

To:

1250 Oceanside, LLC

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

From:

Families of the Kainaliu Beach House Community

RE: (Item D-1 "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 Hawai'i, Hawai'i, Tax Map Keys (TMK): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)") for hearing before BLNR on January 11, 2019

In reference to your request (item D-1 "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 Hawai'i, Hawai'i, Tax Map Keys (TMK): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)") which affects the access to our beach lots and kuleana at Kainaliu, before the Board of Land and Natural Resources currently scheduled for hearing this Friday on January 11, 2019, the Greenwell, Thompson, and Ackerman families respectfully request that you defer hearing on this matter for two months so that we have more time to consider the request.

As we have previously noted to you, we became aware of your request by accident and were not consulted concerning the current or requested locations for the crossing points over the "old government road" ("OGR") and the "steppingstone trail" ("SST").

While the physical access as proposed in your December 26, 2018 correspondence appears at first glance to be reasonable; we, however, have concerns about the long-term issues that need to be dealt with. Since it has only been a couple of weeks since we discovered that this application was going before the DLNR, we have not had adequate time to assess the entire long term legal ramifications these relocations may have for our families.

As we previously discussed, the families previously accessed their respective lots, including the kuleana, through the OGR. However, to our surprise, the State and the previous owner of the Hokulia project relocated the old government road. Consequently, the description of our easements to the OGR (and the description of our boundaries to the OGR) were affected.

Moreover, it appears the previous owner of Hokuli'a and the State of Hawaii entered into an agreement which forbade (except on designated points) vehicular access on the OGR thereby "land locking" the families further. Again, this was a surprise to us.

Last, the families are concerned that relocating R-9 to the south will be to the detriment to the Ackerman family because it is losing its legal access point across the OGR. The Ackerman family will be left to deal with the bureaucratic steps to regain such solely to accommodate the developer's request.

We would like more time to assess this situation and fear that the requested relocation of the easements will perpetuate our problems noted above.

Sincerely,

A handwritten signature in black ink, appearing to read "Tommy Greenwell".

Greenwells (by Tommy Greenwell)

A handwritten signature in black ink, appearing to read "Lori Weeks".

Thompsons (by Lori Weeks, Co-Trustee of the Leilani Kokoali'i'ole Thompson Trust)

A handwritten signature in black ink, appearing to read "A.D. Ackerman".

Ackermans (by A.D. Ackerman)

To: Board of Land and Natural Resources, State of Hawaii

Date: January 8, 2019

RE: (Item D-1 “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 Hawai‘i, Hawai‘i, Tax Map Keys (TMK): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)”) for hearing before BLNR on January 11, 2019

Reference is made to Hokulia’s request (item D-1 “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 Hawai‘i, Hawai‘i, Tax Map Keys (TMK): (3) 7-9-012:011 (portion); 8-1-004:065 and 079 (portions)”) which affects the access to our *Kuleana* (TMK (3) 7-9-012-007; LC Award 5992:1 to Lono, hereinafter “*Kuleana*”)) at Kainaliu, Kona, before the Board of Land and Natural Resources currently scheduled for hearing this Friday on January 11, 2019. The Thompson family respectfully requests that the BLNR defer hearing on this matter for two months so that we have more time to consider the request. As we have previously noted to Hokulia, we became aware of Hokulia’s request by accident and were not consulted prior to any of Hokulia’s submittals concerning the current or requested locations for the crossing points over the “old government road” (“OGR”) and the “steppingstone trail” (“SST”).

Thompson Ohana

Aloha, my name is Lori Thompson Weeks. I am co-trustee of the Leilani Kokoaliiole Thompson Trust, along with my sister, Valerie Corcoran. I am representing my `ohana regarding Hokulia’s proposed relocation of easements in Hokulia, that will affect access to our *kuleana*, L.C. Aw. 5592, Apana 1 to Lono at Honuaino 4, North Kona Hawaii. As you know, Hokulia is an exclusive luxury development by Oceanside 1250.

My great grandfather, Kele Kokoaliiole, was a *mahi`ai*, and he received this *kuleana* from his aunty, Kauokoa, in March, 1897. Kauokoa was the daughter of the original awardee, Lono (who actually received the property prior to the Mahele by none other than Kamehameha himself). It had a *pā hale* on it. My kupuna lived on this *kuleana*. My great grandfather married Lu`ukia Kahalemanu Kuapuu around 1900, and several of their children were born there, including my biological grandmother, who was born on December 14, 1910. Kele’s parents, Kalama Kokoaliiole and Kepaa, along with his brother, Frank Kahae shared the home with them. At some point, the ohana moved *i uka* and lived in a shack owned by the Robinson’s, where he, my great grandmother, and some of their sons worked for the ranch. Our mother, Leilani, was their *hanai* (biologically however their grandchild) from birth and became their 16th child. My mom always said she never knew anybody

who was loved more than her. By the time she was born, many of the older siblings had moved away to other islands to find jobs and a better life. They “haolefied” their last name to Kelley, hoping that it would better enable them to find jobs. They did, and none of them moved back to Kona.

In November, 1949, when mom was 18 years old, her beloved grandparents, Kele and Lu’ukia Kokoaliiole gifted her the kuleana at Kainaliu Beach. It was a generous gift and a blessing that she always cherished. It took nearly 20 years before my parents had the time to seriously make the commitment to clear the land. For one thing, they both worked and were raising 6 children. Getting to the kuleana required 4-wheel drive and driving through private ranch. When we reached sea level, we travelled along the old Hawaiian road until we reached our kuleana. It’s roughly a two (2) mile *mauka* to *makai* drive.

During the early 1970’s, my parents started cleaning and refurbishing the land by hand and with a stump puller. It had become overgrown with *ekoa*. Cattle from the ranch surrounding the property was grazing inside the *kuleana* so dad fenced off small areas at a time, and slowly, but surely, the land was cleared. With the help of friends, they rebuilt a shed-like pavilion, tapped into water from our neighbors, Norman and Jean Greenwell, and we were good to go. Many of our classmates enjoyed camping out at the beach during breaks from school.

Over the years mom and dad did some landscaping and then they built a home where they had planned to live after they retired. Mom had severe asthma but breathed better at the beach. They were blessed to have many good friends, including our Kainaliu Beach neighbors, the Ackermans, Greenwells, and uncle Billy Paris, who were generous with their *kokua* to help make mom’s dream come true to have a home on the *kuleana* her kupuna gifted her. Sadly she passed away from a short illness in 1992, at the age of 61. She never had the chance to live out her retired life, enjoying her *mo’opuna*, at the home she had built in memory of her *kupuna*. It became her legacy to us, and now we are committed to *malama* it as she did for our *mo’opuna* and the generations to follow.

Pre 2018 Access Point

Historically, we have accessed our *Kuleana* through the OGR and through our ahupua’a of the original grant, Honuaino 4, which is the same land division where the Hokulia development is situated. During the past twenty years, we have been accessing our *Kuleana* through the Hokulia property from the Ali’i Bypass Highway (the OGR runs through Hokulia).

Until just a couple of months ago, our access through the property took us across the old government road farther south to our roadway entrance just *mauka* of our *Kuleana*. At that point, easements R-1 and SST-2 were never an issue because we were already *makai* (Westerly) of the two easements. In fact, until we stumbled upon Hokulia’s request, we were unaware that the easements R-1 and SST-2 existed. Upon locating these easements on the ground, it is clear that such were intended to benefit our *Kuleana*.

Unfortunately, the location of R-1 and SST-2 are now issues for our *‘ohana* as Hokulia has unilaterally relocated its “Kuleana Access Road” (note, this name is a euphemism as Hokulia has never recorded such an instrument in favor of the *kuleana* to the north of its property) just *mauka* (easterly) of the OGR and SST. Thus, traversing across such close to our *Kuleana* is now a necessity to reach our *Kuleana*.

According to the Mitigation Plan for Site 50-10-37-21664, a Stepping Stone Trail at Hōkūli‘a (TMK 3-8-1-04), Districts of North and South Kona, Island of Hawai‘i (hereinafter “Mitigation Plan”), R-1 and SST-2 were intended for our (Thompson *Kuleana*) use. To wit, the plan states, in relevant part:

- p. 102 – the attorney for the prior owner of Hokulia said that roadway easements needed to provide access to the owners of *kuleanas* at Kainaliu bays:

As a final matter, we note that the roadway easements are also needed to provide access to the owners of *kuleanas* located at Nawawa and Kainaliu bays, as well as the County of Hawaii for its access easement to the Shoreline Park as required by the entitlements for Hokuli‘a. It is requested that any roadway/utility easements over the Stepping Stone Trail and the Old Government Road include the County of Hawaii and the privately-owned *kuleanas* taking their access over roadways within Hokuli‘a.

p. 102 citing Letter, dated January 9, 2007, from Tim Lui-Kwan, attorney for previous Hokulia owner. Page 105 states in relevant part, SST2 was created for *existing Kuleana*:

SST-2, SST-3 Roadway Purposes

This roadway and utility easement will serve the existing *kuleana* and golf course. These easements will combine a driveway to *kuleana* residences and a golf course maintenance road. The crossing may contain water, sewer, drainage, power, and communications lines.

Page 107 states in relevant part, R-1 was created for *existing Kuleana*:

R-1, R-9, R-10 Roadway Purposes

This roadway and utility easement will serve the existing *kuleana* and the golf course. These easements will combine a driveway to the *kuleana* residences and a golf course maintenance road. The crossing may contain water, sewer, drainage, power, and communications lines.

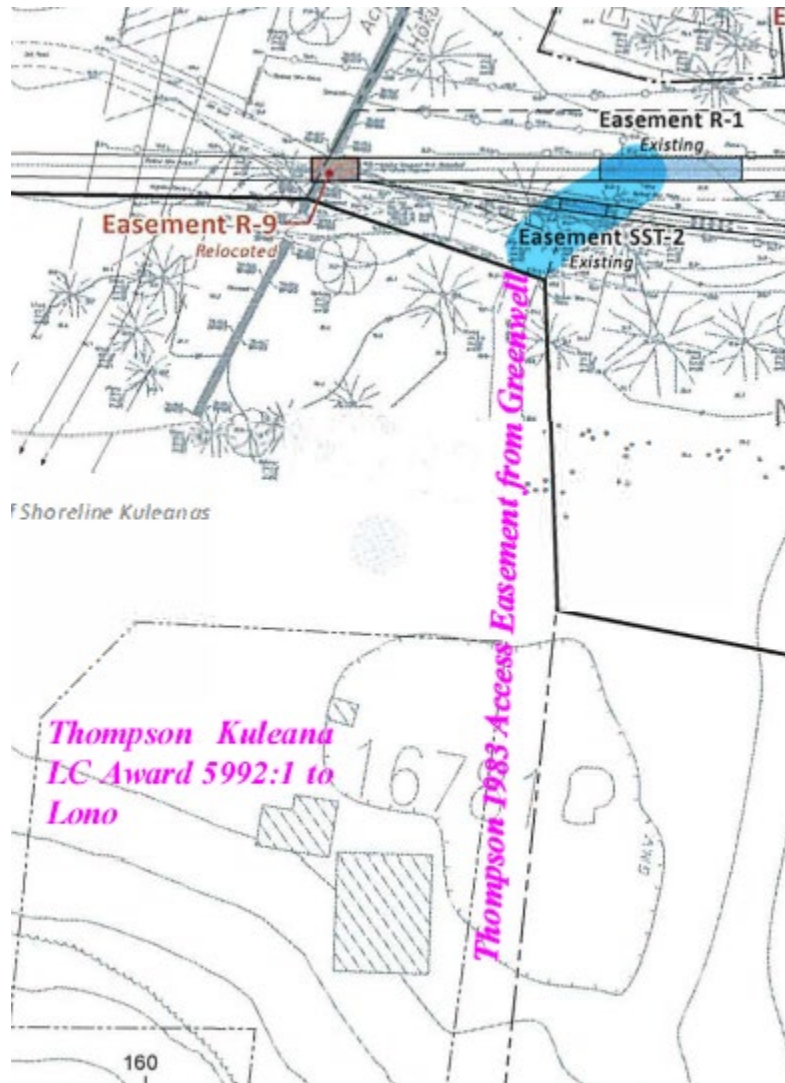
The closest *Kuleana* in the vicinity of R-1 and SST-2 is the Thompson *Kuleana*.

Below is picture depicting the easements aligning with the entrance to our access point to our *kuleana*. Note, the white truck is facing *mauka* (Easterly) parked at the entrance point to our Kuleana.



[cont'd on next page]

Moreover, this is evident even in Hokulia's own Exhibit F, the relevant portion of which is below with the added notation of the location of our Kuleana and our access easement to the original OGR as described in 1949 and 1975:



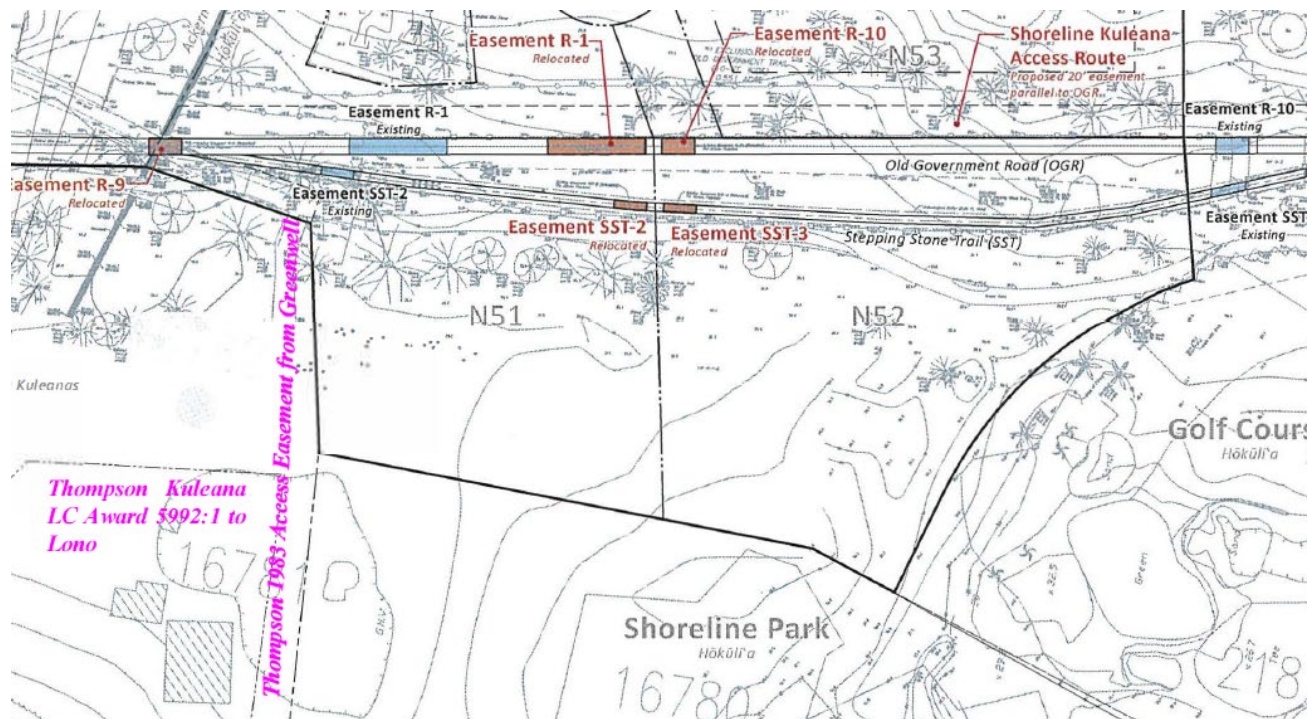
Hokulia requests that easements R-1 and SST-2 be taken away from our family and given to Hokulia farther south to accommodate their yet-to-be-subdivided multimillion dollar lots close to the ocean.

Currently, the yet-to-be-subdivided parcel is outlined as TMK ending in 79 on Exhibit A of Hokulia's submittal:



Id. Hokulia desires to split TMK ending in 79 into two parcels, thereby vastly increasing the value of the area comprising TMK ending in 79.

However, in order to accomplish such and obtain County approval, it needs to take easements R-1 and SST-2 to the South for the northern half of TMK ending in 79, and take easements R-10 and SST-3 to the North for the southern half of TMK ending in 79.

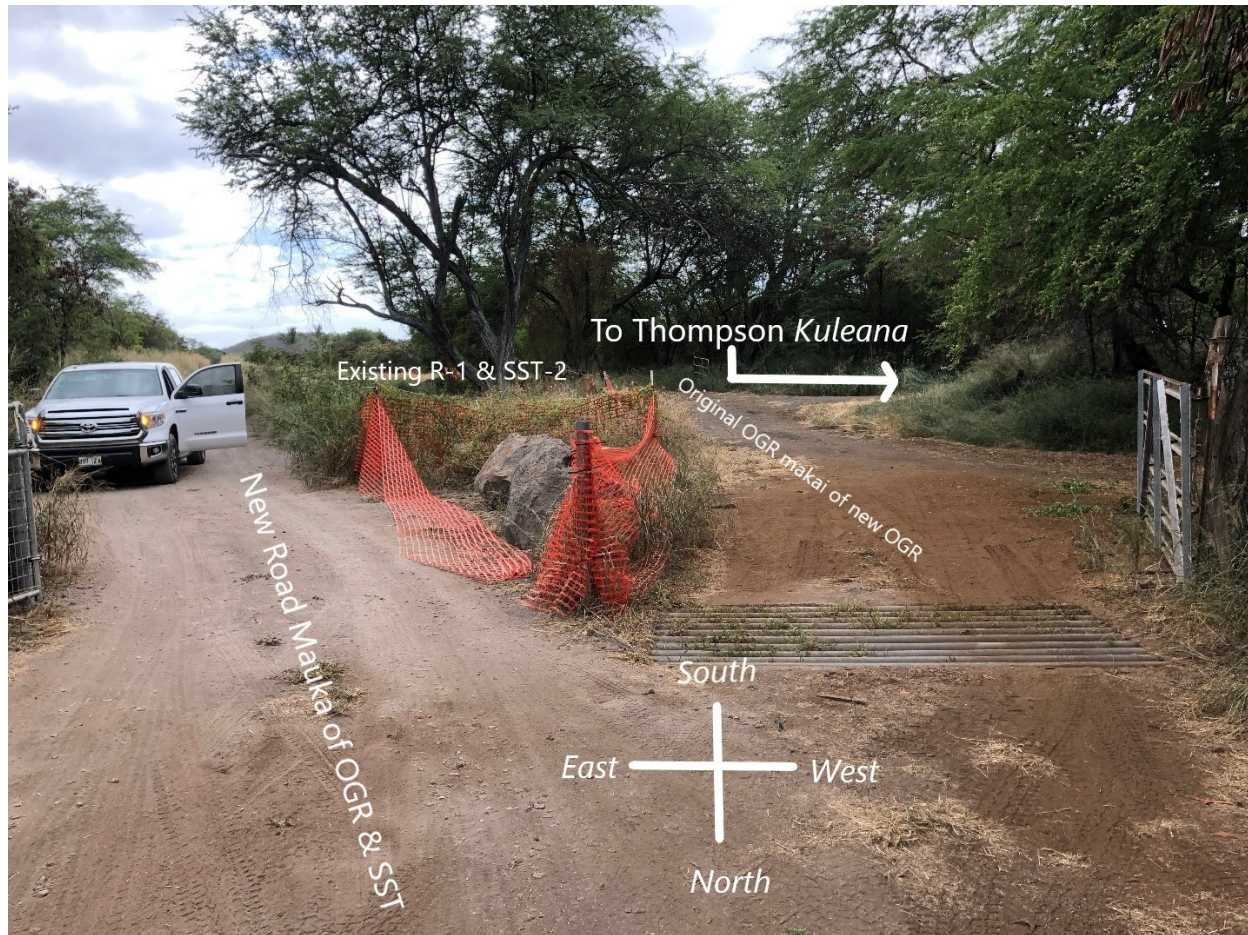


This much is indicated on Exhibits E and F of Hokulia's submittal which shows TMK 79 being cut in half (noted as "N51" and "N52").

Most certainly using said easements for the new, to-be-subdivided, lots frustrates the accepted purposes of said easements: for the *Kuleana*. See Mitigation Plan, *supra*.

Initially, when it relocated its "Kuleana Access Road" *mauka* of the OGR and SST, Hokulia made us trespass unto Ackerman's property and reverse through the cattle guard (the same location as the requested relocation of easement R-9) to access our *Kuleana*. Obviously, this created a legal issue for us as we have no legal right to cross over Ackerman's property.

More importantly, this created a safety issue for our 'ohana reversing through a narrow passageway.



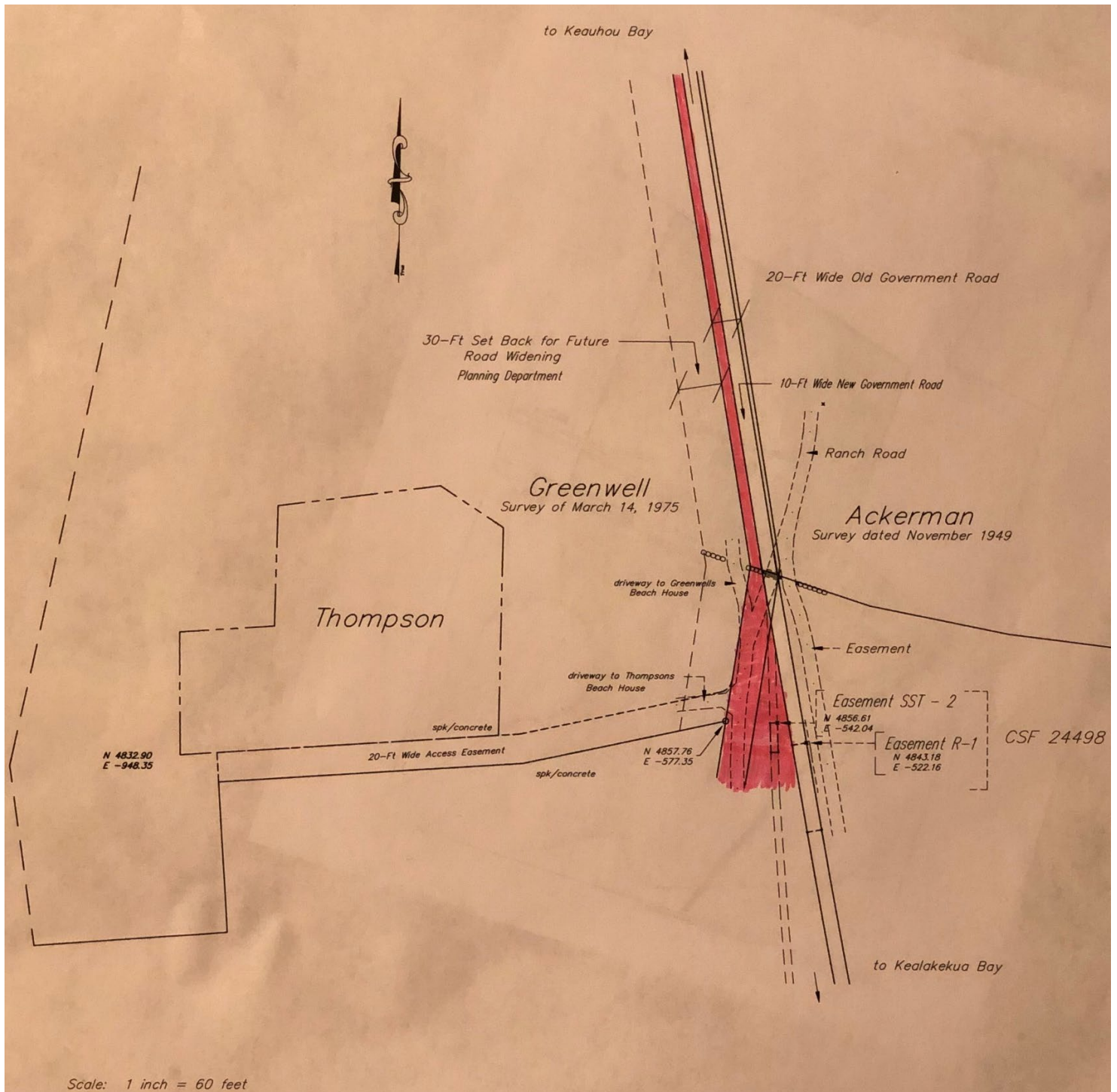
To Hokulia’s credit, after presenting this concern to it, Hokulia has reopened the “old” access point *albeit pending the January 11, 2019 hearing*. And it has suggested revisions according to its December 26, 2018 correspondence. These revisions include making our proposed traverse over the OGR easily negotiable with a reasonably sized vehicle.

While the physical access as proposed in Hokulia’s December 26, 2018 correspondence appears at first glance to be reasonable—*assuming Hokulia follows through with its revisions*; we, however, have concerns about the long-term issues that need to be dealt with. Since it has only a short time since we discovered that this application was going before the BLNR, we have not had adequate time to assess the entire long term legal ramifications these relocations may have for our family.

Long Term Problems Created by Hokulia and the State without Notice to Thompsons

The Thompsons previously accessed their *Kuleana* through the OGR (as described in 1949 and 1975). Note, as late as 1975, the County of Hawaii considered said road as the legal access to Kainaliu beach when it granted subdivision approval for the creation of the Greenwell’s five (5) acre lot and separating such from what is now the Hokulia property. See Exhibit A attached. However, to our surprise, the State and the previous owner of the Hokulia project relocated the OGR (as

described in 1949 and 1975) farther mauka (easterly). Consequently, the description of our easement to the OGR was disturbed. Our *Kuleana* is now landlocked and no longer *pili* with the OGR. The same is true with the Greenwell's five (5) acre parcel. *Did its mauka boundary move with the new location of the OGR?* The "gap" created by the relocation of the OGR (as described in 1949 and 1975) farther mauka (easterly) is illustrated below in pink.



Moreover, it appears the previous owner of Hokuli'a and the State of Hawaii entered into an agreement (to which the Thompsons were not a party to) which forbade (except on designated points) vehicular access on the OGR thereby "land locking" us further. Again, this was a surprise to us.

We have yet to complete even a cursory review of the record to determine if any easement *in writing* in favor of our *kuleana* exists. In any event, the BLNR and Hokulia are duty bound to ensure that the Thompsons are allowed legal and meaningful access to their *kuleana*. This much is mandated by HRS §§ 1-1 and 7-1. Our Kuleana is located in the *ahupua`a* of Honuaino 4, the northern boundary of which borders the northern portion of our *kuleana*. This is the same *ahupua`a* that the Hokulia project is located. Further, under the original Shoreline Park Management and Public Access Plan, as a condition of the development, the previous owner of the project had already stated that "access to the *kuleana* parcels will be maintained over internal project roadways." See Section 2.0, p. 7. Hokulia now attempts to renege on this promise and shirk its responsibility. The relocation of R-1 and SST-2 easements has legal ramifications for our family as such perpetuates the fact that the State and previous owner of the Hokulia project took our access without our knowledge or participation.

At the very least, as a condition of any relocation, the Thompsons request that the State and Hokulia be required to give our family legal access to the Ali'i Bypass highway. While access is being currently traversed through Hokulia, we request that such be memorialized and recorded so that our family does not have to go through this process again. In this vein, among other things, we are concerned that Hokulia's conveyance to the State for the OGR and SST contained no exception or "subject to" language regarding the owner's responsibility to provide access to our *Kuleana*.

Last, we are concerned that relocating R-9 to the south will be to the detriment to the Ackerman family because it is losing their legal access point across the OGR. The Ackerman family will be left to deal with the bureaucratic steps to regain such solely to accommodate the developer's (Hokulia) request.

We would like more time to assess this situation and fear that the requested relocation of the easements will perpetuate our problems noted above, and potentially be construed as a waiver of our rights.

Sincerely,

Thompson `Ohana

(by Lori Weeks, Co-Trustee of the Leilani Kokoali'i`ole Thompson Trust)

COPY

PLANNING DEPARTMENT
25 AUPUNI STREET

COUNTY OF HAWAII
HILO, HAWAII 96720

April 14, 1975

Mr. Robert Carlsmith
Carlsmith, Carlsmith, Wichman
and Case
P. O. Box 686
Hilo, Hawaii 96720

Re: Subdivision of a portion of Grant 1651
to be consolidated with L. C. Aw. 5561-BB:1
Neuaino 3, North Kona, Hawaii
TMK: 7-9-12:3 (73-206)

Inasmuch as the Old Hawaiian Road satisfies the requirements of access and all remaining concerns stipulated in our tentative approval letter have been met, final approval for recordation to the above subdivision is hereby granted.

Copies of the certified map are enclosed.

for 
Raymond Suefuji
Director

DKS:mh

Enclosure - No. 3569

cc Norman Greenwall, et al
Chief Engineer
Manager-DWS
Env. Engineer
District Engineer
State Tax Office
John Weeks

EXHIBIT A