

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

July 26, 2013

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

File: SP1306KNHP01

Moloka'i

Issuance of Direct Lease to Ka 'Ohana O Kalaupapa and Authorization to Construct a Memorial to Honor and Perpetuate the Memory of Those Individuals Who Were Forcibly Relocated to Kalaupapa Peninsula from 1866 to 1969, Kalaupapa National Historic Park, Kalawao, Moloka'i, Tax Map Key: (2) 6-1-001: 002 (por.)

APPLICANT:

Ka 'Ohana O Kalaupapa, a Hawai'i non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended and Omnibus Public Land Management Act of 2009, Title VII, Subtitle B., Section 7108: Kalaupapa National Historical Park Memorial.

LOCATION:

Portion of Government lands of Kalawao, situated at Kalaupapa National Historic Park, Kalawao, Moloka'i, identified by Tax Map Key: (2) 6-1-001: portion 002, as shown on the attached map labeled Exhibit A (the "Property").

AREA:

5.9 acres, more or less (See Exhibit B).

ZONING:

State Land Use District: Agriculture
County of Kalawao: None (Administered by DOH)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: N/A

ITEM E-1

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Memorial construction, operation and maintenance purposes.

LEASE TERM:

Twenty (20) years with a condition that the memorial must be constructed within the initial ten (10) years of the lease.

COMMENCEMENT DATE:

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

ANNUAL RENT:

\$480.00/year

METHOD OF PAYMENT:

Annually – lump sum paid on the anniversary date of the lease.

LEASE REOPENINGS:

None.

PERFORMANCE BOND:

Twice the annual rental.

PROPERTY CHARACTERISTICS:

The subject property is currently vacant. It was previously occupied by the Old Baldwin Boy's Home, which was abandoned in 1932 and subsequently demolished in the 1950s.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject submittal addresses the disposition of land only. Therefore, no environmental assessment is necessary at this time; however, if the lease is approved, Applicant will be required to comply with the relevant requirements of Section 11-200 Hawai'i Administrative Rules and Chapter 343, Hawai'i Revised Statutes which may include, but is not limited to,

the preparation of an environmental assessment.

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Applicant in good standing confirmed: YES X NO ___

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Comply with the requirements of Section 11-200 Hawai'i Administrative Rules and Chapter 343, Hawai'i Revised Statutes regarding environmental impact statements;
2. Furnish and provide a boundary survey and lot description for the Property subject to the review and approval of the Chairperson and the Department of Accounting and General Services, Survey Division prior to the execution of a lease;
3. Obtain approval from the Board for the final design and construction of the memorial improvements prior to any construction taking place;
4. Reach a written agreement with the National Park Service (NPS) prior to returning to the Board for final approval of the memorial construction and plans which describes the roles and responsibilities of the parties with respect to the construction, operation and maintenance of the memorial;
5. Consult with the DLNR State Historic Preservation Division and obtain concurrence regarding an acceptable level of archaeological mitigation, either through data recovery or monitoring if ground disturbance will occur during construction;

REMARKS:

The Kalaupapa Peninsula is located within Kalawao county (under the jurisdiction of the Department of Health) and is managed primarily by the NPS through a series of agreements with the Departments of Health (DOH), Hawaiian Homelands (DHHL), Transportation, Land and Natural Resources (DLNR) and other entities within the boundaries of the Kalaupapa National Historic Park (the "Park"). Of the approximately 8,725 acres of land within the Park, the NPS owns only 23. The bulk of the land in the Kalaupapa Peninsula is owned by the DHHL and the State (as unencumbered lands). In 2009, the Board approved a cooperative agreement which sets forth the terms and conditions for which NPS manages the Park for the unencumbered State portion. NPS entered into a separate lease agreement with DHHL for its approximately 1,300 acre property. The DLNR cooperative agreement is broad in scope and covers matters from interpretive services to endangered species and resource protection - even road maintenance - all accomplished in concert with DLNR. Because of NPS' successful role and stewardship of the Park, DLNR's involvement is mostly policy focused; the Department has no active day-to-day management role in the operation of the Park.

On March 30, 2009, President Barack Obama signed in to law the "Kalaupapa Memorial Act of 2009"¹ (Act). The Act directs the Secretary of Interior to authorize Ka 'Ohana O Kalaupapa ('Ohana), a Hawai'i non-profit, 501(c) (3) organization "...consisting of patient residents at the Park, and their family members and friends to establish a memorial at a suitable location or locations approved by the Secretary at Kalawao or Kalaupapa within the boundaries of Kalaupapa National Historic Park located on the island of Moloka'i, Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to Kalaupapa Peninsula from 1866 to 1969." The Act further requires the 'Ohana to be solely responsible for payment of the expenses associated with the establishment of the memorial.

The 'Ohana intends to raise funds to construct the memorial and to create an endowment to insure its maintenance in to perpetuity. In order to enhance the success of a major fund raising campaign, however, the 'Ohana requested a long term lease to assure donors of its long term use of the Property. The 'Ohana has indicated a plan to conduct a competition to select the final design of the memorial. As such, no specific design has been presented and budget estimates will be conditioned on fundraising efforts and the result of the winning design. While no comprehensive agreement exists today between NPS and the 'Ohana, the parties have agreed on seven principles consistent with NPS' management policies to govern the design process whereby the memorial shall:

1. Be designed and sited to avoid disturbance of natural and cultural resources and values;
2. Be located in surroundings relevant to its subject;
3. Be constructed of materials suitable to and compatible with the local environment;
4. Not encroach on any other pre-existing work or be esthetically intrusive;
5. Not interfere significantly with open space and existing public use;
6. Not divert attention from the park's primary interpretive theme; and,
7. Not be affixed to the historic fabric of a structure.

The proposed memorial location is situated within an area previously occupied by the Old Baldwin Boy's Home, which was deliberately demolished more than 50 years ago. The site was bulldozed and is overgrown by invasive vegetation². The proposed memorial site covers approximately 5.9 acres of land owned by the Department (See Exhibit B). The property has not been subdivided and would be conveyed by lease using a metes and bounds legal description. NPS has, under federal guidelines – not State requirements under Chapter 343 HRS, published an Environmental Assessment (and subsequent FONSI) dated November 23, 2010 which indicated the preferred alternative within the boundaries of the Property³.

1 See Omnibus Public Land Management Act of 2009, Title VII, Subtitle B., Section 7108: Kalaupapa National Historical Park Memorial. It is attached as Exhibit C.

2 Source: Section 106 Consultation notice dated October 25, 2010 issued by the National Parks Service, US Department of the Interior.

3 The Environmental Assessment (EA) was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190, 42, U.S.C. 4321-4347), as amended, including the Council on Environmental Quality regulations found at 40CFR 1500-1508 and other applicable laws, National Park Service Management Policies (2006) and management directives. The EA also contains information on compliance with Section 106 of the National Historic Preservation Act and

Other entities in proximity to the proposed site are the St. Philomena Church and the United Church of Christ. Both operate under cooperative agreements with the NPS where the churches raise funds from their supporters to maintain the church structures and surrounding areas and receive financial or maintenance assistance from NPS. No leases were indicated in the files for the churches although they existed prior to NPS' involvement in the Park.

The 'Ohana is currently working to secure a similar cooperative agreement with NPS. Although discussions haven't progressed as smoothly as desired, the 'Ohana believes the issuance of the subject lease will assist in that regard.

The 'Ohana requests it maintains ownership and management during the term of the lease. In the event the lease is terminated or expires under its own terms, the memorial improvements and maintenance responsibilities will revert back to DLNR. NPS is unable to commit to a specific agreement until the details and scope of the design and construction are addressed.

In a letter dated December 6, 2010 (attached as Exhibit D), the State Historic Preservation Office (SHPD) stated that as long as certain guidelines are followed, the monument will have no adverse effect to the Kalaupapa National Historic Park or to individual historic properties within the district. SHPD did request, however, that data recovery or monitoring plans be in place should there be any ground disturbance activities.

DISCUSSION:

The 'Ohana is the only organization authorized in the Act to establish the memorial. The Act is silent on the issues of the ownership and maintenance of the memorial. Given 'Ohana's request to both construct and maintain the memorial, staff believes the most appropriate disposition option would be for a general lease. Pursuant to the terms of the standard lease form, the lessee would own the improvements during the term of the lease. The lease would provide a mechanism for the Board to review the design of the memorial and provide 'Ohana with assurance of its tenure and ownership of the improvements during the term of the lease.

Because of DLNR's limited role with the day-to-day operation of the Park, and the broad scope of DLNR's Cooperative Agreement (which includes the Property), it is essential that the 'Ohana forge an agreement with NPS. Staff recommends the Board encourage the parties to work together to reach an agreement to honor and perpetuate the memory of those committed to Kalaupapa and to honor the intent of the Act. In addition, because the existing Cooperative Agreement between NPS and DLNR includes the Property, staff requests the Board authorize the Chairperson to negotiate any such agreements necessary between DLNR and NPS to effect the lease.

With respect to the term, both the cooperative agreements between the churches and NPS

as well as the cooperative agreement between NPS and DLNR are for a term of 20 years. Provided the memorial was constructed within 10 years of the date of the lease, a term of 20 years is warranted and consistent with the other cooperative agreements.

Staff recommends approval of the lease to Ka 'Ohana O Kalaupapa and recognizes its efforts over the last 10 years to bring the memorial to fruition.

RECOMMENDATION: That the Board:

1. Find that the public interest demands the issuance of this direct lease to Ka 'Ohana O Kalaupapa, a non-profit organization, for memorial construction and maintenance purposes;
2. Encourage NPS and the 'Ohana to reach an agreement which describes the roles and responsibilities of the parties with respect to the construction, operation and maintenance of the memorial;
3. Delegate authority to the Chairperson to negotiate any agreements necessary with NPS to effect a direct lease to the 'Ohana;
4. Subject to the Applicant fulfilling the Applicant Requirements listed above, authorize the issuance of a direct lease to Ka' Ohana O Kalaupapa 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. That the lease shall be for a period of 20 years with a condition that the memorial be fully constructed within the first 10 years in accordance with the terms and conditions of the lease;
 - B. That any design plans and construction on the Property be subject to the prior approval by the Board of Land and Natural Resources;
 - C. That the location, size, design and inscriptions of the memorial be approved in advance by the Secretary of the Interior pursuant to the Kalaupapa Memorial Act of 2009 as described herein;

- D. The standard terms and conditions of the most current (non-profit) lease document form, as may be amended from time to time;
- E. Review and approval by the Department of the Attorney General; and,
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Dan Quinn
State Parks Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A - Tax Map Key

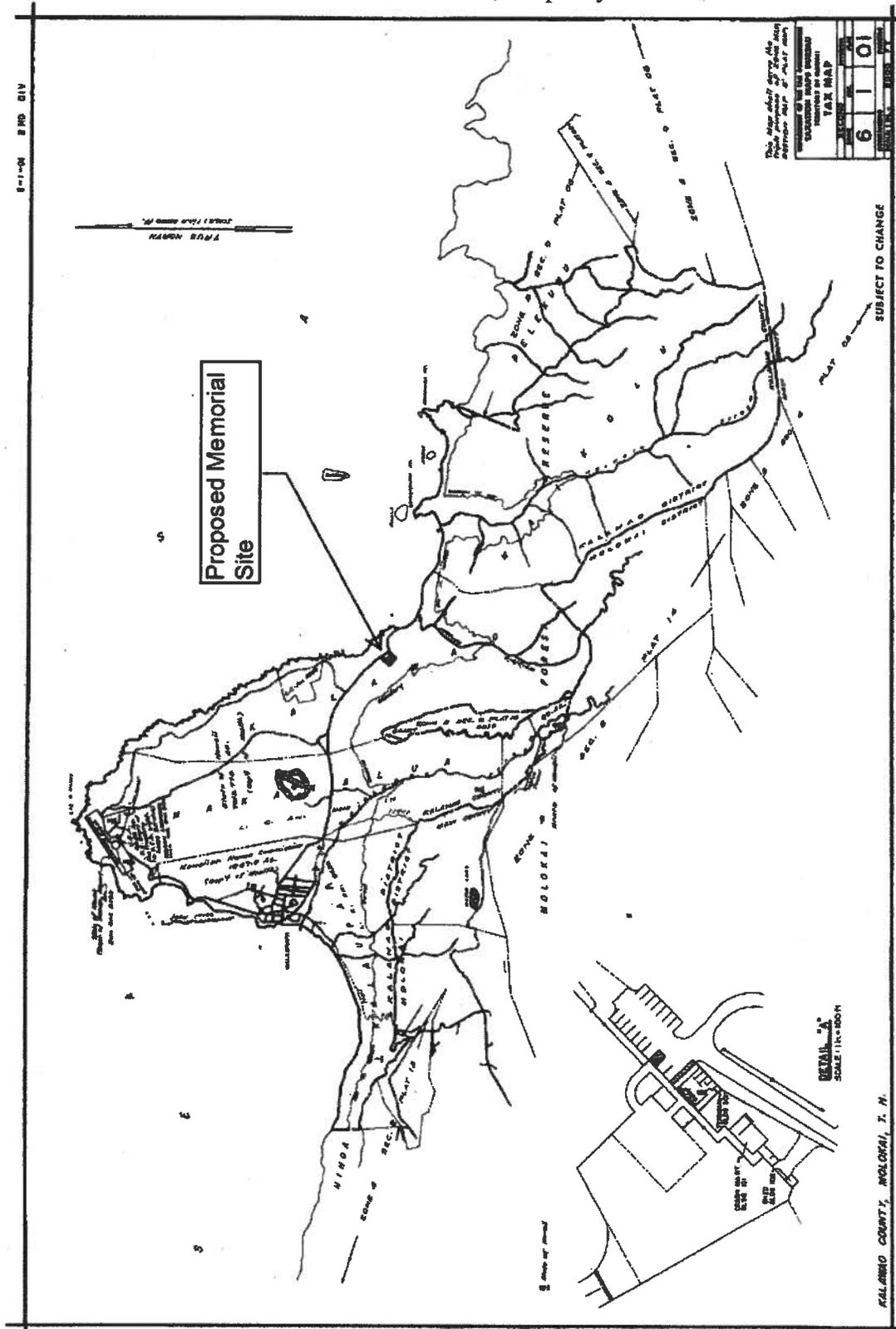


EXHIBIT B – Memorial Site Location

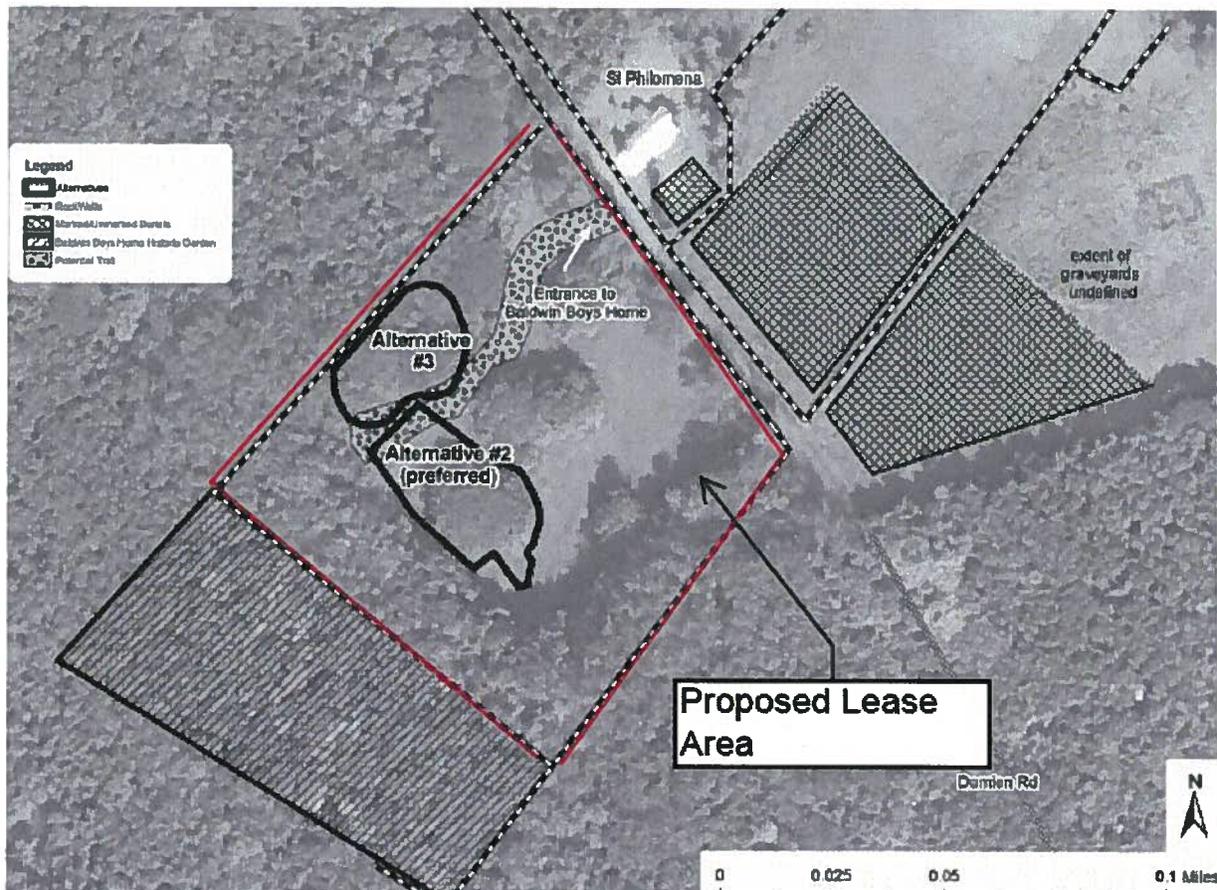


EXHIBIT C – Kalaupapa Memorial Act of 2009

123 STAT. 1196

PUBLIC LAW 111-11—MAR. 30, 2009

the non-Federal land generally depicted on the map as “Tract D”, and the offer is acceptable to the Secretary, the Secretary may, subject to valid existing rights, accept the offer and convey to the Company all right, title, and interest of the United States in and to the Federal land generally depicted on the map as “Tract B”, along with a perpetual easement on a corridor of land contiguous to Tract B for the purpose of vegetation management.

(B) **CONDITIONS.**—The land exchange under subparagraph (A) shall be subject to such terms and conditions as the Secretary may require.

(C) **VALUATION.**—

(i) **IN GENERAL.**—The values of the land involved in the land exchange under subparagraph (A) shall be equal unless the non-Federal land is of higher value than the Federal land.

(ii) **EQUALIZATION.**—If the values of the land are not equal, the values may be equalized by donation, payment using donated or appropriated funds, or the conveyance of additional parcels of land.

(D) **APPRAISAL.**—Before the exchange of land under subparagraph (A), appraisals for the Federal and non-Federal land shall be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(E) **TECHNICAL CORRECTIONS.**—Subject to the agreement of the Company, the Secretary may make minor corrections to correct technical and clerical errors in the legal descriptions of the Federal and non-Federal land and minor adjustments to the boundaries of the Federal and non-Federal land.

(F) **ADMINISTRATION OF LAND ACQUIRED BY SECRETARY.**—Land acquired by the Secretary under subparagraph (A) shall—

- (i) become part of the National Park; and
- (ii) be administered in accordance with the laws applicable to the National Park System.

(4) **MAP.**—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(5) **BOUNDARY REVISION.**—On completion of the land exchanges authorized by this subsection, the Secretary shall adjust the boundary of the National Park accordingly, including removing the land conveyed out of Federal ownership.

Hawaii.
16 USC 410jj-4
note.
Ka 'Ohana O
Kalaupapa
Establishment.

SEC. 7108. KALAUPAPA NATIONAL HISTORICAL PARK.

(a) **IN GENERAL.**—The Secretary of the Interior shall authorize Ka 'Ohana O Kalaupapa, a non-profit organization consisting of patient residents at Kalaupapa National Historical Park, and their family members and friends, to establish a memorial at a suitable location or locations approved by the Secretary at Kalawao or Kalaupapa within the boundaries of Kalaupapa National Historical Park located on the island of Molokai, in the State of Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to Kalaupapa Peninsula from 1866 to 1969.

(b) **DESIGN.**—

PUBLIC LAW 111-11—MAR. 30, 2009

123 STAT. 1197

(1) IN GENERAL.—The memorial authorized by subsection (a) shall—

(A) display in an appropriate manner the names of the first 5,000 individuals sent to the Kalaupapa Peninsula between 1866 and 1896, most of whom lived at Kalawao; and

(B) display in an appropriate manner the names of the approximately 3,000 individuals who arrived at Kalaupapa in the second part of its history, when most of the community was concentrated on the Kalaupapa side of the peninsula.

(2) APPROVAL.—The location, size, design, and inscriptions of the memorial authorized by subsection (a) shall be subject to the approval of the Secretary of the Interior.

(c) FUNDING.—Ka 'Ohana O Kalaupapa, a nonprofit organization, shall be solely responsible for acceptance of contributions for and payment of the expenses associated with the establishment of the memorial.

SEC. 7109. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA. Massachusetts.

(a) COOPERATIVE AGREEMENTS.—Section 1029(d) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 460kkk(d)) is amended by striking paragraph (3) and inserting the following:

“(3) AGREEMENTS.—

“(A) DEFINITION OF ELIGIBLE ENTITY.—In this paragraph, the term ‘eligible entity’ means—

“(i) the Commonwealth of Massachusetts;

“(ii) a political subdivision of the Commonwealth of Massachusetts; or

“(iii) any other entity that is a member of the Boston Harbor Islands Partnership described in subsection (e)(2).

“(B) AUTHORITY OF SECRETARY.—Subject to subparagraph (C), the Secretary may consult with an eligible entity on, and enter into with the eligible entity—

“(i) a cooperative management agreement to acquire from, and provide to, the eligible entity goods and services for the cooperative management of land within the recreation area; and

“(ii) notwithstanding section 6305 of title 31, United States Code, a cooperative agreement for the construction of recreation area facilities on land owned by an eligible entity for purposes consistent with the management plan under subsection (f).

“(C) CONDITIONS.—The Secretary may enter into an agreement with an eligible entity under subparagraph (B) only if the Secretary determines that—

“(i) appropriations for carrying out the purposes of the agreement are available; and

“(ii) the agreement is in the best interests of the United States.”

(b) TECHNICAL AMENDMENTS.—

(1) MEMBERSHIP.—Section 1029(e)(2)(B) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 460kkk(e)(2)(B)) is amended by striking “Coast Guard” and inserting “Coast Guard.”



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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DEPARTMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOHAWI ISLAND RESERVE/CONSERVATION
LAND
STATE PARKS

December 6, 2010

Stephen Prokop, Superintendent
Kalaupapa National Historical Park
US Department of the Interior
PO 2222
Kalaupapa, Hawaii 96742

LOG NO: 2010.3445
DOC NO: 1012MD01
Archaeology

Dear Mr. Prokop:

**SUBJECT: National Historic Preservation Act (NHPA) Section 106 Review -
Proposed Memorial at Kalaupapa National Historical Park
Kalaupapa Ahupua'a, Kalawai County, Island of Moloka'i**

Thank you for your correspondence dated October 15, 2010 regarding the aforementioned undertaking, which we received on October 18, 2010. We apologize for the delay in our reply.

The National Park Service (NPS) is working in partnership with Ka 'Ohana O Kalaupapa (the 'Ohana) to establish the Kalaupapa Memorial (the Memorial) at the Kalaupapa National Historical Park (KNHP). The Memorial is the result of legislation signed on March 30, 2009 by President Barack Obama, directing the Secretary of the Interior to authorize the 'Ohana to establish the Memorial at a location or locations approved by the Secretary to honor and perpetuate the memory of approximately 8,000 individuals who were sent to the Kalaupapa Peninsula from 1866 to 1969 because of government policies regarding leprosy. The 'Ohana, a 501(c)3 organization, consists of surviving patient residents, family members, long-time friends and professionals. The U.S. Department of the Interior Memorandum dated July 1, 2009 (Subject: Activation: P.L. 111-11, Omnibus Public Land Management Act of 2009, Title VII, Subtitle B., Section 7108: Kalaupapa National Historical Park Memorial), states that "The location, size, design, and inscriptions of the memorial shall be subject to the approval of the Secretary of the Interior."

The NPS has determined that the proposed Memorial location, to be situated within the land previously occupied by the Old Baldwin Boy's Home (which was deliberately destroyed in the 1950s) will be located in an APE of 33 acres, "...where the Memorial project may directly or indirectly alter the character of integrity of historic properties" and "the assessment of effects to historic properties extends beyond the proposed Memorial locations because of the potential for effects to the characteristics of the National Historic Landmark and the cultural landscape." We note that the National Historic Landmark encompasses the 8,725-acre Kalaupapa Peninsula.

Your correspondence indicates that guidelines for the design and location of the Memorial have been agreed-upon between the 'Ohana and the NPS. The agreed-upon guidelines follow the NPS Management Policies for memorials and include the following principals;

Stephen Prokop, Superintendent
December 6, 2010
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The memorial shall:

1. Be designed and sited to avoid disturbance of natural and cultural resources and values;
2. Be located in surroundings relevant to its subject;
3. Be constructed of materials suitable to and compatible with the local environment;
4. Not encroach on any other pre-existing work or be esthetically intrusive;
5. Not interfere significantly with open space and existing public use;
6. Not divert attention from the park's primary interpretive theme; and
7. Not be affixed to the historic fabric of a structure.

In your letter dated October 15, 2010, you indicate that, "Through proper mitigation and design, the Kalaupapa Memorial could help to enhance the landscape and enrich the historic of Kalaupapa." We concur with this assessment and believe that if the agreed-upon guidelines (1 through 7 above) are followed, there will be no adverse effect to the KNHP or to individual historic properties within the district, pursuant to 36CFR§800.5, which states,

(b) Finding of no adverse effect. The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the...undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36CFR part 68) and applicable guidelines, to avoid adverse effects.

We believe that the guidelines agreed upon by NPS and the 'Ohana will ensure consistency with the applicable Secretary's Standards for Preservation and Preservation Planning; we also believe that the preferred location at the site of the former Baldwin Boy's Home is within the stated guidelines. We request the opportunity to be consulted as the plans for the memorial are finalized. We also request that you consider some level of archaeological mitigation, either data recovery or monitoring at the final site of the memorial, if ground disturbance will occur during construction.

Your letter also indicates that NPS has determined that this undertaking may have an adverse effect on the KNHP pursuant to CFR 36 Park 800. We request that you take into account the following information when making your final determination:

1. The 'Ohana, who are cited as partners in this undertaking, do not agree with the determination of Adverse Effect (letter to SHPD dated October 25, 2010 and letter to NPS dated November 15, 2010);
2. We feel the APE (either of 33 acres or 8,725 acres) needs further refinement, given that the only location from which this Memorial will be visible is the St. Philomena Church;
3. The Bishop of the St. Philomena Church does not agree with the determination of Adverse Effect (letter from the Bishop of Honolulu to NPS, dated October 25, 2010);
4. The next closest church, United Church of Christ, does not agree with the determination of Adverse Effect (letter from Conference Minister Charles Buck to NPS, dated November 3, 2010);
5. The Advisory Council on Historic Preservation does not agree with the finding of Adverse Effect (letter from ACHP to NPS dated November 5, 2010); and

Stephen Prokop, Superintendent
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6. Prior findings of the NPS indicated that "*Memorial construction not consistent with the Secretary Standards for Historic Preservation will have an adverse effect on cultural resources.*" (*emphasis added: Layered Landscapes* June 2010, p. i).

In addition, we find guidance in the original foundation statement of the Kalaupapa National Historical Park (NPS 2006), citing Public Law 95-565, Sec. 102 dated 22 December 1980 which was the founding document for the KNHP, regarding Patient and Native Hawaiian Staffing:

Preservation and interpretation of the settlement will be managed and performed by patient and Native Hawaiians to the extent practical.

Training opportunities shall be provided to patients and Native Hawaiians in management and interpretation of the settlement's culture, historical, educational, and scenic resources.

It is our understanding that to date, consulted patients and Native Hawaiians have found that the memorial will enhance rather than adversely affect the KNHP.

If you have questions about this letter please contact Morgan Davis at (808) 243-5169 or via email to: morgan.c.davis@hawaii.gov.

Aloha,



Theresa K. Donham
Acting Archaeology Branch Chief
Deputy SHPO
State Historic Preservation Division

cc:

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