REPORT TO THE TWENTY-FIFTH LEGISLATURE
2010 REGULAR SESSION

PROGRESS REPORT ON THE IMPLEMENTATION
OF ACT 15, FIRST SPECIAL SESSION LAWS OF HAWAII, 2009

Prepared by:
State of Hawaii
Department of Land and Natural Resources
Division of State Parks

In response to Section 8 of Act 15, First Special Session Laws of Hawaii, 2009

November 2009
Act 15 of the First Special Session of the 2009 Legislature (Act 15), establishes the Living Park Planning Council (Council) to develop a master plan for Ahupua‘a ‘O Kahana State Park. In developing the Master Plan, the Act requires the Council to:

1. Establish goals and objectives to ensure the living park reaches its full potential;
2. Set forth standards and timelines that enables the goals and objectives to be met;
3. Identify programs for enhancement of educational opportunities and cultural awareness;
4. Develop plans to secure funding for a land manager, a housing fund, and any other financial needs that may be identified in the Park’s Master Plan;
5. Dialogue with residents, kupuna, community groups and organizations from other ahupua‘a to share knowledge;
6. Advise the Department of Land and Natural Resources (Department) on park related matters;
7. Propose agreements establishing the Council’s authority to implement the Master Plan;
8. Establish criteria, policies, and controls for the management of the living park leases including how people are selected for a lease, designate lands to be leased, terms and conditions of the leases, monitoring and enforcement of the lease terms and conditions, treatment of persons residing in the living park without a lease, assignment and renewal of leases;
9. Maintain, promote, and perpetuate the aloha spirit; and
10. Develop protocols and proposals to encourage caring for kupuna and for sharing and perpetuating kupuna knowledge.

According to Act 15, the Council shall be comprised of five voting members appointed by the Governor, three shall be representatives of families who reside in the park, selected from a list of resident nominees provided by the president of the park’s community association, one member shall be a representative of the general public and one member shall be a representative of the Department. The ex officio nonvoting members shall be appointed in equal numbers by the state senator and state representative representing the district in which the living park is located. Act 15 also mandates the first meeting of the Council to be held on the third Tuesday in July, beginning in 2009.
On July 18, 2009, the residents of Kahana held an election for the three council members that represent the families who reside in the park. Jolene Peapealalo, the President of Kahana Community Association (KCA), Ululani Beirne-Keawe, Secretary of the KCA, and May Au were elected. The election was supervised and certified by The League of Women Voters. Subsequently, the Governor appointed Reef Makue to be the member representing the general public and Lauren Tanaka as the Department's representative. Staff has received information that the appointments by the district's state representative and state senator have been made. However, the Department has not received written confirmation to date.

On July 21, 2009, the three resident council members conducted a meeting at which the plans referenced in Act 15 as the guiding documents for the state park, namely the Kahana State Park Development Plan by the Kahana Advisory Council dated December 1985 and The Living Park Plan of Kahana’s People by the ‘Ohana Unity Council prepared in 1979, were distributed to the 18 residents who attended the meeting. Additionally, two information gathering meetings were conducted by the three resident members and all resident families were given copies of the two plans referenced above along with a request to review those documents and submit their comments to the Council within two (2) weeks.

A meeting of the Council has been scheduled for Saturday, October 17, 2009, 9:00 a.m. at the Orientation Center of the Ahupua’a ‘O Kahana State Park, located at 52-222 Kamehameha Highway, Hau‘ula, Hawai‘i 96717. Items on the agenda include the introduction of the members to the Council, discussion about group operating principles, organization of the Council such as election of a chairperson, other officers, developing a mission statement, goals and objectives, and standards and timelines.

Further, Act 15 establishes a two-year moratorium on the evictions of persons who as of July 1, 2009, reside in Ahupua’a ‘O Kahana State Park, has participated in interpretive programs for the park and has continuously lived there since before 1987 or hold or has held a long-term lease or permit to reside there and authorizes the Department to issue long-term residential leases to qualified persons.
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

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

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

Families living in Kahana at the time of condemnation were of varied ethnic backgrounds, and the people of Kahana generally lived a simple, subsistence lifestyle in harmony with native
Hawaiian values and traditions. In 1970, a governor's task force proposed the concept of a living park as a way in which the residents could continue to live in the park and participate in the park for the benefit of the public.

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

Since 1993, three leases have been terminated by the department of land and natural resources for noncompliance with lease conditions. Other families living in Kahana valley have sought to obtain long-term leases, but the department of land
and natural resources refuses to issue any further leases, relying on the attorney general's opinion issued on March 24, 2008, asserting that Act 5, Session Laws of Hawaii 1987, expired.

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

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

The purpose of this Act is to:

1. Establish a two-year moratorium on evictions of persons who at the time of the enactment of this Act, reside in Kahana valley state park, have participated
in interpretive programs for Kahana valley state park,
and have continuously lived there since before 1987 or
hold or have held a long-term lease or permit to
reside there;

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

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

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

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

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

(3) Have:

(A) Continuously lived there since before 1987; or

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

(b) 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 long-term residential leases for sites in state parks with acreage greater than five thousand acres but not more than six thousand acres, with the following qualified persons:

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

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

SECTION 4. (a) For each state living park there shall be established a living park planning council to be placed within the department of land and natural resources for administrative purposes. The planning council shall consist of five voting
members, appointed in the manner and to serve for the terms
provided in section 26-34, Hawaii Revised Statutes, and two ex
officio nonvoting members.

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

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

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

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

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

(1) Land use laws or land use planning;

(2) Community-based planning;

(3) The environment; or
(4) Native Hawaiian culture.

d) The council shall select a chairperson by a majority vote of its voting members; provided that no member may serve as chairperson for more than three consecutive years.

e) Council members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their official duties.

f) Any action taken by the planning council shall be approved by a majority of its voting members. Three voting members shall constitute a quorum to conduct business.

g) The first meeting shall be held on the third Tuesday in July, beginning in 2009.

SECTION 5. The development of a master plan for a state living park shall rest with the living park planning council. The master plan shall be reviewed and updated as needed. In developing the master plan, the council, among other things, shall:

(1) Establish goals and objectives to ensure the living park reaches its full potential;

(2) Set forth standards, timelines, and other measurements to ensure the living park achieves its goals and objectives;
(3) Identify programs that enhance educational opportunities and cultural awareness in the living park;

(4) Develop plans to secure funding for a land manager, a housing fund, and any other financial needs identified in the living park master plan;

(5) Seek out and consult with all residents of the living park, kupuna, community groups adjacent to the living park, and organizations that have knowledge that may benefit the living park;

(6) Advise the department of land and natural resources on any matter relating to the living park;

(7) Propose agreements that will establish the full authority of the planning council to implement the master plan, including whether the planning council can hire a land manager, establish a nonprofit organization, or enter into contracts;

(8) Establish criteria, policies, and controls governing the management of the living park leases, including:

(A) Selection of persons for leases; provided that preference is given to persons residing in the park who contribute twenty-five hours of service
each month to benefit the living park and are actively seeking a lease in the living park;

(B) Designation of lands to be leased;

(C) Terms and conditions of leases;

(D) Monitoring and enforcement of lease terms and conditions;

(E) Treatment of persons residing in a living park without a lease; and

(F) Assignment and renewal of leases;

(9) Maintain, promote, and perpetuate the aloha spirit as defined in section 5-7.5, Hawaii Revised Statutes; and

(10) Develop protocols and proposals to encourage the caring for kupuna and the sharing and perpetuation of kupuna knowledge.

SECTION 6. The living park planning council shall submit a proposed master plan to the board of land and natural resources no later than one year following the first meeting of the planning council. Within ninety days after submission of the proposed master plan, the board of land and natural resources shall either adopt the proposed master plan or deny the proposed master plan. If it denies the proposed master plan, the board of land and natural resources shall submit to the living park
planning council, in writing, its reasons for denying the
proposed master plan. The living park planning council shall
revise the proposed master plan and resubmit the revised
proposed master plan to the board of land and natural resources
until a final master plan is adopted.

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

SECTION 7. Until the living park master plan is adopted
pursuant to this Act and a long-term residential lease
application has been acted upon, persons currently residing in a
living park at the time of enactment of this Act shall not be
evicted on the grounds that they lack a valid lease; provided
that they are contributing at least twenty-five hours of service
each month to benefit the living park.
SECTION 8. The department of land and natural resources shall submit to the legislature an initial progress report, including any proposed legislation, regarding the implementation of this Act not later than twenty days prior to the convening of the regular session of 2010 and a final progress report, including any proposed legislation, not later than twenty days prior to the convening of the regular session of 2011.

SECTION 9. This Act shall take effect on July 1, 2009.