D-5

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

August 11, 2006

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

PSF:05od-032

Oahu

Amendment to Prior Board Action of December 12, 2003, Agenda Item D-49, Direct Award of Perpetual, Non-Exclusive Easement for Utility Purposes, Honolulu, Oahu, TMK: 1-5-041:06, 22, 130, 334 portions.

REMARKS:

On December 12, 2003, agenda item D-49, the Board approved the issuance of a perpetual easement to Hawaiian Electric Company, Inc. (HECO). Parcel number 06 was inadvertently omitted. To correct the prior Board action, parcel 06 is to be added to all of the tax map key references throughout the submittal.

RECOMMENDATION:

That the Board amend its prior action of December 12, 2003, agenda item D-49 by:

1. Correcting all tax map key references to include parcel 06; and

2. Such other terms and conditions as may be prescribed by the Chairperson to protect the State's interests.

Respectfully Submitted,

Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

ITEM D-5

V-47

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

December 12, 2003

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

PSF No.:03od-235

OAHU

Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. (HECO) for Utility Purposes; Issuance of Construction Right-of-entry; Sand Island, Honolulu, Oahu, Tax Map Key (1) 1-5-041: 22, 130, 334 portions.

APPLICANT:

Hawaiian Electric Company, Inc., a Hawaii corporation, whose business and mailing address is P.O. Box 2750, Honolulu, Hawaii 96840-0001.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Sand Island, Honolulu, Oahu, identified by Tax Map Key: (1) 1-5-041: 22, 130, 334 portions, as shown on the attached map labeled Exhibit A.

AREA:

24,892 square feet, more or less, subject to review by DAGS Survey Division.

ZONING:

State Land Use District: Urban
City & County of Honolulu CZO: P-2

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO X

as amended
APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON December 12, 2003

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CURRENT USE STATUS:

Parcel 22 - Encumbered by Revocable Permit No. S-7328, Horizon Lines, LLC for parking of trailer purposes; Governor's Executive Order No. 3892 setting aside to Land Division for Industrial Park and Business Purposes (Sand Island); and perpetual sewer easement (LOD 26186) issued to the City and County of Honolulu.

Parcels 130 & 334 - Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines and poles 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:

A Findings of No Significant Impacts (FONSI) for the City's Sand Island Wastewater Disinfection Facility and Effluent Pump Station was published in the OEQC's Environmental Notice on October 8, 2000.

DCCA VERIFICATION:

Place of business registration confirmed:	YES X	NO ___
Registered business name confirmed:	YES X	NO ___
Applicant in good standing confirmed:	YES X	NO ___

APPLICANT REQUIREMENTS:

Applicant shall be required to:
1) Pay for an appraisal to determine one-time payment;
2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
3) Process and obtain subdivision at Applicant's own cost.

REMARKS:

In July 2003, HECO submitted an application for a perpetual utility easement for a new 46kV circuit along the Sand Island Parkway and within the Department's parcels identified as TMK: 1-

5-041: 22, 130, 334. The primary reason for this line is to meet the City & County of Honolulu's (City's) demand for additional power for its sewage treatment plant located on the adjacent property which has been set aside under EO No. 3939.

The City is in the process of upgrading the existing Sand Island Wastewater Treatment Plant to meet its commitment to the Environmental Protection Agency (EPA) and the National Pollutant Discharge Elimination System permit requirements. The City's project is estimated to start full operation in August 2004 with possible fines imposed if not met. The City requested that HECO provide power to the plant by April 2004 to ensure the facility is working properly prior to the full operation date.

Staff notes that there is an existing 12kV line along the requested easement alignment. However, no easement was ever documented. In 1991, Department of Transportation, Harbors Division (DOT) was completing the container yard expansion and requested that HECO relocate its overhead lines then routed through the container yard to the makai side of the Sand Island Parkway. On July 26, 1991, under agenda item J-6, the Board authorized the issuance of a construction right-of-entry to HECO for the relocation of the existing poles and lines. State (DLNR, DOT and State Parks), the City and HECO signed a right-of-entry. which stipulated that the State would issue a perpetual easement covering the same lines. For unknown reasons, the easement was never issued. While no easement area was identified, staff understands a utility easement at that time was normally 10-feet wide.

Due to physical constraints, HECO cannot expand the existing substation. So HECO decided to use the existing 12kV alignments situated on both sides of the Sand Island Parkway by consolidating the 12kV and 46kV circuits on taller poles. The final design is to build a new substation inside the City's area and connect the existing substation to the new substation (Mokuone Substation) with the new double 46kV circuit system.

Starting from the existing substation, the two circuits will be running side by side on the poles which is located near (1) 1-5-041:334 (Part A on Exhibit A). After the double circuit passes the makai end of parcel 334, one of the circuits will traverse across Sand Island Parkway and then run inside the area managed by the Department of Transportation, Harbors Division. The remaining single-circuit portion of the system (Part B on Exhibit A) will continue to travel along the makai side of the Sand Island Parkway until it reaches Mokuone Substation. The proposed system will replace the current lines on wooden poles (12kV).

HECO's original request consisted of a 25-foot wide easement for Part A and a 15-foot wide easement for Part B, with a total area of 42,416 square feet or just under one acre. Staff had significant concerns with HECO's request since the proposed

easement is located within lands that the Board has designated for development as an industrial park pursuant to Board action on September 12, 2003, under agenda item D-14.

The development of an industrial park (which is also consistent with the purposes of EO No. 3892 setting the land aside to the Land Division) would generate significant lease rent revenues for the State. Staff anticipates the industrial park would be developed under a master lease arrangement, and based on informal discussions with several appraisers, staff estimates fee simple land values for the industrial park site at approximately $15 per square foot. Therefore, staff was concerned that granting such a large easement would significantly reduce the leaseable area within the proposed industrial park and the potential lease rent revenues.

Due to different considerations, staff explains the impacts for Parts A & B on the industrial park separately:

Part A. While maintenance to one circuit can be done from the public right-of-way, similar maintenance to the other circuit requires access on the other side, i.e. the industrial park. Therefore, the width of Part A is wider than that of Part B to account for the maintenance truck. From discussions, staff understands that HECO requires 24-hour access to the easement area which means the future industrial tenant could not utilize the easement area, even for temporary storage. Though HECO can coordinate with the tenant for regular maintenance, emergency repairs would require cooperation from the tenant. To ensure clear access to the easement area, Part A would have to be excluded from the leased area of the industrial park.

Part B. Maintenance of the poles and the attached conductors will be accessed from the public right-of-way. The easement is required to provide the safety distance between the lines and workers as mandated by law. Since HECO does not need access to the easement area, Part B can be designated as non-building area in future leases. The lines will be over 50 feet above ground and the tenant can use this area for storage. As such, the financial impact for Part B while still decreasing revenues since no buildings are possible is less severe than Part A.

Based on these concerns, HECO was asked to provide justification of the proposed alignment and the other options that they have studied.

According to HECO staff, they have minimized the easement area along the industrial park and have no other alternatives for relocating the line. A copy of HECO's letter explaining their efforts in looking for another alternative is attached as Exhibit B. HECO states as follows:

- HECO eliminated the option of expanding the existing substation to meet the City's demand because there is insufficient space surrounding the existing substation.

- HECO also studied the idea of running the double circuit on one side of the road only. The notion of a double circuit is to ensure the reliability of the power supply. It is the best scenario if the two circuits can be separated from each other to avoid any mishaps. However, due to limitation in space near the weighing station, a portion of the two circuits (about 900 linear feet) will have to be put on one side of the road. Once there is sufficient space on both sides of the road, the two circuits are separated.

- Putting the cables underground is also one of the options studied by HECO. The earliest date that an underground alternative could be completed is August 2004. This date does not take into account of any delays to the schedule, such as discovery of contamination while excavating. HECO's engineer does not believe that it would be possible to meet the City's current service date with an underground alternative.

For Part A, instead of putting the double circuits side by side, staff inquired as to the feasibility of putting one of the circuits on top of the other which will reduce the easement area required. HECO responded that such option will require a taller pole. Under the Environmental Impact Statement prepared by the City, the poles were mentioned as 60-foot. HECO's engineer estimated a 100-foot pole will be required to accommodate this option and it will provide a negative visual impact as well as require amendments to the EA and other possibly other permits.

Staff also inquired as to why the lines could not be placed in the DOT right-of-way along the Parkway. HECO originally responded that DOT did not want their lines in the right-of-way. Then in November 2003, DLNR, DOT and HECO met and discussed the alignment of this easement. DOT agreed that HECO's engineer can move the location of the poles towards the right-of-way and reduce the width of its easement to 15-foot (Part A) and 10-foot (Part B) in the industrial park provided the existing 8-foot sidewalk is not altered and no poles are installed on the sidewalk. DOT stated that these conditions were required to meet ADA standards for minimum width.

According to HECO, they have exhausted the search for alternatives and have minimized the easement area within the Department's industrial park.

Staff discussed the easement request with Engineering Division staff who commented that a 10-foot strip for the entire easement

should be feasible from a technical aspect. HECO responded that during the maintenance of one of the circuits, the other circuit must be kept operating. Since the circuits are placed side-by-side and part of the arm for the pole will be located above the State parcel, the maintenance truck needs a 12-foot clearance for access. To provide such clearance, HECO maintains that a 15-foot easement is necessary for the double-circuit portion.

When staff discussed alternatives, HECO staff explained that the planning for these lines started years ago and permits and approvals have already been obtained (e.g., EA, SMA, PUC approval). Unfortunately, neither the City nor HECO thought the request would interfere with the future development of the subject parcels, not knowing of the Department's plans to develop an industrial park. HECO staff explained that they already thought they had an easement in place. Ideally, staff would have liked to see the lines either moved completely in the DOT right-of-way or placed underground. DOT is stating that they will not allow the poles to be placed in the sidewalk. While the cost of undergrounding is competitive with the overhead alternative, because of the permitting requirements and the City's timeframe, it is not a viable option at this point.

With reservations, staff is recommending the approval of HECO's request for a 15-foot and 10-foot easement. We believe efforts have been exhausted in exploring alternatives. At this point, the City's timeline and DOT's position eliminates any alternatives. Finally, staff understands that because of the 1991 action by DOT Harbors, the State had a commitment to provide at least a 10-foot wide easement to HECO.

Because of the loss of industrial lease revenue, staff believes the easement should be appraised on the assumption of highest and best use of the property, i.e. industrial value and should reflect the loss of use of the lands to the State.

Various government agencies have been asked to review the request. They either have no objection/no comment or did not respond before the suspense date. The agencies include Department of Health, DLNR-State Parks, DLNR-Historic Preservation, Commission on Water Resource Management, Department of Transportation, City's Department of Planning and Permitting, Facilities Maintenance, Environmental Services.

To facilitate the construction of the poles, HECO requests the use of a portion of parcel 334 as the staging area as shown on Exhibit A. Currently, the department is working with the Department of Health (DOH) in collecting soil sample from this area. The sampling is related to the contamination substances found in the area. Security of the site is necessary in order not to jeopardize the soil sampling process. Staff needs to work with HECO and DOH as to how to address this issue. Staff will bring HECO's request for the staging area to the Board at later

stage, if the matter can be worked out.

To meet the City's scheduled operation date, HECO also requests a construction right-of-entry for the easement area.

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.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company 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 perpetual 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.

2. Authorize the issuance of a construction right-of-entry to Hawaiian Electric Company covering the subject area and subject to the following:

   A. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time;

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

Respectfully Submitted,

Barry Cheung

Barry Cheung
Acting Supervising Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

December 12, 2003, Land Board Meeting, Item D-49:

Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. (HECO) for Utility Purposes; Issuance of Construction Right-of-Entry; Sand Island; Honolulu, Oahu, TMK: (1) 1-5-41: 22, 130, 334 portions. (ODLO/Barry)

Approved as amended. The Board amended the Recommendation Section by adding a new subparagraph 1.D. to read as follows:

> **"1.D. HECO shall ensure electrical power capacity for the Department's future industrial park to be developed on the premises."**