



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

IN REPLY REFER TO:

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

OAHU

ISSUANCE OF A CONSTRUCTION RIGHT-OF-ENTRY AGREEMENT TO KIEWIT INFRASTRUCTURE WEST COMPANY TO SUPPORT CONSTRUCTION OF KAPALAMA CONTAINER TERMINAL – PHASE II, AT 1845 AUIKI STREET, FORMER KAPALAMA MILITARY RESERVATION, KALIHI-KAI, HONOLULU, OAHU, TAX MAP KEY NO. (1) 1-2-025: PORTIONS OF 011, 084, 100, GOVERNOR’S EXECUTIVE ORDER NO. 3947

LEGAL REFERENCE:

Chapters 171-13 and 171-55, Hawaii Revised Statutes (“HRS”), as amended.

APPLICANT:

Kiewit Infrastructure West Company (“Applicant”), a foreign profit corporation, whose mailing address is 707 Richards Street, Suite 750, Honolulu, Hawaii 96813.

CHARACTER OF USE:

To allow the Applicant and its permitted agents (assignees, contractors, sub-contractors, and agents) the right to enter upon and take possession of the premises for the purposes of vehicle and equipment parking, and construction equipment and material staging and storage area for the Applicant to support construction of the H.C. 10498 Kapalama Container Terminal Wharf and Dredging project (a.k.a. Kapalama Container Terminal – Phase II).

LOCATION:

Portion of Government lands situated at 1845 Auiki Street, former Kapalama Military Reservation, Kalihi-Kai, Honolulu, Oahu, Tax Map Key No. (1) 1-2-025: portions of 011, 084, and 100, as shown on the attached map labeled Exhibit A.

AREA:

The site consists of 2.93 acres of land area as improved with 42,200 square feet of warehouse space.

ZONING:

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

TERM OF RIGHT-OF-ENTRY:

To commence upon execution of the Construction Right-of-Entry Agreement, or January 1, 2021, whichever is later, and to continue through the construction period of the Kapalama Container Terminal – Phase II, or February 29, 2024, whichever is later.

TRUST LAND STATUS:

Land acquired after Statehood (non-ceded).

LAND TITLE STATUS:

Governor’s Executive Order No. 3947 for harbor purposes, to be under the control and management of the Department of Transportation, Harbors Division (“DOT Harbors”).

CURRENT USE STATUS:

The Applicant currently occupies the site under a Construction Right-of-Entry Agreement issued by DOT Harbors, to support construction of the H.C. 10502 Kapalama Container Terminal Yard project (a.k.a. Kapalama Container Terminal – Phase I), which expires on December 31, 2020.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement for the Kapalama Container Terminal and Tenant Relocations project was submitted to the Office of Environmental Quality Control and published in The Environmental Notice on August 23, 2014, and the acceptance by the Governor on October 30, 2014, was published in The Environmental Notice on November 8, 2014.

APPLICANT REQUIREMENTS:

1. Applicant shall ensure that its permitted contractors and sub-contractors shall obtain the following insurance during the term of the Construction Right-of-Entry and naming the Department of Transportation, Harbors Division, as additional insured:
 - (a) Bodily injury or property damage caused by Applicant's or its permitted agents' negligence in the form of a general liability insurance policy with a combined single limit of not less than \$1,000,000.00 for bodily injury and damage to property per occurrence, and \$2,000,000.00 in the aggregate.
 - (b) Automobile insurance for any vehicles used to access and are on the Premises with a minimum limit of not less than \$1,000,000.00 per occurrence.
 - (c) Worker's Compensation Insurance as required by applicable law.
 - (d) All insurance required to be maintained by Applicant and its permitted agents hereunder shall be pursuant to policies in form and substance consistent with policies of similar type issued to businesses similar to Applicant and its permitted agents and issued by companies of sound and adequate financial responsibility, who are authorized to do business in the State of Hawaii, all as reasonably satisfactory to the State.
 - (e) Applicant shall name the State as an additional insured on the policies or provide other assurances, reasonably acceptable to the State, that Applicant's insurance policies shall be primary, not in excess of or pro rata and noncontributing as to and with any other insurance held or maintained by the State, for any injury or claim arising on the Premises due to Applicant's negligence or the negligence of its permitted agents. The State shall include the State's officers and employees acting within the scope of their duties.
 - (f) Applicant shall provide proof of all required insurance to the State either by production of the actual insurance policies or by an insurance certificate on an ACORD form or some other written form reasonably acceptable to the State, together with appropriate written evidence, reasonably satisfactory to the State, that the insurance premiums have been paid.

2. Applicant and its permitted agents shall use due care for public safety and agrees to defend, hold harmless, and indemnify the State, its officers, agents, and employees, or any person acting for and on its behalf, from and against all claims or demands for damage, including claims for property damage, personal injury, or death, arising on, about or in connection with the exercise of the rights and privileges herein granted, caused directly or approximately by any failure on the part of the Applicant in its use of the premises.
3. Applicant shall take all necessary steps to ensure that any of its work involving the premises will not cause any permanent damage to property or improvements situated on, adjacent to, or near the Premises.
4. The State grants Applicant a right to enter upon the lands herein described. Upon expiration of the Construction Right-of-Entry Agreement, Applicant shall, at its sole cost and expense, restore the premises, and the ingress and egress thereto, to the condition it was in immediately prior to commencement of the right-of-entry, to the satisfaction of the State within a reasonable time after such expiration.
5. Applicant shall take all necessary steps to ensure that the work done on the premises does not interfere with any of the operational activities of any adjacent property owners, including, but not limited to, the State of Hawaii, Department of Agriculture (“DOA”).
6. Applicant shall coordinate all activities with Staff of the DOT Harbors.
7. Access to the site, via Road 2, is shared with the DOA. Therefore, the Applicant shall coordinate access, use, and access dates/times, with DOA.
8. Applicant shall, at all times during the term of Right-of-Entry, comply with all applicable laws, statutes, ordinances, rules and regulations, whether State, County, or Federal, which are now or hereafter may be in effect.

REMARKS:

Applicant is the DOT Harbors contractor responsible for the construction of the Kapalama Container Terminal – Phase II and will use the site for construction equipment and material staging and storage, and the (uncovered) land area for vehicle and equipment parking.

The site is currently being used by the same contractor for similar purposes, and to house a temporary mobile office unit, all for the Kapalama Container Terminal – Phase I under a Construction Right-of-Entry Agreement with DOT Harbors with a term to expire on December 31, 2020.

The contractor will be removing the temporary mobile office unit prior to December 31, 2020, and the parking and storage areas are in good condition.

The location of a construction equipment and material staging and storage area, at this site, in close proximity to the Kapalama Container Terminal – Phase II, supports efficient operations during construction of the project and minimizes inconveniences to the public.

RECOMMENDATION:

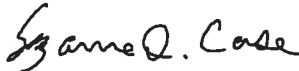
That the Board authorize the issuance of a Construction Right-of-Entry Agreement to the Applicant and its permitted agents covering the subject area for the purposes cited above, subject to the terms and conditions outlined above and incorporated herein by reference, and such terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Respectfully submitted,



JADE T. BUTAY
Director of Transportation

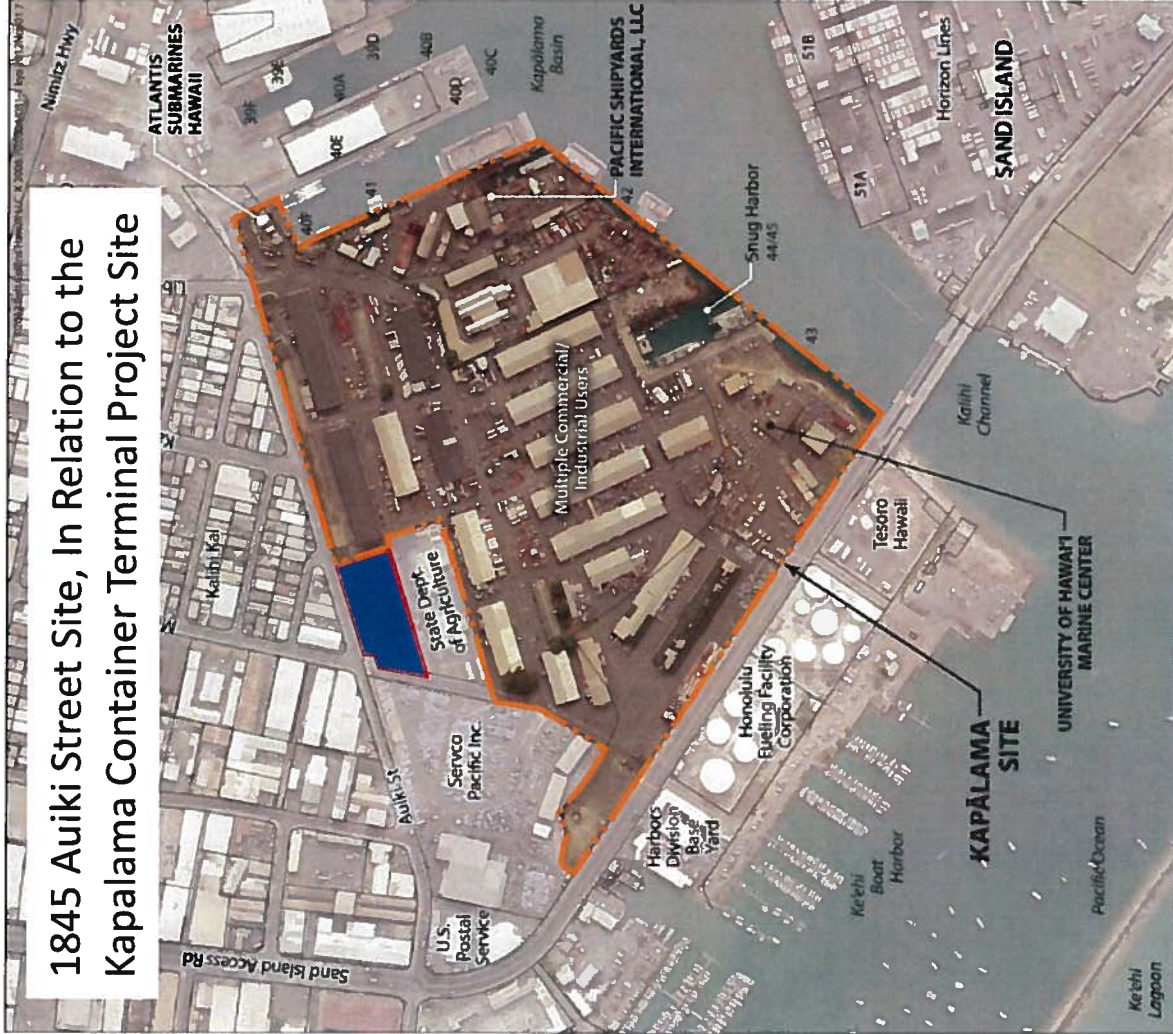
APPROVED FOR SUBMITTAL:



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

Att.: Exhibit A

1845 Auiki Street Site, In Relation to the Kapalama Container Terminal Project Site



Sources:
 Parcel lines—City and County of Honolulu, Department of Planning and Permitting, Honolulu Land Information System (HoLIS), http://plisito.hicentral.com/layers/Cadastral/tax_parcel.zip downloaded on 5/16/12.
 Aerial photograph—USDA-NRCS/DigitalGlobe Inc. dataset, September, 2005.

Area = 2.93 Acres including warehouse

