

HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

No. 26-149

RESOLUTION

APPROVING THE GRANT OF PERPETUAL SUBSURFACE EASEMENTS TO HAWAII SUBMARINE CABLE USA LLC WITHIN PORTIONS OF THE KAHE POINT BEACH PARK, 'EWA, HAWAII, TAX MAP KEY NO. (1) 9-2-049:001.

WHEREAS, Section 46-66, Hawai'i Revised Statutes, as amended ("HRS"), authorizes each county, subject to the approval of the council, to grant, sell, or otherwise dispose of any easement for particular purposes in perpetuity by direct negotiation or otherwise, subject to reverter to such county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements over, under, through, and across land bordering the ocean and easements for any governmental or public utility purpose; and

WHEREAS, Hawaii Submarine Cable USA LLC ("HSC") is requesting three (3) perpetual subsurface easements (collectively, the "Easements") within portions of the Kahe Point Beach Park ("KPBP") for underground fiber optic submarine cable purposes in connection with the planned expansion of its telecommunications infrastructure on a parcel of land adjacent to the Hawaii Cable Landing Station, identified as Tax Map Key No. (1) 9-2-051:001 (the "Project"); and

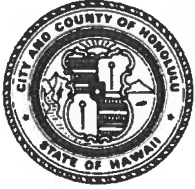
WHEREAS, the Project will comprise of three (3) horizontal directionally drilled bore pipes extending approximately 60-100 feet below the ground surface and west under KPBP into the Pacific Ocean and is not anticipated to affect operations of KPBP; and

WHEREAS, the Director of the Department of Budget and Fiscal Services (the "Director") has recommended the granting of the Easements to HSC for a one-time fee of \$72,500.00 based on an appraisal completed by the Department of Design and Construction; and

WHEREAS, the granting of the Easements shall be subject to the additional terms and conditions set forth in the proposed Grant of Subsurface Easements (the "Grant") attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Easements are designated as Easements 1, 2 and 3, with a total area of 1,480 square feet, as shown highlighted in yellow on the map attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, the various City agencies, including the Department of Parks and Recreation, which has jurisdiction over KPBP, have no objections to the granting of the Easements to HSC; and



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WHEREAS, the granting of the Easements will be in accordance with HRS Section 46-66; now, therefore,

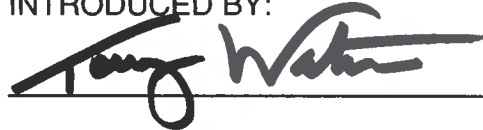
BE IT RESOLVED by the Council of the City and County of Honolulu, that it approves the granting of the Easements to HSC for a one-time fee of \$72,500.00; and

BE IT FURTHER RESOLVED that the granting of the Easements be in accordance with the recommendations of the Director, and/or his or her designee, and with all applicable laws and City policies; and

BE IT FURTHER RESOLVED that the Director, and/or his or her designee, shall be authorized to sign the Grant and other necessary documents; and

BE IT FINALLY RESOLVED that the Clerk be directed to transmit a certified copy of this resolution to the Director.

INTRODUCED BY:



(br)

DATE OF INTRODUCTION:

JUN 17 2026

Honolulu, Hawai'i

Councilmembers

EXHIBIT A

EXHIBIT A

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by ☒ Mail or ☐ Pick-up

TO: City and County of Honolulu
Department of Budget and Fiscal Services
Purchasing Division
530 South King Street, Room 115
Honolulu, Hawai'i 96813

Total Page(s): _____

Tax Map Key No. (1) 9-2-049:001
Certificate of Title No. 59,935
Resolution No. _____

GRANT OF SUBSURFACE EASEMENTS

THIS GRANT OF SUBSURFACE EASEMENTS (this "Grant") is made this _____ day of _____, 20____ (the "Effective Date"), by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, whose business and post office address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 ("**Grantor**"), and **Hawaii Submarine Cable USA LLC**, a Delaware limited liability company, whose business address is 16192 Coastal Highway, Lewes, Delaware 19958 ("**Grantee**").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain parcel of land situate at Honouliuli, Ewa, Oahu, Hawai'i, generally known as Kahe Point Beach Park and identified as Tax Map Key No. (1) 9-2-049:001 (the "**Burdened Property**"), as more particularly described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Section 46-66, Hawai'i Revised Statutes, as amended, authorizes each county, subject to the council approval, to grant, sell, or otherwise dispose of any easement for particular purposes in perpetuity by direct negotiation or otherwise, subject to reverter to the county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements for any governmental or public utility purpose; and

WHEREAS, the Honolulu City Council, by Resolution No. _____ adopted on _____, has approved the granting to Grantee of three (3) perpetual, non-exclusive subsurface easements designated as Easements 1, 2, and 3 (collectively, the "**Easement Areas**"), for underground fiber optic submarine cable purposes, as described in

Exhibits B, C, and D, respectively, and shown on Exhibit E attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the sum of SEVENTY TWO THOUSAND FIVE HUNDRED AND NO/DOLLARS (\$72,500.00) paid to Grantor by Grantee, the receipt of which is hereby acknowledged, and the mutual covenants and promises herein made, the parties do hereby agree as follows:

AGREEMENT:

1. **Grant of Easement Rights**. Grantor hereby grants to Grantee three (3) perpetual, non-exclusive subsurface easements (collectively, the "**Easements**") for telecommunication purposes under, across, and through the Easement Areas, including the right to install, operate, maintain, repair, and remove underground fiber optic apparatus, cable, and such other related appliances and equipment (collectively, the "**Equipment**") and subject to Grantor's prior written approval as addressed in Section 22 (Grantor Approval), to permit third parties to install, operate, maintain, repair, and remove such Equipment; provided, however, that (i) the use of the Easements by any third parties shall be subject to the same terms, conditions, and limitations set forth in this Grant; and (ii) Grantee shall be jointly and severally liable for any breach of this Grant by such third parties;

TOGETHER WITH the right to enter upon the Burdened Property for the above-mentioned purposes.

TO HAVE AND TO HOLD the same unto Grantee, its successors and permitted assigns, forever; **SUBJECT, HOWEVER**, to the following terms, covenants and conditions, and **PROVIDED** also that this Grant shall terminate and the Easements shall revert to Grantor upon (i) the termination of this Grant as provided herein, (ii) the abandonment of the specific purpose for which the Easements are granted, or (iii) after notice and an opportunity to cure as provided herein, the non-performance by Grantee of any of the terms, covenants, and conditions herein to be complied with by Grantee.

2. [Reserved]

3. **Installation and Operation of the Equipment**. This Grant and Grantee's rights hereunder are subject to the following requirements:

3.1 **Review and Approval**.

3.1.1 Grantee shall comply with and obtain all applicable permits and approvals required to install, operate, maintain, repair, and remove the Equipment, including all permits, clearances, and other approvals for any work on or closures of roadways, sidewalks, or adjacent areas, including submission of construction plans to Grantor and utility companies affected by Grantee's proposed work, if any, for their approval.

3.1.2 Grantee shall install, operate, maintain, repair, and remove the Equipment in a manner satisfactory to Grantor.

3.1.3 This Grant shall not be construed as satisfaction of any permits or approvals required from Grantor.

3.2 No Improvements Outside Easement Areas. Grantee shall not construct or install any improvements within the Burdened Property but outside the Easement Areas without Grantor's prior written consent, which may be withheld in its sole and absolute discretion.

4. Care, Diligence and Maintenance. Grantee shall use due care and diligence in the exercise of Grantee's rights hereunder and in such a manner that will occasion as little interference with any and all public or private facilities, improvements, roadways (including streets and sidewalks), storm drains, drainage systems, utility systems (including water, sewer, telecommunication, electric and other utility systems), equipment, or appurtenances thereto, regardless of whether located above-ground or underground, now or in the future existing in, on, under, or around the Easement Areas (collectively, the "Facilities"). Grantee shall undertake all work within the Easement Areas as expeditiously as possible and in accordance with good engineering practices and the industry standard of care so as to minimize disruption of the use of the Burdened Property by Grantor or the general public. Grantee shall, at all times, (i) keep the Easement Areas in a clean, sanitary, safe and orderly condition, except for any conditions caused by third parties; and (ii) not make any waste, strip, soil, nuisance or unlawful, improper or offensive use of the Easement Areas.

5. Repair. Should Grantee damage any portion of the Burdened Property or any Facilities, Grantee shall promptly (i) notify Grantor; and (ii) at its sole cost and expense and in consultation with Grantor, repair, restore, or replace the portion of the Burdened Property or Facilities so damaged by Grantee to its condition immediately prior thereto. Notwithstanding the foregoing, Grantor may, in its sole discretion, repair, restore, or replace the Burdened Property or its Facilities, whether or not such work is deemed an emergency, and Grantee shall reimburse Grantor for all costs and expenses incurred by Grantor to perform such work and to resolve all claims filed against Grantor due to the damage caused by Grantee within thirty (30) days of receipt of an invoice therefor. Prior to performing any such repair, restoration, or replacement, Grantor shall provide a reasonable advance notice to Grantee. Should Grantor determine that Grantee's damage to the Burdened Property or Facilities may result in further imminent and serious damage or poses imminent risk to public health or safety, Grantor may require Grantee to temporarily cease such use of the applicable portion of the Easement Areas after providing written notice describing the specific factual basis of such risk, and providing Grantee a commercially reasonable opportunity to cure any alleged condition unless such opportunity would itself create unreasonable risk. In the event that Grantor determines that the risk of damage or to public health or safety cannot be adequately mitigated or cured, Grantor may relocate the Easement Areas or applicable portions thereof pursuant to Section 9 (Relocation of the Easement Areas).

6. Restoration of Easement Area. Upon completion of any work in, on, or under the Easement Areas, to the extent that Grantee has altered the surface of the land above the Easement Areas, Grantee shall restore the surface of the land above the Easement Areas to a condition satisfactory to Grantor in its sole discretion.

7. Ownership of Improvements and Removal. The Equipment installed or placed in, on, or under the Easement Areas shall be and remain the property of Grantee during the term of this Grant and may be removed or otherwise disposed of by Grantee at any time; provided, however, that such removal shall be accomplished without damage to the Burdened Property or Grantor's Facilities, and in case of damage, the provisions of Section 5 (Repair) shall apply.

8. Reservation of Rights. Grantor reserves unto itself the full use and enjoyment of the Burdened Property and to grant other rights and privileges for any and all purposes affecting the Easement Areas, provided that such use by Grantor and/or third parties do not unreasonably

interfere with the exercise by Grantee of the rights herein granted. Grantee shall take steps necessary to ensure that Grantee's exercise of the rights and privileges granted hereunder does not cause any unreasonable interference with Grantor's use and enjoyment of the Burdened Property.

9. **Relocation of the Easement Areas.** In the event Grantor, in its sole discretion, determines that Grantee's use of the Easement Areas unreasonably interferes with Grantor's use of the Burdened Property, Grantor may relocate the Easement Areas, or any portion thereof, and Grantee shall, at its sole cost and expense, accomplish any necessary temporary and/or permanent relocation of its Equipment; provided, however, Grantor shall give to Grantee at least twelve (12) months' prior written notice of any requirement for such relocation, and provide Grantee all reasonable rights of access, construction, consent, and any other reasonable means requested by Grantee to facilitate the requested relocation. Grantor shall reasonably cooperate with Grantee in connection with any relocation work, and shall provide to Grantee an appropriate perpetual non-exclusive grant of easement authorizing Grantee's use and occupation of the new easement area(s).

10. **Liability and Indemnification.** Grantee shall be liable for all damages and losses caused by or arising out of Grantee's use of the Easement Areas. Grantee shall defend, indemnify, and hold harmless Grantor from and against any and all claims, demands, liabilities, losses, expenses (including reasonable attorneys' fees) resulting from (i) Grantee's use of the Easement Areas, (ii) the exercise by Grantee of any of the rights granted under this Grant, or (iii) Grantee's uncured breach of this Grant; provided, however, that Grantee's obligations hereunder are subject to the obligation of Grantor to notify Grantee as promptly as practicable of any alleged damages, losses, claims, demands, or liabilities, or the reasonable expectation of Grantor of such damages, losses, claims, demands, or liabilities, caused by or arising out of Grantee's use of the Easement Areas. Grantee acknowledges and agrees that Grantor shall not be liable or responsible for any loss or damage sustained by Grantee or anyone claiming by, through or under Grantee unless such loss or damage arise from the gross negligence or willful misconduct of Grantor or anyone claiming by, through, or under Grantor. This provision shall survive the expiration or earlier termination of this Grant.

11. **Default.** If Grantee fails to perform any of Grantee's obligations under this Grant, Grantor shall issue a written notice of default to Grantee.

11.1 **Time to Cure.** Any and all defaults described in such notice of default shall be resolved and remedied to Grantor's satisfaction within thirty (30) days of the date of Grantor's written notice to Grantee which explains with particularity the nature of the claimed default or such other time as may be authorized by Grantor in writing.

11.2 **Grantor's Remedies for Failure to Cure.** In the event that Grantee fails to cure said default within the required time period, or, in the case of a claimed default which cannot be reasonably remedied within a thirty (30)-day period, Grantee fails to commence to cure the claimed default within such thirty (30)-day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed default, Grantor may, but shall not be obligated to, cure or remedy said default itself at Grantee's expense, which Grantee shall pay to Grantor within thirty (30) days of receipt of an invoice therefor. Interest shall accrue on any late payment at twelve percent (12%) per annum. If Grantee defaults under this Grant, and fails to cure such default after notice and opportunity to cure as provided herein, Grantor shall be entitled to all remedies available under this Grant, including termination of this Grant, and at law or in equity, which remedies shall be cumulative and not exclusive. Upon termination of this Grant, Grantee

shall remove all of its Equipment from the Easement Areas, and Grantor shall not be liable to Grantee, its customers, or any one claiming by, through or under Grantee for such action. This provision shall survive the expiration or earlier termination of this Grant.

11.3 Emergency Conditions. Notwithstanding the foregoing, if Grantor determines that Grantee's default poses an imminent risk to public health or safety that must be cured or remedied sooner than the thirty (30) day cure period, Grantor may require Grantee to cure or remedy its default immediately. Alternatively, Grantor may cure or remedy said default itself immediately. In either case, Grantee shall bear all costs and expenses incurred in performing said cure or remedy.

12. Costs, Expenses and Damages. Grantee shall be solely responsible for all costs and expenses it incurs in connection with its use of the Easement Areas for the purposes permitted herein, including all design, planning, engineering, construction, alteration, operation, and maintenance costs. Grantee shall also be responsible for all costs and expenses incurred by Grantor in connection with responding to and investigating actual and consequential damages suffered by Grantor or other users of the Easement Areas as a result of Grantee's exercise of its rights hereunder. Grantee shall pay, within thirty (30) days of receipt of an invoice therefor, all costs and expenses, including reasonable attorneys' fees, which may be incurred by Grantor in enforcing the covenants and conditions of this Grant. Interest shall accrue on any late payment at twelve percent (12%) per annum.

13. Condemnation. If at any time the Easement Areas, or any portion thereof, shall be condemned or taken for public purposes by any governmental authority other than Grantor, then and in every such case, Grantee's interest in the Easement Areas so condemned or taken shall at once cease and determine, and provided that Grantor is not the condemning authority, Grantee shall not by reason of such condemnation or taking be entitled to any claim against Grantor for compensation or indemnity and all compensation payable or to be paid for or on account of the fee interest in the Easement Areas by reason of the condemnation or taking as aforesaid shall be payable to and be the sole property of Grantor, provided that Grantee shall be allowed to pursue claims for its interest in the Easement Areas directly with the condemning authority.

14. Compliance with Laws. In the exercise of its rights granted hereunder, Grantee shall comply with all statutes, ordinances, rules and regulations of the federal, state, and local governments or any agency thereof, and shall not cause the Burdened Property to become non-compliant with the American With Disabilities Act of 1990 (the "ADA"). If Grantee causes the Burdened Property to become non-compliant with the ADA, Grantee shall immediately remedy the same; provided that Grantor shall have the right to approve of any plans and specifications therefor. In connection with Grantee's obligation to remedy its actions that resulted in non-compliance with the ADA, Grantee shall obtain all required permits, and abide by all conditions of said permits.

15. Hazardous Substances.

15.1 Definitions. For purposes of this Grant, Grantee acknowledges and agrees that the following terms shall have the following meanings:

"Environmental Laws" shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses,

authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law, which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These Environmental Laws shall include regulations and orders of the federal Environmental Protection Agency (hereinafter "EPA") and the State of Hawai'i Department of Health (hereinafter "DOH").

"Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCB's), methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by state or federal authorities.

"Including" or **"includes"** shall mean "including, without limitation," unless expressly otherwise provided.

15.2. Grantee's Activities and Duties.

15.2.1 Compliance with Environmental Laws. Grantee agrees, at its sole cost and expense, to comply with all Environmental Laws applicable to the Easement Areas and Grantee's activities and operations within the Easement Areas. This provision shall survive the expiration or earlier termination of this Grant.

15.2.2 Hazardous Substances. Except for any Hazardous Substances used in compliance with all Environmental Laws, Grantee shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its duly authorized employees, agents, guests, or contractors (collectively, **"Affiliates"**), in, on, under, or from the Easement Areas without the prior written consent of Grantor, which consent may be withheld by Grantor in its sole discretion. Grantee shall at all times fully comply with all provisions of this Grant and all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities.

15.2.3 Notice to Grantor. Grantee shall keep Grantor fully informed at all times regarding all Environmental Law related matters affecting Grantee's use of the Easement Areas. This duty shall include providing Grantor with a current and complete list and accounting of all Hazardous Substances of every kind, which are present on or about the Easement Areas as a result of Grantee's activities and with evidence that Grantee has in effect all required and appropriate permits, licenses, registrations, approvals and other consents that may be required by federal and state authorities under all Environmental Laws. Grantee shall also provide immediate written notice to Grantor of any spills, releases, and/or discharge of Hazardous Substances, investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated or issued, or an indication of intent to do so, to Grantor by any federal, state, or local authority that relates in any way to any Environmental Law or any Hazardous Substance affecting the Easement Areas. This written notice to Grantor shall include copies of

all written communications from any federal, state, or local authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by Grantee. At least thirty (30) days prior to termination of this Grant, Grantee shall provide Grantor with written evidence reasonably satisfactory to Grantor that Grantee has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Easement Areas, and the results of all assessments and investigations that may be ordered by Grantor, environmental investigations and assessments herein, or by any governmental agency responsible for enforcement of the Environmental Laws.

15.2.4 Disposal/Removal. Except as to the possession, use and handling of Hazardous Substances for which Grantee is authorized by law, including those Hazardous Substances for which Grantee has obtained all currently required permits to store or use certain Hazardous Substances in, on, or under the Easement Areas, including written permission from Grantor, Grantee shall cause any Hazardous Substances resulting from Grantee's use to be removed and transported from the Easement Areas for disposal solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. Within ten (10) business days of each such disposal, Grantee shall provide Grantor with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws. This provision shall survive the expiration or earlier termination of this Grant.

15.2.5 Environmental Investigations and Assessments. Grantee, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Easement Areas to determine the presence of any Hazardous Substance on, in, or under the Easement Areas caused by Grantee as may be directed from time to time by Grantor or by any federal or state authority when good cause exists to believe that Grantee's activities or use of the Easement Areas has resulted in the presence of any Hazardous Substances on, in, or under the Easement Areas. The extent and number of any environmental investigations and assessments shall be determined by Grantor or the federal or state authority directing said investigations and assessments to be conducted. Grantee shall retain an independent, competent, and qualified third-party person or entity that is satisfactory to Grantor or other governmental authority, as the case may be, to conduct said investigations and assessments. Grantee shall, at its sole expense, direct said person or entity to provide Grantor or other governmental authority, if so requested, with testable portions of all samples of any soils, water, groundwater, or other material that may be obtained for testing, and written results of all tests on said samples upon completion of said testing. In any event, Grantee shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Grant in order to determine the condition of the Easement Areas.

15.2.6 Remediation. In the event that any Hazardous Substance is used, stored, treated, disposed, discharged, or released in, on, under, or from the Easement Areas by Grantee or its Affiliates, or is determined to be present on the Easement Areas or to have migrated to any location within the Burdened Property as a result of Grantee's or its Affiliates' actions, Grantee shall, at its sole cost and expense, immediately remediate the Easement Areas, or any location within the Burdened Property to which any Hazardous Substance has migrated, of such Hazardous Substance, and dispose and remove said Hazardous Substance in accordance with this Grant. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by Grantor or any other relevant governmental authority. This duty to remediate also include replacement of any materials, such as soils, so

removed with materials that are reasonably satisfactory to Grantor or other governmental authority, as the case may be.

15.2.7 Restoration and Surrender of Easement Areas. Upon termination of this Grant or the abandonment of any portion of the Easement Areas, Grantee shall, at Grantee's sole cost and expense, clean up any Hazardous Substances released onto the Easement Areas by Grantee or its Affiliates in accordance with all Environmental Laws. This Subsection shall not be construed to require Grantee to clean up or respond to any Hazardous Substances existing on the Easement Areas prior to the Effective Date.

15.2.8 Grantor's Right to Act. In the event Grantee fails for any reason to comply with any of its duties under this Section 15 (Hazardous Substances) within the time set for doing so or, in the absence of a set time, within a reasonable time as determined by Grantor, Grantor shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. Any cost, expense, or liability of any type that may be incurred by Grantor in performing said acts or duties shall be the sole responsibility of Grantee, and Grantee hereby agrees to immediately pay to Grantor all costs and expenses incurred by Grantor in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of Grantor's right to act, including litigation costs, attorneys' fees, and the costs and fees for collection of said costs, expenses, or liability.

15.2.9 Release and Indemnity. In addition to and not as a limitation of the obligations herein, Grantee hereby agrees to release, indemnify, defend with counsel reasonably acceptable to Grantor, and hold harmless Grantor and its officers, directors, employees, and agents from any liability of any kind, including damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority by reason of any Hazardous Substance that may be used, stored, treated, disposed, discharged, or released in, on, under, or from the Easement Areas by Grantee or its Affiliates, including any fines or penalties assessed against Grantor for Grantee's non-compliance with any Environmental Laws. Grantee understands and agrees that any claims for damages, penalties, fines, judgments, or assessments that may be assessed against Grantee or Grantor by any person or governmental authority based on any violation of any Environmental Laws by Grantee in connection with its use of the Easement Areas shall be paid in full, complied with, and in every way satisfied by Grantee within the required time, and not by Grantor, if caused by Grantee. In the event both Grantor and Grantee shall be liable for any environmental clean-up or remediation of the Easement Areas or of areas impacted by Grantee's use of the Easement Areas, Grantee shall indemnify, defend with counsel reasonably acceptable to Grantor, and hold harmless Grantor in accordance with the terms of this Subsection, in proportion to the extent that Grantee's use of the Easement Areas is responsible for such environmental condition of the Easement Areas or such impacted areas.

15.2.10 Burden of Proof. In all instances covered in this Section 15 (Hazardous Substances), Grantee accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances on, in, or under the Easement Areas. If Grantee cannot establish that it is not responsible for the existence of Hazardous Substances on, in, or under the Easement Areas, Grantee shall be deemed responsible for the existence of Hazardous Substances. Upon Grantee's request, any determination of responsibility hereunder shall be made by an impartial third-party, agreed to by Grantor and Grantee.

16. Waiver of Claims. Grantee hereby waives any claim against Grantor for damage arising out of Grantor's use of the Easement Areas, except where such damage is caused by the

gross negligence or willful misconduct of Grantor. Nothing herein shall be interpreted to waive Grantee's rights to file claims or actions against third parties for harm caused to the Easement Areas by such parties.

17. **Termination and Abandonment.** If Grantee shall, at any time, cease to use the Easement Areas, or any portion thereof, for a continuous period of two (2) years or more, then the unused portion of the Easement Area shall be deemed abandoned and this Grant shall terminate as to such portion without any action on the part of Grantor, subject to the survival of Grantee's restoration obligations herein. Upon termination of this Grant for any reason, Grantee shall, at its sole cost and expense, promptly remove any and all of its Equipment from the Easement Areas. Any such removal shall be accomplished without damage to the Burdened Property or Facilities, and in case of damage, the provisions of Section 5 (Repair) shall apply. In the event Grantee fails or refuses to remove its property from the Easement Areas, Grantor may do so at Grantee's expense, which shall be payable upon demand.

18. **Insurance.** Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Grant, any and all insurance that may be required under the laws, ordinances or regulations of any governmental authority.

19. **As-Is Condition of Easement Areas; Assumption of Risk.**

19.1. **Grantor's Disclaimer of Representations.** Grantor has not made, and will not make, any representations or warranties, express or implied, with respect to the Easement Areas, including (i) the existence of any dangerous or defective conditions in, under or about the Easement Areas (whether or not any such conditions are known or unknown to Grantor or reasonably discoverable by Grantor), (ii) the fitness or suitability of the Easement Areas for Grantee's intended purposes, including the installation, operation, maintenance, repair, and removal of any Equipment, and (iii) any other matter whatsoever pertaining to the Easement Areas.

19.2. **As-Is Condition of Easement Areas.** The Easement Areas are provided in its "as-is and where is" condition with all faults. Grantee acknowledges, agrees, and accepts the Easement Areas on an "as-is and where is" basis with all faults.

19.3. **Assumption of Risk; Waiver of Claims.** Unless caused by the gross negligence or willful misconduct of Grantor or any person claiming by, through or under Grantor, Grantee hereby assumes any and all risk of death, bodily and personal injury, emotional distress, and/or property damage suffered or incurred by Grantee and all persons claiming by, through or under Grantee with respect to the use of the Easement Areas, the exercise of any of Grantee's rights under this Grant, or the performance of any of Grantee's obligations under this Grant, including damage to any and all property, vehicles, or improvements located, constructed or installed in, under or about the Easement Areas. Unless caused by the gross negligence or willful misconduct of Grantor, Grantee hereby waives and releases any claim against Grantor and its officers, directors, employees, and agents, for payment of any compensation or damages to, for, or on behalf of Grantee and any person claiming by, through, or under Grantee for any death, bodily, or personal injury, emotional distress, or property damage suffered or incurred arising (directly or indirectly) out of Grantee's use of the Easement Areas. Nothing herein shall be interpreted to waive Grantee's rights to file claims or actions against third parties, or contractors or other agents of Grantor for harm caused to the Easement Areas by such parties.

20. **No Mortgage or Pledge; No Liens.** Grantee shall not mortgage or pledge the Easement Areas, or any portion thereof, or any interest in this Grant, without Grantor's prior written consent and approval and any mortgage or pledge of the same without Grantor's prior written consent and approval shall be null and void. Grantee shall keep the Easement Areas and the Burdened Property free from any lien or encumbrance of any kind or nature whatsoever.

21. **Prehistoric and Historic Remains.** Grantee shall notify Grantor and the State of Hawai'i Historic Preservation Division ("SHPD") if Grantee discovers or finds any prehistoric or historic remains at, in, on, over, or under the Easement Areas. Upon discovery of any prehistoric or historic remains or archaeological sites or remains on the Easement Areas, Grantee shall immediately stop all work and cease any further disturbance of the remains and surrounding portion(s) of the Easement Areas containing the remains and/or sites. Any and all prehistoric and historic remains found at, in, on, over, or under the Easement Areas shall not be disturbed or removed by Grantee without the express written consent and approval of SHPD and with notice to Grantor. Grantee shall obtain the prior written consent of SHPD with notice to Grantor prior to re-commencing any work within, on or involving those portions of the Easement Areas containing such prehistoric or historic remains or archaeological sites. All such work shall be in accordance with all applicable federal, state, and local laws, rules and regulations.

22. **Grantor Approval.** Prior to allowing any third party to install, operate, maintain, repair, or remove any Equipment within the Easements, Grantee shall submit a written request for approval to Grantor, through the Director of the Department of Budget and Fiscal Services, identifying the proposed third party and confirming that the use of the Easements by said third party shall be subject to the same terms, conditions, and limitations set forth in this Grant; and that Grantee shall be jointly and severally liable for any breach of this Grant by such third party. Grantor's approval of the use of the Easements by such third party shall be deemed approved if Grantor does not provide written objections to Grantee's request within sixty (60) days of Grantee's submittal of its request to the Department of Budget and Fiscal Services.

23. **No Assignment.** Grantee shall not assign any rights in the Easement Areas without the prior written consent of Grantor, which Grantor may withhold in its sole discretion.

24. **Severability.** In the event that any provision of this Grant is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Grant.

25. **Waiver.** The failure of either party to insist upon strict compliance with any term, provision or condition of this Grant shall not constitute or be deemed to constitute a waiver or relinquishment of such party's right to enforce the same in accordance with this Grant.

26. **Terms.** The term "Grantor" wherever used herein shall be held to mean and include the City and County of Honolulu and its successors and assigns. The term "Grantee" wherever used herein shall be held to mean and include Grantee and its permitted successors and assigns. This Grant shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

27. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this Grant by either party hereto shall be in writing and shall be deemed to have been duly given or served: (a) upon receipt if personally delivered; (b) when received by United States mail, postage prepaid and certified with return receipt requested, or

when such receipt is rejected; or (c) when received when sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Grantee:

Hawaiki Submarine Cable USA LLC
16192 Coastal Highway
Lewes, Delaware 19958
Attention: Laurent Le Breton, Manager
Telephone: _____
Email: _____

Grantor:

City and County of Honolulu
Department of Budget and Fiscal Services
Attention: Director
530 South King Street, Room 208
Honolulu, Hawai'i 96813
Telephone: (808) 768-3900
Email: bfspurchasing@honolulu.gov

A party may change its address, telephone number or email contact by providing written notice of such change to the other party. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday observed by the State of Hawai'i, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday observed by the State of Hawai'i.

28. **Counterparts.** This Grant may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers duly authorized on the day and year first above written.

APPROVED AS TO CONTENTS:

By _____
Name _____
Director, Department of Parks and
Recreation

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai'i

By _____
Name _____
Director, Department of Budget and Fiscal
Services

"GRANTOR"

**APPROVED AS TO FORM AND
LEGALITY:**

Name _____
Deputy Corporation Counsel

HAWAIKI SUBMARINE CABLE USA LLC,
a Delaware limited liability company

By _____
Name:
Its:

"GRANTEE"

GRANTOR:

STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU

SS:

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who, being by me duly sworn or affirmed, did say he is the _____ of the Department of Budget and Fiscal Services of the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, and that said _____-page(s) **GRANT OF SUBSURFACE EASEMENTS** dated _____, 20____, was signed on behalf of the municipal corporation by authority of the its City Council, and _____ acknowledged the instrument to be the free act and deed of the municipal corporation. This acknowledgement is deemed to include my Notary Certification.

Print Notary Name: _____
Notary Public, State of Hawai'i
First Judicial Circuit

My Commission expires: _____

GRANTEE:

STATE OF _____

COUNTY OF _____

SS: _____

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who, being by me duly sworn or affirmed, did say that he/she is the _____ of **HAWAIKI SUBMARINE CABLE USA LLC**, a Delaware limited liability company, and that said _____-page(s) **GRANT OF SUBSURFACE EASEMENTS**, undated at the time of signing, was signed on behalf of said association by authority of its members, and said Officer acknowledged said instrument to be the free act and deed of said association. This acknowledgement is deemed to include my Notary Certification.

Print Notary Name: _____

Notary Public, State of _____

My Commission expires: _____

Exhibit A

LOT 361

Being Lot 361, area 4.47 Acres, as shown on Map 61, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 59,935 issued to The City and County of Honolulu.

Situated at Honouliuli, Ewa, Oahu, Hawaii.



1320 North School Street
Honolulu, Hawaii 96817

July 25, 2025
25-02

Description Prepared By:

ENGINEERS SURVEYORS
HAWAII, INC.

A handwritten signature in black ink, appearing to read "Miles S. Horie", written over a horizontal line.

Miles S. Horie
Licensed Professional Land Surveyor
Certificate Number 10007
Exp. 4-30-26
Land Court Certificate Number 338

Exhibit B

EASEMENT 1

Being Easement 1, area 553 Square Feet, for Underground Fiber Optic Submarine Cable purposes, as shown on Map ???, affecting Lot 361, as shown on Map 61, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 59,935 issued to The City and County of Honolulu.

Situate at Honouliuli, Ewa, Oahu, Hawaii.



1320 North School Street
Honolulu, Hawaii, 96817

July 25, 2025
25-02

Description Prepared By:

ENGINEERS SURVEYORS
HAWAII, INC.

A handwritten signature in black ink, appearing to read "Miles S. Horie", written over a horizontal line.

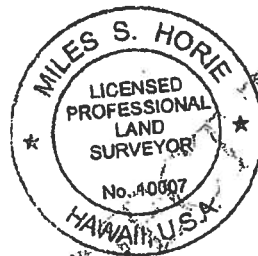
Miles S. Horie
Licensed Professional Land Surveyor
Certificate Number 10007
Exp. 4-30-26
Land Court Certificate Number 338

Exhibit C

EASEMENT 2

Being Easement 2, area 498 Square Feet, for Underground Fiber Optic Submarine Cable purposes, as shown on Map ???, affecting Lot 361, as shown on Map 61, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and of the Estate of James Campbell deceased and being a portion of the land described in Transfer Certificate of Title No. 59,935 issued to The City and County of Honolulu,

Situate at Honouliuli, Ewa, Oahu, Hawaii.



1320 North School Street
Honolulu, Hawaii, 96817

July 25, 2025
25-02

Description Prepared By:

ENGINEERS SURVEYORS
HAWAII, INC.

A handwritten signature of Miles S. Horie in black ink.

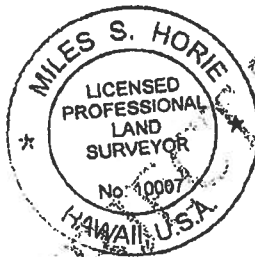
Miles S. Horie
Licensed Professional Land Surveyor
Certificate Number 10007
Exp. 4-30-26
Land Court Certificate Number 338

Exhibit D

EASEMENT 3

Being Easement 3, area 429 Square Feet, for Underground Fiber Optic Submarine Cable purposes, as shown on Map ???, affecting Lot 361 as shown on Map 61, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 59,935 issued to The City and County of Honolulu.

Situate at Honouliuli, Ewa, Oahu, Hawaii.



1320 North School Street
Honolulu, Hawaii 96817

July 25, 2025
25-02

Description Prepared By:

ENGINEERS SURVEYORS
HAWAII, INC.

A handwritten signature of Miles S. Horie in black ink.

Miles S. Horie
Licensed Professional Land Surveyor
Certificate Number 10007
Exp. 4-30-26
Land Court Certificate Number 338

Exhibit E

1069

MAP

PRELIMINARY (SUBJECT TO C&C, DPP APPROVAL) LAND COURT STATE OF HAWAII LAND COURT APPLICATION 1069

DESIGNATION OF EASEMENTS 1, 2, AND 3
AFFECTING LOT 361 (MAP 61)
IN FAVOR OF LOT 5623, AS SHOWN ON MAP 526
AT HONOLULU, EWA, OAHU, HAWAII

ENGINEERS SURVEYORS HAWAII, INC.



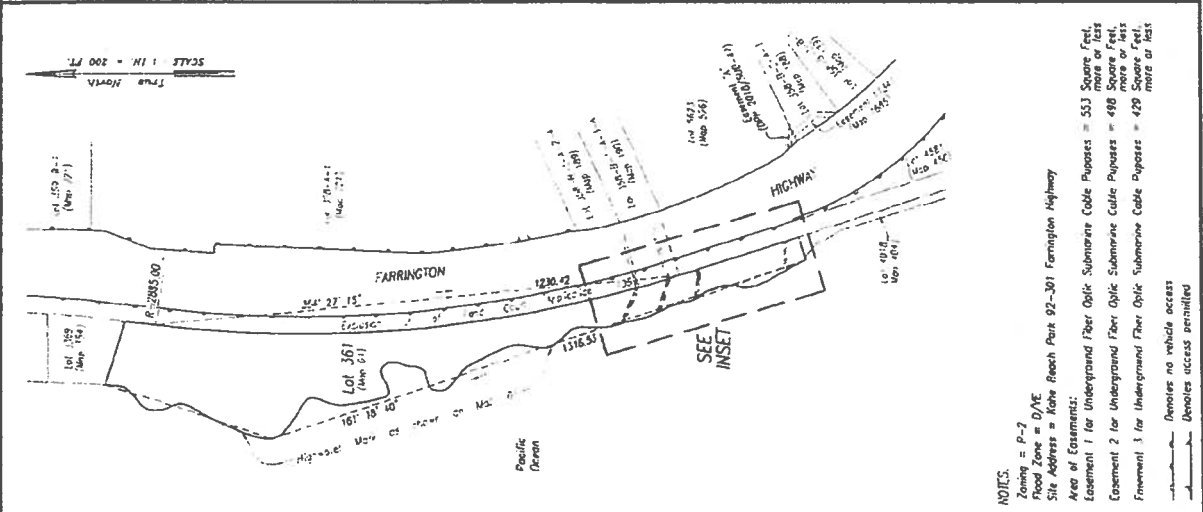
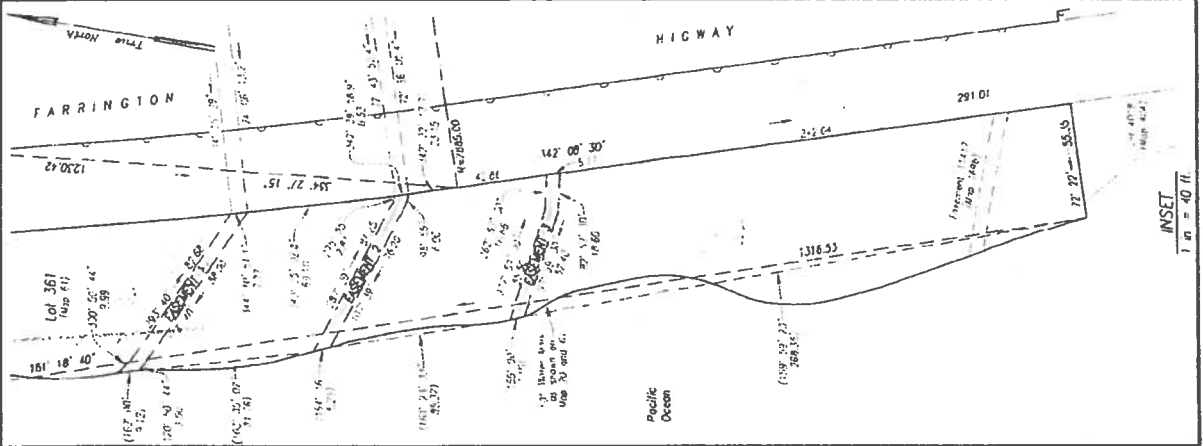
1320 NORTH SCHOOL STREET
HONOLULU, HAWAII
JULY 25, 2025

OWNER: CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PARKS AND RECREATION
TRANSFER CERTIFICATE OF TITLE:

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED
BY ORDER OF THE COURT.

REGISTRAR OF THE LAND COURT

15' x 21' = 2.2 Sq. Ft.



NOTES:
Zone = P-2
Flood Zone = O/NE
Site Address = Kaneohe Beach Park 92-301 Farrington Highway
Area of Easements:
Easement 1 for Underground Fiber Optic Submarine Cable Purposes = 553 Square Feet, more or less
Easement 2 for Underground Fiber Optic Submarine Cable Purposes = 488 Square Feet, more or less
Easement 3 for Underground Fiber Optic Submarine Cable Purposes = 429 Square Feet, more or less
Denotes no vehicle access
Denotes access permitted

Top Map Key 9-2-49 01

EXHIBIT B

MAP

PRELIMINARY
(SUBJECT TO C&C, DPP APPROVAL)

LAND COURT

STATE OF HAWAII

LAND COURT APPLICATION 1069

DESIGNATION OF EASEMENTS 1, 2, AND 3

AFFECTING LOT 361 (MAP 61)

IN FAVOR OF LOT 5623, AS SHOWN ON MAP 526

AT HONOLULU, EWA, OAHU, HAWAII



ENGINEERS SURVEYORS HAWAII, INC.

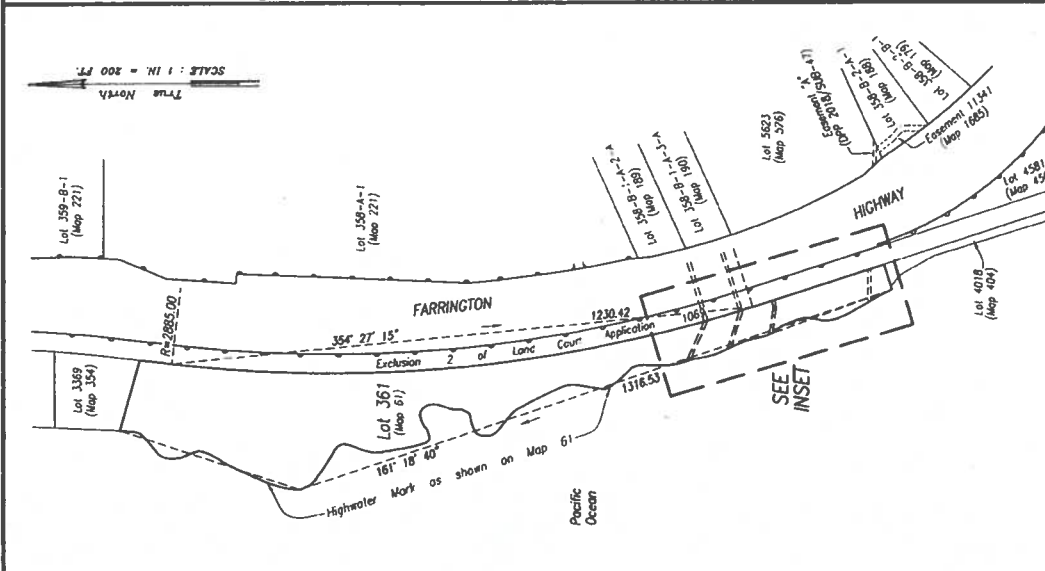
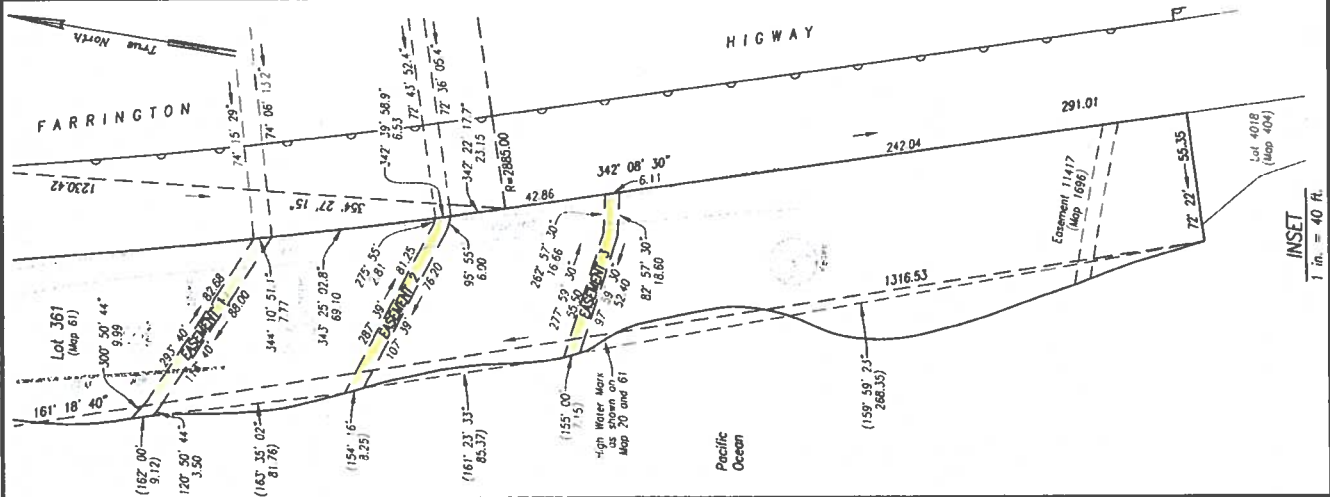
Kees S. Horie
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NUMBER 10007

1320 NORTH SCHOOL STREET
HONOLULU, HAWAII
JULY 25, 2025

OWNER: CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PARKS AND RECREATION
TRANSFER CERTIFICATE OF TITLE:

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED _____
BY ORDER OF THE COURT.

REGISTRAR OF THE LAND COURT



NOTES:

Zoning = P-2

Flood Zone = D/VF

Site Address = Kane Beach Park 92-301 Farrington Highway

Area of Easements:

Easement 1 for Underground Fiber Optic Submarine Cable Purposes = 553 Square Feet, more or less

Easement 2 for Underground Fiber Optic Submarine Cable Purposes = 498 Square Feet, more or less

Easement 3 for Underground Fiber Optic Submarine Cable Purposes = 429 Square Feet, more or less

Denotes no vehicle access

Denotes access permitted

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 26-149

Introduced: 06/17/26 By: TOMMY WATERS - BY REQUEST Committee: INFRASTRUCTURE,
TRANSPORTATION &
TECHNOLOGY (ITT)

Title: APPROVING THE GRANT OF PERPETUAL SUBSURFACE EASEMENTS TO HAWAII SUBMARINE CABLE USA LLC
WITHIN PORTIONS OF THE KAHE POINT BEACH PARK, 'EWA, HAWAII, TAX MAP KEY NO. (1) 9-2-049:001.

Voting Legend: * = Aye w/Reservations

06/17/26	INTRO	Introduced.
06/24/26	ITT	Reported out for adoption.
		CR-177(26)
		5 AYES: CORDERO, DOS SANTOS-TAM, OKIMOTO, TUPOLA, WEYER
07/08/26	CCL	Committee report and Resolution were adopted.
		8 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, NISHIMOTO, OKIMOTO, TUPOLA, WATERS, WEYER
		1 ABSENT: TULBA

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this
RESOLUTION.



CHADD KADOTA, ACTING CITY CLERK



TOMMY WATERS, CHAIR AND PRESIDING OFFICER