

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

November 9, 2017

PSF No.: 17KD-113
Ref. No.: GLS-4259

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

KAUAI

Rescind Prior Board Action of April 25, 2014, Item D-1, *Extension of Lease Term for General Lease No. S-4259, (Contract No. DACA84-5-70-16) to the United States of America, Department of the Air Force, Waimea, Kauai, Hawaii, TMK: (4) 1-2-001:009;*

Withdrawal from Governor's Executive Order Nos. 1509 and 1510 to the Division of State Parks and Reset Aside to the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), for Microwave and Radio Communication Site Purposes;

Grant of Perpetual, Non-Exclusive Easement to DAGS/ICSD for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry to DAGS/ICSD for Public Safety Microwave and Radio Communication Site Purposes at Kukui and Pohakuwaawaa, Kokee, Waimea, Kauai, Tax Map Keys: (4) 1-2-001:009, and (4) 5-9-001:016 por. & 023.

APPLICANT:

Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD).

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.
Section 171-13, Hawaii Revised Statutes, as amended.
Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kukui and Pohakuwaawaa, situated at Kokee, Waimea, Kauai, identified by Tax Map Key: (4) 1-2-001: 009, and (4) 5-9-001: 016 por. & 023, and as shown on the attached map labeled Exhibit A.

TMK/ DISTRICT/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA
		LUC	CZO		
(4) 1-2-001: 009	Kalalau, Waimea	Conserve	Open	EO #1510; State Parks for Waimea Canyon Park. Parcel 2: For Microwave (Kukui) antenna site.	1.251 ac
(4) 5-9-001: por. 016	Kalalau, Waimea	Conserve	Open	EO #1509; State Parks for Kokee State Park. Relating to an access road right-of-way (20-ft wide).	1.209 ac
(4) 5-9-001:023	Kalalau, Waimea	Conserve	Open	EO #1509; State Parks for Kokee State Park. Parcel 1: For Microwave (Pohakuwaawaa) antenna site.	4,000 sf

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:

Unencumbered but improved with a microwave relay station facility.

(Formerly under General Lease No. S-4259 to the USA for access roadway and microwave relay station. Expired on June 16, 2014.)

PURPOSE OF SET-ASIDE:

For microwave and radio communications site purposes.

EASEMENT CHARACTER OF USE:

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

EASEMENT CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

DCCA VERIFICATION:

Not applicable. Applicant, a government entity, is not required to register with DCCA.

REMARKS:

At its meeting of October 10, 1969, the Board of Land and Natural Resources (Board) approved General Lease S-4259 (USA contract No. DACA84-5-70-16) to the United States of America for access roadway and microwave relay station purposes. The lease commenced on June 17, 1969 and was for a five (5) year term with an option to extend lease term for another ten (10) years. The lease consisted of two separate tower sites with an easement for access purposes.

On August 22, 1974, Supplemental Agreement 1 extended the Lease for an additional ten (10) years to June 16, 1984. Subsequently, the Board approved five Supplemental Agreements of five (5) years each.

At its meeting of February 10, 1995, the Board approved After-the-Fact Conservation District Use Permit (CDUP) KA-2731 for the County of Kauai 800 MHz Trunked Radio Station Upgrade Project that covered the subject lands and other communications sites on Kauai. The County of Kauai had a license agreement from the USA at the time to operate an existing radio repeater station at the site.

In 2002, the USA contracted a Phase I Environmental Baseline Survey (EBA) for the two relay stations. The visual inspections on both tower sites, which indicated no major environmental issues or contaminants of concern, with no release or disposal of hazardous or petroleum substances has occurring in the past or at present.

By letter dated May 4, 2010 the USA requested an extension of the lease (Supplemental Agreement 7) for an additional five (5) years, beginning June, 17, 2009 and ending on June 16, 2014. This was considered an after-the-fact extension of lease due to the passing of the expiration date.

At its meeting of April 25, 2014, item D-1, the Board approved an extension for an additional five (5) years by way of Supplemental Agreement No. 8, which would begin on June 17, 2014 and end on June 16, 2019. The aggregate term of the lease would have therefore been fifty-five (55) years ending on June 16, 2019.

The extension documents pursuant to Supplemental Agreement No. 8, for the period covering June 17, 2014 to June 16, 2019 were prepared and forwarded to the USA for authorized signatures. The extension document was never returned, therefore, the lease expired as scheduled on June 16, 2014.

In April 2015, the USA prepared a Final EBS to Support the Closeout of the USA Kukui & Pohakuwaawaa Relay Sites at Kokee, Kauai.

By letter dated September 23, 2016, the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), requested the use of the subject lands for the purpose of public safety microwave and radio communications sites. The request asked that the lease to the USA be assigned to DAGS/ICSD as the USA did not have further use for the facility. As explained above, the lease expired on June 16, 2014, therefore, the proper transfer of the premises would be by way of withdrawal and reset-aside to DAGS/ICSD.

The acquisition of the subject microwave antenna site by DAGS/ICSD will add critical capacity and coverage area to the existing State Microwave System for purposes of public safety, which best serve the public's interest.

The government agencies having interest and/or management jurisdiction over the lands being set aside were contacted. The United States of America, Division of Forestry & Wildlife, State Parks, and OCCL had no objections to the request. The County of Kauai Department of Public Works and Office of Hawaiian Affairs had not responded as of the suspense date.

DAGS/ICSD is aware that should the set aside be cancelled in the future, DAGS/ICSD might be required to remove all improvements, restore the land to a condition satisfactory to DLNR, and prepare a Phase I environmental site assessment.

The proposed use continued since the 1960s. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION:

That the Board subject to the Applicant fulfilling the Applicant requirements above:

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. Rescind Prior Board Action of April 25, 2014, Item D-1, *Extension of Lease Term for General Lease No. S-4259, (Contract No. DACA84-5-70-16) to the United States of America, Department of the Air Force, Waimea, Kauai, Hawaii, TMK: (4) 1-2-001:009.*

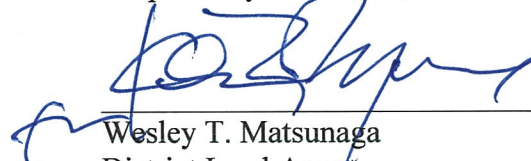
3. Approve of and recommend to the Governor issuance of an executive order withdrawing 1.3009 acres from the Governor's Executive Order No. 1509 and 1.251 acres from Governor's Executive Order No. 1510 subject to the following:
 - A. The standard terms and conditions of the most current executive order 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.

4. Approve of and recommend to the Governor the issuance of an executive order setting aside TMKs: (4) 1-2-001:009 and 5-9-001:023 to DAGS covering the subject area 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 executive order form, as may be amended from time to time;
 - B. DAGS/ICSD accepts the subject land and improvements in an "as is" condition with all faults and defects, whether latent or patent;
 - C. 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;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

5. Authorize the issuance of a perpetual, non-exclusive easement to DAGS/ICSD, covering the area identified as a road right-of-way on TMK: (4) 5-9-001: 016 por., for access purposes, relating to proposed microwave and radio communication tower site 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;

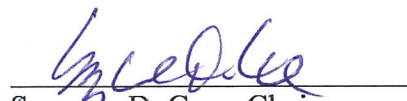
- B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Authorize the issuance of an immediate management right-of-entry to the DAGS/ICSD, its consultants, contractors and/or persons acting for or on its behalf, for the management and operations of the microwave and radio communication towers and related purposes, 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 management and construction right-of-entry form, as may be amended from time to time;
 - B. The term of this management right-of-entry shall commence upon date of this Land Board action and shall expire upon the issuance of the subject set-aside document; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

1. Introduction

1.1 Site Location and Description

The Kukui and Pohakuwaawaa Relay Stations are both on small parcels of land off of the road up to Kokee Air Force Station, Kauai, see Figure 1. Kukui includes a small access road just off of the main highway which makes physical access to the Station very easy. Pohakuwaawaa Relay Station has a small area to pull off of the main highway and park a vehicle; however physical access to this site is more of a challenge (estimated 1.5 miles hike from the parking area). The Sites are both currently owned by the State of Hawaii and leased to the USAF under Real Estate Permit DACA-84-5-70-16. These Stations are administered by the USAF with management assistance from the Hawaii Air National Guard (HANG). These Microwaves Relay Stations were utilized by the AF for many years however the technology that these two Stations have to offer is no longer of any use or mission value to the AF, rendering these Sites obsolete.

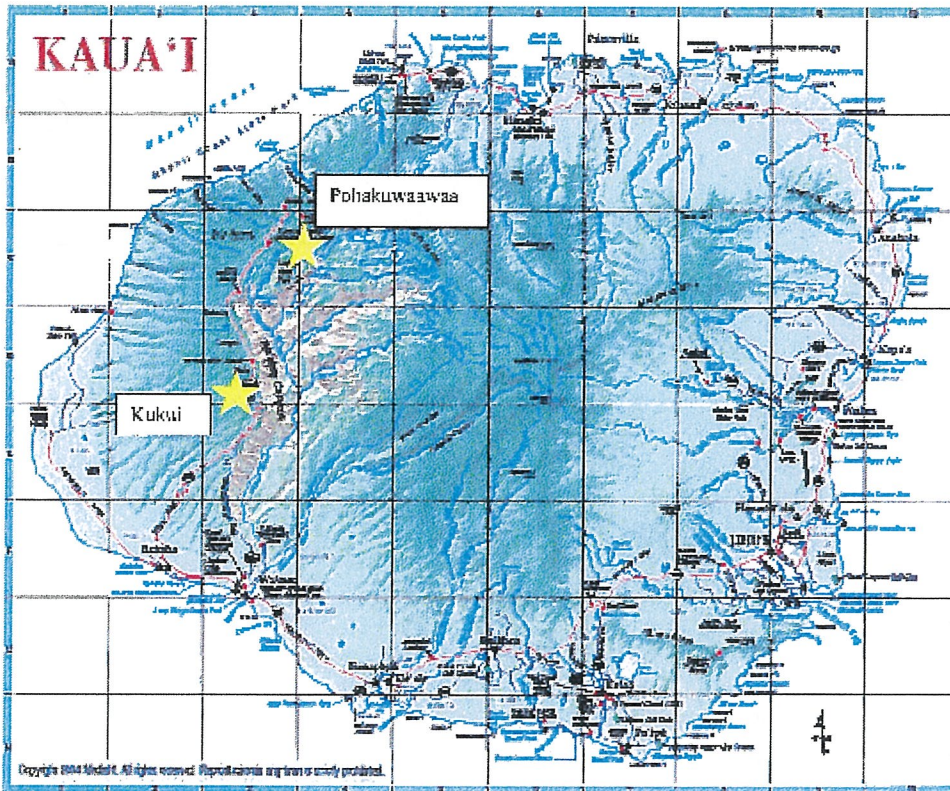
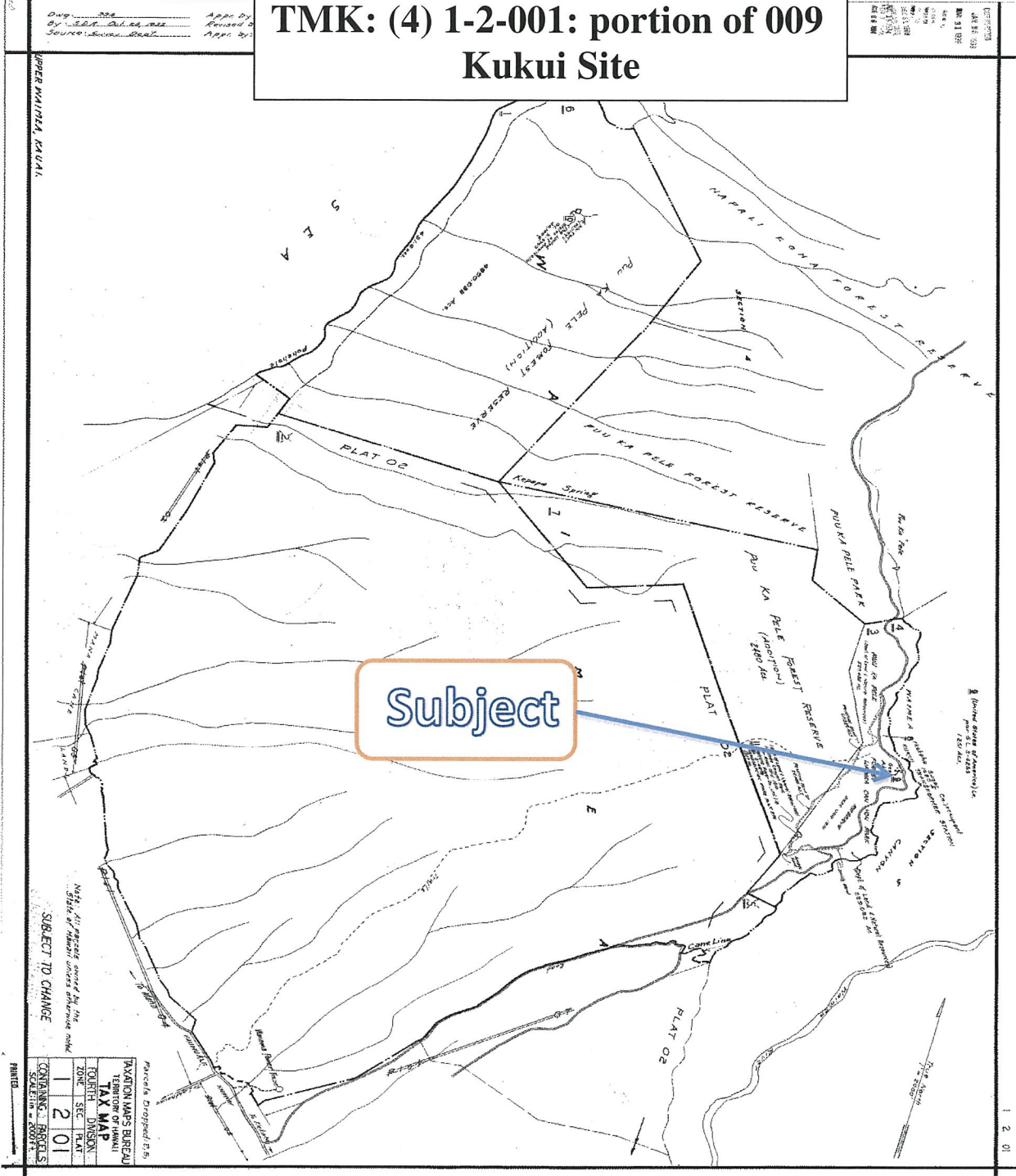


Figure 1: Locality Map, Kukui and Pohakuwaawaa Relay Stations

**TMK: (4) 1-2-001: portion of 009
Kukui Site**



Subject

App. No. _____
 App. By _____
 Date _____

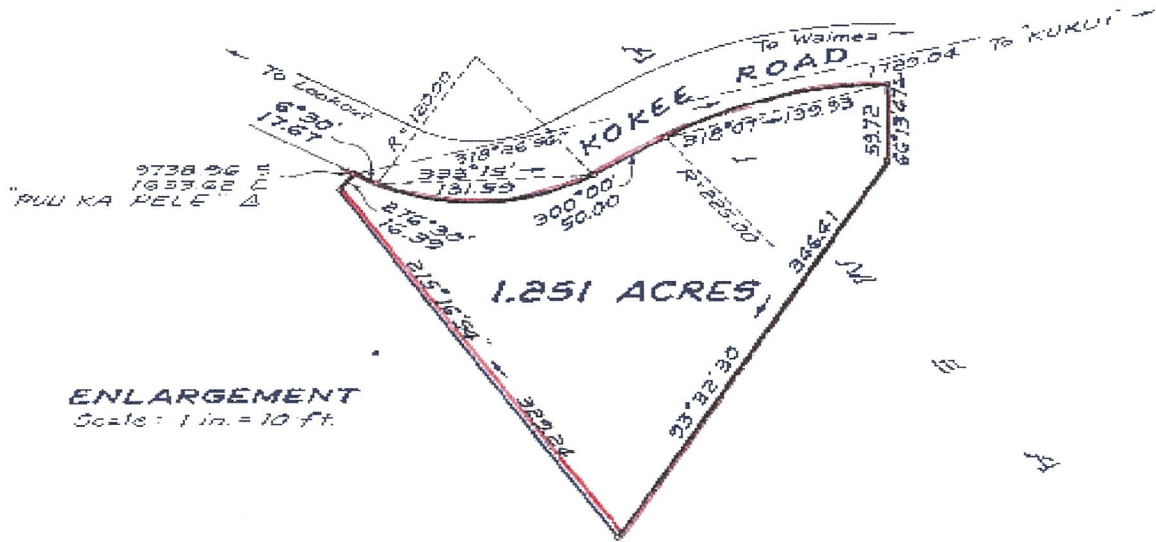
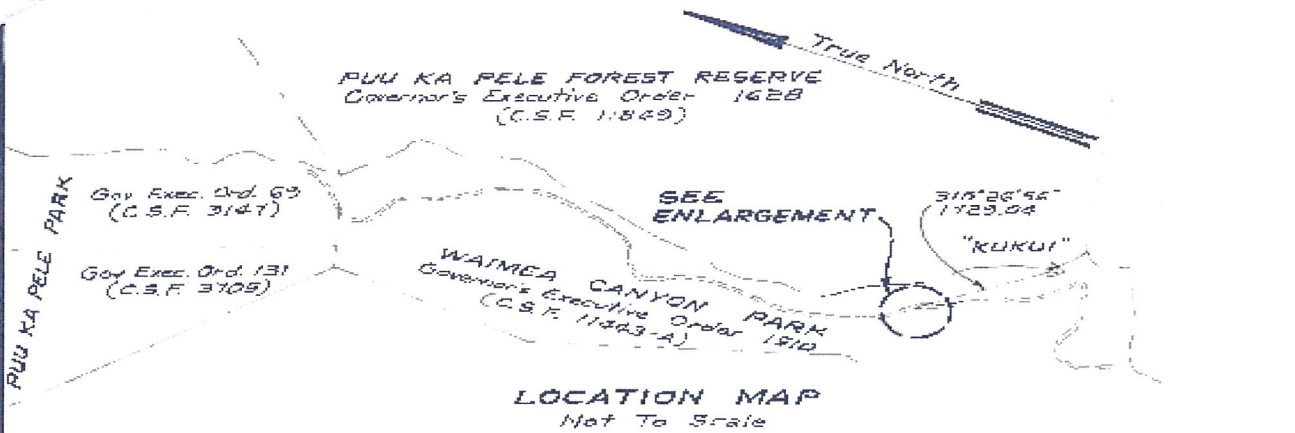
NO. 21 009
 DATE 11/20/01
 SCALE 1" = 200 FT.

SUBJECT TO CHANGE
 Note: All parcels owned by the State of Hawaii unless otherwise noted.

Parcel(s) Designated B-5
PLANNING AGENCIES
CONV. ZONE
1 2 01
PLANNING AGENCIES
CONV. ZONE
1 2 01
PLANNING AGENCIES
CONV. ZONE
1 2 01

EXHIBIT A

TMK: (4) 1-2-001: 009 por.
Kukui Site



MICROWAVE ANTENNA SITE
PARCEL 2

Waimea, Kauai, Hawaii
 Scale: 1 inch = 10 feet

JOB K-353(31)
 C. B. I. S. Koon

TAX MAP 1-2-011 par 3

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

CSF. NO. 21,654

GJK January 16, 1992

EXHIBIT A

TMK: (4) 5-9-001:023
Pohakuwaawaa Site

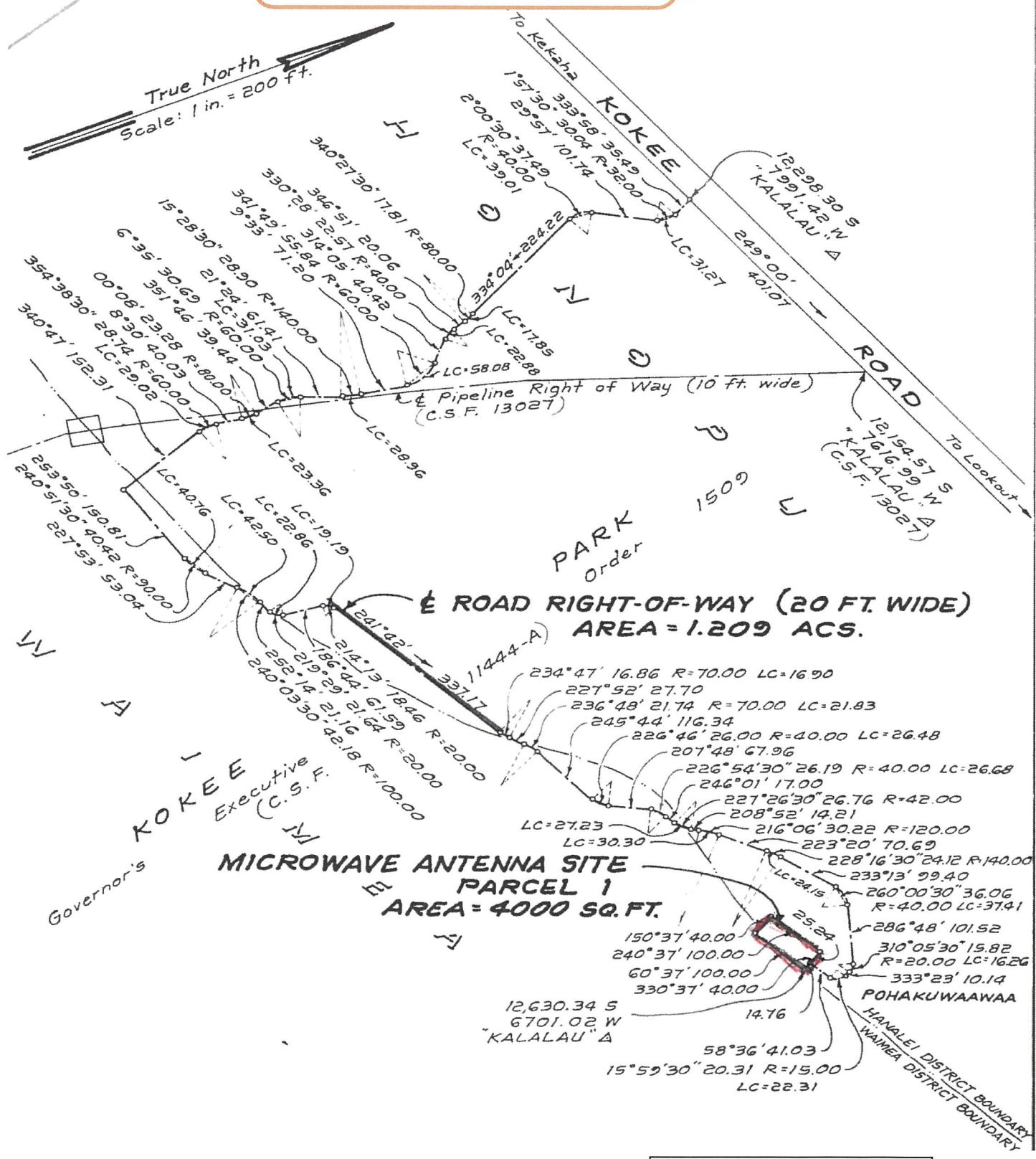
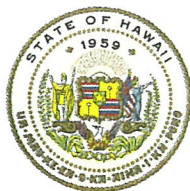
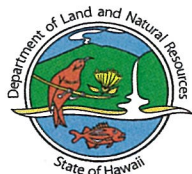


EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 9, 2017

EXEMPTION NOTIFICATION

Ref. No.: 17KD-113

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

Project Title: Withdrawal from Governor's Executive Order Nos. 1509 and 1510 to the Division of State Parks and Reset Aside to the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), for Microwave and Radio Communication Site Purposes; Grant of Perpetual, Non-Exclusive Easement to DAGS/ICSD for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry to DAGS/ICSD for Public Safety Microwave and Radio Communication Site Purposes.

Project / Reference No.: PSF No.: 17KD-113

Project Location: Kukui and Pohakuwaawaa, Kokee, Waimea, Kauai, Tax Map Keys: (4) 1-2-001: por. 009, and (4) 5-9-001:016 & 023.

Project Description: Withdrawal from Governor's Executive Order Nos. 1509 and 1510 to the Division of State Parks and Reset Aside to the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), for Microwave and Radio Communication Site Purposes; Grant of Perpetual, Non-Exclusive Easement to DAGS/ICSD for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry to DAGS/ICSD for Public Safety Microwave and Radio Communication Site Purposes.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(4) 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 preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 43, which states "Transfer of

EXHIBIT B

management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order".

Exemption Item Description
from Agency Exemption List:

Transfer of State land to another state agency involving negligible or no expansion or change of use beyond previously existing.

Consulted Parties:

United States of America, State Parks, Division of Forestry and Wildlife, Office of Conservation and Coastal Lands, DAGS/ICSD, County of Kauai Department of Public Works, and Office of Hawaiian Affairs.

Recommendation:

The prior lease to the United States of America for access, microwave and radio communication site purposes has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources. As such staff believes that the proposed set aside to DAGS ICSD for continued use would involve negligible or no expansion or change in use of the subject area beyond that previously existing. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment.