

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

May 11, 2012

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

**SUBJECT:** REQUEST TO APPROVE MEMORANDUM OF AGREEMENT REGARDING PUBLIC USE OF AND ACCESS TO A PORTION OF THE ALLEGED HISTORIC TRAIL CROSSING LAND OWNED BY HALEAKALA RANCH COMPANY. DISTRICT OF MAKAWAO, AHUPUA'A OF KALIALINUI, MAUI, TMK: (2) 2-3-005:004.

**BACKGROUND:**

The Highways Act of 1892, codified in Haw. Rev. Stat. chapter 264 provides that:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

Hawaii Revised Statutes § 264-1(b) (2007).

For over a decade, there has been a debate as to whether the State owns a Highways Act trail over land owned by Haleakala Ranch Company. A portion of an alleged trail is thought to traverse HRC's working livestock ranch from the end of Olinda Road to the Haleakala Highway. At that point the trail continues outside HRC property through Haleakala National Park. The exact alignment is unknown and disputed, although there are wooden fingerposts and remnants of stone ahu that may mark the historic route.

In a memorandum dated May 1, 2000, DLNR staff person Moana Rowland concluded that the State owns the trail. In 2004, Deputy Attorney General Yvonne Izu concluded in a draft letter to then chair Peter Young that "though far from conclusive, there is significant evidence to support" State ownership. In 2009, Deputy Attorney General Pamela Matsukawa advised then

chair Laura Thielen that the State could prove in litigation that it owns an easement over the trail, but it was not clear whether the State owns the trail in fee simple. Ms. Matsukawa also advised that the Board could enter into a Memorandum of Agreement with HRC regarding use of the trail.

HRC has maintained and does not agree with the claims of the State of Hawaii. A copy of a memorandum from one of its attorneys is attached as Exhibit 1. HRC has nevertheless been willing to discuss limited access to the trail. During this period, the Department's Na Ala Hele Program was negotiating with HRC to allow a safe guided public access across HRC property to an approximate route of the alleged trail.

A group of concerned citizens on Maui supports State ownership of the trail. These citizens are claiming that the trail has been forgotten and closed to the public for over 70 years. Nevertheless, they would now like to have unfettered access to hike the alleged trail. They retained an attorney, Tom Pierce, and lobbied the Department to sue HRC to confirm ownership of the trail and open it to the public.

The Department declined to do so. Mr. Pierce then sued the State and HRC on behalf of the group. A copy of the complaint is attached as Exhibit 2. Mr. Pierce's discussion of state ownership – which largely tracks staff's work - is detailed in the complaint.

### **LAWSUIT:**

The lawsuit seeks two forms of relief: first, it asks the court to determine that the State owns the trail; second, it asks the court to order the Department to open the trail to the public.

The State's position to date as to the first issue has been, plaintiffs do not have the right to litigate the ownership issue on behalf of the State. The State itself does not choose to litigate the issue at this time, because doing so is not a prudent use of its resources. Winning the ownership issue will not benefit the State or the public. It is not practical or economical to allow the public to use the trail without HRC's cooperation. Losing the ownership issue will remove any chance that the State and HRC could compromise as to use of the trail. Losing the ownership issue may set a bad precedent as to other possible Chapter 264 HRS trails.

As to the second issue, the State's position is that whether and how to open the trail to public use is up to the Department and ultimately this Board. The court cannot order the Board to open the trail or to spend money and incur liability to do so.

### **PROPOSED MEMORANDUM OF AGREEMENT:**

Staff, with the assistance of the Department of Attorney General, has negotiated a Memorandum of Agreement with HRC. A copy is attached as Exhibit 3.

Generally speaking, the MOA provides that HRC and the Department (through its Na Ala Hele program) will cooperate to provide limited public access to the alleged trail. The exact

amount of access will depend on public demand and interest and on resources available from HRC and NAH. HRC and NAH will coordinate and/or arrange the attendance of a representative to lead the hiking event. The State will indemnify HRC to the extent authorized by Chapter 198D HRS.

Other requirements are detailed in the MOA.

Mr. Pierce's clients oppose the MOA. They claim the State has a duty to determine ownership of the property and provide unlimited public access to the trail.

The Department does not believe it can or must immediately pursue all disputed claims to putative state land. There are an uncounted number of situations involving persons using – by claim of right or otherwise – land that might arguably be considered state land. A recent law (Act 73 (2003)) providing that the State owns all accreted land must alone present hundreds or even thousands of such instances, depending on how it is interpreted.<sup>1</sup>

The Department does not believe that litigating ownership of the alleged trail is an appropriate use of resources. In addition to the reasons stated above, it is important to note that the alleged trail passes directly through the middle of a working livestock ranch and across rough unmarked terrain that is often covered by daily mist or clouds that will definitely impact any visibility along the terrain. Developing the trail to a standard that the inexperienced hiker or visitor could use would require considerable State resources and it will be very labor intensive and costly to maintain. Doing so would also cause major disruptions to the ranch's livestock operations resulting with a lawsuit to challenge the claim of the State to ownership. If the Court decided against the State, the result could be no access. The compromise approach is to provide occasional guided hikes without the need to do a fully develop trail system. In addition, this approach will also limit the landowner's costs and liabilities.

Other issues to this alleged trail include:

- The trail has not been open to the public for at least 70 years. There appears to be a limited amount of interest in accessing it now.
- The exact alignment of the trail is indeterminate in most areas of HRC's property and to locate it would be costly.
- There is limited or no parking areas at either end of the trail.

Other concerns include signage (management or warning of hazardous conditions), restrictions on use (for example, no motorized vehicles or commercial use), and enforcement of those restrictions.

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<sup>1</sup> The legislature is currently considering a bill to amend Act 73 such that State ownership is limited to land that accretes in 2003 or thereafter.

The Department acknowledges that the public's access of this trail on a working livestock ranch is limited under the MOA. The Department also recognizes that a potential alternative could be the complete loss of access, if the Court agrees with HRC. Even if the Court decided that the State owns the trail, managing this type of a self-guided trail system is a low priority for the Department. The Department supports this compromise approach to providing occasional guided hikes without the need to fully develop a trail system through private property.

**RECOMMENDATION:**

That the Board authorizes the Chair to negotiate a final form of MOA and enter into that MOA with Haleakala Ranch Company, subject to the review and approval of the Attorney General.

Respectfully submitted,



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Paul J. Conry  
Administrator

**APPROVED FOR SUBMITTAL:**



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William J. Aila, Jr., Chairperson  
Board of Land and Natural Resources

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ONE MAIN PLAZA, SUITE 400  
2200 MAIN STREET, P.O. BOX 1086  
WAILUKU, MAUI, HAWAII 96793-1086  
TELEPHONE (808) 242-4535 FAX (808) 244-4974  
WWW.CARLSMITH.COM

OUR REFERENCE NO. 053891-00003

May 15, 2003

Torrie Haurez  
State of Hawaii  
Department of Land and Natural Resources  
Division of Forestry and Wildlife  
54 South High Street, Room 101  
Wailuku, HI 96793-2198

Re: Haleakala Ranch Company / Bridle Trail / Tax Key 2-3-05-4(2)

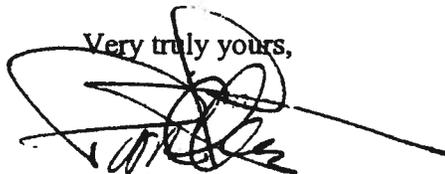
Dear Torrie:

Buzz Stluka from the Haleakala Ranch Company asked that I examine the factual and legal aspects of the Haleakala trail. I have done that.

The result of our effort is the memorandum and exhibits attached.

Please contact Buzz or me after you have reviewed these materials. Thank you.

Very truly yours,



Tom C. Leuteneker

TCL:sje

Enclosures

5089870.1.053891-00003

cc: Haleakala Ranch Company

*Exhibits not attached*

## HALEAKALA BRIDLE TRAIL

The Haleakala Ranch Company does not think that the bridle trail is a government trail owned by the State of Hawaii, for the reasons stated below.

Hawaii Revised Statutes 264-1 says in pertinent part:

“(a) All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways, Public highways are of two types: (1) State highways, which are all those under the jurisdiction of the department of transportation; and (2) County highways, which are all other public highways.

“(c) All roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails as follows:

(1) Dedication of public highways or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway or trail and naming the county as grantee in the case of a county highway or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway or the board of land and natural resources in the case of a state trail. In the case of a county highway or county trail, the deed shall be delivered to and accepted by the legislative body of a county.

(2) Surrender of public highways or trails shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail.”

The case *In the Matter of the Application of Roy Cecil Kelley, et. al.*, 50 Haw. 567 (1968) discusses the statute. In that case a deed was delivered in 1884 and included language: “*excepting and reserving however a public right of way fifty feet wide along the sea beach and across the South Eastern portion of the said premises where the present road runs*”. The issues

in the case were whether this public right of way was on the makai side of the applicants' house lot and between the house-lot and the sea, and whether the applicants received title it, so that the applicants could register that strip of land in the Land Court as their land. The Supreme Court held, by the opinion of Chief Justice Richardson, that the strip was part of a government road and title could not be registered in the applicants.

The Court said: "We hold that where maps and deeds clearly indicate that, as of 1885, a strip of land had been set aside for a public highway . . . such highway was at that time a public, not a private, highway" (at page 574).

On page 579 the Court discusses the Highways Act and said:

"However, Hawaii is one of the few jurisdictions which have provided, at one time or another, for vesting the fee of a highway or road laid out by a private party and abandoned to the public in the central government. *In re American Sugar Co.*, 29 Haw. 820, 825 (1927). A Highways Act was passed for the first time in 1892. It was declared as "public highways" all roads existing at the time of the passage of the Act, as well as those to be build thereafter, regardless of whether such roads had been built by the Government or by private parties which had dedicated, surrendered or abandoned the roads to the Government. L. 1892, c. 47, § 2 (now R.L.H. 1955, § 142-1). The ownership of all such "public highways" was to be in the Hawaiian Government in fee simple. *Id.* at §5 (now R.L.H. 1955, § 142-2)."

And again, on page 579, the Court said:

"The statute does not require a formal act of acceptance for highways already existing at the time of the passage of the Act and, if originally private in nature, already abandoned to the public for a period of five years at the time of passage."

Finally the Court said on page 580

"Appellees also argue that our ruling *In re Hawaiian Trust Co.*, 17 Haw. 523 (1906), governs this case. There is a strip of

land had been used as a highway by the public since 1853 and there was no evidence as to whether the owner had or had not exercised ownership since the passage of the Highways Act of 1892. We stated then that the Government could not acquire the fee in the highway "by a mere legislative enactment" such as the Act of 1892 and that there had to be evidence of actual abandonment before the fee to the highway vested in the Government.

That case does not support appellee for two reasons. First, the grantor in *Hawaiian Trust* had actual fee title to the land underlying the highway, whereas in the case at hand, appellee's predecessor in title, Smith, never had title to the land underlying the road. Second, while there was no evidence of abandonment in *Hawaiian Trust*, in this case the maps and deeds show that the grantor actually abandoned the road to the public in 1885. Thus, the fee title passed to the Government under Section 2 of the Highways Act."

We quote all of the above from the *Kelley* case because the statements from the Supreme Court in that case are applicable to the Haleakala bridle trail. As in the *Hawaiian Trust* case, the Haleakala Ranch had and has actual fee title to the land underlying the trail. Also the Ranch and the previous owners did not make a deed of conveyance naming the Kingdom, Territory or State as grantee. And finally there is no evidence of surrender or abandonment of the trail to the public for 5 years before 1892. The statute is clear and confirmed by the *Kelley* case that the fact that a road or a trail is on a map dated prior to the Highways Act in 1892, does not cause that road or trail to be a government trail. Rather if the trail was laid out by a private party, there must be a deed, or there must be evidence that the trail was surrendered or actually abandoned to the public for a period of five years prior to the passage of the Act. (in the article on Traditional Hawaiian Land Law, in the Hawaii Real Estate Law Manuel, written by Robert Bruce Graham, Jr., Chapter 6, pages 34 - 35, Bruce says the requirement of no act of ownership by the private owner must have occurred for five years prior to 1892).

The "Division of Forestry and Wildlife - Na Ala Hele Program (draft)" on page 3 says "The A.G. (Attorney General) has determined that the burden of proof for ownership is on the State".

There is no evidence that the trail was opened, laid out, or built by the government.

There is no deed of the trail to the government.

There is no evidence that this trail was surrendered or abandoned to the public, and the *Kelley* Court held that there must be such evidence. The statute says that for there to be surrender there must have been "no act of ownership" exercised by the owner of the trail for five years before 1892.

The trail is in Land Commission Award 7124 which was issued to Kamaikaaloa on June 19, 1852. That LCA was owned by various people until it was deeded to the Haleakala Ranch Company in 1888, 115 years ago. From 1852 until 1892, there is no evidence that any owner surrendered or abandoned the trail to the government and did not engage in an act of ownership of the trail for five years. We doubt, because the relevant period is so long ago, that there is any evidence of such surrender or abandonment. That this trail appears on government maps is not evidence that the trail was laid out by the government, or that it was deeded to the government, or that it was surrendered or abandoned to the government.

The evidence will show that from 1888, the Ranch has always and continuously claimed ownership of the trail and the land under the trail, has used the trail for its ranching purposes, has paid taxes on the land under the trail, has continuously maintained locked gates and fences throughout the length of the trail so that the cattle in the area would not get out, and has

granted roadway easements to others at the location of the trail.

Thus, based upon the *Kelley* case and the *Hawaiian Trust* case, since the trail was laid out by a private party, was not deeded to the government, and since there is no evidence that the trail was surrendered or abandoned to the public, this trail is a private trail, owned by the Haleakala Ranch and is not a public trail and is not owned by the State of Hawaii.

The lands owned by the Ranch where the trail is located, Land Commission Award 7142 to Kamaikaaloa (copy with translation attached, Exhibit 1), did not reserve the bridle trail or any trail to the Kingdom. This was an Award by name only, and the only reservation is a reservation of the rights of the native people therein. The records show that Land Commission Awards, kuleanas, are located in the ahupuaa of Kalialinui. Such rights of the native people therein include the right of access to kuleanas and gathering rights; but this does not include an easement in gross to access the crater. Gathering rights are discussed in the PASH case, 79 Haw. 425 (1995), *State v. Hanape*, 89 Haw. 177 (1998), and other related cases.

The State Abstract notes on page 2 that this LCA passed from the Awardee KAMAIIKAALOA through his probate in 1859, to his wife KALALAWALU, who married DOUGLAS PANEE. KALALAWALU and DOUGLAS PANEE deeded this parcel to JAMES CAMPBELL and HENRY TURTON by a Warranty Deed dated January 28, 1868, recorded in Liber 25 at Page 49 (Exhibit 2). That Warranty Deed states that the Kuleauas of Natives as awarded by the Land Commission are reserved. The Warranty deed also says that the Grantees are responsible to get the Royal Patent and that George Minea has the right to cut wood until June 1868. This Warranty Deed has no other reservations and does not reserve any trail.

JAMES CAMPBELL and HENRY TURTON then deeded this land to SAMUEL

L. ALEXANDER and CHARLES H. ALEXANDER on March 13, 1876, recorded in Liber 45 at Page 240 (Exhibit 3). This a Warranty Deed, and reserves the Kuleanas of Natives, but has no other reservations and does not reserve the bridle trail.

Then by Deed dated December 29, 1880, recorded in Liber 69 at page 109 (exhibit 4), SAMUEL L. ALEXANDER deeded this parcel to CHARLES H. ALEXANDER. This deed contains no reservations. By Deed dated May 24, 1886, recorded in Liber 99 at Page 325 (Exhibit 5), LORRIN A. THURSTON, Administrator of the Estate of CHARLES H. ALEXANDER deeded this property to EDWARD H. BAILEY, and this Deed contains no reservations.

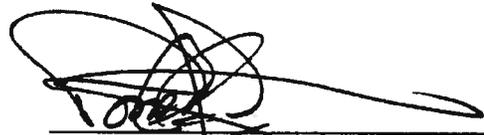
Then EDWARD H. BAILEY and LORRIN A. THURSTON doing business under the name Haleakala Ranch Company, deeded this property to the HALEAKALA RANCH COMPANY, by deed dated September 1, 1888, recorded in Liber 114 at Page 407 (Exhibit 6), with no reservations.

Land Commission Award 7142 was presented to the Commissioner of Public Lands for a Certificate of Boundaries, all of which is confirmed in Land Patent No. 8164 (Exhibit 7) The application for the Land Patent was made by L.A. Thurston, Secretary of the Haleakala Ranch Co. The Royal Patent was issued, after payment of the Government Commutation of \$1,653.15, on October 31, 1904, nearly 100 years ago, and 12 years after the passage of the Highways Act in 1892. This Land Patent, from the Territory of Hawaii, does not reserve the bridle trail, does not reserve any trail and contains no reservation of any kind.

In conclusion, these lands were deeded by the government into private ownership in 1852. The private owner received fee simple title to the lands with no reservation of the bridle

trail. None of the owners in the chain of title deeded the bridle trail to the government. The fact that a trail is shown on maps which pre-date the passage of the Highways Act in 1892, does not cause that trail to now be a government trail. Thus as is explained herein, the only way that the bridle trail can be owned by the State is if it was laid out by the government, deeded to the government, or the Ranch or an owner before the Ranch surrendered or abandoned the trail to the government. The burden of producing evidence that the government laid out the trail or received a deed to the trail, or that the owner surrendered or abandoned the trail, is in the State, and we do not think that the State has that evidence. Thus we conclude that the bridle trail is owned by the Haleakala Ranch Company and not by the State of Hawaii.

Dated: Wailuku, Maui, Hawaii, 5/15/2003.

  
\_\_\_\_\_  
TOM C. LEUTENEKER

11-066321

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*[Signature]*  
N. MARTINEZ, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

TOM PIERCE, ATTORNEY AT LAW, LLLC

TOM PIERCE 6983  
P.O. Box 798  
Makawao, HI 96768  
Tel No. 808-573-2428  
Fax No. 866-776-6645  
Email: tom@mauilandlaw.com

Attorney for Plaintiffs:  
PUBLIC ACCESS TRAILS HAWAII; DAVID BROWN  
JOE BERTRAM, III; KEN SCHMITT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PUBLIC ACCESS TRAILS HAWAII, a  
Hawaii Nonprofit Corporation, and DAVID  
BROWN, JOE BERTRAM, III; KEN  
SCHMITT; for themselves individually, and  
on behalf of all similarly situated persons, and  
on behalf of the general public, as a class.

Plaintiffs,

vs.

HALEAKALA RANCH COMPANY, a  
Hawaii Corporation; WILLIAM AILA, JR. in  
his official capacity as the Director of the State  
Of Hawaii DEPARTMENT OF LAND AND  
NATURAL RESOURCES and chair of the  
State of Hawaii BOARD OF LAND AND  
NATURAL RESOURCES; DEPARTMENT  
OF LAND AND NATURAL RESOURCES;  
BOARD OF LAND AND NATURAL  
RESOURCES; OFFICE OF HAWAIIAN  
AFFAIRS; JOHN DOES 1-10, JANE DOES 1-  
10, AND DOE PARTNERSHIPS,  
CORPORATIONS, GOVERNMENTAL  
UNITS OR OTHER ENTITIES 1-10.

Defendants.

CIVIL NO. 11-1-0031 (3)  
(Other Civil Action)

COMPLAINT; DEMAND FOR JURY  
TRIAL; SUMMONS

JUDGE:

I hereby certify that this is a full, true and  
correct copy of the Original.

*[Signature]*  
Clerk, Circuit Court, Second Circuit

PAID  
\$ 400/35/53  
*[Signature]*

## COMPLAINT

Plaintiffs PUBLIC ACCESS TRAILS HAWAII, and DAVID BROWN, JOE BERTRAM III, and KEN SCHMITT, for themselves individually, and on behalf of all similarly situated persons, and on behalf of the general public, as a class (collectively "Plaintiffs"), by and through their counsel, Tom Pierce, Esq., and allege and aver as follows:

### INTRODUCTION

1. This suit to quiet title, to end a public nuisance, and/or for declaratory, injunctive, and other relief, is brought to restore public access to one of the most culturally, historically and recreationally important trails on the Island of Maui -- the Haleakala Trail, which runs through the Makawao, Olinda areas, and for centuries was the cultural, traditional, and customary path for people to gain access to the summit of Haleakala and the Haleakala Crater.

2. The focus of this suit is on a significant portion of Haleakala Trail that crosses land owned by the Haleakala Ranch Company ("the Company"). The Company claims absolute fee simple ownership over the trail, and the right to exclude all. And, to the injury of the public, the Company has denied public access for over seventy years, and continues to do so.

3. Although the State of Hawaii Department of Land and Natural Resources ("DLNR") has on several occasions written to the Company and stated its claim of ownership, the Company denies those claims, and DLNR has failed to resolve the dispute or otherwise restore meaningful access to the people of Hawaii.

4. The dispute must be resolved in favor of the people:
- A. The people used the trail in ancient times;
  - B. The Great Mahele reserved the rights of the people;
  - C. After the Company's purchase, the Kingdom of Hawaii asserted possession of the trail;
  - D. The Highways Act of 1892 expressly protected the government's rights in existing trails and those maintained by the government;
  - E. In the forty years following the passage of the Highways Act, thousands of people, most tourists, ascended Haleakala via Haleakala Trail, which all considered a public trail;

- F. Both the Kingdom of Hawaii, and its successor in interest, the Territory of Hawaii, expended funds on the maintenance and improvement of Haleakala Trail;
- G. Although the trail fell into disuse upon the construction of Haleakala Highway in 1935, neither the Territory of Hawaii, nor its successor in interest, the State of Hawaii, relinquished its rights in Haleakala Trail.

### **JURISDICTION**

5. This Court has jurisdiction to hear and adjudicate these claims pursuant to HRS sections 669, 6E-13(b), 603-21.5(a)(2) and (3), 603-21.7(a)(3) and (b), 603-21.9, 632-1, 662-3, Haw. Const., Article XI, Sec. 9, and other state law. Plaintiffs also have rights of action under 42 USC § 1983. Venue is proper because the land at issue is located on the Island of, and within the County of, Maui, State of Hawaii.

### **THE PARTIES**

6. Plaintiff PUBLIC ACCESS TRAILS HAWAII (“PATH”) is a Hawaii non-profit corporation duly organized under the laws of the State of Hawai’i, is federally designated as a 501(c)(3) public charity, and was formed with the purpose to promote public access to historical, cultural and other trails in Hawaii through research, education and advocacy. PATH’s board of directors and other supporters, and the persons supported within the scope of its charitable mission, include individuals who reside in the County of Maui, State of Hawaii, and who have, or will in the future, hike, bike, and horseback ride, on the Island of Maui, State of Hawaii.

7. Plaintiff DAVID HENDERSON BROWN, is a resident of the Island of Maui, State of Hawai’i, and has for decades regularly hiked on the Island of Maui. Plaintiff Brown is also a current director of PATH, former president of PATH, and a member of the Na Ala Hele Advisory Council for the Island of Maui.

8. Plaintiff JOE BERTRAM III, is a resident of the Island of Maui, State of Hawaii, and has for decades regularly hiked and biked on the Island of Maui. Plaintiff Bertram is also a current director of PATH and a former president of PATH. He has also been a long time advocate for public access and greenways on the Island of Maui, both in the capacity of a volunteer working with nonprofits, and as a former Hawaii State Legislator.

9. Plaintiff KEN SCHMITT is a resident of the Island of Maui, State of Hawaii, and has for decades regularly hiked on the Island of Maui. Plaintiff Schmitt is a past director and officer of PATH. He has also been a long time advocate for public access, and promotes the importance of hiking as a way of experiencing Hawaii through his company, Hike Maui.

10. Plaintiffs bring this action in their individual capacities, and also as a CLASS ACTION made on behalf of all residents of the State of Hawaii who desire to, or would use Haleakala Trail, but have been, or will be deprived of, the use of, and access to, Haleakala Trail because of the actions or omissions of Defendants, or any of them, identified below.

11. Defendant HALEAKALA RANCH COMPANY ("the Company") is a Hawaii Corporation, and owns land, further identified below, upon which portions of the Haleakala Trail is located.

12. Defendant WILLIAM AILA JR. ("Aila") is the duly-appointed director of the STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES, and is charged with the responsibility to oversee implementation of Hawaii Revised Statutes ("HRS") Chapters 6E, 171, 264, 198D and other provisions of the Hawai'i Constitution and applicable state statutes. Defendant Aila is also the chair of the STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES, which has jurisdiction over Haleakala Trail pursuant to HRS Section 264-1(b).

13. Defendant STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES ("DLNR"), is a department of the executive branch of the STATE OF HAWAII, charged with the enforcement and oversight of HRS Chapters 6E and 264, among other laws.

14. Defendant STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES ("BLNR"), is an executive board that leads DLNR, and, under the Highways Act of 1892, as codified in HRS Chapter 264, is expressly charged with jurisdiction of trails. (Hereinafter Defendants Aila, DLNR and BLNR shall be collectively referred to as "State Defendants.")

15. Defendant OFFICE OF HAWAIIAN AFFAIRS is named as an interested or necessary party pursuant to HRS section 669-2(3), and other statutes, which protect and reserve rights to Native Hawaiians. (Plaintiffs through this Complaint do not seek to adjudicate any rights of Native Hawaiians.)

16. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Governmental Units or Other Entities 1-10 (collectively, "Doe Defendants") are persons or entities who may be liable to Plaintiffs or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs have reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all parties liable to Plaintiffs are named therein. Plaintiffs will identify such Doe Defendants when their names and capacities are ascertained, Plaintiffs are informed and believe and thereon allege that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiffs and the public, as alleged herein.

## FACTUAL ALLEGATIONS

### A. History of Haleakala Trail

17. Long before Captain Cook in 1778 reached the shores of the islands now called Hawai'i, Hawaiians were accessing the top of Haleakala and Haleakala Crater by a trail that ran through the north shore district of Makawao. This trail was used to gain access to a number of places in the Crater, which were used for important cultural and historical practices, including, but not limited to, rock quarries, a number of *heiau*, and one or more *piko* (umbilical cord) pits. It was also used as an overland route to obtain access to the southeast side of Maui, and the ahupua'a of Kaupo.

18. In post-contact times this trail, or portions thereof, was referred to variously as the "Haleakala Trail," "Haleakala Bridle Trail," "Haleakala Road," "Haleakala Mountain Road," "Road to Haleakala," "Trail to Crater," or "Olinda Road." (The trail is referred to herein as "Haleakala Trail.")

19. Most historic maps (as early as 1869) show a "Haleakala Road" starting on the northwest side of Haleakala mountain, at what is now known as St. Joseph's Church, located at the corner of Makawao Avenue and Piihola Road. The maps show that road continuing along a

route that includes parts of what are now the Maui County roads named as Piiholo Road and Olinda Road. The maps also show the road becoming a trail at what is now the *mauka* terminus of Olinda Road, which is also at the boundary of the ahupua`a of Kalialinui, identified further below. On the maps, the trail then continues *mauka* through the ahupua`a of Kalialinui, the pertinent parts of which are now owned by the Company. The trail then continues *mauka* through land now owned by the United States, as part of Haleakala National Park. The trail ultimately reached the crater rim near two places, which on early maps were referred to as "Halemau" and "Lelewi." An 1869 map of the crater, prepared by W.D. Alexander shows the trail descending into the crater at Halemau and continuing across to the approximate center of the crater where it then meets with a trail identified as "Kaupo Road" that continues down into Kaupo gap, located on the opposite, southeast side of Haleakala mountain.

20. In addition to its importance as an ancient Hawaiian route, the trail was heavily used by westerners in post-contact times, most tourists, up until the time of the complete construction of the Haleakala Highway, around 1935.

21. On August 21, 1828, Richards, Andrews and Green made the first recorded ascent of Haleakala, and based on their chronicles, very likely used Haleakala Trail. They slept overnight at Haliimaile, and "were told by the natives, that the way was long, but the ascent very easy." They "procured a guide" who took them to the top in one day.

22. In 1841, another exploration party also recorded reaching the summit of Haleakala, after starting from the north shore of Maui, and with the apparent assistance of Hawaiians.

23. In 1866, Mark Twain visited Haleakala Crater, and mostly likely reached the summit via Haleakala Trail.

24. In 1873, tourist writer Isabella Lucy Bird climbed Haleakala by horse, and, based on her account, most likely used Haleakala Trail for access.

25. By 1890, tourism was fully established in the Hawaiian Islands and Haleakala was Maui's prime attraction. In that same year was published "The Tourists' Guide Through the Hawaiian Islands," written by Henry M. Whitney. The guidebook describes Haleakala Trail:

From Olinda, travelers began the ascent of Haleakala. The old bridlpath was reported to have been recently improved and easy to follow even by the dim light of the stars. There were no diverging paths to mislead (as there had been between

Makawao and Olinda) and the trail was plainly outlined. This part of the journey was steeper than the preceding sections, although the guidebook emphasized that it was not as steep as one might expect. [As paraphrased in The Historic American Engineering Record for Haleakala Highway]

26. In 1891, Worth Osburn Aiken ("Aiken") first climbed to the crater. (Aiken is an instrumental figure in the history of Haleakala Trail, and the Company's relationship to the Trail. He was also the bookkeeper for the Company from 1893 to 1895, and had other close business and friendship ties with the principals of the Company at the relevant times identified in this Complaint, including Henry Perrine ("H.P.") Baldwin, then president of the Company. In the late 1800s and early 1900s, Aiken was also an instrumental member of the Makawao Road Board, including its chairman at times critical to expenditures on Haleakala Trail, and, as explained further below, led lobbying efforts in the early 1900s for government funding of road work on Haleakala Trail.)

27. In 1894, a rest house was constructed near the crater's edge for use by travelers ascending Haleakala via Haleakala Trail. The rest house resulted from the efforts of Will Dickey (father of architect, Charles Dickey) who started a subscription campaign for the rest house, collecting \$5.00 from individuals throughout Maui. H.P. Baldwin furnished laborers to construct the building.

28. From 1901 until 1931, Aiken ran an extremely successful tour guide operation from his property, called Idlewilde, located near the top of what is now referred to as Olinda Road. During its thirty years in operation, his tour company guided thousands of tourists to the top of the Crater on horseback via Haleakala Trail. One of his guides, Aikichi Arisumi, personally guided over 1,500 people on the overnight trip. The cost of the trip in the late 20s and early 30s was \$27.00 per person, which adjusted for inflation, would be a current price of over \$300.00.

29. On November 4, 1905, the Maui News published a story about recent government improvements to Haleakala Trail, with this title: "HALEAKALA TR[A]IL COMPLETED. Funds Here Being Raised to Repair House On Top of Crater. Easy access to The Largest C[ra]ter On Earth. [CONTRACTOR] J. DUGGAN COMPL[E]TED HIS WORK. Portions of the article are set forth in a later allegation in this Complaint.

30. In 1908, W.O. Aiken reconstructed the rest house at Haleakala for tourists and sightseers. Records show the rest house was managed by the Maui Chamber of Commerce.

31. In 1911, the Maui News complained that Haleakala was not receiving the tourists it deserved because they “have spent their lives in soft occupations . . . . Not one in fifty is physically able to stand the shaking up of a ride for eight exceedingly rough miles . . . .” The News article identified the importance of building a highway for automobiles if Maui were to continue to compete with the Island of Hawaii, which offered tourists automobile travel to Mauna Kea’s volcanic sights.

32. In 1914, a new rest house was constructed on the edge of the crater, with funds raised by Honolulu Advertiser publisher, Lorrin A. Thurston. (As alleged further below, Lorrin Thurston’s relationship with Haleakala Trail began in the 1800s while serving in a number of different capacities.)

33. As early as 1915, a great number of influential people began discussing a road to the Haleakala summit that could be achieved in an automobile. One of the early boosters of the concept was Alexander Ford Hume, who in 1917, drove an automobile up the existing Haleakala Trail to within three miles of the summit. Ford labeled Maui a “motorists’ paradise” and encouraged the Maui Chamber of Commerce to endorse his proposal for getting a Haleakala road from Olinda built by subscription.

34. In 1916, Haleakala Crater was made part of Hawaii National Park, in part due to lobbying efforts by Aiken.

35. Between 1925 and 1933, the U.S. Bureau of Public Roads, commissioned by the Park Service, investigated the best automobile route to the top. The Haleakala Trail route was deemed at the time to be the most scenic, but was ultimately not chosen because it was too steep, had worse weather compared to more leeward facing slopes, and a paved road already existed in Kula up to a higher elevation.

36. On September 23, 1931, the Honolulu Star-Bulletin ran a story with the title, “WALSH ACQUIRES MAUI BUSINESS OF WORTH AIKEN – Haleakala Trips to Be Handled in the Future By the Manager of Grand Hotel.” The story provides the following pertinent information:

E. J. Walsh, manager of the Grand hotel, Wailuku, Maui, has purchased the Haleakala horse transportation business and equipment from Worth O. Aiken, and has leased the Idlewilde property for a number of years. . . .

Mr. Aiken, former Maui resident, who now lives in Honolulu, has handled trips to the summit and crater of Haleakala for the last 30 years, having been among the first men in the territory to see the tourist possibilities of Haleakala. . . .

Management of the Haleakala trips will be carried on much the same as under Mr. Aiken's administration. Arazumi [sic], official guide on the crater trips for more than 20 years . . . has agreed to return to the service and will be in charge of all mountain trips under the new management.

37. Four years later, in 1935, the Haleakala Highway was officially opened, and the Maui News ran this story about the ceremony, which thousands attended, and which was broadcast around the world by radio:

[Aiken], one of the first men to broach the idea of the road to the summit of Haleakala. For more than 30 years he carried on the struggle and Saturday he saw his dream realized. Aiken told the crowd, "This is my one hundred and first trip to the summit of Haleakala and after the ride up today I can truly say that the first hundred were the hardest, though they may have been more replete with adventure and romance."

Outside the broadcast shack, Aikichi Arisumi, "veteran guide who has made the ascent of the mountain more than 1,500 times, stood with tear-filled eyes as he listened to his old friend, Mr. Aiken, speak to the world over radio. His mind went back over the march of years to the days when there was no rest house at the summit, when he had led parties of the great and near great over tortuous trails and stood with them in awe-filled silence at the brink of the crater which is one of nature's marvels." [As paraphrased in One Hundred Years of Maui News]

38. America's then and ongoing infatuation with the automobile caused Haleakala Trail to be generally forgotten for nearly eighty years, during which time the Company has denied the public access to the summit of Haleakala via the ancient, historical, cultural, and traditional route – the Haleakala Trail.

## **B. State's Claim of Ownership and the Company's Denial**

39. By memorandum dated, May 1, 2000, State of Hawaii Trails and Access Abstractor, Doris Moana Rowland (designated as an expert witness in other judicial disputes involving trails and roads in the State of Hawaii) wrote to Maui District Trails Manager, Mike Baker about Haleakala Trail, and therein analyzed the State's property interest in Haleakala Trail. Citing the Highways Act, Rowland summarized: "For the reasons stated herein, we are of the opinion that the 'Haleakala Bridle Trail' is a public trail."

40. By letter dated, May 15, 2003, Tom Leuteneker, attorney for the Company, wrote to Na Ala Hele Trail Specialist for Maui County, Torrie Haurez, and stated, "The Haleakala Ranch Company does not think that the bridle trail is a government trail owned by the State of Hawaii . . . ."

41. Subsequent to the above correspondence PATH has demanded that DLNR resolve the dispute and open Haleakala Trail.

42. In addition, PATH asked the Company to open Haleakala Trail to the public, and offered to assist the Company with trail management and other concerns raised by the Company.

43. The Company rejected PATH's request and offers of assistance.

44. In or about the fall of 2007, the Company and the State proposed to execute a memorandum of agreement ("MOA") that would, upon the Company's unilateral terms, permit two supervised trips on Haleakala Trail per year, with no more than 25 people per trip.

45. By letter dated, February 20, 2008, PATH, through its attorney, wrote to then Director of DLNR, Laura Thielen, setting forth PATH's objections to the MOA, and summarizing: "DLNR lacks the jurisdiction to enter into any access agreement with [the] Ranch . . . . Even if DLNR had the jurisdiction to enter into the Draft MOA, it would be a violation of law to do so, as the proposed 'access' agreement provides greater benefits to a private corporation than it does to the public. In addition, the Draft MOA fails to acknowledge the State's ownership of Haleakala Trail."

46. On April 24, 2008, Thielen requested an opinion on the MOA from the State of Hawaii Attorney General.

47. By letter dated January 8, 2009, the Attorney General responded, and confirmed abstractor Doris Moana Rowland's opinion that the State has an ownership interest in Haleakala Trail, and further concluded the State would prevail at trial *if* the State sought judicial relief. The letter then concluded that DLNR had authority enter into an MOA with the Company and indemnify the Company.

48. Subsequent to the above Attorney General letter, a revised draft of the MOA has been circulated to Na Ala Hele. The revised MOA still provides only for two trips on Haleakala Trail per year but now reduces the maximum number of permitted persons on each trip to 15 persons.

49. The proffered MOA does not resolve the ownership dispute between the Company and DLNR, does not otherwise benefit the public in a meaningful way, and is in contravention of the public's right of use to Haleakala Trail by virtue of the State's ownership thereof.

50. DLNR has a duty to, but has failed to, take judicial or other action necessary to resolve this dispute thereby denying the public a right of access over a government owned public trail.

51. Because of the foregoing, it is necessary and ripe for Plaintiffs to file this Complaint for themselves, and on behalf of the public's rights and the State's rights.

### **C. Ownership of Lands Surrounding Haleakala Trail**

52. The focus of this Complaint is an approximately 3.3 mile portion of Haleakala Trail which runs through the ahupua`a of Kalialinui, the pertinent parts of which are owned by the Company, which obtained title according to the conveyances identified below.

53. In 1848, King Kamehameha III conveyed the ahupua`a of Kalialinui to a chief named Kama`ika`aloe.

54. On March 30, 1853, the Land Commission confirmed Kama`ika`aloe's interest by issuing Land Commission Award No. 7124 (hereinafter the ahupua`a of Kalialinui is referred to as "LCA 7124").

55. LCA 7124 included a reservation in favor of the native people therein.

56. In 1859, Kama`ika`aloe's estate was probated and his wife, Kalalawalu was named his heir.

57. By deed, dated January 28, 1868, recorded as Liber 25 at Page 49, Kalalawalu, and her new husband, Douglas Panee, conveyed LCA 7124 to James Campbell and Henry Turton.

58. By deed dated March 13, 1876, recorded in Liber 45, Page 240, Campbell and Turton conveyed LCA 7124 to Samuel L. Alexander and Charles H. Alexander.

59. In 1879, Samuel and C.H. Alexander submitted a survey for LCA 7124 to the Kingdom of Hawaii Boundary Commission, and Boundary Certificate No. 33 was issued.

60. By deed dated December 29, 1880, recorded in Liber 69, Page 109, Samuel L. Alexander deeded his interest in the property to his co-tenant Charles H. Alexander.

61. By deed dated May 24, 1886, recorded in Liber 99, Page 325, Charles H. Alexander's interest was conveyed by his administrator, Lorrin A. Thurston, to Edward H. Bailey. (Lorrin A. Thurston was to later become the Minister of Interior for the Kingdom of Hawaii who granted certain road requests of Aiken and the Company, as explained further below, and still later, as explained earlier above, became the publisher of the Honolulu Advertiser and a booster for tourism on Haleakala.)

62. By deed dated September 1, 1888, recorded in Liber 114, Page 407, Edward H. Bailey and Lorrin A. Thurston, doing business under the name Haleakala Ranch Company, conveyed LCA 7124 to the Company.

63. The Company subsequently paid the Government Commutation and was issued Land Patent No. 8164 on LCA 7124.

**D. Chronology of Government Work on Haleakala Trail and the Company's Acquiescence in the Government's Assertion of Ownership, Both Before and After the Promulgation of the Highways Act of 1892**

64. As detailed below, both the Kingdom of Hawaii and the Territory of Hawaii expended funds on the maintenance and repair of the Haleakala Trail after the Company's purchase in 1888, and both before and after the Highways Act of 1892.

65. On August 28, 1889, then Makawao road Board Chair for the Kingdom of Hawaii, James W. Calville wrote to then Minister of Interior for the Kingdom of Hawaii, Lorrin A. Thurston (former administrator of Charles H. Alexander's interest, and soon to be secretary of the Company), and requested reimbursement for money spent maintaining "the Road to summit of Haleakala." Calville explains that "we have let this work out to Randal von Tempsky on a contract."

66. By 1890 H. P. Baldwin had purchased an interest in the Company, and had been elected its president.

67. In October 1892, Queen Liliuokalani approved the Highways Act of 1892.

68. The Highways Act of 1892 provided that ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple.

The definition of “public highway” in the Act included all existing trails at the time “or hereafter opened, laid out or built by the Government, or by private parties . . . .” The law further provided that, “All public highways once established shall continue until abandoned by due process of law.”

69. From soon after its promulgation, the Company, and its then president H.P. Baldwin, were aware of, and understood the implications of the Highways Act.

70. On January 5, 1893, H.P. Baldwin, in his position as president of the Company, and then Secretary of the Company, Lorrin A. Thurston (and former Minister of Interior), wrote a letter, to then Minister of Interior for the Kingdom of Hawaii, G.H. Wilcox, expressly identifying the Highways Act in their letter, and requesting permission to erect a gate across a government road known as the “outside road.” They explained:

The act approved Oct. 15, 1892, known as the ‘Highways Act of 1892’, authorizes the Minister of the Interior to grant permission to erect gates across roads where it will save the expense of line fences.

71. On March 27, 1896, the Company, in another effort to deal with the effects of the Highways Act, wrote a letter to then Kingdom of Hawaii Minister of the Interior, James A. King, requesting permission to “erect and maintain gates, according to law, on all of the Government Roads [indecipherable] the above mentioned line of fence.”

72. The above letters from the Company not only show that the Company was fully aware of the Highways Act and its effect on government roads crossing Ranch lands, the letters also show that fences and gates erected by the Company are not indicia of the Company’s historical ownership of roads or trails.

73. On July 7, 1898, the islands of Hawaii became a territory of the United States.

74. As explained below, The Territory of Hawaii continued the road activities initiated by the Kingdom of Hawaii, including budgeting funds and maintaining Haleakala Trail.

75. In addition, Ranch executives, or members of their family, including H.P. Baldwin’s son, Henry Alexander (“H.A.”) Baldwin, or other current or former Ranch employees, including Aiken, were serving on the Makawao Road Board at the relevant times identified below, and were instrumental in encouraging the government to improve Haleakala Trail.

76. By letter dated, December 18, 1902, then chairman of the Makawao Road Board, Aiken, wrote to then Superintendent of Public Works, Henry E. Cooper, and summarized the

extensive work of the Board's work on the roads in the Makawao district, including Haleakala Trail:

Since the heavy rains there has been considerable work on several roads here that should be attended to at once. Our Road Board has a regular system of workers employed on the roads, each man having charge of a section of road or roads. We have divided the District up as evenly as possible, and given a man charge of each section, which he is to look out for, and keep in as good shape as possible. In this work we have employed about ten men . . . .

77. By letter dated, January 23, 1904, Aiken (whose crater tour company started in 1901, and still in the capacity as chairman of the Makawao Road Board) wrote to then Territory's Superintendent of Public Works C. S. Holloway. Aiken requested funds from the Superintendent that had been previously appropriated by the Territory, and he identified his three priority efforts for those funds, among them, Haleakala Trail:

As the Territory again takes *complete hold of affairs*, I beg to again call your attention to the work most urgently needed to be done in the Makawao District, provision for which was made in the loan fund. . . . *Repairs to the mountain trail up Haleakala would be of about equal importance with the latter, especially in view of increased tourist travel.* [Emphasis added].

78. Five months later, by letter dated May 21, 1904, Aiken again identifies the government interest in Haleakala Trail when he again wrote C. S. Holloway requesting expenditure of some of the appropriation for a survey: "I enclose an application for authorization against the appropriation '*Trail to summit, Haleakala*', to have a survey of the new trail at least *made now.*" (Emphasis added).

79. Only a few days after Aiken's letter referenced immediately above, by letter dated, May 28, 1904, H.P. Baldwin's son, H. A. Baldwin (who, upon information and belief, was at this time still a member of the Makawao Road Board) also writes (on Alexander & Baldwin, Maui Agricultural Company Letterhead) to C. S. Holloway. He notes, "Your letter to Mr. Aiken, Chairman of the Makawao road Board, was shown [to] me the other day. We had a meeting of the Board last Wednesday . . ." He also commends Mr. Holloway on his suggestion that engineer Hugh Howell (discussed further below) be appointed as an inspecting engineer. Mr. H.A. Baldwin impresses on Mr. Holloway that Mr. Howell has benefits beyond his engineering education and experience:

I am very glad of the turn affairs seem to have taken in connection with the improvements on Maui and am also glad that matters have been arranged so that

Mr. Howell will be kept busy. I think he is a good a man as could be procured for the work and his having a strong political pull makes him doubly valuable to the Republican Party here. It will be very hard for the Republicans to win out in the next election and we could not well afford to lose Howell.

Mr. H.A. Baldwin concludes his letter with a rally cry for his, and his family's, business interests: "If the improvements planned for Maui should not be put through, it would hurt us very materially."

80. On the same day as H.A. Baldwin's letter above, by letter dated, May 28, 1904, Aiken writes C. S. Holloway and urges that he select Hugh Howell to prepare a survey of the Haleakala Trail:

I beg to acknowledge receipt of yours of the 24<sup>th</sup>. Inst, contents of which have had my careful attention. Authorization for an expenditure of sufficient from the appropriation "Trail to summit, Haleakala" to make a survey of the same was also received, and we will have such survey undertaken as soon as possible. I would suggest that Mr. Howell take up this work for being familiar with the country about here I think he would be the most suitable man for the work.

81. In the same letter, Aiken goes on to express "the Road Board's" support for the selection of Mr. Howell "to be employed by the Department here on Maui." Aiken then parrots H. A. Baldwin's message:

I was instructed at the last meeting of our Board to write you . . . to express our endorsement of Mr. Howell for this position on Maui. . . . Mr. Howell may have made mistakes in the past, but he is satisfactory to the mass of the Republicans here on the Island.

82. As another example of the Company's influence over the Makawao Road Board, and close partnership with, and intimate understanding of its activities, two months later, by letter dated, July 16, 1904, Aiken writes to C. S. Holloway again about another Makawao road, urging the Territory to obtain a right of way for the Kula Homestead Road before expending more funds on it. Mr. Aiken then explains:

This doubtless should be done and in fact should be done before any more money is spent on the road, *for we are rather in the power of the Ranch Co.* Mr. L. A. Thurston is the vital man to see in the matter, and also Mr. J. B. Castle, who has lately bought heavily into the Company. [Emphasis added.]

83. The Territory also listened when the Company spoke. Within less than a three month time, the Territory apparently purchased the right of way, as Aiken, in a letter dated October 14, 1904, responds to a October 10, 1904 letter from C. S. Holloway, and states, "I am

pleased to note that we may proceed with the fencing of the Kula-Homestead road immediately.” Aiken in the same letter requests the outstanding balances available for road appropriations, including “Trail to summit, Haleakala.”

84. The year 1905 was a watershed year for Haleakala Trail, as can be seen from the correspondence and other documents cited to below.

85. By letter dated January 23, 1905, the chief clerk of the Territorial Department of Public Works writes to engineer Hugh Howell furnishing a statement of balances for various road funds on Maui. An available balance of \$5,000 is shown for “Trail to summit Haleakala.” The letter shows that only one other appropriation in the Makawao District is greater in size.

86. By letter dated, March 27, 1905, engineer Hugh Howell writes to C. S. Holloway on a number of road matters, including a timeline to save the appropriation (“as the time is so short it is a certainty that it could not be finished before June 30”), the problem of finding labor, and engineering issues related to the proposed improvements to Haleakala Trail, including the following:

In regard to Mr. Dickey’s ideas as to location and grade, I am not prepared at present to venture an opinion. My original intention was to make the road 10% with about the same style of drawings as suggested by Mr. Dickey, except that the ditches should be larger, as it is certain they will receive little if any care at all. But as to increasing the rate of grade to 15% there is a question worthy of discussion.

I expect to start on that work in about two weeks, and have planned to have it completed and advertised long before the appropriation lapses.

All the balance of Maui appropriations will be ready for construction in ample time. I have two assistants now, and work has begun on all appropriations save the Haleakala Trail and the Kaupo road.

87. About six weeks later, by letter dated, May 5, 1905, Hugh Howell writes again to Territorial Superintendent of Public Works, C.S. Holloway, and explains,

I have asked Mr. J. H. Wilson to assist me for a week or two on the Haleakala Trail survey, but he says he cannot accept if the work will bar him from making a bid on the contract. . . .

As Mr. Wilson will simply run levels and take cross-sections under my direction, on the line picked out by myself, and as I always make my own estimates and specifications, it does not seem to me that there should be any reasonable objection to his doing this work and afterwards bidding on the contract.

It is imperative that this survey begin next week in order to get plans and specifications done in time to save the appropriation from lapsing.

88. In the Fifth Annual Report to the Territorial Governor, from the Superintendent of Public Works, for the Year Ending June 30, 1905, is found an entry for "Trail to Summit of Haleakala." The report shows an appropriation of \$5,000.00 as of July 1, 1904, and funds expended of \$375.75, and funds unexpended of \$4,624.25.

89. By letter dated, August 3, 1905, Hugh Howell writes to Chief Clerk of the Territorial Department of Public Works, C.M. White and requests "data concerning Maui contracts," including "Haleakala Trail."

90. By letter dated, August 7, 1905, the Chief Clerk of the Territorial Department of Public Works writes to Hugh Howell, who is now in his capacity as "Engineer, Dept. of Public Works," and furnishes outstanding road contracts on the Island of Maui. Among the contracts is Contract No. 278, dated June 22, 1905, to L.M. Whitehouse, relating to the appropriation, "Trail to Summit Haleakala." The nature of the contract was to "Construct Trail to Summit Haleakala, pay engineering inspection, supervision at \$6.—per day during work." The contract was set to expire on January 8, 1906, and of the \$5,000 originally appropriated, \$4,299.00 remained on the date of this letter.

91. Although not yet found, upon information and belief, a survey of Haleakala Trail was prepared by Hugh Howell or his agents on behalf of the Territory of Hawaii in the summer of 1905. The survey delineated the trail owned by the government from the Company's land, providing a minimum of 20 feet of right of way in favor of the government in all parts.

92. Three months later, on November 4, 1905, the Maui News published the following front pages story about the new, improved Haleakala Trail:

**HALEAKALA TRAIL COMPLETED.**

Funds Here Being Raised to Repair House On Top of Crater.

Easy access to The Largest Crater On Earth.

**J. DUGGAN COMPLETED HIS WORK.**

93. The Maui News Article explained in pertinent part:

It will be of *general interest to the people of the Islands* to learn that the Haleakala trail is now completed to the top of the crater. And what has hitherto been a somewhat difficult trip is now made easy to any one who can ride horseback. From any part of central or West Maui one may drive to Olinda which is but eight and one-half miles from the top of the Crater. *Even a stranger may*

*now ride to the Catholic Church at Makawao and from that as a landmark follow the finger posts to the top and not be under the necessity of taking a guide.*

*Contractor J. Duggan of Honolulu had the Contract to open the trail[,] cleared out the loose stones and cut and cleared away the bush to a width of twenty feet. The finger boards are set one fifth of a mile apart and give the distance on each.*

*And in between each finger board post is a plain guide post so that any one should find his way without difficulty.*

S.R. Dowdle is collecting funds for the repair of the stone house built at the top of Haleakala by Hon. H.P. Baldwin and it is predicted that he will meet with no difficulty securing the required funds and soon have the house in good repair. Little Flea Cave, however, is near the top and provides ample shelter *for all* who may wish to make the trip. . . .

*Come one; come all:* and view this the grandest sight of Maui. (Emphasis added).

#### **E. Other Property Transactions Identifying Haleakala Trail and Government Ownership Thereof**

94. In subsequent property transactions, portions of Haleakala Trail continue to be shown as a delineated “existing road,” including, but not limited to, the following examples.

95. In 1915, the Company, via an Exchange Deed recorded as Land Office Deed No. 1802, conveyed to the Territory of Hawaii certain portions of LCA 7124 for the Olinda Reservoir Lot, as well as a 40 foot wide road to the reservoir, and a Mauka Diversion Ditch for the reservoir (collectively the “Olinda Reservoir Property Rights”). This information is depicted on C.S.F. (Copy of Survey Furnished) No. 2705. CSF No. 2705 indicates the location of a “Gate” crossing the road then known as Haleakala Road before it enters LCA 7124. CSF No 2705 also delineates the “Mountain Trail to Haleakala Crater” from the other properties.

96. In 1926, a portion of LCA 7124 and Grant 4937 to H.A. Baldwin, containing 26.84 acres, designated as Tax Map Key Number (2) 4-15-29, and registered as Land Court Application Number 228 (hereinafter “Land Court App. No. 228”) was issued to Worth Aiken. The Land Court Application expressly provides that the land conveyed is subject to a “right of way for a *Government* trail over and across a portion of said land” (emphasis added). Map 1 of the Land Court Application identifies the location of the trail in the southern portion of the property in the vicinity of Kahakapao Gulch, and it appears to be the same as Haleakala Trail.

97. In January 1973, by Land Court Deed No. 613436, Worth Aiken conveyed Land Court App. No. 228 to Virginia C. Baldwin.

98. On May 24, 1973, Virginia Baldwin granted in favor of the Company a roadway and utility easement, recorded in the Hawaii Bureau of Conveyances as Liber 9167, Page 165. The land encumbered by the easement is described in pertinent part as follows, and identifies Haleakala Trail as an "existing dirt road":

. . . being land situate at said Kalialinui, County of Maui, and being portions of the lands described in R.P. 8167, L.C.Aw. 7124 to Kamaikaaloa, said easement to extend between the adjacent property and the nearest government road situate west of the adjoining lands, and to run substantially along the alignment of the existing dirt road.

99. By warranty deed, dated January 8, 1999, recorded in the Hawaii Bureau of Conveyances as Doc. No. 99-002992, the Company conveyed to the County of Maui Board of Water Supply Lot 2 of the Kahakapao Reservoir Subdivision, and a road easement, which the deed provided was a portion of the land conveyed to the Company in 1888. The deed further expressly provided that the conveyance was subject to the following pertinent encumbrances:

2. Native Tenant Rights as reserved in Land Commission Award No. 7124.
3. Rights or claims of persons or entities other than the Grantor involving or arising out of: . . . persons residing on or otherwise in possession of the land or any portion thereof; *trails, roadways, or other rights of way, including without limitation any rights or claims under Chapter 264, Hawaii Revised Statutes*; claims arising out of customary or traditional Hawaiian rights including but not limited to those for access or gathering purposes protected by the Constitution of the State of Hawaii or the laws of Hawaii. (Emphasis added)

## CLAIMS FOR RELIEF

### Count I -- Public Trust

100. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 99, as though fully set forth herein.

101. In 1845 the Land Commission Board was adopted to quiet land titles. *Public Access Shoreline Hawaii v. Hawaii County Planning Comm'n ("PASH")*, 79 Haw. 425, 445 (1995). To carry out its duties, the Land Commission adopted principles for quieting title to land. *Id.*

102. In 1848, the Great Mahele came into being and the lands of the Kingdom were divided between the chiefs and the King. *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 12 (1982).

103. The Great Mahele awarded entire ahupua`as; however, the rights of native tenants who held kuleanas lands within the ahupua`as, were expressly reserved: “Koe no Kuleana o Kanaka.” *Palama v. Sheehan*, 50 Haw. 298, 300 (1968). The phrase has been interpreted to include all rights of native tenants who held kuleanas lands within the ahupua`as, which rights were set forth in the Act of August 6, 1850. *Id.*

104. The ancient usage of lands carried over into the new system of property rights established through the Land Commission, and the rights of native tenants were not conveyed away, even if the King did not make an express reservation. *PASH*, at 449-450.

105. However, here, there was an express reservation in favor of native tenants in LCA 7124, issued on March 30, 1853, which has encumbered title to LCA 7124 ever since.

106. Under Section 5(f) of the Hawai`i Admission Act, the United States established a ceded land trust to be administered by the State of Hawai`i for 5 public trust purposes.

107. Article XII, § 4 of the Hawai`i State Constitution establishes that “[t]he lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution. . . shall be held by the State as a public trust for native Hawaiians and the general public.”

108. The rights of the general public, which includes but is not limited to Native Hawaiians, were enunciated in 1859 law now codified as Hawaii Revised Statutes Section 7-1, which provides in pertinent part: “The springs of water, running water, **and roads shall be free to all**, on all lands granted in fee simple . . .”

109. Since before the Great Mahele, those public trust rights were protected continuously by Hawai`i’s sovereigns and governments, and are now enunciated in the Hawaii Constitution at Article XII, Section 4, which provides:

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7 of the State Constitution, excluding therefrom lands defined as “available lands” by Section 203 of the Hawaiian Homes Commission Act 1920, as amended shall be held by the State **as a public trust** for native Hawaiians **and the general public**. (Emphasis added).

110. The Committee on Hawaiian Affairs added what is now Article XII, Section 7 of the Hawai'i Constitution to reaffirm customarily and traditionally exercised rights of native Hawaiians, and the general public, as enunciated in HRS Section 7-1.

111. The Committee on Hawaiian Affairs expressly noted in its report that traditional Hawaiian rights incorporate more than the appurtenant rights of Native Hawaiians within an ahupua'a; "[I]t was customary for a Hawaiian to use trails outside the ahupua'a in which he lived to get to another part of the Island." *Id.*, quoting Stand. Comm. Rep. No. 5, reprinted in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, 637.

112. Those concepts are also incorporated within Article XII, Section 7 of the Hawaii Constitution, entitled "Traditional and Customary Rights," which rights have also been interpreted to be greater than the physical boundaries of a particular ahupua'a. *Pele Defense Fund* at 620.

113. The Company's assertion of ownership cannot prevail over the Public Trust because there can be no adverse possession against the government. *In re Land Title, State of Hawaii*, 49 Haw. 537, 569-570 (Haw. 1967).

114. Plaintiffs are entitled to a declaratory ruling that the Haleakala Trail, since the Great Mahele, has been, and continues to be, encumbered by an interest in favor of the public.

### **Count III – Customary and Traditional Access**

115. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 114 as though fully set forth herein.

116. Haleakala Trail is an ancient trail, which provided customary and traditional access to all people from *makai* parts of Maui to Haleakala Crater.

117. Plaintiffs are entitled to a declaratory ruling that the customary and traditional rights of the people to free access to and use of Haleakala Trail have been preserved and protected and remain part of the public trust, and said customary and traditional rights constitute a real property interest designated in favor of the State of Hawaii.

### **Count III -- Highways Act of 1892 and HRS Section 264-1**

118. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 117, as though fully set forth herein.

119. HRS section 264-1 provides in pertinent part as follows:

(b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

(c) All . . . trails . . . in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails as follows: . . . (2) Surrender of . . . trails shall be deemed to have taken place if no act of ownership by the owner of the . . . trail . . . has been exercised for five years[.]

(d) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171.

120. The Highways Act of 1892 (Act 47) provides in pertinent part as follows:

All roads, alleys, streets, ways, lanes, courts, places, trails and bridges in the Hawaiian Islands, whether now or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways. . . . All public highways once established shall continue until abandoned by due process of law.

121. Before 1892, the Kingdom of Hawaii laid out and built Haleakala Trail.

122. After 1892, the Kingdom of Hawaii and the Territory of Hawaii, laid out and built Haleakala Trail.

123. Any private parties, including the Company, who opened, laid out, or built any part of Haleakala Trail did not exert acts of ownership over the trail for periods of more than five years.

124. The State of Hawaii has never disposed or otherwise relinquished its ownership of Haleakala Trail.

125. Plaintiffs are entitled to a declaratory ruling that Halealakala Trail is a “public highway” under the Highways Act of 1892, and a “trail” under HRS section 264-1(b), owned by the State of Hawaii, with jurisdiction over the trail held by the State of Hawaii Board of Land and Natural Resources.

#### **Count IV – Quiet Title**

126. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 125 as though fully set forth herein.

127. Pursuant to HRS Section 669-1(a), “Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.”

128. Plaintiffs, on behalf of themselves, similarly situated residents of the State of Hawaii, and the State of Hawaii bring this action to quiet title.

129. A person need not be in possession to bring an action to quiet title. *Kahoiwai v. Limaue*, 10 Haw. 507 (1896).

130. Because Haleakala Trail is held in trust for the public, is a real property interest for customary and traditional access, and is a government Highway under the Highways Act of 1892, Plaintiffs are entitled to a judgment quieting title to the trail in favor of the State of Hawaii, with the ownership interest being held in fee simple or such other lesser interest that shall provide unconstrained public access, and such other related or necessary rulings or orders, including but not limited to an order requiring a modern survey to delineate the location of the trail at a minimum width of twenty (20) feet throughout, from the Company’s lands, and other just equitable or legal relief in favor of Plaintiffs, including attorneys’ fees and costs.

#### **Count V – Public Nuisance**

131. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 130 as though fully set forth herein.

132. In breach of the public trust, and in violation customary and traditional access rights, and in violation of the State of Hawaii’s ownership as provided under the Highways Act of 1892, Defendant Company has asserted private and exclusive ownership and control and use of Haleakala Trail.

133. State Defendants have failed to, or refused to, preserve ownership and control of Haleakala Trail in the State, thereby permitting Defendant Company’s violation of the Highways Act and thereby permitting Hawaii’s people to be denied use of Haleakala Trail for more than seventy years, and counting.

134. Plaintiffs, and those similarly situated persons identified as a class in this Complaint, have been, and continue to be, directly and proximately injured by the acts or omissions of Defendants, or any of them.

135. The real property and other property rights denied to Plaintiffs and the State of Hawaii by Defendants' actions or omissions are unique, and therefore there is no adequate remedy at law.

136. Plaintiffs are entitled to declaratory and injunctive relief, which among other things, restores public access to Haleakala Trail, and State ownership of Haleakala Trail, and other equitable and legal relief, and such other related or necessary rulings or orders, including but not limited to an order requiring a modern survey to delineate the location of the trail at a minimum width of twenty (20) feet throughout, from the Company's lands, and including attorneys' fees and costs.

#### **Count VI – HRS 6E; Historic Preservation**

137. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 136 as though fully set forth herein.

138. Haleakala Trail constitutes a "historic property," within the meaning of HRS Chapter 6E.

139. Pursuant to Section 6E-7, Defendant DLNR shall control and manage historic property, unless disposed of in accordance with law.

140. Neither Defendant DLNR nor the State of Hawaii has ever properly conveyed or otherwise disposed of Haleakala Trail.

141. HRS Section 6E-13(b) provides as follows:

*Any person* may maintain an action in the trial court having jurisdiction where the alleged violation occurred or is likely to occur for restraining orders or injunctive relief against the State, its political subdivisions, or any person upon a showing of irreparable injury, *for the protection of an historic property . . . and the public trust therein* from unauthorized or improper demolition, alteration, or *transfer of the property* or burial site. (Emphasis added).

142. In violation of HRS Chapter 6E, Defendant Company has improperly, and without authority, confiscated Haleakala Trail and the public trust therein.

143. In breach of the public trust as enunciated in HRS Section 6E-13(b), State Defendants have failed or refused to reassert authority and control over Haleakala Trail.

144. Plaintiffs are entitled to injunctive relief restoring public access to, and State ownership of, the historic Haleakala Trail, and other equitable and legal relief, and such other related or necessary rulings or orders, including but not limited to an order requiring a modern survey to delineate the location of the trail at a minimum width of twenty (20) feet throughout, from the Company's lands, and including attorneys' fees and costs.

### **Count VII – Violation of Due Process of Law**

145. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 144 as though fully set forth herein.

146. Pursuant to 42 U.S.C. Section 1983, no person, acting under color of state law, may deprive another of their rights as established under the laws of the United States.

147. Under HRS Chapter 198D and Title 13-300-46, HAR on the Hawaii Statewide Trail & Access System, State Defendants have a statutory and administrative duty to "preserve and perpetuate the integrity, condition, naturalness, and beauty of the trails or accesses and surrounding areas and to protect cultural and environmental resources."

148. HRS § 198D-2 establishes the Na Ala Hele statewide trail and access program and conveys authority to the Department of Land and Natural Resources to "plan, develop, [and] acquire land or rights for public use of land" to protect trails.

149. Title 13-130-1(b), HAR explains the purpose and mission of Na Ala Hele to "(1) Preserve[] and perpetuat[e] the integrity, condition, naturalness, and beauty of the trails or accesses and surrounding areas; (2) Protect[] cultural and environmental resources ... [and] (6) Ensure[] public access..."

150. The Haleakala Trail is protected by the statutory provisions of HRS Chapters 6E, 198D, and 264, as amended.

151. State Defendants breached their public trust duty to the general public, including Plaintiffs, by failing to resolve ownership over the trail disputed by the Company or by assuring the public meaningful access to and use of Haleakala Trail.

152. State Defendants acted under color of state law to deprive Plaintiffs of their substantive and due process rights, thereby violating 42 U.S.C. Section 1983.

153. Plaintiffs are entitled to a judgment in their favor declaratory and injunctive relief consistent with earlier allegations in this Complaint, and attorneys' fees and costs as provided by federal statute.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this court:

- A. Assume jurisdiction over this action;
- B. Grant the class action requested in this Complaint;
- C. Issue declaratory judgments, including but not limited to the following: (i) that Haleakala Trail has been since the Great Mahele, and continues to be, encumbered by an interest in favor of the public that is protected as a public trust; (ii) that Haleakala Trail is an ancient trail that provided traditional and customary access to the people and constitutes a real property interest that is held by the State in favor of the people of Hawaii for public purposes; (iii) that Halealakala Trail is a "public highway" under the Highways Act of 1892, and a "trail" under HRS section 264-1(b), owned by the State of Hawaii, with jurisdiction over the trail held by the State of Hawaii Board of Land and Natural Resources; and (iv) that Haleakala Trail constitutes "historic property" within the meaning of HRS Chapter 6E, which property has been taken illegally by the Company.
- D. Issue an order quieting title to Haleakala Trail under HRS Chapter 669, declaring that fee simple ownership is held by the State of Hawaii on behalf of the people who have a right of public access to the trail that shall be unconstrained, save restrictions necessary for the public health and safety after being duly promulgated by DLNR in accordance with law;
- E. Order State Defendants to cause a modern survey of Haleakala Trail, and its boundaries, which, at any part of the Trail, shall not be less than twenty (20) feet wide, as was established in 1905 at the time of the Trail's first survey by the Territory of Hawaii;
- F. Issue a permanent injunction against Defendant The Haleakala Ranch Company ordering it to cease and desist from asserting ownership or possession over Haleakala Trail, and

to avoid any acts that would cause harm to the historical trail, or artifacts thereon, and otherwise to fully cooperate with State Defendant efforts to open Haleakala Trail to the public;

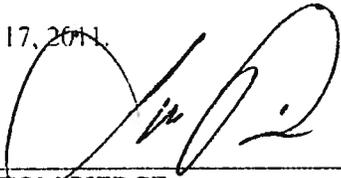
G. Order State Defendants to cooperate with Plaintiff Public Access Trails Hawaii in the creation of a management and stewardship plan, which will assure reasonable and meaningful public access to Haleakala Trail within not less than a twelve month period from this Court's order;

H. Award compensatory damages and other legal or equitable relief in favor of Plaintiffs and members of the class action against Defendant The Haleakala Ranch Company for the injury resulting to the public from denial of rightful access for over seventy years;

I. Reimburse Plaintiff Public Access Trails Hawaii, and other Plaintiffs, for their attorneys' fees and costs of suit pursuant to state and federal law; and,

J. Grant such other and further appropriate legal and equitable relief to Plaintiffs, and members of the class action that this Court deems proper and just.

DATED: Makawao, Hawaii, January 17, 2011.



TOM PIERCE  
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PUBLIC ACCESS TRAILS HAWAII, a  
Hawaii Nonprofit Corporation, and DAVID  
BROWN, JOE BERTRAM, III; KEN  
SCHMITT; for themselves individually, and  
on behalf of all similarly situated persons, and  
on behalf of the general public, as a class,

Plaintiffs,

vs.

HALEAKALA RANCH COMPANY, a  
Hawaii Corporation; WILLIAM AILA, JR. in  
his official capacity as the Director of the State  
Of Hawaii DEPARTMENT OF LAND AND  
NATURAL RESOURCES and chair of the  
State of Hawaii BOARD OF LAND AND  
NATURAL RESOURCES; DEPARTMENT  
OF LAND AND NATURAL RESOURCES;  
BOARD OF LAND AND NATURAL  
RESOURCES; OFFICE OF HAWAIIAN  
AFFAIRS; JOHN DOES 1-10, JANE DOES 1-  
10, AND DOE PARTNERSHIPS,  
CORPORATIONS, GOVERNMENTAL  
UNITS OR OTHER ENTITIES 1-10,

Defendants.

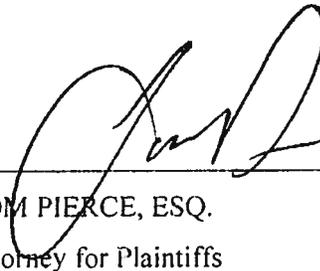
CIVIL NO.  
(Other Civil Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs PUBLIC ACCESS TRAILS HAWAII, and DAVID BROWN, JOE BERTRAM III, and KEN SCHMITT, for themselves individually, and on behalf of all similarly situated persons, and on behalf of the general public, as a class (collectively "Plaintiffs"), by and through their counsel, Tom Pierce, Esq., hereby demand a trial by jury on all issues so triable herein.

DATED: Makawao, Maui, Hawaii January 17, 2011



A handwritten signature in black ink, appearing to read 'Tom Pierce', is written over a horizontal line. The signature is stylized and cursive.

TOM PIERCE, ESQ.  
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PUBLIC ACCESS TRAILS HAWAII, a  
Hawaii Nonprofit Corporation, and DAVID  
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SCHMITT; for themselves individually, and  
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BOARD OF LAND AND NATURAL  
RESOURCES; OFFICE OF HAWAIIAN  
AFFAIRS; JOHN DOES 1-10, JANE DOES 1-  
10, AND DOE PARTNERSHIPS,  
CORPORATIONS, GOVERNMENTAL  
UNITS OR OTHER ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

SUMMONS

SUMMONS

THE STATE OF HAWAII:  
To the above-named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Tom Pierce,  
Attorney at Law, a Limited Liability Law Company, whose address is P.O. Box 798, Makawao,  
Hawaii 96790, an answer to the Complaint which is attached. This action must be taken within  
twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the Complaint.

There shall be no personal delivery of this Complaint between 10:00 p. m. and 6:00 a. m. on premises not open to the public, unless a Judge of the Circuit Court permits, in writing on this Summons, personal delivery during these hours.

DATED: Wailuku, Maui, Hawaii, JAN 18 2011.



\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

# Exhibit 3

MEMORANDUM OF AGREEMENT  
BETWEEN THE STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE  
NA ALA HELE TRAILS AND ACCESS PROGRAM  
AND HALEAKALA RANCH COMPANY  
FOR ACCESS TO HALEAKALA BRIDLE TRAIL

This Memorandum of Agreement, made and entered onto on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between HALEAKALA RANCH COMPANY, a Hawaii corporation, hereinafter referred to as the "Company," and the STATE OF HAWAII, by its Department of Land and Natural Resources, Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program, hereinafter referred to as "DLNR."

W I T N E S S E T H:

WHEREAS, pursuant to §198D-2, Hawaii Revised Statutes ("HRS"), DLNR is charged with the responsibility to plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the statewide trail and access program; and

WHEREAS, pursuant to § 198D-2, HRS, a statewide trail and access program known as Na Ala Hele exists within the Department of Land and Natural Resources, Division of Forestry and Wildlife; and

WHEREAS, the Company owns certain property located in Kula, Maui, Hawaii, identified as Tax Map Key (2) 2-3-005:004 (the "Company's Property"); and

WHEREAS, the State of Hawaii claims that a trail (the "Trail") traverses the Company's Property, as shown in its approximate location on Exhibit "A" attached hereto and incorporated by reference into this Memorandum of Agreement; and

WHEREAS, the State of Hawaii claims that Trail is a portion of an historic trail, known as the Haleakala Bridle Trail, and the State of Hawaii claims real property interests in the Haleakala Bridle Trail; and

WHEREAS, the Company does not agree with those claims by the State of Hawaii; and

WHEREAS, the State of Hawaii, through DLNR, and Company agree that this Memorandum of Agreement does not resolve the State of Hawaii's real property claims to the Trail or any claims in the pending litigation with respect thereto, all rights, claims and defenses of the parties being expressly reserved; and

WHEREAS, the Company desires to provide, without charge, public access to and recreational use of the Trail.

WHEREAS, it is agreed that the access to and use of the Trail permitted under this Memorandum of Agreement is intended and understood to be use of the Company's Property for "recreational purposes" within the meaning of the Hawaii Recreational Use Statute, HRS chapter 520;

NOW, THEREFORE, it is mutually agreed by the parties hereto that:

A. The Company will:

1. Permit members of the public and representatives of Na Ala Hele access over and across the Trail on the Company's Property without charge for a minimum of two (2) hiking events ("Event") each year; provided that:

a. Each Event shall take place on such dates and during such times as the Company shall determine in coordination with DLNR. The Company reserves the right to reschedule within 60 days any Event at any time if the Company determines, in its discretion, that the condition of the Trail, the weather, or any circumstance hazardous to the public so requires.

b. The Event will be confined to pedestrian hiking only, i.e., no bicycles, skateboards, motorcycles, or other vehicles, or horses, pets, or other animals will be allowed, with the exception of animals serving disabled persons who are able to walk the trail with the assistance of their service animals.

c. Due to potential dangers associated with being on a working livestock ranch, participants shall not be permitted to hike or otherwise access or use any other portions of the Company's Property.

2. Define the specific route for each Event and, in coordination with DLNR, arrange the attendance of a Company and/or DLNR representative to lead the hiking event.

3. Provide a plainly worded Company waiver or release of liability form, which shall be signed by each member of the public, or a parent or guardian for a child younger than eighteen (18) years of age, as a requirement for participation in the hiking event. The Company shall not permit any person to participate in an Event until he or she (or, if applicable, their parent or legal guardian) has signed both Company and DLNR waiver forms.

4. Permit the passage of emergency vehicles and equipment necessary to provide assistance when a wildland fire or injury to Event participants occurs.

5. All hiking events will be subject to this agreement and HRS chapter 198D.

B. DLNR will:

1. Defend and indemnify to the full extent allowed and specified in HRS § 198D-7.5 (as the same may from time to time be amended) the Company, its officers, directors, stockholders, employees, representatives, agents, successors, and assigns, from claims or losses caused by or resulting from the public's use of the Haleakala Bridal Trail or the Company's Property under the terms of this Memorandum of Agreement.
2. Have the authority to terminate and/or reschedule any Event within 60 days upon assessment that conditions are considered too hazardous and dangerous for public access.
3. Establish a hike information and reservation system for public participation in the Events.
4. Provide a plainly worded DLNR waiver or release of liability form, which shall be signed by each member of the public, or a parent or guardian for a child younger than eighteen (18) years of age, as a requirement for participation in the hiking event. DLNR shall not permit any person to participate in an Event until he or she (or, if applicable, their parent or legal guardian) has signed both Company and DLNR waiver forms.
5. In coordination with the Company, arrange for the attendance of a representative of Na Ala Hele or a trail guide authorized by the Company at each Event.

C. The Company and DLNR will require each member of the public participating in an Event to do the following:

1. Be responsible for determining his/her own ability to complete the hike along the Trail. Each child under the age of eighteen (18) years shall have the permission of a parent or guardian.
2. Prior to or at the time of the Event, submit to DLNR and/or the Company properly executed Company and DLNR waiver/release forms.
3. Be responsible for the clean up and removal of all trash and debris resulting from the public member's participation in the Event.
4. Notify the accompanying Company and/or DLNR representative immediately upon discovering damage to or disrepair of the Company's Property resulting from any Event.
5. Notify the accompanying Company and/or DLNR representative immediately upon discovering any hazardous or unsafe conditions on or within fifty (50) feet of the Trail or on the Company's Property.

6. Notify the accompanying Company and/or DLNR representative immediately of any injuries to persons or damage to property that may have occurred as a result of the Event.

7. When bringing children, supervise them at all times. All children under the age of eighteen (18) years of age shall be accompanied by an adult chaperone.

8. Arrange transportation to the trail head and a pickup at the destination upon hike completion.

This Memorandum of Agreement may be amended upon the mutual approval of the Company and the Chairperson of the Board of Land and Natural Resources or his/her representative or terminated upon approval of the Board of Land and Natural Resources.

IN WITNESS WHEREOF, Haleakala Ranch Company and the State of Hawaii have executed this Memorandum of Agreement as of the date first above written.

HALEAKALA RANCH COMPANY

By: \_\_\_\_\_

Its \_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

STATE OF HAWAII, DEPARTMENT  
OF LAND AND NATURAL RESOURCES

By:\_\_\_\_\_

Its\_\_\_\_\_

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF                            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
(Print name)  
My commission expires:\_\_\_\_\_