

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

October 9, 2020

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

PSF No.: 20HD-073

Hawaii

**Withdrawal of 0.75 Acre, More or Less, from General Lease No. S-6065,
Natural Energy Laboratory of Hawaii Authority, Lessee; Set Aside 0.75 Acre
to County of Hawaii, Department of Public Works, for Roadway Purposes,
Kapoho, Puna, Island of Hawaii, Tax Map Key: (3) 1-4-001:082 por.**

**Issuance of a Right-of-Entry Permit to County of Hawaii, Department of
Public Works for Survey, Equipment and Material Storage Purposes,
Kapoho, Puna, Island of Hawaii, Tax Map Key: (3) 1-4-001:082.**

APPLICANT:

County of Hawaii, Department of Public Works,

LEGAL REFERENCE:

Sections 171-11, 13, 55 and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kapoho, Puna, Island of Hawaii, identified by
Tax Map Key: (3) 1-4-001:082, as shown on the attached map labeled Exhibit A.

AREA:

Area of Existing Lease: 4.10 acres, more or less.
Area to be Withdrawn: 0.75 acre, more or less.

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: A-1a: 1-acre agriculture

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 General Lease No. S-6065, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, for storage and air quality monitoring site purposes. Lease to expire on June 17, 2079.

LEASE CHARACTER OF USE:

Air quality monitoring site and storage purposes.

PURPOSE OF SET-ASIDE:

For roadway purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This project is being undertaken pursuant to the Governor's Emergency Proclamation from the 2018 Kilauea eruption which suspends Chapter 343 requirements.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
- 2) Obtain written concurrence from lessee of the subject land; and
- 3) Process subdivision approval, if required.

REMARKS:

The subject parcel was previously encumbered under Mining Lease No. S-4602, a direct lease to the Research Corporation of the University of Hawaii (RCUH) for geothermal rights, then assigned to the Natural Energy Laboratory of Hawaii Authority (NELHA) in 1986. The 35-year lease expired on June 18, 2014.

NELHA had requested a new direct lease for air quality monitoring and storage purposes and the Board, at its meeting of April 25, 2014, under agenda item D-3, consented to the direct lease (GL S-6065) for a term of sixty-five (65) years commencing June 18, 2014.

In 2018, lava from the Kilauea eruption inundated a large portion of the lower Puna district including the premises of GL S-6065 and the adjacent county maintained Pohoiki Road. In order to provide access to residents in the area impacted by the lava flow, the

County of Hawaii has initiated the restoration of several roadways with funding in part from the Federal Emergency Management Administration (FEMA).

On May 9, 2018, the Governor signed a Supplementary Proclamation¹ that in part, authorized the County of Hawaii to restore public roadways affected by the eruption. The proclamation included the suspension of certain statutory requirements including Chapter 343 of the Hawaii Revised Statutes relating to environmental impact statements.

This particular road restoration project will provide two 11-foot wide paved travel ways with 5 feet of paved and 5 feet of unpaved shoulders on both sides of the roadway. In order to increase the safety of the road, the County will need to acquire a portion of the subject State land to increase the radius of the road curves.

The attached map (Exhibit B) identifies the proposed road and its location on the subject parcel. The County is requesting the set-aside the shaded area for roadway purposes. The County is also requesting a right-of-entry for use of the remainder of the parcel for staging and stockpiling of material for the duration of the project. This right-of-entry will terminate upon the issuance of the executive order.

GL S-6065 provides in relevant part as follows:

27. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including . . . for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds

The County of Hawaii Department of Public Works has contacted the lessee regarding the request for the withdrawal of the land from the lease and use of the property for construction. The lessee has no objection to the project (Exhibit C). The lessee pays nominal rent under the lease in the amount of \$480 per annum. Accordingly, staff is not recommending any rent reduction as a result of the withdrawal.

A request for comments was sent to various government agencies with no objection to the proposed project.

RECOMMENDATION:

1. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the withdrawal of the subject area from General Lease No. S-6065, Natural Energy Laboratory of Hawaii Authority, Lessee, 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 form for withdrawal

¹ Section 127-12 and 127A-13 Hawaii Revised Statutes

- of land from a lease, 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.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii, Department of Public Works 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.
3. Authorize the issuance of a right-of-entry permit to the County of Hawaii, Department of Public Works 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;
 - b) Waive any fees and provide this right-of-entry gratis; and
 - c) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Gordon C. Heit

KEM

Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A



GENERAL LEASE No. S-6065

EXHIBIT A

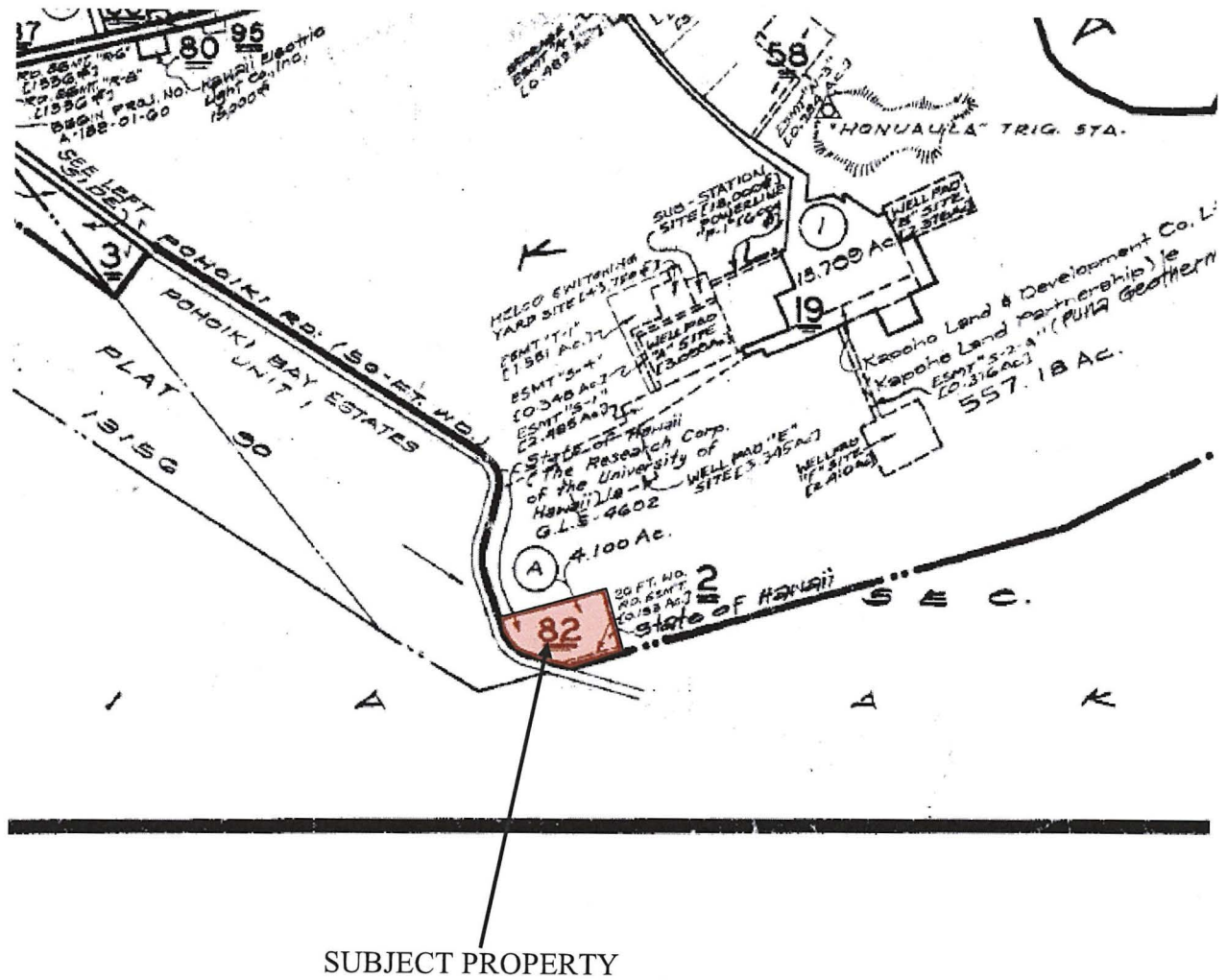


EXHIBIT A

Legend

- 140010820000
- Puna Geothermal Venture



Google Earth

© 2020 Google
Image © 2020 Maxar Technologies

3000 ft

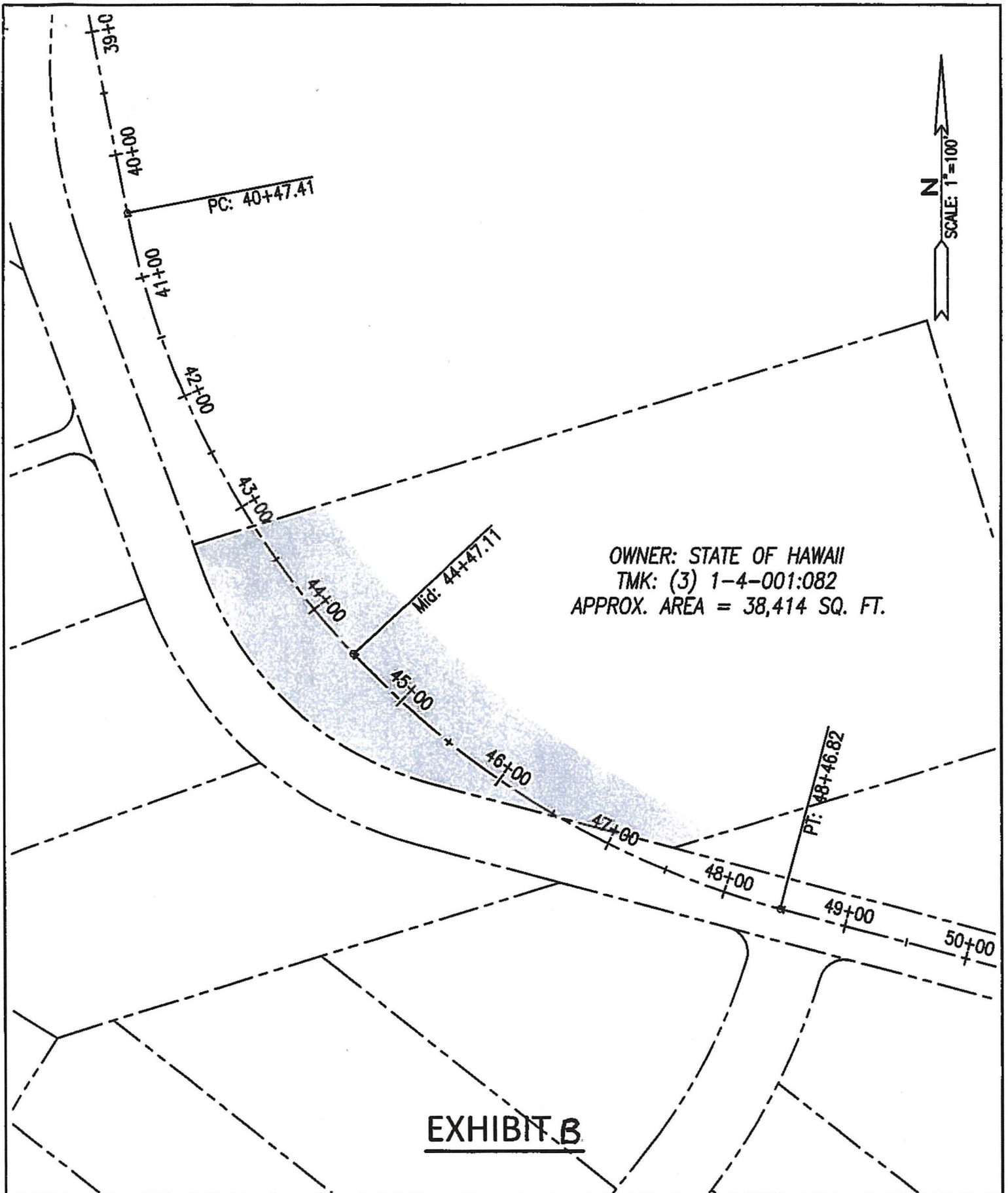


EXHIBIT B



DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION

LEGEND

- PROPERTY LINE
- PROPOSED ALIGNMENT
- PROPOSED ROAD EASEMENT



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Attached Agency of the Department of Economic Development & Tourism, State of Hawaii



May 15, 2020

Mr. David Yamamoto, Director
County of Hawaii
Department of Public Works
110 Pauahi Street, Suite 7
Hilo, Hawaii 96720-8630

Dear Mr. Yamamoto:

Thank you for your letter of April 2, 2020 requesting our consent for a perpetual roadway easement across a portion of our property TMK 3-1-4-001:082, as well as for a construction right of entry for use of the entire parcel as a construction staging and stockpile area for nine months during roadway construction. We understand that this project will increase the radius of curvature of the road fronting our property in order to increase safety for the users of the roadway.

We are pleased to assist the County of Hawaii in its endeavors to restore this important road and hereby provide consent for a perpetual roadway easement as broadly described in the attachment to your letter, and, subject to executing a Right-of Entry Agreement, conditional approval for construction right of entry.

While no final decision has been made, please note that we are considering reconstructing the buildings that were destroyed on the site and may need to begin our work before the end of the nine-month roadway construction period. If we do begin construction before the nine-month period is over, we will need to coordinate with your agency for a mutually beneficial solution to allow both projects to proceed in a timely manner.

Finally, I understand based on communication from Ben Ishii in your department that the new roadway will be constructed fronting our property with a 4 horizontal to 1 vertical cut and fill slope. He has indicated that the slope will be traversable so as to allow access to our parcel. As we move along, we will coordinate with Ben as he works to ensure suitable conditions for our future County-approved driveway to this site.

Very truly yours,

Gregory P. Barbour
Executive Director

Cc: Mr. Ben Ishii

73-4460 Queen Kaahumanu Hwy #101, Kailua-Kona, Hawaii USA 96740-2637
Phone (808) 327-9585 Fax (808) 327-9586 Email: nelha@nelha.org Website: <http://nelha.hawaii.gov>

EXHIBIT C