

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

November 16, 2007

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

PSF No: 04OD-140
Oahu

Rescind Prior Board Actions of June 18, 2004 (D-10), and Subsequent Amendment of February 24, 2006 (D-4), Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:021.

BACKGROUND:

The Board on June 18, 2004, under Agenda Item D-10, attached as Exhibit A, approved to recommend to the Governor a set aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Area Reserve System. The subject property was formerly encumbered by General Lease No. S-4027 to Motorola Communications International, Inc. as a boresight facility site and access easement. The lease was cancelled on September 22, 2000 because the tenant failed to post the required liability insurance policy. The facility had not been in operation for several years prior to the cancellation. Instead, the property was being used by DOFAW as a staging area for site visits to the bog. DOFAW had no objections to the set aside and would continue utilizing the property as a staging area for site visits to the bog. DOFAW had no objections to the set aside and would continue utilizing the property as a staging area for research, hikes, educational briefings, communications site for military exercises, and to store research tools and equipment without harming the surrounding native vegetation.

The Board on February 24, 2006, attached as Exhibit B, under Agenda Item D-4, staff requested the Board amend its prior approval because the subject property had not been withdrawn from Governor's Proclamation dated December 31, 1918 and the prior Board submittal incorrectly stated the land area to be 4,600 square feet when it is 2,500 square feet for the boresight facility and 2,100 square feet is the access easement over Mt. Kaala Access Road.

In June 2006, the Deputy Attorney General reviewing staffs' request for the preparation of the set aside document, disapproved the request. Outstanding issues: (1) did staff obtained Board approval to withdraw the subject property

from Governor's Proclamation dated December 31, 1918, (2) tax map key: 6-7-3:portion 25 was not included in any Board submittal, (3) why did land area encumbered by General Lease No. S-4027 (2,500 square feet) differ from current map and description prepared by DAGS, Survey Division (3,100 square feet), and (4) does DOFAW need to access to Mt. Kaala Access Road.

REMARKS:

Staff reviewed the two Board's approval and can respond to the Deputy Attorney General's concerns:

- (1) Prior to withdrawing the subject property from Governor's Proclamation dated December 31, 1918 (the forest reserve), DOFAW would need Board authorization to conduct a public hearing pursuant to Section 183-11 and 12, HRS. That was not stated in our prior Board approvals.
- (2) The former access easement is located on Parcel 25. Parcel 25 was not stated in our prior Board approvals.
- (3) Survey methods have improved over the years. The earlier land area of 2,500 square feet was determined in August 1966. We are relying on the most current (March 2006) DAGS Survey map and description.
- (4) Mt. Kaala Access Road (encumbered by General Lease No. S-3748 to FAA) is the only way to the subject property and goes through the Mt. Kaala Natural Area Reserve (Governor's Executive Order No. 3099). DOFAW needs to use this road.

Staff ask DOFAW to check their files, if a public hearing was conducted in 1965 (when General Lease No. S-4027 was issued) or in 1981 (when Governor's Executive order No. 3099 was issued to DOFAW for the Mt. Kaala Natural Area Reserve). No records were discovered.


Further discussions ensued with DOFAW representatives from the forest reserve and the natural area reserve system. There are no significant natural resources at the subject property because DOFAW staff has been using it as a staging area. Therefore, it is not necessary to include the subject property into the Natural Area Reserve System. It is okay to leave the subject property in the forest reserve.

Based on this, staff is recommending all prior Board approvals be rescinded.

RECOMMENDATION: That the Board:


1. Rescind the prior Board actions of June 18, 2004, under Agenda Item D-10 and February 24, 2006, under Agenda Item D-4.

Respectfully Submitted,



Melvyn Ho
Land Agent

APPROVED FOR SUBMITTAL:


for _____
Laura H. Thielen, Chairperson

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

June 18, 2004

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

PSF No.: 04OD-140

Oahu

Set Aside to Department of Land and Natural Resources
Division of Forestry and Wildlife for Addition to Mount
Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu,
Tax Map Key: (1) 6-7-003:021.

APPLICANT:

Department of Land and Natural Resources Division of Forestry and
Wildlife (DOFAW).

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Mokuleia, Waialua,
Oahu, identified by Tax Map Key: (1) 6-7-003:021, as shown
on the attached map labeled Exhibit A.

AREA:

4,600 square feet, more or less, and shown as CSF Map 15004,
labeled as Exhibit B.

ZONING:

State Land Use District: Conservation
City and County of Honolulu CZO: Preservation-1

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:

Vacant and unencumbered. Previously encumbered by General Lease
S-4027 to Motorola Communications International, Inc. as a boresight
facility site and access easement.

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

June 18, 2004 *Kek*

ITEM D-10

EXHIBIT "A"

PURPOSE:

Addition to Natural Area Reserve System Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

At its meeting of January 28, 1966, under Item F-15, the Land Board approved the issuance of General Lease S-4027 to the Communications Satellite Corporation (COMSAT) for boresight (antenna) facility and access easement purposes. The 4,600 square foot boresight facility and access easement site was to complement a COMSAT communication satellite earth station located several miles away.

By Governor's Executive Order 3099, 1099.6 Acres of land encompassing the subject area was set aside to the Department of Land and Natural Resources as Mount Kaala Natural Area Reserve, excluding the area encumbered by GL S-4027.

At its meeting of April 27, 1990, under Item F-1, the Land Board consented to the assignment of GL S-4027 to Motorola Communication International, Inc. GL S-4027 was eventually cancelled on September 22, 2000, under Item D-5, as amended, because the tenant failed to post the required liability insurance policy within the cure period. In addition, staff noted during an inspection on May 2, 2002 that Motorola's boresight facility had not been in operation for several years prior to the cancellation of GL S-4027. The site was instead being used by DOFAW as a staging area for site visits. DOFAW staff estimates their use of the boresite began around 1993. Land Division staff was unable to conclude exactly when Motorola ceased to use their boresight facility.

The Federal Aviation Administration (FAA) has informed staff of their desire to further secure the area as a result of the events surrounding 9/11 and does not want any further commercial transmissions from this site. The FAA also owns and controls Mt. Kaala Road, which provides a one-way access to the subject area en route to their transmission facilities. The road is secured with several gates requiring the FAA's permission and key(s) to enter. Staff also noted that Mt. Kaala Road has steep inclines, sharp corners and possible rockslide and other hazardous conditions.

Since DOFAW has already been using the site, they are now

requesting the subject area be set aside as an Addition to Mount Kaala Natural Area Reserve and intends to utilize it as a staging area for research, hikes, educational briefings, communications site for military exercises, and to store research tools and equipment without harming the surrounding native vegetation.

Staff has no objection to setting aside the land to DOFAW.

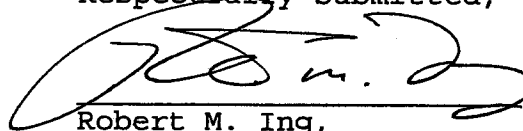
No comments were solicited from any agency or community groups because the area will assimilate with the surrounding Natural Area Reserve with no change in the current use of the land being proposed.

RECOMMENDATION:

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

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources Division of Forestry and Wildlife 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.

Respectfully Submitted,

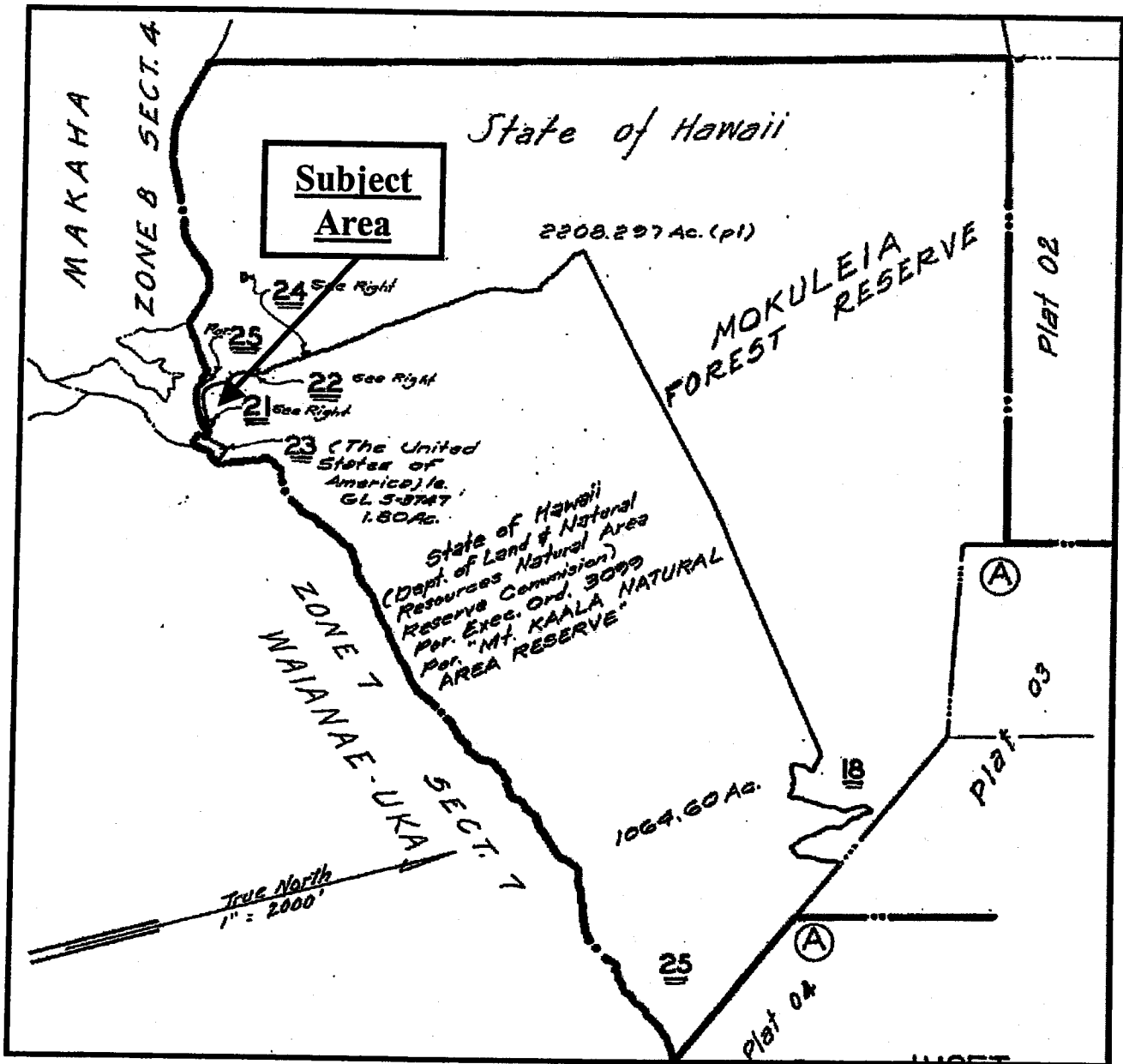


Robert M. Ing,
Land Agent

APPROVED FOR SUBMITTAL:

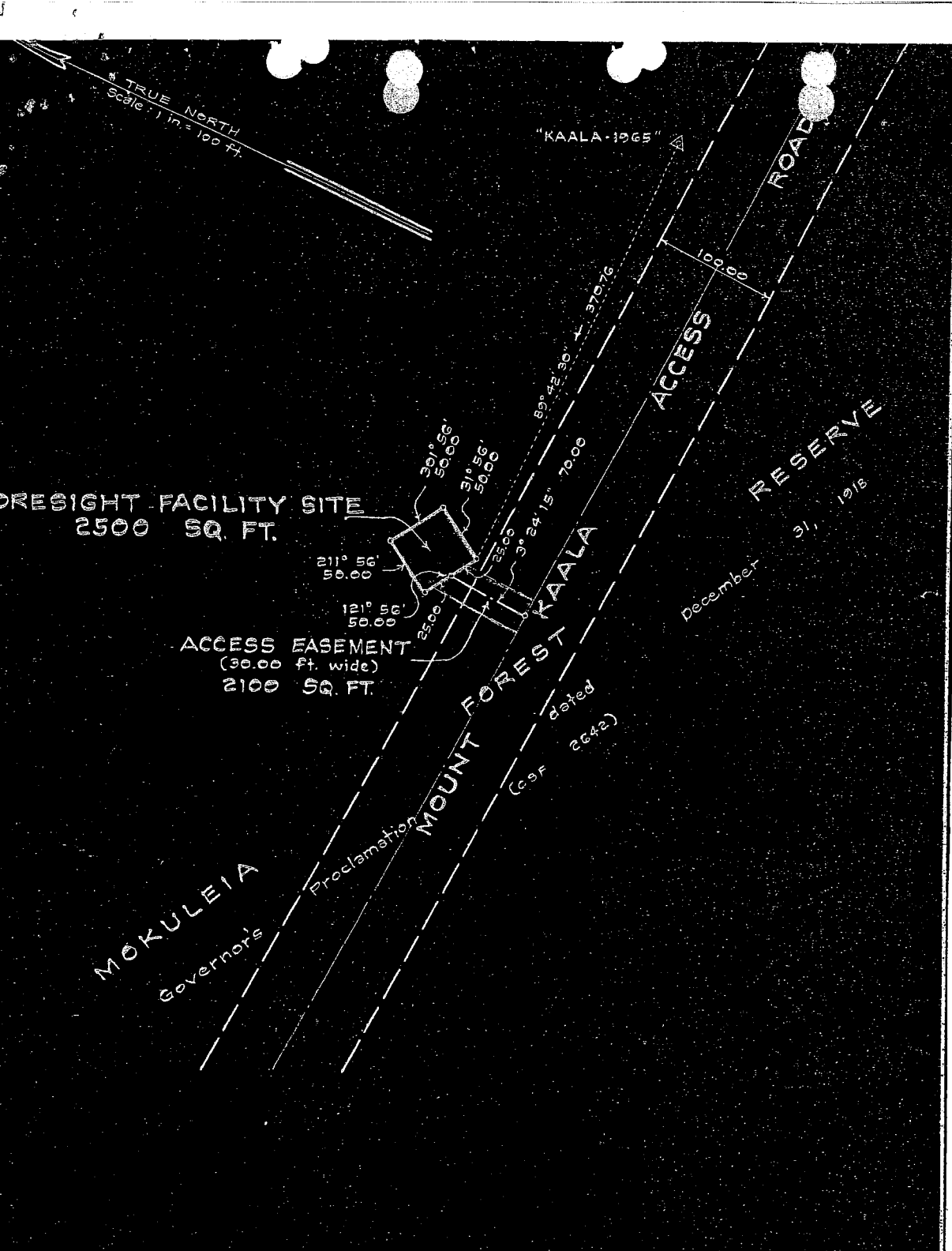


Peter T. Young, Chairperson



Proposed Addition to the Natural Area Reserve
(1) 6-7-003:021

EXHIBIT A



**BORESIGHT FACILITY SITE
AND ACCESS EASEMENT (30.00 Feet Wide)**
Mount Kaala, Mokuleia, Waialua, Oahu, Hawaii
Scale: 1 inch = 100 feet

517
Sakamoto

6-7-03

o. 15004

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

1.S. Aug 9, 1966

EXHIBIT B

TRUE NORTH
SCALE: 1 in. = 100 ft.

MOKULEIA FOREST RESERVE
Governor's Proclamation dated
December 31, 1918
(C.S.F. 2642)

2500 SQ. FT.

Subject Area

Government

"KAALA-1965"

Access Easement (30.00 ft. wide)
ACCESS
ROAD (100.00 ft. wide)
(Federal Aviation Agency)

Land

MOUNT

KAALA
Governor's

NATURAL
Executive
(C.S.F.

MOUNT

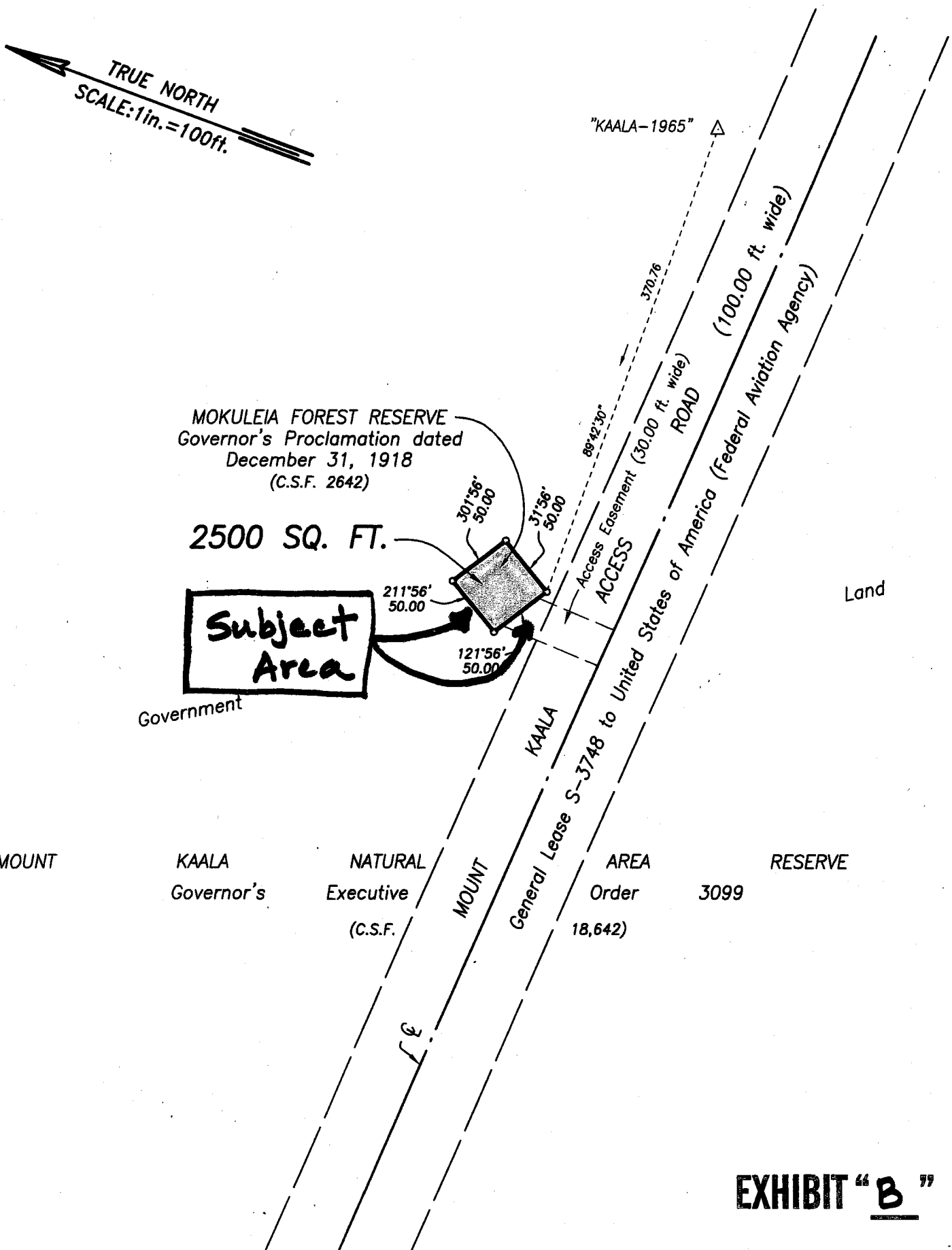
KAALA
General Lease S-3748 to United States of America

AREA
Order
18,642

3099

RESERVE

EXHIBIT "B"



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

February 24, 2006

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

PSF No.: 04OD-140

Oahu

Amend prior Board Action of June 18, 2004, Item D-10, Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:021.

REMARKS:

Following the above-referenced Land Board action to set aside the subject lands to the Division of Forestry and Wildlife (DOFAW) as an addition to Mount Kaala Natural Area Reserve (Exhibit "A"). Staff recently discovered the area leased to Motorola was never withdrawn from the Governor's Proclamation of Forest Reserve in the District of Waialua, City and County of Honolulu, Island of Oahu, dated December 31, 1918 (Mokuleia Forest Reserve). Therefore, the Land Board's approval to withdraw the subject area from this proclamation is required before it can be set aside to DOFAW for natural area reserve purposes.

Staff also determined that the subject area is actually less than 4,600 square feet as stated in the prior Board submittal, and should be clarified before any further action is taken.

Staff previously believed the subject area was the entire area covered under General Lease No. S-4027 (GL4027), also referred to as the former "Boresite Facility Site" that consisted of a 2,500 square foot area of the actual boresite facility, and a 2,100 square foot access easement leading from nearby Mount Kaala Access Road, totaling 4,600 square feet. However, as shown in Exhibit "B", a portion of the 2,100 square foot access easement overlaps Mount Kaala Access Road, which is encumbered by General Lease No. S-3748 to the Federal Government and is part of the Mokuleia Forest Reserve. DOFAW did not request any portion of Mount Kaala Access Road to be set aside for natural area reserve purposes. Therefore, the subject area should not include the portion of the access easement overlapping Mount Kaala Access Road.

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

February 24, 2006

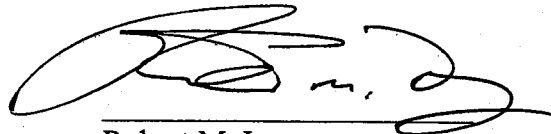
EXHIBIT "B"

RECOMMENDATION:

That the Board amend the prior Board Action of June 18, 2004, under Item D-10, by including its approval to recommend to the Governor the issuance of an executive order withdrawing the subject land, as shown in the attached Exhibit "B", from the Governor's Proclamation of Forest Reserve in the District of Waialua, City and County of Honolulu, Island of Oahu, dated December 31, 1918, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

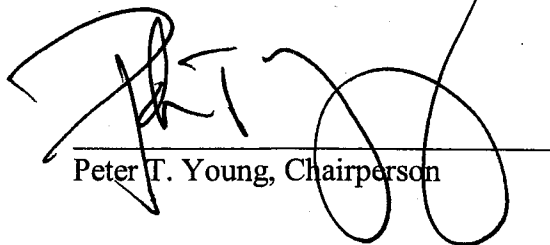
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following 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.

Respectfully Submitted,



WT
Robert M. Ing,
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

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

June 18, 2004

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

PSF No.: 04OD-140

Oahu

Set Aside to Department of Land and Natural Resources
Division of Forestry and Wildlife for Addition to Mount
Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu,
Tax Map Key: (1) 6-7-003:021.

APPLICANT:

Department of Land and Natural Resources Division of Forestry and
Wildlife (DOFAW).

LEGAL REFERENCE:

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LOCATION:

Portion of Government lands situated at Mokuleia, Waialua,
Oahu, identified by Tax Map Key: (1) 6-7-003:021, as shown
on the attached map labeled Exhibit A.

AREA:

4,600 square feet, more or less, and shown as CSF Map 15004,
labeled as Exhibit B.

ZONING:

State Land Use District: Conservation
City and County of Honolulu CZO: Preservation-1

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:

Vacant and unencumbered. Previously encumbered by General Lease
S-4027 to Motorola Communications International, Inc. as a boresight
facility site and access easement.

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

June 18, 2004 *Kik*

ITEM D-10

EXHIBIT "A"

PURPOSE:

Addition to Natural Area Reserve System Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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REMARKS:

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At its meeting of April 27, 1990, under Item F-1, the Land Board consented to the assignment of GL S-4027 to Motorola Communication International, Inc. GL S-4027 was eventually cancelled on September 22, 2000, under Item D-5, as amended, because the tenant failed to post the required liability insurance policy within the cure period. In addition, staff noted during an inspection on May 2, 2002 that Motorola's boresight facility had not been in operation for several years prior to the cancellation of GL S-4027. The site was instead being used by DOFAW as a staging area for site visits. DOFAW staff estimates their use of the boresite began around 1993. Land Division staff was unable to conclude exactly when Motorola ceased to use their boresight facility.

The Federal Aviation Administration (FAA) has informed staff of their desire to further secure the area as a result of the events surrounding 9/11 and does not want any further commercial transmissions from this site. The FAA also owns and controls Mt. Kaala Road, which provides a one-way access to the subject area en route to their transmission facilities. The road is secured with several gates requiring the FAA's permission and key(s) to enter. Staff also noted that Mt. Kaala Road has steep inclines, sharp corners and possible rockslide and other hazardous conditions.

Since DOFAW has already been using the site, they are now

requesting the subject area be set aside as an Addition to Mount Kaala Natural Area Reserve and intends to utilize it as a staging area for research, hikes, educational briefings, communications site for military exercises, and to store research tools and equipment without harming the surrounding native vegetation.

Staff has no objection to setting aside the land to DOFAW.

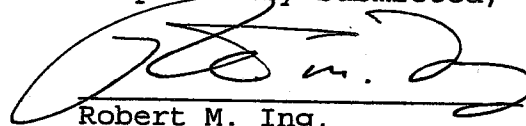
No comments were solicited from any agency or community groups because the area will assimilate with the surrounding Natural Area Reserve with no change in the current use of the land being proposed.

RECOMMENDATION:

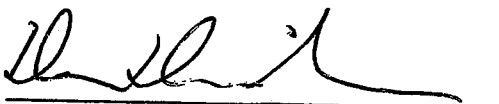
That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources Division of Forestry and Wildlife 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.

Respectfully Submitted,


Robert M. Ing,
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

TRUE NORTH
Scale: 1 in. = 100 ft.

"KAALA-1965"

ROAD

ACCESS

RESERVE

BORESIGHT FACILITY SITE
2500 SQ. FT.

ACCESS EASEMENT
(30.00 ft. wide)
2100 SQ. FT.

211° 56'
50.00

121° 56'
50.00

39° 56'
50.00

31° 56'
50.00

89° 42' 30"
170.76

3° 24' 15"
70.00

December 31, 1918

MOUNT FOREST KAALA

Proclamation

MOKULEIA
Governor's

dated
(CSF 2642)

BORESIGHT FACILITY SITE
AND ACCESS EASEMENT (30.00 Feet Wide)
Mount Kaala, Mokuleia, Waialua, Oahu, Hawaii
Scale: 1 inch = 100 feet

517
Sakamoto

C-7-03

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

15004

15: Aug. 9, 1966

EXHIBIT B

TRUE NORTH
SCALE: 1 in. = 100 ft.

MOKULEIA FOREST RESERVE
Governor's Proclamation dated
December 31, 1918
(C.S.F. 2642)

2500 SQ. FT.

Subject Area

Government

Land

"KAALA-1965"

370.76

89°42'30"

Access Easement (30.00 ft. wide)
ACCESS
ROAD

(100.00 ft. wide)
(Federal Aviation Agency)

KAALA
MOUNT
General Lease S-3748 to United States of America

MOUNT

KAALA
Governor's

NATURAL
Executive
(C.S.F.)

AREA
Order
18,642

3099

RESERVE

EXHIBIT "B"