

October 16, 2015

Edmond Aczon, Chairman  
And members of the State Land Use Commission

Testimony of DeGray Vanderbilt

LUC DOCKET NO. DR-15-53 Petition for Declaratory Order

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OCT 16 2015

STATE OF HAWAII  
LAND USE COMMISSION

Good afternoon Chair Aczon and members of the Commission. My name is DeGray Vanderbilt. I became a resident of Molokai 35 years ago. For over a quarter of a century I have had the privilege of representing Santa Claus at the annual Kalaupapa Lion's Club Christmas party.

I am a former Chairman of the Molokai Planning Commission and in recent years have been assisting the 'Ohana with federal and state compliance issues.

I would like to thank the Commission and Office of Planning staff members for all their assistance in getting our request for a declaratory ruling before you on a timely basis and for helping us to understand the dynamics of process.

My testimony today supports the 'Ohana's request for the Commission to declare the Memorial as a permitted use under HRS Section 205-4.8(a)(8), which indicates the Memorial can be considered a permitted use if its development results in an improvements to a site of historic and/or scenic interest.

I just wanted to take a moment to clarify a couple points. In the Office of Planning comment letter to the Commission it mentions that the Department of Health supports the proposed project, and that Department of Land and Natural Resources (DLNR) verbally informed the Office of Planning it supported the proposed project and had no objections to the 'Ohana's request.

The Office of Planning also notes that the State Historic Planning Division of DLNR stated that it was premature to reach any conclusions until a concrete proposal was submitted.

I wanted to clarify the statement that "that it was premature to reach any conclusions until a concrete design proposal was submitted"

I spoke to SHPD a few weeks ago and they said they did not have time to prepare a formal response so they sent in a copy of their recent response to the 'Ohana's early consultation letter associated with the State's Chapter 343 environmental compliance process.

I have enclosed as Exhibit A an earlier letter from SHPD to National Park Service (NPS) that shows SHPD indeed has reach certain conclusions without a Memorial design, including the fact that NPS is working in partnership with Ka 'Ohana O Kalaupapa (the 'Ohana) to establish the Kalaupapa Memorial.

SHPD also noted in its letter that guidelines for the design and location of the Memorial have been agreed-upon between the 'Ohana and the NPS.

SHPD also noted NPS had indicated that, "Through proper mitigation and design, the Kalaupapa Memorial could help to enhance the landscape and enrich the history of Kalaupapa." And SHPD concluded that it concurred with this assessment and believe that if the agreed-upon design guidelines agreed on between NPS and the 'Ohana are followed, there will be **no adverse effect** to the Kalaupapa National Historical Park or to individual historic properties within the district.

In its petition, the 'Ohana listed the Office of Hawaiian Affairs (OHA) as a potential party because OHA has an interest in the historic site where the Memorial will be located because the property is ceded land.

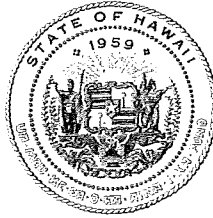
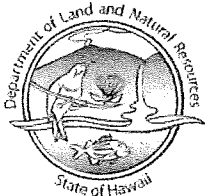
I wanted to include a copy of a letter from OHA to the Kalaupapa National Historical Park Advisory Commission ( EXHIBIT B) which indicates OHA's strong support for the Memorial project and for the 'Ohana management of the Memorial facility over the lng haul as noted in paragraph 2 on page 2 of their letter.

I am not sure if NPS will be in attendance today, but I wanted to include a few excerpts from the federal environmental assessment document they prepared, which acknowledge several ways the Memorial as a use on the historic site will result in improvements to the site. ( EXHIBIT C)

Thank you for your consideration today.

*E. Gay Vancler bitt*

LINDA LINGLE  
GOVERNOR OF HAWAII



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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

December 6, 2010

Stephen Prokop, Superintendent  
Kalaupapa National Historical Park  
US Department of the Interior  
PO 2222  
Kalaupapa, Hawaii 96742

LOG NO: 2010.3445  
DOC NO: 1012MD01  
Archaeology

Dear Mr. Prokop:

**SUBJECT: National Historic Preservation Act (NHPA) Section 106 Review -  
Proposed Memorial at Kalaupapa National Historical Park  
Kalaupapa Ahupua'a, Kalawai County, Island of Moloka'i**

Thank you for your correspondence dated October 15, 2010 regarding the aforementioned undertaking, which we received on October 18, 2010. We apologize for the delay in our reply.

The National Park Service (NPS) is working in partnership with Ka 'Ohana O Kalaupapa (the 'Ohana) to establish the Kalaupapa Memorial (the Memorial) at the Kalaupapa National Historical Park (KNHP). The Memorial is the result of legislation signed on March 30, 2009 by President Barack Obama, directing the Secretary of the Interior to authorize the 'Ohana to establish the Memorial at a location or locations approved by the Secretary to honor and perpetuate the memory of approximately 8,000 individuals who were sent to the Kalaupapa Peninsula from 1866 to 1969 because of government policies regarding leprosy. The 'Ohana, a 501(c)3 organization, consists of surviving patient residents, family members, long-time friends and professionals. The U.S. Department of the Interior Memorandum dated July 1, 2009 (Subject: Activation: P.L. 111-11, Omnibus Public Land Management Act of 2009, Title VII, Subtitle B., Section 7108: Kalaupapa National Historical Park Memorial), states that "The location, size, design, and inscriptions of the memorial shall be subject to the approval of the Secretary of the Interior."

The NPS has determined that the proposed Memorial location, to be situated within the land previously occupied by the Old Baldwin Boy's Home (which was deliberately destroyed in the 1950s) will be located in an APE of 33 acres, "...where the Memorial project may directly or indirectly alter the character of integrity of historic properties" and "the assessment of effects to historic properties extends beyond the proposed Memorial locations because of the potential for effects to the characteristics of the National Historic Landmark and the cultural landscape." We note that the National Historic Landmark encompasses the 8,725-acre Kalaupapa Peninsula.

Your correspondence indicates that guidelines for the design and location of the Memorial have been agreed-upon between the 'Ohana and the NPS. The agreed-upon guidelines follow the NPS Management Policies for memorials and include the following principals;

EXHIBIT A

The memorial shall:

1. Be designed and sited to avoid disturbance of natural and cultural resources and values;
2. Be located in surroundings relevant to its subject;
3. Be constructed of materials suitable to and compatible with the local environment;
4. Not encroach on any other pre-existing work or be esthetically intrusive;
5. Not interfere significantly with open space and existing public use;
6. Not divert attention from the park's primary interpretive theme; and
7. Not be affixed to the historic fabric of a structure.

In your letter dated October 15, 2010, you indicate that, "Through proper mitigation and design, the Kalaupapa Memorial could help to enhance the landscape and enrich the history of Kalaupapa." We concur with this assessment and believe that if the agreed-upon guidelines (1 through 7 above) are followed, there will be **no adverse effect** to the KNHP or to individual historic properties within the district, pursuant to 36CFR§800.5, which states,

*(b) Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the...undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36CFR part 68) and applicable guidelines, to avoid adverse effects.

We believe that the guidelines agreed upon by NPS and the 'Ohana will ensure consistency with the applicable Secretary's Standards for Preservation and Preservation Planning; we also believe that the preferred location at the site of the former Baldwin Boy's Home is within the stated guidelines. We request the opportunity to be consulted as the plans for the memorial are finalized. We also request that you consider some level of archaeological mitigation, either data recovery or monitoring at the final site of the memorial, if ground disturbance will occur during construction.

Your letter also indicates that NPS has determined that this undertaking may have an adverse effect on the KNHP pursuant to CFR 36 Part 800. We request that you take into account the following information when making your final determination:

1. The 'Ohana, who are cited as partners in this undertaking, do not agree with the determination of Adverse Effect (letter to SHPD dated October 25, 2010 and letter to NPS dated November 15, 2010);
2. We feel the APE (either of 33 acres or 8,725 acres) needs further refinement, given that the only location from which this Memorial will be visible is the St. Philomena Church;
3. The Bishop of the St. Philomena Church does not agree with the determination of Adverse Effect (letter from the Bishop of Honolulu to NPS, dated October 25, 2010);
4. The next closest church, United Church of Christ, does not agree with the determination of Adverse Effect (letter from Conference Minister Charles Buck to NPS, dated November 3, 2010);
5. The Advisory Council on Historic Preservation does not agree with the finding of Adverse Effect (letter from ACHP to NPS dated November 5, 2010); and

6. Prior findings of the NPS indicated that "*Memorial construction not consistent with the Secretary Standards for Historic Preservation will have an adverse effect on cultural resources.*" (*emphasis added; Layered Landscapes June 2010, p. i*).

In addition, we find guidance in the original foundation statement of the Kalaupapa National Historical Park (NPS 2006), citing Public Law 95-565, Sec. 102 dated 22 December 1980 which was the founding document for the KNHP, regarding Patient and Native Hawaiian Staffing:

Preservation and interpretation of the settlement will be managed and performed by patient and Native Hawaiians to the extent practical.

Training opportunities shall be provided to patients and Native Hawaiians in management and interpretation of the settlement's culture, historical, educational, and scenic resources.

It is our understanding that to date, consulted patients and Native Hawaiians have found that the memorial will enhance rather than adversely affect the KNHP.

If you have questions about this letter please contact Morgan Davis at (808) 243-5169 or via email to: [morgan.e.davis@hawaii.gov](mailto:morgan.e.davis@hawaii.gov).

Aloha,



Theresa K. Donham  
Acting Archaeology Branch Chief  
Deputy SHPO  
State Historic Preservation Division

cc:

Caroline D. Hall, Assistant Director  
Office of Federal Agency Programs, Federal Property Management Section  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW, Suite 803  
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Charles Buck, Conference Minister  
Hawaii Conference, United Church of Christ  
1848 Nuuanu Avenue  
Honolulu, Hawaii 96817

Most Reverend Larry Silva, Bishop of Honolulu  
Diocese of Honolulu, Office of the Bishop  
1184 Bishop Street  
Honolulu, Hawaii 96813

Charles "Boogie" Kahilihiwa, President  
Ka 'Ohana O Kalaupapa  
PO Box 1111  
Kalaupapa, Hawaii 96742



**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,

EXHIBIT B

Bernard Ka'owakaokalani Punikai'a, and Henry Nalaielua—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).

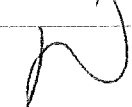
Given Ka 'Ohana's standing, desire, efforts and funding in the establishment of the Memorial, and absent any compelling legal justification precluding its engagement as an owner having long-term managing responsibilities, it behooves stakeholders to acknowledge the merits of a lasting bond with Ka 'Ohana 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

## **THE KALAUPAPA MEMORIAL —AN ALLOWABLE USE IN THE STATE AGRICULTURAL DISTRICT**

One of the permitted uses within the State Agricultural District is a use that results in the “Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest” (Section 2015 – 4.5 (8) Hawaii Revised Statutes)

Ka ‘Ohana O Kalaupapa (‘Ohana) believes the Kalaupapa Memorial qualifies as an allowable use under this permitted use category. The ‘Ohana is seeking a declaratory ruling from the Land Use Commission confirming the Memorial as a permitted use within the State Agricultural District .

The construction of the Kalaupapa Memorial will result in the “improvement” of a “site” that is both “historic” and “of scenic interest. The

**The following are excerpts from the Final Environmental Assessment document prepared by National Park Service (NPS) to satisfy the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190, 42, U.S.C. 4321-4347), as amended, including the Council on Environmental Quality regulations found at 40CFR 1500-1508 and other applicable laws, National Park Service Management Policies (2006) and management directives.**

**We feel these representations included in the NPS federal Environmental Assessment document validate the Memorial being considered an allowable use consistent with the following permitted use noted in §205-4.5 Permissible uses within the agricultural districts: (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest.**

The excerpts below validate that the construction of the Memorial on historic former Old Baldwin Home site will be an improvement to the site by halting the continued degradation of the area if the Memorial is not constructed; by opening scenic views; by benefitting archaeological resources and preserving heritage trees, as well as, enhancing educational opportunities for future generations of visitors.

The improvements to the historic former Baldwin Boys Home site noted below are in addition to improvements/enhancements to the historic site put forth by Bishop Larry Silva, Catholic Diocese of Honolulu and Reverend Charles Buck, Conference Minister for the Hawaii Conference United Church of Christ, some of which were included along with other support statements on Pages 7 and 8 of th<sup>e</sup> ‘Ohana petition to the Land Use Commission. The Catholic Diocese owns historic St. Philomena Church and the United Church of Christ owns historic Siloama Church. Both

EXHIBIT C



**churches are located in Kalawao contiguous to the historic site where the Kalaupapa Memorial will be built.**

**Begin excerpts re “site improvements” from NEPA EA prepared by NPS:**

Page 44: The “Kalaupapa Leprosy Settlement” National Historic Landmark was designated on January 7, 1976, and subsequently listed in the National Register of Historic Places (NR #76002415). The site of Old Baldwin Boys Home (SIHP# 50-60-03-2427) is listed on the National Register of Historic Places.

Page 45: Old Baldwin Boys Home Site - The site of Old Baldwin Boys Home (SIHP# 50-60-03-2427) is listed on the National Register of Historic Places

Page 75: The Old Baldwin Home historic site is a contributing site to the Kalaupapa Leprosy Settlement National Historic Landmark. *The construction of the Memorial in this location would mean that the non-native vegetation and feral animals would be managed resulting in less damage to the National Historic Landmark.*

Page 77: The construction of the Memorial in this location would mean that the non-native vegetation and feral animals would be managed resulting in less damage and *would be a beneficial effect to the archeological resources.*

Page 78: Archeological resources at the Old Baldwin Boys Home have been adversely impacted from past site clearing disturbances (prior to the advent of archeological resources protection laws), erosion and other natural processes. *The encroachment of invasive vegetation and the damage caused by pigs and other feral animals together with erosion and other natural processes continue to degrade this important historic site.*

Page 81: Scenic values are associated with both views looking out from the proposed Memorial location, as well as views looking towards and within the former Old Baldwin Boys Home.

Page 82: The no-action alternative (Memorial not constructed) would lead to continued despoiling of the views (within the Old Baldwin Boys Home and to the ocean, whereas the construction alternatives *provide the benefit of improved vegetation management and maintenance of views.*

Page 83: Construction of a Memorial bearing the names of patients with Hansen’s disease, and possibly other information, is a direct contribution to the educational opportunity offered by existing historic buildings, archaeological features, interpretive signs, and other resources in the vicinity of the Old Baldwin Boys Home. *The Memorial is thus a benefit to local educational opportunities.* □

Page 57: Scenic Resources - Within Kalawao settlement, scenic resources are perceived from vantage points along Old Damien Road, which serves to divide the views into those that are oriented north across the open landscape to the Pacific Ocean, and views looking south, into the walled enclosure and forested areas adjacent to the Old Baldwin Home.

Scenic resources associated with the historic settlement at Kalawao have changed considerably over time. *Much of this change is the result of abandonment, and the spread of non-native [exotic] vegetation into areas historically open in character.*

At the Baldwin Home, non-native vegetation has encroached from areas historically planted with ornamentals, or from areas associated with subsistence and cultivated garden areas. As a result of these changes, remaining views at the Baldwin site focus inward to a relatively small open area in the center of the enclosure and the area surrounding a man-made mound and monkey pod tree at the site of the old rock garden. From this point, historically significant views and scenic resources including views north across the [burial] grounds and open landscape, the Pacific Ocean, and Saint Philomena Church are limited to selected vantage points.

Page 80: Improved grounds management (from construction of the Memorial) would allow *the beneficial retention of heritage trees until the end of their natural life-span.*

Page 48: The site selected for construction of the Baldwin Boys Home was a treeless barren rocky area. Joseph Dutton and some of the boys removed the rocks to make room for the new building complex.

Page 68: *Several benefits (from the construction of the Memorial) would be provided by the improved vegetation management within the Old Baldwin Boys Home and vicinity to maintain open historic views and remove unsafe trees would improve vegetation armoring of the soil by herbaceous vegetation. Improved feral animal control will reduce the amount of rooting by pigs.*

~~Page 20: Impact Topics Dismissed From Further Analysis by NPS in the NEPA EA:~~

The topics listed below either would not be affected or would be affected only negligibly by the alternatives evaluated in this process for selecting an alternative. Therefore, these topics have been dismissed from further analysis. Negligible effects are localized effects that would not be detectable over existing conditions.

Prime and Unique Farmlands: No prime or unique agricultural soils are believed to exist at Kalaupapa. Therefore, this topic was eliminated from further consideration.