

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

October 9, 2015

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

PSF No: 11HD-124

HAWAII

Amend Prior Board Action of October 28, 2011, To include a Pipeline C and to Approve Easement Form Relating to the Amendment and Restatement of Grant of Easement No. S-27,613 to Napuu Water, Inc. for Water Transmission and Storage Purposes, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portion of 006.

The purpose of the amendment is to: 1) delete Condition 2.B., which allowed DOFAW to tap into the Napuu Water pipeline to service an existing DOFAW standpipe, and 2) delete Conditions #15 and #24 of the Amendment & Restatement document.

BACKGROUND:

At its meeting of October 28, 2011, item D-18, the Board of Land and Natural Resources approved the Amendment and Restatement of Grant of Easement No. S-27,613 to Napuu Water, Inc. (NWI) for Water Transmission and Storage purposes. (Exhibit 1)

At its meeting of March 23, 2012, item D-3, the Board of Land and Natural Resources approved to amend its prior actions of October 28, 2011, to include Pipeline C to the Amendment and Restatement of Grant of Easement No. S-27,613. (Exhibit 2)

Purpose of the March 23, 2012 board action was to include two sections of pipeline previously omitted from Grant of Easement No. S-27,613. The two missing sections of pipeline were labeled, Pipeline A (1,100 linear foot), and Pipeline B (800 linear foot), which connected the existing NWI pipeline to the "Coffee Patch" tank site. These sections of pipelines are an integral part to operating the water system.

REMARKS:

The Office of the Attorney General prepared the amendment and restatement document, which was then forwarded to NWI, for signature. NWI reviewed then returned the

document unsigned, stating it had concerns over certain terms and conditions contained within the easement document. NWI requested that the terms and conditions of the Amendment and Restatement be consistent with the terms and conditions of the original easement document and that a new condition which allowed the Division of Forestry and Wildlife to tap into the existing pipeline for its standpipe is not reasonable and acceptable. A copy of the body of the Amendment and Restatement document rejected by NWI is attached as Exhibit 3 (omitting notary page, maps and descriptions).

Condition 2.D. of the March 23, 2012 recommendation, listed as Condition/paragraph #24 of the Amendment and Restatement, authorized the Division of Forestry to tap into NWI's pipeline to service an existing DOFAW standpipe. After conducting a site inspection and meeting with Land staff, DOFAW, and NWI representatives (board members & distribution system operator), it was realized and agreed that the water system is already operating at maximum capacity. The quantity of water being pumped from the ground is severely restricted/ limited due to the size of the underground well pipe. Therefore, it is understood and agreed that DOFAW should not be allowed to tap into the pipeline for its use, as it would negatively affect the amount of water available to others hooked up to the water system. It appears that the water system is already near capacity and can be resolved only if the underground well pipe is replaced with a larger diameter pipe, thereby increasing the flow rate of the water being pumped from the ground. The present situation of having a small diameter well pipe is akin to sucking water through a straw. Even if the pump pressure is increased, only a limited rate/amount of water can be extracted from the ground in a 24-hour period. Although feasible and necessary to improve the system, it is not a realistic option at this time to replace the well pipe, due to the extremely high cost associated with removing and installing a larger well pipe.

Condition/paragraph #15 on page 7 of the amendment and restatement document states:

“The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.”

NWI interprets the language in condition/paragraph #15 of the amendment above as removing certain rights with respect to the intended use of the land for the purpose the easement was originally granted (to construct, use, operate, reconstruct, improve, repair and maintain a water pipeline) and to allow the withdrawal of the easement with no compensation to NWI.

In recognition that NWI has and will continue to invest large sums of money in the necessary assets/improvements to transport and store water on the land granted by this easement, NWI's Board requests the current language in Condition #15 be deleted in its entirety. NWI believes it is not reasonable or realistic for NWI to be required to turn over the water system without compensation, after spending hundreds of thousands of dollars to develop, maintain and improve the water system.

The original easement dated December 22, 1986 contains the following language with respect to withdrawing the easement in condition #2 on page 2 and condition #3 on page 3:

- Condition #2; “The Grantor reserves unto itself and its successors the full use and enjoyment of the easement area, and to grant others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor or any agent, representative or assign of the Grantor, in a manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.”
- Condition #3; “Should future development necessitation a relocation of the easement granted herein, or any portion thereof, such relocation shall be accomplished at the Grantee’s own cost and expense; provided, however, if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.”

NWI, a 501(c)(12), non-profit, member owned corporation, explained that it has a contractual obligation to provide potable water to the adjacent Puu Lani subdivision, PuuWaawaa & Puuanahulu residents, and PuuWaawaa & Puuanahulu Cattle Ranchers. NWI supplies water to approximately 150 members consisting of residential occupants, several cattle ranchers for their respective herds, several structures owned/operated by DLNR and the Puuanahulu Hawaii County Fire Department. As a result, strict monitoring and control of water usage is required by NWI, to assure sufficient and uninterrupted water service to all users.

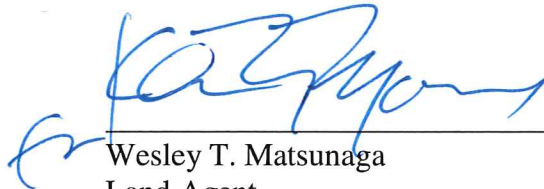
Staff’s intent to amend the existing easement document was to resolve the oversight of the original easement that inadvertently omitted the parcel of the “Coffee Patch” tank site and portions of the existing pipelines labelled as Pipeline A & B. The parcel and pipelines in question have been in use for several decades prior to NWI acquiring the water system. The amendment is also an attempt to correct the unintended conditions, particularly one allowing DOFAW to tap into the pipeline and another allowing the State to withdraw the easement without compensation to NWI.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 28, 2011, under agenda item D-18 by:

- A. Deleting Condition 2.D. (condition/paragraph #24 of the amendment and restatement) in its entirety, relating to allowing DOFAW to tap into the pipeline to service an existing DOFAW standpipe.
2. Authorize the revision of the Amendment and Restatement document by:
 - A. Deleting Condition/paragraph #15 of the Amendment and Restatement document, which reserves to the State the right to withdraw the easement for public use or purposes without compensation.
3. Except as amended hereby, all terms and conditions listed in its October 28, 2011 and March 23, 2012 approvals to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

October 28, 2011

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

PSF No.: 11HD-124

HAWAII

Amendment and Restatement of Grant of Easement No. S-27,613 to Napuu Water, Inc. for Water Transmission and Storage Purposes, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portion of 006.

APPLICANT:

Napuu Water, Inc., a Hawaii non-profit corporation.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Puuwaawaa, North Kona, Hawaii, identified by Tax Map Key: (3) 7-1-001: portion of 006, as shown on the attached map labeled Exhibit A.

AREA:

- Tank "Coffee patch" site: 0.0689 acres, or 3,000 square feet, more or less.
- Pipeline A: 0.2525 acres or 11,000 square feet, more or less.
(10 feet width by 1,100 linear feet length)
- Pipeline B: 0.1837 acres or 8,000 square feet, more or less.
(10 feet width by 800 linear feet length)

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Ag-20A

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

October 28, 2011

EXHIBIT 1

OCT 28 2011

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 4203 to Division of Forestry and Wildlife for Multi-Use Resource, Cultural, Recreational, and Game Management Area purposes.

CHARACTER OF USE:

For water storage and pipelines:
Right, privilege and authority to construct, use, maintain, repair, replace and remove water tanks and water transmission pipeline over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

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:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment; and

REMARKS:

Departmental files show that the most recent lease, General Lease No. S-3589 was the latest of six earlier pasture leases, each of which affected all or portions of the subject lands. Effective from September 27, 1917 were General Lease Nos. 971, 1038, and 1039, which were then succeeded by General Lease Nos. 2533 and 2621, the latter of which was assigned by Robert Hind, Ltd. to Dillingham Ranch, Inc.

Awards and assignments of various general leases were as follows:

Lessor/Lessee/Assignor	Assignee	Effective date/ Bd Action
State of Hawaii	Robert Hind, Ltd	9/27/1917: Auction
Robert Hind, Ltd	Dillingham Ranch, Inc.	10/12/1937
State of Hawaii	Dillingham Ranch, Inc.	8/15/1960: Auction
Dillingham Ranch, Inc.	Dillingham Investment Corporation	12/30/1961
Dillingham Investment Corporation	Puuwaawaa Ranch, Inc	9/13/1968
Puuwaawaa Ranch, Inc	F. Newell Bohnett	9/15/1972
F. Newell Bohnett	Ernest De Luz, Stephen De Luz & Mikio Kato	7/14/2000 Expired: 8/14/2000
Ernest De Luz, Stephen De Luz & Mikio Kato		Holdover: RP- 8/15/2000

At its meeting of November 16, 1984, the Land Board approved a perpetual, non-exclusive easement to F. Newell Bohnett dba Puuwaawaa Ranch. The easement was issued as Land Office Deed (LOD) No. S-27,613. Subsequently, at its meeting of January 25, 1991, the Board approved the assignment of the easement from F. Newell Bohnett to Puuwaawaa Waterworks, Inc. Records indicate that the well, tanks and pipelines were constructed sometime in 1985.

At its meeting of January 25, 2002 the Board of Land and Natural Resources approved

Governor's Executive Order No. 4203 to the Division of Forestry for addition to its Puuwaawaa Forest Reserve. The set aside is subject to various easements traversing the subject property, issued to various entities, for access and utility purposes.

At its meeting of April 28, 2006, Item D-6, the Land Board approved consent to assignment of LOD S-27,613, Puuwaawaa Waterworks, Inc., Assignor, to Napuu Water, Inc., Assignee.

For reasons unknown, the entire water system previously under Puuwaawaa Waterworks, Inc., which is now managed and operated by Napuu Water, Inc., did not include the "Coffee Patch" tank site and portions of the existing pipelines currently in use. As a result, by letter dated November 24, 2010, Michael Donoho, Napuu Water, Inc. Projects Coordinator, requested an easement over sections of the pipeline and tank site not previously included under easement LOD S-27,613. To properly and effectively operate the water system, the tank site and pipelines must all be contiguous, intact, and inclusive under the various easements for the water system's continued use. The water system is critical in providing potable water to the adjacent residential subdivision, which consists of approximately 35 lots, known as "Puu Lani Estates, " and to a few other adjacent private properties.

Napuu Water, Inc., 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.

On August 12, 2011, various government agencies and interest groups were solicited for comments. The only respondents were the County Planning Department, Division of Forestry & Wildlife, and State Historic Preservation.

The County of Hawaii, Planning Department, had no objections to the request.

The State Historic Preservation Division commented that the Puuwaawaa Ranch has been assessed as a Historic Landscape and is recorded as site number 50-10-20-26170 on the State Inventory of Historic Places (SIHP). There are multiple water catchment features around the area that have been recorded as SIHP #-26171 (SHPD Rpt. No. H-2348). Because this project will not involve new construction, it will not physically alter any aspect of this sites integrity. Therefore, we believe that there will be no historic properties affected. However, if the need arises to alter any of the water infrastructure in the future, we would appreciate the opportunity to review those alterations for prior impacts to the Puuwaawaa Ranch Historic Landscape.

The Division of Forestry is supportive of the request, but requests that the Napuu Water, LLC., allow them to tap into their pipeline for use with its existing standpipe, which is currently serviced by the adjacent reservoir. The reservoir is currently in repair, therefore, no water is available for emergency uses. The Division of Forestry is willing to pay for installation of a water meter and the water they use, at an agreeable rate. The standpipe will be secured with a Forestry & Wildlife CBB lock.

Staff has no objections to amend grant of easement No. S-27,613 as the water system has been in place for several decades now, with no incident or problems experienced with its operations.

Staff noted that the existing Grant of Easement document does not include provisions for liability insurance. As a result, staff recommends that inserting of updated easement provisions as necessary to further amend Grant of Easement No. S-27,613.

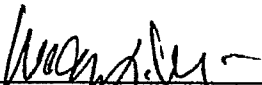
RECOMMENDATION: That the Board:


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. Subject to the Applicant fulfilling all of the Applicant requirements listed above authorize the Amendment and Restatement of Grant of Easement No. S-27,613 covering the subject area for water storage and pipeline 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 amendment document form, as may be amended from time to time;
 - B. To include the "Coffee Patch" tank site and pipeline alignments depicted as Pipeline A & Pipeline B;
 - C. Prior to commencing with any work activities upon the State property relating to the Puuwaawaa water system, Grantee shall contact and coordinate its planned activities with the Division of Forestry and Wildlife;
 - D. Napuu Water, LLC., shall allow the Division of Forestry & Wildlife to tap into its pipeline to service an existing standpipe, located in the vicinity of the Hunter Check-in Station, for fire suppression and/or other official uses;
 - 1) The Division of Forestry & Wildlife shall pay for installation of a water meter at the subject site, when funds are available;
 - 2) The Division of Forestry & Wildlife shall pay for the use of water from the Napuu Water, LLC, water system, at an agreed upon rate;

OCT 28 2011

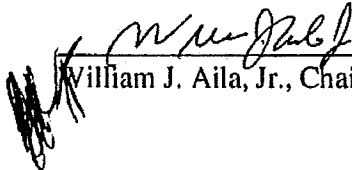
- 3) The standpipe shall be secured with a Division of Forestry & Wildlife CBB lock.
- D. Authorize the Department of the Attorney General to update and restate the existing Grant of Easement document to include the current provisions used in such instruments;
- E. Review and approval by the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

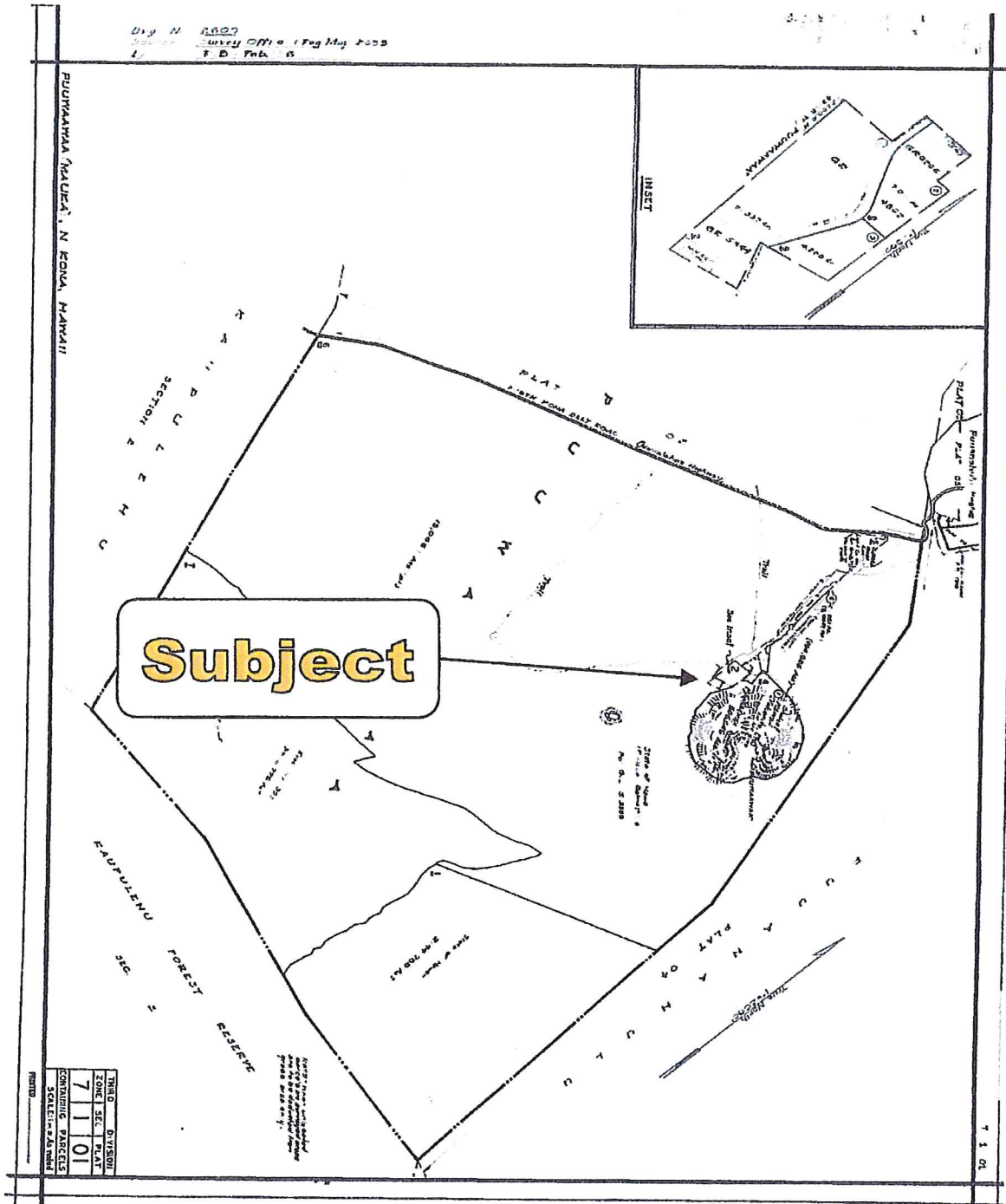
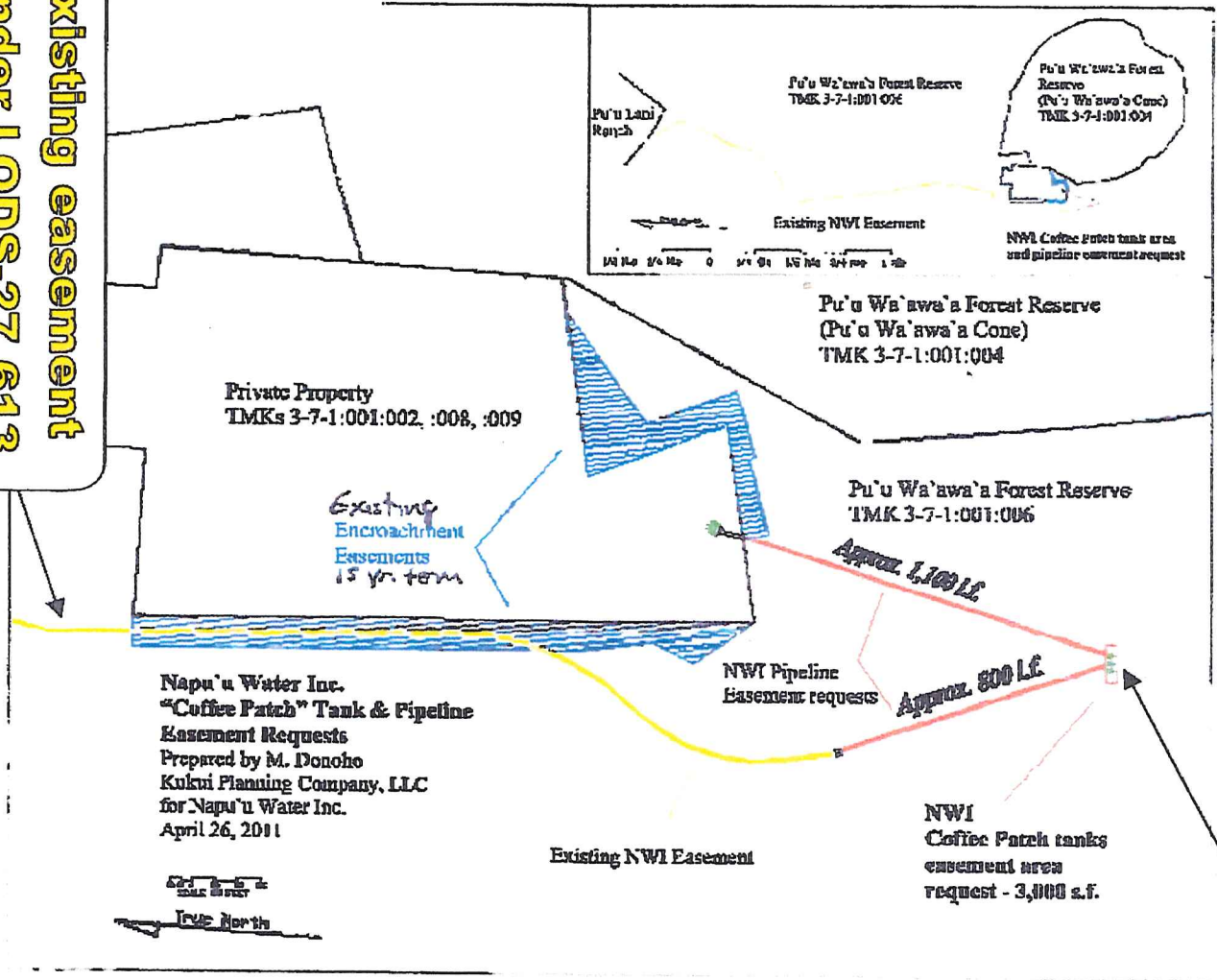


EXHIBIT A

**Existing easement
under LODS-27,613**



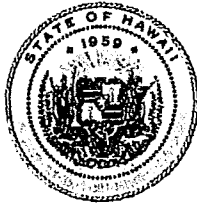
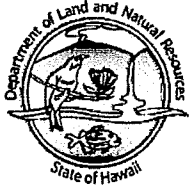
Napu'u Water Inc.
"Coffee Patch" Tank & Pipeline
Easement Requests
Prepared by M. Donoho
Kukui Planning Company, LLC
for Napu'u Water Inc.
April 26, 2011



Subject

EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULI KUKUI
FIRST DEPUTY

WILLIAM M. TANI
DEPUTY DIRECTOR - WATER

AGRICULTURE
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES LABORATORY
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOHOLA 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: Amend Grant of Easement No. S-27,613 to Napuu Water, Inc., for water storage and pipeline purposes.

Project / Reference No.: PSF No.: 11HD-124

Project Location: Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portion of 006.

Project Description: Amend Grant of Easement No. S-27,613 for water tank site and pipelines at Puuwaawaa, North Kona, Hawaii.

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

Exemption Class No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." and

Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description from Agency Exemption List: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Minor alterations in the conditions of land, water or vegetation.

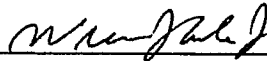
EXHIBIT "B"

Consulted Parties:

The Division of Forestry and Office of Conservation and Coastal Lands were consulted, as a source authority having jurisdiction or expertise in this matter.

Recommendation:

The subject pipeline has been in use on the subject property since the 1980's. It is recommended that the Land Board find that amendment of grant of easement for water tank and pipeline purposes is exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson

9/19/11

Date

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

March 23 2012

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

PSF No: 11HD-124

HAWAII

Amend Prior Board Action of October 28, 2011, To Include a Pipeline C to the Amendment and Restatement of Grant of Easement No. S-27,613 to Napuu Water, Inc. for Water Transmission and Storage Purposes, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portion of 006.

BACKGROUND:

At its meeting of October 28, 2011, the Board of Land and Natural Resources approved the Amendment and Restatement of Grant of Easement No. S-27,613 to Napuu Water, Inc. (NWI), for Water Transmission and Storage Purposes. (Exhibit A)

Purpose of the board action was to include two sections of pipeline previously omitted from Grant of Easement No. S-27,613. The two missing sections of pipeline were labeled, Pipeline A (1,100 linear foot), and Pipeline B (800 linear foot), which connected the existing NWI pipeline to the "Coffee Patch" tank site. These sections of pipelines are an integral part of the operating water system.

REMARKS:

On February 9, 2012, Mr. Michael Donoho, Project Coordinator, Napuu Water Inc, notified staff that it recently discovered the subject pipeline easement over State lands encumbered under Grant of Easement No. S-27,613 is still not depicted in its entirety. Mr. Donoho informed staff that it realized that there is still a 350-foot section of pipeline over the State property not covered under the above Grant of Easement. The missing section of pipeline (Pipeline C) is not depicted in the easement document, consists of a section of pipeline that connects the Puuwaawaa Well Site located at the northern end of Parcel 8, to the existing easement. (Exhibit B)

Pipeline C consists of an area measuring .0803 acres or 3,500 square feet, more or less, with dimensions of 10 feet width by 350 linear feet length.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DW*
AT ITS MEETING HELD ON
March 23, 2012

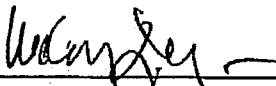
RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 28, 2011, under agenda item D-18 by:
 - A. Revising Page 1, under the Section Heading "AREA" to include:

"Pipeline C: 0.0803 acres or 3,500 square feet, more or less.
(10 feet width by 350 linear feet length)"
 - B. Replacing Recommendation 2.B., with the following:

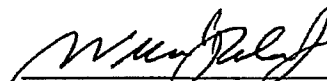
"To include the "Coffee Patch" tank site and pipeline alignments depicted as Pipeline A, Pipeline B, and Pipeline C;"
 - C. Replacing Exhibit A on Page 8 of the October 28, 2011 submittal with Exhibit B of this submittal, which is a revised map that includes a depiction of Pipeline C.
2. All terms and conditions listed in its October 28, 2011 approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

WHEREAS, for reasons unknown, the entire water system previously under Puuwaawaa Waterworks, Inc., which is now managed and operated by Grantee did not include the "Coffee Patch" tank site and portions of the existing pipelines currently in use; and

WHEREAS, the Grantee has requested an easement over sections of the pipeline and tank site not previously included under Grant of Easement dated December 16, 1986.

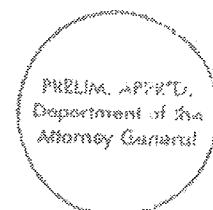
NOW THEREFORE, commencing October 28, 2011, the Grantor, pursuant to Section 171-13, Hawaii Revised Statutes, for and in consideration of the additional sum of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00), the receipt of which is hereby acknowledged, (\$1,600 was previously paid, for a total of \$4,600.00) 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 construct, use, maintain, repair, replace and remove water tanks and water transmission pipeline,

in, over, under and across those certain parcels of land ("easement area") consisting of:

"Perpetual Non-Exclusive Waterline Easement," situate at Puuwaawaa and Puuanahulu, North Kona, Island of Hawaii, Hawaii, containing an area of 3.148 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 20,217 and dated June 18, 1985,

"Perpetual Non-Exclusive Water Tank/Water System Easement and Perpetual Non-Exclusive Waterline Easement, Easements A and B, situate at Puuwaawaa, North Kona, Island of Hawaii, Hawaii, being Water Tank/Water System Easement containing an area of 3000 square feet, Easement A containing an area of 0.226 acre, and Easement B containing an area of 0.303 acre, more particularly described in Exhibit "C" and delineated on Exhibit "D," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,362 and dated March 5, 2014, and



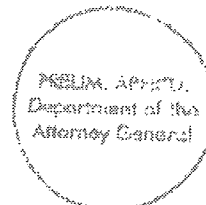
"Perpetual Non-Exclusive Waterline Easement, Easement C," situate at Puuwaawaa, North Kona, Island of Hawaii, Hawaii, containing an area of 0.092 acre, more particularly described in Exhibit "E" and delineated on Exhibit "F," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,363 and dated March 5, 2014, TOGETHER WITH the rights of ingress and egress to and 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. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

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 the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and may be



removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

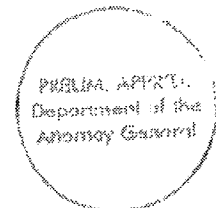
5. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

8. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.



10. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

11. The Grantee shall, upon termination or revocation of this easement peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

12. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

13. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of

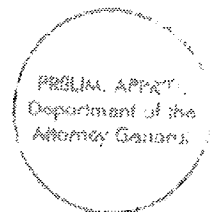


Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of

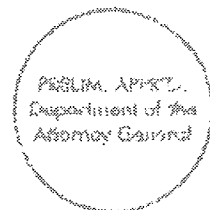


Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.

16. The Grantee shall not mortgage or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage or pledge without such approval shall be null and void.

17. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the disposition; second, to discharge in full



any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispotion which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

18. The Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire easement area, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire easement term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s) that are or were in effect during the easement period.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and



Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

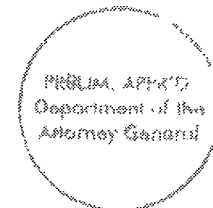
19. The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.

20. The Grantee shall comply with all applicable federal and state environmental impact regulations.

21. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

22. The easement area is encumbered by Governor's Executive Order No. 4203 to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife, and therefore this grant of easement is subject to the State of Hawaii Governor's approval. Said approval was obtained on October 30, 2014.

23. Prior to commencing any work activities upon the Grantor's property relating to the Puuwaawaa water system, the Grantee shall contact and coordinate its planned activities with



the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW).

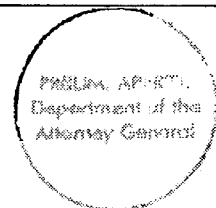
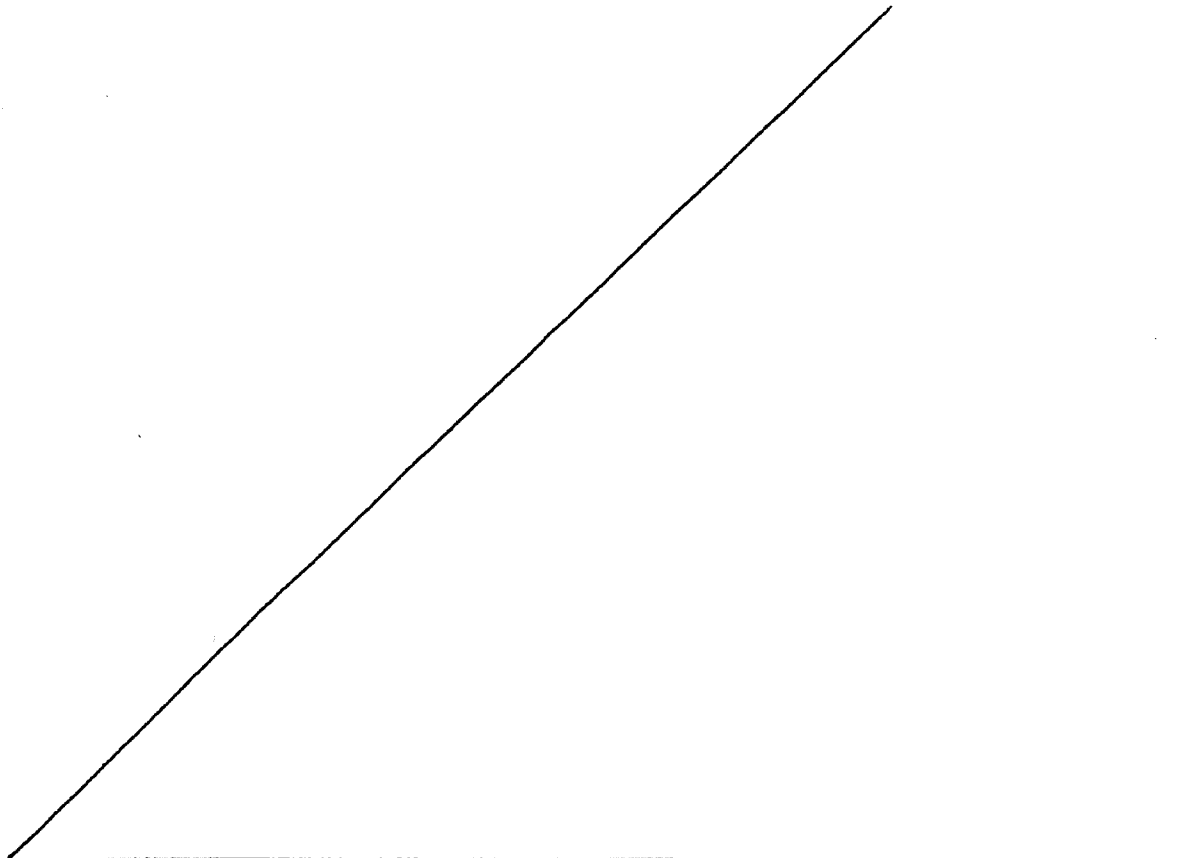
24. The Grantee shall allow the DOFAW to tap into its pipeline to service an existing standpipe, located in the vicinity of the Hunter Check-in Station, for fire suppression and/or other official uses.

i. The DOFAW shall pay for installation of a water meter at the subject site, when funds are available.

ii. The DOFAW shall pay for the use of water from the Grantee's water system at an agreed upon rate.

iii. The standpipe shall be secured with a DOFAW CBB lock.

25. The Grantee shall comply with the conditions contained in conservation district use permit number CDUA HA-9/21-82-1495 approved by the Board of Land and Natural Resources at its meeting of February 25, 1983, (Agenda Item H-8) on file with the Department of Land and Natural Resources.



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on November 16, 1984, October 28, 2011 and March 23, 2012.

By _____
WILLIAM J. AILA, JR.
Chairperson
Board of Land and
Natural Resources

GRANTOR

NAPU'U WATER, INC., a Hawaii nonprofit corporation

By _____
Its _____

APPROVED AS TO FORM:



LINDA L. W. CHOW
Deputy Attorney General

By _____
Its _____

GRANTEE

Dated: Feb. 27, 2015

