

# Another Hunter Creek for McCloskeys?

## ■ Hawaiian agency studies status of trail

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Editor's note: This is the second of a two-part series.

When Tom and Bonnie McCloskey tried to close access to public lands on the north side of Hunter Creek in May 1987, they became — unfairly or not — a symbol of what many people hated about "the new

Aspen."

Legal issues aside, they were widely perceived as breaking a sacred code of a mountain town — shutting off locals from an historic access to the backcountry for their personal gain.

The McCloskeys were willing to risk being ostracized to wage a 10-year legal war over closure of the north access. Ultimately they lost both the court battle and the respect of many Aspenites.

The hard lessons they learned in Aspen might be affecting their actions on the

Hawaiian island of Kauai.

As in Aspen, the McCloskeys sparked the concern of some locals when they bought a 164-acre ranch that was crossed by an historic trail. That trail leaves the public Moloa'a Bay Beach, climbs onto the McCloskeys' property, where it goes to a point, then falls back down to the shoreline, according to a source familiar with the route.

Tom and Bonnie McCloskey are preparing to build a vacation home on the parcel that includes that trail. A gazebo is pro-

posed close to a scenic point that the trail leads to, said the source, who is familiar with the development plan.

Separate from the foot-trail issue, the McCloskeys have sued a neighbor who doesn't want to let them use a road on his land to access their property. The road issue is in court. The trail issue isn't.

### Right to use trail

Tom McCloskey and the general manager of his ranch, Clark Lipscomb, insisted

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## McCloskeys

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in interviews with The Aspen Times that they have never closed access on the pedestrian trail.

"That trail is available to the public," said McCloskey before quickly correcting himself. "That's not true. It's available to the people who have the right to use it."

By McCloskey's definition, the people who have "the right to use it" include a handful of people who own property adjacent to Moloa'a Beach as well as native Hawaiians.

However, his ranch workers aren't stopping trail users to check their heritage, he said. For all practical purposes, the public can use the trail. Legally, the public probably cannot, according to McCloskey.

There were enough concerns over the trail's status that a citizens' advisory board took a "fact-finding" walk on it in April 1999, according to a participant who didn't want to be named.

Members of the EarthJustice Legal Defense Fund, formerly known as the Sierra Club Legal Defense Fund, participated in that fact-finding excursion.

The findings are scheduled to be discussed this week at a meeting of Na Ala Hehe, a state trail agency that's affiliated with Hawaii's Department of Land and Natural Resources.

### Issues more cut and dried

The clarity of Hawaiian law and quick investigation by public agencies might prevent the

Moloa'a Beach trail issue from becoming as cloudy as the north Hunter Creek trail fight.

In Aspen, the McCloskeys shut access on the north trail and built their house virtually on top of it before before Pitkin County government or citizens could react. The McCloskeys and their workers — including Greg Kingsley, who now is the ranch manager in Kauai — regularly harangued any-

ty.

McCloskey has interpreted the law to mean he can close the trail to non-natives. Other observers claim that is an inaccurate interpretation.

"Will McCloskey try to limit the trail as 'Hawaiian-only?'" a source asked. "Will McCloskey try to push the trail from its existing location on his plateau onto a steep cliff area below?"

In the Hunter Creek north trail dispute, the McCloskeys and their allies eventually capitulated to a handful of private property owners that were battling them. The McCloskeys granted permanent access on the trail to those adverse landowners, but continued to try to block public access, arguing that would really be best for the pristine Hunter Creek Valley.

They lost the litigation 18 months ago, but a judge's decision is still needed on the width and location of the public easement. The McCloskeys want the trail located away from their house.

### McCloskey doesn't want replay

McCloskey dismissed suggestions that the Kauai and Aspen trail issues are similar. For one thing, access has never been closed in Hawaii, he said.

"We have never done anything" to prevent use, he said. No trespassing signs have been posted to keep people off his land, but not off the trail, McCloskey added.

Lipscomb said any suggestion that access has been restricted — to anyone — "is simply not true."

"It is being used by the public, but it is a private trail," said Lipscomb. "We're allowing use of a private trail."

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- Clark Lipscomb, ranch manager for McCloskeys

one who tried to use the north trail during much of the dispute.

Conflicting claims about whether the county abandoned an old toll road also doomed the issue to years of legal wrangling.

The status of the trail on the McCloskeys' Moloa'a Bay Ranch (they dropped the apostrophe in their spelling) appears more clear cut. There are PASH laws — Public Access Shoreline Hawaii — which dictate what landowners can do with trails on their proper-

