

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

January 27, 2017

Ref. No.: LODS-27,467
Ref. No.: LODS-28,277
PSF No.: 16HD-060
PSF No.: 16HD-061

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

HAWAII

After-the-Fact Consent to Assignment of Perpetual, Non-Exclusive Easements, Land Office Deed Nos. S-27,467 and S-28,277, John J. Lowrey and Catherine W. Lowrey, Assignors, to Bruce A. Meyer, Nancy P. Meyer, and Naupaka Limited Partnership, Assignees; Declaration of Exemption from the Preparation of an Environmental Assessment for Installation of Water Pipeline Within the Existing Easement Corridor of Land Office Deed No. S-28,277; Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-6-002: portions of 002.

Amend Land Office Deed Nos. S-27,467 and S-28,277 to Allow the Easements to "Run with the Land" and to be assignable without the prior written consent from the Board of Land and Natural Resources.

APPLICANT:

John J. Lowrey and Catherine W. Lowrey, as Assignor, to Bruce A. Meyer and Nancy P. Meyer, husband and wife, tenants by the entirety as to an undivided 50% interest, and Naupaka Limited Partnership, tenant in severalty as to an undivided 50% interest, the whole being held as tenants in common, Assignee.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailea Bay Estates situated at Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-6-002:002, a beach & road reserve (Ala Kahakai), as shown on the attached map labeled Exhibit A.

AREA:

6.344 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-15

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO x

CURRENT USE STATUS:

Encumbered under Governor's Executive Order No. 4333 to State Parks for Addition to Hapuna State Park.

Encumbered by Land Office Deed No. S-27,467 to John J. Lowrey and Catherine W. Lowrey for water-pipeline purposes.

Encumbered by Land Office Deed No. S-28,277 to John J. Lowrey and Catherine W. Lowrey for a roadway for ingress/egress and utility purposes.

Encumbered by Land Office Deed No. S-28,586 to County of Hawaii for road and water-pipeline purposes.

CHARACTER OF USE:

LOD S-27,467; for waterlines:

Right, privilege and authority to construct, use, maintain, repair, replace and remove water transmission pipeline over, under and across State-owned land.

LOD S-28,277; for access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See **Exhibit D**.

DCCA VERIFICATION:

John J. Lowrey & Catherine W. Lowrey:

Not applicable. As natural persons, the Lowreys are not required to register with DCCA.

Bruce A. & Nancy P. Meyer:

Not applicable. As natural persons, the Meyers are not required to register with DCCA.

Naupaka Limited Partnership:

Place of business registration confirmed: YES x NO

Registered business name confirmed: YES x NO

Applicant in good standing confirmed: YES x NO

REMARKS:

As noted above, Land Office Deed No. S-27,467 (LOD S-27,467) was issued to John J. Lowrey and Catherine W. Lowrey (the Lowreys) on January 21, 1985 for water pipeline purposes. Land Office Deed No. S-28,277 (LOD S-28,277) was issued to the Lowreys on October 28, 1987 for a roadway for ingress/egress and utility purposes. Both easements served the Lowreys' private property designated as TMK: (3) 6-6-002:029 (Parcel 29).

By letter dated February 2, 2016, Mr. Roy Vitousek III, Cades Schutte LLP, on behalf of Bruce and Nancy Meyer (the Meyers), current owners of TMK: (3) 6-6-002:029-0001, and John J. Lowrey, Jr., principal of Naupaka Limited Partnership ("Naupaka"), owner of TMK (3) 6-6-002:029-0002, explains that his clients intend to install a water pipeline within the corridor of the existing access and utility easement under LOD S-28,277 that already serves his clients' properties in Wailea Bay Estates.

The water supply to Parcel 29 currently follows an easement corridor over private and public lands and connects to Parcel 29 on its makai side. The portion of the easement crossing State lands is documented under LOD S-27,467 and is shown in blue on **Exhibit**

B attached. The portion of the water pipeline easement over private properties on the makai side of Parcel 18 (Lot 1-E/formerly Parcel 30) is located very close to the shoreline, where there has been significant erosion over the years. Due to the erosion by the wave action, the concrete conduit that contains the water pipeline has cracked, exposing the pipe and creating a hazard to the public. The eroded area (Easement F), is located along the seaward boundary of Lot-1E, private property identified as TMK: (3) 6-6-002: portion of 018, which was formerly Parcel 30. (**Exhibit C**)

The new water pipeline will run underground in an existing conduit from Easement 3 along the eastern boundary of the 40-Foot Government Road (Ala Kahakai Road) northward to Parcel 29 (Lot 1-F) within Easement LOD S-28,277 to service Parcel 29, which consists of CPR 0001 (Meyers) and CPR 0002 (Naupaka). The portion of this alignment located on State land is indicated in yellow on the map attached as **Exhibit B**. The installation of the water pipeline in the corridor of easement LOD S-28,277 will not require significant ground disturbance and staff is therefore recommending that the Board find the installation to be exempt from the preparation of an environmental assessment. See **Exhibit D** attached.

Declaration of Condominium property regime for "Ilima" Condominium Project

In preparing the recommendation regarding the easements, staff noted that the Lowreys' Parcel 29 had been converted to a two-unit condominium property regime ("CPR") with one unit being conveyed to the Meyers and the other unit being conveyed to Naupaka, an entity created by the Lowreys' son, John J. Lowrey, Jr. However, Land Board consent was not sought for the assignment of the two easements. As a result, the applicants area now requesting an after-the-fact consent to assignment of LODs S-27,467 and S-28,277 from John J. Lowrey and Catherine W. Lowrey, as assignor, to Bruce A. Meyer and Nancy P. Meyer, husband and wife, tenants by the entirety as to an undivided 50% interest, and Naupaka Limited Partnership, tenant in severalty as to an undivided 50% interest, the whole being held as tenants in common, as assignee. Staff proposes to amend the easements by inserting a provision to have the easements "run with the land," to be assignable without the prior written consent from the Board.

Staff reviewed the file and can report that the Lowreys are in compliance with all terms and conditions of the easements. Liability insurance is current, with an expiration date of 11/28/2017. The performance bond was waived. The Lowreys have never been cited for any illegal or unlawful activity on the State property.

The Meyers and Naupaka have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The Office of Conservation and Coastal Lands was consulted on the installation of the new water pipeline in the easement corridor of LOD S-28,277 and had no objection. No other agency or community comments were solicited, as there will be no change in disposition or use of the land.

RECOMMENDATION: That the Board:

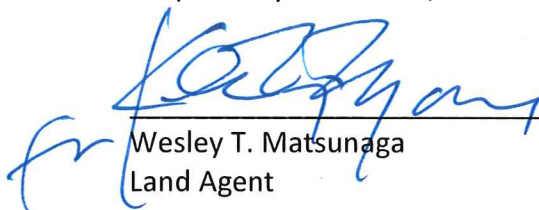
1. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Key: (3) 6-6-002:029-0001 & 0002, 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.
3. Subject to the Applicant fulfilling the Applicant requirements listed above, authorize the after-the-fact, consent to the assignment of Land Office Deed Nos. S-27,467 and S-28,277 from John J. Lowrey and Catherine W. Lowrey, as Assignor, to Bruce A. Meyer and Nancy P. Meyer, husband and wife, tenants by the entirety as to an undivided 50% interest, and Naupaka Limited Partnership, tenant in severalty as to an undivided 50% interest, the whole being held as tenants in common, as Assignees, subject to the following:
 - A. The standard terms and conditions of the most current consent to assignment 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.
4. Authorize the Amendment of Land Office Deed Nos. S- 27,467 and S-28,277 by:
 - A. Inserting a "run with the land" provision as stated below:

"This easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (3) 6-6-002:029-001 & 002, providing that the Grantee shall be required to carry liability

insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."

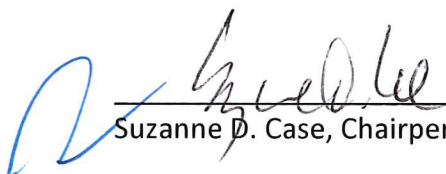
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

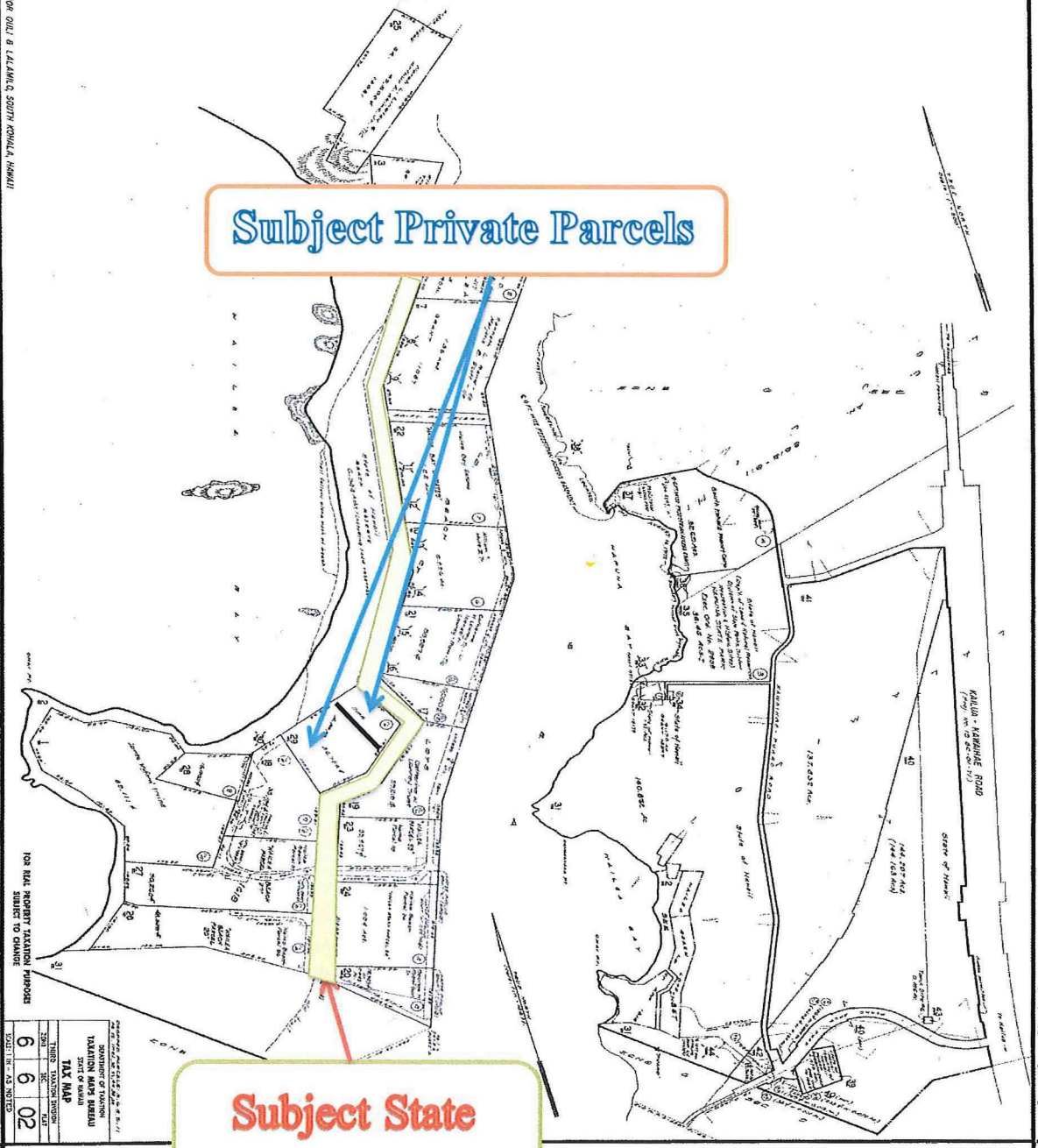
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DWG NO. 2230
 SOURCE: TAX MAP REVISION
 BY: DATE: JULY 1999

FOR CITY & COUNCIL, SOUTH HONOLULU, HAWAII



FOR THE PROPERTY TAXATION PURPOSES
 SUBJECT TO CHANGE

6	6	02
6	6	02
6	6	02

**Subject State
 Road Reserve**

EXHIBIT A

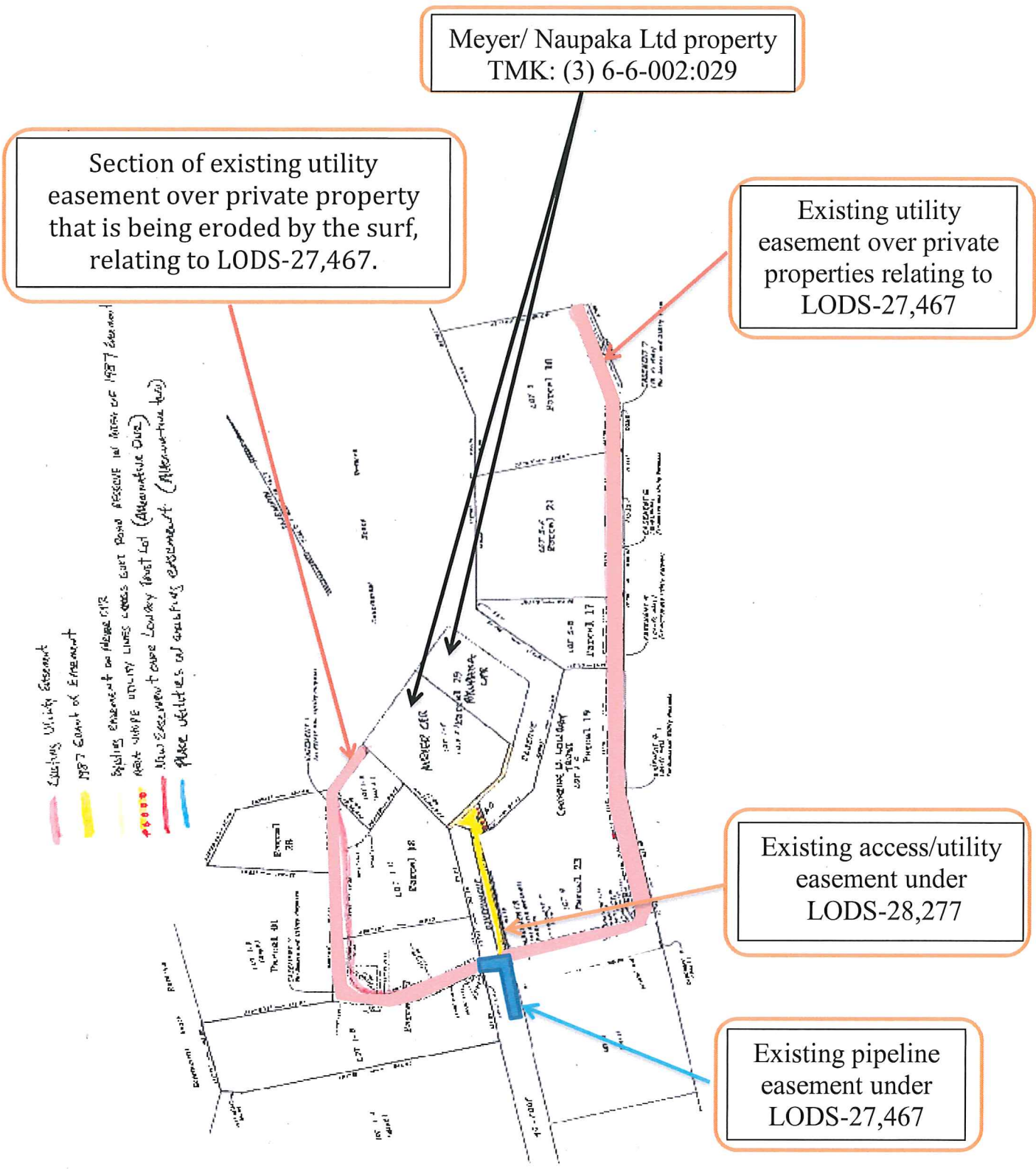


EXHIBIT B

Private property under Meyer and
Naupaka Partnership.
TMK: (3) 6-6-002:029-001 & 002

Area of erosion

Area encumbered
under LODS-28,277
for access and utility
purposes.

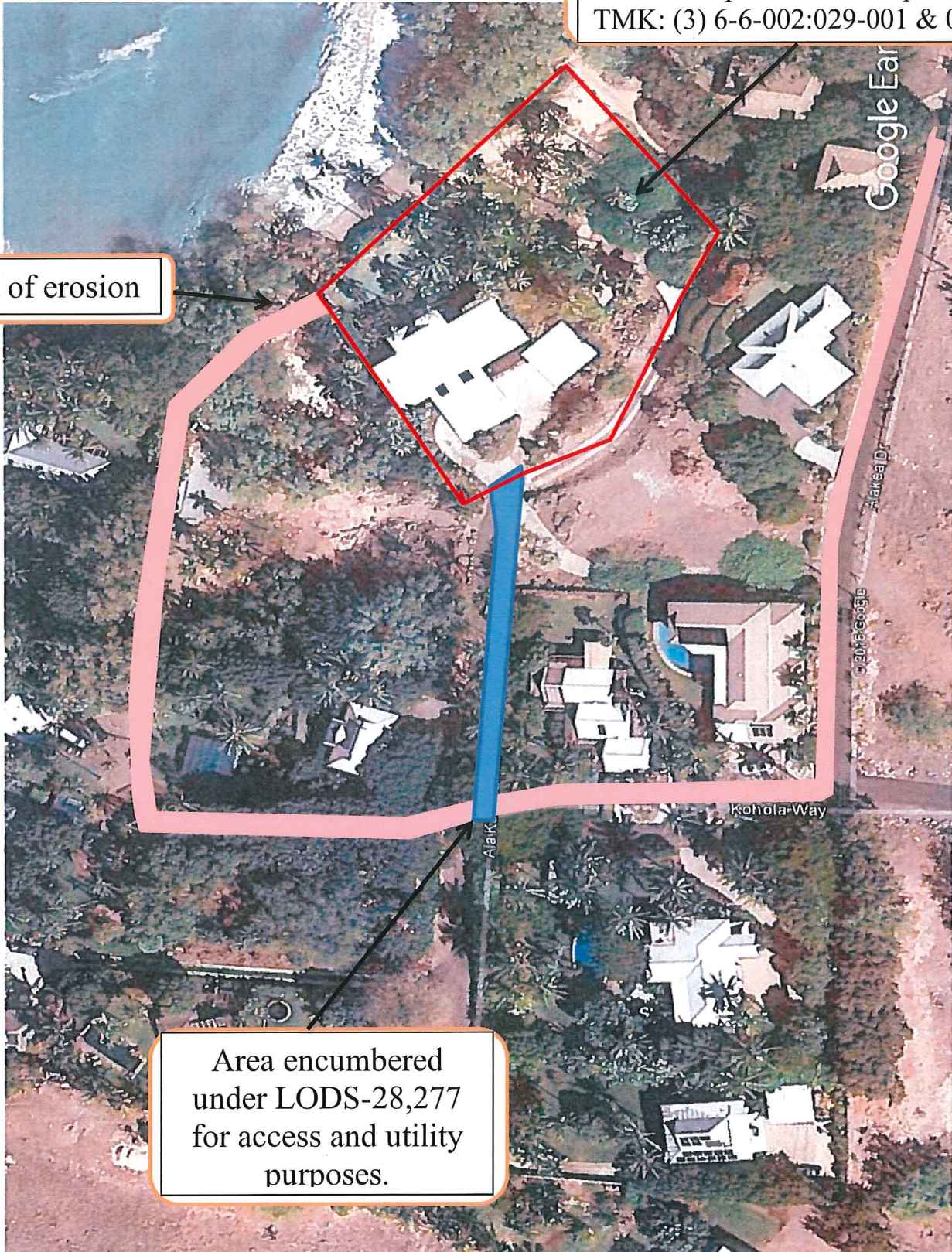


EXHIBIT B



EXHIBIT C



EXHIBIT C

DAVID Y. IGE
GOVERNOR OF HAWAII

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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
January 27, 2017

EXEMPTION NOTIFICATION

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

Project Title:

After-the-Fact Consent to Assignment of Perpetual, Non-Exclusive Easements, Land Office Deed Nos. S-27,467 and S-28,277, John J. Lowrey and Catherine W. Lowrey, Assignors, to Bruce A. Meyer, Nancy P. Meyer, and Naupaka Limited Partnership, Assignees; Declaration of Exemption from the Preparation of an Environmental Assessment for Installation of Water Pipeline Within the Existing Easement Corridor of Land Office Deed No. S-28,277; Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-6-002: portions of 002.

Amend Land Office Deed Nos. S-27,467 and S-28,277 to Allow the Easements to "Run with the Land" and to be assignable without the prior written consent from the Board of Land and Natural Resources.

Project / Reference No.:

PSF No.: 16HD-060 & 16HD-061

Project Location:

Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-6-002: portion of 002.

Project Description:

Installation of water pipeline in corridor of access and utility easement under Land Office Deed No. S-28,277.

Chap. 343 Trigger(s):

Use of State land.

**Exemption Class No.
and Item No.:**

In accordance with Hawaii Administrative Rule Sections 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

EXHIBIT D

preparation of an environmental assessment pursuant to Exemption Class 1, which 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 Class 2 "Replacement or reconstruction of existing structure and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity density height, and dimensions as the structure replaced."

Exemption Item Description
from Dept. Exemption List:

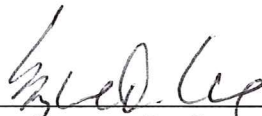
Class 1, Item No. 17, "Repair and maintenance of existing utilities and drainage systems." Class 2, Item No. 9 "Minor upgrades or replacement of existing utilities and drainage systems on state lands. Drainage improvements will generally consist of the installation of culverts, pipes, and construction of gutters or other similar infrastructure where minor flooding occurs."

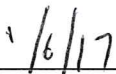
Consulted Parties:

The Office of Conservation and Coastal Lands.

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment as the relocation of the water pipeline will be to another existing utility easement corridor. The water line will be installed in an existing conduit and no significant ground disturbance is anticipated. As a result, the will involve only minor alterations in the condition of land, water or vegetation, and is presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson


Date