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

October 14, 2010

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

PSF No.: 10HD-151

HAWAII

Grant of Perpetual, Non-Exclusive Easement and Immediate Construction Right-of-Entry to Federal Aviation Administration for Access, Utility and Airspace Purposes For Its Proposed Doppler VORTAC Facility at Ooma 1st, North Kona, Hawaii, Tax Map Key: 3rd/7-3-43: portions of 79, 85, 86 & 91 (NELHA Access Road).

APPLICANT:

Federal Aviation Administration (FAA)

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Keahole situated at Ooma 1st, North Kona, Hawaii, identified by Tax Map Key: 7-3-43: portions of 79, 85, 86 & 91 (portion of NELHA Access Road), as shown on the attached map labeled **Exhibit A**.

EASEMENT AREA:

Access Easement: To be determined. (Proposed alignment shall be within the NELHA Access Road Right-of-Way, from the DOT Airport property boundary to the Queen Kaahumanu Highway.)

Utility Easement: To be determined. (Proposed alignment shall be within the NELHA Access Road Right-of-Way, from the DOT Airport property boundary to the Queen Kaahumanu Highway.)

Airspace Easement: Portions of NELHA's High Technology Industrial Park, consisting of 12.468 acres, more or less, over portions of TMK: (3) 7-3-43: 79, 85, 86 and 91. **(Exhibit B)**

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:
YES ___ NO x

CURRENT USE STATUS:

Encumbered by General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit C**.

DCCA VERIFICATION:

Not applicable. The Applicant, a federal government agency 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; and
- 2) Obtain concurrence from Big Island Abalone Corporation for airspace clear zone easement.

REMARKS:

At its meeting of November 19, 1999, the Board of Land and Natural Resources, under Agenda Item D-20, approved as amended, the cancellation of General Lease No. S-4717 and S-5157; Cancellation of Governor's Executive Order No. 3282; and Direct Issuance of a "new" General Lease No. S-5619 to NELHA. Purpose was to consolidate the parcels previously encumbered under Executive Order No. 3282, General Leases No. S-4717 and S-5157 into one lease, to simplify the lease and sublease processes for NELHA. Its intent was to give NELHA the flexibility to develop, maintain, and operate an ocean related high technology industrial park in accordance with Chapter 206M, and/or Chapter 227D, Hawaii Revised Statutes. This would allow NELHA to provide ancillary and accessory uses that will assist in its development to become self-sufficient. The recommendation also included authorizations for NELHA to approve its subleases in attempts to eliminate the huge backlog for sublease approvals.

By letter dated March 3, 2010, Darice B.N. Young, Realty Contracting Officer, Federal Aviation Administration, requested access, utility and airspace easements from NELHA. NELHA approved the easements as requested, to the extent that NELHA can grant easements. However, it was later realized that the easements needed to be in perpetuity, and that only the Board of Land and Natural Resources has the authority to grant perpetual easements over the land. As a result, by letter dated August 18, 2010, FAA requested perpetual, non-exclusive easements for access, utilities and airspace clearance zone from DLNR. The purpose of the easement is to service its Kona Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) facility to be located upon the abutting DOT Airport property currently under Governor's Executive Order No. 2472 and identified as Tax Map Key: (3) 7-3-43: 3. The current VORTAC facility is located at the old Kona Airport on Queen Liliuokalani Trust land. The lease with the Queen Liliuokalani Trust is scheduled to expire on June 30, 2012, with no options for future extensions or renewal. The Kona VORTAC facility is a critical navigational aid of the National Airspace System that is used by both civilian and

military aircraft in the vicinity to determine their current location. The proposed VORTAC facility will have no adverse effects on the adjacent NELHA facilities, and vice versa. The FAA airspace clearance zone easement will not increase any existing restrictions or impose additional ones on NELHA or its sublessees. The restrictions surrounding the proposed Kona D-VORTAC facility are already a part of General Lease No. S-5619, under Conditions 40 & 41, concerning non-adverse effects and non-obstruction reservation to Keahole Airport operations, which is in conformance with FAA Regulations Part 77. These guidelines primarily relate to material and height restrictions depending on a structure's distance from the airport, its runway and/or air navigational facilities.

Staff is recommending that the easements be at gratis as its use will be to benefit the general public.

The FAA 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.

The NELHA Board was consulted and approved granting FAA its proposed easements, over the NELHA access road through the NELHA property, with utility hookups to existing NELHA utility transmission lines. **(Exhibit D)**

Moana Technologies, LLC, a NELHA sublease tenant located on Parcel 79 is within the radius of the proposed airspace easement, was contacted and provided written acknowledgement. **(Exhibit E)**

Big Island Abalone Corporation, a NELHA sublease tenant located on Parcel 86 is within the radius of the proposed airspace easement. FAA is in the process of obtaining a letter of acknowledgement from Big Island Abalone Corporation concerning the proposed airspace clear zone.

Staff solicited various government agencies and interest groups for comments pertaining to the request. To date, there were no responses received.

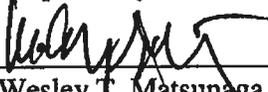
RECOMMENDATION: That the Board:

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 Federal Aviation Administration covering the subject area for access, utility and airspace 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 access, utility and airspace clear zone 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. Grant an Immediate Construction Right-of-Entry to FAA, its contractors, consultants, and/or persons acting for or on its behalf, subject to the following terms and conditions:
- A. The standard terms and conditions of the most current construction right-of-entry document form, as may be amended from time to time;
 - B. This right-of-entry is effective upon Land Board approval and shall terminating upon issuance of the grant of easement document;
 - C. FAA shall consult and coordinate with NELHA prior to commencing with any work activities within the NELHA access road right-of-way;
 - D. 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:



Laura H. Thiesen, Chairperson

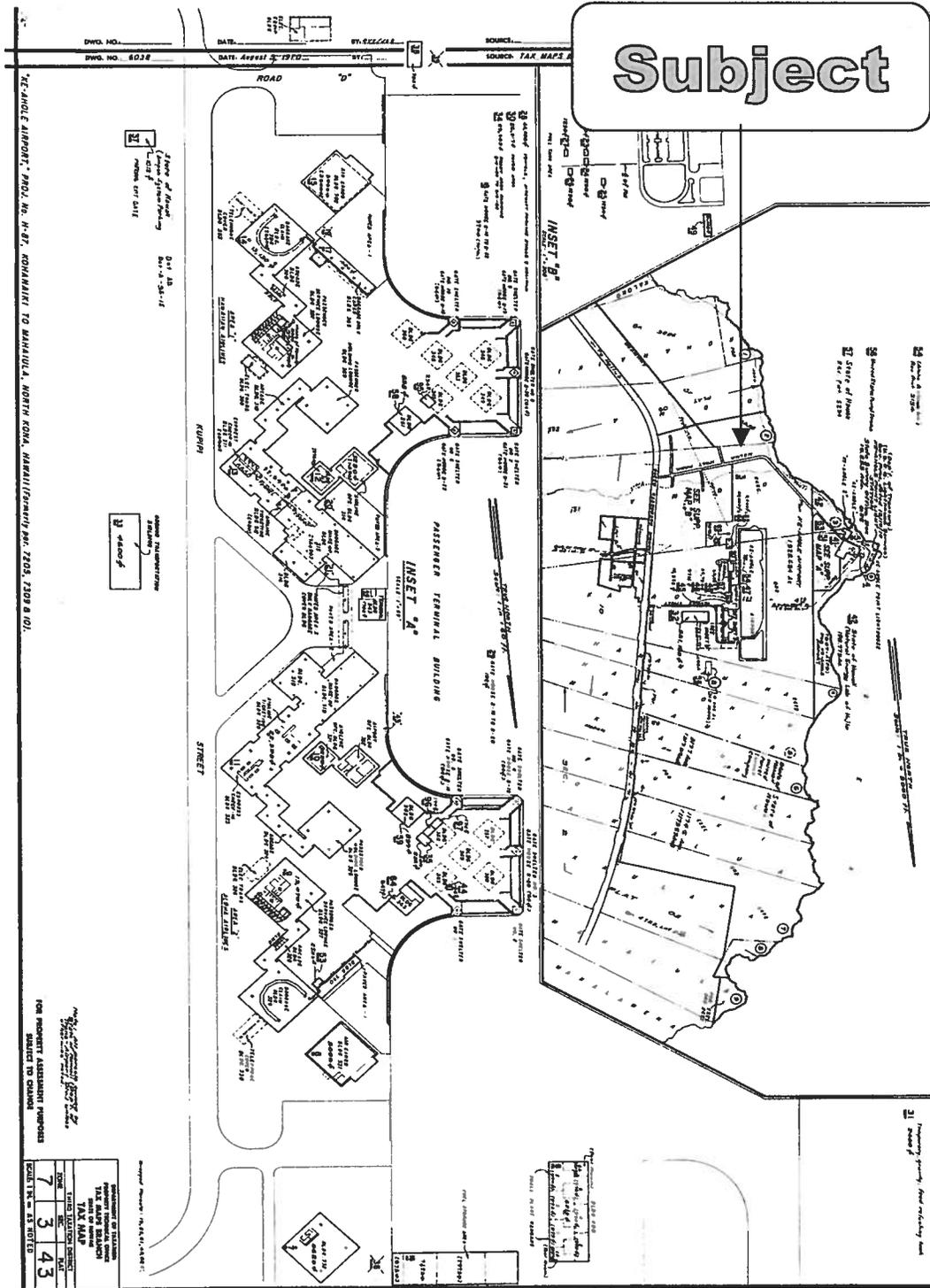


EXHIBIT A

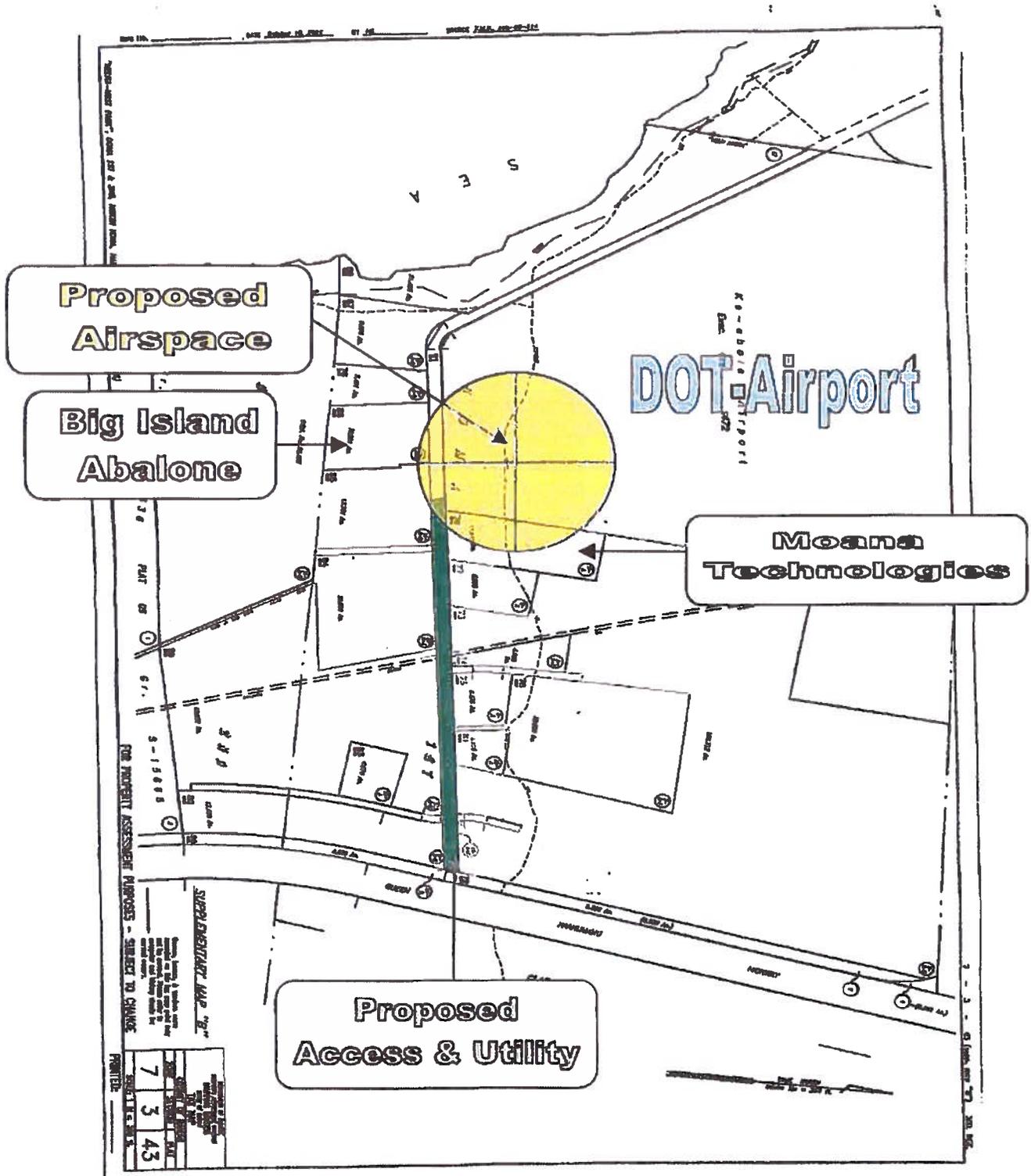
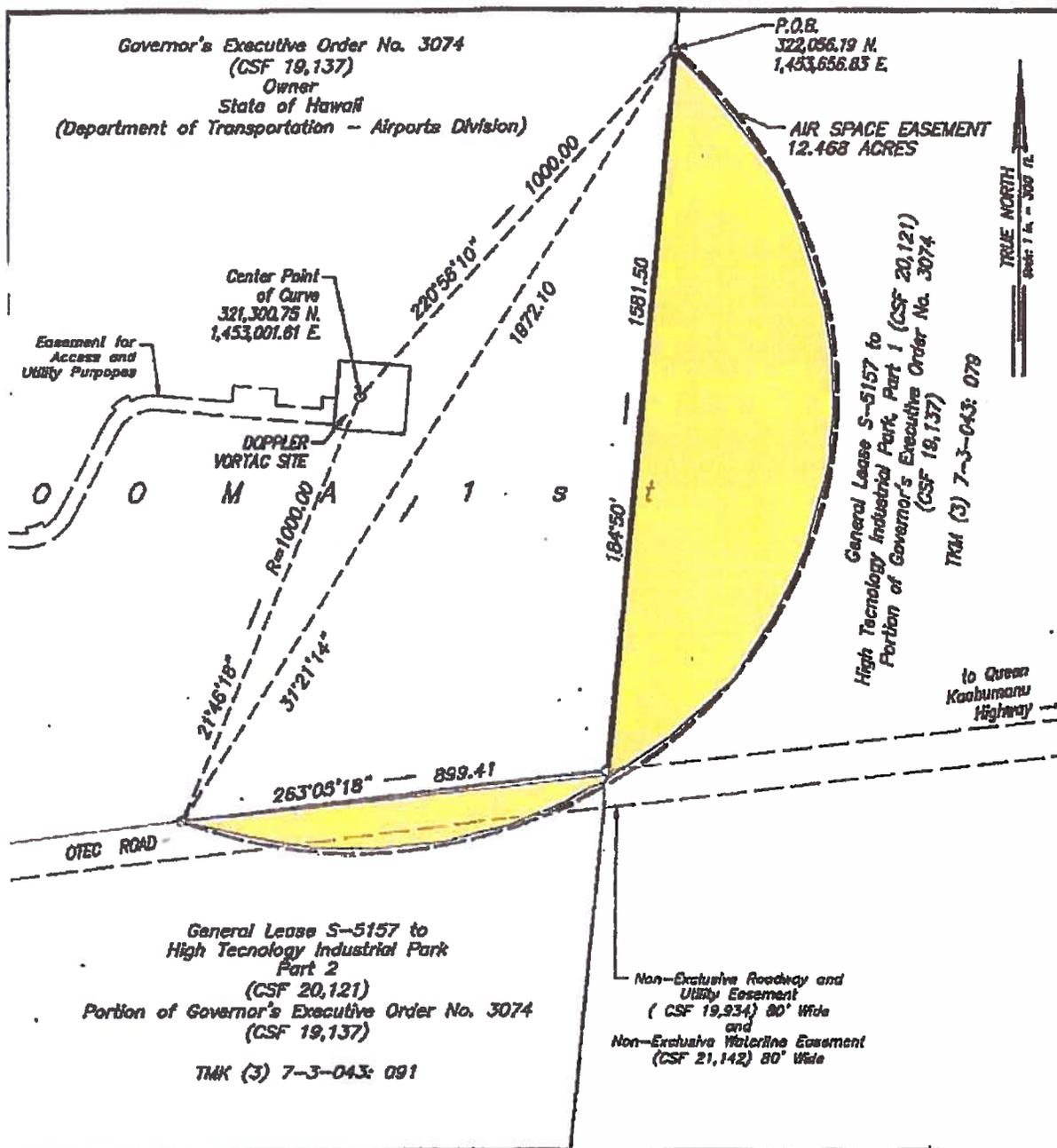


EXHIBIT A



AIR SPACE EASEMENT

EXHIBIT B

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 14, 2010

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 For Access, Utilities, And Airspace Clear Zone To FAA for Its Proposed VORTAC Site.

Project / Reference No.:

PSF No.: 10HD-151

Project Location:

Natural Energy Laboratory of Hawaii Authority (NELHA) at Ooma, North Kona, Hawaii, tax Map Key: (3) 7-3-43: 79, 85, 86 & 91.

Project Description:

Grant of Perpetual, Non-Exclusive Easements for Access, Utilities, and Airspace Clear Zone.

Chap. 343 Trigger(s):

Use of State Lands.

Exemption Class No. and Description:

In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:

Exemption Class No. 1, which 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 **Exemption Class No. 4**, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description
from Agency Exemption List:

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.

Consulted Parties:

Minor alterations in the conditions of land, water or vegetation. The Department of Transportation–Airports and the Federal Aviation Administration were consulted as a source authority having jurisdiction or expertise in this matter, and both concur that the exemption identified above is applicable to and appropriate for the proposed project.

Recommendation:

The FAA’s VORTAC project requires the use of existing access roads and utility corridors on State land. The FAA’s use of the road and installation of new utility lines is a negligible expansion of the existing use. Should any aspect of the FAA’s project result in a material change, FAA will be required to comply with HRS, Chapter 343, as amended.

It is recommended that the Land Board find that this project is exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date

EXHIBIT C



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Attached Agency of the Department of Business, Economic Development & Tourism, State of Hawaii



Joseph L. Manalili
Attorney, Airports & Environmental Law
Office of the Regional Counsel,
Federal Aviation Administration
AWP-7.10 P.O. Box 92007
Los Angeles, CA 90009-2007

BY UNITED STATES POSTAL SERVICE
ELECTRONIC COPY SENT

Dear Mr. Manalili:

I am pleased to inform the Federal Aviation Administration (FAA) that the Natural Energy Laboratory of Hawaii Authority (NELHA) hereby grants the FAA an easement for the FAA's planned new VORTAC at Kona International Airport.

The easement is to the extent that NELHA can grant easements (see the pertinent attached section of the draft Board Minutes of June 29, 2010). Pursuant to the Board Motion, acknowledgment of the easement was obtain from the one affected tenant, Moana Technologies, Inc., a copy of which is also attached.

If you have any question concerning this matter, please contact me.

Best regards,

Ronald Nelson Baird
Chief Executive Officer

Encl.

Cc: John DeLong, NELHA Chair
Darice Young, FAA

73-4460 Queen Kaahumanu Hwy. #101, Kailua-Kona, Hawaii USA 96740-2637
Phone: (808) 329-7341 Fax: (808) 326-3262 Email: nelha@nelha.org Website: <http://www.nelha.org>

EXHIBIT D



29 July 2010

Mr. Ronald Baird
Natural Energy Laboratory of Hawaii Authority
73-4460 Queen Kaahumanu Highway #101
Kailua Kona, HI 96740

Dear Mr. Baird,

Dear Ron,

Subject: Acknowledgement on the Federal Aviation Administration VORTAC

I, Ronald Everaert, CEO of Moana Group of Companies, would like to acknowledge that we were informed and made aware on the broadcast radio waves of the VORTAC and agree on the matter that any future development of Moana Technologies, LLC should be approved by the Federal Aviation Administration.

Best regards,

A handwritten signature in black ink, appearing to read "Ronald Everaert", written over a horizontal line.

Ronald Everaert
CEO
Moana Technologies, LLC