

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

August 11, 2017

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

PSF No.: 17OD-093

OAHU

Grant of Two (2) Perpetual, Non-Exclusive Easements to Hawaiian Electric Company, Inc. and Oceanic Time Warner Cable LLC for Utility Purposes, Issuance of Right-of-Entry Permit; Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-003: portions of 003, 205, and 212, and (1) 1-2-021: portions of 035, 036, and 037, and portion of Kalihi Stream.

APPLICANT:

Hawaiian Electric Company, Inc. (HECO); and

Oceanic Time Warner Cable LLC ("OTC").

LEGAL REFERENCE:

Section 171-13, 17, 55 and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-003: portions of 003, 205, and 212, and (1) 1-2-021: portions of 035, 036, and 037, and portion of Kalihi Stream. The proposed alignment is shown on the map attached as **Exhibit A.**

AREA:

To be determined, further subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:
City & County of Honolulu LUO:

Urban and Conservation
I-2 and P-2

TRUST LAND STATUS:

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

CURRENT USE STATUS:

The entire requested area is encumbered by Governor's Executive Order No. 3201 to Department of Transportation for aviation easement purposes;

(1) 1-1-003:003, 205, and 212 are encumbered by Governor's Executive Order No. 4513 to the City and County of Honolulu for affordable housing for homeless families purposes;

(1) 1-2-021:035 is unencumbered;

(1) 1-2-021:036 is encumbered by Revocable Permit No. 7470 to JSR Equipment, Inc. for baseyard, office, and storage purposes; and

(1) 1-2-021:037 is encumbered by Revocable Permit No. 7835 to Harry and Jeanette Weinberg Foundation for storage, parking, roadway, and office purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, reconstruct, operate, maintain, repair, replace and remove poles, guy wires, anchors, overhead and/or underground wire lines, and such other appliances and equipment, as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communications and control circuit, including, without limiting the generality of the foregoing, the right to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances, and equipment.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

For the Board's information, HECO, through email, confirms that the proposed easements will only serve the Kahauiki Village, the affordable housing project for homeless families that is planned for this location. It is HECO's policy that the cost of an easement be passed on to the customer, i.e. the Kahauiki Village.

Pursuant to Section 171-95(b)(1) "The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); provided that such sale price or

lease rental may (emphasis added) be on a nominal basis, if the board finds that such easement is required in connection with a government project.”

The proposed housing project for the homeless families is not a typical government project, like a school or park, for which the Board may grant an easement at a nominal basis. Nevertheless, it provides an additional option for the State and the City to address the homeless issue by providing shelters for homeless families during the transition. The City, as the landlord, will oversee the proposed housing project pursuant to the terms and conditions of the lease. The Board may consider issuing the requested easements at a consideration less than the fair market value to be determined by an appraisal.

Staff recommends a one-time payment of \$500.00 for each easement, pursuant to the policy adopted by the Board at its meeting of May 13, 2005, under agenda item D-19 (see **Exhibit C**), which states all new dispositions by Land Division shall be subject to a minimum rent of \$500.00 (one-time payment). In addition, the Board reserves the right to revisit the consideration payable, pursuant to Section 171-17(b), Hawaii Revised Statutes, for the requested easements if such easement(s) serves customers other than the housing project as mentioned in the submittal.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred 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, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

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. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
2. Process and obtain designation of easement approval from the Department of Planning and Permitting at Applicant's own cost.

REMARKS:

Executive Order 4513 dated October 17, 2016 was issued to the City and County of

Honolulu (“City”) for affordable housing project for homeless families purposes. The Board also gave its consent to the lease between the City and aio Foundation, of which the latter will develop and manage the Kahauiki Village, a transitional housing project for the homeless families over the land of EO 4513.

At its meeting of June 9, 2016, under agenda item D-4, pertaining to the set aside described above, the Board also authorized¹ the issuance of “a perpetual non-exclusive easement to the City and other appropriate public utility entities over the areas mentioned above for utility purposes”. The 2016 approval is also subject to the location and area of the easement area to be reviewed and approved by the State Survey Division.

Notwithstanding the 2016 approval, staff brings the subject request to the Board on today’s agenda with the alignment of the easement known. Between HECO and OTC, they will install their respective utility lines at different heights along the same alignment. HECO requests the issuance of separate easement documents.

In addition, the applicants request the Board issue immediate right-of-entry permits for the forthcoming construction. For the Board’s information, a ground-breaking ceremony was held on July 11, 2017 for the Kahauiki Village. The proposed easements will comprise mainly overhead and underground utility lines.

Staff did not solicit comments from other agencies on today’s request as a similar process was conducted in 2016. There are no pertinent issues or concerns, and staff recommends the Board authorize the issuance of the requested easements and right-of-entry.

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 a perpetual non-exclusive easement 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 perpetual easement document form, as may be amended from time to time;
 - B. One-time payment of \$500.00;
 - C. The Board reserves the right to revisit the consideration payable, pursuant to Section 171-17(b), Hawaii Revised Statutes, for the requested easements if such easement(s) serves customers other than the housing

¹ Recommendation 2 of the June 9, 2016, Item D-4 submittal.

project for the homeless families as mentioned in the submittal;

- D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance a perpetual non-exclusive easement to Oceanic Time Warner Cable LLC 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. One-time payment of \$500.00;
 - C. The Board reserves the right to revisit the consideration payable, pursuant to Section 171-17(b), Hawaii Revised Statutes, for the requested easements if such easement(s) serves customers other than the housing project as mentioned in the submittal;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate right-of-entry permit to Hawaiian Electric Company, Inc. covering the subject area 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 right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of an immediate right-of-entry permit to Oceanic Time Warner Cable LLC covering the subject area 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 right-of-entry permit form, as may be amended from time to time; and

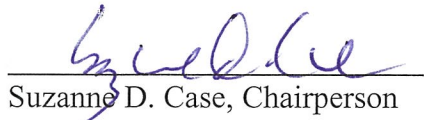
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

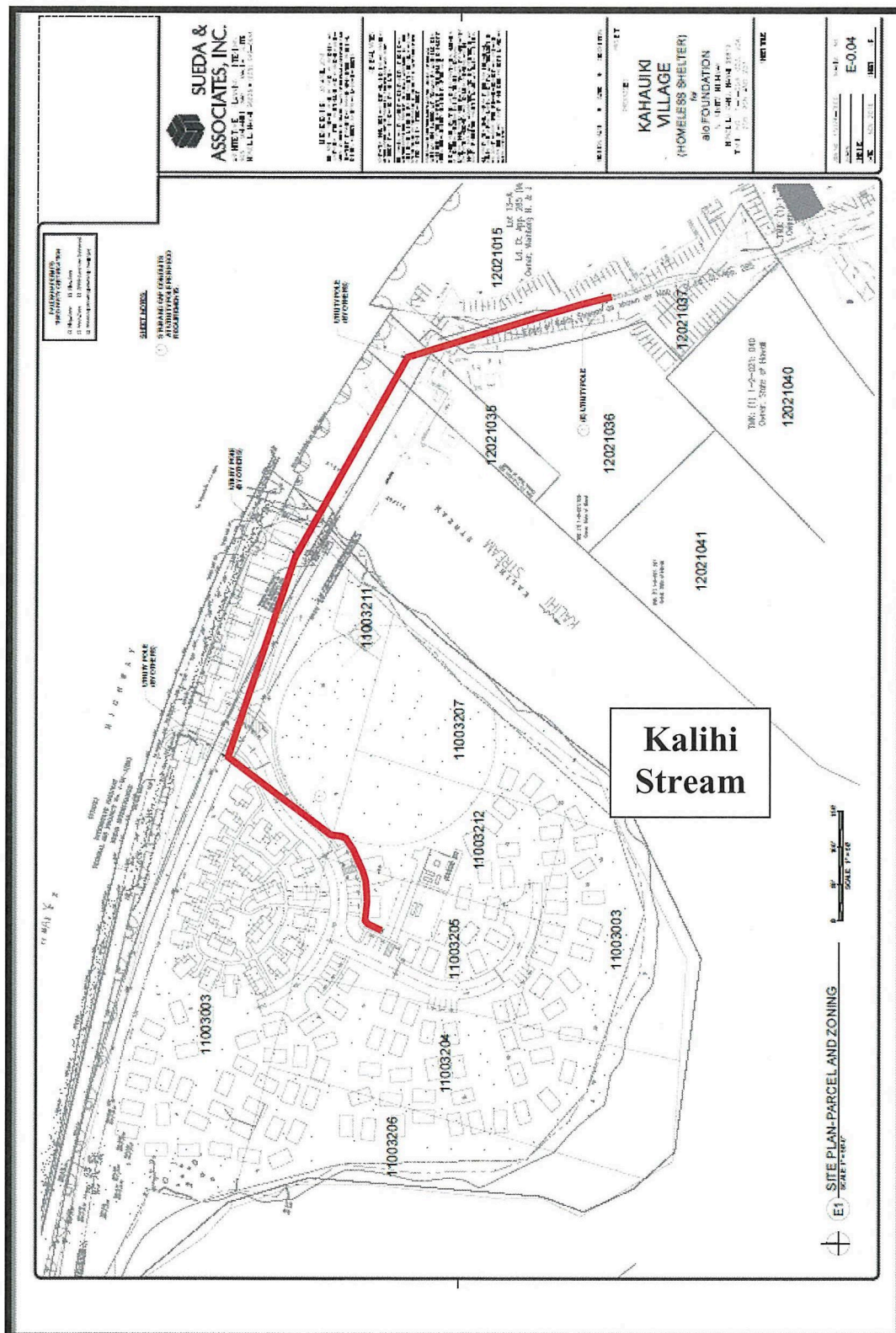
Respectfully Submitted,



Darlene Bryant-Takamatsu
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 1-1-03: 03, 205, 212 and 1-2-21:35, 36, and 37, and Kalihi Stream.

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Two (2) Perpetual Non-Exclusive Easements for Utility Purposes.

Project / Reference No.: PSF 17OD-093

Project Location: Moanalua, Honolulu Oahu; Tax Map Key: TMK (1) 1-1-003: 003, 205, 212 and 1-2-021: 035, 036, and 037, portion of Kalihi Stream.

Project Description: Issuance of two (2) perpetual non-exclusive easements to Hawaiian Electric Company, Inc. and Oceanic Time Warner Cable LLC.

Chapter 343 Trigger(s): Use of State Land.
Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred with by the Environmental Council on June 5, 2015, the subject request includes the issuance of an easement which is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."

The requested easements will serve the proposed transitional housing project for the homeless families. The present condition of the land will not be negatively impact by the installation of the utility lines.

Consulted Parties: Agencies were previously consulted on the housing project, in which the utility easements were also covered.

Recommendation: It is anticipated 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.

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

May 13, 2005

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

Statewide

Minimum Rent Policy for New Dispositions

BACKGROUND

Pursuant to discussion among staff, we feel there is a need to balance staff time and costs against the returns from Land Division dispositions. The State should receive a fair return on the land while maintaining its duty under the public land trust.

The current lowest rent for leases and revocable permits is \$156 per year or \$13 per month. Staff cannot locate any Board approval regarding the definition or the origin of the "minimum rent". Staff believes that in the past we just administratively adopted the term.

A consulting report by local real estate appraisal and consulting firm Medusky & Co. was completed in April 2004 which addressed the state's proposed formula for calculating one-time payments for term shoreline encroachment easements. The report recommended that for small encroachments where the rent payment, when calculated using the recommended formula is less than \$500, a minimum rent be charged of \$500. The \$500 amount was derived via other small easement considerations researched from the market. This fee was considered reasonable in part for inconvenience and to defray administrative costs. The Board has adopted the \$500 minimum rent for shoreline encroachments.

RESEARCH

Staff has conducted some research into overhead and administrative costs necessary to manage new dispositions and reopenings. Other landowners were surveyed such as Campbell Estate and Kamehameha Schools Bishop Estate. Campbell does not have a universal minimum rent but every year they set their rent based on the current conditions and evaluates all new deals based on that. Calls to Kamehameha Schools were not returned. Department of Transportation (DOT) and Department of Agriculture were also surveyed as to their policy regarding minimum rent. Only DOT charges a minimum rent of \$20 per month for rental of storage areas in the harbor areas.

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

May 13, 2005

EXHIBIT "C"

ITEM D-19

Dispositions including lease, easement, license and revocable permit involve rental payments on a recurring basis or lump sum. The proposed guideline as explained below will cover these disposition but not the fee conveyances, e.g. sale of remnant or reclaimed land.

Further, staff notes that land dispositions involve multiple offices, e.g. DLNR, DAGS, AG. Staff would point out that the minimum rent recommended below only covers the staff cost of DLNR as the other agencies are only involved at the application stage. Once the disposition is consummated, DLNR is the only agency that manages the disposition and incurs staff costs. While we want to recoup part of the staff cost, staff feels that the figure has to be realistic and affordable by our tenants.

Also, time consumed for different disposition could be varied. Staff discussed the time with other districts and feels that an 8-manhour period is appropriate as the basis of this analysis.

EVALUATION:

Eight hours at a rate of \$18.91 (starting hourly rate of a Land Agent IV) is \$151.28. However, after the initial year, staff time expended on a disposition, which is in compliance with the terms and conditions, would be reduced substantially. Therefore, staff recommends a 75% discount from the total staff costs to account for the ongoing staff time on managing the disposition. Staff recommends \$40 per month or \$480 per year ($\$151.28 \times 25\% = \37.82 , rounded to \$40 per month) as the minimum rent for all dispositions involving recurring rental payment.

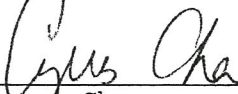
Staff feels the minimum one-time payment (\$500) adopted by the Board for shoreline encroachment could be used as a guideline for other term or perpetual easements as well. The report by Medusky based his findings on market data, which reviewed other minimum rent payments for a variety of other easements. The report concluded a minimum payment for small encroachment easements of \$500. Land Division has been recommending one-time payment for other types of easements (e.g. access, utility easements). Easement valuations are largely determined via independent appraisal. However, in the event the appraised value for the term or perpetual easement is below \$500, then Staff recommends a \$500 charge to cover administrative overhead. Staff feels this amount should be set as a minimum for all dispositions involving one-time payment.

RECOMMENDATION

That the Board approves the above policy by requiring:

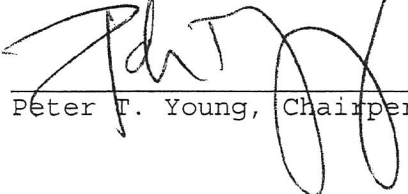
- A. All new dispositions by Land Division shall be subject to a minimum rent of \$40 per month, \$480 per year or \$500 (one-time payment) depending on the payment term.
- B. Staff shall bring any cases that require deviation from the above policy to the Board for approval.

Respectfully Submitted,



Cyrus Chen
Appraisal Manager

APPROVED FOR SUBMITTAL



Peter T. Young, Chairperson