

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

March 23, 2018

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

Ref: 16OD-146

OAHU

*Amend Prior Board Action of November 10, 2016, (Item D-10), Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom Services Company, Inc. for Submarine Fiber Optic Telecommunication Cable Purposes and Issuance of Construction and Management Right-of-Entry on State Submerged Lands off Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-001:seaward of 012.*

Amendment is needed to add legal reference and to correct typographical errors.

BACKGROUND:

At its meeting on November 10, 2016 (Item D-10), the Board of Land and Natural Resources (Board), approved the grant of perpetual, non-exclusive easement to Hawaiian Telcom Services Company, Inc. (“HTSC”) in the subject area. A copy of the 2016 submittal is attached as **Exhibit 1**.

During the review process by the Department of the Attorney General (“AG”), a few issues were noted and discussed with the staff. Both sides agreed that approval from the Board to the amendments described in the following paragraphs is prudent. Staff presents the revisions to the Board below:

Legal Reference 171-95(a)(3):

The applicant, HTSC, is a public utility company. The template condition for an easement issued to a public utility company will include language allowing the assignment of rights to the trustee for the bondholder of the grantee. In addition, an easement is subject to disapproval by the Legislature. AG recommended adding the citation of Section 171-95 (a)(3) as the legal authority of the requested easement.

Amendment of Recommendation 1.B:

In the 2016 submittal, Recommendation 1.B. should mirror the wording in the Remarks Section. Staff inadvertently missed citing the full condition in the Recommendation Section. Therefore, staff recommends the Board replace the relevant section in the 2016 submittal as described in the Recommendation Section below with the additional wording underscored.

Character of use:

In the 2016 submittal, the phrase, "waterlines for", was inserted in the Character of Use section by mistake. Staff recommends the Board authorize the replacing the section as noted in the Recommendation Section below.

RECOMMENDATION: That the Board amend its prior action of November 10, 2016, Item D-10, by the following:

- A. Include the legal reference Sections 171-95(a)(3).
- B. Replace Recommendation 1.B. with the following

"The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map (s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement. The parties further agree that if the easement area is encumbered by an Executive Order, appropriate approvals if required will be obtained, and said easement will be similarly amended."

- C. Replace the entire Character of Use section with the following:

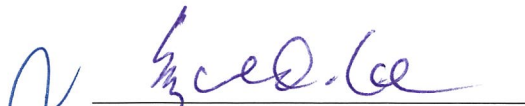
"Right, privilege and authority to construct, use, maintain, repair, replace and remove submarine fiber optic telecommunication cable purposes over, under and across State-owned submerged lands."

Respectfully Submitted,



Darlene Bryant-Takamatsu  
Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

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

November 10, 2016

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

Ref: 16OD-146

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Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom Services Company, Inc. for Submarine Fiber Optic Telecommunication Cable Purposes and Issuance of Construction and Management Right-of-Entry on State Submerged Lands off Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-001:seaward of 012

APPLICANT:

Hawaiian Telcom Services Company, Inc., a domestic profit corporation (Applicant).

LEGAL REFERENCE:

Sections 171-13, 17, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged lands situate off Makaha, Waianae, Oahu, identified by Tax Map Key: (1) 8-4-001:seaward of 012, as shown on the maps labeled **Exhibits A1 & A2**.

AREA:

0.409 acre<sup>1</sup>, more or less (**Exhibit B**), subject to review and approval by the Department of Accounting and General Services, Survey Division. See Remarks Section.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5 (b) of Hawaii Admission Act

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

<sup>1</sup> Territorial waters extend only three miles from each island.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
November 10, 2016 *co*

D-10

**EXHIBIT "1"**

CURRENT USE STATUS:

Requested area is vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove waterlines for submarine fiber optic telecommunication cable purposes over, under and across State-owned submerged lands.

TERM

Perpetual

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. See Remarks Section.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on June 8, 2016 with a Finding of No Significant Impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>  x  </u>	NO <u>  </u>
Registered business name confirmed:	YES <u>  x  </u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>  x  </u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment; and
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost. See Remarks Section.

REMARKS:

Applicant, in partnership with NEC Corporation of America<sup>1</sup>, proposes to install a submarine fiber optic telecommunications cable at the subject location. The cable system will connect from a landing station to be built on a property owned by the Applicant [TMK (1) 8-4-002:059], and travel beneath the Farrington Highway and Makaha Beach Park [TMK (1) 8-4-001:012] before entering into the submerged lands. Applicant will apply for proper authorizations from the Department of Transportation [for Farrington Highway] and the City and County of Honolulu [fee owner of the Makaha Beach Park] over the respective portions of the cable. The subject request pertains only to the portion of cable to be installed in the submerged lands.

According to the published Final Environmental Assessment, the proposed cable system will help to meet the local demand for broadband ability and connect to other Southeast Asian countries, like the Philippines and Indonesia.

For the Board's information, under a separate request on today's agenda, Applicant is seeking the Board's authorization for the issuance of the conservation district use permit (CDUA).<sup>2</sup> Applicant requests putting the CDUA and easement request on the same Board agenda in view of the tight project time frame.

Final Easement Area

At its meeting of February 15, 2014, item D-9, the Board, among other actions, approved an easement document for another easement request regarding a seawater airconditioning waterlines system. One of the amendments regarding the provision of map and legal description is recited below:

“The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map (s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement. The parties further agree that if the easement area is encumbered by Executive Order, appropriate approvals if required will be obtained, and said easement will be similarly amended.”

Staff recommends the Board authorize the use of the same condition mentioned above for the subject request. Upon approval of today's request, staff will initiate the appraisal request using 0.409 acre [which is the latest planned area over State submerged lands] as the initial easement area, subject to the condition mentioned above.

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<sup>1</sup> NEC Corporation of America acts the developer of the system, but not the eventual grantee of the easement.

<sup>2</sup> Upon the request of the Applicant, staff places the subject easement request on today's agenda. However, its approval will be contingent upon the approval of the CDUA as described above.

Staff did not solicit comments for the subject easement request as comments were solicited during the CDUA and EA stages already.

Applicant also requests for immediate construction right-of-entry in view of the tight time line of the project.

Applicant 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.

RECOMMENDATION: That the Board:

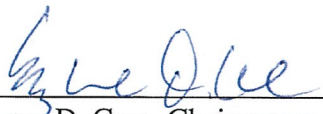
1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Hawaiian Telecom Services Company, Inc. covering the subject area for submarine fiber optic telecommunication cable purposes under the terms and conditions 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. The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map (s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement.
  - C. Terms and conditions of Conservation District Use Permit (OA-3773)
  - 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.
2. Authorize the issuance of a construction right-of-entry to Hawaiian Telecom Services Company, Inc. covering the subject area submarine fiber optic telecommunication 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 right-of-entry document 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,

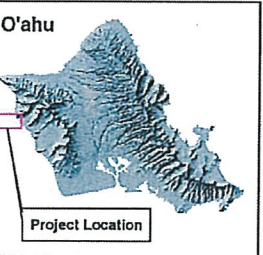
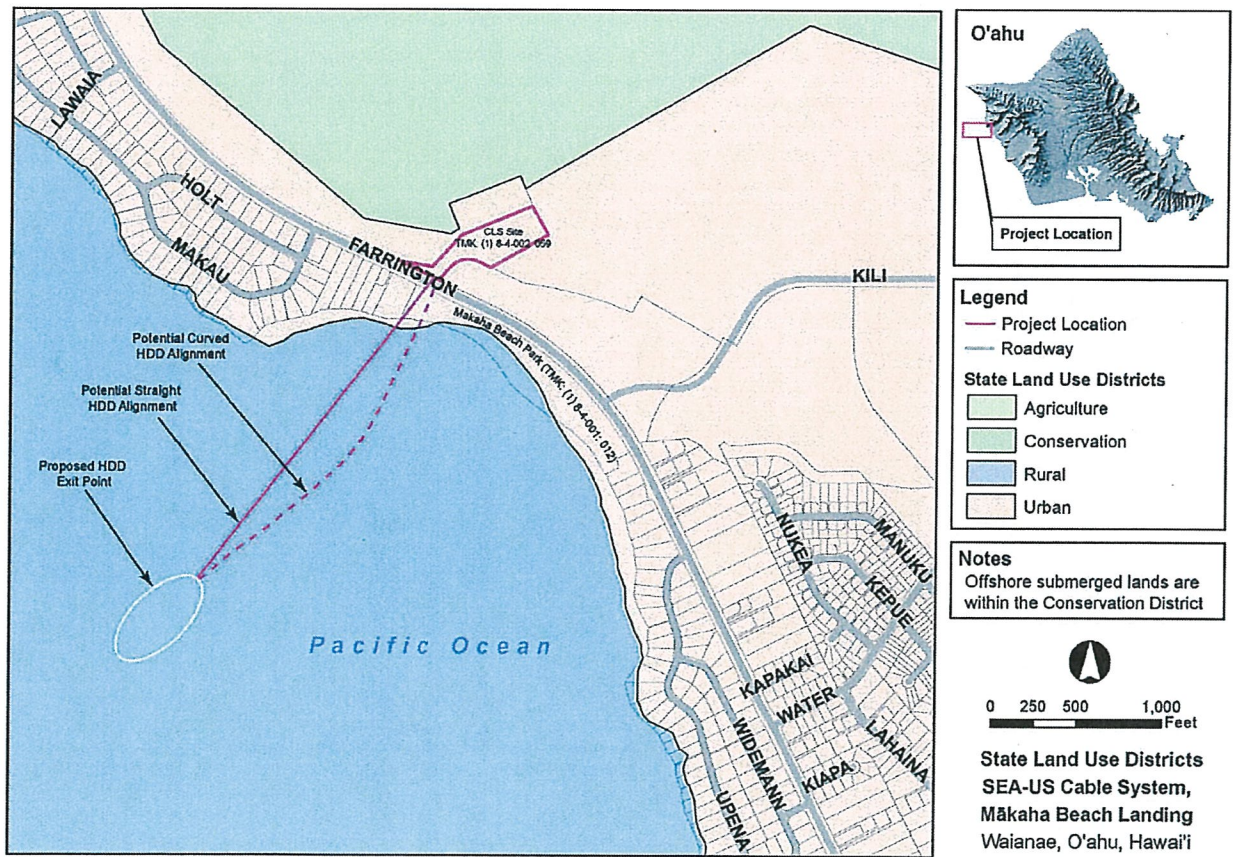
  
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Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
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Suzanne D. Case, Chairperson



1 Figure 8-1, State Land Use Districts



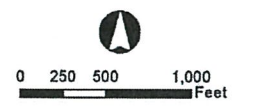
**Legend**

- Project Location
- Roadway

**State Land Use Districts**

- Agriculture
- Conservation
- Rural
- Urban

**Notes**  
Offshore submerged lands are within the Conservation District

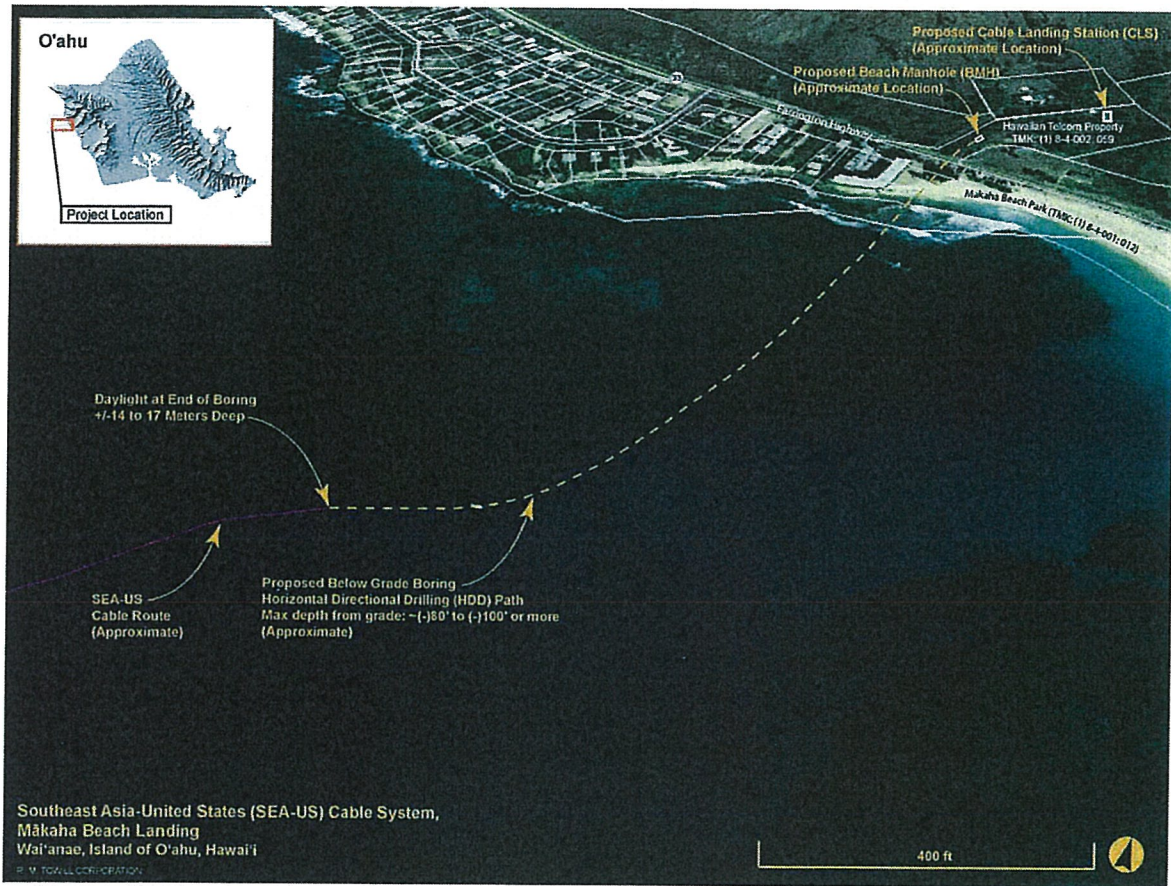


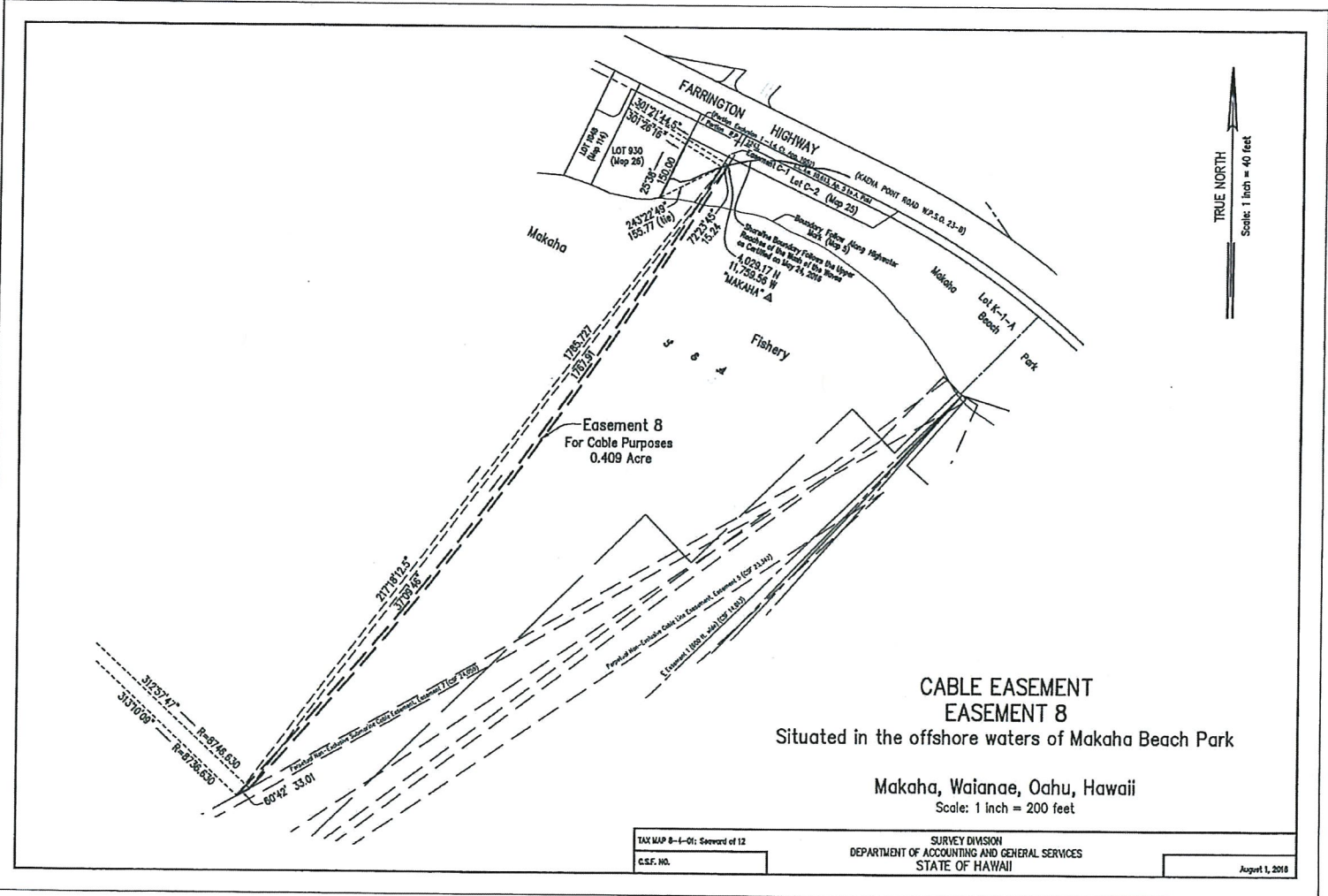
**State Land Use Districts  
SEA-US Cable System,  
Mākaha Beach Landing  
Waianae, O'ahu, Hawai'i**

R. M. TOWILL CORPORATION



1 Figure 2-3, Nearshore and Terrestrial Project Location





**EXHIBIT "B"**