

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

May 25, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

PSF: 12HD-050

HAWAII

Withdrawal from Governor's Proclamation dated December 22, 1928, as Revised, Setting Aside Hilo Forest Reserve, and Set-Aside to the Department of Transportation for Public Highway Purposes; Issuance of Immediate Construction and Management Special Use Permit; Issuance of Immediate Construction and Management Right-of-Entry; Piihonua, South Hilo, Hawaii, TMKs: 3rd/ 2-5-01:02 por., 2-5-01:06 por., 2-5-01:08 por., 2-5-02:01 por. and 2-5-02:14 por.

CONTROLLING AGENCY:

Division of Forestry and Wildlife, Department of Land and Natural Resources.

APPLICANT:

Department of Transportation, State of Hawaii.

LEGAL REFERENCE:

Sections 171-11, 183-11, and 183-12 Hawaii Revised Statutes, as amended, and Sections 104-20 and 105-5(1), Hawaii Administrative Rules, as amended.

LOCATION:

Portion of the Government Lands of Piihonua situate at Piihonua, South Hilo, Hawaii, identified by Tax Map Keys: 3rd/ 2-5-01:02 por., 2-5-01:06 por., 2-5-01:08 por., 2-5-02:01 por. and 2-5-02:14 por., as shown on the attached maps labeled Exhibits A, B and C.

TMK/ ZONING/ AREA/ ENCUMBRANCE:

TAX MAP KEY	ZONING		AREA (Acres)	ENCUMBRANCE
	LUC	CZO		
3 rd / 2-5-01:02 por.	Conservation	Forest Reserve	1,424.005	12/22/1928 Proclamation; DOFAW
3 rd /2-5-01:06 por.	Conservation	Forest Reserve	19.280	12/22/1928 Proclamation; Land Office Deed (LOD) No. 28,756; Verizon Hawaii, Inc.

TAX MAP KEY	ZONING		AREA (Acres)	ENCUMBRANCE
	LUC	CZO		
3 rd /2-5-01:08 por.	Conservation	Forest Reserve	72	12/22/1928 Proclamation, DOFAW
3 rd /2-5-02:01 por.	Agriculture	Open	94.88	LOD No. 27,793 Verizon Hawaii, Inc.; LOD No. 27,794 B. A. Klingshirn
3 rd /2-5-02:14 por.	Conservation	Forest Reserve	83.6	12/22/1928 Proclamation; DOFAW
				Land Office Deed No. 28,756; Verizon Hawaii, Inc.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

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

CURRENT USE STATUS:

TMKs 3rd/2-5-01:02 (parcel 2), 2-5-01:06 (parcel 6), 2-5-01:08 (parcel 8) and 2-5-02:14 (parcel 14) are part of the Hilo Forest Reserve under Governor's Proclamation dated December 22, 1928 as revised, and managed by the Division of Forestry and Wildlife. A portion of Parcel 14 is also encumbered by an easement for communications lines, and Hawaiian Electric Light Company, Inc. has electrical transmission lines and poles on the parcel near the existing Saddle Road.

PURPOSE:

The Department of Transportation is requesting the set-aside of the subject land for public highway purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The final Environmental Impact Statement (EIS) was announced in the Federal Register on September 3, 1999 and in Hawaii's Office of Environmental Quality Control's Environmental Notice on September 8, 1999. A Record of Decision (ROD) finalized on October 30, 1999 presented the selection of the recommended alternatives by the agencies and formalized the mitigation commitments. The Governor accepted the EIS on November 12, 1999. In September 2006, the Department of the Army (DA) requested that a new W-7 alignment be considered because the original W-3 alignment in the EIS essentially divided in two the DA's recently acquired Keamuku Maneuver Area (lands acquired from Parker Ranch). On December 8, 2007, a Supplemental EIS (SEIS) Preparation Notice was published in the Environmental Notice for the Mamalahoa Highway to Milepost 42 section of Saddle Road. An ROD for the SEIS was signed in February 2010, and notice of its availability was published on February 23, 2010 in the Environmental Notice. The Governor accepted the SEIS by letter dated September 1, 2010, and the acceptance was published in the Environmental Notice on September 23, 2010.

On April 8, 2011, the Board of Land and Natural Resources approved Conservation District Use Permit HA-3546 covering the Saddle Road improvements geotechnical borings and the subdivision of the land in Section III and IV.

APPLICANT REQUIREMENTS:

- 1) Process and obtain subdivision at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain the written concurrence of the Division of Forestry and Wildlife to the withdrawal of the subject land from Governor's Proclamation dated December 22, 1928 as revised; and
- 4) Comply with the conditions of Conservation District Use Permit HA-3546.

REMARKS:

The Saddle Road realignment project is a partnership of federal and State agencies to upgrade and modernize Saddle Road from milepost 6 in South Hilo to the junction with Mamalahoa Highway in South Kohala, a distance of approximately 48 miles. The purpose of the project is to provide safe and efficient travel between East and West Hawaii. After completion of construction, the State Department of Transportation (DOT) will operate and maintain the new highway. Three phases of the realignment have been completed extending between mileposts 11 and 35, and a fourth phase is under construction south of Pohakuloa Training Area.

By memorandum dated January 25, 2012, DOT's right-of-way manager, Dean Yogi, requested the set-aside of the State lands within the "Saddle Road – East Side Milepost 11 to 6 Project" to DOT, as well as the issuance of an immediate construction right-of-entry. The memorandum explains that DOT's legal possession of the right-of-way needs to be secured by May 2012 in order to comply with federal funding requirements for the project.

Based on staff's review of the Roadway Plan and Profile, it appears that the new highway right-of-way is planned to be approximately 200 feet wide, although the width of the paved road surface will be approximately 52 feet. The 200-foot right-of-way width is required for grading and road engineering purposes. The new highway right-of-way overlaps the old Saddle Road in some areas and diverges from it in others as indicated in Exhibit C attached. Within the forest reserve, where the new road right-of-way does not overlap the existing Saddle Road, the project calls for the excluded road fragments to be obliterated with those portions resuming their status as forest reserve areas.

DOT's requested right-of-way will also encompass portions of existing utility lines that run parallel to Saddle Road in this area and meander in and out of the right-of-way for the new road. DOT has advised staff that the new road construction will not cause the relocation of any existing utility poles, transmission lines, guy wires or anchors.

Hawaiian Electric Light Company, Inc. (HELCO) has two sets of electric transmission lines and utility poles that parallel Saddle Road. The earlier transmission line (69KV) was erected in 1957 before the environmental assessment and conservation district laws came into effect. The later line (138 KV) was erected in 1987 after a Final EIS and pursuant to Conservation District Use Permits HA-1554, HA-1554A, and HA-1904. Easements for these transmission lines and supporting guy wires and anchors were approved by the Board at its meeting of January 24, 1986, Item F-2, as amended at its meeting of April 12, 1996, Item D-6. However, the easement instrument has not issued because HELCO has not provided staff with completed surveys of the transmission lines. Staff is communicating with HELCO to determine whether the surveys and easement instrument can be finalized before right-of-way is formally set-aside to DOT.

Additionally, by Land Office Deed No. S-28,756 dated June 14, 2005, the Board granted Verizon Hawaii, Inc. a perpetual easement to maintain a fiber optic cable on the HELCO utility poles. The set-aside to DOT of the road right-of-way will need to be made subject to these utility easements.

As to the lands located in the forest reserve, an immediate construction and management special use permit for the new road right-of-way will allow DOT and its contractors to conduct necessary surveys and commence construction on parcels 2, 6, 8 and 14. DOT has requested that the special use permit remain in effect until the executive order setting aside the land to DOT is finalized.

As to the unencumbered State lands designated as TMK: 3rd/2-5-02:01 (parcel 1), an immediate construction and management right-of-entry for the new road right-of-way will allow DOT and its contractors to conduct necessary surveys and commence construction on parcel 1. DOT has requested that the right-of-entry remain in effect until the executive order setting aside the land to DOT is finalized.

Staff notes that the Roadway Plan and Profile designates a number of areas outside of the new road right-of-way (but adjacent to it) as "Temporary Construction Easement" areas. DOT explains that it will need access to these areas during construction of the new highway, but that they will not be a part of the right-of-way upon completion of construction. Staff believes that the best approach to granting access to these areas is through a construction special use permit and construction right-of-entry that will last until completion of construction and acceptance of the highway by DOT and the Federal Highway Administration.

In light of the existence of Saddle Road in this the area, staff is of the opinion that the highest and best use of the subject land is for public highway purposes. Staff further believes that the proposed use fully utilizes the requested land.

RECOMMENDATION: That the Board:

1. As to parcels 2, 6, 8 and 14, approve of and recommend to the governor issuance of an executive order withdrawing the lands required for the Saddle Road – East Side Milepost 11 to 6 Project from the Governor’s Proclamation dated December 22, 1928 as revised and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. As to parcels 2, 6, 8 and 14, pursuant to HRS Section 183-11, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Hawaii regarding the proposed withdrawal of the new road right-of-way from the Hilo Forest Reserve, and further, pursuant to HRS Section 183-12, as amended, authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.

3. As to parcels 2, 6, 8, 1 and 14, approve of and recommend to the governor the issuance of an executive order setting aside the lands required for the Saddle Road – East Side Milepost 11 to 6 Project to the Department of Transportation under the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

4. As to parcels 2, 6, 8 and 14, grant an immediate construction and management special use permit to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current construction and management special use permit form, as may be amended from time to time;
 - B. This special use permit is effective upon DOT's execution of the permit and shall continue until the executive order document is issued; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this special use permit is in force.

5. As to parcels 2, 6, 8 and 14, grant an immediate construction special use permit to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto all "Temporary Construction Easement" areas noted on the Roadway Plan & Profile dated January 25, 2012 for the Milepost 11 to 6 road improvements, as may be amended from time to time, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current construction special use permit form, as may be amended from time to time;
 - B. This special use permit is effective upon DOT's execution of the permit and shall continue until completion of construction and acceptance of the project by the State Department of Transportation and the Federal Highways Administration; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this special use permit is in force.

6. As to parcel 1, grant an immediate construction and management right-of-entry to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current construction and management right-of-entry form, as may be amended from time to time;


- B. This right-of-entry is effective upon DOT's execution of the right-of-entry and shall continue until the executive order document is issued; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
7. As to parcel 1, grant an immediate construction right-of-entry to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto all "Temporary Construction Easement" areas noted on the Roadway Plan & Profile dated January 25, 2012 for the Milepost 11 to 6 road improvements, as may be amended from time to time, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current construction right-of-entry form, as may be amended from time to time;
 - B. This right-of-entry is effective upon DOT's execution of the right-of-entry and shall continue until the executive order document is issued; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,

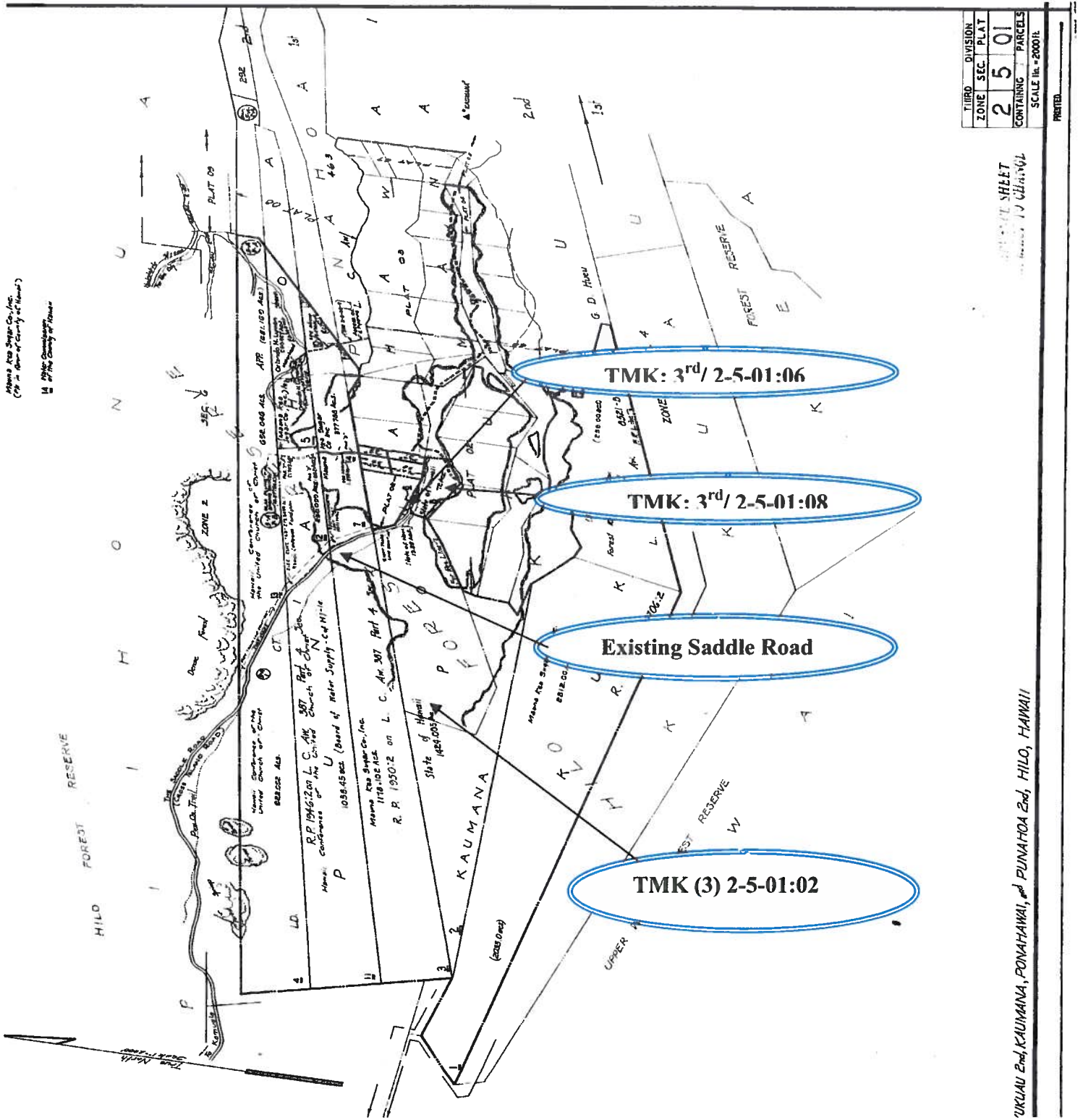


Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TERR	DIVISION	PLAT
2	5	01
CONTAINING PARCELS		
SCALE 1/4" = 2000'		

PLAT SHEET
CONTAINING PARCELS

UKULAU End, KAUMANA, PUNAHAWAI, and PUNAHAWA End, HILO, HAWAII

EXHIBIT A

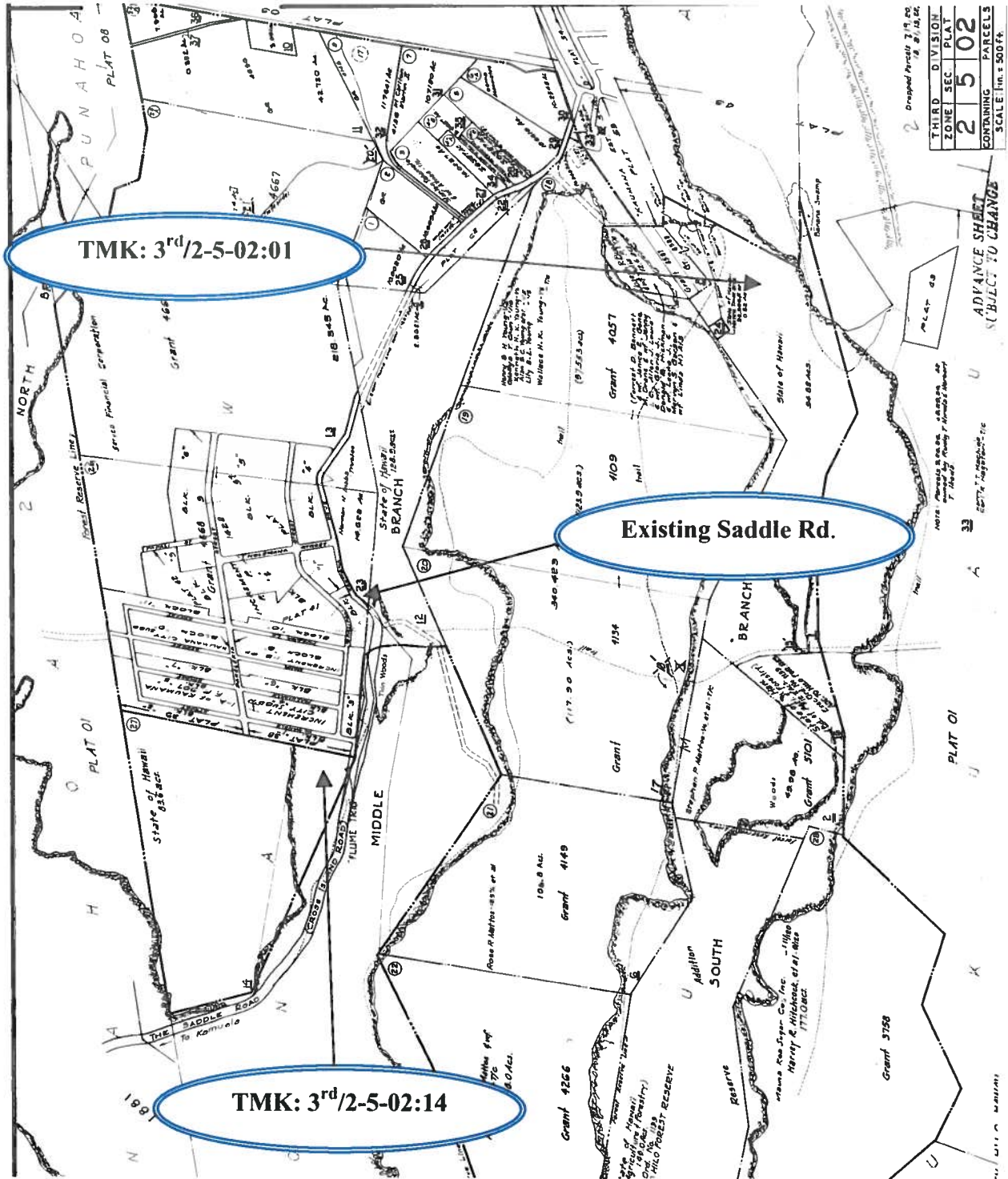


EXHIBIT B

DATE	PROJECT	SCALE	BY
10/10/2003	MP 7.85-11	1" = 1500'	...

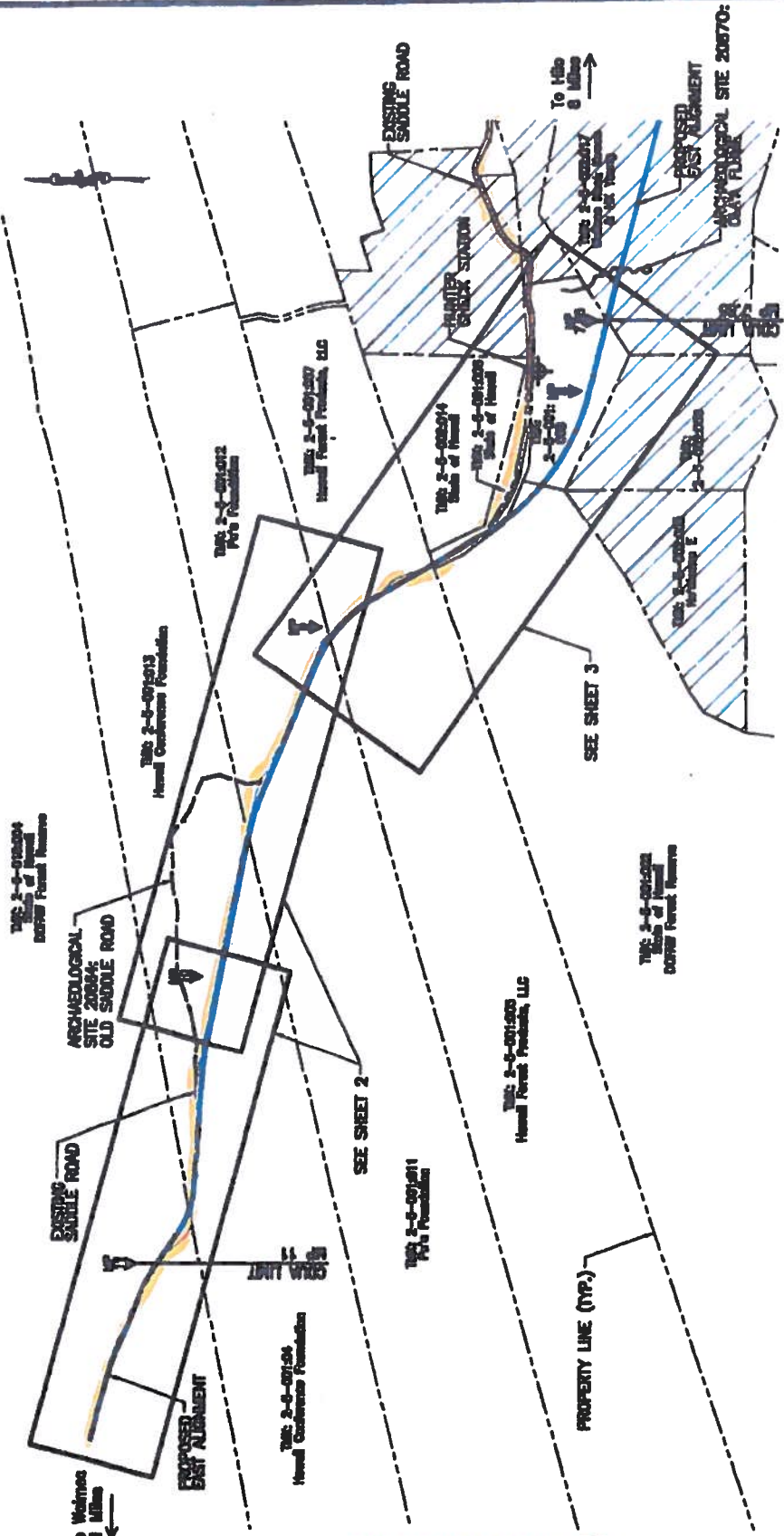


EXHIBIT C

CDMA EXHIBIT III
 KEY MAP -
 EAST ALIGNMENT, MP 7.85-11
 Scale 1"=1500' Date Oct. 2003
 SHEET No. 1 OF 3

LEGEND - LAND ZONES
 RESOURCE (CONSERVATION)
 PROTECTIVE (CONSERVATION)
 PRIVATE (AGRICULTURAL)

LEGEND - MISC. ITEMS
 PROPOSED EAST ALIGNMENT
 EXISTING SADDLE ROAD
 PROPERTY LINE

