

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

May 13, 2016

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

PSF No.: 10OD-196

OAHU

Grant of a Term, Non-Exclusive Easement and the Issuance of a Management Right-of-Entry for Utility Purposes to Hawaiian Electric Company, Inc., Waikele, Ewa, Oahu; Tax Map Key: (1) 9-3-001:portion of 004.

APPLICANT:

Hawaiian Electric Company, Inc.

LEGAL REFERENCE:

Section 171-17, 55 and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waikele, Ewa, Oahu; Tax Map Key (1) 9-3-001:portion of 004, as shown on the maps attached as **Exhibit A1** and **A2**.

AREA:

C-1:	6,454 square feet
C-2:	<u>890 square feet</u>
Total:	7,344 square feet more or less.

ZONING:

State Land Use District:	Conservation
City & County of Honolulu LUO:	P-1

TRUST LAND STATUS:

Section 5 (e) lands of the Hawaiian Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Governor’s Executive Order No. 4146, to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), for Pouhala Wildlife Sanctuary purposes.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land for utility purposes.

COMMENCEMENT DATE and TERM OF EASEMENT:

Staff recommends the Board authorize the easement to commence retroactively on September 15, 2009 in view of the expiration of the previous easement, and provide an expiration date of May 12, 2046, (30 years after today’s Board date), i.e. a total term of approximately 36 years and eight (8) months.

HECO understands the need to commence the easement retroactively, and they need time to explore the option of installing the power lines underground as discussed in the Remarks section. DOFAW agrees, by email, with the term suggested above.

CONSIDERATION:

One-time payment to be determined by an independent appraisal, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, item 46 that states "Creation or termination of easement, covenants, or other rights in structures of land". See **Exhibit 2**.

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> x </u>	NO	<u> __ </u>

APPLICANT REQUIREMENTS: Applicant shall be required to:

- 1) Pay for an appraisal to determine the 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 designation of easement from the Department of Planning and Permitting at the Applicant's own cost.

REMARKS:

In September 1959, Hawaiian Electric Company, Inc. (HECO) entered into a 50-year power line easement with the United States of America, Department of the Navy, over lands now owned by the State.¹ The power line easement expired on September 14, 2009, and HECO requested a new perpetual utility easement regarding the existing power lines from the State in October 2010.

Department of Parks and Recreation, Department of Health, Board of Water Supply, and Department of Planning and Permitting have no objection/comment to the request.

Department of Facility Maintenance, Office of Hawaiian Affairs, State Historic Preservation Division, Office of Conservation and Coastal Lands, and Commission of Water Resources Management have not responded before the deadline.

Division of Forestry and Wildlife (DOFAW)

DOFAW objected the idea of a perpetual easement and expressed its concerns regarding the impact the power lines and the associated infrastructure could cause on the wildlife. The subject sanctuary is an important wetland which contains four (4) species of endangered Hawaiian wetbirds, including Hawaiian Stilt and Hawaiian Moorhen. DOFAW suggested HECO consider placing the power lines underground eventually. In addition, DOFAW preferred an annual easement payment to a one-time payment. See DOFAW's response at **Exhibit C**.

In its response attached as **Exhibit D**, HECO cites the significance of the subject request, which is a portion of the distribution serving the Pearl City, Waipahu, and Kapolei areas. Per HECO, any undergrounding "would probably require Public Utilities Commission approval" and government agencies might be asked to contribute to the cost involved. In addition, HECO argued that perpetual easement subject to one-time payment has been the standard practice and an annual easement rental payment would increase the staff costs in handling the regular reopening.

Further discussions and meetings were held between DOFAW and HECO focusing on the term, payment manner, and the issue of undergrounding the power lines. A compromise was eventually reached between the two parties as indicated by the letter

1. Subject land was returned to the State from USA in September 27, 1962 and is now encumbered by Executive Order 4146.

dated March 17, 2016 from HECO (**Exhibit E**). A brief summary of the agreement is appended below:

1. The term of the easement will be 30 years², subject to one-time payment;
2. At the end of the 15th anniversary of the easement, HECO shall provide a report to DOFAW pertaining to cost, feasibility, and environmental and cultural impacts of placing the existing power lines underground.
3. If the report mentioned in 2 above does not provide sufficient justification for placing the existing power lines underground, HECO agrees to explore further options and shall submit a similar report at the end of the easement term. Any decision to underground lines shall be made in accordance with HECO's "Policy on Underground Lines".
4. HECO shall seek approval from DOFAW regarding any future improvements to be placed within the easement area.
5. HECO shall maintain the vegetation and improvements in coordination with DOFAW.
6. HECO shall regularly consult and apprise DOFAW of its activities in the easement area.

In view of the discussions/agreed conditions mentioned above, staff notes that HECO is aware of DOFAW's desire to have the power lines underground during the term of the easement, if feasible. Further, DOFAW's agreement to the conditions above shall not prohibit DOFAW from recommending that the Board deny another easement over the same location in the future upon the expiration of the requested one.

HECO 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. 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 Hawaiian Electric Company, Inc. covering the subject area for utility purposes under the terms and the 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, non-exclusive

² Subsequent to the receipt of HECO's letter dated March 17, 2016, further discussions result in extending the term of easement for housekeeping purposes, as described in the Commencement Date and Term of Easement section.

easement document form, as may be amended from time to time;

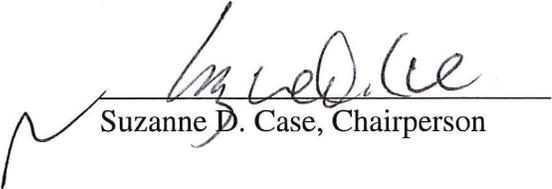
- B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Issuance of a management right-of-entry permit to Hawaiian Electric Company, Inc. covering the subject area 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 management right-of-entry permit 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,

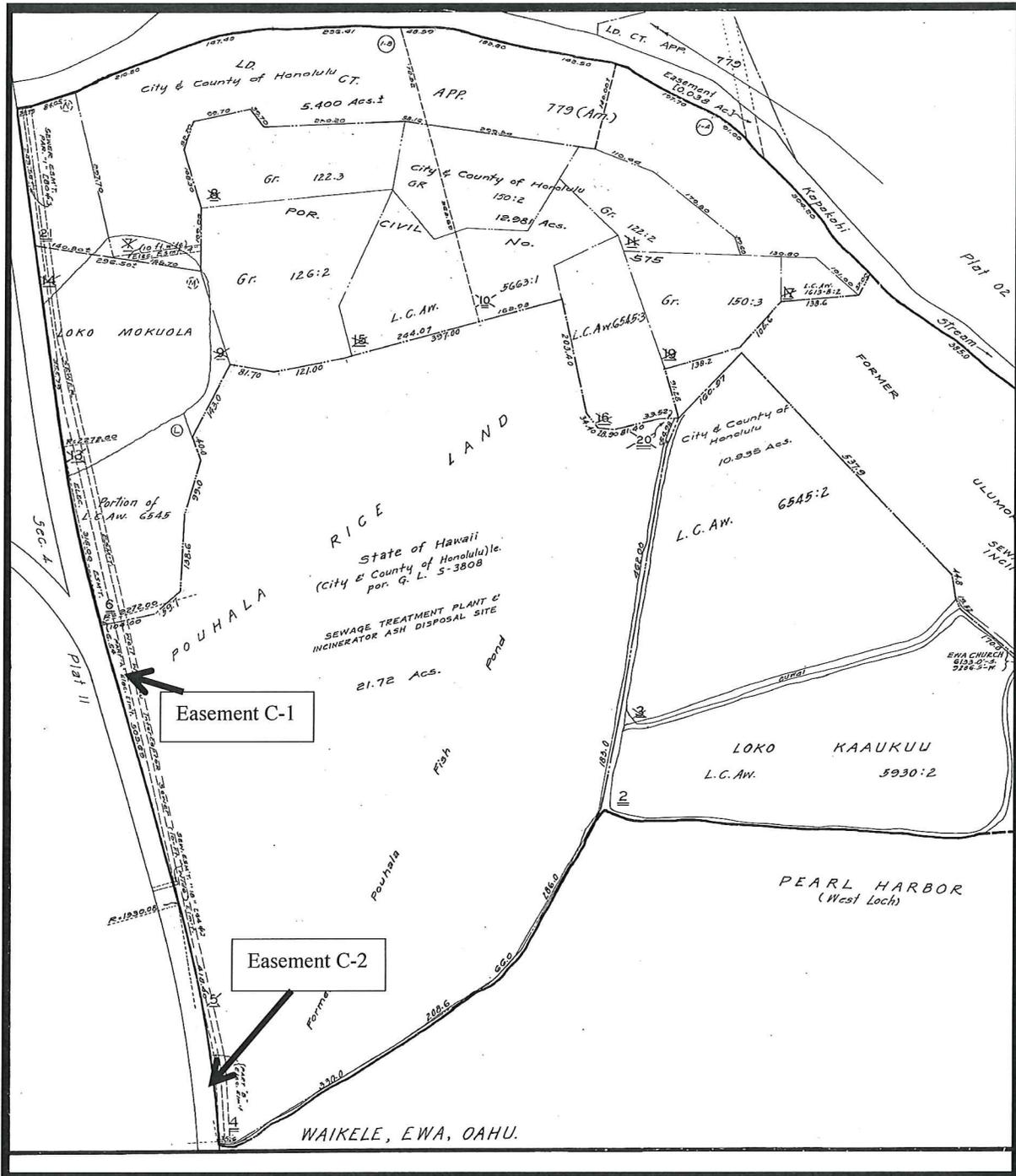


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

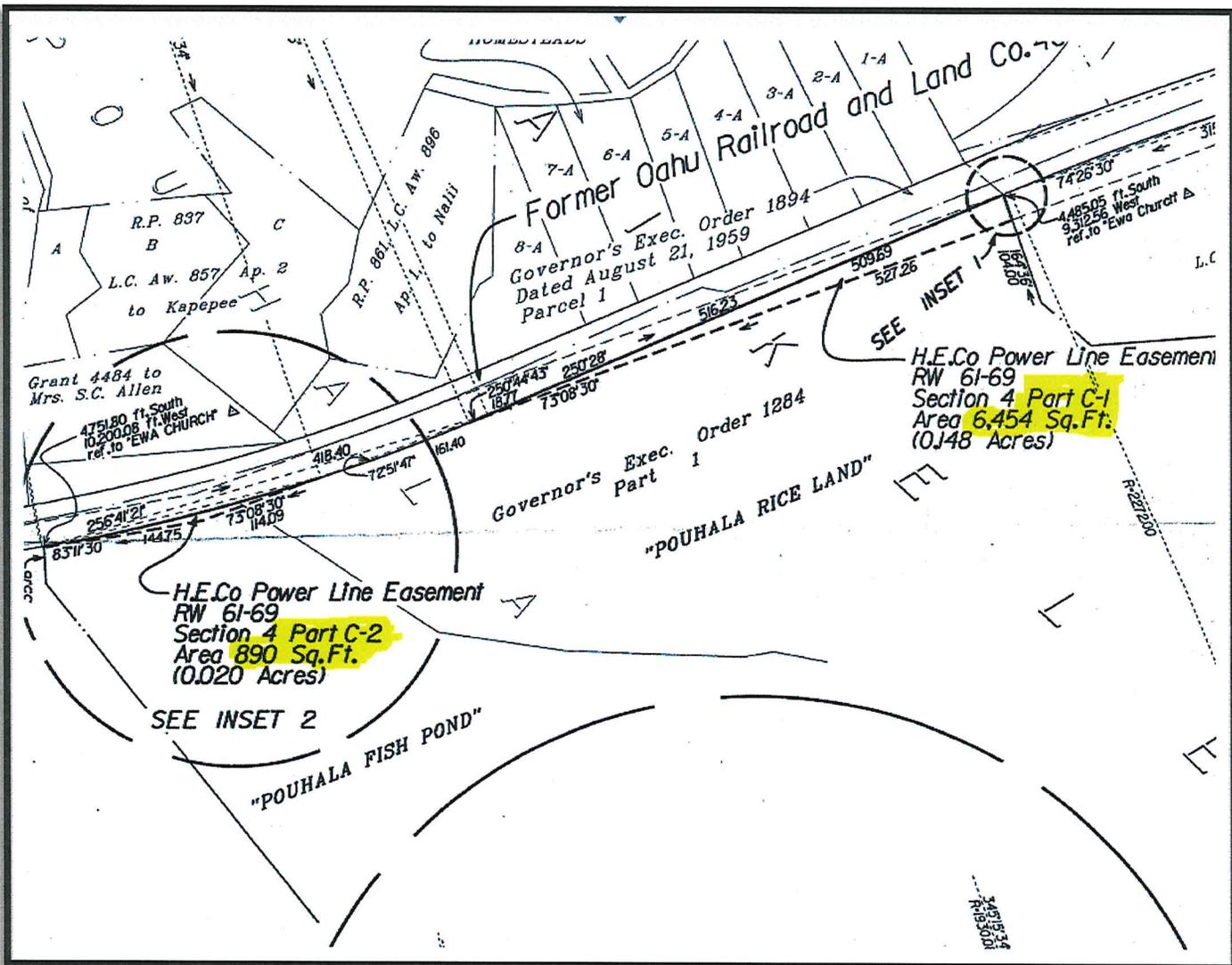


TMK (1) 9-3-001:portion of 004

EXHIBIT A1

TMK (1) 9-3-001:portion of 004

EXHIBIT A2



EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Term, Non-Exclusive Easement and Management Right-of-Entry for Utility Purposes

Project / Reference No.: PSF 100D-196

Project Location: Waikele, Ewa, Oahu, Tax Map Key: (1) 9-3-001:portion of 004.

Project Description: A term, non-exclusive easement to Hawaiian Electric Company, Inc.

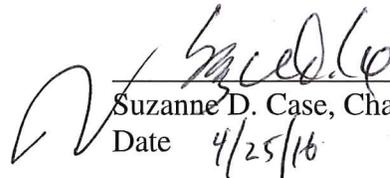
Chapter 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, item 46 that states "Creation or termination of easement, covenants, or other rights in structures of land".

The power lines were installed circa 1959 when the land was under the jurisdiction of the Department of Navy. The subject request includes the issuance of a new easement to cover the same power lines upon the expiration of the previous easement in 2009. There are no changes to the existing use of the land.

Consulted Parties: Agencies as noted in the submittal.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson
Date 4/25/16

EXHIBIT B

LINDA LINGLE
GOVERNOR OF HAWAII



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

PAUL J. CONRY
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Timmy Chee, Land Agent
Land Division

FROM: Paul J. Conry, Administrator
Division of Forestry and Wildlife

SUBJECT: Request for Comments: Request for Utility Easements. Waikele, Ewa, Oahu;
Tax Map Key: (1) 9-3-001: 004 portion.

DATE: November 12, 2010

The Division of Forestry and Wildlife (DOFAW) has received your request for review and comments on the draft Land Board submittal involving state lands.

DOFAW recommends deferring this submittal declaring an exemption from Chapter 343, HRS, and Chapter 11-200, HAR and issuing an easement to Hawaiian Electric Company (HELCO). DOFAW would like HELCO to provide additional details on the construction, maintenance, repair, replacement and removal of electrical transmission lines, poles, guy wires and anchors in the proposed state-owned easement area.

The proposed easement is through a Pouhala Marsh State Wildlife Sanctuary. This Sanctuary is important wetland habitat and contains four species of endangered Hawaiian waterbirds, including the Hawaiian Stilt (*Himantopus mexicanus knudseni*), and Hawaiian Moorhen (*Gallinula chloropus sandvicensis*). Endangered waterbirds and migratory bird species could be impacted by these power lines and associated infrastructure. DOFAW would like HELCO to provide specifics on the plans for replacement and expansion of structures (e.g. increases in size and numbers of lines) because even minor alterations could negatively impact endangered waterbirds and increase power line collisions and impact wetland habitat. Preparation of an environmental assessment may be required if these structures have the potential to impact these endangered species.

DOFAW would like to work with HELCO to explore alternatives for the configuration of the power lines, including eventually putting these lines underground. DOFAW would also like the Land Division to consider an annual fee for this type of easement, rather than a one-time payment.

Thank you for allowing us to review the project.

"To responsibly manage and protect watersheds, native ecosystems, and cultural resources and provide outdoor recreation and forest products opportunities, while facilitating partnerships, community involvement and education. Malama I ka 'Aina."

EXHIBIT C



RECEIVED
LAND DIVISION
2011 OCT 16 A 10:06
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

October 5, 2011

Mr. Tim Chee
Land Agent
DLNR—Land Division
P. O. Box 621
Honolulu, HI 96809

HECO Response to Dept. of Forestry and Wildlife Comments dated November 12, 2010,
Waiau-Steel Mill 46kV Powerline Easement Renewal, Waikele, Ewa, Oahu,
TMK 9-3-001:004 por.

Dear Mr. Chee:

The following is Hawaiian Electric Company's (HECO) response to the comments submitted to Land Division by the Division of Forestry and Wildlife (DOFAW) dated November 12, 2010 (copy enclosed), in connection with HECO's request for a renewal of an expired easement for the Waiau-Steel Mill 46kV line, affecting TMK 9-3-001:004 por. (easement map enclosed). DOFAW asks a variety of questions regarding HECO's power line and maintenance practices, and our answers follow:

Access: HECO accesses the subject area from Pupuole Park, located on Pupuole Street in Waipahu, then along the Bikepath (dirt road), where the line is located.

Regular Maintenance: HECO has a Test and Treat program wherein it schedules the inspection of every pole in a five-year cycle. This would consist of "sounding" the pole (striking the pole with a hammer) to determine its soundness, and treating as appropriate. If a void in the pole is detected, treatment of the pole would entail the drilling of a hole and the injection of termiticide. Termite treatment around the base of a pole may also be necessary. If voids are large enough, the injection of polyurethane to strengthen the pole would also be done. Included would be a visual inspection of the pole and other equipment and the noting of any obvious problems, the taking of photos, and adding the pole to a GPS data base, if not already done.

HECO's Vegetation Management personnel fly each 46kV line at least twice a year to inspect the surrounding vegetation and determine any immediate trimming needs. Routine vegetation management is done in frequency cycles ranging anywhere from 6-months to five-years, depending on the extent of existing vegetation and the rate of its growth.

EXHIBIT D

Mr. Tim Chee
October 5, 2011
Page 2

Relatively minor repairs, such as replacing one insulator on a pole, would require truck access and take a day or less to complete. Most hardware, other than poles, has an average life span of 15 years. Major maintenance, such as replacing most of the poles in a circuit would take at least a day to complete in one specific area and as long as three to four weeks to complete for a majority of a circuit. Poles have an average life span of 30 years. In portions of the subject area, due to the narrowness of the Bikepath, only one HECO truck can access the line at a time. Please see the enclosed photos of the line in this general area.

Therefore, HECO is of the opinion that any maintenance of these facilities would be in compliance with the proposed changes to the Conservation District rules.

Expansion Plans: HECO has no expansion plans for this line. However, we again wish to stress the importance of this line to continued electrical service to the Pearl City, Waipahu and Kapolei areas. Furthermore, this same line, once it reaches the Kapolei area, will be extended to provide electrical service to several major Kapolei projects, such as the University of Hawaii West Oahu campus and surrounding University lands, and other planned projects in East Kapolei, such as the Ka Makani Ali'i Shopping Center. The denial of this easement would greatly inhibit HECO's ability to serve these developments, and in the case of the UH West Oahu project, Public Utilities Commission (PUC) approval has already been obtained to extend the line to reach the campus.

Easement Issues: In response to DOFAW's comments regarding undergrounding of the line and easement compensation, we are not aware of any precedent whereby the Land Board made undergrounding a requirement for renewing an easement. Undergrounding of this 46kV line would probably require PUC approval, and the PUC would ask if government agencies were willing to contribute to the undergrounding cost. As for easement compensation, HECO is requesting a perpetual easement with the compensation paid one time, up front, as has been the standard practice for years. The payment of periodic rent, and subsequent renegotiations, imposes an administrative burden and expense upon both parties. We see no compelling reason to depart from a perpetual easement with the compensation paid as described above.

If have any questions, or require additional information, you can reach me at 543-4735, or at phil.hauret@heco.com. We appreciate your attention to this matter.

Sincerely yours,



Philip Hauret
Director, Land & Rights of Way

Enclosures

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
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Inspection ID: 95485

Inspected Date/Time: 4/7/2011 1:56 PM

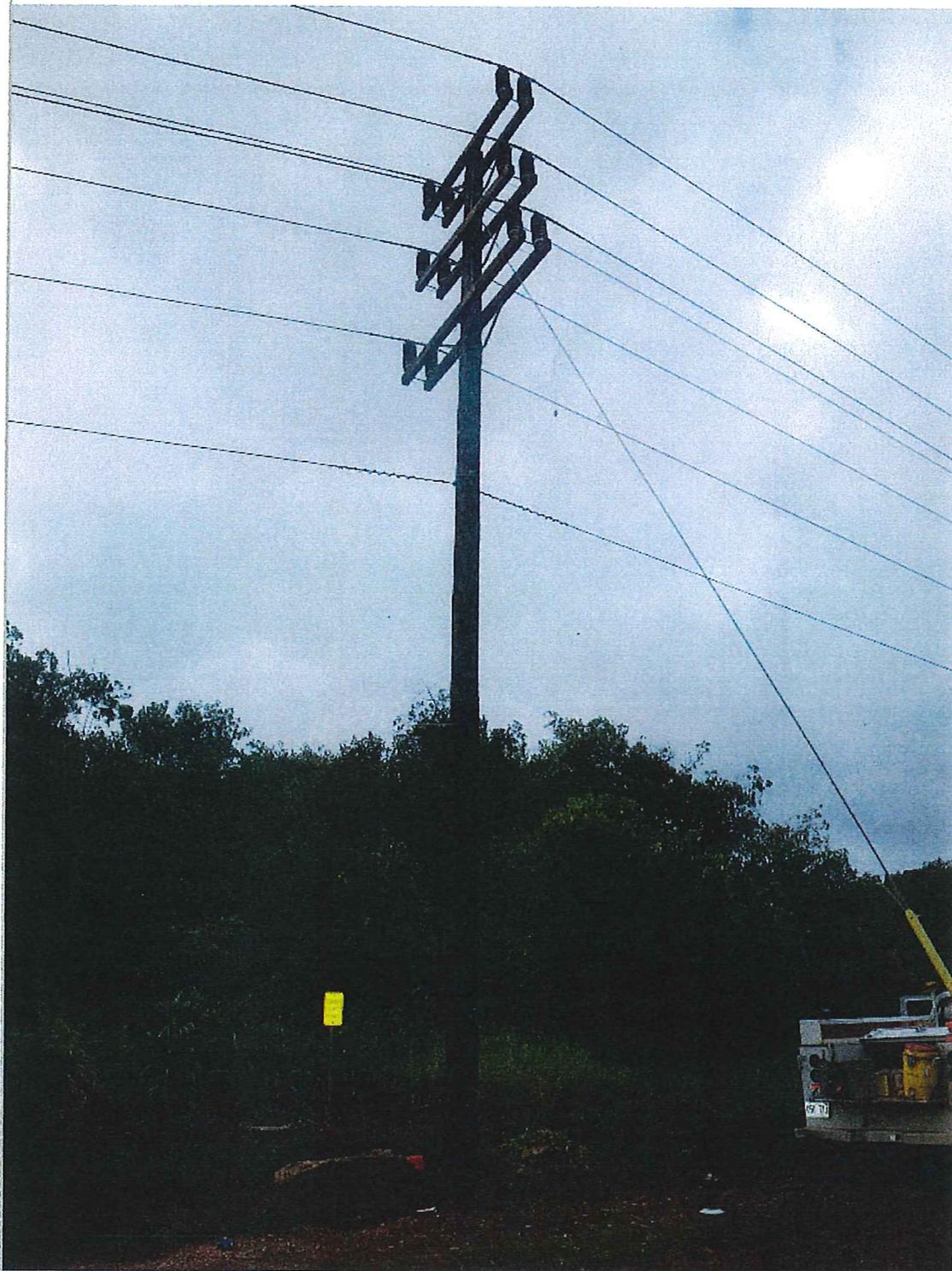
Description: Area Surrounding Pole



Inspection ID: 98090

Inspected Date/Time: 5/10/2011 8:01 AM

Description: Whole Pole



Inspection ID: 95485

Inspected Date/Time: 4/7/2011 1:56 PM

Description: Whole Pole



Inspection ID: 55516

Inspected Date/Time: 4/21/2008 5:52 PM

Description: Whole Pole





2016 MAR 21 AM 11:13

March 17, 2016

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Tim Chee
Land Agent
DLNR—Land Division
P. O. Box 621
Honolulu, HI 96809

Hawaiian Electric Request for Easement Renewal, Waiau-Steel Mill 46kV
Waikele, Ewa, Oahu, TMK 9-3-001:004 por.

Dear Mr. Chee:

We would like to follow-up on our easement renewal request for our Waiau-Steel Mill 46kV Transmission line. Based on numerous meetings/discussions between staff members of the Division of Forestry and Wildlife's (DOFAW) and Hawaiian Electric Company we would like to propose the following Land Board submittal terms:

1. Easement request will be for a non-exclusive 30-year term. Hawaiian Electric will pay for an appraisal and make a one-time payment to the State based on the appraised value of the easement. The 30-year term easement is agreeable in recognition of the specific site conditions of the Pouhala Marsh area and should not be considered a precedent for all future Hawaiian Electric easements.
2. In year fifteen (15) of this easement agreement, Hawaiian Electric shall provide a report to the DOFAW that evaluates placing the lines underground. The evaluation shall consider cost, feasibility, and environmental and cultural impacts. If the evaluation indicates that there is not sufficient justification for undergrounding lines, Hawaiian Electric shall repeat an evaluation and report in year thirty (30). Any decision to underground lines shall be made in accordance with the Company's "Policy on Underground Lines," as defined in Tariff Rule No. 13.D. and subject to approval by the Public Utilities Commission in accordance with H.R.S. Chapter 269. (The evaluations and reports will be paid for by Hawaiian Electric).
3. Within the easement, no new structures or lines shall be placed without consultation with DOFAW and Land Division (LD) staff. However, in the case of an emergency involving imminent danger and/or power outage, Hawaiian Electric shall have immediate access to its system facilities in the easement to assess, mitigate any danger, and to make necessary repairs in accordance with Hawaiian Electric's Best Management Practices. Hawaiian Electric will make every effort to notify DOFAW within 24 hours from the discovery of such an emergency and will

Mr. Tim Chee
March 17, 2016
Page Two



submit a report to DOFAW within 10 days of such an emergency to describe the actions that were taken by Hawaiian Electric.

4. Hawaiian Electric shall maintain vegetation along the easement. Maintenance of the vegetation shall be in accordance with Hawaiian Electric's vegetation management program to maintain proper clearances to its facilities. Maintenance activities shall be coordinated with the DOFAW-Oahu Branch Office.
5. Any regularly scheduled infrastructure maintenance or construction shall be coordinated with DOFAW.
6. Hawaiian Electric shall meet with DOFAW annually to discuss and coordinate activities. Hawaiian Electric shall report on the previous year activities, and discuss upcoming maintenance activities.

If have any questions, or require any additional information, please feel free to contact me at 543-4735, or at wendy.oda@hawaiianelectric.com. We appreciate your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Wendy E. Oda".

Wendy E. Oda
Director, Land & Rights of Way