

1990-01-23-0A-FBA

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Environmental Assessment
for
* Acquisition
of

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Kaihoku Place Pedestrian Beach Access Easement
Kailua, Koolaula, Hawaii 90 JAN 10 P3:09
(Tax Map Key: 4-3-12 Por. 34)

OFC. OF ENVIRONMENTAL
QUALITY CONTROL

Proposing Agency: Department of Parks and Recreation
City and County of Honolulu

Consulted Parties: Department of General Planning
Department of Land Utilization

I. Proposed Project

A. Summary

The City proposes to acquire a public pedestrian beach access easement across a privately owned beach right-of-way and private road. (See Figures 1 and 2.)

B. Technical Characteristics

The private road (Kaihoku Place) and private beach right-of-way are presently owned and maintained by the Kaihoku Place Community Association. The Association is made up of the owners of six lots which use Kaihoku Place for access to South Kalaheo Avenue. (See Figure 2.)

Only minor improvements are likely to take place after public acquisition of a pedestrian easement. Existing "private property" signs will be removed and a public beach right-of-way sign will be installed on Kaihoku Place. One or more trash cans will be installed for public use. If requested by abutting lot owners, then the City will install a chain link fence to separate unfenced parts of private lots from the pedestrian easement. The City does not plan to pave the pedestrian easement or install a parking lot, shower or comfort station.

City ordinances and rules of the Department of Parks and Recreation will be applicable to public use of the pedestrian easement. (For example, consumption of alcoholic beverages will no longer be legal after acquisition of a public pedestrian easement.) The City will be responsible for cleaning and maintaining the pedestrian easement. The City will be liable for any accidents on the pedestrian easement due to City negligence.

C. Social Characteristics

There is no legal public beach right-of-way from South Kalaheo Avenue between Kailua Beach Park and Kalama Beach Park: a distance of about 4,300 feet. Private beach rights-of-way along this stretch of shoreline, established several decades ago when Harold Castle developed leasehold beachfront subdivision lots, originally were open to Kailua residents living mauka of South Kalaheo Avenue. Later, as leasehold lots were sold in fee, these beach rights-of-way were deeded to small community associations made up of abutting lot owners and lessees. In many cases, new owners have either discouraged or prevented public use of their beach rights-of-way.

In May 1988, after mauka Kailua residents confronted this problem at Kaihoku Place, they requested City acquisition of a public pedestrian easement to the beach. Negotiations between these mauka residents and the Kaihoku Place owners have not secured any guarantee that the public will permanently be able to use the Kaihoku Place beach right-of-way. (See Appendix A.)

D. Applicable Land Use Controls

Tax Map Key: 4-3-12: 34 (Kaihoku Place and beach right-of-way) is designated Residential on the Koolaupoko Development Plan Land Use Map and zoned R-10 under the City's Land Use Ordinance. The property is entirely within the City's special management area, and the most makai 40 feet lies within the shoreline setback area. The property is shown as lying outside the 100-year flood-plain on the applicable Flood Insurance Rate Map. No major public improvements are planned in the area under the Koolaupoko Development Plan Public Facilities Map or the City Department of Transportation Services street setback rules.

Public acquisition of a pedestrian easement across Tax Map Key: 4-3-12: 34 is permitted under applicable City land use controls. No Development Plan amendment, zoning change, special management area use permit, shoreline variance, or flood hazard variance is required. However, the City Council must pass Resolution No. 89-341 authorizing condemnation of a pedestrian easement by eminent domain. Any public improvements to the pedestrian easement may require special management area minor permits and/or shoreline variances.

E. Economic Characteristics

The price for public acquisition of a pedestrian easement will be set by either negotiation or court order. As of May 1989, the City Department of Finance does not charge property taxes for Tax Map Key: 4-3-12: 34 but has assessed the land value of this parcel at \$100.

II. Summary Description of the Environmental Setting

A. Topography

The proposed pedestrian easement is about six feet above sea level.

B. Soils

Beachfront properties makai of South Kalaheo are underlain by calcareous beach sand.

C. Rainfall

Median annual rainfall at the site is about 40 inches.

D. Drainage/Water Resources

There are no surface drainage-ways or surface water bodies inland from the shoreline in the immediate vicinity of the proposed pedestrian right-of-way. There is no potable ground water in the area.

E. Natural Hazards

There are no significant natural hazards associated with the property.

F. Vegetation

Panax, ironwood and naupaka hedges are planted on the sides of the property. No rare or endangered species of plants are present.

G. Fauna

The area is highly altered by human action and contains no rare or endangered species of fauna.

H. Existing Land Uses

Kaihoku Place is used as a driveway for six lots and as a walkway to a right-of-way to Kailua Bay. The beach right-of-way is currently used by the lot owners, their tenants, and Kailua residents living in nearby subdivision lots mauka of South Kalaheo Avenue. The absence of public parking on South Kalaheo Avenue discourages practically all use of the beach right-of-way by Oahu residents who do not live in the immediate area.

Neither Kaihoku Place nor the beach right-of-way is paved. Kaihoku Place is covered with crushed coral, and the beach right-of-way is grassed.

I. Historic Sites and Archaeological Resources

There are no known historic sites or archaeological resources in the immediate area.

J. Air Quality, Noise, and Nuisances

Predominant onshore winds buffer residents makai of South Kalaheo Avenue from traffic noise and traffic-generated air pollution. Kaihoku Place property owners consider noise and litter generated by public use of their beach right-of-way to be a nuisance.

K. Traffic and Roads

Because of heavy traffic, the City has banned parking on the sides of South Kalaheo Avenue.

III. Summary of Potential Impacts and Mitigation Measures

The primary impact of the proposed pedestrian easement will be to assure that Kailua residents will continue to be able to walk to the beach across Kaihoku Place and the abutting beach right-of-way. Use of the proposed pedestrian easement by Kailua residents may increase above current levels if other private beach rights-of-way makai of South Kalaheo Avenue are closed to the public. Because of parking constraints and the absence of showers and comfort stations, it is unlikely that Oahu residents living outside Kailua will use a pedestrian easement at Kaihoku Place.

To mitigate problems with litter, the City will install trash cans and maintain the pedestrian easement. If requested by abutting lot owners to maintain their privacy, then the City will install a chain-link fence to separate unfenced parts of private lots from the pedestrian easement. Alternatively, the lot owners may apply for a shoreline variance to construct a fence of their own design along the beach right-of-way.

IV. Alternatives Considered

The no-action alternative was rejected because it is City policy to provide adequate, permanent, legal public access to shorelines with recreational value. Negotiations between the mauka community and Kaihoku Place property owners have failed to reach any other reasonable alternative.

V. Determination

An environmental impact statement is not required under Chapter 343, Hawaii Revised Statutes.

VI. Reasons Supporting Determination

The proposed action will assure continued public use of an existing privately owned beach right-of-way. Existing land uses will not be displaced. New land uses will not be established. Hence, acquisition of a public pedestrian easement will not have significant environmental effects.

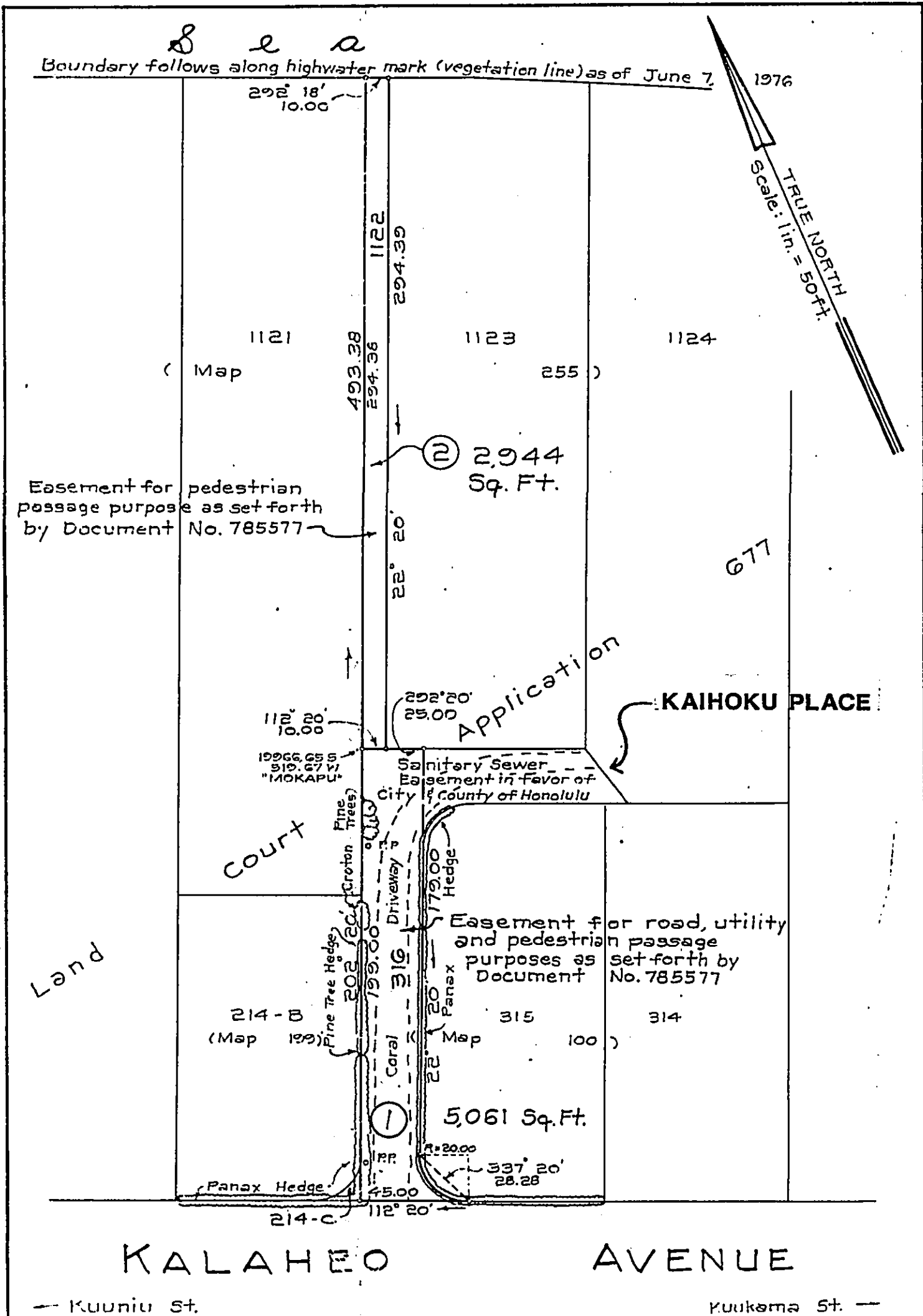


FIGURE 2

Owner's of Parcels 1 and 2
Kaihoku Place Community
Association

Topo taken from map
File No. 15-8-3-5

PARCELS 1 & 2 PARCEL MAP

DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF HONOLULU
DIVISION OF LAND SURVEY AND ACQUISITION

**PEDESTRIAN BEACH
RIGHT OF WAY**

At Kailua, Koolaupoko, Oahu, Hawaii

APPENDIX A

MISCELLANEOUS COMMUNICATIONS TO THE CITY COUNCIL
SUPPORTING THE PROPOSED KAIHOKU PLACE PEDESTRIAN BEACH ACCESS EASEMENT

Testimony on Bill 89-341
Council Committee on Human Services
City Council of Honolulu

Peter T. Dyer
138 Kuuhale Street, Kailua

Aug 1 1 45 PM '89
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I am here today to testify in favor of Bill 89-341, relating to condemnation of an existing roadway lot from North Kalaheo Avenue to Kailua Beach for use by the public to access Kailua Beach.

As a forty year resident of Kailua, I and hundreds of my friends and neighbors and our children, have long cherished Kailua Bay and its beautiful beach. Harold Castle, when he developed much of the land that runs along Kalaheo Avenue, understood the importance of beach access. He provided several roadway lots leading from the highway to the beach, thus permitting access to the beach by the people of Kailua.

When Kaneohe Ranch Company (Harold Castle's business arm) sold off in fee many of the beach front lots, the company also deeded the abutting roadway lots to small community associations, whose members were the owners or lessees of the lots surrounding the roadway lots. As the house lots and the roadway lots began to change hands in recent years, new mainland and foreign owners have attempted wrongly to make access over these lots more difficult or even impossible. Mr. Castle's foresight in providing the roadway lots is being eroded by newly arrived mainland owners, who do not understand the laws of the State and the City and County of Honolulu.

In the case of the particular roadway lot, which this bill seeks to condemn and make available for public use, for many years the residents of the Kuulei area of Kailua have used the roadway to get from the tract to the beach. However, in recent years the new mainland owners of homes abutting the roadway lot have attempted to limit our use, have confronted wives and children, and have intimidated elderly residents of our tract regarding use of the roadway. After ten years of this sort of harassment, and no end in sight, as each sale of the properties seems to create the problem anew, it makes sense to condemn the roadway and give title to the public, which in essence conserves what Harold Castle had originally intended for his beloved Kailua residential developments. The tax on this roadway lot has been one dollar a year for over 35 years. It was placed in the development as a roadway, intended for public use, but never acquired in fee simple title by the City and County of Honolulu. This bill will enable the City and County to acquire title and the public to use the roadway as it was intended - to gain rightful access to Kailua Beach.

AUG 1 1989

Misc. Com. No. 1095

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Nov 14 12 37 PM '89

CITY CLERK
HONOLULU, HAWAII

To: Human Service Committee
City Council
City & County of Honolulu

Re: Resolution 89-341 - PEDESTRIAN BEACH RIGHT-OF-WAY,
PARCELS 1 AND 2, KAILUA

Testimony by Paul D. Haring, Co-Chairman, Kuulei
Community Association, Beach Access Committee

Human Services Committee Meeting 11/14/89

Mr. Chairman and Committee members, I wish to submit the following testimony favoring passage of Resolution 89-341.

I have testified previously before this committee and the full Council on this resolution. My earlier testimony and correspondence with the council, as well as that submitted by others, has provided you with the long history and developments relating to the closure or attempted closure of many former accesses to Kailua Beach. I will not therefore repeat those facts. Instead, I believe the following photographs will suffice to confirm what has taken place all along Kalaheo Avenue since Castle Estate deeded former beach access parcels to abutting property owners. These beach accesses, as the signs and locked gates indicate, are being closed off to the public use.

My own community, the Kuulei tract, which consists of approximately two hundred plus residences, has had to deal with threatened and attempted closure of our traditional beach access repeatedly since 1977. Seventeen months ago, in an effort to finally resolve this issue and secure permanent protection for our beach access rights, the community petitioned the City Administration to acquire the subject parcels identified in proposal 89-341. The City Administration, after lengthy study by the Department of Parks and Recreation and Corporation Counsel, concurred with our request and directed the Department of Parks and Recreation to acquire the right-of-way. I refer you to attached copies of Mayor Fasi's letters to me dated May 20, 1988, July 12, 1988 and August 5, 1988 confirming the Administration's position.

Sixteen months later, efforts to acquire and protect the beach access for the public use still have not resulted in its accomplishment. This in spite of documented support from the Kailua Neighborhood Board, the Kuulei Community Association, Councilman Kahanu and our State House Representative, Mr. Bybee.

Misc. Com. No. 1448

NOV 14 1989

For the past sixty days, at the request of Councilman Kahanu, the Kuulei Community Association Beach Access Committee has attempted in good faith to negotiate a resolution to the beach access issue with the legal representatives of the property owners. Copies of the correspondence between the two parties during negotiations have been provided to Chairman Abercrombie and Councilman Kahanu. I believe this correspondence will show that the Kuulei Community Association has made a honest and earnest effort to honor Councilman Kahanu request. Unfortunately, the attempt at a negotiated settlement thus far has not been successful. Instead, in response to a solicited settlement proposal from our committee, we received a statement from the property owner's legal counsel stating that they are concerned about the liability that the City and County would assume if the parcels were conveyed to the City and suggested further action on the matter be deferred until a State study on liability issues relating to the use of State trails and accesses is completed in early 1990. We perceive this as a delaying tactic.

The liability issue for City and County owned public beach accesses will perhaps be better defined after the State study is completed, but the study will not eliminate the liability issue and it should not defer the City and County from acquiring much needed beach accesses now. The photographs clearly show what has happened to Kailua Beach Accesses since 1977. South Kahaheo Avenue presently has no public beach access to Kailua Beach. Instead the Kuulei community must presently rely on second party "assurances", which are not legally binding, that the subject beach access will remain open to us. Unfortunately, our experience has been that these "assurances" dissolve with each new property owner. I therefore urge you to move forward without further delay on the passage of Resolution 89-341.

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Nov 14 1 21 PM '89

CITY CLERK
HONOLULU, HAWAII

To: Human Service Committee
City Council
City & County of Honolulu

Re: Resolution 89-341 - PEDESTRIAN BEACH RIGHT-OF-WAY
PARCELS 1 AND 2, KAILUA

Testimony by Arthur Fink, Kuulei Community Association,
Beach Access Committee

Human Services Committee Meeting 11/14/89

Mr. Chairman and Committee members:

These past few days have witnessed the remarkable achievement of the coming down of the Berlin Wall. There were those who said this would never happen, but in a few short weeks, the people were heard, and government responded.

We of the Kuulei Community Association, have for 17 months, been trying to get approval for condemnation proceedings for a beach right-of-way, but to no avail. Obstacles have been placed in our way and stalling tactics used, perhaps with the thought that we would be discouraged and go away.

Let us look at a few glaring points. The current owner of the property, an out-of-state resident, fairly recently purchased this property in question. After extensive renovation, all or portions of three homes on the property became rentals for tourists and visitors. This same property owner, when he met accidentally with our group and Councilman Kahanu, and was told that the beaches of Hawaii are for all people, as I recall he said he was from Texas, and he didn't go by tribal laws.

After that, he hired a lawyer who stated she would not negotiate with a certain member of our Committee because he was "too radical". Since when do lawyers select their adversaries. Another stalling tactic.

Now we have a letter from the Asst. Corporation Counsel to Councilman Kahanu about the city's liability in the case of acquisition. Mayor Fasi advised us in letters of May 20, 1988 and July 12, 1988 that the Corporation Counsel's office had already worked to provide answers.

The Corporation Counsel, in his letter, states that Councilman Kahanu's postponement has achieved its purpose of allowing the various parties to engage in dialogue. This is not exactly correct. The Kuulei Association formed a Committee to deal with the access situation. We have met several times and made proposals in writing to the attorneys for the property owners. There have been several phone calls, but no face to face dialogue between parties.

Exc. Com. No. 1449

NOV 14 1989

His letter further states that the landowners have confirmed in writing that they will keep the access open to the community. I do not think we have seen an official letter to this effect.

It would seem that after 17 months, this matter should have been resolved. The big question remains this - Hawaii's beaches are for all the people, not just the few who own property on the beach. To paraphrase John Kennedy famous words "Ich Bin Ein Berliner", I am a Hawaiian, "He Hawaii Au", and I have my rights too.