

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

July 26, 2019

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

OAHU

Issuance of Right-of-Entry Permit for Construction of Road “S” to D.R. Horton – Schuler Homes, LLC on Lands Encumbered by Memorandum of Agreement dated May 1, 2012 between the Department of Hawaiian Home Lands and Department of Land and Natural Resources, as amended on July 19, 2016 Regarding Construction of Roads in East Kapolei II, Kapolei, Ewa, Oahu, Tax Map Key: (1) 9-1-017: portions of 161.

APPLICANT:

D.R. Horton – Schuler Homes, LLC, a Delaware limited liability company. (“DRH”)

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of State land located in Kapolei, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-017: portions of 161, as shown on the maps attached as **Exhibit 1**.

AREA:

A 60-foot roadway, containing an area of 2.584 acres, and further designated as Easement 4772, as shown on Map 712, Land Court Application 1069.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Acquired after Statehood, i.e. non-ceded  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Pursuant to a Memorandum of Agreement (“MOA”) dated May 1, 2012 between the Department of Hawaiian Home Lands (“DHHL”) and Department of Land and Natural Resources (“DLNR”), as amended on July 19, 2016, DHHL is responsible to construct, maintain, and repair East-West Road, Road “E” and Road “S” in East Kapolei II.

CHARACTER OF USE:

Right, privilege and authority to construct, maintain and repair a right-of-way over, under and across Road S.

TERM OF RIGHT-OF-ENTRY:

Commence on a date to be determined by the Chairperson and expire upon the issuance of an executive order to the City and County of Honolulu (“City”), which is not disapproved at the next State Legislature, pursuant to the above-mentioned MOA.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject Road “S” was included in the Final Environmental Impact Statement acceptance notice for the East Kapolei Master Plan published in the OEQC's Environmental Notice in July 1998.

REMARKS:

At its meeting on September 24, 2004, under agenda Item D-14, the Board authorized the conveyance of 318 acres of State lands in East Kapolei to DHHL for the development of housing and associated infrastructure. The roads, including Road “S”, within the development would be conveyed by DHHL to the City upon construction.

Due to the prohibition against the conveyance of its fee title interest in DHHL lands pursuant to the Hawaii Homes Commission Act of 1920, as well as the enactment in 2009 of Section 171-64.7, HRS,<sup>1</sup> the method of disposition was later changed to setting aside the roadways to the City by Governor’s executive order. An MOA was entered into 2012 between DHHL and DLNR and amended in 2016, in which DHHL is responsible for constructing, maintaining, and repairing the roadways until the completion of the set-aside process.

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<sup>1</sup> HRS Section 171-64.7 requires any sale or gift of State land, including conveyances to the various counties, be subject to prior legislative approval by concurrent resolution adopted by at least a two-thirds majority vote in each house.

DRH is the owner of the parcel immediately mauka of Road “S”, which includes a proposed 18-foot roadway lot. DRH and DHHL are working on an agreement by which DRH will construct Road “S” at its costs in conjunction with its improvement of the 18-foot roadway lot on DRH property. DRH requests a right-of-entry from the Board for the construction of Road “S”.<sup>2</sup> Upon completion of the 78-foot roadway, DRH will continue to maintain and repair the entire roadway until the completion of the set-aside of Road “S” and dedication of the 18-foot roadway lot (collectively, the “Road”) to the City. In the event DHHL desires to use any portion of the Road prior to dedication or set aside, as applicable, DRH and DHHL will share equally in the cost of the maintenance and repair of the Road.

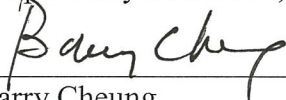
Notwithstanding DRH’s commitment, DHHL will continue to honor its obligation under the MOA with DLNR, i.e., remain responsible for the maintenance and repair of Road “S” until such time the executive order setting aside Road “S” is issued. A memorandum dated June 19, 2019 from DHHL regarding its commitment under the MOA described above is attached as **Exhibit 2** for the Board’s reference.

Other than DHHL, staff did not solicit comments from other government agencies on the subject request. Staff recommends the Board authorize the issuance of a right-of-entry to DRH for the construction of Road “S”.

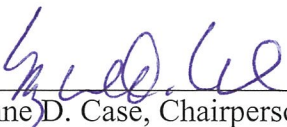
RECOMMENDATION: That the Board authorize the issuance of a right-of-entry permit to D. R. Horton – Schuler Homes, LLC over the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

<sup>2</sup> DRH was not comfortable constructing the road under the MOA between DHHL and DLNR because the MOA does not contemplate a third party entering onto the land and constructing the road on DHHL’s behalf.





**TMK (1) 9-1-017: portions of 161**

**EXHIBIT 1**



DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII




WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P O BOX 1879  
HONOLULU HAWAII 96805

June 19, 2019

TO: The Honorable Suzanne D. Case, Chairperson  
Board of Land and Natural Resources

FROM: William J. Aila, Jr., Chairman   
Hawaiian Homes Commission

SUBJECT: Issuance of Right-of-Entry Permit to D.R. Horton – Schuler Homes, LLC  
Roadway Construction Purposes (Ho'opili, Phase 6 –Road "S")  
Honouliuli, Ewa, Oahu  
Lot 19895, Map 1667, Land Court Application 1069  
Tax Map Key: (1) 9-1-017: portions of 161

The Department of Hawaiian Home Lands ("DHHL") hereby requests that the Board of Land and Natural Resources ("BLNR") issue a Right-of-Entry Permit to D.R. Horton – Schuler Homes, LLC ("DRH") for roadway construction purposes on State property in Honouliuli, Ewa, Oahu, specifically Lot 19895, as shown on Map 1667, filed with Land Court Application 1069, covered by Tax Map Key: (1) 9-1-017: portions of 161 (the "BLNR Parcel").

DHHL has been working with DRH on an agreement ("Road 'S' Agreement") for DRH to undertake the construction of Road "S" within the BLNR Parcel, adjacent to DRH's development known as Ho'opili ("Ho'opili").

Road "S" is contemplated to be constructed over a 60-foot access easement within the BLNR Parcel, identified as Easement 4772, as shown on Map 712, filed with Land Court Application 1069 (the "Roadway Easement Area" or "BLNR Road Segment"). The BLNR Road Segment borders Lot 10067-B-1-A, as shown on Map 1523, filed with Land Court Application 1069 owned by DRH (the "DRH Parcel") within Ho'opili.

Pursuant to that certain First Amended Memorandum of Agreement Regarding Construction of Roads in East Kapolei II, dated July 19, 2016, by and between DHHL and BLNR (the "MOA"), which MOA supersedes that certain Memorandum of Agreement Regarding Construction of Roads in East Kapolei II, dated May 1, 2012, by and between DHHL and the Department of Land and Natural Resources, DHHL is obligated, in part, to improve the Roadway Easement Area (described in the MOA as Road "S") as a roadway, and thereafter maintain and repair such roadway improvements until such time that the Roadway Easement Area and roadway improvements constructed thereon are set aside to the City and County of Honolulu (the "City") via executive order.

**EXHIBIT 2**

Honorable Suzanne D. Case, Chairperson  
June 21, 2019  
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Under the Road "S" Agreement, DRH will undertake the construction of Road "S" and expand the Roadway Easement Area to a 78-foot wide road right of way by including an 18-ft wide area located on the DRH Parcel (the "**DRH Road Segment**"; and, together with the BLNR Road Segment, collectively, the "**Road**") abutting the Roadway Easement Area, as depicted on Exhibit "A" attached hereto. DRH will, at its sole cost and expense, design, construct, maintain and repair the Road improvements until the dedication by DRH of the DRH Road Segment and set aside of the BLNR Road Segment by executive order, respectively, to the City.

Based on the foregoing, DHHL requests a Right-of-Entry Permit for DRH to construct a roadway over the Roadway Easement Area within the BLNR Parcel. Irrespective of the Road "S" Agreement with DRH, DHHL reaffirms the obligations of DHHL under the MOA and specifically acknowledges and agrees that DHHL shall remain responsible for the maintenance and repair of the BLNR Road Segment until such time the Governor issues an executive order setting aside the BLNR Road Segment to the City.

Should you have any questions, please call me at 620-9510, or your staff may contact Darrell Ing of our Land Development Division at 620-9276.

