

ACT 144

H.B. NO. 1029

A Bill for an Act Relating to Living Park Planning Councils.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the coronavirus disease 2019 has had a catastrophic impact on the world economy. The complexities of dealing with a worldwide health crisis have added additional layers of uncertainty that may increase the time needed for recovery. Because of this, the State has implemented the fiscal biennium 2021-2023 program review to identify ways to:

- (1) Reduce expenditures;
- (2) Identify programs, functions, and activities for possible elimination that, although well-intentioned, are of marginal benefit, low performing, or of lesser priority; and
- (3) Identify cost-saving opportunities in core and primary programs and services through tightening program eligibility, reducing program benefits, improving efficiency, or shifting costs.

The department of land and natural resources, after thorough review and much scrutiny, has determined that the living park planning council for Kahana valley is no longer effective and functional.

Act 15, Special Session Laws of Hawaii 2009, authorized the establishment of living park planning councils among other effects to develop a state living park master plan to ensure a living park achieves its purpose and goals. After ten years and over eighty meetings, however, due to the complexity and lack of consensus, the community-based planning council could not reach consensus or develop the framework for a master plan for Kahana valley state park. Hence, the department of land and natural resources engaged the services of a contractor to initiate the master planning process. However, it was determined that there were many issues to be addressed prior to the development of a community master plan. In 2019, the contractor finalized their report that identified three main issues that needed to be resolved prior to moving forward on a master plan:

- (1) Determination if a cultural living park is still a realistic and valid concept;
- (2) Assessment of the provisions and options relating to residential leases; and

- (3) Identifying appropriate alternative management entities for oversight and management of the residential portions of the park or the park in general.

The outcome and outlook have diminished with the lack of participation, consensus, and motivation to move forward towards a master plan for the Kahana community. To date, there has been no further discussion on a master plan or future date to reconvene the planning council.

The purpose of this Act is to:

- (1) Repeal sections of Act 15, Special Session Laws of Hawaii 2009, that authorized the establishment of living park planning councils; and
- (2) Authorize the department of land and natural resources to oversee development and implementation of a master plan for the Kahana community.

SECTION 2. Act 15, Special Session Laws of Hawaii 2009, is amended as follows:

1. By amending section 1 to read:

“SECTION 1. The legislature finds that state living parks possess unique historical and cultural value. In state living parks, individuals reside on lands located within the living park and are an essential part of the purpose of the park for the benefit of the public. As set forth in Senate Resolution No. 264, S.D. 1, Regular Session of 1977, the purpose of a living park is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways.

Kahana valley state park is an example of a living park. Between 1965 and 1969, the State condemned the ahupuaa o Kahana for use as a state park, making it the only landowner in the State of Hawaii, other than the owners of Niihau, to own an intact ahupuaa. An ahupuaa, a triangular slice of land running from the mountains to the ocean, was the major land division used by pre-contact Hawaiians.

Families living in Kahana at the time of condemnation were of varied ethnic backgrounds, and the people of Kahana generally lived a simple, subsistence lifestyle in harmony with native Hawaiian values and traditions. In 1970, a governor’s task force proposed the concept of a living park as a way in which the residents could continue to live in the park and participate in the park for the benefit of the public.

To effectuate the living park concept, Act 5, Session Laws of Hawaii 1987, authorized the department of land and natural resources to issue long-term residential leases to individuals who had been living on the land. In 1993, the department of land and natural resources entered into sixty-five-year leases with thirty-one qualifying families and required that all lessees be an essential part of the interpretive programs by contributing at least twenty-five hours of service each month to benefit the park. To provide lessees with money to construct new houses, Act 238, Session Laws of Hawaii 1988, appropriated funds to provide low-interest home construction and mortgage loans for Kahana valley state park lessees. The appropriation was sufficient for twenty-six lessees to receive loans in the amount of \$50,000 each.

Since 1993, three leases have been terminated by the department of land and natural resources for noncompliance with lease conditions. Other families living in Kahana valley have sought to obtain long-term leases, but the department of land and natural resources refuses to issue any further leases, relying on the attorney general’s opinion issued on March 24, 2008, asserting that Act 5, Session Laws of Hawaii 1987, expired.

Since 1970, Kahana residents and the greater community proposed numerous plans to the board of land and natural resources. However, the board of land and natural resources never adopted a master plan for Kahana valley state park. As a result, there has been a lack of clarity, vision, goals, and policies directing the residents and the department of land and natural resources in the development and management of Kahana valley state park.

The management of a living park requires that the department of land and natural resources have the authority to negotiate and enter into long-term residential leases, a clear master plan, and the resources to support the living park, including the establishment of a land manager position akin to a konohiki.

The purpose of this Act is to:

- (1) Establish a two-year moratorium on evictions of persons who at the time of the enactment of this Act, reside in Kahana valley state park, have participated in interpretive programs for Kahana valley state park, and have continuously lived there since before 1987 or hold or have held a long-term lease or permit to reside there; and
- (2) Authorize the department of land and natural resources to issue long-term residential leases to qualified persons; and
- (3) ~~Establish a living park planning council to develop a master plan for each state living park that will provide the framework, proposed rules, measurements for success, and planning process to ensure that the living park achieves its purpose and goals].”~~
2. By amending sections 5 and 6 to read:

“SECTION 5. The development of a master plan for a state living park shall rest with the ~~[living park planning council.]~~ department of land and natural resources. The master plan shall be reviewed and updated as needed. In developing the master plan, the ~~[council.]~~ department of land and natural resources, among other things, shall:

- (1) Establish goals and objectives to ensure the living park reaches its full potential;
- (2) Set forth standards, timelines, and other measurements to ensure the living park achieves its goals and objectives;
- (3) Identify programs that enhance educational opportunities and cultural awareness in the living park;
- (4) Develop plans to secure funding for a land manager, a housing fund, and any other financial needs identified in the living park master plan;
- (5) Seek out and consult with all residents of the living park, kupuna, community groups adjacent to the living park, and organizations that have knowledge that may benefit the living park;
- ~~[(6) Advise the department of land and natural resources on any matter relating to the living park;~~
- ~~[(7) (6) Propose agreements that will establish the full authority of the [planning council] department of land and natural resources to implement the master plan, including whether the [planning council] department of land and natural resources can hire a land manager, establish a nonprofit organization, or enter into contracts;~~
- ~~[(8) (7) Establish criteria, policies, and controls governing the management of the living park leases, including:~~
 - (A) Selection of persons for leases; provided that preference is given to persons residing in the park who contribute twenty-five hours of service each month to benefit the living park and are actively seeking a lease in the living park;
 - (B) Designation of lands to be leased;

- (C) Terms and conditions of leases;
- (D) Monitoring and enforcement of lease terms and conditions;
- (E) Treatment of persons residing in a living park without a lease; and
- (F) Assignment and renewal of leases;
- [(9)] (8) Maintain, promote, and perpetuate the aloha spirit as defined in section 5-7.5, Hawaii Revised Statutes; and
- [(40)] (9) Develop protocols and proposals to encourage the caring for kupuna and the sharing and perpetuation of kupuna knowledge.

SECTION 6. ~~[The living park planning council shall submit a proposed master plan to the board of land and natural resources no later than one year following the first meeting of the planning council. Within ninety days after submission of the proposed master plan, the board of land and natural resources shall either adopt the proposed master plan or deny the proposed master plan. If it denies the proposed master plan, the board of land and natural resources shall submit to the living park planning council, in writing, its reasons for denying the proposed master plan. The living park planning council shall revise the proposed master plan and resubmit the revised proposed master plan to the board of land and natural resources until a final master plan is adopted.]~~

~~The]~~ The department of land and natural resources shall develop a living park master plan, which shall become effective upon its adoption by the board of land and natural resources. Pending adoption of the living park master plan, the department of land and natural resources and the residents of the living park shall be guided by existing plans developed by the residents of the living park. For example, in Kahana valley, the Kahana state park development plan, dated December 1985, and the living park plan of Kahana's people, dated 1979, shall be guiding documents for Kahana valley state park."

3. By repealing section 4:

~~["SECTION 4. —(a) For each state living park there shall be established a living park planning council to be placed within the department of land and natural resources for administrative purposes. The planning council shall consist of five voting members, appointed in the manner and to serve for the terms provided in section 26-34, Hawaii Revised Statutes, and two ex officio nonvoting members.~~

~~(b) The voting members of the living park planning council shall be as follows:~~

- ~~(1) One member shall be a representative of the department of land and natural resources;~~
- ~~(2) Three members shall be representatives of families who reside in the state living park, selected from a list of resident nominees provided by the president of the park's community association; and~~
- ~~(3) One member shall be a representative of the general public.~~

~~(c) The ex officio nonvoting members of the planning council shall be appointed in equal numbers by the state senator and the state representative representing the district in which the state living park is located. Each nonvoting member of the planning council shall possess general knowledge of at least one of the four strategic areas listed below:~~

- ~~(1) Land use laws or land use planning;~~
- ~~(2) Community-based planning;~~
- ~~(3) The environment; or~~
- ~~(4) Native Hawaiian culture.~~

~~(d) The council shall select a chairperson by a majority vote of its voting members; provided that no member may serve as chairperson for more than three consecutive years.~~

~~(e) Council members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their official duties.~~

~~(f) Any action taken by the planning council shall be approved by a majority of its voting members. Three voting members shall constitute a quorum to conduct business.~~

~~(g) The first meeting shall be held on the third Tuesday in July, beginning in 2009.”]~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 30, 2021.)