

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

January 25, 2013

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

Hawaii

**Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes, Ooma 1<sup>st</sup> & Kalaoa 1<sup>st</sup> – 4<sup>th</sup>, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091.**

APPLICANT:

Time Warner Cable Inc., a Delaware Corporation dba Oceanic Time Warner Cable

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of NELHA-HOST PARK situated at Ooma 1<sup>st</sup> & Kalaoa 1<sup>st</sup> – 4<sup>th</sup>, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:042 & 091, as shown on the attached map labeled Exhibit A.

AREA:

2.76 acres, more or less. Ten (10) foot wide corridor over the length of the access road. Approximately 120,330 sq. ft. To be more accurately determined by survey.

ZONING:

State Land Use District: Urban  
County of Hawaii CZO: Open/MG/ML

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-5619 (GLS-5619), Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, for the purpose to solely develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient. Lease to expire on July 2, 2046 with the next rental reopening scheduled for July 2, 2021.

Also encumbered by Land Office Deed No. 28707 to Hawaiian Telcom, Inc., for perpetual, non-exclusive utility easement purposes and Land Office Deed No. 28990 to the United States of America, Department of Transportation, Federal Aviation Administration as an airspace easement.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove underground fiber optic communication transmission lines over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3 and 4. Refer to attached 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:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey map with metes and bounds description for the 10 foot wide easement from Queen Kaahumanu Highway to the end of the joint utility conduit in accordance with State of Hawaii Department of Accounting and General Services mapping standards and at Applicant's own cost.

REMARKS:

The subject property is encumbered by General Lease No. S-5619 to Natural Energy Laboratory of Hawaii Authority (NELHA), for the purpose to solely develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

NELHA has requested Time Warner Cable Inc., dba Oceanic Time Warner Cable (OTWC), to provide a fiber optic communication connection from Queen Kaahumanu Highway through the NELHA facilities at Keahole Point, North Kona, Hawaii.

The proposed communications fiber optic cable will be placed inside an existing underground, joint utility conduit which traverses the NELHA facility from Queen Kaahumanu Highway to the Keahole Point Lighthouse area.

The joint utility conduit lies within the boundary of the NELHA Access and Utility Corridor Easement "A" (80 feet wide) as depicted on H.S.S. Plat 315-A map (refer to attached Exhibit C).

Easement "A" exists as TMK: (3) 7-3-043:091 and stops at the boundary line of parcel 42 (refer to attached Exhibit A). The joint utility conduit within the boundary of parcel 42 is without the benefit of an easement.

At its meeting of March 13, 1998, agenda item D-11, the Board approved the sale of a perpetual, non-exclusive easement in favor of GTE Hawaiian Telephone Company Inc. (now Hawaiian Telcom, Inc.) for pair gain, cross connect equipment site and existing underground lines purposes. This action created an easement (T-1) along the joint utility conduit within the boundary of parcel 42 of about 1,650 feet long and 10 feet wide.

OTWC proposes to purchase a 10 foot wide easement from Queen Kaahumanu Highway to the end of the joint utility conduit. The easement will be located within the boundaries of

Easements “A” and “T-1” then continue an additional 1,400 feet to the end of the joint utility conduit within parcel 42. (refer to attached Exhibit D).

Time Warner Cable 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.

Since the joint utility conduit is already in place, no trenching will be required. Only minor modifications to enlarge some of the conduit access hand-holes will be needed. Otherwise, the work to be done consists of pulling fiber optic cable through the existing conduit. The disposition of this easement does not involve any expansion or change of use beyond that previously existing. Therefore, staff believes this transaction to be exempt from the preparation of an environmental assessment.

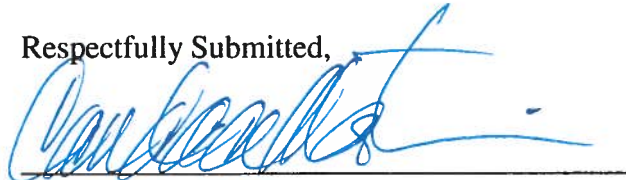
Responses from various agencies to the request for comments are in the table below. The Department of Health – Environmental Health Management responded with a statement regarding the inability of science to correlate adverse health impacts to electromagnetic radiation, ending with the caveat “potential health impacts associated with electromagnetic radiation cannot be determined at this time.”


<b>State Agencies</b>	<b>Response</b>
Dept. of Health - Environmental Health	Electromagnetic Radiation Statement
Dept. of Hawaiian Homes Land	No Response
DLNR - Historic Preservation	No Response
DLNR - Conservation and Coastal Lands	No Response
DOT - Airports Division	No Response
DOT - Highways Division	No Response
<b>Hawaii County Agencies</b>	<b>Response</b>
Planning Dept.	No Response
Parks & Recreation	No Response
Dept. of Public Works	No Response
Dept. of Water Supply	No Objections
Fire Department	No Response
Police Department	No Objections or Comments
Environmental Management	No Response
<b>Other Agencies</b>	<b>Response</b>
Office of Hawaiian Affairs	No Response
NELHA	No Objections
HELCO	No Response
Hawaiian Telcom, Inc.	No Response

RECOMMENDATION: That the Board:

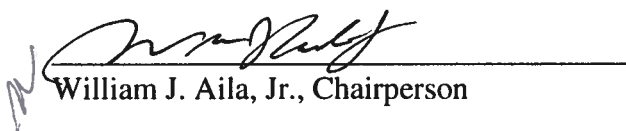
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Time Warner Cable Inc. covering the subject area for underground fiber optic utility cable 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 perpetual 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.
3. Issue an immediate right-of-entry permit to Time Warner Cable Inc. for the purposes of construction activities under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

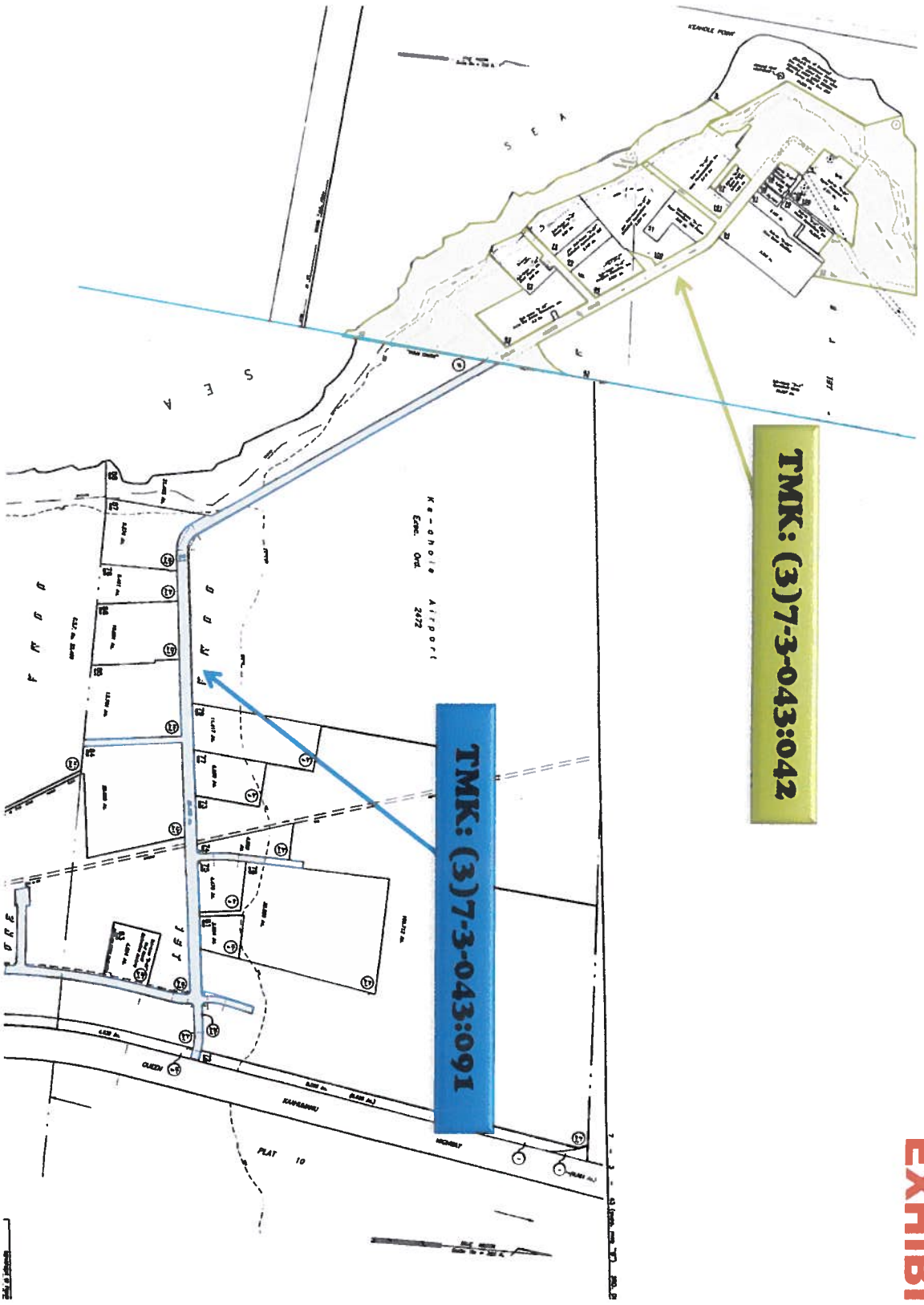


 Candace Martin  
Land Agent

APPROVED FOR SUBMITTAL:



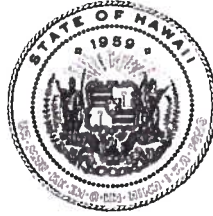
William J. Aila, Jr., Chairperson



**TMK: (3)7-3-043:042**

**TMK: (3)7-3-043:091**

**EXHIBIT A**



## EXHIBIT B

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

ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORY PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

January 21, 2013

### EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes

**Project / Reference No.:** PSF 12HD-170

**Project Location:** Ooma 1<sup>st</sup> & Kalaoa 1<sup>st</sup> – 4<sup>th</sup>, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091

**Project Description:** Natural Energy Laboratory of Hawaii Authority (NELHA) has requested Time Warner Cable Inc., dba Oceanic Time Warner Cable (OTWC), to provide a fiber optic communication connection from Queen Kaahumanu Highway through the NELHA facilities at Keahole Point, North Kona, Hawaii. The proposed communications fiber optic cable will be placed inside an existing underground, joint utility conduit which traverses the NELHA facility from Queen Kaahumanu Highway to the Keahole Point Lighthouse area.

Since the joint utility conduit is already in place, no trenching will be required. Only minor modifications to enlarge some of the conduit access hand-holes will be needed. Otherwise, the work to be done consists of pulling fiber optic cable through the existing conduit. The disposition of this easement does not involve any expansion or change of use beyond that previously existing.

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

**Exemption Class No.:** In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to

Exemption Class No. 3, that states "Construction and location of single, new small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to:...(d) water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Consulted Parties

Not applicable

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



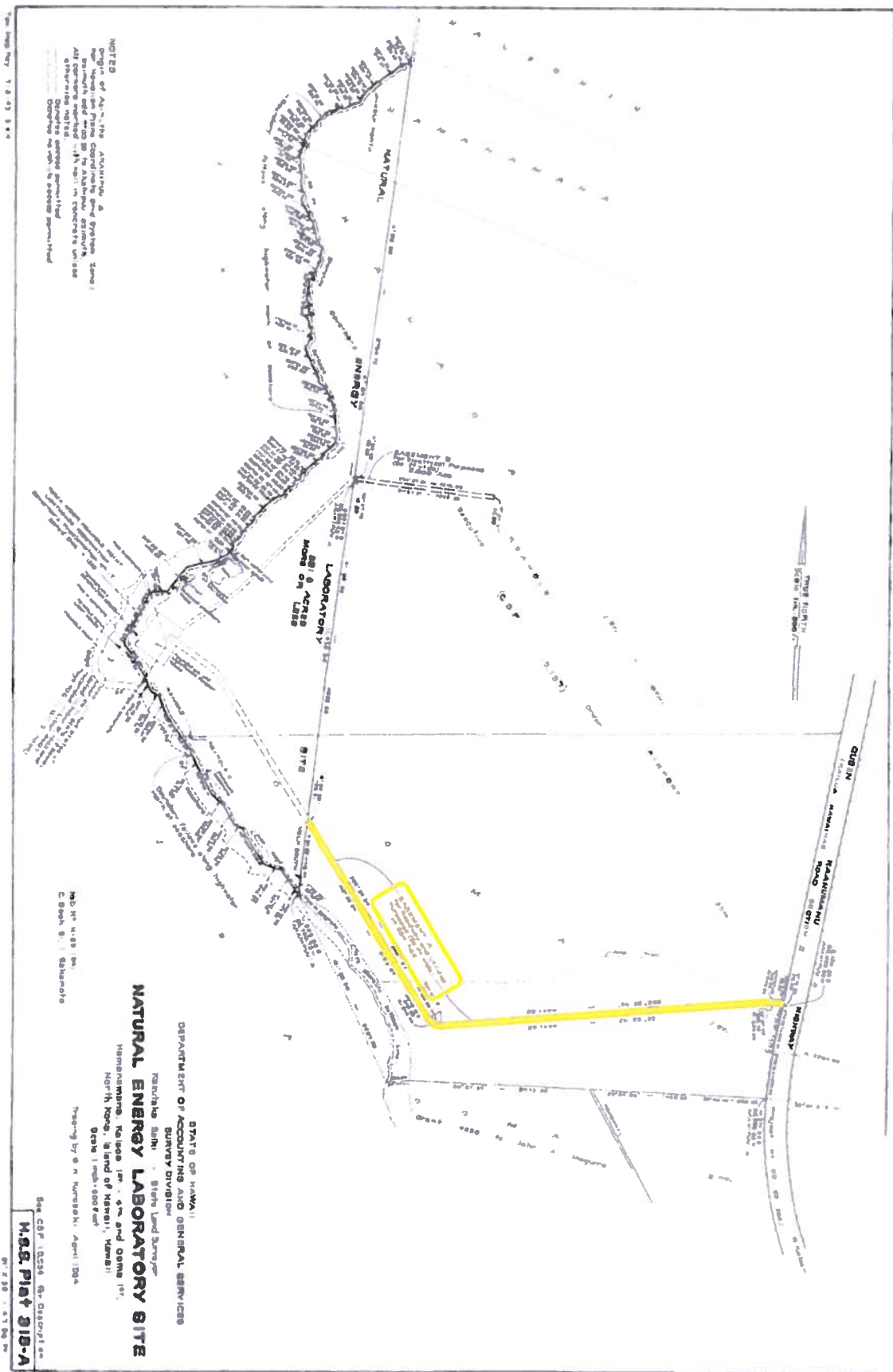
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

1/14/13

\_\_\_\_\_  
Date



**EXHIBIT C**



NOTED of Aerial Photo, April 1964, showing the location of the 830-acre area on the eastern shore of the island of Hawaii, and showing the location of the 830-acre area on the eastern shore of the island of Hawaii, and showing the location of the 830-acre area on the eastern shore of the island of Hawaii.

STATE OF HAWAII  
 DEPARTMENT OF ACQUIRING AND GENERAL SERVICES  
 SURVEY DIVISION  
 Natural Energy Laboratory Site  
 830 Acres More or Less  
 Natural Energy Laboratory Site  
 830 Acres More or Less  
 Prepared by: S. K. Kuroki, April 1964

See G.P.F. 10258, for description  
**M.S.G. Plat 31B-A**  
 of 7.30 - 7.37 Sq. M.

**MELHA Facility**

**NELHA Access Road**

**EXHIBIT D**

