

JOSH GREEN, M.D.
GOVERNOR



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

EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO

IN REPLY REFER TO:

HAR-PM.0001797.23

July 12, 2023

Ms. Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Ms. Chang:

MAUI

Request for authorization to issue a Construction Right-of-Entry (CROE) and Grant of Easements (Perpetual, Non-Exclusive) to the County of Maui, Department of Water Supply (DWS), for a portion of Waterline D situated at Kahului Harbor, island of Maui, Tax Map Key (TMK) No. (2) 3-7-010:003 (P), Governor's Executive Order No. 2635.

LEGAL REFERENCE:

Hawaii Revised Statutes (HRS), Sections 171-6, 171-7, 171-11, 171-13, 171-17, and 171-95, as amended.

APPLICANT:

The County of Maui, Department of Water Supply (Applicant), is an agency of the County of Maui, whose mailing address is 200 South High Street, Kalana O Maui Building, 5th Floor, Wailuku, Hawaii, 96793.

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 to relocate a portion of Waterline D, as may be necessary for the transmission and distribution of water service lines emanating from Waterline D. Together with the right from time to time, and at all reasonable times, to enter upon the areas for the above-mentioned purposes and maintenance thereof, and the right of ingress, egress, and regress over the Department of Transportation, Harbors (DOTH) roads leading to the areas.

ITEM M-27

LOCATION:

Portion of Governmental lands at Kahului Harbor, island of Maui, TMK No. (2) 3-7-010:003 (P), as shown on the enclosed map labeled Exhibit A.

AREA:

Approximately 848 square feet as shown in Exhibit A.

TERMS AND CONSIDERATION, EASEMENTS:

Utility Easements (Perpetual, Non-Exclusive), consideration to be gratis – pursuant to HRS, Section 171-95.

TERMS AND CONSIDERATION, CONSTRUCTION RIGHT-OF-ENTRY:

Until the relocation, maintenance, repair, and removal of the portion of Waterline D as shown in Exhibit A and the recordation of the Grant of Easement.

Consideration to be gratis – pursuant to HRS, Section 171-95.

ZONING:

State Land Use Commission:	Urban
County of Maui:	M-2 (Heavy Industrial)

COMMENCEMENT DATE:

Upon approval by the Board of Land and Natural Resources and as determined by the Director of Transportation.

TRUST LAND STATUS:

Public Land Trust Information System states trust land status for TMK No. (2) 3-7-010:003 (P) is undetermined.

CURRENT USE STATUS:

Land encumbered under Governor's Executive Order No. 2635, dated November 27, 1972, setting aside land for maritime and maritime related use to be under the control of the DOT.

LAND TITLE STATUS:

TMK No. (2) 3-7-010:003 (P) was acquired by the DOTH, through eminent domain proceedings by issuance of Governor's Executive Order No. 2635.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This use is exempt from the Office of Planning and Sustainable Development, and Environmental Review Program requirements pursuant to Hawaii Administrative Rules (HAR), Subchapter 11-200.1, that exempts the following:

“Exemption Type 3, Part 1: Modification of existing facilities or installation of new equipment.”

The DOTH deems the action as de minimis and exempts it from the preparation of an exemption notice in accordance with HAR, Subchapter 11-200.1-16 (b). The exemption declaration for the action described above is based on the Exemption List for the DOTH, reviewed and concurred to by the Environmental Advisory Council on February 1, 2022, is as follows:

Exemption Type 3, Part 1:

- No. 13. “Modify utility systems including electrical (e.g., convert overhead lines to underground lines), gas, water, sewer, communications, and other services to serve structures, buildings, or facilities. Extend utility service connection to new or modified assets. Exterior lighting modifications will comply with HRS, Section 201-8.5, Night Sky Protection Strategy.”
- No. 22. “Installation of temporary parking and temporary storage of construction equipment and materials on DOT property.”

APPLICANT REQUIREMENTS:

The Applicant shall:

1. Ensure that its Contractors and Subcontractors shall obtain the following insurance during the term of the Construction Right-of-Entry and include as additional insured:
 - a. Bodily injury or property damage caused by Applicant's or its permitted agent's negligence in the form of a general liability insurance policy with a combined single limit of \$1,000,000.00 for bodily injury and damage per occurrence, and \$2,000,000.00 in the aggregate.
 - b. Automobile insurance for any vehicles used to access and that are on the Premises with a minimum limit of \$1,000,000.00 per occurrence.

- c. 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 a similar type issued to businesses similar to Applicant and its permitted agents and issued by companies of sound and adequate financial responsibility, who are allowed to do business in the State of Hawaii, all as reasonably satisfactory to the State.
 - d. The Applicant shall include the State as an additional insured on the policies or provide other assurances, reasonably acceptable to the State, that the Applicant's insurance policies shall be primary, not in excess of or pro rata and noncontributing as to add 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.
 - e. The Applicant shall provide proof of all required insurance to the State either by the production of an insurance certificate or some other written form reasonably acceptable to the State.
2. 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 privilege herein granted, caused directly or approximately by any failure on the part of the Applicant in its use of the Premises.
3. 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. 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.
5. Coordinate all activities with Staff of the DOTH.
6. At all times during the term of the CROE, comply with all applicable laws, statutes, ordinances, rules and regulations, whether State, County, or Federal, which are now or hereafter may be in effect.
7. Adhere to other terms and conditions as may be prescribed by the Director of Transportation.

REMARKS:

As part of the 2030 Kahului Harbor Master Plan, the DOTD requested that Hawaiian Cement (HC) relocate its current facility which is in the cargo yard between Piers 2 and 3, to just outside of harbor boundaries on a parcel owned by A&B, as shown in Exhibit B. The relocation of HC to its new facility will allow Kahului Harbor to utilize the cargo yard to support the projected increase of cargo handling needs of Maui County. The relocation of HC will also allow them to build an additional silo to ensure adequate cement supply for the construction needs of Maui County.

In order for HC to build two new silos that will house additional cement to support the island of Maui, the ground under and around their terminal needs to be reinforced with stone columns to prevent liquefaction, and to ensure the foundation is able to support the silos. A portion of Waterline D will need to be relocated within Harbor boundaries of TMK No. (2) 3-7-010:003 (P), and will be connected to an existing DWS water main that services Harbor Facilities. The CROE will allow the Applicant to relocate Waterline D to maintain water service to the DOTD's facilities and give HC ample space to build their new terminal.

RECOMMENDATION:

Based on this submittal, testimony and facts presented, the Department of Transportation recommends that the Board finds that approving the issuance of a CROE and Grant of Easements (Perpetual, Non-Exclusive) to the Applicant for the above stated purposes, subject to terms and conditions outlined above and incorporated herein by reference, and such terms and conditions as may be prescribed by the Director of Transportation; will serve the best interest of the State.

Sincerely,



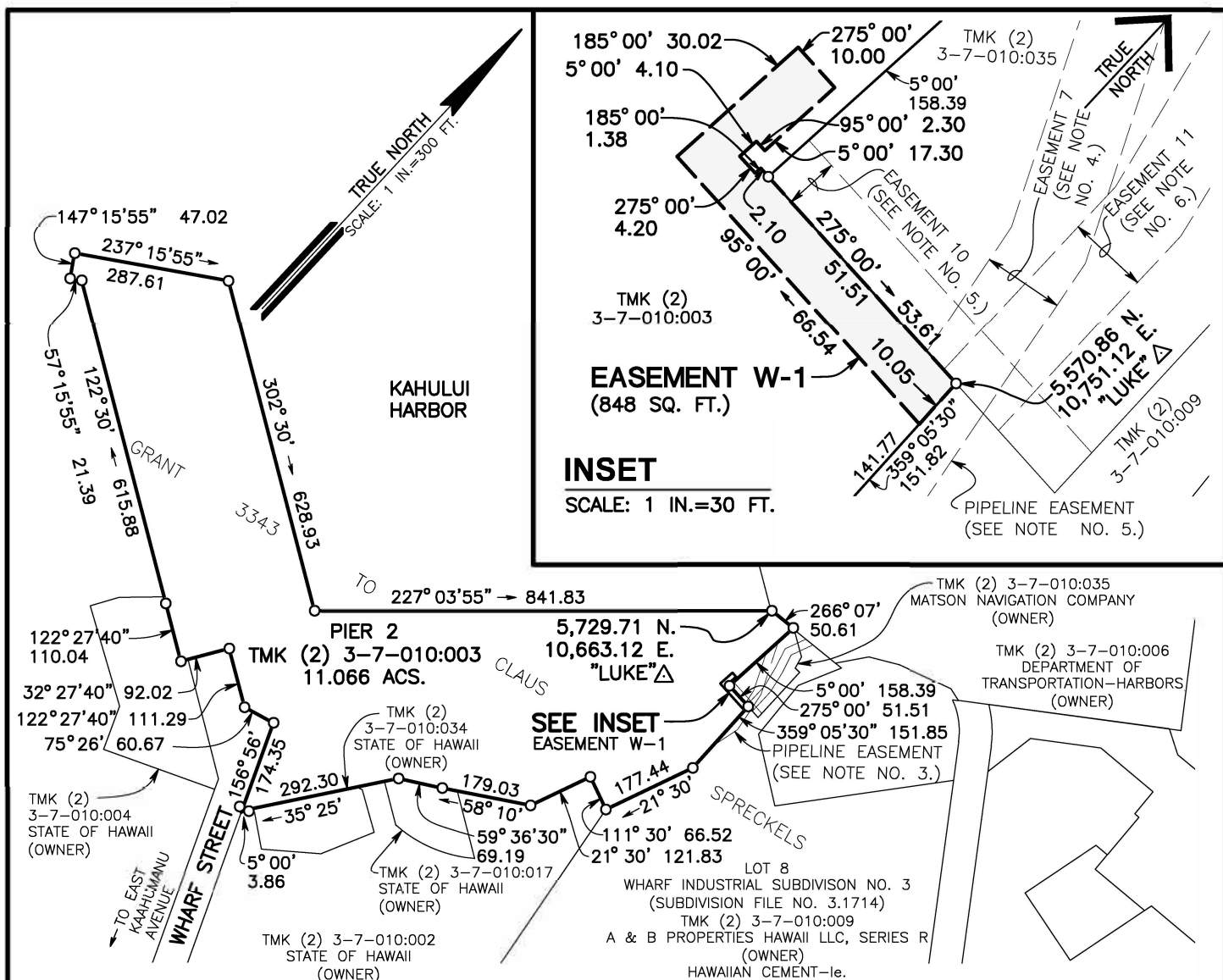
EDWIN H. SNIFFEN
Director of Transportation

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG, Chairperson

Enclosures



MAP SHOWING EASEMENT W-1

AFFECTING A PORTION OF PIER 2 (EXECUTIVE ORDER NO. 02635),
BEING ALSO A PORTION OF GRANT 3343 TO CLAUD SPRECKELS

KAHALUI, WAILUKU, MAUI, HAWAII

SCALE: 1 IN. = 300 FT.

DATE: SEPTEMBER 26, 2022

PREPARED FOR:

HAWAIIAN CEMENT
99-1300 HALAWA VALLEY STREET
AIEA, HAWAII 96701

OWNER:

STATE OF HAWAII
103 ALA LUINA STREET
KAHALUI, HAWAII 96732
E.O. 02635/C.S.F. 16,627

PREPARED BY:

FUKUMOTO ENGINEERING, INC.
1721 WILI PA LOOP, SUITE 203
WAILUKU, HAWAII 96793

PH: (808) 242-8611
EMAIL: office@femaui.com

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "LUKE"Δ.
2. OWNERS OF ADJOINING PARCELS ARE FROM RECORDS IN THE TAX MAPS BRANCH.
3. EXISTING PIPELINE EASEMENT (UNRECORDED) IS IN FAVOR OF THE STATE OF HAWAII.
4. EXISTING EASEMENT 7 (15 FT. WIDE) IS FOR WATER PIPELINE PURPOSES IN FAVOR OF THE STATE OF HAWAII.
5. EXISTING EASEMENT 10 (10' WIDE) IS FOR FIRE PROTECTION PURPOSES IN FAVOR OF THE STATE OF HAWAII.
6. EXISTING EASEMENT 11 WHICH IS 7.5 FEET OFFSET ON BOTH SIDES FROM THE CENTERLINE OF THE APPROXIMATE LOCATION OF A 6 INCH WATERLINE IS AN EASEMENT FOR WATERLINE PURPOSES IN FAVOR OF THE COUNTY OF MAUI AS SHOWN ON THE WHARF INDUSTRIAL SUBDIVISION NO. 3 (L.U.C.A. FILE NO. 3.1714).
7. EASEMENT W-1 (848 SQ. FT.) IS AN EASEMENT FOR WATERLINE PURPOSES AFFECTING PIER 2 (EXECUTIVE ORDER NO. 02635) IN FAVOR OF THE COUNTY OF MAUI.

Relocation of Hawaiian Cement Facility

