

Staff report denial of Cohen
CDUA

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

April 28, 2006

180-Day Expiration Date: May 09, 2006

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) HA-3269
for a Single Family Residence

APPLICANT: Roy Vitousek for
Jonathan Cohen

LANDOWNER: Aloha Properties, LLC

LOCATION: Paoo, North Kohala, Island of Hawaii

TMKs: (3) 5-7-001:005

AREA OF PARCEL ≈10.61 acres

USE: ≈ 5,000 square feet (ft²)

SUBZONE: Resource

BACKGROUND

The Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) HA-1948 for a Single Family Residence (SFR) on February 13, 1987. The permit became null and void on June 25, 1995 due to the former applicant's failure to complete construction of the project within the Board stipulated time frame.

DESCRIPTION OF AREA AND CURRENT USE

The Cohen Single Family Residence is proposed at a previously cleared site located at Pao'o, North Kohala, island of Hawaii, TMK: (3) 5-7-001:005. The 10.61-acre property appears to be dual zoned with $\approx 15,246$ ft² located in the Agricultural State Land Use District and $\approx 446,926$ ft² within the Resource subzone of the Conservation District. The parcel sits on a coastal bluff approximately 0.6 miles south of Lapakahi State Historical Park (**Exhibit 1&2**).

According to the applicant, the property is vacant. It is bounded by the Pacific Ocean to the west and surrounded by State unencumbered lands. This is an undeveloped open space region makai of Akoni-Pule Highway with dry foothills and the wind-swept ocean beyond. There are no County roads, no water, no sewerage and no electrical services. Access to the subject parcel is by way of a Grant of Non-Exclusive Easement across State land to the SFR site. According to the applicant, the public generally uses the northern jeep road to access fishing and surfing sites (**Exhibit 3 & 4**).

According to the applicant, the proposed project site was formerly a habitation terrace known as Hawaii State Inventory of Historic Places (SIHP) Site 2382. Studies done in 1980 noted that bulldozing had mostly destroyed Site 2382. A combination of erosion and recreational use of the area over the last 20 years has resulted in widespread degradation and loss of site integrity.

According to the applicant, wildfire is an important concern in this part of North Kohala, which has burned on a number of occasions owing to arson, car exhaust, campfires and firecrackers among other causes. Fires started on this property many harm not only the owner's property but nearby property as well, including Lapakahi State Historical Park and other State land.

According to a survey report done in November of 2004, the ground surface in the area slopes 0-20% with steeper inclusions of 7-28% where stream erosion has occurred. The soil is of the Kawaihae series (Aridsols) a dry, stony very fine sandy loam. According to the applicant, throughout most of the parcel soil has eroded leaving a deflated ground surface dominated by rocks. A gulch depicted as intermittent traverses the property several hundred feet north of the project site. The area receives a mean annual rainfall of 10 to 20 inches a year. The mean annual temperature is in excess of 76° F. The area is exposed to strong off-shore trade winds (**Exhibit 5**).

The savanna-like vegetation is dominated by alien species, especially kiawe and buffalo grass. Vegetation at the site consists of scattered kiawe and various drought resistant grasses along with annual herbs and weeds. There are no endemic species of flora. The indigenous ilima and uhaloa are present. The dry, arid environment provides very poor

habitat for native birds, insects and mammals. No wetlands or special aquatic sites are present on the property (**Exhibit 6**).

Archeological surface surveys done in 1980 identified 27 total sites, grouped in five main clusters on the subject parcel. These sites include seventeen habitations, five canoe sheds, one shrine, three burials, and numerous terraced areas. Site 2382 had been previously disturbed by bulldozing and land clearing by a former landowner. This site is the site of the proposed home. With the exception of this site, the current landowner plans to preserve all of the archaeological features on the parcel. According to the EA, a Burial Treatment Plan has been approved by the Department's Historical Preservation Division (HPD) and the Hawaii Island Burial Council. An Archaeological Preservation Plan for the remaining sites and features is currently under review by the HPD (**Exhibit 7**). *[Note: According to recent comments from HPD, they are currently reviewing both the Burial Treatment Plan and the Archaeological Preservation Plan. These plans have not yet been approved.]*

PROPOSED USE

According to the application, the proposed residence would consist of a compound of detached structures of approximately 4,065 ft². Pools and on-grade decks would occupy another 678 square feet. Other improvements include native plant landscaping, rock walls, a proposed public shoreline trail and trail signage (**Exhibit 8, 9 & 10**).

All structures shall not exceed 25 feet in height, shall be set back a minimum of 25-feet from property boundaries and shall be set back a minimum of 50-feet inland from the certified shoreline. Approximately 90% of the parcel shall remain "as is." The siting of the home shall be completely within a previously graded area.

Potable water will be supplied to the residence from an existing brackish well located in the Agricultural District of the property. Water desalination and storage along with electrical power through a combination of photovoltaic solar and a propane-fueled generator are also sited within the Agricultural portion of the property. Wastewater disposal shall be through an approved individual wastewater treatment system and leach field sited in the Conservation District.

Other improvements proposed in relation to this application but not within the Conservation District include chip sealing the easement road across State property and to re-route a portion of a lateral jeep road away from both the proposed building site and a series of burial sites, onto State property to maintain public access to the shoreline. In addition, the applicant is also proposing to improve public vehicular access in the northern part of his property by creating a parking area and establishing a coastal footpath from the improved vehicular access point leading south through the parcel (**Exhibit 11**).

According to the applicant, the proposal may have the effect of encouraging additional public access, by providing a coastal lateral access trail that is slated to become part of the Ala Kahakai. Negotiations have taken place with DLNR and the owner in regards to providing this public benefit of lateral access. The applicant has recommended that if DLNR plans to intensify use of its nearby property, fire education signage and firebreaks should be installed. The applicant states that this recommendation is extended to any plans to encourage public use of trails.

The applicant is planning to landscape the property, bringing in native plants that are adapted to the dry, warm climate of the area and do not require excessive watering or maintenance.

The proposed SFR consists of six detached pavilion structures in a design that reduces the scale and to make the structure less visible from the highway, adjacent land and from the ocean. The design appears to be a best alternative as the proposal appears to be designed as a traditional kauhale home site to be more compatible with the surrounding environs. There will be no reflective surface facing the highway. The mauka sides of the pavilions are proposed to be made up entirely of lava rock, weathered wood and natural colored thatch roof. All of the pavilions are single story and will be surrounded by landscaping for shade (**Exhibit 12**).

According to the applicant, the proposed segmented design is a better alternative than a connected structure because one large structure would have a higher and more massive roof, producing greater visual impact from the shoreline and the highway. The footprint of the separated pavilions is similar in scale to the archaeological features. According to the applicant, this segmented configuration supports the sustainable building guidelines of the Office of Environmental Quality Control (OEQC) because it ensures natural cooling from the trade winds, creates shade in the covered lanais and walls recessed behind overhanging roofs and provides maximum natural interior light.

No alternatives to the project were proposed.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health, Office of Hawaiian Affairs, Office of Environmental Quality Control, Department of Land & Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Hawaii District Land Office, Historic Preservation; and the **County of Hawaii** Planning Department. The application was also referred to Hawaii County Councilmember Pete Hoffman and the organization KAKOO. In addition, the application, and the Draft and Final Environmental Assessment were sent to the nearest public library, the Bond

by OCLL
not by applicant

Memorial Public Library, to make this information readily available to those who may wish to review it.

Comments were received and summarized from the following:

STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS (OHA)

An Archaeological Monitoring Plan should be drafted. Because the proposed project intends to demolish a state recognized site and due to the proposed project's proximity to known burial grounds, a professional archaeologist should monitor all ground altering activities. The choosing of replanting the area using native flora will have a positive impact on the ecology of North Kohala. Should iwi or Native Hawaiian cultural or traditional deposits be found during ground disturbance, work will cease, and the appropriate agencies shall be contacted.

Applicant's Response

The applicant is willing to contract for an archaeological monitor during ground-altering activities. We acknowledge your support of the landscaping plan and we agree that such efforts can help restore the ecology of North Kohala, which has been impacted by grazing animals, alien plants and fire. If any previously unidentified sites, or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered, work will stop immediately and State Historic Preservation Division will be consulted to determine the appropriate mitigation. Care will be taken during ground preparation to ensure that, in the unlikely event that human burials are present, they are recognized and dealt with appropriately.

Staff notes: OHA recently revisited the project and the OCCL received additional comments on April 13, 2006. OHA's comments have been summarized and presented below.

A review by OHA Staff of the Hawaii Territory Survey, Registered Map # 2711 clearly indicated that the burial of one Mr. Kauwe is located on kuleana land at the approximate location of state Inventory of Historic Places (SIHP) No. 2383. Prior surveys note this site as a possible ko'a (fishing shrine). The previously ascribed site function definition has apparently been made in error.

OHA requests that the Conservation District Use Permit be denied until interested Native Hawaiian groups have the chance to inform the Hawaii Island Burial Council (HIBC) about the previously identified burial site, pursuant to §13-300, HAR.

Chapter 6E, HRS and 13-300, HAR both provide a framework and process to identify the Kauwe burial site based upon available information which will be presented to the HIBC for their recognition process. Such recognition will greatly assist in implementing the built in protections afforded such burial sites as set forth by the legislature in enacting our current burial protection laws.

As such, our Staff opposes the granting of CDUA HA-3269 until the HIBC has had the opportunity to review the new information and make a recommendation to the state Historic Preservation Division on appropriate treatment, to include protective buffers that may substantively impact the current design of the residence adjacent to this important site. This new information presented is both compelling and deserving of further scrutiny.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL (OEQC)

How do the proposed 6 separate detached structures meet DLNR's rules for a single-family dwelling in the Conservation District?

Applicant's Response

Exhibit 4 of the Hawaii Administrative Rules 13-5 states in the 'Compatibility Provisions,' the following specification: All structures connected or best alternative. The proposed segmented design is a better alternative than a connected structure because one large structure would have a higher and more massive roof, producing greater visual impact from the shoreline and the highway. This segmented configuration supports the sustainable building guidelines of the OEQC because it ensures natural cooling from the trade winds, creates shade in the covered lanais and walls recessed behind overhanging roofs and provides maximum natural interior light.

DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR)

Division of Aquatic Resources (DAR)

Significant long-term impacts adverse to aquatic resource values are not expected from the proposed single-family dwelling and improvements. Any traditional or existing public access to and along the shoreline should be maintained. Any additional or undescribed construction or landscape modifications within the conservation district should be submitted to the Department for review. Precautions shall be taken during construction to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing blowing or leaching into coastal waters.

*They did not note a comment on
the chlorinated beach field
less than 100 ft from shoreline*

Applicant's response

We acknowledge the statement that the proposed SFR and related improvements are not expected to have a significant adverse long-term impact on aquatic resource values. We agree with the precautionary mitigation measures listed.

Division of Conservation and Resource Enforcement (DOCARE)

No comments

Engineering Division

No comments

Division of Forestry and Wildlife (DOFAW)

No comments

Na Ala Hele (NAH)

This land was part of an extensive coastal settlement with fishing villages along the coast. Examination of map data and other historical documents NAH has found evidence of a mauka-makai trail and an ancient lateral coastal trail that crosses a portion of the subject property. This is believed to be a segment of the coastal trail that ran from Mahukona to Kawaihae and is sometimes referred to on maps as the "Ala Loa."

Richard Stevens was detailer maps.

Based on the map and historical document data, it has been determined the coastal trail alignment is owned by the State of Hawaii pursuant to §264-1(b) Hawaii Revised Statutes. Furthermore, due to its coastal location, this trail section may be considered a potential alignment by the National Park Service for the Ala Kahakai National Historic Trail designated by Congress on November 13, 2000. It is recommended that a modern metes and bounds survey of the coastal trail be completed and all adjoining landowners and affected agencies be notified of any future management plans of this ancient trail.

The mauka-makai trail has evolved into an easement for access and utility purposes from the Kawaihae-Mahukona Road to the subject property. The Board granted this easement that passes over government land to the applicant in 2003.

Applicant's Response

Site inspections by our archaeologist, planner, environmental scientist, surveyor, owners representative and officials from the federal trails group developing the Ala Kahakai trail discovered no physical evidence of any lateral trails on the project site. The location of

they had blinders on that day.

the trail appears to have it going directly through a number of ancient, well-preserved archaeological features. This calls into some question the validity of the placement of the trail on the exhibit. The applicant met with representatives of the Ala Kahakai development team and traversed the site. An alignment for a coastal lateral trail that could be constructed on the ground and used without harming archaeological sites was flagged and later surveyed. This lateral trail alignment is indicated on the exhibits included in the Draft EA and the CDUA. The application identifies and supports the use of this lateral trail for coastal trail access.

have not seen any survey

Na Ala Hele recommends that the applicant conduct a metes and bounds description for the coastal trail as depicted on the map. As there is no evidence on the ground of any trail and the alignment depicted on the map is almost certainly erroneous, this would not be possible. The applicant can provide a metes and bounds description of the trail that was identified and flagged in cooperation with the Ala Kahakai development team. This trail will provide adequate coastal access along the shoreline area of the property.

The applicant has proposed the realignment of the makai area of this easement as part of the proposed action. The applicant is not opposed to the public's continued use of this realigned easement that terminates at the lateral jeep trail. It is noted that citizens at the Public Hearing expressed concern that open vehicular access could threaten cultural and archaeological resources in the area.

*Vitorsek cronies
Robby Robertson
Dave Barkley
Anthony A. K.*

Hawaii District Land Office (HDLO)

No comments

Historic Preservation

Our office previously reviewed and accepted the archaeological inventory survey report that identified four burials, which were assigned State site numbers. Division Staff are finalizing their review of the Burial treatment plan with the intent to approve a 30-foot buffer zone. Once approved, no ground disturbing activity can be conducted within these buffer zones.

Staff is also reviewing a preservation plan for other archaeological sites located on the property. As understood, the landowner is proposing preservation in place of these sites, and has offered to protect them by establishing a 15-foot buffer zone around each site. We believe this proposal is reasonable and it's our intent to approve this proposal. However, we are unable to accept the current preservation plan as final as we have recently received information indicating that a site designated as a shrine during the inventory survey may be a burial site.

Staff is currently reviewing historical maps to determine whether this site contains a human burial. Should this be the case, the Hawaii Island Burial Council who maintains jurisdiction for all burial sites identified during archaeological survey work will be contacted to make a determination of preservation in-place or relocation. Once the Council makes a determination, a burial treatment plan will need to be submitted to the Historic Preservation Division for review and approval. That plan will identify whether the burial is to be preserved in-place or relocated to another site. It will also establish the buffer for this particular site. We would favor the establishment of a 30-foot buffer.

Applicant's response

There are a few misstatements in the letter that should be corrected. With respect to the burial treatment plan, the first draft submitted in May 2003, prepared in consultation with a recognized descendant contained a provision of a 20-foot buffer around known burial sites. Continued consultation with additional descendants resulted in a change of the buffer size to thirty feet. The HIBC officially voted to preserve these burial sites in place in July 2003. This modified burial treatment plan was resubmitted to SHPD. A review of the files has discovered that SHPD never sent the final approval for the burial treatment plan. They are 2.5 years overdue to comply with their 90-day statutory time period for providing final acceptance following HIBC approval.

Ms. Chinen's statements that "Staff is also reviewing a preservation plan for other archaeological sites located on the property" and "we are unable to accept the current preservation plan as final" are not consistent with my conversations with her staff, which indicate that the preservation plan is acceptable. The plan proposes to preserve the entire archaeological landscape and to have the building envelope encroach no closer than 15 feet to the archaeological sites nearest the proposed residence.

Regarding the suggestion that Site 2383 may contain a burial, when the Hawaii Island Archaeologist of SHPD was consulted with respect to this site, we agreed that because the landowner was planning to preserve this site there was no need, or desire to "go grave hunting" and that the shrine interpretation could stand. As an archaeological feature it is considered just as significant whether it is a grave or a shrine, or a house site for that matter; and along with the other sites on the property (both burial and non-burial) is being treated with the utmost respect and sensitivity. Site 2383 and its location relative to the proposed residence were discussed during the consultations with the cultural descendants of this land.

Given the numerous archaeological features on the property, including several known graves in the vicinity of the "Kauwe Grave" map notation, it is hard to believe that one could positively correlate SIHP Site 2383 with this notation. As for the claim itself that this site is Kauwe's grave, the sole source of this information seems to be a notation on a 1924 Hawaii Territory Survey Map that labels "Kauwe's Grave" towards the southern

end of Kauwe's grant lot. This grant is listed as 16 acres in size. Mr. Cohen's property is currently 10.6 acres in size. This means that the boundaries of the two properties are not coterminous. Mr. Cohen's property does not appear to extend as far south as the Kauwe grant property. The telling landscape feature is the circular cove that is incorporated into the Kauwe grant property, but appears to be south of the current TMK parcel. It is possible that the notation "Kauwe's Grave" may refer to the known burial area that has been identified collectively as SIHP Sites.

As the SHPD Administrator, Ms. Chinen makes final decisions for her division; the a priori position taken by Ms Chinen relative to the potential establishment of a 30-foot buffer at a minimum is not consistent with my discussions with her staff and certainly not formulated based on any descendants' consultation. Information relative to these issues shall be provided to the Council at the HIBC meeting on April 20, 2006.

Staff notes: HPD comments were received on April 12, 2006. There appears to be differing opinions regarding the location of a grave. Staff notes the shoreline is not a set landmark, therefore the frame of reference of the cove is not reliable.

Office of Conservation and Coastal Lands (OCCL)

Please clarify the role of the caretaker and where this person will be residing, if at all, on the proposed site.

Applicant's response

The applicant is going to be generating his own power and providing his own potable water by having a desalination plant next to his well in the Agricultural (Ag) district. The intention is to have a building in the Ag district housing the propane generator, wellhead, desalination plant, water tank and to store equipment. The caretaker will be a full-time employee who will be responsible for all of the utilities services, gardening and general security. His office will be in the Ag building.

It is not proposed that the caretaker be a resident at the project. The only time it is anticipated that the caretaker would spend the night would be on occasion when the family is away and there is a particular need for someone to be present on the site. In that case he would spend the night in the proposed SFR. There will not be more than one residence in the Conservation District.

UNIVERSITY OF HAWAII

Environmental Center

As with other proposed construction in shoreline areas, exposure to wave and storm hazards is an issue in this proposal. We urge planners and environmental managers to take particular note of the historically based setback provisions adopted by the County of Maui. Adoption of comparable provisions would have a salutary effect with regard to avoiding losses and protecting public health and welfare.

A concern with this project is the proximity of the dwelling to archaeological sites. The draft EA specifies that an archaeologist should be present to orientate the construction crew before the work is conducted. It is unclear if an archaeologist will be present during the construction. We suggest that a professional archaeologist be present to monitor construction when earth-moving activity is undertaken.

Regarding the Individual Wastewater Treatment System, our reviewers feel that a more comprehensive discussion of wastewater management practices would be appropriate in the final EA. Specific topics for discussion should include the depth of soil in the proposed location of the septic tank and leach field, drainage characteristics of the soil and topography in the area and the potential for runoff from that area to contaminate the coastal and ocean ecosystems.

They saw the chlorinated leach field

Applicant's response

Shoreline erosion and wave hazard. We agree with the idea of appropriate shoreline setbacks are important for avoiding losses and protecting public health and welfare. The shoreline in this particular area is rocky and not subject to rapid erosion on human time scales. There are several archaeological features along the shoreline near the proposed residence-some at lower elevation (closer to the shore)-that are relatively intact, indication that a major catastrophic storm event has not occurred in the past several hundred years.

Archaeological monitoring. The applicant is willing to contract for an archaeological monitor during ground-altering activities.

Wastewater treatment. The expected treatment for the wastewater is an aeration-type treatment plant that treats water to the secondary level. It is then chlorinated and discharged for beneficial re-use in irrigation or to a drain field of crushed rock. Similar treatment has been successfully operating in Puako and Kapoho.

COUNTY OF HAWAII

No comments beyond our pre-consultation comments provided in our December 8, 2004 letter and our Special Management Area Use Permit Assessment Application letter of determination dated June 23, 2005.

COMMUNITY MEMBER

There are serious problems in regard to size, nature, scope and added developments. An oral agreement was made with Mr. Cohen and his consultants regarding protection of the sites, the boundaries of the sites and no lateral access to the sites due to the sacred and sensitivity of the sites and other mitigating circumstances connected to the area of Pao'o.

*which were significant
1. move Zoe's room back*

this is Anthony Aka + Papa Mahi, who have no relationship to the land

We are against public access due to the sensitivity of our ancestral sites. Our families condemn the notion of lateral access for the public, as it will cause a desecration to the sacredness of the sites in the Pao'o area that we are committed to protect. There are certain groups demanding lateral access. We are in the process of working with Mr. Cohen and his consultants to provide a mauka-makai access path for the public but it will not allow access to go anywhere the public chooses. This is all in accordance to the Kapu of ka poe, our ancestors beliefs and traditions. We are continuing to work with the applicant.

Applicant's response

We acknowledge your concern about the sensitivity of the sites and the impacts not only to their physical but also their cultural values that could result from increased public access. Although mitigation measures are proposed, it is acknowledged that this may not be sufficient to fully prevent harm. Throughout Hawaii this is a growing problem of the tradeoff between providing more public access and protecting sensitive sites. Please note that Mr. Cohen is not proposing to facilitate public pedestrian lateral access as part of his home construction, but that agencies concerned with expanding and improving public access are requesting that he do so as a condition of his permit to build a SFR. Your commitment to refining a plan in consultation with Mr. Cohen and DLNR to provide appropriate public access yet to protect sensitive sites is acknowledged.

MALAMA KOHALA KAHAKAI (MKK)

We strongly urge the denial of this application for the following reasons:

It will have a direct detrimental impact and contribute to broad negative cumulative effects upon an area of historical and cultural significance. The property is part of a contiguous region of the best intact pre-contact Hawaiian archaeological sites. Allowing homesites to dissect and disturb both physically and visually contiguous areas of rich

resources has permanent negative consequences to sustaining Hawaiian culture and history. If granted, it will be the first house on this stretch of the coast and will set a precedent for allowing development on conservation lands.

The land has been in public use by the Kohala community for generations for a variety of cultural activities and recreational activities, including surfing, hiking, fishing, camping and worshipping at the Ku'ula.

For over 30 years the people of North Kohala have worked to keep this section of the coast free of any development. The community, County Council and the State Legislature have worked to ensure this area remains in open space for perpetuity. This includes a petition of 5,700 signatures of Kohala residents calling on the State and County to stop all development until studies of the coastline could be completed. In addition, a letter dated January 31, 2006, signed by 30 North Kohala businesses and organizations calling on the Mayor to prioritize this area for open space protection.

There is support for the resources to be secured to purchase the property for permanent protection with a land trust or for expansion of Lapakahi State Park. MKK is having conversations with a private donor to contribute to purchase to protect these lands and a local land trust. MKK is willing to work with Mr. Cohen to identify and find a more suitable building site mauka and to raise the funding needed to reimburse Mr. Cohen for his expenses on this application to date.

Public access control and monitoring and maintaining the cultural and archeological sites is a very sensitive issue and deserves a thorough, meaningful, longer community conversation with the community's many lineal descendents and cultural practitioners. It is misleading to imply that these sites will be over run by the public and that the best protection for these sites is to allow private control of the access to the area. We are concerned about the limiting access to the proposed shoreline trail and discouraging or denying cultural practitioners access to this area.

There is a predominant heart felt desire of most North Kohala residents to keep all areas makai of Akoni Pule Highway free of houses and development. The house and supporting structures will negatively impact one of the last contiguous view planes free of development from the highway. Protection of this view plane has been identified in the County's General Plan and in County and State resolutions.

Approval will have deleterious effects on the public health, especially for the Native Hawaiians. Approval of this application accelerates cultural deterioration. When long time residents observe houses and fences being built, the people are cut off from the land visually and physically. The disconnect changes who we are and is demoralizing and damaging and it does effect the public health. It bothers the kupuna to know that their children and grandchildren can only view these areas through fences and in between

*This is a new
argument to be
tweaked out on this
case.*

houses. The public health is better served by preserving the area as open space in perpetuity. The deterioration of open space and environmental quality undermine cultural integrity.

We strongly oppose the realignment of trails. The application states that the benefit of the proposal to the community is monitoring the area. However building on and near important archeological sites and on favorite campsites and recreational areas is more likely to off set this benefit and far more likely irritate local residents.

Staff notes: This area of the North Kohala coast remains undeveloped makai of Akoni Pule Highway. With the exception of a private parcel located .6 m miles to the North, the remaining lands appear to be owned by the State.

Applicant's Response

The Board has previously granted a CDUP to build a single-family home on this property (CDUP HA-1948). The applicant went through and essentially redid most aspects of the environmental and cultural assessments, met and walked the property with lineal descendants of persons associated with the ahupua'a, met with concerned individuals including recreational and cultural users, met with representatives off relevant State and county of Hawaii agencies, finalized an archaeological mitigation plan, obtained Burial Council approval of the burial treatment plan, and developed access plans in a real effort to identify and mitigate any and all potential adverse impacts associated with building a single family home. Applicants resubmitted an EA, a CDUA and participated in a public hearing in south Kohala on January 24, 2006. All testimony at the public hearing was supportive of the proposal. No one purporting to represent Malama Kohala Kahakai (MKK) or any of the other groups listed by MKK commented on the EA, made timely comments on the CDUA or attended the public hearing.

bogus
Mr. Cachola who signed the letter on behalf of MKK has been aware of Applicants intention to build a SFR on this property and had participated in pre-application meetings since at least 2002. Mr. Cohen, his Counsel, Tom Lenchanko, Suzanne Case and Mr. Cachola as members of the Board of Directors of an organization called *Ike Aina*, met Mr. Cohen on site. Mr. Cachola proposed that Ike Aina be given the responsibility to mangle the archaeological sites on the subject property. Mr. Cachola personally and individually represented to Mr. Cohen that he supported Mr. Cohen's objective of building a SFR on the property and that he would assist Mr. Cohen in community relations and in managing the archaeological sites.

In a draft agreement, Ike Aina was proposing that the Cohens give Ike Aina the authority to manage all aspects of public access, recreation, education, and the loke with respect to the archaeological sites and the subject property. The contract expressly acknowledges and understands that Mr. Cohen will be building a SFR on the property.

Mr. Cohen did not enter an agreement with Ike Aina as Mr. Cachola had held a community meeting and had made representations that he would be managing the property and that there would be school groups utilizing the property as a cultural resource center. These representations were not consistent with Mr. Cohen's understanding and raised concerns as to the advisability of proceeding with an agreement with Ike Aina.

Through the archaeological consultant, Dr. Rechtman identified specific families and individuals who were lineal descendants of the persons who built, lived in, and used the structures at Pao'o and whose ancestors are buried there. The lineal descendants were concerned about Mr. Cohen conferring responsibility for the sites to an organization, which did not include lineal descendants from Pao'o. Mr. Arthur Mahi, as a lineal descendant, was very clear as to the decisions to how the sites are treated, restored, and opened to the public. These decisions should be made in conjunction with the lineal descendants of the people who built and lived in those structures. Mr. Mahi told Mr. Cohen that he should view himself not as the owner of the property but as part of the family who live there and take care of it. Mr. Mahi explained that he and members of his family should be involved in these decisions and that if the Cohen family was going to build their home and live on the property, they should act like members of the family and make decisions with respect to how the property is used, protected, and viewed in conjunction with the family.

The Cohen family supports public access to and along the shoreline. However, the Cohens respect Mr. Mahi's concerns about unrestricted public access to the archaeological sites. While the Cohen family has hoped there would eventually be appropriate public access to the archaeological sites for purposes of study, learning, cultural appreciation, etc., Mr. Mahi has advised the Cohens that it is inappropriate to just open up the site to unrestrained public access and the sites must first be cared for in an appropriate manner and by appropriate people.

Mr. Cohen is disappointed that Mr. Cachola has opted to attack his family's plan for a home. The Cohen family has not made any written agreements with any party group relative to his SFR on the property. Mr. Cohen has and will continue to listen to the concerns expressed by members of the community who have used the property for fishing, surfing, along-shore access, and the like. Mr. Cohen has gone far beyond what other similar applicants have done to insure that the concerns and issues of native Hawaiians and other recreational users are protected in the context of his SFR.

The submission by MKK purports to state a preference for public acquisition of the Cohen property or acquisition by a land trust or similar entity. The property was specifically offered to the State of Hawaii in September 1999 for sale or land exchange

Handwritten note:
Kachola
Lawaiians
Contact any

Handwritten note:
Under threat
of CDBA
submission

before the Cohen family acquired the parcel. At no time did the state take any action to acquire the property.

It seems questionable that any legitimate community or land trust organization would participate in acquisition of the property after a blatant attempt to undermine the existing owner's legitimate plans and to devalue the property to the extent it has. In the context of another organization, which described itself as "a native Hawaiian land trust," supported the proposed SFR provided the owner entered a contract with the nonprofit entity of which he was a member. One wonders whether Mr. Cachola disclosed this fact to the various entities he purports to represent. He did not disclose these facts in his letter to the Department. We also wonder whether the organizations listed knew their names would be used in conjunction with opposing the application. Three organizations were contacted and advised us that they were not aware their names were being used in any way or for any purposes associated with opposing the Cohens' CDUP application.

The proposed SFR will not damage or destroy any pre-contact Hawaiian archaeological site. Whatever was at Pao'o before the Cohens build their home will be there after. There are several house sites along the coast between Kawaihae and Upolu Point. The Hawaiian government granted the property to a private individual after the Mahele. The structures on the property show that the area has been used for house sites for hundreds of years. The lineal descendants of the people who built and lived in the house sites on the property do not object to the Cohens building their home there.

No sites are being damaged by the construction of the house. All sites in proximity to the proposal were identified and described in archaeological studies, which were accepted by DLNR/SHPD. Because no sites will be destroyed or modified if there is any change in the assessment or categorization of a particular site at some point in the future, it will not affect the proposal. Buffers are in place and will be respected.

There are several areas between Kawaihae and Upolu Point where there are single-family homes makai of Akoni Pule Highway. These include Hawaiian Homelands, Kohala Waterfront, Mahukona, Pua Kea Bay, etc. The letter ignores the presence of other SFR's makai of Akoni Pule Highway and argues that this home would set a precedent. If there is any suggestion in the application that there is a precedent, it is the fact that the Board previously granted a CDUP for a SFR in the same location as proposed by the Cohens.

Any argument about the effect of granting another CDUP relative to Pao'o might have on other parcels elsewhere is speculative. The Board will review each application on its own merits.

The application clearly acknowledges that members of the public have fished, surfed, and hiked along the coastal areas of and makai of the property. Mr. Cohen has not observed people "worshiping at ku'ula" nor seen any evidence of this, but it may well occur.

The proposed home will affect a small portion of the property. No cultural sites will be disturbed. The coastal trail runs makai of the proposed home and the jeep trail runs mauka and will provide access for recreation. The Cohen family support public pedestrian access along the shoreline and will grant a public access easement over the coastal trail as delineated.

In communication with representatives of the entities listed, we have been advised that the entities were not aware of the Cohen CDUP application, did not intend to oppose it and have not authorized anyone to oppose the CDUP application on their behalf. Mr. Cohen does not doubt that many people generally support open space and preservation of cultural resources. Mr. Cohen does doubt that the 30 entities and organizations passed resolutions or made official statements requesting that the BLNR to deny his application. It appears that Mr. Cachola may again be suggesting that he has authority to act for others when in fact he does not.

The suggestion that the property might be purchased by a governmental or private entity is not based on fact and is merely an effort to delay the permitting process to deny Mr. Cohen and his family the use of their land and to devalue the land while someone runs around and tries to put substantive and reality into these representations. There is nothing concrete in the statements.

The DLNR (OCCL, Land Management, State Parks) and the County of Hawaii reviewed and commented on the EA and CDUA without mentioning any interest in acquiring the property. I am not aware of any action taken by the State to pursue acquisition of the property. No land trust, no private donor has ever approached Mr. Cohen about purchasing the Pao'o property.

Mr. Cohen should not learn of this alleged goal of "working cooperatively with landowners to meet their financial needs" in a last minute plea to deny the application to build his home. The offer to work with Mr. Cohen is not timely and not genuine. MKK is trying to ambush Mr. Cohen and ask the BLNR to deny his application and to prevent him from being legally entitled to build the proposed house. They are trying to devalue the property so that maybe someone could buy it for less than it is worth.

The first he heard of the alleged desire to buy the land, to pay his expenses, or to cooperate with him is in the plea to deny the application-which was not even sent to him. Mr. Cohen's interest in building a home has been open, public knowledge for years. There have been many meetings and consultations, the EA and CDUA have been public, and there was a duly noticed public hearing. There was ample opportunity to comment, to cooperate, and to make an honest offer.

The house will be minimally visible from the road. It will be low-rise, spread out, and landscaped and painted to blend into its surroundings. The agricultural building will be on Ag-zoned land. The adverse impacts will be minimal.

Mr. Cachola never mentioned a concern for the health of native Hawaiians allegedly inflicted by the Cohen home or that approval of the home would "accelerate cultural deterioration when he proposed to manage the property on the Cohen's behalf. All cultural sites will be preserved. The home will be built in an already graded area. The space will remain in conservation and will remain mostly open space.

Mr. Cohen has gone through each step of the process with real consideration for the people of the area. He has tried to do it right. He will use his resources not only to build a home, but also to protect and preserve the area as if he was adopted by the families who lived here before.

Staff notes: Mr. Vitousek states that there are other house sites in the area: *"There are several areas between Kawaihae and Upolu Point where there are single-family homes makai of Akoni Pule Highway. These include Hawaiian Homelands, Kohala Waterfront, Mahukona, Pua Kea Bay, etc. The letter ignores the presence of other SFR's makai of Akoni Pule Highway and argues that this home would set a precedent. If there is any suggestion in the application that there is a precedent, it is the fact that the Board previously granted a CDUP for a SFR in the same location as proposed by the Cohens."*

While this statement is not untrue, Staff notes that there are no residences near the proposed house site makai of Akoni Pule Highway, and this area of the North Kohala coastline remains wild and undeveloped (see Exhibit 13). The proposed project will alter the open and wild nature of the coastline. In addition, the fact that a CDUP once existed for this site but was nullified by the BLNR should not be used as a justification to support the present application. This former application (CDUP HA-1948, 1985) was nullified at the request of a community group who clearly had concerns over the use of the site for a single-family residence.

Dr. Kehaunani Abad, Archaeologist
(At the request of the Directors of MKK)

There are significant problems with the Cultural Impact Assessment (CIA) that was submitted with the project. Serious inadequacies involve the section "Identification and Mitigation of Potential Cultural Impacts." The primary concerns are as follows:

1. Inappropriate site boundary identification. The project involves the artificial partitioning of sites into arbitrary, discrete units. The project should not be seen as sitting adjacent to discrete sites that it only minimally disturbs. The

project should be seen as a large footprint imposed upon a complex or related and integrated sites representing a traditional Hawaiian shoreline community. Significantly, that community extends beyond the project area representing in total an invaluable cultural resource, given its scale, relative high degree of integrity, contiguous view planes, and current lack of intrusive modern construction features. A substantial body of research in archaeology supports the point that the use of small bounded and arbitrarily identified "sites" frequently lacks interpretive utility and archaeological validity.

2. Lack of adequate consultation. The study named only four individuals who were consulted in the process of identifying Tradition Cultural Properties (TCP) and in assessing the potential impacts of the project on the TCPs. The CIA makes no mention of any public solicitation of comments about the sites within the project area.
3. Inappropriate significance determinations of sites. Because there was inadequate consultation with knowledgeable individuals from the Hawaiian community, such further evaluations were not thoroughly accomplished. Instead, the four people consulted determined, seemingly on behalf of all Native Hawaiians, that most of the sites in the project area hold no cultural significance.
4. Lack of recognition of the importance of TCPs to a cultural community. A publication cited in the CIA is the US Department of Interior's publication, *National Register Bulletin 38 Guidelines for Evaluating and Documenting Traditional Cultural Properties*. *Bulletin 38* conveys the following:

Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self-respect. Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them. *Bulletin 38* clarifies that even the infringement upon a site (rather than its complete destruction) can have significant cultural impacts to those who value the sites involved.
5. Inappropriate criteria used to define TCPs. The CIA suggests that continuity in the traditional use of a site for a 50-year period is required to distinguish a site as a TCP. However, *Bulletin 38* states the opposite, "*the fact that a property may have gone unused for a lengthy period of time, with use beginning again only recently, does not make the property ineligible...*"

The CIA prepared has failed to adequately assess the cultural impacts of the planned project on the traditional Hawaiian cultural sites on the property.

Applicant's Response

In her review of the CIA, Dr. Abad lists five areas of concern that constitutes "serious inadequacies." Each one is addressed below:

1. Inappropriate site boundary identification. The boundaries of sites were previously determined in an archaeological study conducted by Archaeological Research Center Hawaii, Inc. (Hammatt and Folk 1980). They adopted a splitter approach when assigning site numbers to a more or less continuous set of archaeological features. As offensive as the concept of boundaries may be, it is the regulatory benchmark for defining sites and assessing their significance. The project area is not seen "as sitting adjacent to discrete sites that it only minimally disturbs." Rather the building envelope was carefully chosen so as to not directly impact any of the intact archaeological features, and the residence is designed so as to not overpower the existing cultural landscape.
2. Lack of adequate consultation. There was a public meeting held in Kohala by Fred Cachola as a representative of Ike Aina when he was in support of the current CDUA and thought his organization would enter into a partnership with the Cohen family. Public notices were placed in several publications with both island-wide and statewide circulation with respect to the treatment of known burials within the project area. The families that came forward were able to establish genealogical ties to Pao'o to the satisfaction of DLNR. We felt these families were the most culturally appropriate individuals with which to consult.
3. Inappropriate significance determinations of sites. Rechtman Consulting, LLC made the significance determinations using the regulatory criteria and standards promoted by SHPD. The families that were consulted did not make any determinations "on behalf of all native Hawaiians," their input was given on behalf of their families, who had genealogical ties to the project area. It was clear that to these families the entire project area is culturally significant. We believe that these local families are the appropriated consulted party.
4. Lack of recognition of the importance of TCPs to a cultural community. Two potential TCPs were identified in the CIA based on the use of the area for resource exploitation and recreation. Specifically, access to and use of the shoreline and immediate offshore area for fishing and surfing. The importance of these activities to the community is recognized. It is possible

that by improving coastal access the project will have a positive impact with respect to these activities.

5. Inappropriate criteria use to define TCPs. Nowhere does the CIA state "continuity in the traditional use of a site for a 50-year period is required to distinguish a site as a TCP." The CIA provides the definition of TCP contained in the regulatory statutes. There was no evidence observed at any of the archaeological sites that indicated use associated with ongoing traditional cultural practices.

In addition to these comments, the consultants provided additional written comments relevant to this correspondence and the CDUA, which are attached as **Exhibits 14, 15, 16, 17, 18, 19, 20 & 21**. Comments in Mr. Vitousek's subsequent letters are largely a re-iteration of issues and concerns previously covered. The OCCL responded to some of his concerns in **Exhibit 27**.

Staff has received late comments from other members of the public attached as **Exhibits 22, 23, 24 & 25**. The Department is also in receipt of what has been identified as "*almost 7,000 signatures on a petition calling on the State and County to stop all development until studies of the coastline can be complete*" (**Exhibit A**) and other examples of the long-standing community support for preserving the Kohala coast in open space (**Exhibit B**).

ANALYSIS

After reviewing the application by correspondence dated November 15, 2005, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, HAR, R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." **Please be advised, however, that this finding does not constitute approval of the proposal;**
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will be required in the public interest;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project;

4. By documentation dated June 23, 2005, the County of Hawaii has determined that the proposed construction of the proposed single-family dwelling and related improvements are exempt from the definition of development subject to conditions as defined in Special Management Area Assessment Application No. 05-000042 (SMAA 05-42).

A Public Hearing took place on January 24, 2006 at 5 p.m. at the Spencer Beach Park located at Kawaihae, South Kohala, Hawaii. Nine individuals in addition to the Hearing Officer and Staff were in attendance. Four individuals provided testimony. Testimony was supportive of the application, however, there is a concern regarding public lateral access and the potential impact the public may have on the cultural historical features that exist on the parcel.

Testifiers - Robbie Robertson, friend of Cohens; Dave Burkley, friend of Cohens; his wife Valerie, who is Cohens' sister married at Wailea; and Anthony Ake (not his legal name.)

The Finding of No Significant Impact (FONSI) was published in the March 8, 2006 publication of the Environmental Notice. *so EA issues are over.*

The application has been evaluated under the criteria set forth in HAR §13-5-30(c) as follows: *for Conservation District Use*

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

The proposed use will create the first Single Family Residence in an undeveloped coastal area, surrounded by undeveloped State lands. It is understood that the area has been utilized by the general public as a recreational resource for surfing camping and fishing for generations. It is not know how many or how frequently the area is visited. The subject parcel contains State owned trails and significant archeological and cultural resources.

The proposed development will alter the character of the area that can best be described as that of a rugged unabridged coastline.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Staff believes the proposed use will affect the current activities that take place at and around the site, such as surfing, hiking, sightseeing, fishing, and camping. The development of the site is likely to reduce the open and rugged nature of the area impacting people's use of the coast, and also limit people's access to the water on a coastline where access to the water is already severely limited. Islanders have utilized the shoreline fronting the proposal for generations for ingress and egress to the ocean resources. Native Hawaiians used this spot as a point of access and egress for their canoes, as evidenced by the canoe hales located next to the shore.

The applicant proposes to realign the current access way that runs into this area around the south perimeter of Mr. Cohen's land so that the public will be directed away from the site onto abutting State land. Staff does not know what shoreline conditions are like in this area of State land.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

The proposal may decrease coastal recreation to the public. The proposal may modify access to resources uniquely sited for recreational activities that cannot be provided elsewhere. This area is one of the few places in which the public may gain access to the ocean.

Portals

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

The proposed road improvements may allow more people to access this remote coastal area and increase the potential of inadvertent and intentional damage to the natural and cultural resources. Staff is of the opinion that the proposed use may result in user conflicts as people have been utilizing this area for years without the presence of human settlements. Conversely, the area, once settled, may cause traditional users to seek outdoor experiences elsewhere.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed project incorporates sustainable design standards and is proposed to be largely self-supporting. However, Staff is of the opinion that the proposed residence cannot be entirely mitigated and this brings into questions whether it is compatible with the locality and surrounding area, which is undeveloped and rugged. This would be the first SFR in this particular area of the leeward lands of North Kohala.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

The remote undeveloped, and archaeologically rich landscape will be permanently adversely affected by the development. Staff is of the opinion that the SFR will impose upon the natural beauty and open space characteristics, despite the applicant's admirable efforts to design an environmentally and culturally sensitive project. *Open space and Viewplane studies*

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed for this project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff notes, public comments received late in the review process have stated that the proposed use may be detrimental to the public health, safety and welfare of the native Hawaiians and long time residents. They note that a sense of loss and hopelessness may prevail and the proposed development may be detrimental to Hawaiian culture (*Malama Kohala Kahakai comments*).

As stated by the applicant, wildfire is an important concern in this part of North Kohala, which has burned on a number of occasions. Staff has strong reservations regarding placing a SFR and the household in a fire prone area.

DISCUSSION

Staff is of the opinion that this remote and undeveloped area of leeward North Kohala is not presently an appropriate location for a modern residence. The area is completely devoid of any infrastructure or development as evidenced by aerial photographs (See Exhibit 13). There are significant archaeological sites up and down the coastline and the

area appears to be of significant cultural importance. The many archaeological sites appear to be an extension of the sites found at the nearby Lapakahi State Historical Park.

Archeological surface surveys done in 1980 identified 27 total sites, grouped in five main clusters on the subject parcel. These sites include seventeen habitations, five canoe sheds, one shrine, three burials, and numerous terraced areas. Site 2382, which has been previously disturbed by bulldozing and land clearing by the former landowner for a SFR, is the site of the proposed home. Even though the project will encompass a pre-disturbed site, it will have an overall impact on the landscape, similar to a recent project in Kau (*Carroll Single Family Residence CDUP HA 3002*). With the exception of this site, the current landowner plans to preserve all of the archaeological features on the parcel. A Burial Treatment Plan and Archaeological Preservation Plan are currently under review by the HPD.

Staff notes, supporting structures appear to be less than 30 feet from burials. Burials are present in close proximity of the proposed home site. Staff further notes remnants of the former landowners grave has been identified on old maps, however it has not been identified within the application. Staff notes there are significant comments and concerns regarding the applicant's evaluation of the cultural sites and the lateral trail. Comments received point out deficiencies with the Cultural Impact Assessment such as inappropriate site boundary identification, lack of adequate consultation, inappropriate significance determinations of sites, lack of recognition of the important Traditional Cultural Properties (TCP) to the Hawaiian community and inappropriate criteria utilized to define TCPs. Although these concerns were raised late in the review process and after the Department accepted the Environmental Assessment, Staff believes these comments to be from reputable sources and is concerned whether cultural issues have been sufficiently addressed at this time. Although these matters were suppose to be covered under the approved EA, Staff is just now beginning to hear from other native Hawaiian practitioners who are strongly opposed to the project.

In addition, it has been determined that there is a coastal trail traversing the property owned by the State of Hawaii pursuant to §264-1(b) HRS. Due to its coastal location, this trail section may be considered a potential alignment by the National Park Service for the Ala Kahakai National Historic Trail designated by Congress on November 13, 2000. The National Park Service is currently developing a combined Comprehensive Management Plan /Environmental Impact Statement for the Ala Kahakai.

It is Staff's understanding that the proposed project area is well known and established as a recreational area. According to various sources, a fishing shrine is present, there is an off shore surf spot, the Boy Scouts and other community organizations and individuals have utilized the subject area for camping. The towering Kohala shoreline cliffs afford the public very little opportunity to gain access to the ocean. Islanders have utilized the shoreline fronting the proposal for generations for ingress and egress to the ocean

resources. Native Hawaiians used this site as a point of access and egress for their canoes, as evidenced by the canoe hales located next to the shore. The proposed residence is being proposed immediately adjacent to this site, and it appears that public access would be directed away from this area, thus potentially limiting access to one of the few beaches on this coastline, and directing the public to areas of the shoreline that may not be considered as safe as this site.

With the development of the site, Staff is fairly confident that there will be conflicts between the property owner and the general public who have enjoyed use of the area for generations. In addition, there is the added concern of moving people onto the State land and the impact that might have on natural and cultural resources. While Staff does not believe that public use of the land, or cultural matters outweighs Mr. Cohen's right to use his property to build a residence, Staff is obligated to ensure that impacts and conflicts are minimized by the proposed project. In this regard, Staff is concerned that the proposed location of the residence may result adverse impacts on the landscape and on public enjoyment of the environment. The applicant notes that the site is ideal because grading work previously disturbed it. Even so, staff does not agree that this is the most ideal location for a residence, from a broader point of view. For instance, if the Ala Kahakai Trail becomes operational, the residence will impose upon the wilderness nature of this stretch of coastline seriously impacting hikers using this rugged coastal area. Furthermore, the site although disturbed, is adjacent of a significant archaeological complex, and there is the aforementioned beach located adjacent to the house site. This does not appear to be an appropriate use of the area and is not consistent with Conservation District criteria which requires that *"The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels."*

Because the project is designed to be self-supportive, the applicant is expected to install an individual wastewater treatment facility treatment. This consists of an aeration-type treatment plant that treats water to the secondary level. It is then chlorinated and discharged for beneficial re-use in irrigation or to a drain field of crushed rock. Despite best efforts, the treated wastewater will ultimately discharge into Class AA marine waters. To the best of Staff's knowledge, these waters are pristine due to the lack of any development seaward of the highway.

Wildfire is also an important concern in this part of North Kohala, which has burned on a number of occasions. The property is surrounded by vacant brush land with alien drought resistant plants intermixed by bunchgrass, and kiawe that produces fast moving and intense fire conditions. The strong onshore winds that persist every day make this area prone to wildfires. A private parcel to the nearby north was seriously burned just a few years ago. According to the applicant, a propane-fueled generator will provide power to the proposed residence. Staff notes that fire-starting fluids may increase the

←
marine
sanctuary
at Lapa Koa

threat of wildfire in an environment that is already prone to such events. This would endanger applicant's land as well as surrounding state unencumbered lands.

The Department of Land and Natural Resources is in receipt of a petition signed by approximately 7,000 individuals calling on the State and County to stop all development along the Kohala coast until studies of the coastline can be completed. Although this petition was circulated in 1988, Staff believes that it has relevance to the present action. In addition, this area has been identified as an area of *Natural Beauty* by the County of Hawaii General Plan. The County identified goals, policies and standards for these areas of which the proposal appears to be incompatible with such as maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty and not allowing incompatible construction in areas of natural beauty.

In addition, a Hawaii County Commission established by Hawaii County ordinance 05-166 has identified the subject property for County/Partnership consideration to purchase. The Commission has recognized and listed the subject property as properties and/or entitlements for purchase by the County through partnership with other public agencies (Exhibit 26 & 27).

Although the State was given the opportunity to purchase the parcel in 1999, unlike now, there were no tools such as legacy land funding or identified partnerships to even entertain the idea of acquisition.

In conclusion, Staff believes that the BLNR should not approve the project, as it has been proposed. Staff believes that BLNR's decision to approve the proposed project would be pre-mature. Should the proposal be implemented, it will significantly change the area. In addition, based on these recent concerns, it may be appropriate to re-evaluate alternatives such as no structures, or relocation of any structure away from any cultural sites or trails or complete preservation of the parcel for cultural purposes. Another alternative could involve a land exchange, conservation easement or outright purchase. It is unfortunate that alternatives such as these were not considered in the application and Staff should have required a more rigorous consideration of such alternatives early in the application process.

Although the application was subject to a complete review under Chapter 183C and 343^{Hist. Sites Environm. Review} HRS, Staff has received late comments that shed some doubt on the appropriateness of this project in its current form. Staff believes that this project should not go further at this time.

Numerous letters were received on behalf of the Applicants to try to justify the project in response to late comments received on this application. These letters failed to address the substantive issues raised by the letters sent in by community members and citizen groups. OCCL Staff responded to applicants' counsel in a letter dated April 11, 2006 (Exhibit 28)

in which Staff explained that comments were not solicited in an attempt to undermine the project. Staff was responding to inquiries received through the Chairperson's office. The fact that these comments were received late in the application process does not mean that they should not be addressed. Staff is obligated to consider all views and concerns up until the time of the BLNR hearing. The OCCL staff has the onerous duty of evaluating the appropriateness of a project based on a complete and comprehensive assessment that has been assembled from acceptance of the application to the writing of this report. In conclusion, Staff believes that the project, as proposed, would not be consistent with Conservation District objectives.

Based on the above discussion and information received, Staff recommends as follows:

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources **deny** this application for a Single Family Residence located at Pao'o, North Kohala, Island of Hawaii, TMK: (3) 5-7-001:005, due to the following reasons:

A.

1. Staff believes that the project as proposed will have an adverse effect on the open space and rugged character of this part of the North Kohala Coast;
2. Staff believes that the project as proposed will have an adverse impact on the Ala Kahakai Trail as well as customary access to the sea by members of the public;
3. Staff believes that the project will jeopardize the integrity of the many archaeological and cultural sites in the vicinity of the project;
4. Staff is concerned over the plan to redirect public access to adjacent State lands;

B.

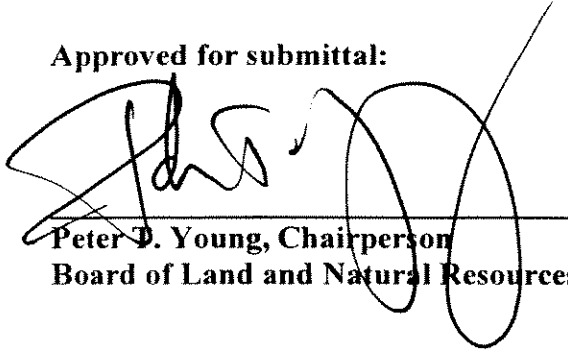
1. Staff further recommends that the applicant consider more fully investigating a land exchange, conservation easement, purchase by a third party, or relocation of the residence away from the shoreline, the Ala Kahakai Trail and the archaeological sites.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Land

Approved for submittal:



Peter D. Young, Chairperson
Board of Land and Natural Resources



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