
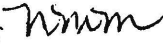


STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

JULY 20-21, 2015

To: Chairman and Members, Hawaiian Homes Commission (HHC)  
Through: Kaleo Manuel, Acting Planning Program Manager   
From: Nancy McPherson, Planner   
Subject: Accept Beneficiary Consultation Report, National Park Service Draft General Management Plan for Kalaupapa National Historic Park, DHHL TMK's (2)6-1-001:001 and (2)5-2-013:006, Kalaupapa and Pālā'au, Molokai

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) accepts this Beneficiary Consultation Report as the public record of beneficiary input and feedback relative to the National Park Service Draft General Management Plan for Kalaupapa National Historic Park, Kalaupapa and Pālā'au, Molokai.

DISCUSSION

Background

An informational submittal on this subject was presented to the HHC at its regularly scheduled meeting of June 15, 2015 (refer to Item G-1 and Exhibits, from June HHC Meeting). The submittal provided some brief historic background and a description of DHHL and National Park Service (NPS) interactions to date regarding the development of a General Management Plan (GMP) for the Kalaupapa National Historic Park (NHP).

A previous submittal was submitted to the HHC in June 2015 as a status report intended to provide an update to the HHC on the Planning Office's continued efforts to consult with beneficiaries on the Draft GMP and the timeline for the planning process moving forward. This submittal constitutes the formal Beneficiary Consultation report describing beneficiary input and feedback obtained during the two (2) consultation meetings held on Molokai on May 26 and May 27, 2015 as well as comments

ITEM G-1

received during the subsequent 30 day comment period, and is hereby submitted to the HHC for acceptance.

### Beneficiary Consultation

The Department's Beneficiary Consultation Policy, approved in January 2009, recognizes that meaningful, timely and effective beneficiary consultation is essential to the successful implementation of Hawaiian Homes Commission policies, programs, and projects. The purpose of this DHHL beneficiary consultation was to collect beneficiary feedback and input on the Draft General Management Plan for the Kalaupapa NHP being circulated by the NPS for comment, therefore providing an additional venue for beneficiaries to communicate their mana'o through the DHHL Planning Office to NPS.

STEP 1. THE PROPOSED ACTION IS DESCRIBED (See Exhibit A and Item G-1 Exhibits B and C from June 15, 2015 HHC Meeting):

The Beneficiary Consultation (BC) on the Kalaupapa Draft GMP was intended to elicit comments on the actions of another agency (NPS), which has a long term lease for Hawaiian Home Lands on the Kalaupapa Peninsula as well as for a small area at the top of the cliff in Pālā'au, the Kalaupapa Overlook area, totaling approximately 1,247 acres. Two consultation meetings were held on "topside" Molokai on May 26 and May 27, 2015. Thirty-eight beneficiaries attended the May 26 evening meeting and seventeen beneficiaries attended the May 27 morning meeting. A slide presentation was prepared to describe the NPS' proposed action and the comments and concerns of beneficiaries that had been expressed to date. Handouts were also distributed at the meetings providing more detailed information, including copies of DHHL's lease with NPS.

STEP 2. BENEFICIARIES WERE NOTIFIED OF OPPORTUNITIES TO CONSULT (See Item G-1 Exhibit B from June 15, 2015 HHC Meeting):

A letter inviting Moloka'i beneficiaries to attend the May 26 and 27, 2015 BC meetings in Ho'olehua and Kalama'ula, Moloka'i was mailed out on May 12, 2015. A total of 1,618 letters were mailed to both applicants and lessees.

EXHIBIT B

STEP 3. PRESENTATION MATERIALS FOR ALL MEETINGS ARE AVAILABLE FOR FEEDBACK (See Item G-1 Exhibits A and C from June 15, 2015 HHC Meeting):

Presentation materials in the form of a PowerPoint handout and a copy of the Sept. 27, 2011 DHHL letter to NPS were available at the BC meetings and were posted to the DHHL Beneficiary Consultation website. A link to the NPS Kalaupapa Draft GMP webpage was also provided on the website.

STEP 4: COMMENTS ARE COMPILED INTO MEETING REPORTS (See Exhibits B through E):

This submittal constitutes the formal Beneficiary Consultation report describing beneficiary input and feedback obtained during the two consultation meetings held on Molokai on May 26 and May 27, 2015 as well as comments received during the subsequent 30 day comment period, and is hereby submitted to the HHC for acceptance.

Summary of Beneficiary Consultation Comments and Staff Recommendations

Meeting notes were provided in the informational submittal in June (See Item G-1, Exhibits D and E from the June 15, 2015 HHC Meeting). The comment deadline given to beneficiaries at the consultation meetings was June 25, 2015. Three letters containing multiple comments, and two phone comments were received during the 30-day comment period. The following table summarizes all comments received during the beneficiary consultation meetings and sorts them by subject or topic, as well as provides any responses from DHHL and/or NPS.

Subject	Question/Comment/Suggestion	Response/Key point
Planning	Is the majority of the settlement on DHHL land?	Yes.
Planning	Need to look at all the lands, regardless of who owns them.	DHHL is taking comments on DLNR land also.
Planning	Keep what they have now - don't add anything.	No new structures are planned.
Planning	Can't issue FONSI until Section 106 process is pau.	NEPA process is incomplete until Section 106 is pau

Subject	Question/Comment/Suggestion	Response/Key point
Planning	Frustrated that NPS hasn't answered our questions from way back when. Send the big guys here from DC so they can see our frustration.	
Planning	Define "stewardship" in the General Management Plan.	DHHL will request an expanded definition of "stewardship"
Planning	Once DOH leaves, what will be jurisdictional status? DHHL needs to participate in transition plan.	DHHL needs to formalize negotiations
Planning	Limit the timeframe of the plan and make the language explicit.	DHHL requesting better definition of terms.
Planning	Need a more detailed plan for Special District lands	DHHL to work w/NPS on Implementation Plan
Planning	Need to convene a Task Force of landowners and beneficiaries.	DHHL supports this idea and will discuss with NPS
Planning	Need to plan for peninsula and Pālā'au Park - topside down and downside up.	
Planning	Have to talk about Pelekunu, Wailau, Halawa, include 'ohana from other valleys.	
Planning	Feds don't have a definition for sacred, or spiritual. Need definitions for restoration, preservation.	Some definitions provided in Glossary (Appendices)
Planning	Define "enhancement." A living culture needs a place to be exercised.	
Planning	Who should be on task force? How many on task force? What are requirements of beneficiaries? Include applicants too - NPS needs to get that right.	DHHL supports this idea and will discuss with NPS
Planning	I wish I knew the patients' recommendations and comments.	

Subject	Question/Comment/Suggestion	Response/Key point
Homesteading	There are 'iwi all over the place - shouldn't have housing, but terraces should be used, reopen the lo'i	Burials are present at Kalaupapa so extra care must be taken
Homesteading	How much acreage within Park boundary could be used?	Special District designation - limited to reuse of existing structures
Homesteading	When they first made the park, I tried to sign up for homesteading but there was no list.	Most of the land is in Special District or Conservation.
Homesteading	If homesteading is ever allowed, there will need to be rules so people will mālama that place.	DHHL to discuss beneficiary stewardship model with NPS.
Homesteading	Create a Kalaupapa Homestead Association to manage revenues. Money should be spent on homesteading.	DHHL to explore Homestead Association option with NPS
Homesteading	Primary mandate is homesteading - need to force NPS to listen.	DHHL is investigating an alternative model of "homesteading" in Kalaupapa
Homesteading	Can they take out "no homesteading" statement? Is there anything in the Plan to return the lands to DHHL someday?	Up to \$40 million invested. If lease is broken, DHHL has to pay for all improvements.
Homesteading	Mālama that 'āina vs. homesteading. Shift the focus.	Focus on stewardship.
Management	Train native Hawaiians to prepare for jobs - make sure we're benefitting.	Employment and Training Opportunities
Management	Need to consult with native Hawaiians re: respecting the culture, what's best for our kupuna down there and future generations.	Consultation
Management	If Kalaupapa is returned, it should become a self-sufficient community.	

Subject	Question/Comment/Suggestion	Response/Key point
Management	Have to respect that place - relatives buried there. Should not be opened to the public.	Burials are present at Kalaupapa so extra care must be taken
Management	Create partnerships with Hawaiian studies, archaeology, and restoration.	Educational Opportunities
Management	No Ospreys in Kalaupapa.	
Management	NPS overextending its kuleana to topside.	DLNR has a Cooperative Agreement w/NPS for area in Pālā'au State Park
Management	Need a strong partnership w/NPS for use of valleys - needs to be formalized.	DHHL needs to formalize negotiations.
Management	Fear that lifting cap of 100 visitors/day will open the floodgates. Needs to be carefully monitored.	Better explain User Capacity Indicators, Standards, Monitoring and Management Strategies
Management	Keep the 100 persons/day cap for visitors, but no limit on stewardship.	Need a hybrid Alternative
Management	Define "visitors" better. Topside homesteaders should be a special category. Prioritize categories.	Create Visitor Categories
Management	Different users should pay different fees.	Create Visitor Categories
Management	Should be different policies for us - we're not malihini.	Create Visitor Categories
Management	Who is going to be given commercial use authorization?	NPS needs to educate beneficiaries on its process
Management	Keep this place as a special sacred area for its sensitive story. Benefits to beneficiaries will always be minimal to protect the story.	Sensitive, Sacred Place
Management	Restore and use shoreline, fishpond for food production.	Develop this idea as part of transition plan

Subject	Question/Comment/Suggestion	Response/Key point
Management	What is real carrying capacity? Need to define.	Define carrying capacity
Management	Concessions need to benefit topside. Not enough level of detail in the Plan.	NPS has a process. Community benefits
Management	DHHL should be managing the buildings and getting revenue.	Buildings have to be restored up to NHPA standards.
Management	I like that patients get first say and first right of refusal.	
Management	Goal should be for 100% of NPS employees to be native Hawaiian, all from Molokai.	Employment and Training Opportunities
Management	What happens if the feds cut the budget and there is less money for Kalaupapa?	
Management	Give first preference for everything to 'ohana that were evicted from Kalaupapa when the settlement was originally established.	Create Visitor Categories
Lease	If the lease doesn't end until 2041, why are we talking about this?	DHHL is evaluating the Draft GMP and expressing your concerns to NPS
Lease	Why does DHHL issue a short term revocable lease to us, and a long term general lease to NPS?	
Lease	Amend the lease to trigger a return of Kalaupapa to DHHL when the last patient expires.	Lease Terms
Lease	Do we get a clean slate in 2041?	NPS won't reinvest if they don't get a lease extension 20 years prior.
Transition	When the time comes, what should be the mechanism?	DHHL needs to formalize negotiations.
Transition	Need to be sitting at the table with DOH re: transition.	DHHL needs to formalize negotiations.
Boundaries	Why does NPS want to enlarge park boundaries?	Required to analyze by NPS

Subject	Question/Comment/Suggestion	Response/Key point
Boundaries	Enlarging the park is offensive to me as a native Hawaiian. Feds trying to manage and control a large area of Molokai.	Do not enlarge park boundaries
Boundaries	North Shore is special to everyone on Molokai. Value of those valleys is for food production.	Do not enlarge park boundaries
Boundaries	Is Waihanau included? There's a cultural village there - heiau, lo'i.	Plan doesn't say how or who will do restoration. DHHL advocates for beneficiaries.
Boundaries	Not in favor of expansion of Park.	Do not enlarge park boundaries
Boundaries	Not in favor of land swapping or condemnation.	No land exchanges
Boundaries	Would make more sense to us to have other backside valleys - open to further acquisitions for the purpose of the HHCA.	DHHL should investigate acquiring backside valleys
Jurisdiction	What is future of Kalawao County? Let's make a Molokai County.	
Jurisdiction	Need to make sure DHHL got all the lands it was supposed to - 2,000 acres are missing.	DHHL needs to formalize negotiations.
Jurisdiction	Keep Kalawao County and place it in DHHL hands.	
Land Exchange	DHHL keep its lands!	No land exchanges
Land Exchange	What if we work through all this and we can't exchange land?	DHHL could work w/DOI to explore land exchange options
Alternatives	I like B's preservation concept, but like C's stewardship component.	Need a hybrid alternative
Facilities	Health and wellness facility for Ho'oponopono, with a preference for beneficiaries and 'ohana.	Need to work with NPS to identify areas for adaptive reuse.



Subject	Question/Comment/Suggestion	Response/Key point
Access	Need assurances of access for traditional practices - people being ticketed for surfing. Too limited now.	Restrictions on surfing are at the request of the Patient Advisory Council.
Access	There should be programs for homesteaders to grow taro in the valleys.	DHHL will work with NPS and DLNR to investigate ag & access options
Access	There needs to be more access and use of lands by beneficiaries outside of settlement area.	DHHL can work on an MOU w/NPS to ensure access.
Access	Want to walk this land, eat from the land. Must continue to restore, not just to look at it.	DHHL will work with NPS and DLNR to investigate ag & access options
Access	I really want to be able to surf down there - it's practicing my culture.	DHHL can work on an MOU w/NPS to ensure access.
Access	If surfing is allowed, it can't be commercial - has to be spiritual, pono.	DHHL to work with NPS to address this issue at transition. May be limited to a purely traditional practice.
Access	Priority for access - Kalaupapa 'ohana, all heirs and descendants.	Create Visitor Categories
Access	100 visitors max, not to include beneficiaries, Molokai residents, etc. 300 total.	Maintain visitor cap. Need a hybrid alternative
Access	Need a process for Molokai homesteaders to reserve a time to visit Kalaupapa.	DHHL to work w/NPS to develop access program
Native Hawaiian	We have a trust obligation to protect these lands and their history. Our rights are being ignored by NPS - we need DHHL to advocate.	Recognize traditional gathering rights
Native Hawaiian	Section 106 consultation not following correct process. Need more consultation.	Section 106 Consultation Inadequate

Subject	Question/Comment/Suggestion	Response/Key point
Native Hawaiian	Section 106 phone consultation too difficult - hard to participate.	Section 106 Consultation Inadequate
Native Hawaiian	Draft GMP does not discuss Article 12 Section 7 of State Constitution.	Recognize traditional gathering rights
Native Hawaiian	Need a cooperative agreement, Task Force to reestablish traditional Native Hawaiian way of life in backside valleys.	DHHL supports this idea and will discuss with NPS
Native Hawaiian	NPS needs to make a formal agreement with DOI and N/native Hawaiians, like with Umatilla Tribe.	DHHL to work with NPS on a Cooperative Agreement or MOU
Native Hawaiian	Need to use Section 106 process to raise issues.	
Native Hawaiian	Hire native Hawaiian cultural consultants now to share pre-settlement history	Employment & training opportunities
Native Hawaiian	US recognizes rights of indigenous people - advice and consent. Law of the land - they have to consult.	Recognize traditional gathering rights
Native Hawaiian	OHA could represent all Hawaiians. Talk to their policy analysts.	DHHL to meet with OHA staff.
Native Hawaiian	DHHL and OHA need to be partners in protecting our rights.	Recognize traditional gathering rights
Visitor Experience	Need to have a really good briefing and staging area.	Plan includes mandatory orientation on general rules
Visitor Experience	Also need orientation topside, but tell story of Molokai, not just Kalaupapa. Include history of homesteading.	DHHL can work w/NPS to develop educational content on homesteading.
Visitor Experience	Keep it a cultural place for our people. Without the pre-settlement history, there would be nothing.	Special Hawaiian Place

## CONCLUSIONS AND NEXT STEPS

The National Park Service has considered and responded to a number of comments from beneficiaries and DHHL in the Draft GMP. However, there are some significant comments that have not yet been clearly addressed or responded to. The NPS has graciously allowed DHHL to have additional time to conduct Beneficiary Consultation on the Draft GMP and will accept comments from DHHL until July 15, 2015. A formal comment letter has been drafted and was submitted to NPS on July 15, 2015. (See Exhibit F)

A major area of concern expressed in the comments is the proposed expansion of park boundaries to include several North Shore valleys, which is perceived as a federal "land grab" with the potential to impede beneficiaries' ability to access resources for subsistence and traditional and customary practices. Also of major concern is the Draft GMP's overall lack of recognition of the protection of traditional and customary practices articulated in Article 12, Section 7 of the Hawai'i State Constitution, as well as the lack of recognition of the purposes of the Hawaiian Homes Commission Act and the rights of its beneficiaries to benefit from use of Hawaiian Home lands. The Section 106 consultation process is seen as being poorly managed and inadequate for the level of importance due the protection of the rights of n/Native Hawaiians.

Tied to these concerns are issues of access to DHHL lands and the desire for some kind of priority system so that beneficiaries and Kalaupapa 'ohana are not out-competed for access to Kalaupapa by the general public. There also is a strong desire for those 'ohana that were unwillingly displaced due to the creation of the Hansen's disease settlement to be supported in reconnecting to the lands of their ancestors. There is also a strong wish for the NPS to place more emphasis on the pre-settlement history and on grounding the visitor experience in a truly Hawaiian sense of place, history and culture.

There is concern that DHHL does not yet have a strong enough involvement in negotiations with NPS, DOH and DLNR regarding planning for the transition once no more patients are living in Kalaupapa. Beneficiaries have many questions and ideas about potential scenarios for the evolution of political jurisdiction, land exchanges or acquisitions, and ownership of existing structures and facilities. There are also many concerns and questions about the terms of DHHL's lease to the NPS and what happens as those terms come up for renegotiation.

Some conclusions and preliminary recommendations are that:

- Negotiations and discussions with state and federal agencies responsible for Kalaupapa be formalized by DHHL with the potential to result in Memoranda of Understanding and/or Cooperative Agreements;
- DHHL works with NPS and others toward the formation of a Task Force or Working Group focused on the transition plan and protection of rights of traditional and customary practices as requested by beneficiaries;
- DHHL staff consult with the appropriate staff at the Office of Hawaiian Affairs regarding the Draft GMP; and
- DHHL consult with the Attorney General's Office and the Department of Interior regarding potential jurisdictional changes and the potential for land exchange or acquisition.

RECOMMENDED MOTION / ACTION

Staff respectfully requests that the Hawaiian Homes Commission accept the recommended motion as stated.

**BENEFICIARY CONSULTATION  
KALAUPAPA NATIONAL HISTORIC PARK  
DRAFT GENERAL MANAGEMENT PLAN**

MAY 26, 2015 6:00 – 8:00 P.M.  
LANIKEHA COMMUNITY CENTER  
HOOLEHUA, MOLOKAI

**AGENDA**

1. INTRODUCTIONS & PULE, DINNER / MEA'AI

2. PURPOSE OF BENEFICIARY CONSULTATION

“Encourage and collect comments, input and feedback on  
Kalaupapa National Historic Park Draft General Management  
Plan”

3. DHHL BACKGROUND ON KALAUPAPA

4. PRESENTATION BY NATIONAL PARK SERVICE STAFF

5. EXERCISE: “I LIKE” / “I WISH” / “WHAT IF”

6. OPEN DISCUSSION

7. PAU

\*For more information or if you have questions, please contact Nancy  
McPherson, Planner, DHHL Planning Office by phone at (808) 620-9519 or by  
email at [nancy.m.mcpherson@hawaii.gov](mailto:nancy.m.mcpherson@hawaii.gov)

TO: U.S. Department of the Interior National Park Service

FR: Blossom Feiteira  
President, Association of Hawaiians for Homestead Lands

RE: KALAUPAPA NATIONAL HISTORICAL PARK  
DRAFT GENERAL MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT  
STATEMENT

Aloha;

My name is Blossom Feiteira and I serve as the President of the Association of Hawaiians for Homestead Lands (AHHL). We are an advocacy organization created to assist beneficiaries of the Hawaiian Homes Commission Act who are currently waiting for an award to trust lands. In addition, I am a beneficiary of the Hawaiian Homes Commission Act and a descendant of a demised resident of Kalaupapa.

Thank you for the opportunity to provide my comments and recommendations on the Draft General Management Plan and Environmental Impact Statement for Kalaupapa National Historical Park.

Your document provides four alternatives, of which the National Park Service (NPS) identifies a preferred alternative; that is Alternative C.

After careful consideration and research into existing federal legislation, rules and Executive Orders, I find some concern in all of the alternatives except alternative A.

In general, the National Park Service provides the general community with opportunities to experience nature in a way that is educational, safe and environmentally friendly. It also has a distinct purpose to its existence, that is to provide protection and management of natural areas that are unique. The National Park Service System currently has 407 different areas under the NPS system across the continental U.S. Alaska, Atlantic and Pacific accommodating over 292 million visitors in 2015 alone. Kalaupapa, in it's entirety, represents one small park that is made up of lands and shoreline that encompasses thousands of acres. However, the National Park itself is exceedingly small; less than 25 acres. Of the acres under management agreements, leases and memorandums, the NPS have established relationships with state agencies and private property owners.

As a beneficiary of the Hawaiian Homes Commission Act, and as the President of an organization working with other beneficiaries, priority concern are those lands currently in trust under the Hawaiian Homes Commission Act. Administered by the State of Hawaii's Department of Hawaiian Home Lands, approximately 1,472 acres establishes its presence in Kalaupapa. Contained within the settlement area and at

Pala`au State Park, these trust lands have played an important role in the care and consideration for the residents of Kalaupapa and their kokua.

The presence of the Hawaiian Home Lands was noticeably silent in all of the alternatives except Alternative C – Preferred Alternative. In that presentation, the NPS states their opposition to any homesteading activity, as, according to comments received during your scoping sessions, homesteading activities are not in keeping with the purpose and intent of the NPS.

I would disagree with your assumptions. As a long time participant of planning efforts of the DHHL, there have been areas of homesteading that required a different approach to homesteading opportunities including the adoption of rules establishing a new waitlist, creation of new homesteading programs, and partnerships with beneficiary based organizations to develop alternative energy, self help housing programs and education and outreach opportunities. Kalaupapa, by its history and legacy can lead to a type of homesteading opportunity that would not only provide the NPS with needed manpower for resource management, but provide opportunities to preserve the legacy that are the memories of the residents. In addition, many beneficiaries are themselves descendants of residents, many of whom were taken away at birth. Their realization that their parents or grandparents were taken to Kalaupapa now compel them to participate in any planning process that will potentially allow them the opportunity to provide care and management of their family's final resting place, and to preserve the place in their memories.

Rather than dismiss homesteading as compatible with the plans for Kalaupapa, NPS should actively work with the DHHL and its beneficiary base for the development of a unique homesteading program for Kalaupapa. DHHL has, in the past, provided for the development of rules and policies that would better serve and address the unique circumstances of homesteading opportunities, including establishing a new wait list, and a new homesteading program.

There is a very unique community "top side" of Moloka`i, many of whom are beneficiaries. In addition to these beneficiaries being on the DHHL waitlist, many of them are also life-long traditional resource management practitioners, carrying the knowledge of their ancestors for generations.

In the plans for resource management at Kalaupapa, having access to this "ancient" knowledge provides the NPS with a very unique opportunity to incorporate these practices in the overall management plan for Kalaupapa. From shoreline management to fisheries, to forestry, wildlife and water management techniques, the people of Moloka`i have long put these philosophies into practice and are recognized statewide as the most active traditional practitioners in the state.

As required by P.L. 96-565, NPS is required to do three things: 1) provide residents first and native Hawaiians with the second right to refusal for economic

opportunities; 2) provide both with employment opportunities; and 3) to provide training for employment opportunities, however nowhere in your document do you outline how the NPS will implement this part of the enabling legislation.

The National Park Service in Kalaupapa is bound by this law to do this. Since your preferred alternative provides for additional staff, it would seem that the NPS currently has or will have a plan to provide these opportunities as they arise. I would recommend that, as part of the GMP, that NPS begin the process to develop that action strategy. It would seem that a marriage of some sort between the NPS and beneficiaries would be beneficial to all concerned.

In regards to statements made in your GMP regarding your lease agreement with DHHL and the costs that may be associated with the departure of NPS, \$40,000,000 seems a bit overreaching, since the NPS association with Kalaupapa has been in place since 1980. To say that DHHL will have to pay for the improvements made by NPS at the stated costs, do not take into consideration the 30 years of your presence there and your use of the same improvements, nor does it take into consideration the years of depreciation.

I believe that there can be a co-existence between the beneficiaries of the HHCA and NPS. More work needs to be done to solidify this relationship.

Another priority concern is the emphasis in the plan for providing for the visitor experience, found in great detail in Alternatives C and D.

At its current state, visitors must be sponsored by a resident, Department of Health (DOH) or the NPS. Visitors are limited to no more than 100 per day, with no visitors under the age of 16 years of age.

Recommendations found in Alternatives C and D provide no specific information on number, only that access would be managed based on policy. Yet, according to the EIS portion of your document, your "pillow count" and housing opportunities, utilities and maintenance needs will allow for a maximum of up to 300 visitors per day.

With the priority for maintaining the environment, ambience, legacy and archaeological sites of Kalaupapa, the recommendations found in Alternatives C and D would be in opposition to your statement. With a vague allusion to the management of visitor numbers based on some management policy not stated in this document, I am led to understand that while there is no minimum, there is certainly a maximum, which, given the propensity to allow for unescorted access would most certainly lead to a systematic degradation of the resources and environment. For, as much as you will purport that education will be provided through orientation activities, and a pass system will be put in place, unescorted access will lead to a casual violation of the restrictions and limitations you may put



in place. Without enforcement in place to ensure compliance, you will find visitors who come for the experience will not adhere to the rules you put in place.

While you have confidence in your ability to engage your visitors in the importance of the place, in my experience, it's those places that create the desire to "go" in an area considered off limits to "see what else is out there".

As the Executive Director of a non-profit cultural preservation organization, I see continuous occurrences when it comes to treasure hunters and "new age" practitioners seeking out special places and items that may convey the spirit of a sacred place.

Secondly, to lift the age limit also presents a potential conflict.

The existing age restrictions may be past its usefulness, as the reason for its implementation no longer exists. However, to allow for children under the age of 16, may present problems. Living in a "tourist destination" provides an insight into how our visitors manage their children, which to our chagrin, does not often happen. Children, just cannot be contained for very long, particularly in an open area, where they can run. In addition, with its cliff sides, trees, cemetery, trails and "rock piles", Kalaupapa provides a temptation that is difficult if not impossible to deny, and presents a very likely scenario for injury. Again, first hand experience with visitors who allow their children to "try" and scale trees, climb an alter or run around in an open space is a natural inclination for the parents to allow. After all, they are on vacation.

There needs to be a limitation of the number of visitors to Kalaupapa. The current limitation of 100 visitors per day should be adhered to, with an age limitation under the age of 12 years of age.

Secondly, there must not be unescorted access into any area of Kalaupapa. Escorts should be provided either with NPS staff or through a Cooperative Agreement with a beneficiary organization or another non-profit partner.

In deference to the families of the residents, there should be at least one weekend each month set aside for families of the residents to attend to their ancestor's final resting place, celebrations and gatherings with no visitors allowed. While the opportunities for overnight visits are allowed now, those overnight visits should also include the descendants during their time at Kalaupapa, and should be part of any activities that would involve restoration, clean up or other activities where additional manpower is needed.

And finally, it is disturbing to see that the work and participation of Ka Ohana O Kalaupapa has been minimized to an extent that they have. After reviewing the document, they are not even listed as a consulting party to the draft plan, and was not afforded any recognition for the last 13 years of intensive work in outreach and

education. As their primary objective was to advocate for the interests of the residents, it is an insult that the organization was treated in such a manner. The work they have accomplished to date has been exemplary, the respect and aloha they have shown to the residents is unquestionable, and their willingness and desire to work with the NPS in the preservation of Kalaupapa is by any measure, outstanding. Yet, the DGMP and EIS chose to not include their commitment and dedication and instead, opts to appropriate their work and assume it as a new introduction of work that the NPS will implement.

The NPS should as a matter of efficiency, focus their efforts on the preservation of Kalaupapa and work with Ka Ohana O Kalaupapa in the area of education and outreach. You are able to do so through either a Programmatic Agreement (PA) or a Cooperative Agreement (CA). This partnership will enable the NPS to garner the much needed community support in your efforts to retain the physical and spiritual environment that is Kalaupapa, expand your ability to share the history of the place, and most importantly for AHHL, to preserve the memories of the residents of this very special place.

In closing, even with the stated concerns, Alternative C is an option that most addresses the management issues that NPS has faced these many years. However, the concerns stated here while applicable in all of the alternatives, they are also most prevalent in Alternative C. As a result, while you are working on the development of the final document, please consider these recommendations.

AHHL extends its appreciation for allowing us to submit our comments on the Kalaupapa National Historic Park Draft General Management Plan and Environment Impact Statement.

Mahalo ia oukou,

/s/

Blossom Feiteira

President

Association of Hawaiians for Homestead Lands

WALTER RITTE  
HUI HO‘OPAKELE ‘ĀINA  
PO BOX 486  
KAUNAKAKAI, MOLOKAI, HI 96748

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June 8, 2015

General Management Plan  
Attn: Erika Stein Espaniola, Superintendent  
Kalaupapa National Historical Park  
P.O. Box 2222  
Kalaupapa, Hawaii, 96742

RE: Comments on the Draft General Management Plan /Environmental Impact Statement for the  
Kalaupapa National Historical Park

Aloha Superintendent Espaniola:

Pursuant to the National Historic Preservation Act (“NHPA”)<sup>1</sup>, The National Environmental Policy Act (“NEPA”)<sup>2</sup>, and the Hawai‘i Environmental Policy Act (“HEPA”)<sup>3</sup>, this letter comments on the Draft General Management Plan/Environmental Impact Statement (“Draft GMP/EIS”)<sup>4</sup> for Kalaupapa National Historic Park (“Kalaupapa NHP”). These comments are on behalf of Hui Ho‘opakele ‘Āina (“Hui”), a hui of Molokai community members who are committed to preserving and protecting the cultural and environmental resources of Molokai.

*“It is good for people to remember who were there before us.”*  
- Peter Keola Jr., 82, who was sent to Kalaupapa in 1940<sup>5</sup>

The patients who were sent to the Kalaupapa peninsula because of government policies regarding Hansen’s disease “deserve to be remembered.”<sup>6</sup> Theirs is a story of courage, perseverance, and ultimate sacrifice. However, it is not the only story. Generations of Hawaiian families called Kalaupapa their home more than 800 years before the first Hansen’s disease

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<sup>1</sup> 300 C.F.R. 800.2(d)(2).

<sup>2</sup> 40 C.F.R. 1503.1(a)(4).

<sup>3</sup> 11 H.R.S. 11-200-91.

<sup>4</sup> DRAFT GENERAL MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT, KALAUPAPA NATIONAL HISTORIC PARK (2015) (“GMP/EIS”).

<sup>5</sup> THE KALAUPAPA MEMORIAL, KA ‘OHANA O KALAUPAPA,  
<http://www.kalaupapaohana.org/monument.html> (last visited May 28, 2015).

<sup>6</sup> See *id.*, quoting Cathrine Puahala, 80, international advocate for the rights of people affected by leprosy; Mrs. Puahala was sent to Kalaupapa at the age of 12 in 1940.

# Hui Ho‘opakele ‘Āina’s Comment Letter Regarding Kalaupapa NHP’s GMP/EIS

June 3, 2015

Page 2 of 20

patient was cast into the sea and forced to take refuge upon its shores in 1866.<sup>7</sup> “The peninsula and the adjacent valleys supported a large population” and was well known for its abundant crops, fishing grounds, salt deposits, and unique plants.<sup>8</sup> Archaeological evidence tells us that Kalaupapa served as a “garden paradise” to Hawaiians, and “wall after wall after wall” of agricultural gardens still remain as evidence.<sup>9</sup> Molokai was then known as an island of ‘āina momona,<sup>10</sup> producing enough surplus food to feed neighboring islands. Today, Kalaupapa is an “alien landscape . . . with alien plants,” but beneath this alien landscape lays the rich cultural landscape created by Hawaiians.<sup>11</sup> Theirs is also a story that deserves to be remembered. As the last chapter in the story of Kalaupapa as a haven for Hansen’s disease patients draws to an end, a new story must inevitably begin. This story should continue with Hawaiians cultivating the land and returning it to its former abundance as a place of ‘āina momona.<sup>12</sup> Molokai should once again become a land of plenty, enabling Hawai‘i to enjoy long-term environmental sustainability, self-sufficiency and food sovereignty in the future.<sup>13</sup>

The National Park Service (“NPS”) released the Draft GMP/EIS in April 2015 for public comment in accordance with the NHPA Section 106 Process.<sup>14</sup> Four potential plans (A, B, C, and D) are presented in the Draft GMP/EIS.<sup>15</sup> This comment letter will primarily address the impacts of the Draft GMP/EIS’s preferred Plan C (“Plan C”).

Hui Ho‘opakele ‘Āina agrees with the overall purpose of the GMP to care for the Kalaupapa Settlement area, to remember the Hansen’s disease patients, and to preserve and respect the legacy of the patients and those who cared for them. The Hui, however, strongly opposes any boundary expansion (hereinafter, called the “Expansion”) of parklands. Plan C’s expansion of the park’s boundaries calls for a 148% increase in Kalaupapa’s park acreage. These expansion plans should be completely severed from the GMP/EIS. All comments and analysis are in light of this proposed boundary Expansion.

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<sup>7</sup> Videotape: Kalaupapa Archaeology (Clap Productions, Arizona Memorial Museum Association 1997) (on file with the Wong Audiovisual Center, University of Hawaii at Manoa) (“Kalaupapa Videotape”).

<sup>8</sup> *See id.*

<sup>9</sup> *See id.*, quoting Earl “Buddy” Neller, Archaeologist, Kalaupapa National Historical Park.

<sup>10</sup> ‘Āina momona: literally “fat land”; an abundant land, or land of plenty; Molokai was known as the land of “fat fish and kukui nut relish,” Claire Gupta, *Food Sovereignty: A Critical Dialogue*, YALE UNIVERSITY AGRARIAN STUDIES, Sept. 14-15, 2013 at 5, [http://www.yale.edu/agrarianstudies/foodsovereignty/pprs/70\\_Gupta\\_2013.pdf](http://www.yale.edu/agrarianstudies/foodsovereignty/pprs/70_Gupta_2013.pdf) (last visited May 30, 2015).

<sup>11</sup> Kalaupapa Videotape, *supra* note 5.

<sup>12</sup> *See* GUPTA, *supra* note 10.

<sup>13</sup> *See id.*

<sup>14</sup> National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq.

<sup>15</sup> DRAFT GMP/EIS, *supra* note 4 at 104.

# Hui Ho‘opakele ‘Āina’s Comment Letter Regarding Kalaupapa NHP’s GMP/EIS

June 3, 2015

Page 3 of 20

For reasons detailed below, the Expansion is legally deficient under federal and Hawai‘i state laws; it neglects to follow federal and state laws that protect the interests of Native Hawaiian traditional and customary rights, as well as the rights of Molokai residents. The NPS should cultivate a real partnership relationship between the Department of Hawaiian Home Lands (“DHHL”) and the Office of Hawaiian Affairs (“OHA”) to develop a living, sustainable Integrated Resource Management Zone (“IRMZ”) where DHHL beneficiaries and other native Hawaiians may practice traditional and cultural farming and food production.

## 1. The Draft GMP/EIS is Legally Deficient Under Federal and Hawai‘i State Laws.

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Over a hundred federal laws<sup>16</sup> and Hawai‘i state laws are applicable to the NPS, and several are noteworthy and especially pertinent to the Draft GMP/EIS.

## 2. The Draft GMP/EIS Fails to Meet the Full Requirements under the National Environmental Policy Act and Hawai‘i Environmental Policy Act Requirements.

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The National Environmental Policy Act (hereinafter, “NEPA”)<sup>17</sup> established national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies.<sup>18</sup>

If the environmental consequences of a proposed federal undertaking may significantly affect the quality of the environment, an Environmental Impact Statement (“EIS”) must be prepared.<sup>19</sup> The Draft GMP/EIS properly concludes that the Kalaupapa NHP triggers NEPA and should comply with NEPA requirements.

## 3. NPS Failed to Integrate HEPA in The NEPA Planning Process.

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Federal agencies “shall integrate the NEPA process with other planning at the earliest possible time to ensure planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”<sup>20</sup> The NPS failed to integrate the Hawai‘i Environmental Policy Act (“HEPA”)<sup>21</sup> process and requirements into its NEPA process.

The specific HEPA triggers involved here is a proposed action that involves (1) the use of state or county lands, (2) any use within any land classified as conservation district, (3) any use

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<sup>16</sup> DRAFT GMP/EIS, *supra* note 4: Appendix B 349-350.

<sup>17</sup> National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (2015).

<sup>18</sup> National Environmental Policy Act, U.S. Environmental Protection Agency, <http://www.epa.gov/compliance/basics/nepa.html> (last visited May 30, 2015).

<sup>19</sup> 40 C.F.R. § 1502.3.

<sup>20</sup> 40 C.F.R. § 1501.2.

<sup>21</sup> Hawai‘i Environmental Policy Act, H.R.S. § 343.

within a shoreline area, and (4) any use within any historic site as designated in the national register or Hawaii register. The Draft GMP/EIS involves these triggers, the NPS must integrate HEPA in the NEPA planning process. When actions are subject to both NEPA and HEPA, then cooperation amongst the appropriate federal and state agencies is expected in order to comply with both HEPA and NEPA requirements under one document.”<sup>22</sup>

Although HEPA was patterned after NEPA and its process and requirements substantially mirror those of NEPA, state law provides an additional requirement that is not present in NEPA. Namely, HEPA mandates submittal of a Cultural Impact Assessment (hereinafter, “CIA”) as part of the environmental review process.<sup>23</sup> The Hawai‘i Environmental Council promulgated Guidelines for Assessing Cultural Impacts (hereinafter “Cultural Guidelines”) as part of the environmental review process to promote “responsible decision making.”<sup>24</sup> These Cultural Guidelines provide a framework for agencies to ensure that their actions comport with the constitution, statutory laws, and court decisions that protect traditional and customary rights in Hawai‘i (hereinafter, “T&C Rights”).

T&C Rights are guaranteed under the Hawai‘i State Constitution (“Hawai‘i Constitution”), statutes, and court decisions. The Hawai‘i Constitution reaffirms T&C Rights in Article XII, Section 7:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Hawai‘i Revised Statutes (“HRS”) section 1-1 instructs Hawai‘i’s courts to look to English and American common law decisions for guidance, except where they conflict with “Hawaiian judicial precedent, or . . . Hawaiian [custom and] usage” pre-dating 1892.<sup>25</sup> Courts look to kama‘āina expert testimony as the foundation for authenticating Hawaiian custom and usage.<sup>26</sup> HRS section 7-1 states:

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<sup>22</sup> H.R.S. § 343-5(h).

<sup>23</sup> 2000 Haw. Sess. Laws Act 50.

<sup>24</sup> Guide to the Implementation and Practice of the Hawai‘i Environmental Policy Act (2012), Office of Environmental Quality Control 2, [http://oeqc.doh.hawaii.gov/Shared%20Documents/Misc\\_Documents/Guide%20to%20the%20Implementation%20and%20Practice%20of%20the%20HEPA.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/Misc_Documents/Guide%20to%20the%20Implementation%20and%20Practice%20of%20the%20HEPA.pdf) (last visited June 1, 2015).

<sup>25</sup> H.R.S. § 1-1; *State v. Zimring*, 52 Haw. 472, 475 (1970) (citing *De Freitas v. Trustees of Campbell Estate*, 46 Haw. 425, 380 P.2d 762 (1963)).

<sup>26</sup> This was first discussed in *Application of Ashford* which relied on “reputation evidence” of a kama‘āina, native person who was most familiar with the land, over a shoreline boundary dispute rather than accept the conclusions of a certified land surveyor. *Application of Ashford*, 50 Haw. 314, 440 P.2d 76 (1968).

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.<sup>27</sup>

Hawai‘i courts have clarified T&C Rights in light of the above constitutional and statutory provisions. The court has found that Hawaiian T&C rights are protected on undeveloped lands.<sup>28</sup> The court has acknowledged that traditions exercised on “less than fully developed” lands might also warrant protection.<sup>29</sup> Most, if not all, of the land of the proposed Expansion area are undeveloped or less than fully developed lands. Kama‘āina families access these lands for traditional subsistence activities and access to important cultural sites.

In *Pele Defense Fund v. Paty* (“Pele I”), the Hawai‘i Supreme Court held that T&C Rights to gather may extend to other ahupua‘a without benefit of tenancy if it can be demonstrated that this was the accepted custom and long-standing practice.<sup>30</sup> The court gave great weight to kama‘āina evidence and acknowledged “traditional and customary rights associated with tenancy in an ahupua‘a may extend beyond the boundaries of the ahupua‘a.”<sup>31</sup> Similar to the testimony and affidavits submitted in Pele I, several kama‘āina in the Hui utilize the North Shore to gather hihiwai and ‘o‘opu, and to engage in fishing, hunting, and gathering.

In *Ka Pa‘akai* the court held that agencies have “statutory and constitutional obligations” to Native Hawaiians and one of those obligations is “to protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible.” It also mandated that state agencies must make an independent assessment regarding the potential impact of proposed actions on T&C practices in order to meet constitutional and statutory obligations to Native Hawaiians.<sup>32</sup> The three factors that agencies must consider when making these assessments are:

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<sup>27</sup> H.R.S. § 7-1.

<sup>28</sup> *Kalipi v. Hawaiian Trust Co.*, 66 Haw 1, 9, 656 P.2d 745, 750 (1982).

<sup>29</sup> *Public Access Shoreline Hawaii v. Hawai‘i County Planning Commission*, 79 Hawai‘i 425, 451, 903 P.2d 1246, 1272.

<sup>30</sup> *Pele Defense Fund v. Paty*, 73 Haw. at 620-21, 837 P.2d at 1272.

<sup>31</sup> *See id.*

<sup>32</sup> *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Hawai‘i 31, 7 P.3d 1068, 1083 (2000).

- “(A) The identity and scope of ‘valued cultural, historical, or natural resources’ in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- (B) The extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and
- (C) The feasible action, if any, to be taken ... by the [State and/or its political subdivisions] to reasonably protect native Hawaiian rights if they are found to exist.”<sup>33</sup>

These factors, also known as the “Ka Pa‘akai framework,” are applicable to any State action affecting T&C Rights and practices, including those exercised by members of the Hui on the North Shore. Plan C fails to assess these factors in light of the Expansion. The NPS must coordinate with state agencies to complete a sufficient assessment.

In today’s modern society, access to traditional trail systems continues to be protected as a T&C Right. An implied dedication of a public right-of-way is established when there is intention and an act of dedication by the property owner, and an acceptance by the public.<sup>34</sup> The public trust doctrine also protects access along trails that run over government and private property. For trails that intersect with government property the State is required to establish rights-of-way across public lands to allow public access to beaches, game management areas, public hunting areas and forests. The Hawai‘i Constitution expands the public trust doctrine for Native Hawaiians in order to protect the exercise of their T&C Rights for subsistence, cultural and religious purposes. Members of the Hui have identified traditional trail systems that they have accessed for subsistence, cultural and religious purposes.

Plan C fails to acknowledge Native Hawaiians’ T&C Rights to gather resources, hunt, fish, and access traditional trail systems within the lands of the Expansion, and states that “[g]uidelines and/or a permit process have not yet been established for subsistence plant collecting or gathering plant materials for cultural use . . . . [v]isitors are prohibited from gathering plants within the park.”<sup>35</sup> Plan C states that the land “could be managed as a Preserve whereby traditional hunting, fishing, and collection would be allowed in accordance with State of Hawai‘i rules and regulations.”<sup>36</sup> However, following constitutional and statutory laws are not optional endeavors. The NPS must allow Hawaiians to exercise their T&C Rights to hunt, fish, gather, and access natural and cultural resources within the Kalaupapa NHP and the Expansion area.

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<sup>33</sup> *See id.*

<sup>34</sup> *The King v. Cornwell*, 3 Haw. 154, 161 (1869).

<sup>35</sup> DRAFT GMP/EIS, *supra* note 4 at 82.

<sup>36</sup> *See id.* at xxiii.



The GMP/EIS’s failure to recognize T&C Rights of Hawaiians creates a potential risk of a future lawsuit if Native Hawaiians are denied their constitutional and statutory rights. The NPS and any state agencies that it partners with in the future should look to the state Cultural Guidelines to assess how Plan C and the Expansion in particular will impact T&C rights and practices.

4. Purpose and Need for the Expansion is Not Given.

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The NPS is required to state the purpose and need for a proposed action in the EIS.<sup>37</sup> Although the Draft GMP/EIS states the purpose and need for a plan for the existing Kalaupapa NHP park boundaries, it does not state the purpose and need for the Expansion.

The Draft GMP/EIS states that the plan objectives are to: develop the purpose, significance, and interpretive themes; describe any special mandates; clearly define desired resource conditions and visitor uses and experiences; provide guidance for NPS managers; and ensure that the plan was developed in consultation with the public and interested stakeholders.<sup>38</sup> None of these adequately explain the purpose for the Expansion.

The Draft GMP/EIS states under the “Need for the Plan” section that the plan is necessary to guide the change in management direction once Kalaupapa has completed service to the last Hansen’s disease patients; cultural and natural resource management; future visitor use; issues regarding law enforcement jurisdiction; facilities preservation, maintenance, and construction; transportation and access; and future partnerships. None of these adequately explain the need for the Expansion.

The sub-section titled “Boundary Issues” under the “Need for the Plan” section states the need for future leases and cooperative agreements between the NPS, DHHL, Department of Land and Natural Resources (“DLNR”), Department of Health (“DOH”), Department of Transportation (“DOT”), and other religious and private entities.<sup>39</sup> Only one paragraph in this sub-section refers to the Expansion:

In 2000, the NPS completed a boundary study of the North Shore Cliffs on Molokai as a requirement of Public Law 105-355, entitled “Studies of potential national park system units in Hawai‘i” enacted on November 6, 1998. The study determined that the area met both suitability and feasibility standards for inclusion in the NPS system.<sup>40</sup>

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<sup>37</sup> 40 C.F.R. § 1502.13.

<sup>38</sup> DRAFT GMP/EIS, *supra* note 4 at 29.

<sup>39</sup> See *id* at 33.

<sup>40</sup> See *id* (emphasis added) (note added).

The Draft GMP/EIS also refers to two other studies pertinent to the Expansion: Kalaupapa Settlement Boundary Study Along the North Shore to Hālawā Valley, Molokai (“North Shore Study”) and the Study of Alternatives—Hālawā Valley, Molokai (“Hālawā Study”), both completed in 2000. The Draft GMP/EIS summarizes these studies:

Both studies surveyed and analyzed the area’s natural and cultural resources and determined that they are of national significance. It was determined that management by the NPS and designating these areas as part of the national park system would provide the most effective long-term protection of the area and provide the greatest opportunities for public use. The recommended areas would complement and enhance the Draft GMP/EIS’s legislated purpose “to research, preserve, and maintain important historic structures, traditional Hawaiian sites, cultural values, and natural features” (Public Law 95-565, Sec. 102).

The NPS’s purpose and needs for the plan appear to be: 1) the Expansion area meets suitability and feasibility standards for inclusion in the NPS system; 2) the Expansion area’s natural and cultural resources are of national significance; 3) NPS management will provide the most effective long-term protection; and 4) NPS management will provide the greatest opportunities for public use.

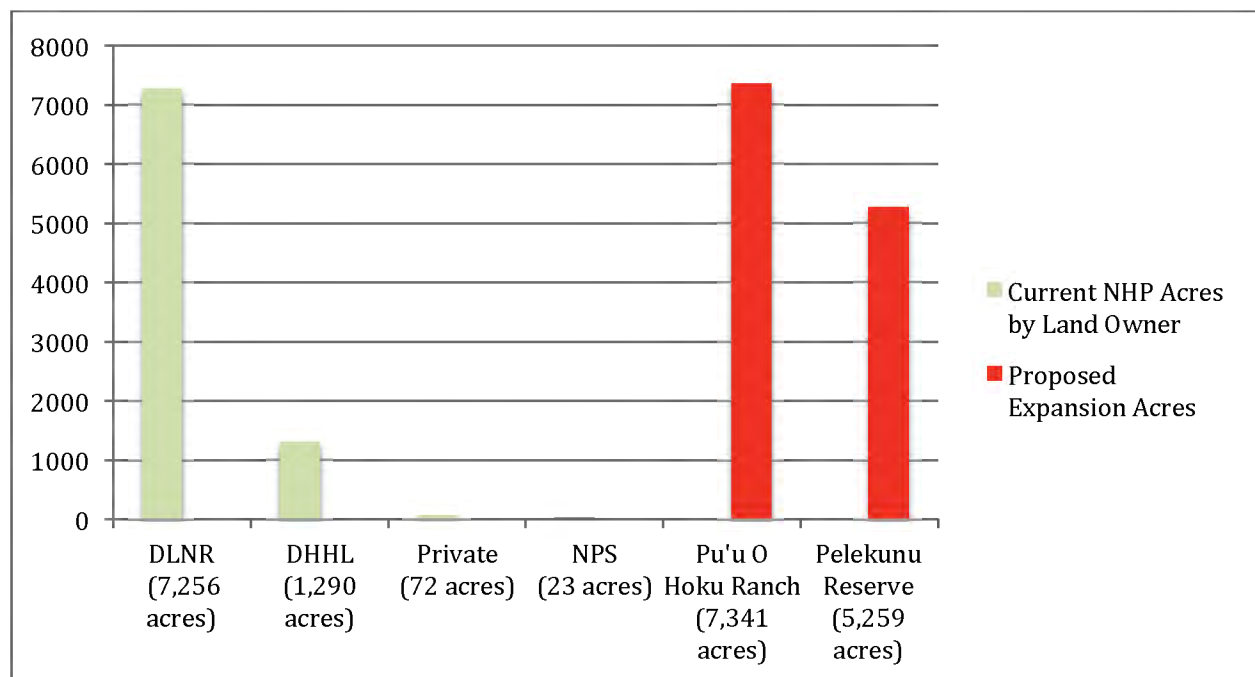
The purpose and needs are not sufficient to justify the Expansion. Just because an area meets suitability and feasibility standards for inclusion in the NPS system does not mean that the area must or should be included. Much of the undeveloped land in Hawai‘i would likely meet the suitability and feasibility standards for inclusion, but it would be impractical and absurd for the NPS to attempt to acquire all of the areas in Hawai‘i that do.

The Hālawā and North Shore studies correctly concluded that the Expansion area contains natural and cultural resources of national significance, but the Draft GMP/EIS fails to state whether the studies found any threat to those resources. Without providing any proof of a threat or immediate danger to the natural and cultural resources, the finding of cultural and natural resources in an area is not sufficient for the NPS to include that area in its jurisdiction. Much of the undeveloped land in Hawai‘i would likely be found to contain natural and cultural resources of national significance, but it would be impractical and absurd for the NPS to attempt to acquire all of the areas in Hawai‘i that do.

Plan C fails to state why NPS management would provide the most effective long-term protection. The Molokai community and members of the Hui have always worked diligently to protect not only the Expansion area, but also the entire island of Molokai from developers and government actions that would have caused damage to natural and cultural resources. The NPS’s conclusion that it would stand as a better protector of Molokai than the Molokai community and the Hui is offensive. The Molokai community has diligently and passionately guarded its island from destruction of its natural and cultural resources for generations. No one is better suited and qualified to mālama (care for) Molokai than the people of Molokai.

Much of the Expansion area is not currently open to public use, and there is no need for the public to have access to it. It is accessed by individuals exercising their T&C Rights and by Molokai residents who hunt, fish, and gather food for their families’ subsistence. Allowing public access to the Expansion area is counter-intuitive and would not provide sufficient protection of the natural and cultural resources.

The Expansion is over-reaching and unnecessary. The NPS can successfully fulfill its purpose and provide adequate protection and preservation to the existing Kalaupapa NHP without the Expansion. The Expansion would result in a 148% increase in the park’s boundaries, giving the NPS jurisdiction over a total of 21,635 acres. The NPS, however, owns merely 23 acres on Molokai, making it the smallest landowner of Kalaupapa NHP by far.



The Expansion is a remarkably over-reaching land-grab in light of the upcoming end of NPS’s lease and the NPS’s dwarfed landownership share.

None of the above purposes and needs stated in the Draft GMP/EIS sufficiently justify the Expansion. The NPS should make the findings of both the Hālawā and the North Shore Studies available to the public for comment and consultation. The Draft GMP/EIS’s failure to state a sufficient purpose and need for the Expansion constitutes a violation of NEPA.

#### 5. Environmental Justice was Improperly Ruled Out as an Impact Topic.

Executive Order 12898 (“EO”) directs each Federal Agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations,” including native

populations.<sup>41</sup> The accompanying Presidential Memorandum (“Memo”) emphasizes the importance of using the NEPA review processes to promote environmental justice.<sup>42</sup> The Memo directs federal agencies to analyze the environmental effects, including human health, economic, and social effects, of their proposed actions on minority and low-income communities when NEPA requires an EIS to be completed. Environmental justice issues may arise at any step of the NEPA process and agencies should consider these issues at each and every step of the process.<sup>43</sup>

In light of Executive Order 12898, the Council on Environmental Quality issued guidelines requiring federal agencies to consider six factors to determine any disproportionately high and adverse human health or environmental effects to low-income, minority, and tribal populations. The principles are: (1) consider the composition of the affected area to determine whether low-income, minority or Tribal populations are present and whether there may be disproportionately high and adverse human health or environmental effects on these populations; (2) consider relevant public health and industry data concerning the potential for multiple exposures or cumulative exposure to human health or environmental hazards in the affected population, as well as historical patterns of exposure to environmental hazards; (3) recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed action; (4) develop effective public participation strategies; (5) assure meaningful community representation in the process, beginning at the earliest possible time; (6) seek Tribal representation in the process.<sup>44</sup> The Draft GMP/EIS did not provide any explanation or analysis of its consideration of the above six factors.

Provisions of the Clean Air Act Section 309 require the EPA Administrator to comment in writing upon the environmental impacts associated with certain proposed actions of other federal agencies, including federal actions subject to NEPA. The EPA Administrator must also ensure that the effects on minority and low-income communities have been fully analyzed.<sup>45</sup> The

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<sup>41</sup> Exec. Order No. 12898, 50 Fed. Reg. 32 (Feb. 11, 1994), <http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf> (last visited June 6, 2015).

<sup>42</sup> Presidential Memorandum of Understanding on Environmental Justice and Executive Order 12898 (Feb. 11, 1994), [http://www.justice.gov/crt/about/cor/TitleVI/080411\\_EJ\\_MOU\\_EO\\_12898.pdf](http://www.justice.gov/crt/about/cor/TitleVI/080411_EJ_MOU_EO_12898.pdf) (last visited June 6, 2015).

<sup>43</sup> FINAL GUIDANCE FOR CONSIDERATION OF ENVIRONMENTAL JUSTICE IN CLEAN AIR ACT 309 REVIEWS, U.S. ENVIRONMENTAL PROTECTION AGENCY (July 1999) [hereinafter EPA GUIDANCE], [http://www.epa.gov/compliance/resources/policies/nepa/enviro\\_justice\\_309review.pdf](http://www.epa.gov/compliance/resources/policies/nepa/enviro_justice_309review.pdf), (last visited June 6, 2015).

<sup>44</sup> ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT; COUNCIL ON ENVIRONMENTAL QUALITY (Dec. 10, 1997), [http://www.epa.gov/environmentaljustice/resources/policy/ej\\_guidance\\_nepa\\_ceq1297.pdf](http://www.epa.gov/environmentaljustice/resources/policy/ej_guidance_nepa_ceq1297.pdf) (last visited June 6, 2015).

<sup>45</sup> EPA GUIDANCE, *supra* note 43 at § 2.1.

comments must be made available to the public.<sup>46</sup> To account for potential environmental justice concerns, reviewers should be sensitive to whether affected resources, particularly natural resources important to traditional subsistence (e.g., hunting, fishing, gathering), are protected and to continue to sustain minority or low-income communities.<sup>47</sup> The analyses should be focused toward how potential effects to these resources may translate into disproportionately high and adverse human health or environmental effects on minority and/or low-income communities.<sup>48</sup>

A minority community is identified by analyzing various sources including: data provided by state, county and local agencies; civic groups; and U.S. Census Bureau geographic data.<sup>49</sup> Agencies must evaluate potential impacts on native communities located beyond the geographic boundaries of the proposed action if the area is used for spiritual or subsistence purposes.<sup>50</sup> Members of the Hui and the Molokai community are a minority community that are located beyond the geographic boundaries of the Expansion and access the area for spiritual and subsistence purposes. According to the U.S. Census Bureau, the Native Hawaiian population comprises 25.89% of the entire population on Molokai.<sup>51</sup> This is a significant percentage of the population, and supports the finding that the Environmental Justice Policy should apply to the Draft GMP/EIS.

A low-income community is identified by analyzing various sources including: U.S. Census Bureau Current Population Reports, Series P-60 on Income and Poverty; state and regional low-income and poverty definitions; and public outreach and other communication efforts that involve community members in defining their communities.<sup>52</sup> According the U.S. Census Bureau, 20.94% of the entire population on Molokai is below the federal poverty threshold, and that number rises to 24.00% for Native Hawaiian households.<sup>53</sup> This is a significant percentage of the population, and supports the finding that the Environmental Justice Policy should apply to the Draft GMP/EIS.

Once the potential for adverse effects to a minority or low-income community is identified, agencies should analyze how the environmental and health effects are distributed within the affected community.<sup>54</sup> Agencies must state how it came to the conclusion that an

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<sup>46</sup> EPA GUIDANCE, *supra* note 43 at § 2.1.

<sup>47</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.2.

<sup>48</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.2.

<sup>49</sup> EPA GUIDANCE, *supra* note 43 at § 3.0, Issue No. 1.

<sup>50</sup> EPA GUIDANCE, *supra* note 43 at § 3.0, Issue No. 1.

<sup>51</sup> This percentage was calculated from data found on the U.S. Census Bureau’s website for the four Molokai zip codes: 96770, 96729, 96757, and 96748. Raw data sets can be accessed online by entering each zip code. COMMUNITY FACTS, AMERICAN FACT FINDER, U.S. CENSUS BUREAU, [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml) (last visited June 7, 2015).

<sup>52</sup> EPA GUIDANCE, *supra* note 43 at § 3.0, Issue No. 2.

<sup>53</sup> See *supra* note 51.

<sup>54</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.3.

impact may or may not be disproportionately high and adverse.<sup>55</sup> The analysis and findings should be documented by the agency, including whether a disproportionately high and adverse health or environmental effect is likely to result from the proposed action and any proposed alternatives. Also, the EIS should identify how the action agency ensured that the findings were communicated to the public.<sup>56</sup> NEPA and the EPA require that all reasonable alternatives must be analyzed rigorously and objectively. The Draft GMP/EIS properly concluded that the Kalawao County does contain both minority and low-income communities. However, the NPS dismissed Environmental Justice as an impact topic because in its opinion it had solicited public participation; Plan C “would not result in any identified effects that would be specific to any minority or low-income population or community”; and the NPS “consulted and worked with the affected Native Hawaiian organizations and will continue to address the effects to traditional subsistence, religious, and ceremonial practice of Native Hawaiians and respond to the Hui’s and other NHO’s objections. Rather than concluding that the Expansion will have no adverse effects on a minority or low-income community, the NPS must implement mitigation measures to address those effects.

Agencies must implement mitigation measures to address effects, and “public participation efforts should be designed and conducted to ensure that effective mitigation measures are identified and that the effects of any potential mitigation measures are realistically analyzed and compared” and can include establishing a community oversight committee to monitor progress and identify potential community concerns.<sup>57</sup> The EPA may require the agency to submit to monitoring and reporting. Failure to implement effective mitigation measures may result in consequences and penalties imposed by the EPA upon the agency.

6. The Draft GMP/EIS Failed to Meet NHPA’s Section 106 Process Requirements.

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The NHPA set the federal policy for preserving our nation’s heritage and to protect it from rampant federal development, after “more than a century of struggle by a grassroots movement of committed preservationists.”<sup>58</sup> The NHPA is codified in the Code of Federal Regulations’ Protection of Historic Properties, which provides detailed measures for compliance with the requirements of the NHPA.<sup>59</sup>

When an action is deemed to be a “federal undertaking” and may affect a registered historic property or an area that would be eligible for registration as a historic property, then the “Section 106 Process” is triggered.<sup>60</sup> A federal undertaking “means a project, activity, or

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<sup>55</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.3.

<sup>56</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.3.

<sup>57</sup> EPA GUIDANCE, *supra* note 43 at § 2.3.5.

<sup>58</sup> NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, <http://www.ncshpo.org/nhpa1966.shtml> (last visited May 27, 2015).

<sup>59</sup> 36 C.F.R. § 800 (2000).

<sup>60</sup> *See id.* § 800.3.

program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.”<sup>61</sup> An effect “means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.”<sup>62</sup> Historic property “means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior . . . includ[ing] properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization (NHO) and that meet the National Register criteria.”<sup>63</sup>

The NPS is a federal agency seeking to implement the Expansion presented in the Draft GMP/EIS. The Draft GMP/EIS is a project under the direct jurisdiction of the NPS and constitutes an undertaking. The Draft GMP/EIS has the potential to cause effects on an area that contains identified historic properties and is a property of traditional religious and cultural importance to a NHOs, including the Hui. Thus, the NHPA is applicable to the Draft GMP/EIS, and must comply with the Section 106 Process requirements. The NPS has properly begun the Section 106 consultation process, and released the Draft GMP/EIS in accordance with the Section 106 Process.

The Section 106 Process requirements for federal agencies include: (1) coordination with the appropriate State Historic Preservation Officer (hereinafter, “SHPO”);<sup>64</sup> (2) soliciting public participation through appropriate notice of proposed actions;<sup>65</sup> (3) “mak[ing]” a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties;<sup>66</sup> and (4) resolving adverse effects through continued consultation “with the SHPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.”<sup>67</sup>

The Draft GMP/EIS properly concludes that “[f]or the purposes of Section 106, the entire Draft GMP/EIS is [an] area of potential effect” and that “identified historic properties within the area of potential effect [ ] may be affected by the proposed undertaking.”<sup>68</sup>

The Draft GMP/EIS shows, however, that the NPS has not adequately consulted with all the relevant NHOs to make a determination that there will be “no adverse effect” to cultural and

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<sup>61</sup> See *id.* § 800.16(y).

<sup>62</sup> See *id.* § 800.16(i).

<sup>63</sup> See *id.* § 800.16(l)(1).

<sup>64</sup> See *id.* § 800.3(c).

<sup>65</sup> See *id.* § 800.16(e).

<sup>66</sup> See *id.* § 800.16(f)(2).

<sup>67</sup> See *id.* § 800.6(a).

<sup>68</sup> DRAFT GMP/EIS, *supra* note 4 at 171.

environmental resources.<sup>69</sup> The Draft GMP/EIS determined that the effects would be either “beneficial”, “negligible”, or “minor” to: values, traditions, and practices of Traditionally Associated People (“TAP”); cultural landscapes; water resources and hydrologic processes; marine resources - coastal reef, habitats and wildlife; fishing, hunting, and gathering; wild and scenic rivers; and sustainable practices.

Because Plan C failed to meet the requirements of the Section 106 process, a follow-up alternative, amendment or addendum to the Draft GMP/EIS is necessary to determine the scope of impact on resources to the greater Molokai community.

7. Cultural Landscapes, Ethnographic Resources, and Traditionally Associated People

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The NPS defines TAP as “ethnic or occupational communities that have been associated with a park for two or more generations (40 years) . . . [and] assign[s] significance to ethnographic resources—places closely linked with their own sense of purpose, existence as a community, and development as ethnically distinctive peoples.”<sup>70</sup>

The Draft GMP/EIS identifies the patient community as the only TAP that it currently consults with. The Draft GMP/EIS briefly mentions the displacement of a Pre-Settlement Native Hawaiian Community between 1865 and 1895 that resulted in “a loss of ancestral connections to the land and a loss of cultural knowledge and traditions relating to the landscape.”<sup>71</sup> Although “NPS hopes to consult with these descendants about park resources and management,” it has not yet done so.<sup>72</sup> The NPS must make a reasonable and good faith effort to identify and consult with these descendants and include them in every step of the Section 106 process. It has failed to do so.

The lands of the Kalaupapa National Park are owned by the Department of Hawaiian Homelands (“DHHL”), and are leased to the NPS. Therefore, the DHHL beneficiaries are stakeholders in the Draft GMP/EIS, and should be recognized as a TAP, however, the Draft GMP/EIS failed to do so. The Hui believes that the DHHL is making a good faith effort to consult with the beneficiaries, however the NPS should expressly include DHHL beneficiaries as a TAP in the Draft GMP/EIS.

TAPs “include more than Indians or other groups with clear ethnic boundaries . . . [and] can be defined by occupation or lifestyle.”<sup>73</sup> In determining whether to qualify a group as a TAP,

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<sup>69</sup> See *id.*

<sup>70</sup> NATIONAL PARK SERVICE, MANAGEMENT POLICIES 2006, <http://www.nps.gov/policy/mp/policies.html> (last visited May 27, 2015).

<sup>71</sup> DRAFT GMP/EIS, *supra* note 4 at 181.

<sup>72</sup> See *id.*

<sup>73</sup> NATIONAL PARK SERVICE, PARK ETHNOGRAPHY PROGRAM, [http://www.nps.gov/ethnography/training/A\\_TAP/overview.htm](http://www.nps.gov/ethnography/training/A_TAP/overview.htm) (last visited May 27, 2015)



the NPS should focus on “peoples’ sense of place” and consider factors such as individuals’ genealogy, knowledge of place names, detailed environmental knowledge, use and stewardship of resources, and lifestyles associated with home place and identity.<sup>74</sup> The NPS must make a reasonable and good faith effort to establish who these resource users are through assessments, studies, and interviews.<sup>75</sup> The NPS’s failure to initially engage Molokai’s traditionally associated people may have broader “implications for [cultivating] long-term relationships” and result in “troublesome political repercussions” when a climate of caution results from a failure to initiate conversations earlier on.<sup>76</sup> The NPS must “assume a more aggressive, proactive form of consultation” so that TAPs and NHOs “may be heard as they are often ignored through conventional assessment methods.”<sup>77</sup>

8. NPS Failed to Engage in a Comprehensive Consultation Process and  
Negotiate a Consensus-Driven Agreement among State Actors and NHOs

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Consultation is defined as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.”<sup>78</sup> This consultation process is critical “so that a broad range of alternatives may be considered during the planning process for the [federal]undertaking.”<sup>79</sup> Here, the NPS was required to make a reasonable and good faith effort to identify all NHOs and invite them as consulting parties. This also includes individuals who may no longer live near to the project area, but have ancestral ties or associate religious and cultural significance to the area. Many of the original families that associated Kalaupapa as their ancestral home but were relocated to make way for quarantine of Hansen’s disease patients were likely not consulted in this process.

While the Draft GMP/EIS listed individuals and groups to consult with, in practice, the NPS has done little to meet the rigorous consultation requirements under Section 106, NHPA. The NPS had not adequately consulted beforehand with all relevant NHOs and TAPs to substantiate its determination in the GMP that there will be “no adverse effect” to cultural resources.”<sup>80</sup>

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*quoting* Dr. Muriel ‘Miki’ Crespi, Chief Ethnographer, Archeology and Ethnography Program, National Ctr. for Cultural Resources; some examples of TAPs are: sport fishermen in Cape Cod; gangs, nudists, pagans, and ORV users at Indiana Dunes National Park; and orchard farmers at Capitol Reef [hereinafter Ethnography Program”).

<sup>74</sup> *See id.*

<sup>75</sup> *See id.*

<sup>76</sup> *See id.*

<sup>77</sup> *See id.*, *quoting* Professor Benita J. Howell, Professor of Anthropology, The University of Tennessee.

<sup>78</sup> 36 C.F.R., § 800.16(f).

<sup>79</sup> 36 C.F.R., § 800.1(c).

<sup>80</sup> *See id.*

One member of Hui Ho‘opakele ‘Āina was informed that a recent 3-hour webinar of which one hour was taken up to describe the GMP and the two remaining hours open for Q&A sufficed to meet NPS’ Section 106 consultation obligations. That webinar was poorly attended with only a handful of private individuals and with mostly state and federal government agency representatives present.

Plan C’s Expansion includes the area known as the “North Shore” on Molokai from which many “Topside Community”<sup>81</sup> families procure certain resources that are critical to their survival and subsistence living.<sup>82</sup> The NPS has failed to work aggressively and proactively to determine who those stakeholders are, expressly include them as a TAP, and consult with them directly throughout and after all stages of the Section 106 Process. Failure to do so could damage long-term relationships with the community, and result in negative political, social, and legal consequences.

One way that the NPS must consult with the Topside Community and NHOs is through the ‘Aha Kiole o Molokai, the island’s local decision-making body which is part of the larger Statewide ‘Aha Moku Advisory Committee (“AMAC”). The AMAC advises the State Department of Land and Natural Resources (“DLNR”) on natural and cultural resource management issues that impact Native Hawaiian rights and traditional religious and subsistence practices.

The NPS has repeatedly ignored the Molokai community’s strong opposition to the Expansion and any management by the federal government. The Hālawā and North Shore Studies’ findings that the Expansion areas would be best protected under NPS management “were not widely supported locally” and “the position of the local community favored local community management of the North Shore over any management by non-Molokai entities and state and federal agencies.”<sup>83</sup> The NPS ignored this community consensus, preferring to adopt Plan C, which includes the federal management of the Expansion area.

Plan C’s failure to engage in a comprehensive consultation process and negotiate a consensus-driven agreement among state actors and NHOs constitutes a violation of NHPA’s Section 106 process.

## 9. Water Resources

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Molokai has largely been considered a barren land with limited freshwater resources.<sup>84</sup> The valleys on the North Shore are the only areas that receive steady rainfall year-round with

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<sup>81</sup> “Top Side Community” are Molokai residents who do not live in Kalaupapa, and are not able to engage in the DHHL consultation process as beneficiaries.

<sup>82</sup> JON K. MATSUOKA ET AL., MOLOKAI: A STUDY OF HAWAIIAN SUBSISTENCE AND COMMUNITY SUSTAINABILITY 33 (Marie D. Hoff, 1st ed. 1998).

<sup>83</sup> See *id* at 87 (emphasis added).

<sup>84</sup> See GUPTA, *supra* note 10 at 5.

heavy rains in the winter.<sup>85</sup> The Expansion includes many of the valleys on the North Shore, which are vital watershed resources capable of sustaining traditional lo‘i and other traditional methods of farming. The valleys, streams, and watersheds on Molokai should remain as they are until they can be restored to their historic, traditional use, once again making Molokai ‘Āina Momona, the land of plenty.<sup>86</sup> Water is “at the center of sustainable taro culture” and is life-giving to Hawaiians.<sup>87</sup> Studies show that taro lo‘i require an average of 260,000 gallons per acre, per day.<sup>88</sup>

Plan C’s analysis covers only the effects of climate change, construction and maintenance of buildings, and water diversion from Waikolu streams. It concludes that the impact on water resources from these factors will be adverse, and names climate change as the “dominant factor influencing water resources.”<sup>89</sup> Plan C does not provide a future strategy for the rivers, streams, and watershed resources within the Expansion, nor does it assess any impact on the water resources within the Expansion.

The Draft GMP/EIS’s failure to assess impacts to the water resources within the Expansion constitutes a violation of NHPA’s Section 106 process.

#### 10. Fishing, Hunting, and Gathering

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The Governor’s Molokai Subsistence Task Force Final Report showed that 87% of Molokai residents depend, in varying degrees, upon resources obtained through fishing, hunting, and gathering for their families’ subsistence.<sup>90</sup> The subsistence study indicates that Molokai residents are, for the most part, able to successfully fish, hunt, and gather the resources necessary for their families’ survival. Seventy-two percent of the respondents stated that “they were still able to fish, hunt, and gather” without interference.<sup>91</sup> Molokai families access land and ocean resources that are included in the proposed Expansion area considered in the Kalaupapa GMP/EIS.

The Draft GMP/EIS states that “hunting would continue to be permitted per State of Hawai‘i hunting regulations.” This conclusion, however, forecloses any consideration of alternative hunting management models. One alternative is the model adopted by the

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<sup>85</sup> DRAFT GMP/EIS, *supra* note 4 at 20.

<sup>86</sup> See GUPTA, *supra* note 10 at 5.

<sup>87</sup> DAVID C. PENN, WATER NEEDS FOR SUSTAINABLE TARO CULTURE IN HAWAI‘I 132 (University of Hawai‘i 1993).

<sup>88</sup> STEPHEN B. GINGERICH ET AL., WATER USE IN WETLAND KALO CULTIVATION IN HAWAI‘I 1 (Office of Hawaiian Affairs, U.S. Geological Survey 2007).

<sup>89</sup> DRAFT GMP/EIS, *supra* note 4 at 261.

<sup>90</sup> DONA HANAIKE ET AL., GOVERNOR’S MOLOKAI SUBSISTENCE TASK FORCE FINAL REPORT 43 (Jon Matsuoka et al. eds., Dept. of Business, Economic Development, and Tourism 1994) (“Subsistence Report”).

<sup>91</sup> See *id.*

Department of Hawaiian Home Lands (hereinafter, “DHHL”) which turned over management of game hunting on the West End of Molokai to Hawaiian homesteaders in Ho‘olehua.<sup>92</sup> Plan C assesses fishing, hunting, and gathering practices and impacts for the existing park boundaries, but fails to evaluate the impact the proposed Expansion will have upon these practices.

The NPS’s failure to assess impacts to fishing, hunting, and gathering practices within the proposed Expansion area constitutes a violation of NHPA’s Section 106 process.

#### 11. Sustainable Practices

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Studies show that if shipping operations to Hawai‘i were disrupted, “the state’s inventory of fresh produce would feed people for no more than 10 days.”<sup>93</sup> Hawai‘i is alarmingly dependent upon food that it is not grown here. Rather than providing a solution to the food problem, big agricultural companies use Hawai‘i as a major testing ground for their pesticides and genetically modified foods, increasing the risk of residents contracting diseases, cancers, and respiratory problems.<sup>94</sup>

Prior to Western contact, Hawai‘i’s resource system was based on community sharing and careful management of resources.<sup>95</sup> Hawaiians believed the ali‘i<sup>96</sup> were divinely appointed to (“administer”) the ‘āina<sup>97</sup> for the benefit of the gods and society as a whole.<sup>98</sup> The ali‘i appointed konohiki<sup>99</sup> to manage ahupua‘a.<sup>100</sup> Konohiki “were masterful managers who possessed a deep knowledge of the natural resources of their ahupua‘a.”<sup>101</sup> They were “stewards of their

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<sup>92</sup> MATSUOKA ET AL., *supra* note 82 at 41.

<sup>93</sup> Maureen N. Mitra, *Trouble in Paradise: Hawaiians Push Back Against Big Ag*, EARTH ISLAND JOURNAL, Spring 2014, at 18-23.

<sup>94</sup> *See id.*

<sup>95</sup> LILIKALĀ KAME‘ELEIHIWA, NATIVE LAND AND FOREIGN DESIRES: PEHEA LĀ E PONO AI? 26-29 (1992).

<sup>96</sup> *Ali‘i*: Chief, chiefess, officer, ruler, monarch, peer, headman, noble, aristocrat, king, queen, commander; MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 20 (rev. & enlarged ed. 1986).

<sup>97</sup> *‘Āina*: Land, earth; PUKUI & ELBERT HAWAIIAN DICTIONARY, *supra* note 96, at 11.

<sup>98</sup> 1 NATIVE HAWAIIANS STUDY COMM’N, REPORT ON THE CULTURE, NEEDS AND CONCERNS OF NATIVE HAWAIIANS 254 (1983), *available at*

<http://babel.hathitrust.org/cgi/pt?id=mdp.39015034241094> (last visited April 13, 2014)

<sup>99</sup> *Konohiki*: Headman of an ahupua‘a land division under the chief; land or fishing rights under control of the konohiki; *supra* note 96, at 166.

<sup>100</sup> *Ahupua‘a*: Land division usually extending from the uplands to the sea, so called because the boundary was marked by a heap (ahu) of stones surmounted by an image of a pig (pua‘a); *supra* note 96, at 9; KAME‘ELEIHIWA, *supra* note 95, at 30-31.

<sup>101</sup> John N. Kittinger PhD, *Konohiki Fishing Rights*, GREEN MAGAZINE HAWAI‘I, October 2009, at 45, *available at*

resources and communities . . . charged with safeguarding the production and perpetuation of the ‘āina and sea resources in their ahupua‘a.”<sup>102</sup> This complex system of aloha ‘āina (literally, “love of land”) enabled a high level of productivity, ensured that all members of the ahupua‘a, from the ali‘i to the maka‘āinana<sup>103</sup> were provided for, and that the resources were never overtaxed.<sup>104</sup>

Under this traditional system of aloha ‘āina, Kalaupapa thrived as a “garden paradise” to Hawaiians, and “wall after wall after wall” of agricultural gardens still remain.<sup>105</sup> Molokai was then known as an island of ‘āina momona,<sup>106</sup> producing enough surplus food to feed neighboring islands. Now, more than ever, Hawai‘i needs Molokai and her verdant valleys to return to a state of plentiful abundance. Hawai‘i’s emancipation from its dependency upon food shipments would go a long way in truly achieving environmental and food sustainability in the future.

The Draft GMP/EIS completely missed the mark in assessing future sustainable practices, and failed to see the “bigger picture” for the future of Molokai’s north shore. The Draft GMP/EIS states that it will fulfill its object of implementing sustainable practices by designing energy and water-efficient facilities, limiting the number of vehicles used, bicycle use, recycling, and by installing supposed “environmentally friendly” CFL light bulbs that release “cancer-causing chemicals” when switched on.<sup>107</sup> While all of these initiatives (with the exception of the CFL light bulbs) will contribute to sustainability efforts, their cumulative effects will be negligible, and should be considered “best practices” rather than a plan for sustainability.

Because the Draft GMP/EIS failed to offer any substantial plan for sustainability within the existing park, it is not a qualified steward to take over management of the areas within the Expansion.

## 12. Conclusion and Recommendations

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The Plan misses the mark when it comes to the larger history of the Hawaiians and their culture, especially those who loss their lands and were displaced. It also misses the mark when it

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[http://www.researchgate.net/publication/258133637\\_Konohiki\\_Fishing\\_Rights](http://www.researchgate.net/publication/258133637_Konohiki_Fishing_Rights) (last visited May 30, 2015).

<sup>102</sup> See *id.*

<sup>103</sup> *Maka‘āinana*: Commoner, populace, people in general; citizen, subject; PUKUI & ELBERT HAWAIIAN DICTIONARY, *supra* note 96, at 224.

<sup>104</sup> Kittinger, *supra* note 101.

<sup>105</sup> Kalaupapa Videotape, *supra* note 9.

<sup>106</sup> *‘Āina momona*: literally “fat land”; an abundant land, or land of plenty; Molokai was known as the land of “fat fish and kukui nut relish,” Clair Gupta, *Food Sovereignty: A Critical Dialogue*, YALE UNIVERSITY AGRARIAN STUDIES, Sept. 14-15, 2013 at 5,

[http://www.yale.edu/agrarianstudies/foodsovereignty/pprs/70\\_Gupta\\_2013.pdf](http://www.yale.edu/agrarianstudies/foodsovereignty/pprs/70_Gupta_2013.pdf) (last visited May 30, 2015).

<sup>107</sup> 5A-38 Lawyers' Medical Cyclopedia § 38.45c.

## Hui Ho‘opakele ‘Āina’s Comment Letter Regarding Kalaupapa NHP’s GMP/EIS

June 3, 2015

Page 20 of 20

comes to the future of the DHHL Hawaiians who own the lands. Last but not least, the plan does little to recognize or mitigate the future impacts on the people who live on Molokai.

The plan calls for the acquisition of thousands of acres of important agricultural lands, which hold the food security future of Molokai.

The plan calls for the Hawaiians and their culture to be treated as a museum piece that needs to be “protected and preserved” so as to be put on display for the American public. In contrast, the consultation process showed a clear voice for the need of a working group or task force consisting of DHHL beneficiaries and OHA beneficiaries along with the NPS. It is clear that these beneficiaries saw Kalaupapa as an integral part of their future with resources that needed to be not only protected, but more importantly, used traditionally and “enhanced.”

A working group task force is critical to address the many unanswered concerns raised during the consultation process of the DHHL land owners and the community of Molokai, here are a few of the deficiencies in the Draft GMP/EIS that must be addressed:

- Restoration plans for Waikolu Valley were not adequately addressed in the Draft GMP/EIS. Special management areas and focus areas are needed to address indigenous peoples concerns and needs.
- Recognition and Benefits to displaced Hawaiian families; DHHL Homesteaders; and the Molokai community overall were either not addressed or are woefully lacking.
- The Draft GMP/EIS fails to recognize constitutional and statutory protections of traditional and customary Hawaiian rights.
- The Draft GMP/EIS fails to acknowledge and integrate the provisions in the United Nations Declaration on the Rights of Indigenous People (hereinafter, “UNDRIP”) that has been adopted by the United States and incorporated into the Section 106 consultation process.
- The NPS failed to recognize and consult with the ‘Aha Kiole o Molokai, the local decision-making body associated with the Statewide ‘Aha Moku system for natural and cultural resource management.

We oppose the following actions proposed by NPS:

- The proposed Expansion of the Park boundaries.
- Any new federal designations of Molokai’s north shore cliffs and rivers
- The inclusion of Pala‘au State Park which is part of DHHL’s management as part of the overall Kalaupapa NHP GMP. Federal NPS boundaries should include only the one “look out” and trail head areas.

We request the following:

- Recognize a prioritized multi-layered definition of the users of the park: DHHL members, Hawaiian families who were displaced in 1865, Molokai top side community, general public.

ITEM G-1  
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EXHIBIT C

EXHIBIT B

Hui Ho'opakele 'Āina's Comment Letter Regarding Kalaupapa NIIP's GMP/EIS

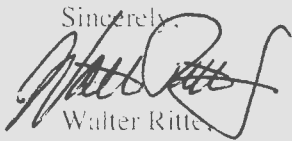
June 3, 2015

Page 21 of 20

- Establish an "Advise and Consent" decision-making agreement with a "Top Side" community panel for management of the park.
- Initiate a management "Partnership" relationship with DHIHL and NPS besides just a lease agreement.
- Allow "special" DHIHL homesteading in Integrated Resources Management Areas.
- Designate "Special Use Areas" or "Focus" areas in the Integrated Resource Management Zone to allow for living, traditional Hawaiian activities such as lo'i cultivation and homesteading.
- Maintain "Kalawao County" as a separate county from Maui County.
- Establish a budget for "invasive plant removal" of the Integrated Resources Management Zone.
- Protect Waikolu River from further water diversions.
- Law enforcement within the Kalaupapa NIIP should remain in accordance with State and County laws. Residents should not be subjected to federal laws and NPS workers should not be "deputized" in a manner that imposes egregious or aggressive enforcement of federal laws that fail to respect traditional and customary Hawaiian rights.

In conclusion, the Draft GMP/EIS fails to sufficiently acknowledge the impact the establishment of the Park has had on the larger Hawaiian community and the Hawaiian homestead community who have been denied access to these Trust resources and who need these Trust resources. The GMP/EIS treats the Park's continued control of our lands as a foregone conclusion. While we recognize the need to honor the many patients who have lived in Kalawao, this area also has a larger history and needs to be returned to Moloka'i. That option was not even contemplated as an option under the Draft GMP/EIS. Therefore we find this plan inadequate and are asking the NPS to conduct a revised DEIS or a supplemental DEIS to include an option whereas DHIHL lands are returned to the people of Moloka'i.

Sincerely,



Walter Ritter

Hui Ho'opakele 'Āina

ITEM G-1  
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EXHIBIT C

EXHIBIT B

Phone Comments Re: Kalaupapa GMP

Daniel Keomaka

May 14, 2015

Phone Call – 11:25 am

- Last 5 survivors – Does the State takes over?
- First experience in Moloka'i in 1968 – picked pineapple
- I applied for pastoral lands – at that period, claimed cattle had virus, but because Moloka'i Ranch didn't kill cattle, no awards given
- Even dreaming of going to Moloka'i is out – if I was put on when I was supposed to be put on, then I would have had a chance; I was a great worker
- Took a survey every year – census every year – they knew who was Hawaiian – State was the trustees – they did a lousy job of awarding me, now I'm cripple
- I went to Kalaupapa and 2 aunties who lived down there
- I love that place and took me back in time
- I would like to see Kalaupapa stay the way it is
- Put all of the AIDS patients down to Kalaupapa; can't see people spreading sexual diseases; From leprosy to AIDS, to contain disease
- No sense in sending me any letters about any land because I'm 62 now.

Lurline Badeax

808-668-6151

May 22, 2015

Phone Call – 5:45 pm

- I have a 2.5 acre farm lot in Kalama'ula
- I can't make the meeting
- I am ok with whatever they decide on Kalaupapa; it's ok with me





**Ka 'Ohana O Kalaupapa  
Board of Directors**

Clarence "Boogie" Kahilihiwa  
President

Pauline Ahulau Chow  
Vice President

Pauline Ka'iulani Puahala Hess  
Treasurer

Sister Davilyn Ah Chick, OSF  
Director

Mark Ellis  
Director

Sol Kaho'ohalahala  
Director

Colette Machado  
Director

Gloria Marks  
Director

Aulani Shiu  
Director

Jason Umemoto  
Director

Charmaine Woodward  
Director

Valerie Monson  
Coordinator and Secretary

June 8, 2015

Erika Stein Espaniola, Superintendent  
Kalaupapa National Historical Park  
PO Box 2222  
Kalaupapa, Hawaii 96742

Dear Erika,

The Board of Directors of Ka 'Ohana O Kalaupapa thanks the National Park Service for recognizing the importance of creating and implementing a General Management Plan for Kalaupapa National Historical Park. We trust that the Park Service will seriously consider our comments that are listed below. We believe our recommendations will make the plan stronger and more inclusive.

Ka 'Ohana O Kalaupapa is a nonprofit organization made up of Kalaupapa residents, family members and longtime friends. Since we organized in 2003, our President has always been a Kalaupapa resident – first Kuulei Bell and now Boogie Kahilihiwa. We have two other Kalaupapa kupuna on our Board as well as seven family members and two longtime friends. Eight of our 12 Directors are Native Hawaiians. Our mailing list now includes more than 1,200 individuals.

The 'Ohana continues to support the Position Paper we submitted to the Park Service in 2009 following the first round of public hearings – as well as the comment letter we submitted following the second round of hearings in 2011.

We trust that the project leaders of the GMP will reach out to Ka 'Ohana O Kalaupapa when preparing the revisions to give the 'Ohana its due recognition and include language that recognizes the 'Ohana as a long-term partner already in charge of certain programs related to Kalaupapa.

The 'Ohana is also concerned about how the final plan will be determined – what is the decision-making process of the NPS? As you have heard, members of the public have expressed frustrations that they have been involved in the GMP process since 2009 or after and yet they feel their voices have not been heard. What weight do public comments carry as opposed to the opinions of the NPS administration, most of whom are located outside of Hawai'i?

These are our comments about the proposed General Management Draft issued in April, 2015:

**There is little mention of Ka 'Ohana O Kalaupapa.** It is quite disappointing that there is barely any mention of Ka 'Ohana O Kalaupapa in the GMP considering all that the 'Ohana has done in the past 12 years in advocating for the Kalaupapa community, assisting family members in learning about their ancestors, developing educational programs and public presentations that have been traveling around the islands for the past few years and working for preservation of

ITEM G-1  
EXHIBIT E  
EXHIBIT B

this important history. The 'Ohana also has been assigned a house at Kalaupapa by the Department of Health for use as a headquarters and future museum to honor the wishes of Bernard Punikai`a. The 'Ohana should be included as a long-term partner in the GMP and be given credit for the many improvements and programs we have made possible. It's also disappointing that the Position Paper we submitted in 2009 to NPS is not even included among the several plans and documents used to prepare the GMP – it is simply referenced. Our Position Paper was written with the input of the Kalaupapa community and endorsed by the Board of Trustees of the Office of Hawaiian Affairs and now-Senator Mazie Hirono among others.

**The plan fails to recognize the programs developed by the 'Ohana while proposing that the NPS duplicate them using taxpayer money.** NPS is now proposing to develop programs to reach out to the families of Kalaupapa and schools, conduct public presentations and create exhibits – projects already created, funded and made highly successful by Ka 'Ohana O Kalaupapa. Several years ago, the 'Ohana saw the need for this outreach and we have since reached thousands of students, family members and other members of the public across Hawai'i. Our "Restoration of Family Ties" program has helped more than 500 families reconnect with their ancestors – we have information on more than 7,200 people sent to Kalaupapa in our digital library from our research of public archives. Three of our programs have been presented with Preservation Awards by the Historic Hawai'i Foundation.

Since 2011, we have visited almost every island at least once a year – except Ni`ihau -- and most of those islands we have visited more than once a year in our efforts to seek out more families and provide the public with an opportunity to hear about our work. Our schools outreach program has grown to the point where we now have a team of Hawaii educators beginning to work on curriculum on how to include the history of Kalaupapa in classrooms. Our traveling exhibits have appeared at UH-Manoa, six community colleges, museums, public places and we are now going into the high schools. The 'Ohana hopes that the NPS would support these programs already developed and being conducted by the 'Ohana and not use taxpayer money for duplicate purposes.

**The Kalaupapa Memorial is barely mentioned in the 325-page plan.** The Kalaupapa Memorial is barely mentioned in the GMP and we believe it will be the most significant addition to Kalaupapa over the next several years. The Memorial should be included as a project common to all alternatives.

In addition there are two serious mistakes about the Memorial that need to be corrected in the final GMP. On Page 37, it states that the Memorial will be located "near" the former Baldwin Home for Boys. This is not correct – it will be located within the rock walls of the former Baldwin Home which is now open space. This has been the preferred location of Kalaupapa residents for many years. The second error is on page 226 where it states the legislation passed by Congress and signed into law by President Obama authorizes the 'Ohana to "install" the Memorial. Again, this is not correct. The law authorizes the 'Ohana to "establish" the Memorial which we are doing – we will build the Memorial and lead the operations and maintenance. These corrections need to be made to the final GMP.

**We do not support the proposed boundary amendments where NPS would acquire lands within Pelekunu and Halawa valleys.** When Kalaupapa National Historical Park was established in 1980, it was at the invitation of the people of Kalaupapa to preserve their lifestyle and the important history at Kalaupapa. It appears these new lands could

be the start of the North Shore National Park where recreation could be emphasized rather than the human history of Kalaupapa. The draft GMP states that the current NPS staff at Kalaupapa would be responsible for managing this additional 12,000 acres. Considering that the NPS had to furlough staff in the summer of 2014 because of economic cutbacks, we believe that the programs at Kalaupapa could suffer if staff is also responsible for these additional lands.

We also believe that the proposal for the NPS to take over these lands has a direct impact on all the people of Molokai. It is disappointing that it appears that the NPS has already been involved in serious discussions with the landowners about obtaining these lands, but without public input until now. The comments of residents of Kalaupapa and upper Molokai need to be carry additional weight in the final decision to acquire these lands.

**More serious discussion need to take place with the beneficiaries about homesteading in the future at Kalaupapa.** There still seems to have been little discussion about homesteading at Kalaupapa other than meetings with officials (we are aware of the meeting held last month with beneficiaries on upper Molokai). The NPS currently has a lease for approximately 1,300 acres of Hawaiian Homelands that make up the ahupua`a of Kalaupapa – this lease expires in 2041. For the past 11 years, the 'Ohana has been encouraging NPS and DHHL to have discussions about the future not only with DHHL officials in Kapolei, but with the beneficiaries, those who have lots and those on the wait list. These discussions – not lip service -- simply must happen or people will feel left out when a decision is made. One meeting every few years is not sufficient.

If homesteading is allowed, can preference for homesteads be given to descendants of those sent to Kalaupapa because of government policies regarding leprosy and/or the kama`aina who were there when the settlement was started? These individuals would carry on the legacies of their ancestors in the very place where they lived.

In addition, the 'Ohana continues to support our 2009 Position Paper where we stated that we oppose any land exchange between the Department of Hawaiian Homelands and the NPS or any other federal agency for the land at Kalaupapa.

**A cap for visitors must be set.** There is no set number for visitors allowed at Kalaupapa per day in Alternatives C and D – although during public hearings held in May, 2015, NPS officials stated that there was a “facility capacity” of about 300 persons per day at Kalaupapa. This is a dangerously high number that could destroy any preservation efforts at Kalaupapa.

As we all know, there is currently a limit of 100 visitors a day – this number was determined by the Kalaupapa community. In the future, there must be a set number of visitors. The visitor cap should be reviewed annually. Too many visitors at Kalaupapa will quickly ruin the special feeling one gets of being on sacred ground. In the Position Paper submitted in 2009, Ka 'Ohana O Kalaupapa recommended that when there are no longer individuals who were once isolated under the old laws living at Kalaupapa, there should be a limit of 150 day-only visitors with a limit of 25 overnight visitors. These numbers should also be reviewed annually – and lowered, if necessary, to protect the resources. The 'Ohana also recommended that family members be given preference for visitation.

**There still seems to be an emphasis on visitors, but little mention of family members or Native Hawaiians.** As we started in our 2011 comment letter, family members should



not be considered visitors in the land of their ancestors and Native Hawaiians should not be considered visitors in their own land. Preference to visit Kalaupapa should always be given to family members and Native Hawaiians.

**As we stated in our 2011 comment letter, Native Hawaiian access rites must be recognized.** We do not see this addressed in any of the alternatives – Native Hawaiian access rites should be common to all alternatives. Some Hawaiians have expressed interest in growing kalo in Waikolu Valley or having access to other parts of the Makanalua peninsula for agricultural purposes, gathering rites and spiritual practices. These proposals have merit and should be pursued with ongoing discussions on how to allow this access without destroying the resources or sacred feeling of Kalaupapa.

**Kalaupapa will always be a place – not a park.** It is troubling that the NPS continually references Kalaupapa as “the park.” To many of us who have been connected to Kalaupapa for many years, Kalaupapa is a community and the home or final resting place of ancestors and loved ones. Kalaupapa National Historical Park has certainly become an important part of Kalaupapa, but Kalaupapa is not -- and will never be -- “a park.”

**Members of Ka 'Ohana O Kalaupapa – and others from the public -- should be allowed to fill vacant seats on the Kalaupapa National Historical Park Advisory Commission.** The application process to the KNHP Advisory Commission should be posted on the KHNP website so more individuals are aware of any vacancies – and how they can apply. If Kalaupapa kupuna are no longer able to serve on the Commission or if there are other openings, family members and Native Hawaiians should be given first preference to fill any vacancy.

**A Kalaupapa Task Force of interested parties should be created.** This idea was suggested by Native Hawaiians on upper Molokai who have an interest in the future of Kalaupapa. There are many organizations involved at Kalaupapa in addition to the descendants of the kama`aina and those sent to Kalaupapa along with the Native Hawaiians on upper Molokai. A Task Force with representatives of all of these voices should be established so plans can be discussed with public input.

Ka 'Ohana O Kalaupapa should be consulted on decisions that will be made when there is no longer a living community of those who were sent there under the isolation laws – this is the land many of us or our ancestors called home. The 'Ohana should be an acknowledged voice in decision-making, especially on such key issues as those listed above.

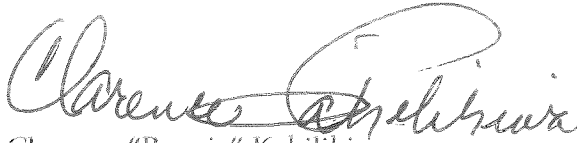
**While this GMP was 325 pages long with many more pages attached, none of the written public comments received since 2009 were attached.** All written comments, including the Position Paper of Ka 'Ohana O Kalaupapa, should be part of the final GMP in both electronic and print form. These comments will be an important part of the record for future reference.

We appreciate the opportunity to offer our concerns and recommendations. If you have any questions or would like to review any revisions, please contact our Coordinator, Valerie Monson, at [vmonson@kalaupapaohana.org](mailto:vmonson@kalaupapaohana.org) or 808-573-2746.

Ka 'Ohana O Kalaupapa hopes that our comments are helpful and we hope the National Park Service will accept additional comments that might arise at a later date and continue these discussions. We look forward to working with the Kalaupapa

community, the National Park Service and other interested parties in the future to preserve this important place and present the history of the people of Kalaupapa in the way they want to be remembered.

Mahalo nui loa,

A handwritten signature in cursive script, reading "Clarence Kahilihiwa". The signature is fluid and stylized, with the first name "Clarence" and last name "Kahilihiwa" clearly legible.

Clarence "Boogie" Kahilihiwa  
President