

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

November 13, 2015

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

Ref. No.: 15HD-116

HAWAII

Amend Prior Board Action of October 23, 2015, Item D-3, Set Aside, Grant of Easement and Construction Right-of-Entry to the Department of Transportation, Highways Division for Rockfall Mitigation and Stabilization Purposes, Relating to Federal Aid Project No. NH-019-2(41) at Laupahoehoe, North Hilo, Hawaii, Tax Map Key: (3) 3-6-004: Portions of 015, 017 & Homestead Road. The purpose of the amendment is to change the disposition of a portion of Homestead Road from a construction right-of-entry to a set-aside by Governor's executive order.

BACKGROUND:

At its meeting of October 23, 2015, under agenda item D-3, the Board of Land and Natural Resources approved as submitted a request by the Department of Transportation, Highways Division (DOT) for set asides, a grant of easement and construction right-of-entry for rockfall mitigation and stabilization purposes on the subject lands. (Exhibit A)

REMARKS:

Upon publishing the final Land Board agenda for the October 23, 2015 meeting, it was noted that the staff submittal contained an error. A portion of the Homestead Road which was to have been a set aside to DOT was instead approved for a construction right-of-entry. An amendment could not be made during the Land Board Meeting due to State sunshine law requirements.

As a result, we are now making a request to amend the Board's prior action of October 23, 2015, under item D-3, to correct the error made in the staff submittal, to reflect a need for a set aside over a portion of the Homestead Road identified as Parcel 2, instead of granting a construction right-of-entry.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 23, 2015, under agenda item D-3, by deleting the entire Recommendation Section and replacing with the following:
 - A. Approve of and recommend to the Governor the issuance of an executive order setting aside Parcel 2, Parcel 5 and Parcel 6 as identified in the table on page 2 of the staff submittal of October 23, 2015, item D-3, to the Department of Transportation, Highways Division, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - 1) The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - 2) 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;
 - 3) Review and approval by the Department of the Attorney General; and
 - 4) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - B. Authorize the issuance of a perpetual, non-exclusive easement to the Department of Transportation, Highways Division, covering the area identified as Easement 2, for access purposes, relating to proposed rock fall mitigation and stabilization activities under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - 1) The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - 2) Review and approval by the Department of the Attorney General; and
 - 3) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - C. Authorize the issuance of an immediate management and construction right-of-entry to the Department of Transportation, Highways Division, its

consultants, contractors and/or persons acting for or on its behalf, over portions of the Homestead Road, identified as Construction Parcel C-1, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

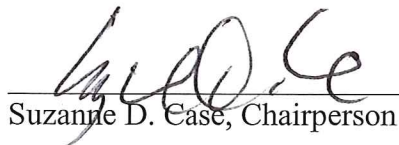
- 1) The standard terms and conditions of the most current construction and management right-of-entry permit form, as may be amended from time to time;
 - 2) This right-of-entry is effective upon Land Board approval and shall terminate upon issuance of the grant of easement document; and
 - 3) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Except as amended hereby, all terms and conditions listed in its October 23, 2015 approval 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 23, 2015

PSF No.: 15HD-116

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

HAWAII

Set Aside to the Department of Transportation, Highways Division for Rockfall Mitigation and Stabilization Purposes, Relating to Federal Aid Project No. NH-019-2(41) at Laupahoehoe, North Hilo, Hawaii, Tax Map Key: (3) 3-6-004: Portions of 015 & 017;

Grant of Perpetual, Non-Exclusive Easements to the Department of Transportation, Highways Division, Under Federal Aid Project No. NH-019-2(41) at Laupahoehoe, North Hilo, Hawaii, Tax Map Keys: (3) 3-6-004: Portion of 017; and

Construction Rights-of-Entry to the Department of Transportation, Highways Division for Rockfall Mitigation and Stabilization Purposes, Federal Aid Project No. NH-019-2(41) onto State Parcels at Laupahoehoe, North Hilo, Hawaii, Tax Map Keys: (3) 3-6-004: Portion of Homestead Road.

APPLICANT:

DEPARTMENT OF TRANSPORTATION, Highways Division (DOT).

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.
Section 171-13, Hawaii Revised Statutes, as amended.
Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Laupahoehoe, North Hilo, Hawaii, Tax Map Keys: (3) 3-6-004: Portions of 015 & 017, and Homestead Road, as shown on the attached map labeled Exhibit A.

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

October 23, 2015 Go

EXHIBIT A

TMK/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCES	AREA	EASEMENT AREA
		LUC	CZO		(acres)	(square foot)
(3) 3-6-004: por Homestead Rd.	Laupahoehoe N. Hilo			Vacant - Proposed Parcel 2	.0510	Parcel 2 2,223
				Vacant - Proposed Construction Parcel C-2	.2575	Const Parcel 2 11,218
(3) 3-6-004: portion of 015	Laupahoehoe N. Hilo	Cons	A-20a		61.150	
				Land Office Deed No. S-28,144 to HELCO/1.739 ac.	(1.739)	
				Proposed Parcel 5	(2.4261)	Parcel 5 105,682
(3) 3-6-004: portion of 017	Laupahoehoe N. Hilo	Cons	A-20a	Vacant	34.110	
				Proposed Parcel 6	(2.0343)	Parcel 6 88,614
				Proposed Easement 2	(.1548)	Easement 2 6,742

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:

TMK: (3) 3-6-004:002	Encumbered by Land Office Deed No. S-11,616 to DOT Highways for the Hawaii Belt Highway.
TMK: (3) 3-6-004:015	Encumbered by Land Office Deed No. S-28,144 to the Hawaii Electric Light Company for overhead electrical transmission lines.
TMK: (3) 3-6-004:017	Vacant and unencumbered.
TMK: (3) 3-6-004:030	Remnant encumbered under DOT.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove anchored wire mesh panels and rockfall impact barriers over, under, and across State-owned land for mitigation and stabilization purposes.

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

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

A final environmental assessment was prepared and notice of its availability published in OEQC's Environmental Notice on July 8, 2010. Due to a rockfall event in 2012, the DOT was prompted to construct emergency rockfall mitigation measures. A supplemental Environmental Assessment was prepared to address the modifications.¹

DCCA VERIFICATION:

Not applicable. The Applicant as a government agency is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain written concurrence from all users of the subject land; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) Process and obtain subdivision at Applicant's own cost, if required;

REMARKS:

The Department of Transportation, Highways Division has determined that the October 15, 2006 earthquakes destabilized the slopes off the Hawaii Belt Road at specific locations adjacent to the Kaawalii, Laupahoehoe, and Maulua Gulches. The Hawaii Belt Road (State Route 19) is located on the northeastern coastline of the island and is the

¹ Applicant's proposed project is also authorized under the Governor's 2006 Emergency Proclamation regarding relief from damage resulting from the October 15, 2006 earthquake. The proclamation suspended a number of statutes, including HRS Chapter 343.

primary thoroughfare between Hilo and Kona. Following the coastline between Hilo and Honokaa, the highway crosses Maulua, Laupahoehoe and Kaawalii gulches and borders accompanying steep and sometimes unstable rock cut cliffs. Daily clearing of the fallen debris is required at each of these gulch crossings, and cases of boulders of up to two feet diameter falling into the roadway after heavy rains have been experienced. Falling debris presents a hindrance and expense to DOT Highways due to the need for constant cleanup, as well as obvious safety risks to highway travelers along the Hamakua coast.

By memorandum dated November 9, 2009, Brennon Morioka, Director of the Department of Transportation requested a right-of-entry onto State lands for its Emergency Earthquake Rockfall Repair Project at Laupahoehoe, North Hilo, Hawaii, Tax Map Key: (3) 3-6-004:015 & 017. The project required temporary construction parcels to survey rock conditions, conduct rock removal and demolition and to allow slope mitigation and stabilization. Portions of the property were used as an access route from the highway to the crest of the slope to provide access to transport equipment and for debris removal. The project was anticipated to take six months.

At its meeting of January 8, 2010, item D-9, the Land Board approved the issuance of a right-of-entry for Emergency Rockfall Repair Project under Federal Aid Project No. ER-15(21) at Laupahoehoe, NorthHilo, Hawaii, TMK: (3) 3-6-004: portions of 015 & 017.

By memorandum dated July 14, 2015, Chris M. Yamamoto, Right-of-Way Manager, DOT-Highways, requested set asides, grant of easements and a construction parcel for proposed rockfall mitigation and stabilization measures along the Hawaii Belt Road at Laupahoehoe Gulch. **(Exhibit B)** Improvements will include the installation of an anchored wire mesh panels along the existing steep rock cut cliffs adjacent to the roadway entrances and exits of Laupahoehoe Gulch. Areas of interest are identified as: Parcel 2, consisting of .0510 acres (2,223 sq. ft.) and Construction Parcel C-1, for .2575 acres (11,218 s.f.), on portions of the homestead road; a set aside of Parcel 5 consisting of 2.4261 acres (105,682 s.f.) on Parcel 15; a set aside of Parcel 6 consisting of 2.0343 acres (88,614 s.f.); and Easement 2 for .1548 acres (6,742 s.f.) on Parcel 17. The purpose of these measures is to improve highway safety along the Laupahoehoe Gulch by improving upon the present unsafe conditions resulting in falling rocks, boulders, and associated sediments onto the highway.

Research indicates that Parcels 2 & 30 of the DOT request is already under the jurisdiction of the Department of Transportation, Highways Division as these two parcels were designated as highway remnants. At its meeting of March 23, 1984, item F-4, the Land Board authorized DOT Highways to dispose of surplus highway remnants, which includes Parcels 2 & 30.

The exemptions in the Governor's Proclamation dated October 15, 2006 are still in effect as confirmed by the Department of Transportation, Highways Division. Previously, the Office of Conservation and Coastal Lands was contacted and Sam Lemmo,

Administrator, confirmed that a CDUA was not required provided the work is conducted under the auspices of the proclamation.

No government agencies or community interest groups were solicited for comments as comments were solicited as part of the draft environmental assessment process, which was published in the OEQC's Environmental Notice on July 8, 2010, with a Supplemental Environmental Assessment being prepared in 2012.

Staff is recommending that the set aside, easements and right-of-entry for the construction parcel be granted on a gratis basis, as the project is government related.

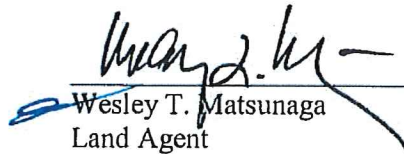
RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirements above:

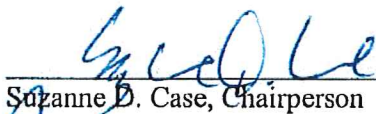
- A. Approve of and recommend to the Governor the issuance of an executive order setting aside Parcels 5 & 6 to the Department of Transportation, Highways Division, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - 1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - 2. 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;
 - 3. Review and approval by the Department of the Attorney General; and
 - 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the issuance of a perpetual, non-exclusive easement to the Department of Transportation, Highways Division, covering the area identified as Easement 2, for access purposes, relating to proposed rock fall mitigation and stabilization activities under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - 1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the issuance of an immediate management and construction right-of-entry to the Department of Transportation, Highways Division, its consultants, contractors and/or persons acting for or on its behalf, over portions of the Homestead Road, identified as Parcel 2 and Construction Parcel C-1, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current construction and management right-of-entry permit form, as may be amended from time to time;
 2. This right-of-entry is effective upon Land Board approval and shall terminate upon issuance of the grant of easement document; and
 3. 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:


Suzanne D. Case, Chairperson

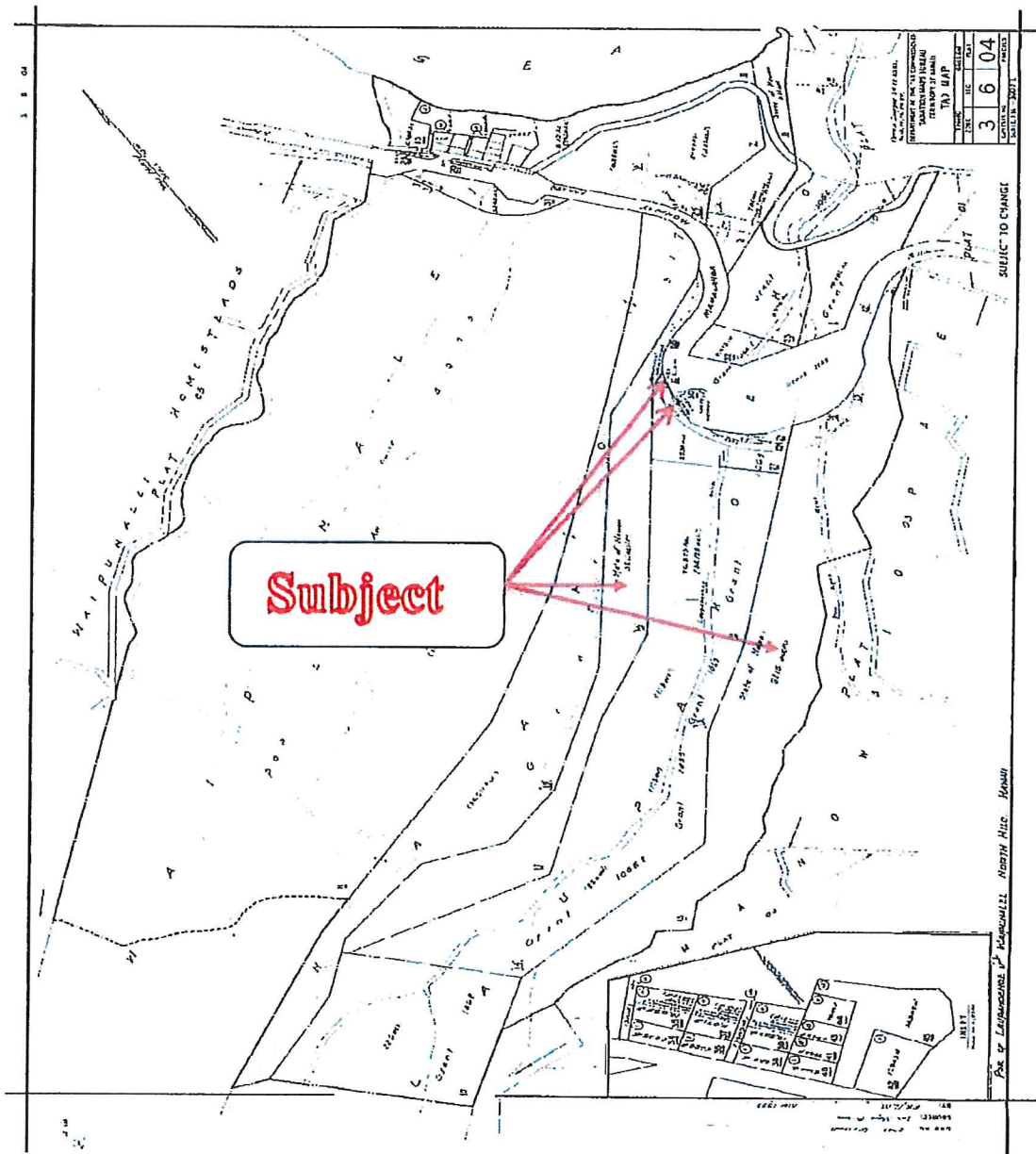
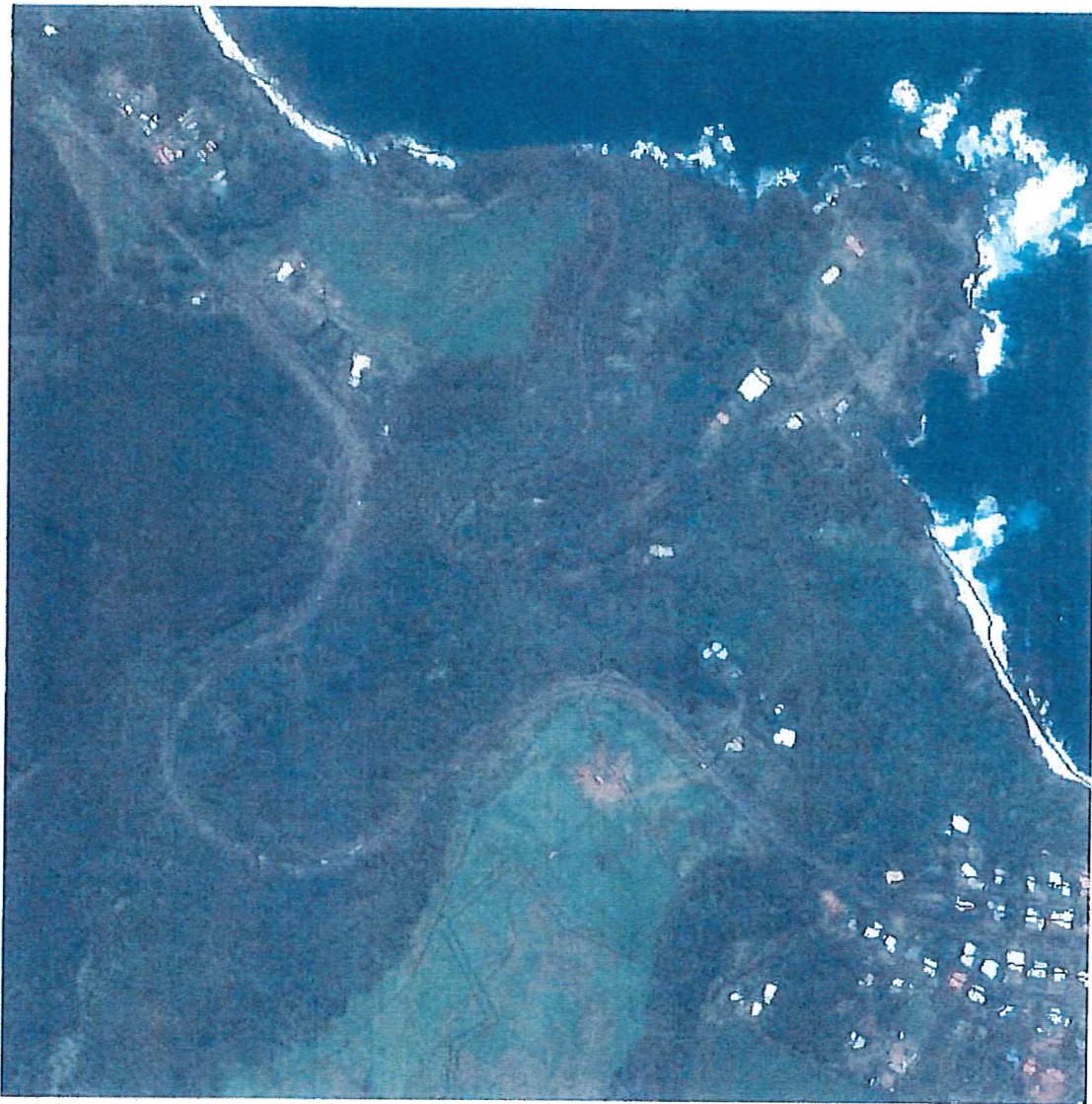


EXHIBIT A



General location map, Laupahoehoe, North Hilo, Hawaii.

EXHIBIT A

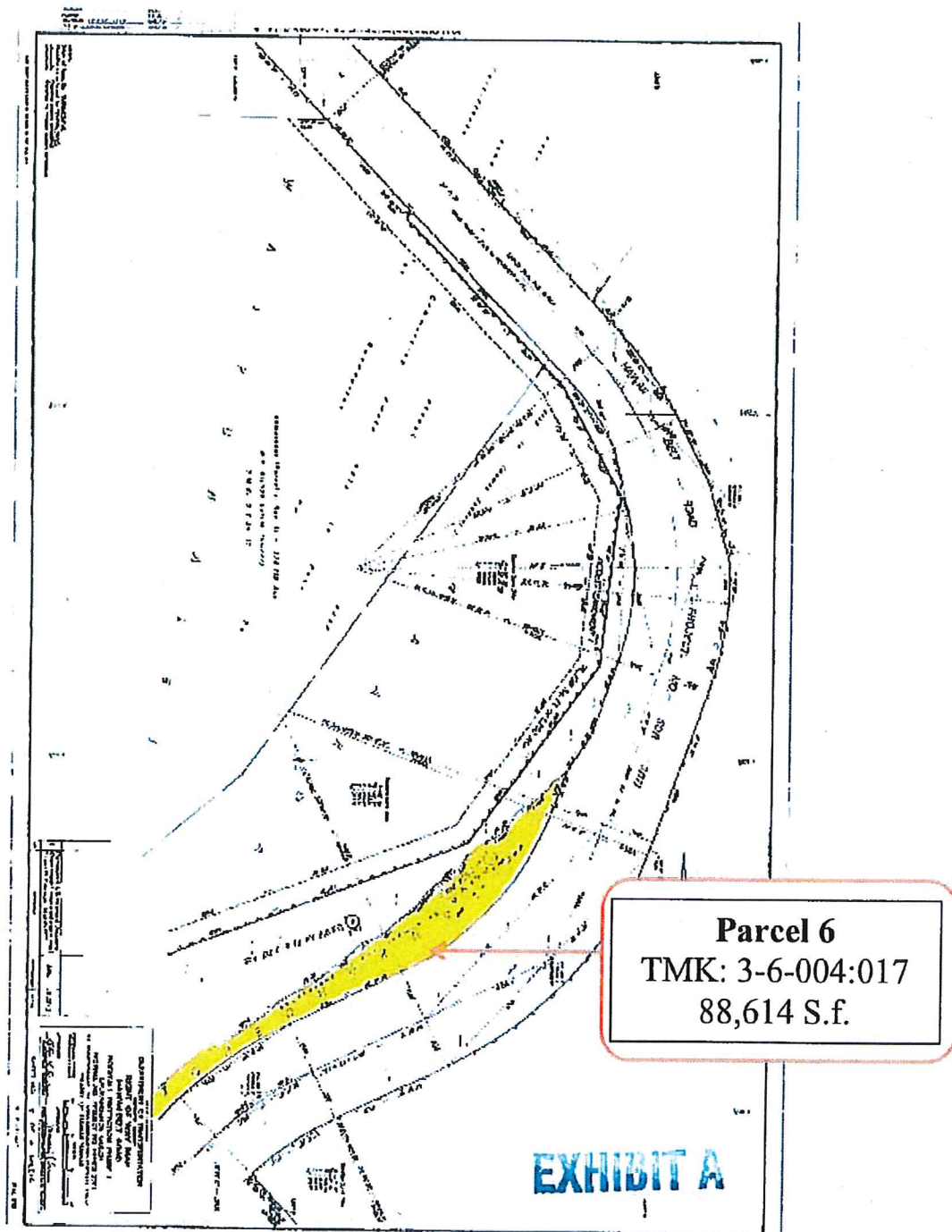


EXHIBIT A

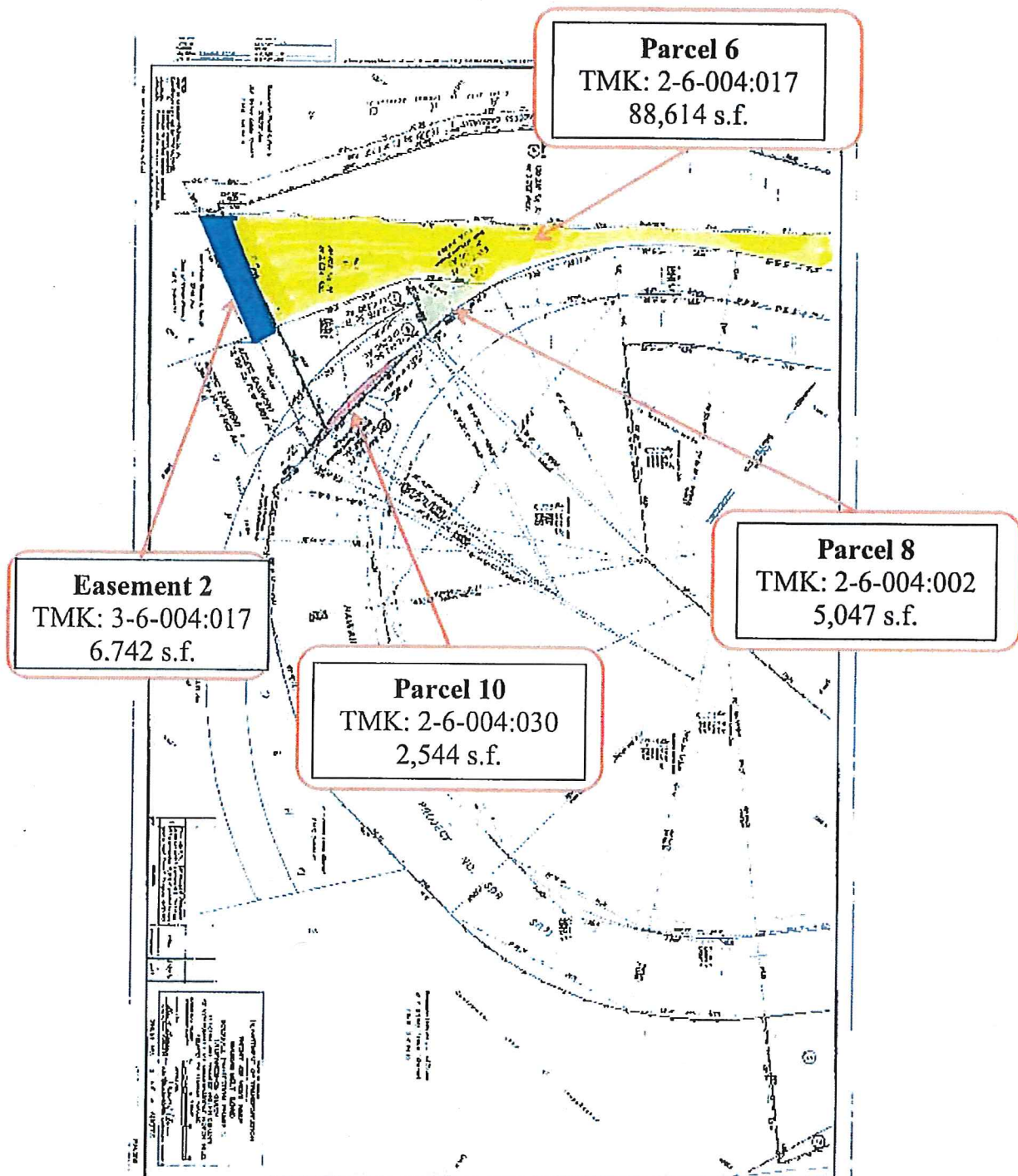


EXHIBIT A

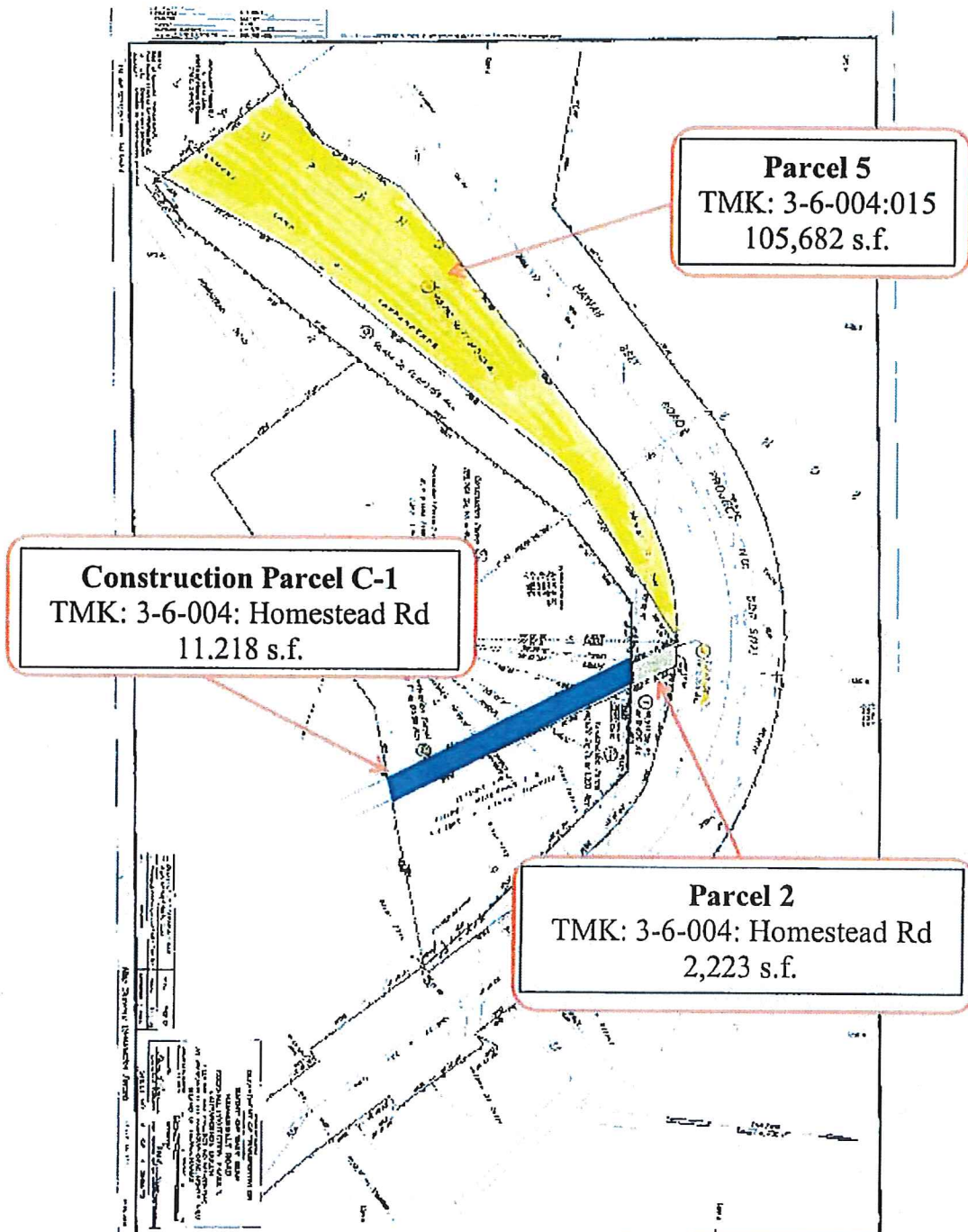


EXHIBIT A

LINCOLN Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
400 KAWAHLA BOULEVARD
KAPOLEI, HAWAII 96707

FRANK L. FUCHS
DIRECTOR

Deputy Director
JACK L. HILLARY
ROBERT H. HOSHI
JAMES H. SHAFER
DORRELL T. YOUNG

IN REPLY REFER TO:

1. CHAIRMAN, BOARD OF PUBLIC UTILITIES
2. CHAIRMAN, BOARD OF PUBLIC UTILITIES
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RIGHT OF WAY BRANCH ROOM 501

RIGHT OF WAY BRANCH ROOM 501

RIGHT OF WAY BRANCH ROOM 501

JUL 14 2015

HWY-RL 3.91919

TO: RUSSELL Y. TSUJI, ADMINISTRATOR
LAND MANAGEMENT DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: CHRIS M. YAMAMOTO
RIGHT-OF-WAY MANAGER

SUBJECT: HAWAII BELT ROAD
ROCKFALL PROTECTION PHASE I, LAUPAHOEHOE GULCH
FEDERAL AID PROJECT NO. NH-019-2(41)
AT WAIPIUNAI TO MANOWAIOPAE, NORTH HILO, HAWAII
TAX MAP KEY NO. (3) 3-6-004-015, 3-6-004-017, 3-6-004-002,
3-6-004-030, 3-6-4-HOMESTEAD ROAD (PORTIONS)

In connection with the subject project, The State of Hawaii, Department of Transportation, Highways Division (DOT) proposes the construction of rockfall mitigation and stabilization measures along Hawaii Belt Road at Laupahoehoe Gulch. Improvements include the installation of anchored wire mesh panels along the existing steep rock cut cliffs adjacent to the roadway entrances and exits of Laupahoehoe Gulch.

We request the Board of Land and Natural Resources (BLNR) approve a set-aside, grant of perpetual, non-exclusive access easement, and issuance of temporary construction right-of-entry to the DOT for highway purposes for the following:

Parcel	Tax Map Key No.	Area
2, Together with Abutter's Rights of Vehicle Access	3-6-004:Homestead Road (Portion)	2,223 sq. ft.
5	3-6-004:015 (Portion)	105,682 sq. ft.
6 (Rev.1), Together with Abutter's Rights of Vehicle Access	3-6-004:017 (Portion)	88,614 sq. ft.
8	3-6-004:002 (Portion)	5,047 sq. ft.
10, Together with Abutter's Rights of Vehicle Access	3-6-004:030 (Portion)	2,344 sq. ft.

EXHIBIT B

Russell Y. Tsuji, Administrator

HWY-RT.3.91919

Page 2

May 14, 2015

<u>Easement</u>	<u>Tax Map Key No.</u>	<u>Area</u>
2	3-6-004:D17 (Portion)	6,742 sq. ft.
<u>Construction Parcel</u>	<u>Tax Map Key No.</u>	<u>Area</u>
C2	3-6-004:Homestead Road (Portion)	11,218 sq. ft.

Parcel 5 is encumbered by Grant of Non-Exclusive Easement, in favor of Hawaii Electric Light Company, Inc. Document No. 96-043782. Parcel 8 is encumbered by abutter's rights of vehicle access in favor of the State of Hawaii, Liber 2756, Page 80. Parcel 10 is encumbered by abutter's rights of vehicle access in favor of the State of Hawaii, Liber 2756, 98 and Liber 2944, Page 124. Parcel 2, 6 (Rev.1), Easement 2, and Construction Parcel C2 are all unencumbered state land.

Construction funding appropriation is to be requested for state fiscal year 2016. Construction is anticipated to commence in 2016 and continue for a duration of three (3) years.

If BLNR approves our request, we request BLNR to grant immediate right-of-entry and possession for the above listed parcels, easements, and construction parcels in order that the project may proceed without delay. We also request to terminate the existing grant of easement and construction right-of-entry that was approved on January 8, 2010 under agenda item D-9, since it would no longer be needed (copy enclosed).

FBA acceptance by the DOT was published in the 7-8-10 issue of the OEQC's The Environmental Notice. Due to a rockfall event in 2012, the DOT was prompted to construct emergency rockfall mitigation measures. Modifications were implemented into these protective measures. A Supplemental Environmental Assessment has been prepared to address these modifications and is currently being reviewed.

Attached is a completed Request for State Lands Application Form with project right-of-way maps and tax map for your information and reference.

We request your expeditious efforts in approving our request. Thank you for your cooperation and attention to this matter.

If there are any questions, please contact Right-of-Way Agent, Jaime Yamashiro at 692-7336 or by email to jaime.k.yamashiro@hawaii.gov.

4 Enclosures

1. Right-of-Way Maps dated 12/17/14, Sheet Nos. 2, 3 and 4 of 4, P.H. 818
2. Tax Map
3. Request for State Lands – Application Form (Government Agencies)
4. Copy of letter Ref. No.: 09HD-156 dated 1/13/10