

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

June 9, 2011

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

PSF No: 05MD-066
Maui

Amend Prior Board Actions of October 28, 2005, Item D-9 and Prior Board Action of May 27, 2005, Item D-3, for a Grant of Perpetual, Non-Exclusive Easement to Oceanic Time Warner Cable for Utility Purposes, Kamaole, Kula, Maui, Tax Map Key: (2) 2-2-1:Portion 051 and 068.

BACKGROUND:

The Land Board, at its meeting of May 27, 2005, under item D-3, amended and approved Oceanic Time Warner's request for a perpetual, non-exclusive easement for utility purposes at Tax Map Key (2) 2-2-001:Portion 051 and 68, attached as Exhibit (C). The amend action was to change the perpetual easement to a term, non-exclusive easement. Pursuant to an amend board action of October 28, 2005, Item D-9, authorization was given for the issuance of a construction right-of-entry (for the installation of cable lines) to Oceanic time Warner Cable and their contractors, attached as Exhibit (D).

REMARKS:

Subsequent to the board approvals, it was brought to staff's attention that the subject property's Tax Map Key number was improperly identified. Follow-up research has determined that the cable television line attached to the existing utility pole affects the area only on the portion of parcel 51. Parcel number 68 is not included in this installation process. Refer to the attached tax map key labeled Exhibit (A) and the GIS overview labeled exhibit (B).

Also, pursuant to a review of the easement request, the office of the Attorney General has advised that Oceanic Time Warner Cable is the registered trade name, and recommended that the easement instead be issued to the corporate entity name of Time Warner Entertainment Company, L.P.

RECOMMENDATION: That the Board:

1. Amend its prior Board actions of May 27, 2005 and October 28, 2005, under agenda items D-3 and D-9 (respectively) by:

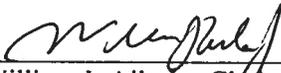
- (a) Replacing the Tax Map Key number of (2) 2-2-1:Portion 51 and 68 with the Tax Map Key number (2) 2-2-1:Portion 51, and;
 - (b) Changing the name of applicant from Oceanic Time Warner Cable to Time Warner Entertainment Company, L.P.
2. All terms and conditions listed in its May 27, 2005 and October 28, 2005 approvals to remain the same.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

Red: Private Property
Blue: State Land

Jones Family PTNSHP
(2) 2-2-001:018

State
(2) 2-2-001:068

026

State
(2) 2-2-001:051

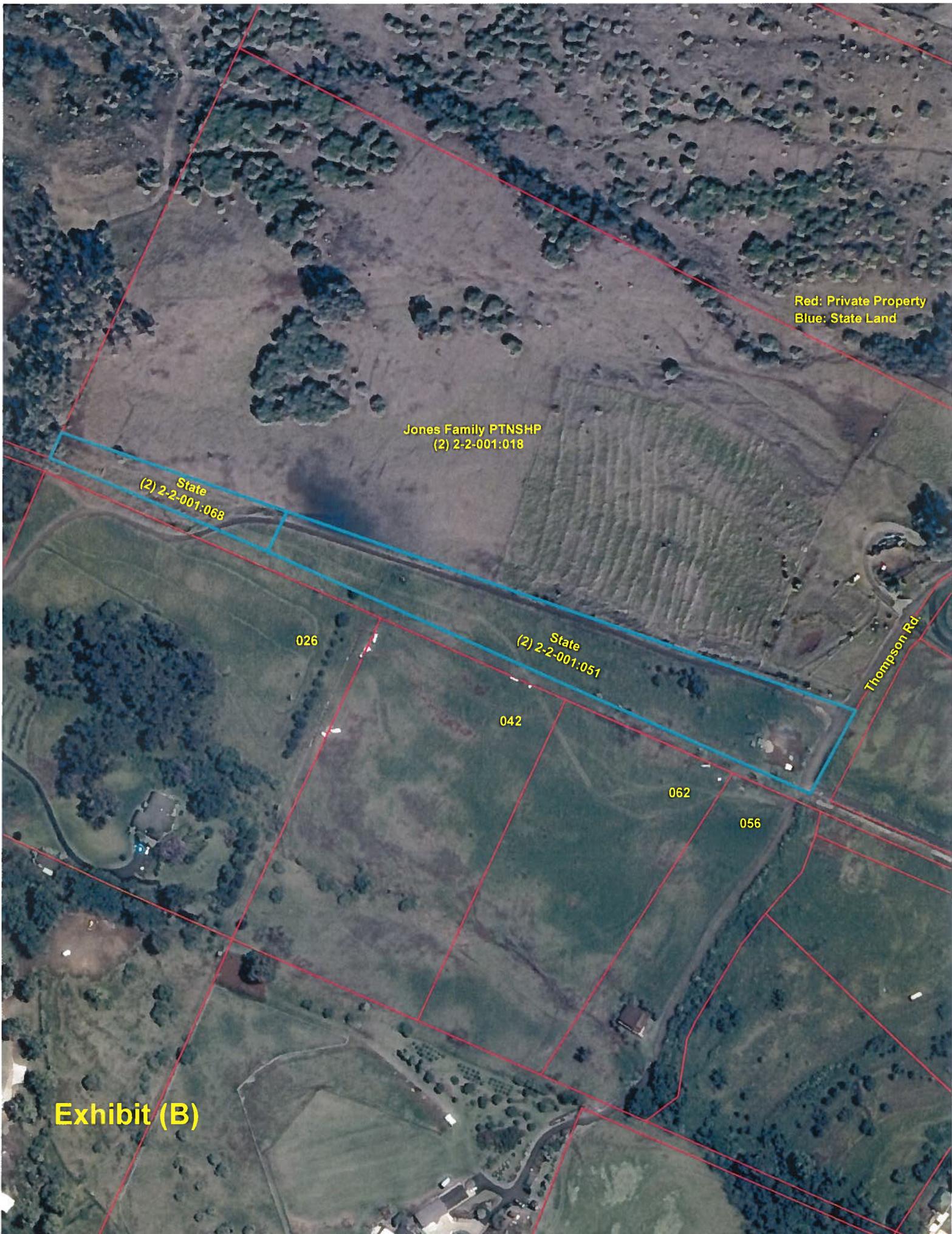
042

062

056

Thompson Rd

Exhibit (B)



AMENDED

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

May 27, 2005

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

PSF No.: 05MD-066

MAUI

Grant of Perpetual, Non-Exclusive Easement to Oceanic Time Warner Cable for Utility Purposes, Makawao, Maui, Tax Map Key: (2) 2-2-1:portion 51 and 68

APPLICANT:

Oceanic Time Warner Cable, a Hawaii corporation whose business and mailing address is 350 Hoozana Street, Kahului, Hawaii 96732.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kamaole situated at Kula, Makawao, Maui, identified by Tax Map Key: (2) 2-2-1:portion 51 and 68, as shown on the attached map labeled Exhibit A.

AREA:

1.0 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Maui CZO: Agriculture

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 Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28042, John Philip Berg and Carol Reed Clarke for water transmission pipeline purposes.

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

EXHIBIT "C"

ITEM D-3

Encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28068, John Sheldon Wallau for water transmission pipeline purposes.

Encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28319, Edward and Laurie Auswacks for access and waterline purposes.

Grant of Non-Exclusive Easement S-5666, Elliot and Jayme Lane for water transmission pipeline purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove cable television 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 or staff 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, Item No. 1.d. that states "Water, sewage, electrical, gas, telephone and other essential public utility services extensions to serve such structures or facilities."

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> * </u>	NO	<u> </u>

*Not applicable. Certificates of good standing are not issued for trade marks, trade names, service marks, or temporary records.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment, and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Applicant is proposing to attach a cable television line to an existing utility pole to provide cable service to nearby property owners. There will be no change to the existing pole. The owner of the utility pole is Maui Electric Co., Ltd. (MECO)/Verizon Hawaii. Staff discovered the State did not issue an easement to Maui Electric Co. and/or Verizon Hawaii. We will be processing one shortly. Over the years, the State has granted easements to various adjacent property owners for pipeline and access purposes.

Staff contacted the Public Utilities Commission and they do not regulate cable companies.

Applicant 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.

Comments were solicited and their statements are listed below:

DHHL	No comments
Historic Preservation	No response
County of Maui, Planning	No comments
County of Maui, Public Works	No response
OHA	No comments

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 term non-exclusive easement to Oceanic Time Warner Cable covering the subject area for utility 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 term easement document form, as may be amended from time to time;

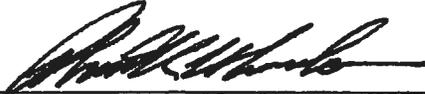
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Approved as amended. The Board amended the Recommendation Section by changing all references to "term, non-exclusive" in the Recommendation section to "perpetual, non-exclusive".

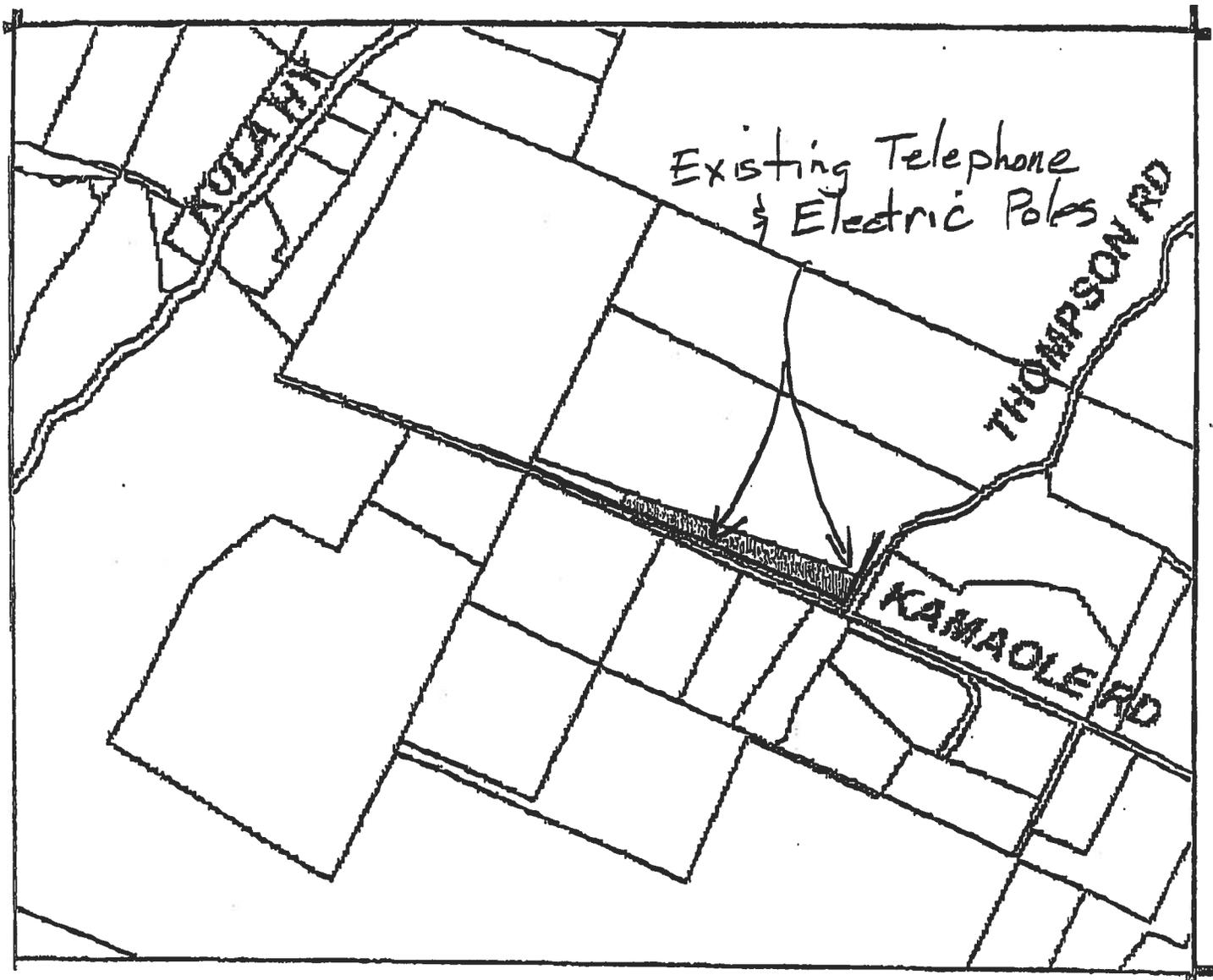


EXHIBIT A

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

October 28, 2005

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

PSF No.: 05MD-066
Maui

Amend Prior Board Action of May 27, 2005 (Item D-3), Grant of Perpetual, Non-Exclusive Easement to Oceanic Time Warner Cable for Utility Purposes, Kahakuloa, Maui, Tax Map Key: (2) 2-2-1:portion 51 and 68 .

BACKGROUND:

At its May 27, 2005 meeting, under Item D-3, the Land Board approved Oceanic Time Warner Cable's request for a perpetual, non-exclusive easement for utility purposes. Oceanic Time Warner Cable was proposing to attach a cable television line to an existing utility pole to provide cable service to nearby property owners.

Mr. Bill Hanke on behalf of Oceanic Time Warner Cable is requesting a construction right-of-entry to start installing the cable lines within the State property. The request is reasonable and staff has no objections.

RECOMMENDATION:

That the Board amend its prior action of May 27, 2005, under Item D-3 by adding:

3. Authorize the issuance of a construction right-of-entry to Oceanic Time Warner Cable and their contractors covering the subject area under the terms and conditions approved by the Land Board at its meeting of May 27, 2005, under Item D-3, 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; and

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 28, 2005

D-9

EXHIBIT "D"

BLNR - Perpetual easement
Oceanic Time Warner Cable

Page 2

October 28, 2005

- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Charlene E. Unoki
Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:

Peter T. Young
Peter T. Young, Chairperson

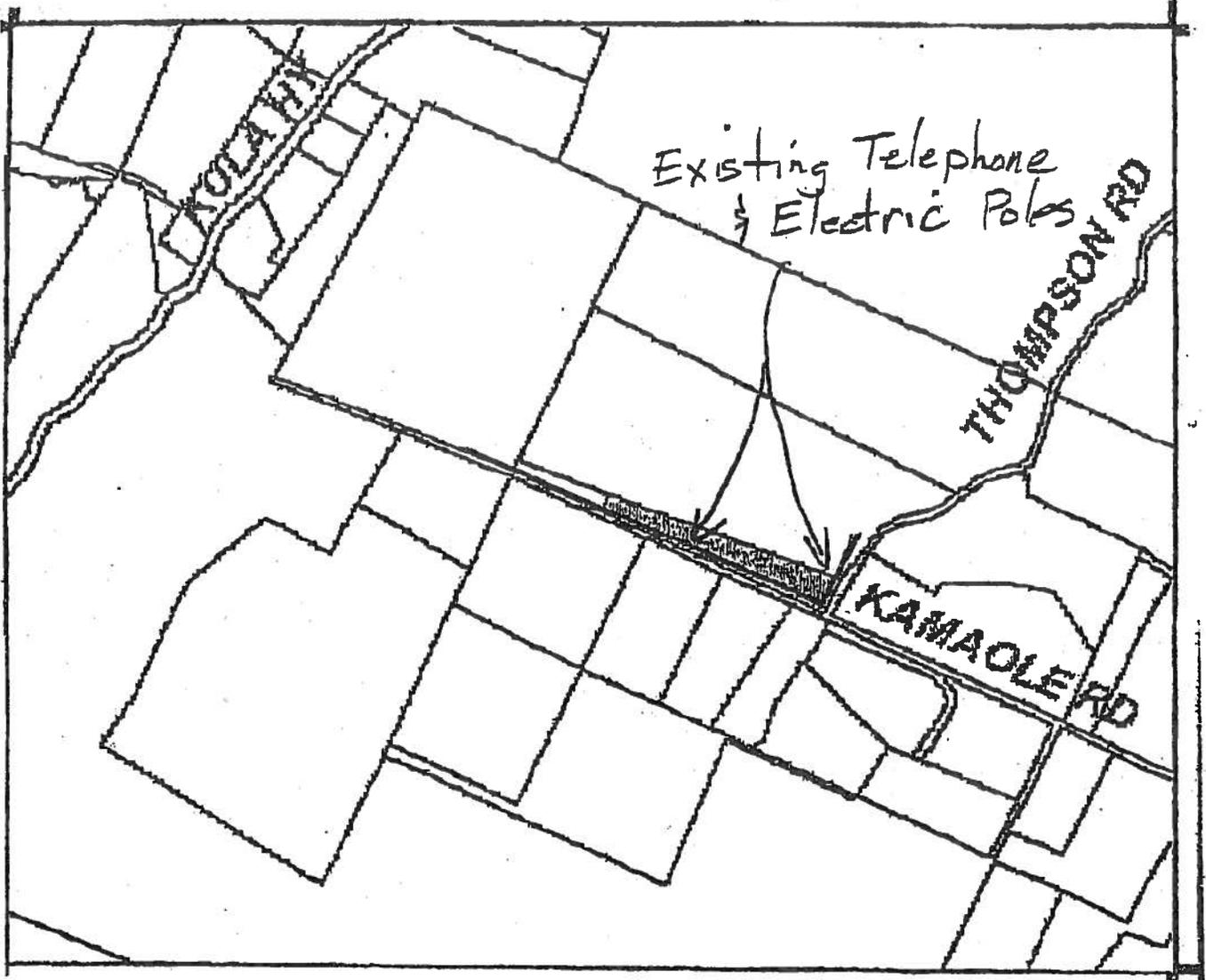


EXHIBIT A