

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

June 14, 2013

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

PSF No: 10OD-084

OAHU

Amend Prior Board Action of July 22, 2011, Item D-9 by Changing the Consideration Payable for Easements 1 and 2 from Fair Market Value to Gratis and Removing Easement 3 from the Request; Grant of Perpetual Non-Exclusive Easements and the Issuance of a Management Right-of-Entry to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. for Telecommunication and Electrical Transmission Purposes, Honolulu, Oahu; Tax Map Key: (1) 2-1-024:001 portion.

BACKGROUND:

On July 22, 2011, under agenda item D-9, the Board authorized the issuance of a perpetual, non-exclusive easement for telecommunication and electrical transmission purposes to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. The request consisted of three easements, namely, Easement 1 (95 square feet), Easement 2 (8,313 square feet), and Easement 3 (1,020 square feet). A copy of the approved submittal is attached as **Exhibit 1**. Appraisal determined the consideration for the easements at \$1,600, \$238,300, and \$29,200 respectively.

After the applicants received the offer letter demanding the payment of the consideration mentioned above, the applicants requested, by letter attached as **Exhibit 2**, that the consideration for Easement 2 be waived on the grounds that the easement was once under a portion of the former Beretania Street. The construction of the State Capitol and the realignment of Beretania Street happened in the mid-1960s causing the easement to fall outside the road, but under the State Capitol grounds. Staff notes that the utility easement falling under the City and County of Honolulu’s right-of-way would not require any easement from the State.

Upon review of the situation, staff believes that the realignment of Beretania Street did trigger the need for an easement, but the easement should be granted as gratis.

Further, staff has reviewed the legal description of the Easement 1, and notes that the source of title is described as “... a portion of the former Miller Street abandoned by the City and County of

Honolulu by Resolution No. 394 and conveyed to the State of Hawaii ... ” Therefore, Easement 1 should be treated in the same manner as Easement 2 described above, i.e. easement granted at gratis.

Subsequently, Hawaiian Telcom, Inc. (“HTI”) advised staff by email that it no longer requires Easement 3 because HTI does not have any improvement/facilities with Easement 3 as confirmed by its engineer’s site inspection. Same situation applies to Hawaiian Electric Company, Inc. Therefore, staff recommends the Board remove Easement 3 from the subject request.

Therefore, staff recommends the Board amend its prior action of July 22, 2011, item D-9, by changing the consideration payable for Easements 1 and 2 from fair market value to gratis based on the circumstances described above, and removing Easement 3 from the request.

For the Board’s reference, the county zoning for the subject parcel should be B-2, instead of P-2 as mentioned in the 2011 submittal.

RECOMMENDATION: That the Board:

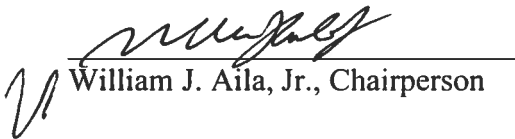
1. Amend its prior Board action of July 22, 2011, under agenda item D-9 by changing the consideration payable for Easements 1 and 2 from fair market value to gratis and removing Easement 3 from the request based on the circumstances described above.
2. All terms and conditions listed in its July 22, 2011 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

July 22, 2011

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

PSF No.: 10OD-084

OAHU

Grant of Perpetual Non-Exclusive Easements and the Issuance of a Management Right-of-Entry to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. and for Telecommunication and Electrical Transmission Purposes, Honolulu, Oahu; Tax Map Key: (1) 2-1-024: 001 portion

APPLICANT:

Hawaiian Telcom, Inc. whose business and mailing address is:
P.O. Box 2200, Honolulu, Hawaii 96841

Hawaiian Electric Company, Inc. whose business and mailing address is:
P.O. Box 2750, Honolulu, Hawaii 96840-0001.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Honolulu, Oahu; identified by Tax Map Key: (1) 2-1-024: 001 portion, as shown on the attached map labeled Exhibit 1.

AREA:

9,428 square feet, more or less.

ZONING:

State Land Use District: Urban

City and County of Honolulu Zoning: P-2, General Preservation

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 22, 2011

EXHIBIT " 1 "

TRUST LAND STATUS:

Section 5 (a) lands of the Hawaiian Admission Act

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

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 4236, Set aside to the Department of Accounting and General Services for State Capitol purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove telecommunication and electrical transmission lines, poles, guy wires and anchors 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, 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. 1, that 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation.". See Exhibit 2.

APPLICANT DCCA VERIFICATION :

Place of business registration confirmed:	YES <u>x</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>x</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>__</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine a one-time payment;
- 2) Process and obtain subdivision at Applicant's own cost.

REMARKS:

Hawaiian Telcom, Inc. (HTI) and Hawaiian Electric Company, Inc. (HECO) are requesting non-exclusive easements for existing telecommunication and electrical transmission lines and equipment located over State owned property. The subject transmission lines and equipment were originally located within Beretania Street, prior to its realignment. According to the applicant, the realignment of Beretania Street and the construction of the State Capitol Building circa 1964-1965, had created the realignment. As a result, the location of many of the subject lines and equipment had subsequently fallen within the current boundary of the State Capitol site.

For purposes of resolving this matter, HTI and HECO are requesting the approval for three easement locations situated within the subject site. Easement No. 1 consists of 95 square feet that includes HECO manholes and underground lines. Easement No. 2 consists of 8,313 square feet of area that includes manholes, pullboxes and underground lines for both HECO and HTI. Easement No. 3 consists of 1,020 square feet that includes pullboxes and underground lines for HTI. See Exhibit 1.

Further, pursuant to Board approval of the easements, a construction and management right-of-entry is also being requested from the State; allowing the work to proceed during the interim period required to finalize the easement document.

HTI and HECO have 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.

The Department of Health had no comments regarding the subject request.

The State Historic Preservation Division, Commission on Water Resource Management, Department of Accounting and General Services, Department of Planning and Permitting, Department of Facility Maintenance and the Board of Water Supply have not responded to staff's request for their comments, as of the requested deadline.

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 perpetual non-exclusive easements to Hawaiian Telcom, Inc and Hawaiian Electric Company, Inc. covering the subject area for telecommunication and electrical transmission 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. Issuance of a construction and management right-of-entry to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. covering the subject area for telecommunication and electrical transmission 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 document 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,

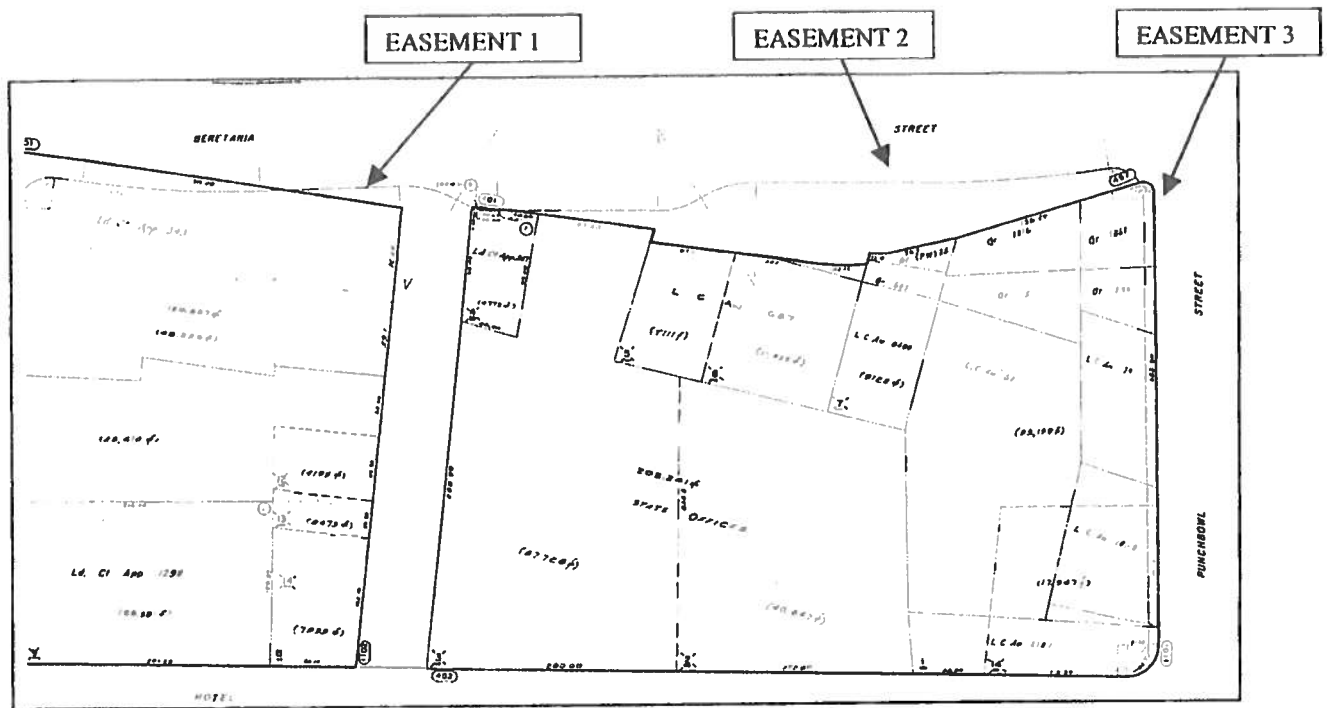


Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson



TAX MAP KEY: (1) 2-1-024: 001 PORTION

EXHIBIT 1

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 Easements and the Issuance of a Management Right-of-Entry to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Telecommunication and Electrical Purposes.

Project / Reference No.: PSF 100D-084

Project Location: Honolulu, Oahu; Tax Map Key: (1) 2-1-024: 001 portion.

Project Description: Electrical and Telecommunication Easements

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 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. 1, that 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Since the proposed non-exclusive easements include pre-existing transmission and electrical lines and equipment, the subject request is expected to have negligible or no expansion or change of use beyond that previously existing, and is therefore exempt from the preparation of an environmental assessment.

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. Afa Jr., Chairperson



Date

EXHIBIT 2



RECEIVED
LAND DIVISION

2012 JUL -2 A 10: 07

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

June 29, 2012

Mr. Barry Cheung
District Land Agent
Department of Land & Natural Resources
P. O. Box 621
Honolulu, HI 96809

Request for Easement, Beretania Street Realignment and State Capitol Project,
Honolulu, Oahu, TMK 2-1-024:001 por., Ref. No. 10OD-084

Dear Mr. Cheung:

Pursuant to Timmy Chee's letter dated May 24, 2012, and the previous correspondence, conversations, emails and meetings concerning this easement request, Hawaiian Electric Company (HECO) and Hawaiian Telcom, Inc. (HTI) are respectfully requesting a re-evaluation of the issue of whether this request is entirely, or in part, the result of a "government project" as set forth in HRS 171-95(b)(1).

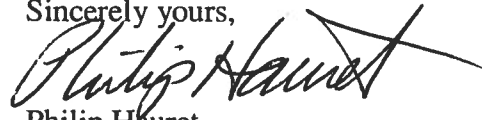
As stated in our letter of May 19, 2010, "The subject underground lines were realigned and deepened as a result of the realignment of Beretania Street and the construction of the State Capitol in the 1964-65 time frame. The realignment of Beretania in a mauka direction resulted in many of these utility lines being located on the Capitol property; previously they were in Beretania Street." And although it cannot be said that these lines directly serve the State Capitol, they were deepened and slightly relocated to accommodate the Capitol/Beretania Street project, particularly the vehicle ramp to the Capitol garage underneath Beretania Street. If it was not for this government project, most of these lines would have remained within the City road right of way and would not require easement coverage. We believe it is only fair that in light of the above circumstances the subject easements, especially Easement 2 on the enclosed map that is contained entirely within the former Beretania Street right of way, be granted gratis. This aspect of the request was discussed in our meeting on June 2, 2010, but apparently was not given further consideration.

EXHIBIT " 2 "

Mr. Barry Cheung
June 29, 2012
Page 2

We would appreciate your re-evaluation of this matter. If you have any questions, or require additional information about our request, you can reach me at 543-4735, or at phil.hauret@heco.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Philip Hauret", with a long horizontal flourish extending to the right.

Philip Hauret
Director, Land & Rights of Way

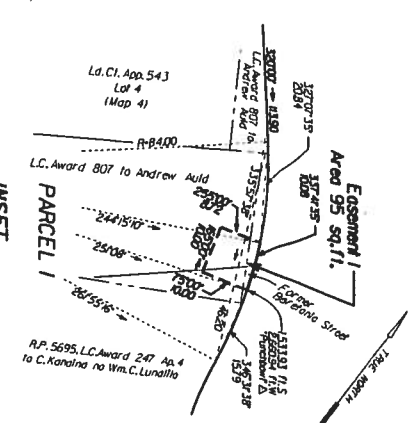
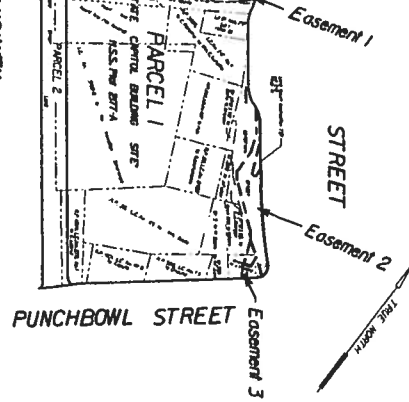
Enclosure

Cc: Karen Sunahara-Teruya, Hawaiian Telcom (w/enc)

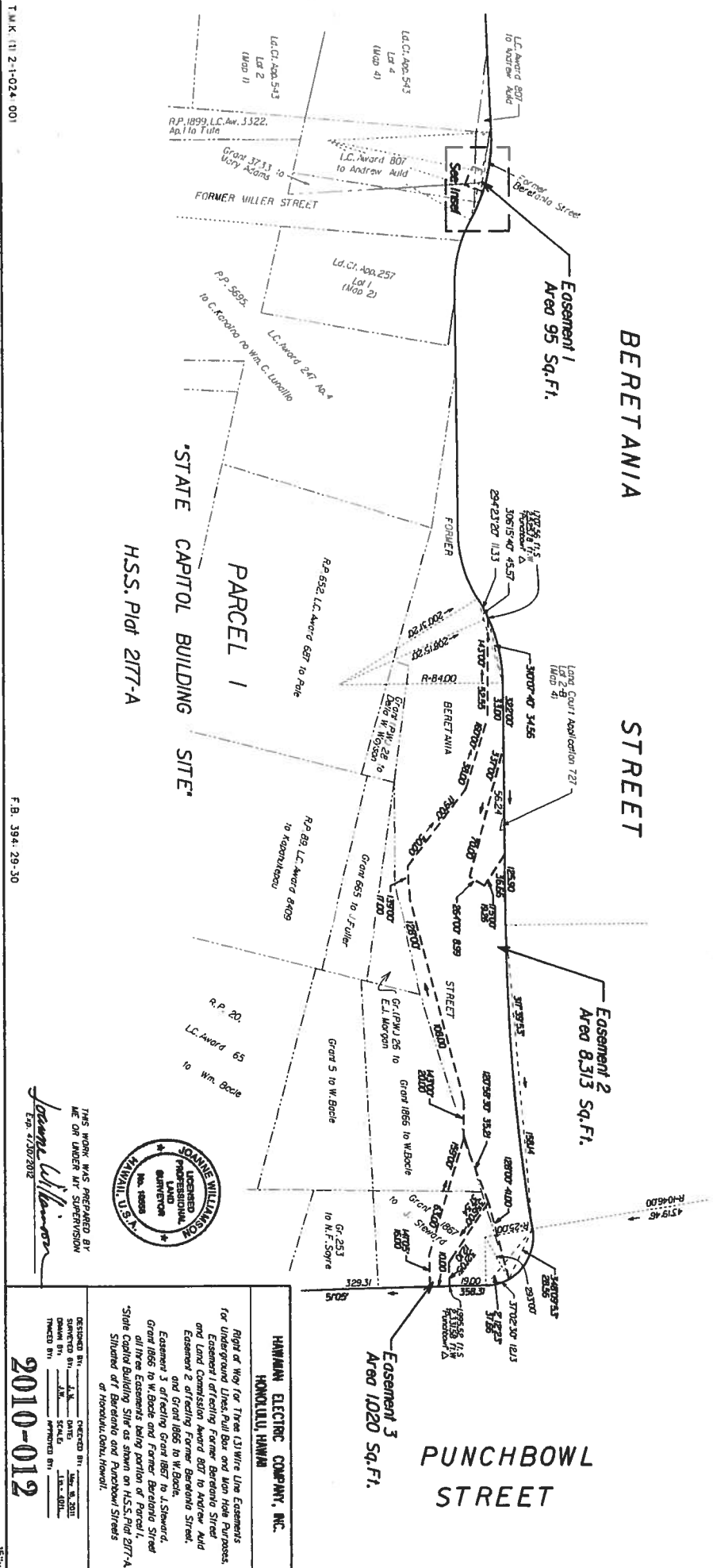
RICHARDS STREET

BERETANIA STREET

VICINITY
Scale 1/4" = 200 Ft.



BERETANIA STREET



T.M.K. (1) 2-1-024-001

F.B. 394-29-30

THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION
Joanne Williams
Exp. 7/20/2012



HAWAIIAN ELECTRIC COMPANY, INC.
HONOLULU, HAWAII

Right of Way for Three (3) Wire Line Easements for Underground Lines, Full Box and Man Hole Purposes, Easement 1 of existing Former Beretania Street and Land Commission Award 807 to Andrew Auld Easement 2 of existing Former Beretania Street and Grant 1865 to Wm. Beale Street, Easement 3 of existing Former Beretania Street and Grant 1865 to Wm. Beale Street, Easement 3 of existing Former Beretania Street and Grant 1865 to Wm. Beale Street, State Capitol Building Site as shown on H.S.S. Plat 2177-A, Shaded at Beretania and Punchbowl Streets at Honolulu, Oahu, Hawaii.

DESIGNED BY: *J.W.* CHECKED BY: *J.W.*
 DRAWN BY: *J.W.* DATE: *11-20-10*
 PLOTTED BY: *J.W.* SCALE: *1/4"=200'*
 TRACED BY: *J.W.*

2010-012