

April 15, 2010

PLANNING DEPARTMENT
COUNTY OF HAWAII

2010 APR 15 AM 7:48
TMK: 8-6-011:003

Horace Yanagi
Randy Lovato
County of Hawaii Planning Dept.
75-5706 Kuakini Hwy., Suite 109
Kailua-Kona, HI 96740

RE: Residential Application by Keith & Cynda Unger Affecting the
Ala Loa in Kauhako

Aloha Horace & Randy,

I would like to provide you with additional information to give you a better perspective in your investigation regarding the residential application by Keith & Cynda Unger that affected the Ala Loa in Kauhako.

EXHIBIT A: At the Na Ala Hele Advisory Council meeting on March 17, 2010, Keith Unger was scheduled to provide an update of the trails involving his residential application in Kalahiki. At that meeting, Mr. Unger submitted a copy of an e-mail that contained inaccuracies that I would like to rebut and correct.

Mr. Unger stated in his July 23, 2009 e-mail to Horace Yanagi that I was the one that requested a meeting with Bob Rechtman. This statement is incorrect. Attached is a copy of an e-mail that I received from Bob Rechtman who asked to meet with me to discuss Kalahiki. It was Mr. Rechtman who initiated the Hookena Pavilion meeting, not me.

Also, Mr. Unger incorrectly identified individuals from the meeting that visited the "bull paddock in makai Kauhako" where the land clearing activity took place. His e-mail stated that a Secretary from KUPA was at the bull paddock visit. This statement is also incorrect. My wife was the only KUPA Board member/Officer that attended the Hookena Pavilion meeting and she and I did not go to the bull paddock visit.

EXHIBIT B: This is an excerpt of research done by Kepa Maly that appears in the Ki'ilae Farms Subdivision and other South Kona project reports. Bob Rechtman contracted Kepa Maly to do the Ki'ilae report and McCandless Ranch/Keith Unger have contracted Mr. Rechtman do consultation work for them as well. So Mr. Rechtman should be knowledgeable of the history and existence of trails in the area.

As to the issue of trails and roads, the report states that South Kona was divided into nine divisions and it also itemizes how many people worked on trails and roads from each division. The report further states that the roads were Government roads and funded in part by Government appropriations. The report also says that the Ala Loa was in existence prior to 1847.



Horace Yanagi
Randy Lovato
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EXHIBIT C: This document is a copy of the minutes of the Hawaii County Public Access, Open Space and Natural Resources Preservation Commission meeting held on April 9, 2007. I would like to bring to your attention to the second to the last paragraph on page 2 which states:

*Mr. Kawashima stated what this means is that if the State can document the existence of a trail prior to 1892, and the feature has not been disposed of pursuant to Chapter 171, the State may claim the trail. **This would apply even if the trail does not currently exist on the ground physically** – in many instances trail sections have been destroyed over time due to various land uses or natural process.*

EXHIBIT D: This is an excerpt from the Honokua Quiet Title case that involved McCandless Land & Cattle Co. and my father and I, and other defendants. Michael Gibson of Ashford & Wriston was the lead attorney. Later in the case, the company was divided among the three McCandless heirs and Roy Vitousek became a sub-attorney representing the interests of McCandless Ranch (Cynthia Salley/Keith Unger). Roy Vitousek participated in the Commissioner's report to complete the Final Judgment. I and my sub-attorney, Mike Matsukawa, also participated and we made sure the trails/easements/roads were included and addressed in the Final Judgment. Michael Gibson prepared the Final Judgment and he was the one that set the 15 ft. width for the Ala Loa. The Final Judgment specifically addresses the Ala Loa which is a part of the road affected by the land clearing in Kauhako. The language in the Final Judgment would be a good model to follow in addressing trail/easement/road issues such as the one that is the subject of your investigating.

Feel free to contact me at 328-2074 or 960-0179 if you have any questions.

Sincerely,



Clarence A. Medeiros, Jr.

Attachments



NA ALA HELE
Hawai'i Trail & Access System

NA ALA HELE ADVISORY COUNCIL
HAWAII ISLAND

DATE: March 17, 2010
PLACE: Kamuela State Tree Nursery
671220-A Lalamilo Farm Lots Rd.
TIME: 6:00 pm to 8:00 pm

AGENDA

- I. REVIEW MINUTES OF January 27, 2010**
- II. PUBLIC TESTIMONY/NEW BUSINESS**
 - A. Residential Application Affecting the Historic Trail in Hookena – Landowner Keith Unger will provide an update on the trails condition.**
- III. UNFINISHED BUSINESS/ COMMITTEE REPORTS**
 - A. Gating of Access Road at Kahauloa.**
 - B. Tutu Mele Trail in Kukuihaele.**
 - C. Na Ala Hele Update**
 - D. Ala Kahakai National Historic Trail Update**
 - E. Set Agenda for Next Meeting**
- IV. ADJOURNMENT**

If you desire to attend the above meeting and require auxiliary aids (taped material or sign language interpreter) please request assistance five working days prior to the meeting to the Division of Forestry and Wildlife Branch at the address shown below or by calling/faxing at (808) 974-4221/(808) 974-4226

Division of Forestry & Wildlife • Dept. of Land & Natural Resources • P.O. Box 4849 • Hilo, Hawaii 96720-0849

EXHIBIT A

Dec 3-17-2010

Keith F. Unger

From: "Keith F. Unger" <kunger@hughes.net>
To: "Cynnne Salley" <mcranch@aloha.net>
Sent: Thursday, July 23, 2009 9:42 AM
Attach: Rancher of the Year.pdf
Subject: Fw: McCandless Ranch

----- Original Message -----

From: Keith F. Unger
To: Horace Yanagi
Cc: Randy Vitousek ; Bob Rechtman
Sent: Thursday, July 23, 2009 9:41 AM
Subject: McCandless Ranch

Aloha Horace,

McCandless Ranch has operated under a Soil Conservation Plan since 1955. The ranch completed a family partition in 1993. Shortly thereafter, I meet with NRCS to modify and update our plan based on this partition. This plan will be delivered to your office today.

In 2007, McCandless Ranch embarked on an ambitious plan to eradicate opiuma and lantana from our pastures. The plan was to uproot the opiuma trees and lantana using our D-8, then follow up with an aggressive herbicide application. We started in our mauka pastures and worked our way makai. Our success was so remarkable that we were named Rancher of the Year by Kona Soil and Water.

During the week of July 14 - 18, 2008, D-8 work commenced in our bull paddock, Makai Kauhakou. Shortly thereafter, I received a call from Dennis Hart, a volunteer on the Ala Kahakai trail. He expressed concern that McCandless was bulldozing the Ala Loa trail in this area. I explained to Dennis that I have worked in that paddock for the past 15 years, I have applied herbicide in the area, repaired rock walls and water troughs, ridden horseback on many occasions to drive our bulls, I have hunted and hiked the area extensively, and I have never seen any evidence of the Ala Loa trail, or any other trail for that matter. I suggested he come to the area and we walk it together. Tuesday, July 22, myself, Dennis Hart and Roy Santiago met and spent over 2 hours walking the property. Roy explained to me that he was trained in "trail identification". After spending a considerable amount of time on the property, no one was able to identify any sign of a trail. Despite not finding any evidence of a trail, I told Dennis and Roy that I would discontinue work in the area and hire an archaeologist to confirm our observations. I immediately called Bob Rechtman of Rechtman and Associates, explained the situation and I hired his firm to send an

archaeologist to the area to search for any evidence of a trail in the area. I had also made arrangements for Morgan Davis, SHPD to join us. Tuesday, July 29, I was suppose to meet with Matt Clark of Rechtman and Associates and Ms. Davis, but Ms. Davis never showed up. After waiting for Ms. Davis, I finally told Matt to head into the field and begin his work, and I'll continue to wait. Shortly thereafter, I received a call from Bob Rechtman. He explained that Clarence Medeiros Jr. had requested a meeting with him at the Hookena Pavilion this morning on an unrelated matter, but when he arrived at the Pavilion, Dennis Hart and several other community members had called a meeting with county, federal and state officials to "protest the McCandless bulldozing of the Ala Loa trail". Bob explained to me that Ms. Davis did not meet us because she was down at this meeting. Needless to say, there was chaos at the meeting, with community activists making a number of false accusations against the ranch. I told Bob to please invite any of these community leaders up to Makai Kauhakou pasture and to extend this invitation to any federal, state or county agency personnel. I said the ranch has nothing to hide, and because there will be a number of trained archaeologist present, this will be an excellent opportunity to resolve this issue once and for all.

The group that came included Dennis Hart, Larry Ha'ai Braily, a secretary from KUPA (Kama'aina United to Protect the 'Aina), Morgan Davis, SHPD, Rick Gamerkin, Na Ala Kahakai and Bob Rechtman. We proceeded into the area and eventually met Matt, who had already spent about an hour in the area. After spending considerable time in the area, it was evident to all parties that this recent activity by McCandless Ranch had not bulldozed the Ala Kahakai Trail. Both Dennis Hart and Larry Braily apologized to me and said if I ever needed a letter of apology from them, to request it. I never did make a request to them, and to the best of my knowledge, this issue was resolved.

I am kama'aina to the Big Island and have lived here all my life. McCandless Ranch has had the privilege of stewarding this property for the past 90 years. Our cowboy/bulldozer operated, Gary Gouveia, is a Kalephano from the Hookena area. We would never knowingly and blatantly bulldoze a historic trail, or for that matter, any other archaeological feature on our ranch.

Keith



Windows Live™ Home Hotmail Spaces OneCare MSN Mail Web nelli88@hotmail.com Sign out

Inbox (4) New Reply Reply all Forward Delete Junk Move to Options

Junk

Drafts (2)

Sent

Deleted (38)

CONSULTATIONS

CraftsEtc

FYI

Genealogy

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Re: Just heard your phone message so I want to clarify

From: Bob Rechtman (bob@rechtmanconsulting.com)
 Sent: Fri 7/18/08 4:40 AM
 Reply-to: Bob Rechtman (bob@rechtmanconsulting.com)
 To: nellie medeiros (nellie88@hotmail.com)

It is TMK 3-7-7-4:61 NOT 62, that is a different parcel with burials that I will not do a treatment plan for.

----- Original Message -----

From: nellie medeiros
 To: Bob Rechtman
 Sent: Thursday, July 17, 2008 12:49 PM
 Subject: RE: Just heard your phone message so I want to clarify

Bob:

Regarding Kaumalumu, is TMK (3) 7-7-004-062 the one you are talking about?

Clarence

From: bob@rechtmanconsulting.com
 To: nellie88@hotmail.com
 Subject: Re: Just heard your phone message so I want to clarify
 Date: Wed, 16 Jul 2008 18:00:12 -1000

Clarence:

The kaumalumu sites I am referring to have not been discussed at Council yet. I am still preparing the Treatment Plan, and will share a copy with you for input. These sites are located right along the mauka side of Aili Drive.

As far as Alfred and Jimmy, their information was summarized and included in the CIA. Jimmy's input was only general in nature, and I had some specific clarification questions for Alfred with respect to his work on the ranch.

Also, we should get together and discuss Kalahiki very soon.

My broken leg (a story I will share with you when we meet) has healed perfectly, thank you for asking.

Bob

----- Original Message -----

From: nellie medeiros
 To: Bob Rechtman
 Sent: Wednesday, July 16, 2008 5:16 PM
 Subject: RE: Just heard your phone message so I want to clarify

Aloha Bob,

Regarding Kaumalumu, it has been a while. I remember the HIBC discussing the burial treatment plan. Have they provided you with any input from their discussions? I would appreciate seeing that so I can be updated before we discuss it further.

As far as Kiilae, will any dialogue from your discussions with Alfred and Jim be documented in print in the final EA? If so, will I have an opportunity to review it?

Clarence

P.S. Ron told me that you injured your leg. Hope you are well.

From: bob@rechtmanconsulting.com
 To: nellie88@hotmail.com
 Subject: Re: Just heard your phone message so I want to clarify
 Date: Wed, 16 Jul 2008 09:42:35 -1000

Nellie and Clarence:

programs, road improvements, and public works); and the Department of Public Instruction (Schools). The records cited herein were viewed in the collections of the Hawai'i State Archives, State Survey Division, and State Land Division. The information is presented by subcategories in chronological order, spanning the period ca. 1847 to 1900.

Trails and Roads of the Kona Hema Region

Alahele (trails) and *alaloa* (regional thoroughfares) are an integral part of the cultural landscape of South Kona and all Hawai'i. The *alahele* provided access for local and regional travel, subsistence activities, cultural and religious purposes, and for communication between extended families and communities. Trails were, and still remain important features of the cultural landscape.

Historical accounts (cited in this study) describe at least two primary trails of regional importance in the South Kona region. One trail crossed the *makai* (near shore) lands, linking coastal communities and resources together. The other major trail of this region is "*Kealaehu*" (The path of Ehu), which passes through the uplands (in the vicinity of the Māmalahoa Highway). This trail comes out of Ka'ū, passes into North Kona, and continues on to Ka'ūpūlehu, where it then cuts *makai* to Kīhōlo (meeting with the *makai* alignment of the *alaloa*). The *alaloa* then continues into Kohala, passing through Kawaihae and beyond. This route provided travelers with a zone for cooler travel, and access to inland communities and resources. The trail also allowed for more direct travel between North and South Kona (see Malo 1951; I'i 1959; Kamakau 1961; Ellis 1963; and *Māhele* and Boundary Commission Testimonies in this study).

In addition to the *alahele* and *alaloa*, running laterally with the shore, there is another set of trails that run from the shore to the uplands (*makai* to *mauka*). By nature of traditional land use and residency practices, every *ahupua'a* also includes one or more *mauka-makai* trail. In native terminology, these trails were generally known as—*ala pi'i uka* or *ala pi'i mauna* (trails which ascend to the uplands or mountain).

Along these trails which pass through Ki'ilae-Kauleolī and the larger South Kona region are found a wide variety of cultural resources, including, but are not limited to residences (both permanent and temporary), enclosures and exclosures, wall alignments, agricultural complexes, resting places, resource collection sites, ceremonial features, *ilina* (burial sites), petroglyphs, subsidiary trails, and other sites of significance to the families who once lived in the vicinity of the trails. The trails themselves also exhibit a variety of construction methods, generally determined by the environmental zone and natural topography of the land. "Ancient" trail construction methods included the making of worn paths on *pāhoehoe* or 'a'ā lava surfaces, curbstone and coral-cobble lined trails, or cobble stepping stone pavements, and trails across sandy shores and dry rocky soils.

Following the early nineteenth century, western contact brought about changes in the methods of travel (horses and other hoofed animals were introduced). By the mid-nineteenth century, wheeled carts were also being used on some of the trails. In the Ki'ilae-Kauleolī vicinity of South Kona, portions of both the near shore and upland *alahele-alaloa* were realigned (straightened out), widened, and smoothed over, while other sections were simply abandoned for newer more direct routes. In establishing modified trail—and early road—systems, portions of the routes were moved far enough inland so as to make a straight route, thus, taking travel away from the shoreline.

By the 1840s, the modified alignments became a part of a system of "roads" called the "*Ala Nui Aupuni*" or Government Roads. Work on the roads was funded in part by government appropriations, and through the labor or financial contributions of area residents and prisoners working off penalties (see below). In the Ki'ilae-Kauleolī section of South Kona, portions of the *Alanui Aupuni* are lined with curbstones; elevated; and/or made with stone filled "bridges" in areas that level out the contour of the roadway. This section of the roadway was surveyed and laid out in ca. 1847 (see Governor Kapeau to Keoni Ana, Aug. 13, 1847 in this study). The *Pali Alahaka* road (Figure 7) that ascends the *pali* from Keōkea into Ki'ilae is one of the significant road construction events of this period. While the *alahaka* (ramp or bridge) has been restored as a part of the National Park Service's preservation program, "old-

timers" interviewed as a part of the present oral history study have stated that the *Alahaka* looks much as it did in the 1930s-1940s.

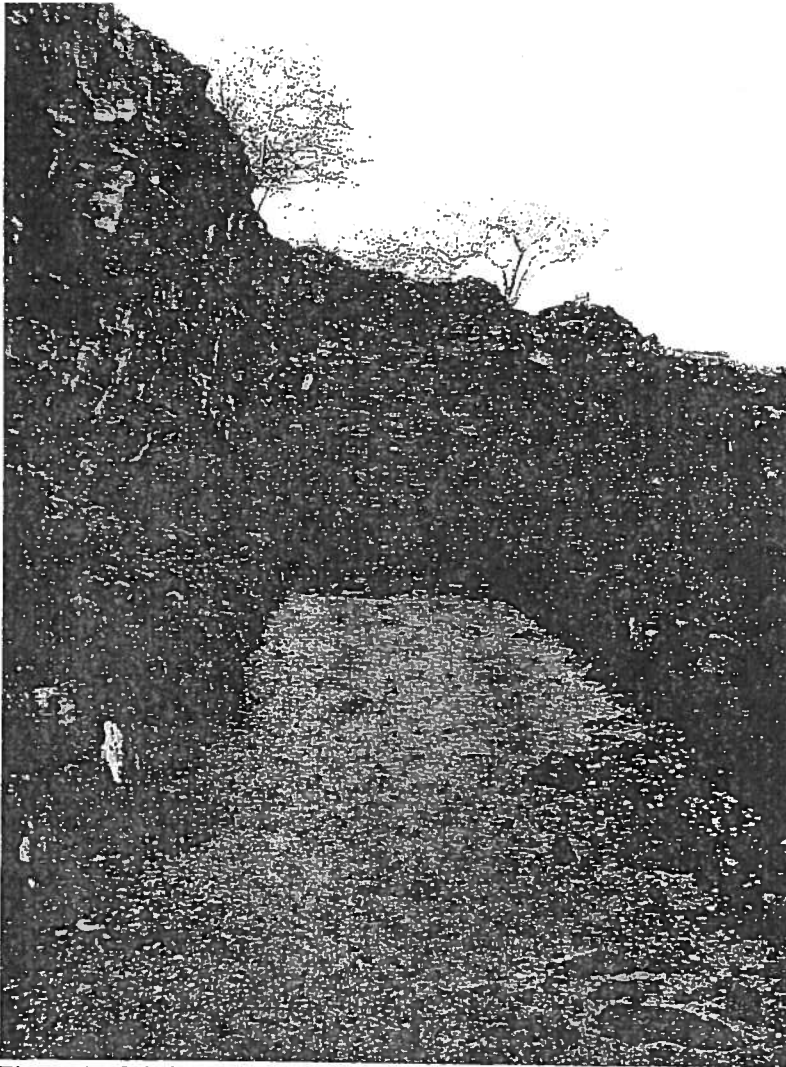


Figure 7. *Alahaka* on the *alanui aupuni* (*Makai Government Road*).

In September 1856, the *Pacific Commercial Advertiser* published an article that provides readers with a historic overview of road development in the Hawaiian Islands:

... The history of road making in this kingdom does not date far back. The first law that we find recorded was enacted in 1840, which as well as the laws of 1846 and 1850 gave to the Governors a general control of the roads, with power to make new roads and employ prisoners in their construction. But no system of road making has ever been introduced, and the whole subject has been left to be executed as chance dictated. In 1852 road supervisors were made elective by the people, at the annual election in January. This change worked no improvement in the roads, as the road supervisors, in order to remain popular, required the least possible amount of labor, and in many districts an hour or two of work in the morning was considered as a compliance with the road law. Under this law the road supervisors were pretty much to themselves, and though accountable to the Minister of the Interior, they considered favor of their constituents of more importance. This law was found productive of more evil than good, and during the last session of

the legislature a new road law was passed, which goes in to force on the 1st of January 1857. This new law gives to the Minister of the Interior the appointment of road supervisors throughout the Kingdom, who are subject to such general instructions (we suppose in regard to the construction of roads) as he may issue . . . (The Pacific Commercial Advertiser, September 25, 1856)

Travel in the Ki'ilaie-Kauleoli Vicinity:

June 26, 1847

George L. Kapeau to Keoni Ana

I have received your instructions, that I should explain to you about the *alaloa* (roadways), *alahaka* (bridges), light houses, markets, and animal pounds. I have not yet done all of these things. I have thought about where the *alanui heleloa* (highways) should be made, from Kailua to Kaawaloa and from Kailua to Ooma, where our King was cared for. And then afterwards around the island. It will be a thing of great value, for the roads to be completed. Please instruct me which is the proper thing for me to do about the *alaloa*, *alahaka*, and the laying out of the *alaloa*. (State Archive-Interior Department Misc., Box 142; translated by Kepā Maly)

August 13, 1847

George L. Kapeau to Keoni Ana

. . . I have a few questions which I wish to ask you. Will the police officers be required to pay, when they do not attend the Tuesday (*Poalua*) labor days? How about parents who have several children? What about school teachers and school agents? Are they not required to work like all other people when there is Government work on the roads and highways?

I believe that school agents, school teachers and parents who have several children, should only go and work on the weeks of the public, and not on the *konohiki* days . . .

. . . The roads from Kailua and down the *pali* of Kealakekua, and from Kailua to Honokohau, Kaloko, Ooma, the place where our King was cared for, and from thence to Kaelehuluhulu [at Kaulana], are now being surveyed. When I find a suitable day, I will go to Napoopoo immediately, to confer with the old timers of that place, in order to decide upon the proper place to build the highway from Napoopoo to Honaunau, and Kauhako, and thence continue on to meet the road from Kau. The road is close to the shore of Kapalilua . . .

. . . The width of the highways round Hawaii, is only one fathom, but, where it is suitable to widen where there is plenty of dirt, two fathoms and over would be all right . . . If the roads are put into proper condition, there are a lot of places for the strangers to visit when they come here. The Kilauea volcano, and the mountains of Maunaloa, Maunakea, Hualalai . . . (Interior Departments Roads Hawaii; translation revised by Kepā Maly)

March 29, 1848

George L. Kapeau to Keoni Ana:

. . . I received your letter, at the instruction of the Minister of the Interior inquiring as to the amount of work done on the Government Roads, on the island of Hawaii. I do not know fully, though know of some work, and tell you here, what I do know . . .

The *alaloa* (highway) from Kealakekua to Honaunau has been worked on, but it is not completed, it is a rocky place. The work done is from Kealakekua to upper Keei, and from Honaunau to Keomo, place of the great battle of Kamehameha and

Keeaumoku with Kiwalao, the battle called Mokuohai. The place covered with dirt is from Kealakekua to Keei. The alaloa at Kau has been made as well, not in it's entirety, but in sections . . . (Interior Department—Misc. Box 142; translation revised by Kepā Maly)

South Kona, Hawaii,
December 22, 1854.

Geo. B. Kalaau (South Kona Road Supervisor),
to Keoni Ana (Minister of the Interior):

. . . I report to you the matters pertaining to the Road Tax of this District during this year, as follows:

1. The number of persons subject to Road Tax in this District. When I counted the persons from 16 years up to forty years and over, there were six hundred and forty-one persons, including foreigners and native Hawaiians.
2. The number of days worked by these persons, under the law of 1853, six days work by each, that being the full payment for the one year ending on the last day of December, 1854; and if these six days are multiplied with the six hundred and forty-one persons, the result will be three thousand eight hundred and forty-six, the number of days. But, I divided the work up in the nine divisions, as follows:

Division 1, from Puuohau to Onouli 1; Division 2, from Onouli 2 to Kealakekua; Div. 3, from Kiloa to Keei 1; Div. 4, Keei 2 to Honaunau; Div. 5, Keokea to Kealia 2; Div. 6, Hookena to Waiea; Div 7, Honokua to Kaohe; Div. 8, Kukuioape to Hoopuloa; Div. 9, Milolii to Kapua.

If the count of the days is by districts, it will be fifty-four days, because, I have given six days to each division, the same to all the sections.

3. The amount of money received from Road Tax in this year. I received the sum of eight dollars, as follows: From David Barrett, \$2.00; Mr. Schulze, \$2.00, Kanakaole, \$2.00, H. Clark, 2.00, these are the names of those who paid properly, according to law...
5. Balance of money from the former year. No balance was given me by the Road Supervisor in 1853.
6. Money disbursed and the balance. I paid out the sum of eight dollars, of the road tax, for a part between Hoopuloa and Milolii. A very bad place, plenty of rocks, therefore, I gave that money in order to fix up that place. There is no money balance.
7. The tools and implements with me now. I received from Charles Hall, the former Government Official, two hammers, two crowbars, and four shovels. These tools and implements were not in a damaged condition, and these things are now in my hands.
8. The number of days worked by me, in this position during this year. Here it is, sixty, as follows: Nine districts, six days of each district, being fifty-four days, which together with the six days worked by me, makes in all sixty days . . .

The total number of people who required to contribute to the Road Tax in the District of South Kona:

From Puuohau to Onouli 1, the people in this division, 99.

From Onouli 2 to Kealakekua, the people in this division, 106.

From Kiloa 1 to Keei 1, the people in this division, 109.

From Keei 2 to Honaunau, the people in this division, 111.
 From Keokea to Kealia 2, the people in this division, 50.
 From Hookena to Waiea, the people in this division, 62.
 From Honokua to Kaohe, the people in this division, 94.
 From Kukuiope to Hoopuloa, the people in this division, 65.
 From Milolii to Kapua, the people in this division, 44.
 The total is 641 . . . (Interior Department Misc. Box 146)

March 6, 1856

R.A. Wood (Superintendent, Bureau of Public Improvements),
 to R.C. Wyllie (Minister of Foreign Relations, Minister at War);
 Reporting on Road Supervisors, Island of Hawaii (District of Kona):

| | |
|------------|---|
| North Kona | G.W. Waiau |
| South Kona | D. Nahinu [Interior Department – Roads] |

February 4, 1868

Geo. Hardy (Road Supervisor), to F.W. Hutchinson (Minister of Interior):

. . . According to your instructions I hereby inform you what work I have done in the different districts under my charge. In South Kona I have repaired a very bad place known by the name of Alahaka in the village of Kiilae, a place of great danger, where several horses had been killed, and where people went in danger of falling down on the way up. I have made it wide and a substantial road.

I have also put the road going down to Kaawaloa in first rate order. In north Kona, I have opened a very convenient road, going down to Keauhou, and also given my attention to repairing the worst places through the districts, and made roads as good as possible . . . (Interior Department Roads—Hawaii Folder 4; translation modified by Kepā Maly)

1869 [see also letter of October 4, 1869]

Petition of J.W. Maele and 97 native residents of South Kona,
 to F.W. Hutchinson (Minister of Interior):

. . . We, the people whose names are below, petition to you about the Road Supervisor of Kona. We desire that S.W. Papaula be made the Road Supervisor of South Kona. That a straight road be opened from Kaulanamauna to Kealakekua, and that the places which are bad and in disrepair be made good, like the work (by Thomas Martin) on the road of Kau.

Please kindly consider our request to you. In truth of this request, we sign our names below . . . (Interior Department, Roads Hawaii Folder 6; translated by Kepā Maly)

Keopuka

August 1, 1871

Henry Cooper (Kona Road Supervisor),
 to F.W. Hutchinson (Minister of the Interior):

. . . I beg to inform you in regards to the roads in South Kona.

I have worked the roads for about 18 miles from North to South, say from your Highness' place to Kukuiope, the roads thus far are in fairly good order.

I have remade two miles of road on the beach across the lands of Keei & Honaunau, this improvement was much required as the road had become almost impassable.

From Kukuioapae to Kapua there is some 12 miles of bad road... I would also say that on the newly made piece of road before mentioned, then natives allow their goats to run at large thereby doing more damage in one month than would be done by ordinary travel in a year. I have posted notices without effect, and would ask your Excellency's instructions upon the subject . . . (Interior Department, Roads Hawaii Folder 8)

December 11, 1871

List of Road Supervisors to whom Circulars and Blanks were sent December 11th 1871.

| Name | District | Island |
|--------------|------------|--------|
| Henry Cooper | South Kona | Hawaii |
| Jas. Smith | North Kona | Hawaii |

[Interior Department Book 10:589]

December 25, 1871

Petition of D.H. Nahinu et al. (signed by 66 individuals), to F.W. Hutchinson (Minister of the Interior):

. . . The names of the people below, are natives dwelling in the district of South Kona, from Kealia, Hookena, Kauhako, Kalahiki, Waiea, Honokua, and Pahoehoe, and to Kaohe, And also up to Honaunau.

We humbly ask you that a new road be built from Hookena to Pahoehoe, because it has been a very long time since any work was done on the road, therefore it is in very bad shape, difficult for our animals to travel upon, and also for the visitors who travel there.

We have asked the Road Supervisor to make this road, but he has refused, saying there is no money left in his account. The road from Kealakekua to Hookena is finished and everything is good, only this area remains in bad shape . . . (State Archives—Interior Department Roads, Hawaii Folder 8; translated by Kepā Maly)

March 31, 1886

Minister of the Interior Reports

Appendix L.

. . . North Kona District. The roads of North Kona are now in fair repair. We have recently cut the lanтана which, to a certain extent, had encroached upon and obstructed them. No large work has been attempted, as the requirements of the District are light. Cost of repairs to the roads in this District for the period has been \$898.

Requirements— [described work to be done in Northern section of the district]

South Kona District. The roads through this District are in good repair at the present time. They have been worked upon from time to time, as they required it. A new road was constructed, six miles long, from Pahoehoe to Hookena. Cost of new road and general repairs in this District has been \$2,882.

Requirements—The wants of this District for the coming period will be light. No new work is required, and an appropriation of \$1,000, in additions to the receipts from road taxes, will be sufficient to maintain the roads in good order . . . (Report of 1886:cvi)

Kailua

November 16, 1889

W.E. Rowell, to L.A. Thurston (Minister of the Interior);

Reporting on road work to be done by Kalanipoo in South Kona, and observed:

... They have had a tremendous crop of coffee this season, and every man, woman & child in South Kona is busy picking and cleaning coffee. It is out of the question getting a gang of natives now for the road, the coffee run will last through December... (Interior Department Roads Box 40)

December 3, 1890

G.W.R. King (Department of Public Works), to

H.W. McIntosh (Superintendent of Public Works):

... I herewith present my report of the work intrusted to my care while acting under your letter of instructions dated Nov. 12/90, relating to the new roads in North and South Kona...

As regards the Hookena Road, I will say that I consider it a fine piece of work and Mr. Kalanipoo deserves the credit of being a very competent man for the work he has in charge . . . The makai road from Hookena to Napoopoo is in bad shape and needs some attention from the local road board. Mr. Nahinu, will however, attend to the matter . . . (Interior Department Roads Box 40)

December 31, 1897

T.H. Wright (South Kona Road Supervisor), to J.A. King (Minister of Interior):

... Napoopoo Road badly washed out by heavy rain . . . it will cost about \$400—to put it in proper repair if not more.

Napoopoo to Hookena beach road in a fearful condition, it needs repair of the worst kind. The Walahaka [Alahaka] pali very dangerous. This road is used every day for the convenience of the public, going and back to these places. It will cost a big lot of money to put it in shape . . . (Interior Department Roads Box 42)

December 31, 1898

T.H. Wright (South Kona Road Supervisor), to J.A. King (Minister of Interior):

... The condition of our roads is fair from Kuaimoku [the Pahoehoe vicinity] to the North boundary [at Kainaliu], with the exception in want of new top dressing... Beach Trail from Napoopoo to Hookena in a very bad condition. The last legislature has appropriated the sum of \$400.00 for repair of the said trail, but the board has not been able to draw the same. How can the board draw this amount from the treasury? (Interior Department Roads Box 42)

Overview of the Hawaiian Schools in the Hōnaunau-Ho'okena Section (with Ki'ilae) South Kona: Records of the Department of Public Instruction

As reported earlier, the instruction of students in schools (most of whom were adults in the early years), in reading, writing and other skills initially fell to the missionaries. In a short time native teachers were trained, and by 1831, eleven hundred schools were in operation throughout the islands, with more than thirty thousand students enrolled (Kuykendall and Day 1970:79). The schools generally served as both native churches and meeting houses, and were established in most populated *ahupua'a* around the island of Hawai'i; native teachers and lay-ministers were appointed to oversee their daily activities.

By ca. 1840, most of the native residents of the Hawaiian Islands could read and write, and interest in the schools began to diminish. On October 15, 1840, Kamehameha III enacted a law that required the maintenance and local support of the native schools (the Constitution of 1840). The Constitution provided a

"Statute for the Regulation of Schools," which required that in a village with 15 or more students, the parents were to organize and secure a teacher. They could then apply to the local school agent for funds to pay the teacher and for land on which a school could be built and classes held. The statute also allowed for the use of proceeds and work of the "*Poalua*" (King's Labor Days) to be used in support of the schools (cf. Constitution of 1840 and Kuykendall and Day 1970). The early records were kept by the mission stations, but by 1847, more detailed records were kept by government representatives and appointed officials, including — teachers, school inspectors, superintendents, and surveyors. In these records are also found important lists identifying the native tenants of various lands in South Kona (including the Ki'ilae vicinity).

In 1847, the records list a school at Ki'ilae, with neighboring schools at Hōnaunau and Keālia. Following a review of all available documentation, it was found that the school of Ki'ilae remained open until 1866, after which, the students either went to Hōnaunau or Ho'okena for school. D.H. Pa'akaula (Pa'akaula may have been the "Kaula" referenced as heir of Meaalii, a *Māhele* applicant for a *kuleana* at Ki'ilae; LCAw. 10121) the last teacher at Ki'ilae participated in an event that led to his removal and left the school with no teacher.

1847 School Report, District 3, Hawaii

(by Superintendent, G.W. Lilikalani)

| <u>Ahupuaa (Land)</u> | <u>Kumu (Teacher)</u> |
|-----------------------|----------------------------|
| Honaunau | Kainapau, Kapiioho, Holoaa |
| Kiilae | Kapawai |
| Kealia | Makuaaloha... |

Teachers who have been released:

| <u>Ahupuaa</u> | <u>Kumu</u> |
|----------------|---------------|
| Honaunau | Nawaaloo |
| Kiilae | Kanakaokai... |

(Public Instruction, Series 261 Box 1)

Kealakekua

January 22, 1848

G.W. Lilikalani (South Kona School Inspector), to Keoni Ana (Assistant Minister of Public Instruction); Reporting on numbers of families, children, and construction of schools:

| | |
|---|------|
| Families of Hawaiian Ancestry | 1033 |
| Number of children, from 4 to 14 years of age | 778 |

New school houses that have been constructed in this District: 5

These were merely grass-houses, with stone walls along the bottom

(Public Instruction Series 261 Box 1)

November 1848

Journal of a tour around the windward islands, Hawaii, Maui & Molokai in the months of September, October & November 1848:

Oct. 2. As we passed along the coast of Kona, I visited the schools in several villages, & as in Kau, found the teachers doing but little.

Met the teachers & trustees of this district in a convention; also examined several schools. There are 29 Protestant schools in this district, embracing about 964 children; and 4 Catholic schools embracing about 80 children. Many of the children & youth appeared well on examination & reflected much credit upon their teachers, while others appeared to have made little or no improvement.

HAWAI'I COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL
RESOURCES PRESERVATION COMMISSION

MINUTES-REGULAR SESSION

April 9, 2007

Department of Liquor Control Conference Room
101 Aupuni St., Suite 230
Hilo, Hawai'i 96720

Present: Chair Kenneth Kaneshiro
Vice-Chair Hannah Springer
Commissioner Paul Campbell
Commissioner E. Kalani Flores
Commissioner Bill Gilmartin
Commissioner Benedict Yung

Absent: Commissioner Laura Schuster

Others Present: Amy Self, Deputy Corporation Counsel
Karen Delimont, Secretary
Harry Yada, Property Manager, Finance
Irving Kawashima, Na Ala Hele Specialist DLNR
Clement Chang, Na Ala Hele Specialist DLNR

CALL TO ORDER

The meeting was called to order by Mr. Kaneshiro at 10:02 am.

STATEMENTS FROM THE PUBLIC AGENDA ITEMS

None

APPROVAL OF MINUTES

Motion: Commissioner Flores moved for approval of the minutes of March 12, 2007 regular session, seconded by Commissioner Springer and carried unanimously by voice vote.

**DISCUSSION WITH IRVING KAWASHIMA, NA ALA HELE SPECIALIST
WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES,
DIVISION OF FORESTRY AND WILDLIFE**

Mr. Kawashima introduced himself to the Commission. Mr. Kawashima stated that the Na Ala Hele is the State of Hawai'i trail and access program established in 1988 in response to the public concern about the loss of public access to certain trails and the threat to historic trails from development pressure. Na Ala Hele has become increasingly

engaged in trail management and regulatory issues due to both public and commercial recreational activities and emerging legal issues. Na Ala Hele is administered by the Division of Forestry and Wildlife- Department of Land and Natural Resources. Mr. Kawashima stated the administrative directives of Na Ala Hele are to regulate activity for specific trails and accesses, conduct trail and access inventory and classification, investigate potential and needed trails and accesses, examine legal issues associated with trails and access, act as point of contact for trail and access information and issues and conduct trail and access advisory council meetings. Mr. Kawashima stated the primary management activities are to construct, restore and maintain trails and access roads through utilization of staff and partnerships with community volunteers.

Mr. Kawashima stated there were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State. In relation to trails, the following two citations describe the legal tools used by the Na Ala Hele Program to identify and possibly claim public ownership of specific features:

The Highways Act of 1892

In October of 1892, Queen Liliuokalani approved law that determined that the ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple. The definition of public highway includes all existing trails at the time or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways. Furthermore, all public highways once established shall continue until abandoned by due process of law.

Chapter 264-1(b), Hawai'i Revised Statues (HRS)

All trails, and other non-vehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as non-vehicular public rights of way at any time hereafter, or in the future, are declared to be public trails. A public trails is under the jurisdiction of the State Board of Land and Natural Resources-unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county. All State trails once established shall continue until lawfully disposed of pursuant to Chapter 171, HRS.

Mr. Kawashima stated what this means is that if the State can document the existence of a trail prior to 1892, and the feature has not been disposed of pursuant to Chapter 171, the State may claim the trail. This would apply even if the trail does not currently exist on the ground physically- in many instances trail sections have been destroyed over time, due to various land uses or natural process.

Mr. Kawashima stated they have an inventory of all the trails on the Big Island, they also have a list of trails that they call Na Ala Hele Program Trails and these are the trails which are open to public use; that list is located on their website.

Mr. Flores asked how would the County of Hawai'i Planning Department know of any trails applicable to the Na Ala Hele list; if they are in the permitting process. Mr. Kawashima stated the County currently sends development applications to Na Ala Hele and they perform research on that parcel to determine if there are trails in existence on those parcels and if those trails meet the criteria set by the Highways Act of 1892. It is possible for the County to issue a permit not realizing there is a trail on the land. Mr. Kawashima stated the County has a shoreline access plan that shows some of the ancient trails that are not meeting the Highways Act. If it shows up, the County calls them to see if those trails meet the Highways Act. Mr. Kawashima stated there is no formal agreement between the County and the State notifying Na Ala Hele of land uses or development.

Ms. Springer asked Mr. Kawashima if there was anyway that this Commission could kokua them through this Commission's focus on access ways and advocating for acquisition of lands. Ms. Springer stated that many people in the public might look at this Commission's primary purpose to identify lands for the County of Hawai'i to acquire however this Commission can also advocate for access easements.

Mr. Kawashima stated if the landowner was agreeable to selling that portion of his land for public access, the County could help with that.

Mr. Kaneshiro stated this Commission could also focus on getting easements for public access instead of just acquiring properties. He would like to see this Commission work with the County to get the easements.

Mr. Kawashima expressed that there are issues of maintenance and liability. For example, if a trail goes through someone's property and it turns out to be a state owned trail, the state picks up the liability. In regards to maintenance, Mr. Kawashima stated they try to get the land owner to help with the maintenance through a Memorandum of Agreement where they agree to help maintain the existing trails with Na Ala Hele. Their funding fluctuates and public trails are not opened until safety and supporting structures are in place. There are State owned trails that are land banked until there are funds available to bring them into the program. A general fund and two special funds facilitate the Na Ala Hele program; the gas tax (motorized use for trails and roads) and commercial permits. The program is currently staffed by two personnel.

Ms. Springer stated in the list of sites that the Commission submitted to the Mayor for consideration, most of the top ten were for acquisition. However, there were two properties Pōhue Bay and 'O'oma were the nominations recommend that we acquire easements for protection of coastal and cultural resources and shoreline access. Ms. Springer asked Mr. Kawashima if he had any thoughts on this.

Mr. Kawashima stated he was not familiar with 'O'oma but with Pōhue Bay, it's a very significant part of the island that hasn't been developed.

Ms. Springer stated 'O'oma is located between the Natural Energy Lab and the Kaloko-Honokōhau National Historic Park. The coastal trails also falls within the Alakahakai designation; the federal designation. Should we be in discussion with Na Ala Hele or the federal program. Mr. Kawashima stated both because they are currently in the process of transferring the Alakahakai over to the National Parks Service; they are in the draft stages of the MOA.

Mr. Yada stated there are some situations where a landowner is not necessarily applying for entitlements but there are trail issues. In those types of situations, there is an opportunity for participation with the County's fund and programs such as Na Ala Hele. Mr. Yada stated his concern that they might be dealing with is the management issue. Mr. Yada stated it's one thing to have an access but to have an entity overseeing some kind of maintenance. Public Works doesn't maintain trails; they do roads. Mr. Yada stated there was nothing stopping Na Ala Hele from submitting an application of trails.

Mr. Flores stated it could be a parcel of land that might serve as a trail head for what Na Ala Hele thinks is important for acquiring but the State might not have the total funds. The County could acquire a partnership or in the entirety a parcel that would help facilitate the trails program as well; such as a parking parcel. This Commission could help with identifying that and bringing it to the County's attention.

Ms. Springer stated the public has brought up maintenance issues. Ms. Springer stated the public's feeling is that it's "poho" to add more lands deserving of management when we already can't manage what we have. Part of management is inventory work to ascertain the nature of resources. Ms. Springer stated the ordinance doesn't anticipate survey or maintenance work unless it reaches the point of nomination.

WRITTEN COMMUNICATION

Communication No. 07-003: Letter to Council Chairman Pete Hoffmann and Members of the County Council from Mayor Harry Kim re: nomination of Kim Garcia of Council District 7 to the County of Hawai'i Public Access, Open Space and Natural Resources Preservation Commission.

The communication was reviewed and accepted by the Commission.

DEPARTMENT OF FINANCE REPORT

Mr. Yada stated there was no progress to report on the Johnson property (Kawa'a). In the next week or two he will meet with Olsen's group in regards to the other TMK's in Kawa'a. Mr. Yada stated he went on a field trip to Kawa'a with Leah Hong (Trust for Public Lands), Sherry Mann (Forestry Acquisitions), and Molly Smith (State Legacy Land Fund) last week. Mr. Yada stated no members have yet been appointed to the Legacy Land Commission. Mr. Yada stated the County had previously submitted a grant application to the Legacy Land fund for Kawa'a.

FILED

2007 MAR 19 AM 10:37

C. OHAWA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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Attorney for Plaintiffs
McCandless Land and Cattle Company
and Elizabeth M. Stack

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

MCCANDLESS LAND AND CATTLE
COMPANY, a Hawaii limited partnership, et
al.

Plaintiffs,

v.

D. KEALOHAPAUOLE, et al.,

Defendants.

CLARENCE A. MEDEIROS, SR., et al.,

Defendants, and
Crossclaimants,

vs.

MCCANDLESS LAND AND CATTLE
COMPANY, a Hawai'i limited partnership, et
al.,

Crossclaim
Defendants.

) CIVIL NO. 92-185K
) (Hilo)
)
) AMENDED FINAL JUDGMENT AND
) DECREE QUIETING TITLE IN FAVOR
) OF PLAINTIFFS AND COUNTERCLAIM
) DEFENDANTS MCCANDLESS LAND
) AND CATTLE COMPANY, A LIMITED
) PARTNERSHIP AND ELIZABETH M.
) STACK AND AGAINST DEFENDANTS
) AND COUNTERCLAIM PLAINTIFFS
) ALFRED ABIHAI; LOUISE ABIHAI;
) LUWANE POHAI KEALOHA ABIHAI;
) SAMUEL ABIHAI; THOMAS ABIHAI;
) AH SING, ANNIE AH SING (ESTATE
) OF); KEALOHA AH SING; WILLIAM
) AH SING; LUCILLE I. AHIA; SAM K.
) AHIA; SAM AHIA; CHARLES K. AHLO;
) JOHN H. AHU; HOOPII J. AHU; KIMELA
) AHU; RAPHEA AIHUE; AIKA;
) AH HONG K. AIPA; ALEXSANDRA
) AIPA; ANNIE AIPA; MABEL AKA;
) AKAMA; CAROLINE AKAMU; JAMES
) AKAMU; MARGARET KUULEI
) AKAMU; TRINIDAD AKAMU;
) DEBONAIR A. AKAU; EMMA LOUISE
) AKO; LUCY AKAU; ASINSEU S. AKEU,
) JR.; SHORENE M.M. AKIONA; ALAE
) RANCH LIMITED; AKEAO ALANI;

35



(b) Reservation of the rights of native tenants; and

(c) The following roadways, trails, and rights-of-way as provided for in HRS § 264-1 over and across the subject real properties are reserved to the public:

(i) South Kona Belt Road, F.A.P. 8-B;

(ii) The "Old Government Road" being a 20-foot roadway acquired by the Minister of Interior from D.H. Nahinu; T.K.R. Amalu; John Nahinu; John Kauwe; Kaumu Waha (w); Jo Kahunaaina; Lapauila; Kealohapauole; Lohelohe; Keliokahaloa; Kalioe Keoki (w); Charles Ka; Kahiona; Kalaiheana; Kaikaina; Luhia; Kaipō; Moikeha; Uhai Hao; and Malia Ioana by deed dated March 5, 1891, recorded in the Bureau of Conveyances in Liber 130, Page 274, which crosses the Mauka portion of Honokua;

(iii) Portion of Hookena Old Government Road being a 20-foot roadway running from the above referenced South Kona Belt Road, F.A.P. 8-B makai to Hookena Landing as delineated and described in Territory of Hawaii, Right-of-Way Map: South Kona Belt Road, Federal Aid Project Nos. F.A.P. 8-B and 8-C, dated October 11, 1956;

(iv) Makai Trail, also known as "Ala Loa Trail" or "Kings Trail," being a 15-foot trail running approximately parallel along coast; and

(v) Honokua Trail being a 10-foot trail which traverses Honokua in the mauka-makai direction, as delineated on Registered Map 2468 and described in the 1908 field survey notes of J.B. Lightfoot in Field Book No. 736.

(d) The following rights are also reserved :