

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

January 27, 2012

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

PSF: SP1101001

O'ahu

Cancellation of the 2004 Request for Qualifications/Request for Proposal (RFQ/RFP) and request for authority to take action – including eviction if necessary - against present occupant at public recreational facilities at Mālaekahana State Recreation Area, Kahuku Section. Request for Approval to Issue a Revocable Permit for Operation of Public Recreational Facilities at the Mālaekahana State Recreation Area. Approval to Issue a Request for Qualifications/Request for Proposal (RFQ/RFP) for the Development and Operation of Public Recreational Facilities at the Kahuku Section, Mālaekahana State Recreation Area, Lā'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65.

REQUEST:

1. Cancellation of the 2004 Request for Qualifications/Request for Proposal (RFQ/RFP).
2. Request for authority to take action – including eviction if necessary - against present occupant.
3. Request for Approval to Issue a Revocable Permit (RP) for Operation of Public Recreational Facilities at the Malaekahana State Recreational Area,
4. Approval to Issue a Request for Qualifications/Request for Proposal (RFQ/RFP) for the Development and Operation of Public Recreational Facilities at the Kahuku Section, Mālaekahana State Recreation Area, (MSRA) Lā'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65 (the "Property").

LEGAL REFERENCE:

Sections 171-16, 17, 35, 36, 41, 55, 59(a), 184-3(6) and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Kahuku Section, Mālaekahana State Recreation Area (MSRA), Lā'ie, Ko'olauloa, O'ahu, identified by Tax Map Key: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65, as shown on the attached map labeled Exhibit A.

ITEM E-2

AREA:

36.288 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: R-5

TRUST LAND STATUS:

The land was acquired after 1959. It is not ceded land.

CURRENT USE STATUS:

This Property is encumbered by Executive Order 3928 setting aside for control and management of the Department of Land and Natural Resources, Division of State Parks. The last entity with approval from the Board to occupy the Property was Lanihuli Community Development Corporation (LCDC). Its revocable permit expired in 2006.

CHARACTER OF USE:

Short term use of public recreational facilities including cabin rental, campground rentals and public day use beach park.

LEASE TERM:

With respect to a lease pursuant to an award with the selected bidder under the RFP/RFQ process, the lease term will be determined through negotiation with the selected bidder, subject to the review and approval of the Chairperson.

COMMENCEMENT DATE:

With respect to a lease as negotiated pursuant to the RFQ/RFP process, the date shall be determined by the Chairperson, through negotiation with the selected bidder. With respect to the issuance of a revocable permit, the commencement date would be determined by the Chairperson.

MINIMUM ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

PERCENTAGE ANNUAL RENT:

Percentage of gross revenue from all sources within the leased premises, excluding State excise tax. Percentage to be determined by staff or independent appraisal establishing fair market rent, subject to approval by the Chairperson.

EFFECTIVE RENTAL:

The amount negotiated between the State and the selected bidder as determined by staff or independent appraisal, subject to the review and approval of the Chairperson.

METHOD OF PAYMENT:

Monthly payments, in advance.

RENTAL REOPENINGS:

At the end of every 10th year, as applicable to the term of the lease, the annual rent shall be reopened and redetermined subject to the review and approval of the Chairperson.

PERFORMANCE BOND:

Twice the annual rental amount.

MINIMUM IMPROVEMENTS:

To be negotiated with the selected bidder based on the investment required and duration of the lease, subject to the review and approval of the Chairperson.

IMPROVEMENT BOND:

An amount equal to the cost of the improvements.

RENT WAIVER:

The lease rental for up to one year may be waived based on negotiation and assessment of need for repair and improvements to existing state owned facilities, subject to the review and approval of the Chairperson.

PROPERTY CHARACTERISTICS:

Utilities –

The Property is served by an existing water line which serves the entire Kahuku section. The awarded

permittee or lessee will pay sixty (60%) percent of the water charges billed to the State Parks. Electrical service is separately metered and billed directly to the operator.

Existing Authorized Improvements- Cabins, residences, office space and day use area restrooms.

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

Encumbrances – Encumbered by Executive Order 3928 setting aside for control and management of the Department of Land and Natural Resources, Division of State Parks.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board pursuant to the RFQ/RFP process is merely for the authorization to issue a Request for Qualifications/Request for Proposals to select a lessee. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. The issuance of a lease pursuant to the RFP process will be conditioned upon the proposed lessee's compliance with all Chapter 343 environmental requirements regarding the lessee's proposed use of the property.

State Parks believes the request to enter into a Revocable Permit in the interim, prior to the negotiation of a lease, will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

Summary:

The Kahuku Section of the MSRA, which is the subject of this submittal, includes 36.288 acres of beachfront land and was acquired through condemnation in October of 1980. It includes seven (7) cabin structures, a comfort station and other various structures used for the operation of a campground and is currently operated by LCDC dba Friends of Mālaekahana and is headed by Mr. Craig Chapman. The current MSRA management situation is the result of a complicated 15 year relationship involving both the management of the property and an

attempt to reach a long term lease agreement with Māleakahana Partners, a company also headed by Mr. Chapman. LCDC has been operating the Property for cabin rentals and tent camping for the last several years under a series of expired revocable permits. The result of a comprehensive review of the management situation includes the following;

1. The documentation of numerous unauthorized improvements and non-compliant waste management strategies;
2. Multiple Environmental Protection Agency and Department of Health violations;
3. The loss of state-owned property; and,
4. Delinquent payment of a portion of water charges.

State Parks is requesting a series of actions to bring the situation to a close and to prepare for an improved, long-term management plan. State Park's goals include compliant recreational development and stewardship, a more appropriate sense of place for the MSRA's public recreational resources and a more sustainable use of these important public resources.

1. Background of Management of the Property - Starting from 1994

In a June 9, 1994 Board meeting (Agenda Item E-4), a direct issuance lease was authorized to the Ko'olauloa Hawaiian Civic Club, a Hawai'i eleemosynary organization (KHCC), beginning June 1, 1994 with a scheduled termination date of April 30, 1997. On November 15, 1994, KHCC entered in to a management agreement with Friends of Malaekahana, (the "Friends") a subsidiary corporation of KHCC, to operate the Kahuku Section of the park.

In an August 23, 1996 Board meeting (Agenda Item E-4), the Division of State Parks (State Parks) sought approval to terminate the then existing lease with KHCC and issue a new lease to Friends. The Board deferred the matter. In a September 17, 1996 letter from Chairman Michael D. Wilson to the KHCC President, Ms. Gladys K. Pualoa, Chairperson Wilson explained the reason for the deferral was due to confusion as to whether or not it was KHCC's true decision to terminate the lease due to some apparent conflicts in testimony and a question about a missing signature on the letter requesting the termination.

In a November 8, 1996 Board meeting, State Parks sought approval of a request by Friends to terminate the lease to KHCC and issue a new 10 year lease to Friends. The Board approved the request with the amendment that in lieu of a 10 year lease, Friends was allowed to fill the remaining term of the KHCC lease.

In a December 12, 1997 Board meeting, a 3 year lease to Friends was approved subject to the Board's review of the lease conditions at a future meeting. However, no such lease was ever executed and information from the Department of Commerce and Consumer Affairs indicates Friends changed its name to Lanihuli Community Development Corporation.

In a December 14, 2001 Board meeting (agenda Item E-2), State Parks sought approval for a revocable permit for Lanihuli Community Development Corporation (LCDC), formerly known as Friends of Malaekahana, on a month to month basis under similar terms and conditions as the KHCC lease. As described in the minutes of the meeting by Ms. Ipolani Tano, LCDC's Chairperson, the purpose of the name change was to, "... broaden the scope of what their management team focuses on.". The matter was approved by the Board.

On August 8, 2002, RP02-01 was issued to LCDC at the rate of gratis. The RP required LCDC to conduct a Level One Hazardous Waste Evaluation and complete abatement/disposal work as necessary. The RP also required LCDC to provide a monthly activity report.

No record of either the evaluation or the report was received. Nonetheless, the RP was subsequently renewed by the Board at its meetings of 1/09/04, and 1/13/06

In September of 2003, a plan offering various development alternatives was completed by Wesley R.Segawa & Associates. The plan envisioned a mix of camping, picnicking and recreational structures as options for the park at an estimated cost of approximately 4.4 million dollars. The recommended alternative use included a mixture of tent and cabin uses with an anticipated 440 overnight users per day and indicated the requirement for an Environmental Assessment or EIS.

On December 12, 2003, Item E-2, the Board approved staff's request to "Issue, Evaluate, Accept and Select a Request for Qualifications/Request for Proposals to Develop, Operate, and Maintain Public Recreational Facilities at Mālaekahana State Recreational Area, Lā'ie, O'ahu through a public process.

In a January 9, 2004 Board meeting (agenda Item E-2) the Board approved State Park request to extend RP 02-01 to LCDC.

On February 6, 2004, RP0201 was signed by LCDC at the rate of gratis. The new document reflected changes to the agreement and among them was a payment plan for past due water charges.

On July 30, 2004, Item E-3, the Board approved staff's request to "Amend previous Board Submittal of December 12, 2003, (Agenda Item E-2)" by using expanded statutory authority under section 184-3(6)H.R.S. that grants powers to "Construct, and operate suitable public services, enter into contracts, leases or licenses for the construction or operation of any services, facilities, or conveniences... upon such terms and conditions as are deemed by it to be in the public interest" relating to the RFQ/RFP process.

On August 24, 2004, the RFQ/RFP process began with packages being made available to the public. In all, some 13 bid packages were issued in physical form. In addition, packages were available through the Internet. The RFQ resulted in 4 bidders being qualified to submit an

RFP. At the deadline for RFP submittals, there was only one applicant, Malaekahana Partners, LLC (MP), headed by Mr. Craig Chapman. Staff and the evaluation committee worked with the principals of MP on the RFP in an effort to have a park that will benefit the public interest and also satisfy the investment criteria of MP.

On January 26, 2005, State Parks sent LCDC a letter outlining deficiencies as a result of an inspection by staff regarding unauthorized improvements.

On March 21, 2005, then State Parks Property Manager, Jim Springer received an email letter from MP's Managing Partner, Craig Chapman indicating MP has not received confirmation of the Partnership as the selected qualified bidder.

On April 1, 2005, Property Manager, Jim Springer replied to Mr. Chapman's email and stated MP's proposal was inadequate, incomplete and otherwise fails to comply with the requirements of the solicitation, and further stated, "The Land Board will ultimately decide whether to approve or reject a bidder's proposal. If a bidder's proposal is approved by the Land Board, then that bidder is "selected" to proceed to the next phase of this solicitation—which is a six (6) month period to negotiate all of the terms and conditions of the Development Agreement and Lease. Unless an agreement is reached within this six (6) month period, and approved by the Land Board, all rights the bidder may have had to negotiate the Development Agreement and Lease will cease and terminate - effectively ending this solicitation. We hope this capsule summary helps you better understand the process for this solicitation. We would appreciate your informing us as soon as possible on whether your firm intends to supplement its current proposal (as suggested by the evaluation committee), or not. Upon receipt of this information, our staff will then be able evaluate the situation, and decide on an appropriate course of action."

On May 13, 2005, the Board considered staff's proposal for "Approval of Selected Bidder per Request for Qualifications/Proposal (RFQ/RFP) for Development, Operation and Maintenance of area" and revised the recommendation as follows:

1. Staff shall develop the assignment criteria for a third party appraisal with MP bearing the cost of the appraisal, staff to choose the appraiser. This appraisal will be used for the Development Agreement and negotiation of the lease terms and conditions.
2. Staff shall negotiate the terms and condition of the development agreement and lease by incorporating the community's recommendations obtained through the public process. The final recommendation of the development agreement and lease shall be brought to the Board for approval.

On June 21, 2005, the State Parks received a letter from MP, dated June 17, 2005 which concluded that MP could not proceed with "any discussions on the RFP Appraisal" until the community presentations were completed and the process approved by the Board.

On December 9, 2005, Agenda Item E-2, the Board considered the cancellation of the RFQ/RFP and Rejection of Responses in accordance with Request for Qualifications/Proposal for Development, Operation and Maintenance of the MSRA dated August 24, 2004 and authorization for re-issuance of a revised RFQ/RFP. After vocal opposition to staff's recommendations from various parties, the Board voted to defer the matter until the first meeting in February.

January 13, 2006. Parks Administrator Quinn submitted a request to approve the continuation of the RP on a month to month basis through 12/31/2006 provided if there were rental payment or non monetary defaults; the RP shall not be renewed. The Board approved the submittal (Agenda Item E-2). **This was the last RP renewal for LCDC.**

On a January 26, 2007, Board meeting, staff again sought approval of MP as the selected bidder. The Board approved staff's recommendations with two additional requirements. The Board directed that the matter be brought back for approval:

1. Once a development agreement was reached; and,
2. That the development agreement be made prior to lease execution subject to community and agency input through the EIS process.

On December 12, 2007, State Parks issued a letter to Craig Chapman, Friends of Malaekahana and MP to cease and desist all ground disturbing activities. The letter was in response to un-permitted construction of new park rental units, including grading and excavation within sand dunes.

January 31, 2008, letter from SHPD expressing concerns regarding possible Chapter 6E violations.

On March 1, 2008, MP produced a "Proposed Master Plan" delivered to State Parks . The plan included the Kalanai section as well and had an investment amount of \$1.5 Million. It indicated the present capacity of the Kahuku section was 445 users per day.

On March 4, 2008 State Parks issued a letter to Mr. Chapman appending and referencing the above letter from SHPD. This letter requested a response from Mr. Chapman regarding the issues raised by SHPD, expressed concern that Mr. Chapman was implementing improvements without authorization and non-conforming to any plans, directed Mr. Chapman to cease all further development until such time as Board approval could be obtained, and requested an updated proposal/development plan.

February 13, 2009. The EPA inquired with State Parks staff on Mr. Chapman's contact information. Mr. Chapman had contacted EPA on an innovative integrated wastewater system to address the closure of the large capacity cesspools (LCCs) in MSRA.

February 23, 2009. Staff from State Parks and Engineering met with DOH - Wastewater

Branch staff regarding compliance issues raised by Mr. Chapman's disclosure of innovative wastewater systems to address LCC closure compliance.

March 18, 2009. Staff from State Parks and Engineering attended an inspection with DOH-Wastewater Branch and EPA staff to identify LCC and Individual Wastewater Systems (IWS) in the area managed by LCDC.

April 8, 2009. DOH issued its findings and notified State Parks that activity at MSRA is in violation of ten (10) unpermitted IWS and five (5) LCCs still in operation. DOH required DLNR to comply within 90 days. Subsequent meetings between DOH and DLNR staff were held and an affirmative action plan was proposed for compliance.

April 8, 2009. EPA issued its notice of noncompliance of the five (5) LCCs still in operation and required DLNR to comply with closure improvements.

April 22 and 27, 2009, DLNR submitted an affirmative action plan and subsequent revisions to correct and comply with the non-compliance issues raised by DOH. The plan identified various milestone dates where construction of stated improvements was to start in April 2012 and completed within six month to a year. This plan was also submitted to EPA to address the LCC closure issues.

May 27, 2009. LCDC registered the trade name, "Friends of Malaekahana", (hereinafter "FOM").

January 24, 2011. State Parks received a City and County of Honolulu Notice of Violation for grubbing and grading within the Shoreline Setback without a variance. The items pursuant to the notice were to be cured by February 21, 2011.

February 10, 2011. State Parks receives a written notice from Mr. Chapman that he was submitting a permit request to make landscaping improvements.

July 20, 2011. State Parks received an additional City and County of Honolulu Notice of Violation for grading on the property without a permit.

November 11, 2011. State Parks received a faxed copy of an approved grading permit and the Notice of Violation was cured shortly thereafter.

2. General Summary of Non-Compliance Issues

As stated, there are numerous Federal and State environmental violations that have been noted including non-permitted individual wastewater systems and improper use of existing cesspools.

There are numerous unauthorized "temporary" structures throughout the subject property that

have been erected for public use without State Parks' approval, Many were completed following a memorandum from Parks Administrator Quinn to Mr. Chapman, dated 3/4/08, which stated, in part:

"...no further development should be undertaken without an accepted development plan approved by the Board. This includes, but is not limited to: road construction, cabin construction, new campsite/shelter development, comfort stations and sewage systems. The only approved activity which should be presently undertaken is maintenance of existing facilities. To reiterate the concerns expressed in my memorandum of December 12, 2007, absolutely no ground-disturbing activities of any kind shall be undertaken in the park until further notice."

To date, FOM has not complied with this request.

Additionally, it is clear, both from observations and statements made by Mr. Chapman, that a number of the unpermitted structures are being used as permanent or temporary housing for FOM staff, as well as persons whose employment appears to be unrelated to operations of the park. During a site visit on 11/15/11, an individual was observed inhabiting a structure within the park. When questioned about this situation, Mr. Chapman indicated that he was letting this individual live in the park until he could acquire a plane ticket to return to the mainland.

State Park staff inspections have noted that a portion of the property has been utilized for storage of items, including vehicles, boats and other watercraft, commercial tree-trimming vehicles and equipment, construction equipment and materials which appear to have no relationship to park operations.

As of January 5th 2012, past due water charges totaled \$16,399 and the outstanding balance has never been lower than \$8,000 for the past two years.

There is no evidence of fire insurance as required under the terms of the now expired RP. The 2004 RP which was continued through 2006 requires the Permittee to keep, "...government-owned improvements located on the Premises insured against loss by fire or other hazards, casualties and contingencies for the full insurable value of those improvements...."

3. Property Loss and Status of Remaining Pre- Existing Cabins, Compilation of Unpermitted Structures

Property Loss

Cabin 1. (Exhibit B) This structure, known as the Kawanakoa House, burned down on March 2nd, 2009. Of the houses that were on the property when the state acquired the land, this one was arguably the most historically significant. The suspected cause of the fire was an

electrical problem¹. Although the expired RP required the permittee to insure all existing improvements against loss from fire, the occupant was carrying no such insurance at the time of the fire, and the State remains uncompensated for this significant loss to this date.

On March 16, 2009, State Parks Administrator Quinn directed Mr. Chapman not to build any temporary or permanent structures in the former Kawanakoa House location.

However, since the loss of this structure, LCDC then imported fill, covered the former concrete house foundation with approximately several feet of soil and rubble, constructed retaining walls, and erected five yurts within the former house footprint. Adjacent to the former house site is a pavilion built over the former lanai of the structure. Several facilities, incorporating metal containers, were erected at the site, including several which serve as new bathroom/ shower facilities and another serving as a makeshift kitchen. Wastewater and sewage from these facilities are disposed of in the existing cesspool in violation of EPA regulations. That bathroom/shower facility serves the 5 yurts located on the house slab as well as the 11 "grass shacks" in the vicinity. With the loss of the former single family dwelling, so was the loss of the grandfathered use of a cesspool to treat sewage at the site – which now illegally serves the multiple users via unauthorized restrooms and showers. This now constitutes a large-capacity cesspool. All new facilities, fill and retaining walls installed and constructed (est. 9) since the fire are not authorized by State Parks.

Status of Remaining Pre- Existing Cabins

The remaining pre-existing State cabins 2, 3, 4, 5 and 6/7 (a duplex) as shown in Exhibit B, have sustained a high level of decay. While temporary makeshift attempts by LCDC to prevent water leaking from the roofs occurred, the cabins are subject to neglect, lack of sustained upkeep, and a few specific cabins are no longer in a condition suitable for public use. There have been complaints by the public regarding the condition of some of the cabins.

In addition, there are 4 other existing residences; the office, the caretaker's residence, (currently occupied at the rate of gratis by Mr. Chapman) and the FOM security house. One of the other cabins on the property – but separate from and adjacent to the area utilized for public overnight use, is occupied by a Division of Conservation and Resources Enforcement Officer in order to provide an enforcement presence in this area for additional nighttime security at both the Kahuku Section and the near by Division of State Park Managed camping area: Malaekahana – Kalanai Point Section.

Unpermitted Structures

There are several yurts and a variety of modified trailers that serve as temporary camping structures placed and rented without State Parks written approval, and in some areas the grades were also modified without State Parks or City and County pre approval. While these

¹ Per site visit and discussion with Mr. Craig Chapman on May 5, 2011.

structures have appeal to various campers visiting from the Mainland and resident campers perhaps interested in a unique low-budget individual or group experience, these structures are not historically or culturally appropriate for MSRA. As an example, yurts are features with origins in Central Asia that have no connection to local Hawaiian culture or sense of place.

Unpermitted “Grass Shacks”

The 11 grass shacks were built and installed circa 2009 to the present without State Parks authorization. Soil fill with rubble was deposited within and atop near shore dune system, large boulders, and retaining walls were constructed without State Parks approval or DPP permits. One grass shack was in the County Shoreline Setback but has since been relocated. A county Notice Of Violation was issued for a portion of the deposited soil and rubble, and has subsequently been removed and relocated elsewhere on the property.

Unpermitted “Eco cabins”

There are 2 eco cabins and related infrastructure, constructed in 2007-8 without State Parks authorization, non-conforming with any designs previously submitted; and built without either a County building permit or State Parks review; septic system built without certification; grading and septic system excavated without Chapter 6E HRS compliance and appurtenant archaeological monitoring, subsurface leach field subsequently excavated and installed in direct defiance of a memorandum from administrator Quinn dated 12/12/07 which stated, in part, “...We hereby order you to cease and desist all ground disturbing activities until further notice. These activities have the potential to destabilize the dune system, undermine established trees and disturb archaeological deposits and/or burials. The mission of State Parks includes preserving and protecting our natural and cultural resources. There are significant compliance procedures which must be adhered to before undertaking the types of activities presently occurring at the property.”

4. Wastewater System violations

The following cesspools are listed in the Environmental Protection Agency (EPA) letter as unauthorized large capacity cesspools:

- CP4 (Associated with a Yurt)
- CP7 (Associated with Cabin 5)
- CP9 (Associated with Cabin 6 and 7)
- CP 10 (Associated with various buildings shown as guest houses)
- CP 14 (Associated with the LCDC staff housing)

In addition to the cesspools listed above, a cesspool on the site formerly occupied by the Kawanakoa House and currently serving as “Tutu’s Hale” is also not in compliance.

The following are IWS's that have not been approved by DOH in regards to design and/or operation:

IWS 1 - IWS 2 (Associated with camping area)

IWS 3 (Larger system associated with Eco Cabins)

5. Water Charges

Under the terms and conditions of the 2004 RP, LCDC is responsible for its share of the water costs supplied by the Board of Water Supply Account #1162097-1027768 paid monthly on a pro-rata basis, 60% paid by the Permittee and 40% paid by the Board. As of January 5, 2012, the outstanding balance for these charges was \$16,399. The account has carried an outstanding balance since August of 2008. On July 24, 2009, a credit was given to the State of \$502.31 for a water leak from inside the State's side of the water meter by the Board of Water Supply. On August 3rd, the prorata share of that rebate was credited to LCDC in the amount of \$301.38.

6. Discussion

The Board on two separate occasions made an attempt to reach a long term agreement with Malaekahana Partners (MP). In the first instance in May of 2005, the Board approved the request to designate MP as the selected bidder provided it paid for an appraisal of the Property and obtained community input on its plans. **MP refused to proceed with the appraisal.**

On the second occasion in January of 2007, the Board approved MP as the selected bidder provided staff return to the Board with an executed development agreement, among other requirements. **No such agreement was reached.**

In a January 12, 2009 letter to State Parks, Mr. Chapman, on behalf of LCDC, advised State Parks that the MSRA Kahuku section generated over \$400,000 in revenue in 2008. A significant portion of these revenues were derived from improvements that were either not authorized by State Parks or used in such a manner that violate State and Federal environmental regulations and standards. Because of this non-compliance, the State is in violation of these requirements and must regain operational control of the property to comply. In addition, because of the history of non-compliance, State Parks is not confident a long term disposition can be reached and a reasonable time period for MP to reach an agreement has long since passed.

Therefore, in light of the expired RP and the non-compliance history, State Parks believes there is no practical alternative but to regain operational control of the property, preserve the authorized existing improvements (cabins) and comply with EPA and DOH mandates to upgrade wastewater systems. State Parks intends, using the previous input from community outreach, to restore property to smaller scale camping experience (similar to how it was used in the 1990's) as outlined in the proposed action plan below.

In the interim, State Parks will seek to enter into a Revocable Permit with a to be determined organization to manage a more modest camping operation on a month to month basis and arrest the

decay of the cabins until a new management plan and an agreement is completed pursuant to a new RFQ/RFP.

2012 Proposed Action Plan

1. Regain operational control of the MSRA and ensure the removal of unauthorized improvements and closure of the LCC's pursuant to EPA and DOH regulations. The timeframe for this depends on the condition of the property based upon FOM compliance on aforementioned improvements.
2. Construct a single comfort station and IWS to allow for existing tent camping. This facility will provide bathroom and shower facilities existing uses only. There are now Capital Improvement Program funds that have been appropriated to State Parks for this purpose.
3. Asses the condition of the existing cabins and determine if and how they can be renovated or restored. Make repairs either with contractors or via a new permittee as required to bring the cabins in to acceptable rentable condition.
4. Enter in to a Revocable Permit with an operator who will offer tent camping and cabin rentals under conditions acceptable to State Parks.
5. Request assistance from the Department of Attorney General to pursue claims, if any, against the current operator for compensation for the loss of the Kawanakoa House.
6. Issue a new RFQ/RFP after evaluating the condition of the property and soliciting input from the various stakeholders.

RECOMMENDATION: That the Board:

1. With respect to the issuance of a revocable permit herein described, declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200 HAR, the project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment and that with respect to the issuance of a lease pursuant to the RFP/RFQ process, direct that the award of a lease be conditioned upon the proposed lessee's compliance with all Chapter 343 environmental requirements regarding lessee's proposed use of the property.
2. Authorize the cancellation of the 2004 Request for Qualifications/ Request for Proposal (RFP/RFQ) process.
3. Require that the current operator, LCDC dba Friends of Malaekahana, provide the Division of State Parks with a current list of any and all future reservations and deposits, including the names and addresses for each reservation, remove all un-permitted structures, vacate the park and refund any prepaid camping reservations fees, subject to a timeframe established by the Board;

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4. Authorize the Chair to take whatever action is necessary to compel action by LCDC and if necessary work with the Department of Attorney General to enforce and collect, including filing suit as needed.
5. Find that it is in the public's interest to negotiate to find an offeror to develop, operate and maintain public recreational facilities for Malaekahana State Recreation Area through a RFQ/RFP process.
6. Authorize the Chairperson to do the following:
 - a. Appoint members to an evaluation committee that will establish the criteria to evaluate the proposals and select an offeror;
 - b. Issue a Request for Qualifications/Request for Proposals (RFP/RFQ) pursuant to Section 171-59(a), HRS for the selection of an offeror;
 - c. Accept and evaluate proposals submitted by prospective offerors; and
 - d. Select the best offeror.
7. Authorize the Chairperson to negotiate and execute the new lease the subject area for recreational business and commercial purposes 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 business or commercial general lease 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.

Respectfully Submitted,



DANIEL S. QUINN, Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Exhibit A Tax Map Key

