

# Kalaupapa Working Group

October 25, 2021



# Agenda

- Recap of Issues Lifted Up in 9/7 Working Group Meeting
- Review Lease & Discussion
- Determine Areas for Future Discussion
- Next Steps

# Ground Rules

- Be respectful of other participants' mana'o, please do not interrupt
- Please be aware of the air you take up in the room
- Respect the viewpoint of others: non-agreement can be a respectful process
- Do your best to be an active listener and a thoughtful participant
- Please remember to mute yourself when not speaking to help minimize background noise
- Be understanding of those who are juggling multiple responsibilities (childcare, schooling, kupuna care, etc.)

# Process Discussion

- Purpose: Better integrate beneficiary voices into Kalaupapa process
  - First couple meetings about process
  - Give you chance to share process
- Share proposed WG framework and got feedback
  - Still working on feedback on process and who else should be involved
- Letters to sent to this group as folks deeply involved in advocacy for Kalaupapa to help us shape process
- **Will record and post to the site**

# Issues Shared Out of 9/7 Meeting

## Issues

- Access
- Land Use
- Residential Considerations
- Tourism
- Community Voice
- Energy Plans
- Enforcement
- Land Ownership
- Transition Team
- Others?

## Discussion Questions

- How are beneficiaries being negatively impacted on Hawaiian Home Lands? How can we correct that?
- How might the Department be a supporter in these issues?

## Discussion

- PA -- big issue bc that's what NPS is using in lieu of GMP
  - Lot of things wrong with PA that will be adverse to beneficiaries
  - Need to spend time on PA and GL
  - Should have been included if NPS included in an EIS
    - But opted out via EA
    - Btw PA and Gl is where rubber going to meet the road
- Record -- DHHL will record and post to website > sooner rather than later
  - If delay, helpful if participants can record and share
- Tourism big albatross -- not keen on tourists coming here
- Would like a diff track on how DHHL will take Park back from NPS/US and make better for ppl of Moloka'i -- ppl have a choice
  - Problematic with this Administration
  - Hard to convince this Commission due to mgmt/resource issues
  - Lease is one avenue
  - Politics is another > increase cmty voices
    - Fed level > Deb Haaland
    - Back to Maui County
- Maui County proposal

# Discussion cont...

- DHHL works with AGs who enter into agreements with proposals that violate HHC duty of exclusive loyalty to its beneficiaries
  - Under fed law, DHHL act in best interest of beneficiaries
  - Confusing with AG, not sure if best interests of beneficiaries or State
  - **Conversation between beneficiaries and HHC to understand what was meant/ context**
  - Got to make sure trust assets are being used properly
  - Questions if terms or lease deliver fiduciary duties to beneficiaries then have right to terminate
- Maybe need to vision what will it look like when last kupuna passes
  - Community voice
  - Transition point
- NPS bad manager of Kalaupapa
  - Piecemeal planning for 40 yrs
  - Basically coerced into lease by using money
  - If kick them out, have to pay back for improvements made up to that pt
  - NPS has been irresponsible in managing Kalaupapa
  - DHHL has been irresponsible to beneficiaries in Kalaupapa
  - Shouldn't have CA bc own land - due to lease agreement
  - How can we protect
  - Preservation of resources
  - Kuleana for overseeing settlement back to DHHL > beneficiaries
- Vision of the WG to set criteria of kuleana for overseeing settlement back to DHHL > beneficiaries?
  - Manage makanalua > repository of iwi kupuna
    - Current red flag: team only within fed sys
  - Beneficiaries have capacity / resources to do
  - DLNR should not have purview
- Bill to dissolve Kalawao County > part of Maui County
  - Amend Charter > under Moloka'i Planning Commission

# Discussion cont...

- NPS/fed gov't makes me nervous
  - Tourists visiting saints still a form of tourism
- Other efforts happening > purchasing part of Moloka'i Ranch
  - Grps not afraid of these challenges
- NPS part of fed gov't > managing program subject to comply with
  - Not whether can change but whether or not the current lease properly support the beneficiaries -- exclusively
  - Negotiating lease terms to make more palatable
- Not necessarily opposed to tourism, opposed that NPS makes the money
  - If DHHL takes back
  - Don't like way currently structured
  - Hope this group shapes criteria for entity that has responsibility to implement what is discussed
- I can support managed access
- Changing views on tourism > good timing for beneficiaries to take over Kalaupapa
- DHHL needs independent legal advice
- Structure of proposed tourism approach is viable but depends on if beneficiaries could negotiate terms favorable to them
  - Regulatory requirements
- What has been our exp with NPS?
  - Taking good people and put into a not good system
  - Structurally it doesn't work
  - Lease will end > DHHL should take back Kalauapapa

**How are beneficiaries being negatively impacted on Hawaiian Home Lands? How can we correct that?**

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# How might the Department be a supporter on these issues?

- Beneficiary Consultations during GMP Process
  - Meetings with NPS and DOH to share beneficiary concerns
  - Helped NPS more accurately interpret NAGPRA regulations
  - Genealogy of events
- Advocating for focused support for Kalaupapa?

# Review Lease

## Table of Contents

- Term of Lease
- Rental
- Contracts Subject to Consent
- Reopening of Term
- Determination of Rental Upon Reopening of the Annual Rental
- Non-Waiver
- Special Provisions
- Article 1: Reservations
- Article 2: Agreements and Covenants Between Parties
- Article 3: Further Agreements
- Signatures
- Acknowledgements

# Lease -- Term, Rental Income, Reopening Term, Determination, Special Provisions

- **Term: July 15, 1991 - July 14, 2041**
- Rental Income
  - 1st 5 years: \$1,491,500 total
    - Annual: \$325,000 discounted to present value
  - **From 6th year: Quarterly payments due on / before 15th day of Jan, Apr, Jul, Oct**
- Reopening of term and rental income redetermined on year 5, 10, 15, 20, 25, 30, 35, 40, 45
  - **Fair market value based on highest and best use as determined by independent appraiser**
  - **35 -- 2026; 40 -- 2031; 45 -- 2036**
- If no patient resident, fair market rental shall be reopened and redetermined based on demised premises being vacant and available for development to highest and best use

## Questions & Discussion



# Lease -- Article I: Reservations

DHHL reserves rights to the following:

- Minerals and waters
- Prehistoric and historic remains
- Withdrawal
  - Pursuant to HHCA SEction 204(a)(2), Lessor (DHHL) has right to withdraw for the purposes of HHCA
  - Lessee (NPS) not entitled to any compensation for improvements already erected
  - Lessee (NPS) entitled to compensation for improvements approved by Lessor (DHHL)
  - Lessor (DHHL) shall give Lesse (NPS) 5 years withdrawal notice
- Relocation of trail / trail head
  - Lessee has right to relocate at no cost
  - If entirely on HHL, public and Lessee entitled to free access to NHP via trail

Questions & Discussion



# Lease -- Article 2: Agreements and Covenants Between Parties

## Questions & Discussion

- Lessee (NPS) responsibilities:
  - Rent -- pay
  - Utility Services -- pay
  - Sanitation
  - Waste and unlawful, improper, or offensive use of premises
  - Compliance with Laws -- all municipal, ordinances and state and federal statutes
  - Inspection -- allow Lessor (DHHL)
  - Repairs -- subj to availability of funds, minus reasonable wear and tear
  - Liens -- Lessee will not commit
  - Character of Use -- as part of Kalaupapa National Historic Park
  - Other -- Native Hawaiians given preference (second right of refusal) to provide revenue producing visitor services after patients have exercised first right of refusal

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# Lease -- Article 2: Agreements and Covenants Between Parties

## Questions & Discussion

- Lessee (NPS) requires Lessor (DHHL) prior written approval
  - Improvements
  - Assignments
  - Mortgage
- Termination
  - Should Lessor (DHHL) terminate for other than breach, Lessor shall be liable to Lessee (NPS) for any approved capital improvements
  - Lessee (NPS) may terminate any time with 1 year notice in writing



# Lease -- Article 3: Further Agreements

- Breach
  - Lessee (NPS):
    - Fails to pay rent on time
    - Abandons premises
    - Fault to observe covenants (Article 2)
  - Lessor (DHHL) must give 60 days notice
- Right to Enter
  - Lessor (DHHL) and County have right to enter
  - But cannot unreasonably interfere with Lessee (NPS)
- Acceptance of Rent Not a Waiver of Breach
- Extension of Time -- Lessor (DHHL) for good cause may allow additional time for any of the terms, conditions, covenants

## Questions & Discussion



# What are your questions and comments regarding the lease?

- DHHL needs counsel independent of AGs
  - Native Hawaiian Legal Corporation
  - **Ka Huli Ao > DHHL to ask**
  - **Malia Akutagawa?**
  - **Ho‘ahu Energy Coop has law/DURP students asking > Lori/Keani will shake the trees**

# Determine Areas for Further Discussion

- Which of the issues may connect with lease provisions?
- Which of the issues may be outside of lease provisions?

## Discussion

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# Determine Areas for Further Discussion

- Which of the issues might be opportunities to collaborate in the near term?
- Other people or entities to reach out to?

## Discussion

- Near Term
  - **Revisit Programmatic Agreement > Aunty Lori write something up**
    - Show adverse impacts to beneficiaries
    - Review PA to avoid adverse impacts to beneficiaries by giving beneficiaries seat at the table and more oversight of process
    - Review way PA was developed and no input of beneficiaries
    - Renegotiate
- Long Term
  - **Legal review of the lease**
    - Lease violation?
    - Renegotiate lease?
  - **Transition team update (from DOH) > Nancy write up something / send Lori submittals**
  - **Envisioning what that looks like after NPS**
    - Establishing criteria for whoever will have governance of area to center service and accountability to beneficiaries
- Federal processes junk

# Looking Ahead

- Others to add to WG?
- Thoughts on adding an alternate?
- Next meeting?

Match criteria from HHC submittal?

- Keani Rawlins-Fernandez
  - Attended lots of 106 meetings
- Kehau Watson
  - Attended lots of 106 meetings
- Monica Morris
  - Descendant of Kalaupapa resident