

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

June 8, 2018

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

PSF No.: 18HD-048

Hawaii

Request to Authorize: (i) Chairperson to Negotiate and Execute a Memorandum of Agreement between the Water Board of the County of Hawaii ("WBCOH") and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM"), for the Kaloko Deep Monitor Well Purposes; (ii) Acquisition for CWRM of a Perpetual, Non-Exclusive Easement on Land Owned by WBCOH for the Kaloko Deep Monitor Well Purposes; (iii) Set-aside of the Easement so Acquired from WBCOH to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto Land Owned by WBCOH for Survey and Construction Purposes, O'oma 2nd - Kaloko, North Kona, Hawaii, Tax Map Key: (3) 7-3-009:030

APPLICANT:

Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM").

LEGAL REFERENCE:

Sections 171-11, -30 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land situated at O'oma 2nd - Kaloko, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-009:030, as shown on the attached map labeled **Exhibit A**.

AREA:

Parcel Area: 41,904 square feet, more or less.
Easement Area: To be determined by survey.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-5a

TRUST LAND STATUS:

Non-ceded.

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

CURRENT USE STATUS:

Owned by the Water Board of the County of Hawaii (“WBCOH”) and developed as water tank site.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and abandon/seal deep monitor well for data collection purposes, together with right-of-way for access to same.

TERM OF THE EASEMENT:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

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. 3, Item No. 13. See **Exhibit B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

CWRM shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at CWRM's own cost.
- 2) Obtain a title report to ascertain ownership, where necessary, at CWRM's own cost and subject to review and approval by the Department.

REMARKS:

CWRM received a \$2 million capital improvements project funding in 2016 for plans, land acquisition, design and construction to construct and/or repair deep monitor wells statewide to monitor the health of drinking water aquifers and other related costs. One of the well sites identified is at Kaloko, North Kona, Hawaii, TMK No.: (3) 7-3-009:030. There is another well site identified in a companion submittal before the Board of Land and Natural Resources ("Board") today for the Pahoehe Deep Monitor Well.

The Department's Engineering Division is assisting CWRM with developing the plans and specifications for solicitation. A contractor must be selected by June 30, 2018 in order to encumber the funds or they will lapse.

CWRM is requesting the Board authorize the Chairperson to negotiate and execute a Memorandum of Agreement ("MOA") between the WBCOH and the Department, on behalf of CWRM. The MOA will delineate the responsibilities of the Department and WBCOH. Also, CWRM is requesting authority to acquire a perpetual, non-exclusive easement, and to secure a right-of-entry ("ROE") permit to conduct a topographic survey and to construct a new deep monitor well for data collection purposes, which will expire upon execution of the easement document. Once the easement is issued, it will be set aside to CWRM by executive order.

WBCOH is willing to enter into a MOA with the Department and grant access to the property. A draft of the ROE is attached as **Exhibit C**.

A draft of the submittal was disseminated to agencies listed below with the results indicated:

Agency	Comment
DLNR – SHPD	No response by suspense date.
DLNR – Engineering	No comment.
DLNR – DOFAW	No comment.
DLNR – OCCL	No response by suspense date.

Agency	Comment
County of Hawaii – Department of Water Supply	No response by suspense date.
County of Hawaii – Planning	No response by suspense date.
County of Hawaii – Public Works	No response by suspense date.
Office of Hawaiian Affairs	No response by suspense date.

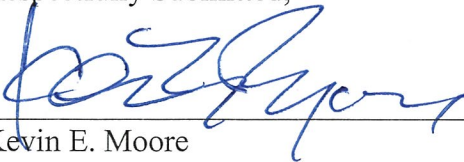
Staff has no issues with this request by CWRM.

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 Chairperson to negotiate terms and conditions of and sign a Memorandum of Agreement between the Water Board of the County of Hawaii and the Board of Land and Natural Resources, on behalf of the Commission on Water Resource Management, under the terms and conditions cited above, and further subject to the following:
 - A. The standard terms and conditions of the most current memorandum of agreement 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. Subject to the Applicant fulfilling the Applicant requirements listed above, authorize the acquisition of a perpetual non-exclusive easement in favor of the Board of Land and Natural Resources, for the Commission of Water Resource Management, 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 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.
4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources, Commission on Water Resource Management, 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 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.
5. Authorize the negotiation and execution of a right-of-entry permit to the Department of Land and Natural Resources, Commission of Water Resource Management, 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 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.

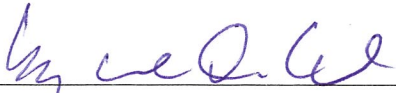
Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

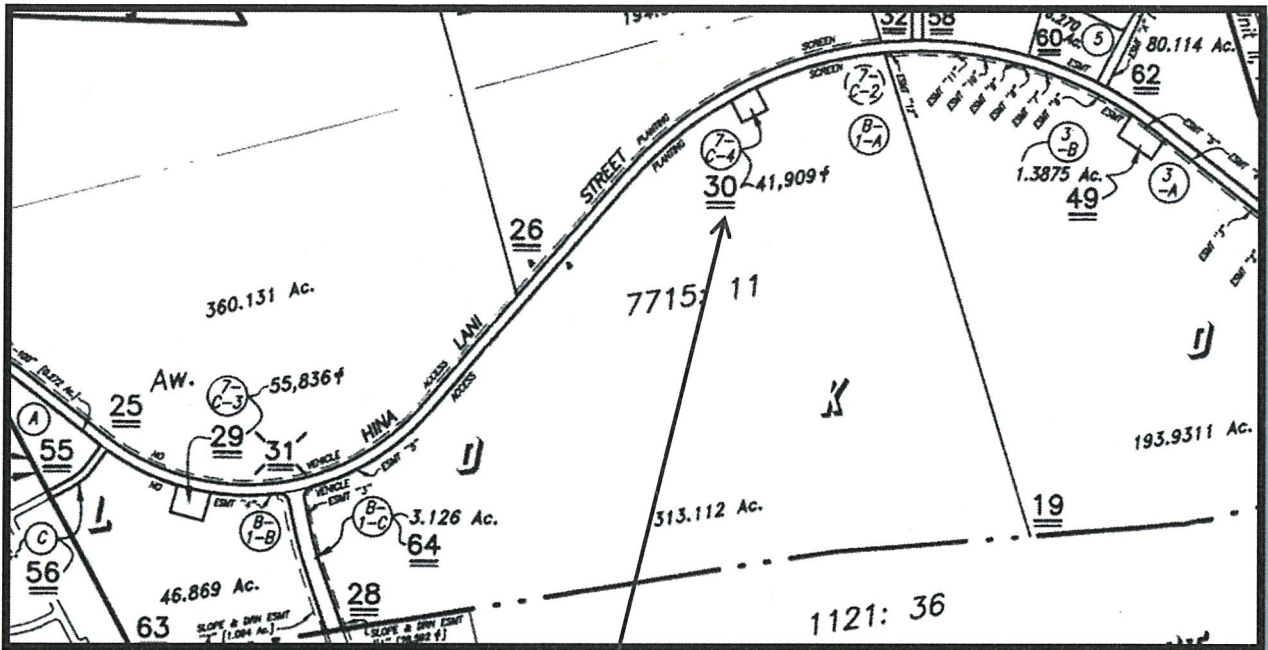
June 8, 2018

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson





TMK No. (3) 7-3-009:030

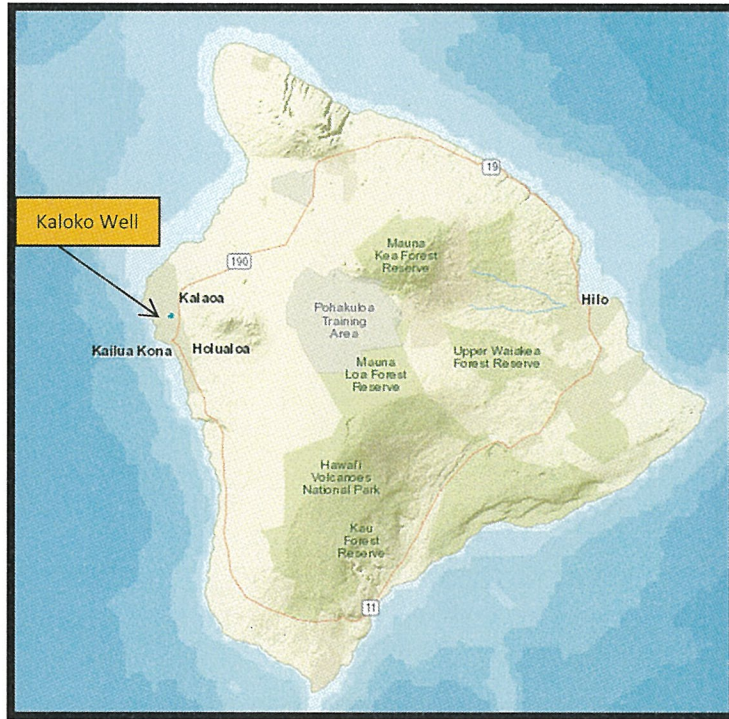
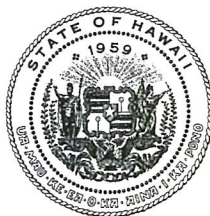


Exhibit A



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 8, 2018

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title: Request to Authorize the: (i) Chairperson to Negotiate and Execute a Memorandum of Agreement between the Water Board of the County of Hawaii ("WBCOH") and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM"), for the Kaloko Deep Monitor Well and Right-of-Way Purposes; (ii) Acquisition on Behalf of CWRM of a Perpetual, Non-Exclusive Easement on Land Owned by WBCOH for the Kaloko Deep Monitor Well and Right-of-Way Purposes; (iii) Set-aside of the Easement so Acquired from WBCOH to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto Land Owned by WBCOH for Survey and Construction Purposes.

Project / Reference No.: PSF No. 18HD-048

Project Location: O'oma 2nd - Kaloko, North Kona, Hawaii, Tax Map Key: (3) 7-3-009:030

Project Description: Request to Authorize the: (i) Chairperson to Negotiate and Execute a Memorandum of Agreement between the Water Board of the County of Hawaii ("WBCOH") and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM"), for the Kaloko Deep Monitor Well and Right-of-Way Purposes; (ii) Acquisition on Behalf of CWRM of a Perpetual, Non-Exclusive Easement on Land Owned by WBCOH for the Kaloko Deep Monitor Well and Right-of-Way Purposes; (iii) Set-aside of the Easement so Acquired from WBCOH to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto Land Owned by WBCOH for Survey and Construction Purposes.

Exhibit B

Chap. 343 Trigger(s): Use of State funds and use of WBCOH lands.

Exemption Class No. and Item No. : In accordance with Hawaii Administrative Rule Section 11-200-8 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. 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 alternation 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 Item No. 13 that states “Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment.”

Cumulative Impact of Planned Successive Actions in Same Place Significant: No. The request is a single occurrence in the area.

Action May Have Significant Impact on Particularly Sensitive Environment: No. The action proposed will have no significant impact to the environment.

Analysis: Deep monitor wells have been constructed statewide and maintained to monitor the health of drinking water aquifers and other related purposes for many years. The proposed project involves the construction of right-of-way and the drilling of a well on the subject land, both of which activities fall within the exemption for construction and location of new small facilities. This is a discrete project with limited impact on the environment. As such, staff believes that the project is exempt from the preparation of an environmental assessment.

Consulted Parties: The following agencies were consulted with the results indicated.

Agency	Comment
DLNR – SHPD	No response by suspense date.
DLNR – Engineering	No comment.
DLNR – DOFAW	No comment.
DLNR – OCCL	No response by suspense date.

Agency	Comment
County of Hawaii – Department of Water Supply	No response by suspense date.
County of Hawaii – Planning	No response by suspense date.
County of Hawaii – Public Works	No response by suspense date.
Office of Hawaiian Affairs	No response by suspense date.

There were no objections to the proposed exemption.

Declaration:

It is recommended 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.

DRAFT

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT, made and entered into by and among the WATER BOARD OF THE COUNTY OF HAWAII, the governing board of the Department of Water Supply of the County of Hawaii (herein referred to as "OWNER"), whose principal place of business and mailing address is 345 Kekuanaoa Street, Suite 20, Hilo, Hawaii 96720; and Department of Land and Natural Resources (herein referred to as "DEPARTMENT"), whose principal place of business and mailing address is 1151 Punchbowl Street, Honolulu, HI 96813;

WITNESSETH:

WHEREAS, OWNER is the owner of the ~~610~~ Kaloko Tank No. 2 Well Site, containing an area of 41,904 square feet, located at Tax Map Key (3) 7-3-009:030, on the Island of Hawaii, as shown in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, DEPARTMENT is desirous of obtaining a temporary right to enter onto the Property for the limited purposes of conducting a topographic survey and constructing a new deep monitor well; and

WHEREAS, the construction of a monitoring well for data collection purposes is exempt from preparation of an Environmental Assessment pursuant to Hawaii's Administrative Rules §11-200-8 and the Exemption List for DEPARTMENT approved by the Environmental Council on June 5, 2015; and

Commented [YJ1]: Since this is the State's monitoring well, should we use their exemption, not ours? I'm assuming it's Exemption Class 3, #13 on the state list?

WHEREAS, OWNER is willing to grant such right of entry to DEPARTMENT upon the following terms and conditions;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. OWNER hereby grants to DEPARTMENT a non-exclusive, temporary, limited right-of-entry, for a period commencing on the date hereof and ending no later than

December 31, 2025, to enter upon the Property for the limited purpose of conducting a topographic survey and constructing a new deep monitor well.

2. OWNER reserves the right to cancel this Right of Entry Agreement for any reason upon thirty (30) days written notice to DEPARTMENT. If this Right of Entry Agreement is terminated, OWNER, in its sole discretion, may order the DEPARTMENT to remove all or part of any items placed or constructed by the DEPARTMENT on the Property and instruct the DEPARTMENT to return the Property to its original state. DEPARTMENT shall solely bear the cost of such a removal and restoration.

3. DEPARTMENT must comply with all of the OWNER's Rules and Regulations, and all other County, State and Federal laws.

4. DEPARTMENT shall not assign or delegate any of its rights under this Agreement, nor permit agents or ~~third~~-third-party entities onto the Property without prior written consent from OWNER.

5. DEPARTMENT shall be solely responsible for damages or injury to persons or Property caused by DEPARTMENT in the course of conducting their topographic survey and deep monitor well construction on OWNER's property. DEPARTMENT agrees that it will be responsible to repair or cause to be repaired any damage to OWNER's real or personal property resulting from DEPARTMENT's activity on OWNER's property. The obligations of DEPARTMENT under this Section shall survive termination of this Agreement. OWNER and DEPARTMENT agree that nothing in this Agreement shall be construed or interpreted as an indemnification. OWNER and DEPARTMENT acknowledge and agree that each, as agencies of the State of Hawai'i, are not authorized to indemnify the other in any way, including, without limitation, against any claims for bodily injury, wrongful death, and/or property damages by any persons.

6. DEPARTMENT shall keep the Property at all times free and clear of all liens, charges and encumbrances of every nature. DEPARTMENT shall be responsible to resolve any lien imposed against the Property or any part thereof, and arising out of any work done by or for DEPARTMENT hereunder. DEPARTMENT will cause any such claim for a lien to be discharged immediately, but in no event later than thirty (30) days of the filing thereof.

7. DEPARTMENT understands and acknowledges that the Property may be dangerous by reason of natural conditions or otherwise. OWNER does not presently have knowledge of the existence of any hazardous conditions on the Property, but hereby warns DEPARTMENT that such conditions may exist. OWNER has not conducted any inspection of the Property in connection with DEPARTMENT's planned use of the Property.

DEPARTMENT hereby assumes all risk of death, bodily harm, personal injury, emotional distress and/or property damages suffered or incurred by DEPARTMENT, and arising (directly or indirectly) from its entry onto the Property, and accepts the Property "as is." OWNER has not made any representation or warranty, express or implied, regarding any aspect of the property, including but not limited to the implied warranties or merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value. OWNER agrees to waive the insurance requirement for DEPARTMENT with the understanding that

DEPARTMENT is an agency of the State of Hawai'i and is self-insured against losses including general liability and property damage which may involve claims and demands for loss, damage or destruction of property and personal injury or death. ~~DEPARTMENT shall obtain and maintain at all times during the term of this Right of Entry Agreement, and deliver to OWNER certificates of, comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, and aggregate of not less than Two Million Dollars (\$2,000,000), providing for thirty (30) days written notification to OWNER of intent to cancel.~~

Prior to first entering the Property, DEPARTMENT shall furnish the OWNER with a Statement of Self-Insurance typically provided by agencies of the State of Hawai'i.

8. DEPARTMENT shall not undertake to perform any sitework without the prior written consent of OWNER. In connection therewith, DEPARTMENT shall deliver to OWNER a sitework plan showing existing contours and depicting any sitework performed to improve drainage of the Property or to permit the construction of any improvements thereon prior to commencing any sitework.

9. DEPARTMENT shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper use of the Property, or any part thereof, nor, without the prior written consent of the OWNER, remove, destroy, or disturb any archaeological or historical features now present or discovered on the Property.

10. DEPARTMENT shall not bring or permit the introduction onto the Property of any hazardous substances, hazardous wastes, hazardous materials, or toxic substances as such terms are defined in any federal, state or local laws, ordinances, regulations, rules or governmental guidance documents relating to the protection of human health or the environment, including without limitation laws relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, or to the use, handling, storage and transportation of such hazardous materials or substances.

11. DEPARTMENT shall observe and comply with all laws, ordinances, rules and regulations, of the federal, state, municipal, or county governments affecting the Property or the improvements DEPARTMENT will be constructing in connection with this Right of Entry Agreement. DEPARTMENT shall at all times during the term of this Right of Entry Agreement, maintain in effect all permits, approvals, licenses, consents, etc., as required by any applicable law.

12. In case the OWNER is made a party to any litigation commenced by or against the DEPARTMENT arising from this Right of Entry, each party shall bear such costs, reasonable attorneys' fees, and other expenses as determined by the Court, or as mutually agreed upon between the parties.

13. Upon the termination of this Right of Entry Agreement, DEPARTMENT shall remove any trash or other debris generated by its activities on the Property.

14. DEPARTMENT, at its sole cost and expense, shall clean, maintain, operate, repair and keep the Property in a clean and safe condition at all times throughout the term of this Right of Entry Agreement so that DEPARTMENT'S work will not interfere with operations of OWNER.

14. If DEPARTMENT fails to observe or perform any of the covenants contained in this Right of Entry Agreement, and such failure continues for a period of ten (10) days after written notice of such failure given by the OWNER, then such action shall constitute a default and OWNER shall be entitled to all remedies available to it by law or in equity, including the right of specific performance, and the right to terminate this Right of Entry Agreement.

15. If DEPARTMENT fails to observe or perform any of the covenants contained in this Right of Entry Agreement, OWNER may undertake such actions as OWNER deems appropriate under the circumstances. If OWNER exercises this right, DEPARTMENT shall promptly reimburse OWNER for any and all costs and expenses incurred by OWNER in connection with such action.

16. The parties agree that no party shall be deemed the drafter of this Right of Entry Agreement, for purposes of interpretation, as both parties are equally participating in the drafting.

17. Neither the failure nor delay on the part of the OWNER to exercise any right or remedy under this Right of Entry Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy, and no waiver of any right or remedy with respect to any occurrence shall be construed as a waiver of such right or remedy with respect to any other occurrence.

18. Following the termination of this ROE, a Memorandum of Agreement and perpetual, non-exclusive easement between OWNER and DEPARTMENT will be executed for access, maintenance, and deep well monitoring activities, subject to approval by the WATER BOARD.

19. This Right of Entry Agreement contains the entire agreement of OWNER and DEPARTMENT relating to the subject hereof, and supersedes all prior negotiations and agreements between them with respect to any right of entry.

20. This Right of Entry Agreement may only be amended in writing, executed by both OWNER and DEPARTMENT.

21. The laws of the State of Hawai'i shall govern the validity, performance, and enforcement of this Right of Entry Agreement.

22. The term "OWNER" shall mean and include OWNER, and the Department of Water Supply, its officers, employees, Water Board Members, successors and assigns. The term "DEPARTMENT" shall mean and include DEPARTMENT and its members, employees, contractors, subcontractors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Right of Entry Agreement this _____ day of _____.

WATER BOARD OF THE COUNTY OF HAWAII

By: _____
Print name: _____
Its: Chairman
OWNER

RECOMMEND APPROVAL:

DEPARTMENT OF LAND AND NATURAL
RESOURCES

By: _____
Print name: KEITH K. OKAMOTO
Its: Manager-Chief Engineer
Department of Water Supply

By: _____
Print name: Suzanne D. Case,
Its Chairperson
DEPARTMENT

APPROVED AS TO FORM:

By: _____
Deputy Corporation Counsel

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20____, before me appeared
_____, to me personally known, who, being by me duly sworn, did say that
_____ is the Chairman of the Water Board of the County of Hawai'i and that the seal affixed to
the foregoing instrument is the seal of the Department of Water Supply of the County of
Hawai'i, and that the instrument was signed and sealed in behalf of the Water Board by authority
of said Water Board, and that _____ acknowledged the instrument to be
the free act and deed of the Water Board.

Signature

Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires: _____

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20____, before me appeared
_____, to me personally known, who, being by me duly sworn,
did say that _____ is the _____ of _____,
a Hawai'i limited liability company, and that said instrument was signed in behalf of said
corporation by authority of its Board of Directors; and that said officer acknowledged said
instrument to be the free act and deed of said corporation.

Signature

Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires: _____

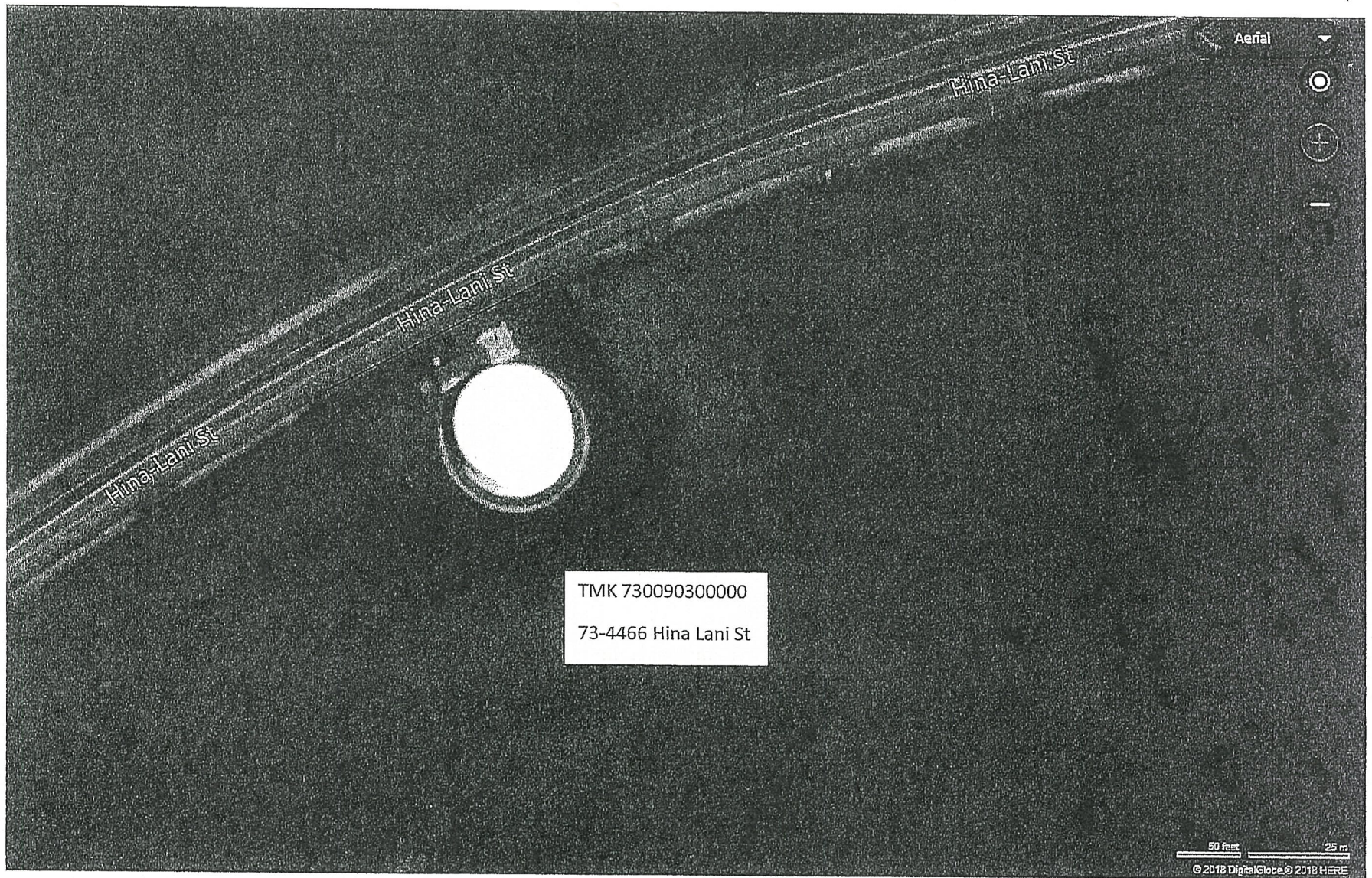


EXHIBIT "A"