

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

August 13, 2021

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT:** Authorize to Execute Agreements for the Realignment of Easement and Acceptance of Perpetual Non-Exclusive Gratis Public Trail Easements to Improve Access to the Ka'iwa Ridge Trail, Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-002:portions of 016, (1) 4-3-007:portions of 018 and 077.

**SUMMARY:**

The Division of Forestry and Wildlife (DOFAW) requests that the Board of Land and Natural Resources (BLNR) approve the realignment of a roadway easement reserved to the State of Hawai'i over private properties located at Tax Map Key (TMK) (1) 4-3-007:portions of 018 and 077, and acceptance of public access easements and execution of memorandum of agreement over private property located at TMK (1) 4-2-002:portions of 016.

The purpose of the request is to realign the roadway easement with a neighboring public access easement to create a single, wider, legal public access corridor for the Ka'iwa Ridge Trail.

**LOCATIONS and APPLICANTS: (Exhibit A-1)**

(1) 4-2-002:016 (Parcel 16)  
Association of Apartment Owners of The Bluestone

(1) 4-3-007:018: CPR 001, CPR 002, CPR 003 (Parcel 18)  
Association of Apartment Owners of Puulani Kai

(1) 4-3-007:077 (Parcel 77)  
Timothy Dwight Smythe, Jr. and Kimberly Marie Smythe, husband and wife, as tenants by the entirety

AREAS:Realignment of easement

1,706 square feet and 2,697 square feet, more or less over Parcel 18 and Parcel 77 respectively as shown on **Exhibits A-2 and A-3**.

Acceptance of easement and memorandum of agreement

Public access easement B, 11,045 square feet and Public Access Easement 8, 3,546 square feet, more or less, as shown on Exhibits A-5 to A-7 over Parcel 16.

LEGAL REFERENCE:

Sections 171-6, 171-30, 107-10, and 198D-7.5 Hawai'i Revised Statutes (HRS), as amended.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The action before the Board does not constitute a use of State lands or funds, and therefore, this action does not trigger the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as Chapter 343, HRS, environmental requirements apply DOFAW use of the lands, DOFAW shall be responsible for compliance for those projects with Chapter 343, HRS, as amended.

BACKGROUND:

Two artillery observation stations were installed by the U.S. Army at the crest of the Ka'iwa Ridge during World War II. The Declaration of Taking No. 743, dated July 23, 1946, recorded in the Bureau of Conveyances as Liber 2070 Page 179, describes the roadway easement as "a perpetual right of way and easement for the location, construction, operation, maintenance, repair and patrol of an access road in, on, over and across said lands, reserving to the present owners, their respective successors in interest, tenants and subtenants, and all persons now or hereafter having rights of way thereover, the right to use said lands in common with the United States in such manner as will not interfere with or abridge the use and enjoyment of the easement taken by the United States." The roadway easement leading to the observation stations thus began as a military access road commissioned to transport personnel and equipment.

Once decommissioned, the parcel containing the observation stations and the roadway easement were privately owned for several decades. There were a number of unsuccessful attempts by developers to build residential properties on the ridge. Lanikai community activists and conservationists advocated for the preservation of Ka'iwa Ridge over several decades. The State of Hawai'i, by its Board of Land and Natural Resources, purchased the parcel, TMK (1) 4-2-002:017, and the roadway easement by Warranty Deed dated December 17, 1992, recorded in the State of Hawaii Office of Assistant Registrar as Doc. No. 1986143, Transfer Certificate of Title No. 405,621, and in the State

of Hawaii, Bureau of Conveyances as Doc. No. 92-215411 on December 31, 1992 (Land Office Deed S-27967). The parcel and the roadway easement were set aside to DOFAW, Nā Ala Hele Trails Program by Executive Order 3610 dated February 11, 1994, recorded in the State of Hawaii, Office of Assistant Registrar as Doc. No. 2176138, “*for the protection and preservation of lands having value as a resource to the State of Hawai‘i and for the Nā Ala Hele Trail Program purposes...* ”.

The roadway easement connects to Ka‘elepulu Drive at Parcel 18 and traverses generally eastward through Parcel 77 where the ridge rises sharply. The roadway easement continues easterly and upslope to the east property line of Parcel 77 where it continues on to Parcel 16 owned by the Association of Apartment Owners of The Bluestone, an unincorporated association (Bluestone). The roadway easement then traverses a parcel of land, TMK (1) 4-2-002:048 (Parcel 48) owned by Trustees of the Estate of Bernice Pauahi Bishop, dba Kamehameha Schools, and eventually connects to the State-owned parcel upon which the historic artillery observation stations are situated. The roadway easement is identified on **Exhibit A-4** with an area of 0.583 acre.<sup>1</sup>

As shown on Exhibit A-1, portions of the roadway easement is currently located approximately 10 feet inside the property line of Parcel 18, and takes a meandering course through Parcel 77, presumably to facilitate vehicle access when initially used by the military. The location of the subject roadway easement divides both Parcels 18 and 77 in such a way that a strip of private property unencumbered by the subject roadway easement is located between the roadway easement and the property line. This strip of private property is essentially unusable by the owners due to its linear configuration and location sandwiched between the subject roadway easement and the property line.

The roadway easement is unmarked, thus in practice, hikers who access the historic artillery observation stations tend to walk on the strip of private property and on a parallel public access easement that is located on the private property, Parcel 16. The public access easement was a requirement placed on Parcel 16 by the City and County of Honolulu as a condition of development to ensure mauka access. The Bluestone public access easement is identified as “Public Access Easement B” [11,045 sf]. In addition, there is another Public Access Easement 8 [3,546 sf] which was also created during the development of the Bluestone parcel. Both easements are depicted on **Exhibits A-5 to A-7**.

## DISCUSSION:

DOFAW’s Nā Ala Hele Program is the process of developing a management plan for the Ka‘iwa Ridge Trail. Over the last decade, the trail has become an increasingly popular destination hike. The trail’s popularity has led to its physical deterioration resulting in erosion that makes traversing the trail difficult and causes nearshore sedimentation

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<sup>1</sup> The 0.583-acre easement is already covered in EO 3610 and portion of such easement crossing Parcel 48 will not be affected by today’s request.

(Falinski, Arimoto, & Conklin, 2016). The erosion is exacerbated as hikers increase the footprint into vegetated areas of the hillside adjacent to the trail, thus illegally traversing across private property and exposing more soil. The popularity of the hike has also created neighborhood conflicts with respect to noise, parking demand, and littering. Lack of facilities, including restrooms, trail signage, water fountains, and a clearly demarcated trail, have led to increased tensions with the neighboring community as hikers seek comfort amenities. These issues have been identified as priority areas of concern for adjacent community associations including the Bluestone Condominium Board of Directors and the Lanikai Association.

Of particular concern is the initial trail approach and first ascent through the Parcels 16, 18, and 77. This segment of trail is very steep, badly eroded and is believed to be the primary source of sediment running off of the trail during rain events. It is in need of physical management measures including surface and water management treatments as well as informational signage for hikers.

As the legal public accesses are currently configured, there are two parallel ten-foot wide easements: the subject roadway easement across parcels 18 and 77 (Exhibit A-1), and the public access easement over Parcel 16 (Exhibit A-2). They are separated from each other by a strip of private property. By realigning the subject roadway easement to the property line adjacent to the public access easement is over Parcel 16, an opportunity presents itself to create a wider trail corridor in which to construct physical improvements to the trail surface and address water management. It also creates the opportunity for a single, legal, corridor in which to direct the hiking public.

DOFAW staff have been in communication with the land owners (AOAO Puulani Kai Condominium and Smythe) to discuss how the trail can be realigned on their property in such a way that continuous legal public access is maintained from Ka'elepulu Drive, without reducing the land area encumbered by the easement. DOFAW staff have also been coordinating with Bluestone in anticipation of a consolidated trail corridor. In order to accomplish the subject roadway easement realignment, a 6-foot 3-inch connection to Ka'elepulu Drive is proposed at Parcel 18, continuing along the property line at 9-foot 6-inches in width. This width aligns between the back of the curb located on the AOAO Puulani Kai Condominium property and the property line. Once the subject roadway easement crosses onto Parcel 77, it will widen to 10-foot 6-inches wide and then to 13-foot wide near the top of the sloped property. See portions outlined in blue on Exhibit A-2. This wider trail width allows for an equal adjustment the land area presently consumed by the meander through the property. Since the realigned roadway easement will be of equal square footage to the present roadway easement, no payment will be made by the State, AOAO Puulani Kai Condominium, or Smythe.

During the process, Bluestone requested the State to formally accept the perpetual non-exclusive gratis public trail, including public access, easements over its property. DOFAW has no objection to the proposal and is planning to enter a memorandum of agreement with Bluestone regarding the ongoing responsibilities from both sides. Copy of the latest draft MOA and easement document are attached as **Exhibits B-1** and **B-2**

respectively.

Upon consummation of the documents relating to the realignment and acceptance of easements, staff recommends the Board authorize the issuance of an executive order to amend Executive Order No. 3610 incorporating all the actions mentioned above for housekeeping purposes.

RECOMMENDATION: That the Board:

1. Approve a realignment of the subject roadway easement as shown on Exhibits A-2 and A-3 as described above subject to the following:
  - a. Ensure that the land area encumbered by the roadway easement is equal to or greater than 1,706 square feet on TMK (1) 4-3-007:018 (AOAO Puulani Kai Condominium).
  - b. Ensure that the land area encumbered by the roadway easement is equal to or greater than 2,697 square feet on TMK (1) 4-3-007-077 (Smythe).
  - c. Authorize the subject request to be applicable in the event of a change in the ownership of the parcels described as Tax Map Key: (1) 4-3-007:018 or (1) 4-3-007:077 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Authorize the execution of agreements for the realignment easement as shown on Exhibits A-2 and A-3 with AOA Puulani Kai Condominium, and Timothy Dwight Smythe, Jr. and Kimberly Marie Smythe for roadway, including public access, purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the acceptance of perpetual non-exclusive gratis easements a shown on Exhibits A-5 to A-7 from the Apartment Owners Association of The Bluestone for public trail, including public access, 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 form of easement document, 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.
4. Authorize Chairperson execute the memorandum of agreement regarding the public trail, including public access, purposes easements as shown on Exhibits A-5 to A-7 with the Apartment Owners Association of The Bluestone under terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Approve of and recommend to the Governor the issuance of an executive order amending Executive Order No. 3610 regarding the realignment and addition of easements as described above to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

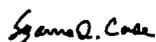
Respectfully Submitted,



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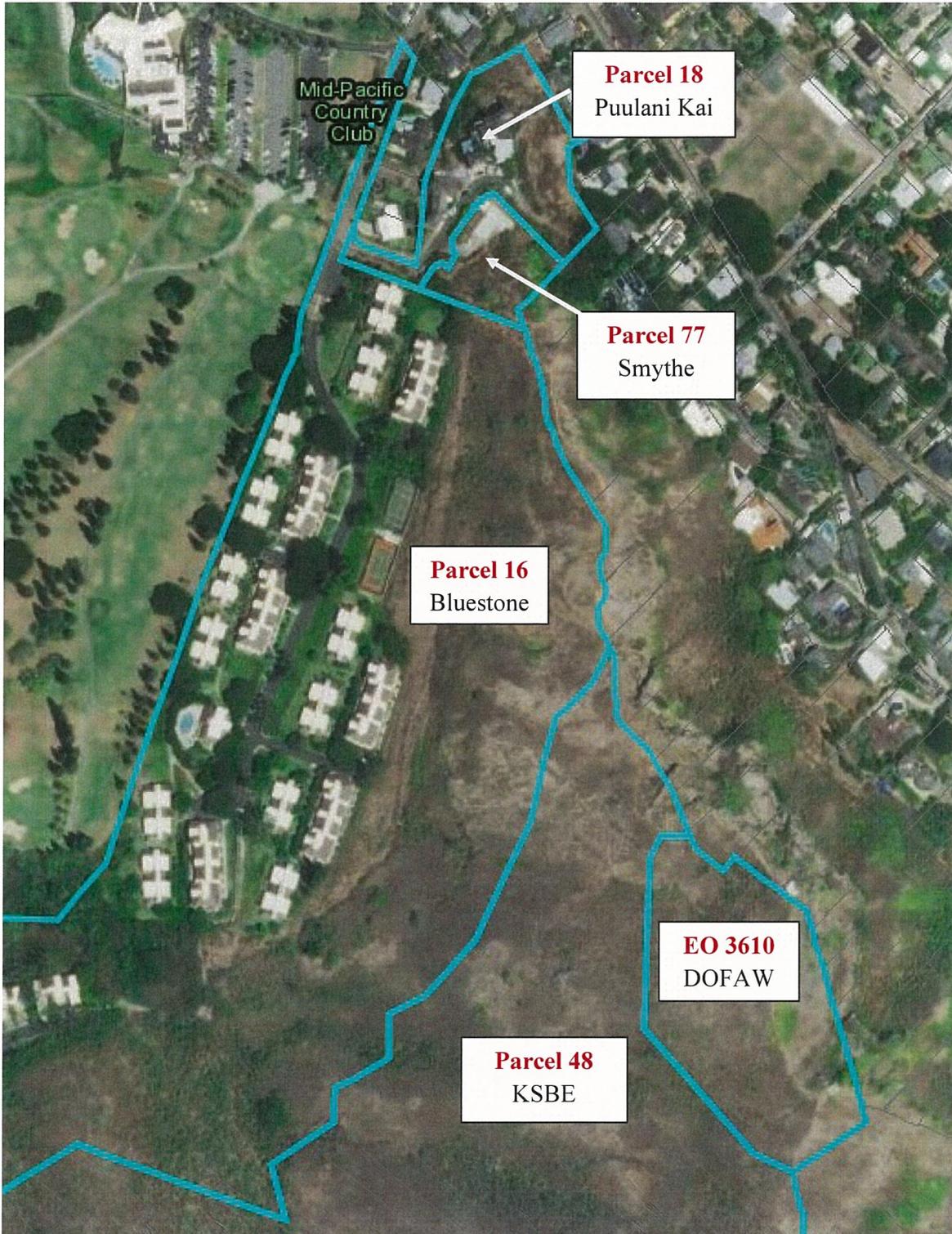
David Smith  
Administrator, Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL

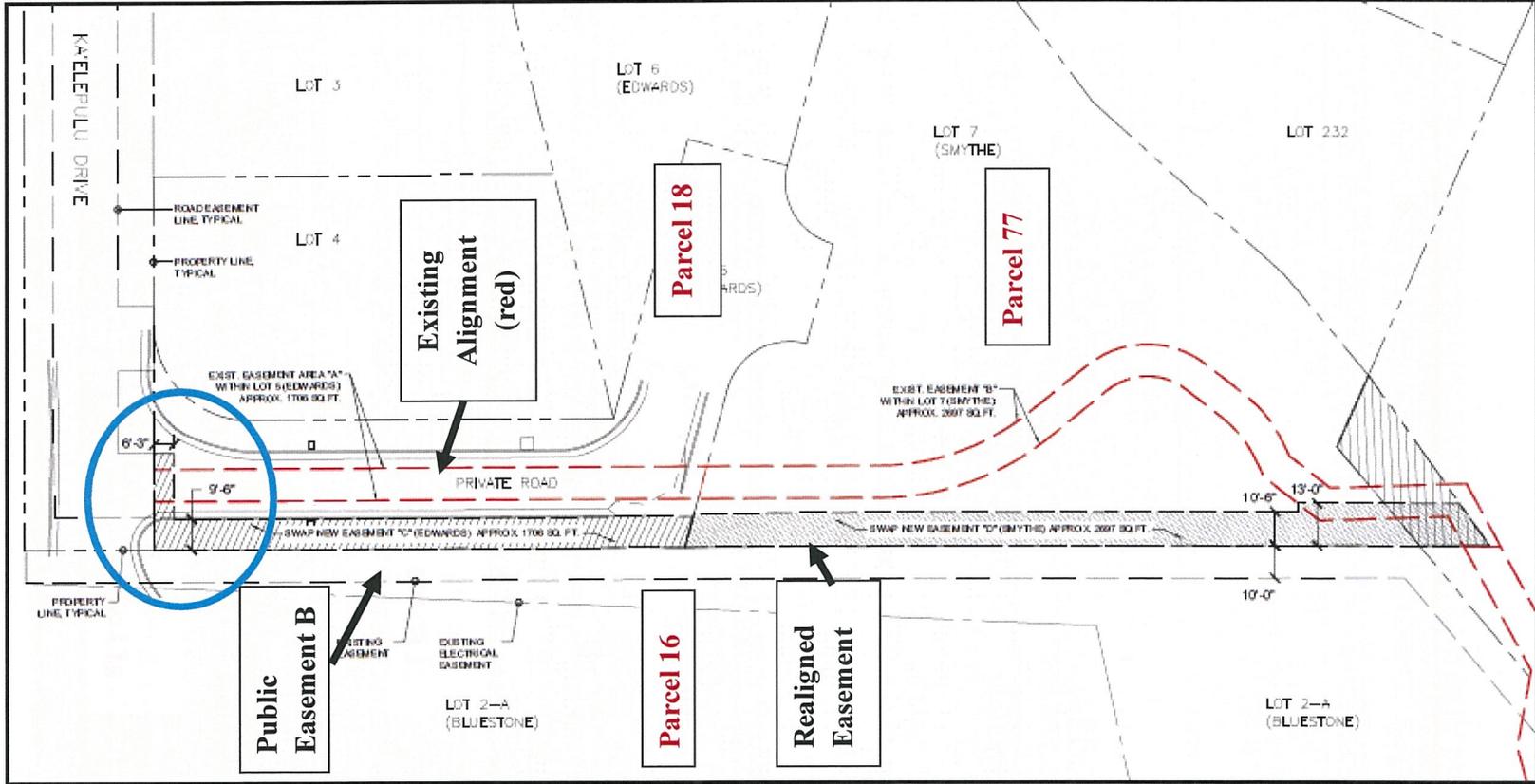


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Suzanne D. Case, Chairperson



**EXHIBIT A-1**



RECOMMENDED TRAILHEAD EASEMENT SWAPS

KA'IWA RIDGE TRAIL

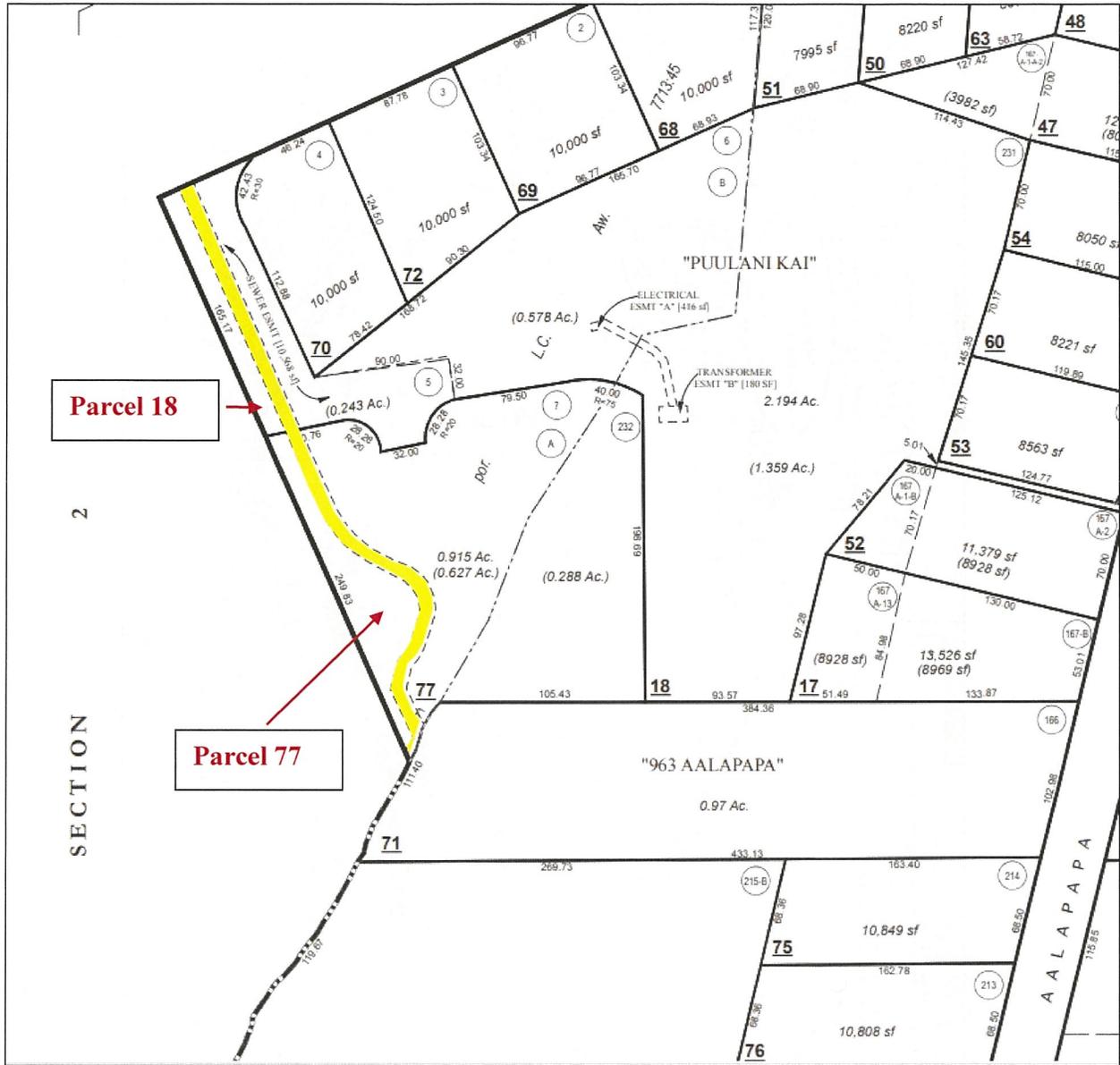
Department of Land and Natural Resources

07/09/2021

Island of O'ahu

DRAFT - SUBJECT TO CHANGE





**EXHIBIT A-3**

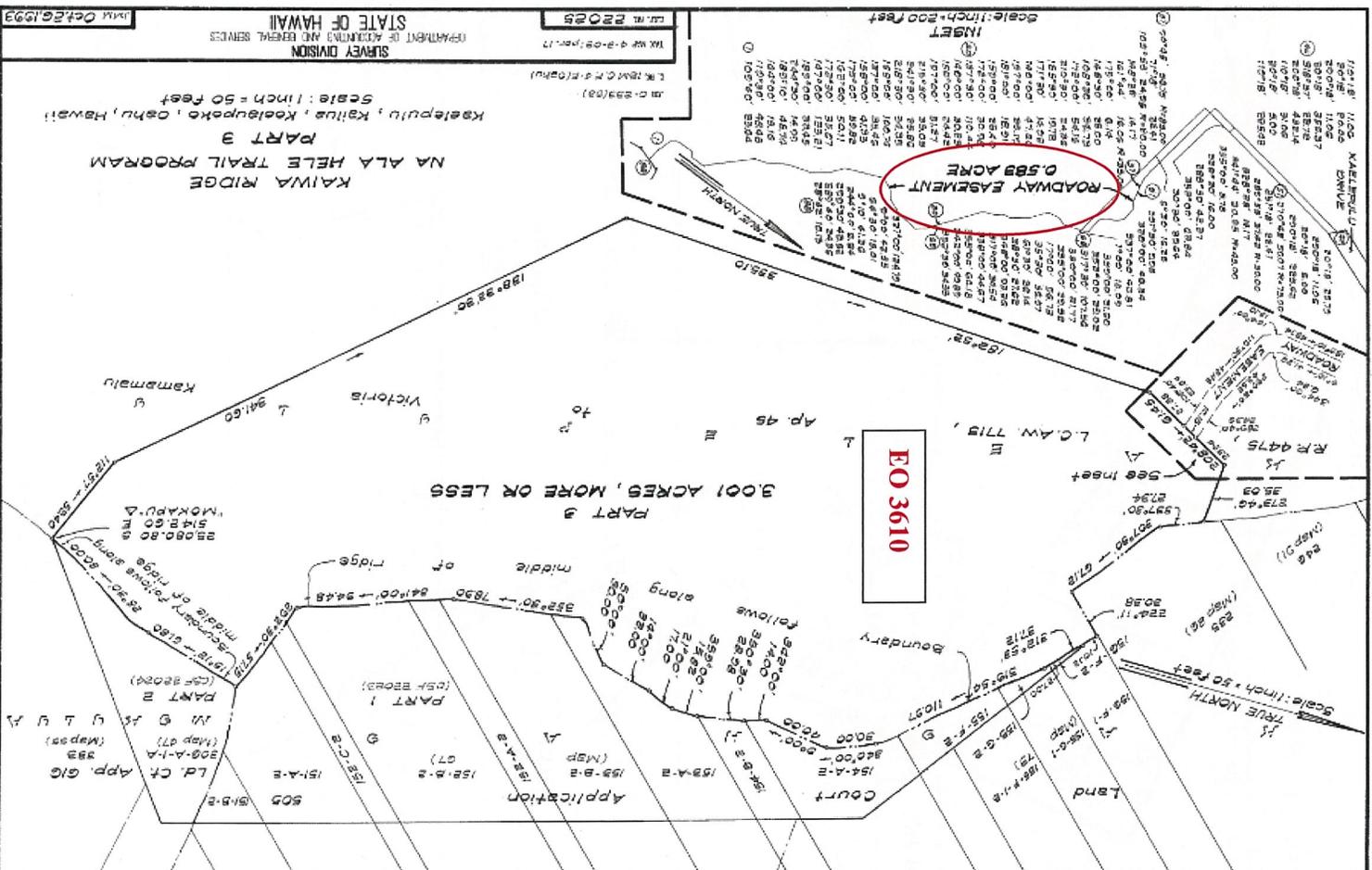
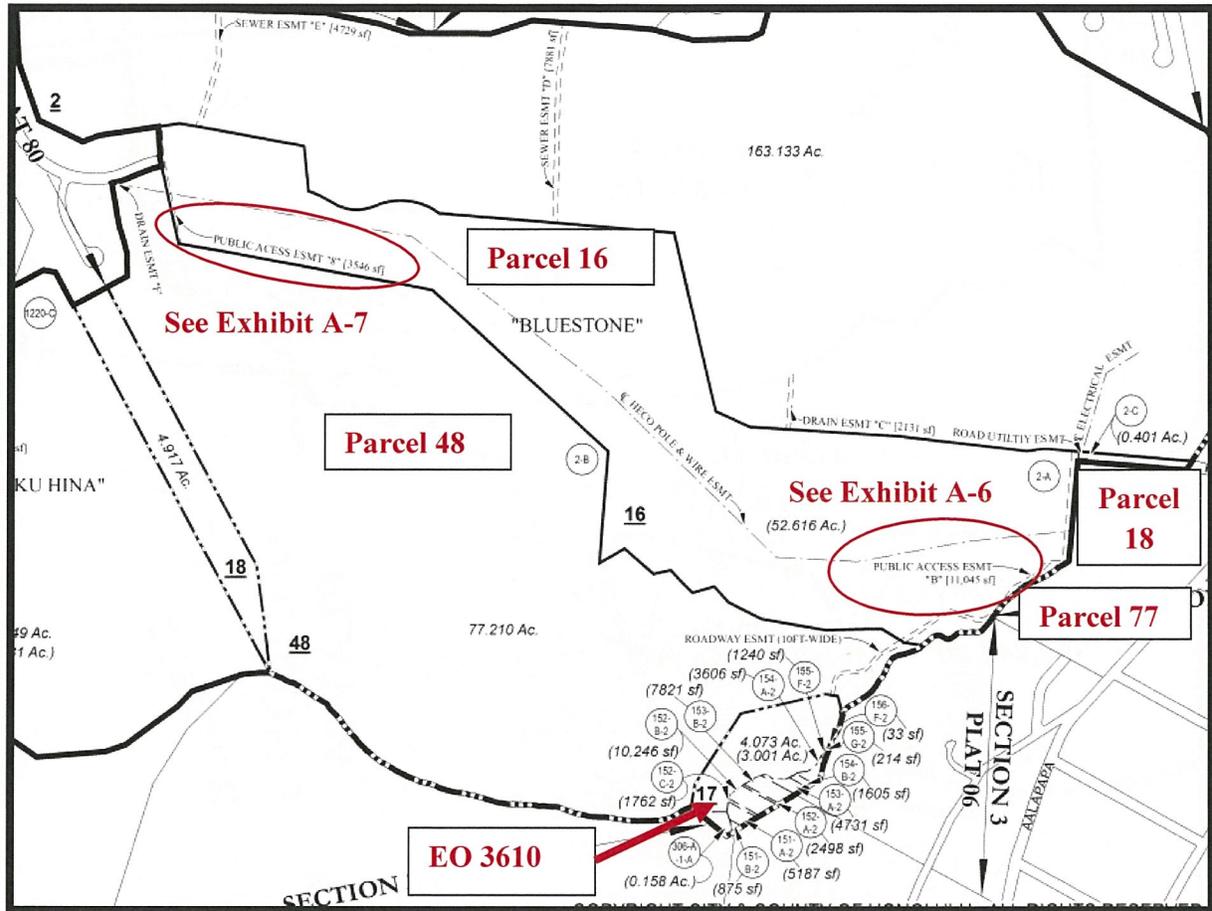
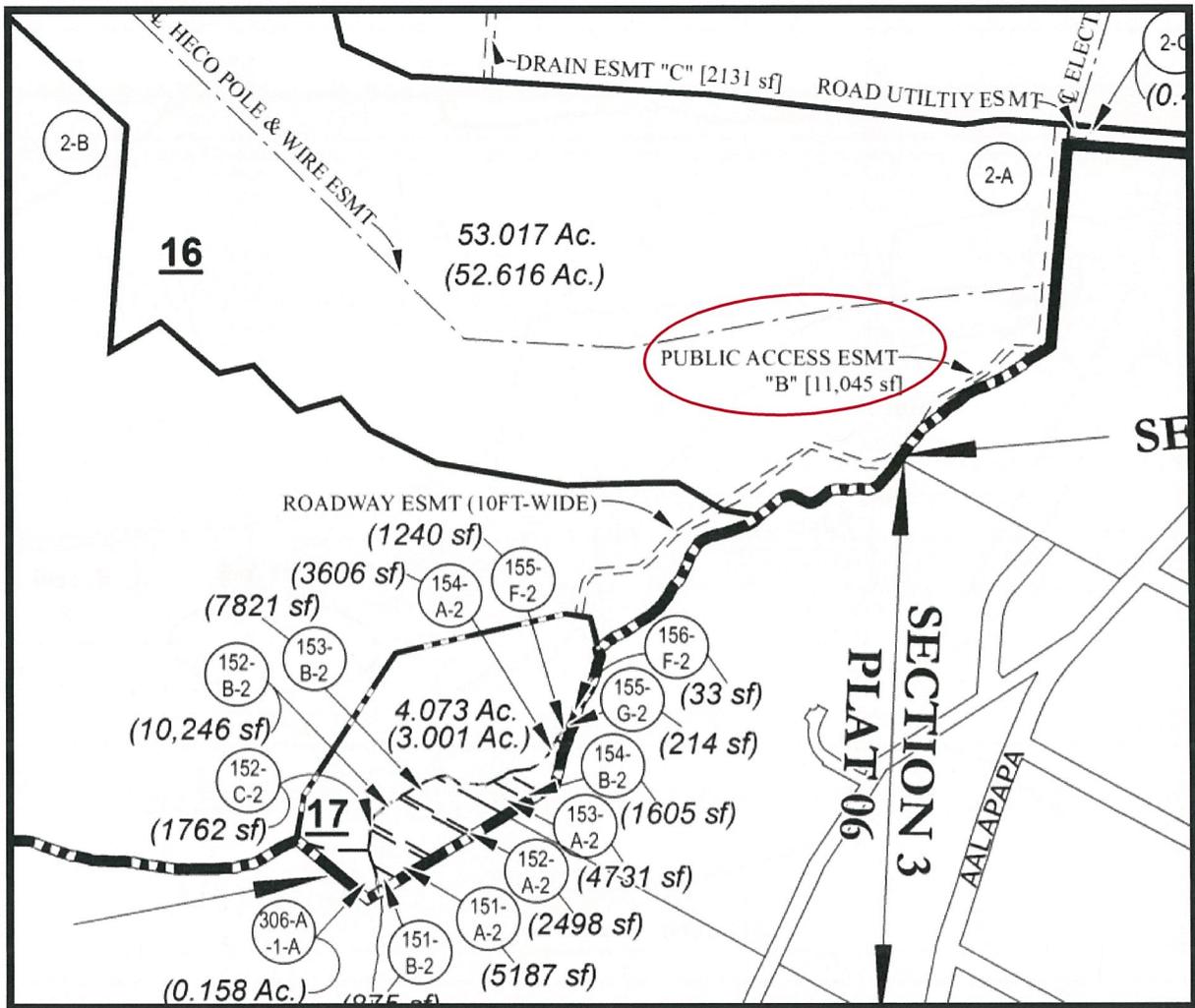


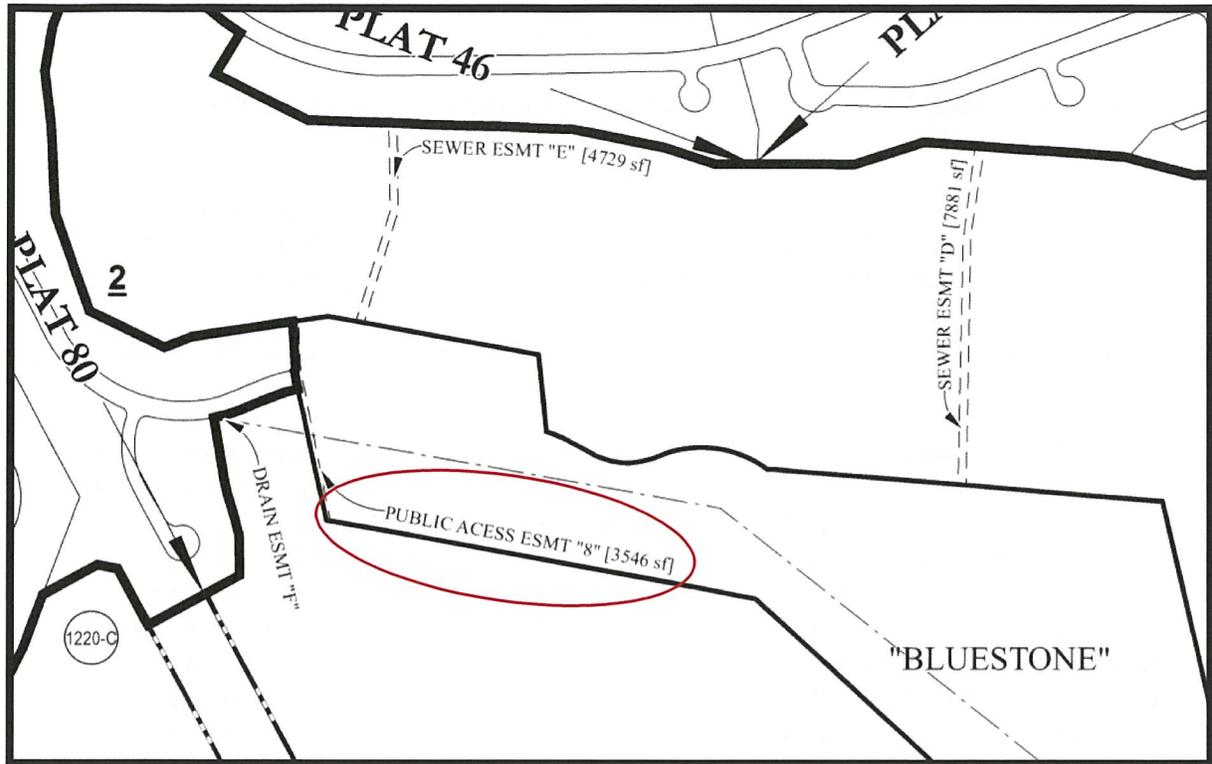
EXHIBIT A-4



# EXHIBIT A-5



**EXHIBIT A-6**



# EXHIBIT A-7

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE ASSOCIATION OF APARTMENT OWNERS OF BLUESTONE, AN  
UNINCORPORATED ASSOCIATION  
AND  
THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL  
RESOURCES FOR THE DIVISION OF FORESTRY AND WILDLIFE  
NA ALA HELE TRAILS AND ACCESS PROGRAM  
FOR  
PUBLIC ACCESS TO A PORTION OF THE LANIKAI PILLBOX TRAIL

This Memorandum of Agreement is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between ASSOCIATION OF APARTMENT OWNERS OF BLUESTONE, an unincorporated association, whose address is 380 Kaelepulu Drive, Kailua, Hawaii 96734, hereinafter referred to as "Bluestone," and the STATE OF HAWAII, by its BOARD OF LAND AND NATURAL RESOURCES, for the DIVISION OF FORESTRY AND WILDLIFE, NA ALA HELE TRAILS AND ACCESS PROGRAM, whose address is 1151 Punchbowl Street Honolulu Hawaii 96813, hereinafter referred to as "DLNR."

**WITNESSETH:**

WHEREAS, pursuant to section 198D-2, Hawaii Revised Statutes (HRS), the Na Ala Hele Trails and Access System ("Na Ala Hele") within the Department of Land and Natural Resources Division of Forestry and Wildlife is charged with the responsibility of managing and regulating trails and accesses in the State of Hawaii; and

WHEREAS, Na Ala Hele is charged with the responsibility to plan, develop, acquire land or rights for public use of land, construct, and engage in coordination activities to implement the statewide trail and access program; and

WHEREAS, pursuant to section 183-1.5, HRS, DLNR is charged with the responsibility of managing and regulating all forest reserves; and

WHEREAS, DLNR is charged with the responsibility to provide for public access and recreational use of forest lands; and

WHEREAS, public access to forest lands for recreational use is provided for in section 198D-2, HRS, through the Na Ala Hele Trails and Access Program; and

WHEREAS, the Lanikai Pillbox located in Kailua on the Island of Oahu, Tax Map Key Number (1) 4-2-002:017 is owned by the State of Hawaii under the management and authority of DLNR, and is of significant importance for public recreational activities; and

WHEREAS, Bluestone is granting DLNR non-exclusive easements over portions of the Lanikai Pillbox Trail located in Kailua on the Island of Oahu, Tax Map Key Number (1) 4-2-002:016 (Portions) (the "Public Access Easement"), as shown on the map attached hereto as Exhibit "A", which property is referred to as the "Portion of Lanikai Pillbox Trail"; and

WHEREAS, the Lanikai Pillbox and the Lanikai Pillbox Trail are regulated and managed by Na Ala Hele; and

WHEREAS, the public will have access to the Lanikai Pillbox through use of the Portion of Lanikai Pillbox Trail; and

WHEREAS, the Portion of Lanikai Pillbox Trail is of critical importance for public recreation; and

WHEREAS, DLNR through its Na Ala Hele Trails and Access Program, may enter into agreements to defend and indemnify owners of private lands to establish and maintain public access over the Portion of Lanikai Pillbox Trail as provided for in section 198D-7.5, HRS; and

WHEREAS, DLNR and Bluestone have a mutual interest in the management and maintenance of the Portion of Lanikai Pillbox Trail; and

WHEREAS, DLNR agrees to maintain, manage, and enforce against illegal activities and unpermitted use associated with the public use of the Portion of Lanikai Pillbox Trail; and

WHEREAS, DLNR shall conduct scheduled periodic inspections of the Portion of Lanikai Pillbox Trail at DLNR's expense to assess trail conditions, monitor public access, and address enforcement issues.

NOW, THEREFORE, it is mutually agreed that both parties hereto shall adhere to the following duties and obligations:

**DLNR shall:**

Construct a trail for the public to access the Lanikai Pillbox through use of the Portion of Lanikai Pillbox Trail.

Install and maintain signage along the Portion of Lanikai Pillbox Trail to provide directions and inform users, as necessary, about access requirements, applicable rules, and potential hazards.

Remove all trash and debris resulting from the public use of the Portion of Lanikai Pillbox Trail.

Provide all needed maintenance along the Portion of Lanikai Pillbox Trail to provide safe public access.

The DLNR's financial obligation and commitment to make payments or reimbursements of any kind under this agreement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the DLNR to make such payment or reimbursement.

**Bluestone shall:**

Allow the public to access the Portion of Lanikai Pillbox Trail.

Advise DLNR within 48 hours whenever Bluestone's management or personnel responsible for overseeing the neighboring Bluestone property are actually aware of unsafe conditions or hazards, as a result of being encountered or reported to Bluestone by the public or Bluestone's representatives or members.

**INDEMNIFICATION**

DLNR shall fully defend and indemnify Bluestone, its officers, board members, association members, tenants, employees, agents, affiliates, successors and assigns ("Indemnified Parties"), against any losses, demands, claims, fines, penalties, expenses, damages, and costs

(including reasonable attorneys' fees), sustained by or made against Indemnified Parties from or arising out of the public's use of the Portion of Lanikai Pillbox Trail pursuant to the Memorandum of Agreement, to the extent allowed and provided by Chapter 198D, as amended, and subject to the provisions of said chapter of the Hawaii Revised Statutes. The provisions of this paragraph shall survive termination for the Memorandum of Agreement but shall be effective only for losses, demands, claims, fines, penalties, expenses, damages, and costs that arise during, or that are attributable to occurrences during, the period in which this Memorandum of Agreement is or was in effect.

#### **NONSUBSTANTIVE AMENDMENTS AND AMENDMENTS FOR MANAGEMENT EFFICIENCIES**

Nonsubstantive amendments or amendments for management efficiencies may be made by mutual agreement of the parties and be executed by a written supplement approved by the DLNR Chairperson and Bluestone and attached hereto.

#### **TERMS, TERMINATION, AND COUNTERPARTS CLAUSES**

**Term.** The term of this Memorandum of Agreement shall be perpetual, unless terminated as provided herein.

**Termination.** This Memorandum of Agreement may be terminated prior to the expiration of the term then in effect by either party, for any reason, upon receipt of ninety (90) days written notification. Bluestone desires to further the public interest in providing and facilitating public access to the Portion of Lanikai Pillbox Trail during the term, while recognizing the potential for changes in circumstances; accordingly, it is DLNR's and Bluestone's intent to exercise such early termination right only for just cause, including without limitation, (a) vandalism, theft, destruction of property, or other unreasonable burdens on Bluestone resulting from this Memorandum of Agreement which DLNR has failed to adequately cure or address in a reasonable and timely manner; (b) changes in circumstances which cause this Memorandum of Agreement to significantly interfere with or adversely impact Bluestone's use of its property, and (c) sale of any part of the Portion of Lanikai Pillbox Trail to an independent third party. DLNR shall have the right, for a period of twelve (12) months upon termination of the Memorandum of Agreement, to enter the Portion of Lanikai

Pillbox Trail to remove signs and other improvements established pursuant to the Memorandum of Agreement, except as may be necessary or advisable for health and safety reasons, and thereafter, all such signs and improvements remaining on the Portion of Lanikai Pillbox Trail property shall be deemed abandoned, and may be removed and disposed of by Bluestone, in its discretion, the reasonable costs of which shall be borne by Bluestone. Contemporaneously with the effective date of such termination the Public Access Easement shall likewise be terminated, and DLNR and Bluestone agree to execute and record in the Bureau of Conveyances a termination and cancellation of the Public Access Easement. Executive Order No. 3610 dated February 11, 1994, recorded in the State of Hawaii, Office of Assistant Registrar as Doc. No. 2176138, Transfer Certificate of Title No. 405,621 shall be amended accordingly.

**Bluestone's Authority.** Bluestone affirms that it has the full right, title, power, and legal authority to sign this Memorandum of Agreement to affect said real property in the capacities as shown and executed and as notarized.

**Counterparts.** The parties hereto agree that this instrument 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, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, Bluestone and the State of Hawaii, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties heretohave executed this Memorandum of Agreement as of the date first above written.

ASSOCIATION OF APARTMENT OWNERS OF BLUESTONE, an unincorporated association

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

\_\_\_\_\_.

STATE OF HAWAII

By \_\_\_\_\_

SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
JULIE H. CHINA  
Deputy Attorney General







Area") situate at Kaelepulu, Kailua, Koolaupoko, Oahu, Hawaii, being identified as " \_\_\_\_\_," containing an area of \_\_\_\_\_, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. \_\_\_\_\_ and dated \_\_\_\_\_, (the Easement Area"), TOGETHER WITH the rights of ingress to and egress from the Easement Area, for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The Grantee shall be responsible for injury caused by the Grantee's officers and employees in the course and scope of their employment to the extent that the Grantee's liability for such damage or injury has been determined by a court or otherwise agreed to by the Grantee. The Grantee shall pay for such damage and injury to the extent permitted by law provided that an appropriation is enacted for that purpose.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the Easement Area and to grant to others rights and privileges for any and all purposes affecting the Easement Area, provided, however, that the rights herein reserved shall not be exercised by the Grantor in a manner which interferes unreasonably with the Grantee in the use of the Easement Area for the purposes for which this grant of easement is granted.

3. All improvements placed in or upon the Easement Area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the Easement Area which shall be restored to a condition as close as reasonably possible to that which existed prior to the Grantee's use of the Easement Area, reasonable wear and tear excepted, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the Easement Area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the Easement Area in a clean and sanitary condition reasonably satisfactory to the Grantor.

5. The Grantee shall keep the Easement Area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Easement Area.

6. The use of the Easement Area shall be subject to the terms and conditions of that certain unrecorded Memorandum of Agreement by and between Grantor and Grantee dated \_\_\_\_\_, 20\_\_ (the "Memorandum"), a copy of which is attached hereto and made a part hereof.

7. If the Memorandum shall ever be terminated as provided therein, then this easement shall terminate contemporaneously with the termination of the Memorandum, and the Grantor and the Grantee agree to execute and record in the Bureau of Conveyances a termination and cancellation of the easement.

8. Upon termination of the use, the Easement Area shall be restored to its condition as close as reasonably possible to that which existed prior to the Grantee's use of the Easement Area, reasonable wear and tear excepted, within a reasonable time and at the expense of the Grantee.

9. The Grantor shall not at any time during the term of this indenture erect any building foundation of any kind below the surface of the Easement Area or at any time erect any building or structure of any kind.

This provision shall not prohibit the Grantor from maintaining the Easement Area or from laying, maintaining, operating, repairing or removing Grantor's electrical cable or other utility lines or water or sewer pipelines, conduit or drains at or below the surface of the Easement Area; provided, however, that such use by the Grantor shall not unreasonably interfere with the Grantee's use of the Easement Area or the Grantee's exercise of the Grantee's rights under this grant of easement.

10. This instrument shall be binding upon and shall inure to the benefit of the parties hereto and its successors and assigns.

11. The Grantee's financial obligation and commitment to make payments or reimbursements of any kind under this agreement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make

such payment or reimbursement.

12. The Grantor affirms that it has the full right, title, power, and legal authority to sign this grant of easement to affect said real property in the capacities as shown and executed and as notarized.

13. The parties hereto agree that this instrument 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, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

**[The remainder of this page is intentionally left blank]**

IN WITNESS WHEREOF, Grantor and the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

ASSOCIATION OF APARTMENT OWNERS OF  
BLUESTONE, an unincorporated  
association

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

GRANTOR

STATE OF HAWAII

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

\_\_\_\_\_.

By \_\_\_\_\_

SUZANNE D. CASE  
Chairperson  
Board of Land and Natural  
Resources

GRANTEE

APPROVED AS TO LEGALITY, FORM,  
EXCEPTIONS, AND RESERVATIONS:

\_\_\_\_\_  
JULIE H. CHINA  
Deputy Attorney General

Dated: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally appeared \_\_\_\_\_  
and \_\_\_\_\_, 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 capacities  
shown, having been duly authorized to execute such instrument in  
such capacities.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires: \_\_\_\_\_