

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

October 12, 2012

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

PSF No.: 12HD-086

HAWAII

Resubmittal: Grant of Term, Non-Exclusive Easement to the United States of America, Department of Agriculture, for Access and Utility Purposes, Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-6-6: portion of 46.

APPLICANT:

United States of America, Department of Agriculture (USDA)

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Laupahoehoe, North Hilo, Hawaii, identified by Tax Map Key: (3) 3-6-6:46, as shown on the attached maps labeled Exhibits A, B and C.

AREA:

To be determined by survey.

ZONING:

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

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:

Encumbered by General Lease No. S-5320, Peter H. Jose and Richard A.J. Jose, Lessees, for pasture purposes. Lease to expire on June 29, 2028. Also encumbered by Governor's Executive Order No. 4357 for forest reserve purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis.

EASEMENT TERM:

Sixty-five (65) years, to be coterminous with lease to be issued to USDA for its Hawaii Experimental Tropical Forest at Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-6-6: portion of 46. The USDA lease area is highlighted on Exhibit B.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment (FEA) for USDA's Hawaii Experimental Tropical Forest project at Laupahoehoe, Hawaii was published in the OEQC's Environmental Notice on September 23, 2011 with a finding of no significant impact (FONSI). Access to the project site over the proposed easement alignment was covered in the FEA.

DCCA VERIFICATION:

Not applicable. As a government agency, USDA 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) Secure the written concurrence of the Division of Forestry and Wildlife to the

grant of easement; and

- 3) Secure the written concurrence of Peter H. Jose and Richard A.J. Jose, Lessees under General Lease No. S-5320, to the grant of easement.

REMARKS:

As explained in two companion submittals before the Board of Land and Natural Resources at today's meeting, the Board has approved the issuance of a direct lease to the United States of America, Department of Agriculture (USDA), on 3 acres of State lands at Laupahoehoe, North Hilo, Hawaii for research and educational purposes. However, there is no legal access to the 3-acre site from a public highway. Rather, USDA will need to traverse private lands owned by Kamehameha Schools / Bishop Estate (KSBE) as well as a portion of General Lease No. S-5320 to Peter H. Jose and Richard A.J. Jose, Lessees, to reach its lease premises.

USDA explains that it is negotiating an access easement with KSBE over its private lands.¹ To facilitate the establishment of legal access, at least with respect to the State lands under the Board's jurisdiction, staff is recommending that the Board grant a term, non-exclusive easement over the lease premises to USDA over the approximate alignment shown in Exhibit C. Staff understands that this alignment follows an existing unpaved road on the Jose lease premises and, therefore, the granting of the easement will not result in the taking of useable pasture land from the Joses.

USDA 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.

No agency or community comments were sought as this project has already been through the environmental assessment process pursuant to HRS Chapter 343 and received a FONSI. However, staff did consult with the Division of Forestry and Wildlife who indicated that it concurs to the grant of the easement. Staff additionally consulted with Lessees Peter H. Jose and Richard A.J. Jose who had no objection to the grant.

RECOMMENDATION: That the Board:

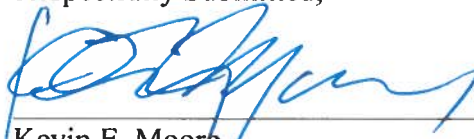
1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the United States of

¹ In one of the companion submittals, staff is recommending that USDA be required to acknowledge and agree in its lease that there is presently no legal access from a public highway to the proposed USDA lease premises, and that USDA shall be solely responsible for establishing any required access over private lands or over any other lands not under the Board's jurisdiction at USDA's sole cost and expense.

America, Department of Agriculture covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

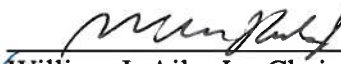
- A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

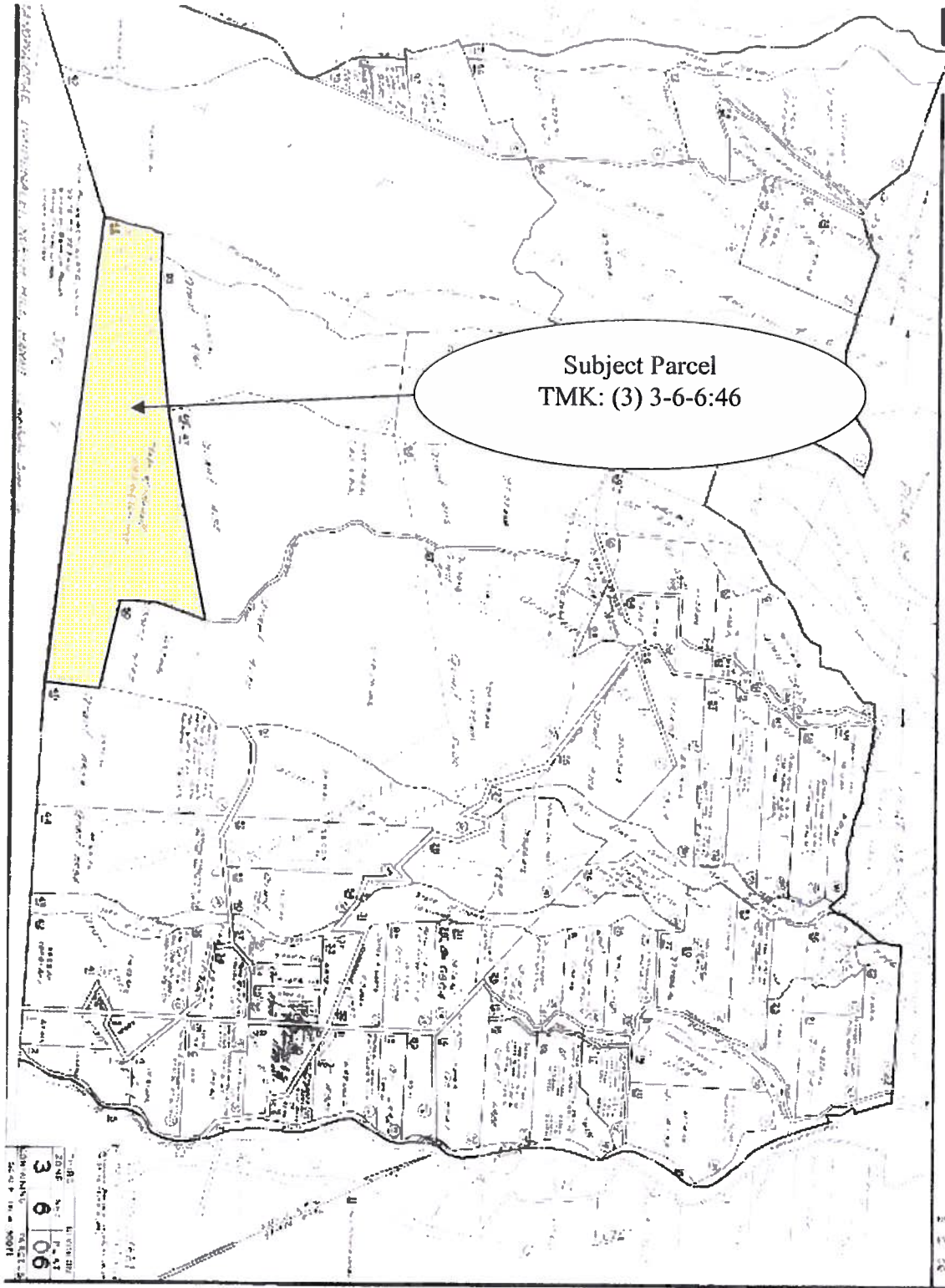


EXHIBIT A

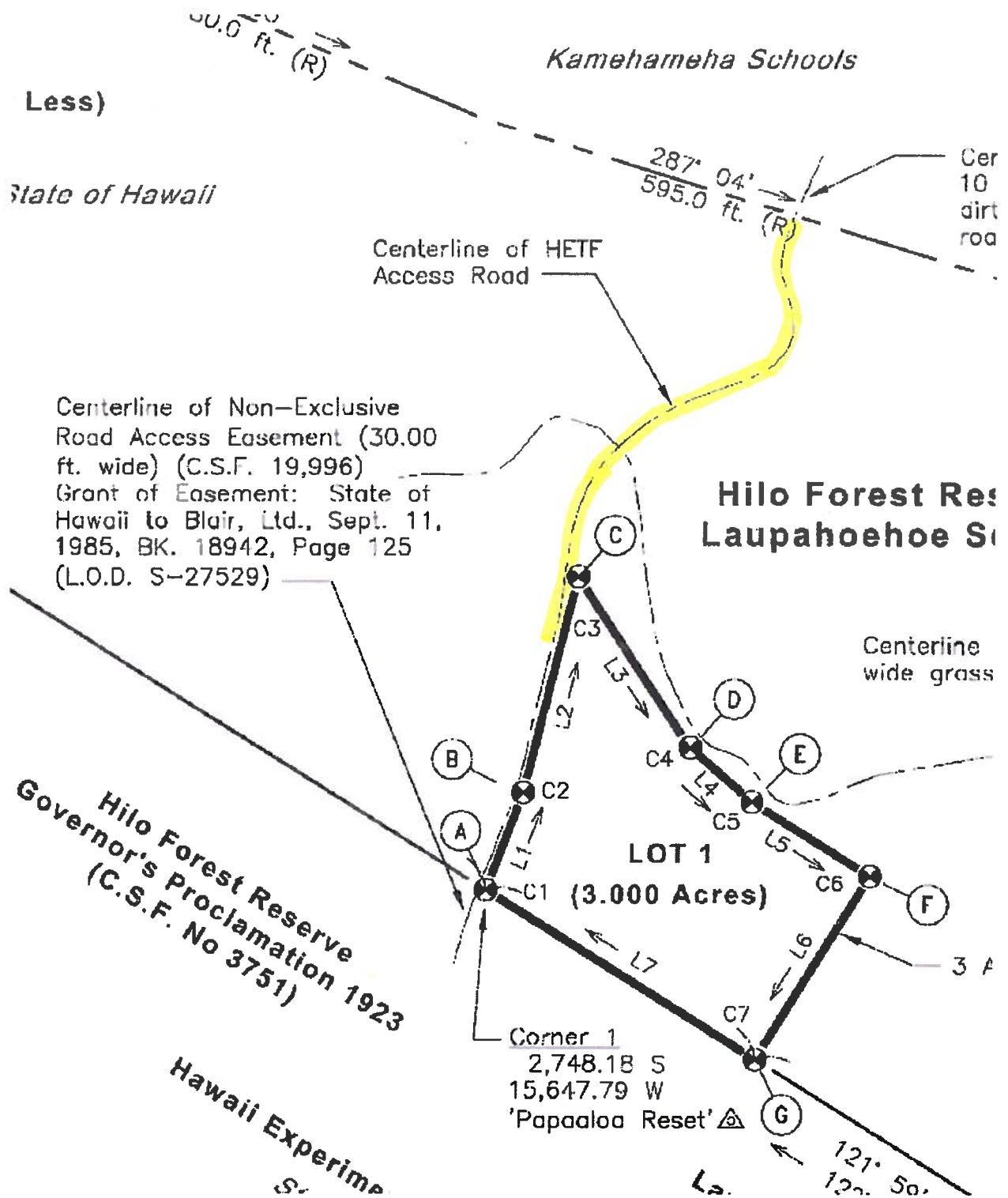


EXHIBIT C