

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
HONOLULU, HAWAII 96813

February 28, 2014

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

PSF No. 07HD-037
Ref. No.: LODS-28,942

HAWAII

Amend Prior Board Actions of June 8, 2007, Item D-2, Grant of Four (4) Perpetual, Non-Exclusive Easements to Kaloko Heights Associates, LLC, for Access and Utility Purposes at Kaloko and Kohanaiki, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-009: portions of 032, 057, 058, 059, 061 and 062.

The Amendment Seeks the Board's Authorization to Change the Grantee to RCFC Kaloko Heights, LLC.

BACKGROUND:

At its meeting of June 8, 2007, Item D-2, the Board of Land and Natural Resources approved Grant of Four (4) Perpetual, Non-Exclusive Easements to Kaloko Heights Associates, LLC, for Access and Utility Purposes, Kaloko and Kohanaiki, North Kona, Hawaii, Tax Map Key: (3) 7-3-009: portions of 032, 057, 058, 059, 061 & 062 (the "Road to the Sea Trail"). (Exhibit A)

REMARKS:

In the processing of the above request, the Hawaii District Land Office forwarded the easement documents to Kaloko Heights Associates, LLC (KHA), for execution. For reasons unknown, the documents were misplaced twice, requiring the Department of the Attorney General to reprint the documents. When staff sent the third set of documents to KHA for execution, staff was informed that the interest of KHA in the private property benefitted by the easements had been transferred to an entity named RCFC Kaloko Heights, LLC. As a result, staff is now recommending that the Land Board authorize a change of the grantee from KHA to RCFC Kaloko Heights, LLC.

On February 15, 2012, RCFC Kaloko Heights, LLC, organized under the laws of Delaware, registered with the Department of Commerce and Consumer Affairs, to do business in Hawaii as a foreign limited liability company.

TMK: (3) 7-3-009:032, 057, 058, 059, 61 & 062

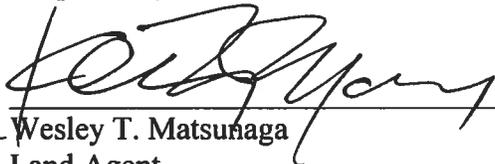
The Hawaii County Real Property Tax Office indicates that RCFC Kaloko Heights, LLC, is the legal owner of the parcels identified as TMK: (3) 7-3-009:032, 057, 058, 061 and 062.

RCFC Kaloko Heights, LLC, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

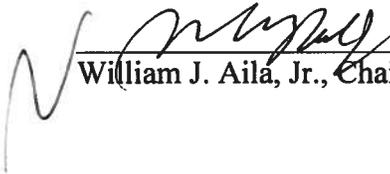
1. Amend its prior Board action of June 8, 2007, under agenda item D-2 by changing the grantee from Kaloko Heights Associates, LLC to RCFC Kaloko Heights, LLC.
2. All terms and conditions listed in its June 8, 2007 approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
HONOLULU, HAWAII 96813

June 8, 2007

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

PSF No.: 07HD-037

HAWAII

Grant of Four (4) Perpetual, Non-Exclusive Easements; Issuance of Management and Construction Right-of-Entry to Kaloko Heights Associates for Access and Utility Purposes Over the Road To The Sea Trail at Kaloko and Kohanaiki, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-09: portions of 32, 57, 58, 59, 61 and 62

APPLICANT:

Kaloko Heights Associates, LLC, a Hawaii limited liability company, whose business and mailing address is Honolulu Hawaii 96813.

LEGAL REFERENCE:

Section 171-13(2), Hawaii Revised Statutes, as amended.

LOCATION:

Portions of Government lands of the Road To The Sea Trail, situated at Kaloko and Kohanaiki, North Kona, Hawaii, which traverses private properties identified as Tax Map Keys: 3rd/ 7-3-09: Portions of 32, 57, 58, 59, 61 and 62. (formerly TMK: 3rd/ 7-3-09:Portion of 32; Lots 1 through and including 7 of SUB No. 05-000003 approved on February 24, 2006)

AREA:

0.0735 acres (3,200sq. ft.), more or less, consisting of four (4) crossings of the Road To The Sea, each approximately 10 feet wide x 80 feet in length.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Single-Family Residential RS-7.5, RS-10 and RS-15;
Multiple-Family Residential RM-3.0; and Open

as Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 8, 2007

EXHIBIT A

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES _____ NO X

CURRENT USE STATUS:

Vacant.

This portion of the Road To The Sea was demolished by the U.S. Army during World War II, sometime between 1941 and 1945. The State Historic Preservation Division has determined that preservation of this portion of the Road To The Sea is not required. Notwithstanding the poor physical condition, members of the NAH Advisory Council and interested Kona community members have expressed the notion that given the historical value of the trail, even the extremely disturbed portions should remain in place to insure the historical integrity of the route.

CHARACTER OF USE:

For access and utility:
Right, privilege and authority to construct, lay, install, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

TRAIL OWNERSHIP:

Applicant and the State have agreed, for the sole purpose of this transaction, to "agree to disagree" on ownership of this portion of the former Road To The Sea, however, for title purposes the transaction is being processed under the same provisions applicable to a purchase of State lands. Scattered archaeological remnants of the original trail are present in dislocated areas, but have been determined by SHPD as not requiring preservation.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28,

1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states, "Operations, repairs or maintenance of existing structures, facilities equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing", and Class 4, which states, "minor alterations in the condition of land, water, or vegetation". Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, Hawaii Revised Statutes, as amended.

The physical integrity of the Road To The Sea was compromised by the bulldozing of the Road To The Sea alignment within the Kaloko Heights subdivision sometime between 1941 and 1945 by the US Army. The State Historic Preservation Division has determined that preservation of this portion of the Road To The Sea is not required.

DCCA VERIFICATION:

Place of business registration confirmed: YES X No ___
Registered business name confirmed: YES X No ___
Applicant in good standing confirmed: YES X No ___

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the purchase price for four (4) easements for access and utilities across the Road To The Sea located within the Kaloko Heights Subdivision.
2. Provide survey maps and descriptions for the easements across the Road To The Sea according to State DAGS standards and at Applicant's cost.
3. Kaloko Heights Associates, LLC, shall be responsible for any compliance requirements under Chapter 343, Hawaii Revised Statutes, as amended, prior to commencement of any work activities within the proposed easement area;

REMARKS:

Applicant consulted with the Big Island Na Ala Hele Advisory Council ("NAH Advisory Council") in February 2006 on its original request to purchase and functionally realign the portion of the Road To The Sea located within the Kaloko Heights subdivision in exchange for a grant of easement for public pedestrian access within the walkways and greenspace areas along the functionally realigned Road To The Sea Trail. The NAH Advisory Council and the Kona community held several meetings and rejected the request for the functional realignment of the Road To The Sea Trail.

The Applicant then consulted with the Kona community on the alternative of establishing up to six crossings of the Road To The Sea for the Kaloko Heights subdivision. In deference to the request by the Kona community members, the Applicant reduced the crossings of the Road To The Sea from six down to four crossings, each approximately 80 feet wide. Upon further discussions with the community group consisting of certain ohana members from the area, a consensus was reached regarding treatment of the Road To The Sea Trail pursuant to the terms of the November 17, 2006 letter by Stanford Carr Development LLC to the Planning Director of the County of Hawaii. (The reference in the November 17th letter to "Kohanaiki Trail" instead of the Road To The Sea or Road To The Sea Coast is in deference to the request by the community ohana group to utilize a name that was more in keeping with the particular land area.)

The physical integrity of the Road To The Sea was compromised by the bulldozing of the Road To The Sea alignment within the Kaloko Heights subdivision sometime between 1941 and 1945 by the US Army. While the State Historic Preservation Division has determined that the physical preservation of this portion of the Road To The Sea is not required, members of the NAH Advisory Council and many interested Kona community members have expressed the notion that due to their perception of the historical and cultural value of the trail, even the extremely disturbed portions should remain in place to insure the historical integrity of the route and allow the public to traverse along the historical alignment. Historically, it is believed that the trail terminated at the Kaloko fish ponds - now a National Historical park.

Applicant is requesting perpetual, non-exclusive easements for access and utility purposes along with a management and construction right-of-entry for its Kaloko Heights Subdivision, consisting of four (4) crossings over portions of the Road To The Sea Trail as described in Exhibit A and Exhibit B. With the exception of these four (4) crossings of this portion of the Road To The Sea, the remainder of the Kaloko Heights Subdivision roads will be dedicated to the County of Hawaii.

The Applicant has not had a lease, permit, easement or other disposition of State Lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the request.

AGENCIES	COMMENTS
State of Hawaii:	
DLNR-Historic Preservation	No objections
DLNR-Land Division	No comments
DLNR-Na Ala Hele Trails	No objections

County of Hawaii:	
Planning Department	No objections
Other:	
Na Ala Hele Advisory Council (Big Island)	No objections
Office of Hawaiian Affairs	No objections

RECOMMENDATION: That the Board:

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- B. Authorize the issuance of four (4) perpetual, non-exclusive easements over and across the Road To The Sea Trail to Kaloko Heights Associates, LLC, covering the subject area identified, for access and utility purposes, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - 1. The standard terms and conditions of the most current easement document form, as may be amended from time to time;

 - 2. The easement shall run with the land and shall inure to the benefit of the Grantee, its successors and assigns, and the real property described as Tax Map Keys: 3rd/ 7-3-09: 32, 57, 58, 59, 61, and 62, provided however, that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions, and provided further, that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

 - 3. Review and approval by the Department of the Attorney General; and

 - 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- C. Authorize the issuance of management and construction right-of-entry to the Kaloko Heights Associates, LLC (hereinafter referred to as "KHA"), its consultants, contractors and/or persons acting for or on its behalf, to proceed with its development work on portions of the Road To The Sea at Kaloko and Kohanaiki, North Kona, Hawaii, relating to Tax Map Keys: 3rd/ 7-3-09: Portions of 32, 57, 58, 59, 61 and 62. This construction right-of-entry is granted under the

terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. KHA, its consultants, contractors and/or persons acting for or on its behalf, shall indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources, harmless from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of KHA, its consultants, contractors and/or persons acting for or on its behalf, under this approval or relating to or connected with the granting of this approval
2. KHA, its consultants, contractors and/or persons acting for or on its behalf, shall procure, at their own expense, and maintain during the entire period of this construction right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Department (\$500,000 per incident/ \$1,000,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death and property damage; that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of KHA, its consultants, contractors and/or persons acting for or on its behalf. KHA, its consultants, contractors and/or persons acting for or on its behalf shall furnish the State with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve KHA, its consultants, contractors and/or persons acting for or on its behalf of its responsibility under this construction right-of-entry as set forth herein or limit the amount of its liability under this construction right-of-entry;
3. KHA, its consultants and/or contractors acting for or in its behalf, shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. KHA, its consultants and/or contractors acting for or in its behalf, shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of business of KHA, its consultants and/or contractors acting for or on its behalf, and then only after written notice is given to the State of the identity of such materials and upon the State's consent which may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain

whether or not there has been any release of hazardous materials by KHA, its consultants and/or contractors acting for or on its behalf, then KHA, its consultants and/or contractors acting for or on its behalf, shall be responsible for the reasonable cost thereof. In addition, KHA, its consultants and/or contractors acting for or on its behalf, shall execute affidavits, representations and the like from time to time at the State's request concerning the best knowledge and belief of KHA, its consultants and/or contractors acting for or on its behalf, regarding the presence of hazardous materials on the right-of-entry area placed or released by KHA, its consultants and/or contractors acting for or on its behalf.

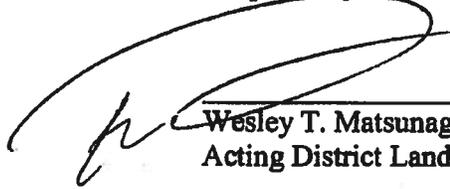
4. KHA, its consultants and/or contractors acting for or on its behalf, agree to indemnify, defend, and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while KHA, its consultants and/or contractors acting for or on its behalf, is in possession, or elsewhere if caused by KHA, its consultants and/or contractors acting for or on its behalf. These covenants shall survive the expiration or earlier termination of the construction right-of-entry.

For purposes of this "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted;

5. KHA, its consultants, contractors and/or persons acting for or on its behalf, shall comply with all applicable laws of the Federal, State and County governments relative to the rights granted herein;
6. This right-of-entry is effective upon Land Board approval and shall continue in effect until the grant of easement documents for this portion of the Road To The Sea is issued;
7. All costs associated with the construction within the right-of- entry area shall be the sole responsibility of KHA, its consultants, contractors and/or persons acting for or on its behalf;
8. KHA shall be responsible for any compliance requirements under Chapter 343, Hawaii Revised Statutes, as amended, prior to commencement of any work activities within the proposed easement area;

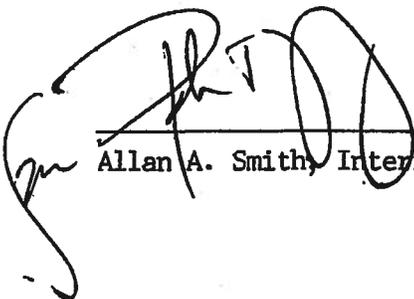
9. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, KHA shall stop work and contact the State Historic Preservation Division at (808) 692-8015, immediately;
10. KHA, its contractors, consultants and/or persons acting for or on its behalf, shall remove and properly dispose any and all trash and refuse it produces within the right-of-entry area;
11. KHA, its contractors, consultants and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general;
12. No open burning of any type shall be permitted on the right-of-entry area and/or the surrounding State lands; and
13. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Acting District Land Agent

APPROVED FOR SUBMITTAL:


Allan A. Smith, Interim Chairperson

APPROVED AND AMENDED

Add letter dated November 17, 2006 from Mr. Paul Kay, Vice President and Sr. Development Manager of Stanford Carr Development, LLC to Mr. Christopher Yuen, Planning Director for the County of Hawaii as a condition in the new easement document.

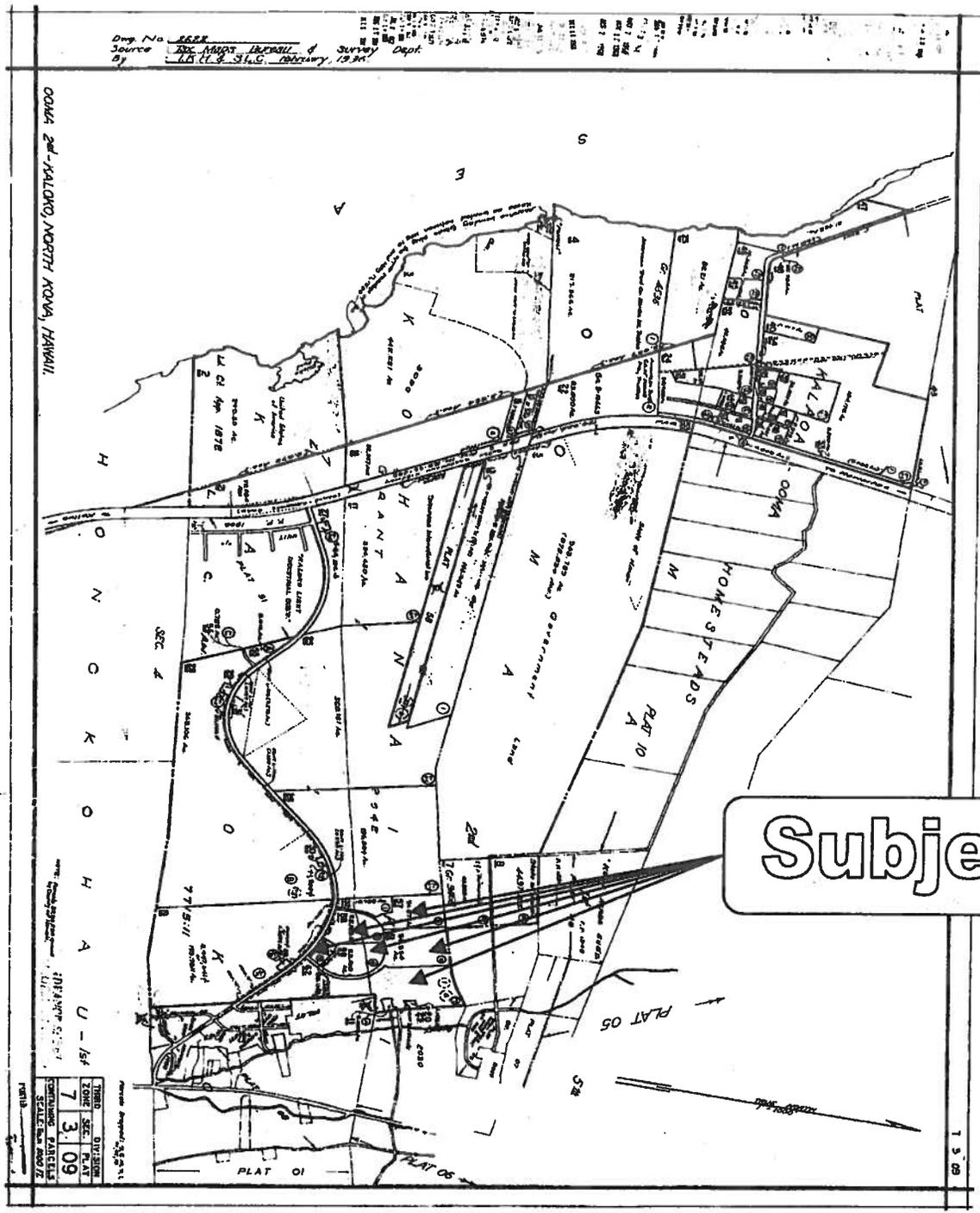


EXHIBIT A

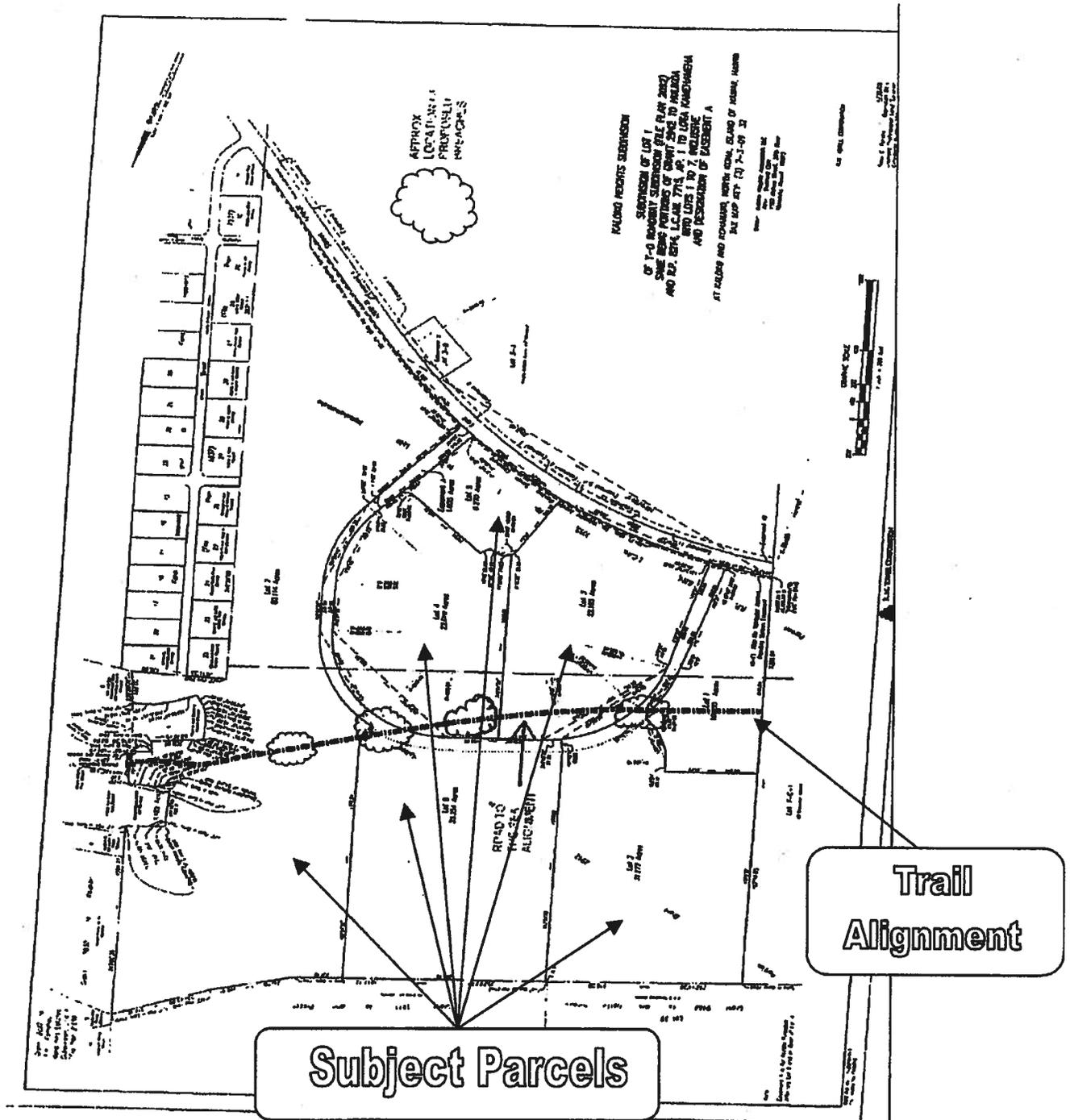


EXHIBIT B