KAHANA: WHAT WAS, WHAT IS, WHAT CAN BE

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FOREWORD

This study was prepared in response to Senate Concurrent Resolution No. 61, Senate Draft 1 (2001). The concurrent resolution asked the Legislative Reference Bureau to study the feasibility of giving management over the ahupua`a `o Kahana (Kahana State Park) to a culturally-sensitive, ahupua`a-based entity.

The Bureau wishes to extend its thanks to all those who assisted in this study, especially Sunny Greer, Adella Johnson, Ben Shafer, the Kahana Advisory Commission, Dan Quinn, Martha Yent, Toni Han, Lauren Tanaka, Al Rogers, Commander Brian K. Swanson, Michael Bajinting, Kathleen Dobler, Vicky Tsuhako, Wendy Wiltsee, Paul Mizue, Gene Hester, Ron Walker, Barry Hill, John Naughton, Linnel Nishioka, Dede Mamiya, Steve Thompson, Glenn Higashi, Gary Moniz, Nathan Napoka, June Harrigan, Steve Chang, Brian K. Minaai, Glenn Yasui, David Blane, Rudy Reese, Anthony Ching, Timothy Steinberger, Kathy Sokugawa, Clifford Jamile, Steven Kubota, and Ray Enos. Thank you for your cooperation and assistance.

Wendell K. Kimura
Acting Director

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FACT SHEET

Highlights

The State acquired the ahupua`a `o Kahana in 1969 from the estate of Mary Foster and six individual lessees. The State was prompted to do so by a 1965 report that portrayed Kahana as a blank slate to be developed in a highly commercial way, including 1,000 camping sites, hotel, cabins, restaurant, a botanical garden, a man-made lake, and shops. An additional factor supporting state acquisition was that it was one of the few, if not the only, ahupua`a left under virtually sole ownership and in a relatively pristine state.

The families living in Kahana at that time had long-standing ties to the valley, and lobbied the Legislature to allow them to stay in the park and preserve their lifestyle. In 1970, a Governor's Task Force proposed the concept of a "living park," which would allow the residents to remain on the land and be a part of the park.

To permit the Kahana residents to remain in the park, the State devised a scheme in which the lessee families would earn the right to a 65-year lease in the park by providing 25 hours of interpretive services per month to the park to preserve, restore, and share Kahana's history and rural lifestyle with the public.

The State paid for a number of master plans for Kahana. Taking their tone from the original report, these were extremely ambitious and expensive, and would have involved removing the remaining families still living in Kahana. The community and the legislature rejected these plans. The Kahana residents proposed more modest plans that focused on the rural culture of the ahupua`a, but these were not accepted by the Department of Land and Natural Resources.

The Bureau contacted twenty-four state, federal, and county agencies about their jurisdiction over or involvement with Kahana. The agencies fell into three categories: some of the agencies had no involvement in Kahana; some had regulatory powers over proposed changes to the ahupua`a but otherwise were not involved; and others had active jurisdiction over a portion of Kahana and could generate their own projects within their limited jurisdiction. It was agreed that the agency with primary jurisdiction is the Department of Land and Natural Resources' State Parks Division.

Two management structures were examined. The first is one in which the management entity has **control** over the entity, similar to the Kaho`olawe Island Reserve Commission. In the other model, each government agency retains its current jurisdiction and the management entity serves as a **coordinator** between the agencies and as an ombudsman between the lessees and the agencies.

However, discussion of the format of a management agency, whether the control or the coordinator model, and which specific entity should be that manager, is premature at this time as there is a crucial but missing element which must be done first: Kahana must have a master plan.

A management entity will not be able to function efficiently and effectively, or be evaluated appropriately, without a master plan. A master plan for Kahana, co-authored by the Kahana lessees, is urgently needed before a change in management should be made. If an entire master plan is not financially feasible at this time, a specific phased plan could be started immediately to deal with the three most-pressing issues relating to Kahana. The first is community-building between the lessees, and between the lessees as a group and State Parks to address the friction that is blocking full participation by every involved person in making the ahupua`a `o Kahana a true living park. The second is a specific plan to address interpretive service and lease issues; and the third is development of a full set of goals for Kahana to use in directing interpretive service hours and in seeking assistance from other governmental agencies.

Funding for a plan for Kahana, whether it be a full master plan or a more focused phased plan, should be among the Department of Land and Natural Resources' top priorities. However, a plan for Kahana will only be effective if the lessees, who are required to be the main source of staffing via their interpretive services, are co-architects of the plan.

Until a master plan is in place, deciding who the management entity should be, or the scope of its powers, is premature.

Anticipated Questions

Q: What about Kahana makes it different from other state parks?

A: Kahana differs from all other state parks as it is an intact ahupua`a – the basic ancient Hawaiian land division – and can demonstrate all of the resources – mountain, upland, shoreline, and ocean – that the ancient Hawaiians used for survival. Kahana is also unique in its "living park" arrangement with lessees whose ancestors have lived on the land and who can serve as the stewards of the land and interpreters of Kahana's rural culture.

Q: Why should funding its master plan be a priority?

A: The State took full possession of Kahana in 1969 and attempted several master plans in the ensuing decades. All the plans were rejected as they were too grandiose. Meanwhile, the kūpuna of Kahana, who suggested more modest but ignored plans that would have restored and displayed the traditional nature and culture of Kahana, are passing away. Also, the relationship between the lessees and State Parks has suffered due to the long delay in devising a master plan. Action is needed now to utilize the wisdom of the remaining kūpuna, support those lessees who are striving to restore Kahana, and encourage those who need guidance and motivation.

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INTRODUCTION

Nature of the Study

During the Regular Session of 2001, the Legislature adopted S.C.R. No. 61, S.D. 1, entitled "Requesting a Study Relating to the Management of the Ahupua`a `O Kahana." A copy of this resolution is contained in Appendix A.

Objective of the Study

The resolution requested the Legislative Reference Bureau to study the feasibility of creating a culturally-sensitive ahupua`a-based entity that would provide comprehensive management of the entire ahupua`a o Kahana, and also promote cooperation between governmental agencies and Kahana residents. At present, Kahana is a state park owned by the State of Hawaii and managed by the State Parks division of the Department of Land and Natural Resources.

Organization of the Study

The study is organized into six chapters. The first chapter is this introduction. The second is background on Kahana and its history up to the point where it became state property. The third chapter describes state ownership issues from 1969 to 2000 and how Kahana came to be designated as a living park. The fourth chapter sets forth the state of Kahana in 2001 and the issues that face Kahana now. The fifth chapter describes the spheres of jurisdiction of various federal, state, and county agencies over the ahupua`a, and examines two models of management. It also discusses the need for a master plan. The sixth chapter makes findings and recommendations.

Chapter 2

BACKGROUND ON THE AHUPUA`A `O KAHANA

What makes Kahana so special? Why should it be treated differently than all the other state parks? Why might independent management be desirable?

The answers to these questions begin deep in the roots of Kahana's history. Before the Bureau can address the issue of whether a special management agency is feasible for Kahana, the Legislature needs to understand how Kahana came to be a state park, what the goals were of making it a state park, and what to date has been achieved. Without that background, the recommendations have no context and will not compel the State to action. To begin with, the path to state ownership must first be explained.

Pre-Mahele Status

Ahupua`a `o Kahana State Park, on the windward side of O`ahu, is comprised of the entire ahupua`a of Kahana. An ahupua`a is an ancient Hawaiian land division, and encompasses a wedge of land starting in the mountains and running to the sea. The Hawaiians used this land division as it encompassed everything they needed to survive, from the forest birds, wild pigs, and trees of the upland forests to the lower-lying taro lo`i, down to the ocean, primary source of food and transportation. Kahana is unique in being the only remaining ahupua`a in the major Hawaiian islands (Kauai, O`ahu, Moloka`i, Maui, and Hawai`i) owned by one owner, and the only one in the whole State owned by the government. In recognition of this rarity, the Kahana Valley State Park was renamed the Ahupua`a `o Kahana State Park in November 2000.

At 5,228.7 acres, Kahana is the second-largest state park in the state park system.[1] Like all land in Hawaii, it was originally owned by the King. It is estimated that the ahupua`a may have had between 600 and 1,000 people before Western contact.[2] After the dying off of great numbers of the Hawaii people due to Western diseases, at the time of the Great Mahele, there were an estimated 200 people in the ahupua`a.[3]

Post-Mahele Awards

After the Great Mahele in 1848, the ahupua`a of Kahana was granted to Annie Keohokâlole,[4] the mother of the King Kalâkaua and Queen Lili`uokalani, with 33 much smaller awards within the ahupua`a going to the maka`âinana and a high ali`i agent, and for the school and the road (collectively referred to in this study as the maka`âinana awards).[5] Keohokâlole received 5,050 acres, and the maka`âinana awards totaled less than 200 acres.[6] One authority is of the opinion that "all or nearly all of the people of Kahana were given land or were in families who received land."[7] While 200 acres compared to 5,000 may seem inordinately small, the maka`ainana shares were among the most valuable in the ahupua`a,[8] as they were the developed house lots (pahale) and taro lo`i. The remainder of the ahupua`a, while it did contain freshwater rights, rights in the Huilua fishpond, and certain fishing rights in the bay, also included vast tracts of undeveloped, and perhaps undevelopable, uplands.[9]

The Ahupua`a Award

In 1856, Keohokalole and her husband Kapa`akea put all their holdings into an asset pool, a type of trust for the benefit of their son, David Kalakaua.[10] As trustee of this asset pool, Keohokalole sold Kahana in May 1857 to AhSing (also known as Apakana), a Chinese merchant.[11] Keohokalole's portion of the ahupua`a passed through the hands of a few other Chinese merchants[12] before being bought by a land hui composed of Hawaiian members of the Church of Latter Day Saints,[13] called the Ka Hui Ku`ai i ka `aina `o Kahana[14] in 1874.[15] The hui had 95 members. Kahana was divided in 115 shares, with most members getting one share, and a few receiving multiple shares.

The land tenure of the Hui was more similar to the pre-Mahele usage than to strict Western land usage. Each shareholder had his or her own houselot (pahale) and taro lo`i, but all had an undivided interest in the pasture and uplands, and in the freshwater rights, ocean fishing rights, and Huilua fishpond.[16] Each member was allowed an equal share in the akule that were caught, and could have up to six animals running freely on the land (additional animals would be paid at a quarter per year).[17] Some of the farmable common lands were leased to rice planters for the group benefit.[18] This started a change in the agricultural nature of the valley, as the taro lo`i began to be converted to rice paddies. This change continued as more lands were leased to rice farmers, and as shares were purchased by Kane`ohe Ranch, both for their income when leased to rice planters, and for their own use as pasture for the ranch's cattle.[19]

The Maka`ainana Awards

While the maka`ainana all held their land awards up to 1873, the advent of the Mortgage Act of 1874, allowing non-judicial foreclosure, spelled the beginning of the end for these individuals owners. This Act allowed the mortgagees of the relatively unsophisticated rural landowners to foreclose without the safeties of court procedures. The lands were gradually either mortgaged and foreclosed on,[20] or sold outright[21] to major players such Kane`ohe Ranch and Mary Foster[22] (a member of the prominent Robinson family) and her husband Thomas.[23]

Mary Foster

Mary Foster became involved in purchasing interests both in the maka`ainana lands and in the Hui ahupua`a shares. She used some of her shares to build a renowned home in Kahana, which was the subject of the popular song, "Beautiful Kahana."

Mary Foster strongly objected to Kâne`ohe Ranch's practice of burning off the indigenous trees and ground cover to create pasturage out of native forests. She began a "bitter economic and legal struggle" with the Ranch for control of Kahana.[24] An out of court settlement was reached in 1901, in which Mary Foster bought out the Ranch's interest, including their leases, in the Hui shares, giving her a controlling interest in Kahana.[25] Even after the settlement, she continued to acquire shares in Kahana, both from original owners and from other land "collectors" such as Lincoln McCandless, increasing her dominance.[26] In that way, Mrs. Foster gained even more of the shares, until she finally held 97% of the land by 1920.[27] By the time of her death, she held all but six parcels in the valley, or well over 99%.

From the standpoint of preserving the Hawaiian rural lifestyle, it is a pity that the shares were made alienable and eventually lost by the maka`âinana whose families had lived there time out of mind. However, if the ahupua`a had to be lost, losing it to an owner like part-Hawaiian Mary Foster, who wanted to preserve its natural state and fought burning the forests for pasture, was the best of the possible options. The Hawaiian families of Kahana, as well as the members of the different ethnic groups who had moved to Kahana, remained on the land on month-to-month tenancies. Foster continued to lease much of the lands she acquired, and to the crops of the Chinese rice planters were gradually added the crops of the Japanese sugar cane farmers.

Mrs. Foster died in 1930, and Kahana passed to her estate and was held in trust for her heirs. Over the ensuing years, Kahana remained a quiet valley, with a peaceful rural lifestyle incorporating many Hawaiian cultural values. The multicultural mix of people in the ahupua`a fit into the Hawaiian rural lifestyle.[28] Sugar production was phased out and ceased in the 1930s, and many residents drifted away and moved to Honolulu.

Legislative Action

When World War II broke out, the military moved the Japanese families out, and began to use the valley to practice jungle warfare,[29] which destroyed some of the archeological sites in the valley. The population dwindled in the 1940s-50s and was unable to support organized fishing, or to fix the breach in the fishpond walls after the tidal waves in those decades.[30]

The lifestyle at this time was rural with Hawaiian roots: the residents still used the ancient Huilua fishpond to gather fish; the traditional hula kahiko was practiced and passed down, and some lo`i still produced taro. The significant majority of the residents were still Hawaiian or part-Hawaiian, but members of other ethnic groups, particularly Chinese and Filipino, had settled in as well.

In the early 1950s, the Legislature apparently was interested in purchasing Kahana for $100,000, but no action was taken.[31] In 1955, the Robinson Agency, acting as the agent for the Foster Estates, contracted with a planner for feasibility studies on Kahana. The report recommended making an authentic South Sea island resort village – an inn with 20 rooms, creating a small lake in the valley, and a nine-hole golf course. There was a cheaper back-up agricultural plan.[32] Nothing happened as a result of this plan.

As Oahu continued to become built up, the remote beauty of Kahana became of more interest: heiress Doris Duke reportedly wanted to purchase Kahana and use its bay for boat races.[33] In 1962, the Legislature appropriated, but the State did not expend, $300,000 to "complete the purchase of remaining beach and shoreline makai of Kamehameha Highway" at Kahana Bay Park (the City and County of Honolulu already held the rest).[34] A study on usage of the valley as a park was done, but no action was taken.[35] Also in 1962, a private foundation presented a plan to create a scientific botanical garden.[36]

In 1965, John J. Hulten, real estate appraiser, produced a remarkable report for the Department of Land and Natural Resources, entitled <u>Report Covering the Proposed Park Development of Kahana Valley</u>.[37] He found that Kahana was ideally suited to be a regional park, offering seashore water sports, mountain camping, and salt and freshwater fishing, and a tropical botanical garden. "Properly developed it will be a major attraction" with 1,000,000 visits annually."[38] The "proper development" he had in mind was astonishing: he wrote that Kahana can provide 600 "developable acres" for camping, fishing, hiking, horseback riding, and swimming, and foresaw over 1,000 camping sites plus cabins, restaurant, and shops.[39] He said that a hotel and other commercial buildings could be developed,[40] and wanted the creation of a 50 acre lake.[41] All of this development would be assisted by a botanical garden and a mauka road from Likelike Highway to Kahana.[42]

What was to be the fruit of this rampaging development? Hulten pulled "preference factors" out of thin air[43] to estimate the visits to Kahana that this development would bring in. He estimated an initial "preference factor" of .483 visits to Kahana for every one to Waikiki (i.e., 480,000 visits to Kahana for every 1,000,000 visits to Waikiki), and by the time of full development on Kahana in 1985, 4,500 – 5,000 residents visiting Kahana every Sunday.[44]

One can only speculate as to why Mr. Hulten, who was also a State Senator, was so eager to push such a dramatically overdeveloped Kahana. It can be noted that in 1964, the total tax assessed value of Kahana was only $2,328,664.[45] In July of 1964, it was reclassified from agricultural to conservation, which if anything should have made the value drop. Hulten estimated the value of the water in Kahana at $2,450,000.[46]

In 1965, the Legislature did approve the purchase and appropriated $1,000,000 for the first of five $1,000,000 payments.[47] That offer, however, was rejected by the heirs on the ground that the State was not legally obligating itself to pay the full

$5,000,000, as the Legislature could not legally bind future legislatures to pay the remaining costs.[48]

The rejection of the State's offer to purchase did not chill the State's interest in Kahana. The State then moved to condemn the property for park purposes for the same $5,000,000 price, and paid it off in five annual installments for use as a park. By 1969, the State had paid the last installment and owned Kahana free and clear.[49] Some of the funding for Kahana came from federal funds. Public Law 87-70 (as amended by P.L. 89-174), Title VII, sections 702(a) and 704 "prohibited changes in the use of the lands purchased without permission of the federal Secretary of Housing and Urban Development."[50] This language would become crucial in future years as the State thrashed around, trying to figure out what to do with Kahana now that it had it.

Hulten's report was simultaneously good and bad for Kahana. It seems to have been the ultimate impetus for the State's condemnation of the land, which resulted in the preservation of the only intact ahupua`a left in the State.[51] However, the legacy of Hulten's wildly-overblown plans haunted state planning for Kahana for decades, as discussed in the next chapter, resulting in a series of lost opportunities for Kahana.

Synopsis

The ahupua`a of Kahana, like all land in Hawai`i prior to the Great Mahele of 1846, belonged to the King. The ahupua`a sustained an estimated population of 600 – 1,000 people at the time of the arrival of Captain Cook, and about 200 at the time of the Great Mahele. After the Mahele, the maka`âinana obtained 33 parcels, small in total size but significant in value, and the vast remainder of the ahupua`a was granted to Keohokâlole, mother of the future King David Kalâkaua and Queen Lili`uokalani.

In 1874, a hui of Hawaiian members of the Church of Latter Day Saints moved to acquire Keohokâlole's ahupua`a interest, and for a while they were able to run it much like a traditional Hawaiian tenure. However, both their shares, and the separate maka`âinana interests, were gradually either mortgaged and foreclosed upon, or sold outright. Mary Foster, a socially prominent part-Hawaiian woman, a member of the Robinson family, ended up with the vast majority of shares after battles for control with Kâne`ohe Ranch and Lincoln McCandless.

After Mary Foster's death in 1930, her estate continued to hold the ahupua`a. Kahana's residents were mostly Hawaiian, but included a mixture of Chinese, Filipino, and other ethnic groups. The population dwindled until there were insufficient numbers to maintain the Huilua Fishpond and the taro lo`i. There were several offers for Kahana over the years, but no action until 1965 when then state Senator John Hulten produced a report on Kahana for the Department of Land and Natural Resources hyping Kahana's potential, recommending significant development, including a regional park, seashore water sports, one thousand camping sites, salt and freshwater fishing, and a tropical botanical garden, that would net a million visits a year.

Based on this recommendation, the Legislature appropriated $1,000,000 in 1965 as the first of a five-year payment plan. The sale was rejected by the Foster heirs, who were afraid that the State would not follow through on the purchase. The State then condemned the land for the same price, paying it off in five annual installments with assistance from the federal government. The residents were put on month-to-month permits and told that the State intended to relocate them outside of Kahana.[52] In 1969, the last payment was made, and the State was now left with the question of what to do with Kahana.

Endnotes

1. Only Na Pali Coast State Park is larger, at 6,175 acres. See the sites at http://mano.icsd.hawaii.gov/dlnr/dsp/kauai.html, "State Parks on the Island of Kauai"; http://mano.icsd.hawaii.gov/dlnr/dsp/oahu.html, "State Parks on the Island of O`ahu"; http://mano.icsd.hawaii.gov/dlnr/dsp/molokai.html, "State Parks on the Island of Moloka`i"; http://mano.icsd.hawaii.gov/dlnr/dsp/maui.html, "State Parks on the island of Maui"; and http://mano.icsd.hawaii.gov/dlnr/dsp/hawaii.html, "State Parks on the island of Hawai`i" listing the comparative sizes of the parks in the state system. According to Kaua`i DLNR staff, Na Pali, while larger, is not a complete ahupua`a.

2. Mark Lewin, "Social Impact Assessment of Kahana Valley State Park, Oahu, Hawaii (1992) at 7, and Kahana State Park Development Plan, Draft 7, Kahana Advisory Council, December 1985, at 5.

3. Kahana State Park Development Plan, Draft 7, Kahana Advisory Council, December 1985 at 5.

4. Land Tenure in Kahana, Hawai`i, 1846-1920, University of Hawai`i at Mânoa dissertation by Robert Hammond Stauffer, May 1990, at 113 (hereafter Stauffer I).

5. Stauffer I at 30 and 62 (noting the difference between the 36 maka`âinana claims and the actual 33 awards). Stauffer's dissertation is an excellent and comprehensive study of how land in Kahana was obtained and lost, and is highly recommended to the interested reader.

6. Stauffer I at 34.

7. Stauffer I at 33.

8. See Stauffer I discussion and charts on pages 132 and 133, showing the general maka`âinana (which he calls kuleana) land awards to total about 1% in terms on size but 43% in terms of value.

9. Stauffer I at 100, 115.

10. Stauffer I at 134.

11. Stauffer I at 138.

12. AhSing and his wife Mele sold Kahana in 1868 to Honolulu businessman J. Ahchuck (a.k.a. Achuck or J. Cheang Chuck), of the firm of Afong & Ahchuck. Ahchuck gave his partner Afong his power of attorney, and Afong sold it in 1872 to rice planter H. Ahmee (a.k.a. Ah Mee or Ahmi). Stauffer I at 141-142.

13. Stauffer I at 178-179.

14. Stauffer I at 183, fn. 35.

15. George Kamakaniau, the administrative leader of the land hui, signed an intent to purchase the ahupua`a on August 1, 1874. An 1875 contract established a trust between Kamakaniau and his hui members. The trust agreement was completed in 1881. Stauffer I at 180-181, 183.

16. Stauffer I at 182 and 235-236.

17. By-laws of the Hui `Aina o Kahana (1882), sections 4 and 18.

18. Stauffer I at 189.

19. Stauffer I at 235-236.

20. Stauffer details this process at 151 and in chapter 7, "The kuleana are lost," Stauffer I at 200-216.

21. See Stauffer I for a full discussion of the various ways in which the maka`âinana and ahupua`a lands were lost, especially Stauffer I at 212.

22. See "City And County Of Honolulu, Foster Botanical Garden, Master Plan, Background Information," at http://www.co.honolulu.hi.us/parks/facility/foster/info.htm (retrieved October 26, 2001).

23. Stauffer I at 220.

24. Stauffer I at 237.

25. Stauffer I at 239.

26. Stauffer I at 244, 255, 259.

27. Stauffer I at 267.

28. Kahana State Park Development Plan, Draft 7, Kahana Advisory Council, December 1985 at 6-7.

29. A Status Report on Kahana, Bob Stauffer, for Alu Like, April 24, 1984, at 9 (hereafter Stauffer II).

30. Kahana State Park Development Plan, Draft 7, Kahana Advisory Council, December 1985 at 7.

31. "Beautiful Kahana Bay May Become Oahu's Finest Public Beach Park," Honolulu Star-Bulletin, October 1, 1957, page 1: "The 1951 Legislature appropriated $100,000 for acquiring the land, but park board officials felt that will not be sufficient today."

32. Stauffer II at 93, 102.

33. "State's offer for Kahana," Honolulu Star-Bulletin, July 9, 1965, C1:1.

34. Act 30, Session Laws of Hawaii 1962, "State's Offer for Kahana."

35. A Comprehensive Plan for Hawaii State Park (1962), cited in H. Mogi - Planning and Research Inc., Revised EIS for Kahana Valley State Park, Ko`olauloa, Island of O`ahu, Hawai`i, prepared for State of Hawaii, DLNR, Division of State Parks, Outdoor Recreation and Historic Sites, October 1978, at 3.

36. Kahana State Park Development Plan, Draft 7, Kahana Advisory Council, December 1985, Appendix D.

37. Report Covering the Proposed Park Development of Kahana Valley, John J. Hulten, prepared for the DLNR (March 17, 1965) (hereafter Hulten).

38. Hulten at ii.

39. Hulten at 9, 40.

40. Hulten at 35.

41. Hulten at 40.

42. Hulten at 2.

43. Hulten at Exhibit A, fn. 6: Hulten states that the preference factor is "based on judgment." No doubt this is the same judgment that he used to estimate that the Caucasian population of Hawaii in 1975 would be "better than half" of the total population. Id. at 13.

44. Hulten at 20.

45. Hulten at 35.

46. Hulten at 38. It is interesting that Hulten notes in his forward that the value of the land is $5,454,000, even after land reclassification to a more restrictive use. More interesting still is his note that "preliminary negotiations indicate that [the 99.8% of the valley owned by the Hui `O Kahana and the heirs of Mary Foster] can be obtained for $5,000,000." (Hulten at iii, 44.) It is also curious that he did not support the purchase of the 6 maka`âinana lots that were still held by 5 individuals and one plantation, and not by the Mary Foster heirs, writing that the "remaining 9.099 acres … can be acquired as needed as development of the park progresses." (Hulten at iii.) This is more than strange, as these lots are intermingled with the Hui and Foster lots, and the massive development envisioned by Hulten would surely impact them. Even more disastrous from the State's point of view, if the six tenants later refused to sell, they could disrupt park plans, or hold out for extremely high prices because the State would have a critical need for the land.

47. See Act 195, Session Laws of Hawaii 1965, at p. 290.

48. "State's offer for Kahana," note 33 supra; "Kahana Valley sale snag 'amazes' State land chief," Honolulu Star-Bulletin, July 10, 1965, p. 1.

49. See Act 155, Session Laws of Hawaii 1969, at p. 232.

50. Stauffer II at p. 116, fn. 171.

51. This is not technically correct, as the entire island of Ni`ihau, which ipso facto contains at least one ahupua`a, is owned by the Robinson family. However, access to this island is extremely limited and by invitation only, so Kahana is the only intact ahupua`a that the vast majority of residents have access to.

52. EIS, supra note 35 at 3.

Chapter 3

"WE HAVE BEEN PLANNED TO DEATH, BUT NOTHING EVER HAPPENS"

After final payment of the condemnation fee in 1969, the State finally owned Kahana free and clear. But what next? The Hulten report, discussed in chapter 2, colored the State's perspective for far too many years, leading planners astray and delaying any true progress on the park. An unceasing number of studies were conducted, many of which led to no real action. DLNR has at least forty-nine studies of various types on Kahana.[1] If Kahana has not been studied to death, it has at least been studied into a state verging on a coma.

1970

The first plan, by the consultant firm of Tongg Associates, Inc., with researcher Hitoshi Mogi, bought into the Hulten concept,[2] stating that "Kahana valley is too large and important … for any small or partial planning to be thinkable."[3] Tongg did shoot down Hulten's suggestion[4] of a mauka road from Likelike Highway to Kahana,[5] but otherwise Tongg's plan sounds familiar, recommending dredging and re-routing the river, creating three mauka lakes with a dam (the spill from which was to be called "Kahana Falls,"[6] which would be the "focal point" for the valley). The mauka lakes would have imported bass and channel catfish, with cabins for campers.[7]

He also recommended widening the river and making a boat marina and creating five 2.5 acre islands with "nationality gardens" connected by walkways.[8] He suggested water pageantry with processions of decorated boats, and contests and exhibitions of water sports[9] with cement stadium seats lining the walls of the channel. He even wanted to build an elevated highway to handle the traffic.[10]

As for the existing attractions, he found that the Huilua fishpond should be cleared of vegetation and restored, but not so much as to remove the "picturesque surroundings"[11] that "make the scene appealing."[12] A Pacific Tropical Botanical Garden was also supposed to be added.[13]

Tongg recommended charging for admission and funding the development from those fees. He suggested that less affluent visitors would have a system to allow them to enter under "special dispensation, perhaps something comparable to food coupons."[14]

The residents organized the Hui o Kahana (later renamed the Hui o Kanani o Kahana) to lobby to allow themselves to stay on their land. The residents were strongly opposed to the Tongg report. They felt that both they and their culture were being ignored, and went to the Legislature to voice their concerns. The Tongg report came under heavy attack from the residents, state legislators, the public, and the media.

In the 1970 legislative session, a Senate Resolution was introduced asking the Department of Land and Natural Resources to initiate a coordinated plan to allow residents to remain at Kahana on leases, if such use was not illegal.[15] The governor sponsored a Governor's Conference on the Year 2000, in which one of the many ideas that arose was the idea of Kahana as a living park.[16] Governor Burns supported these goals and established the Kahana Valley Task Force to "sort things out."[17] The Task Force was established in July, 1970.[18]

The primary focus of the task force was the question of how residents could be permitted to live in a state park. In December 1970, the task force recommended the living park concept to the governor,[19] which would permit the residents to live in, and somehow be a part of, the state park project.

1971 - 1972

The governor forwarded the living park concept to the Board of Land and Natural Resources with a positive recommendation, and Board of Land and Natural Resources adopted it on March 25, 1971.[20]

For the next two years, the task force continued to "'unravel the outside dimensions of the Kahana Valley Living Park Concept.'"[21] The idea of a living state park was greeted with enthusiasm: in 1972, the then-Lieutenant Governor George Ariyoshi said that the concept of a living state park was exciting and '<u>worthy of our highest priority</u>."[22] (emphasis in original) The task force focused on allowing the people of Hawaii to experience identifying with a traditional Hawaiian lifestyle. In 1971, the task force also got an attorney general opinion[23] taking the position that the creation of a living park would be legal under definition of "parks" in Hawaii Revised Statutes section 184-1, under the concept of providing historical and social value.[24]

However, by December 1972, the task force was frustrated as it had no authority or staff to translate its findings into action.[25] The chair wrote the Governor and said if a clarification of its authority and the provision of staff were not forthcoming, the task force should be abandoned. Governor John Burns discharged the task force in January 1973 due to a tight budget and "his belief that the work ahead was one of implementing a living park concept."[26]

While the task force was becoming discouraged, another state agency was becoming quite interested in Kahana. In November 1972, the Department of Education released <u>Learning About Living in the Kahana Valley Living State Park</u>,[27] which suggested a plan to use Kahana as a site and resource for student learning.[28]

Meanwhile, in 1972, the Queen Lili`uokalani Children's Center issued the first study on the culture of current residents.[29] The report is the first to take an in-depth view of the residents. While QLCC does not sugarcoat the situation, the report is basically affirmative, stating that in their hearts, Kahana belongs to its residents: "There is no doubt that a total spirit of community exists in wanting to preserve the beauty and the dignity of their present lifestyle." The report does acknowledge that the concept of the people Kahana being one `ohana does not exist today.[30]

One cogent quote, which needs to be remembered even today:

> In conceiving of a "living park" which hopes to integrate a group of people and their present lifestyle into a public park program, it is easy to fantasize a "happy family" syndrome – a community of beautiful people all living together like one big, happy family. Such was not the case in the ancient culture and is not true of Kahana today.[31]

The report acknowledged that a real sense and spirit of community does exist, as well as some of the knowledge and skills of the old culture, although these are not always practiced.[32]

As future reports would, the QLCC report recognized that a pre-contact Hawaiian culture does not exist in the valley; rather, Kahana is a place where Hawaiian, Filipino, Chinese, Samoan, and other families have "meshed together to form a distinctly observable lifestyle within which some of the skills, knowledge, and practices of the old culture are present. It is this lifestyle that the residents wish to retain."[33]

QLCC brought out the fact that the State and its agencies, specifically the Department of Land and Natural Resources State Parks, Land, and Historic Sites divisions, the Kahana Valley Task Force, and the Governor's Human Services Office, are a significant source of some conflicts within the resident community. The implied message to the residents from the State is that they have to "get their act together" and show what they can do if they want to stay, but it is unclear what that is, and the lack of state coordination thwarts an easy answer to that question. Residents have experienced uncertainty and anxiety for the future: "Expectations have been placed on them in areas in which they have no experience."[34] "The people are not clear who their boss is, whose expectations must be met, and what they must do to insure their place in the park."[35]

The QLCC report faulted the State for its lack of a long-range cultural plan and notes that no qualified professional has been assigned to assist the people to organize and plan their efforts and train them. The report stated that it "cannot over-emphasize the need to immediately hire a full-time professional with these skills as without this we cannot envision a living cultural park coming into being."[36] A commentator in the 1980s, reflecting on this recommendation, notes that this is sadly prophetic: no such professional was hired and there has been no discernible progress in the park.[37]

1973 - 1974

The State, still searching for a solution for Kahana, ordered more studies, including contracting with the University of Hawaii for a botanical study[38] and also contracted with Bishop Museum for archeological studies.[39]

In 1974, Hitoshi Mogi, one of the chief researchers for the 1970 Tongg plan, presented Kahana Valley State Park.[40] One commentator would later write that it "is unfortunate that his new plan failed to adequately appreciate or understand the raw material gathered in the contracted reports."[41] Mogi called for a resident staff of professional scientists to conduct original scientific research, and have laboratory facilities, computer terminals, and a data library – none of which is needed in a rural living park. The plan also called for an agricultural component in which crops were to be grown the "traditional" way (not the then-current method), and would encourage nonresident farmers.

The Mogi Report called for instruction and practice in making nets, spears, fishtraps, and other devices, and for learning about fishes and canoe building, horseback riding, and archeology. It was too ambitious for the number of residents in the valley, but at least it was considering them as part of the solution, not part of the problem that needed to be removed from the park.

The Mogi report does note that while legally the State can require any type of work to fulfill its obligation, "'experience has shown, however, that attempts to impose a set of requirements of this sort unilaterally almost inevitably fails.'" Yet this attitude sets up an atmosphere that haunted Kahana's progress to the current day: if imposed requirements are likely to fail, how likely, on the other hand, is ultimate success if every family selects their own projects without regard to the overall needs of the ahupua`a?

Instead of a professional manager, the Mogi report recommended a "konohiki" to work with the residents and who would undergo periodic reconfirmation. On the controversial issue of housing, Mogi recommended that residents work on their own housing projects.

While one can debate whether the wisdom of Mogi's vision, one thing that cannot be gainsayed is the unfair way in which the Mogi report quoted the 1972 QLCC report against the resident. The report distorted the QLCC report by slanting its emphasis on how Kahana differs from pre-contact Hawaiian culture." The report cited the QLCC for the proposition that only a loose `ohana relationship exists with about two-thirds of the residents.[42] However, the report then said that the QLCC report finds that the community performs very few of its traditional functions, and while residents retain love of the land, a spirit of community, and a desire to preserve their lifestyle, "they admit that much has changed". "They particularly stress a weakening of the traditional `ohana structure that has made it very difficult for the residents to work together as a community."[43] The Mogi report downplayed the cohesiveness of the Kahana people as found by the QLCC, saying that the assumption of the State Parks division that the valley contained a unified, viable, typically Hawaiian community that actively wanted to play a central role in creating an innovative new State park is overly optimistic.[44] It pointed out that, with few exceptions, the residents have no economic ties with each other or the land, and spend much less time with each other, are less dependent on each other, and share far fewer interests. It also noted that they are less willing and able to find satisfactory solutions to their disagreements.

However, the report neglected to examine the State's role in causing the divisions and anxiety that contributes to the tension in the residents. It also ignored the QLCC's conclusion that a real sense and spirit of community does exist, as well as some of the knowledge and skills of the old culture.

Mogi's grandiose plan would have been extremely costly, with improvement costs of $6,700,000 and annual operating costs of $900,000 – $1,000,000 – in 1974 dollars.[45]

In the 1975 session, the House adopted a resolution condemning the Mogi plan as a "contrived and artificial use" aimed toward visitors rather than residents.[46] The House standing committee report specifically found that the "Mogi Plan envisions Kahana as a tourist oriented facility which does not fulfill the needs of the people." The committee found that the Kahana residents exhibited a "deep feeling for the land … a spirit of community … and a common desire to preserve the quiet dignity of their fading lifestyle."[47] The committee noted that the residents expressed two desires: to remain in the valley to "preserve their culture and gentle country lifestyle," and to preserve Kahana of future generations of residents.

The Mogi plan was rejected.

1976

The Kahana residents were still hard at work, trying to devise a plan to protect their lifestyle and the ahupua`a that would pass state muster. The Hui Malama Aina o Kahana prepared a general plan for a "Native Hawaiian Lifestyle Living Park," which impressed the legislature to the extent that it directed the konohiki to work both with this hui and another hui of residents, the Hui o Kanani o Kahana, and include their input in future plans and development of the valley.[48]

1977

The Hui o Kanani o Kahana presented a thoughtful report to the legislature in March 1977 on the residents' plan for Kahana.[49] Defining a living park as an "integral unit of land and people which is preserved for the purposes of transmitting its distinctive culture,"[50] it listed six necessities for the living park of Kahana:

(1) The natural setting be preserved and its archeological/historical sites be protected/restored;

(2) The residents be allowed to stay and "continue the development of their unique lifestyles";

(3) The program be designed to "transmit this relationship of man and land";

(4) The position be developed around the cultures of the residents to give the Park "its distinctive style";

(5) Any necessary outside assistance be provided through traditional cultural practices such as `ohana and kokua; and

(6) The residents to "follow their traditional methods of transmitting this relationship of man and land."[51]

The Hui presentation included reports by its Cultural Education committee, including its willingness to help implement a 1972 Department of Education report, "Learning About Living" about hands-on educational opportunities in Kahana. The Cultural Education committee also reported discussions it had with Leeward, Windward, and Honolulu community colleges and the University of Hawai`i at Mânoa on joint educational programs. Each of these programs had expressed a desire to work with the committee in developing and conducting joint educational programs.

An additional, very significant project was the Cultural Education committee's desire to develop Kahana as a center for Hawaiian study and support, including preservation of the Hawaiian language. It must be remembered that this offer was made before the historic 1978 Constitutional Convention that made Hawaiian one of the official languages of the State,[52] and it is also six years in advance of the Pûnana Leo movement to revitalize the Hawaiian language.[53] The projected costs for these programs were amazingly inexpensive: the DOE pilot project, based on the DOE's own "Learning About Living" report and the committee's experience with Kamehameha Schools Exploration Program and Moanalua Elementary School, was $67,532; the college course expenses were only $14,392; and the Hawaiian language program was a paltry $1,560.[54] The committee also asked for a coordinator at a salary of $16,000 - $18,000 per year, with a half-time clerical staff at $3,000 per year.

A presentation was also made by the Hui's Recreational Resources committee, which planned programs including a hiking trail system, maps, and trail markers. They also had sufficient foresight to propose a solid waste management operation as at that time the City and County of Honolulu did not collect refuse in Kahana. The chairperson of the Housing committee made a presentation with seven options. At that point, the State was still considering funding the housing, so the options ranged from total state funding of new housing to repair of existing housing by the residents.

The residents did not get the funding for the programs they so carefully planned, but they appear to have been sufficiently impressive to draw the legislature's attention back to the needs of the park. The same session, the Senate adopted Senate Resolution No. 264, which requested a senate subcommittee to hold public hearings to define and establish standards and criteria for a living park. The Mogi report was again rejected, as the committee report declared that the first phase of development would be determined by the legislature and the residents, incorporating only such portions of the Mogi plan as would fit into this scheme.[55] As contemplated by the legislature, this first phase would be limited to immediate housing needs, opening up the mauka areas for hiking, an education program, and work to restore the Huilua fishpond.[56]

Kahana was under the Land division of the Department of Land and Natural Resources at this time. The committee report suggested moving it to the State Parks division to develop the living park program.

1978

It might be supposed that the State, having rejected the Tongg report, on which Mogi was a named researcher, and Mogi's prior report, would turn to another source for reports on Kahana. That was not to be. Mogi got yet another assignment to solve the Kahana puzzle[57] by preparing, under contract with the State, the Environmental Impact Statement for Kahana.[58]

The EIS contained a new definition of living park, which is a park "to nurture and foster native Hawaiian culture and spread knowledge of its values and ways…."[59] The EIS proposed a park manager, as opposed to a "konohiki" as suggested in the 1975 Mogi report. The EIS stressed that the manager should have the support of the residents, who should be actively consulted during the selection process and given the right to veto a nominee, and that a periodic confirmation should be established. These were insightful points that were not followed up on, to the long-term detriment of the Kahana residents.

The plan noted that while some of the goals are aimed at preserving pre-contact Hawaiian culture, the major thrust is to create an "ambiance representative of a rural "Hawaiian' community of today retaining ties to the past."[60] This seems to be the most logical as well as the most feasible goal today, especially given that 20 – 30 percent of the residents are not of Hawaiian ancestry and have no familial ties to pre-contact culture. However, the EIS advised that to give the flavor of old Kahana, fairly extensive areas of the valley bottom should be planted in taro – in other words, taro not as cultural artifact but as decoration. In an even more bizarre touch, the EIS also suggested growing patches of taro, rice, and sugar cane – all crops that have been grown in Kahana in the past – in scale so that each patch shows the length of time that the crop was planted in the valley – in other words, taro as time line.[61]

Rather frighteningly for true archeologists and historians, the EIS hints that as Kahana has ongoing restoration, it is an opportunity to involve significant numbers of students and visitors in "excavation, interpretation, and reconstruction of archeological remains."[62] Again, Mogi treats the valley as an artifact rather than a living park, commenting that "care must be taken to avoid the unreal feeling that can result from too much restoration. It is important … that parts of it be allowed to remain … raw and unreconstructed, to grown old and decrepit with the passage of time."[63] This is Kahana, not as living park, but as attractively decayed Disneyland attraction.

The plan called for the creation of a Kahana Advisory Board as the major policy-initiating board for the Valley.[64] It would be composed of one representative from each family in valley, plus State Park representatives, the park manager, and outside community members. The KAB was to continue for five years, after which the Department of Land and Natural Resources could continue the board, discontinue the board, or establish an independent organization to manage and direct the park. This is a key concept that will arise in future discussions on Kahana, most notably in the resolution that gave rise to this study. However, while it was discussed in the EIS, it was never implemented.

The EIS turned around its attitude toward the residents, who were now treated as an essential element of the park instead of obstacles blocking park development. The EIS may have swung too far in the other direction, now relying on residents to provide a good deal of the physical development of the park, develop cultural programs, provide services for park operations, serve as teachers and demonstrators, and provide orientation and aloha.[65]

The EIS neither mentions successorship – can residents' children inherit their parents' lot? – or any humanitarian concerns about those who become too elderly or ill to participate. In fact, language indicating the opposite warns that "[t]hose who do not participate adequately in the park will have to be relocated from the Valley."[66]

The issue of resident housing still remained. The EIS contemplates that the State would construct housing, stating that each family will be provided with resident quarters.[67] The EIS did note that not a single unit of existing residential housing in the park passed the City and County of Honolulu's building code.[68] Funding for that housing was appropriated by the legislature. However, in the spring of 1979, before it could be expended, the attorney general issued an opinion that state funds cannot be used for resident housing.[69] Once again, the residents were left in a state of anxiety, with defeat snatched from the jaws of victory.

A controversial konohiki was hired in 1978, as suggested by the EIS. Earlier reports, such as QLCC's, had called for selection of a cultural expert, but this was not done. He was not a success and his contract was not renewed in 1979.[70]

1979

The EIS drew criticism of the public, especially the Kahana residents. A group of residents, calling themselves the `Ohana Unity Council, drafted a "People's Plan,"[71] and submitted it to DLNR in 1979. (The State had not yet constituted the KAB as suggested by the 1978 EIS).[72]

> A key part of our Park plan includes having the people of Kahana be the ones who do the planning, construction, and operation of the Park. … Because we live here … [w]e have the empathy for the valley necessary to actually create a true ahupua`a system of mutual respect, mutual dependence, and self-sufficiency.
>
> We want to provide education programs to the people of Hawai`i … [s]chool excursions, senior citizen clubs, YWCA and YMCA groups have been taken through the valley already. We plan to expand these programs and make Kahana an educational island center in the traditional ahupua`a lifestyle. This is very needed today. Kahana is perhaps the last ahupua`a left on O`ahu that has any chance of being restored to the traditional way. Before this is lost forever, we must establish this living park[.]

Specific details of this plan were spelled out in the companion report comparing the People's Plan to the various State plans. This companion report noted that in the twelve years since the State obtained Kahana, it hired numerous consultants to prepare plans for the valley, and each consultant "produced a plan that was rejected by the Kahana Valley residents, the Legislature, or the State administration."[73] The report for the first time accuses the State and/or its consultants of manipulation and favoritism designed to divide the residents.[74]

The report listed the following objectives: cleaning the `auwai, to bring the water back into the lo`i to grow taro, restore and run the Huilua fishpond, restore the historic Kahana Mormon Church, share the unique hula of Kahana, restore the Kahana store and bakery, restore and maintain the trails, build a halau wa'a for canoe building, and pass these skills on to the `opio (youth) of the valley.

The residents' firm position was that the State had to reverse its policy of working through hired agents and must keep in touch directly with the residents and their `ohana. "Support the people of Kahana Valley and their `ohana: they are the State's true resource for Hawaiian culture and heritage in Kahana! Give us your kokua, and we will be able to do great things for Hawaii's people."[75]

The letter of transmittal with the companion report added that they have started to clean out the `auwai, have prepared the lo`i for planting, and have planted the huli.[76] The transmittal letter also asked the DLNR why the Kahana Advisory Board was not yet appointed, and the new parks administrator admitted to never reading the EIS or being aware of this provision.[77] It would not be until 1981 that the Kahana Advisory Board would finally be established.

1982

In 1982, the state planner assigned to Kahana died. His position was left unfilled for a significant period, causing more delay.[78] Little progress was made this year: the Unity Council again contacted State Parks and offered their services, noting that Advisory Board had not yet been named.[79]

1983

In the 1983 session, the Legislature called for a status report on Kahana.[80]

1984

Both OHA[81] and Alu Like[82] produced important status reports on Kahana.

The Kahana Advisory Board (KAB) met for the first time on May 30, 1984. State Parks finally established the KAB in February 1984. It varied from the board suggested in the EIS. The EIS had called for one representative from each family, but State Parks appointed just thirteen members, of whom only three were family representatives.[83] The EIS said the KAB is to be the central initiating agency, but State Parks told the board to meet for just six months, provide advice, and disband. State Parks also sought to limit the board input to just the educational and cultural programs, where the original idea for the KAB, as stated in the EIS, was to be in charge of initiating all planning and development in the park.[84]

At the first three meetings of the KAB, a group of residents known as the Unity Council tried to set the record straight on the board's duties and composition with direct references to the EIS. State workers, three of which were on the board, copied only selected pages of the EIS to try to uphold the truncated powers of the KAB.[85] The KAB chair gave State Parks an ultimatum: either State Parks had to reform its thinking on the duties of the KAB, or the KAB would have to resign.[86] The KAB was expanded by adding another two family representatives, but downgraded from a board to a committee,[87] significantly decreasing its authority. It was now known as the Kahana Advisory Committee. Instead of planning and developing itself, it was now merely an advisory group to the State Parks division.

1985

The original Kahana Advisory Committee prepared two reports, the Report on the Residents of Kahana (1985), a census of valley residents and their ties to the valley,[88] and the Kahana State Park Development Plan (1985), a plan not totally approved but which allegedly served as the basis for the Board's "Approved Policies for the Implementation of the Kahana Valley State Park Development Plan."[89]

The Kahana Advisory Committee's Development Plan was positively modest when compared to previous plans: it was that of "restored trails, irrigation systems, taro lo`i, a restored fishpond, renovated or rebuilt homes, and a canoe halau."[90] The plan would have helped restore a modified rural lifestyle lived by its residents, eighty percent of whom were of Hawaiian ancestry.

The report recommended establishing a private nonprofit corporation to develop and maintain Kahana, with the central goal of developing and operating cultural, historical, and educational types of recreational activities, and secondarily to operate non-cultural recreational activities, such as swimming and picnicking. The nonprofit would be funded through the Department of Land and Natural Resources as a purchase of services, although CIP money would also be expected.[91] This nonprofit would hold the master lease for Kahana, and would grant the lessees tenure in the valley in the form of "cooperative long-term lease rights."[92] The DLNR would monitor the valley, the nonprofit would monitor the people, and the people would also monitor each other. As an additional check and balance, the master lease would have a provision allowing DLNR to cancel the lease if the non-profit did not fulfill its commitments.

Note that here too the successorship provisions are short-sighted: a lessee would have to be someone who has "lived in the valley continuously since November 8, 1985," a provision that is not going to hold up into the next generation.[93] There were provisions that allowed the nonprofit to recommend a replacement to the Department of Land and Natural Resources if a family moved out, but no specific requirements for that recommendation.

Another ongoing issue that the report sought to address was that of housing. DLNR had asked the Kahana Advisory Committee for three options on the housing, and those options were: (1) Dwellings to remain in the same place but be renovated or rebuilt up to code; (2) Dwellings moved to a new village area and rebuilt or moved and renovated up to code; and (3) Half of the families to relocate to the new village, and the other half to be tied to specific park projects and rebuilt or renovated where they are.[94] The committee's recommendation was option one, because of the historical and cultural reasons for the locations, for better security, and for a reduced cost to the State. The nonprofit and the individual families would be responsible for the costs of the dwellings, although the State would pay for infrastructure.

The report acknowledges that integrating the Kahana residents into a cultural living park has been "incredibly complex" and that the "process has already taken fifteen years and the road has often been rocky."[95]

The draft report was accepted for review by the BLNR but not adopted. The Board did not make a formal statement as to the reason it was rejected. However, other associated with Kahana indicate that one major reason it was rejected was a dislike of the master lease concept, and a conclusion that the plans and objectives were not feasible.[96]

The original Kahana Advisory Council was eventually disbanded for lack of community participation, and the shift in emphasis to the conditions of the resident leases. It functioned until 1992.

1987

The legislature had proved friendly to the Kahana residents before, so they went back to the legislature and finally had a victory. The legislature passed Act 5 of the 1987 session, establishing the interpretive program to benefit the public, and assuring the residents' ability to stay in the park. In Act 5, the legislature found that Kahana "possesses unique historical and natural resources" and that its long-time residents are "knowledgeable qualified to interpret" these resources for the public benefit.[97] The Act thus authorized the Department of Land and Natural Resources to negotiate and enter into long-term residential leases of up to 65 years with residents on the effective date[98] of the Act who fell into one (or both) of the two following classes:

(1) People who had lived continuously on the park land prior to 1970; or

(2) People who had DLNR permits allowing them to reside on specific property acquired for the park.[99]

The payment for these leases was for all "qualified persons" to agree to be "an essential part of the interpretative programs" in the park.[100] No details of the services or number of hours were mentioned. The Department of Land and Natural Resources was to establish monitoring system and an enforcement mechanism.

Figuring out the housing element took almost ten years. The lease rent requirement, twenty-five hours of service, was waived so that residents could build their homes, and was only reinstated in February 1997.[101]

1992

Resident housing was still not finalized by the start of this year. A revised EIS[102] was drafted and submitted in September 1992, to address the additional impact of the thirty-one homes for the `ohana authorized to live in the park.

In 1992, a survey was done by Beverly Rodrigues of the Kahana residents to find out what areas on interpretive service they were interested in.[103] The list of activities is three pages long, including agriculture, environmental education, fishing, Hawaiian crafts, and ocean recreation, and she asked respondents to indicate whether they wanted to teach, support, or learn each one.[104] The response showed a significant degree of interest, but Rodrigues' study has been criticized for its vagueness – indicating that one is interested in learning about wauke in general, for example, does not necessarily translate into being able to attend a specific class at a specific time, or guarantee any follow-up.

The problem, however, was a distinct gap between interest and performance. Rodrigues noted that while each resident interviewed expressed a strong willingness to participate and to learn, this was somewhat at variance with their actual participation. They responded as though these were things "that are anticipated, as a future expectation but not required right now."[105] This "prevailing attitude has caused some people to question whether or not the current residents can develop a real sense of community and working cooperation to make the project successful."[106] She also noted a "prevailing sense of fragmentation which further hinders current participation."[107] (She seems to be referring here to some long-standing divisions between residents on how best to serve Kahana.)

Rodrigues found a certain degree of low morale and community spirit, stating that "Kahana residents are frustrated, angry, and to some degree unmotivated due to a long history of unsuccessful dealing with the State of Hawaii, as perceived by residents." Quoted one resident: "'We have been planned to death, but nothing ever happens.' She notes that Kahana residents have been engaged or embattled in finding a process to exist in their uniqueness and their lifestyle while trying to meet the State of Hawai`i's requirements in the development of a 'Living Park.'"[108] She acknowledges their "frustration of being kept in a kind of vacuum and uncertainty" and notes that "this state of 'limbo' encompasses a period of about twenty three years."[109]

Despite this discouragement, she found that the residents "desire the opportunity to interpret the programs as they deem appropriate, accurate, and of importance. At a recent meeting … they asked for clarification on the status of **their** development plan."[110] (emphasis in original) She recommended that the residents "**are in need of direction, a vision of what will be, and systems for achieving it. Commitment and Empowerment to succeed must be firmly established.**"[111] (emphasis in original)

Her five-step plan was:

(1) A gathering and sharing of input from all, to arrive at a point of unity.

(2) Possible use of ho`oponopono.

(3) Rediscovering a shared value base to elicit energy to overcome existing inertia.

(4) A systems planning and management council to be selected by the "participants."

(5) Validation of the action plans and committing to the implementation of process as demonstrated in a public ceremony.

She stressed that this is an ongoing process and that "ALL" persons who will be involved must show up – residents, park manager, state parks officials, and employees: "THIS PARTICIPATION IS A REQUIREMENT."[112] (capitalization in original.) This virtual shouting reflects the frustration generally experienced over the years, up to this day, of those who hope to see some positive progress in Kahana.

Another study was done in 1992, a social impact study on residents in the valley.[113] The author, Mark Lewin, pinpointed the problem from the DLNR's point of view: they are charged with creating a park reflecting Hawaiian culture values while staying within modern Western governmental rules.[114] The report discusses the conflicts between the park manager and the residents, citing the fact that the park manager has cancelled meetings due to their nonproductivity,[115] and citing the "volaile" problem in "the non-communication between State workers and residents, and the communication between the two resident groups (Kahana Ohana Unity Council and Hui o Kanani o Kahana)."[116]

He evaluates the park manager-resident problem as follows: the park manager analyzes meetings as problematic because residents repeatedly failed to attend them, and that the only ones who do attend are "activist" residents who frequently interrupt meetings. However, one resident told the writer that she has given up going to the meeting because the park manager talks "at" the residents, not "with" them. She also stated that her group brought up issues that the park manager ignores.[117]

Lewin recommends two changes to the communications: (1) a change in "meeting management" so that the "unidirectional" structure, with the State just telling the residents what to do, becomes two-way communication; and (2) the State "must hire" a mediator to bring together key actors of the Kahana project to mediate issues "which may hinder the Park development." Lewin also suggests getting help from Alternative Dispute Resolution Center.

1993

The leases were eventually signed starting in 1993. Each lease had an "Exhibit C" attached (see Appendix B), which set forth the agreement on the lease rent "payment." Each `ohana had to have its adult members contribute twenty-five hours of "interpretive services" each month to the park in exchange for their land lease. The scope of the term "interpretive service" was not well defined, which was soon to become a real problem. Although the original plan was to delay the interpretive requirements for a year to allow residents to build their homes, the interpretative services were not actually required until February 1996.[118]

1996

"Exhibit C," the lease provision requiring the twenty-five hours of interpretive service per family, was continuing to be a troublesome issue. The park manager drafted his own "plan of operation" to help implement that requirement, but the residents found a considerable number of discrepancies in it. One of them came out with a report of inconsistencies between the two.[119] She pointed out the following:

(1) Exhibit C requires the park manager and the advisory committee to meet annually and review and evaluate the overall interpretive program, but the park manager's plan makes no mention of the advisory committee at all, much less its role in evaluations;

(2) Exhibit C places the burden of monitoring hours on the park manager, but in reality, the lessees work unsupervised and turn their hours in, which may lead to a discrepancy between hours worked, hours reported, and hours recorded,[120] and "an obvious problem regarding effective monitoring";[121] and

(3) General park maintenance was not intended to be considered an interpretive service, yet there seems to be credit granted for that, and so the distinction between the two should be clearly defined. She adds that "[r]esidents of Kahana were granted leases to participate in interpretive Hawaiian cultural programs, not to serve as indentured servants for park beautification."[122]

This lessee's report made a specific critique of the park manager, noting the "tense relationship" between the residents and park management.[123] She noted that the 1992 Rodrigues report called for resident commitment and empowerment, but as the residents still are not empowered, they do not commit themselves to the park.[124]

The report also notes that Rodrigues' first requirement for a park manager was knowledge and expertise in Hawaiian culture, but found that the park manager is "lacking in most of the necessary credentials, especially the first criteria."[125] She also notes that while the park manager is supposed to be responsible for coordinating all scheduling assignments, a schedule is nonexistent, and that the park manager is supposed to submit a monthly record of hours to lessees, but rarely dies.

This report agrees with the 1978 EIS that a modern day konohiki is needed as a middle man between the residents and the State. However, this report saw the konohiki not as a paid state employee, but someone who should be given a dwelling in the park and live the culture. The report recommends that the konohiki "be elected" by the residents, with a provision for review and yearly evaluation and removal or renewal.[126]

1997

In January 1997, State Parks established a committee to address concerns about what qualified as "interpretive service" in January 1997. Confusingly, this committee was also named the Kahana Advisory Committee, like the Kahana Advisory Committee of the 1980s. (A few years later, one of the residents attempted to change the name of this committee to the Kahana Interpretive Advisory Committee to avoid confusion between the two, but her motion did not pass.)[127] The new Kahana Advisory Committee was originally composed to ten members, four residents and six members from outside the community. It was restructured in 1998 to comprise six members: four residents and two non-residents.[128] The new Kahana Advisory Committee sought resident input at nine of its meetings between September 1997 and October 1998, and also did a residents survey. Like most surveys of Kahana residents, it only reached part of the residents – twenty out of the thirty-one families.

Also in 1997, the report, A Vision for Kahana Valley State Park, was created by planner William Goret for review by the Kahana Advisory Committee. It said that the Kam Mon store could be restored and used for information and interpretive activities, as well as the sale of agriculture and crafts from Kahana. The report was not adopted by the Kahana Advisory Committee.

1998

Some residents, evidently frustrated by the "minimal" resident turn-out at the monthly meetings, took it upon themselves to survey their fellow residents to determine what was wrong and how to resolve it.[129] Only twenty out of the thirty-one families, or 65%, participated, a usual percentage for Kahana.

An overwhelming majority of respondents, 85%, did not specify any vision for their desired projects, or comment on how they connected with the Hawaiian culture. There were many suggestions that interpretive programs need to be further developed.[130] The top 3 problems with getting the hours done are: tracking of hours (19%), problems with park manager (16%), and scheduling conflicts (16%).[131] Complaints about the tracking of hours included having one household's hours mixed up with that of others and lack of accuracy and adeptness by the park manager at keeping hours.[132] The residents also make valid points about the working conditions: there is a lack of organization and overlap of residents doing the same work, as there is no master calendar. A resident said: "I wish I knew what everyone else was doing so I can help them and help myself by getting hours and learning something new."[133]

Another problem is the State's failure to pay for supplies for work it wants done (so the resident has to pay money for supplies as well as expend time). One person commented: "Signed up for quilting. State has not provided supplies or money to provide supplies. Yet they expect the finished product as State property."[134]

A third point is that there still was a lack of clear definition between cultural activity, which does count toward the twenty-five-hour requirement, and maintenance, which is not supposed to, but often does.

Residents wanted credit hours for children's contributions. They pointed out that culturally, children worked with the `ohana, and that is how they learned the skills they would need as an adult. One resident noted: "There's a difference between child labor and early education."[135]

The residents' comments, many of which are included in the report, convey a deep level of frustration and weariness with the State. Many problems with the park manager are often mentioned. One specific problem is his apparently personal decision to keep all residents' hours a secret. This thwarts the building of community spirit and building and passing on of skills.

One resident also brings up a problem that has haunted Kahana since the inception of the living park concept: successorship: "Why is the lease only for 65 years? There's no provision for extension…. What about my kids' kids? I can't only think about me now. What about my descendants?"[136]

The Volunteer Survey Group makes the following conclusions:

(1) "Acknowledging only Western laws hinders the flourishing of a traditional Hawaiian lifestyle in Kahana." Example: the current inability to count children's hours toward the twenty-five-hour quota. The group recommends seeking an attorney general opinion.

(2) "The residents lack a common vision and direction because of the absence of an acceptable 'mission statement' from both the residents and State Parks Division." While a mission statement would be adopted next year, there is still no master plan, the tool that implements a mission statement.

(3) "The residents need further clarification and definitions as to what is deemed an acceptable 'Hawaiian interpretive program.'" While Exhibit C of the lease states that general park maintenance does not count toward the twenty-five-hour interpretive serve quota, the survey found that the majority of the interpretive projects in place can be described as maintenance.

(4) "The issues of 'private' and 'public' information need to be addressed." This issue was still unaddressed at the time this study was prepared.

(5) "The development of current and future interpretive programs may be negatively impacted by general recreational activities."

(6) "The scheduling process requires immediate attention." Several householders stated that they were unable to meet with the park manager to schedule hours, as he only worked the usual state hours and was unavailable after their work day. Quoted one: "Most people work during the day …. It almost seems that [DLNR] would rather have you stay home all day supported by welfare."[137]

(7) "Individual agreements with the Park Manager do not promote a communal lifestyle necessary for the success of interpretive programs." This refers to belief by some residents that the park manager favors some families. With interpretive hours kept a secret and no master calendar, it is easy for this impression, accurate or not, to taint the residents' relationship with the park manager.

(8) "Comments received indicate a need for an evaluation of the park manager position." Comments in this report, as well as interviews discussed in the next chapter, indicate a serious and ongoing problem with the park manager.

1999

In 1999, the Kahana Advisory Committee released a Report on Interpretive Programs, Ahupua`a O Kahana, Kahana Valley State Park, Kahana, O`ahu.[138] It established a "vision statement" for Kahana, "Ahupua`a o Kahana forever nô nâ Kupa maoli o Kahana," or "The ahupua`a of Kahana forever for the people of Kahana."[139] It proposed a mission statement:

> The mission of the ahupua`a of Kahana is to preserve, protect, perpetuate and revitalize the ahupua`a of Kahana for the people of Kahana and all Hawai`i through the care, protection, maintenance, [preservation, an teaching stewardship of the environment, Hawaiian culture, ancestors, and resources located in the ahupua`a from the mountains to the sea. This mission will be achieved through implementation of the following goals:
>
> **mâlama kaiapuni** (care of the Ahupua`a)
> **mâlama mo`omeheu o Hawai`i** (care of the Culture)
> **mâlama kûpuna** (care of the Ancestors)
> **mâlama waiwai** (care of the Resources)
> **mâlama kupa** (care of the People)

The report proposed the development of a comprehensive master plan for the ahupua`a, including resource management and interpretation as, incredibly, thirty years after the State had paid for Kahana, there still was no master plan in place. The report also noted the Kahana Advisory Committee's serious level of concern with progress in the park. There was a lack of resident attendance at meetings, even when their input was specifically requested. There was a lack of consistent scheduling of activities in the park, and a concomitant lack of publicity regarding what events there were, to the detriment of both the residents and the community at large.[140] There was no consistent system for reporting and monitoring hours. There was minimal communication and lack of mutual respect between Park staff and residents.[141] Interpretation service hours were not being contributed, or were being contributed for questionable activities. There was a lack of training for the residents, something that was increasingly critical as the kûpuna whose drive had fired the earlier efforts to devise a people's plan for the park were dying off, their knowledge not always passed on to the next generations.

The park manager also was involved in a questionable use of Kahana property apparently disfavored by many Kahana residents. He approved the use of one of the few public buildings in the valley for the Alternative Learning Center of a nearby high school. This had no connection with the mission of the living park, and was a source of irritation to some residents. In 2001, by submission to the land board, the park manager tried to extend the lease by five years, but some of the residents found out and protested, and the lease extension was limited to one year. It is still unclear what relationship this Alternative Living Center has to the park's mission.

To jump-start the group's participation, the Kahana Advisory Committee recommended the following:

(1) Develop a master plan for the ahupua`a, including resource management and interpretation.[142]

(2) Following review and endorsement by Kahana Advisory Committee and Park staff, the Department of Land and Natural Resources will provide a series of workshops, including instructors, materials, and locations.[143]

(3) Residents should provide a written report of their planned and finalized interpretive activities.

(4) Residents/park staff to provide evaluation following each event and this evaluation to be filed in the Orientation Center … Four quarterly review sessions by Kahana Advisory Committee of activities and evaluations, two with residents only and two with staff only; and

(5) Kahana Advisory Committee should schedule an annual meeting to evaluate the program being developed and finalize a report to be submitted to the Chairperson of the LNR, including evaluations and recommendations for the future of the program.[144]

The head of State Parks recommended that their report be accepted and implemented. Kahana Advisory Committee has continued to function to the present day.[145]

The next chapter will summarize the state of Kahana and its residents as of 2001.

Summary

Kahana State Park was the subject of numerous studies from 1970 to 2000. The residents, legislature, and the public rejected the grandiose plans that would have destroyed Kahana's rural culture and marred its natural beauty. The State, on the other hand, ignored all of the smaller-scale studies proposed by the residents. The State and the residents slowly fumbled toward a meeting of the minds, but in the torturously slow process valuable time was wasted. Elderly kûpuna passed on without implementing the programs they had dreamed of, and the remaining residents' confusion and anxiety grew into a distrust and weariness with the State and the planning process. At the end of the millennium, the residents, after thirty years under the State, had only recently obtained their homes, had just made their own mission statement, and still lacked a master plan.

Endnotes

1. Seven reports on park planning, from 1965 – 1992; two other planning documents; twelve program planning reports, from 1972 – 1993; six archeological surveys; one historical research document; four aquatics natural resources studies; one botany natural resource study; four geology natural resource studies; ten studies on the Huilua fishpond, from 1979 – 1997; and two on interpretive materials, for a total of forty-nine. (See Appendix C for a listing.)

2. Tongg Associates, Inc., Preliminary Planning and Research for the Proposed Kahana Valley State Park, Kahana, Koolauloa, Oahu, prepared for the Department of Land and Natural Resources, January 1970 (hereafter Tongg).

3. Tongg at an unnumbered page between pages 3 and 4.

4. Report Covering the Proposed Park Development of Kahana Valley, John J. Hulten, prepared for the DLNR (March 17, 1965) at 20-21 (hereafter Hulten).

5. Tongg at 5.

6. Tongg at 6.

7. Tongg at 7.

8. Tongg at 9-10.

9. Tongg at 10.

10. Tongg at 13.

11. Tongg at 15.

12. Tongg at 15-16.

13. Tongg at 11.

14. Tongg at 17.

15. Senate Resolution No. 186 (1970).

16. State of Hawaii, Department of Education, Learning About Living in the Kahana Valley Living State Park, prepared for the Department of Land and Natural Resources, November 3, 1972, at 3.

17. Bob Stauffer, A Status Report on Kahana, prepared for Alu Like (1984) at 136 (hereafter Stauffer II).

18. Stauffer II at 171, quoting Office of Hawaiian Affairs, "Status Report on Kahana Valley State Park," March 1984, Charles Hopkins, author, at 5-8.

19. Stauffer II at 172.

20. Stauffer II at 172.

21. Stauffer II at 172.

22. Stauffer II at 174.

23. 12/2/71.

24. Stauffer II at 173, quoting Office of Hawaiian Affairs, "Status Report on Kahana Valley State Park," March 1984, Charles Hopkins, author, at 5-8.

25. Stauffer II at 173.

26. Stauffer II at 174.

27. State of Hawaii, Department of Education, Learning About Living in the Kahana Valley Living State Park, prepared for the Department of Land and Natural Resources, November 3, 1972.

28. Id. at 4.

29. Queen Lili`uokalani Children's Center, Lili`uokalani Trust, Socio-cultural Research: Kahana Valley Living Park, December 22, 1972 (hereafter QLCC Report).

30. QLCC Report at 10.

31. QLCC Report at 10.

32. QLCC Report at 10-11.

33. QLCC Report at 18.

34. QLCC Report at 21.

35. QLCC Report at 22.

36. QLCC Report at 46.

37. Stauffer II at 169.

38. Stauffer II at 138.

39. Stauffer II at 153.

40. H. Mogi Planning and Research, Inc., Kahana Valley State Park (Oahu, Hawaii 1974), prepared for the State of Hawaii, Department of Land and Natural Resources, Division of State Parks (hereafter Mogi 1974).

41. Stauffer II at 176.

42. Mogi 1974 at 26.

43. Mogi 1974 at 26.

44. Mogi 1974 at 27.

45. Mogi 1974 at 58.

46. House Resolution No. 670 (1975).

47. House Standing Committee Report No. 835 on House Resolution No. 670 (1975).

48. Senate Standing Committee Report No. 808-76 on Senate Resolution No. 291 (1976).

49. Hui O Kanani o Kahana, Presentation to Chairperson King (March 16, 1977), on file at the Department of Land and Natural Resources.

50. Id. at 2.

51. Id. at 2.

52. Article XV, section 4, Hawaii State Constitution.

53. The Aha Punana Leo was organized in 1983, and the first preschool classes began in 1984. Kulono, http://www.olelo.hawaii.edu/OP/orgs/ (retrieved November 7, 2001). Hawaiian immersion began in the public school in 1987. "Suit settlement boosts Hawaiian-language immersion," http://the.honoluluadvertiser.com/2000/May/05/localnews13.html (retrieved November 7, 2001).

54. Hui report at 4-5.

55. Senate Standing Committee Report No. 1201 on Senate Resolution No. 264 (1977).

56. Kahana at one time had three fishponds, but two were filled in. Huilua is the only remaining fishpond.

57. Mogi also wrote the 1980 Traffic Impact Assessment for Kahana

58. H. Mogi - Planning and Research Inc., Revised EIS for Kahana Valley State Park, Ko`olauloa, Island of O`ahu, Hawai`i, prepared for State of Hawaii, DLNR, Division of State Parks, Outdoor Recreation and Historic Sites, October 1978 (hereafter EIS).

59. EIS at vii.

60. EIS at 20.

61. EIS at 22.

62. EIS at 29. "The proposed program for Kahana, on the other hand, treats <u>the restoration process itself</u> as an opportunity to involve a significant number of students and other lay visitors with the real problems and insights encountered during excavation, interpretation and reconstruction of archeological remains."

63. EIS at 30.

64. EIS at 16.

65. EIS at 18.

66. EIS at 100.

67. EIS at 18.

68. EIS at 62.

69. `Ohana Unity Council, <u>An Hawaiian Heritage Living-Culture Plan for Kahana Valley State Park and the Tourist-Oriented Plans of the State of Hawaii – a Comparison</u> (May 1979) at 2.

70. Stauffer II at 171.

71. `Ohana Unity Council, <u>The Living Park Plan of Kahana's People</u> (1979) (unnumbered), same concepts brought forth in `Ohana Unity Council, <u>An Hawaiian Heritage Living-Culture Plan for Kahana Valley State Park and the Tourist-Oriented Plans of the State of Hawaii – a Comparison</u> (May 1979) (hereafter Unity Council).

72. Stauffer II at 204.

73. Unity Council at i.

74. Unity Council at i.

75. Unity Council at 32.

76. Stauffer II at 206.

77. Stauffer II at 205.

78. Stauffer II at 235.

79. Stauffer II at 259.

80. Senate Resolution No. 58 (1983).

81. Office of Hawaiian Affairs, "Status Report on Kahana Valley State Park," March 1984, Charles Hopkins, author.

82. Bob Stauffer, <u>A Status Report on Kahana</u>, prepared for Alu Like (1984) (Stauffer II).

83. Stauffer II at 231-32.

84. Stauffer II at 232.

85. Stauffer II at 232-33.

86. Stauffer II at 234.

87. Stauffer II at 235.

88. The study tracked those who had lived in Kahana since the park was finally acquired in 1970, and is the basis for increasing the house lots allowed in the valley from 24 to 31, and also set standards for people who could be chosen as successors. See State of Hawaii, DLNR, Division of State Parks, Supplemental Final Environmental Impact Statement for Kahana Valley State Park (September 1992) at 2.

89. Report on Interpretive Programs, Ahupua`a O Kahana, Kahana Valley State Park, Kahana, O`ahu, prepared by the Kahana Advisory Committee, March 1999, for State Parks, DLNR, at ii.

90. Kahana Advisory Committee, Kahana State Development Plan (1985) at 1 (hereafter Development Plan).

91. Development Plan at 52-53.

92. Development Plan at 55.

93. Development Plan at 55.

94. Development Plan at 56.

95. Development Plan at 9.

96. "Keep It Simple," author unknown, included in the informational packet sent out by the Kahana Advisory Committee for the Advisory Committee Meeting of Saturday, January 15, 2000.

97. Act 5, Session Laws of Hawaii 1987, section 1.

98. April 13, 1987.

99. Act 5, supra note 97, section 2.

100. Act 5, supra note 97, section 3.

101. Letter from Ralston Nagata, State Parks Director, DLNR, to the Board of Land and Natural Resources, dated January 29, 2000 (hereafter Nagata letter).

102. State of Hawaii, DLNR, Division of State Parks, Supplemental Final Environmental Impact Statement for Kahana Valley State Park (September 1992).

103. Beverly D. Rodrigues, Kahana Valley Program Participation Report Based on Kahana Valley Residents Interviews and Community Organization Surveys (June 1992) (hereafter Rodrigues).

104. See Rodrigues, Appendix C, for the list, and her report at pages 5 – 18 for the residents' responses.

105. Rodrigues at 21.

106. Id. at 21.

107. Id. at 21.

108. Id. at 34.

109. Id. at 35.

110. Id. at 41.

111. Id. at 36.

112. Id. at 36-37.

113. Mark Lewin, "Social Impact Assessment of Kahana Valley State Park, Oahu, Hawaii" (1992) (hereafter Lewin).

114. Lewin at 10.

115. Lewin at 17.

116. Lewin at 28.

117. Lewin at 30.

118. "Report of Inconsistencies between 'Exhibit C' and the 'Plan of Operation' Relative to the Interpretive Hawaiian Cultural Program Participation at Kahana Valley State Park," by Erline "Sunn" Alonzo Greer, submitted December 1997 [note: from copyright, probably should be 1996] at 7 (hereafter Greer).

119. Id.

120. Greer at 6.

121. Greer at 7.

122. Greer at 8.

123. Greer at 10.

124. Greer at 10.

125. Greer at 11.

126. Greer at 12.

127. Minutes of the Kahana Advisory Committee on October 30, 1999. The movant was Adella Johnson.

128. Nagata letter, January 29, 2000.

129. Shafer at el, "Report on the Residents' Interpretive Program Survey in the Ahupua`a o Kahana," by the Volunteer Survey Group, June 1998. The members of the Volunteer Survey Group were Ben Shafer, Awo Mainaaupo, Ron Johnson, Debbie Gorai, and E. Sunny Greer. (hereafter Shafer Report)

130. Shafer Report at 5.

131. Shafer Report at 8.

132. Shafer Report at 9 – 10.

133. Shafer Report at 12.

134. Shafer Report at 9.

135. Shafer Report at 11-12.

136. Shafer Report at 12.

137. Shafer Report at 9.

138. Report on Interpretive Programs, Ahupua`a O Kahana, Kahana Valley State Park, Kahana, O`ahu, prepared by the Kahana Advisory Committee, March 1999, for State Parks, DLNR (hereafter Kahana Advisory Committee Report).

139. Kahana Advisory Committee Report at 3.

140. Kahana Advisory Committee Report at 7.

141. Kahana Advisory Committee Report at 7.

142. Kahana Advisory Committee Report at 9.

143. Kahana Advisory Committee Report at 10.

144. Kahana Advisory Committee Report at 11.

145. The author attended the Kahana Advisory Committee's July 2001 meeting in Kahana in preparation for this study.

Chapter 4

KAHANA TODAY

"The residents are the actual stewards of Kahana, not the DLNR."

After three decades of delay and frustration in the implementation of Kahana as a living park, the Kahana residents seem understandably wary of further state action. If they were any other set of state tenants, their attitude toward the State would not be of particular concern to the State – if they did not like the conditions of the lease, they could terminate them and the State would bring in new lessees to replace them. But Kahana is unique in that the State, to complete its plans for a living park in the ahupua`a, needs the lessees almost as much as the lessees need the State. To meet the State's goal of Kahana as a living park – as not just an archetypal ahupua`a, but as a representation of this specific ahupua`a, with its particular history and culture – the cooperation and participation of all the Kahana residents is essential.

Kahana Now

What is the situation of the Kahana residents in 2001? Most of them have built their homes on their new sites and have had their monthly revocable permits canceled in favor of their new sixty-five-year leases. The vast majority appear to be keeping up with the twenty-five interpretive service hour requirement required by Exhibit C of the lease, although that continues to be a significant source of friction. A few are still working on their homes on their leased lots, and some of these have fallen behind the building schedule set by the State Parks Division of the Department of Land and Natural Resources (State Parks) and it is unclear what will eventually unfold. Two people are in serious arrears on their interpretive services and were recently served with notices of eviction.

The researcher spoke privately with several Kahana residents, and attended a Kahana Advisory Committee meeting in July 2001 and met additional residents and community members closely involved with Kahana. The researcher obtained additional input from the meeting, and invited further contact by all residents. In speaking with various people involved with Kahana, both residents and non-residents, it was commonly expressed that there were "at least" three different groupings among the Kahana residents, with differing viewpoints on the future of Kahana. There is some degree of competition among the various groups, including the most active.

The researcher also spoke with five state parks staff members: the state parks division head; the park manager; the park manager's supervisor, who is also head of the interpretive division of state parks; the state parks planner assigned to Kahana; and another staff member in the interpretive section. It seemed evident from the discussions that all of these people truly do care about Kahana, in their own ways.

However, it is equally evident that the sheer enormity of the task is more than State Parks can handle at present, especially with the staff cutback several years ago that reduced personnel at the park to just one person.[1]

Interpretive Hours - Lack of a Master Plan

The most substantial problem that faces Kahana is the lack of a master plan that ranks activities by priority and ties them into a commitment by the residents – and State parks – to carry them out. There are so many things that can be done to support a living park that focused efforts need to be required. For example, the Kahana Advisory Council prepared a "report on Interpretive Programs, Ahupua`a o Kahana," in March 1999 to poll the residents to see where their interests lay. The report lists five primary mâlama, or caretaking goals of the park, and many activities to achieve those goals, including kapa making, lauhala weaving, coconut frond weaving, making hula implements, cemetery maintenance, restoring and caring for the `auwai, restoring and using the lo`i, rebuilding the loko`ia, net-making, conducting oral histories, making game implements, building trails, religious site maintenance, restoration of historic buildings, reforestation, learning la`au lapa`au (Hawaii healing), building a canoe halau, and others. There was interest by the residents in all of these areas, but no ranking of priority. These tasks are too numerous to have all of them be accomplished simultaneously by only the thirty-one families, putting in only twenty-five hours per month.

What is even worse than the amount of the tasks -- however relevant or valuable each may be -- is the lack of priorities. Each lessee family is allowed to choose what they will do for their hours. *No specific activity is required*, not even serving as a park interpreter (a park interpreter is one who presents information about the park to the public). While some families are dedicated to the tasks they choose, most notably the `auwai, lo`i, and loko `ia (fishpond), it is not reasonable to expect all of them to be able to independently choose projects and tasks that will contribute to a comprehensive living program without guidance. According to the state parks administrator, while there are programs for organized groups in Kahana, if individuals come to the park, programs are only available on a "catch as catch can" basis.[2] To the dispassionate observer, it is difficult to see how a coherent, much less a quality public program can be established with such a broad range of possible activities, such a small number of families, and no master plan or other framework to assure stability and continuity of activities.

This observation is not a criticism of the Kahana residents. Many of these families, according the state parks officials, routinely put in more hours than the minimum because these are projects that they believe in and support. According to the September 2001 issue of the residents' newspaper, Palapala Ahupua`a o Kahana, in the previous year Kahana residents put in 1,249 more hours than required. No more than 150 hours (or six months' rent) can be stockpiled by one family at one time, so many of their hours are "lost" as far as qualifying for the interpretive service credit is concerned. Their extra work is a labor of love.[3]

Other residents, perhaps less than inspired by the state park "program," do the minimum required. According to state parks personnel, many of the lessees do not have knowledge of traditional Hawaiian practices. The state parks staff do not themselves supply any training, although they have at times brought in someone to teach a class, like feather lei making or kapa making, and will approve training by others on a case-by-case basis. State parks staff say that there has been low turn-out and follow-through, even when the training was made available at nights and on the weekends. Staff has offered to develop an interpretive skills training program for the residents, but the residents feel that it is not needed.[4] Thus there is no consistent or ongoing training program. State parks has taken the role of guidance and monitoring, but has not taken an active role in helping to re-establish and solidify the knowledge of the residents or train them how to communicate that with park visitors.

One of the interpretive staff members suggested that Kahana should offer regularly scheduled programs, such as a fishpond program on Monday, a lo`i program on Wednesday, and so on. The park manager refused, and park management did not pursue it. A schedule such as this would actually have been very beneficial to Kahana, both to allow a structure for the residents to use to put in their hours, and as regularly scheduled events that the public could count on attending.

Controversy Related to the Interpretive Service Requirement

Of the five interpretive service caretaking goals, the most controversial area is the "mâlama o ka `âina" – care of the land. There is some disagreement about what is an interpretive service, and what should be classified as mere maintenance and the job of the state parks maintenance personnel. The second Kahana Advisory Committee was formed to help resolve that issue, but it remains unresolved today. The park manager appears to favor a more expansive view of what qualifies as interpretive service than do some residents, who think he is giving credit inappropriately for mere maintenance activities.

The Kahana residents are supposed to have signed contracts with the park manager stating what they will be doing to meet their interpretive service requirement. According to state parks personnel, the park manager does not monitor the implementation of the contracts very closely, and there are no timetables or benchmarks for performance. The suggestion has been put forward that rather than put in interpretive service hours, residents who elect to do so could simply pay rent. While the park manager's supervisor did not agree with that, the administrator did, as long as the applicable law and leases were changed. The Administrator commented that this arrangement had made state parks a landlord anyway, and it would be cleaner to terminate a lease for failure to pay than the current failure to put in interpretive service hours.

Based on the input received, the residents have significant problems with the existing park manager, who is characterized as divisive, unduly secretive, and unhelpful. There is no master calendar of interpretive services. There is no attempt by him to coordinate residents on interpretive service projects, although some of the residents coordinate themselves in working on the three main projects in the park, the taro lo`i, and `auwai (irrigation ditches), and the Huilua fishpond. The park manager, contrary to what seems to be the current prevailing sentiment among the residents, keeps each family's hours private. Some residents favor this view, but many others do not, claiming the it is difficult to build a communal lifestyle – which was a key element of the rural Kahana sought to be emulated in the park – if the families do not know what the other families are doing. Moreover, this is not just a Kahana issue – these records may have to be open as a matter of law under the Uniform Information Practices Act.

The researcher contacted the Office of Information Practices (OIP) and discussed this alleged privacy issue informally with staff there. Without knowing all the facts, the staff member indicated that there did not appear to be adequate basis in the statutes to keep this information private. The researcher passed on this information to the Kahana Advisory Committee at its July meeting, which was attended by residents and state parks division staff, and suggested that rather than continue ongoing debate within the residents and staff on making this information public, the OIP should be contacted for a definitive written opinion.

A further problem is that many of the residents have regular jobs, and thus perform their interpretive services in the evenings and on weekends, when the park manager is not on duty. Hours are kept on the honor system.[5] Conflicts have arisen as the residents lack confidence that their hours and the hours of their fellows are being tracked accurately, either for better or worse. As the hours are, in essence, payment for rent, it is extremely important that the State provide for accurate tracking and verification.

Evictions

Some residents clearly are tired of State involvement and decline to participate in state park activities, such as the prior surveys and this study. A few of these families have declined to also participate in the interpretive services requirement, to the point where they are many months and even years behind in their hours. The state parks division has been slow to move on enforcing this requirement.[6] At the time this report was being prepared, the researcher was told that evictions of two families for contumacious failure to meet the requirement would be done on July 1, 2001. That did not occur. At the end of November 2001, the eviction notices finally had been given but the evictions still not accomplished.

There are a number of wait list families connected with Kahana, relatives of current residents or other long-term residents, who are eager to take over the leases and work within the program. But any positive change to get them on the land has been blocked for months as state parks slowly and gingerly addresses the problem. The failure of state parks to take decisive action has a negative impact on the other residents, who see these residents "getting away" with continual noncompliance, and for those other Kahana-related families, including grown children of residents, who want to be active participants in the park. According to the State Parks division administrator, the twenty-five-hour requirement is subject to debate "almost every day."[7] The park manager expressed his frustration with the system, in that he will tell people on the waiting list what the rules say, which is that the leases of residents in default will be terminated and made available to those on the waiting list. Then the defaulting residents will go over his head to the board, and the board will either give an exemption that is not provided for in the rules, or fail to act. This frustrates the people on the waiting list and undermines the park manager's credibility with them.[8]

The department has not acted with any kind of dispatch in enforcing the lessee's failure to comply with these requirements. Part of the problem, according to the park manager, is that on the few occasions that the Board of Land and Natural Resources does act, the lessee promptly tries to go over the board's head to the chairperson, leading to a further delay in the proceedings. Late in 2000, the then-administrator finally revoked the lease of a woman who was both behind in her hours and who had not met her house construction deadlines. Although her revocable permit was cancelled and her lease revoked, she refused to move and as of July 2001 was still there.[9] The park manager has expressed his frustration over the lack of follow-through by DLNR. He says that in the past he has prepared eviction notices and revocable permit cancellations as required by the existing rules, but they are not sent out and he has never found out why.

To his credit, the new State Parks administrator, who took over at the beginning of 2001, has taken the steps that his predecessor did not, to enforce both the timetable for completion of the new housing, and to enforce the twenty-five hour requirement. However, he acknowledges that the entire situation is, and continues to be, quite complicated.[10]

Rapport Between the Residents and the State

The working rapport of state parks personnel and Kahana residents is tentative.[11] One of the park plans is to renovate the historic Kam Mon store, and let it serve as both an interpretive center, and perhaps also as a market for residents' products. A staff member commented that "hopefully the residents will buy into operating it."[12] It would be a pity to spend the time and money on restoring something that the residents *won't* buy into operating, yet there seems to be no coordinated effort between both parties to work on and support this project.

The State does not always seem to have grasped that the Kahana residents are seeking to form a community, and need the flexibility that a true community would offer, rather than hide-bound rules unsuited to this unique arrangement. One example that was cited by a number of different people was the State thwarting of the Healthy Day Kahana program that the residents, along with Kahuku Hospital, began to offer to the community. It was a day program set in Kahana, offering educational opportunities at no cost to the community. It was a success for two years. The program was shut down in the third year because Kahana residents were making and selling food to the participants to feed those who had not brought their own lunches, there being no commercial food outlets anywhere in the valley. According to the residents interviewed for this study, they were told that because this was a park, they were not allowed to sell anything, even though the thrust of the day was on free health education and the food was offered only as a courtesy. In a similar vein, although part of the thrust of the Kahana effort is to re-establish historic and cultural traditions like growing taro in the lo`i, the residents have been advised that if they harvest more taro – or any crop – than they can use, they cannot sell it. If they cannot give it away, they must throw it out. This is no way to encourage whole-hearted participation of living park goals.

The lackluster turnout at Kahana Advisory Council meetings[13] and at the workshops scheduled by State Parks for the residents indicates that a culture of indifference, rather than passion, may be growing at the park. Compare this to the passion exhibited by the Kahana residents in the 1970s when they persistently lobbied the legislature for the ability to stay in the park, and produced their own master plans for the park that were much more feasible than the grandiose plans the State paid for during the same period.

The park manager said they used to have "no`eau days," in which residents would teach each other their skills, but that has since fallen by the wayside. The park manager says that he has tried twice to re-establish this, but the residents are not interested. The park manager did say that the Kahana residents can pull together when they need to, such as the recent visit by three voyaging canoes, when the people of Kahana along with other community members hosted a traditional welcome and feast.

Lease Issues

Prior to the signing of the leases, each resident was on a monthly revocable permit. As the new lots became ready and the lessees made arrangements for construction (with many getting special loans through the Housing and Community Development Corporation of Hawaii (HCDCH)), they gave up their revocable permits and signed sixty-five-year leases. Some of the families who moved into the new homes wanted to retain the old ones for other family members. The Board of Land and Natural Resources gave these other family members a six-month extension to look for other housing, or to see if they would qualify for another lease if a lease were to open up. But the Land division of DLNR, not the State Parks division, handled the revocable permits, while the State Parks Division handled the leases.

Early in 2001, the Land division sent out six-month permit extensions to all of its permit holders – including the four remaining Kahana residents on revocable permits –

extending them to December 31, 2001. After some debate, State Parks agreed to let the extension apply. The residents still need to meet interim building deadlines, however.

One of the state parks staff thought that DLNR "almost needs a property manager" to handle the leases and the associated interpretive hours issues.

Concerns Regarding State Management

State Parks has a complicated task in Kahana: it needs to manage its physical resources, its cultural and historic resources, and its human resources. The human resource issues are split into two distinct components: issues relating to completion of the residents' homes, and issues relating to their interpretive service. While State Parks is used to handling issues relating to physical resources and cultural and historic resources, it has little experience with handling lease issues and interpretive service issues. Yet these are just as crucial to the park's success as a living ahupua`a as ensuring that the physical resources remain intact. Over the years, the false turns and delays in implementation have squandered a good deal of human resources, and the goodwill necessary for the Kahana residents to wholeheartedly cooperate with State Parks in a shared vision.

Thirty-one years after it took control over Kahana, State Parks still does not have a master plan for Kahana, or even a state-approved mission statement. The Kahana Advisory Council has devised a mission statement (the five-point mâlama statement referred to in the previous chapter and at the beginning of this one), but according to the state planner assigned to Kahana, the Department of Land and Natural Resources has not adopted it.[14] The Department submitted a bill to appropriate funds to hire a consultant to devise (another) master plan for Kahana for inclusion in the administrative package for the 2000 legislative session, but that bill was not accepted into the package.[15]

State park staff take the position that an outside consultant needs to be used in devising a master plan for Kahana and that it cannot be done in-house. A review of the series of state-sponsored and subsequently rejected master plans for Kahana bear mute testimony to the ineffectiveness of that route. The plans of the Kahana residents, while rejected by the department, actually seem to be better-grounded and more realistic than their expensive counterparts. A different paradigm, one that consults the residents and brings their visions into the process, seems to be what is needed, not more of the same.

The state parks administrator seems open to new options. When asked what his opinion would be on having the administration of Kahana transferred to a non-profit entity as suggested by the resolution requesting this study, he did not hesitate to endorse such a transfer, as long as the natural, cultural, and scenic resources were preserved. He said that Kahana is "unmanageable" because of the cultural aspects –

there is a different skill and interest level in the current residents than there was when the idea was first proposed. The vision was the modern Hawaiian resident living the traditional lifestyle, but as it is now, not as it was two hundred years ago. It was supposed to be a living off the land concept, not a show like the Polynesian Cultural Center. The fishpond is a good example of what the vision was supposed to be – a working fishpond, not an exhibit.[16]

The state parks administrator would like to see a system like that of the National Parks Interpretive Rangers set up in Kahana. However, State Parks cannot do that now as the Department of Human Resources Development will not allow the positions to be classified at a level high enough to attract people who have the skills to make good interpretive staff for Kahana.[17]

Is the Living Park Concept Still Viable?

When asked whether the living park concept is still viable, thirty-one years after the park was taken over and after so many of the knowledgeable kûpuna have passed away, most of the state parks staff were hesitant, but not entirely negative. The lack of full cooperation from all of the residents is a barrier to their plans, yet they seem to feel that they can only request, and not require, their participation in meetings, training, and project support.

The residents, on the other hand, seem to think that such a concept is quite viable, and that the State is only holding them back. They criticize the decades lost to grandiose planning. They acknowledge their factions and agree that they do not speak with one voice, but insist that 100% agreement between all the residents is not necessary for action to be taken – no other group is required to be totally in agreement before changes can be made. They feel quite strongly that they, not DLNR, are the actual stewards of Kahana. They are willing to go forward with the living park concept.

What About a Management Transfer?

The resolution requesting this study suggested the concept of a transfer of management of Kahana to a nonprofit entity, the details of which will be discussed in the next chapter. The state parks administrator was not opposed to this concept as long as the natural, cultural, and scenic resources were preserved. The residents that communicated with the researcher indicated a willingness to explore the option of such a transfer, although they had different conceptions of what such a nonprofit would be, and how it would be run. They did appear to favor the consideration of such a transfer. The fact that not all of the residents indicated an interest in doing so speaks more to their general indifference to state administration than any positive desire for the status quo.

Endnotes

1. The only day-to-day DLNR staff member in the park is the park manager. There used to be two other positions, including a clerk-typist position that was filled by a Hawaiian woman from Windward O`ahu, who also doubled as a park interpreter when the need arose. Unfortunately, due to budget constraints, when the positions became vacant, they were not filled. The park program manager wants to upgrade this position to become a park interpreter position, but due to the concomitant upgrade in civil service classification, this must be done in the supplemental budget and cannot be done by the Department itself.

   The interpretive program is paid for by a special fund, LNR 807. The fund used to be just for interpretive activities, but now it covers a broader range of services, including repair and maintenance, so there is less money for interpretive programs and services. The other parks expenses are covered via a general fund appropriation, LNR 806. Revenues have not been increasing, so funds have not been increasing. The program manager wanted to hire more interpretive personnel and create park interpretive shelters, but budgetary constraints did not allow this.

2. Interview with Dan Quinn, Administrator, State Parks Division, DLNR on July 25, 2001.

3. Interestingly, families may not transfer their excess interpretive service hours to another family. This differs significantly from cash rent payment, in which the State would not know or care who the source of the money is as long as the State receives it. It is not clear what the rationale for refusal to allow the transfer is. The refusal to allow it will grow more problematic as the existing population ages, for if elderly residents cannot get younger family members to supply hours when they themselves are too feeble to perform them, they will lose their homes at a time in their lives when they are ill-equipped to find new ones.

4. Interview with Martha Yent, program manager; Toni Han Palermo, interpretive program specialist, and Lauren Tanaka, planner, State Parks division, Department of Land and Natural Resources, on July 13, 2001.

5. Interview with Al Rogers, park manager, Ahupua`a o Kahana State Park, State Park divisions, Department of Land and Natural Resources, on July 6, 2001.

6. State parks is not the only state agency to move very slowly on handling this kind of development. The Department of Hawaiian Home Lands suspended their eviction process between 1996 and 1999 when one Kaua`i homesteader who was to be evicted killed himself. However, the result of this suspense was a delinquency rate that "shot up," with 519 delinquent homesteaders owing $19 million in 2001. "Agency resumes evictions of delinquent homesteaders," and "Hawaiian homesteaders face evictions," Honolulu Advertiser, November 23, 2001, pages A-1 and A-5.

7. Quinn interview.

8. Rogers interview.

9. Rogers interview.

10. Quinn interview.

11. According to the manager, early on some lessees thought that State Parks could do nothing right, and wanted control of Kahana transferred to National Parks, OHA, or DHHL. While the leases began to be signed in 1993, by January 1994 lessees had already had legislation introduced to move Kahana to these other entities. Rogers interview.

12. Yent interview.

13. Only about half of the lessees show up for most of the scheduled meetings with the DLNR staff. Yent interview.

14. Interview with Lauren Tanaka, planner, State Parks Divisions, DLNR, on June 13, 2001.

15. Tanaka interview.

16. Quinn interview.

17. State Parks is generally underfunded for its scope of responsibilities. Nationally, the Hawaii State Parks division is forty-fifth in budget, forty-eighth or forty-ninth in number of employees, but fifteenth in visitor level. The State Park budget in the mid-90s was about $9.5 million, while in 2001 it is $6.5 million, including special fund revenue. Several bills were introduced in the 2001 regular legislative session to give some of the excess funds from the transient accommodations tax to the State Parks special fund, but that bill, Senate Bill No. 1169, while making it through both houses, did not make it out of conference in 2001, and is still pending for the 2002 session. Quinn interview.

Chapter 5

SOLVING THE KAHANA PROBLEM

The resolution requesting this study asked the Bureau to investigate the feasibility of having Kahana managed by a "culturally-sensitive, ahupua`a-based entity". The resolution also indicated that a number of state, federal, and county authorities have some type of interest in or jurisdiction over Kahana, and the testimony received by the Bureau included a larger list of entities that appeared to have an interest in Kahana. Preparatory to considering management of Kahana by a nonprofit entity, the Bureau contacted twenty-four of these state, federal, and county agencies to determine the nature of their relationship to Kahana.

Federal Government

Coast Guard

The Bureau spoke with a commander from the Coast Guard.[1] He believed that the Coast Guard has "no concerns" with Kahana. A confirming letter from him[2] states that after review of local Coast Guard records, it is his belief that the Coast Guard does not share responsibility for any property in Kahana.[3]

He did add that if changes were proposed to the shoreline, the Coast Guard might need to stay informed on the management planning for the area, and would be happy to coordinate with any management body the Legislature designates.

U.S. Department of Agriculture Natural Resources Conservation Service

The Bureau spoke with two representatives from the Natural Resources and Conservation Service, who confirmed that their agency has no interest in Kahana Bay at present and has no plans for it.[4]

U.S. Environmental Protection Agency

The Bureau spoke with the EPA manager, who said that as long as the state environmental people "sign off" on the Kahana watershed, the federal EPA would be satisfied.[5] The Bureau also spoke with an EPA watershed specialist, who agreed that while the EPA has no current involvement with Kahana, the EPA does offer grant programs that could be applied for to benefit the ahupua`a.[6] The EPA water quality oversight is delegated to the State Department of Health.

U.S. Army Corps of Engineers

The Bureau spoke with a civilian employee of the Civil and Public Works Division of the Honolulu Engineer District of the Army Corps of Engineers.[7] He stated that the Army Corps is not presently involved in Kahana. The Army Corps does not generate requests; they are responsive to local needs and on request will perform studies to assess whether there is a project that fits in with their mission. (Note that this differs from what others have said in regard to the restoration of the fishpond and the need for a permit from the Army Corps for that work, as the Army Corps has jurisdiction over matters that touch navigable water.)

U.S. Fish and Wildlife Service

The Bureau spoke with two staff members of this service.[8] The wildlife biologist informed the researcher that the service has no current interest in Kahana but has several programs that could be made available. They have three potential roles in Kahana – *regulatory*, in the case of a future EIS, *advisory*, to assist with baseline inventories and surveys, and *funding,* as a possible source of grants.

U.S. Geological Service

The Bureau spoke with Assistant District Chief of the U.S. Geological Service's Water Resources Division.[9] He stated that the only connection that his agency has with Kahana is one gauge in the Kahana Stream. That information is automatically transmitted to them and updated on their webpage every four hours. The Division is not a management agency, and does not do anything with the data themselves. The gauge is funded by the State Water Commission, and the Commission uses the data from the gauge to assess the amount of water available.

National Oceanic and Atmospheric Administration (NOAA)

The Bureau spoke with NOAA's Pacific Island Environmental Coordinator for its National Marine Fisheries.[10] He is not aware of any ongoing projects that involve his agency in Kahana. The Army Corps of Engineers will send a copy of a request for a permit to the affected federal agencies, including NOAA, for any future requests within their jurisdiction. He added that his agency generally supports preservation in general, and is very supportive of Kahana in particular.

State Government

Department of Land and Natural Resources

1. State Parks Division

As detailed in chapter 4, the researcher spoke with a number of people within this Division, including the state parks administrator, the park manager, and the planner. It is clear that State Parks has primary, but not sole, jurisdiction over Kahana.

2. Water Resource Management Division

The Bureau spoke with the Deputy Director of the Division of Water Resource Management.[11] She indicated that Kahana is part of the Waiahole water system, and two million gallons per day are taken from the Kahana watershed. Her division is working with the Aquatic Resources Division on a baseline study of the stream in Kahana, to consider restoring it for the benefit of the native `ôpae and `o`opu and the taro lo`i.

3. Land Division

The Bureau spoke with an Assistant Administrator of the Land Division.[12] The only connection between the Land Division and Kahana is the revocable permits (the Land division normally handles all revocable permits on state lands). All Kahana lessees started out on month to month revocable permits. Once State Parks was authorized to enter into leases, the plan was for the residents to select a lot, build a home in a timely manner, and then give up their monthly revocable permits and sign a 65-year lease. The revocable permits would then be cancelled so that eventually there would be 31 leases and no revocable permits. However, as a matter of actual practice, because it appears as though some leases will soon become available due to the pending evictions, some family members of those who now have leases have been allowed to stay in Kahana on their `ohana's revocable permit while these family member wait to see if more leases will open up.

Once the revocable permits have all been transmuted to leases, the Land Division will have no further involvement in Kahana. The Assistant Administrator also commented favorably on the concept of giving away management to a non-state entity, stating that State Parks is not set up to be a landlord, and that this living park situation is making them one.

4. Forestry and Wildlife Division

No response was received.

5. Division of Boating and Ocean Recreation

The Bureau spoke with the Oahu Division Manager.[13] The only part of Kahana over which his agency has jurisdiction is the boat ramp on the Laie side of the bay. His agency interacts a little with the State Parks Division as State Parks manages the restroom facilities by the boat ramp. Their only concern with Kahana is with the unapproved recreational and commercial uses of the bay. The primary problem is with jet skis. The agency does not interact with the lessees.

6. Aquatic Resources Division

The researcher spoke with an aquatic biologist at the Aquatics Resources Division.[14] The Division's tasks include working a baseline assessment of all streams in Hawai`i. They look at the habitats and populations of native fish and invertebrates. They did a baseline study on Kahana stream in 2000 and will go back to Kahana in December 2001 to talk to the community about their findings and gather more data. The Division works with State Parks and the Water Commission on stream flow issues.

A problem appears to exist with the overgrowing of hau, which may be blocking the stream flow, causing silting in the fishpond and hindering `o`opu from travelling upstream. The Division may look to NOAA for a grant to fund removal and stream restoration.

7. Division of Conservation and Resources Enforcement (DOCARE)

The Bureau spoke with the Administrator for this Division.[15] DOCARE is the enforcement division of DLNR. As such, they only act when requested by another division. The State Parks Administrator commented that DOCARE would be involved in the physical eviction of lessees who do not choose to leave willingly.

8. State Historic Preservation Division

The Bureau spoke with the History and Culture Branch Chief.[16] The Historic Preservation Division used to be within State Parks, until it was transferred out in the late 1980s, so he had been familiar with the Kahana situation in the 1970s. From his perspective, the main problem then was, and may still be, the lack of a clear mission for the ahupua`a. The Division is not now actively involved in managing Kahana.

Department of Health (DOH)

1. Environment Planning Office

According to the Environmental Planning Office Manager at the DOH,[17] her office's four major concerns are EPA compliance, waste management, water management, and air management. As far as Kahana is concerned, the only issue her office has is that Kahana Stream is presently listed as "impaired" in quality. Her office will do an assessment and report, and, if the stream is in fact found to be polluted, her office will coordinate a group of stakeholders to form a coalition to take action.

She also reported a problem with illegal dumping in Kahana, and would like the management entity to address that problem. She recommended consulting with the Solid and Hazardous Water Management Branch about illegal dumping.

In terms of a new management entity, her position was that as long as federal and state laws are complied with, the identity of the entity managing it is not of particular concern.

2. Solid and Hazardous Waste Branch

The Bureau spoke with the chief of the Solid and Hazardous Water Management Branch.[18] His office responds to illegal disposal. As it does not have the funding to deal with the dumping itself, the branch attempts to track down the person who did the dumping, charges the person a fine, and requires the person to clean up the materials. If no dumper is found, clean-up is the responsibility of the landowner. The chief said that the level of dumping in Kahana is "about what you would expect" in any remote area, and is not as bad as some locations on O`ahu. It is not clear who the persons dumping the waste are, and it could well be that they are people from the broader Ko`olauloa and Ko`olaupoko communities.

Department of Transportation

The Bureau received a memo from the Director of Transportation[19] and spoke with the Highways Administrator[20] about plans for Kahana. The Administrator stated that the portion of Kamehameha Highway that fronts Kahana Bay has a "curvature that is less than desired" and should be curved further inland into the valley to make it safer. He did not have a particular path in mind as of yet. The DOT was holding a series of public informational meetings for the Windward O`ahu area between the Hygienic Store and Kahuku to gather community input on possible changes to the highway.

The researcher informed the Administrator that the State Parks Division was considering rebuilding the Kam Mon store in Kahana in the front part of the park. The Administrator was not worried about any potential space conflicts, commenting that if this were to happen, State Parks would need a permit and the DOT would review it, and could advise State Parks at that time of any possible conflict.

Department of Business, Economic Development, and Tourism (DBEDT)

1. Office of Planning

The Bureau spoke with the director of this office.[21] He was unclear about the reason DBEDT was listed as having an interest in Kahana, as his office performs three functions,[22] none of which seem particularly relevant to Kahana. He said that DBEDT's interest in Kahana was "peripheral at best."

2. Housing and Community Development Corporation of Hawaii (HCDCH)

The Bureau spoke with the staff person at HCDCH who handles the Kahana mortgages.[23] Originally, when the concept of the living park was first considered, there was discussion over how the housing in the park should be funded. According to some of the lessees, in the mid-1980s, the Legislature agreed that the housing should be provided with state funds, and was going to appropriate the money to do so. Before it could be expended, the Attorney General apparently (according to lessees) issued an opinion stating that that it was not appropriate to fund private housing in the park with public funds, and the funding of the housing fell to the residents. The residents faced a problem similar to lessees of Hawaiian Home Lands: without the land to serve as collateral, getting a mortgage for home building was difficult. To resolve this problem, in 1988 the Legislature passed Act 238, Session Laws of Hawaii 1988, which appropriated funds for a low-interest home construction and mortgage loan program for Kahana residents, to be administered by the Housing Finance and Development Corporation, which was the predecessor of the HCDCH.

The HCDCH maintains a line of communication with State Parks, as a resident's failure to pay the mortgage could impact the lease, and vice versa. There are still some unsettled questions, such as what would happen if a lessee were current on the mortgage but in default of the interpretive service hours. The questions would have to go to the Attorney General for resolution.

Land Use Commission (LUC)

The Bureau received email from the Commission's Executive Officer.[24] He stated that if a party were to bring a petition before the Land Use Commission seeking boundary amendments, special permits, or other type of declaratory ruling, the LUC staff would note to the LUC that the state Legislature supports the idea of keeping Kahana as an intact ahupua`a and will note the actions taken by the Legislature to keep Kahana under a single management entity. The LUC apparently does not have any other involvement in Kahana.

City and County of Honolulu

Department of Environmental Services

The Bureau spoke with the Director of the Honolulu Department of Environmental Services.[25] He did not see a connection between the duties of his office and Kahana. His department handles refuse and sewers, and there are no sewers in Kahana. He said he would get back to the researcher on whether they handle the refuse in Kahana, but did not. However, even if his department does handle the Kahana refuse, this would just be a service that they provide, not a management or oversight function. It should not affect a decision on whether to change the management structure of the park or not.

Department of Planning and Permitting

The Bureau spoke with the Community Planning Division Chief about Kahana.[26] She stated that her agency had no active projects in Kahana. If future projects would have an impact on either the beach or other lands that touch the water, a permit would be needed from her office.

Board of Water Supply (BWS)

The Bureau spoke with the Manager and Chief Engineer at the Board of Water Supply.[27] He noted that the watershed in Kahana contains wells and reservoirs that service the Windward side of O`ahu down to Waimanalo. BWS staff is in Kahana at least once a week to physically check on their facilities there. The Kahana facilities are also monitored around the clock from the Board of Water Supply's Beretania Street facility. The BWS does not foresee building any additional facilities in Kahana.

In terms of a management entity, the Manager stated that as long as whoever does it preserves the environment and does not tamper with the wells and reservoirs, it does not matter who the management entity is.

Community Organizations

Ahupua`a Action Alliance (AAA)

The Bureau spoke with Steven Kubota of the Ahupua`a Action Alliance.[28] The AAA has been working with the Kahana lessees for about five years. Their principal project has been the restoration of the `auwai (irrigation ditch). He noted several management problems with Kahana, including the fact that no funding mechanism exists to fund the various projects that the lessees want to do which would benefit the ahupua`a. He noted the tension that exists between State Parks and the lessees, especially in the area of so-called "commercial activities." For instance, there used to be a monthly workday in Kahana, in which volunteers were bused in to help participate in the restoration. However, according to Kubota, it had to be cancelled due to its costs: the lessees could not afford to pay for the bus, and they were not allowed to charge the volunteers for it. He also brought up the forced cancellation of the Healthy Day Kahana program, as discussed in previous chapters, which was cancelled because some of the residents were making modest meals to sell to the participants as Kahana has no eating establishments.

Based on his experience, he believes that a public trust foundation is needed, and that no existing entity exists that can handle this role.

Kahana-Based Organizations

As discussed in the previous chapter, the researcher attended a meeting with the Kahana Advisory Board and invited input from members, and also met with two representatives from the Kahana-based 501(c)(3) group, Friends of Kahana.

Analysis

While the researcher was given a significant number of agencies to contact concerning Kahana, in reality, most of these are peripheral to the management of Kahana. Some of the agencies expressed confusion that they were being contacted at all, especially those at the federal level. The lack of response from one of the DLNR Divisions may have arisen from their assumption that they were contacted in error as they consider State Parks to be the primary contact.[29] The agencies generally fell into three groupings: one disclaimed any current or planned future involvement with Kahana (such as U.S. Geological Service, DBEDT's Office of Planning, and the City & County's Department of Environmental Services); a second had a regulatory interest in any proposed changes to Kahana, but aside from that are not involved in management and did not self-generate projects (such as the U.S. Army Corps of Engineers and the City & County's Department of Planning and Permitting); and a third had diverse but limited interests in specific aspects and could generate their own projects (such as the City & County's Board of Water Supply, certain DLNR Divisions such as the Water Resource Management and the Land Divisions, and DOH's Solid and Hazardous Waste Branch).

In all of the interviews, the participants took for granted that the primary management agency for Kahana was State Parks. All participants seemed willing to work with whoever was designated as such, whether it was State Parks or the independent entity proposed by the resolution. Even the Administrator of the State Parks Division did not have a problem with a management transfer, as long as all natural, scenic, and cultural resources were maintained intact.[30] That flexibility exhibited by that position was refreshing.

Two management models were reviewed to see if it could be determined which would work better for Kahana. One lessee suggested a model based on the Kaho`olawe Island Reserve. The researcher contacted the Deputy Attorney General assigned to advise the Kaho`olawe Island Reserve Commission (KIRC) to assess KIRC as a model and whether it would make sense to apply it to Kahana.[31] KIRC is federally funded by the U.S. Department of Defense/Navy. Because the Navy is running the clean-up of the island, while it technically has to comply with all state and federal laws, as a practical matter it only has to comply with the federal EPA laws. The State has no jurisdiction to force compliance – or even monitor – the current management actions of the Navy. The Navy is paying for all the cost associated with the clean-up and management of Kaho`olawe.

The lessee who proposed this model liked it for its comparative freedom from state and federal regulation. Under the current system, permitting can be an extremely time-consuming process, especially for project that involve the water. The lengthy delay to receive a permit from the Army Corps of Engineers for fishpond restoration was cited as a problem.

But KIRC is a federal, not state, entity. Even if the State was willing to waive jurisdiction of state and county agencies to a new management entity, it has no authority to remove jurisdiction of federal agencies such as the Army Corps of Engineers. Also, while the federal EPA office is not actively involved with Kahana, this is because it has delegated its role to the State. Were the State to remove jurisdiction over Kahana from the state environmental protection office, it is not at all clear that the federal EPA would continue to take a hands-off position.

Three significant problems exist in the case of a KIRC-like model for Kahana. First, the federal jurisdiction would still exist separately and could not be taken over by the State. Second, it would be difficult to get some of the state and county agencies that do have some jurisdiction over Kahana to agree to forego it. This would especially be true where the jurisdiction impacts other areas, such as the Board of Water Supply's wells, which service the Windward side down to Waimanalo, and the Department of Transportation's interest in the overall safety of Kamehameha Highway. Unlike Kaho`olawe, which is physically separate from any other land, Kahana is and will remain physically a part of O`ahu. It is not practical to treat Kahana in all respects as though it is detached from the rest of the island.

The third problem with the KIRC model is that if this new entity were to have control, it would need to have significantly more staff than is presently allocated to Kahana, especially in the area of enforcement. This will be quite costly. The new entity would have to handle issues presently handled by the DLNR's DOCARE and Division of Boating and Ocean Recreation and the DOH's Solid and Hazardous Waste Branch, among others. Whether this is affordable remains an open question, considering that although Kahana brings in a great deal of money to the State for its water, none of those funds are earmarked for Kahana and there are few if any additional sources of revenue from Kahana.

The KIRC model proposes a scenario in which not only management, but **control** of all resources is handled by one entity. An alternate model would be one whereby the management of the ahupua`a is given to an entity that would handle overall management by **coordinating** with the existing state, federal, and county agencies that have a real interest in Kahana to produce a unified outcome. The management entity would serve as a coordinator among agencies and an ombudsman between them and the lessees. For instance, if this management entity wanted to reconstruct the historic Kam Mon store at the front of the park, the entity would coordinate with all agencies to ensure a positive result. When the researcher spoke with the State Parks officials who are presently contemplating such a project, the State Parks staff had no idea that the Department of Transportation was considering moving the highway further in to the park – potentially conflicting with the store – and the DOT had no idea that such a structure was contemplated and might have an impact on a potential route. A management entity would have the authority that State Parks does not apparently at this time possess to do this kind of preplanning coordination. It would serve as a buffer for the lessees and the agencies, as some of the problems the lessees have experienced relate to government bureaucracy. While this alternate management structure lacks the control that the KIRC model has, the advantage of this alternate model is that it is much less costly as the other agencies continue to pay for their responsibilities and functions.

The resolution suggested a management entity comprised of residents of the ahupua`a, lessees within the ahupua`a, and the affected state agencies. No such entity currently exists and would have to be created. A new entity like this would have to be paid: management of the only intact ahupua`a in the major Hawaiian islands cannot be done appropriately on a volunteer basis. This new entity could be a 501(c)(3) nonprofit organization or it could be a quasi-state agency. It would have to receive sufficient authority for it to accomplish its goals, unlike the Kahana Advisory Board, which disbanded due to frustration with its lack of powers, or either of the Kahana Advisory Committees. Creating another merely advisory committee would be ineffective and counterproductive.

When asked if any existing agency could handle management of Kahana, the few who answered suggested the Office of Hawaiian Affairs, Friends of Kahana, the Hawaii Nature Center, the Pacific Island Land Institute (PILI), and `Ike `Âina. But consideration of these models and the entity to manage them are premature. Before any kind of new management entity can be expected to take over Kahana, the management entity – along with the lessees, O`ahu residents, and the State itself – must have a master plan for Kahana in place. This is essential.

Thirty-one years after the State obtained Kahana, the State still does not have a master plan for it. This is one of two key problems about Kahana that must be addressed now. The State has paid for a number of grandiose plans that the lessees and others have criticized as culturally insensitive and inappropriate, and the residents have proposed their own plans that the State has dismissed without comment. Meanwhile, the kûpuna who were the driving force behind the whole living park concept grow old and pass on, and a precious resource is squandered that can never be fully recovered. Some of the lessees have vision and are doing their best to devise their own methods of serving Kahana, but some are apathetic or discouraged, and those `ohana need to be brought back into the fold as willing partners in the living park concept.

For the master plan to work, authority to act must be given and decisions must be confirmed. Kahana needs neither another time-consuming and unproductive study nor another frustrated advisory-only committee without the teeth to enforce its findings. State Parks does not believe that it can devise a master plan in-house, and tried to have a bill submitted last year for a master plan. The bill was not included in the Governor's package. Yet this is the first step that must be taken to assure proper management. How can a program, especially one of such vast resources, be managed in the absence of a master plan? The difference with this plan, this time, is that is must involve the lessees, not merely as consultants, but as fellow architects of the plan. If they are expected to run the living park, they must have a voice in its structure. The failure to include them as active partners, as in previous state-sponsored master plans, must not be repeated.

Some of the lessees were indignant at the thought of yet another state master plan, asking why their previous plans were not accepted. In hindsight, the lessees' plans seem more practical and in tune with the functions of a cultural living park than the state plans do. Yet a new plan is needed to address at least two new things that have not been done previously by the lessee plans. First, a hierarchy of needs must be designed, with lessee input. Thirty-one families, working only 25 hours per month, cannot possibly take care of the needs of the entire ahupua`a. Certain areas and projects have to take precedence over others. The lessees' prior plans assume that appropriate things will be done, again without any specific assignments or requirements. This has not been the case. There should be multiple first-priority projects – there are enough family hours for that – but certain projects should be known priorities of the park, including providing interpretive services, and time and effort should be directed there accordingly.

The second, related, area that must be addressed is how to involve all of the lessees in this comprehensive plan. At present, there is a multitude of tasks that qualify as interpretive services. The park manager is supposed to get each lessee family to sign a contract for a particular task or set of tasks to make up twenty-five hours of service per month, but no specific services are required of anyone – not even serving as a park interpreter for the public. If the lessees all decided in a particular month that they were working hard on agricultural projects and had no time to spend on interpreting, there would be no one except the park manager to meet with any of the groups of visitors. This is no way to run a program that is designed, it must be remembered, to benefit the public. Families should be guided into making their choices among the top priority choices. This should be revisited in the master plan.

A plan calling for commitment for specific interpretive services is not a new concept. During the 1987 regular session, in passing House Bill No. 1494 (which became Act 5 authorizing the residential leases in Kahana), House Standing Committee Report No. 355 stated that "[r]esident families would then have <u>precise duties</u> assigned to them based on these [DLNR] program statements." (emphasis added) Strict assignment of duties would **not** be effective, given the whole scope of this task. Duties must have some flexibility to allow for the fact that the ahupua`a is a living entity – for instance, if the taro lo`i are lying fallow, the `ohana that grow taro can choose other tasks and requiring them to do only taro would be counterproductive. One task might be finished, and then another task chosen by an `ohana. But at the same time, an overall coordinated scheme in which each lessee family plays a significant role is needed to supply the matrix on which all lessees can built a unique, vital living park.

The other key problem that must be addressed is improving the relationship between the lessees and the management entity. At present, considerable friction exists between the lessees and State Parks, with the park manager in particular. The State Parks Administrator commented that his office gets calls from someone at Kahana almost every day on one issue or another.[32] This observation is not intended as a criticism of the goodwill of the State Parks personnel, who all seem to genuinely care about Kahana. Rather, part of the problem is due to State Parks' being forced into a position that it was never designed to fit – that of landlord. Its employees do not have the training or sufficient staff to handle that role, and the multiple layers of appeal – including the Board of Land and Natural Resources, and, if the Board's decision is not favorable, to the Chairperson – leads to delays, uncertainty, and aggravation. It is frustrating for staff and for the lessees. In any new system, there should be a short, limited appeal system, with definite boundaries.

A new management entity would start fresh and would have to take care to work with the lessees in an atmosphere of mutual respect and cultural sensitivity to retain their respect. At the same time, all of the lessees would have to acknowledge that they are in some respect the stewards of Kahana and that the needs of the ahupua`a have a priority that may sometimes supersede their individual preferences. But moving to a new management system will do nothing to help Kahana and is not feasible until these serious and ongoing problems are solved. No credible entity will want to manage Kahana until a master plan is devised so that the management entity will know what it is supposed to do.

In addition to any substantive qualifications, the entity preparing the master plan would need to be culturally sensitive and able to work collaboratively with the lessees and the State. The Hawaii Nature Center[33] and the Pacific Island Land Institute,[34] both of which have had some experience with a somewhat similar situation in Maunalaha, indicated a willingness to discuss working on a master plan, either individually or in collaboration with each other. Once a master plan is in place, then the choice of management structures – a manager that controls most of the jurisdiction, like the Kaho`olawe Island Reserve Commission, or a coordinating manager – would become obvious. It would also be easier to see which people or agencies need to be involved in the entity and what resources need to be available to the management entity.

A full-scale master plan will necessarily incur some costs and even with all the existing supporting material, will take some time. If it is not feasible or affordable to engage in a full master plan immediately, the objectives of the plan could be broken out and addressed more quickly and less expensively in specific phased plans. These phases should include: community-building with the lessees and the existing management and the development of some shared goals for Kahana; specific plan to address interpretive service and lease issues; and development of a full set of goals for Kahana to use in directing interpretive service hours and in seeking assistance from other governmental agencies. The first phase, community-building, should be started immediately to resolve ongoing management problems and build some better kind of rapport between the lessees, and between them as a whole and State Parks. Mediation, ho`oponopono, or some other type of community building can and should be started without delay to begin this process and rebuilt communication and trust with all the lessees. An entity qualified by experience, familiar with the Hawaiian culture, and with property management and social work experience would be a good candidate to facilitate this process.

Any substantial change in management structure without a master plan or beginning the specific phased plans will be only rearranging deck chairs while the Titanic wanders aimlessly toward its doom. Merely changing the structure may eliminate the park manager who is a source of friction, and will probably streamline activities that are now slowed down by government bureaucracy. But such a change, without a master plan or specific phased plans will not give the State the framework it needs to fully realize the benefits from Kahana. Kahana is a precious gem in the state parks system. It is unique, not only for its abundant physical resources, but for its cultural and human resources as well. Just as the State had the foresight to snap up Kahana in the 1960s to preserve its physical resources, it needs that kind of vision today to invest in collaborative and effective plans to assist in Kahana's restoration.

A specific phased plan may be done relatively inexpensively, while a full master plan will be more costly. However, Kahana brings in substantial revenues for the State via sale of its water.[35] The State diverts some of the funds received from Kahana to its general state parks program, and it might be appropriate to divert an extra percentage to fund its master plan. Bills were introduced in the 2001 session that provided that a portion of the transient accommodations tax revenues designated to be deposited into the tourism special fund be deposited into the state parks special fund.[36] If this concept were enacted, it may be appropriate to designate that some of those funds be used for the Kahana master plan.

Conclusion

The twenty-four federal, state, and county agencies contacted for this study break down roughly into three categories: one group that has no current or future plans for Kahana, one that has regulatory oversight over some aspects of Kahana, but only when certain activities are generated by someone outside the agency, and a third group that has a certain limited but regular contact with Kahana to monitor or administer self-generated projects. All of the entities familiar with Kahana understood that the primary administrator for Kahana was the State Parks division of the Department of Land and Natural Resources.

There were two proposed models for a management change. One is a setup similar to that of the Kaho`olawe Island Reserve Commission, in which the new management entity would not only manage but control all the resources of the ahupua`a. The primary concerns about this model are the inability to make a complete transfer of control, as the federal agencies will still retain their interests in Kahana, and the perceived unwillingness of certain state and county agencies (such as the Board of Water Supply and the Department of Transportation) to waive jurisdiction over their interest in Kahana when those interests touch their responsibilities outside of Kahana. An additional concern would be costs, especially enforcement costs, that are now being footed by the various agencies.

The other management organization review is a setup where the management entity serves the coordinator between all the other agencies but does not take jurisdiction away from them. In this model, the management entity would also serve as a buffer between the other agencies and the lessees. This model is not as costly, as the individual agencies would still pay for and control their functions while the entity coordinates and functions similar to an ombudsman.

The resolution asked if either of these models is feasible, and neither is at the moment due to two overriding problems: the lack of a master plan, and the lack of a program to engage the lessees in making coordinated contributions to a mutually-established priority of projects. A master plan that is made collaboratively with the lessees is a crucial and immediate need. A master plan could be broken down into specific phased plans that could be implemented more quickly and less expensively, starting with community building between the lessees and State Parks.

Endnotes

1. Phone interview with Commander Brian Swanson, August 27, 2001.

2. Letter from Commander Brian K. Swanson, U.S. Coast Guard, to researcher, dated August 28, 2001.

3. Commander Swanson stated that he intended to confirm this with the Coast Guard's real property office in Alameda, California, and would contact the researcher if he discovered anything to the contrary. No further communication was received, so it is assumed that the Coast Guard has no interest in Kahana.

4. Phone interview with Michael Bajinting and phone interview with Kathleen Dobler, August 28, 2001.

5. Phone interview with Vicky Tsuhako, May 29, 2001.

6. Phone interview with Wendy Wiltsee, EPA watershed specialist, May 31, 2001.

7. Phone interview with Paul Mizue, May 30, 2001.

8. Phone interview with Gene Hester on May 23, 2001, and with Ron Walker, wildlife biologist on June 13, 2001.

9. Phone interview with Barry Hill on May 30, 2001.

10. Phone interview with John Naughton and researcher on October 2, 1001.

11. Phone interview with Linnel Nishioka and researcher on May 31, 2001.

12. Phone interview with Dede Mamiya and researcher on December 11, 2001.

13. Phone interview with Steve Thompson on June 6, 2001.

14. Phone interview with Glenn Higashi on December 12, 2001.

15. Phone interview with Gary Moniz on May 30, 2001.

16. Phone interview with Nathan Napoka on May 30, 2001.

17. Phone interview with June Harrigan, August 21, 2001.

18. Phone interview with Steve Chang, August 23, 2001.

19. Memorandum from Brian K. Minaai, Director of Transportation, to Wendell K. Kimura, acting director, Legislative Reference Bureau, on Senate Concurrent Resolution No. 61; S.D. 1; on the Ahupua`a `o Kahana, dated September 5, 2001.

20. Phone interview with Glenn Yasui, September 6, 2001.

21. Phone interview with David Blane, August 21, 2001.

22. Representing the State before the Land Use Commission, GIS (mapping), and Coastal Zone Management. The last is largely administrative, funding the counties to do the actual CZM enforcement.

23. Phone interview with Rudy Reese, October 30, 2001.

24. Email from Anthony Ching to researcher, May 14, 2001.

25. Phone interview with Timothy Steinberger and researcher on August 27, 2001.

26. Phone interview with Kathy Sokugawa, September 11, 2001.

27. Phone interview with Clifford Jamile, August 21, 2001.

28. Phone interview with Steven Kubota, May 23, 2001.

29. For example, when the researcher attempted to follow-up the initial letter with a phone call to the Land Division, she was transferred by the Land Division to State Parks.

30. Interview with Dan Quinn, Administrator, State Parks Division, DLNR, on July 25, 2001.

31. Phone interview with Ray Enos, July 30, 2001.

32. Quinn interview.

33. Phone interviews with Executive Director Linda Colburn on August 31, 2001. Ms. Colburn has since left the Hawaii Nature Center, and a follow-up call was made to Sandie Osborne of the Hawaii Nature Center. Ms. Osborne indicated that Ms. Colburn had proposed working with Kahana to the HNC executive committee, but was not given any direction by the committee. Ms. Osborne says that HNC, appropriately, cannot make a commitment without more information, but does not want to be left out of consideration for any future planning for Kahana. It was Ms. Colburn who suggested contacting PILI.

34. Phone interviews with Maile Bay of PILI, September 4 and 10, 2001. Ms. Bay suggested that a community-based structure would be needed to plan the master plan, with a sunset date to

assure timely completion, and a budget. PILI is a 501(c)(3) nonprofit whose mission is to protect, preserve, and restore natural, cultural, and agricultural resources in the Pacific islands, using innovative conservation techniques and collaboration and partnerships. Ms Bay writes: "PILI is well qualified to assemble and manage the professional team, and to act as a facilitator and coordinator of the process with major input into designing an effective governance structure and a long-term stewardship plan." Letter from Maile Bay, PILI, to researcher, dated September 20, 2001. Ms. Bay also suggested `Ike `Âina as an entity that could do the master plan or work with others to do it.

35. Kahana contributes two million gallons per day to Waiahole-Waikane out of approximately twelve million gallons per day. Nishioka interview.

36. See, e.g., H.B. No. 694, H.D. 1; H.B. No. 1453; H.B. No. 1219; and S.B. No. 1169, all introduced during the 2001 regular session, and carried over to the 2002 regular session.

Chapter 6

FINDINGS AND RECOMMENDATIONS

Findings

1. The ahupua`a `o Kahana was populated for centuries prior to the arrival of Captain Cook in Hawai`i. An ahupua`a is an ancient Hawaii land division, running in a wedge-shaped division from the mountains to the sea, and is the basic unit in which a Hawaiian community lived. It is estimated that its pre-contact population was between 600-1,000 people. Its native population, like that of Hawai`i as a whole, declined dramatically after that, and by the time of the Great Mahele in 1846, the reported populated was about 200 maka`âinana (commoners).

2. After the Great Mahele, in which the lands of Hawai`i, formerly owned by the King, were distributed to the ali`i (chiefs) and the maka`âinana, shares in the ahupua`a `o Kahana were awarded both to the maka`âinana living there and to the ali`i Keohokâlole (the mother of the future monarchs of Hawai`i, King Kalakâua and Queen Lili`uokalani). Keohokâlole's shares were eventually sold to several different owners, ending with a group of Hawaiian Mormon merchants who formed a hui to own and work the land.

3. Mary Foster, a wealthy member of the prominent Robinson family, began collecting shares of the maka`âinana and the hui, and had acquired 99% of them by the time of her death in 1930. Her estate then held the shares in trusts for her heirs.

4. A few proposals were made to purchase Kahana from time to time. In 1965, one state senator issued a report on the benefits of the State acquiring Kahana, portraying Kahana as a blank slate to be developed in a highly commercial way, stating that Kahana can provide 600 "developable acres" for camping, fishing, hiking, horseback riding, and swimming, and hold over 1,000 camping sites plus cabins, restaurant, and shops. He said that a hotel and other commercial buildings could be developed, and wanted the creation of a 50-acre lake, a botanical garden, and a mauka road from Likelike Highway to Kahana. An additional factor supporting state acquisition was that it was one of the few, if not the only, ahupua`a left under virtually sole ownership and in a relatively pristine state. The State condemned the entire ahupua`a of Kahana for use as a state park and paid for it in five annual installments between 1965 and 1969.

5. The families still in the valley, mostly Hawaiian but including persons of various other ethnicities, lobbied the Legislature to allow them to stay in the park and preserve their lifestyle. In 1970, a Governor's Task Force proposed the concept of a "living park," which would allow the residents to remain on the land and somehow be a part of the park. The Governor accepted this idea and recommended it to the Department of Land and Natural Resources, which accepted it.

6. The State then paid for a number of master plans for Kahana. Taking their tone from the original report, these were extremely ambitious and expensive, and would have involved removing the remaining families still living in Kahana. One plan included the construction of a dam, waterfall, and three lakes, importing non-native fish for sport, camping sites for 1,000 people, flooding the lower plain and constructing islands with "nationality gardens", and water pagentry on the dredged and rerouted stream. Another plan required a staff of resident scientists in the park, complete with a computer lab. The lessees proposed modest plans that focussed on the rural culture of the ahupua`a, but these were not accepted by the Department of Land and Natural Resources.

7. The State devised a scheme in which the lessee families would earn the right to a 65-year leases in the park by providing 25 hours of interpretive services per month to the park to preserve, restore, and share the history and rural lifestyle of the ahupua`a with the public.

8. The leases finally began to start being awarded in the mid-1990s. Today, most of the lessees have cancelled their revocable permits and have signed their 65-year leases.

9. Most of the lessees are current on their monthly 25-hour interpretive services requirement, but the interpretive services program is disorganized and frustrating to the lessees. Some of the lessee families have taken responsibility for large projects such as the restoration of the taro lo`i, the Huila fishpond, and the `auwai and regularly put in excess hours. Others merely put in the hours required. A few are not participating and, as of the date this report was finalized, face eviction.

10. The Bureau contacted twenty-four state, federal, and county agencies about their jurisdiction over or involvement with Kahana. The agencies fell into three categories: some of the agencies had no involvement in Kahana; some had regulatory powers over proposed changes to the ahupua`a but otherwise were not involved; and the third set had active jurisdiction over a portion of Kahana and could generate their own projects within their limited jurisdiction. It was agreed by all who knew anything about Kahana that the agency with primary jurisdiction over Kahana is the Department of Land and Natural Resources' State Parks Division.

11. Two management structures were examined. The first is one in which the management entity has **control** over the entity, similar to the Kaho`olawe Island Reserve Commission. The benefit to this model is the virtually full control that allows restoration to be made on a timely basis free from the permitting process delays. The drawbacks to this model are the fact that:

    a. The State cannot seize jurisdiction from the federal government, so that to a certain extent jurisdiction will still be split;

    b. Some state and county agencies may object strenuously to having their jurisdiction removed from programs and resources that affect areas outside of Kahana, such as the Board of Water Supply and the Department of Transportation, and to the extent that they make an effective argument that they should retain jurisdiction, the less effective this model is; and

    c. This will be a costly model to implement as a considerable amount of staff will be needed to perform functions presently funded and carried out by other agencies, such as the Department of Land and Natural Resources' Division of Conservation and Resources Enforcement and Division of Boating and Ocean Recreation, and the Department of Health's Solid and Hazardous Waste Branch, among others.

12. The other model reviewed is one in which each agency retains whatever jurisdiction it currently has, and the management entity serves as a **coordinator** between the agencies and as an ombudsman between the lessees and the agencies. While this alternate management structure lacks the control of the other model, it could still provide the comprehensive management sought by the resolution and its advantage is that it is much less costly as the other agencies continue to pay for their responsibilities and functions.

13. The resolution suggested consideration of a management entity composed of lessees and residents of Kahana and all affected government agencies. This entity could either be a nonprofit agency, or a quasi-state agency. No such entity currently exists and would have to be created and funded. It is not effective to have an entire intact ahupua`a managed solely by volunteer labor: the scope is just too vast.

14. When asked if there were existing agencies who might be able to handle management of Kahana, the few study participants who answered this question suggested the Office of Hawaiian Affairs, Friends of Kahana, the Hawaii Nature Center, the Pacific Island Land Institute (PILI), and `Ike `Âina.

15. Discussion of the format of a management agency, whether the control or the coordinator model, and which specific entity should be that manager, is premature at this time as there is a crucial but missing element which must be done first: Kahana must have a master plan.

16. The State has paid for a number of grandiose plans that the lessees and others have criticized as culturally insensitive and inappropriate, and the residents have proposed their own plans that the State has dismissed without comment. Meanwhile, the kûpuna who were the driving force behind the whole living park concept grow old and pass on, and a precious resource is squandered that can never be fully recovered.

17. A management entity will not be able to function efficiently and effectively without a master plan. However, a master plan for Kahana will only be effective if the lessees, who are required to be the main source of staffing via their interpretive services, are co-architects of the master plan.

18. The previous plans created by the lessees, although much closer in scope and nature to the living park concept, lack two things: First, a hierarchy of needs must be designed, with lessee input. At present, there are literally dozens of tasks that can be done to qualify for interpretive hours, and the combined work of the lessees is scattered. Second, once the hierarchy of needs is established, methods must be created to involve all of the lessees in this comprehensive plan. Families should be guided into making their choices among the top priorities for the park, including interpretive services. It must be remembered that the intent of the living park concept is to benefit the public.

19. If it is not feasible or affordable to create a master plan immediately, it would be possible to break up the elements of the master plan into three specific phased plans than can be handled more quickly and less expensively. Those three phases would be: community-building with the lessees and the existing management and the development of some shared goals for Kahana; specific plan to address interpretive service and lease issues; and development of a full set of goals for Kahana to use in directing interpretive service hours and in seeking assistance from other governmental agencies.

20. While new management cannot be obtained until a master plan is created, the existing relationship between the State Parks Division of the Department of Land and Natural Resources (State Parks) and the lessees, and within the lessee group itself, can and does need to be addressed now. At present, considerable friction exists between the lessees and State Parks, with the park manager in particular. Part of that is due to State Parks' being forced into a position that it was never designed to fit – that of landlord. Its employees do not have the training or sufficient staff to handle that role. This observation is not intended as a

criticism of the goodwill or integrity of the State Parks staff. Also, the multiple layers of appeal – including to the Board of Land and Natural Resources, and, if the Board's decision is not favorable, to the Chairperson – leads to delays, uncertainty, and aggravation. The situation is frustrating for staff and for the lessees.

21. Kahana contributes substantial revenues to the State via the sale of its water. The State diverts some of the funds received from Kahana to its general state parks program, and it might be appropriate to divert an extra percentage to fund the Kahana master plan. Bills were introduced during the 2001 regular legislative session to require that a portion of the transient accommodations tax revenues designated to be deposited into the tourism special fund be diverted into the state parks special fund. If the Legislature chooses to enact this concept (on which the Bureau takes no position), it may be appropriate to designate that some of those funds be used for the Kahana master plan.

Conclusions

1. A master plan for Kahana, co-authored by the Kahana lessees, is urgently needed before a change in management should be made. Funding for a master plan for Kahana should be among the Department of Land and Natural Resources's top priorities. If a full master plan is not financially feasible at this time, a series of specific phased plans can be started that would be affordable and would address Kahana's most pressing problems.

2. As Kahana is a major source of water for Waiahole-Waikane and brings in considerable revenue to the State, it would be appropriate to use some of those funds to fund the Kahana master plan. In the alternative, several bills introduced during the 2001 regular legislative session were designed to divert some of the funds raised through the transient accommodations tax to fund state parks in general. While the Bureau takes no position on whether this should be done, if the Legislature chooses to enact such a measure, requiring hat a discrete portion of that revenue be spent on funding a master plan for Kahana is also an option.

3. Until a master plan is in place, deciding who the management entity should be, or the scope of its powers, is premature. If a series of specific phased plans is implemented instead of a master plan, the entity assisting the lessees and State Parks in the first phase of the plan relating to community-building between the lessees and State Parks should be an entity familiar with the Hawaiian culture, and with property management and social work experience, to address the friction that is blocking full participation by every involved person in making the ahupua`a `o Kahana a true living park.

Report Title:

Kahana Valley; Management Study

THE SENATE

TWENTY-FIRST LEGISLATURE, 2001

STATE OF HAWAII

S.C.R. NO. 61 S.D. 1

SENATE CONCURRENT RESOLUTION

requesting a study relating to the management of the ahupua`a `o kahana.

WHEREAS, the ahupua`a `o Kahana (the ahupua`a) is located within the moku (district) of Ko`olauloa between the ahupua`a of Ka`a`awa on the east and Punalu`u on the west and extends over four miles from the 2,670 foot crest of Pu`u Pauao on the Ko`olau mountain range to the reefs at the seaward mouth of Kahana Bay; and

WHEREAS, the ahupua`a includes over 5,300 acres of land, plus the submerged lands of Kahana Bay and the primary stream, Kahawainui, which is fed by four tributary streams out of side valleys: Kawa, Pilali, Kalehua, and Koloahulu, and discharges into Kahana Bay primarily at the eastern edge of a wide crescent shaped beach; and

WHEREAS, the culturally significant Huilua fishpond is located adjacent to the mouth of the stream; and

WHEREAS, between 1965 and 1974, the State of Hawaii initiated condemnation proceedings to acquire all 5,260 acres for park use at a cost in excess of $5 million; and

WHEREAS, within the past thirty years, a number of studies and proposals were developed to provide a balance between the public's interest and the rights of the residents who live in the valley; and

WHEREAS, in 1987, the Legislature authorized the Department of Land and Natural Resources to negotiate and enter into long-term residential leases with qualified persons on the condition that these individuals participate in providing interpretive programs at the park for the benefit of the public; and

WHEREAS, the State Park is a living source of spiritual renewal for Hawaiians and others, but only if left intact, and can serve as a field laboratory and observatory for biologists and botanists, a resource for archaeologists and cultural specialists; and

WHEREAS, there are residents of the ahupua`a `o Kahana, who are not lessees in the State Park; and

WHEREAS, residents outside the State Park and lessees within the State Park boundaries are able to preserve valuable cultural practices that cannot be done in other, more urbanized areas; and

WHEREAS, the entire ahupua`a should be managed as a unit to protect the ahupua`a for future generations to study and enjoy; and

WHEREAS, the management of the resources of the ahupua`a are at present divided among numerous federal, state and county agencies; and

WHEREAS, there is a need for a culturally-sensitive ahupua`a-based entity that can provide comprehensive management of the entire ahupua`a as well as promote cooperation between governmental agencies and residents of the ahupua`a with respect to managing the resources of the ahupua`a; and

WHEREAS, this entity should be comprised of residents of the ahupua`a, lessees within the State Park, and representatives of the affected governmental agencies; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2001, the House of Representatives concurring, that the Legislative Reference Bureau study the feasibility of creating a culturally-sensitive ahupua`a-based entity that would provide comprehensive management of the entire ahupua`a as well as promote cooperation between governmental agencies, residents of the ahupua`a, and lessees within the State Park with respect to managing the resources of the ahupua`a; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit a report containing findings, recommendations, and any draft implementing legislation to the Legislature no later than twenty days prior to the convening of the 2002 Regular Session; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor, the District Commander of the Army Corps of Engineers, the Chairperson of the Board of Land and Natural Resources, the Director of Health, the Chairperson of the Board of Agriculture, the Chairperson of the Commission on Water Resource Management, the Chairperson of the Kahana Advisory Committee, the lessees within the State Park, and the Legislative Reference Bureau.

Appendix B

EXHIBIT "C"

INTERPRETIVE HAWAIIAN CULTURAL
PROGRAM PARTICIPATION COMMITMENT

The program participation requirement for in-kind payment of the lease rent is twenty-five (25) hours per month of services related to scheduled interpretive programs. This participation requirement will commence as soon as this lease is signed provided, however, that service hours will be waived for a period of not more than twelve (12) months after the Lessee is notified by the State that the residential housing infrastructure has been completed. This waiver is made available only to those residents who are actually participating in the construction of their new homes or renovating existing homes on their new 65 year houselots. This waiver may be extended upon a showing of good cause and with written approval by the Chairperson.

Eligible Interpretive Programs - Interpretative Programs will generally be based on the expressed interest of valley residents as reflected in the Addendum attached to this Exhibit, more particularly identified as "Kahana Valley State Park, Addendum to Schedule C, Interview Summary Data of Participation, Activities of Kahana Residents". Interpretative Programs shall be recommended by an advisory committee with the assistance of the Park Manager. The residents may recommend additional programs to the advisory committee. The advisory committee and Park Manager shall, at least annually, review and evaluate the overall interpretative programs. General park maintenance shall not be considered an interpretative program.

Type of Work to be Performed - Service hours will be credited for all aspects of a scheduled activity including planning, gathering/preparing materials, presenting the activity and clean up after the event. Service hours will also be credited for learning, teaching and evaluating activities as part of a scheduled, ongoing training program. No credit shall be received if a resident is paid for participating in a scheduled activity. Lessees who qualify for the 12-month waiver are encouraged to participate in their respective interpretative programs.

Qualified Family Members - All family members, as defined in the lease, who are over 14 years of age are eligible to provide the scheduled service hours. The proportion of time divided among each eligible family member from the lessees family shall be determined by the family.

- Children of qualified families between 14 and 18 years of age will need a work permit and will be subject to all child labor laws in order to qualify for family service hours.

- Such children may participate in scheduled service hours provided that no more than 10 hours per month can be earned by the children of a given family.

- The lessee's family may not substitute anyone outside the family for an eligible and able family member for service hour credit.

- Family members ineligible for service hour credit may participate in program activities, unless a participant capacity would be exceeded.

- The planning and operation of these programs may be enhanced and enriched with assistance from residents' families outside the valley. However, it must be emphasized that since it is the residents who are participating in the Interpretative Programs in lieu of lease rent, use of non-valley residents to satisfy the 25 hour in-kind requirement is discouraged and authorized only upon approval by the Park Manager.

<u>Service Hour Credits</u> - Service time beyond the 25 hours per month requirement may be accumulated for a total service credit not to exceed 150 hours per year. Accumulated service credit cannot be sold, transferred, or otherwise conveyed in any manner.

The 25 hour requirement can be considered an average monthly requirement. Periodic scheduled program activities may require the lessee's participation to exceed 25 hours in any given month. At other times the lessee may wish to refrain from participation in an interpretative program because of family needs (e.g., family vacation, extended illness, military service, education, etc.) Excess hours beyond 150 hours will not be credited but can be donated as voluntary assistance.

<u>Scheduling</u> - In scheduling any interpretative program the State and residents shall be sensitive to and have a mutual respect for the concerns and needs of the respective parties. For example, the State recognizes that many residents have full time jobs outside the park and they may not be available if their interpretative program is scheduled during their normal work hours. Further, the State fully supports the residents need to practice the traditions and customs of Native Hawaiians in their most natural unrestricted environment which may at times be scheduled when the visitor is unavailable. At the same time, the residents fully support the State's concerns

that since this is an ’Ama Ho’omalu, or Park of Distinction, the traditional Hawaiian customs and practices should be shared with as many park visitors as possible at various times and days which may require the residents to be available after working hours, on weekends and holidays. Both parties shall make a good faith effort to assist each other in fulfilling their concerns and needs. Requests for assistance from either party shall not be unreasonable and, in accommodating such needs and concerns may require scheduling interpretative programs at times that are inconvenient for the residents and park visitor participation.

All interpretative program activities shall be scheduled in advance. Lessee family participants may submit requests up to one year in advance, but no later than 60 days in advance of the scheduled interpretative program activity. While no family service hours will be credited for scheduling, families are encouraged to assist in the interpretative program scheduling. Lessees shall notify the Park Manager of any changes in their schedule at least 10 days before their scheduled interpretative program assignment. A lessee that is unable to participate in their scheduled interpretative program should have a reasonable excuse and should seek a replacement.

Lessees will be encouraged to participate in a variety of interpretative programs. Each lessee’s family must be willing to participate in at least two different programs in order to meet their program participation commitment.

The Park Manager will be responsible for coordinating all scheduling assignments, keeping records and monitoring program assignments. Each lessee shall receive a monthly record of their service hours and the Park Manager will review these records annually with each family.

Penalties - Lessees shall be on time and work the hours scheduled. Lessees shall be assessed one penalty hour for being late and one penalty hour for each program hour or part thereof missed, unless excused. Lessees have the responsibility for notifying the park office of sickness or other emergencies, as soon as possible. Excused absence shall be worked within 30 days of the date the lessee or qualified family members are able to resume program participation.

Lessees who fall behind in their required service hours shall be rescheduled as soon as possible. Any lessee who falls one month (25 hours) behind shall be give a written notice that the lessee is in violation of the lease. At that time, the violation will follow the dispute resolution procedures established in Section III, Item 2 of this Lease.

2. Dispute resolutions. Performance under this lease shall be coordinated with a representative of the Lessor to be designated by the Chairperson who shall act as the principal liaison between the Lessee and the Lessor to help interpret the conditions of the lease, resolve policy questions, to expedite decisions, to inspect and monitor the work performed and to implement the plan of operation.

In the event of any disagreement over the interpretation and/or implementation of this lease, Park Manager and Lessee shall attempt to mutually resolve the matter in a reasonable and equitable manner consistent with the purpose and spirit of this lease. In the event that agreement cannot be reached, then the matter shall be submitted to a Kokua Committee.

The Kokua Committee shall be composed of three Kahana Valley residents and one Kahana Valley resident alternate to be elected by the residents by secret ballot. Names of interested residents shall be submitted to the Chairperson who shall administer the election. If a Lessee is interested in serving on the Kokua Committee, that Lessee shall submit no more than one name from the Lessee’s family. Each Lessee shall have four votes.

The Kokua Committee shall review the dispute and attempt to reach a mutually acceptable resolution of the problem. If a mutually acceptable resolution cannot be reached, then the Kokua Committee shall submit its recommendation to the Division of State Parks. In the event the dispute affects a Kokua Committee member’s Lease, that member shall disqualify itself from taking action on the dispute and the alternate Kokua Committee member shall serve.

The Division of State Parks shall review the dispute and the Kokua Committee’ s recommendation. In the event the Division of State Parks disagrees with the Kokua Committee’s recommendation, then the Division of State Parks shall submit to the Chairperson for his review both Division of State Parks’ and Kokua Committee’s recommendation. The Division of State Parks shall submit a copy of its recommendation to the Kokua Committee. The Kokua Committee may comment on the Division of State Park’s recommendation and submit its comments directly to the Chairperson.

The Chairperson has the discretion to make a final decision or bring the matter before the Board.