

**SECOND CIRCUIT COURT OF THE STATE OF HAWAI‘I**

*Public Access Trails Hawai‘i, et al. v. Haleakala Ranch Company, et al.*; Civil No. 11-1-0031(3)

**NOTICE OF CLASS ACTION SETTLEMENT  
REGARDING HALEAKALA TRAIL**

To: **All pedestrians who, as members of the public, have been, or continue to be, denied access to Haleakala Trail**

A proposed settlement has been reached among the parties in this class action lawsuit. The Court has preliminarily approved the Settlement, subject to a period of time for Class Members to raise objections and subject to approval at a final hearing. This notice informs you of the terms of the Settlement, and advises you of your right to object to the Settlement subject to the procedures and deadlines set forth below.

**PLEASE READ THIS NOTICE CAREFULLY TO UNDERSTAND YOUR RIGHTS**

**I. DEFINITIONS**

As used herein, the following terms have the following meanings:

**“Haleakala Trail”** means a part of the trail that was used to access Haleakala Crater before the completion of the Haleakala Highway in or around 1935. The location of Haleakala Trail that is the subject of this litigation runs from the top of Olinda Road in Makawao, Maui, Hawai‘i, up to the boundary with the Haleakala National Park. The location is further shown on the attached **Exhibit 1**.

**“Class Members”** means the class of persons who have been certified by the Court to be represented in this case, namely: *all pedestrians who, as members of the public, have been, or continue to be, denied access to Haleakala Trail*.

**“Class Representatives”** means collectively Public Access Trails Hawai‘i (“PATH”), David Brown, Ken Schmitt and Joe Bertram, III, who, for themselves individually and on behalf of the Class Members, have been the plaintiffs in this case since the initiation of this case in Court in 2011.

**Class Counsel”** means collectively Tom Pierce, Esq., Peter N. Martin, Esq., and Hayden Aluli, Esq., who are the attorneys of record for the Class Representatives.

**“Court”** means the Circuit Court of the Second Circuit of the State of Hawai‘i, where this case is pending.

**“HRC”** means Defendant Haleakala Ranch Company, which owns land abutting Haleakala Trail.

“**State**” means the State of Hawai‘i and/or William Aila, Jr., in his official capacity as the Director of the State of Hawai‘i Department of Land and Natural Resources (“DLNR”) and Chair of the State of Hawai‘i Board of Land and Natural Resources (BLNR”), DLNR, and BLNR.

“**Settlement**” means the settlement between and among the Class Representatives, the State, and HRC that, as further described below, resolves all remaining matters in this case, subject to final approval by the Court after the opportunity for Class Members to state their objections, if any.

Pursuant to the *Preliminary Approval Order Approving Mediated Settlement Agreement*, filed by the Court on May 7, 2015, Class Members ARE HEREBY NOTIFIED AS FOLLOWS:

## **II. BACKGROUND OF THE CASE**

Below are some key events in the litigation. More information may be found at PATH’s website, <http://pathmaui.org>.

On January 18, 2011, Class Representatives filed their Complaint against HRC and the State, and requested trial by jury.

On December 2, 2011, the Court initially confirmed the certified class membership to include: “All pedestrians, non-motorized bicyclists and equestrians who, as members of the public, have been, or continue to be, denied access to Haleakala Trail.”

On August 10, 2012, the Court narrowed the certified class membership to include: “All pedestrians who, as members of the public, have been, or continue to be, denied access to Haleakala Trail,” who are referred to herein as Class Members.

On February 5, 2013, the Court approved on behalf of the Class Members a joint prosecution agreement (“JP Agreement”) between Class Representatives and the State, a copy of which can be found at <http://pathmaui.org>. Pursuant to the JP Agreement, Class Representatives dismissed all the claims against the State without prejudice, and Class Representatives and the State agreed to jointly prosecute the issue of ownership of Haleakala Trail. Pursuant to the JP Agreement, Class Representatives and the State are required to make good faith efforts to reach agreement with respect to public access and management over Haleakala Trail. However, if an agreement cannot be reached, Class Representatives have reserved the right to assert or reassert claims against the State. The JP Agreement remains in effect and is not affected by the Settlement discussed herein. Issues relating to management of, and public access to, Haleakala Trail are not the subject of the Settlement.

On May 3, 2013, the Court bifurcated the trial in this matter into two phases. Subsequently, the Court established that the following were to be adjudicated in the first phase of trial:

- The State’s cross-claim against HRC, which sought to quiet title to Haleakala Trail, including under the Highways Act of 1892; and

- The first element of the public nuisance claim, which element sought findings of fact and conclusions of law that Haleakala Trail is a public right of way under, among other things, the Highways Act of 1892, as well as because it was a successor trail to a trail that existed before the Mahele of 1848.

Additionally, during trial, it was agreed that HRC’s cross-claim against the State, in which HRC sought judgment that it is the sole and exclusive owner of Haleakala Trail, would also be presented to the jury.

On or around September 2013, the State and HRC proposed a land exchange in which the State would have exchanged its property interest in Haleakala Trail for an unrelated access route on the leeward side of Haleakala. On January 10, 2014, at a public hearing before the State of Hawai‘i Board of Land and Natural Resources (“BLNR”), the BLNR rejected an immediate decision on the proposed land exchange.

The first phase of the case was tried in Court before a jury, starting on March 17, 2014 and concluding April 23, 2014. On April 23, 2014, the jury made findings of fact based on a preponderance of evidence through a *Special Verdict Form*. Among the jury’s findings of fact were the following:

- HRC does not own Haleakala Trail;
- The government opened, laid out, or built Haleakala Trail during 1905;
- The centerline survey description (“Survey Description”) submitted into evidence at the trial establishes the location of Haleakala Trail that was opened, laid out, or built by the government during 1905;
- The width of Haleakala Trail as opened, laid out or built during 1905 is six (6.0) feet;
- Haleakala Trail in the Survey Description is the successor to the trail that existed prior to 1892 and the trail that existed prior to the Mahele of 1848, when all land was in the public domain; and
- HRC failed to prove that it owns Haleakala Trail.

On December 19, 2014, consistent with the *Special Verdict Form*, the Court entered judgment on the first phase of trial, a copy of which can be found <http://pathmaui.org>. The Court’s order makes final the Jury’s Special Verdict, and additionally provides, among other things, that:

- The State owns Haleakala Trail in fee simple; and
- Haleakala Trail is a public right of way and therefore Class Representatives have proven the first element of their public nuisance claim against HRC.

### **III. SUMMARY OF THE SETTLEMENT**

The Settlement provides that all matters in the first phase of the trial are non-appealable and HRC may not seek a new trial. The Settlement dismisses with prejudice all remaining claims against HRC in the second phase of the trial. These claims include a claim against HRC for public resource damages, as well as alternative arguments of ownership based on implied dedication and custom. Note: Class Representatives did not seek damages on behalf of individual class members. No individual Class Member would be entitled to damages under any of the claims that have been presented to the Court in litigation.

The Settlement also provides that HRC may not seek any form of land exchange for Haleakala Trail with the State.

On the issue of attorneys' fees for the first phase of the trial, the Settlement provides that this issue will be separately heard by the Court, and that the Court's decision will be appealable by either party. At hearings before the Court on February 25, 2015, and April 22, 2015, the Court granted in part Class Representatives' request for attorneys' fees. The Court's order on attorneys' fees may be subject to an appeal by either party.

A copy of the Settlement may be found at <http://pathmaui.org>. Portions of the Settlement relating to attorneys' fees were required to be redacted because the issue is still pending before the Court, and potentially may be the subject of an appeal by either party.

### **IV. CLASS REPRESENTATIVES AND CLASS COUNSEL SUPPORT THE SETTLEMENT**

Class Representatives and Class Counsel support this Settlement. Their reasons include: (1) the Settlement makes final and non-appealable the judgment on phase one of the trial, wherein Class Representatives and the State prevailed in proving that Haleakala Trail is owned by the State and is, and has always been, a public right of way; and (2) the Settlement prohibits HRC from seeking in any form a land exchange of Haleakala Trail from the State, which will further protect Haleakala Trail's legacy as a public right of way in the future. Additionally, Class Representatives and Class Counsel believe that the risks of proceeding to trial on the merits on the second phase of this case may be very expensive and protracted, with no certain results. Finally, without the Settlement, HRC would be able to seek an appeal and/or a new trial on phase one, and there are inherent delays and uncertainties associated with any appeal.

Therefore, upon careful consideration of all of the facts and circumstances of this case, the Class Representatives and the Class Counsel believe that the Settlement is fair, reasonable, and adequate.

### **V. OBJECTING TO THE SETTLEMENT**

If you are a Class Member, you do not have the right to opt out of the Settlement. However, you may object to the terms of the Settlement before final approval by submitting a written notice of your objections in the manner described below.

If you timely submit written objections, you may also submit a notice of your intent to appear and object at the final approval hearing, if you wish to do so. To object, you must send a written notice of objection, and also, if you wish, a written notice of your intent to appear and object at the final approval hearing, to the Clerk of the Court and to Class Counsel at the addresses shown below. **DO NOT TELEPHONE THE COURT OR DEFENDANTS' COUNSEL.**

Any written objection and/or notice of your intent to appear at the hearing must state: (1) your full name; (2) your address and telephone number; (3) each specific reason for your objection; and (4) any support for your position. To be valid and effective, the Court and Class Counsel must receive any written objections and/or notices of intent to appear at the hearing **no later than June 17, 2015**. A Class Member who fails to submit a written statement of objections in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Send your Notice of Objections and/or Notices of Intent to Appear to:

**Office of the Clerk of the Second Circuit Court of the State of Hawai'i**

Hoapili Hale  
2145 Main Street  
Wailuku, Hawai'i 96793-1679

And also Send Copies of your Notice of Objections and/or Notices of Intent to Appear to:

**CLASS COUNSEL**

Tom Pierce, Esq.  
Peter N. Martin, Esq.  
Hayden Aluli, Esq.

c/o TOM PIERCE, ATTORNEY AT LAW, LLLC  
P.O. Box 798  
Makawao, Hawai'i 96768  
Phone: (808) 573-2428  
Fax: (808) 776-6645

**VI. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing in the Second Circuit Court of the State of Hawai'i **on June 24, 2015** in order to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. This hearing may be postponed without further notice to the Class Members. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the Settlement, you may appear at the hearings at your option if you have filed a notice of intent to appear pursuant to the process set forth above. If the Settlement is not approved by the Court, the litigation in the second phase of this case will continue.

## VII. GETTING MORE INFORMATION

The above is a summary of the litigation and the basic terms of the Settlement. The pleadings and other records in this litigation, including a copy of the Mediated Settlement Agreement, may be examined at any time during regular business hours in the office of the Clerk, Second Circuit of the State of Hawai'i, Hoapili Hale, 2145 Main Street, Wailuku, Hawai'i 96793-1679. Additionally, many copies of documents filed with the Court are also available on the PATH website, <http://pathmaui.org>, including a copy of the motion for approval of the Settlement and the responses by other parties involved in the litigation.

### **You may also contact Class Counsel listed below for more information:**

Tom Pierce, Esq.  
Peter N. Martin, Esq.  
Hayden Aluli, Esq.

c/o TOM PIERCE, ATTORNEY AT LAW, LLLC  
P.O. Box 798  
Makawao, Hawai'i 96768  
Phone: (808) 573-2428  
Fax: (808) 776-6645  
[info@mauilandlaw.com](mailto:info@mauilandlaw.com)

