

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

2015 SEP - 9 A 7:48

LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of: KA
‘OHANA O KALAUPAPA, for Declaratory
Order Under §§ 15-15-98 *et seq.* of the Land
Use Commission Rules and Hawai‘i Revised
Statutes § 91-8

Affected Landowner and Property:
Hawai‘i Department of Land and Natural
Resources
Kalaupapa National Historical Park
Kalawao, Molokai, Hawaii
TMK No: (2) 6-1-001:002 (portion)

DOCKET NO. DR15-53

PETITION FOR DECLARATORY ORDER;
EXHIBITS “1” – “17”; CERTIFICATE OF
SERVICE

Filed by:

KA ‘OHANA O KALAUPAPA

PETITION FOR DECLARATORY ORDER
EXHIBITS “1”-“17”
CERTIFICATE OF SERVICE

TOM PIERCE, ATTORNEY AT LAW, LLC

TOM PIERCE, # 6983
PETER N.MARTIN (of Counsel), #9705
P.O. Box 798
Makawao, Hawai‘i 96768
Tel No. 808-573-2428
Fax No. 866-776-6645
Email: tom@mauilandlaw.com

Attorneys for Petitioner
KA ‘OHANA O KALAUPAPA

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of: KA
‘OHANA O KALAUPAPA, for Declaratory
Order Under §§ 15-15-98 *et seq.* of the Land
Use Commission Rules and Hawai‘i Revised
Statutes § 91-8

Affected Landowner and Property:
Hawai‘i Department of Land and Natural
Resources; Kalaupapa National Historical
Park; County of Kalawao; Kalaupapa, Island of
Molokai, Hawai‘i; TMK No: (2) 6-1-001:002
(portion)

DOCKET NO. DR15-53

PETITION FOR DECLARATORY ORDER

Filed by:

KA ‘OHANA O KALAUPAPA

PETITION FOR DECLARATORY ORDER

KA ‘OHANA O KALAUPAPA, a Native Hawaiian Organization¹ and Hawai‘i nonprofit corporation (“**Petitioner**”), through its attorney Tom Pierce, Attorney at Law, LLC, hereby submits this *Petition for Declaratory Order* (“**Petition**”) and hereby requests that the State of Hawai‘i Land Use Commission (“**LUC**” or “**Commission**”) issue declaratory orders pursuant to Land Use Commission Rules (“**LUC Rules**”) §§ 15-15-98, *et seq.* and Hawai‘i Revised Statutes (“**HRS**”) § 91-8.

¹ Under the National Historic Preservation Act, Public Law 89-665.

I. REQUEST FOR WAIVER OF FILING FEE

Petitioner is a Hawai`i nonprofit corporation and is tax exempt public charity under 501(c)(3) of the Internal Revenue Code. *See Exhibit 1.* Due to the unique circumstances of this matter, Petitioner hereby respectfully requests waiver of the LUC Petition for Declaratory Order filing fee.

II. NAME, ADDRESS AND TELEPHONE NUMBER OF PETITIONER

Petitioner is a Native Hawaiian organization and 501(c)(3) tax exempt public charity organized for the purpose of conducting educational and charitable and preservation activities relating to Kalaupapa and its community. Petitioner consists of Kalaupapa residents, family members and descendants of individuals sent to Kalaupapa, professionals involved in preserving the history of Kalaupapa, and longtime friends of the Kalaupapa community.

Tom Pierce and the law firm of Tom Pierce Attorney at Law, LLLC, have been appointed to represent Petitioner pursuant to LUC Rules § 15-15-35. All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Tom Pierce, Attorney at Law, LLLC, P.O. Box 798, Makawao, Hawai`i 96768.

As part of its Petition application, Petitioner has authorized this law firm to act on its behalf with respect to this matter. *See* notarized Authorization by Petitioner’s Secretary, Valerie Monson, attached hereto as **Exhibit 17.**

III. STATEMENT OF PETITIONER’S INTEREST, INCLUDING REASONS FOR SUBMISSION OF THE PETITION

Petitioner has a sufficient interest in the land at issue in order to submit this petition, which interest is confirmed by both federal law and actions taken by Hawai`i agencies, as briefly identified below.

On March 30, 2009, President Barack Obama signed into law the *Kalaupapa Memorial Act of 2009* (Act), which was made Section 7108 of H.R. 146, the Omnibus Public Land Management Act of 2009.² See **Exhibit 2**. The Act directs the Secretary of Interior to authorize Petitioner to establish a memorial within the boundaries of Kalaupapa National Historic Park located at Kalaupapa, on the island of Molokai, Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to Kalaupapa Peninsula from 1866 to 1969.

Through actions take on July 26, 2013 and February 14, 2014, the Hawai`i Board of Land and Natural Resources (“BLNR”) approved a 65-year lease to Petitioner for the proposed Kalaupapa Memorial. See relevant BLNR documents attached hereto as **Exhibit 3**. Final approval and issuance of the lease is subject to the completion of the Hawaii environmental compliance process (Chapter 343) and concluding final negotiation of the lease terms. Both processes are underway. Petitioner anticipates going back to BLNR with the completed Chapter 343 process and a negotiated lease in the next several months.

On November 28, 2014 Director of the Hawai`i Department of Health (“DOH”), Dr. Linda Rosen, issued an *Executive Order, Director of Health, State of Hawai`i, Providing for the Future Kalaupapa Memorial and Activities of Ka ‘Ohana O Kalaupapa*, providing Petitioner with a physical location at Kalaupapa to conduct business and responsibilities associated with the construction and management of the Kalaupapa Memorial. See **Exhibit 4**.

Petitioner’s reason for petitioning for a declaratory order is as follows: On July 15, 2015, Mr. Daniel Orodener, Executive Officer of the Hawai`i Land Use Commission (“LUC”) wrote to Petitioner, through its planner, Munekiyo Hiraga, requesting that Petitioner obtain a Declaratory Order from the State land Use Commission under sub-chapter 14 of the LUC rules (HAR 15-15-98, *et seq.*). See **Exhibit 5**. For the reasons specified below, Petitioner is requesting from the

² See <https://www.govtrack.us/congress/bills/111/hr146/text>.

LUC a declaratory order that the Kalaupapa Memorial is a permitted use under Hawai`i Revised Statutes (“HRS”) §§ 205-4.5.

IV. DESIGNATION OF THE SPECIFIC PROVISION, RULE, OR ORDER IN QUESTION

Under Title 15, Chapter 15 of Hawai`i Administrative Rules (“LUC Rules”) § 15-15-98(a), the LUC may make declaratory rulings “as to the applicability of any statutory provision or of any rule or order of the department or the commission.” Additionally, under § 15-15-98(c) of the LUC Rules, the LUC may “on its own motion or upon request but without notice of hearing, . . . issue a declaratory order to . . . remove uncertainty.” Section 15-15-104 of the LUC Rules further provides that each declaratory order of the LUC is unique and dependent on the circumstances.

Petitioner requests a declaratory order from the LUC that the Kalaupapa Memorial is a permitted use under HRS Chapter 205-4.5.

V. COMPLETE STATEMENT OF THE RELEVANT FACTS AND A STATEMENT OF THE ISSUES RAISED OR CONTROVERSY OR UNCERTAINTY INVOLVED

A. Background

The Kalaupapa Memorial (“Memorial”) is a dream founded and fostered by the residents of Kalaupapa and their family members and friends. After Petitioner was formed in 2003, the organization, at the urging of Kalaupapa residents has made establishment of a memorial a priority of the organization. Less than 1,000 of the estimated 8,000 individuals who died at Kalaupapa have a marked grave. The remaining 7,000 people lie in unmarked graves—their names are no longer part of the landscape where they lived together and built a community under the most difficult of circumstances. The Memorial will serve as a lasting tribute to these thousands of people, more than 90 percent of whom were Native Hawaiians, to ensure that they

are an integral part of the history that they helped to create. The Memorial will also provide family members with a fitting place to reflect on the lives of their ancestors and find pride and healing.

Time is of the essence for this project as there are not many Kalaupapa residents remaining. The small population is elderly. Many of those who had hoped to see the Memorial completed have passed away. It will be a sad day if there are no living residents left to witness the magnificence of the 8,000 names when the completed Memorial is unveiled.

Petitioner and its supporters have faced and overcome many challenges over the years to bring the Memorial to where it is today. In 2003, Petitioner sought the approval and support of the National Park Service (NPS) for the Memorial. At the time, NPS was unable to offer its approval. This resulted in the 'Ohana having to seek help from the Hawaii Congressional delegation to keep the hopes of a Kalaupapa Memorial alive. In December 2005, new federal legislation was introduced seeking approval from the United States Congress to authorize the Memorial to be established by the 'Ohana at Kalaupapa. On March 30, 2009, President Barack Obama signed into law the *Kalaupapa Memorial Act of 2009*, which directs the Secretary of Interior to authorize Petitioner to establish a Memorial within the boundaries of Kalaupapa National Historic Park. *See Exhibit 2.*

Most residents of Kalaupapa have favored locating the Memorial at Kalawao within the grounds of the former Old Baldwin Boys Home, an area that is close by two historic churches, St. Philomena and Siloama, as well as the original grave of Father Damien de Veuster (now Saint Damien), and within view of a field east of St. Philomena Church where an estimated 2,000 individuals lie in unmarked graves.

Petitioner will establish the Memorial within the four historic rock walls of the Old Baldwin Boys Home site. This site covers an area of approximately 5.9 acres. This land is part of the several thousand acres of state land under the jurisdiction of the Department of Land and Natural Resources (“DLNR”). The Memorial structure will occupy less than 10% of the site.

Petitioner has received significant support for the Memorial from the residents of Kalaupapa and their extended families and from the other stakeholders at Kalaupapa, as follows:

- The Catholic Diocese of Honolulu, which is the owner of St. Philomena Church located near the proposed Memorial. *See Exhibit 6.* Bishop Silva stated in his letter:

The area of Kalawao in question is a sacred place and visitors I have taken there always are in great awe at its "mana" or spiritual nature. Adding the Memorial would enhance the feeling of sacred space, since it would call to mind all the people who worshiped at those two sites (Siloama and St. Philomena churches) and the others for whom they prayed daily.

The Memorial would serve as a kind of communal "headstone" so that all buried on the Peninsula, whether in marked or unmarked grave could be remembered. Therefore, I would like to affirm this site of the old Baldwin Boys Home as the ideal site for the Memorial.

- The Hawaii Conference United Church of Christ, owner of Siloama church located near the proposed Memorial. *See Exhibit 7.* Reverend Charles Buck wrote:

The former old Baldwin homesite is ideal because it is within visual range of and in near proximity to the field of two unmarked graves across the road could greatly enhanced visitors experience and would offer visual interest in a meditative environment for visitors.

- BLNR and DLNR, through the 65 year lease. *See Exhibit 3;*
- The United States Congress, through the approval of federal legislation, *Kalaupapa Memorial Act of 2009.* *See Exhibit 2;*
- The National Park Service (NPS) which has a 20-year cooperative management agreement with DLNR *See Exhibit 8;*
- DOH, which has certain powers relating to Kalawao County pursuant to HRS Chapter 326. *See Exhibit 4;* and,
- The Office of Hawaiian Affairs (OHA). *See Exhibit 9;*

B. Description of the Proposed Site

The approximate location of the proposed site for the Memorial is shown in **Exhibits 10, 11, 12 and 13**.

The proposed site is located within the State Agricultural district. *See Exhibit 14*.

Petitioner has not had the chance to confirm with the Hawai`i Office of Planning or the LUC; however, the proposed site for the Memorial appears to have a Land Study Bureau (“LSB”) Classification that is *less than* class A or B. *See Exhibit 15*. The land proposed for the Memorial also does not appear to be identified as Agricultural Lands of Importance to the State of Hawai`i (“ALISH”). *See Exhibit 16*.

Soils on the proposed site are very rocky, silty clay loam; the typical profile consists of topsoil from 0 – 5 inches below the surface (0–13 cm) and subsoil ending at bedrock at 12 inches (30 cm) below the surface (McCoy and Hartshorn 2007).

The site of the Old Baldwin Boys Home (SIHP# 50-60-03-2427) is listed on the National Register of Historic Places. Prior to the Old Baldwin Home being built, the site was a barren, rocky area. The physical integrity of the Memorial site has been compromised over the years. In the 1930s, all of the Old Baldwin Home buildings were purposely demolished and burned when the Home was relocated to the Kalaupapa side of the peninsula. Subsequently in the 1950’s, the entire site was bulldozed as evidenced by the bulldozer push piles that remain. Historic and cultural resources on the site continue to be degraded by the encroachment of invasive vegetation. It is intended that the establishment of the Memorial will lead to the beneficial rehabilitation of the entire Old Baldwin Home site through the cooperative efforts of the NPS and Petitioner.

VI. STATEMENT OF THE PETITIONER'S INTERPRETATION OF THE STATUTE, RULE, OR ORDER OR THE POSITION OR CONTENTION WITH RESPECT THERETO

The objective of the LUC Rules is to secure the just and efficient determination of every proceeding. Section 5-15-01 provides that the LUC Rules "shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai`i."

For the reasons set forth below, the LUC is the sole agency with jurisdiction to determine whether or not the Memorial is a permitted use under HRS § 205-4.5.

For the reasons set forth below, the Memorial is a permitted use under HRS § 205-4.5.

VII. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S POSITION OR CONTENTION

A. Jurisdiction

The LUC has jurisdiction over this matter notwithstanding the fact that Kalawao is technically a "county" of Hawai`i. The issue presented is whether or not the Memorial is a permitted use under HRS § 205-4.5. Chapter 205, entitled the "Land Use Commission", establishes the commission, its powers, and designates permitted uses within the various land use districts, which include the Agricultural district, within which the Memorial is proposed to be located.

While HRS § 205-4.5 establishes the permitted uses, ordinarily, it is the counties who are authorized to enforce permitted uses because each of the counties of the State of Hawai`i are vested with zoning authority pursuant to HRS Chapter 46-4. However, in the case of Kalawao, it is a county in name only, and otherwise has almost no powers (except sheriff powers). HRS

Chapter 326, entitled “Hansen’s Disease”, and relating to the powers of DOH, provides guidance. HRS § 326-34(a) provides as follows:

(a) The county of Kalawao shall consist of that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu, and commonly known or designated as the Kalaupapa Settlement, and shall not be or form a portion of the county of Maui, but is constituted a county by itself. ***As a county it shall have only the powers especially conferred and given by sections 326-34 to 326-38 and, except as provided in those sections, none of the provisions of the Hawaii Revised Statutes regarding counties shall be deemed to refer to or shall be applicable to the county of Kalawao.***

(Emphasis added). A review of HRS §§ 326-34 to 326-38 confirms that the Hawai`i Legislature has not given Kalawao the power to make zoning decisions. Rather, §§ 326-34 to 326-38 relate to the powers of DOH to appoint and pay for a sheriff and sets forth the duties of the Sheriff, who is the only County officer in Kalawao County.

While DOH has some jurisdiction over Kalawao, it is limited. It is Petitioner’s contention that the language in HRS § 326-34(a), quoted above, is applicable to DOH as well, specifically: ***“none of the provisions of the Hawaii Revised Statutes regarding counties shall be deemed to refer to or shall be applicable to the county of Kalawao.”*** This is supported by HRS § 326-24, which limits DOH’s ability to adopt rules affecting Kalawao “except as limited by this chapter”:

The director of health may adopt rules pursuant to chapter 91 necessary for the conduct of all matters pertaining to Hansen’s disease, the treatment and care thereof, and other services provided to persons affected with Hansen’s disease, and the full and complete governance of the county of Kalawao, ***except as limited by this chapter.***

HRS § 326-24 (Emphasis added). The limitations on Kalawao county are expressly stated in HRS § 326-34(a), quoted above.

Irrespective of this, it is clear that no mandate has been made by the Hawai`i Legislature that DOH *must* take on *all* police powers ordinarily granted to a county in Hawai`i. Rather, it is clear that DOH’s authority with respect to Kalawao, whatever its scope, is limited by what laws

it has *chosen* to adopt pursuant to the Hawai`i Administrative Procedure Act, HRS Chapter 91.

This may be seen by the second part of HRS § 326-34(a):

(b) The county of Kalawao shall be under the jurisdiction and control of the department of health ***and be governed by the laws, and rules relating to the department and the care and treatment of persons affected with Hansen’s disease***, except as otherwise provided by law.

(Emphasis added).

A review of the DOH rules, set forth in Hawai`i Administrative Rules (“HAR”) Title 11, shows that DOH, even if it has the right to do so, has *not* chosen to take on the role of a land use enforcer. Rather, Petitioners have found only two rules relating to Kalawao, HAR §§ 11-168 and 11-169. The first relates to creation of a “Hansen’s Disease Branch. The second relates to registration and operation of motor vehicles in Kalawao County.

The above conclusion that neither Kalawao nor DOH have jurisdiction over matters relating to HRS Chapter 205, but rather the LUC, is further confirmed by Hawai`i case law. A county in name only has no power to act. Rather, “[t]he County, as an artificial entity, acts through the officers of its executive and legislative branches.” *County of Kaua’i ex rel. Nakazawa v. Baptiste*, 115 Hawai`i 15, 28, 165 P.3d 916, 929 (2007), *as corrected* (Aug. 7, 2007) (“*Nakazawa*”). In reaching this conclusion, the *Nakazawa* Court pointed to, among other things, the legislative record relating to the amendment of State’s taxing authority through Article VII, § 3 of the Hawai`i Constitution (1978), which exempts Kalawao from taxing authority, even though it is a county.³ The *Nakazawa* Court, quoting Article VIII, § 1 of the Hawai`i

³ Haw. Const. art. VIII, § 3 (1978) provides:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, ***with the exception of the county of Kalawao***. The legislature shall have the power to apportion state revenues among the several political subdivisions.

(Emphasis added).

Constitution,⁴ went on to explain that a county in Hawai`i only has such powers as it vests itself with through adoption of the necessary laws, including a county charter. 115 Hawai`i 15, 42, 165 P.3d 916, 943 (2007), *as corrected* (Aug. 7, 2007). The *Nakazawa* Court then goes on to quote at length from the Committee of the Whole Debates in the Proceedings of the Constitutional Convention of Hawai`i of 1978, using the issue of Kalawao as an example, including this pertinent part:

. . . Kalawao is administratively handled by the Department of Health. It does not have any county government of any description of its own. . . .

. . . Kalawao is an unusual situation as you are aware. We don't make a great number of distinctions in Hawai`i government among the levels of municipality. We just have the one category—county. We call Kalawao a county although it has no direct governmental relationship in the way it operates with any of the other counties. . . .

115 Haw. 15, 45-46, 165 P.3d 916, 946-47 (2007), *as corrected* (Aug. 7, 2007) (original emphasis omitted).

In such instances where the county lacks jurisdiction or enforcing authority, or otherwise cannot accept such authority or jurisdiction, the LUC can and must maintain jurisdiction and authority, even where the statute does not expressly provide for the LUC's jurisdiction or authority. This point was addressed by the Hawai`i Supreme Court in *Lanai Co., Inc. v. Land Use Commission*, wherein the court explained:

It is well established that an administrative agency's authority includes those implied powers that are reasonably necessary to carry out the powers expressly granted. The reason for implied powers is that, as a practical matter, the legislature cannot foresee [sic] all the problems incidental to carrying out the duties and responsibilities of the agency.

105 Haw. 296, 317-18, 97 P.3d 372, 393-94 (2004) (quoting *Morgan v. Planning Department*,

⁴ Haw. Const. article VIII, § 1 provides:

Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law....

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

County of Kauai, 104 Hawai`i 173, 184, 86 P.3d 982, 993 (2004)) (internal quotes, citations, ellipses and brackets omitted).

B. The Memorial Is a Permitted Use Under HRS § 205-5(b)

With respect to a proposed (non-solar) use such as the Memorial, Chapter 205 separates permitted uses on lands designated within the Agricultural District by the LUC (hereinafter “Agricultural Lands”) into two basic areas: (1) all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B (“LSB Rating”); and, (2) lands with an LSB Rating that is *less than* A or B. Petitioner is not aware of the LUC or the Office of Planning having made a formal line delineation with respect to the LSB Rating. Reviewing the State’s LSB GIS map, **Exhibit 15**, it appears that the proposed site for the Memorial is *not* LSB Rated A or B.

If that is so, the permitted uses are governed by HRS § 205-2. *See* HRS § 205-4.5(c) (“Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).”); and *see* HRS § 205-5(b) (“Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. . . .”).

A broad variety of non-agricultural uses are permitted under HRS § 205-2. Therefore, if the LSB Rating for the proposed Memorial site is less than A or B, the Memorial is a permitted use under HRS § 205-2.

C. The Memorial Is a Permitted Use Under HRS § 205-4.5(a)

As noted above, HRS § 205-4.5(a) is focused on Agricultural Lands with a LSB Rating of A or B. Even if the proposed Memorial site has such a LSB Rating, the Memorial is still a permitted use under HRS §-205-4.5(a)(8).

HRS § 205-4.5(a)(8) permits the following pertinent uses: “Retention, restoration, rehabilitation, or *improvement* of buildings or *sites* of historic or scenic interest.” Here, the Memorial is clearly a site of historic interest, as well as a site of scenic interest. While it will require new construction, it rests within a part of a formerly built-out area, *i.e.*, the Old Baldwin Boys Home. As such, the Memorial is in keeping with the above statutory language in HRS § 205-4.5(a)(8), which provides for the “improvement” of “sites” of historic interest. As noted in support letters by Bishop Silva and Reverend Charles Buck, the Memorial will “enhance” the site of the former Old Baldwin Boys Home in a number of ways.

VIII. NAMES OF OTHER POTENTIAL PARTIES

The following are identified as potential parties, including a brief indication of their potential interest. These entities will be served by Petitioner at the time of filing this Petition:

- DLNR through BLNR, which has jurisdiction over land encompassing the proposed Memorial site, and which has authorized the granting of a 65 year lease for the Memorial;
- DOH granted certain powers over Kalawao County pursuant to HRS Chapter 326;
- The National Park Service, which has one or more management agreements relating to the Kalaupapa National Historic Park;
- The Catholic Diocese of Honolulu, owner of historic the St. Philomena Church, which manages a church near the proposed Memorial site;
- The Hawaii Conference, United Church of Christ, owner of Siloama Church, which manages a church near the proposed Memorial site; and

- The Office of Hawaiian Affairs, which has an interest in the ceded lands where the Memorial will be located.
- The Office of Planning, which has a statutory interest as an advisor to the LUC.

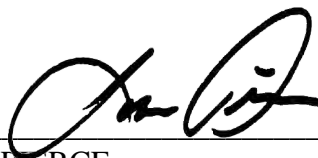
IX. STATEMENT OF WHETHER THE PETITION FOR DECLARATORY RULING RELATES TO ANY DOCKET FOR DISTRICT BOUNDARY AMENDMENT OR SPECIAL PERMIT

This Petition does not relate to any LUC docket.

X. CONCLUSION

For the foregoing reasons, Petitioner respectfully request that the Commission grant the declaratory relief requested herein.

DATED: Makawao, Maui, Hawai`i, September 8, 2015.



TOM PIERCE
PETER N. MARTIN
Attorneys for Petitioner
Ka 'Ohana O Kalaupapa

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: SEP 20 2005

KA OHANA O KALAUPAPA
C/O JEFFREY S PIPER ESQUIRE
745 FORT ST STE 1500
HONOLULU, HI 96813-0000

Employer Identification Number:
72-1595460
DLN:
17053075032025
Contact Person:
DANIEL F FRISCH ID# 95116
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
November 12, 2003
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
December 31, 2007

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

EXHIBIT 1

KA OHANA O KALAUPAPA

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lois G. Lerner".

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)

111TH CONGRESS
1ST SESSION

H. R. 410

To provide for the establishment of a memorial within Kalaupapa National Historical Park located on the island of Molokai, in the State of Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to the Kalaupapa Peninsula from 1866 to 1969, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Ms. HIRONO (for herself and Mr. ABERCROMBIE) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To provide for the establishment of a memorial within Kalaupapa National Historical Park located on the island of Molokai, in the State of Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to the Kalaupapa Peninsula from 1866 to 1969, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Kalaupapa Memorial
5 Act of 2009”.

1 **SEC. 2. ESTABLISHMENT OF MEMORIAL WITHIN**
2 **KALAUPAPA NATIONAL HISTORICAL PARK.**

3 (a) IN GENERAL.—The Secretary of Interior shall
4 authorize Ka ‘Ohana O Kalaupapa, a non-profit organiza-
5 tion consisting of patient residents at Kalaupapa National
6 Historical Park, and their family members and friends,
7 to establish a memorial at a suitable location or locations
8 approved by the Secretary at Kalawao or Kalaupapa with-
9 in the boundaries of Kalaupapa National Historical Park
10 located on the island of Molokai, in the State of Hawaii,
11 to honor and perpetuate the memory of those individuals
12 who were forcibly relocated to Kalaupapa Peninsula from
13 1866 to 1969.

14 (b) DESIGN.—

15 (1) IN GENERAL.—The memorial authorized by
16 subsection (a) shall—

17 (A) display in an appropriate manner the
18 names of the first 5,000 individuals sent to the
19 Kalaupapa Peninsula between 1866 and 1896,
20 most of whom lived at Kalawao; and

21 (B) display in an appropriate manner the
22 names of the approximately 3,000 individuals
23 who arrived at Kalaupapa in the second part of
24 its history, when most of the community was
25 concentrated on the Kalaupapa side of the pe-
26 ninsula.

1 (2) APPROVAL.—The location, size, design, and
2 inscriptions of the memorial authorized by sub-
3 section (a) shall be subject to the approval of the
4 Secretary of the Interior.

5 (c) FUNDING.—Ka ‘Ohana O Kalaupapa, a nonprofit
6 organization, shall be solely responsible for acceptance of
7 contributions for and payment of the expenses associated
8 with the establishment of the memorial.

○

EXHIBIT C – Kalaupapa Memorial Act of 2009

123 STAT. 1196

PUBLIC LAW 111-11—MAR. 30, 2009

the non-Federal land generally depicted on the map as “Tract D”, and the offer is acceptable to the Secretary, the Secretary may, subject to valid existing rights, accept the offer and convey to the Company all right, title, and interest of the United States in and to the Federal land generally depicted on the map as “Tract B”, along with a perpetual easement on a corridor of land contiguous to Tract B for the purpose of vegetation management.

(B) **CONDITIONS.**—The land exchange under subparagraph (A) shall be subject to such terms and conditions as the Secretary may require.

(C) **VALUATION.**—

(i) **IN GENERAL.**—The values of the land involved in the land exchange under subparagraph (A) shall be equal unless the non-Federal land is of higher value than the Federal land.

(ii) **EQUALIZATION.**—If the values of the land are not equal, the values may be equalized by donation, payment using donated or appropriated funds, or the conveyance of additional parcels of land.

(D) **APPRAISAL.**—Before the exchange of land under subparagraph (A), appraisals for the Federal and non-Federal land shall be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(E) **TECHNICAL CORRECTIONS.**—Subject to the agreement of the Company, the Secretary may make minor corrections to correct technical and clerical errors in the legal descriptions of the Federal and non-Federal land and minor adjustments to the boundaries of the Federal and non-Federal land.

(F) **ADMINISTRATION OF LAND ACQUIRED BY SECRETARY.**—Land acquired by the Secretary under subparagraph (A) shall—

(i) become part of the National Park; and

(ii) be administered in accordance with the laws applicable to the National Park System.

(4) **MAP.**—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(5) **BOUNDARY REVISION.**—On completion of the land exchanges authorized by this subsection, the Secretary shall adjust the boundary of the National Park accordingly, including removing the land conveyed out of Federal ownership.

Hawaii.
16 USC 410jj-4
note.
Ka 'Ohana O
Kalaupapa
Establishment.

SEC. 7108. KALAUPAPA NATIONAL HISTORICAL PARK.

(a) **IN GENERAL.**—The Secretary of the Interior shall authorize Ka 'Ohana O Kalaupapa, a non-profit organization consisting of patient residents at Kalaupapa National Historical Park, and their family members and friends, to establish a memorial at a suitable location or locations approved by the Secretary at Kalawao or Kalaupapa within the boundaries of Kalaupapa National Historical Park located on the island of Molokai, in the State of Hawaii, to honor and perpetuate the memory of those individuals who were forcibly relocated to Kalaupapa Peninsula from 1866 to 1969.

(b) **DESIGN.**—

PUBLIC LAW 111-11—MAR. 30, 2009

123 STAT. 1197

(1) IN GENERAL.—The memorial authorized by subsection (a) shall—

(A) display in an appropriate manner the names of the first 5,000 individuals sent to the Kalaupapa Peninsula between 1866 and 1896, most of whom lived at Kalawao; and

(B) display in an appropriate manner the names of the approximately 3,000 individuals who arrived at Kalaupapa in the second part of its history, when most of the community was concentrated on the Kalaupapa side of the peninsula.

(2) APPROVAL.—The location, size, design, and inscriptions of the memorial authorized by subsection (a) shall be subject to the approval of the Secretary of the Interior.

(c) FUNDING.—Ka 'Ohana O Kalaupapa, a nonprofit organization, shall be solely responsible for acceptance of contributions for and payment of the expenses associated with the establishment of the memorial.

SEC. 7109. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA. Massachusetts.

(a) COOPERATIVE AGREEMENTS.—Section 1029(d) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 460kkk(d)) is amended by striking paragraph (3) and inserting the following:

“(3) AGREEMENTS.—

“(A) DEFINITION OF ELIGIBLE ENTITY.—In this paragraph, the term ‘eligible entity’ means—

“(i) the Commonwealth of Massachusetts;

“(ii) a political subdivision of the Commonwealth of Massachusetts; or

“(iii) any other entity that is a member of the Boston Harbor Islands Partnership described in subsection (e)(2).

“(B) AUTHORITY OF SECRETARY.—Subject to subparagraph (C), the Secretary may consult with an eligible entity on, and enter into with the eligible entity—

“(i) a cooperative management agreement to acquire from, and provide to, the eligible entity goods and services for the cooperative management of land within the recreation area; and

“(ii) notwithstanding section 6305 of title 31, United States Code, a cooperative agreement for the construction of recreation area facilities on land owned by an eligible entity for purposes consistent with the management plan under subsection (f).

“(C) CONDITIONS.—The Secretary may enter into an agreement with an eligible entity under subparagraph (B) only if the Secretary determines that—

“(i) appropriations for carrying out the purposes of the agreement are available; and

“(ii) the agreement is in the best interests of the United States.”

(b) TECHNICAL AMENDMENTS.—

(1) MEMBERSHIP.—Section 1029(e)(2)(B) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 460kkk(e)(2)(B)) is amended by striking “Coast Guard” and inserting “Coast Guard.”



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 2, 2013

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAN
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HERITAGE PRESERVATION
KAIKOLA WILDLIFE AND RESERVE COMMISSION
LAND
STATE PARKS

Mr. Boogie Kahilihiwa
President
Ka 'Ohana O Kalaupapa
P.O. BOX 1111
Kalaupapa, Hawaii 96742

Aloha Mr. Kahilihiwa:

Congratulations! As you know, at its meeting on July 26, 2013, the Board of Land and Natural Resources (Board) approved a 65 year lease to Ka 'Ohana O Kalaupapa ('Ohana) to construct a memorial at Kalaupapa. In addition to the 65 year term, the Board added a condition that by year 20 of the lease, the 'Ohana will provide the Board with a management plan. The specific terms of the Board's approval will be documented when the minutes of the meeting are adopted at a future Board meeting.

I know the 'Ohana has been pursuing this long term lease to facilitate fundraising efforts. You now have the approval of the Board of Land and Natural Resources for the lease. The Department looks forward to a positive and productive partnership to make the memorial a reality.

Please continue to work with Dan Quinn at Division of State Parks to process the lease.

Sincerely,

A handwritten signature in cursive script that reads "Esther Kiaaina for".

William J. Aila, Jr.
Chairperson



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

EXECUTIVE ORDER

DIRECTOR OF HEALTH STATE OF HAWAII

PROVIDING FOR THE FUTURE KALAUPAPA MEMORIAL AND ACTIVITIES OF

KA 'OHANA O KALAUPAPA

WHEREAS, the authority vested in me by Chapter 326 of Hawaii Revised Statutes provides that I control permission for persons to be allowed to visit or remain upon any land, place or inclosure set apart by the Department of Health for Hansen's disease patients; and

WHEREAS, Ka 'Ohana O Kalaupapa was formed in 2003 as a 501(c)(3) nonprofit, Native Hawaiian organization at the request of the Kalaupapa community and includes patients, relatives of patients and friends of Kalaupapa; and

WHEREAS, Ka 'Ohana O Kalaupapa has been specifically named by Federal Public Law 111-11 known as the Kalaupapa Memorial Act of 2009 to be solely responsible for the acceptance of contributions for and payment of expenses associated with the establishment of the Kalaupapa Memorial at a suitable location or locations within the Kalaupapa National Historical Park to honor and perpetuate the memory of those individuals who were forcibly relocated to Kalaupapa Peninsula from 1866 to 1969; and

WHEREAS, the Kalaupapa Memorial Act of 2009 requires the Kalaupapa Memorial to display the names of 8,000 individuals sent to the Kalaupapa Peninsula from 1866 onward and the responsibility for the gathering of these names has been assumed by Ka 'Ohana O Kalaupapa; and

WHEREAS, the Hawaii Department of Land and Natural Resources, with the approval of the Kalaupapa National Historical Park, has granted a 65 year lease within the ahupua'a of Kalawao and Makanalua to Ka 'Ohana O Kalaupapa specifically for the grounds within the rock walls of the former Baldwin Home at Kalawao for the Kalaupapa Memorial; and

WHEREAS, the lease granted to Ka 'Ohana O Kalaupapa by the Department of Land and Natural Resources is contingent on the production of a management plan and completion of the State's Hawaii Revised Statutes, chapter 343 environmental impact statement requirements; and

WHEREAS, Ka 'Ohana O Kalaupapa requires a physical location within the Kalaupapa Settlement in order to conduct the legitimate business and responsibilities aforementioned.

NOW, THEREFORE, I, LINDA ROSEN, Director of the Department of Health of the State of Hawaii, by virtue of the authority vested in me under Chapter 326 Hawaii Revised Statutes, as amended, do hereby order the following:

Employees and volunteers of Ka 'Ohana O Kalaupapa, approved by a current or former Hansen's disease patient of Kalaupapa, will be allowed to travel within the Settlement of Kalaupapa and Kalawao County without the requirement of being physically accompanied by a patient.

Ka 'Ohana O Kalaupapa will be provided Bernard Punikai'a's former residence or other similar sized and centrally located usable dwelling for their sole use in pursuing the creation of the Kalaupapa Memorial and other legitimate activities of Ka 'Ohana O Kalaupapa.

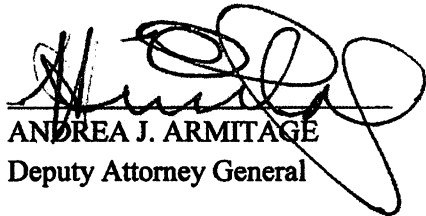
This permission is granted to conduct the aforementioned responsibilities towards the Kalaupapa Memorial and fulfill Ka 'Ohana O Kalaupapa's mission to assist the State of Hawaii, the County of Maui, the National Park Service, patients, relatives of former and current patients, and visitors to perpetuate the history of the struggles of the patients sent to Kalaupapa for the benefit of all future generations. IN WITNESS WHEREOF, I have hereunto set my hand. Done at the Department of Health, Kinau Hale at Honolulu this 28th day of November, 2014.



LINDA ROSEN, M.D., M.P.H.

Director of Health of the State of Hawaii

APPROVED AS TO FORM:



ANDREA J. ARMITAGE
Deputy Attorney General

JUL 17 2015

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

BERT K. SARUWATARI
Planner

SCOTT A.K. DERRICKSON
Planner

RILEY K. HAKODA
Planner/Chief Clerk

FRED A. TALON
Drafting Technician

July 15, 2015

Ms. Tessa Munekiyo Ng, AICP, Vice President
Munekiyo Hiraga
735 Bishop Street, Suite 321
Honolulu, HI 96813

SUBJECT: Ka 'Ohana O Kalaupapa ('Ohana) Proposed Memorial – TMK (2) 6-1-001:002,
Kalawao County, Molokai, Hawaii

Dear Ms. Munekiyo Ng,

After review of your inquiry dated June 1, 2015 in the above captioned matter we have concluded that Chapter 205 HRS is unclear on whether the proposed memorial is an allowed use under Section 205-4.5(8).

In order to ensure that the mandates of Chapter 205 are met and to be sure that you have all of the necessary approvals to move forward, we would suggest that you request a "Declaratory Order" from the Land Use Commission under sub-chapter 14 of the LUC rules (HAR 15-15-98 through 15-15-104).

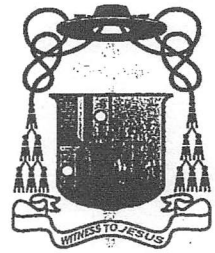
Thank you for your understanding and cooperation in this matter. We will make every effort to hold a hearing to resolve the issue in an expeditious manner once we receive the necessary submittals.

If you require any further assistance please contact Scott Derrickson (#808-587-3822) of my staff.

Sincerely,

Daniel Orodener
Executive Officer- State Land Use Commission

Diocese of Honolulu • Office of the Bishop • www.catholicahawaii.org
1184 Bishop Street, Honolulu, HI 96813-2859 • 808.585.3347 • bishop@rcchawaii.org



October 25, 2010

Stephen Prokop
Superintendent
Kalaupapa National Historical Park
P.O. Box 2222
Kalaupapa, HI 96742

Subject: Section 106 Consultation for Proposed Memorial at Kalaupapa National Historical Park

Dear Mr. Prokop:

Thank you for your letter of October 15, 2010, requesting my input on the proposed Memorial at Kalaupapa National Historical Park.

I am in agreement with the sites proposed by the Ohana O Kalaupapa for the Memorial, namely in the area of the former Baldwin Boys Home. I was a little confused about what the National Park Service is recommending, since the two following paragraphs, in juxtaposition, seem to cancel each other out.

NPS has initially determined that the construction of the Kalaupapa Memorial on the former Baldwin Boys Home site may cause adverse effects to cultural resources, specifically the National Historic Landmark, archeological resources and the cultural landscape, areas which encompass almost the entire 8,725-acre Kalaupapa Peninsula.

Through proper mitigation and design, the Kalaupapa Memorial could help to enhance the landscape and enrich the history of Kalaupapa. ... Establishing the Memorial in the Old Baldwin Boys Home could provide opportunities for education and interpretation as well as continued invasive vegetation management.

I am not sure what "adverse effects" the Memorial would have on the area, but in my opinion it would have very positive effects on the site of the old Baldwin Boys Home. The two you mention above (opportunities for education and interpretation as well as continued invasive vegetation management) are excellent reasons in themselves. In addition, I would add the following:

- The area of Kalawao in question is a sacred place, and visitors I have taken there always are in great awe at its "mana" or spiritual nature. Siloama and St. Philomena churches, the cemetery with Father Damien's original grave and Joseph Dutton's grave all contribute to the sacredness of the area. Adding the Memorial would enhance the feeling of sacred space, since it would call to mind all the people who worshipped at those two sites and the others for whom they prayed daily.

EXHIBIT 6

- The area of the Baldwin Boys Home is currently underappreciated, because only those who have been to Kalaupapa before know that is indeed the former site of the Home. The Memorial would call greater attention to this great community service that was a part of the life of the Kalaupapa settlement.
- We know that the area is an important archeological zone, filled with the remains of those who were buried there over the decades and whose graves are not unmarked. The Memorial would serve as a kind of communal "headstone" so that all buried on the Peninsula, whether in marked or unmarked graves, could be remembered.

Therefore, I would like to affirm the site of the old Baldwin Boys Home as the ideal site for the Memorial. Since the NPS will have continuous oversight over the project, I would urge the NPS to make the determination that the project will not have adverse effects, so that the Memorial may move forward as expeditiously as possible.

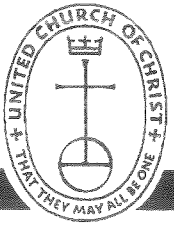
Thank you for all you do to preserve this very special place.

Sincerely,

A handwritten signature in black ink that reads "Larry Silva". The signature is written in a cursive style with a large initial "L" and "S".

Most Reverend Larry Silva
Bishop of Honolulu

Cc.: Mr. Clarence Kahilihiwa, Chairman of Ohana O Kalaupapa



**HAWAII
CONFERENCE**
UNITED CHURCH OF CHRIST

18 March 2015

Mr. Clarence "Boogie" Kahilihiwa, President
Ka 'Ohana O Kalaupapa
Post Office Box 1111
Kalaupapa, Hawai'i 96742

Dear Mr. Kahilihiwa:

**RE: Early Consultation for the Preparation of a Chapter 343 Hawaii
Revised Statutes Draft Environmental Assessment for the Establishment of
the Kalaupapa Memorial to Honor and Commemorate the Residents of
Kalaupapa**

Thank you for your invitation to provide comments related to an Environmental Assessment.

The position of the Hawai'i Conference of the United Church of Christ (HCUCC) is unchanged since the time that the National Park Service conducted its Environmental Assessment in 2011. In summary, HCUCC believes that the Memorial as currently proposed would pose no impact on our Siloama Church, including its two buildings and grounds. For this reason, we supported the "Finding of No Significant Impact."

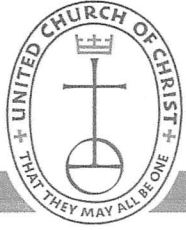
The Hawai'i Conference remains supportive of both the Memorial concept and the location proposed. The former Old Baldwin Home Site is ideal because it is within visual range of and in near proximity to the field of unmarked graves across the road, could greatly enhance visitors' experience to Kalawao, and would offer visual interest and a meditative environment for visitors.

HCUCC is committed to assisting Ka 'Ohana O Kalaupapa in its efforts to see the Memorial through to its completion, including community support, names research and fundraising.

Please let us know if we can be of further assistance.

Sincerely,

Charles Buck
Conference Minister



HAWAI'I CONFERENCE

UNITED CHURCH OF CHRIST

23 July 2013

Department of Land and Natural Resources
Attn: Board Members
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

Dear Chairman William J. Aila, Jr., and Board Members:

As Conference Minister of the Hawai'i Conference of the United Church of Christ, I am supportive of the issuance of a direct lease to Ka 'Ohana O Kalaupapa for the purpose of constructing and maintaining a Memorial as authorized by President Barack Obama in the "Kalaupapa Memorial Act of 2009."

The United Church of Christ (UCC) has been active and present on the Kalaupapa peninsula from the beginning of the forced relocation of Hansen's disease patients to the present day through the Siloama (Kalawao) and Kana'ana Hou (Kalaupapa) churches, which have merged over time to become what is known today as the Kana'ana Hou-Siloama United Church of Christ. Also, the UCC works cooperatively with the National Parks Service in the administration, maintenance and stewardship of the church buildings at Kalaupapa, a relationship that has been formalized in a twenty-year Cooperative Agreement that was most recently renewed in 2003. And the UCC, as a supporting member of Ka 'Ohana O Kalaupapa, has been an advocate for the establishment of a Memorial to honor the dignity and perpetuate the legacy of all those who lived at Kalaupapa.

The UCC is among those that recognizes the effective efforts of Ka 'Ohana O Kalaupapa toward a Memorial. From the start, when the Memorial was being envisioned, Ka 'Ohana has worked amicably and cooperatively with all the important stakeholders, including the patients and their families, National Parks Service, United Church of Christ, Diocese of Honolulu (Roman Catholic), the State of Hawai'i, and communities around the Hawaiian islands. There is no better party to entrust the erection and stewardship of the Memorial.

For this reason, the UCC supports a direct lease to Ka 'Ohana for at least the twenty years being recommended by DLNR staff. If a longer, sixty-five year lease were possible, the UCC would be equally supportive, not only because Ka 'Ohana has the capability to live up to the terms of the lease, but also because this would be an important sign to constituent donors of the State's genuine interest in and support of a long-lasting Memorial.

Department of Land and Natural Resources
23 July 2013
Page 2

The UCC is confident that with the granting of a lease, remaining issues, such as reaching a cooperative agreement with the NPS, as well as coming up with an approved design and plan for construction of the Memorial, will be resolved in a timely and satisfactory manner.

The UCC remains committed to supporting Ka 'Ohana O Kalaupapa in this worthy effort, and we are thankful for the State's support of the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Buck". The signature is written in a cursive style with a long horizontal flourish at the end.

Charles Buck
Conference Minister

OFFICIAL ELECTRONIC MAIL SENT VIA EMAIL
NO HARD COPY TO FOLLOW



United States Department of the Interior

NATIONAL PARK SERVICE
Kalaupapa National Historical Park
P.O. 2222
Kalaupapa, HI 96742



Tel: 808-567-6384
Fax: 808-567-6408

L3035 (Land Leases)

July 17, 2013

Mr. Dan Quinn,
Administrator, Division of State Parks
Department of Land and Natural Resources

Re: Ka 'Ohana O Kalaupapa Lease Request at Kalaupapa National Historical Park, Island of Molokai

Aloha e Dan,

Mahalo for your efforts to date to coordinate and prepare a package on behalf of Ka 'Ohana for presentation to the Board of Land and Natural Resources to request a land lease at Kalaupapa National Historical Park. Unfortunately, neither I nor the Manager of the Pacific Islands Office in Honolulu, Melia Lane-Kamahele, will be able to attend the upcoming DLNR Board meeting on July 26, 2013. Though we won't be in attendance, I do want to write and express the NPS's support for Ka 'Ohana O Kalaupapa obtaining a lease from DLNR for the Kalaupapa Memorial to be constructed on the grounds of the old Baldwin Home site at Kalawao. The proposed area is owned by DLNR and currently managed by the NPS under a cooperative agreement. The NPS concurs with the current legislation that positions Ka 'Ohana to fundraise, design and construct the proposed Memorial. We await the decision of the Board and look forward to the next steps working with the DLNR and Ka 'Ohana.

Respectfully,

Erika Stein Espaniola
Superintendent

ecc: Patty Neubacher, DRD Pacific West Region, NPS
Greg Gress, Chief, PWR Lands Division
William Aila, Chairman, Department of Land and Natural Resources
Steven Soares, Property Manager, DLNR State Parks



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

January 19, 2012

HRD10/4919E

Chair David Ka'upu and Commissioners
Kalaupapa Federal Advisory Commission
c/o Kalaupapa National Historical Park
McVeigh Social Hall
P.O. Box 2222
Kalaupapa, Hawaii'i 96742

Re: Notice of January 23, 2012, Meeting for Kalaupapa Federal Advisory Commission; Agenda Item 5(a)-(b) Entitled "Commission's Recommendation on the Memorial: (a) Ownership; (b) Long-Term Management"

Aloha e Honorable Chair Ka'upu and Fellow Commissioners:

Mahalo for this opportunity to provide commentary on Agenda Item 5(a)-(b) for the above-referenced proceedings. The Office of Hawaiian Affairs (OHA) respectfully submits the following:

The Administration of OHA supports the Commission's recommending the ownership and long-term management of the Memorial to Ka 'Ohana O Kalaupapa (Ka 'Ohana), a Native Hawaiian organization of Hansen's patients and others, and will recommend that the OHA Board of Trustees (BOT) adopt this position of support.

The Congressional record for the Kalaupapa Memorial Act lends guidance in determining the ownership and long-term management issue, even though no specific agency, department, office or entity is expressly appointed. Nevertheless, Senate Report 110-389, dated June 16, 2008, from the Committee on Energy and Natural Resources, lays justification for Ka 'Ohana's service in that capacity, where page 2 concludes: "As required by the act, the Ka 'Ohana O Kalaupapa, an organization of Hansen's patients and others, would construct and maintain the memorial at its own expense."

Moreover, a resolution by the OHA BOT adopted on May 21, 2009, issued the following:

BE IT RESOLVED, that the Board of Trustees of the Office of Hawaiian Affairs—in honor of Paul Harada, Richard Marks, Elizabeth "Ku'ulei" Bell,

Bernard Ka'owakaokalani Punikai'a, and Henry Nalaei lua—gives its support for the position of Ka 'Ohana O Kalaupapa with regard to the relationship between National Park Service, U.S. Department of the Interior, and Kalaupapa peninsula, consistent with recommendations presented in the "Preliminary Position Paper for Kalaupapa National Historical Park's General Management Plan" (2009).

Given Ka 'Ohana's standing, desire, efforts and funding in the establishment of the Memorial, and absent any compelling legal justification precluding its engagement as an owner having long-term managing responsibilities, it behooves stakeholders to acknowledge the merits of a lasting bond with Ka 'Ohana and the Memorial in perpetuity. It is Hawaiian custom to look up to kūpuna, our elders for guidance and instruction because of the wisdom they possess. In that vein, OHA looks up to Ka 'Ohana, and patients especially with kūpuna roles, in providing that wisdom for the way we shall commemorate those whose names will rest on the Memorial.

Recognizing the importance of the relationships and emotional ties between past and present patients and generations of 'ohana members are deeply sensitive matters indeed, and the religious or spiritual issues attached to such undertakings are perhaps outside the purview of government. To relegate Ka 'Ohana to the status of a volunteer group would be insensitive and run counter to common law notions where disposition and treatment of the deceased is a right and responsibility of family members and next of kin. The Memorial is tantamount to that kind of disposition and treatment.

Lastly, OHA is greatly appreciative of the Commission, the National Park Service, all of the Superintendents and staff who have graced Kalaupapa with Aloha, the Department of Health (DOH), Department of Land and Natural Resources (DLNR) and Department of Hawaiian Home Lands (DHHL), and all of those who have yet to embrace this wahi kapu, or sacred place, in the years ahead. A fitting solution would have all stakeholders working in successful collaboration in the spirit of Lōkahi. But even while a leaner arrangement is logistically more feasible, OHA respectfully submits that full consideration and faith be given to Ka 'Ohana O Kalaupapa on the Memorial's ownership and long-term management.

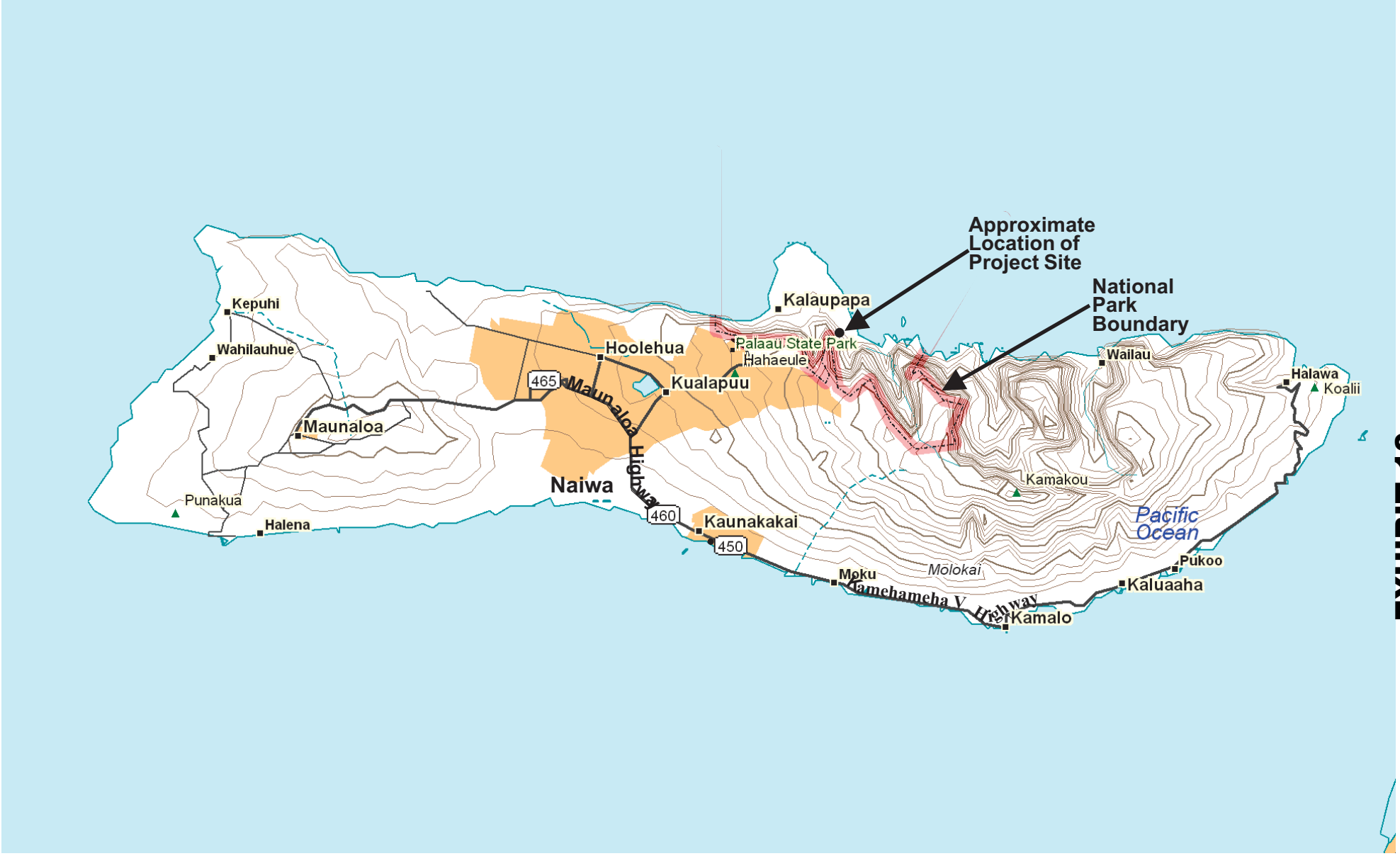
Mahalo again for giving due consideration to our comments regarding the Memorial. If you have any questions, please contact Jerome Yasuhara, Compliance Specialist, at (808) 594-0129 or jeromey@oha.org.

'O wau iho nō, me ka ha'aha'a,

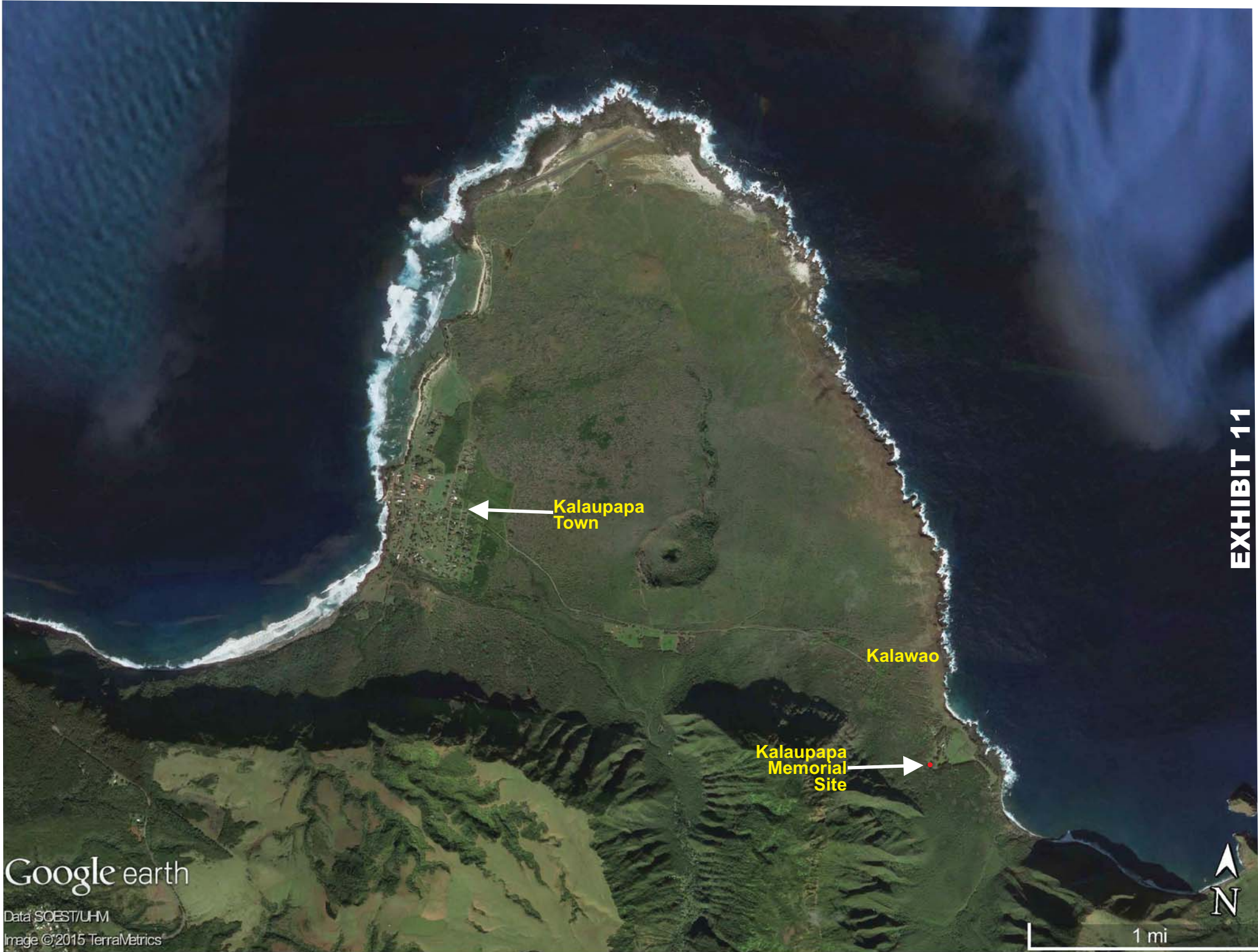


Richard Pezzulo
Interim Chief Executive Officer

c: OHA Chair Colette Y. Machado



KaOhanaOKalaupapa/Memorial/NPS.boundary



Google earth

Data SIOEST/UHM
Image © 2015 TerraMetrics



Siloama Church

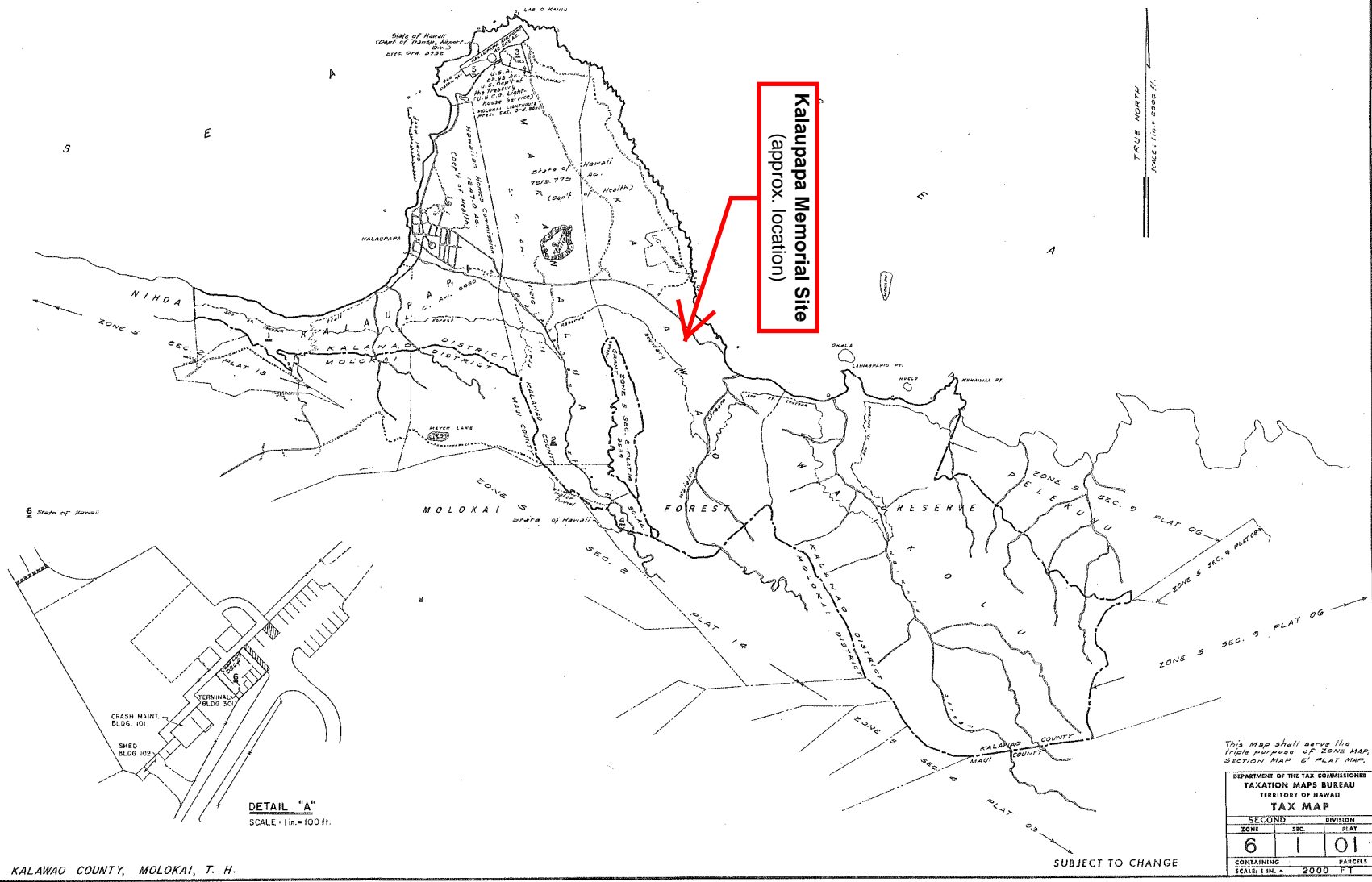
St. Philomena
Church

Kalawao
Settlement

Kalaupapa Memorial Site

EXHIBIT 12

EXHIBIT 13



DWG NO. 6477
SOURCE: U.S. GEOLOGICAL SURVEY MAP, Survey Dept. of T.M.B.
DATE: H.C.P.M. FEBRUARY 3, 1956

KALAWAO COUNTY, MOLOKAI, T. H.

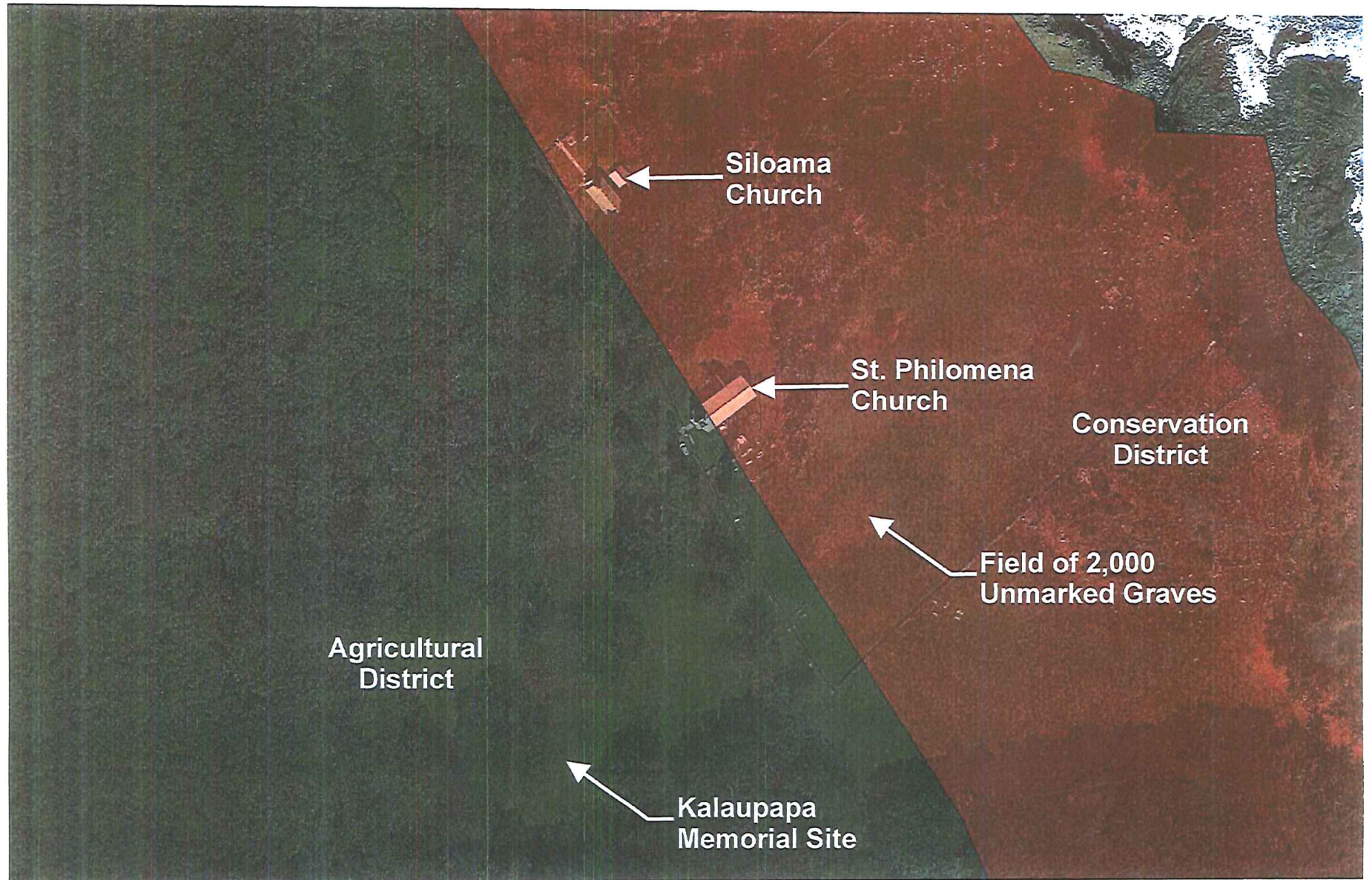
DETAIL "A"
SCALE: 1 in. = 100 ft.

This Map shall serve the triple purpose of ZONE MAP, SECTION MAP & PLAT MAP.

DEPARTMENT OF THE TAX COMMISSIONER			
TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
SECOND		DIVISION	
ZONE	SEC.	PLAT	PARCELS
6	1	01	
CONTAINING		PARCELS	
SCALE: 1 in. =		2000 FT.	

SUBJECT TO CHANGE

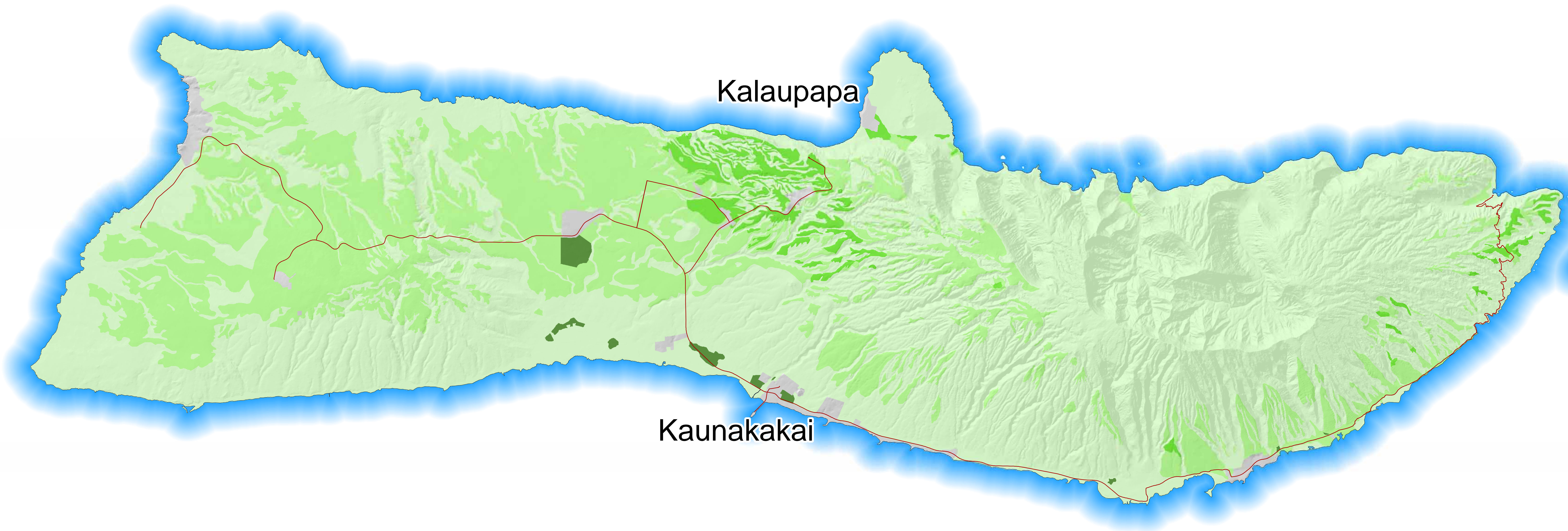
EXHIBIT 14



Source: Google Earth, State Land Use Commission

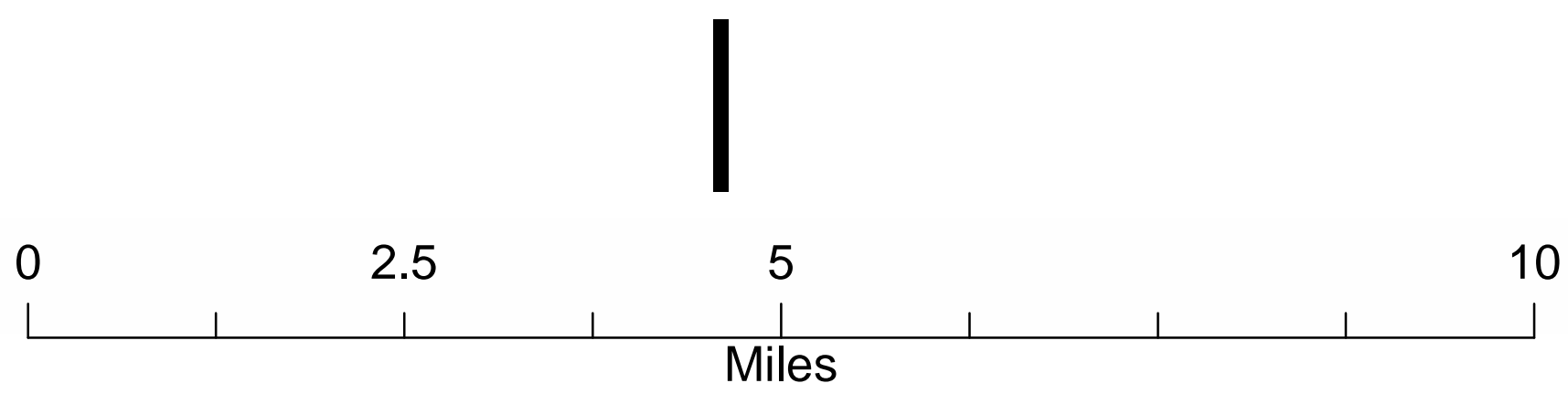
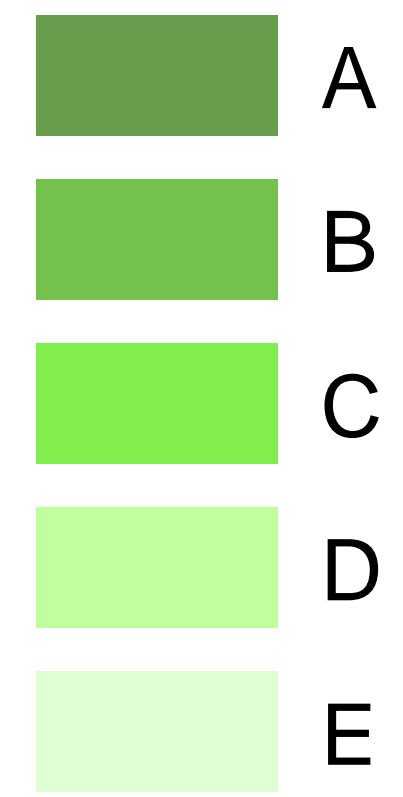
KaOhanaOKalaupapa/Memorial/Draft EA/SLUD

State Land Use District Map



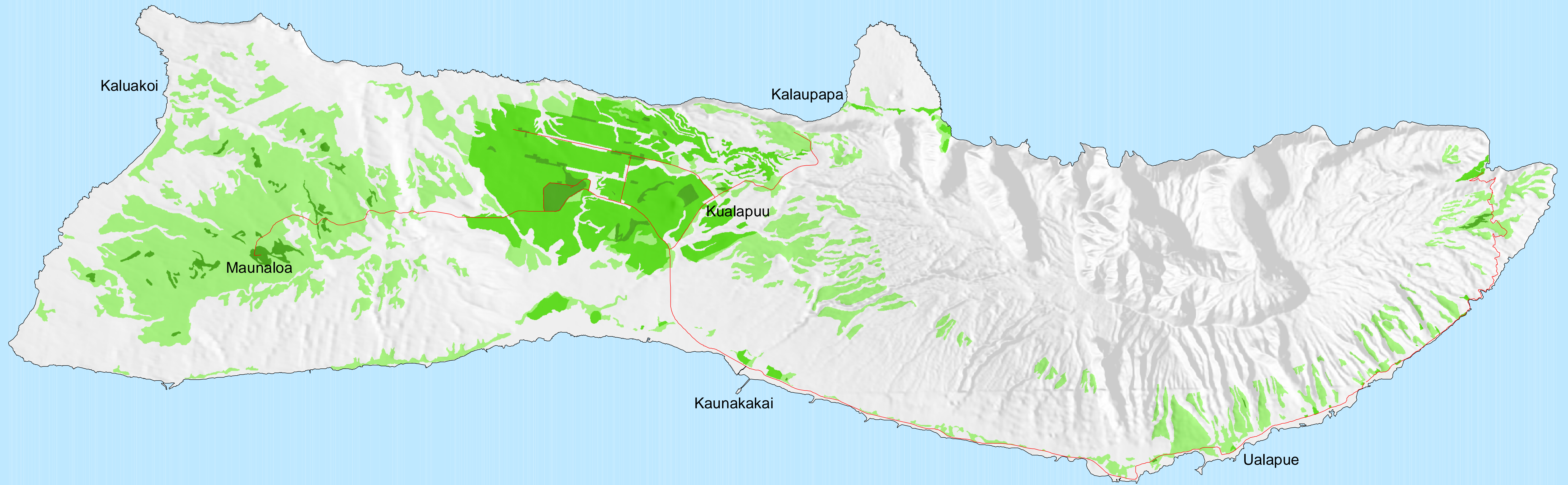
**County of Maui
Islands of Molokai and Lanai**

LSB Classification





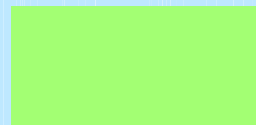
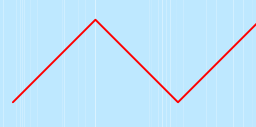
This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OP.
 Map No.: 20130909-06-DK
 Map Date: 09/09/13
 Sources:
 LSB Classifications: Land Study Bureau, 1965 to 1972.
 Major Roads: County of Maui.

Molokai

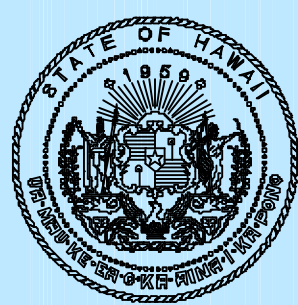
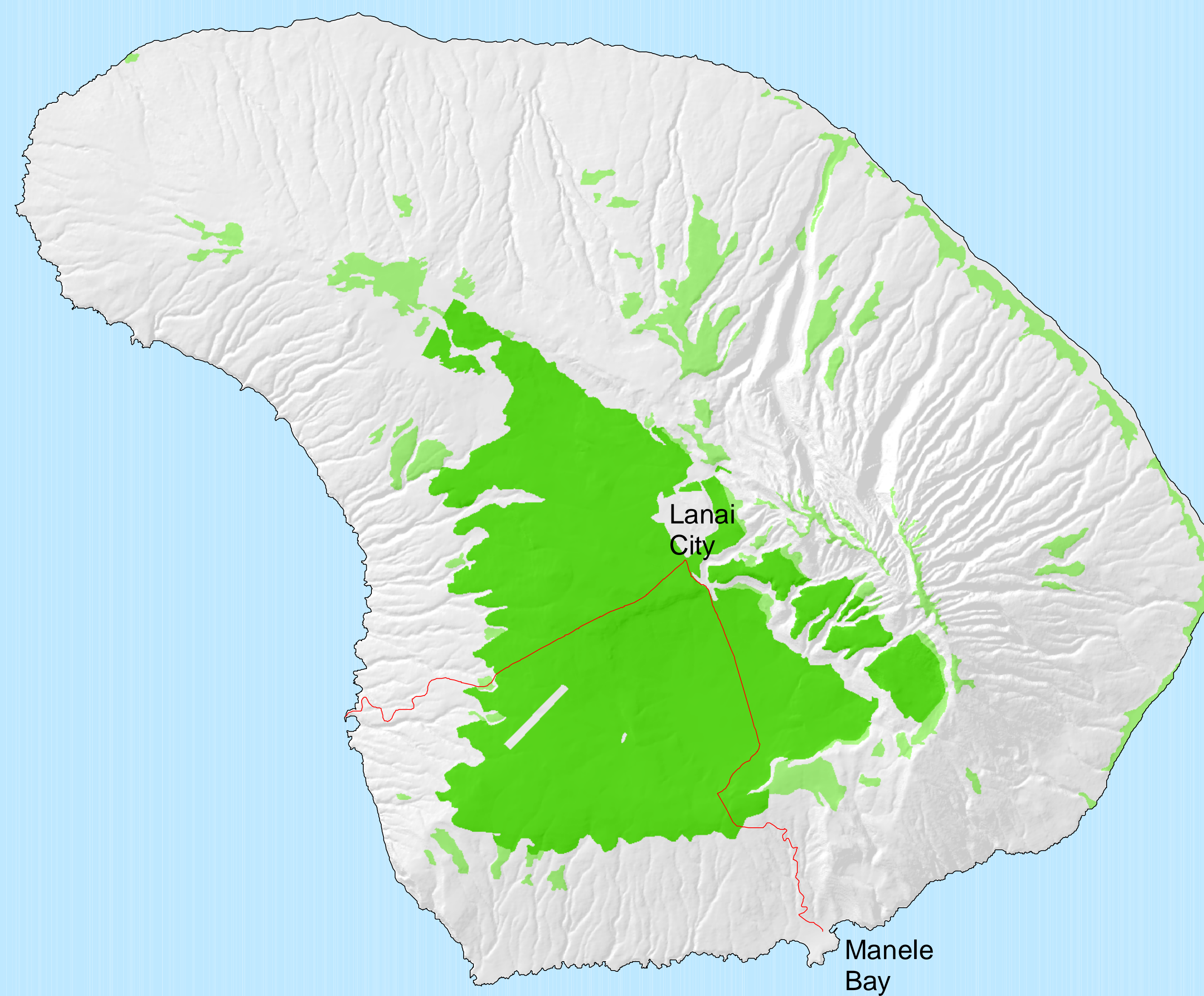


Islands of Molokai and Lanai

ALISH

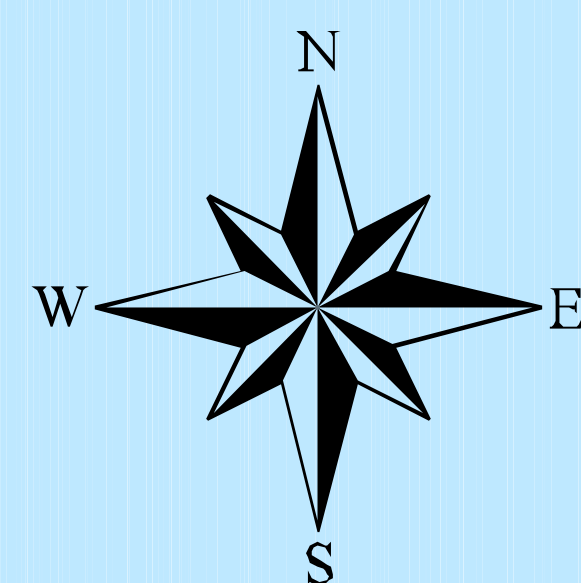
-  Prime
-  Unique
-  Other
-  Major Roads

Lanai



This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OP.

Sources:
ALISH (Agricultural Lands of Importance to the State of Hawaii) - State Dept. of Agriculture, 1977.
Major Roads - USGS, 1983.

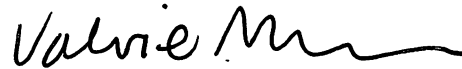


0 2.5 5 10 Miles

NOTARIZED AUTHORIZATION

I, Valerie Monson, Secretary for Ka ‘Ohana O Kalaupapa, hereby confirm that Tom Pierce, Attorney at Law, LLLC, is authorized to represent Ka ‘Ohana O Kalaupapa, Hawai`i nonprofit corporation, with respect to matters before the State of Hawai`i Land Use Commission (“LUC”), including but not limited to the filing of a petition for a declaratory order from the LUC that the proposed Kalaupapa Memorial is a permitted use under the Hawai`i Revised Statutes Chapter 205.

Dated: Maui, Hawai`i, September 6, 2015.



VALERIE MONSON
KA ‘OHANA O KALAUPAPA
Secretary

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

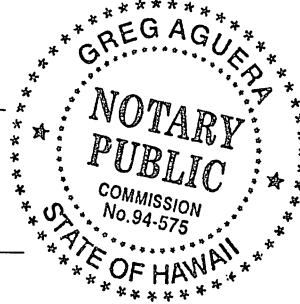
The foregoing document was acknowledged before me this 8th day of September, 2015, by VALERIE MONSON, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the foregoing document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Greg Aguera
Notary Public, State of Hawai'i

Print Name: GREG AGUERA

My commission expires: 10/6/18



Doc. Date: <u>9/8/15</u>	No. of Pages: <u>TWO</u>
Notary Name: <u>GREG AGUERA</u>	<u>2ND</u> Judicial Circuit
Doc. Descrip: <u>Notarized Authorization</u>	
<u><i>Greg Aguera</i></u> Notary Signature	<u>9/8/15</u> Date
	 Stamp or Seal

NOTARY PUBLIC CERTIFICATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been duly served upon the following via email and United States Mail, postage prepaid, on September 8, 2015:

Suzanne Case, Chairperson
Department of Land and Natural Resources
State of Hawaii
Post Office Box 621
Honolulu HI 96809

Curt Cottrell
Administrator, State Parks Division
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu HI 96813

Virginia Pressler, M.D.
Director, Department of Health
State of Hawaii
1250 Punchbowl Street
Honolulu HI 96813

Andrea J. Armitage
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu HI 96813

Attorney for State of Hawaii Department of Health

Erika Stein Espaniola
Superintendent, National Park Service
United States Department of the Interior
Kalaupapa National Historical Park
P.O. 2222
Kalaupapa HI 96742

Most Reverend Larry Silva
Bishop of Honolulu, Diocese of Honolulu
Office of the Bishop
1184 Bishop Street
Honolulu HI 96813-2859

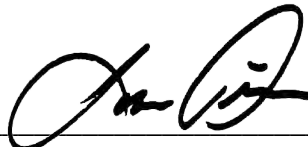
Charles Buck
Conference Minister
Hawaii Conference United Church of Christ
15 Craigsid e Place
Honolulu HI 96817

Office of Hawaiian Affairs
State of Hawaii
711 Kapiolani Boulevard, Suite 500
Honolulu HI 96813

Bryan C. Yee, Esq.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu HI 96813

Attorney for Office of Planning

DATED: Makawao, Maui, Hawai`i, September 8, 2015.



TOM PIERCE
PETER N. MARTIN
Attorneys for Petitioner
Ka 'Ohana O Kalaupapa