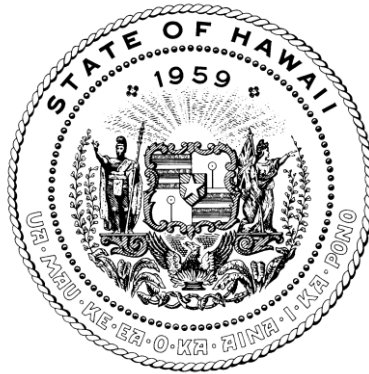


REPORT TO THE TWENTY-SIXTH LEGISLATURE
2011 REGULAR SESSION

INITIAL PROGRESS REPORT ON THE IMPLEMENTATION
OF ACT 15, SPECIAL SESSION OF 2009



Prepared by
THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS

In response to
SECTION 8 OF ACT 15, SPECIAL SESSION OF 2009

DECEMBER 2010

INITIAL PROGRESS REPORT ON THE IMPLEMENTATION OF ACT 15, SPECIAL SESSION OF 2009

This initial progress report is prepared in consultation with the Living Park Planning Council, pursuant to Section 8 of Act 15, Special Session of 2009 (Act 15), regarding the implementation of a master plan for a state living park in Kahana Valley.

The Living Park Planning Council (Council) is comprised of five voting members appointed by Governor Linda Lingle (Governor). They are:

1. May Au, representing the residents of Kahana ahupua‘a,
2. Ululani Beirne Keawe, representing the residents of Kahana ahupua‘a,
3. Benjamin Shafer representing the residents of Kahana ahupua‘a,
4. Richard Paglinawan, member of the general public, and
5. Lauren Tanaka, representative of the Department of Land and Natural Resources (Department).

Also on the Council are the following six ex officio nonvoting members that were appointed by legislators Senator Clayton Hee and Representative Jessica Wooley representing the district in which the state living park is located:

1. Ralph Makaiau, Jr.,
2. Kapua Sproat Fonoimoana,
3. Luciano Minerbi,
4. Lena Soliven,
5. Ervin Kahala, and
6. Laulani Teale

In response to one of the provisions in Act 15, the Kahana Community Association held an election on July 18, 2009, to decide who would represent the residents of Kahana ahupua'a. The election was supervised by the League of Women Voters and elected were May Au, Ululani Beirne Keawe, and Jolene Peapealalo.

On July 21, 2009, the three elected representatives from Kahana held a meeting in order to comply with Act 15's mandate, and subsequently, held three more meetings. However, it was later determined that because the full council of five voting members had not been formally appointed as provided in Section 26-34, Hawaii Revised Statutes, these meetings could not be considered "official" meetings.

Lauren Tanaka was appointed to represent the Department in October 2009. In December 2009, the Governor submitted the names of the three members who would represent the residents of Kahana, May Au, Ululani Beirne-Keawe and Benjamin Shafer. At the February 10, 2010 Council meeting, an announcement was made that Richard Paglinawan, who was in attendance, would be the public member appointed by the Governor. As a result, the Council declared that the meeting was the first "official" meeting of the Council and unanimously elected Ralph Makaiau, Jr. as its Council Chair. At the meeting, Mr. Makaiau Jr. went on to provide the details of the Kahana Planning matrix, a road map that breaks down the provisions of Act 15, identifies the entities that would be responsible for those provisions (the State, the Council, and the Valley residents), and seeks to find ways for the three entities to work together to come up with resolutions to long standing problems.

In conjunction with the Matrix, six committees were established in the following areas: (1) Kupuna, (2) Lessee Consensus; (3) Tenants; (4) Interpretive Programs; (5) Guidelines; and (6) the Master Plan. To chair those committees, Chair Makaiau Jr. further recommended to the Council that only nonvoting members be assigned. This was to ensure that issues with the sunshine law would not be raised. The law authorizes certain interactions between members outside of a meeting, and cautions that such interactions cannot be used to circumvent the requirements to have a properly noticed meeting. To be noted, all Council and committee meetings were noticed with agendas posted on the State Calendar and the Office of the Lieutenant Governor. Additionally, meeting notices and agendas were also mailed to the 28 families with leases and the six resident non lessees.

It should be noted that in January 2010, Dr. Jim Anthony, a lessee of Kahana Valley, forwarded an email message to the State Parks Administrator of the Department that Dr. Anthony received from the State Ethics Commission. The message was in response to his request for a ruling or opinion on the issue of a potential conflict of interest involving two voting council members who have leases, and their relationship with a nonvoting member who is a non-lessee resident. Seeking clarification as to whether recusal from voting of both of the voting members would be appropriate when the matter of issuing new leases came before the Council, the State Ethics Commission responded that they are not authorized to provide advice to one individual about the situation involving another individual. The Council, having been made aware of this issue raised by Dr. Anthony at its earlier meetings, agreed to having the Chair sending a letter to the State Ethics Commission on behalf of the entire Council. To date, no response from the State Ethics Commission has been received on this matter.

While a number of issues were identified, the ones that generated the most discussion were:

Leases

- Can more leases be issued if Act 15 is considered unconstitutional? The Governor in her veto of the legislation which became Act 15 as a result of override, stated that Section 3 of the bill violates Section 5 of Article XI of the Hawai'i State Constitution. The Council is in discussion on having an opinion on this matter rendered by the Department of the Attorney General (AG's).
- If more leases can be issued, will priority be given to the six families who are resident non-lessees?
- What criteria will be used to qualify people for those leases?
- Can the six families qualify for a mortgage loan with a financial institution or do they need financial assistance from other sources?
- Will the six families be allowed to remain where they are and rebuild their existing homes to meet building codes or will they be relocated?

Proposed Changes to the Existing Leases

- The ability of Lessees to use the improvements (house) and the remaining years on their lease as collateral for a bank loan.
- Removal of the provision that Lessees cannot sublet or rent their homes
- Lease perpetuity by eliminating the terminal nature of the 65-year lease
- Allowance for payment of a lease rent in lieu of performing the 25 hours

Interpretive Programs and the Requirement for 25 hours a month

- Percentage of noncompliance
- Enforcement of lease provisions for those in default of hours requirement
- Credit for hours of the following activities:
 - Maintenance of the park grounds

- Attendance at council meetings
- Removal of cap of 150 hours of carryover
- Curatorships of certain interpretive activities/areas
- Historic and cultural accuracy of programs
- Doing cultural programs in the “background” and not face-to-face with the public

Other Issues:

- There is no money or support for the Council to: (1) Obtain legal advice; (2) Hire a qualified person to perform administrative tasks such as the recording, scheduling, notification of meetings; and (3) Purchase equipment such as a computer to carry out the mandates set forth in the law
- ‘Ohana zoning
- Ho‘oponopono and reconciliation
- A topographical survey of the entire ahupua‘a
- Structurally establish the Living Park Planning Council as a for profit entity
- Structurally establish Lessees as members of a nonprofit entity

In August 2010, the six Committees reported their findings to the full Council and made the following recommendations:

The Kupuna Committee received two characterizations of the Council logo from lessees and has a preamble for the Council to adopt for the Master Plan:

“Ahupua‘a ‘O Kahana forever no na kupa maoli O Kahana a me Hawai‘i nei” which means, “The ahupua‘a of Kahana forever for the people of Kahana and Hawai‘i nei“.

The logo is important to capture the spirit of the ahupua‘a and what it represents, but an appropriate design has not yet been submitted. The Committee’s recommendation is that the residents need to be involved in ho‘oponopono and reconciliation. Councilmember Paglinawan is trained in the practice of ho‘oponopono, and wants to help.

The Interpretive Program Committee’s recommendation is that an appropriate liaison be designated by the Council to approach lessees not in compliance, advise them of the eviction moratorium end date and offer to dialogue on assistance to bring them into compliance. The liaison would also work on expanding the interpretive program so that more can participate and recommend to the council the status of evictions.

The Lessee Consensus Committee’s recommendations are to continue to be available for meetings with the lessees, maintain the public forum, and to find ways in which there can be forgiveness and trust within the community.

The Tenant Committee’s main objective was to figure out how they can become lessees and be in compliance with the 25 hour requirement. Currently, only those families with leases are required to perform the 25 hours of interpretive programs. Act 15 extended participation in the interpretive programs to those who are affected by the two year moratorium from evictions. The Committee reports that the resident non-lessees have been maintaining a log of their hours from February 2009, and it is in the same format as the one used by the lessees when they report on their hours. Issuing new residential leases to the six resident non-lessees, create development plan financing specific to the six families, and the designation of a liaison to monitor compliance are the recommendations this Committee has come up with.

The Master Plan Committee reported that it reviewed most of the reports prepared about Kahana, particularly the Kahana State Park Development Plan, prepared by the Kahana Advisory Council in 1985, and The Living Park Plan of Kahana's People, prepared by the 'Ohana Unity Council in 1979. In comparing the various reports for information that could be incorporated in the current master planning process, the Committee decided the 1985 Plan would be the one to revise and update. In the public outreach, the Committee Chair along with the Kupuna Committee Chair met with 10 individuals and found that while there are flaws in the way programs are carried out, the residents are satisfied with how things are going. The recommendations are to staff the Master Plan Committee with all members of the Council who would fine tune the existing plans by filling in the spaces. Residents want to be the architects of the Plan and the Council needs to guide them. Everyone wants their leases perpetuated.

The Guidelines Committee did not provide a report as its Chair was out of town. One of his graduate students did provide the Council with a written outline of the 1985 development plan summarizing its various components and prepared diagrams of the provisions of Act 5 from the 1987 Legislature and Act 15.

The Council voted to receive the committee reports. Some of the members wanted to accept the reports, but others felt that the lack of information coming from the lessees was of great concern and wanted to do more to engage them in the dialogue. The Council also received written objections from a lessee to the reports submitted by the Tenants, Interpretive Programs, and Master Plan Committees. These objections were also submitted to the Office of Information Practices and the State Ethics Commission.

Thirteen months into this process, the Council has reached a milestone. On September 1, 2010, Ralph Makaiau, Jr. stepped down from the Chairmanship and appointed Lauren Tanaka as the Interim Chair. Since late August, Interim Chair Tanaka has conducted four open house workshops with the residents. The resident outreach has brought forward 18 families with leases, not including the three who are council members, and the six resident non-lessees. The main topic of discussion has been: (1) The issuance of more leases; (2) How many more and to whom; (3) What criteria should be applied in determining who qualifies for a lease; (4) Should priority be given to the six families, and if so, should they be allowed to remain where they are; and (5) What are their financial needs to qualify for loans to rebuild their homes to meet building codes.

The Council recognizes that in order to come up with a master plan for Kahana that is able to affect improved changes for those who live in the Valley, their participation and involvement is necessary. A successful plan is one wherein the people whose lives it impacts take ownership of it. The dialogue has just begun with the residents, and while the process may be long and progress slowly, the Council will have to make every effort to obtain resident input. Plans are being made by the Council to meet with the families who have not yet come forward to share their mana'o.

Unresolved issues of the Council involve the constitutionality of Act 15, the moratorium on evictions and the Master Plan. The Council will ask the Department to request an opinion from the AG's on the constitutionality of Act 15. The timelines for the moratorium on evictions and the submission of a proposed Master Plan to the Board of Land and Natural Resources (Land Board) need to be extended until the Council has developed a recommendation about the six families that will be presented to the Land Board for approval and a draft Master Plan is developed. On the matter of funding, a legislative appropriation to pay for legal counsel would best serve the interests of the Council at this time.