May 7, 1994

Office of State Planning
Post Office Box 3540
Honolulu, Hawaii 96811-3540

Dear Friends:

Most unfortunately, I am unable to be with you on this historic day. I have worked hard for the return of Kaho'olawe and I am pleased that the dream is now reality.

Today, the Island of Kaho'olawe is returned to the people of Hawaii. We have waited many years. Some have given their lives for this moment. The waiting for many has been painful. The government of the United States has acted, and Kaho'olawe is now returned to its rightful place in the bosom of the Hawaiian Islands.

Along with the federal apology signed into law by President Clinton on November 23, 1993, it heralds the beginning of a new era in the continuing struggle of Native Hawaiians for federal recognition as an indigenous people of our nation.

It is appropriate to acknowledge the contributions made toward this end by thousands of concerned Native Hawaiians, and particularly the Protect Kaho'olawe Ohana.

This is a glorious victory. We must celebrate while realizing that much work lies ahead of us before the full return of the island can be accomplished. The cleanup of this island will take many years. The State government and the Protect Kaho'olawe Ohana now have important responsibilities to perform.

This is a banner day for Native Hawaiians, indeed for all Hawaiians. I would like to take this opportunity to express my deep appreciation for the efforts of Admiral Charles Larson and the United States Navy for their vital, sensitive leadership. And, on a more personal note, I wish to extend my deep appreciation and aloha to my dear friend Frenchy DeSoto for her wise advice and counsel and patient leadership throughout the long journey to this solemn day.
The return of Kaho'olawe was the result of teamwork: Senator Daniel K. Akaka, Representatives Patsy Mink and Neil Abercrombie, Governor John Waihee, the United States Navy, the Congress of the United States and above all, the Native Hawaiians of our state. I congratulate them on this magnificent triumph.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:hju
To: Mary
From: Jenna

SUBJECT: Kaho`olawe conveyance ceremony

FROM: Norma Wong

DATE: April 15, 1994

Next week, you will receive a formal invitation from Governor Waihee to attend the signing ceremony to convey the island of Kaho`olawe from the U.S. Navy to the State of Hawaii. Please reserve Saturday May 7, 1994 from 11:15 a.m. to 3 p.m. The public ceremony will take place at Palauea Beach near Wailea, Maui.

There will also be a private ceremony at dawn on Sunday, May 8 at Hakioawa Bay on Kaho`olawe. If you choose to participate in the Kaho`olawe portion, you must camp over night on the 7th at Hakioawa. There will be no helicopter arrivals at Hakioawa on the 8th.

All participants must be prepared to stay on island from sunset Saturday until approximately 9:00 a.m. on Sunday. The Protect Kaho`olawe Ohana will host all guests during the overnight stay.

Once you receive the formal invitation it will be crucial for you to respond as soon as possible, particularly if you intend to participate in the dawn ceremony on Kaho`olawe. Additional information will follow. Should you have any questions before then, please call either myself (808) 587-2831 or Linda Polhemus or Heidi Meeker at (808) 587-2846.
November 19, 1993

Mr. Andrew Keahiolalo  
1156 Manono Street  
Hilo, Hawaii 96720

Dear Mr. Keahiolalo:

Thank you for your letter containing your request for information about the disposition of Kaho'olawe. I appreciate your sharing this concern with me. I am enclosing a recent statement I issued on this subject following Congressional action on this matter. Hopefully, it will be helpful to you in your history report.

Thank you again for sharing this matter with me.

Aloha,

Daniél K. Inouye  
United States Senator

DKI:fkw  
Enclosure
Senator Daniel Inouye
722 Hart Senate Office Bldg.
Washington, D.C. 20510-1103

Dear Senator Inouye,

My name is Andrew Keahiolało, I am in the eighth grade and go to Waiakea Intermediate School in Hilo. I am doing a history report on Kaho’olawe. Being that I am part Hawaiian, I was particularly interested in this issue.

I would like to know how you were able to convince the government to return Kaho’olawe to the state of Hawaii’s control, and how you convinced the government to authorize 445 million dollars to clean it up. Is this amount enough to completely restore all the land to be liveable? Who is going to clean it?

I know you are a busy man, but any response would be definitely used in my report. Thank you for getting Kaho’olawe returned to Hawaii.

Sincerely,
Andrew
Keahiolało

P.S.
Any additional information or pictures you have that may be useful in my report would be greatly appreciated.

Andrew Keahiolało
1156 Manono St.
Hilo, Hawaii 96720
July 22, 1993

Professor Ernst S. Reese
Hawaii Institute of Marine Biology
University of Hawaii at Manoa
Post Office Box 1346
Kaneohe, Hawaii 96744-1346

Dear Professor Reese:

I received your letter concerning your research on the coral reefs of Kaho'olawe. Thank you for updating me on your efforts. I look forward to receiving a copy of your semi-annual report.

Please do not hesitate to contact me if I may be of assistance.

Aloha

[Signature]

DANIEL K. INOUYE
United States Senator

DKI:mlc
Senator Daniel K. Inouye  
722 Hart Senate Office Bldg.  
Washington, D.C. 20510-1102  
Attention: Ms. Margaret Cummins

Dear Senator Inouye:

July 13, 1993

It is a distinct pleasure to report to you that our NOAA sponsored research on the coral reefs of Kaho'olawe Island is progressing exceedingly well. I am preparing the semi-annual report which I will send to you when it is complete. It occurred to me, however, that a brief report at this time might be useful to you. We have established two principal monitoring sites based on preliminary surveys. We sought an area of relatively pristine conditions to compare with an area which has been impacted by sedimentation resulting from soil erosion on the island.

The first study site is a lovely spot with high coral cover and an abundance of reef fishes. It is just north of Hakioawa Beach which is the area most of the Hawaiian groups visit. It is located on the northeast corner of Kaho'olawe.

The second site is at Kuheia Bay on the northwest side of the island. This area is heavily impacted by silt, yet corals are growing on the lava ridges and reef fishes are present. This is encouraging and suggests that with time and the control of erosion on the island by planting programs, the reefs along the northwest side of Kaho'olawe will recover.

We have concentrated on these areas because the east and south coasts of Kaho'olawe drop quickly into deeper water and therefore coral reef development is marginal. The more extensive, shallower, and better developed coral reef areas are where we have concentrated our effort.

I am in the process of applying for a second year of funding from NOAA in order to complete this study. Our conclusion to date is favorable, namely that the coral reefs of Kaho'olawe have not been degraded beyond the point of no recovery.

Thank you very much for your interest and support of this research.

Sincerely yours,

Ernst S. Reese  
Professor of Zoology
June 30, 1993

Mr. Jack Madden
617A Lilikoi Road
Haiku, Hawaii 96708

Dear Mr. Madden:

On behalf of Senator Inouye, thank you for your recent letter regarding Kahoolawe. Please be assured that I will relay your suggestions to the Senator who is presently in Washington, D.C., and reviewing various legislative options to address the clean up of the Island of Kahoolawe.

Trained personnel and specialized expertise is needed to ensure that the clean up is conducted properly, thoroughly and safely. It would not be feasible for the various national guards of the 50 states to converse on the island. In light of the U.S. Navy's obligation, pursuant to the Executive Order, to return the Island in a habitable condition, the Navy will be required to lead the clean up effort. As such, we will be deferring to their expertise, as well as to the propriety of involving other entities, let alone other nations.

Once again, thank you for your letter.

Aloha,

JENNIFER R. GOTO
Chief of Staff-Hawaii

JRG: gjw
MEMORANDUM

TO: RODGER BETTS, KICC
    MARGARET CUMMISKY, SENATOR INOUE
    LAURA EFURD, REP. MINK
    ALAN YAMAMOTO, REP. ABERCROMBIE

FROM: ESTHER KIA'AINA, DEBRA WADA

DATE: JUNE 2, 1993

SUBJECT: DRAFT OF KAHO'OOLAWE CONVEYANCE LEGISLATION

In response to the draft legislation on the Kaho'olawe Conveyance bill, a number of issues were identified by Mr. Dennis Dwyer, a consultant for the State of Hawaii in Washington, D.C.

Please let us know if you have comments or recommendations to make in response to any of the points which he has raised.
Attached are some of our thoughts on the Kaho‘olawe legislation. We have attempted to raise specific issues but this analysis should not be seen as exhaustive.

Please call when you have a moment and we can discuss this further.

Best regards.

************************************************************

FOR TELECOPIER OPERATOR ONLY

TRANSMITTED: DATE: ________ TIME: ________ OPERATOR: ________

TELECOPIER CANNON FAX L-910 (202) 371-6279
FOR ASSISTANCE CALL TELECOPIER OPERATOR AT (202) 371-6245

SENATOR DANIEL K. AKAKA
WASHINGTON, D.C.

VERNER, LIPFERT, BERNHARD, MCPHERSON, AND HAN
Chartered
Suite 700
901 15th Street, N.W.
Washington, D.C. 20005-3301
(202) 371-6000
TELECOPIER (202) 371-6279
The original Bill, in draft form, is reproduced below. Each of its three Sections is followed by some Notes that describe the issues that need to be discussed relative to those Sections. The issues described are not intended to be exhaustive in number or in depth of analysis. Moreover, every effort should continue to be made to assure the Bill retains the virtue of simplicity.

103D CONGRESS
1st Session

S. _______

IN THE SENATE OF THE UNITED STATES

Mr. Akaka introduced the following bill; which was read twice and referred to the Committee on

A BILL

To provide for the conveyance of Kaho'olawe Island, Hawaii, to the State of Hawaii, to provide for the environmental restoration and environmental clean-up of the Island, and for other purposes.
Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF KAHO'OLAWE ISLAND, HAWAII,
TO THE STATE OF HAWAII.

(a) IN GENERAL. - Notwithstanding any other provision of
law and subject to Section (b), the Secretary of the Navy shall convey,
without consideration, to the State of Hawaii all right, title, and interest
of the United States in and to a parcel of land consisting of
approximately 28,776 acres of land known as Kaho'olawe Island,
Hawaii.

(b) CONDITION OF CONVEYANCE. - The conveyance
required under subsection (a) shall be subject to the condition that the
State of Hawaii shall, upon completion of the conveyance, enter into an
agreement with the Protect Kaho'olawe 'Ohana to permit access to
Kaho'olawe Island by representatives of the Protect Kaho'olawe
'Ohana.

(c) DESCRIPTION OF PROPERTY. - The exact acreage
and legal description of the parcel of property to be conveyed under
subsection (a) shall be determined by a survey that is satisfactory to the
Secretary. The cost of the survey shall be borne by the Secretary.

[NOTES TO SECTION 1.]

1. Accident Liability. There is no reference to liability for
accidents during or after clean-up. Consequently, liability for such
accidents would be considered under the Federal Tort Claims Act and
State law from the moment of conveyance of title to the State. At a
minimum, the State would be exposed to accident claims (because it has title and some element of control over access to the Island) involving ordinance that it did not place on the Island and cannot remove and for a process (ordinance clean-up) for which it has no responsibility.

The State and PKO (to the extent of its interest) should be aware of what this means. It is obvious from the initial discussions with the State that Navy wants to create a record that transfers such accident liability with the transfer of title and control over access and public safety to the State. Although there are limits to what the Navy can do to "exempt" itself, the legislation does not clarify the federal government's intention with respect to such accident liability during or after clean-up. The proposal to have the conveyance of title occur within "60 days" creates a time frame only for transfer, not for agreement on any other issues or the coming into being of "rules of liability." From the State (and PKO's) perspective there must be an element of certainty on this issue that does not expose either party to the risk of harm or the uncertainty of financial drain on the public treasury or the cost of litigation.

2. Conditions For Conveyance: There are two conditions in the legislation. The first (made explicitly) is that Hawaii "shall, upon completion of the conveyance, enter into an agreement with [PKO] to permit access to Kaho'olawe . . . ." In light of the PKO's historical role and its historical and cultural relationship to the Island, such access is both reasonable and, in fact, is the subject of a proposed MOU between PKO and Hawaii made, in part, pursuant to state law. This "condition" for conveyance, however, has a procedural effect on other transfers and uses that may be, more appropriately, left to State (legislative) choice. With respect specifically to PKO, that choice already has been made. PKO shall have access as well as sharing in other responsibilities. In addition, PKO should consider the broader political and liability implications of being formally identified in the federal legislation.

The second condition (made implicitly) is that Hawaii has an obligation for "environmental restoration" (in Section 2. below) that — although providing funds — requires the State to assume administrative costs and liability for problems it did not create. Put differently, within the broad range of discretion and responsibilities the Bill provides Hawaii there are, nonetheless, other duties and costs that the State must understand and undertake.

3. Title To Island: The directive to the "Secretary of the Navy" assumes that Department has title to the Island rather than, for
example, the Secretary of Defense or "the United States." This should be clarified. Our understanding is that title is in the United States.

4. **Timing of Conveyance** Should the State and the Commission, established under state law, have a time period before conveyance occurs during which it can develop a management regime (including rules and regulations) for the Island's governance?

**SECTION 2. ORDINANCE REMOVAL AND ENVIRONMENTAL RESTORATION ON KAHO'OLawe ISLAND, HAWAII**

(a) **ORDINANCE REMOVAL.** - (1) the Secretary of the Navy shall, to the maximum extent practicable:

(A) detect and remove from Ka ho'olawe Island, Hawaii, any unexploded ordinance, the remains of any exploded ordinance, and any solid waste associated with such ordinance or with the use of Ka ho'olawe Island for bombing training, gunnery training, or similar munitions training; and

(B) carry out such other activities as are necessary to restore Ka ho'olawe Island to a condition that is reasonably safe for human use and habitation.

(2) The Secretary shall complete the activities described in paragraph (1) not later than 4 years after the date of the enactment of this Act.

(b) **ENVIRONMENTAL RESTORATION ACTIVITIES OF THE STATE OF HAWAII.** - (1) the Secretary shall award a grant to the State of Hawaii in an amount equal to $22,000,000 to carry out environmental restoration activities on Kah o 'olawe Island.
(2) The State of Hawaii shall use the grant awarded under this subsection for the purposes of carrying out environmental restoration activities on Kaho'olawe Island, including-

(A) soil conservation and water resource development;

(B) erosion abatement (including reforestation and revegetation);

(C) stabilization and restoration of sites of archaeological or historical significance, and development of interpretive displays and facilities relating to such sites;

(D) removal or destruction of non-native plants and animals;

(E) construction and maintenance of fences, if any; and

(F) such other activities relating to the environmental restoration of Kaho'olawe Island as are determined appropriate by the State of Hawaii.

(c) COOPERATION OF FEDERAL DEPARTMENTS AND AGENCIES. - Upon the request of the Secretary or the State of Hawaii, as the case may be, any department or agency of the Federal Government may provide assistance to the Secretary or the State of Hawaii, as the case may be, in carrying out the ordinance removal and environmental restoration activities required under this section.
55 (d) **AUTHORIZATION OF APPROPRIATIONS.**  (1) For
56 the purposes of carrying out this section, there are authorized to be
57 appropriated the following sums:
58
59 (A) $88,000,000 to carry out the provisions of
60 subsection (a);
61 (B) $22,000,000 to carry out the provisions of
62 subsection (b).
63
64 (2) Any amounts appropriated pursuant to the authorization
65 in paragraph (1) shall remain available until expended.

[NOTE TO SECTION 2.]

1. **Cost Estimation:** Is it safe to assume the funding for
   clean-up -- ordnance and non-ordnance -- will continue to be
   forthcoming if the current estimates are incorrect?

2. **Authority To Act:** Reference to "the Secretary of the
   Navy" as the entity responsible for the tasks identified here should be
   reassessed for the limited purpose of determining its appropriateness to
   fully and timely accomplish such tasks. Put differently, should explicit
   reference be made to the Army Corps of Engineers or to the Defense
   Department?

64 **SECTION 3. ADDITIONAL ENVIRONMENTAL REMEDIATION OF**
65 KAHO'O LAWE ISLAND, HAWAII, AND ADJACENT WATERS.
66
67  (a) **ASSESSMENT OF ADDITIONAL ENVIRONMENTAL**
68  **CLEAN-UP.**  (1)(A) Not later than 4 months after the date of the
69  enactment of this Act, the Secretary of the Navy shall undertake such
70  studies and appraisals as are necessary to identify the type, quantity,
71  and estimated costs of removal of the hazardous substances, if any, that
72  are located -
(1) on Kaho'olawe Island, Hawaii; and

(2) in the waters adjacent to Kaho'olawe Island.

(B) The cost of the studies and appraisals referred to in subparagraph (A) shall be borne by the Secretary.

(2) Upon the completion of the studies and appraisals referred to in paragraph (1)(A), the Secretary shall carry out any responses to the hazardous substances located on Kaho'olawe Island and in the waters adjacent to Kaho'olawe Island (as identified in such studies and appraisals) that are necessary to protect human health and the environment. The cost of such responses shall be borne by the Secretary.

(3) In this subsection, the terms "hazardous substance" and "response" have the meanings given such terms in Sections 101(14) and 101(25), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14), (25)).

(b) RESPONSIBILITY OF THE NAVY TO CONDUCT CLEAN-UP AND REMEDIATION ACTIVITIES. - (1) Notwithstanding the conveyance required under Section 1, the Secretary shall be responsible for the conduct of any clean-up and activities relating to environmental remediation of Kaho'olawe Island, and adjacent waters, under the Comprehensive Environmental Response, Compensation, and

(2) Nothing in this Act shall relieve, and no action may be taken under this Act to relieve, the Secretary from any obligation or other liability to carry out or provide for the environmental remediation of Kaho'olawe Island, and adjacent waters, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) and other applicable laws. Nothing in this Act is intended to restrict or define the level of clean-up on Kaho'olawe Island, or adjacent waters, to be carried out under applicable laws.

(3) The State of Hawaii shall provide the Secretary with such access to Kaho'olawe Island as may be reasonably (as determined by the Secretary) to carry out the obligations of the Secretary arising out of the responsibilities and liabilities of the Secretary under this section.

(c) AUTHORIZATION OF APPROPRIATIONS. - There are authorized to be appropriated such sums as may be necessary for the purposes of carrying out subsections (a) and (b). Any amount appropriated pursuant to the authority of such subsections shall remain available until expended.

[NOTES TO SECTION 3.]

1. CERCLA Liability: Once conveyance occurs and the State has title, Hawaii may become a Potentially Responsible Party (PRP) under CERCLA for clean-up costs. In fact, under normal circumstances the title holder to property would necessarily be a PRP. The fact that Congress would assure that the Navy is responsible under CERCLA (Section 3(b) of the Bill) does not necessarily relieve Hawaii.
A provision in CERCLA (Section 120(h)(3)) requires that the Navy convey title to property subject to its continued obligation to clean-up. Although this obligation also is helpful, it is still untested in terms of its proper legal meaning vis-a-vis the property owner, which would be Hawaii. Hawaii should be exempt from any clean-up liability and the Navy explicitly made "solely" responsible (financially and for clean-up) under CERCLA.

2. EPA's Role: EPA has a formal role under CERCLA. In fact, this site is now (post February 5, 1993) subject to a site assessment by EPA under CERCLA. Under the proposed Bill, EPA still has a statutory responsibility along with the Navy. Although, as we understand it, a site assessment has been completed (we have not seen it), its content has marginal bearing on EPA's continued legal obligation under CERCLA. Because the Corps of Engineers (and Hawaii) also have a responsibility under the Bill (as does Interior because, in part, the site is on the National Register of Historic Places), there are now four (perhaps five) entities (and two sovereigns) that must "cooperate" to accomplish the Bill's goals. The implications of this should be understood.

3. Standard To Be Attained For Clean-Up: The proposed Bill contains two, perhaps three or four clean-up standards: "reasonably safe for human use and habitation" (Sec. 2(a)(1)); "necessary to protect human health and the environment" (Sec. 3(a)(2)); and "nothing in this Act is intended to restrict or define the level of clean-up on Kaho'olawe Island, or adjacent waters, to be carried out under applicable laws" (Sec. 3(b)(3)), which may be a reference to the Executive Order's standard or the CERCLA standard.

These "standards of attainment" are different and are perhaps contradictory and their relationship to the original standard ("fit for human habitation") is not described but such a relationship is left open (e.g., "... under applicable laws") and could be drawn by a Court or by the entity responsible for clean-up. Although these standards may have similar meanings or objectives or may have application to different legislative mandates or different problems (e.g., ordnance, toxic substances, etc.), they may yield uncertainty with respect to (i) the appropriate methodology to use in order to assure clean-up (e.g., a "lesser" standard may require a "less exacting" clean-up methodology) and (ii) the relationship between the standard required (and presumably attained) and the accident liability that attaches to the State after that standard is met (e.g., if the standard is "attained", is the federal government thereafter able to defend itself against a liability claim?).
4. **This Law's Effect**: Keep in mind that the precise legal status of all previous documents (i.e., Executive Orders, etc.) and the directives and standards contained in them become problematic once this Bill is enacted into law (put differently, this law could reasonably be construed as displacing all its predecessors). Consequently, although the previous documents are an essential part of the Island's "legal history", their meaning and continued viability vis-a-vis clean-up, liability, etc. cannot be assumed.

5. **The Consent Decree**: In the same context as No. 4, the Consent Decree in Ahul, et al. v. Brown, is not affected by the legislation. Any alteration of the Decree must be undertaken in the federal court where it arose. The implications of this should be considered.

**[GENERAL NOTE TO ENTIRE BILL]**

1. **No Reference To "Safety"**: Given the public risks associated with clean-up and use and the resulting uncertainty about accident liability, some reference should be made to the recognized risks to public safety that all parties (Hawaii, the Navy, PKO, etc.), including Congress should acknowledge, understand and accept as fundamental to the transfer and to clean-up, access and use of the Island. Such a reference also is useful in any litigation involving an accident (it reflects one form of "notice" to the public that a risk to safety is involved for anyone who comes near or on the Island).

2. **National Environmental Policy Act (NEPA)**: The Navy will, in all likelihood, have to prepare an EIS as part of the transfer process. Seeking an "exemption" would be inadvisable. In fact, an EIS would be a useful vehicle for assuring that the Navy properly considers all the relevant factors within the time period prior to the actual conveyance of title. The consequences of this process should be considered.
COMMISSIONERS:
Mr. Hannibal M. Tavares, Chairman
Dr. Noa Emmett Aliu, Vice Chairman
Mr. H. Howard Stephenson
Mr. James Kelly
Ms. A. Frenchy DeSoto

H. Rodger Bette, Executive Director
Velma M. Santos, Deputy Director

One Main Plaza, Suite 325
2200 Main Street
Wailuku, Maui, HI 96793
(808) 242-7900 Fax: (808) 242-5710

KAHOOLAVE

FAX TRANSMITTAL

June 2, 1993

TO: Senator Daniel K. Akaka
     Attn: Patrick McGarey, Esq., and Esther Kia`aina
     TELEPHONE: (202) 224-6361
     FAX: (202) 224-2126

TO: Senator Daniel K. Inouye
     Attn: Jennifer Goto and Margaret Cummisky
     TELEPHONE: (202) 224-3934
     FAX: (202) 224-6747
     FAX: (808) 541-2549

TO: Representative Neil Abercrombie
     Attn: Alan Yamamoto and Merryl
     TELEPHONE: (808) 541-2570
     FAX: (808) 533-0133
     FAX: (202) 225-4580

TO: Representative Patsy Mink
     Attn: Laura Efurd and Joan Manke
     TELEPHONE: (808) 541-1986
     FAX: (808) 538-0233
     FAX: (202) 225-4987

TO: Norma Wong, Administrative Assistant
     Office of State Planning
     TELEPHONE: (808) 587-2831
     FAX: (808) 587-2848

FROM: Momi Lovell Singson
      Administrative Assistant
     TELEPHONE: (808) 242-7900
     FAX: (808) 242-5710


COMMENTS: Aloha: Faxing Memorandum from KICC Legal Counsel relative to proposed draft legislation received from Senator Akaka's office. The KICC Commissioners and staff members are looking forward to and are preparing for the Monday, June 7th meeting.

If I can be of further assistance, please do not hesitate to call.

Faxing: 7 pages
CERCLA and defines hazardous substance, pollutant or contaminant according to parts of CERCLA §101 [42 USC §§ 9601(9), (14), (22) and (33).]²

The CERCLA definition of hazardous substance found at 42 USC §9601(14) relies upon definitions found in several other laws, including §3001 of the Solid Waste Disposal Act (42 USC §6921). As noted in prior memoranda, the EPA is now promulgating a regulation "identifying when military munitions become hazardous waste for purposes of" the Solid Waste Disposal Act, as required by Public Law 102-386 of October 6, 1992, the Federal Facility Compliance Act, at §107, 106 Stat 1513, that amended the Solid Waste Disposal Act, 42 USC §6924. One predictable repercussion of that identification will be felt in the context of CERCLA, particularly with regard to DOD munitions hazards and contamination. It is in view of the expected EPA regulation that DOD is now apparently preparing to abandon its previous reluctance to acknowledge that munitions waste should be subject to the federal liability-fixing provisions of CERCLA §120.³

The DOD policy is not surprising. The substance of the policy, i.e., that federal liability makes transfer of DOD property to a State subject to a careful assessment of the potential for liability, has been reviewed in previous memoranda to KICC. DOD has recently formulated a policy reflecting concerns that stand out most noticeably in CERCLA §120. It is certain that those policy concerns will be viewed by DOD in the context of Kaho'olawe.

There are predictable consequences of federal liability, in addition to doubts regarding pre-cleanup conveyance. The Commission recommends that enough hazardous materials be removed to provide safety for recommended limited uses. Because the recommended decontamination is based upon limited uses, use limitations should be

² §332 of that Act requires a DOD report regarding contractor liability under CERCLA. This is evidently a continuation of last year's unsuccessful attempt by DOD to gain legislation authorizing indemnification for environmental restoration contractors.

³ DOD made previous efforts to evade liability under CERCLA §120 for ordnance and munitions waste and could advance similar rationalizations based on the fact that each of the new appropriations provisions reflects definitions from other environmental statutes. Although explosives generally are considered hazardous wastes under RCRA (40 CFR §261.23 defines the hazardous waste characteristic of reactivity, including the capability of detonation or explosive reaction), DOD has previously taken pains to define ordnance and munitions waste to avoid environmental statutes such as RCRA. Since the scope of the definitions reference is so obviously broad, and since EPA's FFCA rulemaking is expected to pin down the definition of hazardous waste as it applies to munitions, DOD seems to be accepting the inevitable, even while the inevitable is probably less the result of recent Congressional efforts and more a reflection of previously established law and regulations.
MEMORANDUM

May 25, 1993

To: Kaho'olawe Island Conveyance Commission (KICC)

From: Joel E. August

Re: Proposed revisions to draft of Kaho'olawe conveyance legislation

This memorandum addresses several proposed revisions to the draft Kaho'olawe conveyance legislation prepared by Senator Akaka's office. Also relevant are several items of Department of Defense (DOD) policy material received by fax from Lt. Col. Ruter of the Air Force Budget Liaison Office. Finally, I have been promised (but I have not yet received) a DOD general counsel's opinion on liability matters -- that document also should be of interest in this regard.

There are four proposed modifications: (1) require conveyance within 60 days after enactment; (2) designate the Army Corps of Engineers (ACE) as lead agency for ordnance decontamination; (3) provide supporting introductory clauses; and (4) require conveyance of as much of the light house reservation as is not needed for the light.

(1) Require conveyance within 60 days

My March 3, 1993, memorandum addressed the legislation as originally drafted by Senator Akaka's office. That and other previous memoranda have addressed liability questions that affect the recommendation for pre-cleanup conveyance. A provision that would require conveyance within sixty days after enactment elevates those questions so that the liability issue is posed in make-or-break terms for Congressional consideration.

In other words, the sixty day conveyance provision will probably cause those concerned to present the liability issue for examination in Congress and the provision will then be either changed or accepted. If the provision survives examination, then that result will have required some adjustment of existing federal liability policy. If the provision for quick conveyance cannot survive examination with regard to liability issues, then that first blemish on the draft legislation may lead to further critical examination of the Kaho'olawe recommendations.

Lt. Col. Ruter faxed material concerning a recent DOD land transfer policy related to liability. The policy, albeit recent, is actually an expression of law that is consistent with previously existing law and regulations. (The yet to be delivered General Counsel's opinion may go into greater detail with regard to how this policy evolved.)
Lt. Col. Ruter provided an October 6, 1992, DOD memo and excerpts from the FY 93 Authorization and Appropriation Acts as well as material (reviewed in my December 31, 1992, memo to KICC) concerning the Community Environmental Response Facilitation Act of October 19, 1992, Public Law 102-426, 106 Stat 2174 (regarding parcelization.)

The October 6, 1992, DOD memo regarding *Transfer or Lease of Department of Defense Real Property to States or Political Subdivisions of States* refers to the DOD Appropriations Act of 1993, Public Law 102-396. The pertinent section of that Act, entitled *Environmental Restoration, Defense*, 106 Stat. 1883, appropriates $1.199 billion for Defense environmental restoration work¹ and further provides that if property is transferred to a state then the United States shall retain all liability and indemnify the state with regard to claims resulting from any DOD hazardous substance, pollutant or contamination. In that provision, *hazardous substance, pollutant or contamination* is defined to mean anything "regulated under any environmental law or regulations applicable to the property..."

The October 6, 1992, DOD policy statement observes "To ensure careful stewardship of the taxpayers' funds and to minimize the risk of incurring indemnification obligations that may prove expensive to the Treasury, DOD must review planned transfers or leases of real property to a State or a political subdivision of a State in light of this new statutory liability of the United States." The policy therefore requires that no DOD property transfer may take place without approval from the Deputy Secretary of Defense following submission of a request for approval accompanied by an "assessment of the potential for liability..."

Also included in the fax material from Lt. Col. Ruter is an excerpt from the National Defense Authorization Act for Fiscal Year 1993, Public Law 02-484. §330 of that law, 106 Stat. 2371-73, provides for indemnification of transferees of formerly used defense property. This reflects a more general indemnification requirement, including states and other entities or persons, for sites subject to base closure law. This section contains more detailed requirements that track the Federal Tort Claims Act and related federal tort claims regulations. §330(e) specifically provides that "Nothing in this section shall be construed as affecting or modifying in any way section 120(b)" of

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¹ $200 million is earmarked for "the expedited cleanup of environmentally contaminated sites [] in accordance with a comprehensive plan submitted to Congress by the Secretary of Defense."
expected to become a condition of any transfer of jurisdiction. Existing federal policy, particularly as illuminated by the October 1992 DOD policy, would appear to require that use limitations be made a required condition or restriction of any conveyance.

(2) Designate ACE as lead agency

DOD inter-service rivalries are a political reality of the Kaho'olawe situation, as noted in earlier memoranda. To summarize generally some of the circumstances that would affect or follow designation of ACE as lead agency, it is necessary to first appreciate the broad context of the DOD environmental remediation scheme.

Under the Defense Environmental Restoration Program (DERP), each service is responsible for remediation of their own active installations (under the Installation Restoration Program or IRP.) ACE, however, is designated as the DOD agency responsible for formerly used defense sites (or FUDS). So the concept of an initial pre-cleanup conveyance of Kaho'olawe to the State of Hawai'i, if accepted by Congress, would be consistent with the concept of Kaho'olawe being a former defense site, or FUDS, under ACE decontamination management.

However, if pre-cleanup conveyance is not accepted by Congress, then the designation of ACE as the lead agency is actually counter to an existing notion that Kaho'olawe should be treated as a Navy IRP site during decontamination. The Navy has already begun the IRP process on Kaho'olawe with a preliminary hazardous substances study. It is not possible to say with certainty how the Navy would regard the removal of Kaho'olawe from their purview for restoration purposes. The Navy would likely desire to keep management of the Island during cleanup, or else remove itself from any responsibility.

If it is assumed that DOD will keep control of the Island during cleanup, the question of introducing ACE as remediation manager introduces an unknown factor into the initial clean-up period. There have been some comments that at least the existing relationship with the Navy brings certain known and predictable characteristics.

A final factor has to do with areas of expertise. ACE, as the usual FUDS manager, has greater experience in managing extensive remediation efforts -- especially in contrast with Pearl Harbor. However, the Navy has the greater expertise in the technology of ordnance decontamination. Beyond Pearl Harbor (and in support of the Explosive Ordnance Disposal and public works offices there) the Navy has a capacity for actual ordnance decontamination much greater than ACE. In fact, ACE often relies upon Navy ordnance disposal technology and expertise.
This circumstance also raises the question of how the decontamination will actually be accomplished: will the real work be done by one or more military services or will the real work be contracted out to civilian organizations? ACE is the contracting specialist, and so their lead predicts more non-military involvement. The Navy is the technology specialist, so their participation predicts a higher level of technical expertise. A previously recommended solution for this situation is the proposal that DERP create an inter-service task force to deal with the decontamination of Kaho'olawe. In that case, DERP could be the lead agency, diminishing some inter-service rivalry political questions.

(3) Provide supporting introductory clauses

The stated purpose of the introductory whereas clauses is to "highlight the background, justification and need for the legislation." Problems inherent in the wording of some whereas clauses are also problematic in the text of the KICC report.

The second whereas clause could be more precisely phrased to state that §5(c) of the Admission Act makes federal control of Kaho'olawe (as ceded land) subject to the limitations imposed under Executive Order 10436. The reference in §5(c) is general, applying to all ceded lands and executive orders -- the §5(c) reference is not specific to Executive Order 10436 or Kaho'olawe.

The second whereas clause states that Executive Order 10436 requires the return of Kaho'olawe. Page 2 of the KICC the report also states that "In 1953, President Dwight D. Eisenhower promised that the U.S. government would return the Island to the people of Hawai'i when its usefulness for military training was ended." That is not true, as can be discerned by reading Executive Order 10436. Further down on page 2 of the KICC report, there is the more accurate statement explaining that "There was a mutual understanding, which is reflected in the Executive Order, that the Island would be restored to a usable condition and returned to local control when it was no longer needed for military purposes." Return to local control was not an expressed understanding of the document resulting from the negotiations -- it was not expressed in the Executive Order. It is an implied or inferred understanding based upon the Organic Act (as stated in the first whereas clause.)

It has also been proposed that remediation (that is, ordnance and hazardous waste decontamination) be more directly coordinated with environmental restoration (that is, site stabilization, revegetation, etc.) by placing a non-military agency in the position of lead agency (under an inter-agency agreement, or IAG) for a more comprehensive cleanup and restoration plan.
The last *whereas* clause, in conjunction with the logic of the next to last *whereas* clause, builds upon the notion that Executive Order 10436 requires the return of Kaho'olawe to the State of Hawai'i when the Island is no longer needed as a weapons range. The intended effects of the Presidential memorandum and the Congressional funding restrictions seem unlikely to be changed: an end of the military weapons range use of Kaho'olawe probably has been accomplished, *de facto*. But bootstrapping that political circumstance into a *de jure* assumption is risky. Both the Presidential memorandum and the appropriation restrictions are temporary, discretionary acts, lacking substantial finality.

A final determination that Kaho'olawe is no longer needed for military weapons range use can be made in its own right, without reliance upon supposed consequences of those previous temporary steps. Actually, Kaho'olawe *is* still usable as a military weapons range, absent a final determination such as could be made by Congress.

(4) Light house conveyance

Subject to the considerations discussed above, it seems appropriate to include the light house conveyance in the draft legislation.

**Conclusion.**

DOD has provided material emphasizing the fact that federal liability could make immediate unconditional conveyance of Kaho'olawe to the State problematic.

To some extent, the proposed revisions to the draft Kaho'olawe conveyance legislation exacerbate liability issues by placing added emphasis upon quick conveyance and by statements vulnerable to inquiry.

It is hoped that Congress will act in appreciation of the real value of Kaho'olawe by agreeing with recommendations that would preserve those values.

However, the best recommendations for Kaho'olawe may face rough seas in a Congress where the reality of federal liability is taken seriously and where the potential for scrutiny can be anticipated.

Joel E. August
KICC Counsel
January 19, 1993

The Honorable Hannibal Tavares
Chairman
Kahoolawe Conveyance Commission
2200 Main Street
One Main Plaza, Suite 325
Wailuku, Hawaii 96793

Dear Hannibal:

I wish to share with you a copy of a letter and accompanying enclosures I received from my colleague, Senator Paul Simon, regarding the clean-up of the Island of Kahoolawe. Within applicable rules and regulations, I would appreciate your consideration, to the extent possible, of his request.

Thank you for your attention. I look forward to seeing you on one of my next visits to Hawaii, and to learning further of the progress of the Commission.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:jgd
Enclosure

cc: Mr. Ry Barbin
January 4, 1993

Honorable Daniel K. Inouye
722 Senate Hart Building
Washington, D.C. 20510

Dear Senator Inouye:

I am attaching a copy of a letter that I sent to Kahoolawe Commission on behalf of a former resident of Illinois. If you could add your endorsement to mine for this company, it would be greatly appreciated.

If you have any questions about this matter, please contact my Illinois state director Jerry Sinclair at 217/492-4960.

Thank you for your attention to this request.

My best wishes.

Cordially,

Paul Simon
U.S. Senator

PS/js
Trident Corporation is a small business located on the Big Island of Hawaii. Trident Corporation is composed of shareholders and employees that are ex-Navy SEALS experienced in demolitions, naval ordnance, diving operations, and hydrographic reconnaissance. Trident Corporation is an integral part of HAWAIIAN DIVERS, a diving business located also on the Big Island.

Kahoolawe is an island that requires clearance of unexploded munitions that are buried in its soil and presumably beneath the waters surrounding the island. Trident Corporation proposes that a hydrographic reconnaissance be conducted with nearshore hydrographic charts constructed to identify and mark unexploded ordnance. These charts will be used to eventually return to sympathetically detonate or remove the mapped unexploded ordnance.

Beach reconnaissance and clearance operations will presumably be conducted out to the 30 fathom curve, the presumed depth that will be required to safely anchor vessels in the future. Decompression dives will be required for operations at this depth. Trident Corporation is fully capable of operations at this depth.

Ordnance to be cleared will be from 3 inch to 16 inch fused naval ordnance and bomb ordnance. Fuses will range from impact, delay, time, variable time, and CVT. Locations will be marked by hydrographic chart using satellite navigation for reference baseline. Locations will be physically marked with a marker buoy.

Plan of Action. Trident Corporation will begin recruitment immediately upon agreement of terms with Kahoolawe Commission. Anticipated employment will be 100 personnel from the civilian sector of ex-SEALS or EOD (Explosive Ordnance Disposal) personnel. Surface support craft required will consist of two LCM-8 landing craft which will be required to support diving operations. Landing craft will be purchased or leased. Land based support camps will provide shelter for these personnel, and will consist of temporary camps (tents). Hydrographic charts will be constructed at these camps by ex-UDT/SEAL cartographers.
Scope. Operations will be conducted initially at the site of three targets, S-1 (UTM grid coordinate 466777), S-2 (UTM grid coordinate 467771), S-3 (UTM grid coordinate 467778). Hydrographic reconnaissance will be conducted up to 1000 yards on either side of these targets. These targets were taken out of service prior to 1978, but probably contain a lot of unexploded naval munitions. Hydrographic surveys will also be conducted from Kuakaiwa Point to Waikahalulu Bay in the southern part of the island. 11,000 yards of shoreline will be surveyed. Finally, the remainder of the island will be searched and all unexploded ordnance marked for future removal.

Background. Trident Corporation is currently a business name owned by Hawaiian Divers. Arnold Ako, Robert Baker, Ivan Treht. Hawaiian Divers is a sole proprietorship owned by H.R. Hofelich, a U.S. Naval Reserve SEAL officer recently detached from active duty in 1992. Lieutenant Commander Hofelich, currently assigned as the Salvage Officer of the Reserve Mobile Diving and Salvage Unit, Pearl Harbor, Hawai'i, was assigned to the Naval Special Warfare Center, Coronado, California prior to release from active duty. His duties involved assignment as Diving Officer. Prior to this assignment he was assigned to four years of duty in the Philippines, where he coordinated exercises in close air support bombing, and naval gunfire support, as well as numerous demolition exercises where sizable quantities of munitions were detonated in beach clearance and channel blasting operations. Assignments prior to this were three years at Seal Team One and three years at Underwater Demolition Team Twelve. Numerous exercises involving detonation of ordnance occurred at naval gunfire ranges at San Clemente Island off the coast of California, at Niland, California, the desert training base for SEAL demolition training, and also on Luzon Island, Philippines, and also in the country in Malaysia. Due to twelve years of continual work in underwater demolition, and numerous sweep operations in weapon impact areas, Hawaiian Divers, under the guidance of H.R. Hofelich, is ready and able to undertake the search operations required to identify and mark unexploded ordnance on the island of Kahoolawe. If Hawaiian Divers is awarded funds to conduct the search, Trident Corporation will subcontract diving services to support demolition clearance operations. Trident Corporation will be composed of native Hawaiian ownership and control by ex-Navy SEALs. Trident Corporation will use dive equipment and expertise from Hawaiian Divers.

Cost. Survey of approximately 78 kilometers of shoreline will be a long and intensive operation. Assuming 100 personnel are continually working to conduct the survey, it can be assumed that a kilometer of shoreline can be searched in a day. Areas with current and surf will take longer. Projected man-hours expended will be 800 man-hours daily.
Manpower costs for diving related labor per day is estimated at 100,000 dollars a day, with estimated completion within 90 days of startup. Manpower costs are therefore estimated at 9,000,000 dollars. Overhead costs to include dive support vessels, base camps, marking devices, recompression chamber, medical support, dive equipment, compressors, fuel, food, and travel expenses follow:

- Dive support vessels: 500K
- Base camp facilities: 250K
- Marking devices: 20K
- Recompression chamber: 200K
- Medical support: 100K
- Dive equipment: 50K
- Compressors: 100K
- Fuel: 25K
- Food: 75K
- Travel expenses: 25K
- Vehicle support: 125K
- Side scan sonar: 50K
- Magnetometer: 50K

Total 1,570,000 plus 9,000,000 for labor.

Although overhead costs appear high, these same costs could be applied to the removal of ordnance, especially if the ordnance could be destroyed or removed in a timely manner either after the survey is completed, or in a follow-up operation that could follow the survey. This could easily be conducted with additional personnel and funding for removal or destruction. Sympathetic detonation of ordnance is preferred to removal.

Proposal: Any amplification or request for a more detailed plan of action can be obtained by contacting H.R. Hofelich, Hawaiian Divers, P.O. Box 3513, Kailua-Kona, Hi 96745....Phone 1-808-329-2323, 329-2243, or 329-5050.
October 14, 1992

Mr. James Lee
P.O. Box 22061
Honolulu, Hawaii 96822

Dear Mr. Lee:

On behalf of Senator Inouye, who is currently in Hawaii, I would like to thank you for your letter concerning the cost of living in Hawaii and your suggestion to involve the National Guard in helping to remove the live ordnance on Kaahoolawe. As soon as the Senator returns to the office I will bring your letter to his attention.

Thank you again for sharing your concerns with the Senator.

Aloha,

FRANK J. KELLY
Legislative Assistant

FJK:dlc
JAMES LEE  
AUTOMOTIVE - INDUSTRIAL - MILITARY  
CONSULTANTS  
P.O.B. 22061 HONOLULU HAWAII 96822

Dear Sir, Mornings,

Enclosed is a graph which says it better than I could. Needless to say, political gain can be made from this. How about legislation for C.A.B. for all city & state numbers? Forget Pay Raise for about six years. This can be the Final nail of Mr. Reed's coffin! Don't debate the man, he is a one man demolition derby on himself. He'll Faux-Paux on election night shows the man does not know protocol & does not belong in Wash. Place or Wash. D.C.!

Best Regards,

James Lee

P.S. On Kauai base for ordnance cleanup, can we get Hawaii National Guard to help? I'm ready to go also if I can help in cleanup.
May 18, 1992

Ms. Velma Santos
Deputy Director
Kahoolawe Conveyance Commission
2200 Main Street
One Main Plaza, Suite 325
Wailuku, Hawaii 96793

Dear Velma:

Thank you very much for your prompt response to my request for a budget to extend the Kahoolawe Conveyance Commission through the 1993 fiscal year. I appreciate your taking the time to meet with me regarding the return of Kahoolawe to the State of Hawaii.

Based upon your request, I will pursue the extension of the Commission in my Fiscal Year 1993 Department of Defense Appropriation bill with a budget of $500,000.00 to ensure that the Commission has an adequate level of funding to complete its responsibilities. I will also extend the bombing prohibition in my bill.

I was pleased to learn that the cleanup costs may be about $100 million in accord with a lesser definition of "reasonable for human habitation." I believe this will be much easier to accomplish as compared to the early "ball park" figure of $1 billion. I also appreciated your candid comments in response to my suggestion that some military presence without bombing or further degradation may be needed to secure the cleanup funds. In light of the recent polls which indicated that a majority of the people of Hawaii want the island returned without any military presence, your points and concerns about the possible criticism such an action would cause were appropriate and well-taken.
The possibility that the amount of the cleanup will be substantially less would also greatly increase the possibility that the two would not be linked together. I will continue to review and investigate this matter on my end as the Commission continues its important work. I look forward to continuing our discussion. I remain very open and appreciative of your comments and views.

Once again, I enjoyed seeing you again, and look forward to the next time that our paths cross in the not too distant future.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:jgd
Mr. Arnold Ako  
P.O. Box 254  
Kailua-Kona, Hawaii 96745

Dear Mr. Ako:

Thank you for your letter regarding your interest in participating in the cleanup of the Island of Kahoolawe, and the restoration and healing of the land. I appreciate your taking the time to express your interest and expertise in this matter.

By way of background, I wish to share with you the events that have occurred regarding the return of the Island of Kahoolawe because it will give you and your colleagues a better insight into the present situation, and how your interest in participating in the cleanup may possibly be facilitated.

In 1981, Kahoolawe was placed on the National Register of Historical Places because it is the only island in Hawaii where the remains of the total prehistoric and historical system are known to be preserved. In 1990, Senator Akaka and I authorized the establishment of the Kahoolawe Conveyance Commission. As Chairman of the Senate Appropriations Subcommittee on Defense, I secured $1.5 million for two years to allow the Commission to carry out its mandate.

The Commission is responsible for studying the terms and conditions for the return of the island, including the cost of cleanup and a time frame for the return. The Commission will recommend to the Congress an interpretation and specific application of the portion of President Eisenhower's Executive Order, requiring the return of the island in a "reasonably safe condition for human habitation."
The Commission is presently carrying out its responsibilities with due diligence. It must balance the needs, sensitivities, and constraints of all interested parties. To ensure that the rights of all parties are preserved, all bombing and further degradation of the island has been prohibited since 1990. The Commission has requested additional funding, beyond the two year authorization period, to allow sufficient time to complete its findings and to submit its recommendations. I am committed to providing the necessary funding to ensure that the Commission has the proper resources to do its job. Additionally, I am committed to including a provision in my FY 1993 Defense Appropriations bill to continue the bombing prohibition.

The cost of cleanup for purposes of rendering the island safe for a lesser degree of habitation which would restore and preserve the island for parks and recreation, historic landmark visits, and for education and research-related activities, for example, on certain parts of the island, would be less costly, and more in line with a educational and cultural end. The Commission is currently reviewing this major issue which directly relates to your interest.

I would be pleased to share your letter with the Chairman, Hannibal Tavares, of the Kahoolawe Conveyance Commission. I have enclosed a copy of my letter for your information.

Once again, thank you for your letter. I will be sure to share with you any further information I receive.

Aloha,

Daniel K. Inouye
United States Senator

DKI:jgd
Enclosure

cc: Mr. William Kikuchi
May 18, 1992

The Honorable Hannibal Tavares  
Chairman  
Kahoolawe Conveyance Commission  
2200 Main Street  
One Main Plaza, Suite 325  
Wailuku, Hawaii 96793

Dear Hannibal:

I wish to share with you a copy of a letter I received from Mr. Arnold Ako who, together with his colleagues, is interested in participating in the restoration of the Island of Kahoolawe. I have also enclosed a copy of my response to Mr. Ako for your reference.

I would appreciate your following up directly with Mr. Ako and providing him with additional information pertinent to his interest. While it is premature to begin discussions on the specifics relating to Kahoolawe's restoration in light of the Commission's ongoing study of the entire matter, I believe it is important to keep interested community members informed of the process such that at the appropriate time, direct input and participation may be facilitated.

Once again, thank you for your attention to this matter. It was great to see you and to chat in April. I look forward to continued, open discussions as the Commission continues its important work.

Sincerely,

[Signature]

Daniel K. Inouye  
United States Senator

DKI:jgd  
Enclosures

cc: Mr. William Kikuchi
May 5, 1992

DANIEL K. INOUYE, U.S. SENATOR
722 Hart Senate Office Bldg.
Washington, D.C. 20510

SUBJECT : DISPOSAL OF EXPLOSIVES ON THE ISLAND OF KAHOOLAWE

Dear Senator Inouye :

Aloha pumehana.

For the past several months there have been news items relating to the island of Kahoolawe and that there is a very strong possibility of having it restored as a ceremonial symbol of prehistoric Hawaiian culture. To accomplish this goal it will be necessary to dispose of the explosives resulting from years of using the island for Naval target practice from the sea and air.

We have organized a team of nine (9) highly skilled individuals, three of whom are native Hawaiians, to fulfill such an assignment. The native Hawaiians, having been born and raised in the islands, have a deep respect for Hawaiian culture and heritage. We understand, we truly feel, the spiritual power or mana for 'aina, the land.

But this is only part of our valued qualifications. All nine of us served in Special War Fare (Navy Seals) Branch of the Naval Forces for a number of years. We completed, successfully, several tours of duty in Viet Nam. During those tours of duty we became intimately familiar with all types of explosives and the disposal of those which were unexploded.

The purpose of this letter to determine what action is necessary on our part to be selected for clearing the island of Kahoolawe of the service oriented explosives still polluting the soil.

An early response to this request would be greatly appreciated. Mahalo nui loa for your interest in the heritage of all native Hawaiians.

Sincerely,

ARNOLD AKO
P.O. Box 254
Kailua-Kona, HI 96745
Phone : 808/329-3403

c/c Governor John Waihee
October 16, 1991

Mr. Ralph Lopez
Pacific Regional Manager
Sanctuaries and Reserves Division
National Oceanic and Atmospheric Administration
1825 Connecticut Avenue, N.W., #714
Washington, D.C.

Dear Mr. Lopez:

As a follow-up to my letter of September 13, 1991, offering our comments on the scoping process for the National Marine Sanctuary Feasibility Study for the Island of Kahoolawe, we have had further discussion within the Administration for the purpose of arriving at a State policy position on the matter of a National Marine Sanctuary in Hawaiian waters.

In this regard and as a result of these internal deliberations, attached for your use and information is our position which has been agreed to by the Department of Transportation and the Department of Land and Natural Resources.

Thank you very much. We look forward to discussing these matters further as you finalize the results of your scoping process.

Sincerely,

Harold S. Masumoto
Director

cc: The Honorable William W. Paty, Chairman
   Board of Land and Natural Resources

   The Honorable Edward Y. Hirata, Director
   Department of Transportation
State

1) race as whole/ trad. fish village
2) access to beach laws complexity
3) how far out (in the water)
4)  

Analysis

1) existing military bounds / maybe extent
2) whales do go near Kakeholme
3) interim mgmt. -> alone
4) inventory bio life
5) mgmt. plan for marine ecosystem
6) NOAA policy reg.
   a) Obama involves
   b) remove ordinance
   c) no commercial use
   d) multi site sanctuary native access
State of Hawaii Policy Position
on the matter of a
Proposed National Marine Sanctuary in Hawaiian Waters

1. The State of Hawaii favors reconsideration of a single-species Humpback Whale National Marine Sanctuary, the boundaries of which would extend around all appropriate islands at a distance which is scientifically justifiable, provided that such a sanctuary is designated within three years.

   **Rationale:** We understand that the existing Humpback Whale National Marine Sanctuary proposal is still an active candidate. As such, it could readily be designated during the present Governor's term of office. In addition, the depth and extent of its previous consideration as a sanctuary candidate -- as well as advances in State regulations supporting the protection of humpback whales -- should enhance its general public support and acceptability. Also, we are in agreement with the scientific evidence which supports a humpback whale sanctuary boundary which is multi-island and which includes more than the waters surrounding Kahoolawe.

2. The State of Hawaii supports a more protective regime governed under State laws, rules, and regulations in the waters immediately surrounding Kahoolawe.

   **Rationale:** Given the uncertainty surrounding the future uses of the Island pending completion of the work of the Kahoolawe Island Conveyance Commission, it would be premature to designate a national marine sanctuary in State waters surrounding Kahoolawe. However, the State is exploring the possibility of achieving the benefits of sanctuary status for both Kahoolawe's land and water resources under existing State laws and regulations. In addition, other issues such as access to the island and its surrounding waters for Native Hawaiians are more easily addressed under State law.

3. The State of Hawaii opposes a national marine sanctuary in Hawaiian waters that includes multiple sites or resources to be managed or multiple purposes to be achieved.

   **Rationale:** Mixing objectives and resources to be managed within a single sanctuary will confuse disparate constituencies, extend the approval/implementations process because of its complexity, force unnecessary competition for limited implementation funds, and create more reasons to oppose its designation. Moreover, any multi-resource sanctuary should only be designated on the basis of equivalent scientific evidence and as a result of appropriate baseline studies.
4. The State of Hawaii favors the consideration of non-humpback whale sites, areas, or resources as potential national marine sanctuary candidates.

Rationale: Other sites suggested by the general public for possible inclusion in the national marine sanctuaries system may indeed have a high degree of natural resource or human-use value, i.e., the waters off existing national parks and refuges in support of on-shore attractions such as the Kilauea Lighthouse on Kauai, the City of Refuge and Kaloko-Honokohau Park on Hawaii, and Kalaupapa on Molokai. As such, they should be evaluated on a case-by-case basis for possible inclusion on the National Marine Sanctuaries Program's Site Evaluation List for consideration as a sanctuary site or system.
July 11, 1991

Dear Friends:

Please accept my sincere greetings and congratulations on the occasion of the Kahoolawe Island Conveyance Commission's Blessing and Open House. Your "new home" at One Main Plaza will allow the Commission to conduct the very important work of overseeing the conveyance of the island of Kahoolawe back to the people of Hawaii.

I regret that I was unable to join you for the ceremonies. However, please be assured that I was with you in the spirit of the occasion.

Daniel K. Inouye
United States Senator

DKI:ngc
The attached is Kahoolawe letter. Lt. Cmdr. Dalton at 471-0284 has DKI's original inquiry if you have any questions.

P.S. Sorry... Thelen's letter is dtd 3/7— I don't know when DKI sent inquiry out.

I think maybe we did not do anything... It sounds like a kick-0f from the Able's letter—

Saro
Ms. Cynthia Thielen  
Attorney at Law  
345 Queen Street  
Suite 700  
Honolulu, Hawaii 96813  

Dear Ms. Thielen:  

Thank you for your letter of March 7, 1991, and for the opportunity to restate the Navy's position relating to the sections of the Consent Decree addressed in your letter. Although I believe that the three basic assertions of your letter are factually incorrect, I have given considerable thought to the positive aspects of having such a large number of students visit Kaho'olawe and learn more about Hawaiian culture through a first-hand experience. Therefore, contingent upon the requirements listed in the last paragraph of this letter, I am granting permission for an access between March 24 and March 27, 1991.

Three points in your letter must be corrected, specifically that the Consent Decree does not authorize the Navy to condition access upon the availability of medical evacuation helicopters or other such equipment or reasons, that the cost to the government is not a valid argument, and that the Protect Kaho'olawe 'Ohana ('Ohana) is recognized as the Stewards of Kaho'olawe by the Consent Decree.

The language of the Consent Decree is straightforward. To quote Section V. (B)(1). "Access will be subject to conditions imposed by Commander, THIRD Fleet (now replaced by Commander Naval Base, Pearl Harbor) necessary and appropriate to ensure the safety of the access participants." Very clearly I am given the authority to establish the conditions for access based on what I consider necessary to ensure the safety of the participants. Such conditions are subject to change, depending on the circumstances at any given time.

Section V. (B)(2). is equally clear and unambiguous. "Access will be provided at no cost to the Government." In October 1988, cost to the Government was one of the reasons Dr. McGregor's request for access outside the regularly scheduled closure period was denied. Per Section V. (B)(3). The number of and qualifications of the escort personnel will be determined by the Navy and sufficient escorts will be provided for escort outside of the base camp area. We have scheduled access simultaneous to closures so that EOD escort personnel would already be on island and could be made temporarily available at no additional cost. Such scheduling was intentional so that no additional cost would be incurred in providing the agreed-to escorts. I do not agree that the Navy must provide EOD escorts any time the 'Ohana desire to visit the island.
outside of a normal closure period and I do not view Captain Mittendorff's December 1987 letter as precedential. I am agreeing to provide escorts this one time given the benefits to be gained by the students involved.

Contrary to the statement in your letter and often repeated by the 'Ohana, the Consent Decree does not recognize the 'Ohana as the Stewards of Kaho'olawe. Section I. (A). (3). states that "Defendants recognize [the 'Ohana] seeks to act as Stewards of the moku Kaho'olawe." By Executive Order 10436, the United States Navy is appointed Steward of Kaho'olawe Island and will remain so until relieved by higher authority. The Navy, along with many private citizens and groups, including the 'Ohana, is interested in the welfare and proper management of the Island.

This special access outside of a normal 10-day closure period is predicated on your clients' certification by letter to Commander Naval Base, Pearl Harbor (Captain Radican) prior to the March 24 access that Dr. Aluli will be on the island during the entire period, that an identified medical evacuation helicopter is on stand-by on Maui and in radio communications with the group leader or other adult leader, and that instructions issued by the EOD escorts for the safety of the access participants will be followed explicitly.

W. A. EARNER
Rear Admiral, U.S. Navy
Commander Naval Base
Pearl Harbor, Hawaii

Copy to:
Senator Inouye
Senator Akaka
Governor John Waihee
Mr. William Paty
Chairman Hannibal Tavares
Mr. Howard Stephenson
Mr. James Kelly
Dr. Emmett Aluli
Mrs. Frenchy De Soto
Dr. Davianna McGregor
The Honorable Daniel K. Inouye
United States Senate
Suite 722, Hart Senate Building
Washington, DC 20510-1102

Dear Senator Inouye:

Thank you for your letter of 28 February 1991 in which you request that I consider Dr. Aluli's recommendations concerning the March access period to the island of Kaho'olawe. I assure you that I have given close and careful consideration to Dr. Aluli's request, but unfortunately find that I am unable to grant his request in full. Please note that I am not cancelling the access, but rather, due to lack of operational assets, have simply rescheduled it by one week. In addition, I have suggested to Dr. Aluli other alternatives which I hope will enable us to agree on a rescheduled March access period.

Enclosed please find a copy of my response to Dr. Aluli.

Sincerely,

W. A. EARNER
Rear Admiral, U. S. Navy
Commander Naval Base
Pearl Harbor, Hawaii

Encl.: My ltr of February 25, 1991
Dr. Noa Emmett Aluli
P. O. Box 39
Kaunakakai, HI 96748

Dear Dr. Aluli:

Thank you for your letter of February 19 in which you request revision of a rescheduled access period. I fully understand, appreciate and am sympathetic to the rationale behind your request. Regrettably I cannot grant it.

Per the Consent Decree, access is to be at no cost to the government. We have been able to meet that requirement by granting access coincidental to scheduled ordnance clearance operations. We have made a conscientious effort to approve access dates as requested. However, from time to time it has been necessary to adjust the dates of the sweep operations and access slightly to obtain the necessary logistical and/or personnel support. Such is the case with the closure originally scheduled to commence March 26. Due to circumstances beyond our control, required support will not be available until the first of April. We are not cancelling the access, rather shifting it one week. Additionally, the 'Ohana will be on island during the first two days of March, with the sweep operations continuing until March 7. You are welcome to extend your access during that time.

Safety of visitors on the island is my paramount concern. Even without ordnance clearance operations, given the large number of visitors (especially high school students) planned for the access, it is prudent and reasonable to have a medevac helicopter on island. Medevac helicopters are not available, which is why the sweep operations were shifted one week in the first place. Were we to have a medevac helicopter on island specifically for your access, it would have to be on a reimbursable basis.

You have requested that we consider cancelling the sweep operation and provide escorts only for the 'Ohana during the last week of March. To do so would require dedicated flights and personnel for 'Ohana access at a cost to the government. Since the Consent Decree stipulates such services will be at "no cost to the government" I can do that only on a reimbursable basis. Should you be willing to pay all associated costs, we will provide the escorts.

Lastly, per Section V of the Consent Decree, the months of June, July, August, and September have special significance to the Protect Kaho'olawe 'Ohana. Since the signing of the Decree, you have added the months containing the opening and closing ceremonies of Makahiki as special months. However, you have not
February 28, 1991

Admiral W. Earner
Commander
Pearl Harbor Naval Base
Box 110
Pearl Harbor, Hawaii 96860-5020

Dear Admiral Earner:

I am writing with regard to the cancellation of court sanctioned access to Kahoolawe for the week of March 24 – 30, 1991. Dr. Noa Emmett Aluli of Protect Kahoolawe Ohana shared with me a copy of the letter he recently sent to you regarding this matter. A copy is attached for your reference.

In light of the Consent Decree and Order regarding access to the Island of Kahoolawe, I would appreciate, within applicable rules and regulations, your consideration of the compromise recommendations that Dr. Aluli has proposed which would provide access to the Island in March for the educational trips that have been planned well in advance of the cancellation.

Thank you for you responsive and timely consideration of this matter. I look forward to hearing from you.

Aloha,

DKI: jgd
United States Senator

Enclosure
TO: SENATOR  
FROM: JENNIFER  
RE: LETTER FROM EMMETT ALULI REGARDING ACCESS TO KAHOOLAWE  

DATE: FEBRUARY 26, 1991  

Attached is a letter from Emmett Aluli to Admiral Earner regarding the Navy's cancelled access to Kahoolawe for the month of March. Apparently, Protect Kahoolawe Ohana (PKO) was planning spring break expeditions to the island with students and teachers. The Navy has informed PKO that there will not be able to go to the Island in March. As part of the letter, Aluli provides compromise points in an effort to secure access to the Island for the agreed upon dates in March.

HOW DO YOU WISH TO PROCEED?

DO YOU WISH TO WRITE A LETTER TO ADMIRAL EARNER?

YES _________  NO _________

[[Handwritten notes:]]

- Please fax Budy a copy.
- PKO letter +
- Ask him to call Aluli + tell him we are sending a letter in support.
- Earn 26 will fax Bridle copy of your letter to share with Aluli.
February 21, 1991

TO: SENATOR DANIEL INOUYE
    MS JENNIFER GOTO

FAX 202 224-6747

FROM NOA EMMETT ALULI, M.D.
THE PROTECT KAHO'OLAWE 'OHANA

RE The following correspondence concerning cancellation of our access to Kaho'olawe this next month may need your kokua or intervention, the U.S. Navy remains determined to use the "gulf crisis" or the KICC mandate to complicate our regular court sanctioned accesses.

We will keep you apprised as to our on-going negotiations.

Mahalo for your attention to this matter.

If there are any questions, please do not hesitate to contact us.

Aloha
February 19, 1991

Admiral W. Earner
Commander, Naval Base Pearl Harbor
Box 110
Pearl Harbor, Hawai'i 96860-5020

RE: CANCELLATION OF COURT SANCTIONED ACCESS TO KAHO'OLawe WEEK OF MARCH 24 - 30, 1991

Aloha:

I am writing to you on behalf of our island wide organization, the Protect Kaho'olawe 'Ohana, for the purpose of resurrecting our access for March 1991 (c.f. Aluli v. Brown, Civil No. 76-0380 Consent Decree and Order).

As you know, access dates were arranged at our 17th and 18th semi-annual negotiations. The dates requested and set for March 1991 were March 28 - 31, 1991 to coincide with the Spring Break for Hawai'i schools. The March Spring Recess has always been very important for us. You might review the number of participants who visit Kaho'olawe during the Spring Break over the past years to verify the importance of this period.

It is the primary time for students and teachers to visit the island because they can do so without having to miss school. This March, students from the University of Hawai'i - Manoa Ethnic Studies Hawaiians class, the Center for Hawaiian Studies Kua'ana Program, the Maui Community College, St. Anthony's School on Maui, other public school teachers and their students are fundraising and making plans to join us on Kaho'olawe.

In addition, the Maui 'Ohana has gathered ula lena grass over the past three months and we plan to bring it over to thatch our heiau. The 'ula lena grows seasonally from November through February and this will be our first chance to thatch the heiau with what we have gathered this year. Moreover, it will be a unique and important experience for the students on access.
Both Davianna McGregor and myself have been in telephone contact with Captain Radican who has explained the potential logistical and emergency problems leading to the cancellation of our scheduled access.

Because of the importance of this access and as per our consent decree, we would like to propose to you the following conditions and arrangements which would allow you to accommodate our monthly access as required by the Consent Decree:

1. We would release the U.S. Navy from the obligation to conduct ordnance clearance* for the month of March, 1991 (as required in the Consent Decree, Section I. D. Clearance) provided the Navy provides sufficient “safety escorts” to facilitate the March 1991 access.

2. We will exercise our right to access Kahoʻolawe under Section V. of the Consent Decree and the Navy will provide a sufficient number of “safety escorts” as stated in Section V. B. 3. “The number and qualifications of safety escorts will be determined by Defendants who shall provide sufficient numbers for reasonable access outside of the base camp area.”

3. In order to ease the pressure for the Navy to provide sufficient numbers of EOD escort, we will agree to limit hikes to trails and roads frequently travelled that were marked cleared for the past November and January accesses.

4. Please note that we intend to bring a maximum of 60 persons on the island in March 1991. The teachers have requested that the dates be changed to March 24 to 27 or March 25 to 28. The entire access group would arrive on day one at or close to dawn and remain in camp on that day. On the second day we would like to have a group hike to Moaʻula via the 'Ohana planting sites. One group would probably continue on to Puʻu Molii while one group would hike back from Moaʻula. A small number may remain in camp. On the third day the main group would remain in camp, however two to three members of the Water Study/Revegetation team would like to have EOD escort for exploration of the laying of pipes. On the fourth day the entire group would leave at dawn.
We would be willing to meet with you, in person, to discuss these issues and the logistical arrangements, if necessary. If you have any questions, please do not hesitate to contact me on Moloka'i 567-6278 (h) or 553-5353 (w); Davienne McGregor on O'ahu 845-1504 (h) or 956-7068 (w); or Burt Sakata 244-5649 on Maui.

We look forward to hearing from you. Aloha.

Sincerely,

[Signature]

Nos Emmett Ahihi, M.D.
Protect Kaho'olawe 'Ohana

c.c. Rep. Cynthia Thielen, PKO attorney
Joel August, PKO attorney
Hannibal Tavares and Members of Kaho'olawe Island Conveyance Commission
Gov. John Waihee
Sen. Daniel Inouye
Sen. Daniel Akaka
Kaipua-Ia-Haina-Nania
155 N. Beretania Ave., #E-103
Honolulu, Hawaii 96817

Dear Friend:

Thank you for your letter regarding your suggestion that Kahoolawe be used as a prison site. I appreciate your thoughtfulness in taking the time to share your views with me.

I have received several letters suggesting that Kahoolawe be used in such a fashion. While it will be considered, as I understand it, the Protect Kahoolawe Ohana is interested in preserving the Native Hawaiian historical sites and establishing educational and research-related programs on the Island. The need for a federal prison in Hawaii has been proven. However, you are correct that finding a site for a federal prison on Oahu will be very difficult.

There is overcrowding in the existing State correctional facilities which is being exacerbated by the need to house federal prisoners in Hawaii. Presently, the Hawaii State Legislature is debating several alternatives to address the overcrowding issue in the face of the court ordered prison inmate maximums.

Please be assured that I will consider your suggestion as I work with federal and state officials to address the need for additional prison capacity in Hawaii. Once again, thank you for your letter.

Aloha,

Daniel K. Inouye
United States Senator

DKI:jgd
Dear Senator Inouye:

Perhaps I could suggest what to do with KAHOOLAWE! Since the Island needs a clean up committee, why not build the new PRISON site upon it and have the prisoners do the work. Plus the fact that a new facility on OAHU (In its over amassed environment) wouldn't be in peril of dangerous influences that would hinder our progress to better lives.

Since it seems that it is an outstanding fact also that there is no re habilitation program than cruising for these prisoners whom like to live dangerously.

Thank you for listening

KAIPUA-IA-HAINA-NANIA
December 19, 1990

Mr. Michael Ching  
P.O. Box 426  
Hanalei, Hawaii 96714

Dear Mr. Ching:

On behalf of Senator Inouye, who is currently out of the office, I would like to thank you for your letter containing your comments about the Island of [Redacted]. Please be assured of the Senator's continuing interest in seeing that Kahoolawe is returned to the State of Hawaii. As soon as the Senator returns to the office I will bring your letter to his attention.

Thank you again for writing.

Aloha,

FRANK J. KELLY  
Legislative Assistant

FJK: mwk
December 13, 1990

Honorable Senator Daniel Inouye  
United States Senate  
Hart Senate Office Bldg., Room 722  
Washington, D.C.

Dear Senator Inouye:

I am very disappointed with your stand on the return of Kahoolawe to the Hawaiian Islands.

The postponement is a great injustice to the people of the State. Kahoolawe should have been returned long ago.

Please reconsider your position.

Thank you.

Sincerely,

Michael G. Ching

MGC/pe
December 19, 1990

Mr. Joe Valente
P.O. Box 1944
Hilo, Hawaii  96721

Dear Mr. Valente:

On behalf of Senator Inouye, who is currently out of the office, I would like to thank you for your letter containing your comments about bombing on Kahoolawe. As soon as the Senator returns to the office I will bring your letter to his attention.

Thank you again for sharing your concerns with the Senator.

Aloha,

Frank J. Kelly
Legislative Assistant

FJK: mwk
December 9, 1980

University of Hawaii at Hilo
University Student Naturalist

Dear Senator Inouye,

It was very disheartening to read that bombing Kaho'olawe was once again being reconsidered, and that you were, in fact, supporting it.

It is very difficult to understand why men bomb the 'Aina.

The 'Aina of Hawaii is sacred land. Was it all just a political election move?

Please do not support the military use of Kaho'olawe! No more bombing Hawaii!

Sincerely,

Joe Valente
Student Naturalist
Ms. Ruth Gillmar  
2987 Kalakaua Avenue, #404  
Honolulu, Hawaii 96815

Dear Ms. Gillmar:

Thank you for your letter expressing your appreciation for my statement on... It was kind of you to write.

Thank you again for your letter.

Aloha,

DANIEL K. INOUYE  
United States Senator

DKI: fkk
The Honorable Daniel Inouye  
United States Senate  
Washington D.C. 20510

Dear Senator Inouye,

I wish to highly commend you for your successful stand on the bombing of Kailua. Thanks to you and the Hawaiian people there are exciting days ahead for "those very special people - the Hawaiians" for whom we have deep respect.

Ke Aloha no
Ruth Scudder Jallmar
Edward Dougherty
2619 S. Kihei Rd, Apt A-408
Kihei, HI 96753
808/879-2227
Ms. Dorothy J. Dale  
95-107 Wekiu Place  
Mililani, Hawaii 96789

Dear Ms. Dale:

I would like to share with you a copy of a letter I received from the Department of the Navy in response to your request about the military's use of Kahoolawe. Hopefully, the information provided will adequately address your concerns.

Thank you again for sharing this matter with me.

Aloha,

DANIEL K. INOUYE  
United States Senator

DKI:fks  
Enclosure
The Honorable Daniel K. Inouye
United States Senate
Washington, DC 20510

Dear Senator Inouye:

Thank you for forwarding Ms. Dorothy J. Dale's letter concerning military use of Kahoolawe.

The island of Kahoolawe is used by the Department of the Navy under Executive Order 10436 (1953). It is used as a multi-purpose training area for armed forces units stationed in Hawaii and forward deployed units while in transit to their operational areas. Kahoolawe is the only place in the mid-Pacific area available for required military training. No practical alternative is available. For example, the nearest training site other than Kahoolawe is San Clemente Island, California. For a single destroyer-class ship, a round trip from Hawaii to San Clemente requires 11 days and costs $14,000 for fuel alone. Sites in the Western Pacific carry an even greater handicap in terms of distance, time, and cost.

Restrictions are placed on training operations to make sure that Maui is not at hazard. Aircraft don't fly over any portion of Maui while carrying ordnance. Ships fire from a specified zone, away from Maui to eliminate any possibility of rounds landing on Maui. We restrict night operations to minimize noise disturbance. The Navy also monitors sound on Maui to help reduce the noise problem and change training exercises when sound problems are expected to occur.

Use of Kahoolawe for ordnance training remains essential for maintaining military readiness. The Navy will continue to make every effort, to reduce the effect of training on the natural, historic, and social environment of Hawaii.

Sincerely,

S. R. Arthur
Vice Admiral, U. S. Navy
Deputy Chief of Naval Operations (Logistics)
The Honorable John Waihee  
Governor  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813  

Dear John:

I would like to share with you a copy of a letter I received from the Department of the Army regarding Kahoolawe. As soon as I have the final response I will be back in touch.

Aloha,

DANIEL K. INOUYE  
United States Senator  

DKI:fks  
Enclosure
The Honorable Daniel K. Inouye  
United States Senate  
Select Committee on  
Indian Affairs  
Washington, DC 20510-6450  

Dear Senator Inouye:

This is in response to your recent request for a copy of the Manual of the Judge Advocate General report of investigation regarding the off-target delivery of aviation ordnance by CVW-2 aircraft at Kahoolawe Island on or about 22 July 1987. We have not received the final investigative report at this time.

The requested investigative report is currently undergoing review by Commander in Chief, Pacific. Upon receipt of the completed report, a copy will be prepared for release and forwarded to you.

If I can be of further assistance, please contact me.

Sincerely,

A. K. Llewellyn
Commander, JAGC, U.S. Navy  
Deputy Assistant Judge Advocate General (Investigations)
The Honorable Daniel K. Inouye  
United States Senate  
Washington, DC 20510

Dear Senator Inouye:

Thank you for forwarding Governor Waihee's letter, on behalf of the Oahu Protect Kahoolawe Ohana, requesting a report on the possible accidental bombing of an archaeological site on Kahoolawe.

Under the Freedom of Information Act, the Office of the Judge Advocate General, in Alexandria, Virginia, has final release authority for this information. That office is processing the request, and is aware of the urgency of the matter. Release will be finalized during the first week in August.

As always, if I can be of any further assistance I hope you will not hesitate to contact me.

Sincerely,

[Signature]

S. R. ARTHUR  
Vice Admiral, U. S. Navy  
Deputy Chief of Naval Operations (Logistics)
June 30, 1988

Honorable Daniel K. Inouye
United States Senate
722 Hart Building
Washington, D.C. 20510

Dear Senator Inouye:

Enclosed for your information is a copy of Resolution No. 88-236 CD-1 which was adopted by the Council of the City and County of Honolulu on June 22, 1988.

Sincerely and Aloha,

CITY COUNCIL

RAYMOND K. PUA
City Clerk

Enclosure
RESOLUTION

THE COUNCIL OF THE CITY AND COUNTY OF HONOLULU URGES THAT THE ISLAND OF KAHOO'OLAWE BE RETURNED TO THE PEOPLE OF HAWAII FOR PEACEFUL AND PRODUCTIVE USE.

WHEREAS, the island of Kaho'olawe has attained national significance and recognition as the only island listed on the National Register of Historic Places; and

WHEREAS, Kaho'olawe contains hundreds of archaeological sites and features, including one of Hawaii's major petroglyph fields, the second largest adze quarry discovered in the Hawaiian Islands, numerous fishing shrines, temples, house structures and burial sites; and

WHEREAS, the archaeological resources of Kaho'olawe illustrate the detailed and complex record of nearly 1,000 years of habitation by the Hawaiian people; and

WHEREAS, under the stewardship of the Protect Kaho'olawe 'Ohana, Kaho'olawe serves as an educational center for the perpetuation and practice of Hawaiian culture; and

WHEREAS, the United States has used Kaho'olawe as a bombing target since World War II; and

WHEREAS, the use of Kaho'olawe as a target for bombs is detrimental to the island's historic and cultural attributes, is harmful to humpback whales, and disturbs residents on neighboring Maui; and

WHEREAS, the Governor of the State of Hawaii, the Hawaii State Legislature, the Mayor of the County of Maui and the Maui County Council have repeatedly called for a cessation of the bombing and the return of Kaho'olawe to the State of Hawaii; and

WHEREAS, the U.S. Department of the Navy has ignored all requests to stop the bombing of Kaho'olawe; and

WHEREAS, the U.S. Department of the Navy continues to invite other nations to participate in the bombing of Kaho'olawe as part of the biennial RIMPAC exercises; and

WHEREAS, every RIMPAC nation, with the exception of Canada, has refrained from participating in the bombing of Kaho'olawe during past RIMPAC exercises out of respect for the Hawaiian people and their land; and
WHEREAS, local sentiment against Canada's shelling of Kaho'olawe may result in public protest that may complicate the City and County's selection process to award the Honolulu Mass Transit construction contract; now, therefore,

BE IT RESOLVED that the Council of the City and County of Honolulu hereby requests that the United States and all foreign governments once and for all time stop the destructive bombing of the island of Kahoolawe; and

BE IT FURTHER RESOLVED that the Council urges that the island of Kaho'olawe be returned to the people of Hawaii for peaceful and productive use; and

BE IT FINALLY RESOLVED that the Clerk be, and he is hereby, directed to transmit a copy of this Resolution to the President of the United States, members of the Congress, all RIMPAC participants and the Executive Committee of HSAC.

INTRODUCED BY

GARY GILL, Councilmember

Date of Introduction:

June 6, 1988
Honolulu, Hawaii

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

I hereby certify that the foregoing RESOLUTION was adopted by the COUNCIL OF THE CITY AND COUNTY OF HONOLULU on the date and by the vote indicated to the right.

ATTEST:

RAYMOND K. PUA
CITY CLERK

ARNOLD MORGADO, JR.
CHAIR AND PRESIDING OFFICER

Dated JUN 2 2 1988

ADOPTED MEETING HELD

JUN 2 2 1988

AYE NO A/E

BORNHORST

DEGOTO

DOO

GILL

IWASE

KAHANU

KIM

O'CONNOR

MORGADO

Resolution No.
88-236
(CD-1)
June 27, 1988

The Honorable John Waihee
Governor
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear John:

Thank you for your letter of June 14, 1988, in which you request a copy of the report done on the accidental bombing of the archaeological site on Kaho'olawe during July of 1987. I will be pleased to assist you in this matter. As soon as I have had this opportunity, you will hear from me.

Thank you again for your letter.

Aloha,

Daniel K. Inouye
United States Senator

DKI: fks
June 14, 1988

Admiral David E. Jeremiah  
Commander in Chief  
U. S. Pacific Fleet  
Pearl Harbor, Hawaii 96860-7000

Dear Admiral Jeremiah:

I have received a letter from Davianna McGregor of the O'ahu Protect Kaho'olawe Ohana requesting my assistance in obtaining a copy of the report done on the accidental bombing of archaeological site on Kaho'olawe in July of 1987.

I would appreciate your consideration of the release of this report.

Thank you, as always, for your help.

With kindest regards,

Sincerely,

JOHN WAIHEE

cc: Hon. Daniel Inouye  
Hon. Spark Matsunaga
Ms. Dorothy J. Dale
95-107 Wekiu Place
Mililani, Hawaii 96789

Dear Ms. Dale:

Thank you for your letter containing your comments about the military's RIMPAC training exercise and the use of the Island of Kahoolawe. I will be pleased to assist you in this issue. You will hear from me.

Thank you again for your letter.

Aloha,

Daniel K. Inouye
United States Senator

DKI:fks
June 2, 1988

Congressional Liaison
Department of the Navy
Washington, D.C. 20350

Dear Sir:

I would like to share with you a copy of a letter I received from Ms. Dorothy J. Dale concerning the military's use of the Island of Kahoolawe. Would you kindly look into this matter and provide the appropriate information?

Thank you for your cooperation.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:fks
Enclosure
Sen. Daniel Inouye  
Hart Office Bldg, Room 722  
2nd. and C Sts.  
Washington, D.C. 20510

May 20, 1988

Dear Senator Inouye:

Please use your considerable influence to end the Navy's shelling of the Island of Kahoolawe.

The upcoming Rimpac exercises have brought this continuing irritation to the surface again. For the U.S. Navy to use as a target an island sacred to the local people is a flagrant example of the armed forces' frequent disregard for the opinion of the rest of the world, and seems to me unconscionable behavior for the troops of a nation which believes final control of the military is civilian. Our armed forces are not supposed to ride rough-shod over the civilian population.

Moreover, even if Kahoolawe itself were not important, it is too close to Maui to be a safe target. What if some shell overshot its mark and landed in downtown Lahaina?

May I impress upon you that disgust with the Navy's insistence upon this course of action is not limited to a small group of Native Hawaiians. My husband and I are thoroughly East Coast haole, residents of the Pacific rim for the last ten years, and are just as angered as locals. So are our friends.

If this year's Rimpac exercises have reached the point of no return, at least please do your utmost to see that this year is the last time any artillery is fired at Kahoolawe. The only guns should be those used to shoot goats.

Very truly yours,

Dorothy J. Dale
April 28, 1987

The Honorable Hannibal Tavares  
Mayor  
County of Maui  
Maui, Hawaii  96793  

Dear Mayor Tavares:  

Thank you for sharing with me a copy of your letter to Governor Waihee expressing your frustration about the military use of Kahoolawe. I appreciate your sharing this issue with me and I want to assure you that I will be pleased to continue to work with you on this matter. I have communicated with the Department of Defense many times expressing opposition to the use of Kahoolawe by the military and I will do so again.  

Thank you again for sharing this matter with me.  

Aloha,  

DANIEL K. INOUYE  
United States Senator  

DKI:fks
Congressional Liaison
Department of the Navy
Washington, D.C. 20350

Dear Sir:

I would like to share with you a copy of a letter from Mayor Hannibal Tavares concerning the use of Kahoolawe. Would you kindly provide the appropriate information so that I may respond to the Mayor?

Thank you for your cooperation.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:fks
Enclosure
April 16, 1987

The Honorable John D. Wahiee  
Governor of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Governor:

Letters like the attached from the Navy really bother me. How do we make the Navy realize it is time for it to move out of Kahoolawe.

What can we do to make the Navy understand how important this matter is to all of us?

Please let me know how you think we can work together to have Kahoolawe returned to the State of Hawaii and the County of Maui.

Very truly yours,

HANNIBAL TAVARES  
Mayor, County of Maui

Attachment
Mr. Chase Untermeyer  
Assistant Secretary of the Navy  
Department of the Navy  
Washington, D.C. 20350-1000

Dear Mr. Untermeyer:

Thank you for responding on behalf of the President regarding my newest and oft-repeated request for Presidential action to halt the use of our island of Kahoolawe as a bombing target.

Your reply however is extremely dissatisfying, to say the least.

By its tone, I am led to understand that the Department of the Navy does not intend to reconsider its adamancy in maintaining its tight and seemingly selfish grasp on the island, which as I attempted to explain, (in my previous correspondence on the issue) has important historical and spiritual significance to all the people of Hawaii.

It was my hope that my letter to the President would trigger a fresh, sincere and meaningful review of the Navy's need for Kahoolawe, but the terseness of your reply indicates that we in Hawaii may not hope for even a simple reconsideration of my request.

Your response indicates an imperious dismissal of my appeal for the island's return to civilian use, and this attitude is indeed rankling and difficult to understand.

Surely the anguish of my people over the abuse and long loss of Kahoolawe merits a new, more compassionate review of your policy.

Alternatives certainly exist for your training needs. Fleet readiness, I insist, does not depend on the Navy's bombardment practice on Kahoolawe. Need I remind you that we are on the threshold of the 21st Century and that available technology makes it possible to utilize less harmful means for accomplishing your training needs.
After more than 40 years, it is time that the Navy relinquish its unjustifiable and extremely improper hold on Kahoolawe. Please give my request the consideration it is due.

Very truly yours,

HANNIBAL TAVARES
Mayor, County of Maui

cc: President Ronald Reagan
    Admiral Ronald Hays,
    Cinc U.S. Pacific Forces
    Senator Daniel K. Inouye
    Senator Spark M. Matsunaga
    Representative Pat Saiki
    Representative Daniel K. Akaka
    Governor John Waihee
    Protect Kahoolawe Ohana
The Honorable Rick Reed  
The Senate  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813  

Dear Senator Reed:

I would like to share with you a copy of a letter I have received from the Department of the Navy regarding the Navy's use of Kahoolawe. Hopefully, the information provided will adequately address your concerns.

Thank you again for sharing this matter with me.

Aloha,

Daniel K. Inouye  
United States Senator

DKI:fks  
Enclosure
The Honorable Daniel K. Inouye  
United States Senate  
Washington, DC 20510

Dear Senator Inouye:

This is in response to your recent inquiry regarding the Navy's use of the Island of Kahoolawe in Hawaii. The following information may be of assistance to you in replying to State Senator Reed's inquiry regarding the Navy's use of Kahoolawe.

The Island of Kahoolawe is used and administered by the Navy in accordance with Executive Order 10436 (1953) and 32 Code of Federal Regulations 763 (1986). It is utilized as a training area for the armed forces. This training includes ordnance delivery and gunnery practice. The use of the Island of Kahoolawe fulfills vitally needed training requirements, both for military units stationed in Hawaii and forward deployed units transiting through. This required training is performed to achieve readiness necessary to fulfill national defense mission requirements.

Because of its unique strategic location, the Island of Kahoolawe is the only place in the mid-Pacific area available to the military for this required training. The urgency of the requirement is underscored by the prohibitive cost of transporting ships, aircraft, equipment and personnel to the nearest alternative. The high costs cannot be met under budget constraints without a decrease in readiness.

With regard to the recent off-target incident reported in the Honolulu Advertiser on August 5, 1987, the photograph showing a purported cluster bomb spacer on an archeological site is in error. The piece of ordnance pictured is a 20mm projectile, not a part of a cluster bomb. Additionally, the perspective used by the photographer greatly magnifies the relative size of the projectile (actual size 3/4 x 3 inches) which, as evidenced by the deterioration shown in the photo, has been in the area for a considerable period of time. In fact, Navy and state archeologists have confirmed that there was no damage to any archeological site as a result of the incident reported in the newspaper article.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

E. Inman Carmichael  
Rear Admiral, U.S. Navy  
Assistant Deputy Chief of  
Naval Operations (Logistics)
August 13, 1987

The Honorable Rick Reed
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Senator Reed:

Thank you for your letter of August 5, 1987 regarding the military's use of the island of Kahoolawe. I will be pleased to assist you in this matter. As soon as I have had this opportunity I will be back in touch with you.

Thank you again for sharing this matter with me.

Aloha,

Daniel K. Inouye
United States Senator

DKI: fks
August 13, 1987

Congressional Liaison
Department of the Army
Washington, D.C. 20310

Dear Sir:

I would like to share with you a copy of a letter I have received from Hawaii State Senator Rick Reed concerning the military's use of the island of Kahoolawe. Would you kindly look into this matter and provide the appropriate information on which to base a reply to the inquiry?

Thank you for your cooperation.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:fks
Enclosure
August 5, 1987

The Honorable Ronald Reagan  
President of the United States  
The White House  
Washington, D.C.

Dear Mr. President:

As you know, there is an island in Hawaii of great spiritual and cultural significance to the people of Hawaii. The island is Kahoolawe. The Navy calls it "the target island" because they use it for bombing practice.

Pleas to you and the Navy have failed to stop the bombing. Enclosed is a newspaper photograph of the casing from a cluster bomb that was dropped recently. It missed its mark and hit an archaeological site on the island. That this particular bomb did not explode on impact is irrelevant. What is relevant is that the bombing continues with every reason to believe that archaeological sites are being harmed.

I am presently a Republican State Senator. Ten years ago, I was a newspaper publisher on the island of Maui calling for an end to the bombing. Then, as now, I was appalled that the U.S. government would continue to callously bomb an island amidst a people who firmly believe that the land is sacred and must be preserved and protected.

In this, the "Year of the Hawaiian," I respectfully ask you to bring an immediate end to this unnecessary and unrighteous violation of the land and the people of Hawaii.

Sincerely,

Rick Reed  
State Senator

cc: Secretary of Defense  
Secretary of the Navy  
Admiral Ronald Hays,  
CinC U.S. Pacific Forces
cc continued:

Mayor Hannibal Tavares
✓ Senator Daniel K. Inouye
  Senator Spark M. Matsunaga
  Representative Pat Saiki
  Representative Daniel K. Akaka
  Governor John Waihee
  Protect Kahoolawe Ohana