

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

January 10, 2014

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST APPROVAL TO ISSUE AN INVITATION FOR BIDS AND TO AWARD, EXECUTE, AMEND, AND EXTEND A CONTRACT TO CONDUCT AN ARCHAEOLOGICAL INVENTORY PURSUANT TO CHAPTER 6E, HAWAII REVISED STATUTES, FOR PROPOSED SUBJECT LAND EXCHANGE, AND OF A PORTION OF THE ALLEGED HISTORIC TRAIL CROSSING LAND OWNED BY HALEKALA RANCH COMPANY, DISTRICT OF MAKAWAO, AHUPUA‘A OF KALIALINUI, MAUI, TMK: (2) 2-3-005:004, AND;

REQUEST APPROVAL TO ISSUE AN INVITATION FOR BIDS AND TO AWARD, EXECUTE, AMEND, AND EXTEND A CONTRACT TO CONDUCT ENVIRONMENTAL REVIEW OF PROPOSED SUBJECT EXCHANGE, AND FOR THE WAIOPAI KAHIKINUI FOREST RESERVE ACCESS ROAD, CROSSING LAND OWNED BY HALEKALA RANCH COMPANY, DISTRICT OF KAUPU, AHUPUA‘A OF NA KULA, MAUI, TMK: (2) 1-8-001:004, AND;

REQUEST DISAPPROVAL OF THE REQUEST BY PUBLIC ACCESS AND TRAILS HAWAII (PATH) TO ISSUE A LAND LEASE TO PATH OF A PORTION OF THE ALLEGED HISTORIC TRAIL CROSSING LAND OWNED BY HALEKALA RANCH COMPANY, DISTRICT OF MAKAWAO, AHUPUA‘A OF KALIALINUI, MAUI, TMK: (2) 2-3-005:004, AND;

REQUEST APPROVAL FOR THE CHAIRPERSON TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH HALEKALA RANCH COMPANY TO AGREE, IN PRINCIPLE, TO TERMS FOR A PROPOSED EXCHANGE OF A PORTION OF THE ALLEGED HISTORIC TRAIL CROSSING LAND OWNED BY HALEKALA RANCH COMPANY, DISTRICT OF MAKAWAO, AHUPUA‘A OF KALIALINUI, MAUI, TMK: (2) 2-3-005:004, AND FOR THE WAIOPAI KAHIKINUI FOREST RESERVE ACCESS ROAD,

CROSSING LAND OWNED BY HALEKALA RANCH COMPANY,
DISTRICT OF KAUPU, AHUPUA'A OF NA KULA, MAUI, TMK: (2)
1-8-001:004, BETWEEN THE STATE AND HALEAKALA RANCH
COMPANY, FOR FUTURE CONSIDERATION BY THE BOARD
PURSUANT TO §171-50, HAWAII REVISED STATUTES AND ALL
OTHER APPLICABLE LAWS.

BACKGROUND

The Highways Act of 1892 (Act), codified in §264-1, Hawaii Revised Statutes (HRS), provides for public ownership of certain trails, highways, and non-vehicular rights-of-way. Applicability of the Act in practice requires extensive research be conducted to support state ownership by way of the Act. The department performed such research in May 2000 in order to determine whether an alleged historic trail crossing private lands owned by Haleakala Ranch Company (HRC) is a public trail. The subject trail is thought to traverse HRC's working livestock ranch from the mauka 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 disputed, although there are wooden fingerposts and remnants of stone ahu that may mark the historic route (Exhibit 1). Based on the records search and abstract, in consultation with the Department of the Attorney General, the department concluded that there is significant evidence to support state ownership of the trail.

In a letter to the department dated May 15, 2003, HRC informed the department that it does not agree that the state owns the trail and provided an explanation to support its position. Certain concerned citizens notified the department that they believed that the state owned the trail and that the trail should be opened to the public for unregulated access. The department declined to do so, but engaged HRC in discussions to develop opportunities for public access to the trail through the establishment of scheduled guided hikes. Those discussions culminated in the development of a memorandum of agreement (MOA) between the department and HRC that provides for a minimum of two guided hikes per year, scheduled using a reservation system maintained by the department, and led by a representative from the department or HRC. The MOA was approved by the board at its May 11, 2012 meeting and executed by the parties upon approval.

Although not yet reflected in the MOA, in practice HRC is scheduling hikes as needed to meet public interest and demand. To date, the reservation system that has been employed under the MOA has provided for nine trips between August 2012 and December 2013, with attendees numbering from 4 to 25 per trip. All persons that have signed up under the reservation system and shown up for the hike have been accommodated. The department maintains that the public use of the trail that is presently provided represents a reasonable accommodation for the public use of the trail that is consistent with levels of desired use, provides a practical and economical means to address the concerns of HRC regarding potential negative impacts to their private lands and operations, and is consistent with the department's rules and practices.

In a series of communications, representatives of PATH, including Mr. Tom Pierce, on behalf of his clients, objected to the MOA, urged the department to pursue ownership of the trail, and

expressed their belief that the trail should be opened to unfettered public access. In January 2011, Mr. Pierce filed suit against HRC and the department, seeking that the court determine that the state owns the trail, and that the court order the department to open the trail to unrestricted access. The State's attorneys' attempted to dismiss the case on the basis that it is up to this Board rather than plaintiffs to pursue quiet title claims. The court refused to dismiss and indicated that title to the trail would be determined in the case.

Mr. Pierce and his team have dedicated substantial effort and research and put together a compelling argument supporting State ownership of the trail. Based on the court's ruling and plaintiffs' efforts, the department, in December 2012, agreed to join with the plaintiffs in arguing in the lawsuit that the State owns the trail. The State and plaintiffs executed a joint prosecution agreement.

PROPOSED LAND EXCHANGE

The department and HRC, along with numerous other partners, have, for years, collaborated on a wide range of public-private partnerships for the public benefit, including participation in two multi-landowner watershed partnerships on Haleakala, establishment and preservation of rare ecological communities at Waikamoi Preserve, and protection and recovery of rare and endangered plants and animals. In April 2013, the department entered into discussions with HRC to determine whether an agreement could be established that would provide a greater public benefit than would be achieved from the benefits expected from the civil suit alone. The department indicated that it had a long standing interest in securing public access to the eastern portions of the Kahikinui Forest Reserve, and portions of that land that were recently designated as the Na Kula Natural Area Reserve (NAR).

In recent years, the department has focused a significant amount of management effort and funding to protect and restore the native forests of the eastern portions of the Kahikinui Forest Reserve and the Na Kula NAR as a priority project of the department's watershed protection initiative, to restore the indigenous ecological communities of the region, to provide habitat for the recovery of numerous endangered species, and to provide public recreational opportunities in the form of hunting, hiking, camping, and nature experience (Exhibit 2). However, no public access to those lands and resources exists at this time due to the rugged and remote nature of the lands and because the public lands remain land locked, surrounded by lands through which public access is not allowed. Acquisition of a public access route to the reserves would enable the department to revisit the potential development of a network of trails and cabins that had been envisioned many years ago, but was not developed due to the absence of any access routes.

The department and HRC proposed that an exchange of lands be made, pursuant to the provisions of chapter §171-50 HRS, and other applicable laws, in which HRC acknowledged state ownership of the alleged trail, the state relinquished title to the alleged trail to HRC and secured, in exchange, a perpetual easement over a certain road near Waiopai, extending from the public highway, mauka to the boundary of the state lands, provided that public access to the alleged trail would continue in perpetuity, at a level commensurate with anticipated public demand, through a perpetual MOA that runs with the land, provided further that an environmental assessment is conducted pursuant to chapter 343, HRS, that an archeological

inventory is conducted pursuant to chapter 6E, HRS, and that consideration of the findings of those assessments be made to ensure that any restrictions, covenants, or conditions necessary for the protection of environmental or cultural resources are provided for. The department believes that such a land exchange may represent the alternative with the highest level of public benefit (Exhibit 3).

PROPOSED LEASE OF ALLEGED TRAIL

The department sought to engage Mr. Pierce, in his capacity as attorney for PATH, in the discussions concerning the potential land exchange. Mr. Pierce indicated to the department that he objected to any such exchange and proposed instead, in a letter dated December 9, 2013, that the department issue a lease for the alleged trail to PATH or another suitable party (Exhibit 4). Mr. Pierce contends that such an alternative serves the public benefit because, 1) a higher level of public benefit would be realized since the state would continue to own the alleged trail, 2) the lessee would provide a more desirable management of public access, 3) the proposed access easement at Waiopai could be secured by the state through eminent domain proceedings, 4) HRC would not be able to use the alleged trail for its private gain, and, 5) such an exchange would result in litigation, presumably from lawsuits filed by PATH.

The department appreciates the efforts by PATH to identify agreements and approaches that would provide the greatest public benefits with regard to public access in light of the disagreements among the parties concerning ownership of the alleged trail and the pending litigation. However, the department does not concur that PATH has identified an alternative that achieves that goal and provides an analysis of alternatives below to support its position that the proposed land exchange provides the highest level of public benefit and its recommendation that the negotiations pursuant to the proposed land exchange continue.

ANALYSIS

The department provides the following analysis of public benefit in support of this request. The alternatives and potential public benefits are as follows:

- 1) Proceeding with litigation to establish that the state owns the alleged trail, and resulting in the plaintiffs and the state prevailing as to ownership. This would result in:
 - a) The state assuming management of the alleged trail, including regulation of use consistent with the administrative rules of the department. The department expects that the level of public use of the trail under this alternative would be similar to use under the MOA, since, under the MOA, all persons wishing to use the trail have been accommodated. This alternative would not result in gaining public access to the Na Kula NAR and Kahikinui Forest Reserve through the Waiopai access route unless HRC remained willing to do the exchange after trial. HRC has indicated it will not do so and plaintiffs will continue to oppose the exchange; or
 - b) As proposed by PATH, the state leasing the alleged trail to PATH or another entity. As PATH has implied, its intention would be to provide unregulated access to the trail. However, since the management of the trail under the MOA appears to be sufficient to accommodate the public's desired use of the trail, given that all persons wishing to use

the trail have had the opportunity to do so, the department suggests that little added benefit would be achieved from a management framework that provided unregulated access to the trail. This alternative would not result in gaining public access to the Na Kula NAR and Kahikinui Forest Reserve through the Waiopai access route.

- 2) Proceeding with litigation to establish that the state owns the alleged trail, and resulting in the plaintiffs and the state losing the case as to ownership. This represents a risk involved in proceeding with litigation, in which the access provided to the alleged trail through the MOA may be threatened, and no access to the Waiopai route would be secured.
- 3) Carrying out the proposed land exchange. In this case, the public would continue to have access to the alleged trail through a revised MOA, at a level consistent with public demand, and would have the additional benefit of access to more than 3,500 acres of department reserves for the purpose of recreation, hunting, wildlife viewing, and nature experience.

Regardless of the high quality of plaintiffs' work there is no guarantee that litigation will result in state ownership of the trail. Therefore, in light of the risk of losing the lawsuit, the minimal additional benefit to public access resulting from prevailing in the lawsuit, and the significant added benefit from the land exchange, in the form of public access through the Waiopai route, the department believes that the land exchange provides the highest public benefit and the best alternative.

The department does not concur with the assertions made by PATH in its letter of December 9, 2013, in which PATH contends that leasing the alleged trail to PATH or another entity will provide a greater public benefit than the proposed land exchange for the following reasons:

- 1) PATH argues that state ownership of the trail, per se, provides a higher level of public benefit. The department disagrees. Ownership per se does not, in and of itself, confer a public benefit; rather, it is the management of and access to the trail that has the potential to impact public benefit.
- 2) PATH argues that the lessee would provide a greater level of public benefit, presumably by providing unregulated access to the trail, than HRC would under the MOA. Even assuming PATH has the resources to make good on this promise, the department does not concur that this is necessarily the case, since it is the intention of the department to revise the MOA, as a condition of the land exchange, to provide a level of public access that is consistent with public demand.
- 3) PATH argues that the public benefit may be compromised if HRC is allowed to enjoy private gain from the trail. The department appreciates this concern and notes that the current MOA ensures that public access to the alleged trail is available free of charge, and intends to ensure that public access provided under any revised MOA be available free of charge to the public.
- 4) PATH argues that the Waiopai access may be acquired by the state through eminent domain proceedings. While this may be true in theory, such proceedings would be lengthy, expensive, technically and legally complicated, and would not necessarily achieve the desired goal.
- 5) PATH argues that the public benefit will suffer as a result of lawsuits it intends to file.

The department appreciates this concern and urges PATH to recognize that the greatest public benefit will be achieved through the proposed land exchange and not through continued litigation. In any event, PATH's remaining claims attempt to usurp this Board's right and duty to control public lands. The department opposes any such claims in principle and with respect to this case.

CHAPTER 343 ENVIRONMENTAL REVIEW

In accordance with the requirements of §343-5, HRS, and as mentioned above, an environmental review will be conducted before the proposed land exchange is effected. This submittal does not ask the Board to approve the exchange because that can only be finally decided with the benefit of the information to be provided by the chapter 343 document. Rather this submittal asks the Board to determine that the proposed exchange is deserving of further study as required by law and for approval to conduct feasibility and planning studies for a possible future project that the agency has not yet approved.

CHAPTER 6E REVIEW

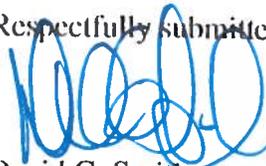
The State Historic Preservation Division has sent a letter pointing out that the exchange may result in disposition of historic property associated with the alleged trail and that § 6E-7 may be applicable to the exchange (Exhibit 5). Accordingly this submittal also requests Board approval for further study in accordance with SHPD recommendations.

RECOMMENDATIONS

That the Board of Land and Natural Resources:

1. Approve the Division of Forestry and Wildlife to retain services or solicit, award, execute, amend, or extend a contract for the completion of an archaeological inventory, pursuant to chapter 6E, HRS, in compliance with state procurement statutes, chapter 103D, and associated rules for the subject alleged trail and proposed land exchange.
2. Approve the Division of Forestry and Wildlife to retain services or solicit, award, execute, amend, or extend a contract for the completion of an environmental review, pursuant to chapter 343, HRS, in compliance with state procurement statutes, chapter 103D, and associated rules, for the proposed exchange, to include modifications to the subject Waiopai access route.
3. Disapprove the request from PATH that the Division of Forestry and Wildlife enter into a lease agreement for the subject trail with PATH or another entity.
4. Approve that the Chairperson negotiate and execute an agreement with Haleakala Ranch Company to agree, in principle, to terms for a potential exchange for the subject lands, provided that such an agreement does not constitute approval of the exchange, which shall be subject to approval by the board at a future meeting, and subject to section 171-50, and all other applicable laws of the state, including but not limited to chapter 6E and chapter 343.

Respectfully submitted,

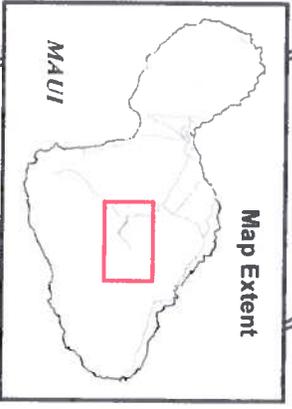


David G. Smith
Acting Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson
Board of Land & Natural Resources



Map No. FW - 1188 (12/2013)



KULA HIGHWAY

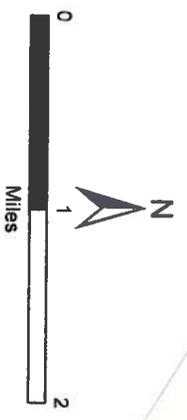
Kekaulike Avenue

To Makawao
Olinda Road

Haleakala Crater Road

To Haleakala Crater Summit

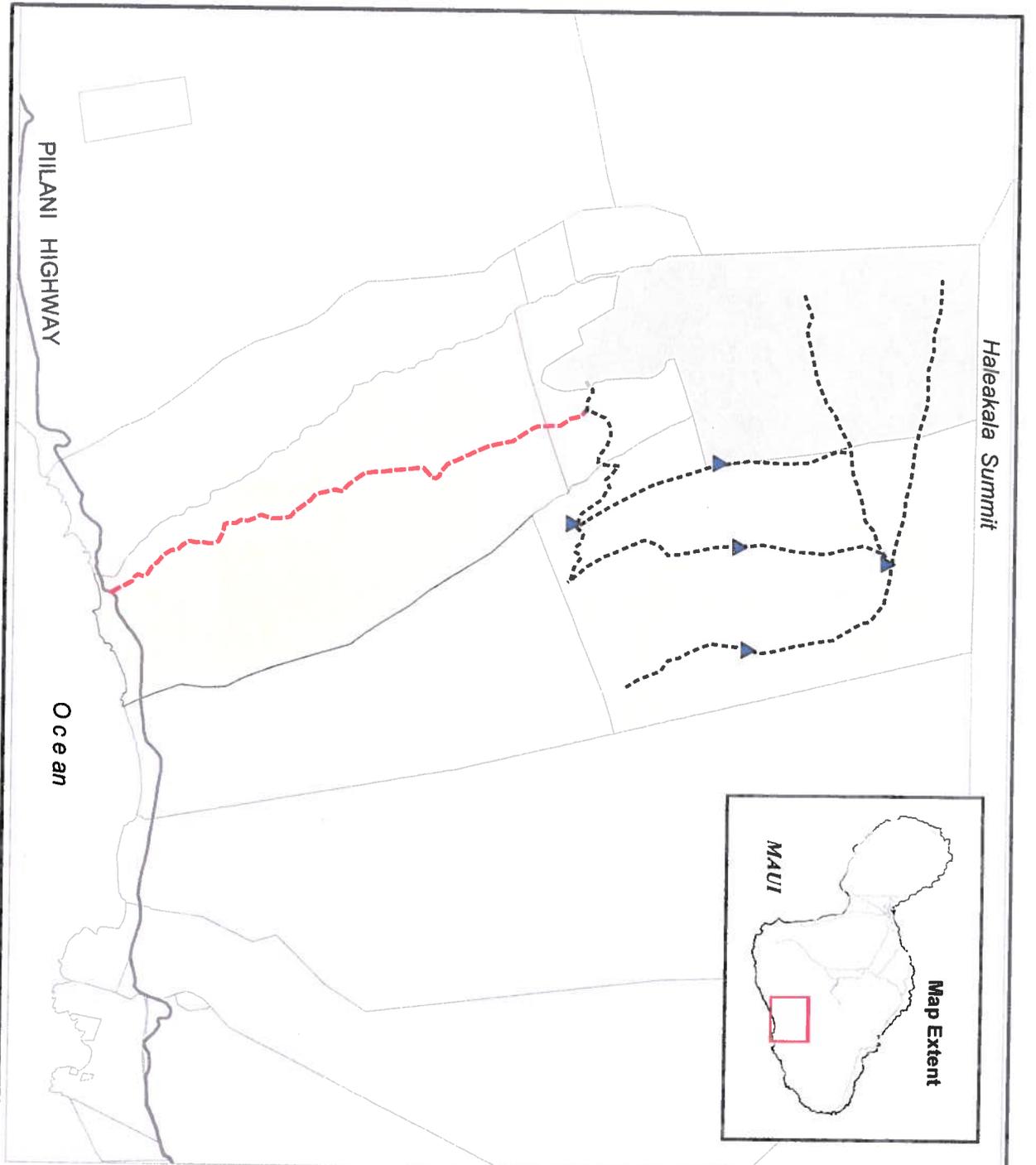
Park Access Road



Legend

- - - Bridle Trail
- - - - Unimproved/4WD Road
- TMK 223005003 & 223005004 Haleakala Ranch Co.
- Haleakala National Park

EXHIBIT "T"



Legend

- - - Wailaulau Access
- - - Trails
- ▲ Camps and Cabins
- TMK 218001004
HALEAKALA RANCH CO.
- Kahikimui Forest Reserve
- Na Kula Natural Area Reserve
- State Land

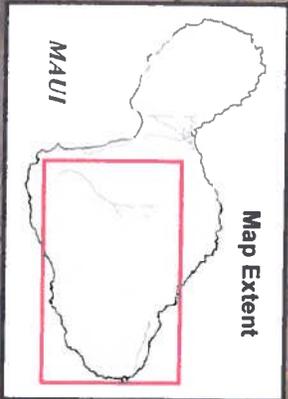


EXHIBIT "2"



Map No. F.W. - 1189 (12/2013)





Legend

-  Trails
-  Haleakala Ranch Co.
-  Haleakala National Park
-  Kahikinui Forest Reserve
-  Na Kula Natural Area Reserve

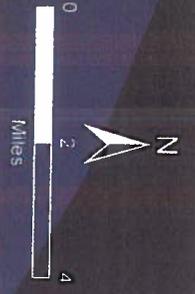
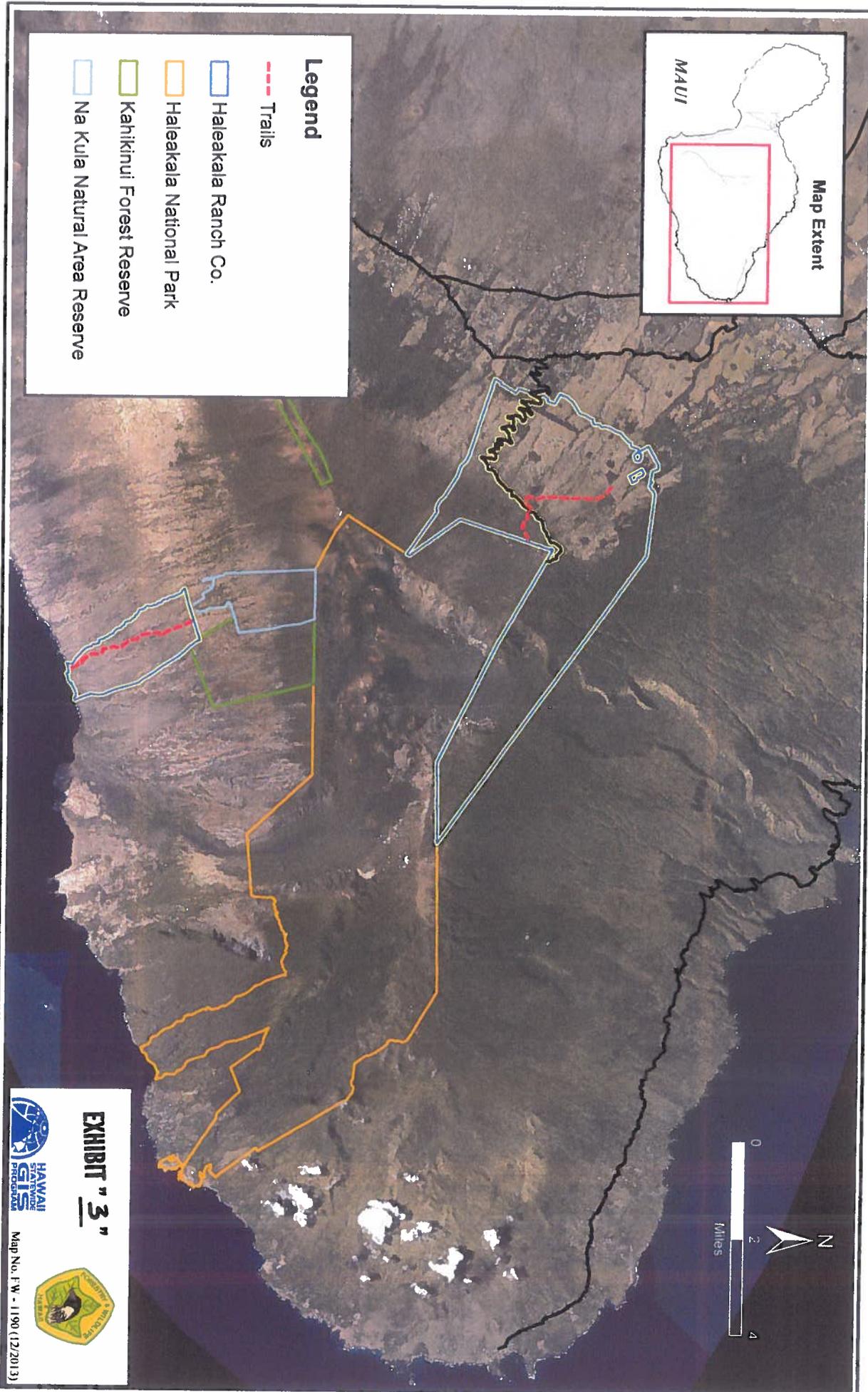


EXHIBIT "3"




Map No. E-W - 1190 (12/2013)

TOM PIERCE, ATTORNEY AT LAW
A Limited Liability Law Company

PROPERTY • LAND CONSERVATION • LAND USE • RENEWABLE ENERGY • NONPROFIT

TOM PIERCE
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PETER N. MARTIN (Of Counsel)*
peter@mauilandlaw.com

December 9, 2013

William Aila
Chair
Board of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, Hawai'i 96809

VIA EMAIL & U.S. MAIL

william.j.aila@hawaii.gov

**Re: BLNR Agenda Item: Lease or Purchase of Haleakala Trail by a Maui
501(c)(3) Nonprofit**

Dear Mr. Aila:

I represent Public Access Trails Hawai'i ("PATH"), which is 501(c)(3) tax exempt Hawai'i nonprofit corporation with the mission of building community ties by connecting people and places through trails, urban paths and bikeways. Haleakala Ranch Company (HRC) has made a proposal ("HRC's Proposal") to the Department of Land and Natural Resources (DLNR) to exchange Haleakala Trail¹ for a strip of land in East Maui owned by HRC that would be used to provide vehicular access to the Kahikinui Forest Reserve Hunting Unit A and the Nakula Natural Area Reserve (the "Kahikinui/Nakula Access"). It is our understanding that DLNR plans to submit a recommendation to the Board of Land and Natural Resources (BLNR) to approve HRC's Proposal, and that this will be heard by BLNR in January 2014.² *We are*

¹ The location of Haleakala Trail is not in dispute, as may be seen from the negotiations between DLNR and HRC. It is the trail as opened, laid out, and built by the Territory of Hawai'i in 1905. The portion at issue runs from the top of Olinda road, in Makawao, Maui, to the boundary with Haleakala National Park. This portion runs through land owned by HRC, namely: Land Commission Award 7124, Royal Patent 8164, to Kama'ika'aloa, in the *ahupua'a* of Kalialinui, Island and County of Maui, State of Hawai'i, and bearing tax map key number: (2) 2-3-005-004.

² PATH has separately identified the HRC Proposal as illegal, and does not waive any rights with respect to that position. See letter from T. Pierce to W. Aila and N. Ayers, through W. Wynhoff, dated 11/14/2013, and attachments thereto.

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EXHIBIT "4"

requesting the BLNR put on the same agenda an alternative proposal (“PATH’s Proposal”), which will result in much greater public benefit, with less administrative burden on BLNR, as described below.

PATH’s Proposal

PATH’s Proposal is much more administratively simple because it will not require appraisals, or require referral to the legislature. It will also result in greater benefits to the public.

- We propose that BLNR lease Haleakala Trail to PATH, or another 501(c)(3) identified by PATH, or to the National Park Service), with such lease terms as may be appropriate. The law governing BLNR specifically identifies and encourages this type of lease:
 - HRS § 171-43.1 provides BLNR may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to a 501(c)(3) organization; and
 - HRS § 171-36.2 provides BLNR may lease public lands in the State for use in historic preservation and restoration projects through price negotiated by BLNR.
- In the event BLNR would prefer to convey Haleakala Trail in fee simple, see footnote for PATH’s alternate proposal.³

PATH’s Proposal Is Based on the Same Premises Applied to HRC’s Proposal

The same premises apply to the two proposals (including PATH’s alternative proposal):

- The State of Hawai’i (“State”) owns, or will soon be determined to own, Haleakala Trail;

³ **PATH’s Alternate Proposal:** PATH will pay the State in cash five percent (5%) more than the appraised fair market value of the Kahikinui/Nakula Access. In return for PATH’s payment, the State will convey, in fee simple, Haleakala Trail to PATH, or as agreed to by PATH, to another tax exempt nonprofit with a similar mission and public access values (or, alternatively, to the federal government pursuant to a program similar to the Ala Kahakai National Historic Trail on the island of Hawai’i). To the extent necessary, PATH is prepared to post cash to be held in trust by the State for the anticipated fair market value of the Kahikinui/Nakula Access, plus five percent.

- DLNR is willing to convey Haleakala Trail in fee simple, or some lesser interest, to private persons or entities, subject to meeting any regulatory requirements, including receiving the fair market value for Haleakala Trail; and
- HRC is willing to convey the Kahikinui/Nakula Access to the State in exchange for its fair market value.⁴

PATH's Proposal Has Much Greater Benefit to the Public, and the State

PATH's Proposal will result in greater proceeds to the State of Hawai'i, and greater benefits to the public:

- Under the lease to PATH or other Maui nonprofit or to the National Park Service, the State will still own Haleakala Trail for perpetuity;⁵
- Once conveyed to this organization (in fee or by lease), Haleakala Trail can be managed for true public access, as opposed to the inherently flawed "guided hikes" that HRC proposes to continue conducting;
- The Kahikinui/Nakula Access can still be purchased by the State either through agreement with HRC or through a simple eminent domain proceeding, at which time HRC will receive fair market value for the Kahikinui/Nakula Access, the same as it would have under the land exchange rules;⁶
- HRC will not be able to use Haleakala Trail for its own private gain, which it otherwise would have been permitted to do under HRC's Proposal; and
- The State will avoid years of litigation, which would ensue from HRC's Proposal due to the violations of law relating to it that have been identified by PATH (see footnote 2).

⁴ According to the documents we have seen, HRC is only willing to only convey a *non-exclusive easement* in return for the *fee simple* Haleakala Trail. We anticipate the State will at a minimum require a fee simple exchange for a number of reasons.

⁵ Alternatively, if BLNR prefers to sell Haleakala Trail to a nonprofit, it would receive five percent more cash value for Haleakala Trail than would have been attained through HRC's Proposal.

⁶ See Hawai'i Revised Statutes ("HRS") § 101-2 ("Private property may be taken for public use"); HRS § 101-23 (establishing essentially fair market value as what must be paid to the private landowner).

12/9/2013

Letter to William Aila re Lease of Haleakala Trail to a nonprofit

Page 4

TOM PIERCE
ATTORNEY AT LAW

A Limited Liability Law Company

Conclusion

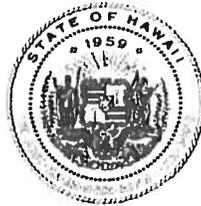
Mr. Aila, at your earliest convenience please confirm that DLNR will submit this to BLNR on the same agenda at which HRC's Proposal will be considered. Addition of PATH's Proposal is good for BLNR's decision making, as well as for the public. BLNR needs to know there are other alternatives to HRC's Proposal that better benefit the public. To the extent DLNR desires more supporting material for PATH's Proposal, please feel free to contact me, and we will provide the same.

Very Truly Yours,



Tom Pierce

cc: Client
Bill Wynhoff (attorney for DLNR)
Michael Gibson (attorney for HRC)
Senator Kalani English
Lieutenant Governor Shan Tsutsui
Guy Archer (Hawai'i Trail and Mountain Club)
Randy Ching, Robert Harris, Lucienne DeNaie (Sierra Club)
Sterling Wong (Office of Hawaiian Affairs)
Bianca Isaki (KAHEA: The Hawaiian-Environmental Alliance)
Marti Townsend (The Outdoor Circle)



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND FISH RECREATION
BUREAU OF GREAT WATERS
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DEVELOPMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOOA WILDLIFE AND RESERVE COMMISSION
LAND
STATE PARKS

**HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

December 10, 2013

MEMORANDUM

Log No: 2013.5307
Doc No: 1312MD11
Archaeology

TO: William Aila, Chairperson
Department of Land and Natural Resources
P.O. Box 616
Honolulu, HI 96809
(William.J.Aila@hawaii.gov)

FROM: Theresa K. Donham, Archaeology Branch Chief 

SUBJECT: Chapter 6E-7 Historic Preservation Review -
Haleakalā Historic Trail – Proposed Land Exchange
Kalialinui and Hā'iku Uka Ahupua'a, Makawao District, Island of Maui
TMK: (2) 2-1-various

On December 9, 2013, SHPD was copied on a letter from Tom Pierce to William Aila and Nelson Ayers dated November 14, 2013 regarding the subject land exchange. According to this letter, DLNR has decided to expedite a land exchange with Haleakalā Ranch that would transfer the 3.3 mile Haleakalā Trail to private ownership in exchange for undeveloped land on which to construct a jeep trail to access the State Forest Reserve. We understand that the Land Board may be considering his transfer/exchange in January and we would like to provide comments.

SHPD staff archaeologist Jenny Pickett conducted an inspection of the Haleakalā Trail March 25-26, 2013 in connection with *Public Access Trails vs. Haleakala Ranch, et al.* The results of the site inspection confirmed that the trail is a historic property with multiple associated features and construction elements, including curbstones, markers (*ahu*), overhang shelters, petroglyphs, mounds, an additional trail, and other features. The Haleakalā Trail is significant under multiple Hawai'i Register of Historic Places criteria (A, C, D and possibly B), and under Hawaii Administrative Rule §13-275-6 Criterion "e" for cultural value; it is eligible for listing on the State and National Registers of Historic Places. It is currently listed in the State Inventory of Historic Places as Site 50-50-11-7749. **Transfer of this historic property without the appropriate restrictions, covenants or conditions relating to its preservation will constitute an adverse effect.** Pursuant to HRS Chapter 6E-7, SHPD recommends that an archaeological inventory survey be conducted of the Haleakalā Trail and adjacent lands, so that the DLNR has sufficient information to frame appropriate covenants and restrictions for inclusion in the transfer documents. These covenants would include, but not be restricted to, designation of an appropriate buffer zone to ensure preservation of the trail and associated features, rights of public access, maintenance, restoration and repair [§6E-7(b)]. We recommend that no transfer occurs until the inventory survey and appropriate mitigation measures/covenants are completed.

Please contact me at (808) 933-7653 (Theresa.K.Donham@hawaii.gov); or Morgan Davis at (808) 243-4641 (Morgan.E.Davis@hawaii.gov) if you have any questions about this memo.

cc: Nelson Ayers, Wildlife, Trails and Access Manager, Forestry and Wildlife (Nelson.L.Ayers@hawaii.gov)
Torrie Nohara, Maui Na Ala Hele, Forestry and Wildlife (Torrie.L.Nohara@hawaii.gov)

EXHIBIT "5"