

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

April 13, 2017

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

PSF No: 12HD-170
Hawaii

Amend Prior Board Action of January 25, 2013, Item D-3, Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes, Ooma 1st & Kalaoa 1st – 4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091.

The purpose of the amendment is to change the grantee to Oceanic Time Warner Cable LLC.

BACKGROUND:

In November 2012, Time Warner Cable Inc. made application for a perpetual, non-exclusive easement over State Lands and at its meeting of January 25, 2013, item D-3, the Board granted the easement (refer to Exhibit A).

The appraisal was completed March 18, 2014. Upon review, Time Warner Cable Inc. disputed the valuation determination and sought its own appraisal. The matter went to arbitration and was settled in August 2016.

REMARKS:

During the process to draft the easement document, it was noted that Time Warner Cable Inc. had been acquired by Charter Communications, Inc. and the Hawaii component is now Oceanic Time Warner Cable LLC.

At the time of the prior Board action, Time Warner Cable Inc. was doing business as Oceanic Time Warner Cable. The change of grantee is due to a change in the parent company, which does not affect the use or operation of the easement or any other aspect of the easement.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of January 25, 2013, under agenda item D-3, by replacing Time Warner Cable Inc. with Oceanic Time Warner Cable LLC.
2. All terms and conditions listed in its January 25, 2013 approval to remain the same.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

EXHIBIT A

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

January 25, 2013

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

Hawaii

Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes, Ooma 1st & Kalaoa 1st – 4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091.

APPLICANT:

Time Warner Cable Inc., a Delaware Corporation dba Oceanic Time Warner Cable

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of NELHA-HOST PARK situated at Ooma 1st & Kalaoa 1st – 4th, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:042 & 091, as shown on the attached map labeled Exhibit A.

AREA:

2.76 acres, more or less. Ten (10) foot wide corridor over the length of the access road. Approximately 120,330 sq. ft. To be more accurately determined by survey.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open/MG/ML

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 25, 2013 jo.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: **NO**

CURRENT USE STATUS:

Encumbered by General Lease No. S-5619 (GLS-5619), Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, for the purpose to solely develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient. Lease to expire on July 2, 2046 with the next rental reopening scheduled for July 2, 2021.

Also encumbered by Land Office Deed No. 28707 to Hawaiian Telcom, Inc., for perpetual, non-exclusive utility easement purposes and Land Office Deed No. 28990 to the United States of America, Department of Transportation, Federal Aviation Administration as an airspace easement.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove underground fiber optic communication transmission lines over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3 and 4. Refer to attached Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO __

Registered business name confirmed: YES X NO
Applicant in good standing confirmed: YES X NO

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey map with metes and bounds description for the 10 foot wide easement from Queen Kaahumanu Highway to the end of the joint utility conduit in accordance with State of Hawaii Department of Accounting and General Services mapping standards and at Applicant's own cost.

REMARKS:

The subject property is encumbered by General Lease No. S-5619 to Natural Energy Laboratory of Hawaii Authority (NELHA), for the purpose to solely develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

NELHA has requested Time Warner Cable Inc., dba Oceanic Time Warner Cable (OTWC), to provide a fiber optic communication connection from Queen Kaahumanu Highway through the NELHA facilities at Keahole Point, North Kona, Hawaii.

The proposed communications fiber optic cable will be placed inside an existing underground, joint utility conduit which traverses the NELHA facility from Queen Kaahumanu Highway to the Keahole Point Lighthouse area.

The joint utility conduit lies within the boundary of the NELHA Access and Utility Corridor Easement "A" (80 feet wide) as depicted on H.S.S. Plat 315-A map (refer to attached Exhibit C).

Easement "A" exists as TMK: (3) 7-3-043:091 and stops at the boundary line of parcel 42 (refer to attached Exhibit A). The joint utility conduit within the boundary of parcel 42 is without the benefit of an easement.

At its meeting of March 13, 1998, agenda item D-11, the Board approved the sale of a perpetual, non-exclusive easement in favor of GTE Hawaiian Telephone Company Inc. (now Hawaiian Telcom, Inc.) for pair gain, cross connect equipment site and existing underground lines purposes. This action created an easement (T-1) along the joint utility conduit within the boundary of parcel 42 of about 1,650 feet long and 10 feet wide.

OTWC proposes to purchase a 10 foot wide easement from Queen Kaahumanu Highway to the end of the joint utility conduit. The easement will be located within the boundaries of

Easements "A" and "T-1" then continue an additional 1,400 feet to the end of the joint utility conduit within parcel 42. (refer to attached Exhibit D).

Time Warner Cable Inc. has 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.

Since the joint utility conduit is already in place, no trenching will be required. Only minor modifications to enlarge some of the conduit access hand-holes will be needed. Otherwise, the work to be done consists of pulling fiber optic cable through the existing conduit. The disposition of this easement does not involve any expansion or change of use beyond that previously existing. Therefore, staff believes this transaction to be exempt from the preparation of an environmental assessment.

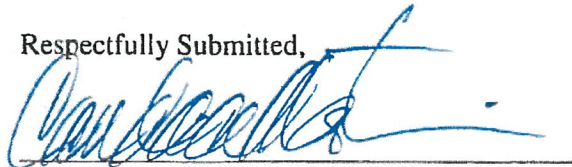
Responses from various agencies to the request for comments are in the table below. The Department of Health – Environmental Health Management responded with a statement regarding the inability of science to correlate adverse health impacts to electromagnetic radiation, ending with the caveat "potential health impacts associated with electromagnetic radiation cannot be determined at this time."

State Agencies	Response
Dept. of Health - Environmental Health	Electromagnetic Radiation Statement
Dept. of Hawaiian Homes Land	No Response
DLNR - Historic Preservation	No Response
DLNR - Conservation and Coastal Lands	No Response
DOT - Airports Division	No Response
DOT - Highways Division	No Response
Hawaii County Agencies	Response
Planning Dept.	No Response
Parks & Recreation	No Response
Dept. of Public Works	No Response
Dept. of Water Supply	No Objections
Fire Department	No Response
Police Department	No Objections or Comments
Environmental Management	No Response
Other Agencies	Response
Office of Hawaiian Affairs	No Response
NELHA	No Objections
HELCO	No Response
Hawaiian Telcom, Inc.	No Response

RECOMMENDATION: That the Board:

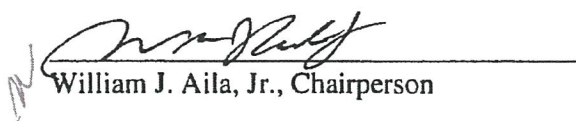
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Time Warner Cable Inc. covering the subject area for underground fiber optic utility cable 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 perpetual easement document 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.
3. Issue an immediate right-of-entry permit to Time Warner Cable Inc. for the purposes of construction activities 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 permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



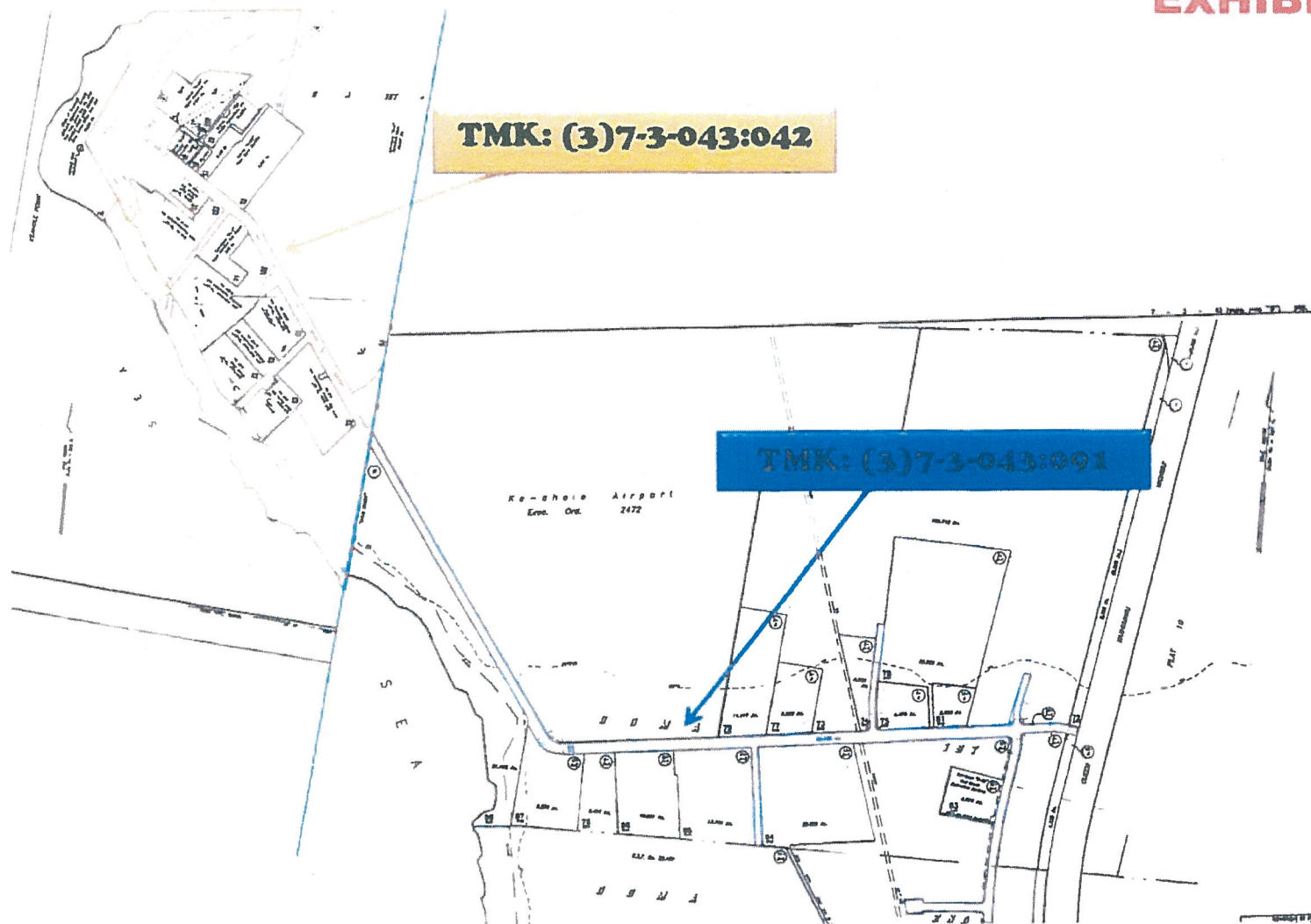
♀ Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AIA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

ESTHER KIA'AINA
DEPUTY

WILLIAM M. IAI
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
BOATING AND EXTERIOR IRRIGATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENGINEERING
FORESTRY AND WILDLIFE
HIS-HERE PRESERVATION
KAIHOLE POINT AND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 21, 2013

EXEMPTION NOTIFICATION

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

Project Title: Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes

Project / Reference No.: PSF 12HD-170

Project Location: Ooma 1st & Kalaoa 1st – 4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091

Project Description: Natural Energy Laboratory of Hawaii Authority (NELHA) has requested Time Warner Cable Inc., dba Oceanic Time Warner Cable (OTWC), to provide a fiber optic communication connection from Queen Kaahumanu Highway through the NELHA facilities at Keahole Point, North Kona, Hawaii. The proposed communications fiber optic cable will be placed inside an existing underground, joint utility conduit which traverses the NELHA facility from Queen Kaahumanu Highway to the Keahole Point Lighthouse area.

Since the joint utility conduit is already in place, no trenching will be required. Only minor modifications to enlarge some of the conduit access hand-holes will be needed. Otherwise, the work to be done consists of pulling fiber optic cable through the existing conduit. The disposition of this easement does not involve any expansion or change of use beyond that previously existing.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to


Exemption Class No. 3, that states "Construction and location of single, new small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to:...(d) water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Consulted Parties

Not applicable

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson

1/14/13

Date

EXHIBIT C

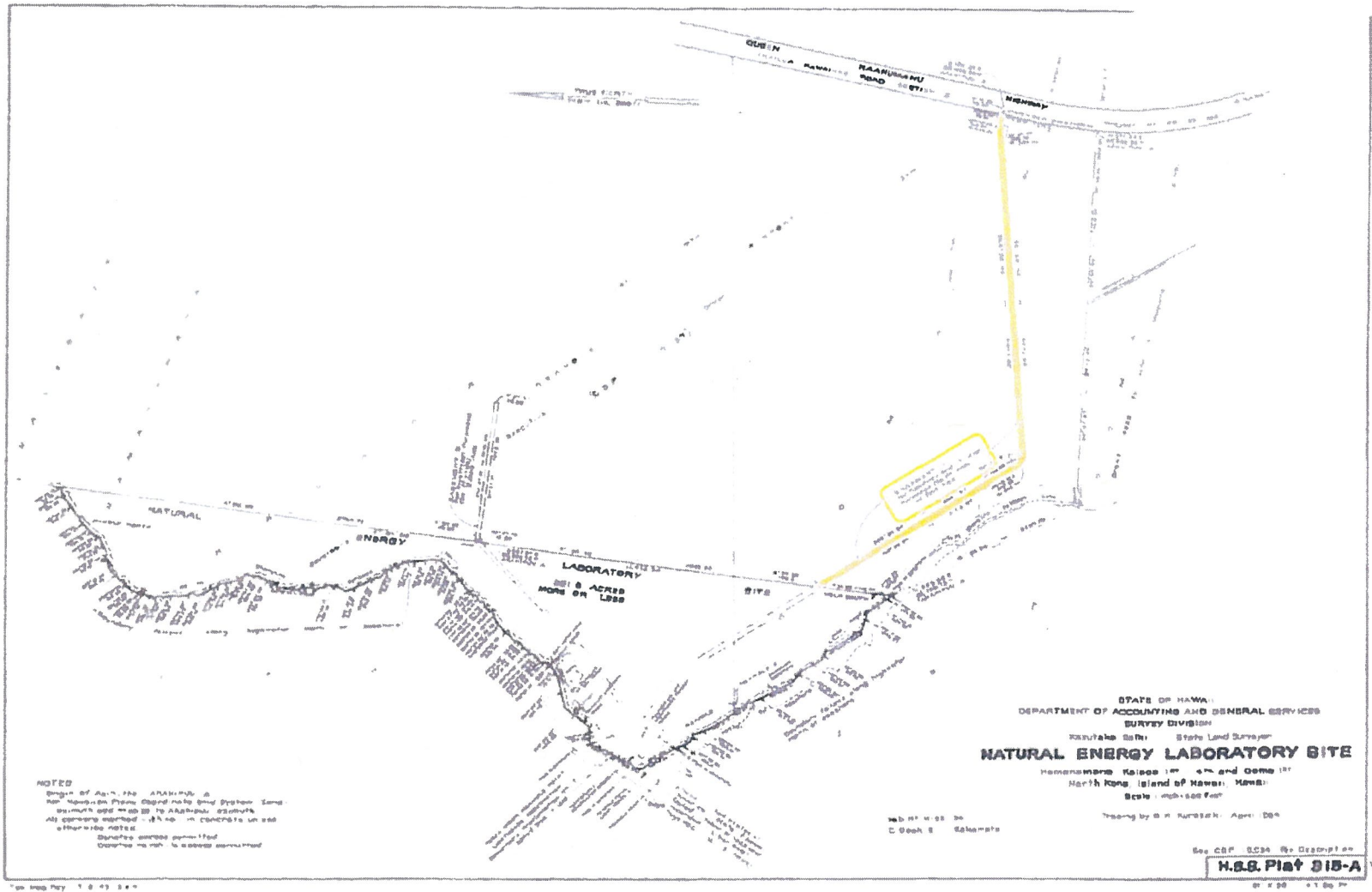


EXHIBIT D

NELHA Facility

NELHA Access Road

