

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2019

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

LOD Nos. S-29,068,
S-29,086 & S-29,088
Hawaii

Amend Grant of Perpetual Non-Exclusive Easements under Land Office Deed (LOD) Nos. S-29,068, S-29,086 and S-29,088, State of Hawaii, Board of Land and Natural Resources, Grantor, to 1250 Oceanside, LLC, Grantee, for Roadway and Utility Purposes, North Kona, Island of Hawaii, Hawaii, Tax Map Keys (TMK): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)

The purpose of the amendments is to relocate five easements for roadway and utility purposes as follows: (i) one easement under LOD No. S-29,068 from TMK: (3) 7-9-012:011 por. to TMK: (3) 8-1-004:079 por.; (ii) two easements under LOD No. S-29,086 to other portions of TMK: (3) 8-1-004:079; and (iii) two easements under LOD No. S-29,088 from TMK: (3) 8-1-004:065 pors. to TMK: (3) 8-1-004:079 pors.

APPLICANTS:

1250 Oceanside, LLC, a Delaware limited liability company

Department of Land and Natural Resources, Division of Forestry and Wildlife – Na Ala Hele Trail and Access Program

LEGAL REFERENCE:

Sections 171-6 and -13, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located at North Kona, Island of Hawaii, Hawaii, identified by Tax Map Keys (3) 8-1-004:065 and 079 (portions) as shown on the attached map labeled **Exhibit A**.

AREA:

LOD No.	Easement	Area	Current Location TMK
S-29,068	R-9	200 sq. ft.	(3) 7-9-012:011
S-29,086	R-1 SST-2	600 sq. ft. 100 sq. ft.	(3) 8-1-004:079
S-29,088	R-10 SST-3	200 sq. ft. 107 sq. ft.	(3) 8-1-004:065

The land areas of the relocated easements are anticipated to be approximately the same as the area of the easements they are replacing. The specific land areas of the relocated easements are subject to survey.

ZONING:

State Land Use District: Agriculture, Conservation
County of Hawaii CZO: A-1a, Road

TRUST LAND STATUS:

Acquired after statehood.

CURRENT USE STATUS:

Encumbered by Grant of Non-Exclusive Easements under Land Office Deed Nos. S-29,068, S-29,086 and S-29,088, State of Hawaii, Grantor, to 1250 Oceanside, LLC, Grantee.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, and construct improvements and easements for roadway and utility purposes, in, over, under and across portions of the subject lands.

COMMENCEMENT DATE OF AMENDMENT:

To be determined by the Chairperson.

CONSIDERATION:

None. Land Office Deed Nos. S-29,068, S-29,086 and S-29,088 were issued to 1250 Oceanside, LLC as part of a Settlement Agreement in *Kelly, et al. v. 1250 Oceanside Partners, et al.*, Civil No. 00-1-0192K, to which the State was a party. The easement instruments allow 1250 Oceanside LLC to relocate the easements “without payment of

monetary consideration” when the substitute easements are of “similar width within the reasonable vicinity of the original alignment”

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice in September, 1993.

With respect to the relocation of the easements specifically, staff believes the relocation represents a negligible expansion of an existing use considering that the relocated easements will be situated over parts of the trail where breaches already exist (Easement R-9), or where no intact evidence of the trails remains (Easements R-1, R-10, SST-2 and SST-3). See Exemption Notification attached as **Exhibit B** and the State Historic Preservation Division's ("SHPD") determination letter attached as **Exhibit C**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

1250 Oceanside, LLC ("Oceanside") is the developer of the Hokulia project ("the Project") which includes an agricultural lots subdivision, an eighteen hole golf course, golf club house and related amenities and a 140-acre public shoreline park. There are three historic trails identified within the boundaries of the Project that parallel each other and run along the coastline, with some sections overlapping. On July 11, 1997, the Old Government Road ("OGR") was quitclaimed to the State of Hawaii ("State") by Oceanside and made part of the Na Ala Hele Trail and Access Program ("NAH"). The State and Oceanside entered into a Memorandum of Agreement for the management, restoration and maintenance of the OGR.

The State, through NAH, sought ownership and inclusion of two other historic trails within the Project, the Stepping Stone Trail ("SST") and the Old Cart Road ("OCR"). However, in 2000, a lawsuit was filed by the Protect Keopuka Ohana and a number of individuals, *Kelly, et al. v. 1250 Oceanside Partners, et al.* (Civil No. 00-1-0192K, Third Circuit Court) against Oceanside, the County of Hawaii and the State, claiming *inter alia*, public ownership of certain historic trails within the Project. While this case

was on appeal, Oceanside and the State entered into a Settlement Agreement, effective March 14, 2006, resolving all disputes including those pertaining to the ownership and control of the historic trails. Oceanside agreed to convey to the State title to the SST, the OCR which runs primarily within the Shoreline Park of the Project, and the pedestrian access (“Pedestrian Connector”) between the OCR and OGR.

On March 23, 2007, under agenda item C-1 (**Exhibit D**, without its lengthy exhibits), the Board of Land and Natural Resources (“Board”) approved and accepted Quitclaim Deeds to the State for the OCR and the SST as well as a Pedestrian Connector into the NAH. The Board also approved the grant of 21 easements crossing the OGR and 18 easements crossing the SST to Oceanside for roadway and utility purposes.

On November 9, 2015, Oceanside’s counsel, Tim Lui-Kwan, Esq., Carlsmith Ball LLP, requested the relocation of five access easements over the OGR and the SST. Easement Nos. R-1, R-9, and R10 cross the OGR, and Easement Nos. SST-2 and SST-3 cross the SST. Oceanside proposed to relocate Easement Nos. R-1, R-10, SST-2 and SST-3 for better alignment and access points with the actual location of the roadway that is developed as part of the Project. Easement R-9 will be relocated within Oceanside’s property, TMK: (3) 8-1-004:079, instead of leasing lands on the adjacent parcel, TMK: (3) 7-9-012:011. A copy of the November 9, 2015 letter is attached as **Exhibit E**.

REMARKS:

The five easements, R-1, R-9, R-10, SST-2 and SST-3 are recorded in three Land Office Deed (“LOD”) documents which were executed on June 13, 2014. A chart below shows the LOD numbers, easements, area, the current TMK of the easements and the new TMK locations, if they are relocated to another TMK. Also, see **Exhibit F** attached, which is a map showing the location of the original easement alignments relative to proposed relocated easements.

LOD No.	Easements	Area	Current Location TMK	New Location TMK
S-29,068	R-9	200 sq. ft.	(3) 7-9-012:011	(3) 8-1-004:079
S-29,086	R-1 SST-2	600 sq. ft. 100 sq. ft.	(3) 8-1-004:079	(3) 8-1-004:079
S-29,088	R-10 SST-3	200 sq. ft. 107 sq. ft.	(3) 8-1-004:065	(3) 8-1-004:079

All three LODs include the following provision at paragraph 8:

8. Should future development by the Grantee necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee’s own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the

Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

As indicated in **Exhibit F**, the proposed relocated easements are within the reasonable vicinity of the original alignments and appear to be of similar width to the original alignments. The areas of the final alignments will need to be determined by survey. If the surveys show that relocated easements are not of “similar width” to the original alignment, then staff will bring the matter back to the Board for a decision on how to proceed.

On October 25, 2016, Oceanside requested a written concurrence from SHPD to relocate the three easements, R-1, R-9 & R-10 which were established in SHPD’s approved mitigation plans for the OGR on August 23, 2001, and two easements, SST-2 and SST-3 were accepted by SHPD on November 30, 2007. Rather than create new easements along the trails which would potentially add to the cumulative impact of the trail, Oceanside proposed to relocate those easements that are best suited for the Project and in areas that will have less of an impact on the physical remains of the historic trails. Also, all five proposed relocated easements will allow for access to kuleana properties at Kainaliu Beach, just north of the phase 3 of the Project area and access across the OGR and SST trails.

On December 4, 2017, SHPD agreed to Oceanside’s request to relocate the five subject easements which “will result in no historic properties affected.” See **Exhibit C**.

Staff solicited comments on the proposed exemption from agencies listed below with the results indicated:

Agency	Comment
DLNR – Engineering	No comments
DLNR – Historic Preservation	See Exhibit C
DLNR – DOFAW	No comments
County of Hawaii – Planning	No response by suspense date
County of Hawaii – Public Works	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date

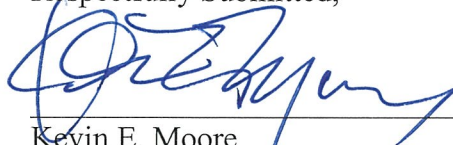
Oceanside has not had a lease, permit, easement or other disposition of State lands terminated within the last five year due to non-compliance with such terms and conditions.

The Na Ala Hele Trail and Access Program supports this request and staff has no issues with this request.

RECOMMENDATION: That the Board:

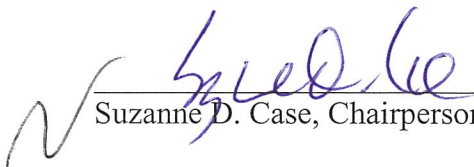
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of Grant of Perpetual Non-Exclusive Easements under Land Office Deed Nos. S-29,068, S-29,086 and S-29,088, State of Hawaii, by its Board of Land and Natural Resources, Grantor, to 1250 Oceanside LLC, Grantee, to relocate five (5) easements for roadway and utility purposes, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current amendment of easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

January 11, 2019

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Amend Grant of Perpetual Non-Exclusive Easements under Land Office Deed (“LOD”) Nos. S-29,068, S-29,086 and S-29,088, State of Hawaii, Board of Land and Natural Resources, Grantor, to 1250 Oceanside, LLC, Grantee, for Roadway and Utility Purposes, North Kona, Island of Hawaii, Hawaii, Tax Map Keys (“TMK”): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)

The purpose of the amendments is to relocate five easements for roadway and utility purposes as follows: (i) one easement under LOD No. S-29,068 from TMK: (3) 7-9-012:011 por. to TMK: (3) 8-1-004:079 por.; (ii) two easements under LOD No. S-29,086 to other portions of TMK: (3) 8-1-004:079; and (iii) two easements under LOD No. S-29,088 from TMK: (3) 8-1-004:065 pors. to TMK: (3) 8-1-004:079 pors.

Project / Reference No.: LOD Nos. S-29,068, S-29,086 and S-29,088

Project Location: North Kona, Hawaii, TMKs: (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)

Project Description: Relocation of grant of easements for roadway and utility purposes crossing Na Ala Hele trails

Chap. 343 Trigger(s): State Land

Exemption Class No.: In accordance with Hawaii Administrative Rules Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, 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 Item No. 46, that states “creation or termination of easement, covenants, or other rights in structure or land.”

Exhibit B

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?

No. The one-time relocation of five access easements, three crossing Old Government Road (“OGR”), R-1, R-9 and R-10, and two crossing the Stepping Stone Trail (“SST”), SST-2 and SST-3 will not have any cumulative impact to the environment.

Actions may have
Significant Impact on
Particularly Sensitive
Environment?

No. Staff believes that the request will involve negligible or no expansion or change to the use of the historic trails beyond that previously existing.

Analysis:

The proposed relocation of the five easements for roadway access and utility purposes along the OGR and the SST will not impact the historic trails as they correlate with locations where historic breaches in the trail already exist (easement R-9) or where no intact evidence of these trails remain (easements R-1, R-10, SST-2 and SST-3). As such, the relocation of these easements avoids additional cumulative impacts to the OGR and SST.

Consulted Parties:

Agency	Comments
DLNR – Engineering	No comments
DLNR – Historic Preservation	See Exhibit C
DLNR – DOFAW	No comments.
County of Hawaii – Planning	No response by suspense date
County of Hawaii – Public Works	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date

Declaration:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

December 4, 2017

Mr. Mike Millay
Statewide Program Manager
Na Ala Hele Trail and Access Program
Department of Land and Natural Resources
Room 325, Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813
Email: michael.v.millay@hawaii.gov

IN REPLY REFER TO:

Log No. 2016.02534

Doc. No. 1711SL04

Archaeology

Dear Mr. Millay:

**SUBJECT: Chapters 6E-7 and 6E-42 Historic Preservation Review –
Request to Relocate Stepping Stone Trail (SST) Easements
SST-2 and SST-3, and Old Government Road (OGR) Easements
R-1, R-9, and R-10 within the Hōkūli‘a Subdivision
Honuaino Ahupua‘a, South Kona District, Island of Hawai‘i
TMK: (3) 7-9-012:011 and (3) 8-1-004:065, 079**

The State Historic Preservation Division (SHPD) received this request from 1250 Oceanside LLC (Oceanside) requesting the SHPD's concurrence with proposed relocation of five SHPD-approved crossing easements: Easements SST-2 and SST-3 of the Ala Nui or Old Government Road (OGR), and Easements R-1, R-9, and R-10 of the Ala Loa or Stepping Stone Trail (SST). Both trails are owned by the State of Hawaii and are included in the State trail system managed by Na Ala Hele. The OGR is listed on the State Inventory of Historic Places (SIHP) as Site 50-10-37-10290, and the SST is listed as Site 50-10-37-21664. The SHPD received this submittal on October 27, 2016 (Log No. 2016.02534).

Previously, the SHPD received a letter dated November 9, 2015 from Carlsmith Ball LCC (Carlsmith; Tim Lui Kwan) to Na Ala Hele and Access Program (Nelson L. Ayers) informing Na Ala Hele of Oceanside's request to relocate the five aforementioned-crossing easements (Carlsmith Ball LLC Ref. No. 051730-42; SHPD Log No. 2015.04060). This submittal included a map showing the existing SHPD-approved easement locations (Exhibit A) and the proposed new locations of the five easements (Exhibit B). The existing R-9 easement on TMK: (3) 7-9-012:001 will be relocated to TMK: (3) 8-1-004:079; Easements R-10 and SST-3 on TMK: (3) 8-1-004:065 will be relocated to TMK: (3) 8-1-004:079; and Easements R-1 and SST-2 will be relocated to new locations within TMK: (3) 8-1-004:079.

Additionally, the November 9, 2015 letter from Carlsmith indicates that Oceanside proposes to relocate Easement R-9 within TMK: (3) 8-1-004:079 as Oceanside no longer plans to lease the current location of R-9 within TMK: (3) 7-9-012:011, and that Oceanside proposes to relocate roadway and utility easements R-1, R-10, SST-2 and SST-3 to better align them with the actual location of the roadway that will be developed as part of the Hōkūli‘a project.

In the current submittal (Oceanside, October 27, 2016) indicates the proposed five relocations are to allow for access to *kuleana* properties at Kainaliu Beach, just north of the Hōkūli‘a project area and access across the OGR and SST trails to subdivision lots within Phase 3 of the Hōkūli‘a project. Oceanside also states that no new easements are

Exhibit C

being requested or created. Also included in this submittal is (1) a map showing the current locations of the five easements and the proposed new locations; (2) a letter dated October 20, 2016 from ASM Affiliates (Benjamin Barna) to Oceanside (Mike Vitousek), titled *Old Government Road mapping end of field report*; and (3) a report from Haun & Associates dated October 25, 2016, titled, *End of fieldwork – Supplemental testing in support of relocating Easements SST-2 and SST-3 Site 50-10-37-21664, Honuaino 3-4 Ahupua'a, North Kona District, Island of Hawai'i*.

The SHPD approved restoration plans for the OGR on August 23, 2001 (Log No. 28016, Doc. No. 0108PM06). Subsequently Oceanside executed a Memorandum of Agreement (MOA) with Na Ala Hele, allowing Oceanside to improve and maintain the OGR. The SHPD-accepted mitigation plan for the OGR established the locations of crossing easements R-1, R-9, and R-10. In consultation with SHPD, Oceanside agreed to revise the mitigation plan to reduce adverse effects to the OGR and to conduct additional mitigation in the form of detailed mapping. As indicated in the attached one-page letter report titled, *Old Government Road mapping end of field report* (Barna, October 20, 2016), ASM Affiliates reported that no intact portions of the trail were found in the proposed new locations for easements R-1, R-9, and R-10. The existing location of easement R-9 would require construction of a new crossing, the new location is in an area used as a ranch access point across the OGR. Presently, a cattle guard is in the proposed new location of R-9. Easements R-1 and R-10 occur in areas that exhibit no intact evidence of the OGR. The only indication of the alignment is a loose scatter of rocks associated with clearing of the area for the existing 4-wheel-drive road.

Portions of the SST were to be preserved and other portions were to be subject to data recovery excavation (see Tuggle and Tuggle 1999 Integrated Archaeological Mitigation Plan). The SHPD identified preservation issues related to the SST and requested a mitigation plan be prepared with clear discussion and maps regarding appropriate preservation and data recovery measures and where each would occur (March 27, 2001, Log No. 27162, Doc. No. 0103R21 [sic]; and May 29, 2001, Log No. 27564, Doc. No. 0105RC44). On March 23, 2007, the Board of Land and Natural Resources (BLNR) accepted quitclaim deeds for the SST and the OGR and approved designation of the SST as a program trail under the regulatory jurisdiction of the Na Ala Hele Statewide Trails and Access Program. The conveyance of the SST includes a 1.5-m-wide (5 ft.) alignment through the Hōkūli'a project, except where the trail overlaps the OGR. On November 30, 2007, the mitigation plan for the SST prepared by Tomonari-Tuggle and Tuggle (2007) was approved by the SHPD (Log No. 2007-3598 [sic], Doc. No. 0711MD44). This plan identified easements SST-2 and SST-3 for roadway and utility purposes. Haun & Associates conducted the extensive data recovery field work between September 8, 2014 and September 20, 2016. Prior to initiation of the field work, in consultation with the SHPD, the data recovery scope was revised to include excavation of test trenches within the proposed relocation of easements SST-2 and SST-3 to determine if any intact portion(s) of the trail remains in those areas. The attached Haun & Associates report titled, *End of fieldwork – Supplemental testing in support of relocating Easements SST-2 and SST-3 Site 50-10-37-21664, Honuaino 3-4 Ahupua'a, North Kona District, Island of Hawai'i* (October 25, 2016), indicates that while some intact portions of the SST exist, none occur within the proposed new locations of easements SST-2 and SST-3. Further, the relocation of easements SST-2 and SST-3 will be memorialized in a data recovery report for the SST that meets the requirements of HAR §13-278-4.

Lastly, the subject submittal indicates that Oceanside, "believes that the proposed relocation of the easements to the identified and data recovered locations depicted in submittal figure 6 will result in **no historic properties affected**" and that Oceanside looks forward "to receiving SHPD concurrence with the proposed relocation of easements on State Property."

Pursuant to Hawaii Revised Statutes (HRS), the Hōkūli'a project is a private project as defined in HRS §6E-42. The proposed relocation of the five easements affect the OGR (Site 50-10-37-10290) and the SST (Site 50-10-37-21664), both historic properties owned by the State of Hawaii and included in the State trail system managed by Na Ala Hele, and thus are also subject to review under HRS §6E-7. The overall Hōkūli'a project effect determination is "Effect, with agreed upon mitigation commitments", which include preservation, data recovery (excavation, salvage, and archaeological monitoring), and burial treatment (burial treatment plans, burial site components of data recovery plans, and burial site components of preservation plans).

)
SHPD agrees to the request from 1250 Oceanside LLC to relocate the five subject easements: Easements SST-2 and SST-3 of the Ala Nui or Old Government Road (OGR), and Easements R-1, R-9, and R-10 of the Ala Loa or Stepping Stone Trail (SST) from their existing approved locations to the proposed locations, as shown in submittal figure 6. Further, based on the recent data recovery findings, the proposed easement relocations reduce the impact

Mr. Mike Millay
December 4, 2017
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on the historic trails as they correlate with locations where historic breaches in the trail already exist (easement R-9) or where no intact evidence of these trails remain (easements R-1, R-10, SST-2 and SST-3). As such, the relocation of these easements avoids additional cumulative impacts to the OGR and SST.

SHPD looks forward to notification of the initiation of relocation of the easements, and to receiving the following mitigation reports for review and acceptance:

- Data recovery report for the SST (Haun & Associates) that meets the requirements of HAR §13-278-4; and
- Revised mitigation plan that meets the requirements of HAR §13-277/278 for the entirety of the OGR portion in the Hōkūliʻa project (ASM Affiliates) that includes the data recovery mapping.

Please contact Susan Lebo, Archaeology Branch Chief, at Susan.A.Lebo@hawaii.gov for any questions regarding this letter.

Aloha,



Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Aaron Lowe, Na Ala Hele, aaron.lowe@hawaii.gov
Moana Rowland, Na Ala Hele, Moana.rowland@hawaii.gov
Clement Chang, Na Ala Hele, clement.chang@hawaii.gov
Eric Bose, Sun Kona Properties I, LLC/1250 Oceanside LLC, ebose@suncap.com
Mike Vitousek, 1250 Oceanside LLC, mvitousek@hokulia.com
Alan Haun, Haun & Associates, ahaun@haunandassociates.com
Bob Rechtman, ASM Affiliates, brechtman@asmaffiliates.com

62581

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

March 23, 2007

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

Land Board Members:

SUBJECT: Request for Approval and Acceptance of: Quitclaim Deeds to State for the Old Cart Road (OCR) and the Stepping Stone Trail (SST) and to include these Two Trails and a Pedestrian Connector into the Na Ala Hele Program; Authorize the Chairperson of the Department to approve a Memorandum of Agreement Between Na Ala Hele Program and Hokulia for the Management of the OCR and SST; The Application for Perpetual, Non-Exclusive Easements (18) Crossing the SST (Site No. 21664) for Roadway and Utility (SST-1, SST-2, SST-3, SST-5 and SST- 7), Golf Cartpath (SST-4, SST-9 and SST-11), Utility (SST-6, SST-8, SST-10, SST-14, SST-15 and SST-16), Drainage (SST-12, SST-17 and SST-18) AND Golf Cartpath &Utility (SST-13) Purposes; and for Perpetual, Non-Exclusive Easements (21) Crossing the Old Government Road (Site No. 10290) for roadway (R-1 through R-9), golf cart pathway (G-1 through G-3), pedestrian pathways (P-1 and P-2) and utility (U-1 through U-7) crossing Honuaino 3rd and 4th, Hokukano 1st, Hokukano 2nd, Kanaeue 1st and 2nd, District of North Kona, and Halekii, Keekee 1st and 2nd, Ilikahi, Kanakau 1st and 2nd, Kalukalu 1st, 2nd, and 3rd, Onouli 1st, District of South Kona, Island and County of Hawaii.

APPLICANTS:

1250 Oceanside Partners, a Hawaii limited partnership, whose business and mailing address is 78-6831 Alii Drive, Suite K-15, Kailua-Kona, Hawaii 96740 (Landowner); and

Division of Forestry and Wildlife - Na Ala Hele (NAH) Trail and Access Program (DLNR).

Approved by the Board of
Land and Natural Resources
at its meeting held on

03/23/07 with amendments

Exhibit D

ITEM C-1

LEGAL REFERENCE:

Hawaii Revised Statutes, Sections 171-30, 198D, , as amended;
Hawaii Administrative Rules §13-130-13.

LOCATION:

Portions of the Two Historic Trails and the Trail Easement within the Hokuli'a Project, Kealakekua over the Lands of Honuaino, Hokukano, Kanaeue, North Kona District and the Lands of Halekii, Keekee, Ilikahi, Kanakau, Kalukalu and Onouli, South Kona District, Tax Map Key Nos.: (3) 7-9-012: 011, 8-1-004: 003, 8-1-004: 065, 8-1-004: 070, 8-1-032: 022, 8-1-032: 054, 8-1-033: 017 and 8-1-034: 025, as shown on the attached maps labeled as Exhibits A, B and C.

AREA:

The Stepping Stone Trail is two and a half (2½) feet either side of the centerline alignment established by DLNR in its December 18, 2002 determination which has been surveyed and comprises an area of 44,625 square feet, more or less, in three separate sections (Sections 1, 2 and 3). The Old Cart Road is five (5) feet either side of a centerline, identified by the State NAH which has been surveyed and comprises an area of 70,218 square feet, more or less. The Pedestrian Connector is five (5) feet either side of a centerline, identified by the State NAH which has been surveyed and comprises an area of 751 square feet, more or less, in two separate sections (Easements A and B).

LAND STATUS:

Private

CURRENT USE STATUS:

Agricultural subdivision development, existing golf course, shoreline park and vacant.

CONSIDERATION:

None. The dedication to the State of Hawaii of the historic pedestrian trails by quitclaim deed and grant of perpetual easement, and the application by the Landowner for the crossing easements over the historic trails to complete development of the Hokuli'a Project are part of the Settlement Agreement in *Kelly, et al. v. 1250 Oceanside Partners, et al.*, Civ. No. 00-1-0192K (Third Circuit Court of the State of Hawaii), approved by the State of Hawaii, effective March 14, 2006.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Proposed acceptance of existing historic trails by means of dedication by quitclaim and grant of easement on private land does not propose use of State funds or lands nor does it propose any new use within the conservation district. The crossing easements requested by the Landowner are proposed over lands within the SLU agricultural district zoned A-1a that were described and included in the Environmental Impact Statement accepted for the project in September, 1993. No Environmental Assessment is required.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Landowner has provided the required survey maps and descriptions prepared according to State DAGS standards.

REMARKS:

The Landowner is the developer of the project commonly known as Hokuli`a located near the town of Kealahou, Kona on the Island of Hawaii ("project" or "Hokuli`a"); that envisions the construction of an agricultural lot subdivision, an eighteen hole golf course, golf clubhouse and related amenities and a 140-acre public shoreline park as shown on the attached location map labeled Exhibit A and the attached project map labeled Exhibit B.

There are three historic trails that have been identified within the project boundaries of Hokuli`a, that roughly parallel each other and the coastline, and in some sections are overlapping. For the purpose of this submittal, the starting location is the Kailua-Kona side boundary of Hokuli`a, ending on the Hokuli`a boundary on the Keopuka side – generally trending in a southeasterly direction.

The Old Government Road (OGR) was previously quitclaimed to the State by the Landowner and made a part of the Na Ala Hele Trail and Access Program by BLNR on July 11, 1997. The NAH Program common name for this feature is the Keauhou-Napoopoo Trail, since historically it terminated at Napoopoo. DLNR and the Landowner subsequently executed a Memorandum of Agreement, for the management, restoration and maintenance of the OGR within the regulatory authority of Chapter 13-130, Hawaii Administrative Rules. Due to the suspension of construction and maintenance during litigation, this trail has not been usable but will soon be ready for public use once the trail clearing and restoration is completed pursuant to the MOA.

The State, through NAH, seeks acceptance of ownership and inclusion within the NAH program the two (2) other historic trails at Hokuli'a which were one of which was the subject of recently settled litigation involving both the State and the Landowner.

In 2000, a lawsuit was brought by the Protect Keopuka Ohana and a number of individuals encaptioned *Kelly, et al. v. 1250 Oceanside Partners, et al.* (Civil No. 00-1-0192K, Third Circuit Court) against the Landowner, the County of Hawaii and the State of Hawaii (DLNR and DOH) claiming, *inter alia*, public ownership of certain historic trails within the project. While this case was on appeal, the parties entered into a Settlement Agreement, effective March 14, 2006, resolving all disputes including those pertaining to the ownership and control of the historic trails.

The Settlement Agreement at Section 10.1 provided that "(w)ithin one year after the Effective Date, Oceanside shall convey to the State title to the trail that is the subject of a pending appeal (the "Stepping Stone Trail") based on the alignment previously submitted to the Court by DLNR". The area to be conveyed to the State is a pedestrian access five feet (5') in width along the approved centerline alignment as described by metes and bounds in the draft quitclaim deed submitted by the Landowner for dedication to the State of Hawaii as shown on the attached map labeled Exhibit B. (Quitclaim Deed, Exhibit F)

The Landowner and DLNR also agreed pursuant to Section 10.10 of the Settlement Agreement that the State of Hawaii is the owner of another existing historic trail known as the Old Cart Road (OCR) that runs primarily within the Shoreline Park of Hokuli'a. The OCR begins near its intersection with the *kuleana* access road to Nawawa Bay just *mauka* of Pu'u Ohau and traverses to the project's southern boundary as shown on the attached map labeled Exhibit C. Oceanside has further agreed grant a perpetual easement to DLNR for a pedestrian access (the "Pedestrian Connector") between the OGR and the OCR shown Easements A and B on the attached map labeled Exhibit C. While both the OGR and the OCR appear to intersect with the Ka'awaloa Road located to the south on public lands near Kealakekua Bay, no connection between these trails have been identified within the project (Quitclaim Deed and Grant of Easement, Exhibit G).

It has been suggested that the SST was historically the first and primary trail, to be later subsumed physically by the OCR in this area and modified for equestrian and cart use. Although portions the existing OCR are located within the conservation district, the Pedestrian Connector is situated completely on private lands owned by Oceanside within the SLU agricultural district.

The trail network incorporating the OGR, the OCR and the Pedestrian Connector, may be considered for inclusion in the Ala Kahakai National Trail currently being developed by the National Park Service on the Island of Hawaii. Due to their value in expanding public recreational opportunities and significant position in the

cultural history for the region, both the Stepping Stone Trail and the Old Cart Road, together with the Pedestrian Connector, are qualified to be included in the Na Ala Hele Trail and Access Program. This has the concurrence of the Hawaii NAH Advisory Council. This would, in effect, establish what would be called the Hokuli'a Trail System.

Future NAH plans may include subsequent negotiations with adjoining landowners for formal dedications and management of both the OCR and the OGR- Keauhou-Napoopoo Trail, to Ka'awaloa road and Kealakekua Bay State Historic Park.

The State may accept dedications of real property pursuant to Haw. Rev. Stat. § 171-30:

§ 171-30. Acquisitions of real property; general. (a) The board of land and natural resources shall have exclusive responsibility, except as provided herein, of acquiring by way of dedications: (1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes...

The Settlement Agreement also provides that the Stepping Stone Trail (State Site No. 21664) would be designated a preservation site permitting only pedestrian use except for any crossings required by the Landowner to complete development of the project as described in Section 10.8 of the Settlement Agreement. The Landowner is establishing a protective buffer five feet (5') in width on each side of the trail's centerline; creating a preservation corridor 10 feet (10') in width for the Stepping Stone Trail.

In the attached letter labeled Exhibit D to the DLNR dated January 19, 2007, the Landowner is requesting the approval of crossing easements over the historic trails at Hokuli'a to complete development of the project as contemplated by the Settlement Agreement. The agreement at Section 10.8.1 states that "Oceanside shall be permitted easements for at-grade ingress and egress over, and easements for underground utilities beneath, specified portions of the Stepping Stone Trail Area and specified portions of any other roads or trails at Hokuli'a, on terms consistent with standard practices evidenced by similar crossings at other trail locations along the west coast of the Island of Hawaii.

The easements requested by the Landowner for crossing the OGR at twenty-one specified locations along that trail were previously identified in the Management Plan approved by NAH on July 17, 2000 with reconstruction treatments as set out in the Restoration Plan approved by SHPD on August 23, 2001. The crossings proposed for the Stepping Stone Trail at eighteen (18) specified locations (Easements SST-1 through SST-18) are also described and discussed in the draft Mitigation Plan submitted for SHPD review and public comment. No work for either the archaeological data recovery or reconstruction of the Stepping Stone Trail will be performed at the proposed crossing easements except those as

described below, until approval of the Mitigation Plan by SHPD and NAH. Previous approval for data recovery and reconstruction of a portion of the Stepping Stone Trail at the two roadway crossings (SST-1 at Road F and SST-5 at Road J-3) was given by SHPD on March 21, 2002. The descriptions of proposed easements across the OGR and the Stepping Stone Trail by maps and metes and bounds have been submitted to DLNR and meet the standards set by State DAGS for such descriptions. The proposed easements are shown on the attached map labeled Exhibit B. The dedication of the historic trails and grants of easements are being made *gratis* by both parties pursuant to the Settlement Agreement. Therefore, no appraisal is required.

The Landowner presented the proposed dedication and the requested easements to the Hawaii NAH Advisory Council at its meeting on January 23, 2007 to approve the inclusion of the OCR and the SST into the NAH Program. The Advisory Council has voted in support of the proposal to accept and include the subject trails into NAH Program. The Landowner will present at the March 20, 2007 NAH Advisory Council meeting more details on the requested easements.

The Landowner has agreed to work with the DLNR/NAH/HPD program to restore, preserve and manage the historic trails via a Memorandum of Agreement. Staff recommends that the dedication be accepted for the Stepping Stone Trail, the OCR and the grant of easement for the Pedestrian Connector and that the Board designate these trails under the regulatory authority of Na Ala Hele Trail and Access Program pursuant to Hawaii Administrative Rules §13-130-13.

§13-130-13 Program trail and access designation. The board shall periodically designate the inclusion of a trail or access selected from among the inventoried trails and accesses upon consultation with the division, the NAH staff, and the respective island advisory council from which a particular trail or access is located.

Staff also recommends approval of the easements requested by the Landowner at 18 specified locations along the Stepping Stone Trail and at 21 specified locations along the OGR as shown on the attached map labeled Exhibit B.

DEPARTMENT FINDINGS:

The Department finds that:

1. Historically, the government is recognized as the owner of the Stepping Stone Trail and the Old Cart Road at Hokuli'a at the location set forth in Exhibit B.
2. The public and the NAH Advisory Council has expressed a strong desire to reopen and utilize these historic trails at Hokuli'a for managed public use;

3. There is a need to increase public recreational opportunities in this part of West Hawaii, especially in close proximity to other public recreational opportunities such as the Shoreline Park at Hokuli'a.
4. Accepting the Landowner's dedication of the quitclaim deeds for the Stepping Stone Trail and the Old Cart Road and the grant of easement for the Pedestrian Connector, as well as Landowner's offer to restore, preserve and manage these trails, will facilitate delivery of these recreational and cultural resources to the public use and enjoyment in the shortest possible time with little or no expenditure of public funds.
5. Approving the grant of easements to the Landowner for crossing the Old Government Road at the 21 specified locations and for crossing the Stepping Stone Trail at 18 specified locations is consistent with the terms of the Settlement Agreement and will expedite the prudent development and restoration of these important recreational and cultural resources with minimal impact.

RECOMMENDATION:

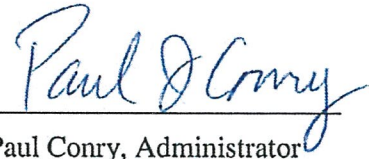
That the Board:

1. Authorizes the acceptance of the quitclaim deeds to the Stepping Stone Trail and the Old Cart Road, and the grant of easement for the Pedestrian Connector. The Landowner shall grant and record the quitclaim deeds for the Stepping Stone Trail and the Old Cart Road and the grant of a perpetual pedestrian easement for the Pedestrian Connector to the State in an appropriate form document subject to review and approval by the Department of the Attorney General;
2. Designates the Stepping Stone Trail, the Old Cart Road and the Pedestrian Connector under the regulatory authority of Na Ala Hele Trail and Access Program pursuant to Hawaii Administrative Rules §13-130-13 and authorizes the Chairperson to enter into Memoranda of Agreement with the Landowner, its successors, assigns or designees for the management of the subject trails for public use - under such terms and conditions acceptable to NAH and subject to review and approval by the Department of the Attorney General;
3. Approves the grant of 21 easements crossing the Old Government Road and 18 easements crossing the Stepping Stone Trail to the Landowner at locations specified in its request by survey maps and descriptions prepared according to State DAGS standards in a form of a perpetual, non-exclusive easement document drafted by the Department of the Attorney General; and

4. Authorizes the Chairperson to execute other terms and conditions as may be necessary to best serve the interests of the State.

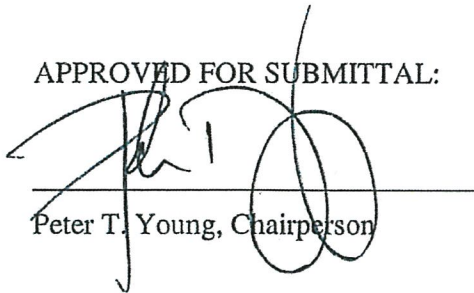
Attachments: Exhibit A - Location map
Exhibit B - Project map
Exhibit C - Pedestrian Connector
Exhibit D - Letter to Peter Young Requesting and Documenting
Easements
Exhibit E - Letter to Peter Young for Quitclaim Deeds and Grant of
Easement for Pedestrian Connector
Exhibit F - Quitclaim Deed, SST
Exhibit G - Quitclaim Deed, OCR and Grant of Easement

Respectfully Submitted.



Paul Conry, Administrator

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

CARLSMITH BALL LLP

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OUR REFERENCE NO.:
051730-42

November 9, 2015

Mr. Nelson L. Ayers
Statewide Program Manager
Na Ala Hele Trail and Access Program
Department of Land and Natural Resources
Room 325, Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Hökūli'a - Relocation of Kuleana Access Easement Nos. R-1, R-9, R-10, SST-2 and SST-3 over the Old Government Road and Stepping Stone Trail

Dear Mr. Ayers:

This letter is to inform you that 1250 Oceanside Partners ("**Oceanside**") requests to relocate five (5) crossing easements along the kuleana access routes over the portions of the Old Government Road ("**OGR**") and Stepping Stone Trail ("**SST**") that are located within the Hökūli'a project on TMK Nos. (3) 8-1-004: 79 and 65, Grant. Easement Nos. R-1, R-9 and R-10 cross the OGR, and Easement Nos. SST-2 and SST-3 the SST, each of which easements are for roadway and utility purposes (collectively referred to as the "**Relocated Easements**"). A map showing the current locations of each of the easements is attached hereto as Exhibit A. A map showing the proposed locations of the Relocated Easements is attached hereto as Exhibit B.

These easements provide access over the OGR and SST to coastal lots within the Hökūli'a project. Oceanside proposes to relocate Easement Nos. R-1, R-10, SST-2 and SST-3 to better align such easements and access points with the actual location of the roadway that will be developed as part of the Hökūli'a project, and to create a more common area over which the OGR and SST are crossed. Easement R-9 will be relocated within TMK No. (3) 8-1-004: 079 because Oceanside no longer plans to lease that land that is identified by TMK No. (3) 7-9-012: 011, the current location of Easement R-9, and thus, will not control the land upon which the current Easement R-9 is located.

The legal descriptions for each of the easements were previously reviewed and approved by the State Survey Office, which provided all of the CFS descriptions and maps attached as exhibits to the Grant of Non-Exclusive Easement ("**Grant**") for each respective easement. The

HONOLULU

HILO

KONA

MAUI

GUAM

LOS ANGELES

Exhibit E

4

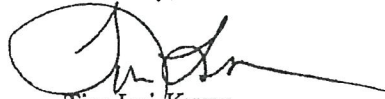
Nelson L. Ayers
November 9, 2015
Page 2

legal descriptions for each Grant for the respective Relocated Easements will be updated at a later date to reflect the new location and metes and bounds of each of the Relocated Easements. The Grants will remain the same in all other respects.

If you have any questions or concerns, please feel free to contact me at the phone number or email address above.

Thank you for your attention and assistance in this matter.

Sincerely,

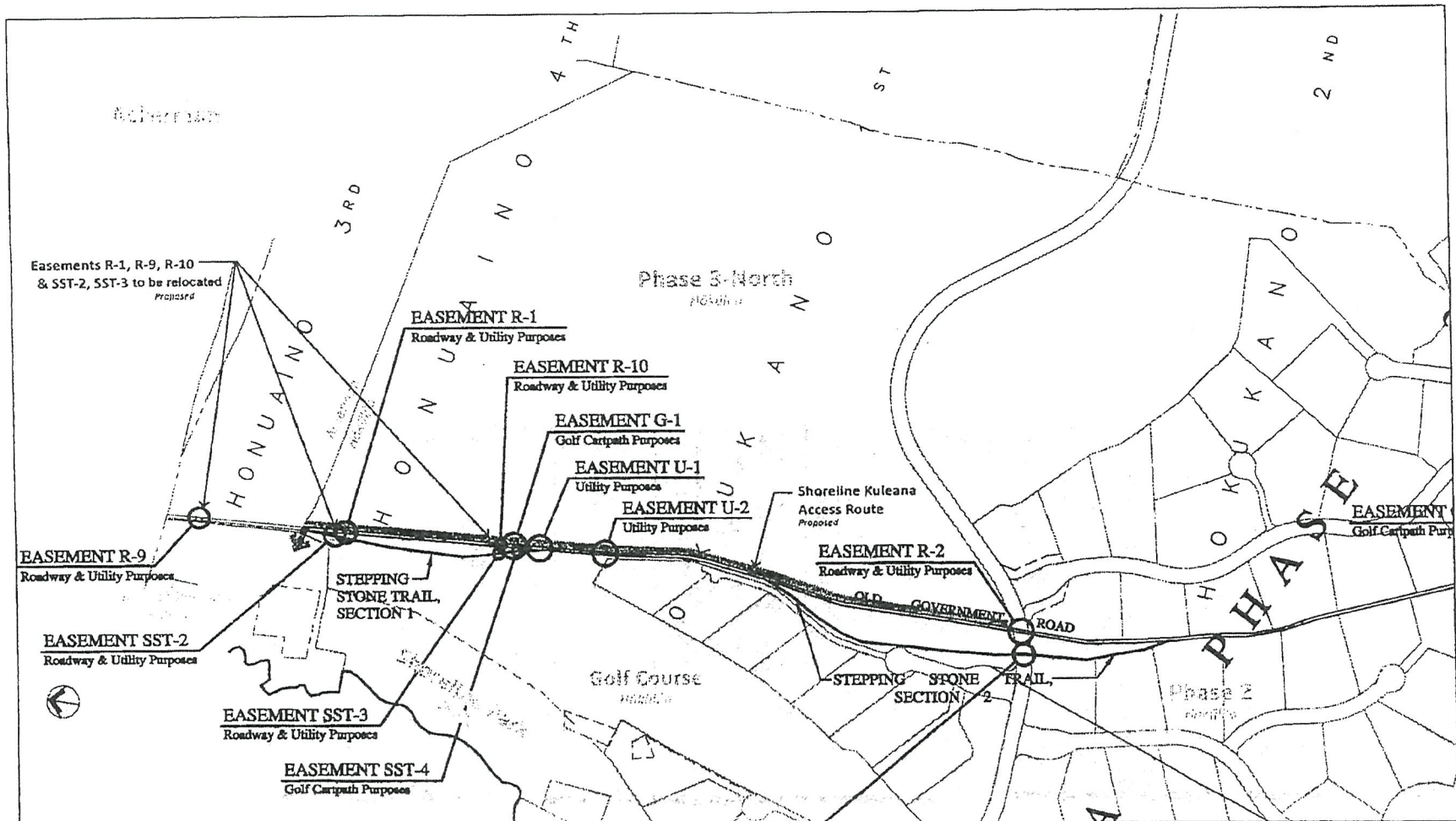


Tim Lui-Kwan

TLK/PPT

cc: State Historic Preservation Division

4841-5937-2842.1.051730-00042

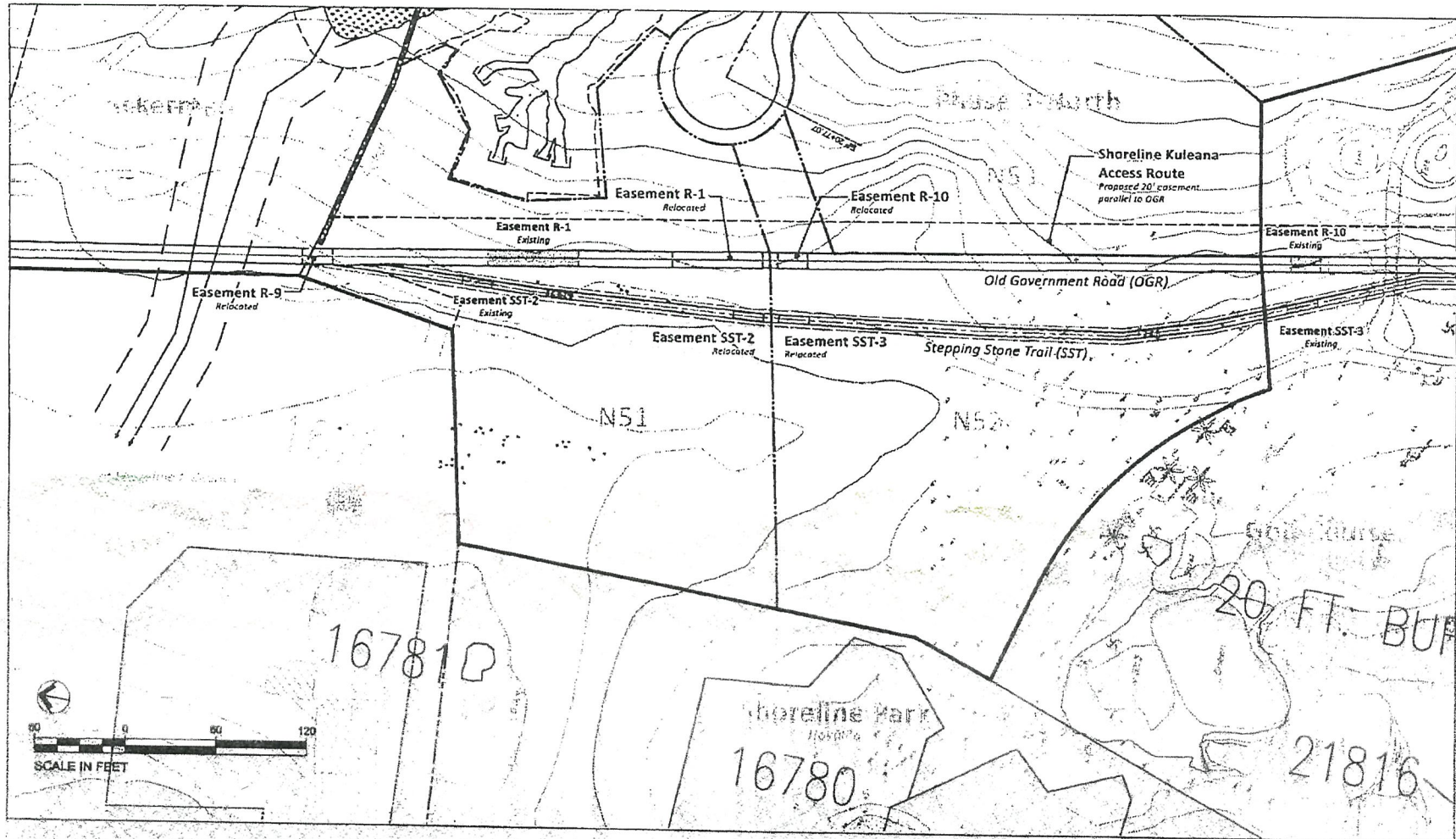


HOKULIA

PROPOSED SHORELINE KULEANA ACCESS ROUTE

Phase 3-North, Hōkūliʻa
Prepared for 1250 Oceanside, LLC

EXHIBIT A February 20, 2015

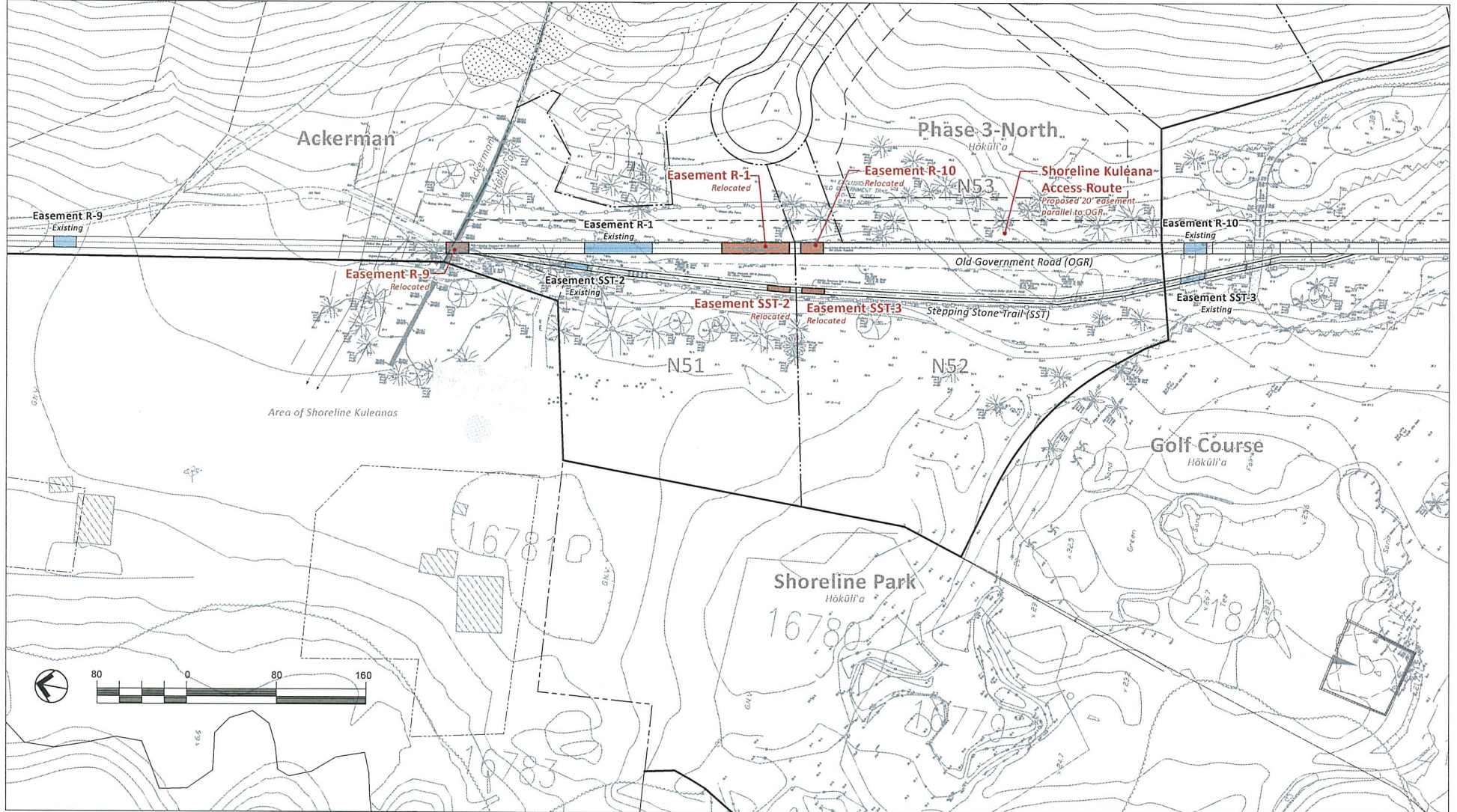


Prepared by


HŌKŪLIʻA

PROPOSED RELOCATION OF EASEMENTS ALONG OLD GOVERNMENT ROAD & STEPPING STONE TRAIL
 Phase 3-North, Hōkūliʻa
 Prepared for: 1250 Oceanside, LLC

EXHIBIT B February 20, 2015



Prepared by



HŌKŪLI'A

Exhibit F

PROPOSED RELOCATION OF EASEMENTS ALONG OLD GOVERNMENT ROAD & STEPPING STONE TRAIL

Existing easements: Blue
Relocated easements: Red

Phase 3-North, Hōkūli'a
 Prepared for 1250 Oceanside, LLC

October 22, 2018