

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

September 28, 2012

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

PSF No.:10od-165

OAHU

Grant of Term, Non-Exclusive Easement to The Gas Company, LLC for Gas Transmission Lines Purposes, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-014:seaward of 002 and (1) 9-1-074: seaward of 036.

APPLICANT:

The Gas Company, LLC, a domestic limited liability company

LEGAL REFERENCE:

Section 171-13 and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-014:seaward of 002 and (1) 9-1-074: seaward of 036 as shown on the attached map labeled **Exhibit A**.

AREA:

Easement A: 4,111 square feet, and
Easement C: 117 square feet, more or less.

Subject to review and approval of the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing gas transmission lines over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Subject to one-time payment of consideration determined by an independent appraiser subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4), 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exemption Notification at **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) Pay for an appraisal to determine the one-time payment of consideration; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

Owners of the abutting properties, identified as tax map key (1) 9-1-014:002 (Parcel 2), and (1) 9-1-074:036 (Parcel 36), are in the process of obtaining a shoreline certification. The shoreline certification is pertinent to a proposed drainage improvement work at the location. During the survey process, portion of a gas transmission line with an earthen berm covering is found makai of the shoreline (see **Exhibit C**).

Parcel 36

Parcel 36 is a portion of Lot 106, and its seaward boundary is shown on Map 25, Land Court Application 1069 dated March 12, 1940 and attached as **Exhibit D**. Around 1991, Lot 106 and other adjacent properties were consolidated and subdivided into multiple industrial lots, and the subsequent subdivision is shown on Map 602, Land Court Application 1069 dated September 11, 1991 and attached as **Exhibit E**.

The seaward boundary of Lot 106 as of 1940 is located further makai as compared to that of the 1991 map (see Exhibit E). In the event any erosion occurred to a property during the subdivision process, staff understands the county would normally require the seaward boundary of such property run along the certified shoreline submitted simultaneously. According to the agent representing the applicant, Lot 106 has undergone the exact process, thus its seaward boundary shifted inland in 1991, due to erosion.

By its letter dated May 5, 2010 attached as **Exhibit F**, Office of Conservation and Coastal Lands (OCCL) has determined that the subject gas line was built around 1968 at the present location and considered the gas line as a non-conforming use. As mentioned above, the seaward boundary of Lot 106 was not changed until 1991. There was no shoreline certified at the location between 1940 and 1991. Therefore, the gas line was built on private property circa 1968 because the boundary was makai of the line. The same gas line did not become an encroachment on State land until 1991 when a certified shoreline, mauka of the gas line, was used as the new seaward boundary of the subdivided lots. The encroachment is the subject of today's request (Easement A).

Parcel 2

Parcel 2 also experienced erosion as shown on the map attached as Exhibit C. There was no shoreline certification or erosion claim processed at Parcel 2 in the past suggesting the extent of any erosion. Therefore, seaward boundary of Parcel 2 remains at the original location shown on Map 79, Land Court Application 1069 dated November 23, 1957. As mentioned above, around 1968, portion of the gas line was placed on this private property.

Another portion of the same gas line ("Easement C") will become an encroachment on State land upon the shoreline certification process. Similar to Easement A over Parcel 36, Easement C was on private land when it was built.

Both Easements A and C are over portions of State submerged lands based on the above analysis. The applicant intends to resolve the encroachments by obtaining a term

easement from the Board.

REMARKS:

On August 10, 2012, under agenda item D-1, the Board heard a similar case on Kauai in which the shoreline improvements were once within portion of private property. Due to erosion, portions of the improvements became located makai of the current shoreline and encroaching on State lands. Land Division reported at the August 2012 meeting that the Department would attempt to revise the statutes in the coming Legislative session. The proposed amendment would allow the Board to issue easements at nominal consideration over portions of improvements which were built within private properties previously. These improvements became encroachments because of the effect of erosion. The Board allowed the applicant for the Kauai case to defer the tendering of the consideration until the end of the next legislative session, while an easement would be executed to protect the State from potential liability issue.

The subject encroachment will have to be resolved before any shoreline is certified. Staff recommends the Board authorize the issuance of the easement subject to a one-time payment of consideration, further subject to the understanding that such consideration may become moot in the event the new law mentioned above is approved during the next session, expected to end around June 2013.¹

Other Conditions

Conditions of the proposed easement will be no different from a normal 55-year term easement for shoreline encroachment, include but not limited to providing liability insurance, indemnifying the State, and maintaining the easement area. Staff defers to the Department of the Attorney General for advice on the inclusion of appropriate hazmat compliance provision for the requested gas pipeline easement.

Agency Comments

Division of Aquatic Resources, Department of Health (Environmental Planning Office), Department of Facility Maintenance, and Board of Water Supply have no objection/comment to the request. Department of Hawaiian Home Lands, State Historic Preservation Division, Commission on Water Resource Management, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded as of the suspense date.

Fine

Staff does not recommend imposing fines or recovering administrative costs for the subject encroachments because they were located on private land before the erosion occurred.

Governor and Legislature approvals pursuant to Section 171-53 (c) are not required because the subject request pertains to pipeline which is excluded from the need of

¹ Due to the time required to prepare the map and description of the easement area, plus the time required for the appraisal process, staff anticipates the easement would not be ready for execution until around mid 2013.

obtaining the approval from the Governor and the Legislature.

Applicant 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:

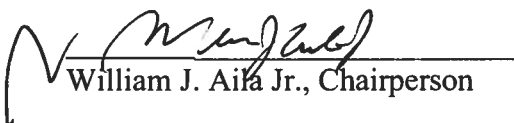
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to The Gas Company, LLC covering the subject area for gas transmission lines 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 term shoreline encroachment easement document form, as may be amended from time to time;
 - B. Appropriate provision for any hazmat compliance provision as advised by the Department of the Attorney General;
 - C. The easement may be issued at gratis consideration if the proposed legislation changes mentioned in the text herein shall become law at the end of the 2013 Legislative session;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aifa Jr., Chairperson

EXEMPTION NOTIFICATION

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

Project Title: Term, Non-Exclusive Easement for Gas Transmission Lines Purposes

Project / Reference No.: PSF 100D-165

Project Location: Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-014:seaward of 002 and (1) 9-1-074:seaward of 036.

Project Description: Easement to legalize the encroachments on State lands.


Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The gas transmission line was built around 1968 and it became an encroachment on State submerged lands as a result of erosion and the shifting of the shoreline. The request is to document the existing improvements and no new improvement is planned. The request will not involve any expansion or change of use. Staff anticipates the alteration, if any, in the conditions of land, water, and vegetation at the location will be minor. Therefore, it is recommended that the subject request be exempt from an environmental assessment.

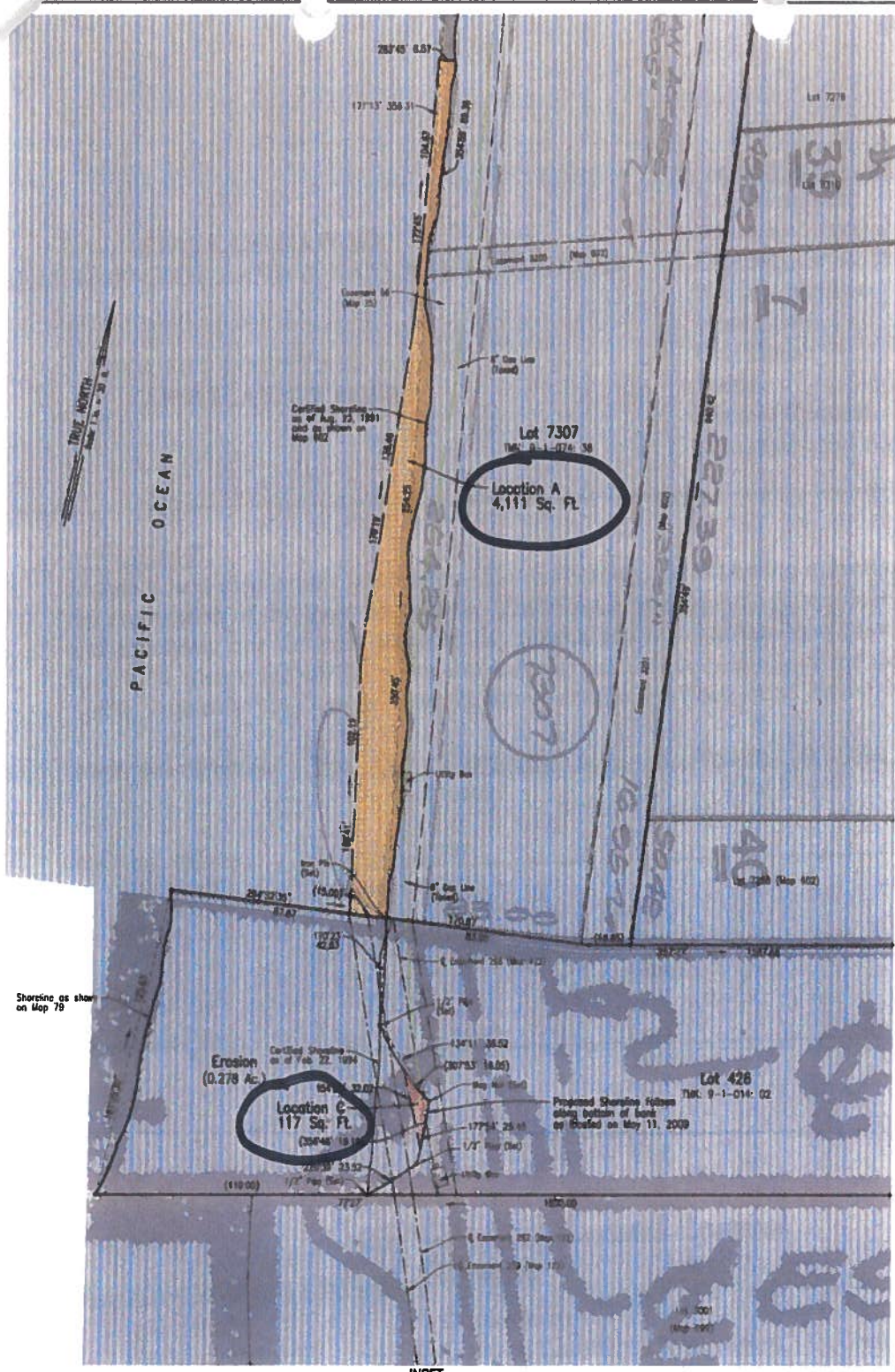
Consulted Parties Office of Conservation and Coastal Lands

Recommendation: That the Board find 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.



William J. Aila Jr., Chairperson
Date 9/28/12

EXHIBIT B



INSET
Scale: 1 in. = 50 ft.

TMK: 9-1-014: 02 (Lot 426)
 Fee Owner: James Campbell Company LLC
 Address: 1001 Kamohala Blvd., Suite 250
 Kapolei, HI 96707
 Property Address:
 91-400 Malakole Street
 Kapolei, HI 96707

TMK: 9-1-074: 36 (Lot 7307)
 Fee Owner: Kenoi Property Management
 Address: 1149 Bethel St. #501
 Honolulu, HI 96813
 Property Address:
 Malakole Street
 Kapolei, HI 96707

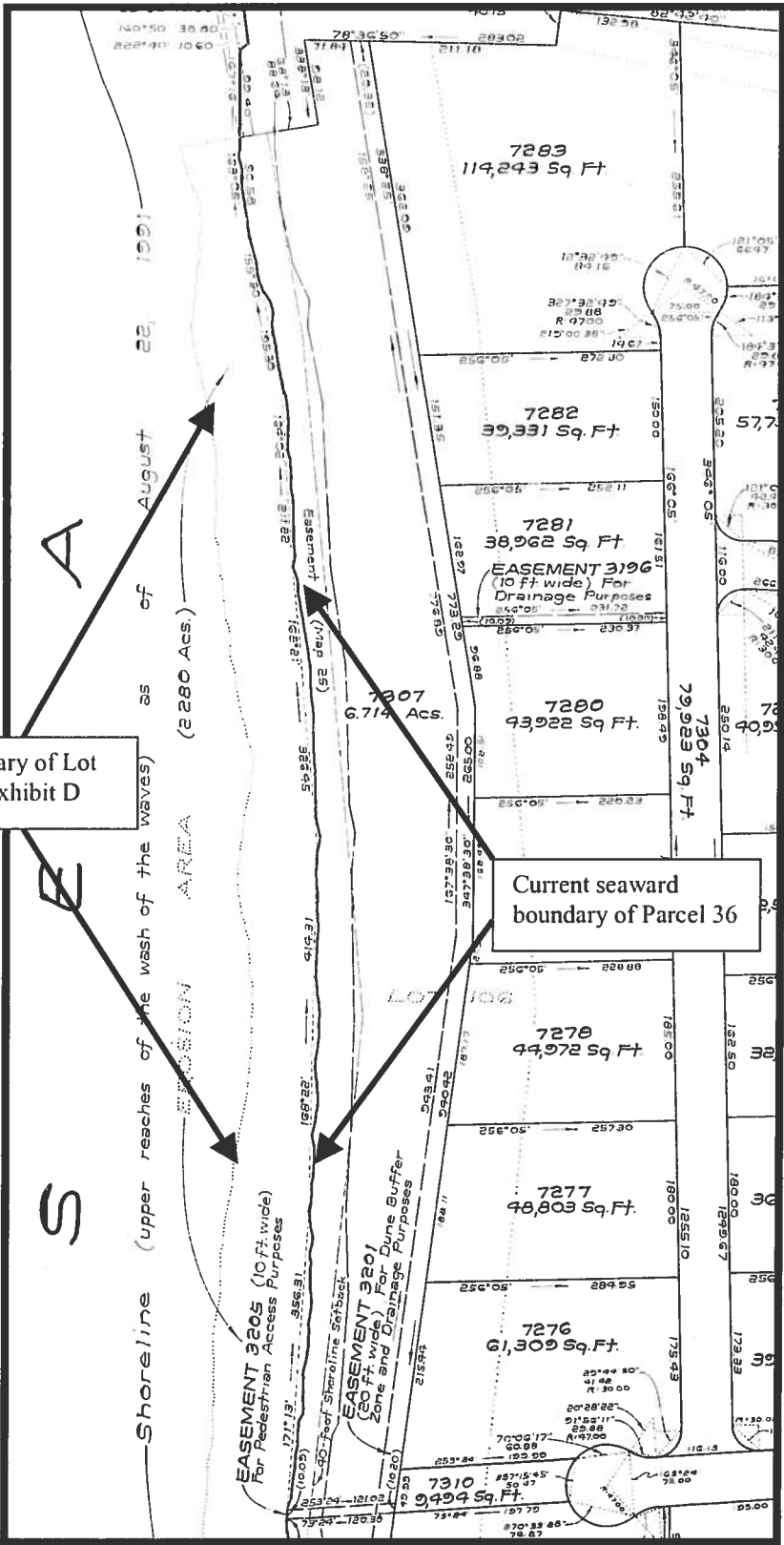
NOTE:
 Azimuths referred to "KAPUAI NEW" Δ.

FN: 08017-34.dwg

TMK: 9-1-014: 02 & 9-1-074: 36
 F.B. 2788

EXHIBIT "C"

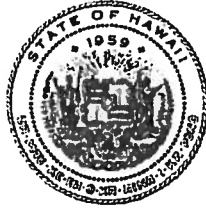
Seaward boundary of Lot 106 shown in Exhibit D



Excerpt from Map 602, Land Court Application 1069 dated September 11, 1991

EXHIBIT E

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU HAWAII 96809

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

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVIYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:MC

Correspondence OA-10-99

MAY - 5 2010

Mark K. Murakami
Carlsmith Ball LLP
1001 Bishop Street
Honolulu, HI 96813

Dear Mr. Murakami,

SUBJECT: NON CONFORMING USES: Earthen Berm and Gas Pipeline
Honouliuli, 'Ewa, O'ahu
TMK (1) 9-1-014:002 and 074:036

The Office of Conservation and Coastal Lands (OCCL) has reviewed your correspondence regarding land uses on the above subject parcels. You have requested information on the non-conforming status of an earthen berm and of an underground gas line, both of which run parallel to the coast.

Our records show that the shoreline on this coast has migrated, accreting in some years and retreating in others. The land mauka of the shoreline in this area is outside the State Land Use Conservation District. Lands makai of the shoreline are part of the Resource Subzone of the Conservation District pursuant to Hawai'i Administrative Rules (HAR) §13-5-13.

According to the information you provided, the berm existed prior to 1991. A survey done on August 22, 1991 located the shoreline mauka of the berm. At this point it was included in the Conservation District. *OCCL concurs that the berm thus qualifies as a non-conforming use.*

The underground gas line was constructed in or around 1968. If the shoreline survey is certified as proposed then it appears that parts of the line will be included in the Resource Subzone of the Conservation District. *OCCL concurs that the gas line will thus qualify as a non-conforming use if the shoreline is certified as proposed.*

We encourage the landowner to review HAR §13-5-37 NONCONFORMING USES in order to understand the regulations regarding repair and maintenance to nonconforming structures. We have enclosed a copy of HAR §13-5 for your use. If you have any questions please call Michael Cain at 587-0048.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

attachment: HAR 13-5

EXHIBIT "F"