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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

File: HA-3148

NOV 12 2003

**MEMORANDUM**

TO: Genevieve Salmonson, Director  
Office of Environmental Quality Control

FROM: Dierdre S. Mamiya, Administrator *Dierdre Mamiya*  
Land Division, Department of Land and Natural Resources

SUBJECT: Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for Conservation District Use Application (CDUA) HA-3148 for After-The-Fact Approval for Improvements to a Jeep Road, Associated Erosion Control, and Tree Removal, North Kohala, Island of Hawaii, TMK: (3) 5-8-001:009

The Department of Land and Natural Resources has reviewed Conservation District Use Application (CDUA) HA-3148 and Final Environmental Assessment (FEA) for the After-The-Fact Approval for improvements to a jeep road, associated erosion control, and tree removal, North Kohala, Island of Hawaii, TMK: (3) 5-8-001:009.

The Draft Environmental Assessment (DEA) for CDUA KA-3045 was published in the August 23, 2003 OEQC's Environmental Notice for the subject project. The FEA is being submitted to OEQC. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. Please publish this notice in the November 23, 2003 OEQC's Environmental Notice.

We have enclosed four copies of the FEA and CDUA HA-3148 for the project. The OEQC Bulletin Publication Form is attached. Comments on the draft EA were sought from relevant agencies and the public, and were included in the FEA. Please contact Dawn Hegger of our Planning Branch at 587-0380 if you have any questions on this matter.

Enclosures

DEC 8 2003

FILE COPY

2003-12-08-HA FEA

*Final Environmental Assessment*

(KEAWEULA JEEP ROAD MAINTENANCE)

**IMPROVEMENTS TO EXISTING JEEP  
ROAD AT KEHENA 2<sup>ND</sup>, NORTH KOHALA,  
HAWAI'I**

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QUALITY CONTROL

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PREPARED FOR:  
**Ms. Chandi Duke Heffner/Keawe'ula, LLC.**

PREPARED BY:



**P L A N N I N G  
S O L U T I O N S**

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NOVEMBER 2003

**PROJECT SUMMARY**

<b>Project:</b>	<b>Jeep Road Maintenance, Kehena 2<sup>nd</sup></b>
<b>Applicant</b>	Ms. Chandi Duke Heffner/Keawe'ula, LLC
<b>Approving Agency</b>	Department of Land & Natural Resources ("DLNR") P.O. Box 621, Honolulu, HI 96813
<b>Location</b>	North Kohala District; Island of Hawai'i
<b>Tax Map Key</b>	(3) 5-8-01:09
<b>Parcel Area</b>	166.046 acres
<b>Project Site Area</b>	Less than one (1) acre
<b>State Land Use District</b>	Conservation, Resource (R) Subzone
<b>County Zoning</b>	Agriculture, A-5a
<b>Project</b>	The applicant seeks after-the-fact approval for improvements to the existing jeep road, associated erosion control, and tree removal improvements within the portions of the jeep road that are within the Conservation District
<b>Associated Actions Requiring Environmental Assessment</b>	Issuance of a Conservation District Use Permit
<b>Agency Consultation for Draft Environmental Assessment</b>	<p><u>State of Hawai'i</u></p> <ul style="list-style-type: none"> <li>• Department of Land &amp; Natural Resources: Historic Preservation Division, Land Management, Forestry &amp; Wildlife, Na Ala Hele, Planning &amp; Technical Services, State Park and Aquatic Resources</li> <li>• Department of Transportation</li> <li>• Office of Environmental Quality Control</li> <li>• Office of Hawaiian Affairs</li> </ul> <p><u>County of Hawai'i</u></p> <ul style="list-style-type: none"> <li>• Planning Department</li> <li>• Department of Water Supply</li> <li>• Department of Public Works</li> <li>• Fire Department</li> <li>• Police Department</li> </ul>
<b>Required Permits and Approvals</b>	Conservation District Use Permit
<b>Determination</b>	Finding of No Significant Impact
<b>Consultant</b>	Planning Solutions, Inc. 210 Ward Avenue, Ward Plaza 330, Honolulu, HI 96814 Contact: Perry White (808)-550-4483

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- Exhibit 1: Location Map
- Exhibit 2: Tax Map
- Exhibit 3: Warranty Deed of 2002
- Exhibit 4: USGS 1963/1964 Land Classification Map
- Exhibit 5: Site Map and Photographs
- Exhibit 6: SMA Exemption Letter
- Exhibit 7: March 11, 2003 Letter
- Exhibit 8: Land Use District Interpretation

## 1.0 INTRODUCTION

### 1.1 IDENTIFICATION OF APPLICANT AND OWNERSHIP

The Applicant is Chandi Duke Heffner, whose mailing address is c/o Planning Solutions, Inc., 1210 Auahi Street, Suite 221, Honolulu, HI 96814. Keawe'ula, LLC is the fee owner of the property involved in the Project, Keawe'ula, being a portion of R.P. No. 7680, L.C. Aw. No. 8559-B, Apana 4 to William C. Lunalilo at Kehena 2<sup>nd</sup>, District of North Kohala, Island, County, and State of Hawai'i, being parcel 16-1, more particularly identified as Tax Map Key ("TMK") parcel: (3) 5-8-01:09. Ownership of Keawe'ula is evidenced by the Warranty Deed, recorded at the Bureau of Conveyances of the State of Hawai'i on January 30, 2002, as Document No. 2002-016847 (see, Exhibit 1 Location Map; Exhibit 2 Tax Map; and Exhibit 3-Warranty Deed.)

### 1.2 IDENTIFICATION OF APPROVING AGENCY

This environmental assessment is being submitted in conjunction with an application to the Board of Land & Natural Resources for a Conservation District Use Application ("CDUA"), in accordance with Section 13-5-30 of the Department of Land and Natural Resources ("DLNR") Administrative Rules. The approving agency for this environmental assessment is DLNR.

### 1.3 IDENTIFICATION OF AGENCIES CONSULTED IN MAKING ASSESSMENT

The following agencies provided assistance or information in preparing this assessment:

#### State of Hawai'i

- Department of Land & Natural Resources: Historic Preservation Division, Land Management, Forestry & Wildlife, Na Ala Hele, Planning & Technical Services, State Park and Aquatic Resources
- Department of Transportation
- Office of Environmental Quality Control
- Office of Hawaiian Affairs

#### County of Hawai'i

- Planning Department
- Department of Water Supply
- Department of Public Works
- Fire Department
- Police Department

## 2.0 PROJECT DESCRIPTION

### 2.1 LOCATION

The 166.046-acre oceanfront property is situated along Keawe'ula Bay and Keawanui Bay at the Kehena 2<sup>nd</sup> Ahupua'a, District of North Kohala, Island, County, and State of Hawai'i, and is designated by the TMK No. (3) 5-8-01:09 ("Keawe'ula;" see, Exhibit 1-Location Map; and Exhibit 2-Tax Map). Keawe'ula is located on the *makai* or westerly side of the Akoni Pule Highway, also known as the Kawaihae-Mahukona Road, approximately two miles south of Lapakahi State Park and six miles north of Kawaihae. Keawe'ula is flanked along its northern boundary by vacant State of Hawai'i land, on its southern boundary by vacant land privately owned by Kamehameha Schools Bishop Estate ("KSBE"), on its eastern boundary by the Akoni Pule Highway, and along its western shoreline by the Pacific Ocean.

A narrow coastal strip of Keawe'ula fronting the shoreline is classified "Conservation" ("Resource" Subzone) and the remaining portion of Keawe'ula is classified Agricultural by the State Land Use Commission, and zoned "Agricultural," with a minimum lot size of five acres (A-5a), under the Hawai'i County Zoning Code (Chapter 25, Hawai'i County Code). The Land Use Pattern Allocation Guide ("LUPAG") map designates a narrow coastal strip of Keawe'ula along the shoreline as Open, and the remaining portion of Keawe'ula as "Extensive Agricultural." Keawe'ula is located within the County of Hawai'i's Special Management Area ("SMA"), which runs along the Akoni Pule Highway.

### 2.2 EXISTING USES AND ACTIVITIES

Keawe'ula is an undeveloped "rectangular-shaped" parcel, characterized by open scrub grassland and kiawe thickets. The northern, southern and eastern perimeter boundaries of Keawe'ula are fenced with 4-foot high hog-wire fencing. Entrance to Keawe'ula is via a 4-foot high double gate. A jeep road traverses across a portion of Keawe'ula, with a branch-off *mauka* toward the Akoni Pule Highway (see, Exhibit 4-USGS 1963/1964 Land Classification Map). Portions of this jeep road have been improved with gravel (see, Exhibit 5-Site Map and Photographs).

### 2.3 PERMITS ISSUED FOR THE PROJECT

#### 2.3.1 SPECIAL MANAGEMENT AREA EXEMPTION

Pursuant to the County of Hawai'i Planning Commission Rules 9-4(10)C and 9-10G, the Planning Director by letter dated September 22, 1999, determined that the primary and accessory improvements to the jeep road are consistent with Planning Commission Rule 9-4(10)B(ii) or (vi), are exempt from the definition of "development," and are exempt from the SMA Rules (see, Exhibit 6-SMA exemption letter.)

#### 2.3.2 SHORELINE SURVEY WAIVER

Pursuant to Planning Commission Rule 9-10B(8) and Planning Department Rule 11 45(c), the Planning Director by letter dated September 22, 1999, waived the requirement for submission of a certified shoreline survey based on the fact that the Project's setback from the shoreline will exceed the mandatory minimum 40-foot shoreline setback requirement. (see, Exhibit 6-SMA exemption letter.)

### 2.4 SURROUNDING USES AND ACTIVITIES

The surrounding land areas are characterized by privately and publicly owned vacant lots of comparable size which are similarly classified "Conservation" and "Agricultural" by the State Land Use Commission, zoned "Agricultural" with a minimum lot size of 5 acres (A-5a) under the Hawai'i

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**PROJECT DESCRIPTION**

County Zoning Code (Chapter 25, Hawai'i County Code), designated "Open" and "Extensive Agricultural" on the County's LUPAG map, and located within the County of Hawai'i's Special Management Areas ("SMA"). Lands north and northeast of Keawe'ula at TMKs: 5-8-01:05 and 13 are owned by the State of Hawai'i. Lands to the south and southeast of Keawe'ula at TMKs: 5-8-01:03, 08 and 14 are privately owned by KSBE.

**2.5 PROPOSED USES AND ACTIVITIES**

The Applicant is seeking a State Conservation District Use Permit to comply with DLNR's March 11, 2003 letter ("March 11, 2003 Letter"), which found the Applicant in violation of Title 13-5, HAR and Chapter 183C, HRS, for failing to obtain the "CDUA approval required by the Board's August 27, 1999 decision." Condition C of the March 11, 2003 Letter requires that the Applicant file a Conservation District Use Application ("CDUA") by July 1, 2003 for the use, to determine their final disposition (see, Exhibit 7-March 11, 2003 Letter). The Applicant believes she has fully complied with the Board's August 27, 1999 decision and is not subject to the March 11, 2003 Letter, which was issued in violation of the Applicant's due process rights. Her application was submitted without prejudice to the Applicant's due process argument.

The Applicant is seeking after-the-fact approval for improvements to the portions of the jeep road that are within the Conservation District and associated erosion control and tree removal improvements within the Conservation District. For purposes of this assessment, the improvements will be called the "Project," and that portion of Keawe'ula within the Conservation District on which the Project took place will be called the "Project Area." "Jeep Road" refers to that portion of the existing jeep road in the Project Area.

**2.5.1 DETERMINATION OF FINAL DISPOSITION OF ROADWAY IMPROVEMENT VIOLATION**

DLNR's August 27, 1999 staff report indicates that the improvement to the Jeep Road may have been an "extension of a nonconforming use." Section 13-5-2, HAR defines "Nonconforming use" as "the lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established immediately prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district."

Section 13-5-3, HAR, provides in part as follows:

(a) This chapter shall not prohibit the continuance of, or repair of nonconforming uses as defined in this chapter. The burden of proof to establish that the land use or structure is legally nonconforming shall be on the Applicant.

\* \* \* \* \*

(e) Repairs or reconstruction of the nonconforming structure shall not exceed the size, height or density of the structure which existed immediately prior to October 1, 1964 or at its inclusion into the conservation district.

Portions of the Jeep Road have been in existence and use immediately prior to October 1, 1964 as identified in the 1963/1964 USGS Reference: Keawe'ula (see, Exhibit 4 1963/964 USGS Land Classification Map.) Therefore, the completion of the roadway improvements in these portions of the road, including the grading and placement of gravel for erosion control, and removal of fallen and dead kiawe trees adjacent to the Jeep Road (which existed prior to October 1, 1964) constitutes the repair or reconstruction of a legally nonconforming use and is not in violation of Title 13-5, HAR and Chapter 183C, HRS.

In further support of this determination, the Applicant submits that the County of Hawai'i Planning Director has determined that the primary and accessory improvements to the Jeep Road are "consistent with Planning Commission Rule 9-4(10)B(ii) or (vi)." In support of her conclusion, the



Planning Director found that the Jeep Road improvements were exempt because they constituted "either the repair or maintenance of a road or of an existing use, the unpaved jeep trail" (See Exhibit 6-SMA exemption letter).

### 2.5.2 AFTER-THE-FACT APPROVAL FOR ROADWAY IMPROVEMENTS

Alternately, in the event the non-conforming use is not approved, the Applicant seeks after-the-fact approval for the improvements along the Jeep Road, which consisted of grading, removal of fallen and dead kiawe trees, and placement of further gravel. The removal of fallen and dead kiawe trees was to prevent the outbreak of brush fires during times of drought. The placement of gravel was to reduce erosion and the introduction of suspended sediments into nearshore waters during storm events.

Alteration of Jeep Road. Grading, removal of fallen trees and placement of gravel along a portion of the Jeep Road constitutes permitted land uses within the Protective (P) and Limited (L) subzones, under Sections 13-5-22 and 23, HAR. All identified land uses and their associated permit or site plan approval requirements listed for Protective (P) and Limited (L) subzones apply to the Resource (R) Subzone under Section 13-5-24(a), HAR.

- L-3 Erosion Control: Erosion control, flood control, and other hazard prevention devices or facilities (D-1).
- P-12 Tree Removal.
  - Removal of dead or diseased: (1) Non-native trees (A-1(1))
  - Removal of more than five trees, six inches or greater in diameter measured at ground level (D-1)

### 2.6 TIMETABLE FOR DEVELOPMENT

As discussed above in Section 2.5, this CDUA is for an after-the-fact approval for the Project, which was completed between April and June of 1999.

### 2.7 APPLICANT'S OBJECTIVES FOR THE PROJECT

The Applicant has the following objectives with this Project:

1. To comply with the March 11, 2003 Letter;
2. To preserve the aesthetic open space, vista and views of the area;
3. To minimize erosion and the introduction of suspended sediments into nearshore waters during storm events;
4. To prevent the outbreak of brush fires during times of drought by removing fallen and dead kiawe trees; and
5. To repair the Jeep Road.

### 3.0 ENVIRONMENTAL SETTING, IMPACTS, & MITIGATION MEASURES

#### 3.1 LAND FORMS, SOILS, AND AGRICULTURAL ACTIVITIES

*Setting.* The elevation of Keawe'ula ranges from sea level to approximately 200 feet above mean sea level along the *mauka* (northeasterly) boundary at the Akoni Pule Highway. A shallow (less than 10 feet) approximately 20- to 30-foot wide gully traverses Keawe'ula from the *mauka* boundary at the Akoni Pule Highway to the shoreline.

The soils at Keawe'ula are classified by the United States Department of Agriculture, Soil Conservation Services, Soil Survey Report as "KOC" or "Kawaihae Series, very rocky very fine sandy loam, 6 to 12 percent slopes." In a representative profile the surface layer is dark reddish-brown, extremely stony, very fine sandy loam about 2 inches thick. Below this is dark, reddish brown and dusky-red stony silt loam and loam. Hard pahoehoe lava bedrock is at a depth of about 33 inches. The surface layer is neutral, and the subsoil is neutral to mild alkaline. Permeability is moderate, runoff is medium and the erosion hazard is moderate. Rock outcrops occupy 10 to 20 percent of the surface, with severely eroded areas in which small gullies are forming and the vegetation is sparse. This area has been historically used for pasture.

The Land Study Bureau Overall Master Productivity Rating classifies the soil at Keawe'ula as "E", or "Very Poorly Suited," to agricultural productivity. The State of Hawai'i, Department of Agriculture's Land of Importance to the State of Hawai'i ("ALISH"), which lists all of the land in Hawai'i with agricultural significance, does not classify the area as being "Prime," "Unique" or "Other Important Agricultural Lands."

*Impacts and Mitigation.* Minor changes to the landforms have occurred from the grading of the Jeep Road and associated erosion control and tree removal improvements. However, no substantial changes to the landforms or soils resulted or are expected to result from the Project, and the amount of sediment entering the ocean has decreased in comparison with previous levels. The Project did not result in loss of any valuable agricultural lands, since the soils at Keawe'ula are poor and Keawe'ula is currently not in agricultural use.

#### 3.2 NATURAL HAZARDS

*Setting.*

Flood and Coastal Hazards. The U. S. Corps of Engineers Flood Insurance Rate Map (FIRM) designates Keawe'ula in Zone X. Zone "X" is designated for those areas outside of the 500-year flood plain. The FEMA map designates Keawe'ula in an area of minimal tsunami inundation. The shoreline portion of Keawe'ula is located within the County of Hawai'i Civil Defense Agency's Tsunami Evacuation Zone.

Volcanic and Earthquake Hazards. According to the United States Geological Survey map, Keawe'ula is located within Lava Flow Hazard Zone 9, on a scale of ascending risk 9 to 1. Zone 9 consists of Kohala, the oldest volcano on the island, which last erupted about 60,000 years ago. The Building Code designates the entire island of Hawai'i in Earthquake Zone 3 and contains certain structural requirements to address the relative seismic hazards.

*Impacts and Mitigation.* Keawe'ula is not located within the coastal high hazard area, and thus the degree of risk to human life is minimal. The Jeep Road is sufficiently inland from the shoreline to be beyond the high hazard area. The Project Area is also located in the lowest volcano risk zone on the island.

## SETTING, IMPACTS AND MITIGATION

**3.3 LIVING RESOURCES****3.3.1 FLORA**

*Setting.* Elliott and Hall (August 1979) conducted a botanical survey at Keawe'ula and described four types of botanical habitat: (1) open scrub grassland, (2) coastal forest, (3) gully vegetation and (4) rocky shore. Each of these is described separately below.

1. Largely because of the semi-arid climate (average annual rainfall is less than ten inches), the predominant vegetation and land cover type is open scrub grassland extending from approximately 750 feet from the shoreline to the Akoni Pule Highway. Open scrub grassland is characterized by moderately to widely spaced kiawe trees and shrubs that occur in association with vast, rolling annual grasslands. Kiawe (*Prosopis pallida*) is an exotic plant species introduced to Hawai'i in the 1800's. It is well adapted to the harsh, arid environment of this area. Other plants common include the stinkgrass (*Eragrostis cilianensis*), and waltheria (*Waltheria americana*). During periods of drought, most of these species die off or become dormant. The average height of the grass ranges from one to two feet; and the trees are commonly 15 to 25 feet height.
2. The coastal forest cover type exists between the rocky shoreline to approximately 750 feet inland and occurs in dense patches. This cover type is characterized by a dense, continuous cover of kiawe trees (30 to 40 feet in height) concentrated near or along the coast. Although the under-story is less dense, species are similar to open scrub grassland.
3. Kiawe and taller, greener, more vigorous grasses characterize the vegetation found in the widely spaced and shallow gullies (less than 10 feet deep) in this area.
4. The rocky shore cover type is characterized by black lava-rock boulder beaches. The transition between coastal kiawe forest and rocky shore is abrupt, with the absence of vegetative cover. No plant species listed by the U.S. Fish & Wildlife Services as threatened or endangered, proposed, or a candidate species or "species of concern" occur at Keawe'ula or within the immediate vicinity.

*Impacts and Mitigation.* Only dead trees were removed from the Project Area. This is not a significant impact since all the dominant species on the site are common xerophytic exotics such as kiawe. In addition, no plant species listed by the U.S. Fish & Wildlife Services as threatened or endangered, proposed, or a candidate species or "species of concern" occur in the Project Area or at Keawe'ula, and Keawe'ula has not been declared as a critical habitat for any plant species.<sup>1</sup>

**3.3.2 FAUNA**

*Setting.* Known fauna found within Keawe'ula consists predominantly of lowland urban birds, such as common mynah (*Acridotheres tristis*), house finch (*Carpodacus mexicanus*), northern cardinal (*Cardinalis cardinalis*) and Japanese white-eye (*Zosterops japonica*), and game species such as Erckle's Francolin (*Francolinus erckelii*) and Japanese Quail (*Coturnix Coturnix*). None of these species is rare or endangered. Additionally, no resident endemic and indigenous land birds, resident indigenous seabirds, resident endemic and indigenous water birds and migratory indigenous birds have been recorded at Keawe'ula. The area is not included within the critical habitat for protected species. Mammal species that are expected to occur at Keawe'ula include mongoose, feral cat, mouse and rat. These common species are found throughout the island.

*Impacts and Mitigation.* An earlier on-site wildlife survey conducted by Phillip Bruner in June, 1979 notes that no endangered or native species are known to inhabit Keawe'ula. The improvements to the Jeep Road did not disrupt any existing wildlife on the site. No rare or endangered species were or are

<sup>1</sup>As shown in the U.S. Fish & Wildlife Service's recent establishment of critical habitats for the island of Hawai'i. See: [http://pacificislands.fws.gov/CHRules/bigislandch\\_fs.pdf](http://pacificislands.fws.gov/CHRules/bigislandch_fs.pdf)

likely to be affected, since there is no evidence of threatened or endangered birds or mammals within the Project Area or surrounding area. In addition, the area is not included within the normal habitat for any of the 44 currently listed threatened or endangered Hawaiian animal species.<sup>2</sup>

### 3.4 HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES

*Setting.* The resources along the North Kohala coastline are highly significant for their potential to yield information on prehistoric cultural patterns. Surveys conducted by the Bishop Museum and others have identified several noteworthy archaeological features at Keawe'ula.

A brief surface study was conducted at Keawe'ula by Rose Schilt and Aki Sinoto in January 1980. Of the 23 sites identified, 15 were discrete sites and 8 were restricted cluster perimeters. These included enclosures, platforms, C-shaped and U-shaped structures. No functional interpretations were made. The report indicates that no substantial variation of site types or distributions were observed. The Habitation Complex (Site No. 2358) at Keawanui Bay, consisting of enclosure and pavings, and Kehena Inland Complex (Site No. 2362) are not listed on the Hawai'i State Register of Historic Places (11/93) and have not been determined to be eligible for inclusion in the National Register of Historic Places, but are listed on the Hawai'i Inventory of Historic Places.

The U.S. National Park Service alleges that the Ala Kahakai<sup>3</sup> follows an approximately 175-mile portion of the prehistoric *ala loa* roughly parallel to the seacoast extending from 'Upolu Point down the west coast of the island around Ka Lae (South Point), to the east boundary of Hawai'i Volcano National Park at the site of the former ancient shoreline temple know as Waha'ula Heiau, which was covered by lava flows in the 1990's. This "conceptual alignment of the Ala Kahakai" encompasses the entire leeward coastline of the North Kohala district. Although Keawe'ula has been included in the land ownership inventory of properties along the "theoretical trail route within the study area," Keawe'ula has not been identified as a significant cultural site or resource in the Ala Kahakai, National Trail Study and Final Environmental Impact Statement, prepared by the Department of the Interior, National Park Service, Pacific West Region (January, 1998).

Cultural impact assessments must comply with the requirements of Chapter 343 (Hawai'i Revised Statutes; HRS), as amended by H.B. No. 2895 H.D. 1 of the Hawai'i State Legislature (2000) and approved by the Governor as Act 50 on April 26, 2000. These laws require, *inter alia*, that environmental assessments identify and assess the potential effects of any proposed project upon the "...cultural practices of the community and State...." Chapter 343 was amended by the State legislature because of the perceived need to assure that the environmental review process explicitly addressed the potential effects of any proposed project upon "...Hawai'i's culture, and traditional and customary rights."

Guidelines prepared and adopted by the State Office of Environmental Quality Control (OEQC) (1997) provide compliance guidance. Both Act 50 and the OEQC Guidelines for Assessing Cultural Impacts mandate consideration of all the different groups comprising the multi-ethnic community of Hawai'i. This inclusiveness, however, is generally understated, and the emphasis of the cultural impact assessment issue, and the intent and evolution of both the legislative action and the guidelines—is clearly meant to be primarily upon aspects of Native Hawaiian culture—particularly traditional and customary access and use rights.

*Impacts and Mitigation.* Although 23 archaeological sites were identified in the 1980 survey, none of these sites extended onto the Jeep Road and none of the road improvements completed by the Applicant has impacted these or any other archaeological features at Keawe'ula (see Appendix A,

<sup>2</sup> See the U.S. Fish & Wildlife descriptions of these species and their habitats, included in the following URL: <http://pacificislands.fws.gov/wesa/hawanimalsindex.html#Hawaiian>

<sup>3</sup> The U.S. National Park Service recommends a continuous historic trail management strategy for the development of this trail along and near the coast of the island of Hawai'i (see U.S. Federal Register, June 26, 1998 (Volume 63, Number 123))

## SETTING, IMPACTS AND MITIGATION

Archaeological Assessment Survey). In addition, these identified sites at Keawe'ula are not among those listed as historic properties in the Hawai'i State Register of Historic Places and have not been determined to be eligible for inclusion in the National Register of Historic Places. The Applicant will preserve in place the above Site Nos. 2358 and 2362, which are listed on the Hawai'i Inventory of Historic Places.

Although Keawe'ula has been included in the land ownership inventory of properties along the "theoretical trail route" of the *ala loa*, Keawe'ula has not been identified as a significant cultural site or resource in the *Ala Kahakai, National Trail Study and Final Environmental Impact Statement*. Thus, the improvements to the Jeep Road do not substantially impact cultural resources (see Appendix B, Cultural Impact Assessment).

### 3.5 AIR QUALITY AND NOISE

#### *Setting.*

Air. The air quality in the area is largely affected by air pollutants from vehicular emissions and dust generation from off-road vehicle operation. The predominant source of pollutants is from vehicular exhaust along the Akoni Pule Highway created by commuters from North Kohala to Kona.

Noise. The noise generated in the vicinity of the Project Area is associated with existing vehicular sources along the Akoni Pule Highway. Other noises in the Project Area come from natural sources (ocean and wind) and wildlife.

*Impacts and Mitigation.* Some generation of dust occurred during the Project, but, over the long term, the emplacement of gravel on the Jeep Road has led to an improvement of general air quality, since vehicles on this road generate less dust than occurred before the gravel was introduced.

The Project caused minor, short-term increases in noise level in the Project Area. However, these noises were generated only during normal daylight hours and had no substantial long-term impact on noise levels in the area.

### 3.6 VISUAL RESOURCES AND OPEN SPACES

*Setting.* Keawe'ula is located along a stretch of highway that presently has no development along it and remains in its natural condition. The present landscape of the Project Area is characterized by scrub grasslands of no particular outstanding aesthetic value. Keawanui Bay is identified in the General Plan with the North Kohala District as having natural beauty.

*Impacts and Mitigation.* One of the objectives of the Applicant is to preserve the aesthetic open space, vista and views of the area. The Applicant believes that removal of some of the dead trees and overgrown grassland has enhanced the aesthetic value of the Project Area and also enhanced the scenic and open-space resources of the Project Area, goals that are consistent with the Open designation of the General Plan and that have not caused any negative impact on the existing visual resources in the area.

### 3.7 COASTAL RESOURCES

*Setting.* The rocky shoreline is characterized by an accumulation of limestone on a volcanic basalt basement complex. The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of jagged, barren lava platforms dotted with tide pools separated by Keawe'ula Bay and Keawanui Bay. The bays contain small beaches made up of rounded basaltic boulders mixed with scattered bleached limestone cobbles. The beaches are wide in places and are discontinuous. A 1980 assessment of the nearshore area of Keawe'ula conducted by Dollar and Boucher (November 1980) indicates that the biological communities present in the offshore areas are highly adapted to the relatively stable and benign environmental conditions.

The County of Hawai'i Public Access to the Shoreline Inventory (1979) does not list Keawe'ula as a property that provides public access from the Akoni Pule Highway to Keawe'ula Bay and Keawanui Bay. The Applicant has been provided with copies of the documentation utilized by the State abstractor in determining the coastal alignment. The State abstractor's report, dated March 31, 2000, concludes that no *mauka-makai* access exists at Keawe'ula. The Applicant strongly opposes any public access to Keawe'ula by foot or by vehicle, but does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law.

*Impacts and Mitigation.* The Project did not involve any direct or indirect modifications to the nearshore environment and did help to minimize erosion and therefore the introduction of sediments into nearshore waters. Therefore, there was no physical disruption of coastal resources or nearshore processes. By limiting access to the shoreline, the Applicant is helping to protect these coastal resources from over-fishing, discharges of domestic and sanitary wastes, and other negative impacts that generally occur at shoreline areas that have easy public access.

### 3.8 ACCESS

*Setting.* Private access to Keawe'ula is restricted to access points designated pursuant to HRS 264-64 by the State of Hawai'i Department of Transportation-Highways from the Akoni Pule Highway, a State owned and maintained road, which has a 24-foot wide paved roadway surface and 6-foot wide graveled shoulder, in a designated 80-foot wide right-of-way. A 10-foot wide graveled roadway leads to Keawe'ula's double entrance gate. There is no public access to Keawe'ula from the Akoni Pule Highway.

*Impacts and Mitigation.* The Project did not cause any substantial adverse impact upon access.

### 3.9 WATER RESOURCES

*Setting.* The nearest County of Hawai'i municipal water system is located at the Kawaihae Industrial Park approximately six lineal miles south from the Project Area. No municipal water system is available to the Project Area.

*Impacts and Mitigation.* The Project had no impact on public water systems.

### 3.10 UTILITIES

*Setting.* Neither electricity nor telephone services are presently available in the Project Area. The Project did not require these services, and the Applicant does not anticipate connection to these services.

*Impacts and Mitigation.* Since neither electrical nor telephone services were required for the Project, there was no anticipated adverse impact upon electrical and telephone utility services.

### 3.11 POLICE AND FIRE PROTECTION

*Setting.* Police protection services are provided by the North Kohala police station located in Kapa'au, approximately ten miles north of Keawe'ula. Fire protection services are provided by the North Kohala fire station located in Kapa'au and the South Kohala Fire Station, located along the Queen Ka'ahumanu Highway, approximately 13 miles south of Keawe'ula.

*Impacts and Mitigation.* The Project increased the demand for police services due to increased trespassing, vandalism, and terroristic activity. The North Kohala police station has responded to these issues. The Project did not increase the demand for fire services and, because dead and dried trees were removed, it may have reduced the demand for fire services. Thus no substantial impacts to these services resulted from the Project.

## 4.0 RELATIONSHIPS TO LAND USE PLANS, POLICIES, AND CONTROLS

### 4.1 STATE LAND USE LAW

All lands within the State have been classified into one of our land use districts: Urban, Rural, Agricultural and Conservation, by the State Land Use Commission, pursuant to Chapter 205, HRS. A narrow coastal strip of Keawe'ula along the shoreline is within the State Land Use Conservation District, Resource (R) Subzone, and the remaining portion of Keawe'ula is within the State Land Use Agricultural District, as delineated on Boundary Interpretation No. 99-16. This boundary interpretation includes the note: "*approximate State Land Use Agricultural/Conservation District Boundary (follows jeep road as it existed in 1969).*" This Boundary Interpretation is reproduced here as Exhibit 8.

The Applicant submits that the State Land Use Conservation District Boundary is located further *makai* along the shoreline based on the aerial photograph of the 1963/1964 field mapped, USGS Reference: Keawanui Bay, which clearly indicates that the existing jeep road does not traverse the entire parcel, but rather ends at the southern point of Keawe'ula Bay (see, Exhibit 4-1963/1964 USGS Land Classification Map).

Section 205-2(e), HRS, provides that Conservation District shall include:

*"...areas necessary for protecting watersheds and water sources; preserving scenic and historic area; providing park lands, wilderness, and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; open space area whose existing openness; natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept."*

Lands located within the State Land Use Conservation Districts are administered by DLNR, pursuant to Chapter 183C, HRS.

As discussed in Section 3.0 of this EA, the Project was entirely consistent with these uses and did not impair or compromise the natural and recreational resources in the area that the Conservation District designation is designed to protect.

### 4.2 STATE ADMINISTRATIVE RULES GOVERNING LAND USES WITHIN CONSERVATION DISTRICTS

Title 13 of the Hawai'i Administrative Rules (HAR), for DLNR under Subtitle 1, Chapter 5, regulates land uses within the Conservation District. The rules establish five subzones within the Conservation District: the Protective (P), Limited (L), Resource (R), General (G) and Specific subzones. All land within the Conservation District has been designated within one of the five subzones by BLNR. Keawe'ula is designated within the Resource (R) subzone.

Section 13-5-13, HAR, provides that the objective of the Resource (R) subzone "*...is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.*" Further, all identified land uses listed for the Protective (P) subzone (Section 13-5-22, HAR) and Limited (L) subzone (Section 13-5-23, HAR) also apply to the Resource (R) subzone under Section 13-5-24, HAR.

The Project is permitted within the Protective (P), Limited (L) and Resource (R) subzones, under Sections 13-5-22, 23 and 24, HAR.

### 4.3 HAWAI'I STATE PLAN, CHAPTER 266, HRS

The Hawai'i State Plan, Chapter 226, HRS, establishes a set of goals, objectives and policies to serve as long-range guidelines for the growth and development of the State. The following sections of the Hawai'i State Plan contain guidelines that are relevant to the Project.

#### Section 226-11. Objective and policies for the physical environment - scenic, natural beauty, and historic resources.

*Objectives:* Prudent use of Hawai'i's land-based, shoreline, and marine resources and effective protection of Hawai'i's unique and fragile environmental resources.

*Policies:* Exercise an overall conservation ethic in the use of Hawai'i's natural resources. Take into account the physical attributes of areas when planning and designing activities and facilities. Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damages. Encourage the protection of rare or endangered plant and animal species and habitat native to Hawai'i. Pursue compatible relationships among activities, facilities and natural resources. Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.

*Analysis:* The Project was carried out in harmony with the existing physical environment. No changes in the shoreline or topography were made.

#### Section 226-12. Objective and policies for the physical environment, scenic, natural beauty, and historic resources.

*Objective:* Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawai'i's scenic assets, natural beauty, and multiple-cultural/historic resources.

*Policies:* Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, oceans, scenic landscapes and other natural features. Encourage the design of development and activities that complement the natural beauty of the islands.

*Analysis:* The Project had no impact on the natural beauty and visual resources of Keawe'ula Bay and Keawanui Bay. The aesthetic and historic resources of the area were preserved.

#### Section 226-13. Objective and policies for the physical environment - land, air, and water quality.

*Objective:* Maintenance and pursuit of improved quality in Hawai'i's land, air and water resources.

*Policies:* Promote the proper management of Hawai'i's land and water resources. Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

*Analysis:* The Project did not impact air quality and reduced erosion from the road, leading to less introduction of sediments into the ocean and thus an improvement in water quality.

### 4.4 HAWAI'I COUNTY GENERAL PLAN

The Hawai'i County General Plan is a policy document for the long-range comprehensive development of all land within the County of Hawai'i. The plan contains goals, policies and standards, as well as a set of land use maps, designated as the General Plan Land use Pattern Allocation Guide ("LUPAG") maps, showing the location of desired land uses.

The LUPAG map designates a narrow coastal strip of Keawe'ula along the shoreline as "Open," and the remaining portion of Keawe'ula as "Extensive Agricultural." The Open designation includes



parcs and historic sites, Natural Areas and Reserves, Open Space Recreation Areas, Scenic Vistas and View planes. The Extensive Agricultural designation includes pasture and range lands.

The Project did not conflict with the Open and Extensive Agricultural designation of the General Plan, since it did not change the use of the land, and it preserved the existing visual resources and historic features. These improvements were also entirely compatible with the County Agricultural designation.

#### 4.5 HAWAI'I COUNTY ZONING

Keawe'ula is zoned under the Hawai'i County Zoning Code (Chapter 25, Hawai'i County Code) as Agricultural, with a minimum lot size of 5 acres (A-5a). The Project is permitted under this zoning district.

#### 4.6 COUNTY SPECIAL MANAGEMENT AREA

Keawe'ula is located within the Special Management Area (SMA), which runs along the Akoni Pule Highway, as defined in Chapter 205A, HRS, and Rule 9 of the County of Hawai'i Planning Commission Rules.

Rule 9.4(10)C provides that: "*Any proposed use, activity, or operation listed in paragraph B shall be deemed to be 'Development' until the Director has determined it to be exempted from the definition of 'development.'*"

Pursuant to Planning Commission Rules 9-4(10)C and 9-10G, the Planning Director by letter dated September 22, 1999, declared, *inter alia*, that the primary and accessory improvements to the Jeep Road are consistent with Rule 9-4(10)B(ii) and are exempt from the definition of "development" and the SMA Rule (see, Exhibit 6-SMA exemption letter.)

#### 4.7 SHORELINE SETBACK AREA

The shoreline area of Keawe'ula encompasses the 40-foot shoreline setback area as defined by Rule 8 of the County of Hawai'i Planning Commission Rules. The Project was not in the shoreline setback area (see, Exhibit 6-SMA exemption letter.)

#### 4.8 ENVIRONMENTAL ASSESSMENT

Section 343-5(a)(2) HRS provides that any use that is proposed within any land classified as Conservation District land by the State Land Use Commission under Chapter 205, is subject to the Environmental Impact Statement law, Chapter 343, HRS. Section 343-5(c), HRS, provides that applicants proposing actions subject to Chapter 343, HRS, "*... shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required.*"

This environmental assessment has been prepared to fulfill these requirements.

## 5.0 IDENTIFICATION OF MAJOR IMPACTS AND ALTERNATIVES CONSIDERED

### 5.1 MAJOR IMPACTS

Due to the limited scope of the Project, the Project was not and is not expected to contribute to any substantial economic, social or environmental concerns, or cause adverse environmental impacts. In addition, no major long-term impacts are anticipated from the Project, since these activities were permitted uses within the Conservation District Resource Subzone, pursuant to Sections 13-5-22, 23 and 24, HAR.

### 5.2 ALTERNATIVES TO THE PROJECT

#### 5.2.1 NO ACTION

Because the Project has already been completed, and because the Board of Land and Natural Resources has already cited the Applicant for failure to obtain the proper approvals for these activities, the No Action alternative is not viable.

#### 5.2.2 RESTORATION

Restoration of the Jeep Road to its condition prior to the completed improvements would entail disturbance of the Conservation District that is comparable to or greater than the disturbance caused by the original activities and might itself require the acquisition of a Conservation District Use Permit. Furthermore, such restoration would be very likely to increase the vulnerability of the roadbed to significant erosion during storm events, leading to potentially adverse affects on nearshore marine resources. For these reasons, restoration is not a viable alternative to leaving the completed improvements in place.

## 6.0 DETERMINATION

### 6.1 SIGNIFICANCE CRITERIA

Hawai'i Administrative Rules §11-200-11.2 establishes procedures for determining if an environmental impact statement (EIS) should be prepared or if a finding of no significant impact is warranted. §11-200-11.2 (1) provides that proposing agencies should issue an environmental impact statement preparation notice (EISPN) for actions that it determines may have a significant effect on the environment. Hawai'i Administrative Rules §11-200-12 lists the following criteria to be used in making that determination:

*In most instances, an action shall be determined to have a significant effect on the environment if it:*

1. *Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;*
2. *Curtails the range of beneficial uses of the environment;*
3. *Conflicts with the State's long-term environmental policies or goals as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;*
4. *Substantially affects the economic or social welfare of the community or State;*
5. *Substantially affects public health;*
6. *Involves substantial secondary impacts, such as population changes or effects on public facilities;*
7. *Involves a substantial degradation of environmental quality;*
8. *Is individually limited but cumulatively has considerable effect on the environment or involves a commitment for larger actions;*
9. *Substantially affects a rare, threatened, or endangered species, or its habitat;*
10. *Detrimentially affects air or water quality or ambient noise levels;*
11. *Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;*
12. *Substantially affects scenic vistas and view planes identified in county or state plans or studies; or,*
13. *Requires substantial energy consumption.*

### 6.2 FINDINGS

The Applicant evaluated the potential effects of the Project using the significance criteria of HAR §11-200-12. In considering the significance of potential environmental effects, the Applicant has considered the sum of effects on the quality of the environment and evaluated the overall cumulative effects of the Project. The Applicant has considered the expected consequences, both primary and secondary, and the cumulative, as well as, the short- and long-term effects of the Project. As a result of these considerations, the Applicant has determined that the approval of the Project by the Board of Land and Natural Resources will have no significant effect on the environment since:

1. The improvements to the Jeep Road at Keawe'ula did not and are not expected to impact archaeological/cultural resources in the area that would involve an irrevocable commitment to loss or destruction of any natural or cultural resources. The Applicant is committed to protecting and

preserving Habitation Complex (Site No. 2358) at Keawanui Bay and the Kehena Inland Complex (Site No. 2362).

3. The preparation of the environmental assessment is in compliance with Chapter 344, HRS, and the Project did not and will not conflict with the short or long term policies, goals and guidelines of Chapter 343, HRS.
4. The economic or social welfare of the community were positively affected from the creation of construction-related jobs.
5. Public health was not and will not be affected, by the Project.
6. The Project did not and will not cause substantial secondary impacts, nor adversely affect population changes on public facilities. Electrical and telephone services are not available to the Project Area and are not anticipated to be connected to these services. There were and are no additional burdens on public facilities anticipated from the road improvements.
7. As discussed in Section 3.0 of this EA, the Project did not and will not involve a substantial degradation of environmental quality. It did not and does not compromise the character of Keawe'ula and surrounding area, but improves the resources of the land by preserving cultural sites, reducing the possibility of erosion and sedimentation seepage into the coastline and preventing brush fire hazards by the removal dead and diseased trees.
8. Keawe'ula will remain consistent in character and size with other undeveloped property in the area, and will neither conflict with or intensify existing land uses, nor burden existing area resources and available public services, and therefore the Project does not have a cumulative effect upon the environment or involve a commitment for larger action.
9. There are no known rare, threatened, or endangered plant or animal species or habitats at Keawe'ula or within the immediate vicinity. Keawe'ula is not designated as critical habitat for any threatened or endangered plants and does not constitute normal habitat for any of the listed threatened or endangered animals in Hawai'i.
10. The Project did not and will not detrimentally affect air or water quality or ambient noise levels since the air quality in the area is largely affected by air pollutants from vehicular rather than natural sources. The Project did not and does not involve any direct or indirect modifications to the nearshore environment nor alter shoreline processes. The minor, short-term increases in noise level during completion of the Project were confined to normal daylight hours.
11. Keawe'ula is located outside of the 500-year flood plain and is in the lowest volcano risk zone on the Island of Hawai'i. Although the shoreline of Keawe'ula is located within the Hawai'i County Civil Defense Agency's tsunami evacuation area, there are no tsunami data for the Project Area, and the shoreline along Keawe'ula has remained stable during seasonal coastal storms.
12. Keawe'ula is consistent with the character and size of other vacant parcels in the area and does not substantially affect the visual resources of surrounding properties.
13. No substantial energy consumption was required for the Project, other than the consumption of fuel for the trucks and earth-moving equipment that completed the work.

### 6.3 DETERMINATION

Based on the information described herein, the Project did not and is not expected to result in significant social, economic, cultural or environmental impacts. Consequently, a Finding of No Significant Impact (FONSI) is issued, subject to the public review provisions of Section 11-200 9.1, HAR.

## 7.0 PARTIES CONSULTED

### 7.1 DISTRIBUTION OF DRAFT ENVIRONMENTAL ASSESSMENT

The Applicant previously received consultation from government agencies and other organizations during the preparation of an Environmental Assessment for the Project, as well as for other activities that are not the subject of this CDUA. These groups included the County of Hawai'i Planning Department, Department of Water Supply, State Department of Land and Natural Resources, Division of Forestry & Wildlife, Na Ala Hele Trail & Access Systems, Engineering Branch, State Parks, Hawai'i District Branch, and Division of Aquatic Resources, Office of Hawaiian Affairs, the State Office of Environmental Quality Control, Hui Lihikai/Citizens for the Protection of the N. Kohala Coast, and Jonathan and Patricia Benjamin/Restore Beach Access Hawai'i through Steven Strauss.

This DEA was distributed to the individuals and organizations listed in Table 7-1.

Table 7-1 Draft EA Distribution List

<b>Federal Agencies</b>	
Environmental Protection Agency, Pacific Islands Contact Office	U.S. Fish & Wildlife Service, Pacific Island Eco-Region
U.S. Department of Agriculture, Natural Resources Conservation Service	District Chief, Geological Survey, Department of the Interior
District Engineer, U.S. Army Engineer District, Honolulu	
<b>State Agencies</b>	
Office of Environmental Quality Control	Department of Business and Economic Development & Tourism, CZM Office
State Department of Defense	State Department of Agriculture
Department of Education	DLNR Land Division
Department of Hawaiian Home Lands	DLNR Historic Preservation Division
Office of Hawaiian Affairs	DLNR Division of Forestry & Wildlife
State Department of Accounting and General Services	DLNR Division of Aquatic Resources
Environmental Center, University of Hawai'i	DLNR Na Ala Hele Trail & Access Systems, Engineering Branch
<b>County of Hawai'i</b>	
Planning Department	Fire Department
Department of Parks and Recreation	Department of Water Supply
<b>Libraries and Depositories</b>	
Hawai'i State Library Hawai'i Documents Center	Hilo Regional Public Library
University of Hawai'i, Hilo Campus Library	Kailua-Kona Regional Library
Bond Memorial Library, Kapa'au	

### 7.2 WRITTEN COMMENTS RECEIVED AND RESPONSES

In response to the above distribution, we received written comments on the DEA from the parties listed in Table 7-2. Copies of those letters and our responses to them are included at the end of this section. For ease of reference, each comment letter is designated by a number, listed in this table and reproduced on the copy of the comment letter.

## PARTIES CONSULTED

Table 7-2 Written Comments Received

<i>Name &amp; Title of Commenter</i>	<i>Organization</i>	<i>Letter Number</i>
Christopher Yuen, Director	County of Hawai'i Planning Department	1
Thomas E. Arizumi, Chief	Environmental Management Division, State of Hawai'i Department of Health	2
Patricia A. Benjamin	Private Individual	3
Theresa Perez	Private Individual	4
Steven D. Strauss, Esq.	Attorney representing Benjamin and Perez	5
Genevieve Salmonson, Director	State of Hawai'i Office of Environmental Quality Control	6
P. Holly McEldowney, Acting Administrator	State Historic Preservation Division, State of Hawai'i Department of Land and Natural Resources	7
Peter L. Yee, Director	Office of Hawaiian Affairs, State of Hawai'i	8

Source: Compiled by Planning Solutions, Inc.

Harry Kim  
Mayor



**County of Hawaii**

PLANNING DEPARTMENT  
Aspen Center • 101 Puuhale Street, Suite 2 • Hilo, Hawaii 96720  
Phone (808) 951-4211 • Fax (808) 941-4742

August 19, 2003

Ms. Dierdre S. Mamiya, Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P. O. Box 621  
Honolulu Hi 96809

Dear Ms. Mamiya:

CDUA HIA-3148 (Board Permit)  
Chandi Duke Heffner  
Improvements to Existing Jeep Road  
Kehena 2<sup>nd</sup>, District of North Kohala, County of Hawaii  
TMK: (3) S-8-1: 9

This is in response to the above-referenced application for after-the-fact approval for improvements to portions of an existing jeep road and associated erosion control and tree removal within the Conservation District.

We have the following comments to offer:

1. This department granted an SMA exemption in September 22, 1999 for perimeter fencing for animal husbandry purposes, brackish well construction, water trough installation, tree-planting, and improvements to the private jeep road. Requirements of the exemption were that the fencing and other improvements would not encroach upon the 40-foot shoreline setback area; all improvements were for agricultural purposes; road improvements were limited to repair and maintenance of an existing unpaved jeep trail; shoreline lateral access must be preserved; and any requirements of the State-DLNR for Conservation Districts would be met.

01

Christopher J. Yuen  
Director  
Roy R. Takemoto  
Deputy Director

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LAND DIVISION  
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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Ms. Dierdre S. Mamiya, Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
Page 2  
August 19, 2003

2. Since granting the SMA exemption, the State's Nā Ala Hele program abstractor researched the existence of a historic coastal footpath along the Mahukona-Kawaihae coastline and concluded in a report dated January 14, 2000 that the lateral coastal trail referred to as the *ala'oa* on historic maps corresponds to the jeep trail alignment extending laterally through the subject parcel. Further, the lateral jeep trail alignment is State-owned. In light of this new information, public access along the unpaved jeep trail where it provides lateral shoreline access should be preserved. Perimeter fencing should not block the public's right-of-way and all other blockage should be removed. Should the applicant wish to control use of the lateral shoreline access via the jeep trail, an SMA Major Use Permit will be required pursuant to the Coastal Zone Management objectives and policies of Chapter 205A, HRS. Additionally the applicant must submit with the SMA Use Permit Application authorization from the State to do any improvements within the lateral jeep trail alignment and/or to control use of the lateral shoreline access.

Thank you for the opportunity to comment on this matter. If you have questions, please feel free to contact Alice Kawaha of this office at 961-8288.

Sincerely,

*Christopher J. Yuen*

CHRISTOPHER J. YUEN  
Planning Director

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cc: Planning Department - Kona



**P L A N N I N G  
S O L U T I O N S**

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Mr. Christopher J. Yuen, Director  
County of Hawai'i Planning Department  
Aupuni Center • 101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

Subject: Draft Environmental Assessment (DEA): CDUA HA-3148 (Board Permit) Chandl  
Duke Heffner Improvements to Existing Jeep Road Kehena 2<sup>nd</sup>, North Kohala  
District, County of Hawaii TMK: (3) 5-8-1; 9

Dear Mr. Yuen:

Thank you for your August 19, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for Ms. Chandl Heffner's improvements to an existing jeep road on her property. We appreciate the time you and your staff spent reviewing the document and providing written comments. Item-by-item responses to your comments (reproduced for your convenience in italics before each response) are provided below.

1. *This department granted an SMA exemption in September 22, 1999 for perimeter fencing for animal husbandry purposes, brackish well construction, water trough installation, tree-planting, and improvements to the private Jeep road. Requirements of the exemption were that the fencing and other improvements would not encroach upon the 40-foot shoreline setback area; all improvements were for agricultural purposes; road improvements were limited to repair and maintenance of an existing unpaved jeep trail; shoreline lateral access must be preserved; and any requirements of the State-DLNR for Conservation Districts would be met.*

Response: Thank you for re-affirming that the improvements to the jeep road considered in this DEA are exempt from the County's Special Management Area permit requirements. As stated in the September 22, 1999 letter from the County of Hawaii Planning Department:

*"On-site (Private) Jeep Road: Repair or Maintenance. The primary and accessory improvements to the existing jeep road are consistent with Rule 9-4(10)(B)(ii) or (vi). These improvements are exempt by this rule because it constitutes either the repair or maintenance of a road or of an existing use, the unpaved jeep trail."*

The CDUA for which this DEA was prepared does not propose any fencing, well or water-trough construction, or tree planting within the Conservation District. The limited nature of the project for which this CDUA and DEA were prepared is described as follows in the Project Summary of the DEA: "The Applicant is seeking after-the-fact approval for improvements to the portions of the jeep road that are within the Conservation District and associated erosion control and tree removal improvements within the Conservation District."

We note that the County of Hawai'i Planning Department investigated the improvements for which this after-the-fact approval is sought, and concluded as follows:

Page 2  
Mr. Christopher J. Yuen  
November 7, 2003

"The fencing and roadway in the State Land Use Agricultural District is exempt and no violation has occurred in the Special Management Area.

"As to the complaint about public access on the above property, according to our records there is no recorded public access located on this property."

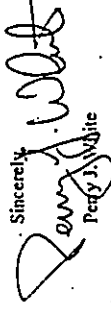
A copy of the June 8, 1999 letter from Planning Director Virginia Goldstein is enclosed for your reference.

2. *Since granting the SMA exemption, the State's Na Ala Hele program abstractor researched the existence of a historic coastal footpath along the Mahukona-Kawaihae coastline and concluded in a report dated January 14, 2000 that the lateral coastal trail referred to as the alaloa on historic maps corresponds to the jeep trail alignment extending laterally through the subject parcel. Further, the lateral jeep trail alignment is State-owned. In light of this new information, public access along the unpaved jeep trail where it provides lateral shoreline access should be preserved. Perimeter fencing should not block the public's right-of-way and all other blockage should be removed. Should the applicant wish to control use of the lateral shoreline access via the jeep trail, an SMA Major Use Permit will be required pursuant to the Coastal Zone Management objectives and policies of Chapter 205A, HRS. Additionally the applicant must submit with the SMA Use Permit Application authorization from the State to do any improvements within the lateral jeep trail alignment and/or to control use of the lateral shoreline access.*

Response: The Applicant does not propose any perimeter fencing in this CDUA. Section 3.7 of the DEA states that the Applicant "...does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law."

The perimeter fencing does not extend outside of the Agricultural Zone, and specifically does not extend across the coastal jeep trail alignment. Please also see the enclosed correspondence dated June 8, 1999 from former Planning Director Virginia Goldstein, confirming the lack of any violation in the Special Management Area associated with the perimeter fencing. In addition, per the attached letter from Lisa Bail, Esq. and Bruce Lamont, Esq., please note that the applicant acknowledges that the State has made informal claims to ownership of the coastal jeep trail alignment, but disputes the State's claimed "ownership."

Again, thank you for your comments.

Sincerely,  
  
Perry J. White

Enclosures:

- (1) 6/8/99 Letter from Virginia Goldstein
- (2) 10/1/03 Letter from Lisa Bail and Bruce Lamont

cc: Ms. Chandl Duke Heffner  
Ms. Lisa Bail, Goodwill, Anderson Quinn & Stifel  
DLNR Land Division







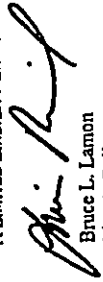
Perry White  
November 6, 2003  
Page 3

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

This letter does not attempt to present all of Ms. Heffner's legal and factual contentions with respect to matters relevant to the comments you have received on the draft EA.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

  
Bruce L. Lammon  
Lisa A. Bail

FILED

2003 MAR -4 AM 9:49

S. ENOVA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

GOODSILL ANDERSON QUINN & STIFEL

BRUCE L. LAMON 2738-0  
LISA A. BAIL 6021-0  
Ahi Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813  
Telephone: 547-5600

Attorneys for Defendant  
CHANDI D. HEFFNER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

CIVIL NO. 01-1-0059  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER DENYING  
PLAINTIFFS' MALAMA NA KAHAKAI,  
ET AL.'S MOTION FOR PRELIMINARY  
INJUNCTION AND VACATING  
TEMPORARY RESTRAINING ORDER  
FILED JANUARY 4, 2002

MALAMA NA KAHAKAI, RICHARD C.  
LINDSEY, JR., ISABELLA MEDEIROS,  
ROBBINS KINNEY, TIM CARAVALHO,  
RAYNARD TORRES, FHTILIA MARY  
CABRERA KAHOLOA'A, LEONARD  
PANG, STEPHANIE CABANISS, CLYDE  
YANO, BERNETTE P. HUI-COLLO,  
JEFFERY KIAAINA, SR., RAYMOND K.  
KALUA 'U, PATTY KALUA 'U, THERESA  
PEREZ, PATRICIA BENJAMIN AND  
JONATHAN BENJAMIN,

Plaintiffs,

vs.

CHANDI DUKE HEFFNER, JOHN DOES  
1-10, JANE DOES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
CORPORATIONS 1-10, DOE  
GOVERNMENTAL UNITS 1-10, DOE  
ENTITIES 1-10,

Defendants.

(Motion Filed on October 22, 2001)

Hearing: November 9, 2001  
Dates: November 13, 2001  
February 7, 2002

Judge: Riki May Amano

NO TRIAL DATE HAS BEEN SET

General 415591.1

I hereby certify that this is a full, true and correct copy of the original in this office.

  
S. ENOVA, CLERK

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
DENYING MALAMA NA KAHAKAI, ET AL.'S MOTION FOR  
PRELIMINARY INJUNCTION AND  
VACATING TEMPORARY RESTRAINING ORDER FILED  
JANUARY 4, 2002

Plaintiffs Malama Na Kahakai, Richard C. Lindsey, Jr., Isabella Medeiros, Robbins Kinney, Tim Caravallho, Reynard Torres, Filitia Mary Cabrera Kaholou'a, Leonard Pang, Stephanie Cabanis, Clyde Yano, Bernette P. Hui-Collo, Jeffrey Kianina, Sr., Raymond K. Kalua'u, Patty Kalua'u, Theresa Perez, Patricia Benjamin and Jonathan Benjamin's ("Plaintiffs") Motion for Preliminary Injunction, filed October 22, 2001 ("Motion"), came on for hearing before the Honorable Riki May Amano on February 7, 2002 at 10:00 a.m. Steven Strauss appeared on behalf of Plaintiffs and Bruce Lamon and Lisa Bail appeared on behalf of Defendant Chand D. Heffner ("Heffner"). The Court having considered the oral and written arguments, papers and evidence filed or submitted by the parties; having heard testimony from witnesses Joseph Chang, Howard Sur, Robert Taira, and Stanley Tamura; having heard testimony from Plaintiffs Isabella Medeiros and Theresa Perez, and being fully advised in the premises, hereby finds, concludes and orders as follows:

FINDINGS OF FACT

1. The Motion seeks an order granting public access to the mauka-makai jeep road ("Jeep Road") crossing Heffner's real property as generally depicted at Tax Map Key No. (3)5-8-001-009 ("Property").

2. The Jeep Road is a private road.

3. Plaintiffs have failed to present any evidence of any intent by Heffner or any of its owners to dedicate or surrender the Jeep Road to the public, or of any intent by any of its owners to make the Jeep Road a public roadway, or of any intent by any of its owners to give anyone an absolute right to use the Jeep Road. The testimony adduced at the February 7, 2002 hearing on the Motion showed the opposite of any such intent. Witnesses using the Jeep Road acknowledged that they did so with permission and/or that they were not given such permission by Heffner.

4. Plaintiffs have submitted insufficient evidence to show a likelihood of prevailing on the merits of establishing an easement across the Jeep Road.

5. Although Heffner erected a gate preventing public access to the Jeep Road from the Akoni-Pule Highway in 1999, Plaintiffs did not file the Motion until October 2001.

6. Continued disuse of the Jeep Road will not harm the Plaintiffs.

CONCLUSIONS OF LAW

7. Plaintiffs are not likely to prevail on the merits herein because (a) they have presented no evidence showing compliance with the requirements for public dedication or surrender under Hawaii Revised Statutes ("H.R.S.") § 264-1 such that H.R.S. § 264-1 would apply to make the Jeep Road a public highway; (b) they have presented no evidence of any intent to dedicate the Jeep Road to the public, such that the common law doctrine of implied dedication would apply; and (c) they have presented insufficient evidence of any easement in their favor over the Jeep Road.

8. Denial of the Motion will not cause Plaintiffs to suffer irreparable harm. The balance of irreparable harm therefore does not favor granting the Motion.

9. The public interest does not support granting the Motion.

ORDER DENYING PLAINTIFFS' MALAMA NA KAHAKAI, ET AL.'S MOTION FOR  
PRELIMINARY INJUNCTION AND VACATING TEMPORARY RESTRAINING ORDER  
FILED JANUARY 4, 2002

10. The Motion be and hereby is denied.
11. The Temporary Restraining Order filed herein on January 4, 2002 be and  
hereby is vacated.

MADE: Hilo, Hawaii, February 2, 2002.

MAR 04 2002

BIKI MAY AMANO  
JUDGE OF THE ABOVE-CAPTIONED COURT

In the Circuit Court of the Third Circuit, State of Hawaii; Civil No. 01-1-0059; *Malama Na  
Kahakai, et al. v. Heffner*. ORDER DENYING PLAINTIFFS' MALAMA NA KAHAKAI,  
ET AL.'S MOTION FOR PRELIMINARY INJUNCTION AND VACATING  
TEMPORARY RESTRAINING ORDER FILED JANUARY 4, 2002

RECEIVED  
LAND DIVISION



02  
DIERDRE S. MAMIYA, M.D.  
DIRECTOR OF HEALTH

700 SEP 10 P 3:44

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 3378  
HONOLULU, HAWAII 96801-3378

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

September 9, 2003

09037PKP.03

To: Dierdre S. Mamiya  
Acting Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources

From: Thomas E. Arizumi, P.E., Chief  
Environmental Management Division

*Thomas E. Arizumi*

Subject: Request for Comments  
Conservation District Use Application (CDUA)  
Board Permit  
Improvements to Existing Jeep Road at Keheha 2nd  
North Kohala, Hawaii  
TMK: (3)5-8-01:09

The Department of Health, Clean Water Branch (CWB) has reviewed the subject document and offers the following comments:

1. The Army Corps of Engineers should be contacted at 438-9258 to identify whether a Federal license or permit (including a Department of Army permit) is required for this project. Pursuant to Section 401(a)(1) of the Federal Water Pollution Act (commonly known as the "Clean Water Act"), a Section 401 Water Quality Certification is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..."
2. A National Pollutant Discharge Elimination System (NPDES) general permit coverage is required for the following activities:
  - a. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).
  - b. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities.
  - c. Discharges of treated effluent from leaking underground storage tank remedial activities.

Dierdre S. Mamiya  
September 9, 2003  
Page 2

- d. Discharges of once through cooling water less than one (1) million gallons per day.
- e. Discharges of hydrotesting water.
- f. Discharges of construction dewatering effluent.
- g. Discharges of treated effluent from petroleum bulk stations and terminals.
- h. Discharges of treated effluent from well drilling activities.
- i. Discharges of treated effluent from recycled water distribution systems.
- j. Discharges of storm water from a small municipal separate storm sewer system.
- k. Discharges of circulation water from decorative ponds or tanks.

The CWB requires that a Notice of Intent (NOI) to be covered by a NPDES general permit for any of the above activities be submitted at least 30 days before the commencement of the respective activities. The NOI forms may be picked up at our office or downloaded from our website at <http://www.state.hi.us/doh/eh/cwb/forms/genl-index.html>.

3. The applicant may be required to apply for an individual NPDES permit if there is any type of activity in which wastewater is discharged from the project into State waters and/or coverage of the discharge(s) under the NPDES general permit(s) is not permissible (i.e. discharges into Class 1 or Class AA waters). An application for the NPDES permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may also be picked up at our office or downloaded from our website at <http://www.state.hi.us/doh/eh/cwb/forms/indiv-index.html>.
4. Hawaii Administrative Rules, Section 11-35-38, also requires the owner to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. Please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.

If you have any questions, please contact the CWB at (808) 586-4309.



**P L A N N I N G  
S O L U T I O N S**

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Mr. Thomas E. Arizumi, Chief  
Environmental Management Division  
Department of Health  
State of Hawaii  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

Subject: Draft Environmental Assessment (DEA): CDUA IIA-3148 (Board Permit) Chandu  
Duke Heffner Improvements to Existing Jeep Road Keliha 2<sup>nd</sup>, North Kohala  
District, County of Hawaii TMK: (3) 5-8-1: 9

Dear Mr. Arizumi:

Thank you for your September 9, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for improvements Ms. Chandu Heffner's made to an existing jeep road on her property. We appreciate the time you and your staff spent reviewing the document and providing written comments. Item-by-item responses to your comments (reproduced for your convenience in italics before each response) are provided below.

1. *The Army Corps of Engineers should be contacted at 438-9238 to identify whether a Federal license or permit (including a Department of Army permit) is required for this project. Pursuant to Section 401(a)(1) of the Federal Water Pollution Act (commonly known as the "Clean Water Act"), a Section 401 Water Quality Certification is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..."*

Response: A Section 401 Water Quality Certification was not needed for the 1999 jeep road improvements, associated erosion control, and tree removal covered by the DEA because there was no discharge into navigable waters. With respect to your request that the Army Corps of Engineers be contacted, we note that the U.S. Army District Engineer in Honolulu received a copy of the DEA but did not comment on it.

2. *A National Pollutant Discharge Elimination System (NPDES) general permit coverage is required for the following activities:*

- a. *Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).*
- b. *Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities.*

Page 2

Mr. Thomas E. Arizumi  
November 7, 2003

- c. *Discharges of treated effluent from leaking underground storage tank remedial activities.*
  - d. *Discharges of once through cooling water less than one (1) million gallons per day.*
  - e. *Discharges of hydrotesting water.*
  - f. *Discharges of construction dewatering effluent.*
  - g. *Discharges of treated effluent from petroleum bulk stations and terminals.*
  - h. *Discharges of treated effluent from well drilling activities.*
  - i. *Discharges of treated effluent from recycled water distribution systems.*
  - j. *Discharges of storm water from a small municipal separate storm sewer system.*
  - k. *Discharges of circulation water from decorative ponds or tanks.*
2. *The CIBW requires that a Notice of Intent (NOI) to be covered by a NPDES general permit for any of the above activities be submitted at least 30 days before the commencement of the respective activities. The NOI forms may be picked up at our office or downloaded from our website at <http://www.state.hi.us/doh/ehewb/forms/-sent-index.html>.*

3. *Hawaii Administrative Rules, Section 11-55.18, also requires the owner to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. Please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.*

Response: Thank you for noting the activities for which National Pollutant Discharge Elimination System (NPDES) general permit coverage is required and for summarizing the application procedures. An NPDES general permit was not needed for the 1999 jeep road improvements, associated erosion control and tree removal which is the subject of this after-the-fact CDUA for the following reasons:

- The improvements did not involve any of the discharges described in Item a. or in Items c. - k above.
- The improvements to the jeep road disturbed less than the one-acre threshold specified in Item b. In view of the foregoing, it is our understanding that, the activity did not require an NPDES permit. If you have any further questions concerning the project, please call me at (808) 550-4483.

Sincerely,

Perry J. White

cc: Ms. Chandu Duke Heffner  
Ms. Lisa Bai, Goodwill Anderson Quinn & Stifel  
DLNR Land Division

03

My email is, x0113

Chairperson Department of Land and Natural Resources:

Dear Chairperson & Board:

It has come to my attention that you are soliciting comments on Chandi Heffner's permit request.

For years I have used what is commonly referred to as "the old firetrail roads" to access beaches adjacent to Ms. Heffner's property.

Other people that I know also used those roads.

I personally witnessed a violation of the EPA Clean Water Act, among other violations when I saw earth, rocks, trees and other debris purposefully bulldozed over a cliff into the ocean. This was at the precise coordinates for a GPA at 80.07 17 N - 155.53 W. On the coastline it was at approximately page # 48.

This violation was witnessed.

by many other people. It was discovered shortly after Ms. Heffner's agents were grubbing without permits. There were no trees leaning over the ocean that could have fallen in. It was not a rockslide. One could see the scapes on the ground from equipment pushing the dirt to each clear. It is ironic that Ms. Heffner should do this through her agent since this area was a wonderful gathering place for opihi, tako, and fishing. For so many generations of our people have taken their grand children to the shore to gather, swim and pray.

Auntie Marie Solomon taught us and her own of the culture of Hawaii at that site. She pointed out many very important cultural and historical things regarding the Alii, Gods, Goddesses, Papa Bill Akau and Auntie Madeline all taught us what they had learned of that place.

The address Jane was to go back when Ms. Heffner had an uncle the.



Issue due to an injunction and  
the saw so much cultural destruction  
spiritually significant rocks had  
been moved from places they exist  
in for at least hundreds of years  
and broken in half deliberately.  
Lono = broken and moved over  
next to the steps for the ali'i  
ney to hit there.

Tree rocks were missing from  
the house. Other rocks were  
missing; rocks that are necessary  
for Puukey and spirituality.  
Due ancient trail on the coastline  
has had a been constructed over it.  
I personally heard Mr. Idefner admit  
to her knowledge of the them in  
her deposition. She admitted to  
wanting people to stay off island.  
Due trail through controversial case;  
laws and regulations that that  
Idefner is trying to block and  
keep people from using as access  
to gathering places and places of  
learning and worship. I would be  
legally kept open. Due in dictation  
by very Hawaiian. ~~to~~ ~~to~~  
I'd like the Hawaiian text.

In addition, I respectfully  
request that Mr. Idefner's permit  
request be denied until a full  
investigation and analysis is  
made public. Please analyze and  
let us know.

I am certain that your credible  
engineers would find some of the  
road beds questionable for environ-  
mental concerns.

Please investigate all of these  
things. Please deny this permit.

Yours truly,  
Patricia A Benjamin  
P.O. Box 509  
Kapaa, HI 96755



**P L A N N I N G  
S O L U T I O N S**

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Ms. Patricia A. Benjamin  
P.O. Box 509  
Kapa'au, HI 96755

**Subject: Draft Environmental Assessment (DEA): CDUA HIA-3148 (Board Permit) Chandil Duke Heffner Improvements to Existing Jeep Road Kehena 2<sup>nd</sup>, North Kohala District, County of Hawaii TMK: (3) S-8-1: 9**

Dear Ms. Benjamin:

Thank you for your handwritten letter of September 15, 2003 and your typewritten letter of September 22, 2003 commenting on the *Draft Environmental Assessment (DEA)* for after-the-fact approval for improvements to an existing Jeep road on Ms. Chandil Heffner's property. The content of both letters is similar, and this letter is sent in response to both. We appreciate the time you spent reviewing the document and providing written comments. Item-by-item responses to your comments (reproduced for your convenience in italics before each response) are provided below.

*(1) For years I have used what is commonly referred to as "The old Jeep trail roads" to access beaches adjacent to Ms. Heffner's property. Other people that I know also used those roads.*

**Response:** As stated in Section 3.7 of the Draft Environmental Assessment, the Applicant "does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law." Any access to which you and others may be entitled would be facilitated by the activities for which this after-the-fact permit is sought.

The actions for which this after-the-fact Conservation District Use permit is being sought do not restrict access from Akoni Pule Highway to the shoreline. We understand that in your individual capacity and as secretary of Malama na Kahakai, Inc. you are pursuing litigation entitled *Malama Na Kahakai et al. v. Heffner*, Civil No. 01-1-0059, currently pending before the Circuit Court of the Third Circuit, regarding access to Keawe'ula (the "Litigation"). We understand that in the Litigation, the Court denied your request to use the *manuka-makal* Jeep road.

*(2) I personally witnessed a violation of the EPA Clean Water Act, among other violations when I saw earth, rocks, trees and other debris purposefully bulldozed over a cliff into the ocean. This was at the precise coordinates for a GPS at 20.07 17N - 155.53 19W. On the coastline it was at approximately pole #48.*

**This violation was witnessed by many other people. It was discovered shortly after Ms. Heffner's agents were grubbing without permits. There were no trees leaning over the ocean that could have fallen in. It was not a rockslide. One could see the scrapes on the ground from equipment pushing the earth & other debris.**

*It is ironic that Ms. Heffner should do that through her agent since this area was a wonderful gathering place for opihit, tako (he'e), and fishing. For so many generations grandparents have taken their grandchildren to the shore to gather, swim, and pray.*

Page 2  
Ms. Patricia Benjamin  
November 7, 2003

**Response:** The record does not support your allegation that the Applicant "...bulldozed [earth, rocks, trees and other debris] over a cliff into the ocean." We understand from statements made by your husband during his deposition in the Litigation that you were not present when the bulldozing took place, but that you base your statements on the observation of a bulldozer scrape. The Applicant is unaware of any soil deposited in the ocean by earth-moving equipment operated on the property since she purchased it in 1999.

On October 20, 2000, the State Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) investigated these allegations in response to the complaint Mr. Strauss filed on your behalf. A copy of Investigation Report HIA-01-207 is attached. The Investigation Report documents that DOCARE did not find any evidence to support your claims. Instead, it states:

*It was found that the earth debris and keawe [sic] parts were bulldozed years ago for a fire break. A fire that happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that the old dried grass is on the previously moved earth. The new property owner Chandil HEFFNER [sic], is not responsible for this bulldozing of debris.*

A grubbing permit was not necessary for this project since the grubbing did not alter the general and localized drainage pattern with respect to abutting properties and did not exceed a total area of one acre. We also note that the need for or existence of a grubbing permit is irrelevant to the issue of whether the actions described on this after-the-fact CDUA had a "significant effect" on the environment, and whether a Finding of no Significant Impact should issue.

*(3) Amie Marie Solomon taught us and her own of the culture of Hawai'i at that site. She pointed out many very important cultural and historical things regarding the Ali'i, gods, and goddesses. Papa Bill Apau and Amitee Madieros all taught us what they had learned of this place.*

**Response:** Your comments are duly noted. We do not believe that the actions which are the subject of this after-the-fact application had any effect on the things you describe. This conclusion is substantiated by an archaeological survey and cultural impact assessment, both of which will be included in the Final EA.

*(4) The saddest time was to go back when Ms. Heffner had to unlock the gate due to an injunction and we saw so much cultural destruction.*

**Spiritually significant rocks had been moved from places only exist in for at least hundreds of years and broken in half deliberately. Lono - broken and moved over next to the steps for the Ali'i next to the Hale.**

**Face rocks were missing from the Heiau. Other rocks were missing; rocks that are necessary for prayer and spirituality.**

**Response:** On October 20, 2000, the State Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) investigated your allegation of damage to archaeological sites in response to the complaint Mr. Steven Strauss filed on your behalf. The DOCARE investigation report states that "no damage to any archaeological site could be detected." A copy of the DOCARE report is enclosed. An archaeological assessment survey by Paul Rosendahl will be included in the Final Environmental Assessment. This survey documents that there have been no significant adverse effects to historic sites caused by the project for which this after-the-fact permit is sought.

In further response, we note that Ms. Heffner opened the mauka-makai jeep road to you and other Plaintiffs in the Litigation from approximately November 2001 to March 2002 in response to the Order Granting a Temporary Restraining Order in Favor of Plaintiffs filed January 4, 2002. Since this period postdates the October 20, 2000 DOCARE investigation report, and since the DOCARE investigation report substantiated that no damage to any archaeological site could be detected, any damage you may have observed during the period from November 2001 to March 2002 could not have been caused by the activities for which this permit is sought.

The activities for which after the fact approval is being sought caused no significant damage to any archaeological resource. The Applicant has noticed that since her purchase of the property persons unknown to Applicant have created stone-lined fire pits for campfires on the property. She is not aware whether these pits incorporate any of the significant rocks to which you refer, but wishes to assure you that they were not built by her or as part of the activity for which this permit is sought.

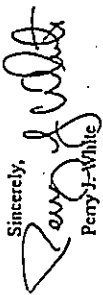
(5) *One ancient trail on the coastline has had a berm constructed over it. I personally heard Ms. Heffner admit to her knowledge of the berm in her deposition. She admitted to wanting people to stay off her land.*

*The trails through continuous use; laws and regulations that Ms. Heffner is trying to block and keep people from using as access to gathering places and places of learning and worship should be legally kept open. That it dictates by every Hawaiian State law since the Kuleana Act.*

**Response:** As stated in Section 3.7 of the DEA, you are correct that, "The Applicant strongly opposes any public access to Keawe'ula by foot or by vehicle." Part of the reason for this opposition is the "increased trespassing and vandalism" to which Applicant has been subject as described in Section 3.11 of the DEA. Her intent since purchasing the property in 1999 has been to preserve the archaeological sites and natural features on the property.

Please also note, however, that as stated in Section 3.7 of the DEA, the Applicant "...does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law."

Thank you again for your comments.

Sincerely,  
  
Perry J. White

Enclosure:  
(1) 10/20/2000 DOCARE Investigation Report

cc: Chandri Duke Heffner  
Lisa Baih, Goodhill Anderson Quinn & Stifel  
DLNR Land Division

**LAND USE / POSSIBLE CHAPTER VI VIOLATION**

Case No. 102-01-07  
Applicant: Steven STRAUSS  
Address: P.O. Box 11517, Hahaione, HI 96721  
Date of Report: 11/07/03

1. LOCATION OF OFFENSE AND ORDER OF RESTRICTION TIME IT BEGAN AND WHEN IT ENDED: Between 1999 & 2000 (rca)  
2. DATE OF VIOLATION: 07/25/01-01/14/03  
3. DATE OF REPORT: 11/07/03

**VIOLATION INFORMATION**

VIOLATION TYPE	DATE	LOCATION	STATUS	APPLICANT	PERMITS
1. VIOLATION TYPE 1					
2. VIOLATION TYPE 2					
3. VIOLATION TYPE 3					

**APPLICANT INFORMATION**

NAME: Steven STRAUSS  
ADDRESS: P.O. Box 11517, Hahaione, HI 96721  
PHONE: 909-6204

**PROPERTY INFORMATION**

ADDRESS: P.O. Box 11517, Hahaione, HI 96721  
PHONE: 909-6204

The complainant Steven STRAUSS, requested that legal habitation work not being done during the period of the violation at the location of the violation property at Hahaione, HI 96721.

REFER TO ATTACHED SUPPLEMENTAL REPORT FOR ADDITIONAL INFORMATION OF THIS REPORT.

**APPROVALS**

APPLICANT: Steven STRAUSS  
DATE: 11/07/03

AGENCY: DLNR  
DATE: 11/07/03

Steven STRAUSS  
P.O. Box 11517,  
HILO, HAWAII

HA-01-207  
LAND USE:  
CHAPTER 5 VIOLATION

HA-01-207

Page 1 of pages.

Page 2 of pages.

**CONTACTED COMPLAINANT:**

09-20-00: Writer contacted Steven STRAUSS at his office in Hilo regarding the complaint he made by phone to the Hilo DOCAFE office. STRAUSS indicated to me that he had information that there were several violations within the Conservation District located at Keaweula & Keaweulua area in North Kohala, TMK 5-8-01-09.

STRAUSS also indicated that he had photo's and GPS readings of the violations at this property mentioned. I gave STRAUSS the Kamuela Office fax number and the address so that he could send the information needed to this investigation.

Approximately two (2) weeks past and no information was sent regarding this complaint so I contacted STRAUSS again and related to him about the photo's and additional information he was suppose to send me. STRAUSS stated that he was working on this and was going to send it right away.

10-18-00: A Letter was hand delivered to the Kamuela Office refer to exhibit 1. After reading the letter, I found that that Mr. STRAUSS is representing Jonathan and Patricia BENJAMIN and Restore Beach Access Hawaii. In the letter STRAUSS indicated several possible violations at the HEFNER'S property at North Kohala.

As follows:

1. Operating earth moving equipment in the Conservation District.
2. Additional gravel spreading.
3. Oil-based substance applied to gravel area.
4. Degradation of water quality due to the oil.
5. Earth debris and keawe debris to fall into the ocean.
6. Structure or structures within Conservation District.
7. Human sewage disposal.
8. Damage to archaeological features resulting from machines

**INSPECTION AT SITE:**

10-20-00: 0845 Hrs: A site inspection was conducted at the HEFNER'S property at North Kohala TMK 5-8-01-09 with the caretaker of the property. It should be noted that the last inspection of the property was conducted on 05-31-00.

I inspected the road parallel to the shoreline area within the conservation District. No sign of oil or petroleum base substance could be detected on the gravel road also no additional work was done by earth-moving equipment within the Conservation District since the last site inspection took place and that no additional gravel were spread.

At Keaweulua Bay it was observed that a portable metal container structure was use for storage for recreational equipment. refer to photo report, exhibit 2. At this time it is not known that this structure is in a Conservation District. At this site tables and other materials (roof iron) as indicted in photo record was observed. According to the caretaker of the property, he related that the structures was there when the property was bought. No signs of person (s) was residing in the area. A check for human defecation could not be detected.

From this site I then proceeded north along the shoreline road to Keaweulua Bay. at this site I noted a portable metal container used for the storage of tools and equipment. Refer to photo report. No sign of person (s) residing in the area and no defecation of human waste could be detected. It is unsure that this structure is in the Conservation District.

Further north according to Mr. STRAUSS GPS reading, 20.07.17 N, 155.53.19 W., I could not locate this reading because according to my GPS it would take me into the ocean. I then took the pole number 48 which is said to be next to the possible violation site. Pole #48 was located, a GPS reading was taken, 20.07.10N, 155.53.12W. Photo's was taken of the area. It was found that the earth debris and keawe parts were bulldozed years ago for a fire break. A fire that happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that old dried grass is on the previously moved earth. The new property owner Chandf HEFNER, is not responsible for this bulldozing of debris.

From the south to the north shoreline of this property, I could not detect no oil film or oil substance in the ocean. And finally, I could not detect any archaeological features that were disturbed. I will contact Marc SMITH, State archaeologist, for a final inspection of the archaeological site if damages occurred.

**ARCHAEOLOGIST CONTACTED:**

Arrangements were made to inspect the HEFNER'S property on 11-08-00, with Marc SMITH.

EXHIBIT D

HA-01-207

page 3 of 3 pages.

11-08-00: 0945 Hrs; A inspection for damage archaeological features was conducted by myself and Marc SMITH at the HEFNER'S property. The property was inspected from the north side to the south direction of the property, and no damage to any archaeological site could be detected. A report from Marc SMITH will be sent to me for my final report.

PHOTO REPORT:

Refer to photo report attached.

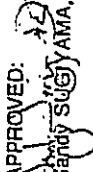
MAP OF AREA:

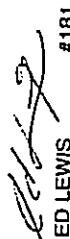
Structures in question on HEFNER'S property.

DISPOSITION:

In view of this investigation, contact with Sam LEMMO, planning Dept. State Land Division is in effect. This report will be sent to LEMMO to determine if the structure(s) is in Conservation District zone land.

This report will remain Inv. Continuing.

APPROVED:  SANDY SUGIYAMA, Supervisor NH

  
ED LEWIS #181  
CREO III NH  
11-09-00 1400 Hrs

Law Offices Of  
STEVEN D. STRAUSS  
P.O. Box 11517, Hilo, Hawaii 96721  
Telephone: (808) 969-6684/Facsimile: (808) 934-8898

Hand delivered

October 18, 2000

Eddie Lewis  
Department of Land & Natural Resources  
DOCARE

Re: Keaweula  
Kehena Second, North Kohala, Hawaii, TMK (3)5-8-01:9

Dear Mr. Lewis:

I represent Jonathan and Patricia Benjamin and Restore Beach Access Hawaii, an association of Hawaii's citizens and others who wish to restore and preserve public access to the shoreline in the North Kohala area. On behalf of my clients, I request that your office investigate apparent Conservation District violations at Keaweula and Keawenui, North Kohala. As you may be aware, in 1999 Ms. Heffner was fined by the Department of Land and Natural Resources for grading, spreading gravel and other activities within a conservation district without seeking prior permits. The Board issued a cease and desist order. Moreover, the Board required her to submit an after the fact conservation district use application, she has since withdrawn such application.

My clients are informed that, since the date of the cease and desist order, Ms. Heffner has continued to operate earthmoving equipment in the Conservation District. My clients report additional gravel spreading and an oil-based substance having been applied to the gravel area. Snorkelers in the near shore area report degradation of water quality due to the oil. I am also enclosing photographs showing disturbances to the shoreline which have caused earthen debris and keawe debris to fall into the ocean. The GPS coordinates for this debris site are 20.07.17 N, 155. 53.19W. It is near ocean marker pole no. 48.

My clients are also informed that Ms. Heffner is allowing persons to reside in an unpermitted structure or structures within the Conservation District. The method of human sewage disposal for these residents is unknown.

DOCUMENT CAPTURED AS RECEIVED

EXHIBIT

HA-01-207  
LAND USE;  
POSSIBLE CHAPTER  
5 VIOLATION

PHOTO REPORT

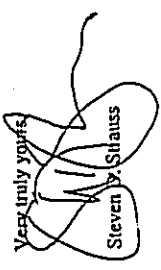
STEVEN STRAUSS

October 18, 2000  
Eddie Lewis  
Department of Land & Natural Resources  
DOCARE  
Page 2

Finally, my clients have viewed damage to archaeological features resulting from Ms. Heffner's earthmoving operations, some of which is believed to be within the Conservation District.

I also have available aerial and ground photos showing the progression of Ms. Heffner's unpermitted work over time. I look forward to your department taking up these issues at the earliest opportunity.

Thank you for your attention to this matter.

Very truly yours,  
  
Steven P. Strauss

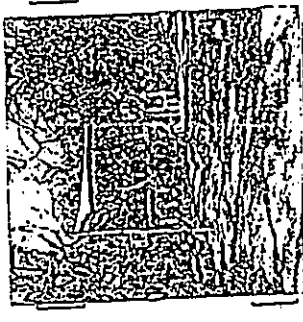


PHOTO 12 Depicts existing tables and roof top at Keavenul Bay.

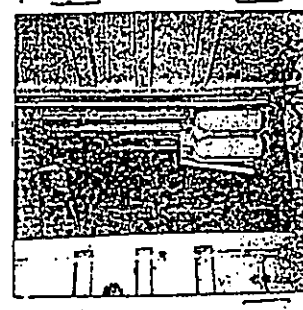


PHOTO 11 Depicts Portable storage container at Keavenul Bay.



PHOTO 14 Depicts Bulldozed work done years ago by unknown person(s). Observe old work done and dried grass on area.

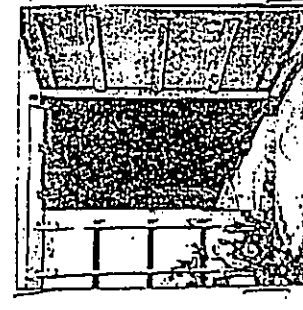


PHOTO 13 Depicts Portable metal container at Keavenul Bay.

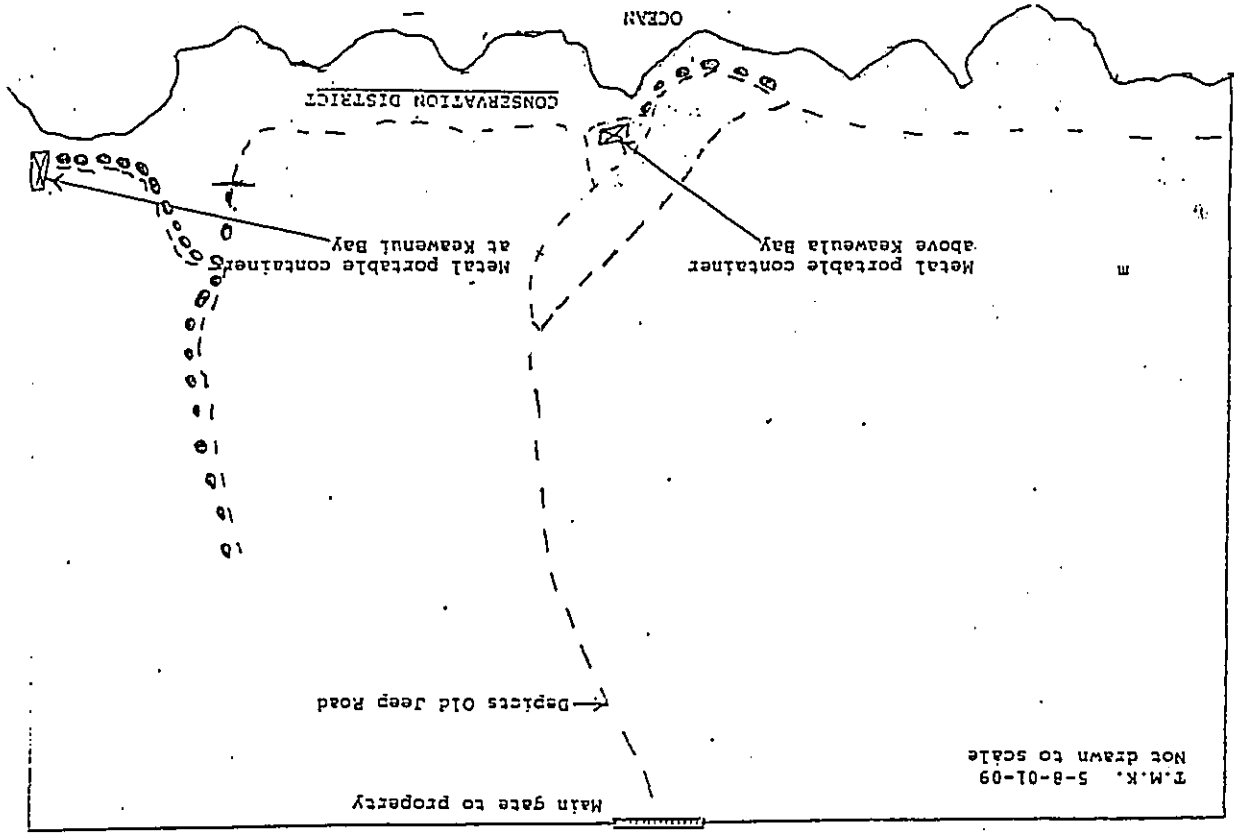
ED LEWIS  
CREC III  
11-17-00

PHOTO BY  
Sandy STIVANA Supervisor NH

#181  
NH  
1400 HRS

Enclosures

cc: T. Johns, Esq., DLNR  
Attorney General Earl Anzai,  
J. Benjamin



AKONI PULE HIGHWAY (Route 270)

SOUTH

HA-01-207  
LAND USE:  
POSSIBLE CHAPTER  
5 VIOLATION

PHOTO REPORT

STEVEN STRAUSS

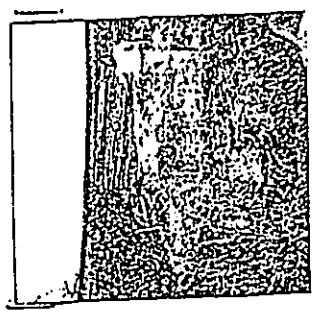


PHOTO 16 Depicts same area as photo 14. Note again old work done in the area.

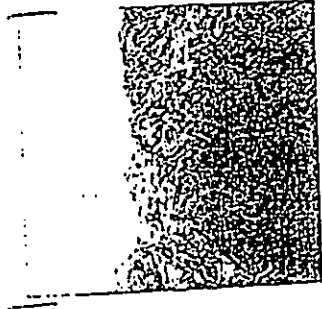


PHOTO 15 Depicts area as photo 14. GPS reading 20.07.10N, 155.53.12W.

ED LERWIS  
CRD 111  
11-17-00

ED LERWIS  
CRD 111  
11-17-00

Approved: *[Signature]*  
Bobby WYATA Supervisor NH



Sept. 17, 2003

Re: CDUP  
Chandi Duke Heffner/ Keawe uia LLC  
Keawe uia Jeep Road Maintenance  
Draft Environmental Assessments

Public Comment by:  
Theresa Perez  
P.O. Box 1426  
Kamuela, Hawaii 96743

To: Planning Solutions, Inc.  
1210 Auahi St. suite 221  
Honolulu, Hawaii 96814  
Attn: Perry White

RECEIVED  
LAND DIVISION

2003 SEP 19 A 10:37

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

thing I have taught my own children. And now it is not possible. The road is not an easy walk to do. More so harder for the elderly and handicap citizens to do.

I understand that this woman is extremely wealthy as we all know, but it is not about her wealth. All we want is to get to the shoreline to practice our traditional gathering rights.

We need to preserve our shoreline for our children and future generations to come. And it is getting more difficult now because makai properties all along the coast of Kohala is being bought and gated off and public right of ways is being taken away.

I have learned also, that she has not handed in her archaeology survey which is in her possession.

So therefore I am requesting that she is not granted her CDUP until the archaeology survey is completed. It is important that we preserve those ancient Hawaiian Historical sites and burial graves that are present there.

Mahalo-

Sincerely,

Theresa Perez

Cc: DLNR  
Sam Lemmo

Aloha,  
I am Theresa Perez president of Malama na Kahakai Inc.  
I personally have used the jeep road to get to Keawe uia Bay since 1970. I have used it up until the time Chandi Heffner has purchased it. Which is now presently fenced off and gated.

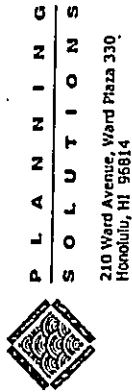
Shortly after she had purchased it, she had heavy equipment on the property excavating. I then called the county office and inquired what was being done there. They acted upon my complaint over the phone and found out that she had no grubbing permits and had ordered her to stop but she then continued to grub the property.

Our non profit organization had filed a suit against her and had been awarded by court order temporary access through the jeep road for about 3 months. We also had a drive through field trip down there with her hired archaeologist to go over the historical site with a few kupunas from the community. There were areas where we could see heavy equipment tracks that went over ancient walls that belong to historical sites. She had excavated couple areas near the shoreline too.

My family and other ohana had been using that beach often since 1979. I had taught my 2 children to swim and snorkel there. My son has learned how to swim, snorkel, dive for fish, throw net, pick crab and ophi and most importantly to respect the aina. We often camped there during Thanksgiving and other school vacations.

I am soon to be a grandmother of a boy and I always said to myself that some day this is where I will want to bring my grandchildren and teach them the same





PLANNING  
SOLUTIONS

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814

04

November 7, 2003

Ms. Theresa Perez  
P.O. Box 1426  
Kamuela, Hawaii 96743

Subject: Draft Environmental Assessment (DEA): CDUA HA-3148 (Board Permit) Chandii Duke Hefner Improvements to Existing Jeep Road Kēhena 2<sup>nd</sup>, North Kohala District, County of Hawaii TMK: (3) 5-8-1: 9

Dear Ms. Perez:

Thank you for your September 17, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for improvements to an existing jeep road on Ms. Chandii Hefner's property. We appreciate the time you spent reviewing the document and providing written comments. Item-by-item responses to your comments (reproduced for your convenience in italics below each response) are provided below.

(1) *I personally have used the jeep road to get to Keawe uia Bay since 1970. I have used it up until the time Chandii Hefner has purchased it. Which is now presently fenced off and gated.*

**Response:** We understand that in your individual capacity and as president of Malama na Kahakani, Inc. you are pursuing litigation entitled *Malama Na Kahakani et al. v. Hefner*, Civil No. 01-1-0059, currently pending before the Circuit Court of the Third Circuit, regarding access to Keawe'ua (the "Litigation"). The gate and fence referenced in your comment above is not in the Conservation District and is therefore not the subject of this after-the-fact Conservation District Use Permit Application. We understand that in the Litigation, the Court denied your request to use the mauka-makai jeep road.

(2) *Shortly after she had purchased it, she had heavy equipment on the property excavating. I then called the county office and inquired what was being done there. They acted upon my complaint over the phone and found out that she had no grubbing permits and had ordered her to stop but she then continued to grub the property.*

**Response:** A grubbing permit was not necessary for this project since the grubbing did not alter the general and localized drainage pattern with respect to abutting properties and did not exceed a total area of one acre. We also respectfully note that the need for or existence of a grubbing permit is irrelevant to the issue of whether the actions described in this after-the-fact CDUA had a "significant effect" on the environment, and whether a Finding of no Significant Impact should be issued.

(3) *Our non profit organization had filed a suit against her and had been awarded by court order temporary access through the jeep road for about 3 months. We also had a drive through field trip down there with her hired archaeologist to go over the historical site with a few kupunas from the community. There were areas where we could see heavy equipment*

Page 2  
Ms. Theresa Perez  
November 7, 2003

*tracks that went over ancient walls that belong to historical sites. She had excavated couple areas near the shoreline too.*

**Response:** On October 20, 2000, the State Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) investigated these allegations in response to the complaint filed on your behalf by Mr. Steven Strauss. The DOCARE investigation report indicates that the bulldozing occurred for a fire break several years before Ms. Hefner purchased the property in 1999 but that, in any event, "no damage to any archaeological site could be detected." A copy of the DOCARE report is enclosed. Furthermore, an archaeological assessment survey by Paul Rosendahl is included in the Final Environmental Assessment. This survey documents that there have been no significant adverse effects to historic sites caused by the project for which this after-the-fact permit is being sought. The Applicant is unaware of any destruction of historical or archaeological sites caused by earth-moving equipment operated on the property since she purchased it in 1999.

(4) *My family and other ohana had been using that beach often since 1979. I had taught my 2 children to swim and snorkel there. My son has learned how to swim, snorkel, dive for fish, throw net, pick crab and opihl and most importantly to respect the 'aina. We often camped there during Thanksgiving and other school vacations.*

*I am soon to be a grandmother of a boy and I always said to myself that some day this is where I will want to bring my grandchildren and teach them the same thing I have taught my own children. And now it is not possible. The road is not an easy walk to do. More so harder for the elderly and handicap citizens to do.*

*I understand that this woman is extremely wealthy as we all know, but it is not about her wealth. All we want is to get to the shoreline to practice our traditional gathering rights.*

*We need to preserve our shoreline for our children and future generations to come. And it is getting more difficult now because makai properties all along the coast of Kohala is being bought and gated off and public right of ways is being taken away.*

**Response:** As stated in Section 3.7 of the Draft Environmental Assessment, the Applicant "does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law." Any access to which you and others may be entitled would be facilitated by the activities for which this after-the-fact permit is sought.

(5) *I have learned also, that she has not handed in her archaeology survey which is in her possession.*

*So therefore I am requesting that she is not granted her CDUP until the archaeology survey is completed. It is important that we preserve those ancient Hawaiian Historical sites and burial graves that are present there.*

**Response:** An archaeological assessment survey by Paul Rosendahl is included in the Final Environmental Assessment. This survey documents that there have been no significant adverse effects to historic sites caused by the project for which this after-the-fact permit is sought. Deferral will not preserve or protect any sites or graves.

STATE OF HAWAII  
DOCCARE-6

DEPT. LAND & NATURAL RESOURCES  
DIV. CONSERVATION & RESOURCE ENFORCEMENT  
INVESTIGATION REPORT

Page 3  
Ms. Theresa Perez  
November 7, 2003

Again, thank you for your comments.

Sincerely,  
*Perry J. White*  
Perry J. White

Enclosure  
(1) 10/20/2000 DOCCARE Investigation Report

cc: Chandi Duke Heffner  
Lisa Bai, Goodwill Anderson Quinan & Sifel  
DLNR, Land Division

1. INVESTIGATION NUMBER 10A-01-007	2. SUBJECT EDLEWS	3. OFFICE 1899K	4. OCCASION LAWYER
5. LAND USE POSSIBLE CHAPTERS VIOLATION	6. TYPE OF VIOLATION M	7. DATE N/A	8. LOCATION N/A
9. NAME Steven STRAUSS	10. ADDRESS P.O. Box 11517, Hilo, Hawaii	11. DATE OF VIOLATION Between 1999 & 2003 (year)	12. DATE OF REPORT 09/25/03-14:00
13. LOCATION OF VIOLATION North Kona/Aloni Puka Hwy. 10 Mile marker	14. CONTACT LOCATION OR OFFICE TUMK 5-8-01-09	15. DATE OF VIOLATION Between 1999 & 2003 (year)	16. DATE OF REPORT 09/25/03-14:00
17. INVESTIGATION TYPE 1. General 2. Specific 3. Other	18. INVESTIGATION TYPE 1. General 2. Specific 3. Other	19. INVESTIGATION TYPE 1. General 2. Specific 3. Other	20. INVESTIGATION TYPE 1. General 2. Specific 3. Other
21. INVESTIGATION TYPE 1. General 2. Specific 3. Other	22. INVESTIGATION TYPE 1. General 2. Specific 3. Other	23. INVESTIGATION TYPE 1. General 2. Specific 3. Other	24. INVESTIGATION TYPE 1. General 2. Specific 3. Other
25. INVESTIGATION TYPE 1. General 2. Specific 3. Other	26. INVESTIGATION TYPE 1. General 2. Specific 3. Other	27. INVESTIGATION TYPE 1. General 2. Specific 3. Other	28. INVESTIGATION TYPE 1. General 2. Specific 3. Other
29. INVESTIGATION TYPE 1. General 2. Specific 3. Other	30. INVESTIGATION TYPE 1. General 2. Specific 3. Other	31. INVESTIGATION TYPE 1. General 2. Specific 3. Other	32. INVESTIGATION TYPE 1. General 2. Specific 3. Other
33. INVESTIGATION TYPE 1. General 2. Specific 3. Other	34. INVESTIGATION TYPE 1. General 2. Specific 3. Other	35. INVESTIGATION TYPE 1. General 2. Specific 3. Other	36. INVESTIGATION TYPE 1. General 2. Specific 3. Other
37. INVESTIGATION TYPE 1. General 2. Specific 3. Other	38. INVESTIGATION TYPE 1. General 2. Specific 3. Other	39. INVESTIGATION TYPE 1. General 2. Specific 3. Other	40. INVESTIGATION TYPE 1. General 2. Specific 3. Other
41. INVESTIGATION TYPE 1. General 2. Specific 3. Other	42. INVESTIGATION TYPE 1. General 2. Specific 3. Other	43. INVESTIGATION TYPE 1. General 2. Specific 3. Other	44. INVESTIGATION TYPE 1. General 2. Specific 3. Other
45. INVESTIGATION TYPE 1. General 2. Specific 3. Other	46. INVESTIGATION TYPE 1. General 2. Specific 3. Other	47. INVESTIGATION TYPE 1. General 2. Specific 3. Other	48. INVESTIGATION TYPE 1. General 2. Specific 3. Other
49. INVESTIGATION TYPE 1. General 2. Specific 3. Other	50. INVESTIGATION TYPE 1. General 2. Specific 3. Other	51. INVESTIGATION TYPE 1. General 2. Specific 3. Other	52. INVESTIGATION TYPE 1. General 2. Specific 3. Other
53. INVESTIGATION TYPE 1. General 2. Specific 3. Other	54. INVESTIGATION TYPE 1. General 2. Specific 3. Other	55. INVESTIGATION TYPE 1. General 2. Specific 3. Other	56. INVESTIGATION TYPE 1. General 2. Specific 3. Other
57. INVESTIGATION TYPE 1. General 2. Specific 3. Other	58. INVESTIGATION TYPE 1. General 2. Specific 3. Other	59. INVESTIGATION TYPE 1. General 2. Specific 3. Other	60. INVESTIGATION TYPE 1. General 2. Specific 3. Other
61. INVESTIGATION TYPE 1. General 2. Specific 3. Other	62. INVESTIGATION TYPE 1. General 2. Specific 3. Other	63. INVESTIGATION TYPE 1. General 2. Specific 3. Other	64. INVESTIGATION TYPE 1. General 2. Specific 3. Other
65. INVESTIGATION TYPE 1. General 2. Specific 3. Other	66. INVESTIGATION TYPE 1. General 2. Specific 3. Other	67. INVESTIGATION TYPE 1. General 2. Specific 3. Other	68. INVESTIGATION TYPE 1. General 2. Specific 3. Other
69. INVESTIGATION TYPE 1. General 2. Specific 3. Other	70. INVESTIGATION TYPE 1. General 2. Specific 3. Other	71. INVESTIGATION TYPE 1. General 2. Specific 3. Other	72. INVESTIGATION TYPE 1. General 2. Specific 3. Other
73. INVESTIGATION TYPE 1. General 2. Specific 3. Other	74. INVESTIGATION TYPE 1. General 2. Specific 3. Other	75. INVESTIGATION TYPE 1. General 2. Specific 3. Other	76. INVESTIGATION TYPE 1. General 2. Specific 3. Other
77. INVESTIGATION TYPE 1. General 2. Specific 3. Other	78. INVESTIGATION TYPE 1. General 2. Specific 3. Other	79. INVESTIGATION TYPE 1. General 2. Specific 3. Other	80. INVESTIGATION TYPE 1. General 2. Specific 3. Other
81. INVESTIGATION TYPE 1. General 2. Specific 3. Other	82. INVESTIGATION TYPE 1. General 2. Specific 3. Other	83. INVESTIGATION TYPE 1. General 2. Specific 3. Other	84. INVESTIGATION TYPE 1. General 2. Specific 3. Other
85. INVESTIGATION TYPE 1. General 2. Specific 3. Other	86. INVESTIGATION TYPE 1. General 2. Specific 3. Other	87. INVESTIGATION TYPE 1. General 2. Specific 3. Other	88. INVESTIGATION TYPE 1. General 2. Specific 3. Other
89. INVESTIGATION TYPE 1. General 2. Specific 3. Other	90. INVESTIGATION TYPE 1. General 2. Specific 3. Other	91. INVESTIGATION TYPE 1. General 2. Specific 3. Other	92. INVESTIGATION TYPE 1. General 2. Specific 3. Other
93. INVESTIGATION TYPE 1. General 2. Specific 3. Other	94. INVESTIGATION TYPE 1. General 2. Specific 3. Other	95. INVESTIGATION TYPE 1. General 2. Specific 3. Other	96. INVESTIGATION TYPE 1. General 2. Specific 3. Other
97. INVESTIGATION TYPE 1. General 2. Specific 3. Other	98. INVESTIGATION TYPE 1. General 2. Specific 3. Other	99. INVESTIGATION TYPE 1. General 2. Specific 3. Other	100. INVESTIGATION TYPE 1. General 2. Specific 3. Other

REFER TO ATTACHED SUPPLEMENTAL REPORT FOR ADDITIONAL INFORMATION OF THIS REPORT.

1. NAME EDLEWS	2. ADDRESS P.O. Box 11517, Hilo, Hawaii	3. PHONE 937-5001	4. FAX 937-5001
5. DATE 11-09-03	6. TIME 11:09:00	7. SIGNATURE <i>[Signature]</i>	8. TITLE Investigator
9. DATE 11-09-03	10. TIME 11:09:00	11. SIGNATURE <i>[Signature]</i>	12. TITLE Supervisor

Steven STRAUSS  
P.O. Box 11517,  
HILO, HAWAII

HA-01-207  
LAND USE;  
CHAPTER 5 VIOLATION

Page 1 of pages.

**CONTACTED COMPLAINANT:**

09-20-00: Writer contacted Steven STRAUSS at his office in Hilo regarding the complaint he made by phone to the Hilo DOCAFE office. STRAUSS indicated to me that he had information that there was several violations within the Conservation District located at Keaweula & Keawenui area in North Kohala, TMK 5-8-01-09.

STRAUSS also indicated that he had photo's and GPS readings of the violations at this property mentioned. I gave STRAUSS the Kamuela Office fax number and the address so that he could send the information needed to this investigation.

Approximately two (2) weeks past and no information was sent regarding this complaint so I contacted STRAUSS again and related to him about the photo's and additional information he was suppose to sent me. STRAUSS stated that he was working on this and was going to sent it right away.

10-18-00: A Letter was hand delivered to the Kamuela Office refer to exhibit 1. After reading the letter, I found that Mr. STRAUSS is representing Jonathan and Patricia BENJAMIN and Restore Beach Access Hawaii. In the letter STRAUSS indicated several possible violations at the HEFNER'S property at North Kohala.

As follows:

1. Operating earth moving equipment in the Conservation District.
2. Additional gravel spreading.
3. Oil-based substance applied to gravel area.
4. Degradation of water quality due to the oil.
5. Earth debris and keawe debris to fall into the ocean.
6. Structure or structures within Conservation District.
7. Human sewage disposal.
8. Damage to archaeological features resulting from machines

**INSPECTION AT SITE:**

10-20-00: 0845 Hrs; A site inspection was conducted at the HEFNER'S property at North Kohala TMK 5-8-01-09 with the caretaker of the property. It should be noted that the last inspection of the property was conducted on 05-31-00.

Page 2 of pages.

I inspected the the road parallel to the shoreline area within the conservation District. No sign of oil or petroleum base substance could be detected on the gravel road also no additional work was done by earth-moving equipment within the Conservation District since the last site inspection took place and that no additional gravel were spread.

At Keawenui Bay it was observed that a portable metal container structure was use for storage for recreational equipment, refer to photo report, exhibit 2. At this time it is not known that this structure is in a Conservation District. At this site tables and other materials (roof iron) as indicted in photo record was observed. According to the caretaker of the property, he related that the structures was there when the property was bought. No signs of person (s) was residing in the area. A check for human defecation could not be detected.

From this site I then proceeded north along the shoreline road to Keaweula Bay. at this site I noted a portable metal container used for the storage of tools and equipment. Refer to photo report. No sign of person (s) residing in the area and no defecation of human waste could be detected. It is unsure that this structure is in the Conservation District.

Further north according to Mr. STRAUSS GPS reading, 20.07.17 N, 155.53.19 W., I could not locate this reading because according to my GPS it would take me into the ocean. I then took the pole number 48 which is said to be next to the possible violation site. Pole #48 was located, a GPS reading was taken, 20.07.10N, 155.53.12W. Photo's was taken of the area. It was found that the earth debris and keawe parts were bulldozed years ago for a fire break. A fire that happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that old dried grass is on the previously moved earth. The new property owner Chandl HEFNER, is not responsible for this bulldozing of debris.

From the south to the north shoreline of this property, I could not detect no oil film or oil substance in the ocean. And finally, I could not detect any archaeological features that were disturbed. I will contact Marc SMITH State archaeologist, for a final inspection of the archaeological site if damages occurred.

**ARCHAEOLOGIST CONTACTED:**

Arrangements were made to inspect the HEFNER'S property on 11-08-00, with Marc SMITH.

HA-01-207

Exhibit D

HA-01-207

Law Offices Of  
STEVEN D. STRAUSS  
P.O. Box 11517, Hilo, Hawaii 96721  
Telephone: (808) 969-6684/Facsimile: (808) 934-8898

page 3 of 7 pages.

11-08-00: 0945 Hrs: A inspection for damage archaeological features was conducted by myself and Marc SMITH at the HEFNER'S property. The property was inspected from the north side to the south direction of the property, and no damage to any archaeological site could be detected. A report from Marc SMITH will be sent to me for my final report.

PHOTOREPORT:

Refer to photo report attached.

MAP OF AREA:

Structures in question on HEFNER'S property.

DISPOSITION:

In view of this investigation, contact with Sam LEMMO, planning Dept. State Land Division is in effect. This report will be sent to LEMMO to determine if the structure(s) is in Conservation District zone land.

This report will remain Inv. Continuing.

APPROVED:

Sandy SUGAYAMA, Supervisor NH

ED LEWIS #181  
CREC III NH  
11-09-00 1400 Hrs

October 18, 2000

Hand delivered

Eddie Lewis  
Department of Land & Natural Resources  
DOCARE

Re: Keaweala  
Kehena Second, North Kohala, Hawaii, TMK (3)5-8-01:9

Dear Mr. Lewis:

I represent Jonathan and Patricia Benjamin and Restore Beach Access Hawaii, an association of Hawaii's citizens and others who wish to restore and preserve public access to the shoreline in the North Kohala area. On behalf of my clients, I request that your office investigate apparent Conservation District violations at Keaweala and Keawenui, North Kohala. As you may be aware, in 1999 Ms. Heffner was fined by the Department of Land and Natural Resources for grading, spreading gravel and other activities within a conservation district without seeking prior permits. The Board issued a cease and desist order. Moreover, the Board required her to submit an after the fact conservation district use application, she has since withdrawn such application.

My clients are informed that, since the date of the cease and desist order, Ms. Heffner has continued to operate earthmoving equipment in the Conservation District. My clients report additional gravel spreading and an oil-based substance having been applied to the gravel area. Snorkelers in the near shore area report degradation of water quality due to the oil. I am also enclosing photographs showing disturbances to the shoreline which have caused earthen debris and keawc debris to fall into the ocean. The GPS coordinates for this debris site are 20.07.17 N, 155. 53.19W. It is near ocean marker pole no. 48.

My clients are also informed that Ms. Heffner is allowing persons to reside in an unpermitted structure or structures within the Conservation District. The method of human sewage disposal for these residents is unknown.

DOCUMENT CAPTURED AS RECEIVED

*Exhibit*

Steven STRAUSS PHOTO REPORT  
HA-01-207  
LAND USE:  
POSSIBLE CHAPTER  
5 VIOLATION



PHOTO 12 Depicts existing tables and roof top at Keavenul Bay.

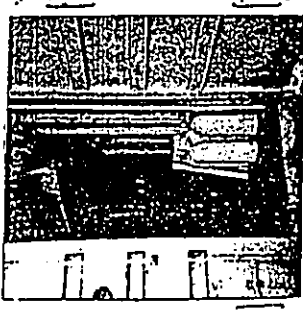


PHOTO 13 Depicts Portable storage container at Keavenul Bay.

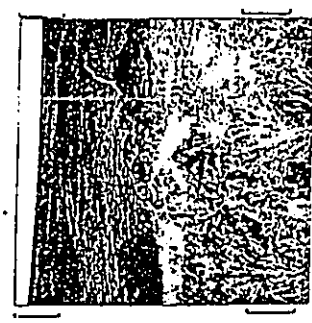


PHOTO 14 Depicts Bulldozed work done years ago by unknown person(s). Observe old work done and dried grass on area.

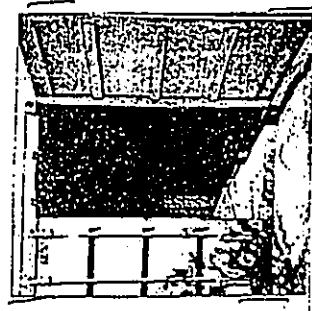


PHOTO 15 Depicts Portable metal container at Keavenul Bay.

ED LEWIS  
CREO 111  
11-17-00  
1181  
NH  
1400 hrs

APPROVED: *[Signature]*  
Sandy ESHYAMA Supervisor NH

October 18, 2000  
Eddie Lewis  
Department of Land & Natural Resources  
DOCARE  
Page 2

Finally, my clients have viewed damage to archeological features resulting from Ms. Heffner's earthmoving operations, some of which is believed to be within the Conservation District.

I also have available aerial and ground photos showing the progression of Ms. Heffner's unpermitted work over time. I look forward to your department taking up these issues at the earliest opportunity.

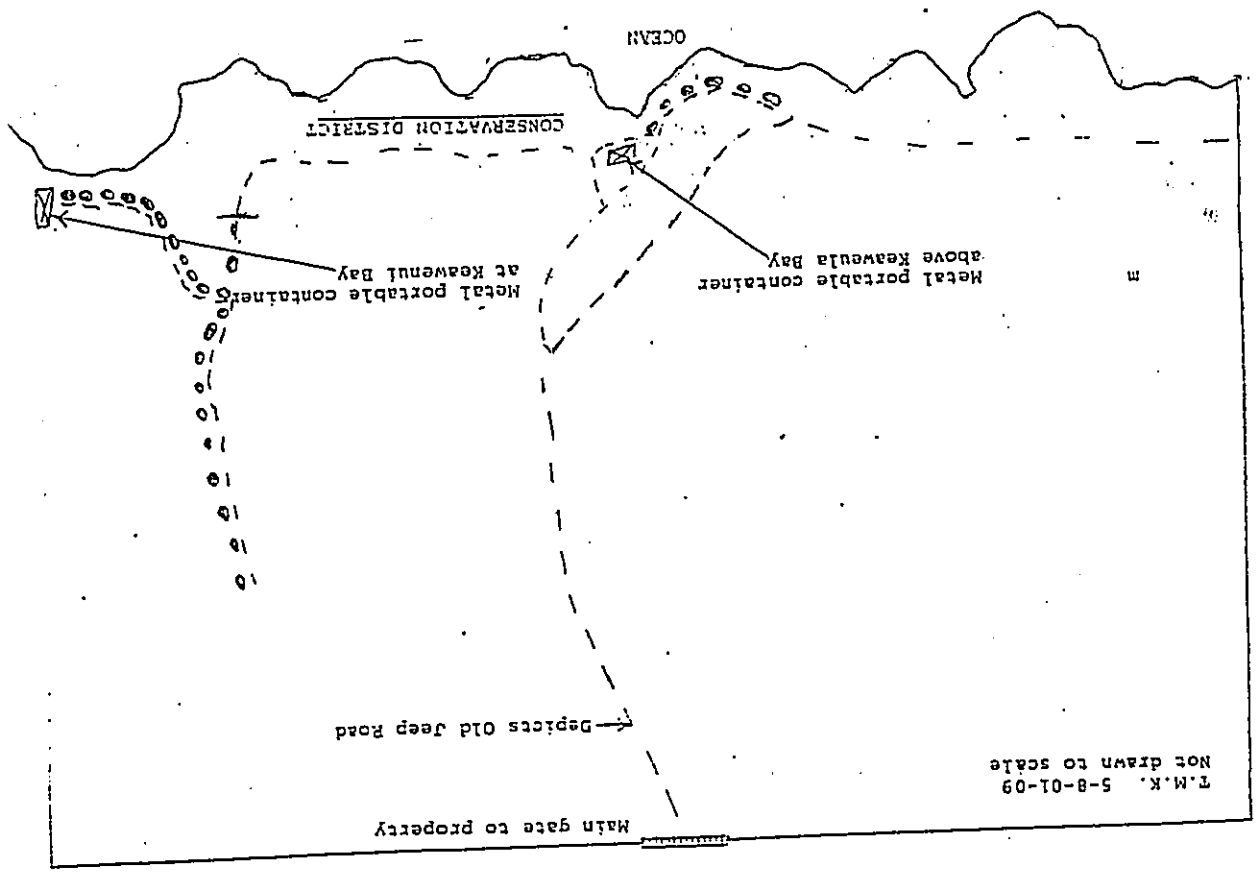
Thank you for your attention to this matter.

*Very truly yours,*  
*[Signature]*  
Steven Strauss

Enclosures

cc: T. Johns, Esq., DLNR  
Attorney General Earl Anzai,  
J. Benjamin

DOCUMENT CAPTURED AS RECEIVED



KA-01-207  
LAND USE:  
POSSIBLE CHAPTER  
5 VIOLATION

PIIPTO REPORT

Steven STRAUSS

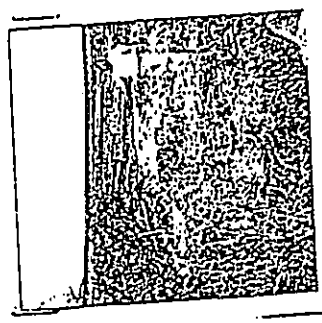


PHOTO #6 Depicts same area as photo # 4 & 5. Note again old work done in the area.

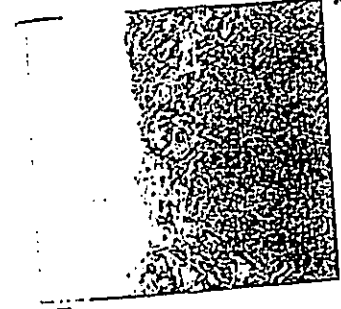


PHOTO #5 Depicts area as photo #4. GPS reading 20.07.10N, 155.53.12W.

*[Signature]*  
ED. LEWIS III  
CREG III  
11-17-00  
1400 HCS

*[Signature]*  
Sandy SUTYVANA Supervisor III

9/23/03



RECEIVED

73 SEP 25 11:30 AM '03

STEVEN D. STRAUSS

LAW OFFICES OF

POST OFFICE BOX 11517  
HONO. HAWAII 96721

Licensed in California & Hawaii  
Civil and Criminal Trials Intellectual Property Business Development Environment & Land Use

TELEPHONE 808-968-6884  
FACSIMILE 808-587-0390  
STATE COURT HOUSE  
e-mail: [bulb@interpac.net](mailto:bulb@interpac.net)



September 22, 2003

Peter Young  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl  
Honolulu, Hawaii 96813

VIA FACSIMILE 808-587-0390

Perry White  
Planning Solutions, Inc.  
1210 Auahi Street, Suite 221  
Honolulu, Hawaii 96814

VIA FACSIMILE 808-593-1956

Office of Environmental Quality Control  
235 S. Beretania Street  
Letopapa A, Kamehameha  
Suite 702  
Honolulu, Hawaii 96813

VIA FACSIMILE 808-586-4186

Re: Draft EA "Improvements to Existing Jeep Road at Kehena 2<sup>nd</sup>,  
North Kohala, Hawaii"  
The Environmental Notice, August 21, 2003

Gentlemen:

I represent Malama Na Kahakai, Inc., a § 501(c)(3) nonprofit corporation dedicated to environmental and conservations concerns in North Kohala.  
I also represent Patricia Benjamin, whose separate comments are also enclosed.  
Following review, Malama Na Kahakai, Inc., considers that the draft environmental assessment is deficient in several respects. Moreover, a full EIS should be required.

September 22, 2003  
Peter Young  
Perry White  
Office of Environmental Quality Control  
Page 2

First, Malama Na Kahakai, Inc. incorporates its comments and exhibits submitted March 9, 2000 responsive to the previous draft environmental assessment submitted by Applicant's predecessor, Chaodi Duke Heffner. Malama Na Kahakai, Inc.'s prior comments and exhibits were submitted to DLNR and the Office of Environmental Quality Control and provided to Ms. Heffner. The comments remain applicable.

Second, the Applicant remains noncompliant with the Board's directive March 11, 2003.

Third, regarding cultural impacts, the Applicant continues to deny, impair and impede access on the property to cultural sites, including places of worship and recreation all along the coastline fronting the property. The issue of cultural impacts cannot be divorced from public access necessary to practice cultural activities.

As noted in the draft environmental assessment at page 3-5, Applicant continues to deny access along the jeep roads adjacent and lateral to the shoreline and comprising the mauka boundaries of the conservation district, which jeep roads are owned by the State and claimed as such. Applicant maintains illegal berms impeding vehicular access across these State jeep roads. Applicant has failed to install gates along her mauka-makai fence lines to provide for vehicular and pedestrian access along the State jeep roads. So far, despite demands from Malama Na Kahakai, Inc. and others, the State has done nothing to remedy these illegal obstructions and restore lateral access through Applicant's property to and along the shoreline from State lands.

Applicant's claim at page 3-5 that it helped to minimize erosion and sediment introduction by denying public access at the shoreline is a sick joke. It was not the public who carelessly bulldozed sediment into the sea: it was Applicant.

Fourth, public access across Applicant's property from Alkoni-Pule Highway to the shoreline does exist and remains a subject of the continuing lawsuit, *Malama Na Kahakai et al. v. Heffner*, Civ. No. 01-1-0659 (Third Circuit, Hilo). The most recent activity in such lawsuit is the certification of a class of Native Hawaiian users in Spring, 2003.

September 22, 2003  
Peter Young  
Perry White  
Page 3

PATRICIA BENJAMIN  
P.O. BOX 509  
KAPA'AU, HAWAII 96755

In sum, Applicant continues to ignore State law, historic and archaeological site integrity, public access and severe cultural impacts. Applicant's draft environmental assessment is misleading, incomplete and inadequate.

Contested Case Request.

Malama Na Kahaakai and Patricia Benjamin request that they be permitted to participate in a contested case regarding the required Conservation District Use Application.

Respectfully submitted,



Steven D. Strauss

September 22, 2003

Peter Young  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl  
Honolulu, Hawaii'i 96813  
VIA FACSIMILE 808-587-0390

Perry White  
Planning Solutions, Inc.  
1210 Auahi Street, Suite 221  
Honolulu, Hawaii'i 96814  
VIA FACSIMILE 808-593-1936

Re: Draft EA  
"Improvements to Existing Jeep Road at Kehena 2<sup>nd</sup>, North Kohala, Hawaii'i"  
The Environmental Notice, August 23, 2003

Gentlemen:

I am submitting these comments concerning the draft environmental assessment entitled "Improvements to Existing Jeep Road at Kehena 2<sup>nd</sup>, North Kohala, Hawaii'i", notice of which was published in *The Environmental Notice*, August 23, 2003, page 13.

For years, I have used what is commonly referred to as "the old jeep trail roads" to access beaches adjacent to Ms. Heffner's property. Other people that I knew also used those roads.

I personally witnessed a violation of the EPA clean water act, among other violations when I saw earth, rocks, trees, and other debris purposefully bulldozed over a cliff into the ocean. This was at the precise coordinates for a GPA at 20.01 17 N - 155.53 19 W. On the coastline, it was approximately pole #48.

This violation was witnessed by many other people. It was discovered shortly after Ms. Heffner's agents were grubbing without permits. There were no trees leaning over the ocean that could have fallen in. It was not a rock slide. Once could see the scrapes on the ground from equipment pushing the earth and other debris.



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Peter Young  
Perry White  
Page 2

It is ironic that Ms. Heffner should do this through her agency since this area was a wonderful gathering place for opihi, tako, and fishing. For so many generations, grandparents have taken their grandchildren to the shore to gather, swim, and pray.

Aunt Marie Solomon taught us and her own of the culture of Hawai'i at that site. She pointed out many very important cultural and historical things regarding the ali'i, gods, and goddesses. Papa Bill Akau and Auntie Medeiros all taught us what they had learned at that place.

The saddest time was to go back when Ms. Heffner had to unlock the gate and reopen the path due to an injunction and we saw so much cultural destruction.

Spiritually significant rocks had been moved from places they existed in for at least hundreds of years and broken in half deliberately. Lono - broken and moved over next to the steps for the ali'i next to his hale.

Face rocks were missing from the heiau. Other rocks were missing; rocks that are necessary for prayer and spirituality.

The ancient trail on the coastline has had a berm constructed over it. I personally heard Ms. Heffner admit to her knowledge of the berm in her disposition. She admitted to wanting people to stay off her land.

The trails through continuous use, laws and regulations that Ms. Heffner is trying to block and keep people from using as access to gathering places and places of learning and worship should be legally kept open. This is dictated by every Hawaiian State law since the Kuleana.

In addition, I respectfully request that Ms. Heffner's permit request be denied until a full investigation and analysis is made public. Please analyze and let us know.

September 22, 2003  
Peter Young  
Perry White  
Page 3

I am certain that your credible engineers would find some of the roads beds questionable for environmental concerns. Please investigate all of these things. Please deny this permit.

Very truly yours,

131  
Patricia A. Benjamin  




P L A N N I N G  
S O L U T I O N S

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Mr. Steven D. Strauss  
P.O. Box 11517  
Hilo, HI 96721

Subject: Draft Environmental Assessment (DEA): CDUA HA-3148 (Board Permit) Chandi Duke Heffner Improvements to Existing Jeep Road Kehena 2<sup>nd</sup>, North Kohala District, County of Hawaii TMK: (3) 5-8-1:9

Dear Mr. Strauss:

Thank you for your September 22, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for improvements to an existing jeep road on Ms. Chandi Heffner's property. Item-by-item responses to your comments (reproduced for your convenience in italics before each response) are provided below.

(1) *First, Malama Na Kahakai, Inc. incorporates its comments and exhibits submitted March 9, 2000 responsive to the previous draft environmental assessment submitted by Applicant's predecessor, Chandi Duke Heffner, Malama Na Kahakai, Inc.'s prior comments and exhibits were submitted to DLNR and the Office of Environmental Quality Control and provided to Ms. Heffner. The comments remain applicable.*

**Response:** We respectfully disagree that your comments and exhibits submitted March 9, 2000 "remain applicable." The prior CDUA submitted by Ms. Heffner on November 24, 1999 was much broader in scope than the present CDUA submitted on July 1, 2003. For example, the prior CDUA sought approval for "establishment of agricultural uses, animal husbandry, and indigenous or endemic, and non-native plant and wildlife uses, accessory fencing, water system improvements and lateral shoreline access gate improvements." The present application does not seek approval for such uses. We therefore believe that your comments and exhibits submitted March 9, 2000 are no longer applicable. We nonetheless provide the following responses to certain of your prior comments. These responses are provided even though Applicant is not obligated to do so.

(1)(a) *[Excerpted from letter of March 9, 2000] The shoreline at Keawe'ula and Keawenui is a significant and irreplaceable historical, cultural and recreational resource. The site features the Kehena 2 Habitation Complex, State Site No. 2358 . . . such site is classified as "valuable" and is registered in the Hawaii Register of Historic Places.*

The Habitation Complex (Site No. 2358) at Keawenui Bay was not impacted by actions for which this after-the-fact permit is sought. Moreover, this Habitation Complex, consisting of enclosure and pavings, is not listed on the Hawaii State Register of Historic Places and has not been determined to be eligible for inclusion in the National Register of Historic Places. It is listed on the Hawaii Inventory of Historic Places.

The Applicant is unaware of any destruction of any historical or archaeological sites caused by earth-moving equipment operated on the property since site purchased it in 1999. On October 20, 2000, the State Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) investigated these allegations in response to the complaint you filed on behalf of Ms. Patricia Benjamin and others. A copy of Investigation Report HA-01-207 is enclosed. DOCARE found no evidence of any disturbance of historic resources caused by the project. This

Page 2  
Mr. Steven D. Strauss  
November 7, 2003

finding has been recently re-confirmed by an archaeological assessment of the project, which is also enclosed.

(1)(b) *[Excerpted from letter of March 9, 2000] Since the opening of the Akoni-Pule Highway more than twenty years ago North Hawai'i citizens and others have continuously used a mauka-makai jeep road from the highway to the shoreline at Keawe'ula and Keawenui bays.*

The mauka-makai jeep road is not in the Conservation District, and the Applicant does not seek a permit for uses in or around the mauka-makai jeep road. Furthermore, in litigation entitled *Malama Na Kahakai, et al. v. Heffner*, Civil No. 01-1-00559 pending before the Circuit Court of the Third Circuit, the Court found it unlikely that your clients would prevail on the merits of their claims regarding use of the mauka-makai jeep road and found that continued disuse of the jeep road by your clients would not harm them.

(1)(c) *[Excerpted from letter of March 9, 2000] The shoreline area has long been accessed by a lateral, North-South jeep trail located within the Conservation District subzone. Again in the summer of 1999, Applicant also illegally blocked vehicular access by dumping excavated rock and dirt in mounds across the jeep road.*

The mound of dirt and rock across the jeep road on the northern property boundary does not restrict foot access to the property and is not illegal. In fact, wheel marks and other evidence observed during a site visit on October 29, 2003, indicate that vehicles are continuing to drive over and around the low berm.

(1)(d) *[Excerpted from letter of March 9, 2000] Applicant's purchase of the property was subject to: "3. Such trails that may exist crossing these premises."*

The foregoing language regarding trails does not affirm or create the existence of any trails, nor does it create an affirmative right to use such trails.

(1)(e) *[Excerpted from statement of Edwina Ah Puck attached to the letter of March 9, 2000] It has been used by residents who have lived here all their lives and no one should have a right to take something or a place away from people who lived and used the place all their lives.*

(1)(f) *[Excerpted from statement of Laurie Arnold attached to the letter of March 9, 2000] The beaches & public roads still do belong to the people. We all have rights & should not be denied access to a beach we have gone to many many times before. Our past should also be part of our future.*

(1)(g) *[Excerpted from statement of Christina Ban attached to the letter of March 9, 2000] My family have used Keawe'ula since 1997 (year).*

(1)(h) *[Excerpted from statement of Marcia Ban attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe'ula because: of the recreational, spiritual and educational resources available at Keawe'ula.*

(1)(i) *[Excerpted from statement of Theresa Bella attached to the letter of March 9, 2000] That was one of our family camping grounds and fishing area. It was one of the safest [sic] place for young children to swim for an off road area.*

- (1)(f) [Excerpted from statement of Stephanie Cabaniss attached to the letter of March 9, 2000] As a child I enjoyed camping and fishing & swimming privileges in this area throughout my adult life. I would like to see future generations have this same right & privileges.
- (1)(g) [Excerpted from statement of Carmelita A. Carvalho attached to the letter of March 9, 2000] My family use to go camping and it's a nice place for children to swim and family to relax and have fun.
- (1)(h) [Excerpted from statement of Betty Chang attached to the letter of March 9, 2000] I have special interest in preserving public access and vehicular access to Keawe Ula because: I use it occasionally & need to drive down nowadays. [sic]
- (1)(i) [Excerpted from statement of Joe Chung Sr. attached to the letter of March 9, 2000] I have special interest in preserving public access and vehicular access to Keawe Ula because: I still use it and need access.
- (1)(j) [Excerpted from statement of Cindy Chong attached to the letter of March 9, 2000] We fish there for traditional celebrations and when time are hard, this is our subsistence. We camp there every summer with our families to relax, to explore, and to teach our children about the environment & its importance for the future. We swim there, we throw-net there, we dive there & we play there.
- (1)(k) [Excerpted from statement of Marla Chong attached to the letter of March 9, 2000] We all have different reasons for preserving the ainaland. I strongly feel by preserving public access, we will be able to enrich the children of the future, and keep alive the Hawaiian Culture. If we do not preserve what we have now, may not have a future.
- (1)(l) [Excerpted from statement of Steven Gusman attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe Ula [sic] (10 mi. marker Akoni Pule Hwy) because: Food Gatherings.
- (1)(m) [Excerpted from statement of Bernette P. Hui-Collo attached to the letter of March 9, 2000] In the ancient days a vast amount of people existed & lived along the entire shoreline. Like many generations before me, this cove has sustained life for many, granted their need and respect. Public access, then now from the highway has been used and appreciated ever since its existence. Generations of my family has [sic] used Keawe Ula and I'd like to know that their's [sic] an opportunity for my children and future generations.
- (1)(n) [Excerpted from statement of Corlis Ishitawa attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe Ula [sic] because: of our basic right to shoreline access.
- (1)(o) [Excerpted from statement of Damien Jeursen attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe Ula [sic] because: It's our right to use the beaches too.
- (1)(p) [Excerpted from statement of Myk Jeursen attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe Ula [sic] because: our rights to this beach shouldn't be denied us because of money [sic] or power that we may not have.
- (1)(q) [Excerpted from statement of Lowena Kahana attached to the letter of March 9, 2000] The first time I went to Keawe Ula was with my auntie Theresa in 1999. When I went to Keawe Ula I learned how to snorkel. I also learned how to look for puka shells. I went with my brother and auntie Theresa and her family. My brother and my cousin and

- uncle went diving there. I don't think that some rich person can just come and buy a beach. Everyone loved the beach Keawe Ula and everyone that went there cleaned up when they left. So I do not think that if we kept it clean the should not have taken it away. When I went there the first time I did not now [sic] it would be the last.
- (1)(r) [Excerpted from statement of Mary Cabrera Kahaloa'a attached to the letter of March 9, 2000] I have regularly camped, fished at Keawe Ula. Once the highway went in, I used the jeep road from the highway to the beach to drive in. I also use the shoreline for spiritual cleansing.
- (1)(s) [Excerpted from statement of Robbins Kinney attached to the letter of March 9, 2000] I have special interest in preserving public access and vehicular access to Keawe Ula [sic] (10 mi. marker Akoni Pule Hwy) because: I use the area for fishing.
- (1)(t) [Excerpted from statement of Roger Kinney attached to the letter of March 9, 2000] I regularly kayak to the cove and back toward Kawaihae - we have camped and spent weekends [sic] at Keawe Ula since I was seven.
- (1)(u) [Excerpted from statement of Marc Kinoshita attached to the letter of March 9, 2000] No one owns the shoreline. We are living on an island where recreation and gathering rights is a freedom granted to all residents. Vehicle access has provided an opportunity for residents to enjoy the beach.
- (1)(v) [Excerpted from statement of Alta Labialo attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe Ula because: my family and I has [sic] been going camping from way back and hopefully still continue to.
- (1)(w) [Excerpted from statement of Faren Perez attached to the letter of March 9, 2000] I learned to swim there also dive. I learned a lot about the beach. I know the beach like the back of my hand. I camp there ever [sic] summer and than giving [sic] also whatever weekend the schools give off. I would never think some one would by [sic] that beach now I have a new recipe [sic] about the beach. Every one [sic] after the camp use to spend about half [sic] an hour cleaning the beach. NOW with all the fences dose [sic] not fell [sic] like before. The only thing I got from them [sic] beach is my puka shell bracelet and the best one of all is the memories.
- (1)(x) [Excerpted from statement of Theresa Perez attached to the letter of March 9, 2000] I HAVE USED THAT BEACH FOR AS LONG AS 23 YEARS. I RAISED MY CHILDREN BY THE SAME TRADITION AND CULTURE TOO. THEY HAVE LEARNED TO SWIM, DIVE FOR FISH AND POLE FISHING. WE HAVE PRACTICED OUR TRADITIONAL AND CULTURAL GATHERING RIGHTS. THERE.
- THEY HAVE LEARNED HOW TO RESPECT AND TAKE CARE OF THE AINA AND THE OCEAN. I HAD NIECES AND NEPHEWS THAT WOULD JOIN US IN OUR CAMP ALSO MY HUSBAND GOT TO TEACH THEM ABOUT THROW NET, DIVING FOR FISH. THE BEACH IS FOUND TO BE SAFE FOR THE KEIKIS. THEY HAD EASY ENTRANCE TO THE WATER. SO WE FOUND IT TO BE VERY IDEAL TO GO CAMPING DURING THANKSGIVING AND SUMMER VACATIONS.
- AS FOR ME I ALWAYS FOUND PIECE [sic] OF MIND AND RELAXATION THERE IT WAS WHERE WE COULD GO AND ENJOY WITH THE KEIKIS, FAMILY AND FRIENDS. WE WERE ALL SADDENED

**TO DISCOVER THAT WE WERE NO LONGER ALLOWED TO ENTER THE AREA.**

**I FEEL WE NEED ACCESS SO THAT OUR CHILDREN AND THEIR CHILDREN CAN ALSO PRACTICE WHAT WAS OUR WAY OF LIFE.**

(1)(e) [Excerpted from statement of Amy Tanaka attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe'ula because my friend's [sic] and family's [sic] made that road lifting heavy rock's [sic]. We love to fish & camp at this location. It's rude for people to [illegible] it up.

(1)(f) [Excerpted from statement of Jennie-Lee Tavares attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe'ula (10 mi. marker to Akoni Pule Hwy.) because: I love to see the beautiful ocean & go fishing.

(1)(g) [Excerpted from statement of Raymond Torres attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawe'ula (10 mi. marker to Akoni Pule Hwy.) because: me and my son do a lot of fishing and camping [sic].

(1)(h) [Excerpted from statement of Tim Carvalho attached to the letter of March 9, 2000] I have special interest in preserving public access and vehicular access from Akoni Pule Hwy. to the beach because to [sic] let my children experience the pleasure of the beach the way we did when I was a child.

(1)(i) [Excerpted from statement of Jayleen Chong attached to the letter of March 9, 2000] I have special interest in preserving public access and vehicular access to Keawe'ula [sic] (10 mi. marker Akoni Pule Hwy.) because: I like to go there and spend time with my family. And in all my years I was born I thought that was the nice [sic] place ever. I miss going there because that was my favorite beach.

**Response:** As stated in Section 3.7 of the Draft Environmental Assessment, the Applicant "does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law." Any access to which you and others may be entitled would be facilitated by the activities for which this after-the-fact permit is sought. The actions for which this after-the-fact permit is sought do not restrict access from Akoni Pule Highway to the shoreline.

(2) Second, the Applicant remains noncompliant with the Board's directive March 11, 2003.

**Response:** Please see the attached letter from Lisa Bail, Esq. and Bruce L. Lamom, Esq. of Goodwill Anderson Quinn & Stifel, Ms. Hefner's legal counsel, for a response to this allegation. They believe that Ms. Hefner has complied fully with the Board's directive.

(3) Third, regarding cultural impacts, the Applicant continues to deny, impair and impede access on the property to cultural sites, including places of worship and recreation all along the coastline fronting the property. The issue of cultural impacts cannot be divorced from public access necessary to practice cultural activities.

As noted in the draft environmental assessment at page 3-5, Applicant continues to deny access along the jeep roads adjacent and lateral to the shoreline and comprising the mauka boundaries of the conservation district, which jeep roads are owned by the State and claimed as such. Applicant maintains illegal berms impeding vehicular access across these State jeep roads. Applicant has failed to install gates along her mauka-makoi fence lines to provide for

**vehicular and pedestrian access along the State jeep roads. So far, despite demands from Malama Na Kahakai, Inc. and others, the State has done nothing to remedy these illegal obstructions and restore lateral access through Applicant's property to and along the shoreline from State lands.**

**Response:** A Cultural Impact Assessment has been prepared and is enclosed here. As stated in Section 3.7 of the Draft Environmental Assessment, the Applicant "does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law." Any access to which you and others may be entitled would be facilitated by the activities for which this after-the-fact permit is sought. The berms have not in fact impeded vehicular access. In addition, per the enclosed letter from Lisa Bail, Esq. and Bruce Lamom, Esq., the Applicant acknowledges that the State has made informal claims to ownership of the coastal jeep trail alignment, but disputes the State's claimed "ownership." We also respectfully note that ownership of the coastal jeep trail alignment is not relevant to the issue of whether the actions described on this after-the-fact CDUA had a "significant effect" on the environment, and whether a Finding of No Significant Impact should be issued.

(4) Applicant's claim at page 3-5 that it helped to minimize erosion and sediment introduction by denying public access at the shoreline is a sick joke. It was not the public who carelessly bulldozed sediment into the sea; it was Applicant.

**Response:** The record does not support your allegation that the Applicant "bulldozed sediment into the sea." The enclosed Investigation Report (11A-01-207) documents that DOCARE did not find any evidence to support your claims, and states:

*It was found that the earth debris and keawe [sic] parts were bulldozed years ago for a fire break. A fire that happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that the old dried grass is on the previously moved earth. The new property owner Chand HEFNER [sic], is not responsible for this bulldozing of debris.*

Furthermore, as documented in the enclosed memorandum dated February 7, 2000 from Conservation Officer Richard White to Patti Edwards at the Honolulu DOCARE Office, "The Department found no significant impact to the environment due to the unauthorized improvements."

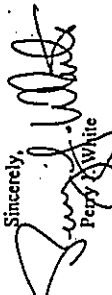
(5) Fourth, public access across Applicant's property from Akoni Pule Highway to the shoreline does exist and remains a subject of the continuing lawsuit, Malama Na Kahakai, et al. v. Hefner, Cv. No. 01-1-0059 (Third Circuit, Hilo). The most recent activity in such lawsuit is the certification of a class of Native Hawaiian users in Spring, 2003.

**Response:** Please see the enclosed letter from Lisa Bail, Esq. and Bruce L. Lamom, Esq. of Goodwill Anderson Quinn & Stifel describing the Applicant's position with respect to this assertion.

STATE OF HAWAII  
 Dept. Land & Natural Resources  
 DIV. Conservation & Resources Enforcement  
 INVESTIGATION REPORT  
 COPY DOCARE-6

Page 7  
 Mr. Steven D. Strauss  
 November 7, 2003

Again, thank you for the time you spent preparing your comments.

Sincerely,  
  
 Perry White

- Enclosures:  
 (1) DOCARE 10/20/2000 Investigation Report  
 (2) February 7, 2000 memorandum from Richard White to Patti Edwards  
 (3) Archaeological Assessment → see Appendix A  
 (4) Cultural Impact Assessment → see Appendix B  
 (5) Letter from Lisa Bail and Bruce Laumon

cc: Chandi Duke Heffner  
 Lisa Bail, Goodwill Anderson Quinn & Stifel  
 DLNR Land Division

1. Name of Person EDLEWS		2. Date of Birth 11-01-2007	
3. Address 1000 S. ...		4. City/State/Zip HAWAII	
5. Occupation N/A		6. Date of Report 11-09-03	
7. Name of Employer N/A		8. Date of Employment N/A	
9. Name of Property N/A		10. Date of Acquisition N/A	
11. Description of Offense N/A		12. Date of Offense N/A	
13. Name of Person Steven STRAUSS		14. Address P.O. Box 11517, Hls, Hawaii	
15. City/State/Zip HAWAII		16. Date of Report 11-09-03	
17. Name of Employer N/A		18. Date of Employment N/A	
19. Name of Property N/A		20. Date of Acquisition N/A	
21. Description of Offense N/A		22. Date of Offense N/A	
23. Name of Person Steven STRAUSS		24. Address P.O. Box 11517, Hls, Hawaii	
25. City/State/Zip HAWAII		26. Date of Report 11-09-03	
27. Name of Employer N/A		28. Date of Employment N/A	
29. Name of Property N/A		30. Date of Acquisition N/A	
31. Description of Offense N/A		32. Date of Offense N/A	

The complainant, Steven STRAUSS, reported that illegal activity was being done causing damage to his land located at the corner of ...  
 HEFFNER property at North Kalahele, Maui 960103.

REFER TO ATTACHED SUPPLEMENTAL REPORT FOR ADDITIONAL INFORMATION OF THIS REPORT.

REPORT MADE BY: EDLEWS  
 REPORT DATE: 11-09-03  
 REPORT TIME: 11:09 AM  
 REPORT PAGE: 75

Steven STRAUSS  
P.O. Box 11517,  
HILO, HAWAII

HA-01-207  
LAND USE;  
CHAPTER 5 VIOLATION

HA-01-207

Page 2 of pages.

Page 1 of pages.

**CONTACTED COMPLAINANT:**

09-20-00: Writer contacted Steven STRAUSS at his office in Hilo regarding the complaint he made by phone to the Hilo DOCARE office. STRAUSS indicated to me that he had information that there were several violations within the Conservation District located at Keaweula & Keawenui area in North Kohala, TMK 5-8-01-09.

STRAUSS also indicated that he had photo's and GPS readings of the violations at this property mentioned. I gave STRAUSS the Kamuela Office fax number and the address so that he could send the information needed to this investigation.

Approximately two (2) weeks past and no information was sent regarding this complaint so I contacted STRAUSS again and related to him about the photo's and additional information he was suppose to send me. STRAUSS stated that he was working on this and was going to send it right away.

10-18-00: A Letter was hand delivered to the Kamuela Office refer to exhibit 1. After reading the letter, I found that that Mr. STRAUSS is representing Jonathan and Patricia BENJAMIN and Restore Beach Access Hawaii. In the letter STRAUSS indicated several possible violations at the HEFNER's property at North Kohala.

As follows:

1. Operating earth moving equipment in the Conservation District.
2. Additional gravel spreading.
3. Oil-based substance applied to gravel area.
4. Degradation of water quality due to the oil.
5. Earth debris and keawe debris to fall into the ocean.
6. Structure or structures within Conservation District.
- 7: Human sewage disposal.
8. Damage to archaeological features resulting from machines

**INSPECTION AT SITE:**

10-20-00: 0845 Hrs: A site inspection was conducted at the HEFNER'S property at North Kohala TMK 5-8-01-09 with the caretaker of the property. It should be noted that the last inspection of the property was conducted on 05-31-00.

I inspected the road parallel to the shoreline area within the conservation District, No sign of oil or petroleum base substance could be detected on the gravel road also no additional work was done by earth-moving equipment within the Conservation District since the last site inspection took place and that no additional gravel were spread.

At Keawenui Bay it was observed that a portable metal container structure was use for storage for recreational equipment, refer to photo report, exhibit 2. At this time it is known that this structure is in a Conservati on District. At this site tables and other materials (roof iron) as indicated in photo record was observed. According to the caretaker of the property, he related that the structures was there when the property was bought. No signs of person (s) was residing in the area. A check for human defecation could not be detected.

From this site I then proceeded north along the shoreline road to Keaweula Bay, at this site I noted a portable metal container used for the storage of tools and equipment. Refer to photo report. No sign of person (s) residing in the area and no defecation of human waste could be detected. It is unsure that this structure is in the Conservation District.

Further north according to Mr. STRAUSS GPS reading, 20.07.17 N, 155.53.19 W., I could not locate this reading because according to my GPS it would take me into the ocean. I then took the pole number 48 which is said to be next to the possible violation site. Pole #48 was located, a GPS reading was taken, 20.07.10N, 155.53.12W. Photo's was taken of the area. It was found that the earth debris and keawe parts were bulldozed years ago for a fire break. A fire that happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that old dried grass is on the previously moved earth. The new property owner Chandl HEFNER, is not responsible for this bulldozing of debris.

From the south to the north shoreline of this property, I could not detect no oil film or oil substance in the ocean. And finally, I could not detect any archaeological features that were disturbed. I will contact Marc SMITH, State archaeologist, for a final inspection of the archaeological site if damages occurred.

ARCHAEOLOGIST CONTACTED:

Arrangements were made to inspect the HEFNER'S property on 11-08-00, with Marc SMITH.

Exhibit D

Law Offices Of  
STEVEN D. STRAUSS  
P.O. Box 11517, Hilo, Hawaii 96721  
Telephone: (808) 969-6684/Facsimile: (808) 934-8998

HA-01-207

page 3 of 7 pages.

11-08-00: 0945 Hrs: A inspection for damage archaeological features was conducted by myself and Marc SMITH at the HEFNER'S property. The property was inspected from the north side to the south direction of the property, and no damage to any archaeological site could be detected. A report from Marc SMITH will be sent to me for my final report.

PHOTOREPORT:

Refer to photo report attached.

MAP OF AREA:


Structures in question on HEFNER'S property.


DISPOSITION:

In view of this investigation, contact with Sam LEMMO, planning Dept. State Land Division is in effect. This report will be sent to LEMMO to determine if the structure(s) is in Conservation District zone land.

This report will remain Inv. Continuing.

APPROVED:

  
Sandy Sugiyama, Supervisor NH

  
ED LEWIS #181  
CREO III NH  
11-09-00 1400 Hrs

Hand delivered

October 18, 2000

Eddie Lewis  
Department of Land & Natural Resources  
DOCARE

Re: *Keaweula*  
Keheha Second, North Kohala, Hawaii, TMK (3)5-8-01:9

Dear Mr. Lewis:

I represent Jonathan and Patricia Benjamin and Restore Beach Access Hawaii, an association of Hawaii's citizens and others who wish to restore and preserve public access to the shoreline in the North Kohala area. On behalf of my clients, I request that your office investigate apparent Conservation District violations at Keaweula and Kraweui, North Kohala. As you may be aware, in 1999 Ms. Hefner was fined by the Department of Land and Natural Resources for grading, spreading gravel and other activities within a conservation district without seeking prior permits. The Board issued a cease and desist order. Moreover, the Board required her to submit an after the fact conservation district use application, she has since withdrawn such application.

My clients are informed that, since the date of the cease and desist order, Ms. Hefner has continued to operate earthmoving equipment in the Conservation District. My clients report additional gravel spreading and an oil-based substance having been applied to the gravel area. Snorkelers in the near shore area report degradation of water quality due to the oil. I am also enclosing photographs showing disturbances to the shoreline which have caused earthen debris and keawe debris to fall into the ocean. The GPS coordinates for this debris site are 20.07.17 N, 155.53.19W. It is near ocean marker pole no. 48.

My clients are also informed that Ms. Hefner is allowing persons to reside in an unpermitted structure or structures within the Conservation District. The method of human sewage disposal for these residents is unknown.

*Exhibit 2*

HA-01-207  
LAND USE:  
POSSIBLE CHAPTER  
5 VIOLATION

PHOTO REPORT

STEVEN STRAUSS

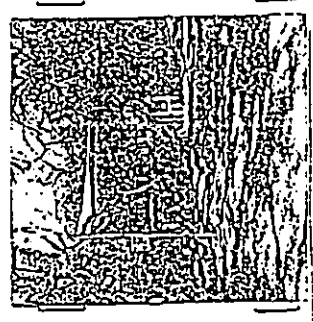


PHOTO 12 Depicts existing tables and roof top at Keavenul Bay.

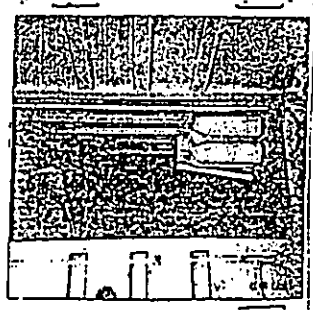


PHOTO 11 Depicts portable storage container at Keavenul Bay.

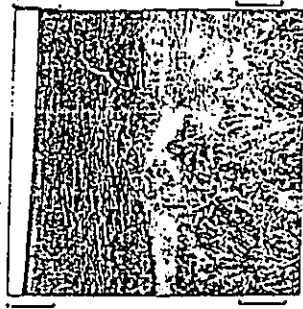


PHOTO 14 Depicts bulldozed work done years ago by unknown person(s). Observe old work done and dried grass on area.

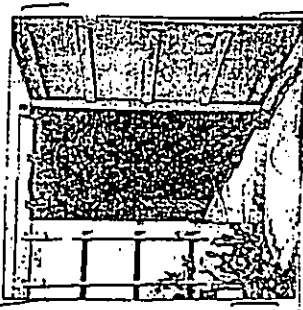


PHOTO 13 Depicts portable metal container at Keavenul Bay.

1181  
NH  
1400 hrs  
ED LEWIS  
CREO III  
11-17-00

Approved:  
*[Signature]*  
Sally Saitama Supervisor NH

October 18, 2000  
Eddie Lewis  
Department of Land & Natural Resources  
DOCARE  
Page 2

Finally, my clients have viewed damage to archaeological features resulting from Ms. Heffner's earthmoving operations, some of which is believed to be within the Conservation District.

I also have available aerial and ground photos showing the progression of Ms. Heffner's unpermitted work over time. I look forward to your department taking up these issues at the earliest opportunity.

Thank you for your attention to this matter.

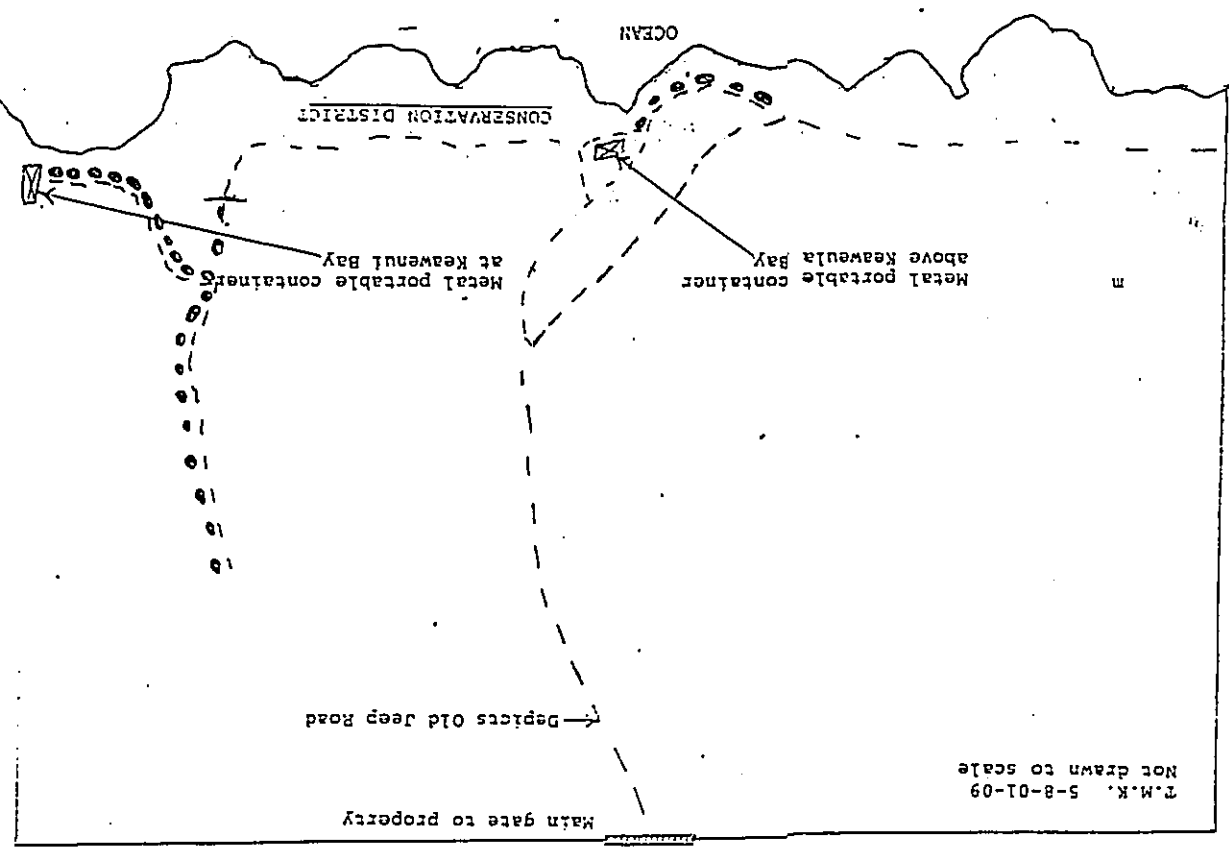
Very truly yours,  
*[Signature]*  
Steven Strauss

Enclosures

cc: T. Johns, Esq., DLNR  
Attorney General Earl Anzai,  
J. Benjamin



DOCUMENT CAPTURED AS RECEIVED



AKONI PULE HIGHWAY (Route 270)

SOUTH

IA-01-207  
LAND USE:  
POSSIBLE CHAPTER  
5 VIOLATION

PHOTO REPORT

STEVEN STRAUSS

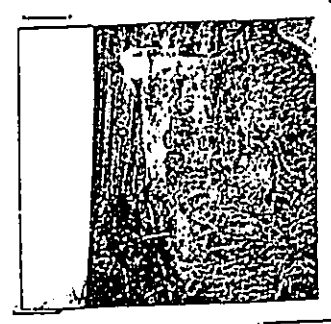


PHOTO 16 Depicts same area as photo 14 & 15. Note again old work done in the area.

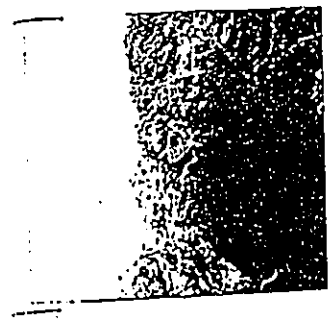


PHOTO 15 Depicts area as photo 14. GPS reading 20:07.10N, 155:53.12W.

435A  
HI  
1400 Hrs

EA LOMAS  
CREO III  
11-17-00

Supervisor HI

*[Handwritten signature]*

*[Handwritten signature]*  
Bobby S. JAMA

HA 99-1079

RECEIVED  
DOCARE

TO : PATTI EDWARDS, HONOLULU D.O.C.A.R.E. HILO, HAWAII

VIA : SANDY SUGIYAMA, NORTH HAWAII SUPERVISOR

VIA : LAWRENCE TERLEP, HAWAII BRANCH CHIEF

FROM: RICHARD R. WHITE, NORTH HAWAII OFFICER

SUBJECT: COMMENTS REGARDING CDUA HA-2970B

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

ALB PLACE, SUITE 1800 - 1079 ALAKA STREET  
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196  
HONOLULU, HAWAII 96801

TELEPHONE: (808) 547-5600 • FAX: (808) 547-5880  
info@goodstill.com • www.goodstill.com

DAVID L. BARNES  
DAVID F. DENNIS  
JAMES E. FORD  
WALTER H. GARDNER  
DAVID J. HERRINGTON  
MICHAEL J. KENNEDY  
DAVID L. KOPPEL  
JOHN L. KUMAR  
TERRY L. LANGE  
DAVID J. LEWIS  
DAVID J. MURPHY  
DAVID J. O'NEILL  
DAVID J. PETERSON  
DAVID J. RICHARDS  
DAVID J. ROSS  
DAVID J. SHERIDAN  
DAVID J. SUGIYAMA  
DAVID J. TAYLOR  
DAVID J. THOMAS  
DAVID J. WATSON  
DAVID J. WELLS  
DAVID J. WILSON  
DAVID J. WOOD  
DAVID J. YOUNG

DAVID J. BARNES  
DAVID J. DENNIS  
DAVID J. FORD  
DAVID J. GARDNER  
DAVID J. HERRINGTON  
DAVID J. KENNEDY  
DAVID J. KOPPEL  
DAVID J. KUMAR  
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DAVID J. TAYLOR  
DAVID J. THOMAS  
DAVID J. WATSON  
DAVID J. WELLS  
DAVID J. WILSON  
DAVID J. WOOD  
DAVID J. YOUNG

November 6, 2003

Perry White  
Planning Solutions, Inc.  
1210 Auahi Street, Suite 221  
Honolulu, HI 96814

Re: Response to Comments from Steve Strauss  
CDUA for Improvements to Existing Jeep Road at Keleona 2nd,  
North Kohala, Hawaii

Dear Mr. White:

This letter is sent response to legal issues raised in the comment letter from Mr. Steven Strauss dated September 22, 2003 in connection with the above application. Mr. Strauss represents Malama Na Kahakai, Inc. and other clients in litigation entitled Malama Na Kahakai, et al. v. Heffner, Civil No. 01-1-0059 pending before the Circuit Court of the Third Circuit (the "Litigation"). Our firm represents defendants Chandi Heffner and Keawe'ula, LLC in connection with the Litigation. Specific comments are addressed in the numbered paragraphs below:

Approved:  
*Sandy Sugiyama*  
Sandy SUGIYAMA #5

*RRW*  
Richard R. White

Richard R. WHITE #16  
Conservation Officer  
02-07-00 1800 Hrs.

a. "Second, the Applicant remains noncompliant with the Board's directive March 11, 2003."

As Ms. Heffner's legal counsel, it is our opinion that Ms. Heffner has complied with the Board's directive. We note that The CDUA and Draft EA which are the subject of Mr. Strauss' comments were submitted as required by the Board's letter.

We also note that compliance with the Board's letter of March 11, 2003 is not a criteria for determining whether the action for which this after-the-fact permit is sought has had a significant effect on the environment under Chapter 343.

547253

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Perry White  
November 6, 2003  
Page 2

- b. "... Applicant continues to deny access along the jeep roads adjacent and lateral to the shoreline and comprising the mauka boundaries of the conservation district, which jeep roads are owned by the State and claimed as such."

In a memo dated January 14, 2000, Abstractor D. Moana Rowland first claimed that the coastal Jeep trail alignment was "owned" by the State of Hawaii. Despite this conclusion, the State has taken no legal action to establish such an ownership interest. Unless and until such time as title vests in the State of Hawaii, the Applicant disputes the State's asserted "ownership."

- c. "... public access across Applicant's property from Akoni-Pule Highway to the shoreline does exist and remains a subject of the continuing lawsuit, *Malama Na Kahakai, et al. v. Heffner, Civ. No. 01-1-0059 (Third Circuit, Hilo)*. The most recent activity in such lawsuit is the certification of a class of Native Hawaiian users in Spring 2003."

We acknowledge that the Litigation pursued by Mr. Strauss and his clients remains pending before the Circuit Court of the Third Circuit. However, contrary to Mr. Strauss' representation, public access across the property from Akoni-Pule Highway to the shoreline does not exist. The Third Circuit Court denied Plaintiffs' Motion for Preliminary Injunction, filed October 22, 2001, which sought an order granting public access to the mauka-makai jeep road crossing the property from Akoni-Pule Highway to the shoreline. In its ruling, the court stated that the mauka-makai jeep road "is a private road." Enclosed is a copy of the March 4, 2002 Findings of Fact, Conclusions of Law and Order Denying Plaintiffs' *Malama Na Kahakai, et al.*'s Motion for Preliminary Injunction and Vacating Temporary Restraining Order Filed January 4, 2002.

Moreover, the Circuit Court has not certified a class of Native Hawaiian users as Mr. Strauss claims in his letter. Based on leave of court, Mr. Strauss was allowed to file a class action complaint. Mr. Strauss has not filed a class certification motion, nor has a class been certified by the Third Circuit Court.

- d. "*Malama Na Kahakai and Patricia Benjamin request that they be permitted to participate in a contested case regarding the required Conservation District Use Application.*"

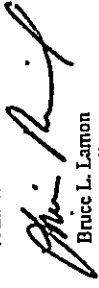
This request is not germane to the adequacy of the draft EA or to the question of "significant effect" under Chapter 343. Moreover, it is procedurally improper and amounts to an improper attempt to relitigate issues that are before, and have in some instances been decided in the Litigation brought by Mr. Strauss.

Perry White  
November 6, 2003  
Page 3

This letter does not attempt to present all of Ms. Heffner's legal and factual contentions with respect to matters relevant to the comments you have received on the draft EA.

Very truly yours,

GOODSILL ANDERSON QUINN & STEEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP



Bruce L. Lamont  
Lisa A. Bail

LAB:

Enclosure

FILED

GOODSILL ANDERSON QUINN & STIFEL  
BRUCE L. LAMON 2738-0  
LISA A. BAIL 6021-0  
Ahi Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813  
Telephone: 547-5600

2002 MAR -4 AM 9:49

S. ENOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

Attorneys for Defendant  
CHANDI D. HEFFNER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

MALAMA NA KAHAKAI, RICHARD C.  
LINDSEY, JR., ISABELLA MEDEIROS,  
ROBBINS KINNEY, TIM CARAVALHO,  
RAYNARD TORRES, FHITILIA MARY  
CABRERA KAILOLOA'A, LEONARD  
PANG, STEPHANIE CABANISS, CLYDE  
YANO, BERNETTE P. HUI-COLLO,  
JEFFERY KIAAINA, SR., RAYMOND K.  
KALUA'U, PATTY KALUA'U, THERESA  
PEREZ, PATRICIA BENJAMIN AND  
JONATHAN BENJAMIN,

Plaintiffs,

vs.

CHANDI DUKE HEFFNER, JOHN DOES  
1-10, JANE DOES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
CORPORATIONS 1-10, DOE  
GOVERNMENTAL UNITS 1-10, DOE  
ENTITIES 1-10,

Defendants.

CIVIL NO. 01-1-0059  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER DENYING  
PLAINTIFFS' MALAMA NA KAHAKAI,  
ET AL.'S MOTION FOR PRELIMINARY  
INJUNCTION AND VACATING  
TEMPORARY RESTRAINING ORDER  
FILED JANUARY 4, 2002

(Motion Filed on October 22, 2001)

Hearing: November 9, 2001  
Dates: November 13, 2001  
February 7, 2002  
Judge: Riki May Amamo

NO TRIAL DATE HAS BEEN SET

General 415521.1

I hereby certify that this is a full, true and correct  
copy of the original as filed in this office.

*[Signature]*  
Court Clerk, State of Hawaii

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
DENYING MALAMA NA KAHAKAI, ET AL.'S MOTION FOR  
PRELIMINARY INJUNCTION AND  
VACATING TEMPORARY RESTRAINING ORDER FILED  
JANUARY 4, 2002

Plaintiffs Malama Na Kahakai, Richard C. Lindsey, Jr., Isabella Medeiros,  
Robbins Kinney, Tim Caravvalho, Raynard Torres, Fhitilia Mary Cabrera Kaholoa'a, Leonard  
Pang, Stephanie Cabaniss, Clyde Yano, Bernette P. Hui-Collo, Jeffery Kiaaina, Sr., Raymond K.  
Kalua'u, Patty Kalua'u, Theresa Perez, Patricia Benjamin and Jonathan Benjamin's ("Plaintiffs")

Motion for Preliminary Injunction, filed October 22, 2001 ("Motion"), came on for hearing  
before the Honorable Riki May Amamo on February 7, 2002 at 10:00 a.m. Steven Strauss  
appeared on behalf of Plaintiffs and Bruce Lamon and Lisa Bail appeared on behalf of Defendant  
Chandi D. Heffner ("Heffner"). The Court having considered the oral and written arguments,  
papers and evidence filed by the parties; having heard testimony from witnesses  
Joseph Chang, Howard Sur, Robert Taira, and Stanley Tamura; having heard testimony from  
Plaintiffs Isabella Medeiros and Theresa Perez; and being fully advised in the premises, hereby  
finds, concludes and orders as follows:

FINDINGS OF FACT

1. The Motion seeks an order granting public access to the mauka-makai jeep  
road ("Jeep Road") crossing Heffner's real property as generally depicted at Tax Map Key No.  
(3)5-8-001-009 ("Property").
2. The Jeep Road is a private road.

ORDER DENYING PLAINTIFFS' MALAMA NA KAHAKAI, ET AL.'S MOTION FOR  
PRELIMINARY INJUNCTION AND VACATING TEMPORARY RESTRAINING ORDER  
FILED JANUARY 4, 2002

3. Plaintiffs have failed to present any evidence of any intent by Heffner or its owners to dedicate or surrender the Jeep Road to the public, or of any intent by any of its owners to make the Jeep Road a public roadway, or of any intent by any of its owners to give anyone an absolute right to use the Jeep Road. The testimony adduced at the February 7, 2002 hearing on the Motion showed the opposite of any such intent. Witnesses using the Jeep Road acknowledged that they did so with permission and/or that they were not given such permission by Heffner.

4. Plaintiffs have submitted insufficient evidence to show a likelihood of prevailing on the merits of establishing an easement across the Jeep Road.

5. Although Heffner erected a gate preventing public access to the Jeep Road from the Akoni-Pule Highway in 1999, Plaintiffs did not file the Motion until October 2001.

6. Continued disuse of the Jeep Road will not harm the Plaintiffs.

CONCLUSIONS OF LAW

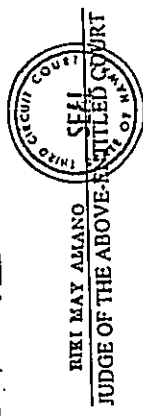
7. Plaintiffs are not likely to prevail on the merits herein because (a) they have presented no evidence showing compliance with the requirements for public dedication or surrender under Hawaii Revised Statutes ("H.R.S.") § 264-1 such that H.R.S. § 264-1 would apply to make the Jeep Road a public highway; (b) they have presented no evidence of any intent to dedicate the Jeep Road to the public, such that the common law doctrine of implied dedication would apply; and (c) they have presented insufficient evidence of any easement in their favor over the Jeep Road.

8. Denial of the Motion will not cause Plaintiffs to suffer irreparable harm. The balance of irreparable harm therefore does not favor granting the Motion.

9. The public interest does not support granting the Motion.

- 10. The Motion be and hereby is denied.
- 11. The Temporary Restraining Order filed herein on January 4, 2002 be and hereby is vacated.

FEB 04 2002  
DATED: Hilo, Hawaii, February 4, 2002.



In the Circuit Court of the Third Circuit, State of Hawaii; Civil No. 01-1-0059; *Malama Na Kahakai, et al. v. Heffner*; ORDER DENYING PLAINTIFFS' MALAMA NA KAHAKAI, ET AL.'S MOTION FOR PRELIMINARY INJUNCTION AND VACATING TEMPORARY RESTRAINING ORDER FILED JANUARY 4, 2002

LINDA LYNKLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

200 SOUTH KOLEKOLE AVENUE  
HONOLULU, HAWAII 96813  
TELEPHONE: (808) 586-4185  
FACSIMILE: (808) 586-4185  
E-mail: eqc@hawaii.gov



GENIEVE SALMONSON  
DIRECTOR

06



P L A N N I N G  
S O L U T I O N S

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

September 22, 2003

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LAND DIVISION

2003 SEP 23 P 3 52

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Ms. Chandii Duke Heffner, Keawe'ula LLC  
c/o Planning Solutions, Inc.  
1210 Auahi Street, No. 221  
Honolulu, Hawaii 96814

Mr. Matthew Myers  
Department of Land and Natural Resources, State of Hawaii  
P.O. Box 621  
Honolulu, Hawaii 96809

Mr. Perry White  
Planning Solutions, Inc.  
1210 Auahi Street, No. 221  
Honolulu, Hawaii 96814

Dear Ms. Heffner, Messrs. Myers and White

We have reviewed the June 2003, Chapter 343, Hawaii's Revised Statutes after-the-fact draft environmental assessment entitled "Improvements to Existing Jeep Road at Kehenā 2<sup>nd</sup>, North Kohala, Hawaii" prepared by Planning Solutions, Tax Map Key (3) 5-8-01-09, in the judicial district of North Kohala. We offer the following comments for your consideration and response.

1. ACCESS: The 1979 County of Hawaii's Public Access Inventory is cited under Section 3.7 to support the assertion that the property is not listed as providing public access to the shoreline. Since the Supreme Court decision in the case of *Public Access Shoreline Hawaii v. The Hawaii County Planning Commission* (79 Hawaii 425, 903 P.2d 1246) all agencies of the State (including the Department of Land and Natural Resources) are required to consider public access in their decisionmaking; please describe alternatives to allow limited access to the shoreline.

Again, we thank you for the opportunity to comment. If there are any questions, please call me or Mr. Leslie Segundo, Environmental Health Specialist, at (808) 586-4185.

Sincerely,

*Genieve Salmonson*  
GENIEVE SALMONSON  
Director

Ms. Genevieve Salmonson, Director  
Office of Environmental Quality Control  
235 South Beretania Street, Suite 702  
Honolulu, HI 96813

Subject: Draft Environmental Assessment (DEA): CDUA HA-3148 (Board Permit) Chandii Duke Heffner Improvements to Existing Jeep Road Kehenā 2<sup>nd</sup>, North Kohala District, County of Hawaii TMK: (3) 5-8-1: 9

Dear Ms. Salmonson:

Thank you for your September 22, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for improvements to an existing jeep road on Ms. Chandii Heffner's property. We appreciate the time you and your staff spent reviewing the document and providing a written comment. Our response to your comment (reproduced for your convenience in italics before the response) is provided below.

*ACCESS: The 1979 County of Hawaii Public Access Inventory is cited under Section 3.7 to support the assertion that the property is not listed as providing public access to the shoreline. Since the Supreme Court decision in the case of Public Access Shoreline Hawaii v. Angel Pilago, v. the Hawaii County Planning Commission (79 Hawaii 425, 903 P.2d 1246) all agencies of the State (including the Department of Land and Natural Resources) are required to consider public access in their decision making; please describe alternatives to allow limited access to the shoreline.*

**Response:** Section 3.7 of the DEA states, "Applicant does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law."

If you have any further questions concerning the project, please call me at (808) 550-4483.

Sincerely,

*Perry J. White*  
Perry J. White

cc: Chandii Duke Heffner  
Lisa Bail, Goodwill Anderson Quinn & Stifel  
DLNR Land Division

LOCAL OFFICE  
OFFICE OF PERMITS

COPIES



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
HISTORIC PRESERVATION DIVISION  
KAMUHIEVA BUILDING, ROOM 533  
801 KAMOMILA BOULEVARD  
KAPOLEI, HAWAII 96707

September 19, 2003

Mr. Perry White  
Planning Solutions, Inc.  
1210 Auahi Street, Suite 221  
Honolulu, Hawaii 96814

Dear Mr. White:

**SUBJECT:** Chapter 6E-42 Historic Preservation Review of a Draft Environmental Assessment (DEA) for Road Improvements, Chandi Duke Heffner/Keawe'ula LLC; Conservation District Use Application File No: HA-3148, Ahupua'a of Kehena 2<sup>nd</sup>, North Kohala, Hawaii Island  
TMK: (3) 5-8-001-009

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
HISTORIC PRESERVATION DIVISION  
KAMUHIEVA BUILDING, ROOM 533  
801 KAMOMILA BOULEVARD  
KAPOLEI, HAWAII 96707

07

PETER T. YOUNG  
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CONSERVATION AND COASTAL LAND  
MANAGEMENT  
POLYMER AND WILSON  
HAWAIIAN ISLAND RESERVE COMMISSION  
11211 PONO

Mr. Perry White  
Page 2

If you have any questions regarding our review, please call Dr. Patrick McCoy at (808) 692-8029 or MaryAnne Maigret at (808) 327-3690.

Aloha,

*P. Holly McElowney*

P. Holly McElowney, Acting Administrator  
State Historic Preservation Division

c. Dierdre Mamiya, Administrator, Land Division [ATTN: Matthew Myers]  
Genevieve Salmonsén, Director, Office of Environmental Quality Control  
Peter L. Yes, Director, Neighborhood and Native Rights, Office of Hawaiian Affairs, 711  
Kapiolani Blvd, Suite 500, Honolulu, HI 96813 [ATTN: Pua Aiu]

The DEA titled *Improvements to Existing Jeep Road at Kehena 2<sup>nd</sup>, North Kohala, Hawaii* was submitted to us for review by the Office of Conservation and Coastal Lands, DLNR, in early August, 2003 as a component of the above mentioned Conservation District Use Application. As indicated in the *Environmental Notice* publication of August 23, 2003, we are sending our comments directly to you for your consideration and action.

The applicant states that the most recent published archaeological investigations on the subject property were conducted by Rose Schilt and Aki Sinoto in 1980. However, the 1980 survey does not satisfy current standards for archaeological inventory work as set forth in the draft Hawaii Administrative Rules Chapter 13-276, and therefore cannot be relied upon to evaluate the total number of sites, their significance, or the potential for adverse effects of the jeep road improvements on historic sites. We are aware that more recent archaeological investigations have been, or are being, conducted on the subject property, but we have not received any report documenting the more recent investigations.

Therefore, by copies of this letter to the Office of Environmental Quality Control, DOH, and the Office of Conservation and Coastal Lands, DLNR, we recommend that all action on pending permits be deferred until we review an archaeological inventory survey report that meets current standards, and have the opportunity to evaluate any recommendations made for mitigating the "adverse effect" on significant historic sites that may have been caused by improvements to the jeep road, erosion control, and tree-removal measures.



**P L A N N I N G  
S O L U T I O N S**

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Ms. P. Holly McEldowney, Acting Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
Kakuhiweva Building, Room 555  
601 Kanoaika Boulevard  
Kapolei, HI 96707

**Subject: Draft Environmental Assessment (DEA): CDUA HA-3148 (Board Permit) Chandl  
Duke Heffner Improvements to Existing Jeep Road Kehena 2<sup>nd</sup>, North Kohala  
District, County of Hawaii TMK: (3) 5-8-1: 9**

Dear Ms. McEldowney:

Thank you for your September 19, 2003 letter commenting on the *Draft Environmental Assessment (DEA)* for after-the-fact approval for improvements to an existing jeep road on Ms. Chandl Heffner's property. We appreciate the time you and your staff spent reviewing the document and providing your written comment. Our response to your comment (reproduced for your convenience in italics before the response) is provided below.

*The applicant states that the most recent published archaeological investigations on the subject property were conducted by Rose Schitt and Aki Sinoto in 1980. However, the 1980 survey does not satisfy current standards for archaeological inventory work as set forth in the draft Hawaii Administrative Rules Chapter 13-276, and therefore cannot be relied upon to evaluate the total number of sites, their significance, or the potential for adverse effects of the jeep road improvements on historic sites. We are aware that more recent archaeological investigations have been, or are being, conducted on the subject property, but we have not received any report documenting the more recent investigations.*

*Therefore, by copies of this letter to the Office of Environmental Quality Control, DOH, and the Office of Conservation and Coastal Lands, DLNR, we recommend that all action on pending permits be deferred until we review an archaeological inventory survey report that meets current standards, and have the opportunity to evaluate any recommendations made for mitigating the "adverse effect" on significant historic sites that may have been caused by improvements to the jeep road, erosion control, and tree-removal measures.*

**Response:** An archaeological assessment survey is enclosed and will be included in the Final Environmental Assessment. Its scope has been coordinated with your Division to ensure that it addresses the concerns expressed in your September 19, 2003, letter. The survey documents that there have been no significant adverse effects to historic sites caused by the project for which this after-the-fact permit is being sought. Deferral will not preserve or protect any sites or graves.

Page 2  
Ms. P. Holly McEldowney  
November 7, 2003

If you have any further questions concerning the project, please call me at (808) 550-4483.

Sincerely,  
  
Perry J. White

Enclosure:

(1) Archaeological Assessment Survey → See Appendix A

cc: Chandl Duke Heffner  
Lisa Bail, Goodwill Anderson Quinn & Stifel  
DLNR Land Division



08



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LAND DIVISION

FAX (808) 594-1145  
2003 OCT 20 A 9 33

PHONE (808) 594-1184



DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
711 KAPOLAHU BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

HRD03/522

October 16, 2003

Dierdre S. Mamiya  
Acting Administrator  
Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, HI 96809

RE: CDUA Application, Chandu Duke Heffner, TMK 5-8-01:09

Dear Ms. Mamiya,

OHA is in receipt of your July 29, 2003 letter requesting comments on the above referenced project. We apologize for our late response and offer the following comments.

**Cultural Impact Assessment**

The Draft Environmental Assessment does not include a Cultural Assessment pursuant to Act 50 HSL 2000, despite the discussion of the law and its intent, which is included in the EA.

OHA beneficiaries have stated that they have used the jeep road upon which the improvements were made to access Keawe'ula Bay prior to it being closed by the current landowner. The people of Kohala still practice their subsistence gathering rights at Keawe'ula, and these have been abridge by Ms. Heffner's actions, which include gating the jeep road. OHA requests that a permit not be given until a full cultural assessment is done, and until OHA has had time to review the document.

**Archaeological Assessment**

In their letter of September 19, 2003, the State Historic Preservation Division has recommended that "all action on pending permits be deferred" until their office has had a chance to review an archaeological inventory that meets current standards, and to assess any adverse effects to historic sites that may have occurred while building the road. OHA concurs with the SHPD recommendation.

Thank you for this opportunity to comment. If you have further questions, please contact Pua Aiu at 594-1931 or e-mail her at [paiu@oha.org](mailto:paiu@oha.org).

Sincerely,

Peter L. Yee  
Director  
Nationhood and Native Rights

cc: Mr. Perry White  
Planning Solutions, Inc.  
1210 Auahui St., Ste 221  
Honolulu, HI 96814



**P L A N N I N G  
S O L U T I O N S**

210 Ward Avenue, Ward Plaza 330  
Honolulu, HI 96814



November 7, 2003

Peter L. Yee, Director  
Nationhood and Native Rights  
State of Hawai'i Office of Hawaiian Affairs  
711 Kapi'olani Boulevard, Suite 500  
Honolulu, Hawai'i 96813

**Subject: Draft Environmental Assessment (DEA): CD00A HA-3148 (Board Permit) Chandi  
Duke Heffner Improvements to Existing Jeep Road Kheena 2nd, North Kohala  
District, County of Hawai'i TMK: (3) 5-8-1-9**

Dear Mr. Yee:

Thank you for your October 16, 2003 letter commenting on the *Draft Environmental Assessment (DEA)* for after-the-fact approval for improvements to an existing jeep road on Ms. Chandi Heffner's property. We appreciate the time you and your staff spent reviewing the document and providing written comments. Item-by-item responses to your comments (reproduced for your convenience in italics before each response) are provided below.

Your letter acknowledges your "late response" provided after the September 22, 2003 deadline for comments on this CDUA. While ordinarily a response is not required to comments received or postmarked after the thirty-day review period, we acknowledge the time and effort you have spent reviewing the DEA and your concerns regarding a cultural impact assessment and archaeological assessment, and therefore respond below. We also provide this response according to DLNR's instruction that your letter was forwarded to us for our "response and records." While this response is provided to address your concerns, it is also provided without waiver of Applicant's belief that no response is required by the Hawai'i Administrative Rules.

**(1) Cultural Impact Assessment**

*The Draft Environmental Assessment does not include a Cultural Assessment pursuant to Act 50 HSL 2000, despite the discussion of the law and its intent, which is included in the EA. OHA beneficiaries have stated that they have used the jeep road upon which the improvements were made to access Keane'ula Bay prior to it being closed by the current landowner. The people of Kohala still practice their subsistence gathering rights at Keane'ula, and these have been abridged (sic) by Ms. Heffner's actions, which include gating the jeep road. OHA requests that a permit not be given until a full cultural assessment is done, and until OHA has had time to review the document.*

**Response:** The gate across the mauka-makai jeep road is not part of the action that is being considered in this environmental assessment, and the gate is not in the Conservation District. As discussed in Section 3.7 of the EA, the Applicant "... does not dispute shoreline access via boat or along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law."

In response to OHA's request for a full cultural assessment, the Final EA for the actions covered by the after-the-fact Conservation District Use Permit application has been modified to include a more

Page 2  
Mr. Peter Yee  
November 7, 2003

formal Cultural Impact Assessment as an appendix to account for the possibility that Act 50 may be construed to require it. The Cultural Impact Assessment is enclosed here for your review.

**(2) Archaeological Assessment**

*In their letter of September 19, 2003, the State Historic Preservation Division has recommended that "all action on pending permits be deferred" until their office has had a chance to review an archaeological inventory that meets current standards, and to assess any adverse effects to historic sites that may have occurred while building the road. OHA concurs with the SHPD recommendation.*

**Response:** An archaeological assessment survey report is enclosed and is included in the Final Environmental Assessment. Its scope has been coordinated with the State Historic Preservation Division to insure that it addresses the concerns expressed in its September 19, 2003, letter. The survey documents that there have been no significant adverse effects to historic sites caused by the project for which this after-the-fact permit is sought. Deferral will not preserve or protect any sites or graves.

Sincerely,

Peter J. White

Enclosure

- (1) Cultural Impact Assessment → see Appendix B
- (2) Archaeological Assessment Survey → see Appendix A

cc: DLNR, Land Division  
Chandi Duke Heffner  
Lisa Bail, Goodwill Anderson Quinn & Stifel  
Paul H. Rosendahl

**APPENDIX A: ARCHAEOLOGICAL ASSESSMENT SURVEY**



**Paul H. Rosendahl, Ph.D., Inc.**

*Archaeological • Historical • Cultural Resource Management Studies & Services*  
224 Waiānuenu Avenue • Hilo, Hawai'i 96720 • (808) 969-1763 • FAX (808) 961-6998  
P.O. Box 23305 • G.M.F., Guam 96921 • (671) 472-3117 • FAX (671) 472-3131

PHRI Report 2366-110303

November 6, 2003

Lisa A. Bail, Esquire  
Goodsill, Anderson, Quinn & Stifel  
1099 Alakea Street, Suite 1800  
Honolulu, Hawai'i 96813

Via Email  
lbail@goodsill.com

Subject: Archaeological Assessment Survey  
"After the Fact" CDUA Project (CDUA-HA-3148)  
Land of Kehena 2<sup>nd</sup>, North Kohala District  
Island of Hawai'i (TMK:3-5-8-001:009)

Dear Ms. Bail:

At your request and on behalf of your client, Chandi Duke Heffner/Keawe'ula LLC, Paul H. Rosendahl, Ph.D., Inc. (PHRI) recently conducted an archaeological assessment survey related to the "After the Fact" CDUA Project in the Land of Kehena 2<sup>nd</sup>, North Kohala District, Island of Hawai'i (TMK:3-5-8-001:009). This survey was carried out as part of the archaeological consultant services being provided in connection with a pending Conservation District Use Application (CDUA-HA-3148).

### **General Background**

#### General Project Area Description

The area that is the subject of this report is a portion of Parcel 09 of TMK: 3-5-8-01. That parcel consists of approximately 166 acres in the seaward portion of the Land of Kehena 2<sup>nd</sup>, in the District of North Kohala on the leeward side of the Island of Hawai'i. (See Figure 1, at end.) With State Highway 270 (Akoni Pule Highway) defining the eastern parcel boundary; the parcel extends west from the highway to the sea. The Kehena 1<sup>st</sup>/Kehena 2<sup>nd</sup> and the Puanui/Kehena 2<sup>nd</sup> boundaries respectively define the northern and southern boundaries of the parcel. Elevation ranges from 0 to c. 213 feet above mean sea level. Sato et al. (1973) classify the soils in the Kehena 2<sup>nd</sup> lowlands as extremely stony, very fine sandy loams. Terrain within the overall area is generally characterized by slopes between 0-20%, with steeper slopes descending the prominent ridges and range from 20-60%. The parcel was previously used by Parker Ranch for cattle pasture, and this has likely affected the present vegetation pattern. The area has also been burned over by fire at least once in recent history, as evidenced by charred trees, bulldozer-cut roads, push piles, and various other disturbances apparently resulting from fire-suppression activities.

The landscape within the parcel is strikingly dry, windswept, and arid. Mean annual rainfall is 10 inches, and the leeward coastal location is dominated by the prevailing northeast trade winds referred. These elements have combined to create a barren and deflated landscape where thin soil layers are interspersed between the predominantly rocky ground surfaces. Several dry

gulches representing intermittent stream courses are present, the largest of which bisects the parcel and terminates at Keawanui Bay.

Grasses dominate the vegetation over most of the parcel. The immediate coastal margin, however, consists of a dense, closed canopy of *kiawe* (*Prosopis pallida*) and *koa-haole* (*Leucaena glauca*). The shoreline is formed largely by two shallow embayments, with Keawanui Bay located in the central and southern portion of Kehena 2<sup>nd</sup>, and Keaweula Bay to the north. While the shoreline along the bays has several inlets with small cobble and boulder beaches, much of the shoreline consists of exposed *pāhoehoe* ledges that form steep sea cliffs.

The parcel incorporates two State land use designations, conservation and agricultural. According to the State, the boundary between the two is the inland edge of the coastal jeep road which is situated roughly parallel to the shoreline and along the general location of the 40-ft elevation contour, with the Conservation District land extending seaward (southwest) to the shoreline and the Agricultural District extending inland (northeast) to State Highway 270 (Akoni Pule Highway). With the exception of the private access road that leads from the highway to the coastal jeep road and is thus located within the Agricultural District land, the specific project area of the present archaeological assessment survey was restricted to the Conservation District land—i.e., the area from the inland edge of (and including) the existing coastal jeep road to the shoreline (see Figure 1, at end).

#### Previous Archaeological Work

Portions of the parcel were surveyed for archaeological sites during six earlier studies. In 1924, Emory (n.d.) completed an extensive survey of the entire Kohala area and noted several coastal sites, complexes including the one at Keawanui Bay. His survey was a cursory examination, however, and did not provide detailed descriptions of the features. In 1964, Soehren carried out a reconnaissance survey for the proposed Mahukona-Kawaihae Highway (subsequently designated as Akoni Pule Highway). Soehren identified one site (F5-1) with several cairns tentatively identified as graves in the seaward portion of Kehena 2<sup>nd</sup>, which was later designated SIHP Site 2391 during the 1972 State-wide Inventory of Historic Places (SIHP).

During his survey of coastal leeward Kohala, Bonk (1968) identified three more sites within the parcel. Using the Bishop Museum's original site numbering system, the three sites were designated F5-2, F5-3, and F5-6. Site F5-2 was described as a significant prehistoric settlement at Keawanui Bay, containing at least two canoe sheds, numerous house sites, and seven large salt pans. Site F5-3 was described as a cleared area well-paved with coral and waterworn pebbles situated c. 50 feet from the existing coastal jeep road. Bonk also identified a large area (Site F5-6) with numerous house sites and other structures—including an apparent canoe launching ramp and associated canoe shed—on the point of land separating Keawanui and Keaweula Bays.

Two related studies were undertaken by Bishop Museum on a series of leeward Kohala parcels that included the parcel. The earlier of the two studies (Sinoto 1979) was a reconnaissance conducted prior to a more formal archaeological survey (Schilt and Sinoto 1980). The latter survey identified twenty-three sites and site clusters, the majority of which were situated near the coast.

#### **Archaeological Assessment Survey (October 29, 2003)**

##### Background

The parcel was acquired by the present owner in 1999. In that same year, the owner improved both the private access road situated within the Agricultural District land and portions of the existing coastal jeep road by the addition of coarse gravel. In response to allegations made to the Department of Land and Natural Resources (DLNR) by members of the public that the road improvements work had involved unpermitted bulldozing within the Conservation District resulting in the destruction of significant archaeological sites and other

environmental violations, DLNR-Division of Conservation and Resources Enforcement (DOCARE) conducted an investigation (DOCARE Report No. HA-01-207). Mr. Ed Lewis of DOCARE conducted a site inspection of the affected area on October 20, 2000, during which he found no evidence that any archaeological features had been disturbed.

Subsequently, on November 8, 2000, Mr. Lewis returned to the same area with Mr. Marc Smith, the then-current State Historic Preservation Division (SHPD) staff archaeologist based on Hawai'i Island, and together they conducted a second site inspection for the specific purpose of identifying any damage to archaeological remains. According to the DOCARE report (Report No. HA-01-207), Mr. Smith detected no damage to any archaeological site. While Mr. Lewis explicitly anticipated eventual receipt of a written report from Mr. Smith, no such report has been located—despite several requests to SHPD, and SHPD has recently indicated its conclusion that Mr. Smith may not have ever produced or submitted a written report on the site inspection prior to his subsequent resignation from SHPD and relocation to the mainland (SHPD letter dated October 28, 2003 to L.A. Bail, Esq.).

#### Scope of Work

The basic objectives of an archaeological assessment survey are to determine the following: (a) the general nature, extent, and potential significance of any archaeological-historical remains that might be present, (b) the historic preservation implications of any such remains for the feasibility of any proposed future development; and (c) the general scope of work and level of effort for any subsequent archaeological-historic preservation work that might be appropriate and/or required. The ultimate objective of any such subsequent work would be to comply with all current historic preservation requirements of the Hawai'i State Historic Preservation Division (SHPD) and the Hawai'i County Planning Department (HCPD).

More specifically, the purpose of the assessment survey undertaken for the "After the Fact" CDUA Project in the Land of Kehena 2<sup>nd</sup> was to determine whether recent land alteration activities—i.e., improvements to the existing coastal jeep road, and associated erosion control and tree removal—had damaged or destroyed any of the archaeological sites and features known to be present within the Conservation District land portion of the parcel. Based on discussions with Ms. Lisa A. Bail and Mr. Bruce Lamon of the law firm of Goodsill, Anderson, Quinn & Stifel, a preliminary review of prior archaeological work done within the subject project area, and familiarity with both the general project area and the current regulatory review requirements of the SHPD and the Hawai'i County Planning Department, the following scope of work was determined to be appropriate for the proposed assessment survey:

1. Conduct appropriate background review and research;
2. Mobilization—including all field work preparations, field crew travel time, and demobilization;
3. Conduct variable intensity, sample coverage, pedestrian and vehicular surface reconnaissance fieldwork of the portions of the project area in which the various jeep road improvements had been carried out;
4. Conduct post-field analysis of field and other data; Prepare a written assessment survey report—including description and evaluation of assessment survey findings, and a scope of work and for any additional archaeological work that might be required by various regulatory agencies in connection with any development; and
5. Coordinate and consult with client, client representatives, agency staff, etc. (as appropriate and/or required).

### Field Methods

Archaeological assessment survey fieldwork was conducted on October 29, 2003 by PHRI Principal Archaeologist Paul H. Rosendahl, Ph.D. and PHRI Supervisory Archaeologist Alan B. Corbin, M.A. Dr. Rosendahl and Mr. Corbin were accompanied by Perry J. White and Charles L. Morgan of the firm of Planning Solutions, Inc. The owner's caretaker, Mr. Lewis Rincon, provided both access to the property and information relating his many years of association with the property. Pedestrian inspection of the existing coastal jeep road and its immediate vicinity within the Conservation District land was carried out by physically walking the entire route of the coastal jeep road from the north boundary of the property to the south boundary.

### Findings

With the single possible exception noted below, the assessment survey fieldwork did not find physical damage of any kind to existing archaeological sites or features resulting from the jeep road improvements work done in 1999 within either the Conservation District or Agricultural District lands of the parcel. The single possible exception noted above involved the apparent deposition of cobble and small boulders atop a corner of a previously unidentified small archaeological feature located immediately adjacent to and seaward of the existing coastal jeep road at the north boundary of the parcel. It appeared that in the course of the construction of a low soil and stone berm across the jeep road at the property boundary, the operating machine—most likely a small front-end loader—either disturbed or deposited a small pile of cobble and small boulders atop the inland edge of a previously unidentified small archaeological feature. Closer archaeological inspection, probably including limited removal of rock material, would be needed to determine more accurately the specific nature of the disturbance; in any case, the extent of the disturbance is both small and restricted, and the physical integrity of the structural feature remains basically intact.

### Conclusion

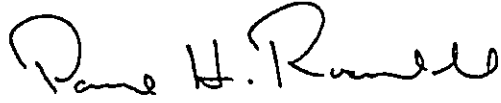
Based on the negative findings of the assessment survey fieldwork, it is my professional opinion that—with the one minor possible exception noted above—the jeep road improvements and related activities carried out in 1999 by the current property owner did not damage or destroy any significant archaeological sites and features. This assessment confirms the earlier negative findings of the initial DOCARE site inspection conducted on October 20, 2000 and the subsequent combined DOCARE and SHPD site inspection conducted on November 8, 2000.

With regard to any additional archaeological work, it is my professional opinion that the only appropriate work possibly needed would be to conduct an adequate inventory survey of the Agricultural District land—i.e., that portion of the parcel inland of the existing coastal jeep road which is Conservation District boundary before undertaking any new uses of the Agricultural District land which involve disturbance of soil and rock. This opinion differs from that expressed by SHPD in its review letter to Mr. Perry White dated September 19, 2003 responding to the Draft Environmental Assessment for Road Improvements (Planning Solutions 2003) in which SHPD recommended no action on the pending CDUA (CDUA-HA-3148) until an inventory survey report covering the entire parcel and meeting current SHPD standards had been reviewed and approved.

My opinion is based on the fact that no additional work is proposed by the current property owner in either the Agricultural or Conservation District lands and the only immediate historic preservation issue relating to the Conservation District land is whether or not the jeep road improvements work done in 1999 damaged any of the significant archaeological sites, and this issue has been resolved in the negative by both the two earlier DOCARE site inspections conducted in late 2000 and our own recent assessment survey fieldwork. This opinion was discussed on October 6, 2003 with Dr. Pat McCoy, SHPD Staff Archaeologist for Hawai'i Island, and Dr. McCoy concurred (pers. comm.).

Thank you for the opportunity to provide you with archaeological and historic preservation services. Should you have any questions, or need any further information, please contact me at my Hilo office (808-969-1769).

Sincerely yours,

A handwritten signature in cursive script that reads "Paul H. Rosendahl". The signature is written in dark ink and is positioned above the printed name.

Paul H. Rosendahl, Ph.D.  
President and Principal Archaeologist



**References Cited**

**Bonk, W.J.**

- 1968 The Archaeology of North and South Kohala: from the Ahupua'a of Kawaihae to the Ahupua'a of Upolu: Coastal Archaeology Surface Survey. *Hawaii State Archaeological Journal* 68-3. Division of State Parks, Department of Land and Natural Resources

**Emory, K.P.**

- n.d. Conditions for Ethnological Field Work in Kohala and Hamakua, Hawaii. Manuscript on file at Bishop Museum. (1924)

**Planning Solutions (Honolulu)**

- 2003 Draft Environmental Assessment: Improvements to Existing Jeep Road at Kehena 2<sup>nd</sup>, North Kohala, Hawai'i. Prepared for Ms. Chandi Duke Heffner/Keawe'ula, LLC. (June)

**Sato, H. H., W. Ikeda, R. Paeth, R. Smythe, and M. Takehiro, Jr.**

- 1973 *Soil Survey of the Island of Hawaii, State of Hawaii*. U.S. Department of Agriculture, Soil Conservation Service and University of Hawaii Agricultural Experiment Station. Washington, D.C.: Government Printing Office.

**Schilt, R., and A. Sinoto**

- 1980 Limited Phase I Archaeological Survey of Mahukona Properties, North Kohala, Island of Hawai'i. Report Ms.018180; Department of Anthropology, B.P. Bishop Museum (Honolulu). Prepared for Belt, Collins & Associates (Honolulu). (January)

**Sinoto, A.**

- 1979 Archaeological Reconnaissance Survey of Mahukona Properties, North Kohala District, Island of Hawai'i. Manuscript report; Department of Anthropology, B.P. Bishop Museum (Honolulu). Prepared for Belt, Collins & Associates (Honolulu). (August)

**Soehren, L.J.**

- 1964 An Archaeological Reconnaissance of the Mahukona-Kawaihae Highway, Kohala, Hawaii. Manuscript report, B.P. Bishop Museum, Honolulu.

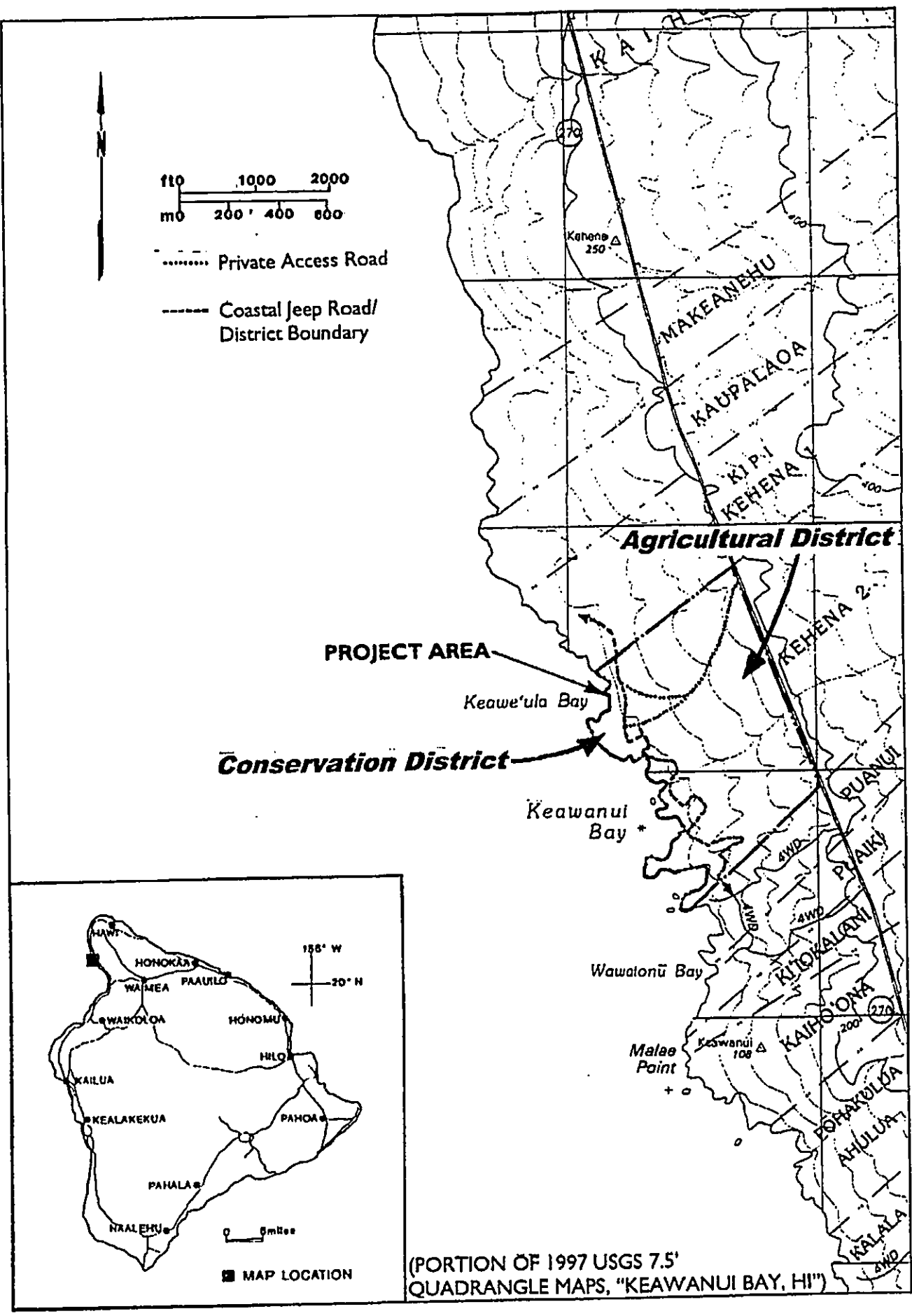


Figure 1. Project Area and Location Map.

## APPENDIX B: CULTURAL IMPACT ASSESSMENT



Paul H. Rosendahl, Ph.D., Inc.

Archaeological • Historical • Cultural Resource Management Studies & Services

224 Waiānuenuē Avenue • Hilo, Hawai'i 96720 • (808) 969-1763 • FAX (808) 961-6998  
P.O. Box 23305 • G.M.F., Guam 96921 • (671) 472-3117 • FAX (671) 472-3131

Letter 2966-110503

November 6, 2003

Perry J. White  
Planning Solutions, Inc.  
210 Ward Ave.  
Ward Plaza, Suite 330  
Honolulu, HI 96814

Subject: Cultural Impact Assessment for Draft Environmental Assessment  
(DEA)

CDUA HA-9148 (Board Permit) Chandi Duke Heffner  
Improvements to Existing Jeep Road Kehena 2<sup>nd</sup>  
North Kohala District, County of Hawaii TMK: (S)5-8-1:9

Dear Mr. White:

On October 29, 2003, the Department of Land and Natural Resources, Office of Conservation and Coastal Lands, forwarded to you a letter from the Office of Hawaiian Affairs (OHA) dated October 16, 2003, commenting on the above-referenced Draft Environmental Assessment. The letter acknowledges that it was sent after the September 22, 2003, deadline for comments. In that letter, OHA stated, "OHA requests that a permit not be given until a full cultural assessment is done, and until OHA has had time to review the document." Notwithstanding the lateness of OHA's request, you asked that we investigate its claims and prepare a letter addressing them.

The purpose of this cultural impact assessment is to comply with the requirements of *Chapter 348 (Haw. Rev. Stat.)*, as amended by H.B. No.2895 H.D. 1 of the Hawai'i State Legislature (2000) and approved by the Governor as *Act 50* on April 26, 2000, and which among other things requires that environmental impact statements identify and assess the potential effects of any proposed project upon the "...cultural practices of the community and State...." *Chapter 348 (Haw.Rev.Stat.)* was amended by the State legislature because of the perceived need to assure that the environmental review process explicitly addressed the potential effects of any proposed project upon "...Hawai'i's culture, and traditional and customary rights." Guidelines previously prepared and adopted by the State Office of Environmental Quality Control (OEQC) in 1997 provide compliance guidance. Both *Act 50* and the *OEQC Guidelines for Assessing Cultural Impacts* mandate consideration of all the different groups comprising the multi-ethnic community of Hawai'i. This inclusiveness, however, is generally understated, and

the emphasis is clearly meant to be primarily upon aspects of Native Hawaiian culture—particularly traditional and customary access and use rights.

The scope of work and methodology for this cultural impact assessment is based on the general assumption that the level of study effort appropriate in any project-specific context should involve the consideration of several factors. The most relevant of these are: (a) the probable number and significance of known or suspected cultural properties, features, practices, or beliefs within or associated with the specific project area; (b) the potential number of individuals (potential informants) with cultural knowledge of the specific project area; (c) the availability of historical and cultural information on the specific project area or immediately adjacent lands; (d) the physical size, configuration, and natural and human modification history of the specific project area; and (e) the potential effects of the project on known or expected cultural properties, features, practices, or beliefs within or related to the specific project area. Consideration of these factors within the specific nature and context of the after-the-fact Conservation District Use Permit Application (CDUA) which this report supports indicates that the most appropriate level of study for an adequate assessment of potential cultural impacts is a limited or abbreviated assessment study.

The Applicant's CDUA seeks "after-the-fact" approval for improvements to the portions of the jeep road that are within the Conservation District and associated erosion control and tree removal improvements within the Conservation District. For reasons outlined below, we believe that the work covered by the application did not adversely affect any cultural practices.

The grading and placement of gravel within the Conservation District occurred along the existing coastal jeep road. There were no Native Hawaiian traditional cultural practices that took place within the boundaries of the pre-existing road. The improvements to the jeep road, which are the subject of the after-the-fact application, did not restrict access to any gathering areas, but instead may have actually facilitated access to any such adjacent areas. The CDUA in Section 3.7 states that the Applicant "does not dispute access via boat of along the shoreline itself as allowed by law. The Applicant also does not dispute other access rights allowed by law."

Although a soil and rock berm was created across the coastal jeep road on the northern property boundary to restrict vehicle access, the berm does not restrict pedestrian access as would typically have been used in the pursuit of any traditional and cultural practices. Furthermore, as observed during my recent visit to the property on October 29, 2003, the berm now appears to be ineffective in preventing vehicular access to the property.

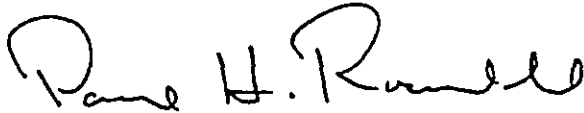
The CDUA also seeks a permit for removal of fallen and dead *kiawe* trees to prevent the outbreak of brush fires during times of drought. *Kiawe* trees are a non-native species introduced to the Kohala coast of Island of Hawaii early in the 20<sup>th</sup> century and could not have been the subject of any traditional and cultural Hawaiian practices.

Contemporary cultural practices on the parcel that includes the area covered by the CDUA have been explored during depositions taken of plaintiffs in the matter entitled *Malama Na Kahakai et al. v. Heffner*, Civil No. 01-1-0059 (Third Circuit Court). Contemporary practices at Keawe'ula include fishing and crabbing. 'Opihi, sea urchins, limu, and lobster are gathered. Both *alae*, a white rock ground for medicine, and salt are

collected from the shoreline. None of the plaintiffs described contemporary gathering practices as taking place within the roadway that is the subject of this after-the-fact application. Furthermore, pedestrian access to the property is not restricted, and therefore any legitimate traditional gathering practices by Native Hawaiian cultural practitioners have not been restricted.

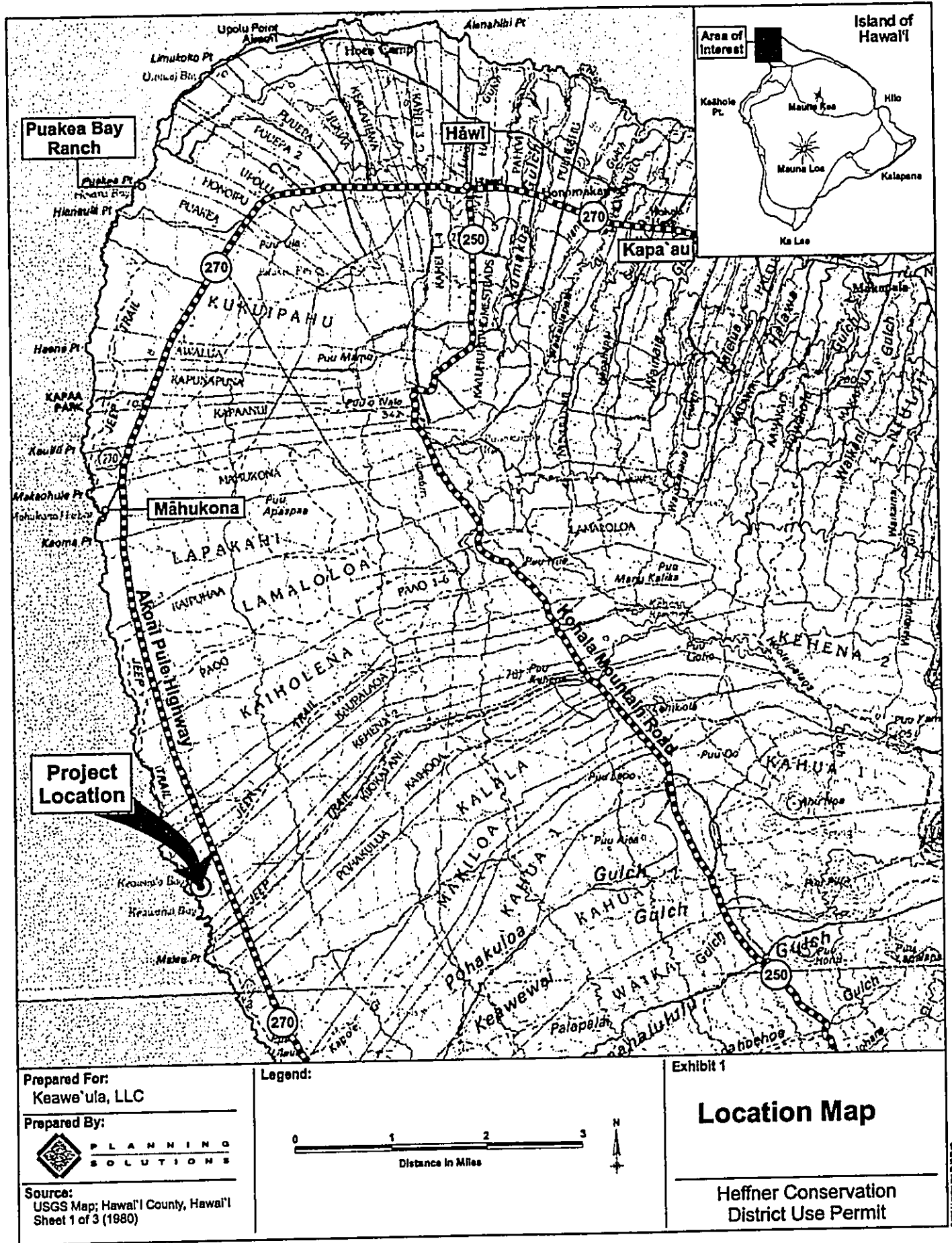
In summary—based on the fact that the improvements were limited to an existing modern era jeep road, that the affected trees were both dead and of a species not introduced to the Island of Hawai'i until the early 20<sup>th</sup> century, and on the lack of significant damage to any archaeological sites or features, it is my opinion that there is no "significant effect" or any adverse impact upon cultural practices of the community and State which would warrant further assessment, investigation, or mitigation. Within the boundaries of the CDUA project area, there is no indication of use for traditional cultural purposes by either Native Hawaiian cultural practitioners or individuals of any other cultural affiliation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul H. Rosendahl". The signature is written in a cursive style with a large initial "P" and "R".


Paul H. Rosendahl  
President and Principal Archaeologist

**EXHIBIT 1: LOCATION MAP**



Prepared For:  
Keawe'ula, LLC

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Prepared By:  

**PLANNING SOLUTIONS**

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Source:  
USGS Map; Hawai'i County, Hawai'i  
Sheet 1 of 3 (1980)

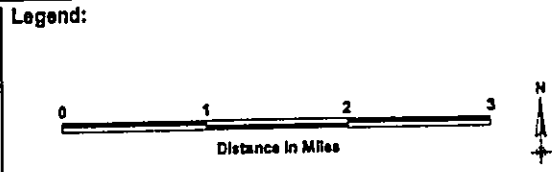


Exhibit 1

## Location Map

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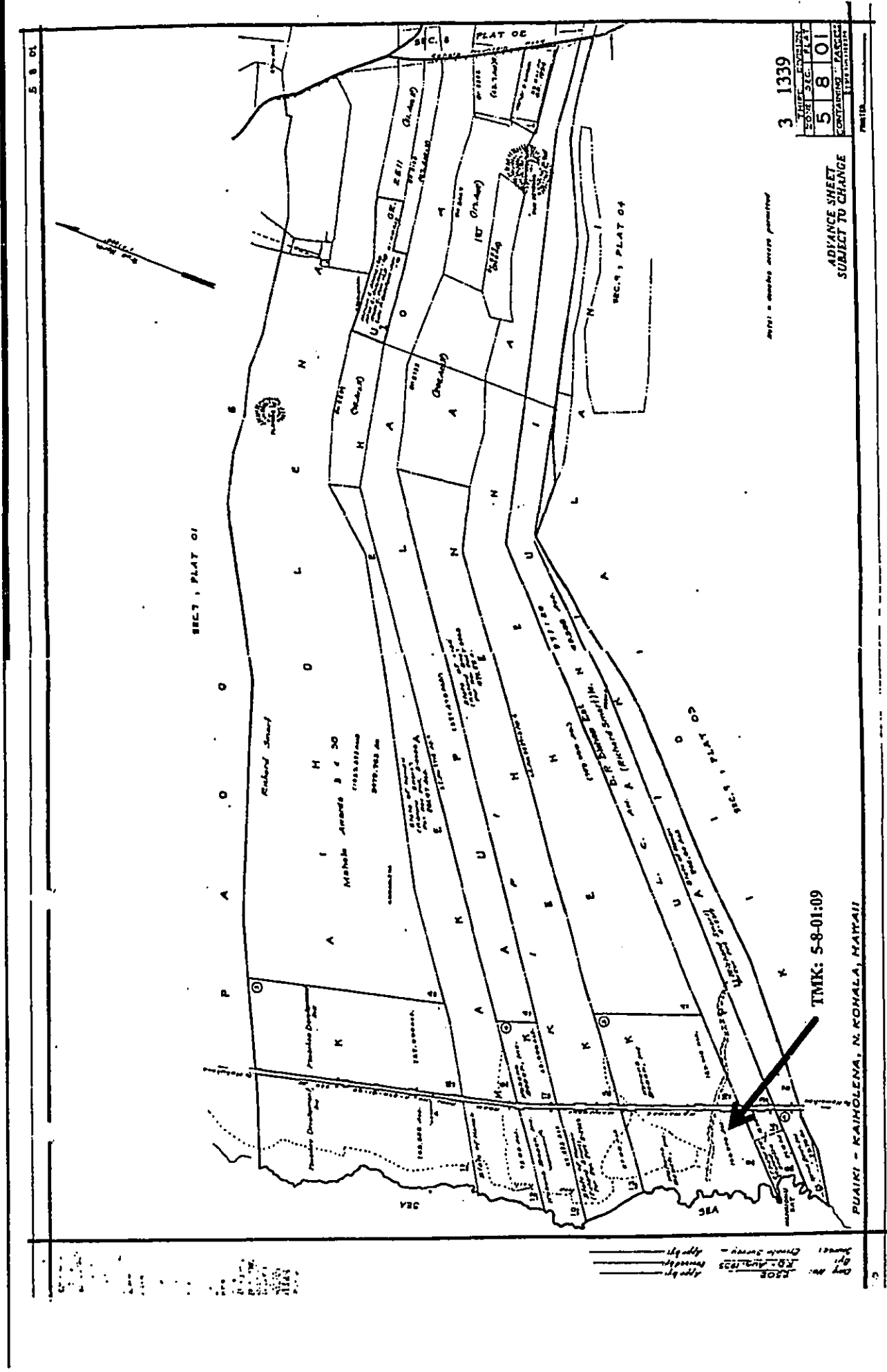
Heffner Conservation  
District Use Permit



**EXHIBIT 2: TAX MAP**

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 By: R.O. 100-100  
 App'd: R.O. 100-100  
 Date: 100-100-100  
 Scale: 1" = 100'

**EXHIBIT 3: WARRANTY DEED OF 2002**

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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
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DOCUMENT NO. 2002-014847

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup (XX) To:  
Lisa A. Bail, Esq.  
Goodsill Anderson Quinn & Stifel  
1099 Alakea Street, Suite 1800  
Honolulu, Hawaii 96813

Tax Map Key No.: (3) 5-8-001-009

Total pages: 8

### WARRANTY DEED

THIS Deed is made as of this 23rd day of January, 2002, by CHANDI DUKE HEFFNER, unmarried, hereinafter called the "Grantor," and KEAWE'ULA, LLC, a Hawaii limited liability company, whose address is P.O. Box 6773, Kamuela, Hawaii 96743, hereinafter called the "Grantee."

### WITNESSETH:

That for Ten Dollars (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as tenant in severalty, in fee simple:

All of that certain real property more particularly described in Exhibit A attached hereto and made a part hereof;

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property described in said Exhibit A in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet required by law to be paid, and except as may be specifically set forth in said Exhibit A; that the Grantor has good right to sell and convey said property, as aforesaid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The Grantee acknowledges the physical condition of the property and other improvements and the personal property (if any) constituting a part of the property described in Exhibit A and accepts same AS IS as of the date hereof, without any representations or warranties whatsoever, either express or implied, by Grantor or any person on behalf of Grantor, as to the condition, state or repair, operating order, safety, structural soundness or fitness thereof for any purpose whatsoever.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, and the Grantee's heirs, devisees, personal representatives, successors, successors in trust and assigns.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees, corporations or other entities and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust, and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents as of the day and year first above written.

  
CHANDI DUKE HEFFNER

"Grantor"

KEAWE'ULA, LLC, a Hawaii limited liability company

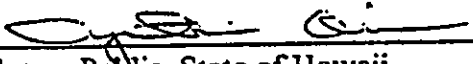
By   
Chandi Duke Heffner  
Member

"Grantee"

STATE OF HAWAII )  
 ) ss:  
CITY AND COUNTY OF Hawaii )

On this 23<sup>rd</sup> day of January, 2007, before me personally appeared CHANDI DUKE HEFFNER, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

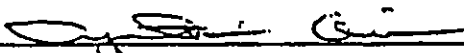
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\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: Cynthia Aiona  
My Commission expires: 01-16-07

STATE OF HAWAII )  
CITY AND COUNTY OF Hawaii ) ss:

On this 23<sup>rd</sup> day of January, 2007, before me personally appeared CHANDI DUKE HEFFNER, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

69

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: Cynthia Aione  
My Commission expires: 01-15-07



## EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7680, Land Commission Award Number 8559-B, Apana 4 to William C. Lunaliilo) situate, lying and being at Kehena 2nd, District of North Kohala, Island and County of Hawaii, State of Hawaii, being PARCEL 16-1, and thus bounded and described:

Beginning at the north corner of this parcel of land, on the southwesterly side of Kawaihae-Mahukona Road, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System (Zone 1) being 470,208.28 feet north and 367,933.82 feet east, and running azimuths measured clockwise from true south:

1.	338°	13'	264.11	feet along the southwesterly side of Kawaihae-Mahukona Road;
2.	68°	13'	20.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
3.	338°	13'	200.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
4.	248°	13'	20.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
5.	338°	13'	800.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
6.	68°	13'	10.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
7.	338°	13'	200.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
8.	248°	13'	10.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
9.	338°	13'	600.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
10.	68°	13'	30.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
11.	338°	13'	200.00	feet along the southwesterly side of Kawaihae-Mahukona Road;
12.	248°	13'	10.00	feet along the southwesterly side of Kawaihae-Mahukona Road;

- |   |      |     |     |          |  |
|---|------|-----|-----|----------|--|
| 13.   | 338° | 13' |     | 450.00   | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 14.   | 68°  | 13' |     | 10.00    | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 15.   | 338° | 13' |     | 250.00   | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 16.   | 248° | 13' |     | 20.00    | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 17.   | 338° | 13' |     | 250.00   | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 18.   | 248° | 13' |     | 10.00    | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 19.   | 338° | 13' |     | 54.83    | feet along the southwesterly side of Kawaihae-Mahukona Road;   |
| 20.   | 45°  | 08' | 20" | 2,448.00 | feet along L.C. Aw. 9971, Apana 10 to W. P. Leleiohoku, to highwater mark at seashore, passing over a pipe in concrete marked K-1 at 2,138.12 feet;                                      |
| Thence following along highwater mark at seashore, the direct azimuth and distance being: |      |     |     |          |  |
| 21.   | 158° | 37' | 35" | 3,615.76 | feet;  |
| 22.   | 232° | 49' | 30" | 2,309.00 | feet along the Government land of Kehena 1st, passing over a pipe in concrete marked 201 at 79.57 feet, to the point of beginning and containing an area of 166.046 acres, more or less. |

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : MAHOLA, INC., Successor General Partner of Mahukona Properties, a Hawaii limited partnership

GRANTEE : CHANDI DUKE HEFFNER, unmarried, as Tenant in Severalty

DATED : April 21, 1999

RECORDED : Document No. 99-062894

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
3. Such trails that may exist crossing these premises.
4. Restriction of rights of vehicle access into and from Kawaihae-Mahukona Road, Project No. A-270-01-62, except where such access is permitted, as shown on Tax Map.
5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

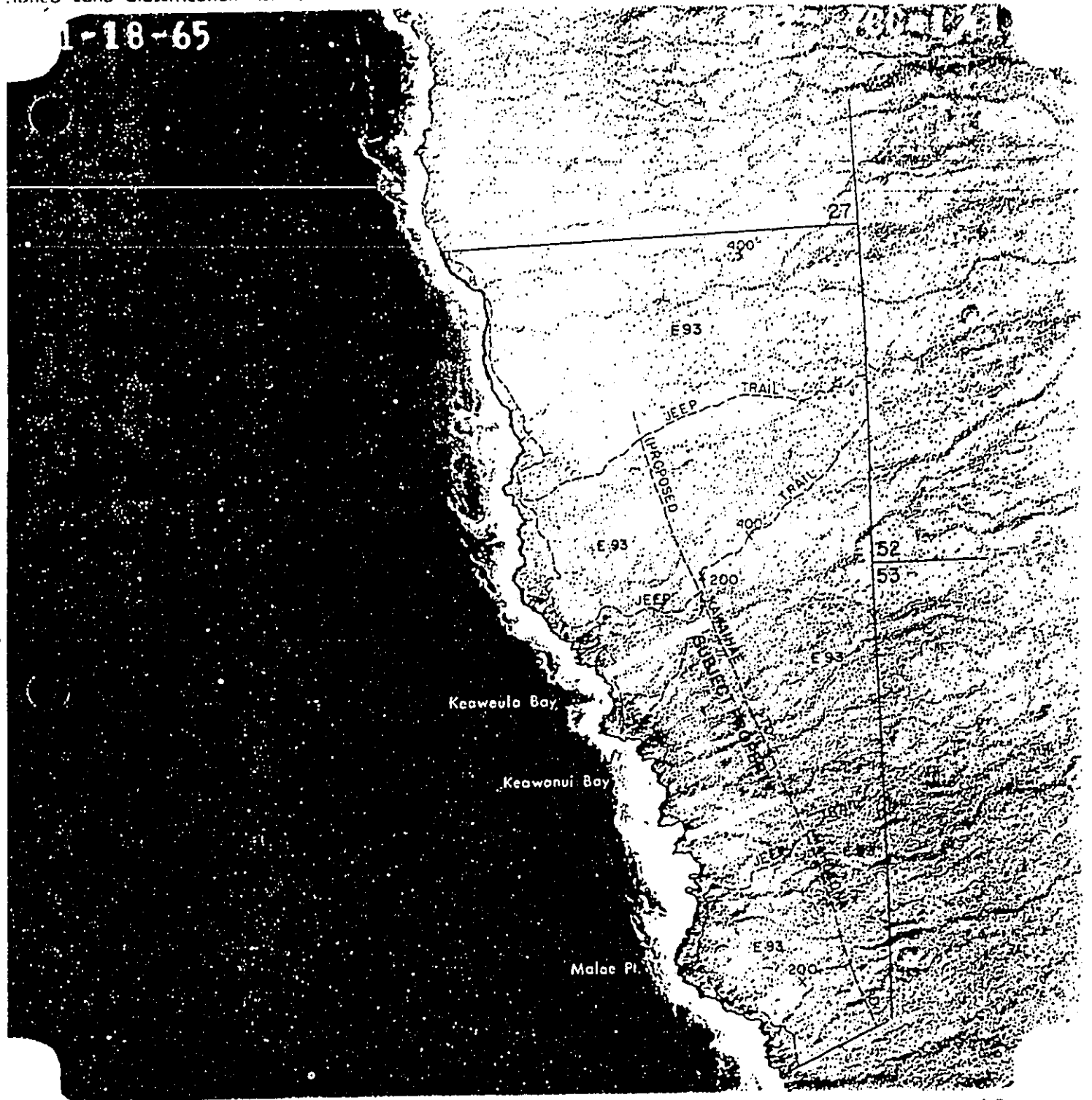
**EXHIBIT 4: 1963-64 LAND CLASSIFICATION MAP**

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Revised Land Classification - Island of Hawaii

Map No. 28

1-18-65



Field mapped 1963-64

**LAND CLASSIFICATION SYMBOL:**

Master Productivity Rating  
 Land Type, Number and letter "i" if irrigated;  
 number only if unirrigated. (See sections of  
 text where land types are defined and rated by  
 selected uses.)



U.S.G.S. Quad. Reference: Keawonui Bay

Approx. Scale (ft./in.): 12,200 - Ground Elevation  
6

Aerial Photographs: U.S. Dept. of Agric., A.S.C.S.


LAND STUDY BUREAU, University of Hawaii

L. S. Bulletin No. 6  
November 1965

## DETAILED LAND CLASSIFICATION - ISLAND OF HAWAII

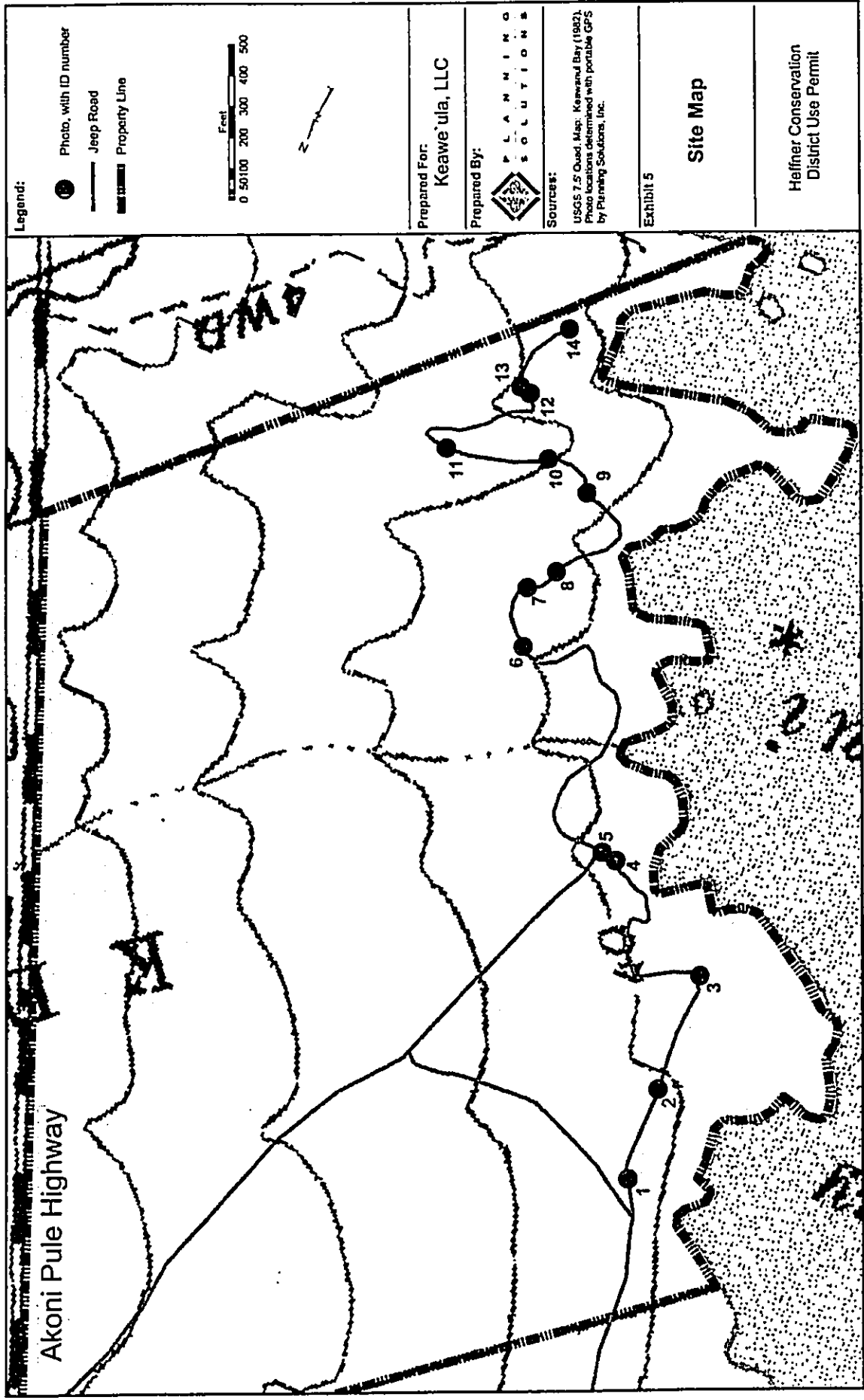
H. L. Baker, Director and Land Economist  
T. Sahara, Land Classification Specialist  
T. M. Ryan, Jr. Land Classification Specialist  
E. T. Murabayashi, Jr. Land Classification Specialist  
A. Y. Ching, Jr. Land Classification Specialist  
F. N. Fujimura, Jr. Specialist in Cartography  
I. Kuwahara, Jr. Specialist in Geography

LAND STUDY BUREAU  
University of Hawaii  
Honolulu, Hawaii



**EXHIBIT 5: SITE MAP AND PHOTOGRAPHS**

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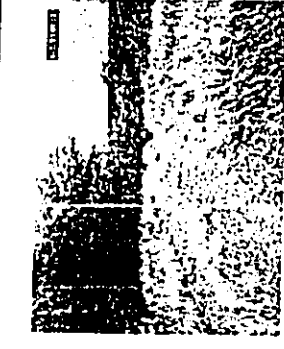


Site Map

Exhibit 5

Helfner Conservation  
District Use Permit





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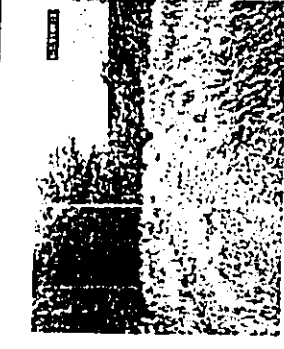
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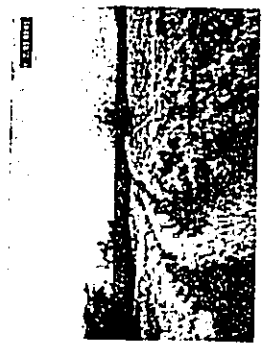
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Exhibit 5  
**Site Photographs**  
 Prepared For: Keawe`ula, LLC  
 Prepared By: 

Heifner Conservation  
 District Use Permit

**EXHIBIT 6: SMA EXEMPTION LETTER**

Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

September 22, 1999

Mrs. Chandi Duke Heffner  
c/o Wendelin L. Campbell  
Campbell & Campbell, Attorneys-at-Law  
Haina Cottage - Suite 5  
65-1235 -A- Opelo Road  
Kamuela, HI 96743

Dear Mrs. Heffner:

SMA (Special Management Area) Use Permit  
Assessment Application (SMAA 99-27)  
Applicant: Chandi Duke Heffner  
Request: To Establish Pasturage for Donkeys, Other Ranch Animals,  
& Animal Husbandry w/ Accessory Improvements  
TMK: 5-8-01: 09, Kehena 2d, N. Kohala, Hawaii Island

**Declaration of Exemption from SMA Rules.** Pursuant to SMA Rule 9-4(10)C, it is the Director's determination that the proposed donkey pasturage with accessory improvements and the improvements to the existing jeep road are exempt from the definition of "development." Therefore, in accordance with Rule 9-10G, the Planning Director declares that the proposal is exempt from the SMA rules.

**Agricultural Use.** Consistent with Rule 9-4(10)B(viii), the proposed animal pasturage and animal husbandry use with accessory improvements are exempt. This SMA rule provides for the exemption of *animal husbandry and/or other agricultural purposes*. On-site (Private) Jeep Road: Repair or Maintenance. The primary and accessory improvements to the existing jeep road are consistent with Rule 9-4(10)B(ii) or (vi). These improvements are exempt by this rule because it constitutes either the repair or maintenance of a road or of an existing use, the unpaved jeep trail.

SEP 23 1999

Mrs. Chandi Duke Heffner  
Page 2  
September 22, 1999

Scope of Exemption: Project Improvements or Uses. The SMA exemption is granted for the proposed project improvements consistent with the applicant's description and representations as stated in the SMA assessment application materials, the submitted site plans, and discussions with staff. The SMA exemption is approved for the following improvements or uses:

1. **Perimeter Fencing & 40 feet Shoreline Setback Area.** The purpose of the fencing is for domestic or ranch animal pasturage and animal husbandry. Emplacement of perimeter fencing is approved for parcel 09 along its front property line facing the State Akoni-Pule Highway and along the North and South side property lines from the highway frontage lot line makai to and only until the 40 (forty) feet shoreline setback line.

**Shoreline Setback.** The shoreline setback area is parallel to the parcel's coastline. The side property line fencing is not approved to encroach into the 40 feet shoreline setback area. A shoreline setback variance is required to emplace fencing or any other structure within the 40 feet shoreline setback.

**Zoning Code Requirements.** The maximum height limit of a perimeter boundary fence built at the property line is subject to the following two criteria: a solid wall fence is not to exceed a 6 (six) feet height limit; a "see-through" fence (e.g., one constructed of wire or chain link material) is not to exceed an 8 (eight) feet height limit.

2. Brackish Well Construction
3. Installation of Water Troughs
4. Planting of Shade Trees
5. Accessibility Improvements to the Existing On-site (private) Jeep Road
6. Coastal Shoreline Lateral Access. According to the applicant, lateral shoreline access will be preserved.

Permitted Use: Consistent with Zoning. Because parcel 09 is within the county's SMA zone it is subject to the Hawaii County Planning Commission's SMA Rule 9 regulations and the state Coastal Zone Management laws of Haw. Rev. Stat. Chapter 205A. In addition, according to the County's zoning tax maps, parcel 09 is subject to or split-zoned by two state land use designations: generally, the state zoning boundary line designates a mauka portion of parcel 09 in the state "Agricultural" district and the makai portion is in the state "Conservation" district.

Mrs. Chandi Duke Heffner  
Page 3  
September 22, 1999

This project is a permitted use consistent with the state and county land use criteria as well as SMA Rule 9.


Jurisdictional Authority in SLU: "C" ("Conservation") Districts. The jurisdiction of "C" lands is governed by the State DLNR (Department of Land & Natural Resources). Haw. Rev. Stat. sec. 205-5(a). Where this project is located in parcel 09's State "C" district it may be subject to DLNR's conditional use permitting procedures, the CDUA (Conservation District Use Application). Haw. Admin. R. 13-2-1 (1990). To determine if a State CDUA permit is required, please consult with the below agency.

State of Hawaii - Department of Land & Natural Resources  
Land Management Division - Planning & Technical Services Branch  
P.O. Box 621, Honolulu, HI 96809 Ph: (808) 574-0414  
State Government Offices, Oahu, Toll Free: 974-4000, ext. 4-0414

**Waiver of Shoreline Survey.** According to the applicant's representations, the project's location will be in the mauka portion of the parcel near to the state highway. Proposed holding tank sites nearest to the coastline will be approximately 100 feet (+/-) from the shoreline. Consequently, submission of a shoreline survey is waived pursuant to SMA Rule 9-10B(8) because the project's setback locations will be at a considerable distance from the shoreline, exceeding the minimum 40 feet shoreline setback requirement of Planning Department Rule 11-5(a). Pursuant to Planning Department Rule 11-45(c), submission of a *certified* shoreline survey is waived because of the special or unusual physical circumstances or conditions of the land: the project's setback from the shoreline will exceed Rule 11's mandatory minimum 40 feet shoreline setback requirement; and secondly, the agricultural nature of the proposed use with its low density structures will maintain the parcel's existing open space.

Any questions on this matter can be discussed with staff planner, Earl Lucero.  
Ph: 961-8288.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EML:gp  
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**EXHIBIT 7: BLNR MARCH 11, 2003 LETTER**

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. Box 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

ERNEST LAU  
DEPUTY DIRECTOR

DEAN A. NAKANO  
ACTING DEPUTY DIRECTOR FOR  
THE COMMISSION ON WATER  
RESOURCE MANAGEMENT

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS

Ref.:PB:MM

MAR 11 2003

Ref: File No.: HA-01-19

Ms. Chandi Heffner  
Akoni Pule Highway  
P.O. Box 6773  
Kamuela, Hawaii 96743

Dear Ms. Heffner:

We wish to inform you that on February 28, 2003, the Board of Land and Natural Resources found you in violation of Chapter 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for unauthorized road improvements at North Kohala, Hawaii (TMK: (3) 5-8-001:009).

In addition the Board has imposed five conditions, paragraph C was amended by the Board (as noted below):


- A. That the Board of Land and Natural Resources finds that the alleged violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain the CDUA approval required by the Board's August 27, 1999 decision;
- B. That the Board imposes fines to cover all administrative costs totaling \$607 [\$307.00 DOCARE and \$300.00 Planning Staff];
- C. That upon payment of the fine by the alleged by July 1, 2003, the alleged shall submit a Conservation District Use Application by July 1, 2003 for the subject road improvements, to determine their final disposition. Additional land use elements may also be included in the application. If damage to archaeological/cultural resources is discovered during the application process, the Department and Board may levy additional fines and requirements on the applicant;

- D. That in the event of failure to comply with item B and/or C, the Board of Land and Natural Resources impose a fine of \$2,000 per day, from November 26, 1999 to the present, pursuant to Chapter 183C, HRS; and
- E. That in the event of failure of the alleged to comply with items B, C and D, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within (30) days.

Should you have any questions, please contact Matthew Myers of our Planning Branch staff at 587-0382.

Aloha,

  
Dierdre S. Mamiya, Administrator  
Land Division

Receipt acknowledged:

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

cc: Hawaii Board Member  
Hawaii District Land Office  
Chairperson  
DOCARE (Hawaii)  
Lisa A. Bail, Esq, Goodsill Anderson Quinn & Stifel



**EXHIBIT 8: LAND USE DISTRICT INTERPRETATION**

60  
BENJAMIN J. CAYETANO  
GOVERNOR



377-10  
ESTHER UEDA  
EXECUTIVE OFFICER

STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
LAND USE COMMISSION

P.O. Box 2359  
Honolulu, HI 96804-2359  
Telephone: 808-587-3822  
Fax: 808-587-3827

January 6, 2000

George K. Lindsey, Jr., Esq.  
1111 Bishop Street, Suite 515  
Honolulu, Hawai'i 96813

Dear Mr. Lindsey:

Subject: BOUNDARY INTERPRETATION No. 99-28 for Tax Map Key: 5-8-01: 9,  
Kehena 2nd, North Kohala, Hawai'i

This is pursuant to your October 21, 1999, letter requesting a boundary interpretation for the subject parcel, please be advised that we have determined an approximate location of the State Land Use Agricultural / Conservation District boundary.

Our determination is based on the Commission's records and official maps currently on file at our office.

Copies of the "Shoreline Certification Maps Showing Parcel 16-1", with the approximate location of the State Land Use Agricultural / Conservation District boundary delineated is enclosed for your reference.

Should you have any questions, please feel free to call Fred Talon or Bert Saruwatari of my staff at 587-3822.

Sincerely,

FOR  
ESTHER UEDA  
Executive Officer

EU:ft

encl: Shoreline Certification Maps Showing Parcel 16-1, dated January 6, 2000

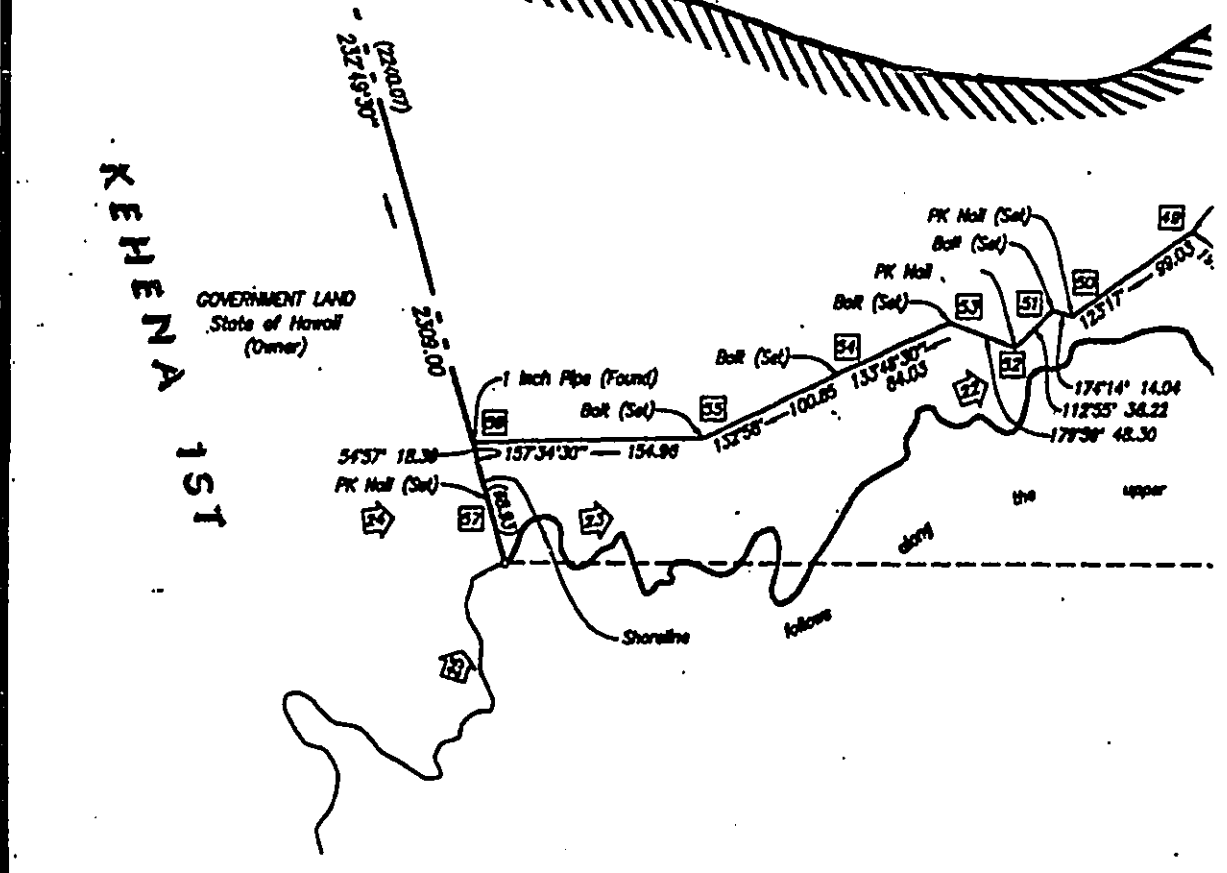
cc: X Timothy E. Johns, BLNR Chairperson (w/encl.)  
Virginia Goldstein, Hawai'i County Planning Director (w/encl.)  
S. Kalani Schutte, Deputy Finance Director (w/encl.)  
County of Hawai'i, Real Property Tax Division, Mapping Section

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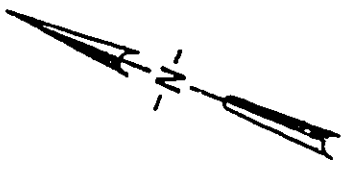
JAN 10 11 35 AM '00

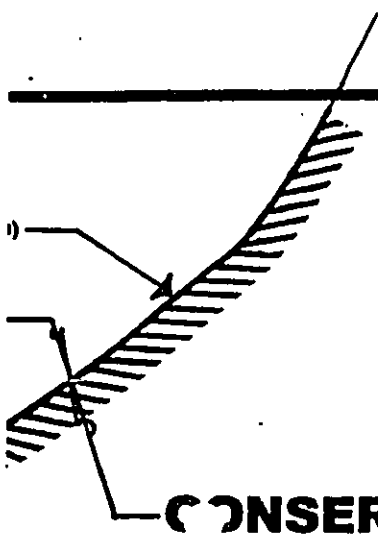
APPROXIMATE STATE LAND USE AGRICULTURAL /  
CONSERVATION DISTRICT BOUNDARY (FOLLOWS  
MAUKA SIDE OF JEEP TRAIL AS IT EXISTED IN 1989) —

# AGRICULTURAL



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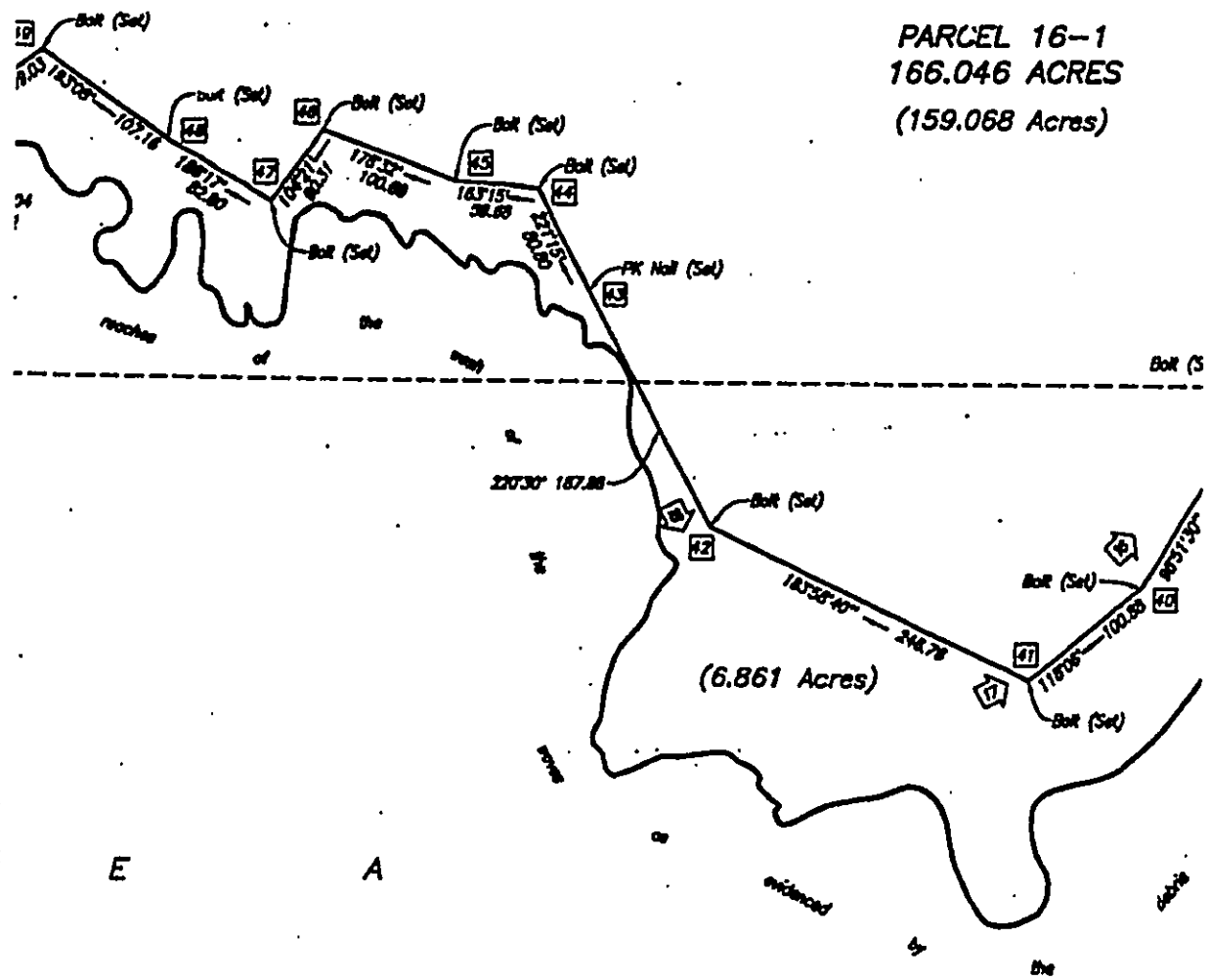


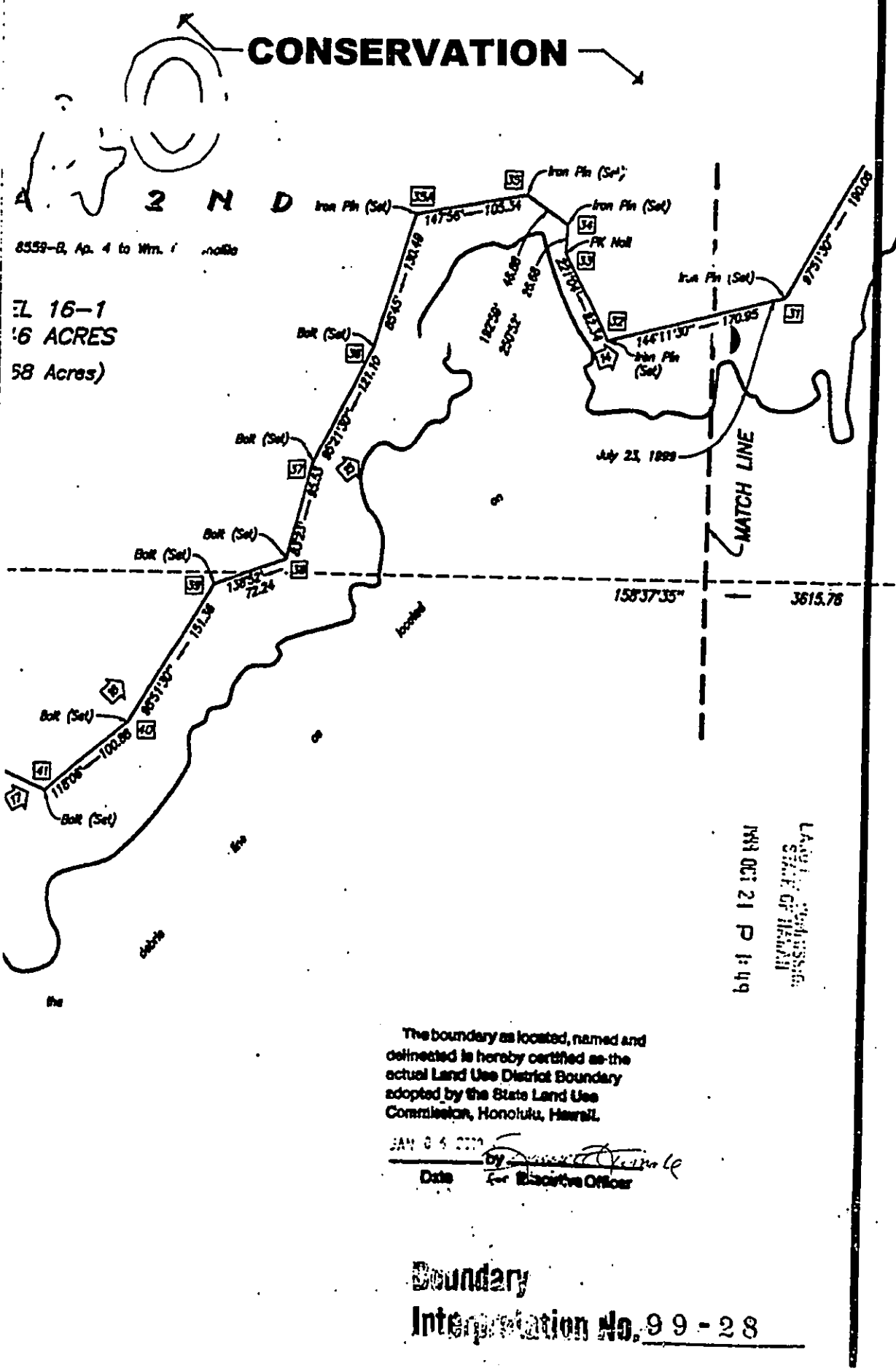
# K E H E N A 2

Portion of R. 7690, L. C. Av. 8539-B, Ap. 4 to Wm. 1

## CONSERVATION

**PARCEL 16-1**  
**166.046 ACRES**  
**(159.068 Acres)**





**A 2 N D**  
 8558-B, Ap. 4 to Wm. I. ...  
 16-1  
 16 ACRES  
 58 Acres)

**CONSERVATION**

LARRY COMMISSION  
 STATE OF HAWAII  
 1999 OCT 21 P 1:49

The boundary as located, named and  
 delineated is hereby certified as the  
 actual Land Use District Boundary  
 adopted by the State Land Use  
 Commission, Honolulu, Hawaii.

JAN 6 6 2000  
 Date *[Signature]*  
 For Executive Officer

**Boundary**  
**Interpretation No. 99-28**