

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

December 7, 2023

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

PSF 23MD-035

Maui

Mutual Termination of Waterline Easement W-1 Recorded in the Bureau of Conveyances as Document No. 2001-195580, Issuance of Right-of-Entry Permit and Grant of Term, Non-Exclusive Easements to Nowhere, LLC for (i) Relocation of Water Transmission Line and (ii) New Electric Transmission Line Purposes, Kula, Maui, Tax Map Key: (2) 2-3-005:002 por.

APPLICANT:

Nowhere, LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

Sections 171-6 and -13, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Kula, Maui identified by Tax Map Key: (2) 2-3-005:002 por., as shown on the attached map labeled Exhibit A-1 and A-2.

EXISTING EASEMENT AREA (W-1):

21,500 square feet (sf)

PROPOSED EASEMENT AREA:

New Water transmission line:	14,000 sf (more or less)
New Electric transmission line:	<u>1,200 sf</u> (more or less)
Total area:	15,200 sf (more or less)

ZONING:

State Land Use District:	Agriculture
County of Maui CZO:	Agriculture

TRUST LAND STATUS:

Acquired after the year 1959.

CURRENT USE STATUS:

Easement W-1 for waterline purposes, identified on attached survey map labeled Exhibit B, issued on November 26, 2002, and recorded as document #2001-195580 benefiting Applicant's TMK (2) 2-3-005: 007.

Easements U-1 and U-2 for electric transmission line purposes benefiting TMK (2) 2-3-005: 007 and 008.

Easement A-1 for access purposes benefiting TMK (2) 2-3-005: 007 & 008.

Easement A-2 for access purposes benefiting TMK (2) 2-3-005: 007.

Terms and Conditions Pursuant to Agreement of Sale in Partnership with the U.S. Department of Agriculture (USDA) Forest Service, Forest Legacy Program (FLP) grant.

CHARACTER OF USE for PROPOSED EASEMENT AREAS:

For water pipeline:

Subject to special terms and conditions to include prescribed forest management needs within the easement corridor to be stipulated by the DLNR Division of Forestry and Wildlife and further subject to the review and consent of the USDA Forest Service as may be needed in regards of the right, privilege and authority to construct, use, maintain, repair, replace and remove water transmission pipeline over, under and across State-owned land.

For electrical transmission:

Subject to special terms and conditions to include prescribed forest management needs within the easement corridor to be stipulated by the DLNR Division of Forestry and Wildlife and further subject to the review and consent of the USDA Forest Service as may be needed in regards of the right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land, including the right to trim and keep trimmed any trees in the way of its appliances and equipment.

TERM OF RIGHT-OF-ENTRY:

For one-year pursuant to USDA Forest Service approval of easement relocation, or until the easements are executed, whichever shall first occur. The Chairperson is authorized to extend or continue the right-of-entry permit for additional one-year periods for good cause shown.

TERM of PROPOSED EASEMENTS:

55-years

COMMENCEMENT DATE for PROPOSED EASEMENTS:

To be determined by the Chairperson

CONSIDERATION:

For water pipeline:

Gratis. Applicant already has an easement for water pipeline purposes across the subject property pursuant to that certain Waterline Easement recorded in the Bureau of Conveyances as Document No. 2001-195580. The Waterline Easement provides as follows with respect to relocation of the easement:

Relocation of Pipeline. In the event Grantor's use of Parcel 2 shall reasonably require the relocation of the water pipeline from the easement area to another or other easement area within Parcel 2, the Grantee, at Grantee's own expense, shall relocate said pipeline or such portions thereof as shall allow Granter to use Parcel 2 as reasonably desired. Provided, however, that the Grantee shall not be required to make more than one such relocation.

The Waterline Easement was entered into in 2001, before the State acquired the property from the private owner in 2020. The State is nevertheless bound by the Waterline Easement because it encumbered the subject property when the State acquired the property. Staff notes that the current easement form used by the Department of the Attorney General includes a similar relocation provision that does not require the grantee to pay additional consideration for the relocation of the easement. Accordingly, staff is recommending that no new consideration be charged to Applicant to relocate Waterline Easement W-1.

For electrical transmission:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson. Because Applicant is not requesting a relocation of an existing electrical easement, but instead the grant of a new electrical easement, by law Applicant is required to pay fair market value for this easement.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the

preparation of an environmental assessment pursuant to General Exemption Type 1 that states “ Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing,” Part 1, Item 39 that states, “ Creation or termination of easement, covenants, or other rights in structures or land,” and General Exemption Type 3 that states “Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities...,” Part 1, Item 14 that states, “Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.”

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Applicant in good standing confirmed: YES X NO __

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment for the new electrical easement;
- 2) Provide a survey map and description according to State DAGS standards and at Applicant's own cost for new water and electrical utility easements;
- 3) Cover all costs of electrical transmission line and relocation of the water pipeline;
- 4) Comply with all special terms and conditions to include prescribed forest management needs within the easement corridor to be stipulated by the DLNR Division of Forestry and Wildlife and further subject to the review and consent of the USDA Forest Service as may be needed, and
- 5) Obtain USDA Forest Service written consent for termination and relocation of utility easements as may be needed.

REMARKS:

At its meeting on May 8, 2020, under agenda item C-1, the Board of Land and Natural Resources (Board) approved the acquisition of 3,433 acres of privately owned land further identified as TMK (2) 2-3-005:002 (Parcel 002) & 014 (Parcel 14) for forest reserve purposes.

The property was conveyed to the State of Hawai'i on August 31, 2020, pursuant to Land

Office Deed No. S-29,229. The acquisition of Parcels 002 and 014 was jointly funded by state and federal sources, that include a State Capital Improvement Project Appropriation, a U.S. Department of Agriculture (USDA) Forest Service Forest Legacy Program (FLP) grant, and a grant through the U.S. Fish and Wildlife Service.

Parcel 002 is encumbered by an existing, non-exclusive, Waterline Easement, identified as W-1, benefiting Applicant's TMK (2) 2-3-005:007 (Parcel 007). W-1 consists of a deteriorated pumphouse and an unusable above ground waterline. When W-1 was functional, Parcel 007 received water pumped, from a County of Maui meter, located along Kekaulike Avenue, into a water tank that was connected to a pipeline that transported water to existing structures on Parcel 007 for domestic uses. The new owner of Parcel 007, Nowhere, LLC, contacted the State about relocating easement W-1 to allow for a more cost-efficient way to restore its access to potable waterlines along Kekaulike Avenue.

The subject mutual termination of W-1 and relocation of utility easements are a win-win situation for both the applicant and State of Hawaii. The current location of W-1 is in an area needed for more consistent management and restoration of anticipated forest cover over an existing pasture. W-1 is in the middle of the FLP area and redevelopment of W-1 would require grading, grubbing and trenching that would limit proposed forest management activities for the area that include a management access road, public parking, recreational trail corridor and planned reforestation sites. Furthermore, the footprint of the proposed easement area is 6,300 square feet (sf) smaller than the existing easement area. W-1 is approximately 21,500 sf and the new easements will be a combined 15,200 sf, more or less.

For the proposed easement relocation area, the property is forested and development will not involve extensive tree clearing thus retaining the majority of its existing forest cover. The State has advised Applicant that the new easement areas will be subject to special terms and conditions to include prescribed forest management needs within the easement corridor to be stipulated by the DLNR Division of Forestry and Wildlife and further subject to the review and consent of the USDA Forest Service as may be needed. Applicant is required to develop a survey map and description of the new easement area that would encumber Parcel 002 and be subject to the review and consent of both Board and USDA Forest Service.

Staff believes that this project qualifies for an exemption from the preparation of an environmental assessment because it involves relocation of an existing easement whereby no known significant impacts to the environment is anticipated as the proposed location of portions of the relocated easement is adjacent to existing access easements and utility easements and along the top of a gulch forested with non-native black wattle trees. As such, staff believes the proposed use involves no expansion or change in use of the subject area beyond that previously existing.

The County Department of Water Supply (DWS) supports the proposed relocation of the water meter currently serving W-1 and both the DLNR Division of Forestry and Wildlife

and State Historic Preservation Division was consulted with no objections. Maui Electric Company also supports the new electrical transmission line location as it will enhance safety and reduce current impacts to its existing electric substation. The new electrical transmission line is needed to monitor and provide power to an electrical pump that will be located within the relocated waterline easement and used to pump water up from DWS water supply lines along Kekaulike Avenue to Parcel 007.

The 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.

Staff recommends Board approval granting the nonexclusive access and utility easement and issuance for right-of-entry permit for construction purposes following receipt of a written letter indicating USDA Forest Service approval of easement relocation.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 2-3-005:007, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling the Applicant requirements listed above, authorize the issuance of 55-year term, non-exclusive easements to Nowhere, LLC covering the subject area for: (i) relocation of water transmission line and (ii) new electric transmission line 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. Special terms and conditions to include prescribed forest management needs within the easement corridors to be stipulated by the DLNR Division of Forestry and Wildlife and further subject to the review and consent of the USDA Forest Service as may be needed;
 - C. The easements shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-3-005:007, provided however: (1) it is specifically understood and agreed that the easements shall immediately cease to run with the land upon the termination or

- abandonment of the easements; and (2) if and when the easements are sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- 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.
4. Authorize the issuance of a right-of-entry permit to Nowhere, LLC 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. The right-of-entry shall be for a term of one-year pursuant to USDA Forest Service approval of easement relocation, or until the easements are executed, whichever shall first occur. The Chairperson is authorized to extend or continue the right-of-entry permit for additional one-year periods for good cause shown; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

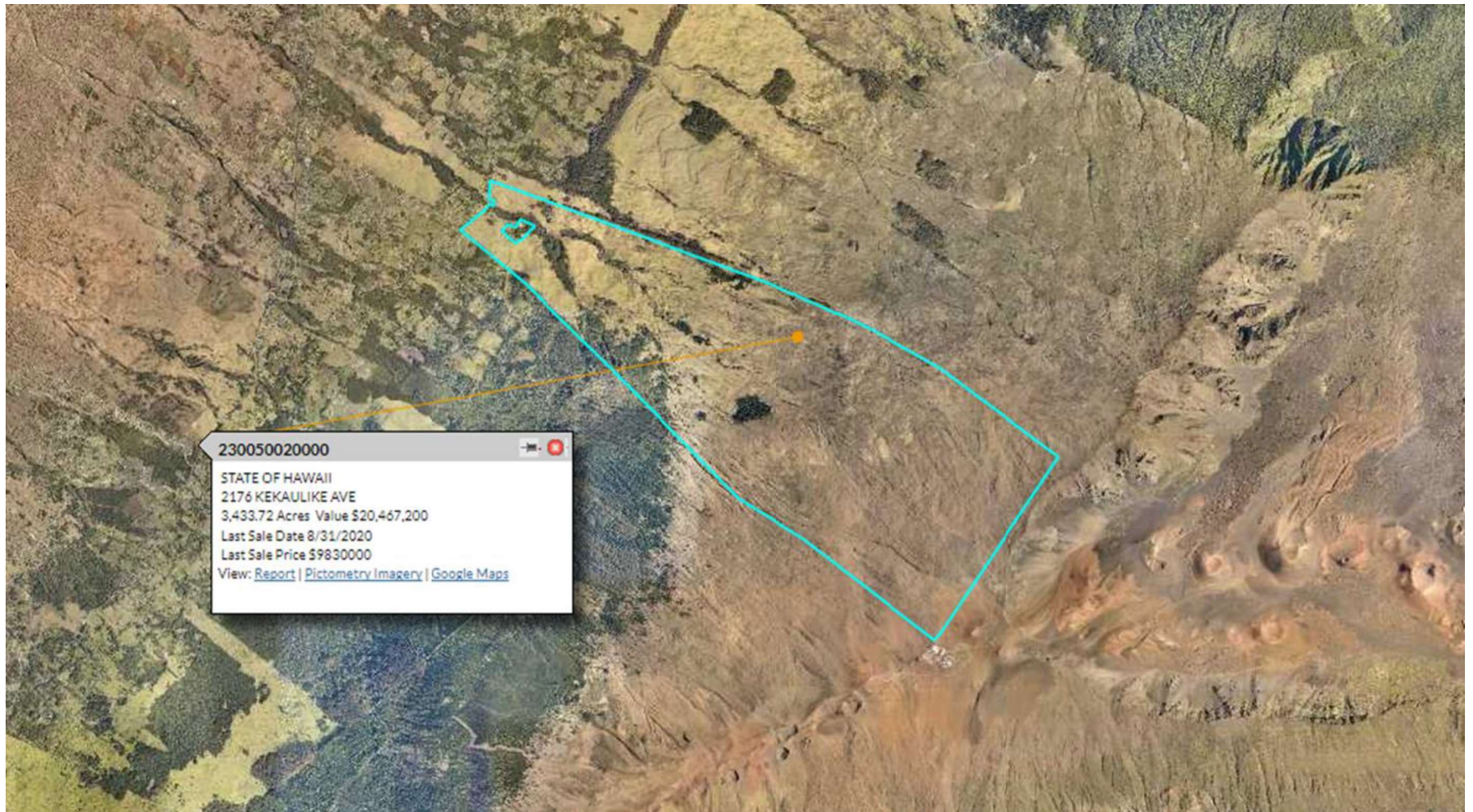
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APPROVED FOR SUBMITTAL:

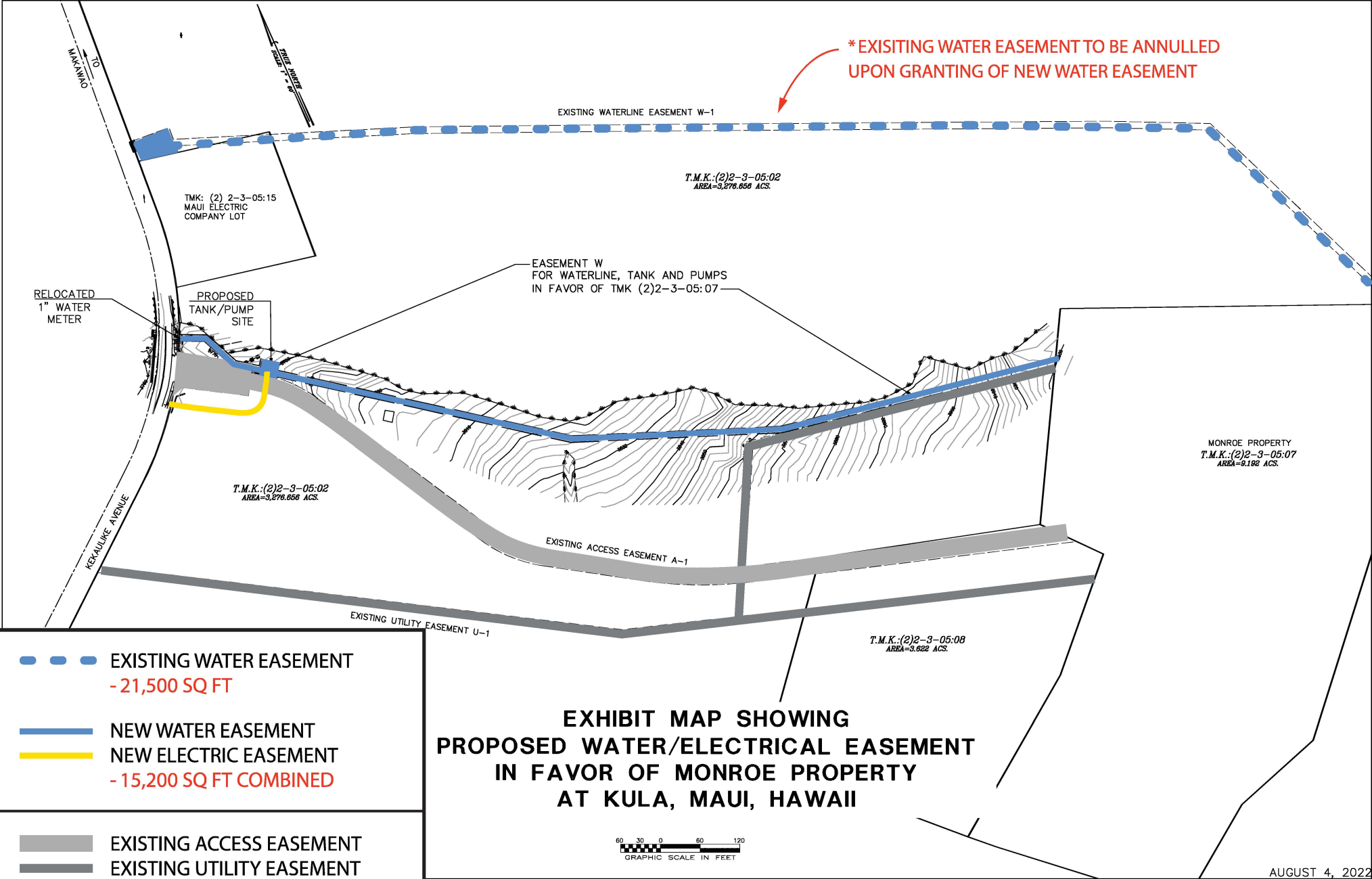


Dawn N. S. Chang, Chairperson

New Forest Reserve at Kamehamehanui - 3,433 acres
Kula, Maui, Tax Map Key: (2) 2-3-005:002



*** EXISTING WATER EASEMENT TO BE ANNULLED UPON GRANTING OF NEW WATER EASEMENT**



MAUI ELECTRIC COMPANY LOT

TMK: (2) 2-3-05:15
MAUI ELECTRIC COMPANY LOT

RELOCATED
1" WATER
METER

PROPOSED
TANK/PUMP
SITE

EASEMENT W
FOR WATERLINE, TANK AND PUMPS
IN FAVOR OF TMK (2)2-3-05:07

EXISTING WATERLINE EASEMENT W-1

T.M.K.:(2)2-3-05:02
AREA=3,276.858 ACS.

T.M.K.:(2)2-3-05:02
AREA=3,276.858 ACS.

EXISTING ACCESS EASEMENT A-1

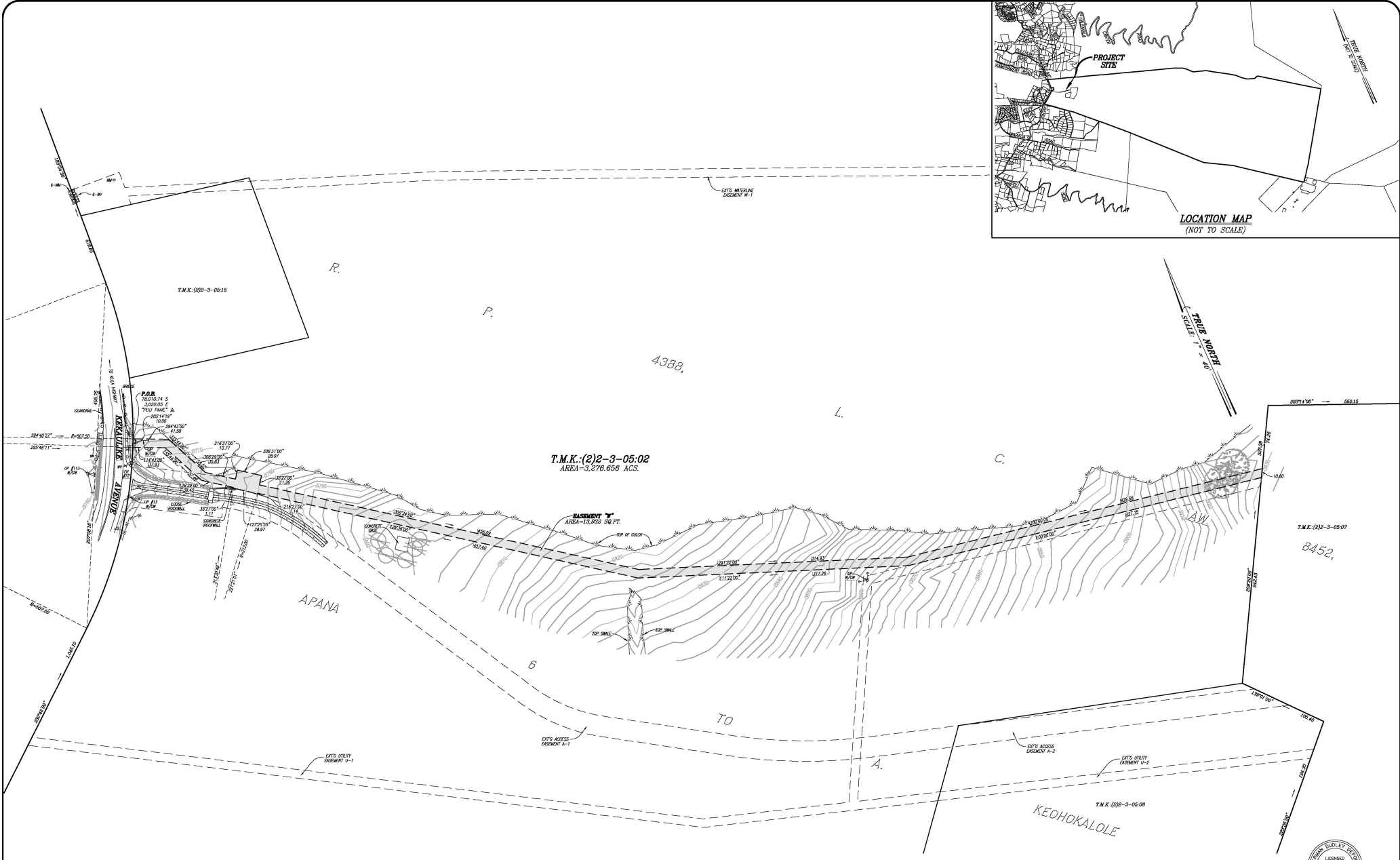
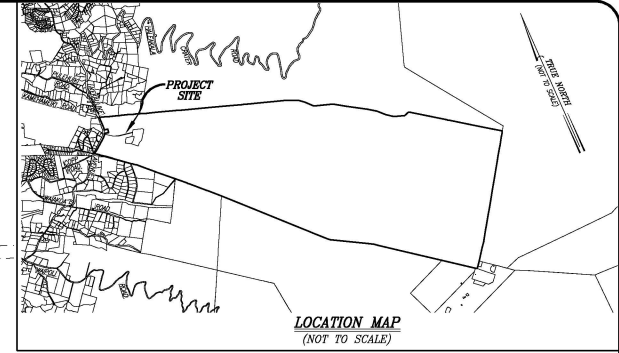
EXISTING UTILITY EASEMENT U-1

T.M.K.:(2)2-3-05:08
AREA=3,682 ACS.

MONROE PROPERTY
T.M.K.:(2)2-3-05:07
AREA=9,192 ACS.

KELAKUIKE AVENUE

LAND SURVEY



**SURVEY MAP OF A PORTION OF ROYAL PATENT 4388,
 LAND COMMISSION AWARD 8452, APANA 6 TO A. KEOHOKALOLO
 AND DESIGNATION OF EASEMENT "W"**

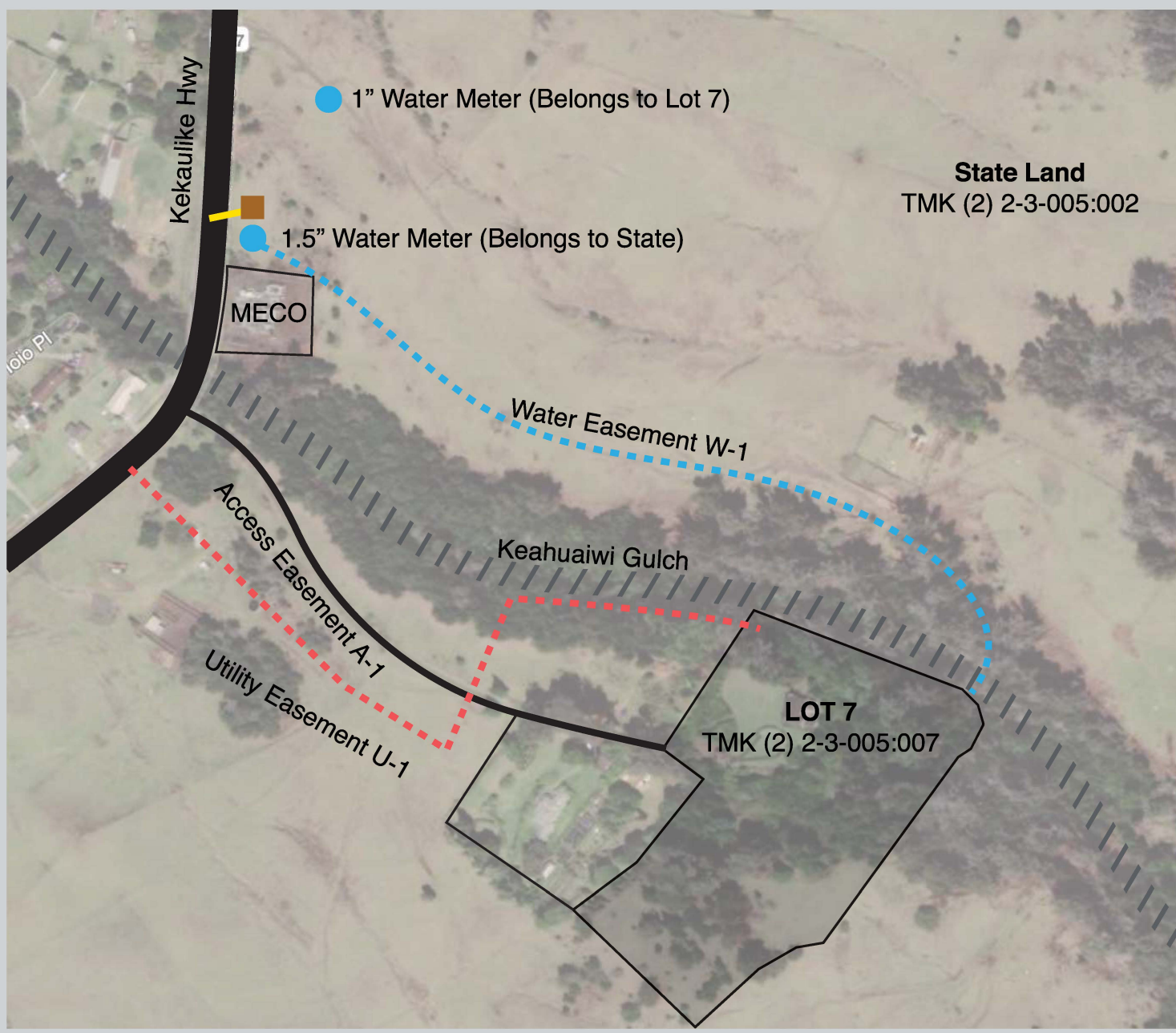
SITUATE AT
 KAMEHAMENUI, KEALAHOU 3 & 4, MAKAWAO, MAUI, HAWAII



THIS WORK WAS DONE BY ME OR UNDER MY SUPERVISION
 SHERMAN DUDLEY DEPONTE
 LICENSED PROFESSIONAL LAND SURVEYOR
 STATE OF HAWAII CERTIFICATE NO. 8888
 EXPIRES 04/30/2014

EXHIBIT B	JOB NO. 882009-85M-2824232
AKAMAI LAND SURVEYING, INC. P.O. BOX 1745 MAKAWAO, MAUI, HAWAII 96768	T.M.K. (2)2-3-05:02 DATE: 2/20/22 SHEET 1 OF 1

EXISTING SITUATION



EXISTING INFRASTRUCTURE

- - Water Meters
- - Waterline within W-1
- - Access A-1
- - Water pumphouse
- - Electric service to pumphouse
- - Utility Lines U-1

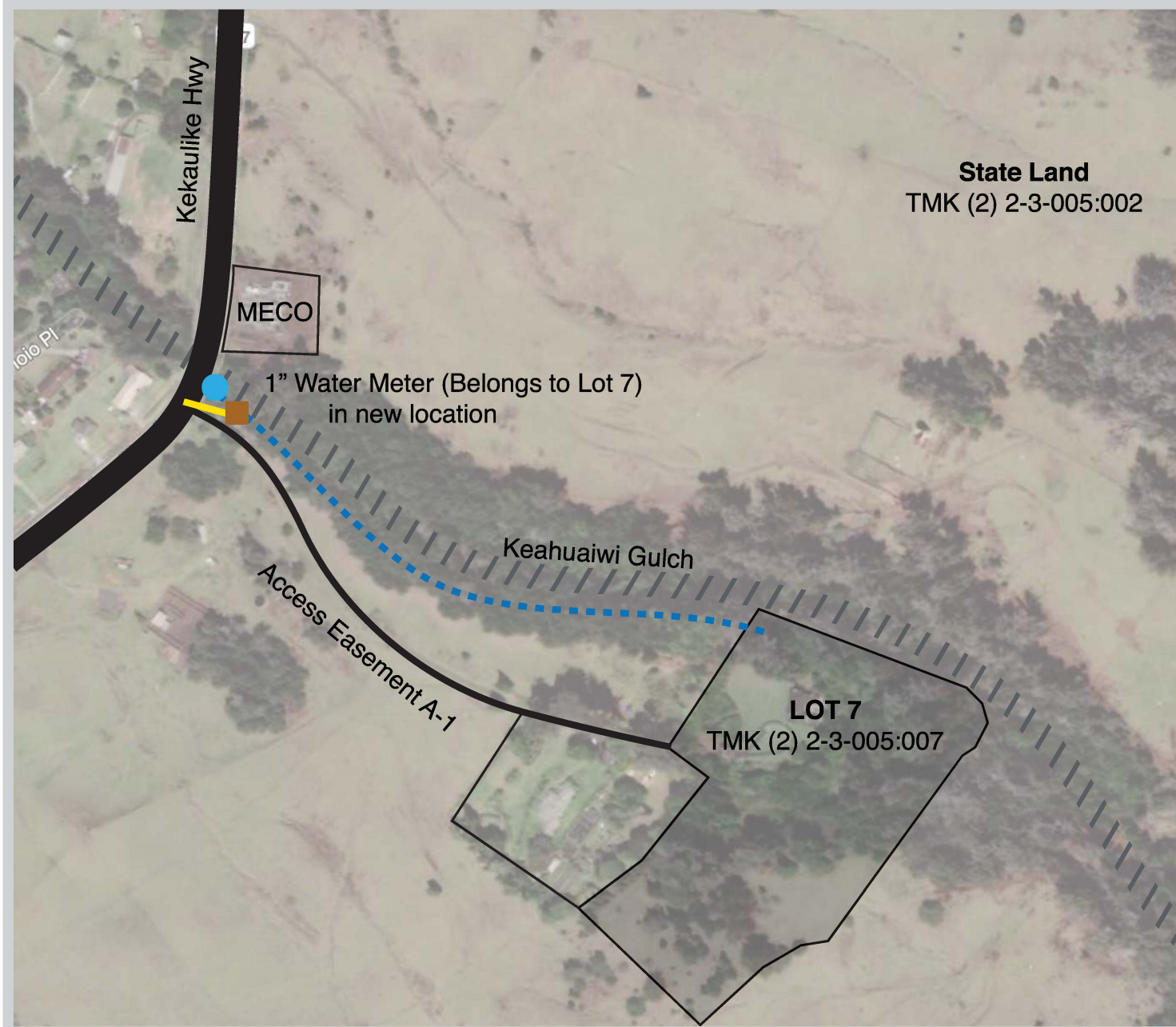
EXISTING EASEMENTS

- - Water W-1
- - Access A-1
- - Utility Easement U-1

NOTES

- Notice the mis-match in water meters. The existing water infrastrucutre servicing Lot 7 connects to the 1.5" water meter belonging to State, not the correct 1" water meter belonging to Lot 7.

POSSIBLE WATER SOLUTION



NEW INFRASTRUCTURE

..... - Waterline within W-2

NEW EASEMENTS

..... - Water Easement W-2

———— - Electric service to pumphouse

Existing Stub-out

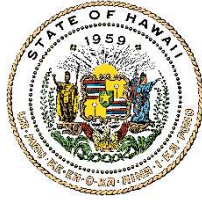


NOTES

- This solution requires the 1" water meter to be moved to an existing stubout on transmission line
- This solution reduces infrastructure impact on State land

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
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

December 7, 2023

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Termination of Waterline Easement W-1 Recorded in the Bureau of Conveyances as Document No. 2001-195580, Issuance of Right-of-Entry Permit and Grant of Term, Non-Exclusive Easements to Nowhere, LLC for: (i) Relocation of Water Transmission Line and (ii) New Electric Transmission Line for Utility Purposes.

Project / Reference No.: PSF 23MD-035

Project Location: Kula, Maui, Tax Map Key: (2) 2-3-005:002 por.

Project Description: Relocation of existing waterline easement and issuance of new electrical easement.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No. and Description: In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 39 that states "Creation or termination of easement, covenants, or other rights in structures or land," and General Exemption Type 3 that states, "Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of

Exhibit F

new, small, equipment and facilities and the alteration and modification of the equipment or facilities...” Part 1, Item 14 that states “Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.”

Cumulative Impact of Planned Successive Actions in Same Place Significant:

No. This action is not held on a routine or regular basis (i.e., daily, or weekly). This action will be a one-time action to relocate an existing waterline easement and grant a new electrical easement.

Action May Have Significant Impact on Particularly Sensitive Environment:

The requested area is a portion of newly acquired State lands. Based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors. Proposed relocation area consists of non-native forest cover. Cleared areas will be subject to replacement with more desirable forest cover.

Agencies Consulted:

DLNR: Division of Forestry and Wildlife, State Historic Preservation Division, and County of Maui, Department of Water Supply, have no objections to the subject termination and relocation of utility easements.

Analysis:

Staff believes that this project qualifies for an exemption from the preparation of an environmental assessment because it involves relocation of an existing easement and issuance of a new electrical easement whereby no known significant impacts to the environment are anticipated as the proposed locations of the relocated and new easements are adjacent to existing access easements and utility easements and along the top of a gulch forested with non-native black wattle trees. As such, staff believes the proposed use involves no expansion or change in use of the subject area beyond that previously existing.

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.