED TO RESIDE WITHIN THE PARK. However, it would be feasible for the State Legislature to in effect negate this legal opinion by enacting legislation that provides for MONETARY LEASE RENTS for the Kahana residential lots. Such legislation may also need to “separate out” the residential lands from the State Park, as the residential lots would have no function within or for the State Park.

A “LEASE TO FEE” alternative was discussed during the early months of this current planning effort. However, the Lease to Fee alternative raises a number of difficult questions, including:

1. There is a general State policy that the State will NOT sell State land;
2. According to DLNR Land Division staff, State land can only be sold with a “super majority” vote of 2/3 of the members of both the State Senate and the State Legislature, and therefore “the State can sell State land, but doesn’t.” (Note: this 2/3 vote rule does not apply to “remnant parcels” that have no public value – for example, a portion of an irrigation ditch that is owned by the State but that is part of the irrigation system for a privately owned farm.)
3. If the Kahana residential lots were allowed to be sold to lessees at MARKET VALUE – which might be in the range of \$200,000 to \$400,000 for these 10,000 square foot rural residential lots, there would be very few of the lessees who would have the financial means to purchase the lots.
4. If the lots were valued according to the monetary value of the required 25 hours per month of interpretive activities = 300 hours per annum, and those activities were valued at \$10 to \$20 per hour = a monetary value of \$3,000 to \$6,000 per annum, the remaining 42+ years of the leases would be valued at \$126,000+ to \$252,000+ – which again very few of the lessees could afford, and this lease-rent value would need to be added to the underlying adjusted value of the land, making for even higher and more unaffordable purchase costs.
5. Fee simple sale of even a few of the Kahana residential lots would, of course, require a new set of rules regarding **qualifications of the buyers**, as the State would in all probability NOT allow the lots to be sold on the open market.
6. Fee simple sale of even one of the Kahana residential lots would also require legislative action regarding the earlier Deputy Attorney General’s position that families MUST provide interpretive services in order to live within the Park.

One of the current Kahana lessees is adamant that HRS 516 provides the basis for lease to fee conversion of the Kahana residential lots. This lessees thoughts on this key issue are provided in the next section of this report.

Thus, based on analysis work to date, there appears to be a consensus within the Kahana community regarding the 65-Year Leases that:

1. **The 65 Year term of the leases should be extended;**
2. **Provisions of the leases that limit the ability of Kahana families to benefit from the economic value of their houses should be changed.**

There is at this time NO CONSENSUS on the concept of possibly replacing the “25 hours of interpretive programs” with monetary lease rents.

2.10 HRS 516

Below is a listing of the sections in Hawai'i Revised Statutes (HRS) 516. Due to its length, the entire statute is not provided here. Instead, only those sections that are referenced in the analysis in **Section 2.11 Analysis: Applicability of HRS 516**, and bolded in the list below, are presented.

CHAPTER 516 RESIDENTIAL LEASEHOLDS

Part I. General Provisions

Section

516-1 Definitions

516-2 Applicability

516-3 No estoppel or waiver

516-4 Trusts and estates

516-5 Penalty

516-6 Administration of chapter

516-7 Corporation's duties, generally

516-8 Interested members, officers, or employees

516-9 Quitclaim deeds

Part II. Condemnation of Development Tract

516-21 Applicability

516-22 Designation of leased fee interest in all or part of development tract for acquisition

516-23 Exercise of power of eminent domain

516-24 Compensation

516-24.5 Exchanges

516-25 Interest acquired

516-26 Interest in compensation paid by the corporation

516-27 Compulsory or involuntary conversion

516-28 Disposition, generally

516-29 Notice of disposition

516-30 Purchase of leased fee interest

516-31 Disposition by lease

516-32 Not for profit

516-33 Qualification for purchase

516-33.5 Deposits by lessees

516-34 Mortgages, agreements of sale, other instruments

516-35 Restrictions on sale and use of residential lots

516-35.1 Foreclosure and sale by mortgagees

516-36 to 39 Repealed

516-40 Bonds as legal investments

516-41 Exemption from taxation and assessments

516-42 Investment of reserves

516-43 Security for funds deposited

516-44 Repealed

516-45 General obligation bonds

516-51 Preliminary negotiation required

516-52 to 55 Repealed

516-56 Eminent domain trial

Part III. Rights of Lessees

516-61 Applicability

516-62 Discrimination

516-63 Free assignability

516-64 Forfeiture

516-65 Extension

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The Constitutionality of a Naked Transfer: Mandatory Lease-to-Fee Conversion's Failure To Satisfy a Requisite Public Purpose in Hawai'i Condominiums. 25 UH L. Rev. 561.

The Moon Court, Land Use, and Property: A Survey of Hawai'i Case Law 1993-2010. 33 UH L. Rev. 635 (2011).

Case Notes

Chapter did not preempt ordinance relating to residential condominium leasehold conversion. 76 H. 46, 868 P.2d 1193.

Chapter only authorizes housing finance and development corporation to institute single condemnation proceeding of a specifically designated portion of a development tract and does not allow that proceeding to be judicially divided into multiple condemnations of individual lots. 82 H. 172, 921 P.2d 92.

Constitutionality.

Chapter did not violate "public use" requirement of Fifth Amendment to U.S. Constitution. 467 U.S. 229.

Hawaii Land Reform Act violates public use limitation of Fifth and Fourteenth Amendments of U.S. Constitution. 702 F.2d 788.

Given system of landholding in Hawaii, legislature could, under police power, conclude that general welfare was served by condemning land of large landholder-lessors and allow lessees to purchase land from State. 483 F. Supp. 63.

Legislature's determinations of what land is subject to condemnation and who is entitled to repurchase from State are not arbitrary or capricious. 483 F. Supp. 63.

Condemnation of leased fee interests in residential houselots continued to satisfy "public use" prerequisite of Fifth Amendment to U.S. Constitution and article I, §20 of Hawai'i constitution. 79 H. 64, 898 P.2d 576.

§516-2 Applicability. This chapter applies to all lands leased as residential lots which are owned or held privately or owned by the State or its political subdivisions, except Hawaiian home lands which are subject to Article XII of the Constitution of the State and lands owned or held by the federal government. This chapter is not meant to supersede or preclude any other remedy at law available to residential leasehold lessees or the State, including those available under chapter 480. [L 1967, c 307, §3; HRS §516-2; am L 1969, c 203, §1; am L 1975, c 184, §2(2)]

§516-6 Administration of chapter. The Hawaii housing finance and development corporation shall administer this chapter. [L 1967, c 307, §7; HRS §516-6; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

§516-35 Restrictions on sale and use of residential lots. (a) If state moneys are used for the purchase of the owner's basis, then for a period of ten years after the purchase from the corporation of the leased fee interest in a residential lot, the purchaser shall not transfer any interest in the property unless the purchaser has first notified the corporation in writing of the purchaser's intention to do so.

The notice shall specify the purchaser's address and upon receipt of the notice, the corporation shall have the first option to purchase the land at the original purchase price of the leased fee from the corporation plus ten per cent a year from the date of said original purchase up to the time of repurchase or the fair market value at the time of repurchase, whichever is lower, plus the fair market value of the improvements; provided that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, notwithstanding any qualifications set forth in section 516-33 or the rules and regulations established by the corporation.

At the time of the repurchase, the fair market value of the land and the improvements shall be determined by a qualified appraiser, selected by the purchaser from a list of three appraisers provided by the corporation, whose services shall be paid for by the corporation; provided that the appraisal is subject to review by the corporation prior to acceptance. If the purchaser disagrees with the value, the purchaser may appoint the purchaser's own appraiser at the purchaser's own cost and any further disagreement on the value may be resolved by negotiation or otherwise.

(b) Within sixty days after the receipt of the notice the corporation shall in writing notify the purchaser at the address so specified whether it elects to exercise its option. The date of election to purchase shall constitute the date of valuation for repurchase. Nonpayment of the purchase price by the corporation within ninety days from the date of election shall constitute a default and shall void the election and terminate the right to exercise the option by the corporation. If the corporation refuses, or fails within the sixty-day period to reply to the offer, the purchaser may sell the fee simple interest in the property, or lease the property for a period not to exceed one year, to any person, free from any price restrictions; provided that if the purchaser leases the property, the purchaser shall, upon expiration of the term of the lease, again comply with the requirements of subsection (a) whenever the expiration date of the term of the lease is within the ten-year period stated in subsection (a); further provided that if the purchaser notifies the corporation of the purchaser's intention to sell the property, but does not sell or lease the property within two years after the date the notice was received by the corporation, the purchaser must again comply with the requirements of subsection (a) if the ten-year period stated in subsection (a) has not expired.

(c) The corporation may lease, rent, or resell, any lot and improvements purchased by it under this part.

(d) Any original lease, deed, agreement of sale, mortgage, and other instruments of conveyance issued by the corporation under this part shall expressly contain the restriction on sale and use of the residential lot as prescribed by this section. [L 1967, c 307, §24; HRS §516-35; am L 1975, c 184, §2(15); am L 1976, c 242, §3; gen ch 1985; am L 1987, c 337, §16; am L 1988, c 104, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16]

§516-61 Applicability. Except as otherwise expressly provided, this part applies to all leases of residential lots existing and in force on June 24, 1967, and to all leases of residential lots executed thereafter.

Notwithstanding any term, condition, or provision in any lease to the contrary, the lessee of a residential lot shall have all of the rights enumerated in this part. [L 1967, c 307, §34; HRS §516-61; am L 1968, c 46, §2j]

[[516-83] Legislative findings and declaration of necessity; purpose. (a) The legislature finds that:

(1) There is a concentration of land ownership in the State in the hands of a few landowners who have refused to sell the fee simple titles to their lands and who have instead engaged in the practice of leasing their lands under long-term leases;

(2) The refusal of such landowners to sell the fee simple titles to their lands and the proliferation of such practice of leasing rather than selling land has resulted in a serious shortage of fee simple residential land and in an artificial inflation of residential land values in the State;

(3) Due to such shortage of fee simple residential land and such artificial inflation of residential land values, the people of the State have been deprived of a choice to own or take a lease of the land on which their homes are situated and have been required instead to accept long-term leases of such land which contain terms and conditions that are financially disadvantageous, that restrict their freedom to fully enjoy such land and that are weighted heavily in favor of the few landowners of such land;

(4) The economy of the State and the public interest, health, welfare, security, and happiness of the people of the State are adversely affected by such shortage of fee simple residential land and artificial inflation of residential land values and by such deprivation of the people of the State of the choice to own or take a lease of the land on which their homes are situated and the required acceptance of such long-term leases of such lands;

(5) The acquisition of residential land in fee simple, absolute or otherwise, at fair and reasonable prices by people who are lessees under long-term leases of such land and on which such land their homes are situated and the ability of such people to fully enjoy such land through ownership of such land in fee simple will alleviate these conditions and will promote the economy of the State and public interest, health, welfare, security, and happiness of the people of the State;

(6) The cost of living in Hawaii is and has been high. In recent years inflation has drastically increased the cost of living in the State. The spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a growing proportion of Hawaii's population, quite possibly a majority, the high cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing, and adequate preventive and curative health services. A substantive and significant contributing factor to the high and rising cost of living is the high cost of land whether leasehold or fee. Stabilizing the costs of land or, at least, slowing

the artificial inflation of land values would curb the rising cost of living in Hawaii and, ultimately, contribute to the welfare of all people of the State by improving their standard of living;

(7) The Constitution of the State of Hawaii provides the State the power to provide assistance for persons unable to maintain a standard of living compatible with decency and health. The rising cost of land tied to other cost of living increases is swelling the ranks of those persons unable to maintain a decent and healthful standard of life. If the inflationary trend of land continues unchecked, the resultant inflationary total cost of living could create such a large population of persons deprived of decent and healthful standards of life that the consequent disruptions in lawful social behavior could irreparably rend the social fabric which now protectively covers the life and safety of all Hawaii's people. The threat posed by this possibility is sufficiently real and imminent to warrant state action to redistribute land as a means of curbing continuing inflationary rises in land values;

(8) The right to own land is not an irrevocable grant of a special privilege where it operates against the general welfare of the many for the particular benefit of the few;

(9) Land, in common with other natural resources, is of finite quantity; a fact particularly obvious in Hawaii. In recent decades there has been growing general agreement that the wise conservation, preservation, use and management of exhaustible natural resources such as land are matters mandating an active governmental role. There is an intimate relationship between the monetary values accorded land in Hawaii and the stability and strength of the State's economy as a whole. Land values, artificially inflated by the high concentration of ownership, skew the state economy toward unnecessarily high levels. The pervasive and substantial contribution made to inflation by high land values creates a potential for economic instability and disruption. Economic inflation, instability and disruptions have real and potential damaging consequences for all members of an affected society. Checking inflation, improving the stability of the economy, and forestalling disadvantageous economic disruptions all are productive of general benefit to all members of the Hawaiian society. The sound and wise conservation, preservation, use and management of land cannot be separated from the subject of patterns of land ownership. To accomplish the public purposes of wisely conserving, preserving, using, and managing the land in the State requires changing present patterns of land ownership. Public laws, expenditures, programs, and policies which contribute to the realization of these public purposes serve a public use since they ultimately benefit the entire community. Changing present patterns of land ownership by allowing lessees under long-term leases of residential land to purchase in fee simple, absolute or otherwise, the land on which their homes are situated, through governmental intervention including exercise of the power of eminent domain to

acquire fee simple title to such land and public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State, will help satisfy the pressing public necessity for a secure, strong and stable economy;

(10) The State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter is for the public use and purpose of protecting the public safety, health and welfare of all people in Hawaii;

(11) Inflation lessens the quality of life of all members of this afflicted society and is particularly invidious in its impact on the ninety plus per cent of the population who are in the poverty, and low through middle income groups. The State has limited abilities to curb inflation and, perhaps, the only useful means available is the State's power to control land values. There is a pressing public necessity for the State to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide all citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter;

(12) The use of the power of eminent domain to condemn the fee simple title to residential land and the payment of just compensation therefor for the purpose of making the fee simple title thereto and the use thereof available for acquisition by people who are lessees under long-term leases of such land and on which such land their homes are situated is for a public use and purpose;

(13) Legislation providing to people who are lessees under long-term leases of residential land on which their homes are situated the ability to fully enjoy such land through ownership of such land in fee simple, absolute or otherwise, is for a public purpose.

(b) It is therefore declared to be necessary and it is the purpose of this chapter to alleviate the conditions found in subsection (a) of this section by providing for the right of any person who is a lessee under a long-term lease of residential land in the State to purchase at a fair and reasonable price the fee simple title to such land, by providing for the condemnation of the fee simple title to such land and the payment of just compensation therefor by the State through the use of the power of eminent domain and by providing for the public financing of such purchase and such condemnation and payment through the issuance of bonds, the

expenditure of general revenue funds, and the use of private funds which are at the disposal of the State. [L 1975, c 186, §2]

Law Journals and Reviews

Extending Land Reform to Leasehold Condominiums in Hawai'i. 14 UH L. Rev. 681.

Case Notes

Determination of whether taking is for public purpose is limited to whether there is a denial of substantive due process. Statute is constitutional if: (1) any possible rationale for the statute, expressed or not, is within state police power; and (2) statute is not arbitrary or product of legislative bad faith. 483 F. Supp. 63.

Discussed: 79 H. 64, 898 P.2d 576.

Mentioned: 471 F. Supp. 871; 74 H. 294, 845 P.2d 1186.

2.11 Analysis: Applicability of HRS 516

By: Jim Anthony, PhD (February 20, 2018)

THE CONVERSION TO FEE SIMPLE OPTION: KAHANA

HRS 516: Its relevance to long term residential leases within the confines of public land (as defined in the Hawaii State Constitution, Article X1, §5), Kahana Valley State Park.

2.11.1 Abbreviated Background: WHY THIS SUBMITTAL

SOME TWO YEARS ago, local consulting firm, Townscape, Inc. was retained by the Division of State Parks to do a study of three critical issues related to 28 leases within the confines of Kahana Valley State Park, public land owned by the State.

The first—and most important of the three issues -- was the terminal 65-year residential lease issued in 1993 to the 31 lessee families then living in Kahana. At this writing 1993 is 25 years ago. **That means that 40 years remain on the lease. For those of us who pay attention to the passage of time and understand anything about leases this is a frightening, stress inducing statistic.**

That part of Townscape's study (the matter of the lease) was designed to inquire, without apparent, specific restriction, into the terms of the lease and how, if it was found to be necessary, to make such changes considering the record of the past approximately 25 years which had elapsed since the leases were entered into in 1993.

The preliminary scoping study which Townscape did identified the 3 critical issues which, they said, had to be addressed first before any Master Planning process might begin. The scoping study found that the cultural living park (ill-defined to begin with) was "broken". The so called "cultural living park" had, in very large part, failed to materialize. By 2017 some 70% of the remaining 28 lessees, were in default of their leases—in particular, with respect to that provision which required lessees to do 25 hours of work a month in lieu of paying a monetary lease rent. Some 50,000 hours of work were owed to the State.

The scoping report erred on the side of caution: it did not quite say that the cultural living park was irretrievably broken. In the wash of the scoping report the 1993 lease was identified as the most important of the three critical issues² on which the second Townscape study was supposed to focus. There were (and continue to be) other indices of failure: several of the 28 lessees were also in default of their HHFDC mortgages; several of the 28 homes had not been completed and were falling into disrepair and others, although completed, were also falling into disrepair from lack of maintenance. A Planning Council appointed under the terms of Act 15 (2009) had had around 50 meetings over 7 years to write a Master Plan but had failed to produce a single sentence of planning text.³ Another index of failure: on

² The other two issues were: a. the cultural living park, and b. who should continue to be the responsible agency to manage the broken cultural living park if it was going to be mended and continued.

³ Act 15 was a poisoned gift. The Legislature passed a law over then Governor Lingle's veto, but provided no staff, no operational funding to hire staff, provided no office space or equipment of any kind and made no arrangement

average, in the course of 7 years and at least 50 meetings, an average of about five lessees (including the 3 on the Council) ever attended those meetings. At this writing the Council has not met for close to, or more than, six months.

In August 2017 Townscape completed a DRAFT report on the 3 critical issues and offered it to lessees in Kahana, as well as other stakeholders, for their comments. In the 7 months since August 2017 I have written a wide range of comments on the Draft report and also have had a series of discussions with Mr. Bruce Tsuchida, the head of Townscape and its planning team. I have also made representations to Mr. Curt Cottrell, Director of the Division of State Parks. My main concern has been about the lease, the treatment of which in the DRAFT report I found to be seriously lacking in substance. For example, HRS 516 is barely mentioned; in my view a very serious omission. Much (but not all) of what I set out in this submission has already been communicated in writing to both Mr. Tsuchida as well as to Mr. Cottrell.

Both Mr. Tsuchida and Mr. Cottrell invited me to frame my thoughts on the lease to fee conversion issue (which I consider to be at the heart of the long festering Kahana ‘problem’) in a submission which would be included as an Appendix to an abbreviated report to the Board of the DLNR. The process for this is that Mr. Tsuchida would write a new summary of his August 2017 DRAFT which would draw on suggested changes along with his own revised thoughts and this submission would be attached to it as one of several Appendices. Mr. Tsuchida’s work product with the Appendices) would then be submitted to Mr. Cottrell to be transmitted to the Board intact or ‘tweaked’ in such a way as Mr. Cottrell might decide either unilaterally or in further consultation with Mr. Tsuchida and stakeholders. All stakeholders, Mr. Tsuchida, Mr. Cottrell and perhaps others would then appear before the Board at a duly noticed public hearing or briefing to address members of the Board and answer such questions as members of the Board might have.

There is one important, but delicate process issue that I should mention here. There has been, what I consider to be, improper interference by at least one member of the senior staff of DSP in the direction and design of the Townscape “final” Progress Report. There have been meetings behind closed doors between Townscape representatives and some senior, and not so senior DSP staff members, including Mr. Cottrell. When this project was launched there was an understanding that all meetings would be open to all three parties: stakeholders, Townscape and DSP. There was a reason for this. And that was the same reasoning why parties in a lawsuit, when asked by a Judge to meet in Chambers, invariably have both sides appear together. And the principal reason for this is simple: by having both parties present each can make and rebut arguments being advanced in their interaction with a Judge. This is part of the reasoning that prohibits *ex parte* communication with a Judge. There has been pressure aplenty on Mr. Tsuchida to write the final version of his ‘progress’ report as a ‘research paper’ confining him to reporting what he has found and NOT offering opinions or evaluations of his own. This has been sufficiently troubling that at a recent meeting with Mr. Cottrell it became necessary to ask him to ‘rein’

for providing legal advice. The Division of State Parks had a representative on the Council but, though hard working, she quickly became a part of the problem and became ineffective. State Parks finally brought Townscape in as a consultant contractor to do what the Planning Council had failed to do—and was, in fact, incapable of doing.

in the senior DSP staff member who was trying to dictate the design of Mr. Tsuchida's work product. For me, a very salient, troubling issue.

I have always maintained from as far back as the mid-nineties when I first became involved in Kahana issues that the State (meaning DSP, as an agent of the DLNR and therefore of "the State", was in over its head. In fact DSP, from the very beginning (i.e. after the signing of the leases in 1993) treated the cultural living park program as an unwanted child. In time that became more apparent. Lessees saw—and resented—how they were treated by the State and its agents. The State, in turn, resented being saddled with a project in which they saw themselves as having no expertise. DSP, as one senior DSP official put it on several occasions, runs parks, not housing estates. The point here is this: pointing the finger only at the lessees for having failed to do their part to make the cultural living park work, is only one part of the explanation. Failure on the part of DSP to do its part is no less substantial. DSP wants out but it has been averse to invoking the provisions of HRS 516 as a possible way out. Its position is beginning to shift. Inviting me to write this submittal on HRS 516 is a pin point of light in what has been a dark room for a very long time.

2.11.2 The Law on Lease/Fee Conversions: for long term leased residential lots

HRS 516 – some of its most relevant provisions:

1. "§516-2 **Applicability.** This chapter applies to all lands leased as residential lots which are owned or held privately or owned by the State or its political subdivisions. "[Emphasis added.]
2. "§516-3. **No Estoppel or waiver.** No rights granted to lessees by this chapter shall be effective, notwithstanding any provision, term, condition, or contract to the contrary.... Any provision in any lease or contract contrary to the intent or purpose of this chapter is void. [L 1967, c. 307, Section 4; HRS 516 Section 516-3, gen ch 1985]."
3. **§516-6. Administration of chapter.** The Hawaii housing finance and development ("HHFDC") corporation (sic, lower case in the original) shall administer this chapter.
4. **§516-35. Restriction and use of residential lots. (a) through (d).**
The reader is invited to read the entire section.
5. "§516-61. **[PART III. RIGHTS OF LESSEES]**
Applicability. Except as expressly otherwise provided, this part applies to all lessees of residential lots existing and in force on June 24, 1967, and to all leases of residential lots executed thereafter.
Notwithstanding any term, condition or provision in any lease to the contrary, the lessee of a residential lot shall have all the rights enumerated in this part. [L1967 c307, Section 34; HRS 516-62; am L1976, c 159, Section 8; gen ch 1985]"

6. “[§516-83] **Legislative findings and declaration of necessity; purpose.**
- (a) (5) The acquisition of residential land in fee simple, absolute or otherwise, at *fair and reasonable prices* by people who are lessees under long-term leases of such land and on which such land their homes are situated and the ability of such people to fully enjoy such land through ownership of such land in fee simple will alleviate these conditions and will promote the economy of the State and public interest, health welfare, security, and happiness of the people of the State.” [Emphasis added]

This entire section, 516-83 from (a) (1) through (13) (b) is worthy of particular note. Sub-sections 12 and 13 are particularly relevant to Kahana even though it is public land within the meaning of the Hawai'i State constitution, Article XI, Section 5. Note particularly that the State may use its power of eminent domain to provide **“for the public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State.”** [Emphasis added.] [L 1975, c 186, Section 2]”

2.11.3 The August 2017 Townscape Draft Report on the Lease to Fee Conversion Issue: Argument, Rebuttal, Comments

- A.** My first duty in this section is to refer the reader to the relevant section in the August 2017 Townscape Draft Report which addresses the “Lease to Fee” issue. This is to be found on p.19 of the report, midway on the page. It is divided into 5 parts (a through e). I will take each in turn in the same sequence as it is to be found in the report. For emphasis the exact language of each section is reproduced here in italics. My comments are not in italics.

- a. *“It is our understanding that State policy is that to NOT sell State land.*
[sic].

The language is deceptive. “Our understanding” based on what? Is the policy written down anywhere? State or any other “policy” not based on law or that is in conflict with existing law is very likely to be found to be illegal. Had the Townscape team done its homework? Did it look at HRS §516-2? Did it read HRS §516-83? Did the Townscape team look at HRS 516 at all? In as much as the so called “policy” plainly conflicts with HRS §516-2 it is plainly wrong, inaccurate

- b. *“According to State Land Division staff”*

Was this a legal opinion from an attorney or more than one attorney in the State Land Division or was this a shoot from the hip opinion from a couple of bureaucrats? *“...State land can only be sold* Really? Again, what about HRS 516—particularly the sections cited in Section II above? **Again this section of the Townscape DRAFT report of August 2017 is wrong.** Designed to mislead or, to put it diplomatically, just slippage??

- c. *“...there would be very few of the lessees who would have the financial means to purchase the lots.”*

The Townscape DRAFT report does **not provide** a single piece of financial information that it elicited from lessees. On what basis did the author/s of the report reach this conclusion? We know that Mr. Tsuchida did not get a formal reversionary interest appraisal done. So where do the “\$200,000 to

“\$400,000” figures come from? Mr. Tsuchida apparently (nor did any member of his team) look at any of the financing provisions in HRS 516. More slippage?

d. *“If the lots were valued according to the monetary value of the required 25 hours of interpretive activities (i.e. 300 hours per annum), and those activities were valued at \$10 to \$20 per hours (i.e., a monetary value of \$3,000 to \$6,000 per annum, the remaining 42+ years of the leases would be valued at about \$126,000 to \$252,000 – **which very few of the lessees could afford.**”* [Emphasis added]

Without any income or other financial data from lessees how does Mr. Tsuchida know what “very few lessees [can] afford?” Further comments: it is all well and good for Mr. Tsuchida to use figures like \$126,000 to \$252,000 but not to mention that the fee simple value of these lots would likely be in excess of \$500,000 is misleading. The more relevant question is, therefore, can lessees NOT afford to buy these lots (with government assistance provided for in HRS 516) at a time when there are still 40 odd years left on the leases? These lessees need an urgent education in financial planning. I am also obliged to mention here that the second set of figures (\$126,000 to \$252,000) and the apparent methodology used to get to them are not unreasonable. I know—because I have had some very expensive research done for us on this issue.

e. To the extent that I understand this, my comment is as follows: Again, HRS 516 is relevant here. *“... would, of course, require a new set of rules”*

There are plenty of rules and protective provisions in HRS 516. Since it appears that the Townscape team did not look at HRS 516 and did not consult with legal counsel much of what is set out in this section is either overstated or is simply inaccurate.

The second paragraph of e. beginning with the words *“Fee simple sale of even one of the Kahana residential lots* This (what is also known as the Hanaike caveat) -- could be made to run with the title. I have already pointed this out to both Mr. Tsuchida and Mr. Cottrell in writing.

B. Any lease, particularly one that is terminal, condemns the lessee/s to economic death row. But that is not all. A lease condemns future generations of the original lessee’s family to economic death row, too; to intergenerational permanent poverty. **Any reading of the language in §516-83 makes clear the foundational reasons which the Legislature had in mind when it enacted this statute as long ago as 1968. One of those reasons was the ‘condemnation to poverty’ reason.**

Long term leases of residential lots were NOT in the public interest in the 60s. They were “financially disadvantageous” [§516-83 (3)] to lessees in a way “that restrict[ed] their freedom” [§516-83 (3)]. Variations of this reasoning are repeated in §516-83 (3), (5), (6), (7), (9), (12) and (13). This same reasoning is no less true today.

HRS 516 has been subjected to hostile scrutiny at the highest levels of our country’s judicial system and it has withstood that scrutiny. The Democratic Party which fought tooth and nail to enact this legislation in the 60s (the party of Jack Burns, Dan Inouye, Tom Gill, Vince Esposito, Alvin Shim, Nelson Doi, Patsy

Mink and others) is still the party in power in today's Legislature. There has been no wavering of support for HRS 516. What was true of leases in 1968 is no less true today.

2.11.4 Ancillary Arguments

- a. The law as it stands provides for lease to fee conversions of long term residential leased lots owned by the State or its political subdivisions.
- b. There are now 28 long term, residential leased lots in Kahana Valley State Park. All of these lots are owned by the State. All of them are subject to lease to fee conversion.
- c. All of the 28 leases now still in effect were entered into after June 24, 1967. This is a relevant qualifying factor. All lessees in Kahana meet that criterion.
- d. There are several aspects of the Kahana. lease related to lease to fee conversion that are not addressed in the Townscape draft report of August 2017. They need not be addressed point by point in this section at this time. If the need should arise at some time in the future these matters might be addressed then.
- e. Throughout the Townscape planning process, the Division of State Parks failed to inform a kindred agency of State government (HHFDC) that lessees in Kahana might be interested in acquiring the fee interest in their long term, leased residential lots. This would have been a matter of good governance, of good administrative practice in the public interest. It may well be a safe bet that DSP knew little to nothing about HRS 516. Why? For one simple reason: they had not done their homework.
- f. Neither the Townscape consultants nor the Division of State Parks took any steps to commission a reversionary interest appraisal the purpose of which would be to give Kahana lessees some firm indication what the cost was likely to be if they chose to petition HHFDC to purchase the fee interest in their long terms residential leased lots.
- g. The position espoused by DSP and at least one recent, former Head of DLNR was that State land was "not for sale", in apparent violation of the clearly stated intent of HRS §516-2 and the foundational related reasoning in §516-83, **Legislative findings and declaration of necessity; purpose.**
- h. **Key players in DSP and the titular head of DLNR appear to cling tenaciously to old myths and stubbornly refuse to face present realities as well as landmark law duly established almost a half century ago. The present Governor, facing a difficult election for a second term, has shown no proactive leadership in the handling of this issue. Indeed, he has become a part of this enduring problem: he has apparently issued instructions that the lid is to be kept on the Kahana 'issue' until after the 2018 elections.**

I raise these issues because, as the Governor dawdles, and DSP struggles against the tide, lessees' equity gets whittled away, one day at a time. Think about it this way: when one is a mere lessee of a residential lot on which one's home rests, one's equity in one's property consists of two principal parts: (1) one's home, the on-site improvement, and (2) the number of years left on the lease. There are two principal factors that determine what is called the reversionary interest—that figure which the lessee will have to pay if her/his/their lease is converted to fee simple. Those factors are: the number of years left on the lease and the amount of lease rent specified in the lease. Depending on the threshold date that you

take, lessees in Kahana have lost 20 years of equity value if you take one date, or, if you take another, say from 2010 (a year after Act 15 became law after Governor Lingle’s veto of it and the subsequent override by the Legislature). Here is the crucial issue: every day that goes by all lessees without exception lose value. Its like watching your pension fund get whittled away as each day, each, week, each month, each year goes by.

Remember now, the Kahana lease is unlike any other long term lease of a residential lot that I know of in the recent history of Hawai‘i: lessees cannot sell their property (the equity interest they have in the number of years left on the lease and the fair market value of their home). As things stand now, and as things have stood since 1993 when the Kahana leases were signed, lessees have been on economic death row watching their equity getting eaten away.⁴

The Legislative findings and declaration of necessity in HRS§516-83 was crafted with great care and focused on the strongest of legal arguments: “the public interest”. It did not use a metaphor like “death row.” I suggest, with great respect, that if those who penned the 1968 language that was grafted on to HRS §516 were in my place today my metaphor would be an apt one.

2.11.5 Conclusion

FINALLY, let me remind you of that time in history and the circumstances under which HRS §516 was researched, written and finally adopted by the Legislature. The year 1968 was a mere 9 years after Statehood. Most of the sons (and they were mostly sons) who crafted the legislation and who relentlessly fought for it were veterans who had served their country in the battlefields of World War II. When all is said and done, in whatever history’s final reckoning might be, we might justifiably say of them that this was their finest hour. Lease to fee legislation was at the very top of the agenda of a revitalized Democratic Party which had replaced the long dominant Republican majority and their big money, big landowners, plantocrats and captains of interlocking directorate supporters.

What finally became HRS §516 was a major plank in the platform of the Democratic Party to make Hawaii less of an uneven playing field than it had long been.

For the 28 lessees in Kahana this is unfinished business. Most of the Kahana lessees are, to the best of my knowledge, not informed about HRS 516. I had hoped that Mr. Tsuchida would talk about it. It seemed very natural to me that he would because the lease issue was preeminent among the three critical issues that his report was supposed to be about. But, in large part, that did not happen. I have been talking about HRS 516 since shortly after the failed Kahana Planning Council came into existence in 2009. I have also sent an avalanche of further representations on the HRS 516 lease to fee conversion option to both Mr. Tsuchida as well as Mr. Cottrell. They finally asked me to write this paper to be forwarded to the Board as what will eventually be a Staff/Townscape Submittal for the Board’s consideration.

⁴ See the accompanying Appendix—The Anthony ‘Ohana: Our Story.

The law is still where it was put in place 50 years ago; still “on the books.” What is called for now is the will to do what America has long been about: the search for justice, to do the right thing. That is all that I ask in the name of this and future generations. My wife, Grace, an immigrant like I am, also a mother, grandmother, great grandmother, joins me in making the case set out here for a process to be established for the lease to fee conversion option under HRS 516 to be fully considered.

Every proverbial journey of a thousand miles begins with the proverbial first foot forward. As Townscape proceeds with its report, a crucial part of which has to do with the existing leases in Kahana, that first foot forward has not quite been taken yet. For a start, no effort has been made to enhance the corpus of each lessee’s information base about the lease to fee conversion option. This means that each lessee is entitled to be informed as fully as possible about the intricacies of HRS 516. Until this is done, along with a reversionary interest appraisal by a qualified appraiser, lessees will not be in a position to make a rational decision about whether or not they wish to exercise their option to purchase their lots in fee simple. This information enhancement ought to have been the consultant’s job but it did not get done. This is the time to get that job done. No community, particularly one such as you have in Kahana, can weigh the pros and cons of making a decision on an issue as complex and as important as this one is, without being **educated** about it ‘Education’ means enriching these lessees with pertinent knowledge and information about the lease/fee conversion process in general, including as full and comprehensive an explanation of what is in HRS 516.

The Townscape team was retained by the State at considerable taxpayer expense to comprehensively examine and report on 3 critical issues related to Kahana. First among those issues was the 65-year, terminal lease. In this case Townscape’s job—and its duty—was to both report and tender advice to the Division of State Parks in the form of a comprehensive bottom/up report. Townscape’s report, once completed, was supposed to be given to the Division of State Parks to inform policy recommendations that it would in turn formulate and then submit to the Board of Land and Natural Resources for review in a duly noticed public meeting—an informal wide-ranging briefing first to be followed by one or several decision-making makings at which further public testimony would be offered. **The briefing has been vetoed by the Chair of the Board** without any apparent consultation with its members: an unfortunate decision which should be reversed.

Townscape’s consulting services were not retained for it to merely be a potted plant. Townscape’s job was to be proactive: collect relevant information, report what it found and use its independent judgment to make recommendations that in its view were based on reason, were defensible, prudent and consistent with relevant law. In my view the Townscape work product submitted for review in August 2017 (29 pages of text, 150 pages of unannotated miscellaneous appendices) fell short of what its report should have been. Townscape’s one-half page treatment of the lease to fee conversion issue on page 19 of its 29 page report has been submitted to searching analysis and criticism in this submittal. Townscape and the Division of State Parks invited me to address the lease to fee issue in a formal written submittal and I have done so here. I have found the August 2017 Townscape report to be seriously flawed and have said as much in an avalanche of correspondence sent to Mr. Tsuchida and Mr. Cottrell. **The section on lease to fee conversion set out on p.19 of the Townscape August 2017 draft report I find to be fatally flawed and must be extensively re-written.**

The time has come to move this issue along. There is work aplenty to be done on the lease to fee conversion issue by inviting representatives of all of the relevant players to the table: stakeholders (assisted by experienced counsel), Townscape, DSP, the BLNR, HHFDC, the AG’s office, representatives of the Legislature and the Governor’s office. While ‘educating stakeholders’ about the complexities of lease to fee conversion is important, that alone will not get the job done.

This submittal, like any other act of publication, is only as good as it withstands hostile scrutiny. I invite that and look forward to it. ‘Hostile scrutiny’, in my view, derived from my long experience, is the gold standard. Hostile scrutiny is the ultimate test of accountability and the worth of whatever it is that we put into words “on paper.”

2.12 Analysis: Future Management of Kahana – Options

Alternative management strategies for Kahana were presented in Section 2.4 of this Progress Report. The management alternatives were:

Alternative 3A: State Parks continues to manage all four areas of Kahana with supplemental funds for qualified management staff.

Alternative 3B: State Parks continues to manage Kahana mauka, makai and recreational resources, and contracts with a for-profit or non-profit entity to manage the residential leases, with supplemental funds.

Alternative 3C: State Parks continues to manage Kahana mauka, makai and recreational areas, in partnership with other DLNR Divisions, and converts residential areas to affordable monetary leases or to affordable fee simple ownership for Kahana families.

Alternative 3D: State Parks continues to manage Kahana recreational areas but relinquishes management of the mauka, makai and residential areas to one or more other entities.

Alternative 3E: State Parks removes itself completely from Kahana and turns over or leases out the management of the four areas to one or more entities.

The pros and cons of each of the above-outlined five (“A” through “E”) management scenarios for Kahana could be discussed at some length. However, State Parks currently favors “Alternative 3C.” Also, the conversion of “residential areas to affordable monetary leases” would entail a number of complicating management factors. These complicating factors include:

1. The need to “separate out” the residences (particularly the two residential areas of the Trout Farm Road and Kahana Valley Road subdivisions) from the State Park such that the residential areas are no longer a part of the State Park. If this “separating out” action were not implemented, and the Kahana families were paying monetary lease rents instead of providing 25 hours per month of interpretive services, the families would be in violation of the 1986 Deputy Attorney General’s finding that: *“The residents have no vested rights in the park. If they are not a part of the interpretive programs, they cannot reside in the park.”* Alternatively, it may be possible to enact new legislation that would permit Kahana families to *“reside in the park”* even if they are *“not a part of the interpretive programs.”* However, a physical “separating out” of the residential areas from the Park may be the cleaner solution.
2. The current 65-Year Leases would need to be amended, with a provision for monetary lease rents taking the place of the “25 hours per month of interpretive services.”

3. There would still be the need for SOME ENTITY to manage the monetary lease rents. If the residential lots are no longer a part of Kahana State Park, the managing entity would not have to be State Parks. The managing entity could be the DLNR Land Management Division (LM). DLNR LM already manages many state leases, including the leases for the Maunalaha, O'ahu and Miloli'i, Hawai'i County residential lots. Alternatively, DLNR LM could contract with a property management entity to manage the Kahana residential leases.
4. The monthly lease rents would need to be set at a nominal amount, as there are Kahana families who have very little income. Nominal lease rents in 2018 would be approximately \$60/month for a state lease for a 10,000 square foot residential lot. This very low monthly lease rent would inevitably attract some criticism from parties who would assert that Kahana families should pay "market rents" – which would probably be in the range of \$500 to \$1,000 per month for a 10,000 square foot lot located near the coast in the District of Ko'olau Loa. On the other hand, nominal lease rents seem to have worked out for Maunalaha and Miloli'i.
5. The management entity – DLNR LM or other – would need to enforce the terms of the new leases, including actions to ensure that lots are kept clean and free of trash, junked cars, etc., and appropriate action is taken to resolve any delinquencies for payment of rents – including possibly working out agreements with other family members to pay overdue rents or agreements with charitable organizations to pay overdue rents. Clearly, eviction actions should be avoided if at all possible.
6. Some Kahana families may not agree with a process that will "separate out" the residential areas from the Park. Some families may interpret this management move as the State's way of severing ties between Kahana people and the Ahupua'a 'O Kahana. State Parks would need to find a means of alleviating this fear. The legislation that "separates" the two residential areas from the Park could include a provision for the formation of a Kahana community-based entity that would have an ongoing role in the management and interpretation of the natural and cultural resources of the ahupua'a.

2.13 Summary of Actions Needed in the Near Term

2.13.1 Natural and Cultural Resources Management

State Parks should continue to work with Kahana families on important natural and cultural resource management programs, including the restoration of Huilua Fishpond, community-based management of the ocean resources of Kahana Bay, restoration of lo'i and 'auwai, and restoration of the free flow of Kahana Stream. In the longer term, State Parks and the Kahana community need to work together toward a comprehensive program for the ongoing management and stewardship of the natural and cultural resources of this 5,249-acre ahupua'a.

2.13.2 Property Management

State Parks plans to create a position for a full-time property manager for Kahana – as distinct from the current part-time cultural programs manager position. As Kahana lessees have clearly and repeatedly stated, Kahana does NOT need an unsympathetic and heavy-handed manager. It will be essential for the Kahana property manager to have strong and proven “people skills,” and to have the ability to *work with* Kahana lessees and families to help them to address and solve community and family problems, large and small.

2.13.3 Leases for the Six Families Awaiting Leases

State Parks plans to continue to work with the six families that are awaiting Kahana leases. State Parks first needs to obtain funding and Department of Health approval for the construction of wastewater vaults for the six house sites. State Parks will also need to work with the Board of Land and Natural Resources (BLNR) to amend the 1979 Conservation District Use Permit. The application for that permit, dated June 8, 1979, stated that: “No dwelling units will be constructed in hazard (flooding, tsunami) prone areas.” However, the six families that are awaiting Kahana leases plan to live in houses that are within the coastal flood plain. Once these actions have been completed, leases for the six Kahana families can be executed. Note: These six leases should include revisions to Kahana leases that may be made to further the economic well-being of Kahana lessees.

2.13.4 Amending the Kahana Leases

State Parks plans to work with Kahana lessees to revise and amend the Kahana leases in order to provide more economic flexibility and potential economic benefits to lessees. Changes to the terms of the Kahana leases may include an option of nominal monetary lease rents in lieu of the currently required 25 hours per month of participation in cultural programs for each Kahana family. This lease amendment process will also further explore the possibility of lease to fee conversion as an option for Kahana lessees. State Parks will retain expert legal counsel to assist with this lease amendment process.

2.13.5 Changes State Land Use Designation “Conservation” to State Land Use “Agricultural”

The existing residential and small-scale agricultural uses within Ahupua'a 'O Kahana State Park are not permitted uses within the State “Conservation” District. Technically, such residential and agricultural uses require a Conservation District Use Permit before these uses can be implemented. State Parks is considering the submittal of an application to the State Land Use Commission to change the Kahana residential and small-scale agricultural areas from “Conservation” lands to “Agricultural.”