

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

July 14, 2017

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO TERMINATE 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, DATED MAY 11, 2012.

BACKGROUND

The Highways Act of 1892 (Act), codified in §264-1(b), Hawaii Revised Statutes (HRS), provides that all trails and non-vehicular rights-of-way in existence at the time of the Act or later built by the government are declared to be public rights-of-way:

“All trails, and other non-vehicular 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 non-vehicular 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”.

Applicability of the Act in practice requires that a records search and title abstract be conducted to develop evidence of state ownership of a trail of interest pursuant to this law.

The Division performed such an abstract 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. Beyond that point, the trail continues outside HRC property through Haleakala National Park. The exact alignment was unknown, 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 Division concluded that there was 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 did 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; Exhibit 2) 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.

Seeking relief, on January 18, 2011, Plaintiffs Public Access Trails Hawaii (PATH) et al. filed a claim against HRC and the state in circuit court. The lawsuit asked the court to determine that the state owns the trail and to order the state to open the trail. On December 26, 2012, the state entered into a Joint Prosecution Agreement (Agreement; Exhibit 3) with the plaintiffs to pursue state ownership of the trail. The provisions of the Agreement included the dismissal of claims against the state in the lawsuit. The Agreement acknowledged that the plaintiffs did not agree on a number of issues related to the management, terms of use, and regulation of the use of the trail, identified as *Access and Management Issues* in section F of the Agreement. The Agreement further provided that the state would act in good faith to work with the plaintiffs to come to agreement on the Access and Management Issues in the event that the plaintiffs prevailed in the lawsuit.

In April 2014, the plaintiffs and the state prevailed. A settlement agreement was reached, in which HRC agreed not to appeal the verdict. The final court order was filed on July 18, 2016. In a letter to Suzanne D. Case, Chairperson of the Board of Land and Natural Resources, dated August 1, 2016, HRC requested that the MOA be terminated on the grounds that ownership and management of the trail have now been determined to be the responsibility of the state (Exhibit 4). The MOA provides for termination upon approval by this Board.

ANALYSIS

At the time of the establishment of the MOA, HRC disputed any claims of state ownership of the Haleakala Bridle Trail. The purpose of the MOA was to establish an agreement that would allow for reasonable terms for public use, while addressing concerns expressed by the landowner concerning ownership, liability, and impacts on HRC's ranching operations taking place on the lands through which the trail passes. The conditions of the MOA included the establishment of a sign-up system, scheduling of guided hikes, and regular coordination with HRC on routes and events. Under the MOA, all hikes are to be guided by a department, HRC, or third party representative agreeable to the department and HRC.

The maintenance of the reservation system and the guided hikes requires a significant commitment of staff time that is unusual for a public trail and places a substantial burden of expense on an already stretched Na Ala Hele program. Given the legal resolution of the ownership of the trail, the considerable expense required to implement the MOA, and the obligations of the state to act in good faith to resolve the *Access and Management Issues* identified in the Joint Prosecution Agreement, staff concurs that termination of the MOA with HRC is appropriate at this time. Staff is still pursuing potential agreement with the Plaintiffs or other appropriate entities to establish reasonable terms for public use of the trail that will better accommodate the public. Pursuant to that goal, staff have been in contact with PATH, HRC, and the Maui Chapter of the Sierra Club to engage in discussions to resolve the *Access and Management Issues* identified in the Agreement.

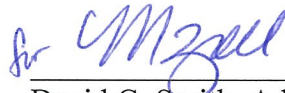
CHAPTER 343 ENVIRONMENTAL REVIEW

In accordance with the requirements of chapter 343, HRS, an environmental assessment is not required as this request does not include approval of an action, pursuant to §§343-2 and 343-5(a).

RECOMMENDATIONS

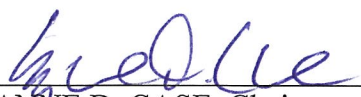
That the Board of Land and Natural Resources approve that the subject MOA be terminated, effective immediately.

Respectfully submitted,

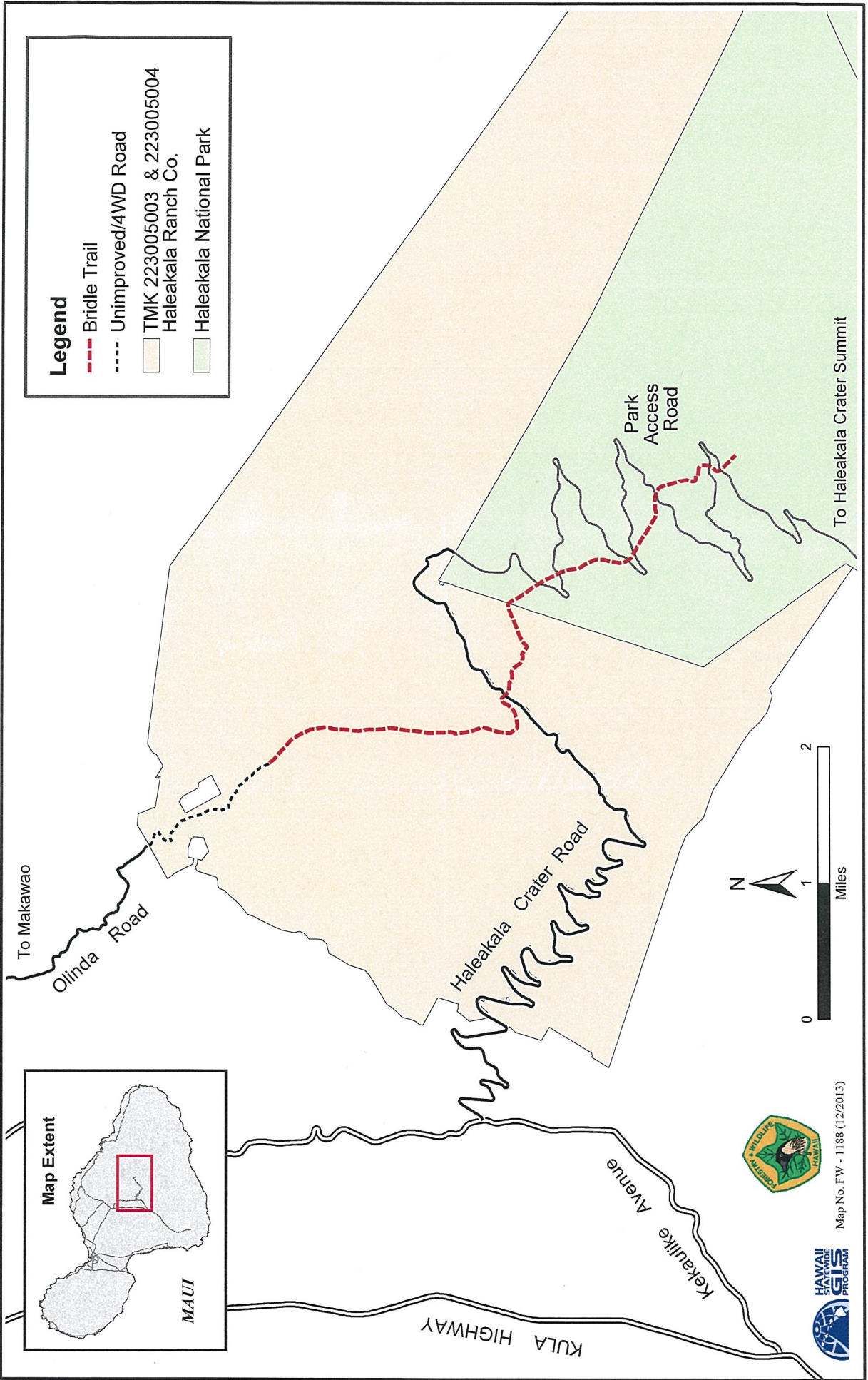


David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

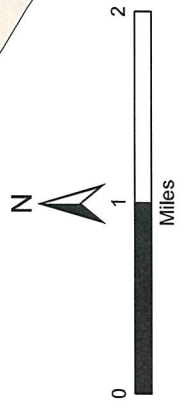
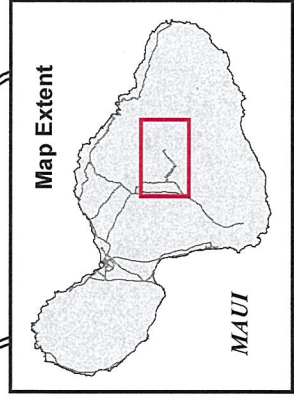


SUZANNE D. CASE, Chairperson
Board of Land & Natural Resources



Legend

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



Map No. FW - 1188 (12/2013)



KULA HIGHWAY
Kekaike Avenue

To Makawao
Olinda Road

Haleakala Crater Road

Park Access Road

To Haleakala Crater Summit

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

COPY

This Memorandum of Agreement, made and entered onto on this 11 day of May, 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."

WITNESSETH:

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 to meet reasonable demand; 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, or other Third Party agreeable to the Company and DLNR, 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: Don G-8

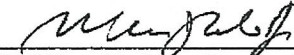
Its President

By: JCCC

Its Vice President / General Man.

Approved by the Board of Land and Natural Resources on May 11, 2012

STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES

By: 
William J. Aila, Jr.

Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:



William J. Wynhoff
Deputy Attorney General

STATE OF HAWAII)
) SS.
COUNTY OF)

On this 16TH day of MAY, 2012, before me personally appeared DON YOUNG and J. SCOTT MEIDEL, 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.

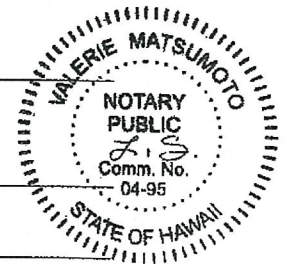
Valerie Matsumoto

Notary Public, State of Hawaii

VALERIE MATSUMOTO

(Print name)

My commission expires: FEB 29 2016



NOTARY CERTIFICATION

Document Date: Not Dated Number of Pages: 6

Name: Valerie Matsumoto Second Circuit

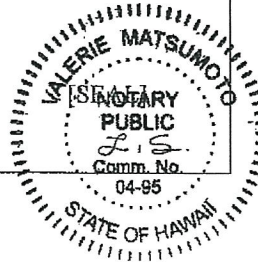
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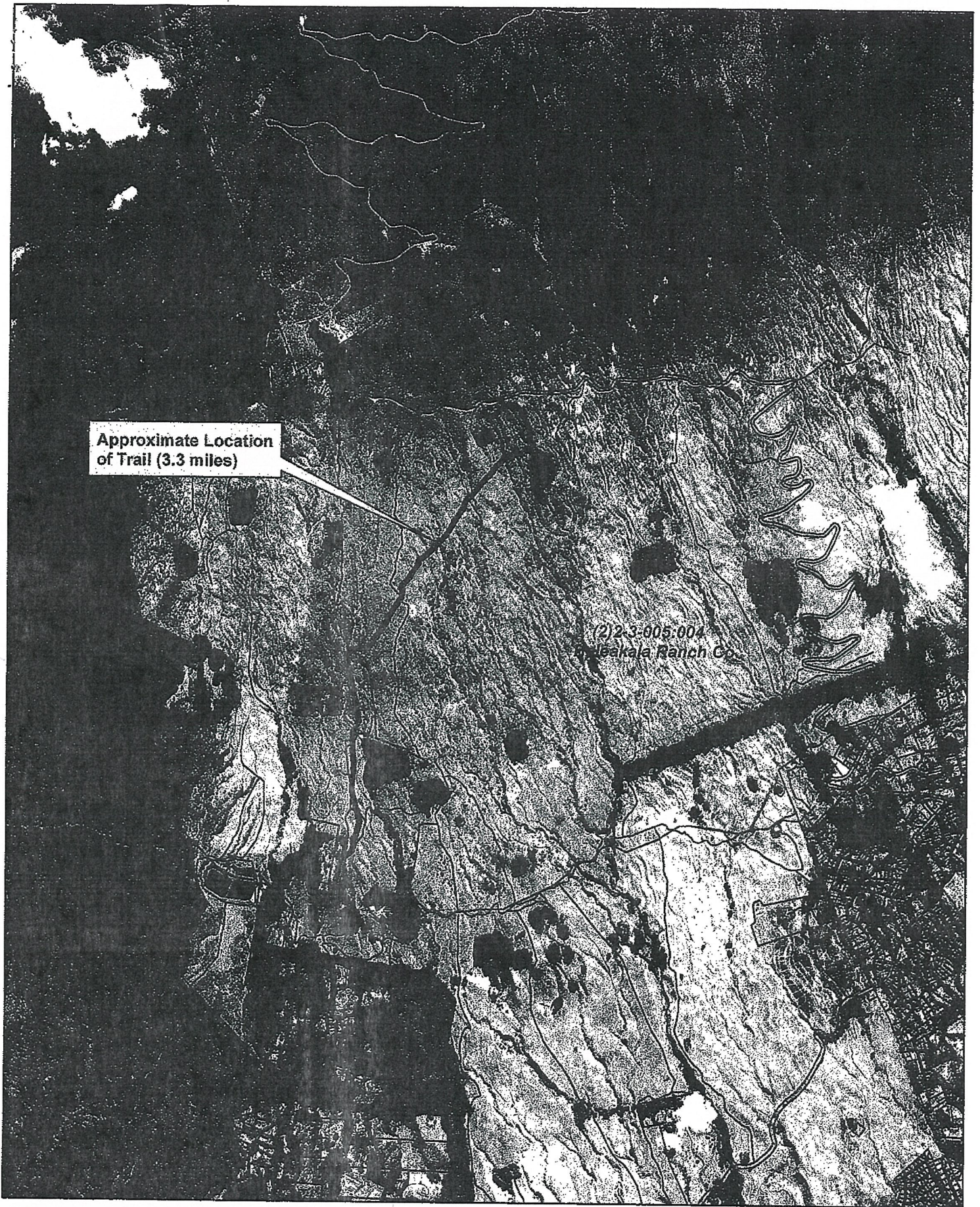
Memorandum of Agreement between the State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife Na Ala Hele Trails and Access Program and Haleakala Ranch Company for access to Haleakala Bridle Trail

Valerie Matsumoto

Notary Signature

5-16-2012
Date





Approximate Location
of Trail (3.3 miles)

(2) 2-3-005:004
Bakala Ranch Co.



1 inch = 3,140 feet

EXHIBIT A



JSM 20100329

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement ("*Agreement*") is entered on this 26 day of December, 2012, by and between the "Plaintiffs," identified below, and the "State," identified below. This Agreement is subject to Court approval. If not approved by the Court, then the Agreement is null and void, *ab initio*.

A. Definitions

"*Certified Class Members*" means collectively the class action members certified by Court Order, filed December 2, 2011, and modified by Court Order filed September 10, 2012.

"*Plaintiffs*" means collectively: PUBLIC ACCESS TRAILS HAWAII, a Hawai'i Nonprofit Corporation, and DAVID BROWN, JOE BERTRAM, III; KEN SCHMITT, individually, and on behalf of the Certified Class Members.

"*State*" means collectively: WILLIAM AILA, JR. in his official capacity as the Director of the State of Hawai'i DEPARTMENT OF LAND AND NATURAL RESOURCES and chair of the State of Hawai'i BOARD OF LAND AND NATURAL RESOURCES; DEPARTMENT OF LAND AND NATURAL RESOURCES; BOARD OF LAND AND NATURAL RESOURCES.

"*Parties*" means collectively Plaintiffs and State.

"*HRC*" means Defendant Haleakala Ranch Company.

"*Court*" means the Court of the Second Circuit, State of Hawai'i.

"*Complaint*" means the complaint brought by Plaintiffs on behalf of themselves and the Certified Class Members against the State and HRC, filed in Court on January 18, 2011.

"*Action*" means Civil Number 11-1-0031(3), related to the Complaint.

"*Trail*" means that trail, identified in historical maps and documents by names such as "Haleakala Trail," "Haleakala Bridle Trail," "Road to Haleakala," "Haleakala Mountain Trail," "Haleakala road to the summit," or "government road," and as further described in the Complaint, which crosses lands owned by HRC.

"*HRS*" means Hawai'i Revised Statutes.

"*HRCP*" means the Hawai'i Rules of Civil Procedure.

"*Favorable Ruling*" means a final judgment in favor of either of the Parties on the Joint Prosecution Claim either from the Court if no appeal is taken or after all

appeals have been fully resolved. If any appeal results in remand, then the term means a final judgment by the Court after remand.

B. Background

1. The Complaint includes seven claims for relief enumerated as Count I through Count VII.

2. Two of the claims for relief are Count III (relating to the Highways Act of 1892 and HRS § 264-1) and Count IV (relating to quiet title and HRS ch. 669), which claims generally allege that the Court should vest title to the Trail in the State of Hawai'i, either in fee simple or a lesser interest, such as an easement (collectively "*Joint Prosecution Claim*").

3. The Court recently granted Plaintiffs' motion to file a first amended complaint to allege or reallege a § 1983 claim against the State ("*the Federal Claim*"), which has not been filed with the Court, in light of the Parties' efforts to reach this Agreement.

4. The Federal Claim and Counts I, II, V, VI and VII of the Complaint are hereinafter referred to as the "*Remaining Claims*."

5. The Parties desire to jointly prosecute against HRC the Joint Prosecution Claim, subject to the terms of this Agreement.

C. Contingencies and Related Consideration by Respective Parties

1. The terms and conditions of this Agreement are contingent on the following:

- a. That the Court approves this Agreement as to the Certified Class Members, based on a motion that shall be filed by Plaintiffs consistent with the terms of this Agreement ("*Agreement Motion*").
- b. That the Court grants the State leave to file a cross-claim against HRC substantially in the form attached hereto as **Exhibit A** (the "*Cross-Claim*"), as requested in the Agreement Motion, or similar relief to the State as necessary to permit it to prosecute the Joint Prosecution Claim against HRC.
- c. That the Court grants Plaintiffs leave to dismiss without prejudice the claims against the State in the Action, as requested in the Agreement Motion.

D. Other Consideration by the State and Related State Issues

1. The State shall, at minimum, join with the Plaintiffs on substantive motions in Court against HRC with respect to the Joint Prosecution Claim, or join and support any appellate arguments in either or both of the Hawai'i appellate courts related to the Joint Prosecution Claim.

2. The State shall coordinate with Plaintiffs in the preparation of evidence for motions, evidentiary hearings, and/or trial against HRC on the Joint Prosecution Claim. This may include, but not be limited to, assisting with and providing declarations or testimony from experts from the State of Hawai'i, such as the Na Ala Hele abstractor on title or abstract issues.

3. In the event that Plaintiffs prevail on any claims for relief against HRC, the State shall not object to any efforts by Plaintiffs to seek from HRC attorneys' fees and costs of suit pursuant to the private attorney general doctrine, and/or as otherwise permitted by law.

E. Other Consideration by Plaintiffs and Related Plaintiffs Issues

1. Plaintiffs shall join in, or cooperate with, efforts taken by State to affirmatively prosecute the Joint Prosecution Claim.

2. Plaintiffs shall not file the Federal Claim, except upon the conditions set forth in Section F of this Agreement.

3. If both of the Parties fail in obtaining a Favorable Ruling on the Joint Prosecution Claim, and the Court determines title to the Trail is vested in HRC, Plaintiffs and the Certified Class Members shall not, with respect to the Trail, reallege any claim, and/or allege any other claims, against the State (including any agency or employee of the State).

4. Notwithstanding the foregoing, this Agreement shall not in any way affect the Remaining Claims and prayers for relief against HRC.

F. Agreements Relating to Access and Management Issues

1. In the event the Court determines that title to the Trail is vested in the State of Hawai'i, there remain the following types of issues over which the Parties have not reached agreement, hereinafter referred to collectively as the "*Access and Management Issues*": (1) the rights of the public to access the Trail; (2) the extent of the public's right of access; (3) whether the State has authority to limit or deny public access to the Trail;

(4) how the Trail should be maintained, improved, preserved and protected for the public's benefit; (5) whether HRC's ranch activities should be a factor in considering the public's access to the Trail; (6) the extent of State of Hawai'i funding and other resources available, if any, for managing the Trail; (7) whether management of the Trail by the State is necessary; and (8) any similar types of issues.

2. Notwithstanding the terms of this Agreement, neither of the Parties waives any of their respective rights they may have with respect to the Access and Management Issues.

3. In the event either of the Parties obtains a Favorable Ruling on the Joint Prosecution Claim, the following provisions shall apply:

- a. The Parties shall, as soon as practicable thereafter, engage in good faith settlement discussions, with or without participation of HRC, with the goal of arriving at agreement on the Access and Management Issues in the form of a "*Trail Access and Management Agreement*;" provided the Parties acknowledge any such Agreement will require at a minimum the approval of the Hawai'i Board of Land and Natural Resources in an open meeting noticed and conducted pursuant to HRS chapter 92 and any other applicable law.
- b. If the Parties execute a Trail Access and Management Agreement without the participation of HRC, they shall thereafter collectively make demands upon HRC necessary to fulfill it.
- c. If HRC refuses to fully accept the Trail Access and Management Agreement, the State shall take necessary and appropriate action to enforce said Agreement including but not limited to seeking judicial relief consistent with said Agreement. Plaintiffs, individually and/or on behalf of the Certified Class Members, may seek to join or intervene in any such action, but are not required to do so.
- d. If the Parties cannot reach agreement on the Access and Management Issues after good faith settlement efforts between themselves the following provisions shall apply:
 - i. Plaintiffs may seek to enforce against HRC, including seeking injunctive relief, any right of public access they claim they have as the result of either of the Parties prevailing on the Joint Prosecution Claim.

- ii. Plaintiffs on their own behalf and on behalf of the Certified Class Members may file a new action in the Second Circuit Court, naming the State (or its agencies or employees) as defendants, including, but not limited to, alleging or realleging against the State the Remaining Claims and the Federal Claim, and any new facts. The State shall not claim that the new action is barred by dismissal of claims pursuant to this Agreement but reserves all other rights and defenses, including the right to seek removal to federal court.

G. Miscellaneous Provisions

1. *Privileges and Work Product.* In pursuing the Joint Prosecution Claim against HRC, the Parties shall maintain between the Parties confidences regarding their strategy and drafts and assert and defend the attorney-client privilege or work product doctrine to the extent permitted by law in joint prosecution of claims by co-plaintiffs.

2. *Fees and Costs.* As to each other, each of the Parties shall bear their own attorneys' fees and costs with respect to this Agreement and with respect to the Action.

3. *Cooperation.* The rule of good faith and fair dealing shall apply to this Agreement and all parts thereof, and all actions contemplated thereto. In addition the Parties and their attorneys shall reasonably cooperate with each other in carrying out this Agreement.

4. *Effect of Material Breach.* A Party's sole remedy for a material breach is to seek from the Court a return to the status quo before this Agreement was signed. If either of the Parties believes there is a material breach of this Agreement, the Party shall provide notice and a two week opportunity to cure. If after two weeks the noticing Party believes the other Party has failed to cure or sufficiently cure the material breach, the Party may seek Court relief to return the case to the status quo before this Agreement was signed.

5. *No Party Deemed Drafter.* The Parties each having reviewed this Agreement, and each being represented by counsel agree that for purposes of construction of any provision of this Agreement, no party shall be deemed to be the sole author of any of the provisions in this Agreement, including its exhibits.

6. *Choice of Law, Venue.* This Agreement shall be governed by the laws of the State of Hawai'i and the exclusive venue for any dispute regarding this Agreement or its terms shall lie in the Circuit Court of the Second Circuit of the State of Hawai'i,

provided, however, that the State reserves the right to remove any claims to the federal district court to the extent removal is authorized by law.

7. *Complete Terms.* This Agreement supersedes each and every other prior agreement between the Parties; the terms are contractual and not a mere recital. This Agreement shall not be altered, amended, or modified except by a writing executed by the Parties.

8. *No Admission.* This Agreement, its contents, and the partial settlement it evidences, are not to be construed as an admission of any claim made by Plaintiffs, but are to be construed strictly as a compromise and partial settlement of claims between the Parties hereto for the purpose of avoiding controversies, litigation, and expenses.

9. *Survival of Provisions.* If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

10. *Counterpart Execution.* The Parties agree that this Agreement and its exhibits may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

WHEREFORE, the undersigned Parties hereby sign and execute this Joint Prosecution Agreement on the date set forth above.

"PLAINTIFFS"

PUBLIC ACCESS TRAILS HAWAI'I

By its President
David H. Brown

David H. Brown

Ken Schmitt


Joe Bertram, III

Approved as to form:

Tom Pierce
Attorney for Plaintiffs

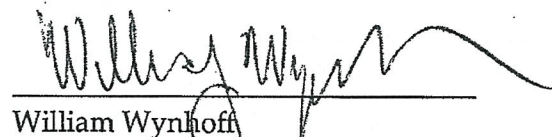
"STATE"

**WILLIAM AILA, JR. in his official capacity as the Director of the State Of Hawai'i DEPARTMENT OF LAND AND NATURAL RESOURCES and chair of the State of Hawai'i BOARD OF LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND NATURAL RESOURCES; BOARD OF LAND AND NATURAL RESOURCES**



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

Approved as to form:



William Wynhoff
Deputy Attorney General

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"PLAINTIFFS"

"STATE"

PUBLIC ACCESS TRAILS HAWAII

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David Henderson Brown

By its President
David H. Brown

David Henderson Brown

David H. Brown

Ken Schmitt

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

Joe Bertram, III

Approved as to form:

Approved as to form:

Tom Pierce

Tom Pierce
Attorney for Plaintiffs

William Wynhoff
Deputy Attorney General


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Approved as to form:

Tom Pierce
Attorney for Plaintiffs

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DEPARTMENT OF LAND AND NATURAL RESOURCES; BOARD OF LAND AND NATURAL RESOURCES

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

Approved as to form:

William Wynhoff
Deputy Attorney General

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"STATE"

PUBLIC ACCESS TRAILS HAWAII

WILLIAM AILA, JR. in his official capacity as the Director of the State Of Hawai'i DEPARTMENT OF LAND AND NATURAL RESOURCES and chair of the State of Hawai'i BOARD OF LAND AND NATURAL RESOURCES; DEPARTMENT OF LAND AND NATURAL RESOURCES; BOARD OF LAND AND NATURAL RESOURCES

By its President
David H. Brown

David H. Brown

Ken Schmitt



Joe Bertram, III

Approved as to form:

Tom Pierce
Attorney for Plaintiffs

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

Approved as to form:

William Wynhoff
Deputy Attorney General



HALEAKALA RANCH

• EST. MAUI 1888 •

August 1, 2016

Suzanne Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

RE: Termination - Memorandum of Agreement re: Haleakala Bridle Trail

Dear Chairperson Case:

Based on the litigation and final court order that was filed July 18, 2016, I believe the Memorandum of Agreement (MOA) between Haleakala Ranch and the Department of Land & Natural Resources (DLNR) regarding the Haleakala Bridle Trail (HBT) should be terminated.

The MOA was initially proposed in 2007 in a collaborative effort between the Ranch and DLNR to avoid litigation regarding ownership of the trail and provide public access through a program of guided hikes. The MOA was approved by the Board of Land & Natural Resources in 2012 when both HRC and the State (DLNR) were defendants in the lawsuit regarding the HBT. The State subsequently reached an agreement with the Plaintiffs that resulted in the State joining the Plaintiffs to prosecute the claim of ownership of the HBT in Phase I of the lawsuit. In April 2014 the State prevailed in a jury trial on this claim and all parties reached a Settlement Agreement in December 2014, in which the Ranch agreed to not appeal the verdict of State ownership, and in return all remaining claims against HRC were dismissed. The Court approved the Settlement Agreement and has now filed the final order.

Although we continue to have serious concerns regarding public access of the segment of unmarked and unimproved trail that goes across private Ranch lands which are actively used in our ranching operations, we recognize that the State now has ownership of the trail and the responsibility to manage public access.

In summary, we respectfully request the Board of Land & Natural Resources approve the termination of the Memorandum of Agreement with Haleakala Ranch regarding the Haleakala Bridle Trail.

Please let me know if you have any questions or concerns.

Thanks for your support and assistance with this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Young", with a stylized flourish at the end.

Don Young
President & CEO

Cc: Michael Gibson – Ashford Wriston
Scott Fretz – DLNR Maui Branch Manager
Scott Meidell – HRC Vice President