



## United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, California 94104-2828



IN REPLY REFER TO:

L2623(PWR-PR)

April 5, 2013

Mr. Scott L. Chan, Stadium Manager  
Aloha Stadium  
PO Box 30666  
Honolulu, Hawaii 96820-0666

Re: N-HI-495A; Aloha Stadium, Honolulu, Hawaii

Dear Mr. Chan:

Thank you for your letter of August 28, 2012, for your generous hospitality at our meeting on September 12, 2012, and for your follow-up letter of January 30, 2013.

As you have correctly stated, the deed conveying the stadium property to the State of Hawaii required the submittal of biennial performance reports for a certain period and thereafter as further determined by the Secretary of the Interior. Our records indicate that the biennial report requirement has been met, and that the last biennial report we received was dated May 1997. Even though the regular reporting requirement has been met, the National Park Service reserves the right to request further such reports at any time. In addition, and as you acknowledge, any change of use that would constitute a departure from the accepted program of utilization for the site would require NPS review and concurrence.

In your letters and in our September meeting, you requested further guidance regarding what types of uses would be acceptable at Aloha Stadium. The Federal Lands to Parks Program (FLP) requires that land conveyed under this public benefit disposal authority be used only for public park and recreation purposes. As the deed states:

“The premises above described shall be forever and continuously used and maintained as and for a public park and public recreational area, and for these purposes only, in accordance with the Application for Public Park, Public Recreational Area and/or Historic Monument of the Party of the Second Part dated October 5, 1966...”

In its report and recommendation on the original application in 1967, the Bureau of Outdoor Recreation (succeeded by the National Park Service for managing the FLP Program) recommended approval for uses described as follows:

“The stadium would be used by the public, on a non-discriminatory basis, to enjoy sport events, spectacles, rallies, concerts, programs, exercises, ceremonies, conventions, and other features provided by the municipality, by civic organizations, civic-minded persons, the military, or by other responsible groups. The parks would contain play and rest areas amid landscaped settings, principally for intensive use as a neighborhood park and playground.”



This requirement was assumed by the State of Hawaii when it acquired the property from the City and County of Honolulu in 1970. The record of correspondence between the State of Hawaii and the Department of the Interior regarding acceptable uses under the deed restrictions reveals a long-standing question about acceptable uses at the site. These questions were frequently initiated by the State, and raised in the context of the more general question about whether or not the deed could be amended to drop the restriction to public park and recreation purposes since the State was contemplating commercial uses that would not be typical for most public parks. One such exchange resulted in our letter of May 1, 1987, in which we reaffirmed our March 22, 1977 approval of the swap meet use of the stadium parking lot:

“The law and implementing regulations do not define public park and recreation and this determination is left up to the National Park Service as the agency with oversight and compliance responsibilities for this aspect of the surplus Federal property program. It is conceivable that all or most of the uses you have in mind for the stadium site would be determined eligible uses under our interpretation of the public park and recreation requirement. For instance, on March 22, 1977, we approved a Swap Meet Concession for use of the parking area provided it did not conflict with normal stadium activities. Such periodic "open market" use of an existing facility (parking lot) was considered to be a public recreational activity in a general sense of the term. Determinations of what is and is not a legitimate public recreational use very often depend on the size and type of park or recreation area, existing facilities, compatibility and potential use conflicts, extent and frequency of use, degree of general public participation, environmental impacts, entry and user fees, access and use restrictions, and various other considerations that require a case-by-case evaluation.”

I think both we and the State have struggled somewhat to determine what uses are appropriate for Aloha Stadium. The facility is an awkward fit in the Federal Lands to Parks Program in that it is geared more to spectator sports than to public outdoor recreation, and it is a large facility that requires revenues sufficient to support it. The general rule is that concessions may be used to support the public recreational use of the site, and reasonable fees may be charged to support that use. Uses such as retail sales that are specifically to generate revenues as opposed to facilitating the public's recreational use of the site are not consistent with the terms of the conveyance.

The exploration of abrogation of restrictive deed conditions by either negotiated sale or land exchange (in correspondence, by legislative direction, and in the 2008 Memorandum Of Understanding (MOU)) appear to be due to the awkward programmatic fit and the desire for revenue generation without the public recreation constraints. In the meantime, your letter of January 30, 2013 lays out a reasonable approach to operating the facility consistent with the requirements of the program as they apply specifically to Aloha Stadium. As we discussed in person in September, public parks are frequently used for private events, as long as the private uses do not displace the primary public use.

The types of events you name in your letter: company meetings, workshops, trainings, retreats, etc., celebratory parties for birthdays, weddings, awards, etc., and seasonal activities and celebrations, all could be acceptable, even if not open to the general public, as long as they meet the criteria that they do not interfere with the public use of the stadium property, and that public recreational use takes precedence over private events. In fact, given the nature of the stadium facility and the revenues needed to support it, they could be seen as helping to make maximum use of the facility so that it can be appropriately maintained.

Regarding the rapid transit easement and associated structures, we must defer significantly to local land-use decisions and your determinations regarding the usefulness of that rapid transit station to stadium operations and public access. Our finding regarding its acceptability within the terms of the FLP deed is

dependent upon its serving as a public access facility for the public recreational use of the stadium park. No right to exclusive use of the premises for rapid transit purposes is to be conveyed. The federal reversionary interest that ties the stadium park to use only for public park and recreation purposes also applies to the land on which the rapid transit station is to be situated.

The stadium is a facility that was originally approved by the Federal Lands to Parks Program, but it is also one that inherently pushes the boundaries of what we consider to be a public recreational facility in terms of the purposes of the public benefit conveyance program. We urge you to consider other ways the facility could be used more extensively for public outdoor recreation. We also would encourage you (the State) to continue exploring land exchange options according to the terms of the MOU, or other deed abrogation possibilities, such as negotiated purchase.

We are very grateful for your continued conscientious management of the Aloha Stadium park for public recreational use. Please let us know if you would like further information or discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "David Siegenthaler". The signature is fluid and cursive, written over a large, faint watermark that reads "carrollcox.com".

David Siegenthaler  
Federal Lands to Parks Program Coordinator  
Pacific West Region