

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

October 13, 2017

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

PSF No.:14OD-194

OAHU

Grant of Term, Non-Exclusive Easement to United States of America,  
Department of Navy for Communication Facility Purposes; Kamananui, Waialua,  
Oahu, Tax Map Key: (1) 6-7-003:portion of 025.

APPLICANT:

United States of America, by its Department of the Navy.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kamananui Waialua, Oahu, identified by Tax  
Map Key: (1) 6-7-003:portion of 025, as shown on the map attached as **Exhibit A**.

AREA:

1,493 square feet, more or less.

ZONING:

State Land Use District: Conservation  
City & County of Honolulu LUO: P-1

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 Governor's Executive Order No. 3099 setting aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Mount Kaala Natural Area Reserve purposes.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson, Board of Land and Natural Resources.

ANNUAL RENT:

Gratis

EXPIRATION DATE:

April 18, 2028 [Same as GL 3747 and 3748. See Remarks Section.]

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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 item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Government agency.

APPLICANT REQUIREMENTS:

None. Applicant has provided the map and description of the requested area.

REMARKS:GL 3747 and 3748

The subject State lands, TMK (1) 6-7-003:025 is located at Mt. Kaala in Wailua, Oahu.

Due to its elevation, the site is suitable for installation of communication facilities. Currently, there are two (2) leases in the vicinity for such purposes which are GLs 3747 and 3748, issued in 1963 to the Army Corps of Engineers (ACOE) and the Federal Aviation Administration (FAA) respectively. Both leases expire on April 18, 2028.

In 1990, the Navy was planning to construct a communication facility within the area of GL 3747 leased by ACOE. The Board, at its meeting of April 27, 1990, under agenda item F-14, approved the amendment of GL 3747 allowing the Navy to use a portion of the leased premises. Staff understands there was no expansion to the footprint of the Navy's facilities since 1990. The approximate extent of the Navy's improvements is outlined in red on Exhibit A.

#### Encroachment noticed in 2008

Around 2008, the ACOE and the Navy noticed from their records that the Navy's facilities might not be entirely within the GL 3747 area, as believed previously. A field survey subsequently conducted in 2008 by the State Surveyor's office found that the majority of the Navy's facilities were actually outside the GL 3747 area and they did not have any authorization from the State.

According to the Navy, "when the facility was sited and initially built, it was believed to be within the [State/Army Lease] property boundaries. It was discovered years later due to incorrect mapping/meets and bounds of the records provided that the improvements were built partially outside the boundary".

In September 2014, the Navy submitted a request for land disposition, together with the map and legal description of the Navy's area to the Department and requested to resolve the situation.

#### Respective Areas of Encroachment

Land Division and the Navy visited the subject site recently and noted that the Navy's improvements are well maintained. For illustration purposes, staff divides the entire Navy facility into three (3) portions as depicted on **Exhibits C1 and C2**, of which the latter is photo-indexed, namely:

##### Area A, about 1,493 square feet (NARS Area, outlined in red and cross-hatched)

At its meeting held on July 31, 2017, the NARS Commissioners approved and recommended the Board issuance of a –term, non-exclusive easement to the Navy for its improvements, further subject to the terms and conditions described above.

##### Area B, about 2,917 square feet (FAA Access Road, outlined in blue and hatched)

At a meeting coordinated by FAA and attended by all users of the access road (both public and private entities) on July 7, 2016, FAA announced a new process of handling the use of the access roads through its Outgrant Permit. FAA anticipated that when its documentation process is completed, it would request, at a later date, the Board's consent to such

agreements pursuant to the lease condition of GL 3748. Therefore, the Navy's use of the Permit Area is not under today's request.

Area C, area not available (Area leased to ACOE indicated by the purple arrow.)

As noted above, the Board amended GL 3747 in 1990 to account for the Navy's occupation of a portion of GL 3747 leased land. There is no outstanding action regarding Area C pertaining to GL 3747.

Department of Planning and Permitting and State Historic Preservation Division have no comments to the request. Division of Forestry and Wildlife, Office of Conservation and Coastal Lands, and Office of Hawaiian Affairs have not responded to the solicitation for comment.

There are no other pertinent issues or concerns. Staff recommends the Board approve the request subject to the terms and conditions described above.

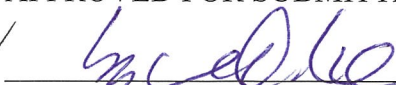
RECOMMENDATION: That the Board:

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. Authorize the issuance of a term non-exclusive easement to United States of America, by its Department of Navy covering the subject area for communication facility 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 term 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.

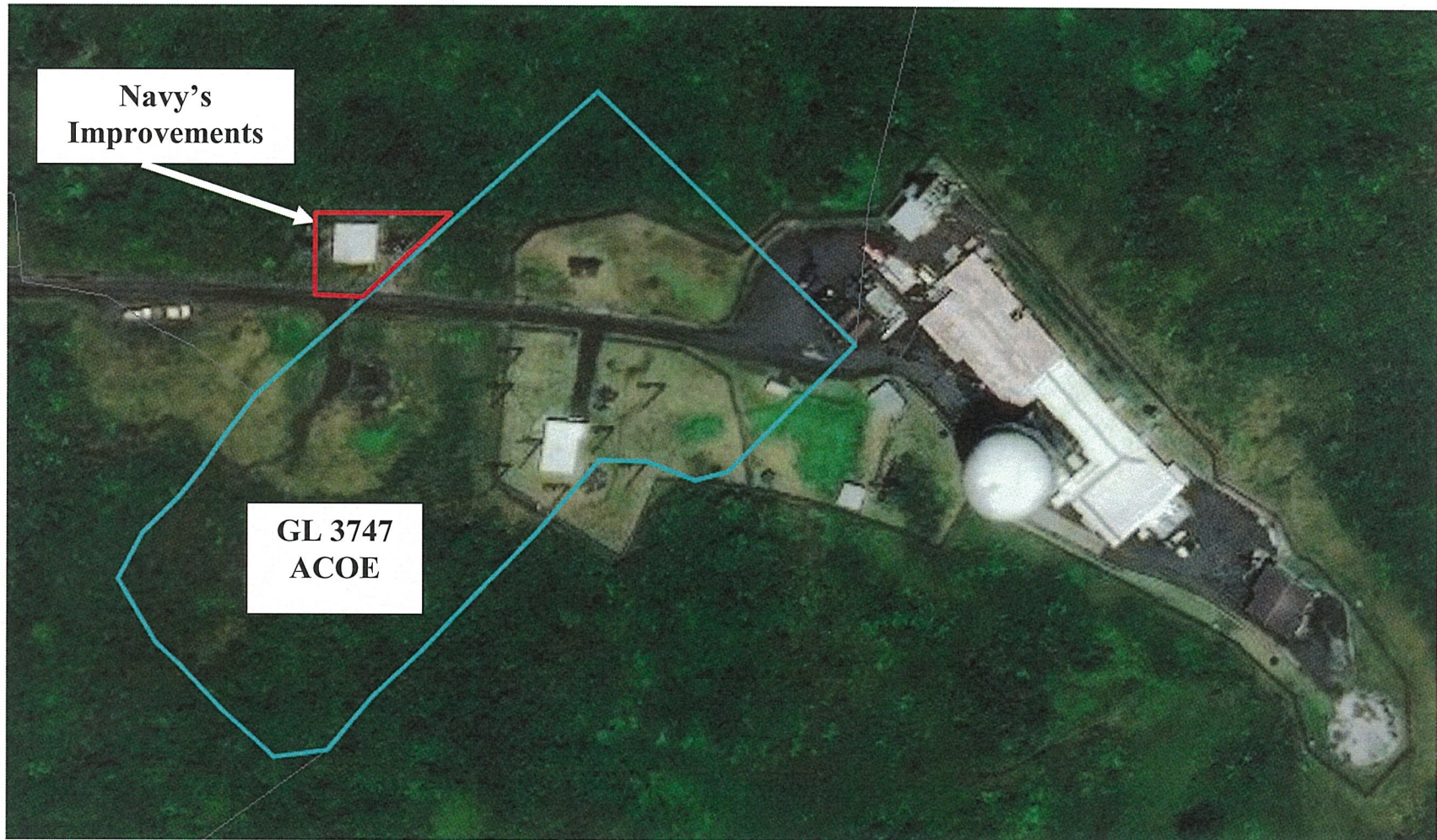
Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





TMK (1) 6-7-003: portion of 025

**EXHIBIT A**

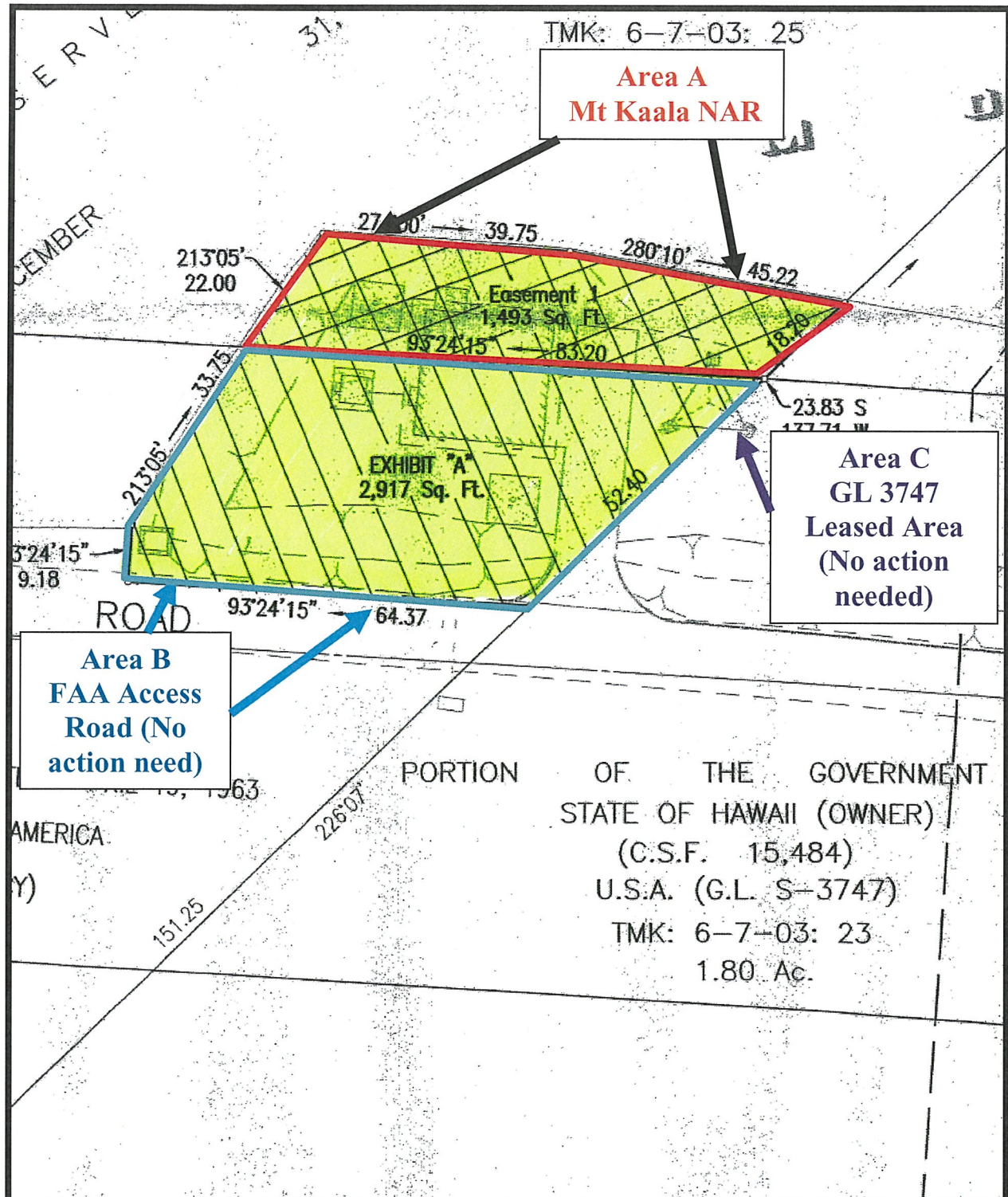
### **EXEMPTION NOTIFICATION**

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

Project Title:	Issuance of term easement for communication facility purposes.
Project / Reference No.:	14OD-194
Project Location:	Kamananui Waialua, Oahu, Tax Map Key: (1) 6-7-003:por. of 025
Project Description:	Correct the geographical discrepancy on records by issuance of the requested easement.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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 item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."</p> <p>The proposed action is for housekeeping purposes to correct the discrepancy in records. The Navy's facility was on the subject property since 1990. As such staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.</p>
Consulted Parties	Agencies as noted in the submittal.
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.

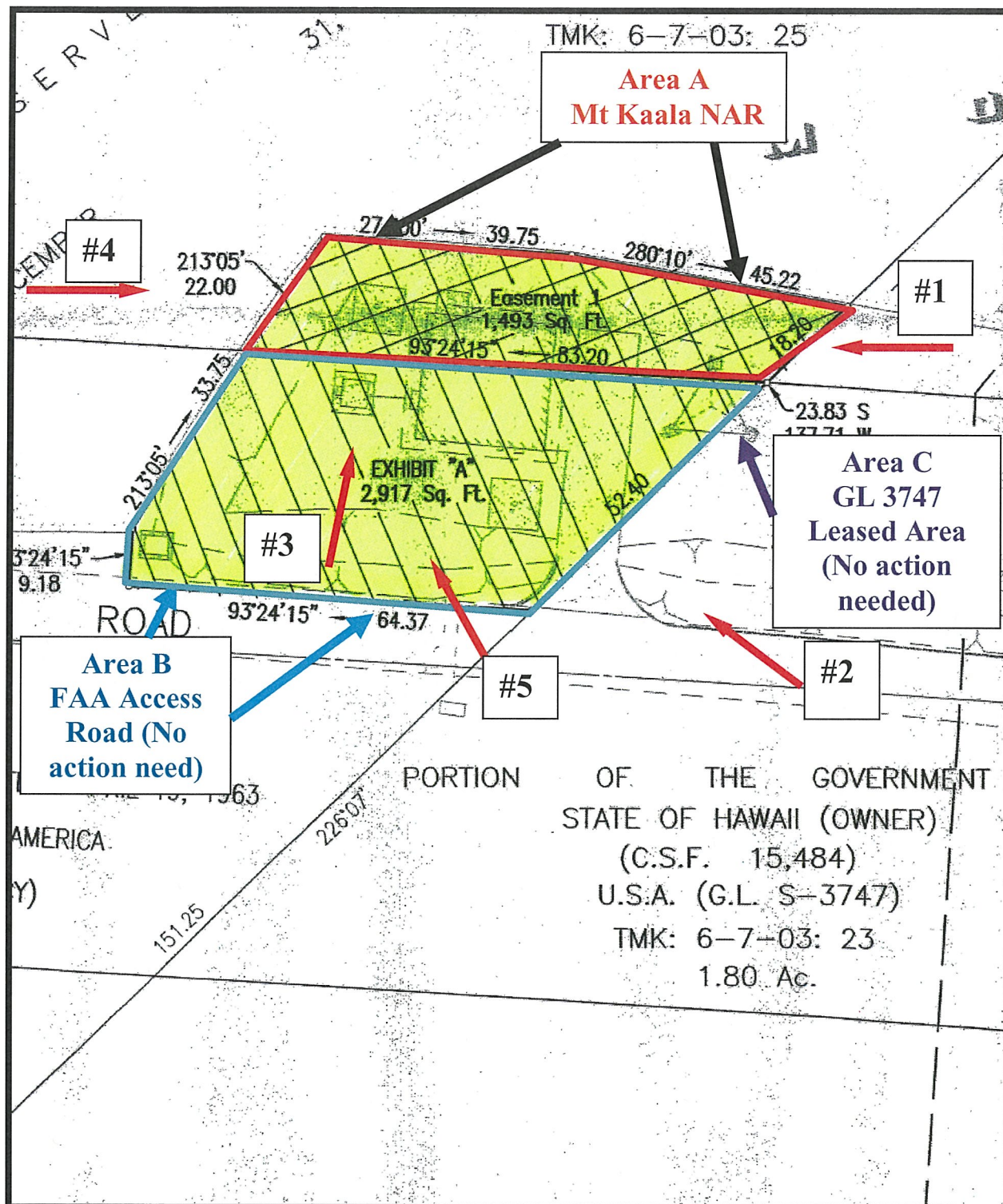
## **EXHIBIT B**





TMK (1) 6-7-003: portion of 025

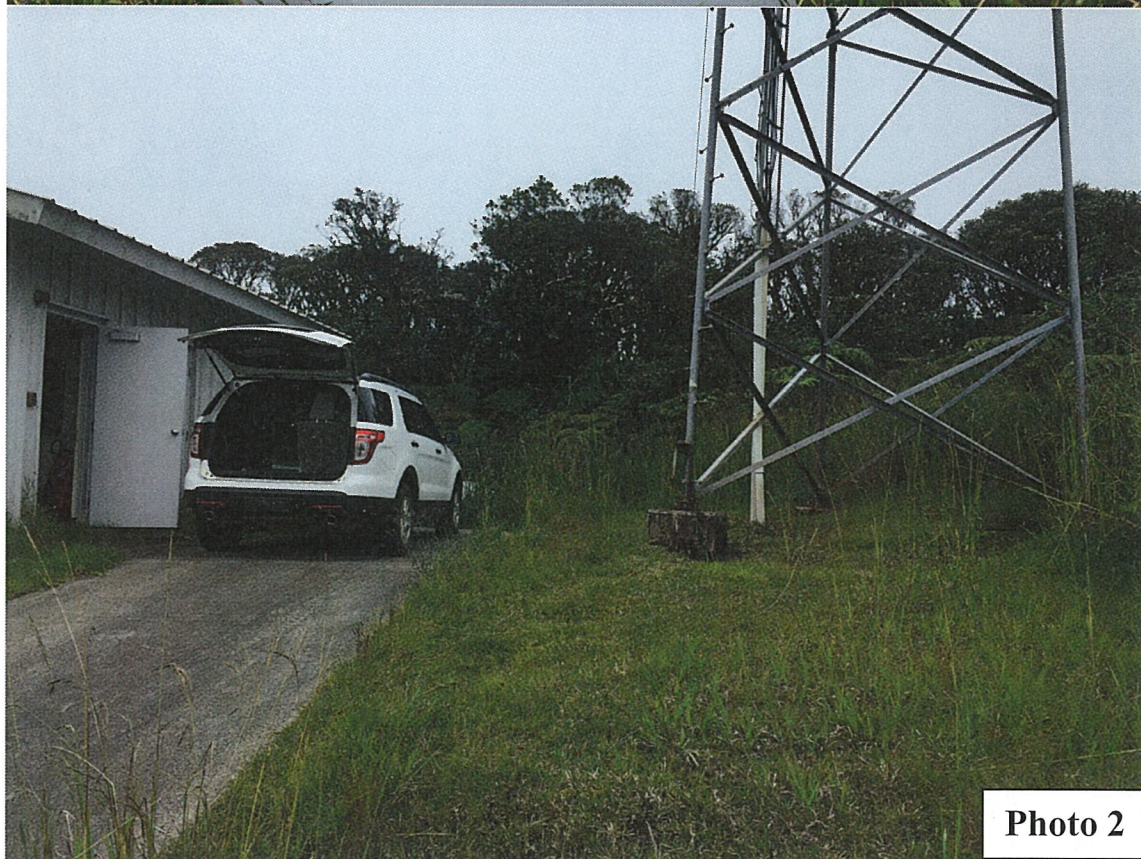
**EXHIBIT C1**



TMK (1) 6-7-003: portion of 025 (w/photo indexed)

**EXHIBIT C2**













**Photo 5**