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

May 23, 2025

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

**OAHU** 

Amend Prior Board Action of May 24, 2024, Item D-12, Grant of Two Term, Non-Exclusive Easements and Immediate Construction and Management Right of Entry to State of Hawaii, Department of Transportation for Drainage Basin Purposes, Honouliuli, Ewa, Oahu Tax Map Key: (1) 9-1-017:097; and

Authorize the Chairperson to Enter Into a Memorandum of Agreement between the Department of Land and Natural Resources and the Department of Transportation Regarding the Future Modification and Relocation of the Drainage Basins and Approval of Access Points Serving Tax Map Key (1) 9-1-017:097.

The purpose of the amendment is to approve three additional 10-year term non-exclusive easements for slope purposes and one additional 10-year term non-exclusive easement for waterline purposes, and an immediate construction and management right of entry to State of Hawaii, Department of Transportation.

### BACKGROUND:

At its meeting on May 24, 2024, under agenda item D-12, the Board approved two 10-year term non-exclusive easements for drainage basin purposes and an immediate construction and management right of entry to State of Hawaii, Department of Transportation for Tax Map Key: (1) 9-1-017:097; and authorized the Chairperson to enter into a Memorandum of Agreement (MOA) between the Department and the Department of Transportation regarding the future modification and relocation of the drainage basins and approval of access points serving Tax Map Key (1) 9-1-017:097 (Parcel 97). A copy of the approved submittal is attached as **Exhibit A**.

Since then, the right of entry has been executed and the Department has worked with the Attorney General on the MOA and provided a revised draft MOA document to DOT for its review and approval. Recently DOT informed the Department that it required three additional slope easements and one additional waterline easement along the boundary of Parcel 097 abutting Farrington Highway. A map identifying the slope easements as

easements S-17, S-18 and S-19, and the waterline easement as easement F-4 is attached as **Exhibit B**.<sup>1</sup>

### **REMARKS**:

The requested easements will facilitate the Farrington Highway widening project conducted by DOT, which is critical to develop the Department's parcels for the East Kapolei Transit Oriented Development Project. According to DOT, the three slope easements (S-17, S-18 and S-19) are to bring the ground elevation back to existing from the back of the sidewalk at a maximum of a 2:1 slope. The waterline easement (F-4) is for a waterline go around the widened bridge over Kaloi Gulch. The area of the easements are as follows:

S-17: 285 square feetS-18: 697 square feetS-19: 610 square feetF-4: 8,904 square feet

Staff notes that as with the prior approved easements, DOT will be responsible for the applicant requirements to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost and process and obtain subdivision at Applicant's own cost. Consistent with the prior drainage basin easements, Staff recommends the new easements be approved for a 10-year term. DLNR and DOT will coordinate on modifications to the easements, if necessary, based on the improvements as completed post-construction. DLNR and DOT will return to the Board to approve new easements for a longer term that reflect those modifications.

As the additional easements will encumber the entire boundary of Parcel 097 along Farrington Highway from Kualakai Parkway to Kaloi Gulch, Staff asked DOT to specify an access from Farrington Highway serving that area of Parcel 097 to ensure that the easements would not preclude the access in the future. In response, DOT proposed a twenty-four feet wide access to the east of the drainage basin, located between a proposed light pole and electrical manhole, as identified on the map attached as **Exhibit C**. DOT disclosed that the location of the proposed access is slightly short of the sight distance for the turning movements of a passenger vehicle due to the proximity of the Kualakai Parkway intersection and does not have the required sight distance for a truck. Despite these issues, staff is acceptable of the proposed location due to the critical need to provide access to Parcel 097 from Farrington Highway in that area and defers to DOT that such location is appropriate.

Staff has not yet been able to determine whether the 24 feet width of the access is sufficient to serve Parcel 097. However, DOT has stated that due to the construction schedule, the approval of the easements and right of entry are needed by early June 2025. As proceeding with the widening project is a priority, the Board is requested to approve the easements and allow Staff to work with DOT to resolve potential issues in the future. Staff will work with

<sup>1</sup> The previously approved drainage basin easements are identified as easements B-5 and B-6.

the Attorney General to include a reservation for the access in the easement document and revise the MOA as may be appropriate to address the additional easements and access.

# **RECOMMENDATION**: That the Board:

1. Amend its prior Board action of May 24, 2024, under agenda item D-12 by revising recommendation 1 as follows:

Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two six term, non-exclusive easements to the State of Hawaii, Department of Transportation, covering the subject area for drainage basin, slope and waterline 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. 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. Amend its prior Board action of May 24, 2024, under agenda item D-12 by revising recommendation 2 as follows:

Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of an immediate construction and management right of entry to the State of Hawaii, Department of Transportation, covering the subject area for drainage basin, slope and waterline 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 right-of-entry 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.
- C. <u>Authorize the Chairperson to extend the right of entry to the Applicant for additional one year periods.</u>
- 3. All terms and conditions listed in its May 24, 2024, approval, to remain the same.

Respectfully Submitted,

Ian Hirokawa

Acting Administrator

APPROVED FOR SUBMITTAL:

Dawn N. S. Chang, Chairperson

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

May 24, 2024

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

OAHU

Grant of Two Term, Non-Exclusive Easements and Immediate Construction and Management Right of Entry to State of Hawaii, Department of Transportation for Drainage Basin Purposes, Honouliuli, Ewa, Oahu Tax Map Key: (1) 9-1-017:097; and

Authorize the Chairperson to Enter Into a Memorandum of Agreement between the Department of Land and Natural Resources and the Department of Transportation Regarding the Future Modification and Relocation of the Drainage Basins and Approval of Access Points Serving Tax Map Key (1) 9-1-017:097.

# APPLICANT:

State of Hawaii, Department of Transportation Highways Division (DOT-H)

## LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes (HRS), as amended.

# **LOCATION**:

Portion of Government land located Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-017:097, as shown on the attached map labeled **Exhibit A**.

#### AREA:

Easement 1 (Basin E): approximately 8500 square feet, more or less. Easement 2 (Basin F): approximately 5100 square feet, more or less.

Total area of approximately 13,600 square feet more or less.

#### ZONING:

State Land Use District:

Urban

City & County of Honolulu LUO:

Agricultural

**EXHIBIT A** 

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON

May 24, 2024 U.O.

D-12

#### TRUST LAND STATUS:

Acquired after 1959.

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

Page 2

# **CURRENT USE STATUS:**

Encumbered by Right of Entry to Department of Transportation, Highways Division for staging/laydown area for Farrington Highway widening from Kapolei Golf Course to Fort Weaver Road, Project No. 7101A-01-20.

# **CHARACTER OF USE:**

Right, privilege and authority to construct, use, maintain, repair, replace and remove drainage basins over, under and across State-owned land.

# TERM:

10 years.

#### **COMMENCEMENT DATE:**

To be determined by the Chairperson.

#### **CONSIDERATION:**

Gratis.

#### CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the Environmental Review Program's <u>The Environmental Notice</u> on September 23, 2020 with a finding of no significant impact (FONSI).

# **DCCA VERIFICATION**:

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

# **APPLICANT REQUIREMENTS:**

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 2) Process and obtain subdivision at Applicant's own cost.

### **REMARKS:**

At its meeting on October 23, 2020, under agenda item D-9, the Board approved the Department's draft East Kapolei Strategic Master Development Plan for four State owned parcels adjacent and in close proximity to the Keone'ae Rail Station in East Kapolei, including the subject parcel of this request, Tax Map Key (1) 9-1-017:097 (Parcel 97). Parcel 97 is approximately 36.37 acres and is located adjacent to the Keone'ae Rail Station. Planned uses for this parcel include mixed uses such as rental housing, commercial, retail, office and hotel. The parcel will also serve as the site for the rail station park and ride, and bus turnaround. The mauka boundary of parcel 97 is adjacent to Farrington Highway, where the DOT-H is commencing a widening project to increase capacity on Farrington Highway to facilitate multiple developments in the region.

To assist with the project, the Chairperson previously approved a right of entry to DOT-H to provide a portion of Parcel 97 to be used by DOT-H's contractors as a staging area. In subsequent discussions with DOT-H staff, Department staff was informed that DOT-H planned to place two drainage basins on Parcel 97 along Farrington Highway. The drainage basins are intended to capture runoff resulting from the additional paved surfaces created by the widening of Farrington Highway. Upon review of the size and locations of the drainage basins, staff was concerned that the drainage basins could impact the Department's ability to effectively develop the impacted areas for the intended purposes. A design map showing the size and location of the drainage basins is attached as **Exhibit B**.

Drainage Basin E is approximately 8500 square feet and situated at the northwest corner of Parcel 97 near the intersection of Farrington Highway and Kualakai Parkway. This portion of Parcel 97 is physically separated from the remainder of the parcel by Kaloi Gulch, creating a standalone area of approximately 2.6 acres, more or less. Due to its location, the Department intends to develop that are for commercial purposes. However, the proposed size and location of the drainage basin may impact the development potential as it is located along desirable frontage space along Farrington Highway. Additionally, the drainage basin may impair access to the area from Farrington Highway.

Drainage Basin F is approximately 5100 square feet, located to the east, and is situated adjacent to the proposed intersection that would serve as the entry into the development area on Parcel 97 from Farrington Highway. Although there are no immediate development plans for the impacted area, staff is concerned that since the drainage basin would be above ground and located at an entry point to the development area, the size and design of the drainage basin may negatively affect the aesthetic value of the area.

Staff informed DOT-H of the concerns but also acknowledges that the widening project is critical to facilitating the Department's and other development projects in the region.

Therefore, staff is agreeable to recommend Board approval of the easements provided that DOT-H commit to future actions to mitigate the impact of the drainage basins on the subject parcel and approve additional access points serving Parcel 97. However, staff also believes that the Department should not have to shoulder the burden of a project that benefits multiple public and private developments at the expense of the Department's project.

Regarding the mitigation activities, the Department requested that DOT-H relocate Basin E to the makai corner of the subject area bordered by Kaloi Gulch, including installing underground pipes. This would allow the area fronting Farrington Highway to utilized more effectively for development purposes. For Basin F, the Department requested that it be modified to a subsurface basin to minimize the aesthetic impacts to the subject area. Due to budgetary and scheduling concerns, DOT-H informed staff that the drainage basins cannot be re-designed and modified at the initial construction. DOT-H requested to proceed with constructing the drainage basins as currently designed and agreed to implement the proposed mitigation actions upon receipt of future funding. In order to memorialize this agreement, the Department requests that the Board authorize the Chairperson to enter into a Memorandum of Agreement, with a sample draft attached as **Exhibit C**.

In addition to the modifications to the drainage basins, the Department requested that DOT-H approve additional access points to Parcel 97 from Kualakai Parkway and Farrington Highway. The first access point would be from Farrington Highway to the area impacted by Basin E located at the corner of Farrington Highway and Kualakai Parkway. The second access point would be from Parcel 97 to Kualakai Parkway as a right in, right out limited to city buses to serve the bus turnaround. This was identified by the City Department of Transportation Services (DTS) as being the optimal alternative to facilitate the operations bus turnaround serving the park and ride. The final access point would be a pedestrian bridge over Kaloi Gulch connecting the park and ride to the Keone'ae Rail Station. All of the access points would require the use of land and airspace under the jurisdiction of DOT, so staff will work with DOT on the required land dispositions that will be brought back to the Board for approval at a later date. The proposed locations of the various access points are identified in **Exhibit D**.

Finally, in order to avoid delay and expediate construction of the drainage basins, staff is recommending that the Board approve the issuance of a construction and management right of entry to DOT-H pending executing of the formal easement documents.

# **RECOMMENDATION**: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two term, non-exclusive easements to the State of Hawaii, Department of Transportation, covering the subject area for drainage basin

<sup>1</sup> There is an existing vehicular access way connecting Parcel 97 to Farrington Highway that is located on land under DOT-H jurisdiction. However, staff would be open to an alternative location that provides access to the subject area from Farrington Highway.

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. 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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of an immediate construction and management right of entry to the State of Hawaii, Department of Transportation, covering the subject area for drainage basin 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 right-of-entry 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.
- 3. Authorize the Chairperson to enter into a Memorandum of Agreement between the Department of Land and Natural Resources and the Department of Transportation regarding the future modification and relocation of the drainage basins and approval of access points serving Tax Map Key (1) 9-1-017:097, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. Review and approval by the Department of the Attorney General; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Jan Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

Dawn N. S. Chang, Chairperson

RT

Land Board Meeting: May 24, 2024; D-12: Approved as submitted.

Approved as submitted.4

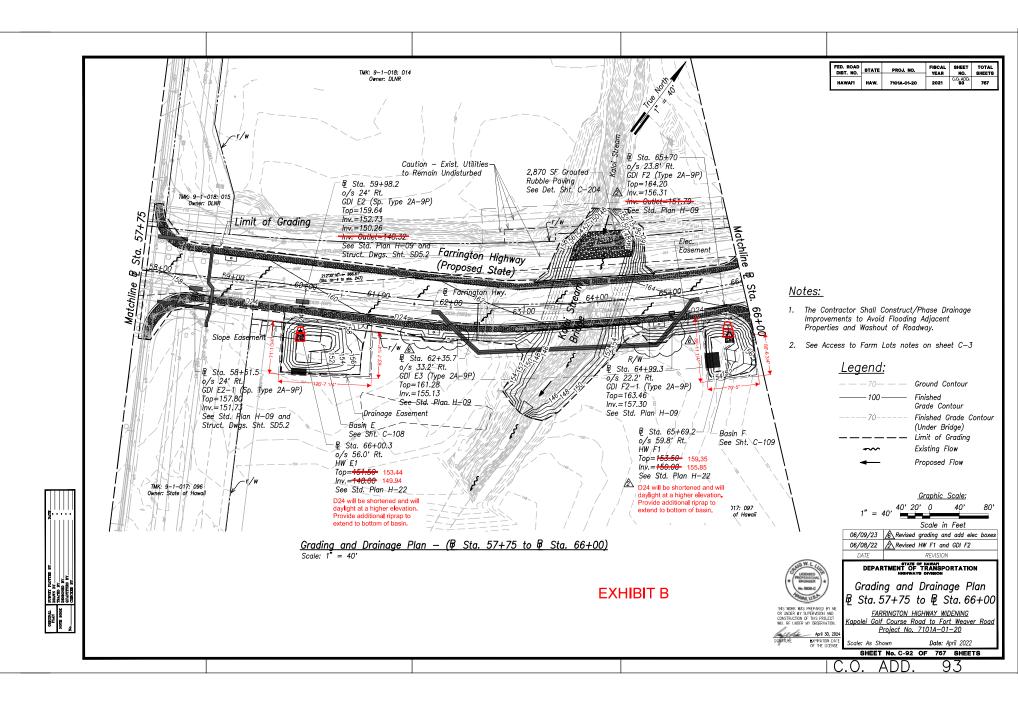
<sup>4</sup> Member Yoon requested that staff add a condition to the Memorandum of Agreement to ensure that DLNR's future interests are protected.

# Public Land Trust Information System



**EXHIBIT A** 

Resource Mapping Hawaii, Maxar, Esri, HERE, Garmin



ning/Dwg/Construction Dwgs/C-92 Grading and Drainage Plan - Sta. 57475 to 66+00

# MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

This Agreement, executed on this	day of _		
2024, and effective as of the date of the last ex-	ecution, by	and betwee	n the
DEPARTMENT OF LAND AND NATURAL	RESOURCI	ES, STATE	e OF
HAWAII, whose principal place of business an	d business	address is	1151
Punchbowl Street, Honolulu, Hawaii 96813 (herei	inafter the "	DLNR") an	d the
DEPARTMENT OF TRANSPORTATION, STA	ATE OF I	HAWAII, v	vhose
principal place of business and post office addre	ss is 869 P	unchbowl S	Street,
Honolulu, Hawaii 96813 (hereinafter "DOT").			

### RECITALS

WHEREAS, DLNR is responsible for managing lands owned by the State of Hawaii (hereinafter the "STATE") for the benefit of the public, providing long-term income generation in support of natural, cultural, historical and recreational resource protection and management, and meeting the STATE'S affordable housing objectives;

WHEREAS, DOT is responsible for providing a safe efficient, accessible and sustainable intermodal transportation system that ensures the mobility of people and goods, and enhances and/or preserves economic prosperity and quality of life:

WHEREAS, DOT is responsible for the Farrington Highway Widening Kapolei Golf Course to Fort Weaver Road Project No. 7101A-01-20 ("Farrington Highway Widening Project"), which will facilitate multiple public and private developments in the region, including DLNR's East Kapolei Transit Oriented Development Project ("East Kapolei TOD Project");

WHEREAS, the Farrington Highway Widening Project requires non-exclusive easements over a portion of STATE land along Farrington Highway, bearing Tax Map Key 9-1-017:097 (hereinafter the "Property"), to install and accommodate two drainage basins designated as Basins E and F, sized at 8500 square feet and 5100 square feet, respectively, located along the area of the Property fronting Farrington Highway;

WHEREAS, the Board of Land and Natural Resources, at its meeting on October 23, 2020, under agenda item D-9, approved the Department's draft East Kapolei Strategic Master Development Plan, with planned uses for the Property including mixed uses such as rental housing, commercial, retail, office and hotel, rail station park and ride, and bus turnaround;



WHEREAS, the currently planned size and location of the drainage basins may impact DLNR's ability to develop the Property for the intended purposes; and

WHEREAS, DLNR has requested, and DOT has agreed to perform certain future modification actions to the Basins E and F for the purpose of mitigating the impact of the drainage basins on the Property.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DLNR and DOT enter into this Memorandum of Agreement (hereinafter the "MOA") regarding the proposed conveyance of two non-exclusive easements affecting the Property to DOT drainage basin purposes, for the use by DOT for the Farrington Highway Widening Project, and covenant and agree as follows:

# 1. FUTURE MODIFCATION OF DRAINAGE BASINS

At a time determined by DLNR, DOT shall be responsible for modifying Basins E and F for the purpose of mitigating the impact of Basins E and F on the development potential of the Property. Basin E shall be relocated to a different area of the Property as determined by DLNR, and Basin F shall be converted to subsurface chambers. DOT will be responsible for all costs of the future modifications including the provision of any additional infrastructure required to accommodate the modified drainage basins. A preliminary design for the modifications is attached as **Exhibit A**.

- 2. DOT APPROVAL OF FUTURE ACCESS POINTS FOR THE PROPERTY DOT agrees to provide all necessary approvals to accommodate three additional access points serving the Property that require the use of land under DOT jurisdiction described as follows:
- a) Vehicular access to the property from Farrington Highway situated between the intersection of Farrington Highway and Kualakai Parkway on the West and western boundary of Kaloi Gulch on the East;
- b) Right In/Right Out from Kualakai Parkway serving the bus turnaround and limited to city buses operating under the management of the City and County of Honolulu, Department of Transportation;
- c) Pedestrian access from the park and ride facility to the Keone'ae Rail Station via a connecting bridge over Kaloi Gulch.

A map showing the location of the access points is attached as **Exhibit B**.

#### 3. SUBDIVISION.

In the event subdivision approval is required for the easements, DOT shall be required to pay for all costs and expenses associated with the subdivision approval process and the recordation of all conveyance documents.

#### 4. CHAPTER 343, HAWAII REVISED STATUTES

DOT shall be responsible for compliance with Chapter 200.1, Hawaii Administrative Rules and Chapter 343, Hawaii Revised Statutes for all actions undertaken under this Agreement.

#### 5. ASSIGNABILITY.

DLNR and DOT, and their assigns, shall not have the right to assign or otherwise transfer this MOA, without the prior written consent of DLNR and DOT, which consent shall not be unreasonably withheld or delayed.

#### 6. AMENDMENT

This MOA shall not be altered, amended, modified, or otherwise changed, in any respect or particular whatsoever, except by writing duly executed by both DLNR and DOT. DLNR and DOT hereby acknowledge and agree that they shall make no claim at any time that this MOA has been orally altered or modified in any respect whatsoever.

#### 7. CONSTRUCTION.

DLNR and DOT have participated jointly in the negotiation and drafting of this MOA. In the event an ambiguity or question of intent or interpretation arises, this MOA shall be construed as if drafted jointly by both DLNR and DOT, and no presumption or burden of proof shall arise favoring or disfavoring either DLNR or DOT by virtue of the authorship of any of the provisions of this MOA.

# 8. NO REPRESENTATIONS.

DLNR and DOT, nor anyone acting on their behalf, has relied on any representations, statements, or opinions of any other party or their representatives in entering into and executing this MOA, other than as expressly set forth herein.

#### 9. APPLICABLE LAW.

This MOA shall be applied, interpreted and construed in accordance with the laws of the State of Hawaii, including but not limited to the validity of this MOA, the interpretation or construction of any of its terms, or any alleged breach of its provisions.

#### 10. BINDING EFFECT.

Upon its execution by DLNR and DOT, this MOA shall become binding and enforceable according to its terms. The rights and obligations of each Party named in this MOA shall bind and inure to the benefit of each party and their respective successors and assigns.

#### 11. COOPERATION.

DLNR and DOT shall cooperate with each other in every way and exercise their best efforts in carrying out the transactions contemplated herein, obtaining all required approvals, authorizations, and clearances, and executing and delivering in recordable form all documents, instruments, or copies thereof or other information deemed reasonably necessary or useful by each other.

# 12. ENTIRE AGREEMENT.

This MOA embodies the entire agreement of DLNR and DOT, and supersedes all other agreements or understandings with respect to the subject matter hereof that may ever have existed between DLNR and DOT.

# 13. COUNTERPARTS; FACSIMILE COPIES.

This MOA may be executed in counterparts, each of which shall, for all purposes, be deemed to be an original and all of which shall constitute but one and the same document. Further, DLNR and DOT agree that when this MOA is executed by any party, a facsimile or electronic copy of that party's signature shall be deemed to be an original signature for any and all purposes.

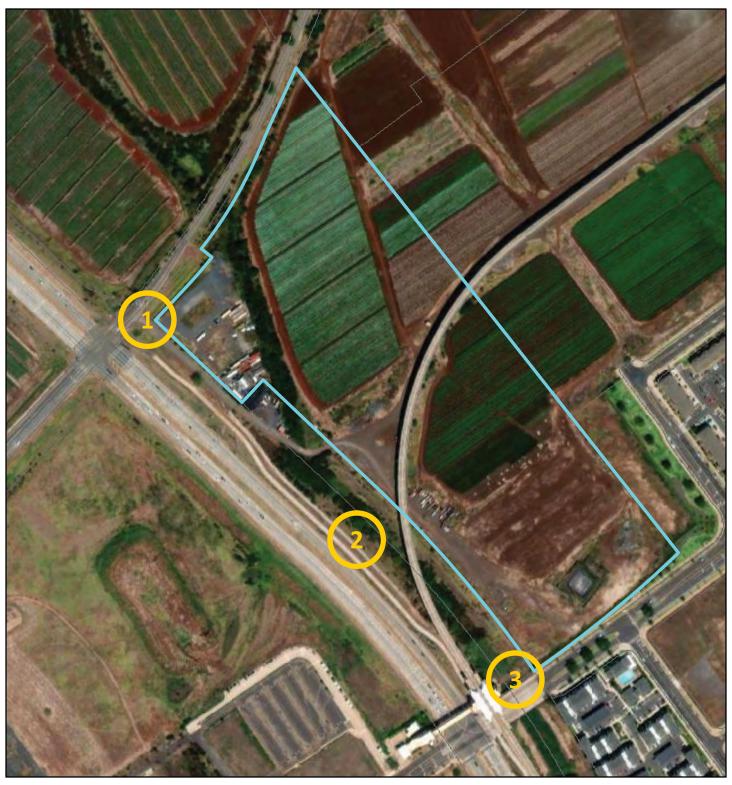
[Remainder of page intentionally left blank; signatures appear on next page.]



IN WITNESS WHEREOF, DLNR and the DOT have executed this MOA as of the date first above written.

Approved by the Board of Land and Natural Resources at its meeting held on	
Approved as to form:	
Deputy Attorney General	DAWN N. S. CHANG, Chairperson Board of Land and Natural Resources
Approved as to form:	
Deputy Attorney General	EDWIN H. SNIFFEN, Director Department of Transportation

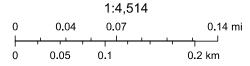
# Public Land Trust Information System



April 17, 2024

# **LEGEND**

- 1. Access from Farington Hwy. to portion of parcel slated for future retail/commercial development.
- 2. Bus restricted right-in/right-out onto Kualakai Parkway.
- 3. Bridge type connection strucutre over Kaloi Gulch from Keoneae Station to the Park and Ride/Bus Transit Terminal area.



Resource Mapping Hawaii, Maxar, Esri, HERE, Garmin



