

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

July 7, 2021

Suzanne Case, Chairperson  
Board of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

SUBJECT: APPROVAL OF REQUEST FOR ACCEPTANCE OF PERPETUAL NON-EXCLUSIVE DRAINAGE EASEMENT FROM AMAZON.COM SERVICES LLC, AS GRANTOR, IN FAVOR OF STATE OF HAWAII, AS GRANTEE; TMK: (1)1-2-025:036; HONOLULU, ISLAND OF OAHU, HAWAII

Dear Chairperson Case:

We respectfully request that the enclosed submittal be placed on the agenda for consideration at the July 23, 2021 meeting of the Board of Land and Natural Resources regarding the acceptance of a perpetual non-exclusive drainage easement from Amazon.com Services LLC, as Grantor, to the State of Hawaii, as Grantee.

Should there be any questions, please do not hesitate to contact Linda Murai, Property Manager, at [Linda.H.Murai@hawaii.gov](mailto:Linda.H.Murai@hawaii.gov) or call 808-973-9473.

Sincerely,

Phyllis Shimabukuro-Geiser  
Chairperson, Board of Agriculture

Enclosures

c. Russell Tsuji  
Barry Cheung

ITEM M-16



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES  
HONOLULU, HAWAII

July 23, 2021

Board of Land and Natural Resources  
Honolulu, Hawaii

Subject: APPROVAL OF REQUEST FOR ACCEPTANCE OF PERPETUAL  
NON-EXCLUSIVE DRAINAGE EASEMENT FROM AMAZON.COM  
SERVICES LLC, AS GRANTOR IN FAVOR OF STATE OF HAWAII,  
AS GRANTEE; TMK: (1) 1-2-025:036; HONOLULU, ISLAND OF  
OAHU, HAWAII

Grantor: AMAZON.COM SERVICES LLC

Grantee: STATE OF HAWAII

Land Area: 14,036 sq. ft.

Tax Map Key: Div. (1) 1-2-025:036

Term: Perpetual

**BACKGROUND:**

AMAZON.COM SERVICES LLC (“Amazon”) purchased a 14-acre parcel from Servco Hawaii in July 2020 with plans to construct a delivery center. Amazon intends to relocate an existing drainage easement on the acquired property to facilitate their development plans.

Amazon’s property abuts the Department of Agriculture (“Department”) Plant and Non-Domestic Animal Quarantine facility on Auiki Street, Sand Island, Honolulu, Hawaii (“Auiki Street Facility”). The drainage easement between properties favors the State in perpetuity.

The new drainage easement relocation is shown in red hashed lines skirting perimeter of proposed building site as described on Exhibit “A”. The old easement is shown in blue hashed lines cutting through middle of Amazon’s proposed 142,600 SF building site. Amazon needs the relocation of the existing easement to obtain the necessary building permits to construct a distribution facility on their newly acquired property.

The Department expressed concerns about future maintenance and repair responsibilities, liabilities associated with the relocation, and the potential impact the drainage easement relocation could have on its ability to obtain regulatory approvals for any future construction, repair, and maintenance work which may be necessary or desirable at the Auiki Street Facility in the future. While the Department has no current objections to the relocation of Easement ‘1’, given its concerns regarding potential future impacts, it is amendable to the proposed relocation of the existing drainage easement, subject to the following:

1. Amazon is responsible for and performs all appropriate establishment, construction, repair, and maintenance of the easement;


2. Amazon indemnifies and holds Grantee harmless from any and all liability, damages, or injury arising from Amazon's construction, repair, and maintenance of the easement;
3. Amazon is prohibited from constructing any improvement within the easement area which alters or hinders the drainage functions of the easement without prior written approval from Grantee; and
4. The Grantee reserves its rights to full use and enjoyment of the easement area for the purposes set forth therein.

On June 22, 2021, the Department accepted the Grant of Non-exclusive Easement and the Board of Agriculture ("BOA") approved the acceptance of the perpetual non-exclusive drainage easement from Amazon.Com Services LLC. True and correct copies of the Grant of Non-Exclusive Easement and approved BOA submittal are attached as Exhibits "B" and "C", respectively.

RECOMMENDATION:

The Department recommends that the Board of Land and Natural Recourses approve the execution and acceptance of a perpetual non-exclusive easement from AMAZON.COM SERVICES LLC in favor of the State, for drainage purposes benefitting the Department's Auiki Street Facility, subject to the conditions set forth above, and provided that all related documents shall be subject to review and approval as to form by the Department of the Attorney General; and such other terms and conditions as may be prescribed by the Chairperson, to best serve the interests of the State.

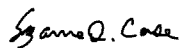
Respectfully submitted,



Phyllis Shimabukuro-Geiser,  
Chairperson, Board of Agriculture  
Approved by The Board of Agriculture

Attachment – Exhibits "A", "B", and "C"

APPROVED FOR SUBMISSION



SUZANNE CASE  
Chairperson, Board of Land and Natural Recourses





EXHIBIT "B"

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up  To:

CARLSMITH BALL LLP  
1001 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813

Attention: Avery C. Matro, Esq.  
Telephone: 808-523-2536

(This document consists of \_\_\_\_ pages.)

TITLE OF DOCUMENT:

**GRANT OF PERPETUAL  
NON-EXCLUSIVE DRAINAGE EASEMENT**

PARTIES TO DOCUMENT:

**GRANTOR:** **AMAZON.COM SERVICES LLC**, a Delaware limited liability company, whose mailing address is c/o Amazon.com, Inc., Attention: General Counsel (Real Estate (NA Ops): DHI2), 410 Terry Ave. N, Seattle, Washington 98019-5210

**GRANTEE:** **STATE OF HAWAII**, by its Board of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii 96813

TAX MAP KEY: (1) 1-2-025-036

**GRANT OF PERPETUAL NON-EXCLUSIVE DRAINAGE EASEMENT**

THIS INDENTURE, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between **AMAZON.COM SERVICES LLC**, a Delaware limited liability company, whose mailing address is c/o Amazon.com, Inc., Attention: General Counsel (Real Estate (NA Ops): DHI2), 410 Terry Ave. N, Seattle, Washington 98019-5210, hereinafter referred to as the "Grantor," and the **STATE OF HAWAII**, by the Board of Land and Natural Resources, located at 1151 Punchbowl Street, Honolulu, Hawaii 96813, for and on behalf of the Department of Agriculture, located at 1428 S. King Street, Honolulu, Hawaii 96814, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

The Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), the receipt of which is hereby acknowledged, and of the terms, conditions, and covenants herein contained, and on the part of the Grantee to be observed and performed, does hereby grant unto the Grantee, the following non-exclusive and perpetual easement rights:

Right, privilege and authority to use for purposes of drainage, including, but not limited to storm water and surface drainage over, upon, across, in, through that certain parcel of land situate Kaluapulu, Kalihi, Honolulu, Oahu, Hawaii, containing an area of 14,036 square feet, more or less, more particularly described in Exhibit "A" and delineated on Exhibit "B" all of which are attached hereto and made parts hereof (herein referred to as the "Easement Area"), including, but not limited to, the right to use any storm drainage facilities, and other appliances and equipment (herein referred to as the "Facilities") built, constructed, reconstructed, rebuilt, installed, maintained, operated, repaired by Grantor, as may be necessary for said use, in, over, under and across the Easement Area, TOGETHER WITH the rights of ingress to and egress from the Easement Area, for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. Storm water, surface, and other drainage shall be permitted to discharge and flow over, upon, across, through, and under the Easement Area from Grantee's property. The Grantee reserves its rights to full use and enjoyment of Easement Area for the purposes granted.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the Easement Area and to grant to others rights and privileges for any and all purposes affecting the Easement Area, provided, however, that Grantor shall not construct, place,

or build, or convey to others permission to construct, place, or build, any structures or improvements on, over, across, in, through, under, or within the Easement Area that alters or hinders the drainage functions of the Easement Area or hinders the rights of the Grantee without the prior written approval of the Grantee and that the rights herein reserved shall not be exercised by the Grantor in a manner which interferes unreasonably with the Grantee in the use of the Easement Area for the purposes for which this grant of easement is granted. Grantor shall not alter or place anything in the Easement Area which shall obstruct or impede the flow of storm water or surface drainage from the Grantee's property and shall not develop or allow the development of the Easement Area in any manner which obstructs the flow of storm water or surface drainage.

3. The Grantee shall have the right to sell, assign, convey, lease or otherwise transfer or dispose of, directly or by operation of law this grant of easement or the rights arising thereunder, without the prior written consent of the Grantor, and without monetary consideration payable to the Grantor and its successors and assigns.

4. No improvements may be constructed by the Grantee on the Easement Area.

5. The Grantee will not use the Easement Area for any purpose not expressly permitted herein.

6. The Grantee shall at all times during the term of this grant of easement observe, perform and comply with all laws and regulations applicable thereto.

7. The use and enjoyment of the Easement Area shall not be exercised in support of any policy that discriminates against any person based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, disability, age, or infection with the human immunodeficiency virus (HIV).

8. The Grantee shall have the right, at reasonable times, of ingress to and egress from said Easement Area for all purposes of inspecting the Easement Area and any Facilities on the Easement Area and in connection with the rights hereby granted; provided, however, it shall be the Grantor's sole responsibility to appropriately build, construct, reconstruct, rebuild, install, maintain, operate, repair and remove the Facilities at its own expense, and that the Grantor shall have the sole right and responsibility to appropriately maintain and repair the Facilities in its sole reasonable discretion; provided further, however, that the Grantor shall not be responsible for the repair of any damage to or alteration of the Facilities directly resulting from the actions of the Grantee or the Grantee's officers, employees, and contractors, which shall be the sole responsibility of Grantee.

In the event that repair of any damage to or alteration of the Facilities directly resulting from the actions of the Grantee or the Grantee's officers, employees, and contractors is required, the Grantor, in its sole discretion, shall have the right (but not the obligation) to undertake such repairs. The Grantee, upon written request of the Grantor, shall reimburse the Grantor for any and all reasonable costs and expenses incurred by the Grantor in connection with such repairs.



The Grantee shall have the right to require or demand that Grantor make any repairs or alterations desired by the Grantee to the extent such repair or alteration is necessary to preserve Grantee's rights herein.

9. If the Grantor refuses or fails to timely perform any of the provisions of this Grant of Easement, or commits any other substantial breach of this Easement, the Grantee may notify Grantor of the non-performance or delayed performance and if not cured in ten (10) days or any longer time specified by the Grantee, then the Grantee may procure similar services as deemed appropriate by the Grantee. The Grantor shall be liable for costs incurred in procuring similar goods or services.

10. Grantor shall defend, indemnify, and hold harmless the Grantee, and its officers, members, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, arising out of or resulting from any damage or injury caused by the Grantor or the Grantor's employees officers, agents, or subcontractors. Grantor shall defend, indemnify, and hold harmless the Grantee, and its officers, members, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, arising out of or resulting from any damage or injury arising from Grantor's construction, repair, and maintenance of the Facilities and the Easement Area. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Grant of Easement.

11. This instrument shall be binding upon and shall inure to the benefit of the parties hereto and its successors and assigns.

12. The Grantee's financial obligation and commitment to make payments or reimbursements of any kind under this grant of easement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Agriculture to make such payment or reimbursement.

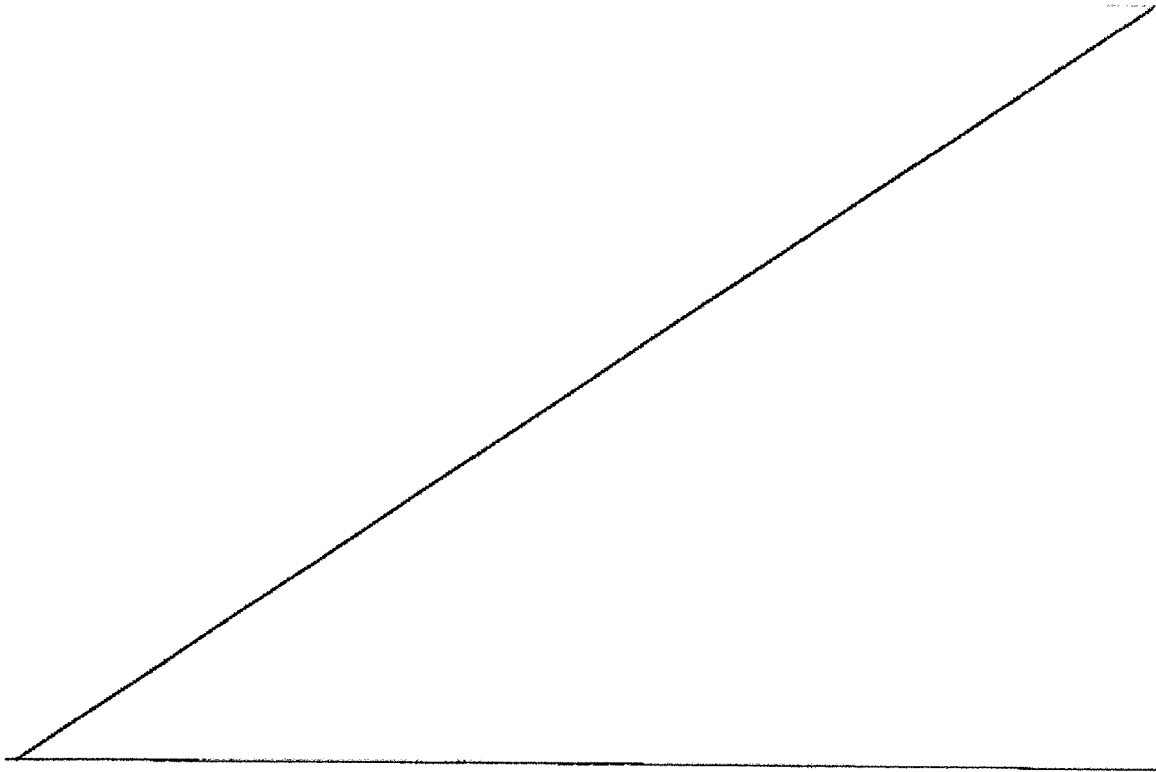
13. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this easement grant. The validity of this easement grant and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this easement grant shall be brought in the First Circuit Court of the State of Hawaii (a court of general jurisdiction in Honolulu, Hawaii).

14. The Grantor affirms that it has the full right, title, power, and legal authority to sign this grant of easement to affect said real property in the capacities as shown and executed and as notarized.

15. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and

unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

16. This Grant of Easement constitutes the entire agreement and understanding between the parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the parties regarding the Easement. This Grant of Easement cannot be modified except by a written instrument signed by both parties.



IN WITNESS WHEREOF, the parties hereto have caused this indenture to be executed as of the day, month, and year first above written.

**AMAZON.COM SERVICES LLC,  
a Delaware limited liability company**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**"Grantor"**

**STATE OF HAWAII**

By \_\_\_\_\_  
**Suzanne D. Case, Chairperson  
Board of Land and Natural Resources**

**"Grantee"**

Approved by the Board of Land and Natural Resources at its meeting held on \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
**Concurrence**

Phyllis Shimabukuro-Geiser, Chairperson  
Board of Agriculture

Approved by the Board of Agriculture  
at its meeting held on \_\_\_\_\_

Dated: Honolulu, Hawaii, \_\_\_\_\_, 2021

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of Washington

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
(Notary Stamp or Seal)	
Printed Name of Notary	

**EXHIBIT A**

**EASEMENT "D-1"  
(15 feet wide)**

**For Drainage Purposes**

**Affecting Parcel "A"**

**As Shown on D.P.P. File No. 1989/Sub-95**

**Being a Portion of Land Patent 8194  
on Portion of Land Commission Award 6450,  
Apana 1 to Kaunohua for W. L. Moehonua**

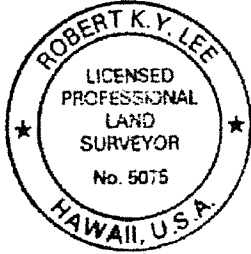
**Situated at Kaluapulu, Kalihi, Honolulu, Oahu, Hawaii**

Beginning at the Southwest corner of this easement, being also the East corner of the remainder of Easement 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,323.56 feet North and 13,923.41 feet West, and thence running by azimuths measured clockwise from True South:

1.	169° 07' 30"	16.44	feet along the remainder of Easement 1;
2.	235° 00'	236.97	feet along the remainder of Parcel "A";
3.	278° 43'	31.37	feet along same;
4.	222° 50'	92.31	feet along same;
5.	286° 59'	193.83	feet along same;
6.	312° 50'	256.22	feet along same;
7.	42° 38'	120.58	feet along same;
8.	352° 12'	13.57	feet along same;
9.	41° 56'	19.66	feet along Parcel 11;
10.	172° 12'	33.34	feet along the remainder of Parcel "A";
11.	222° 38'	112.70	feet along same;
12.	132° 50'	237.83	feet along same;
13.	106° 59'	180.99	feet along same;
14.	42° 50'	90.87	feet along same;
15.	98° 43'	33.31	feet along same;

16. 55° 00' 237.67

feet along same, to the point of beginning and containing an area of 14,036 Square Feet, more or less.



2153 N. King Street, Suite 308  
Honolulu, Hawaii 96819  
June 10, 2021  
Job No. 5452-2

TOWILL, SHIGEOKA & ASSOCIATES

A handwritten signature in cursive script that reads "Robert K. Y. Lee".

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Robert K. Y. Lee  
Licensed Professional Land Surveyor  
Certificate Number 5075

# EXHIBIT B

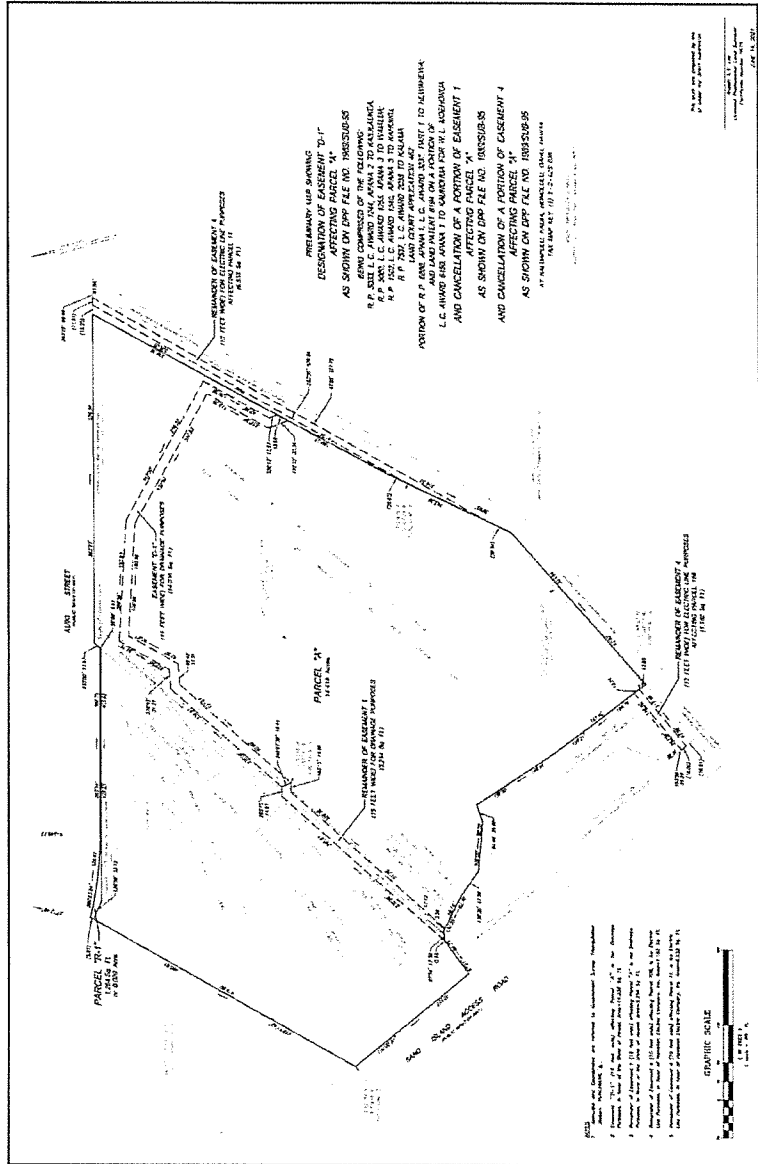




EXHIBIT "C"

STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESOURCE MANAGEMENT DIVISION  
HONOLULU, HAWAII

June 22, 2021

Board of Agriculture  
Honolulu, Hawaii

Subject: REQUEST APPROVAL FOR ACCEPTANCE OF PERPETUAL  
NON-EXCLUSIVE DRAINAGE EASEMENT FROM  
AMAZON.COM SERVICES LLC, AS GRANTOR IN FAVOR  
OF STATE OF HAWAII, AS GRANTEE; TMK: 1<sup>st</sup> Div/1-2-  
025:036; HONOLULU, ISLAND OF OAHU, HAWAII

Grantor: AMAZON.COM SERVICES LLC

Grantee: STATE OF HAWAII

Land Area: 14.4470 acres

Tax Map Key: 1<sup>st</sup> Div/1-2-025:036

Term: Perpetual

BACKGROUND:

AMAZON.COM SERVICES LLC purchased a 14-acre parcel from Servco Hawaii in July 2020 with plans to construct a delivery center. Amazon intends to relocate an existing drainage easement on the acquired property to facilitate their development plans.

Amazon's property abuts the Department of Agriculture ("Department") Plant and Non-Domestic Animal Quarantine facility on Auiki Street, Sand Island, Honolulu, Hawaii ("Auiki Street Facility"). The drainage easement between properties favors Department in perpetuity.

The new drainage easement relocation is shown in red hashed lines skirting perimeter of proposed building site as described on Exhibit "A". The old easement is shown in blue hashed lines cutting through middle of Amazon's proposed 142,600 SF building site.

The Department expressed concerns about future maintenance and repair responsibilities, liabilities associated with the relocation, and the potential impact the drainage easement relocation could have on its ability to obtain regulatory approvals for any future construction,

repair, and maintenance work that may be necessary or desirable at the Auiki Street Facility in the future. While the Department has no current objections to the relocation of Easement '1,' given its concerns regarding potential future impacts, it is amenable to the proposed relocation of the existing drainage easement, subject to the following:


1. Amazon is responsible for and performs all appropriate establishment, construction, repair, and maintenance of the easement;
2. Amazon indemnifies and holds the Grantee harmless from any and all liability, damages, or injury arising from Amazon's construction, repair, and maintenance of the easement;
3. Amazon is prohibited from constructing any improvement within the easement area that alters or hinders the drainage functions of the easement without prior written approval from the Grantee; and
4. The Grantee reserves its rights to full use and enjoyment of the easement area for the purposes granted.

RECOMMENDATION:

The Department recommends that the Board of Agriculture approve the execution and acceptance of a perpetual non-exclusive easement from AMAZON.COM SERVICES LLC in favor of the Department, for drainage purposes benefitting the Department's Plant and Non-Domestic Animal Quarantine facility on Auiki Street, subject to the conditions set forth above, and provided;

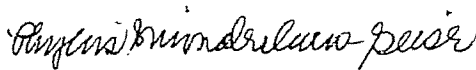
1. All related documents shall be subject to review and approval as to form by the Department of the Attorney General; and
2. Such other terms and conditions as may be prescribed by the Chairperson, to best serve the interests of the State.

Respectfully submitted,

  
FOR BRIAN KAU, P.E.  
Administrator and Chief Engineer  
Agricultural Resource Management Division

Attachment – Exhibit "A"

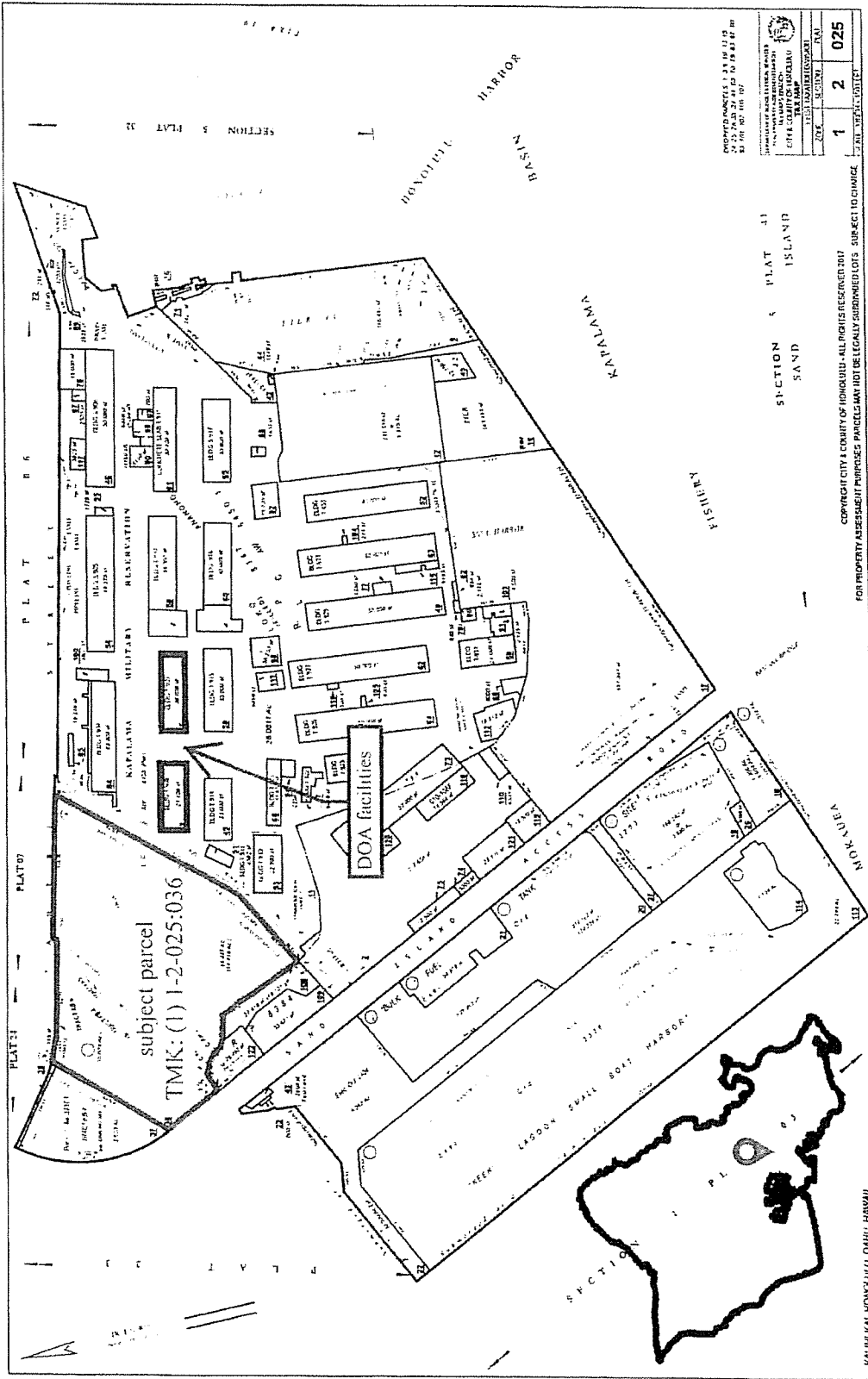
APPROVED FOR SUBMISSION

  
PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

Approved by the Board of  
Agriculture at its meeting held  
6/22/2021  
as agenda item IV, B1



Exhibit "A"  
(page 2 of 2)



B.4