

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

April 13, 2018

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

PSF No.: 18OD-035

OAHU

Grant of Term, Non-Exclusive Easement to United States of America, by its Federal Aviation Administration for Roadway and Slope Maintenance Purposes; Issuance of Immediate Construction Right-of-Entry Permit; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-8-001: portions of 001

APPLICANT:

United States of America, by its Federal Aviation Administration, Lessee.

LEGAL REFERENCE:

Sections 171-55 or 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Mokuleia, Waialua, Oahu, identified by Tax Map Key: (1) 6-8-001: portions of 001, as shown on **Exhibits A1 and A2**.

AREA:

Site 1 - Easement 1-A	7,109 square feet; and
Site 4 - Easement 2-A	12,973 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 Proclamation dated December 31, 1928 for Mokuleia Forest Reserve purposes.

CHARACTER OF USE:

Roadway and Slope Maintenance Purposes

TERM:

Commence on a date to be determined by the Chairperson, and expire on April 18, 2028 [i.e. the expiration date of GL 3748].

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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, "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," item 46 that states, "creation or termination of easement, covenants, or other rights in structures or land," and Exemption Class No. 6, "Construction or placement of minor structures accessory to existing facilities," item 9 that states, "Construction of interior roadways, driveways, parking area, sidewalks, pathways, aisles, curbs, gutters, and other similar items on state lands." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Government agency.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
2. Process and obtain designation of easement approval from the Department of Planning and Permitting at Applicant's own cost.

REMARKS:

General Lease No. S-3748 (“Lease”) was issued to the United States of America, by its Federal Aviation Administration (“FAA”), with an expiration date on April 18, 2028. The leased area includes a 100-foot wide access roadway connecting the site to the public highway. Pursuant to Condition 6 of the Lease, FAA is also required to maintain and repair such access roadway.

US Army Corps of Engineers, on behalf of FAA, recently contacted the department regarding some repairs to the roadway. The proposed repairs cover five (5) sites along the roadway. Among the sites, Site 3 falls on private land, whereas Sites 2 and 5 are within the roadway. FAA will proceed with the repairs to the above-mentioned sites pursuant with the approval of the private owner as to Site 3 and in accordance with Condition 6 of the Lease as to Sites 2 and 5. Plans showing the proposed repairs to the remaining Sites 1 and 4 are included in **Exhibit C1 to C3**.

Site 1 will involve removal of portions of the upslope embankment so that the existing road can be realigned away from the existing landslide area downside of the road; and Site 4 will include removing limited portions of upslope soil to mitigate landslide hazard. Repairs proposed at these two sites include the area outside the boundaries of the roadway covered by the Lease. Therefore, authorization from the Board is required before FAA can proceed with the repair at Sites 1 and 4.

The additional areas (“Easement 1-A and 2-A”) described above are within Mokuleia Forest Reserve and zoned Conservation District. Office of Conservation and Coastal Lands (“OCCL”) and Division of Forest and Wildlife (“DOFAW”) were consulted on the project and have no objection to the proposed exemption declaration from the preparation of an environmental assessment.

DOFAW recommended FAA be responsible for the ongoing maintenance of Easements 1-A and 2-A, and OCCL has issued Site Plan Approval on February 22, 2018 for the proposed repairs. The DOFAW response and OCCL approval leave the grant of easement for Sites 1 and 4 as the remaining outstanding item. Staff brings the request to today’s agenda recommending the Board issue a term easement which shall run coterminous with the Lease.¹

FAA intends to start the construction while the final documentation is worked on. Staff recommends the Board authorize the issuance of an immediate right-of-entry which shall expire upon the consummation of the amendment document described above.

There are no other pertinent issues or concerns, and staff does not have any objections to the request.

RECOMMENDATION: That the Board:


1. Declare that, after considering the potential effects of the proposed disposition as

¹ The current position of the Department of the Attorney General is that easement rights must be granted separately from a lease as they are two different forms of disposition.

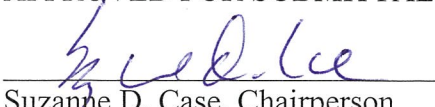
provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

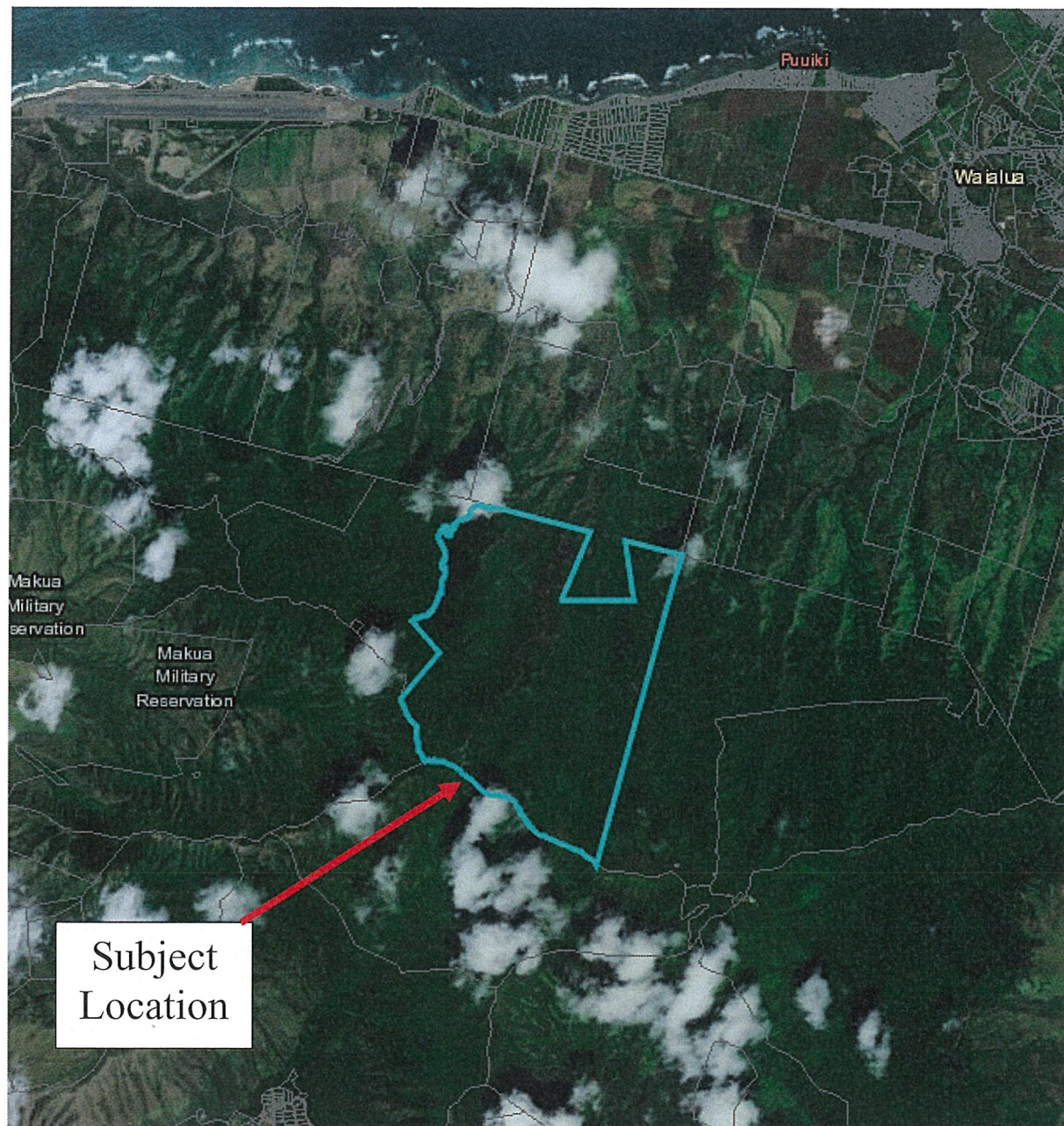
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to the United States of America, by its Federal Aviation Administration covering the subject area for roadway and slope maintenance purposes under the terms and 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. Terms and conditions of the Site Plan Approval dated February 22, 2018;
 - 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.
3. Authorize the issuance of a right-of-entry to the Applicant 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 right-of-entry permit document form, as may be amended from time to time; and
 - B. 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

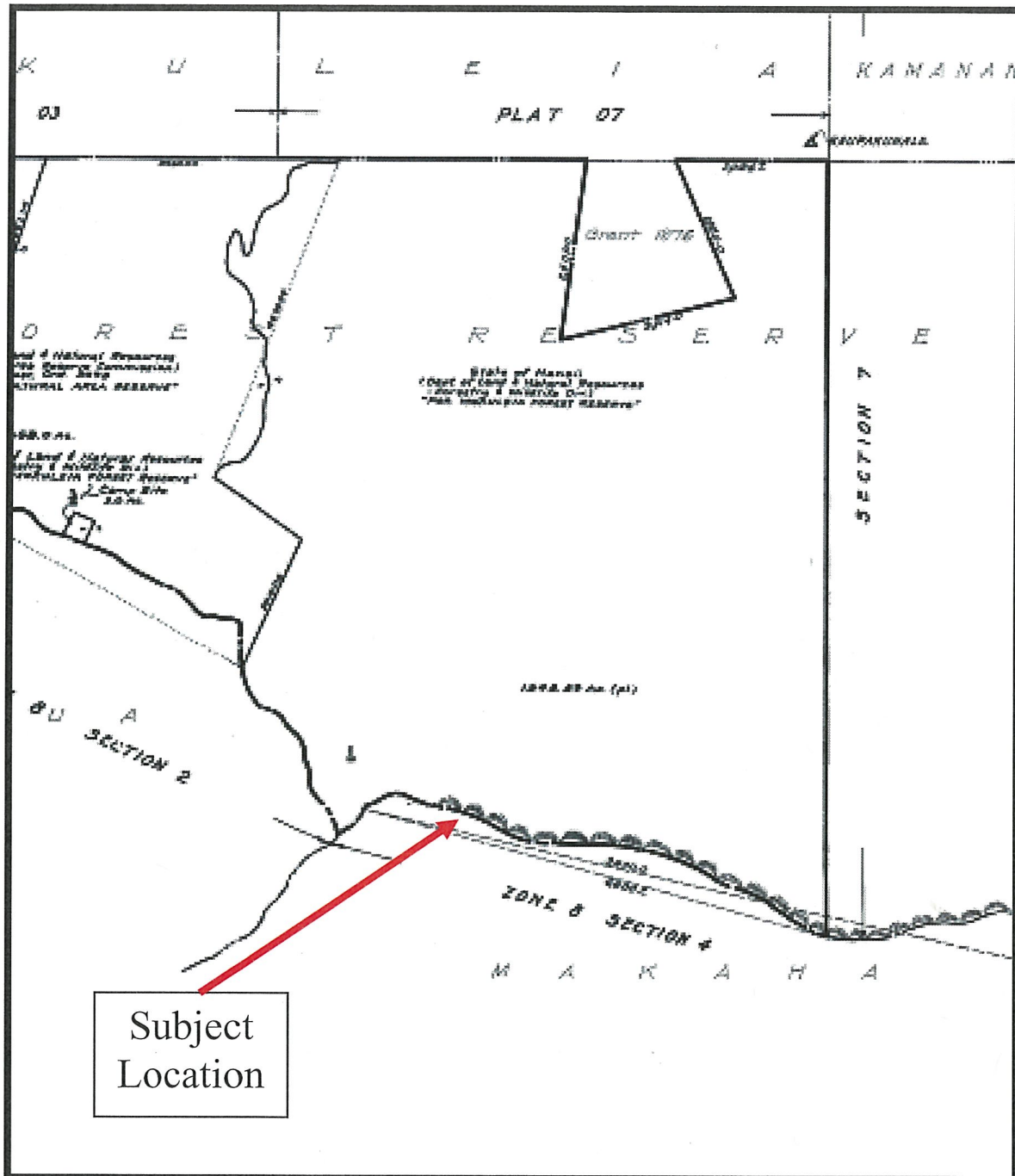
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 6-8-001: portions of 001

EXHIBIT A1



TMK (1) 6-8-001:001

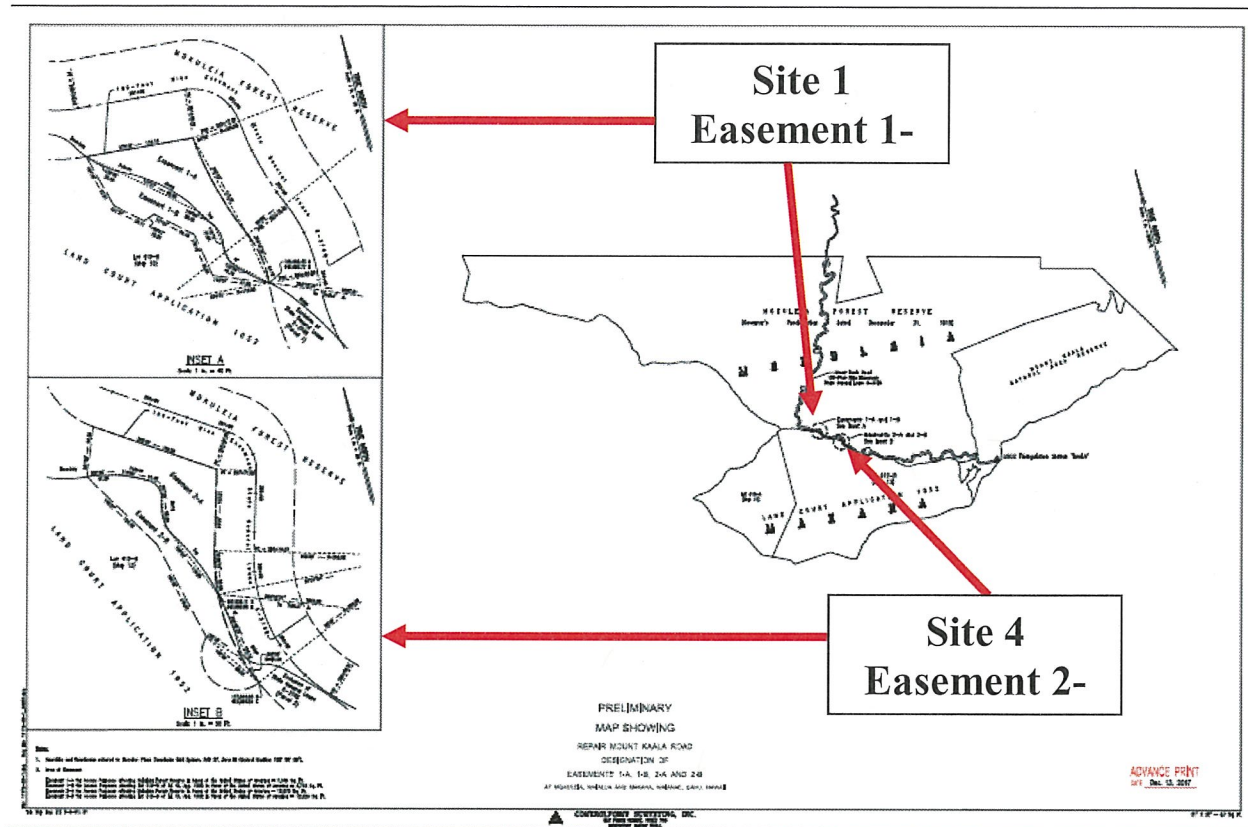
EXHIBIT A2

EXEMPTION NOTIFICATION

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

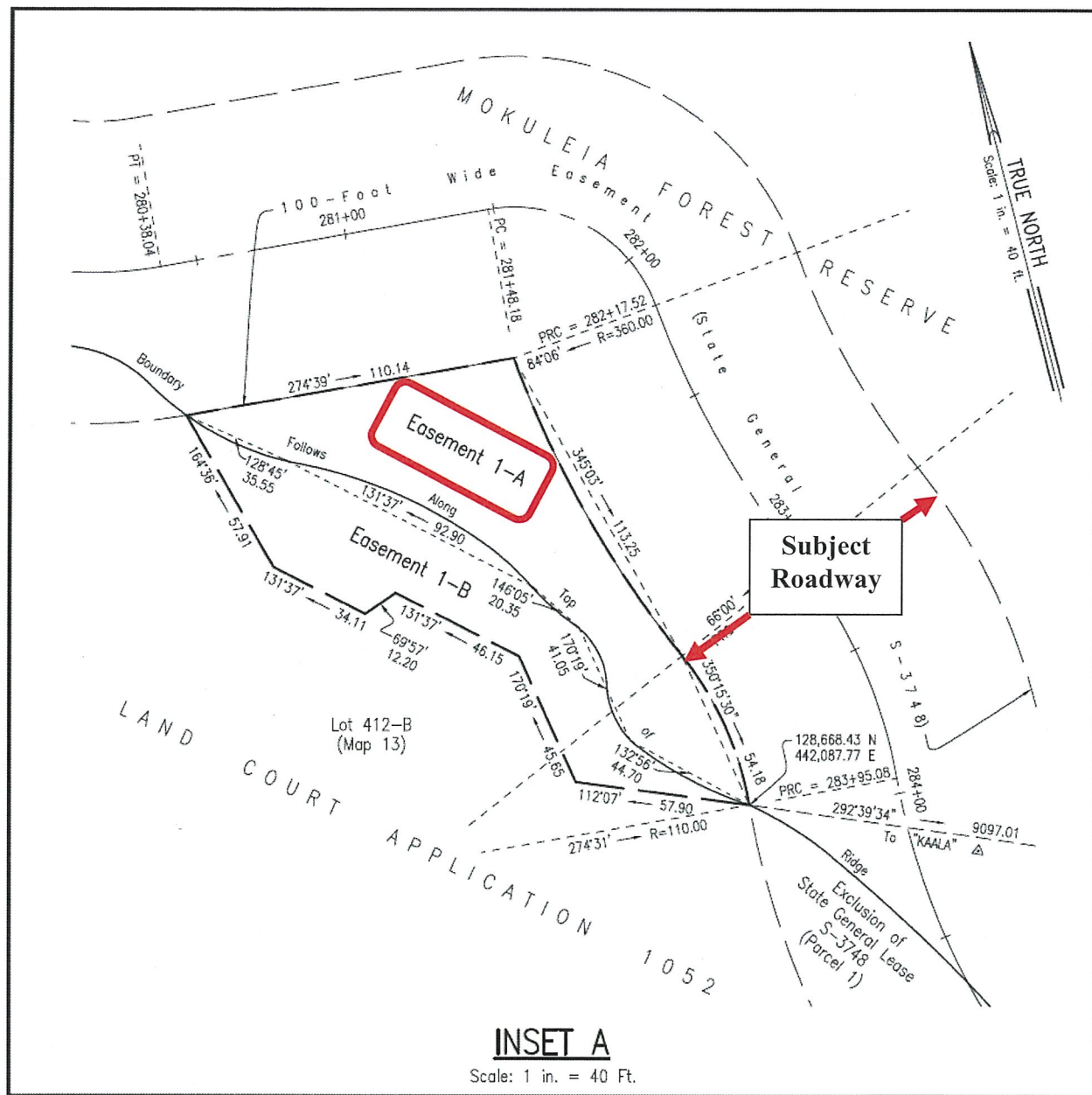
Project Title:	Issuance of Term Easement and Immediate Construction Right-of-Entry Permit.
Project / Reference No.:	PSF 18OD-035
Project Location:	Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-8-001: portions of 001.
Project Description:	Issuance of easement for roadway and slope maintenance purposes and immediate construction right-of-entry permit.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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, "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," item 46 that states, "creation or termination of easement, covenants, or other rights in structures or land," and Exemption Class No. 6, "Construction or placement of minor structures accessory to existing facilities," item 9 that states, "Construction of interior roadways, driveways, parking area, sidewalks, pathways, aisles, curbs, gutters, and other similar items on state lands."</p> <p>The Applicant is not planning to conduct any major improvement other than paving into a driveway to mitigate possible erosion issue. Therefore, staff believes that the proposed project would involve negligible or no expansion or change in use beyond that previously existing and fall under the exemption class mentioned above.</p>
Consulted Parties	Office of Conservation and Coastal Lands and Division of Forestry and Wildlife
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) 6-8-001: portions of 001

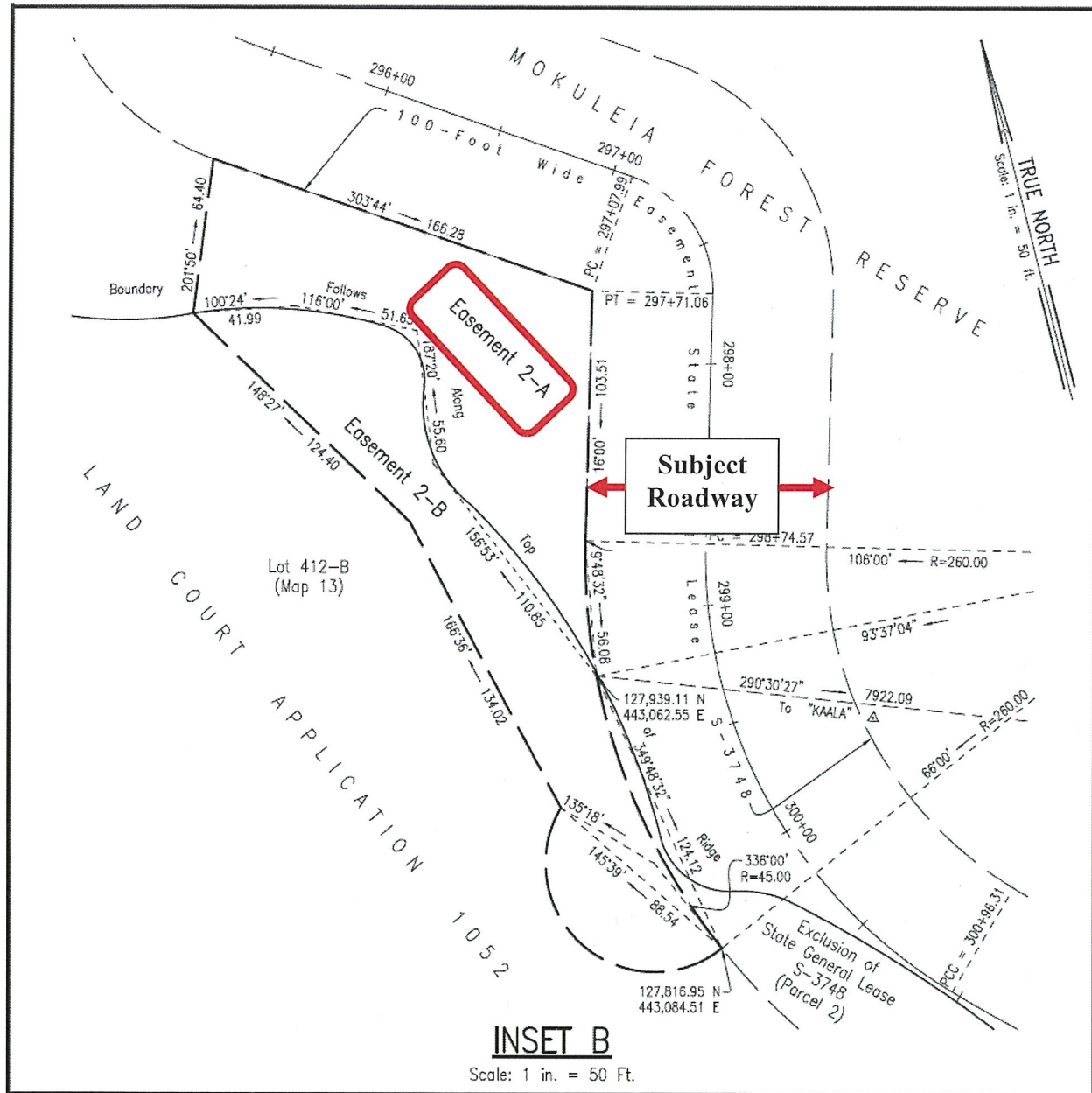
EXHIBIT C1



Site 1 – Easement 1-A
 TMK (1) 6-8-001: portion of 001

EXHIBIT C2

Note: Easement 1-B is located on TMK (1) 8-4-030:001 owned by the City and County of Honolulu. Therefore, it is not a subject of this request.



Site 4 – Easement 2-A
TMK (1) 6-8-001: portion of 001

EXHIBIT C3

Note: Easement 2-B is located on TMK (1) 8-4-030:001 owned by the City and County of Honolulu. Therefore, it is not a subject of this request.