MEMORANDUM

TO: Genevieve Salmonson, Director
Office of Environmental Quality Control

FROM: Dierdre S. Mamiya, Administrator
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
Final Environmental Assessment

(KEAWEULA JEEP ROAD MAINTENANCE)

IMPROVEMENTS TO EXISTING JEEP ROAD AT KEHENA 2ND, NORTH KOHALA, HAWAI‘I

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

PREPARED BY:
PLANNING SOLUTIONS

NOVEMBER 2003
# PROJECT SUMMARY

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<thead>
<tr>
<th>Project:</th>
<th>Jeep Road Maintenance, Kehena 2nd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Ms. Chandi Duke Heffner/Keawe'ula LLC</td>
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<tr>
<td>Approving Agency</td>
<td>Department of Land &amp; Natural Resources (&quot;DLNR&quot;)</td>
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<tr>
<td></td>
<td>P.O. Box 621, Honolulu, HI 96813</td>
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<td>Location</td>
<td>North Kohala District; Island of Hawai'i</td>
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<tr>
<td>Tax Map Key</td>
<td>(3) 5-8-01:09</td>
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<td>Parcel Area</td>
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<tr>
<td>Project Site Area</td>
<td>Less than one (1) acre</td>
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<td>State Land Use District</td>
<td>Conservation, Resource (R) Subzone</td>
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<tr>
<td>County Zoning</td>
<td>Agriculture, A-5a</td>
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**Project**

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.

**Associated Actions Requiring Environmental Assessment**

Issuance of a Conservation District Use Permit

**Agency Consultation for Draft Environmental 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

**Required Permits and Approvals**

Conservation District Use Permit

**Determination**

Finding of No Significant Impact

**Consultant**

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. Lanalilo at Kehea 2nd, 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 Kehea 2nd Ahupua'a, District of North Kohala, Island, County, and State of Hawai'i, and is designated by the TMK No. (3) 5-8-0109 ("Keawe'ula," see, Exhibit 1-Location Map; and Exhibit 2-Tax Map). Keawe'ula is located on the mokai or westerly side of the Akoni Pule Highway, also known as the Kawaihae-Malukona 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 Kamehamea 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 kiauea 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(i) 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
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.

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.

*****

(c) 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 1963/1964 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 9-6(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 CDSUA 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 dusty-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 gulles 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.
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 staggrass (Eragrostis ciliatiflora) and walltheria (Walltheria 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.

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 erckelli) and Japanese Quail (Coturnix japonica). 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

¹As 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/CHIrules/bigislandch_fa.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.²

### 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 Kohala Inland Complex (Site No. 2362) are not listed on the Hawai‘i State Register of Historic Places (1993) 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 follows an approximately 175-mile portion of the prehistoric a‘a lao roughly parallel to the seacoast extending from ‘Upo‘u Point down the west coast of the island around Ka‘Le‘e (South Point), to the east boundary of Hawai‘i Volcano National Park at the site of the former ancient shoreline temple known as Waha‘ula Heiau, which was covered by lava flows in the 1990s. 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 (OEOC) (1997) provide compliance guidance. Both Act 50 and the OEOC 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,...

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¹ See the U.S. Fish & Wildlife descriptions of these species and their habitats, included in the following URL: http://pubdocs.fws.gov/pubs/hawaiiananimalsindex.html#Hawaiian

² 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)
Archaeological Assessment Survey). In addition, these identified sites at Keawe'u'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'u'ula has been included in the land ownership inventory of properties along the "theoretical trail route" of the a'au a'au, Keawe'u'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'u'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'u'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'u'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 Keawani Bay. The Applicant has been provided with copies of the documentation utilized by the State abtractor in determining the coastal alignment. The State abtractor’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 linear 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 terrorist 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: Keawani 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 areas; 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.

**Objective:** 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
parks 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

KeeAw'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

KeeAw'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 KeeAw'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 (EISP1) 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. Detrimentally 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 nor 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

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<tr>
<th>Federal Agencies</th>
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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.
### Table 7-2 Written Comments Received

<table>
<thead>
<tr>
<th>Name &amp; Title of Commenter</th>
<th>Organization</th>
<th>Letter Number</th>
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<tbody>
<tr>
<td>Christopher Yuen, Director</td>
<td>County of Hawai`i Planning Department</td>
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<tr>
<td>Thomas E. Arizumi, Chief</td>
<td>Environmental Management Division, State of Hawai`i Department of Health</td>
<td>2</td>
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<tr>
<td>Patricia A. Benjamin</td>
<td>Private Individual</td>
<td>3</td>
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<tr>
<td>Theresa Perez</td>
<td>Private Individual</td>
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<tr>
<td>Steven D. Strauss, Esq.</td>
<td>Attorney representing Benjamin and Perez</td>
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<tr>
<td>Genevieve Salmoonson, Director</td>
<td>State of Hawai`i Office of Environmental Quality Control</td>
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<tr>
<td>P. Holly McElдонney, Acting Administrator</td>
<td>State Historic Preservation Division, State of Hawai`i Department of Land and Natural Resources</td>
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<tr>
<td>Peter L. Yee, Director</td>
<td>Office of Hawaiian Affairs, State of Hawai`i</td>
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Source: Compiled by Planning Solutions, Inc.
August 19, 2003

Ms. Dieter S. Maniya, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Maniya:

CDHA H-3148 (Board Permit)
Chandl Duke Heifner
Improvements to Existing Jeep Road
Kekaha 2nd District of North Kohala, County of Hawai‘i
TMK: 5-5-1-3

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, brushcut wall construction, water trough installations, 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 60-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.

2. Since granting the SMA exemption, the State's Nal Ala Hele program administrator researched the existence of a historic coastal footpath along the Makalawena-Kawaihae section and concluded in a report dated January 14, 2000 that the lateral coastal trail referred to as the alakai on historic maps corresponded to the jeep trail alignment extending laterally through the subject parcel. Furthermore, 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 public's right-of-way and all other obstructions 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 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 Kasahara at this office at 981-8288.

Sincerely,

Christopher J. Yue
Planning Director

County of Hawaii
PLANNING DEPARTMENT
Aauvitzen Center - 301 Pacific Street, Suite 3, Hilo, Hawaii 96720
Phone (808) 961-8228 Fax (808) 961-8215
November 7, 2003

Mr. Christopher J. Yuen, Director
County of Hawai‘i Planning Department
Augusta Center 101 Paaulhi Street, Suite 3
Hilo, Hawai‘i 96720

Subject: Draft Environmental Assessment (DEA): CDUA EA-3148 (Board Permit) Chandi Duke Helfter Improvements to Existing Jeep Road on Kohala Property

Dear Mr. Yuen:

Thank you for your August 19, 2003 letter commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for Mr. Chandi Duke Helfter’s improvements to an existing jeep road on his 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 below each response) are provided below.

1. This project granted an SMA exemption on September 22, 1999 for perimeter fencing for animal husbandry purposes, brush and weed control, water trough installation, tree planting, and improvements to the private jeep road. Requirements of the exemption were that the fencing and other improvements were not to exceed upon the 40-foot shoreline setback area; all improvements were for agricultural purposes; road improvements were limited to repair and maintenance of an existing improved jeep trail; shoreline lateral access must be preserved; and any requirements of the State-DOFNR 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 Hawai‘i Planning Department:

"On-site (Private) Jeep Road: Repair or Maintenance. The primary and accessory improvements to the existing jeep road are consistent with Rule 3-10(J)(2)(i)(A) or (ii). These improvements are exempt by this rule because it contains either the repair or maintenance of a road or of an existing use, the improved jeep trail."

The CDUA for which this DEA was prepared does not propose any fencing, wall or water-rough 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 Ka Ala Hele program administrator researched the existence of a historic coastal footpath along the Mahaloa-Ewaheea coastline and concluded in a report dated January 14, 2000 that the coastal trail referred to as the aloha on historic maps corresponds to the jeep trail alignment extending literally through the subject parcel. Further, the lateral jeep trail alignment is State-owned. In light of this new information, public access along the improved 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 Adaptive Use Permit will be required pursuant to the Coastal Zone Management Act’s objectives and policies of Chapter 195A, HRS. Additionally, the applicant must submit with the SMA Adaptive 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 1.7 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 Ball, Enq, and Bruce Leamen, 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,

(Please Sign)

Enclosures:
(1) 6/8/99 Letter from Virginia Goldstein
(2) 10/1/02 Letter from Lisa Ball and Bruce Leamen

cc: Mr. Chandi Duke Helfter
Ms. Lisa Ball, Goodall, Anderson Quinn & Stifel
DLNR, Land Division
Through our investigation of the above complaint we find that there has been no violations in the Special Management Area (SMA) and we are closing the file on this case. We appreciate your cooperation in these matters. If you have any further questions, please feel free to contact CZM Inspector Jeff Darrow at 961-9338.

Sincerely,

[Signature]

VIRGINIA GOLDSTEIN
Planning Director

Enclosure

cc: Mr. Richard Boyd
P.O. Box 368
Hilo, HI 96721

Ms. Claire Treiter
P.O. Box 723
Kapaau, HI 96755

Mr. Edward Lewis
Department of Land and Natural Resources-Enforcement Division
P.O. Box 6046
Kamuela, HI 96743

Mr. Jeff Darrow

A complaint was received regarding possible Special Management Area (SMA) violations on the above subject property. The complaint alleged that there was a road being bulldozed and gravel was being laid on the roadway. The complaint also alleged that the new owner of the property had not applied for the proper permit. And lastly, the complaint alleged that the new owner was blocking a public accessway from the highway to the ocean.

A site inspection was conducted on June 2, 1999. At this time, CZM Inspector Jeff Darrow met with you regarding the above listed complaints. It was learned that you were felling off a portion of your property to ease for and protect donkeys. This use is considered animal husbandry and is exempt according to the Planning Commission's Rule 9. The fencing and the 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.

There may be violations located in the Conservation Districts but these are enforced by the Department of Land and Natural Resources (DLNR).
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 Kahana 2nd
North Kohala, Hawaii

Dear Mr. White:

This letter is in 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, Inc. v. HFFH, Civil No. 03-1-0019 pending before the Circuit Court of the Third Circuit (the “Litigation”). Our firm represents defendants Chandi Helfer and Karo’alea, LLC in connection with the Litigation. Specific comments are addressed in the numbered paragraphs below:

a. “Served, the Applicant remains noncompliant with the Board’s directive March 11, 2003.”

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

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.

November 6, 2003
Perry White
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, Administrator D. Mesho 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 lawsuits, Malama Na Kahakai, et al. v. HFFH, Civ. No. 03-1-0019 (Third Circuit, Hawaii). The most recent activity in such lawsuit is the certification of a class of Native Hawaiian users in Spring 2002.”

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’s 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 makua-maui jeep road crossing the property from Akoni-Pule Highway to the shoreline. In its ruling, the court stated that the makua-maui 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’ 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 the 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 Patrick 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 elicit tentative answers 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 concerns you have received on the draft EA.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

Bruce L. Lamon
Lisa A. Ball

LAB: Enclosure

GOODSILL ANDERSON QUINN & STIFEL
BRUCE L. LAMON 20580-0
LISA A. BALL 6021-0
Ali Place, Suite 1800
1099 Alika Street
Hilo, HI 96720
Telephone: 974-5600

Attorneys for Defendant
CHANDI D. HEFFNER

STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

MALAMA NA KA MAHALA, RICHARD C.
LINDSEY, JR., ISABUILLA MENDROS,
ROBBINS KINNEY, TIM CARAVALHO,
RAYNARD TORRES, THITILIA MARY
CABRERA KAHOLOA'A, LEONARD
PANG, STEPHANIE CABANES, CLYDE
YANO, BERNETTE P. HIB-COLLO,
JEFFERY KAKA, SR., RAYMOND K.
KALUA 'U, PATTY KALUA 'U, THERESA
PEREZ, PATRICK BENJAMIN AND
JONATHAN BENJAMIN,

Plaintiffs,

vs.

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

Defendants.

CIVIL NO. 01-1-0059

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

(Motion Filed on October 22, 2001)

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

Judge: Riki May Amano

NO TRIAL DATE HAS BEEN SET
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 6, 2002

Plaintiffs Malama Na Kahakai, Richard C. Lindsay, Jr., Isabella Medeiros,
Robbie Kincaid, Tim Cassavalho, Raymond Torres, Philita May Cabrera Kahului'a, Leonard
Paua, Stephanie Cabaniss, Clyde Yama, Brittenne P. Hui-Collo, Jeffrey Klassen, Sr., Raymond K.
Kahau'a, Fatty Kahau'a, Therem Perr, 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 Amaro on February 7, 2002 at 10:00 a.m. Steven Strauss
appeared on behalf of Plaintiffs and Bruce Lauren and Lisa Biall appeared on behalf of Defendant
Chaudi D. Helfter ("Helfter"). 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 Taire, and Stanley Tarnus; 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 makua-makui jeep
road ("Jeep Road") crossing Helfter'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 Helfter 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 Helfter.

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 Helfter 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 denial 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 KAHAKALE 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.


BIKI MAY AMANO
JUDGE OF THE ABOVE-NOTED COURT

In the Circuit Court of the Third Circuit, State of Hawaii; Civil No. 01-1-0059; Malama Na Kahekai, et al. v. Hufford. ORDER DENYING PLAINTIFFS' MALAMA NA KAHAKALE, ET AL.'S MOTION FOR PRELIMINARY INJUNCTION AND VACATING TEMPORARY RESTRAINING ORDER FILED JANUARY 4, 2002
To: Diodore S. Maniwa  
Acting Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  

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

Subject: Request for Comments  
Conservation District Use Application (CDUA)  
Board Permit  
Improvements to Kailua-Jeep Road at Heeia 2nd     
North Kona, Hawaii  

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 404(a)(1) of the Federal Water Pollution Control Act (commonly known as the “Clean Water Act”), a Section 404 Water Quality Certification is required for “[any applicant for Federal license or permit to construct 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)(1)(iv) through 122.26(b)(1)(iv)(a) and 122.26(b)(1)(iv)(a).

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 or different schedules under a larger common plan of development or site. An NPDES permit is required before the commencement of the construction activities.

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 hydrcracking 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/cwbs/smpform/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 or coverage of the discharge(s) under the NPDES general permit(s) is not permissible (i.e. discharges into Class I 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/cwbs/smpform/index.html.

4. Hawaii Administrative Rules, Section 11-55-38, 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.
Mr. Thomas E. Ariumi, Chief
Environmental Management Division
Department of Health
State of Hawai‘i
P.O. Box 3378
Honolulu, Hawai‘i 96801-3378

Subject: Draft Environmental Assessment (DEA) – CBUSA 11A-3444 (Direct Permit) Chambil Duke Heffner Improvements to Existing Jeep Road Repeal 2nd, North Kohala District, County of Hawai‘i TMDL: (3) 5-8-1: 9

November 7, 2003

Dear Mr. Ariumi:

Thank you for your September 5, 2003 letter commenting on the Draft Environmental Assessment (DEA) for alterations for improvements to Chambil Duke Heffner’s existing jeep road on her property. We appreciate the time you and your staff spent reviewing the document and providing written comments. State-by-state 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 438-2525 to determine whether a Federal license or permit (including a Department of Army permit) is required for this project. Pursuant to Section 404 of the Federal Water Pollution Act (commonly known as the “Clean Water Act”), a Section 404 Water Quality Certification is required for “[any 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 404 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(5)(1)(6) through 122.26(b)(1)(4)(5) and 122.26(b)(1)(5)

b. Construction activities, including clearing, grading, and excavation, that results 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.
My email 10/20/3

Chairperson Department of Land and Natural Resources:

Dear Chairperson & Board:

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

The years I have used what is commonly referred to as “the old preoffice road” to access beaches adjacent to Mr. Heffner’s property.

Other people that I knew also used those roads.

I personally witnessed a violation of the EPA Clean Water Act, along with other violations when at dawn, 12 large rocks, trees and other debris purposely chucked onto a cliff into the ocean. That was at the parking coordinates for a GGA at 36.07 N 155.53 W. On the coastline, it was at a depth—merry rate #48.

This violation was witnessed.

By many other people. It was discovered shortly after Ms. Heffner’s agent was grubbing without permits. There were notices coming over the ocean that could have fallen in. It was not a rockslide. One could see the stages in the ground from equipment pushing the cliffs to other debris.

It is ironic that Ms. Heffner should do this through her agent—where this area was a wonderful gathering place for oysters, fish, and fishing. For so many generations of grandparents have taken their grand children to the shore to gather, swim and play.

Cousin Marie Solomon taught us and her own of the culture of Hawaii at that site. She painted out many very important cultural and historic things regarding the Leis, gods, ancestors.

Hope Bill Abbey and Lucy Modier all taught us what they had learned of that place.

The saddest time was for Jack, when Mrs. Heffner had an unknot the
As the due to an injunction and
the saw so much cultural destruction
Spiritually significant rocks had
been moved from places they existed
in existence of thousands of feet
and broken in half deliberately.
Lords broken and moved apart
next to the steps for the altars
at this temple.

These rocks were missing from
the plaza. Other rocks were
missing, rocks that are necessary
for players and spirituality.

The ancient wall on the coastline
has had a trench constructed over it.
I personally heard Mr. Keough admit
to being aware of the trench in his
definition. He admitted to
wanting people to be away from the
area where he conducted the

In addition, I respectfully
request that both Heffner'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 creditable
engineers would find some of the
road beds questionable for erosion-
control concerns.

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

Sincerely,

Patricia A. Bentamin
P. O. Box 509
Kapaa, Kauai 96746
Dear Ms. Benjamin:

Thank you for your handwritten letter of September 15, 2003 and your typewritten letter of September 19, 2003 commenting on the Draft Environmental Assessment (DEA) for after-the-fact approval for improvements to existing jeep road Kekaha 2nd, North Kauai District, County of Hawaii TMC (O) S-8:11-9.

We appreciate the time you spent reviewing the document and providing written comments. Your comments have been incorporated into the final report.

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

Comment: 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 access for which this after-the-fact Conservation District Use permit is being sought do not result from access from Ahahui Pali 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. 01-4-0655, currently pending before the Circuit Court of the Third Circuit, regarding access to Kawa'ena's (the "Lithic Site"). We understand that in the litigation, the Court denied your request to use the mauka-makai jeep road.

(2) I personally witnessed a violation of the EPA Clean Water Act, among other violations when I saw earth, rocks, area and other debris purposefully bulldozed over a cliff into the ocean. This was at the precise coordinates for a GPS at 26.01191' N 153.53194' W. 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 agent was requested by her agent after the bulldozer was seen moving over the ocean. The agent was appalled. One could see the debris from the ground to the ocean, with no obvious reasons.

This is ironic that Ms. Heffner is said to have moved the earth due to religious or spiritual reasons. For so many generations, Native Hawaiians have taken their children to the shore to gather, swim, and play.

Page 2
Ms. Patricia Benjamin
November 7, 2003

Response: The record does not support your allegations 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 bulldozer took place, but that you base your statements on the observation of a bulldozeroperator. The Applicant is aware of no such deposition. We consider your statements to be the personal opinion of the Applicant.

On October 20, 2003, the State Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) investigated these allegations in response to the complaint of Mr. Steven Strauss filed on your behalf. A copy of the Investigation report, DOCARE 2003-207, is attached. The Investigation report documents that DOCARE did not find any evidence to support your claims.

(3) As indicated by my photographs taken it shows that the bulldozing is old and that the old dried grass is in the previously moved earth. The new property owner Chundi HEFFNER (sic), is not responsible for this bulldozing of debris.

A grabbing permit was not necessary for this project since the grabbing did not alter the general and localized shoreline 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 grabbing permit is irrelevant to the issue of whether the actions described on this after-the-fact DEA had a "significant effect" on the environment, and whether a Finding of No Significant Impact should issue.

(4) I am the owner of the Culture of Hawaii at that site. She pointed out many very important cultural and historical things regarding the site, gods, and goddesses. Pope Bill Aya and Amule Makina tell us what they had learned from 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.

(5) The saddest time was to go back when Ms. Heffner had to unlock the gate due to an injection and we saw much cultural destruction. Spiritually significant rocks had been moved from places that originally existed in at least hundreds of years and broken in half deliberately. Rocks - broken and moved over onto the soils for the AHU walls to the site.

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

Response: On October 20, 2003, the State Department of Land and Natural Resources, Division of Conservation Resources Enforcement (DOCARE) investigated your allegations of damage to archaeological sites in response to the complaint of Mr. Steven Strauss filed on your behalf. The DOCARE Investigation report states that "no damage to any archaeological sites could be detected." A copy of the DOCARE report is enclosed. An archaeological assessment survey by Paul Reventhal 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 man-kapu [sic] to you and other Plaintiffs in the Litigation from approximately November 2000 to March 2002 in response to the Order Granting a Temporary Restraining Order in Favor of Plaintiffs filed January 4, 2002. Since this period predates the October 25, 2000 DOESTAR Investigation report and since the DOESTAR investigation report substantiated that no damage to any archaeological site could be detected, any damage you may have observed during the period from November 2000 to March 2002 could not have been caused by the activities for which this permit is sought.

The activities for which the fact approval is being sought caused no significant damage to any archaeological resources. The Applicant has noticed that since her purchase of the property persons unknown to Applicant have created stone-lined fire pits for camping 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.

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

The truth through continuous use, laws and regulations that Mr. Heffner is trying to block and keep people from using an 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 Kalana act.

Note: As stated in Section 3.7 of the DEA, you are correct that, "The Applicant strongly opposes any public access to Keaweula 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 state purporting 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,

[Signature]

Enclosure:
(1) 1/28/00 DOESTAR Investigation Report

cc: Chandl Duke Heffner
     Linda Hall, Goodfellow Quiles & Stich
     DLNR Land Division
Steven STRAUSS
P.O. Box 11517
HILO, HAWAII

HA-01-207
LAND USE,
CHAPTER 5 VIOLATION

Page 1 of 2

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 was several violations within the Conservation District located at Keawele & Keawaula area in North Kohala, TMK 5-6-01-09.

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

Approximately two (2) weeks past and no information was sent regarding this complaint as I contacted STRAUSS again and related him to 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.

10-16-00: A letter was hand delivered to the Keawaula Office refer to exhibit 1. After reading the latter, I found that that Mr. STRAUSS is representing Jonathan and Paalida 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 keawa 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:

10-29-00: 0845 hrs: A site inspection was conducted at the HEFNER'S property at North Kohala TMK 5-6-01-09 with the caretaker of the property. It should be noted that the last inspection of the property was conducted on 05-01-00.

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 was spread.

At Keawaula 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 foam) as indicted in photo report 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 detection could not be detected.

From this site I then proceeded north along the shoreline road to Keawelea 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 detection 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 49 which is to be next to the possible violation site. Pole #49 was located, a GPS reading was taken, 20.07.17 N, 155.53.12 W. Photo's was taken of the area. It was found that the earth debris and keawa parts were bulldozed years ago for firm break. A fire had happened approximately four or five years ago. As indicated by my photographs taken it shows that the bulldozing is old and that duided grass is on the previously moved earth. The new property owner Chandl HEFNER, is not responsible for this bulldozing 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.
11-09-00: 09:45 Hrs. A inspection for damage archaeological features was conducted by myself and Marc SMITH at the HEPNER'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 HEPNER'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:

[Signature]

ED LEWIS
CREC III
11-09-00
1400 Hrs

[Signature] YAMA, Supervisor NH

October 18, 2000

Eddie Lewis
Department of Land & Natural Resources

Re: Kauwela
Koheha Second, North Kohala, Hawai‘i

Hand delivered

Dear Ms. Lewis:

I represent Jonathan and Patricia Benjamin (Restore Beach Access Hawai‘i), an association of Hawai‘i 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 Kauwela and Koheha, 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 trenching equipment in the Conservation District. My clients report additional gravel spreading and an oil-based substance having been applied to the gravel area. Smokers 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 erosion debris and leave debris to fall into the ocean. The GPS coordinates for this debris site are 20.07.17N, 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.
PHOTO 19 Depicts same area as photo 16. GPS reading 32.47.120s, 115.14.120W.

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

ED LINKE
Depot Supervisor NE

CENG 112
33-17-00
1400 hrs

Note: Not drawn to scale
Sept. 17, 2003

Re: CUP
Chandi Duke Heffner/Keawe ula LLC
Keawe ula Jeep Road Maintenance
Draft Environmental Assessments

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

To: Planning Solutions, Inc.
1210 Aukai St., suite 221
Honolulu, Hawaii 96814

Attn: Perry White

 Aloha,

I am Theresa Perez president of Malama na Kahalal Inc.
I personally have used the jeep road to get to Keawe ula Ray 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 asked 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 kupunia 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 snorkeled there. My son has learned how to swim, snorkel, dive for fish, throw net, pick crabs and oysters 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 malal properties all along the coast of Kohala is being bought and gated of 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 CUP 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 Lemno
Ms. Theresa Perez
P.O. Box 1426
Kailua, Hawaii 96734

Subject: Draft Environmental Assessment (DEA): CDUA 11A-3148 (Board Permit) Chandl Duke Heffern Improvements to Existing Jeep Road Keheia 2", North Kohala District, County of Hawaii T&R (3) 5-6-1: 8

Dear Ms. Perez:

Thank you for your September 17, 2003 letter commenting on the Draft Environmental Assessment (DEA) for the after-the-fact approval for improvements to an existing jeep road on Ms. Chandl Duke’s property. We appreciate the time you spent reviewing the document and providing written comments. In your comment response to your comments (reproduced in entirety for your convenience in full below) are provided below.

(1) I personally have used the jeep road to get to Keheia Moanalua since 1970. I have used it up until the time Chandl Duke has purchased it. Which is now presently fenced off and shut.

Response: We understand that in your individual capacity and as president of Malama na Kohala, Inc., you are pursuing litigation entitled Malama na Kohala, Inc. v. Duke, Civil No. 01-1-0019, currently pending before the Circuit Court of the Third Circuit, regarding access to Keheia Moanalua (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 moanalua jeep road.

(2) Shortly after she purchased it, she had heavy equipment on the property extracuting. 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 grabbing permits and had ordered her to stop but she then continued to grab the property.

Response: A grabbing permit was not necessary for this project since the grabbing did not alter the general and local land use pattern with respect to grading properties and did not exceed a total area of one acre. We also respectfully note that the need for an existence of a grabbing 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 about there with our bird biologists to go over the historical site with a few kupuna from the community. There were areas where we could see heavy equipment...
Enclosure

(1) 10/20/1991 DOCARE Investigation Report

cc: Claudi Duke Hefner
Lisa Bell, Goodrich Anderson Quinn & Stiefel
DLNR, Land Division
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 Keawaula & Kewanui 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 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. Depredation of water quality due to the oil
5. Earth debris and leave 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 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 Keawaula 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 (pool items) as indicated in photo record was observed. According to the caretaker of the property, he stated that the structure 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 proceed north along the shoreline road to Kewanui 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 defacement 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 pote number 48 which is said to be next to the possible violation site. Pote #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 leave debris 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 CHAD 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.
11-09-00: 0545 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:  

ED LEWIS  #101  
CRICHI  
11-09-00  1400 Hrs

Hand delivered

October 18, 2000

Edwin Lewis
Department of Land & Natural Resources

Re:  Kawaiola
Khena Second, North Kohala, Hawaii, TMK (33)-8-01:9

Dear Mr. Lewis:

I represent Jonathan and Patricia Bergamini and Restoral Beach Access Hawaii, an association of Hawaii's citizens and citizens 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 Kawaiola and Kawaiola, 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 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 eelgrass debris and leave debris to fall into the ocean. The GPS coordinates for this debris site are 20.013773, 155.531949. It is near ocean marker pole no. 48.

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

[Signature]

Steven Strauss

Enclosures

cc: T. John, Esq., DLNR
    Attorney General Earl Anzuul,
    J. Benjamin
September 22, 2003

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

Perry White
Planning Solutions, Inc.
1210 19th Street, Suite 221
Honolulu, Hawaii 96821

Office of Environmental Quality Control
233 S. Beretania Street
Leipapa A Kamehameha
Suite 902
Honolulu, Hawaii 96813

VIA FACSIMILE 808-348-0190
VIA FACSIMILE 808-583-1956
VIA FACSIMILE 808-386-4186

Re: Draft EA “Improvements to Existing Jeep Road at Kahana 2nd, North Kohala, Hawaii.”
The Environmental Notice, August 23, 2003

Gentlemen:

I represent Malama Na Kohala, Inc., a § 501(c)(3) nonprofit corporation dedicated
to environmental and conservation concerns in North Kohala.

I also represent Patricia Bojanoski, whose separate comments are also enclosed.

Following review, Malama Na Kohala, 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 Kohala, Inc. incorporates its comments and exhibits submitted
March 9, 2000 relative to the previous draft environmental assessment submitted
by Applicant’s predecessor, Chandi Duke Heffner. Malama Na Kohala, 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

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 diverted 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 main boundaries of the conservation district, which jeep roads are owned by
the State and claimed as such. Applicant maintains illegal barriers impeding
vehicular access across these State jeep roads. Applicant has failed to install gates
along the main access points cross to provide for vehicular access along the State jeep roads. So far, despite demands from Malama Na Kohala, Inc.
and others, the State has done nothing to remedy these illegal obstructions and
restored 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 Akoni-Pule Highway to the
shoreline does exist and remains a subject of the continuing lawsuits, Malama Na
Kohala, Inc. v. Heffner, CV No. 01-1-0059 (Hilo Circuit, HI). The most recent
activity in such lawsuits is the certification of a class of Native Hawaiian users in
Spring, 2003.
September 22, 2003
Peter Young
Perry White

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

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

Respectfully submitted,

[Signature]

September 22, 2003

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

VIA FACSIMILE 808-587-0190

Peter Young
Chairperson
Department of Land and Natural Resources
1151 Punchbowl
Honolulu, Hawai‘i 96813

VIA FACSIMILE 808-593-1956

Perry White
Planning Services, Inc.
1210 Aalii Street, Suite 221
Honolulu, Hawai‘i 96814

Re: Draft EA
“Improvements to Existing Jeep Road at Kohala 2nd, North Kohala, Hawai‘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 Kohala 2nd, North Kohala, Hawai‘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 Mr. Hellner’s property. Other people that I know also used these roads.

I personally witnessed a violation of the EPA clean water act, among other violations when I saw each, rocks, trees, and other debris purposefully bulldozed over a cliff into the ocean. This was at the precise coordinates for a GPM at 20.0117 N - 155.3319 W. On the cliffline, it was approximately pole #8.

This violation was witnessed by many other people. It was discovered shortly after Mr. Hellner’s agents were grabbing without permits. There were no trees leaning over the ocean that could have fallen in. It was not a rock slide. One could see the slashes on the ground from equipment pushing the earth and other debris.
September 22, 2003
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 ephih, nuku, and fishing. For so many generations, grandparents have taken their grandchildren to the shore to gather, swim, and pray.

Auntie 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 all i, gods, and goddesses. Papa Bill Akau and Auntie Medeleno 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. Large – broken and moved over next to the steps for the all i’s new to his hole.

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

The ancient trail on the coastline has had a beam constructed over it. I personally heard Ms. Heffner admit to her knowledge of the beam 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 not keep people from using an access to gathering places and places of framing and worship should be legally kept open. This is dictated by every Hawaiian State law since the Kolona.

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 these beds questionable for environmental concerns. Please investigate all of these things. Please deny this permit.

Very truly yours,

[Signature]

[Vital Statistics]
Dear Mr. Strauss:

Thank you for your September 22, 2003 letter commenting on the Draft Environmental Assessment (DEA) for the moku-ma'alea road project. We appreciate your comments and the opportunity to respond to them. Below are our responses to your comments:

1) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment submitted by Applicants. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

2) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

3) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

4) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

5) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

6) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

7) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

8) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

9) First, Na'alehu Na Kula, Inc. incorporates its comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our response to the Applicants' comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment is also incorporated into this letter. Our comments remain applicable.

Response: We respectfully disagree with your comments and exhibits submitted March 9, 2000, in its response to the previous draft environmental assessment. Our comments remain applicable.

Mr. Steven D. Strauss
P.O. Box 11117
Hilo, HI 96721

November 7, 2003
(116) [Extracted from statement of Stephanie Kahale attached to the letter of March 9, 2000] I do not feel that a special interest is being preserved for the community. I strongly feel that preserving public access to Keawee Uka because it is a special place for fishing.

(117) [Extracted from statement of Sarah Jones attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawee Uka because it is a special place for fishing.

(118) [Extracted from statement of Cindy Chang attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(119) [Extracted from statement of Merle Chang attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(120) [Extracted from statement of Marita Chang attached to the letter of March 9, 2000] I have a special interest in preserving public access and vehicular access to Keawee Uka because it is a special place for fishing.

(121) [Extracted from statement of Stewart Gump attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(122) [Extracted from statement of Bremont H. Kolaa attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(123) [Extracted from statement of Cora Ishihara attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(124) [Extracted from statement of Doulas Kanaka attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(125) [Extracted from statement of Mala Kanaka attached to the letter of March 9, 2000] I have a special interest in preserving public access to Keawee Uka because it is a special place for fishing.

(126) [Extracted from statement of Lawrence Kukahana attached to the letter of March 9, 2000] The first time I went to Keawee Uka was in 1939. When we went to Keawee Uka 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 there. I don't think that some rich person can just come and buy a beach. Everyone who is interested in Keawee Uka and everyone who want to clean up the beach should keep it clean.
TO DISCOVER THAT WE 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)(r) [Excerpted from statement of Anyi Tonzaha attached to the letter of March 10, 2003] I have a special interest in preserving public access and vehicular access to Kamehameha because my friend [sic] and family’s [sic]开发 made that road using heavy rock’s [sic]. We love to fish & camp at this location. It’s rude for people to [illegible] it up.

(1)(s) [Excerpted from statement of Jerome Lee Torrens attached to the letter of March 9, 2003] I have a special interest in preserving public access and vehicular access to Kamehameha [10 ml marker in Akole Pule Highway] because, I love to see the beautiful ocean & go fishing.

(1)(t) [Excerpted from statement of Raymond Torres attached to the letter of March 9, 2003] I have a special interest in preserving public access and vehicular access to Kamehameha [10 ml marker in Akole Pule Highway] because, me and my son go a lot of fishing and clamming [sic].

(1)(u) [Excerpted from statement of Tim Curvalho attached to the letter of March 9, 2003] I have a special interest in preserving public access and vehicular access from Akole Pule [10 ml marker Akole Pule Highway] because, I love the children experience the pleasure of the beach the way we did when I was a child.

(1)(v) [Excerpted from statement of Japane Chong attached to the letter of March 9, 2003] I have a special interest in preserving public access and vehicular access to Kamehameha [10 ml marker Akole Pule Highway] because, I like to go there and spend time with my family. And in all my years I was born I thought that the area [sic] place ever. I was 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 permitted by the Act. Also, the area this after-the-fact permit is sought, the actions for which this after-the-fact permit is sought do not restrict access from Akole 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 Bell, Esq. and Bruce L. Lannon, Esq. of Goodwill Anderson Quinn & Stiffler, Ms. Helfner’s legal counsel, for a response to this allegation. They believe that Ms. Helfner 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 to and parallel to the shoreline and crossing the marsh. The boundaries of the conservation district, which jeep roads are owned by the State and claimed as such, Applicant maintains illegal barriers impeding vehicular access across these State jeep roads. Applicant has failed to install gates along her mānana or mesh fence lines to provide for vehicular and pedestrian access along the State jeep roads. So far, despite demands from Molokai No Kaohaku, Inc. and others, the State has done nothing to remedy these illegal obstructions and restore legal access through Applicant’s property to the shoreline from State lands.

RESPONSE: A Cultural Impact Assessment has been prepared and is included 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 permitted by the Act. The permits have not been inspected vehicular access. In addition, per the enclosed letter from Lisa Bell, Esq. and Bruce L. Lannon, Esq., the Applicant acknowledges that the State has made informal claims to ownership of the coastal jeep trail alignment, but disputes the State’s claim “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 in page 3-5 that it helped to minimize erosion and sediment introduction by obtaining 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 (1/4-21-3) documents that DOCAIR did not find any evidence to support your claims, and states:

It was found that the earth debris and heavy [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 debris is on the previously moved earth. The new property owner Chadui Heffner [sic] is not responsible for this bulldozing of debris.

Furthermore, as documented in the enclosed memorandum dated February 7, 2000 from Conservation Officer Richard Whits to Pati Edwards at the Honolulu DOCAIR Office, “The Department found no significant impact to the environment due to the unauthorized improvements.”

(5) Fourth, public access across Applicant’s property from Akole-Pule Highway to the shoreline does exist and remains a subject of the continuing lawsuit, Molokai No Kaohaku, et al. v. Helfner, No. 91-1-0039 (Third Circuit, HI). The most recent activity in such lawsuit is the certification of a class of Native Hawaiian owners in Spring, 2003.

RESPONSE: Please see the enclosed letter from Lisa Bell, Esq. and Bruce L. Lannon, Esq. of Goodwill Anderson Quinn & Stiffler describing the Applicant’s position with respect to this assertion.
Page 7

Mr. Steven D. Street
November 7, 2003

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

Sincerely,
[Signature]

Enclosures:
(1) DOCARE 10/20/2009 Investigation Report
(2) February 7, 2000 memorandum from Richard White to Paul Edwards
(3) Archaeological Assessment → See Appendix A
(4) Cultural Impact Assessment
(5) Letter from Lisa Bail and Bruce Lawson → See Appendix B

c: Chandi Dale Heffter
Lisa Bell, Goodwill Anderson Quinn & Stifel
DLNR Land Division
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 was several violations within the Conservation District located at Keawaiki & Keawawu area in North Kohala, TMK S-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 the letter STRAUSS is representing Jonathan and Patricia BENJAMIN and Restore Beach Access Hawaii. In the letter STRAUSS indicated several possible violations at the HEPNER'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 oil.
5. Earth debris and leaves 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: 08:45 Hrs; A site inspection was conducted at the HEPNER'S property at North Kohala TMK S-8-01-09 with the caretaker of the property. It should be noted that the last inspection of the property was conducted on 06-31-08.

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 KeawauBay it was observed that a portable metal container structure was used 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 indicated in photo record was observed. According to the caretaker of the property, he related that the structures were there when the property was bought. No sign of person(s) was residing in the area. A check for human detection could not be detected.

From this site I then proceeded north along the shoreline road to Keawaiki 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 detection 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 leaves 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 Chandi HEPNER. is not responsible for this bulldozing of debris.

From the south to the north shoreline of this property, I could not detect any oil 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 HEPNER'S property on 11-06-00, with Marc SMITH.
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 Stare 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: 
ED LEWIS #81
NII-09-00 1400 Hrs

Hand delivered

October 18, 2000

Eddie Lewis
Department of Land & Natural Resources
DOCARE

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

Dear Ms. 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 Kewaunee and Kewenu, North Kohala. As you may be aware, in 1999 Mr. 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 him to submit an after the fact conservation district use application, the has since withdraw such application.

My clients are informed that, since the date of the cease and desist order, Mr. Heffner has continued to operate earth-moving equipment in the Conservation District. My clients report additional gravel spreading and an oil-based substance having been applied to the gravel area. Sandbars 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 erosion debris and lease debris to fall into the ocean. The GPS coordinates for this area are 20.07.17N, 155.33.19W. It is near ocean marker pole no. 48.

My clients are also informed that Mr. Heffner is allowing persons to reside in an unpermitted structure or structures within the Conservation District. The method of human sewage disposal for these residences is unknown.
October 18, 2000
Eddie Lewis
Department of Land & Natural Resources
DOH
Page 2

Finally, my clients have viewed damage to archaeological features resulting from Ms. Jeffers’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. Jeffers’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.

Sincerely,

Enclosures

cc: T. John, Esq., DLNR
    Attorney General Erek Ancia,
    S. Benjamin
PHOTO 15 Depicts area as photo 14. GSP reading 35.07.12hr.
155.12.12hr.
PHOTO 16 Depicts same area as photo 14 & 15. Note again old work done in the area.

[Signatures and dates]

Main gate to property

DePicci Old Deep Road

Not drawn to scale
As stated, the Department found no significant impact to the environment due to the unauthorized improvements.

As to the unauthorized improvements to the HEFFNER property, this officer feels that the fine imposed is sufficient for their lack of communication with the Board.

This letter is in response to legal issues raised in the comment letter from Mr. Strauss re: application for Malama Na Kabaka, Inc. and other clients in litigation entitled Malama Na Kabaka, Inc. v. Heffner, Civil No. 01-1-0008 pending before the Circuit Court of the Third Circuit (the "Litigation"). Our firm represents defendant Hanu Heffner and Hanu's LLC in connection with the Litigation. Specific comments are included in the numbered paragraphs below:

At the request of the Board in the Litigation, it is our opinion that Hanu 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.
b. "...Applicant continues to deny access along the jeep road adjacent and lateral to the shoreline and comprising the masked boundaries of the conservation district, which jeep roads are owned by the State and claimed as such."

In a memo dated January 14, 2000, Abreu G. Meura Howard first claimed that the coastal jeep trail alignment was "owned" by the State of Hawaii. Despite this conclusion, the State has not taken any legal action to establish such an ownership interest. Unless and until such time as title vests to 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 Kohalui, et al. v. Haffner, Ch. No. 01-1-0039 (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 prompted 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 Plaintiff's Motion for Preliminary Injunction, filed October 22, 2001, which sought an order granting public access to the masked jeeps road crossing the property from Akoni-Pule Highway to the shoreline. In its ruling, the court stated that the masked jeeps road "is a private road." Enclosed is a copy of the March 4, 2002 Finding of Fact, Conclusions of Law and Order Denying Plaintiff's Malama Na Kohalui, 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 Kohalui and Patricia Benjamin request that they be permitted to participate in a consolidated case regarding the required Conservation District Use Application." This request is not genuine 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 re-litigate issues that are before, and have in some instances been decided in the litigation brought by Mr. Strauss.
IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

MALAMA NA KAHAikal, RICHARD C.
LINDEY, JR., ISABELLA MEDEROS,
ROBBINS KINNEY, TIM CARVALHIO,
RAYMOND TORRES, FIFIITIA MARY
CABRERA KAHOLOA, LEONARD
PANG, STEPHANIE CERLAN, CLYDE
YANO, BERNETTE P. HUI-COLLO,
JEFFREY KIAINA, JR., RAYMOND K.
KALUAU, PATTY KALUAU, 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 MALAMA NA KAHAikal ET AL.'S MOTION FOR
PRELIMINARY INJUNCTION AND
VACATING TEMPORARY RESTRAINING ORDER
FILED JANUARY 4, 2002

(Motion Filed on October 22, 2001)

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

Judge: Riki May Amano

NO TRIAL DATE HAS BEEN SET

FINDINGS OF FACT

1. The Motion seeks an order granting public access to the maka-kaʻa jeep
road ("Jeep Road") crossing Heffner's real property as generally depicted at Tax Map Key No.
(335-1-001-009) ("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 Akani-Pule Highway in 1999, Plaintiffs did not file the Motion until October 2001.

6. Continued use 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 and injury does not favor granting the Motion.

9. The public interest does not support granting the Motion.
Ms. Consuelo Salomon, Director
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, HI 96813

Subject: Draft Environmental Assessment (DEA): CDBA-HA-3148 (Board Permit) Chandl
Duke Heffner Improvements to Existing Jeep Road, Keheha 2nd, North Kohala
District, County of Hawaii

Dear Ms. Salomon:

Thank you for your September 23, 2003 letter concerning the Draft Environmental Assessment
(DEA) for the Board Permit 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
a written comment. Our response to your comments (reproduced for your convenience in italics
below) is provided below.

ACCESS: The 1979 County of Hawaii Public Access Inventory 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 Filgo, v. the Board of County Planning Commission (79 Hawaii 425, 903 P.2d
1246), all agents of the State (excluding the Department of Land and Natural Resources) are
required to consider public access in their decision making: please describe alternatives
allowing for public 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 access rights
allowed by law."

If you have any further questions concerning the project, please call me at (808) 329-4485.

Sincerely,

Chandl Duke Heffner
Lisa Staj, Goodwill Anderson Quinn & Stiefel
DLNR Land Division
Mr. Perry White  
Planning Solutions, Inc.  
1210 Aanii 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, Kohala Mountain Road, Kona, Hawaii

The DEA titled improvements to Existing Jeep Road at Kohala Kona, 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 archeological investigations on the subject property were conducted by Rose Smith and Aki Shinsato in 1993. However, the 1993 survey does not satisfy current standards for archaeological inventory work as set forth in the draft Hawaii Administrative Rules Chapter 13-216, and therefore cannot be relied upon to evaluate the total number of sites, their significance, or the potential for adverse affects of the proposed improvements on historic sites. We are aware that more recent archeological 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 receive 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.

Sincerely,
P. Holly McGinnis
Planning Solutions, Inc.
1210 Aanii Street, Suite 221
Honolulu, Hawaii 96814
Ms. P. Holly McElroy, Acting Administrator
State Historic Preservation Division
Department of Land and Natural Resources
Kahului Building, Room 555
601 Kamehame Boulevard
Kapolei, HI 96707

November 7, 2003

Subject: Draft Environmental Assessment (DEA): CRUA 1A-1148 (Boulder Permi) Chanhaini
Duke Helfer Improvement to Existing Road Khakana 2nd, North Kohala
District, County of Hawaii 1200 (3) 5-8.1

Dear Ms. McElroy,

Thank you for your September 19, 2003 letter commenting on the Draft Environmental Assessment (DEA) for the all-purpose road construction in the area. We appreciate the time you and your staff spent reviewing the document and providing us with your written comments. Our response to your comments (reproduced for your convenience in this letter) is provided below.

The applicant states that the most recent published archaeological investigations on the subject property were conducted by D.G. Bhet and I.A. Zimm in 1998. However, the 1980s' archaeology report does not satisfy current standards for the subject property. We recommend that the subject property be reviewed by an archaeologist to evaluate the total number of sites, their significance, or the potential for adverse effects of the project improvements. We are aware that more recent archaeological investigations have been conducted on the subject property, but we have not received any report documenting the findings.

Therefore, we have copies of a 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 receive 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 project.

Response: An archaeological assessment survey is underway and will be included in the Final Environmental Assessment. The survey has been completed with your Division to ensure that there have been no significant adverse effects to historic sites caused by the project for which this permit is being sought. Deferral will not preserve the permit in the future.
October 16, 2003

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

RE: CDUA Application, Chandi Duke Helfner, TMK 5-8-01:99

Dear Ms. Mamiya,

OHA is in receipt of your July 29, 2003 letter requesting comments on the above referenced project. We appreciate your letter and offer the following comments.

Cultural Impact Assessment

The Draft Environmental Assessment does not include a Cultural Assessment pursuant to Act 501 SL 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 Keawaula Bay prior to it being closed by the current landowner. The people of Kohala still practice their subsistence gathering rights at Keawaula, and there have been abide by Ms. Helfner’s actions, which include gaging 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 30, 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 SHPO recommendation.

Thank you for this opportunity to comment. If you have further questions, please contact Pua Alii at 594-1931 or e-mail her at pual@oha.org.

Sincerely,

Peter L. Yee
Director
Native Hawaiian and Native Rights

cct: Ms. Perry White
Planning Solutions, Inc.
1210 Aala St., Ste 221
Honolulu, HI 96814
Peter L. Yee, Director  
Neighborhood & Native Rights  
State of Hawaii/Office of Hawaiian Affairs  
711 Kapalina Boulevard, Suite 500  
Honolulu, Hawaii 96813

Subj:  
Draft Environmental Assessment (DEA); DEIA-TH-0348 (Board Permit); Chaudi  
Duke Heffner Improvements to Existing Jeep Road Naheau 2nd, North Kohala  
District, County of Hawaii/THMA (2) 5-6-1s-9

Dear Mr. Yee:

Thank you for your letter of October 16, 2003 letter commenting on the Draft Environmental Assessment (DEA) for the request for a permit to improve an existing jeep road in Kohala at the property of Mr. Chaudi Heffner. We appreciate the time you and your staff spent reviewing the document and providing written comments. Our board reviewed your comments and our comments (reproduced for your convenience in exhibit B). Your letter was transmitted for our "review and comment" on the DEA and your concerns regarding a cultural impact assessment and archaeological assessment. We also provide this response according to DEIR's instruction that your letter was forwarded to us for "review and comment." This response is provided to address your concerns, it is also provided without waiver of Applicant's belief that no further response is required by the Hawaii Administrative Rules.

(1) Cultural Impact Assessment  
The Draft Environmental Assessment does not include a Cultural Assessment pursuant to Act 309, SLH 2000, despite the discussion of the law and its intent, which is included in the DEA. DEIR beneficiaries have stated that they have used the jeep road upon which the improvements were made to access Keanae/Ka'uhao Bay prior to it being closed by the current landowner. The people of Kohala still practice their subsistence gathering rights at Keanae, and these have been abridged (sic) by Mr. Heffner's actions, which include the closing of the jeep road. DEIR requests that a permit be given until a full cultural assessment is done, and until DEIR 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 2.7 of the EA, the Applicant "... does not dispute the existence of the lease that the Applicant and the Future Leaseholder have a right to access the beach, and the seaward portion of the beach is a public beach easement. Therefore, it is not part of the action being allowed by law. The Applicant also does not dispute the existence of a public access right allowed by law."

In response to DEIR'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

November 7, 2003  
Mr. Peter Yee  
November 7, 2003  
final Cultural Impact Assessment as an appendix to account for the possibility that Act 309 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 pending permit be deferred" until their office has had a chance to review an archaeological inventory that meets current standards, and to meet 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. It is not required, but considered consistent with the State, Hawaii's Preservation Division to ensure 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,

[Signature]

Notes:
(1) Cultural Impact Assessment  
(2) Archaeological Assessment Survey  
(3) DELNR, Land Division  
Chaudi Duke Heffner  
Lisa Bell, Goodfellow Quinn & Sulfes  
Paul H. Rosenfield

See Appendix A  
See Appendix B
APPENDIX A: ARCHAEOLOGICAL ASSESSMENT SURVEY
Lisa A. Bail, Esquire
Goodsill, Anderson, Quinn & Stifel
1099 Alakea Street, Suite 1800
Honolulu, Hawai‘i 96813

Subject: Archaeological Assessment Survey
“After the Fact” CDUA Project (CDUA-HA-5148)
Land of Kehena 2nd, 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 2nd, 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-5148).

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 2nd, 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 1st/Kehena 2nd and the Puamui/Kehena 2nd 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 2nd 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-hauole (Leucaena glauca). The shoreline is formed largely by two shallow embayments, with Keawanui Bay located in the central and southern portion of Kehena 8th, 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 pahoehoe 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 (Akonui 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 1954, 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 (F6-1) with several cairns tentatively identified as graves in the seaward portion of Kehena 8th, which was later designated SHIP Site 2391 during the 1972 State-wide Inventory of Historic Places (SIHP).

 During his survey of coastal leeward Kohala, Bonk (1966) identified three more sites within the parcel. Using the Bishop Museum's original site numbering system, the three sites were designated F6-2, F6-3, and F6-6. Site F6-2 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 F6-3 was described as a cleared area well-paved with coral and water-worn pebbles situated c. 60 feet from the existing coastal jeep road. Bonk also identified a large area (Site F6-4) 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 6, 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 Keheia 2nd 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 Goodsell, Anderson, Quinn & Stifflé, 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 (808-969-1789).

Sincerely yours,

[Signature]

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

Bork, W.J.
1966 The Archaeology of North and South Kohala: from the Ahupua'a of Kawaihae to the Ahupua'a of Upolu. Coastal Archeology Surface Survey. Hawaii State Archaeological Journal 6&7. Division of State Parks, Department of Land and Natural Resources

Emory, K.P.

Planning Solutions (Honolulu)


Schiltz, R., and A. Sinoto

Sinoto, A.

Soehren, L.J.
Figure 1. Project Area and Location Map.
APPENDIX B: CULTURAL IMPACT ASSESSMENT
Letter 2566-110503

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-5148 (Board Permit) Chandi Duke Heffner
Improvements to Existing Jeep Road Kehena 2nd
North Kohala District, County of Hawaii
TMK: (5)5–6–1:9

Dear Mr. White:

On October 29, 2008, 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, 2008, commenting on the above-referenced Draft Environmental Assessment. The letter acknowledges that it was sent after the September 22, 2008, 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 343 (Haw. Rev. Stat.), as amended by H.B. No.8935 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 343 (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 8.7 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 kiau trees to prevent the outbreak of brush fires during times of drought. Kiau trees are a non-native species introduced to the Kohala coast of Island of Hawaii early in the 20th 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 Keaweleula include fishing and crabbing, 'Opiki, sea urchins, lihe, 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 20th 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,

[Signature]

Paul H. Rosendahl
President and Principal Archaeologist
EXHIBIT 1: LOCATION MAP
EXHIBIT 3: WARRANTY DEED OF 2002
LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup (XX) To:
Lisa A. Ball, 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.”

WITNESS:

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 severality, 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,
devises, 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, devises, 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
Chandi Duke Heffner
Member

"Grantee"
STATE OF HAWAII

CITY AND COUNTY OF #{Hawaii}#

On this 23rd day of January, 2003, 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.

Notary Public, State of Hawaii
Print Name: Cyndie Rione
My Commission expires: 01-15-04
STATE OF HAWAII

CITY AND COUNTY OF Hawaii

On this 23rd day of January, 2002, 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.

Notary Public, State of Hawaii
Print Name: CYPHIE AMION
My Commission expires: 01-15-04
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. Lumalilo) 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. | $338^\circ$ 13' | 450.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 14. | $68^\circ$ 13' | 10.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 15. | $338^\circ$ 13' | 250.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 16. | $248^\circ$ 13' | 20.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 17. | $338^\circ$ 13' | 250.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 18. | $248^\circ$ 13' | 10.00 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 19. | $338^\circ$ 13' | 54.83 feet along the southwesterly side of Kawaihæ-Mahukona Road; |
| 20. | $45^\circ$ 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. | $158^\circ$ 37' 35" | 3,615.76 feet; |
| 22. | $232^\circ$ 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** : CHANDY DUKE HEFFNER, unmarried, as Tenant in Severalty

**DATED** : April 21, 1999

**RECORDED** : Document No. 99-062894

7
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
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
EXHIBIT 6: SMA EXEMPTION LETTER
September 22, 1999

Mrs. Chandi Duke Heffner

Assessment Application (SMAA 59-27)

Applicant: Chandi Duke Heffner

Request: To Establish Pasturage for Donkeys, Other Ranch Animals, & Animal Husbandry w/ Accessory Improvements

TMK: 5-8-01: 09, Keheka 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.
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.
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,

[Signature]

**VIRGINIA GOLDSTEIN**  
Planning Director

EML: gp  
file/wp60earl/ema/sma9927.eml
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 587-0362.

Aloha,

Dierdre S. Mamiya, Administrator
Land Division

Receipt acknowledged:

Applicant's Signature

Date

cc: Hawaii Board Member
    Hawaii District Land Office
    Chairperson
    DOGARE (Hawaii)
    Lisa A. Ball, Esq, Goodrich Anderson Quinn & Stiffel
EXHIBIT 8: LAND USE DISTRICT INTERPRETATION
January 6, 2000

George K. Lindsey, Jr., Esq.
1111 Bishop Street, Suite 515
Honolulu, Hawaii 96813

Dear Mr. Lindsey:

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

This is a 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,

ESTHER UEDA
Executive Officer

EU:ft

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

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

PARCEL 16-1
166.046 ACRES
(159.068 Acres)

KEHENA 2
The boundary as located, named and defined is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

By: ________________________
    Executive Officer

Date: ________________________

Boundary Interpretation No. 99-28