

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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OFFICE OF
QUALITY

November 15, 1994

3706
KEITH W. AHUE, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

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FORESTRY AND WILDLIFE
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LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

File No.: HA-2475A

MEMORANDUM

TO: Dr. Bruce Anderson, Interim Director
Office of Environmental Quality Control

FROM: *John P. Keppeler II*
Keith W. Ahue, Chairperson
Board of Land and Natural Resources

SUBJECT: Environmental Assessment for Cowell Single Family Residence at Keekee,
Hawaii, tmk: 8-1-4:13

The Department of Land and Natural Resources has reviewed the comments received during the 30-day public comment period that began on October 8, 1994. The Department has determined that this project will not have significant environmental effect and has issued a negative declaration. Please publish this notice in the next OEQC Bulletin.

We have enclosed a completed OEQC Bulletin Publication Form and four copies of the final EA. Please contact Don Horiuchi at 587-0381 if there is any question.

Attach.

1994-12-08-H-~~FEA~~-Cowell Single
Family Residence

DEC - 8 1994

FINAL ENVIRONMENTAL ASSESSMENT

Cowell's Single Family Residence
Keeke, Hawaii

(1) Identification of applicant or proposing agency.

The applicants are William and Rita Cowell, who are the owners of the parcel.

(2) Identification of approving agency, if applicable.

Department of Land and Natural Resources is the approving agency for the CDUA.

(3) Identification of agencies consulted in making assessment:

Department of Land and Natural Resources, State Historic Preservation and a submittal of a Special Management Area Use Permit Assessment to the County of Hawaii Planning Department.

(4) General description of the action's technical, economic, social, and environmental characteristics.

The area surrounding the kuleana is primarily used as pasture land by ranchers. There are no other residences in the area. The residence will be approximately 100 feet from the high water debris line. The residence will be set amongst the kiawe growing on the property and will have minimal visual impact from the coast. The residence is not visible from the Belt Road.

The proposed single family residence is a 2 bedroom one bath residence is approximately 1200 square feet and represents a deviation from the previously submitted plans which raised some concern with the Board and also represents a reduction in the square footage of the proposed residence. The proposed house will be constructed of wood with a corrugated roof, supported by wooden piers which are secured on concrete footings. The existing structure, which was built on a large bedrock outcrop in the center of the property to prevent endangering any significant archaeological or historical sites, will be incorporated into the proposed residence, taking into account the building code.

(5) Summary description of the affected environment, including suitable and adequate location and site maps;

The Cowells' kuleana is located approximately 2 1/2 miles from the town of Kealahou. The Cowells gain access through permissible use of ranch roads and gates. The roads meander toward the ocean. See EXHIBIT 6 The proposed construction is not expected to significantly impact aquatic resource values. Access to the shoreline is limited by cliffs with the exception of a small extension corridor to the shoreline. The "beach" in this area is comprised of wave worn rocks and pahoehoe.

(6) Identification and summary of major impacts and alternative considered, if any;

In view of the fact that the pavilion is 90% complete, impacts regarding the previous construction cannot be avoided and mitigated. The petitioners are using a portable chemical toilet until an individual waste water system designed by Aqua Waste is approved. It is the petitioner's intent to avoid the features identified and to avoid any subsurface features by building on the pahoehoe outcrop. Additionally, maninia grass has spread to minimize any damage to the mid den which may be caused by vehicles.

Alternatives to this project were considered. They were:

(a) Build a large luxury family home or

(b) Do nothing.

The first alternative may have considerable economic benefit for the petitioners but is not consistent with their primary goal of providing a "retreat" for their family and preserving the natural setting of their property. A large luxury family home may also increase the potential environmental impacts such as visual or view plain impacts, near shore water quality impacts from runoff of landscaping chemicals, increased water and power usage.

The second alternative would not involve substantial environmental impacts but would not accomplish the petitioners desired goal of having a small single family retreat at Ke'eke'e, South Kona.

The land the house is built on will be the only irreversible and irretrievable commitment of resources

(7) Proposed mitigation measures, if any;

The applicant proposes to adopt the conditions previously requested by the Historic Sites Division as follows:

1. The house will be built on concrete footings which will all lie on exposed pahoehoe outcrop where no historic sites are present. During construction, the two mortars must be temporarily covered to avoid any inadvertent damage to them.

2. The proposed septic tank will be dug in pahoehoe outcrop to avoid disruption of the subsurface mid den deposits in those portions of the property with soil and in compliance with the approved individual waste water system.

3. If subsurface midden deposits are present in the proposed "grassed parking" area, some kind of fill should be placed over the deposits to avoid damage to them by vehicles and caution should be used until the grass has become sufficiently established to stabilize the fill. (Maninia grass is growing well in this area.)

(8) Determination:

Applicants request a negative declaration for the proposed action.

(9) Findings and reasons supporting the determination:

Impacts to the area may be mitigated to a "no adverse effect" level.

I.

Description of Parcel

Petitioners are applying for an after the fact CDUA for a partially constructed single family residence, on a parcel of "Kuleana land" which is approximately .51 acres located at Ke'eke'e, South Kona and to complete construction on the remainder of the residence. --- Petitioners acquired the property in 1988 for residential purposes. They intend to utilize the residence as a weekend/vacation retreat for their family.

In view of the concerns raised by the Board, the Historic Preservation Division and by the County Planning Department, the applicants met with their architect Raymond Cote and William Barrera (archaeologist) to determine the location of their residence which will have the least impact on the sites present on their property. It was determined that they would design a house, whose footing stones would rest on pahoehoe outcrop.

It was their joint conclusion that to expand on the existing site, by projecting 10' north, 8' makai and add a 16' x 16' extension on the pahoehoe outcrop, which exists on the mauka side of the existing beach house will meet everyone's objectives. Expanding the structure mauka above the pahoehoe outcrop will result in no direct disturbance to any surrounding sites or cultural deposits. This compromise addresses the concerns of the Historic Sites Division and meets the applicants needs to construct a home on their kuleana.

The 2 bedroom one bath residence is approximately 1200 square feet and represents a deviation from the previously submitted plans which raised some concern with the Board and also represents a reduction in the square footage of the previously proposed residence. (The previous proposal consisted of two modules: (1) the main house and (2) an attached pavilion. The main house was approximately 32' x 40' and the pavilion, which is 90% complete, was approximately 30' x 24', including a large covered deck.) The proposed house will be constructed of wood with a corrugated roof, supported by wooden piers which are secured on concrete footings. The existing structure, which was built on a large bedrock outcrop in the center of the property to prevent endangering any significant archaeological or historical sites, will be incorporated into the proposed

residence, taking into account the building code.

Petitioners have landscaped the area with maninia grass and they have left the kiawe trees in place.

A. Existing Structures/Uses

At the current time, a pavilion, which is approximately 90% complete is the only existing structure on the property. This structure was the subject of CDUA File No.: HA 3/15/92-2475 (which was withdrawn on July 24, 1992).

B. Existing Utilities

There are no public utilities available; however, petitioners obtain water through an agreement with Palani Ranch, whose water line runs adjacent to petitioners' property.

There is no sewage system presently serving the site. Sewage will be disposed of by means of an individual wastewater disposal system which complies with the State of Hawaii, Department of Health regulations. Petitioners intend to utilize an improved septic tank system for wastewater. The individual wastewater system will be designed by Aqua Waste Engineers. Petitioners currently use a portable chemical toilet when visiting the property.

C. Existing Access

Access to the property is via an "old government road". Petitioners also gain access to their property through the permissive use of ranch roads and gates. Access may also be gained by landing a boat at the shoreline.

D. Vegetation

Vegetation is primarily kiawe and thick pasture grass. Other vegetation on the subject property include haole koa, bitter melon, lantana and maninia grass.

E. Topography

The property is located along the shoreline of South Kona, Hawaii. The property has a slope of 6-12%, with bedrock outcroppings of various sizes.

The property is peculiarly shaped with a small extension corridor to the shoreline. EXHIBIT 6 There is a small bluff approximately 15 feet high at the shoreline boundary of the property and the shoreline itself consists of pahoehoe sloping into the ocean and small wave worn rocks.

F. Shoreline

Petitioners do not intend to construct the dwelling within the immediate area of the shoreline.

There is a small bluff approximately 15 feet high at the shoreline boundary of the property and the shoreline itself consists of pahoehoe sloping into the ocean and small wave worn rocks.

G. Existing Covenants, easements, restrictions

Access to the property is currently via an "old government road". Petitioners also gain access to their property through the permissive use of ranch roads and gates. Access may also be gained by landing a boat at the shoreline.

H. Historic sites affected

An archaeological reconnaissance of the subject parcel was conducted by William Barrera, Jr. on January 14, 1991 to determine the presence or absence of significant archaeological or historical remains on the property and to make recommendations to the petitioners regarding the location of the residence and septic tank.

A Archaeological Inventory Survey of the property was conducted by William Barrera, Jr., pursuant to the State Historic Preservation Division's request and submitted to that division on April 7, 1994.

The archaeologist concluded:

The expected pattern of permanent coastal habitation in both the historic and prehistoric period was realized. The excavations revealed that a cultural deposit averaging about 30 centimeters in depth is probably present on most of the parcel where bedroom is not right at the surface. Midden and artifactual remains recovered represent activities associated with coastal domestic habitation, with an

emphasis on exploitation of marine resources.

The central feature of this site is Feature A, the terrace. This structure's large size and well-built construction indicate that it is more than an ordinary domestic habitation, and the absence of coral fragments would rule out its use as a strictly religious site. It was probably the residence of a high ranking individual, perhaps a *konohiki* or a priest associated with one of the nearby temples, and dates from the prehistoric period. The possibility that the structure dates from the historic period should not be overlooked, however, but it would require relatively large scale excavations to determine this.

Most of the other features can only be understood in terms of their relation to this Feature A. Had any of these been found in isolation, or absent Feature A, there would be little hesitation in attributing an ordinary domestic function and prehistoric age to Features B, C, F through J, and L. The three enclosures [Features B, G and I] and the terrace [Feature L] would be seen as rather typical habitation sites. Two of the retaining walls [Features H and J] would be easily recognizable as habitation sites, even though their details have been obscured by roaming cattle. Feature C is probably a habitation structure dating from the prehistoric period, but its collapse and subsequent reconstruction have obscured its details. The proximity of these sites to what was probably the residence of a high-status individual means that they should be interpreted as having been functionally associated with that structure. Certainly there would not have been commoner's residences immediately adjacent to that of a chief or priest. It would appear most likely, therefore, that at least these particular features comprise a prehistoric *kauhale*, or residential complex, and they are of

significance for their information content.

The functions and ages of Features E and K are problematical at this point. These rather nondescript minor features could be the remains of prehistoric structures associated with the *kauhale*, or they might have been associated with historic activities in the area. They are significant for their information content.

Feature D may have been the west edge of a prehistoric habitation, or it may have been constructed in historic times as a property boundary in association with the freestanding stone wall that nearly surrounds the parcel. It is significant for its information content.

Feature M was probably built to level the area at the top of the sea cliff so more land area would be available for utilization, and may date from either the prehistoric or the historic period. It is significant for its information content.

Feature N was built during the historic period to enclose LCA 8455 F: 2.

Significance:

HRHP 18430 is significant for its information content. Because roaming cattle have knocked down walls and kicked rocks around, it cannot be considered an excellent example of a site type. Any adverse impact posed by construction activities can be mitigated by implementation of a data recovery plan, the specific details of which would have to be worked out between the property.

II. Description of Proposed Activity

A. Generally

The 2 bedroom one bath residence is approximately 1200 square feet and represents a deviation from the previously submitted plans which raised some concern with the Board and also represents a reduction in the square footage of the proposed residence. The proposed house will be constructed of wood with a corrugated roof, supported by wooden posts which are secured on concrete footings. The existing structure, which was built on a large bedrock outcrop in the center of the property to prevent endangering any significant archaeological or historical sites, will be incorporated into the proposed residence, taking into account the building code.

Petitioners have landscaped the area with maninia grass and they have left the kiawe trees in place.

B. Proposed/Present Access

The petitioners propose to continue utilizing the permissive easements through surrounding ranches, the historical "old government road" and on occasion, access via the shoreline.

III. Commencement and Completion Dates

In as much as this CDUA is an after the fact application for the pavilion, there is no commencement date for this portion of the residence, however, upon approval, the petitioners intend to commence construction within one year and to complete construction within three years of the approval of the permit of the house and the remainder of the pavilion. The septic system will be completed within the same time frame.

IV. Type of Use Requested:

Conditional Use: Subzone L

Area of Proposed use:

Name & Distance of Nearest Town or Landmark: The nearest town is Kealahou, Hawaii, which is approximately 2 1/2 miles away from the subject parcels.



RECEIVED

'94 NOV 9 AM 8:36

University of Hawai'i at Mānoa

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Crawford 317 • 2550 Campus Road • Honolulu, Hawai'i 96822
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

DLNR
OCEA

November 7, 1994
EA:0094

Mr. Don Horiuchi
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Horiuchi:

**Draft Environmental Assessment (DEA)
Cowell Single Family Residence
Keekee, Hawaii**

The referenced project involves construction of a 1200 square foot, two bedroom and one bath house in the conservation district at Keekee. The proposed dwelling will use a septic system for waste disposal and will be located one hundred feet inland from the high water mark. The proposed project will incorporate an existing unauthorized structure that is currently undergoing review through an after-the-fact CDUA.

Our review was prepared with the assistance of Chris Welch of the Environmental Center.

We are concerned over the failure of the applicant to comply with regulatory procedures established for management of the Conservation District. In applying for permits and doing assessments after-the-fact, the system of laws and regulation set up to protect fragile and rare resources is disregarded and thus becomes ineffective. Furthermore, cases such as this add to the already excessive precedent regarding abuse of regulatory controls. How will the granting of permission to build in Keekee, with regard to a breach of law, affect future decisions of other individuals contemplating such activity? As greater evidence of the willingness of agencies responsible for enforcement of these regulations to sanction after-the-fact proceedings accumulates, how will these agencies respond with equity to future compliant and non-compliant applications? Is it not the case that acquiescence to irregularities of this type fosters a general disregard for the regulations? These are some of the major "social" questions raised once again in this case. As in the past, we strongly

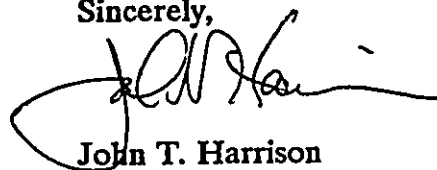
Mr. Don Horiuchi
November 7, 1994
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recommend that a concerted policy be established by regulatory agencies at all levels of government to respond uniformly to breach of regulatory process.

The central purposes of an Environmental Assessment are to identify impacts of a proposed project and assess their potential significance. Our review of the referenced DEA found the document inadequate. Although substantial information on archaeological features of the surrounding environment was presented, and the general sensitivity of these features was acknowledged, the document concluded with the assertion that, "[i]mpacts to the area may be mitigated to a 'no adverse effect' level. Nowhere in Chapter 343, HRS, is there a provision for a "mitigated negative determination". The relevant section of the law states, "A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment" {Section 343-5(c), HRS}. The EIS Rules specify that "an action shall be determined to have a significant effect on the environment if it: (1) involves an irrevocable commitment to or loss or destruction of any natural or cultural resource" {Section 11-200-12(b), Hawaii Administrative Rules}. The document, in section (7) 2. says that a septic system will be dug into the pahoehoe outcrop. Trenching and digging in lava takes heavy equipment. What kind of equipment will be brought on site? What precautions will be taken to protect the abundant archaeological remains from construction effects? It is noted in the archaeological report that a large stone terrace - designated site "A" - is adjacent to the proposed structure. Two bedrock mortars - designated site "F" - will be underneath the proposed structure. These artifacts could easily be damaged by the equipment that is required to dig into lava. The presumption that effects of construction "may" be mitigated is no less compelling than the presumption that these cultural relics "may" be destroyed. Given the specificity of the cited section of Chapter 343, it is clear that an Environmental Impact Statement is required.

Thank you for the opportunity to comment.

Sincerely,



John T. Harrison
Environmental Coordinator

cc: OEQC
Roger Fujioka
Chris Welch

SENT BY:

11-14-94 : 4:09PM :

CSF&W-

DLNR / OCEA:# 2/ 6

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November 14, 1994

Chairman Keith Ahue
Department of Land and
Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Cowell, William and Rita
TMK No. (3) 8-1-4:13
Ke'oke'e, South Kona, Hawaii

Dear Mr. Ahue:

Thank you for forwarding the letter dated November 7, 1994 from the University of Hawai'i at Manoa's Environmental Center (University) for our review and comment.

In response to the University's concern regarding the statement in the Environmental Assessment that "impacts to the area may be mitigated to a 'no adverse effect' level", the applicants respond as follows:

1. In a letter dated June 30, 1994, the State Historic Preservation Division commented as follows:

It is our understanding based on the June 24th meeting, that the Cowell's intend to preserve "as is" the one archaeological site (18430) on their property, avoiding damage to the features of the site. It is our further understanding that the new house will be designed to reduce visual impacts to the adjacent archaeological village ruins. This arrangement will have "no adverse

Letter to Keith Ahue
re: Cowell - CDUA
Ke'eke'e, Hawaii
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effect" on the historic sites if the following conditions are met:

1. The Cowell's archaeological consultant must provide individual plans and a photographic record of the 14 features that comprise the site. Detailed plans and photographs are needed to better document the site as it exists today and for the additional purpose of assessing the condition of the site in the future. Please have the archaeologist contact our office first, so we can clarify exactly what is needed. We anticipate that the individual plans may already be available.
2. Our office will be given the opportunity to conduct a field check of the site to ensure that the features are properly documented.
3. Plastic fences will be erected around the individual features as an interim site protection measure during the construction of the house.
4. As a long-term preservation measure, the property owners will not be allowed to modify any of the features without permission of the State Historic Preservation Division or the Department of Land and Natural Resources. The Division shall have the opportunity to periodically check the condition of the features.
5. House design and landscaping shall be compatible with the surrounding Ke'eke'e village site and existing vegetation. Photographs of the existing house will be submitted to

Letter to Keith Ahue
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the Historic Preservation Division. House design and landscaping plans will need to be approved by the Historic Preservation Division. Our division will be glad to work with the architect on design ideas that are compatible with the historic nature of the area

2. Septic System

The applicants have reviewed several options regarding individual wastewater systems including: (a) an above the ground septic system, which would be screened via landscaping, which utilizes a leach field and (b) a self-contained, biological toilet system, which requires no water, no chemicals and no septic tank system. The second option requires no installation of water lines or a septic tank and leach field. The applicants would utilize a biological toilet system, which has received NSF approval. Both systems under consideration require the Department of Health approval before any construction can commence.

Option (a) an above ground septic system, would require a minimum amount of ground work for the leach field. A John Deere 510 C backhoe with a hammer would be utilized. The backhoe weighs approximately 15,400 pounds. The hammer weighs 1100 pounds. The dimensions of the backhoe are 23' long with a wheel base of 83" x 86". The arm extends 86" horizontally; raised, the arm is 8'9".

The applicants and their archaeologist would consult with the State Historic Preservation Division on the best location for the leach field.

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3. Large stone terrace -site A:

The large stone terrace, which lays to the south of the existing structure will be protected throughout the construction of the proposed residence by a plastic fence which will be erected around this feature.

4. Two bedrock mortars-site F:

Throughout construction, the bedrock mortars will be protected in a manner approved by the State Historic Preservation Division.

The declaration by the State Historic Preservation Division that there will be "no adverse effect" on the historic sites if the aforementioned conditions are met represent substantial work on the part of the applicants to address the presenting environment concerns raised by the University.

The applicants have worked with the various agencies to meet the requirements of Chapter 343 of the Hawaii Revised Statute and §11-200-12(b) Hawaii Administrative Rules. §11-200-8 creates exempt classes of action, which because they probably have minimal or no significant effect on the environment, shall generally be exempted from the preparation of an environmental assessment. Based on the submittals by the applicant and the responses from the reviewing agencies, it is clear that proposed nonconforming use of the *kuleana* will have no significant effect on the environment and therefore an Environmental Impact Statement is not required.

We believe that the Cowells' violation and subsequent compliance with the necessary processes for a Conservation District Use Application are well documented.

SENT BY:

11-14-94 : 4:12PM :

CSF&R-

DLNR / OCEA:# 6/ 6

Letter to Keith Ahue
re: Cowell - CDUA
Ke'oke'e, Hawaii
File NO.: OA-2475A
November 14, 1994
Page 5

As always, please feel free to call me regarding this
matter at 329-5811.

Very truly yours,



NANI LEE

for

CADES SCHUTTE FLEMING & WRIGHT

cc: M/M Cowell
R. Evans, OCEA