

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY
DIRECTOR

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LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
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EDWIN H. SNIFFEN

IN REPLY REFER TO:

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

OAHU

AMEND PRIOR BOARD ACTION OF JANUARY 24, 2020, ITEM M-3, REQUEST FOR CANCELLATION OF PERPETUAL NON-EXCLUSIVE EASEMENT 6B AND TO ISSUE EXCLUSIVE USE EASEMENT 6C TO SERVCO PACIFIC INC., FOR A TERM OF THIRTY-FIVE (35) YEARS, TAX MAP KEY NO. (1) 1-2-025:011 (PORTION), GOVERNOR'S EXECUTIVE ORDER NO. 3947

THE AMENDMENT IS TO SEEK BOARD'S AUTHORIZATION FOR THE EXECUTION OF AN AMENDED AND RESTATED PERPETUAL, NON-EXCLUSIVE EASEMENT COVERING EASEMENTS 6A AND 6C, AND THE CORRECTION OF TAX MAP KEY FROM (1) 1-2-025:001 (PORTION) TO (1) 1-2-025:011 (PORTION)

LEGAL REFERENCE:

Sections 171-6, 171-11, 171-13, and 171-17, Hawaii Revised Statutes (HRS), as amended.

APPLICANT:

Servco Pacific Inc. (Applicant) is a domestic profit corporation whose mailing address is 2850 Pukoloa Street, Suite 300, Honolulu, Hawaii 96819.

CHARACTER OF USE:

To amend and restate perpetual, non-exclusive easement covering easements 6A and 6C.

LOCATION:

Portion of governmental lands in Kapalama, Honolulu, Oahu, identified by Tax Map Key Nos. (1) 1-2-025:011 (P), as shown on the attached map labeled Exhibit A.

AREA: See attached Exhibit A

See prior Board Action of January 24, 2020, Item M-3 and Minutes (Exhibit A).

ITEM M-10

CONSIDERATION:

See prior Board Action of January 24, 2020, Item M-3 and Minutes (Exhibit A).

ZONING:

State Land Use Commission:	Urban
City and County of Honolulu:	I-2 (Intensive Industrial District) I-3, Waterfront Industrial District

COMMENCEMENT DATE:

To be determined by the Director of Transportation.

TRUST LAND STATUS:

Subsection 5(a) of the Hawaii Admission Act (non-ceded).

CURRENT USE STATUS:

Easement 6C is a portion of Easement 6 which consists of an easement that provides access to the Applicant's private property

LAND TITLE STATUS:

Under management jurisdiction of DOT Harbors by issuance of Governor's Executive Order No. 3947.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement, of the Kapalama Container Terminal (KCT) and Tenant Relocations, Honolulu Harbor, Oahu (Chapter 3, Easements, Published November 8, 2014)

REMARKS:

Background. At its meeting of January 24, 2020, under agenda item M-3, the Board approved the subject request. A copy of the approved submittal is attached as Exhibit 1.

Easements 6B and 6C described in the prior submittal were portions of a perpetual non-exclusive easement for access purposes ("Easement 6") granted by the federal government to Servco Pacific, Inc. who owns the adjacent property identified as TMK

No. (1) 1-2-025:036. Federal government returned the subject parcel to the State for harbors purposes, subject to Easement 6.

As explained in the January 2020 submittal, the extinguishment of Easement 6B, as agreed by the grantee, is necessary for the development of the harbor. Nevertheless, the remaining portions of the Easement 6, which are now identified as Easements 6A and 6C, are to remain over the subject parcel. After consultation with the Department of the Attorney General, staff believes restating the remaining easements, i.e. 6A and 6C, in the most current easement document which carries the standard insurance and indemnification provision shall best serve the interest of the State.

In addition, staff suggests adding recommendations to allow the relevant approval applicable in the event of any change in ownership of the abutting private property. For housekeeping purposes, the pertinent Tax Map Key No. should be (1) 1-2-025:011 (portion) instead of (1) 1-2-025:001 (portion).

RECOMMENDATION:

That the Board amend its prior action of January 24, 2020, under agenda item M-3 by adding the following to the Recommendation Section:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 1-2-025:036, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Tax map key is revised to (1) 1-2-025:011 (portion).
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the execution of an amended and restated perpetual, non-exclusive easement to Servco Pacific Inc. covering Easements 6A and 6C for the right, privilege and authority to construct, use, maintain, and repair a right of way for access 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. Consideration for the amended and restated perpetual non-exclusive easement is gratis;
 - C. Commencement date to be determined by the Director of Transportation;

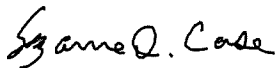
- D. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 1-2-025:036, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- E. Review and approval by the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Respectfully submitted,



JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson and Member
Board of Land and Natural Resources

Attachment: Exhibit A



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

Board of Land and Natural Resources
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REQUEST FOR CANCELLATION OF PERPETUAL NON-EXCLUSIVE
EASEMENT 6B AND TO ISSUE EXCLUSIVE USE EASEMENT 6C TO SERVCO
PACIFIC INC., FOR A TERM OF THIRTY-FIVE (35) YEARS, TAX MAP KEY
NO. (1) 1-2-025:001 (PORTION), GOVERNOR'S EXECUTIVE ORDER NO. 3947

LEGAL REFERENCE:

Sections 171-6, 171-11, 171-13, and 171-17, Hawaii Revised Statutes (HRS), as amended.

APPLICANT:

Servco Pacific Inc. (Applicant) a domestic profit corporation whose mailing address is 2850 Pukoloa Street, Suite 300, Honolulu, Hawaii 96819.

CHARACTER OF USE:

To cancel perpetual non-exclusive rights in and to the use of Easement 6B; and to issue an exclusive term easement for the rights over, across, and through Easement 6C (Easement 6B and Easement 6C being portions of current Easement 6).

LOCATION:

Portion of governmental lands located in Kapalama, Honolulu, Oahu, identified by Tax Map Key No. (1) 1-2-025:011 (Portion), see attached Exhibit A.

AREA: See attached Exhibit A

Approximately 3,866 square feet as shown highlighted in "blue" on Exhibit A.

CONSIDERATION:

Payment by Department of Transportation, Harbors Division (DOT Harbors) of \$1,254,279.00 to extinguish (cancel) portion of Applicant's perpetual easement. One-time rental payment for term easement of \$24,500.00 by Applicant to DOT Harbors.

ITEM M-3

Exhibit A

ZONING:

State Land Use Commission: Urban
City and County of Honolulu: I-2 (Intensive Industrial District)
I-3 (Waterfront Industrial District)

TERM:

Thirty-five (35) year term lease of easement.

COMMENCEMENT DATE:

To be determined by the Director of Transportation.

TRUST LAND STATUS:

Subsection 5(a) of the Hawaii Admission Act (non-ceded land).

CURRENT USE STATUS:

Easement 6C is a portion of Easement 6 which consists of an easement that provides access to the Applicant's private property.

LAND TITLE STATUS:

Under management jurisdiction of DOT Harbors by issuance of Governor's Executive Order No. 3947.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement, of the Kapalama Container Terminal (KCT) and Tenant Relocations, Honolulu, Harbor, Oahu (Chapter 3, Easements, Published November 8, 2014).

REMARKS:

The Applicant has serviced the Hawaiian Islands since 1958, providing responsible importing and distribution of automobile vehicles and parts to the existing automotive dealer network throughout the State. The Applicant transports new cars from the piers to the Applicant's car lot, served by the current perpetual non-exclusive Easement 6, with a car carrier, and then to seven (7) different automobile dealerships on Oahu.

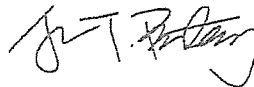
As described above, the Applicant currently uses the existing Easement 6 to access its property. The DOT Harbors informed the Applicant during its consultation process for the KCT Project of its plans to extinguish a portion of such easement (Easement 6B) to enable expansion of the KCT to the DOT Harbors property line. Such expansion allows for truck with containers to enter a planned electronic gating system that tracks incoming and outgoing containers into and out of the KCT.

With Easement 6B extinguished, the Applicant will have access to its property through Easement 6C for its exclusive use.

RECOMMENDATION:

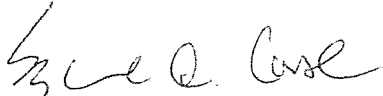
That the Board authorize (a) the cancellation (relinquishment) of Easement 6B; and (b) issuance by the DOT Harbors to the Applicant of an exclusive use easement for a term of thirty-five (35) years for the above-stated purposes, subject to the terms and conditions outlined above and incorporated herein by reference, review and approval by the Department of the Attorney General, and such terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Respectfully submitted,



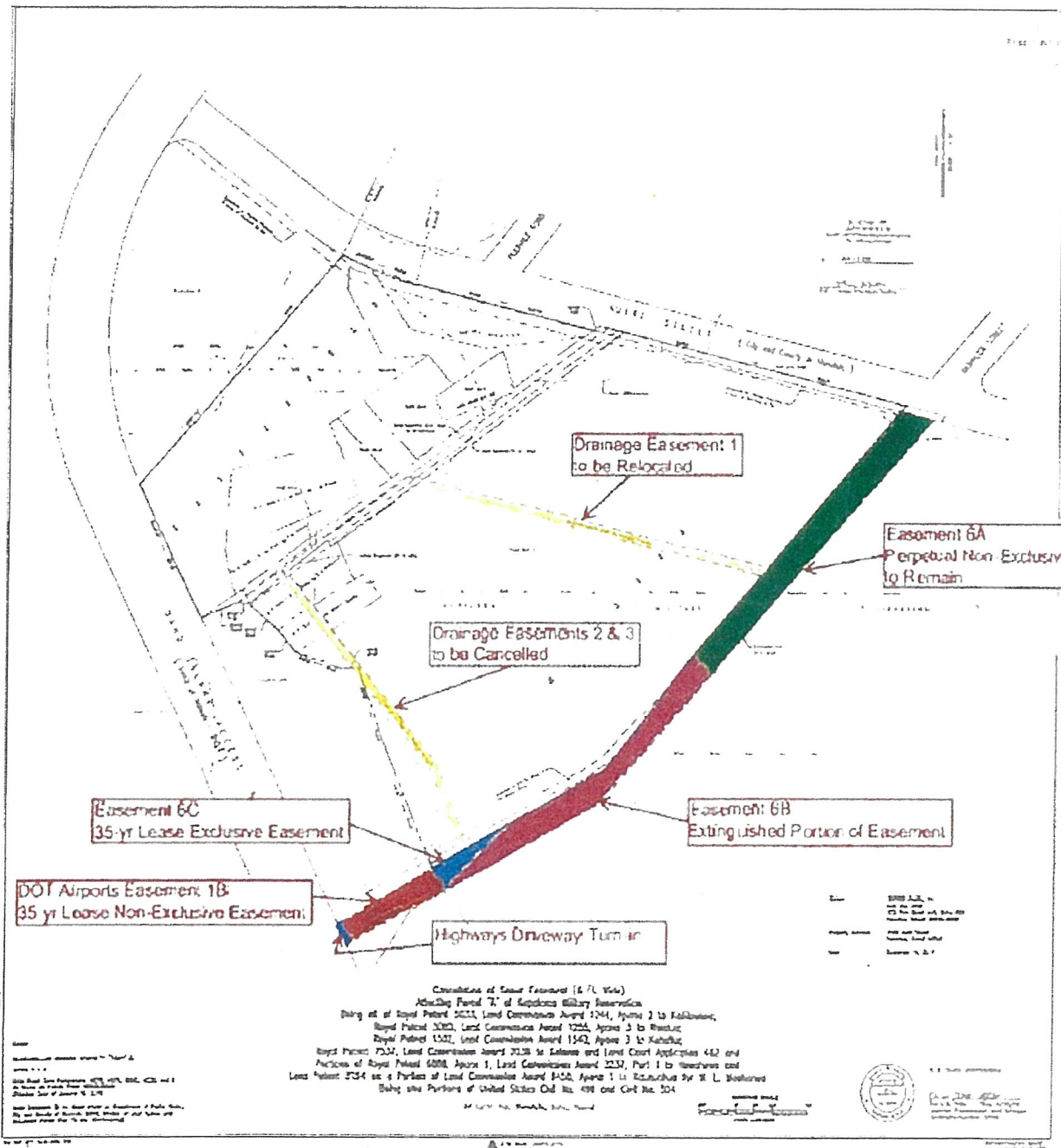
JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson and Member
Board of Land and Natural Resources

Attachment: Exhibit A



Conditions of Lease Easement (6/7/1964)
 Attached Parcel 77 of Kapalama Military Reservation
 Being all of Royal Patent 5211, Land Commission Award 1264, Appear 1 to Kailashine,
 Royal Patent 5202, Land Commission Award 1226, Appear 3 to Wheeler,
 Royal Patent 5201, Land Commission Award 1542, Appear 3 to Kailashine,
 Royal Patent 7037, Land Commission Award 2228 to Salomon and Land Court Application 442 and
 Portions of Royal Patent 6008, Appear 1, Land Commission Award 2232, Part 1 to Henshaw and
 Land Patent 2734 as a Portion of Land Commission Award 2450, Appear 1 to Kailashine by W. L. Henshaw
 Being also Portions of United States Ord. No. 498 and Ord. No. 504

BY: W. L. Henshaw, State Engineer

APPROVED: [Seal of the State Engineer]