AMENDMENT TO PRIOR LAND BOARD ACTION OF APRIL 24, 1998, UNDER AGENDA ITEM K-1, REGARDING ISSUANCE OF LEASES FOR STATE LAND FOR CEMENT SILO TERMINAL OPERATIONS TOGETHER WITH EASEMENTS FOR OFFLOADING AND TRANSMISSION OF BULK CEMENT, KALAELOA BARBERS POINT HARBOR, EWA, OAHU

STATUTE: Section 171-36 Hawaii Revised Statutes.


CHARACTER OF USE: Cement silo terminal purposes, including the wholesale, storage and distribution of cement, together with the option to acquire a non-exclusive easement for the offloading and subsurface pipeline transmission of bulk cement from ship to terminal.

LOCATION: Open Land situated at Kalaeloa Barbers Point Harbor, Tax Map Key No. 1st/9-1-14:24, as shown on the attached Exhibit "A."

STATUS: Encumbered by Governor's Executive Order No. 3383, setting aside the land to the Harbors Division, Department of Transportation.

AREA: 170,999 square feet of open land.
5,450 square feet, non-exclusive 5-foot-wide subsurface pipeline easement.

TERM: Thirty-Five (35) Years, commencing on October 4, 1999, up to and including October 3, 2034.

CURRENT RENTAL: $279,087 per annum.
AMENDED RENTAL: $279,087 per annum plus fair market value of additional easements as determined by independent appraisal, the cost of which shall be paid by Hawaiian Cement. Additional rent shall be assessed from the date of installation of easements.

REMARKS: Harbor Lease No. H-98-10 to Hawaiian Cement was authorized by the Land Board at its meeting of April 24, 1998, under agenda Item K-1, attached as Exhibit "B."

Harbors Division files indicated that Hawaiian Cement requested a non-exclusive easement for subsurface electric power designated as Easement 60000 as depicted on the attached Exhibit "C," and exclusive easements for pipelines, electrical and rails designated as Easements 70000 thru 70004, as depicted on the attached Exhibit "D."

<table>
<thead>
<tr>
<th>Easement</th>
<th>Sq. Ft.</th>
<th>Description</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>60000</td>
<td>15,263</td>
<td>Subsurface non-exclusive electrical easement</td>
<td>C</td>
</tr>
<tr>
<td>70000</td>
<td>1,599</td>
<td>Rail easement</td>
<td>D</td>
</tr>
<tr>
<td>70001</td>
<td>1,599</td>
<td>Rail easement</td>
<td>D</td>
</tr>
<tr>
<td>70002</td>
<td>5,757</td>
<td>Pipeline easement</td>
<td>D</td>
</tr>
<tr>
<td>70003</td>
<td>536</td>
<td>Electrical easement</td>
<td>D</td>
</tr>
<tr>
<td>70004</td>
<td>3,540</td>
<td>Pipeline easement</td>
<td>D</td>
</tr>
</tbody>
</table>

Harbors Division’s concurrence for designation was provided with the following conditions:

1) Harbor Lease No. H-98-10 is to be amended;
2) The existing above ground cement pipeline shall be required to be relocated underground in the event future redevelopment of the area occurs;
3) Identify the various easements as a non-exclusive or exclusive easement; and
4) Rental shall be assessed from the date of installation and shall be based on an independent appraisal, which cost shall be reimbursed to the State.

Harbors Division’s file documents from then Harbors Administrator Glenn Okimoto, Ph.D. are attached as Exhibit "E."

Since Easements 60000 and 70000 thru 70004 were not captured in the original lease agreement, Harbors is requesting to amend Harbor Lease No. H-98-10 to include these electrical, pipeline and rail easements.
RECOMMENDATION:

That the Board:

1. Amend its action of April 24, 1998, under agenda Item K-1, by authorizing the addition of easements 60000, and 70000 thru 70004 for electrical, pipeline and rail easements to Harbor Lease No. H-98-10, subject to foregoing terms and conditions, incorporated herein by reference, and further subject to the following:

a. All other terms and conditions of the Land Board action of April 24, 1998, under agenda Item K-1, remain the same.

b. Such other terms and conditions as may be prescribed by the Director of Transportation that best serve the interest of the State, including, but not limited to appraisal of easements to amend the rent to include these encumbrances.

Respectfully submitted,

GLENN M. OKIMOTO, Ph.D.
Director of Transportation

Attachments

APPROVED FOR SUBMITTAL:

WILLIAM J. AILA, JR.
Chairperson and Member
Board of Land and Natural Resources
Exhibit "A"
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

April 24, 1998

Subject: Department of Transportation Request for Authorization to Issue  
Construction Right-of-Entry Agreements and to Sell, at Public Auction,  
Two (2) Separate Leases of State Land for Cement Silo Terminal  
Operations together with Nonexclusive Easements for Offloading and  
Transmission of Bulk Cement at Barbers Point Harbor, Ewa, Oahu

STATUTE: Chapter 171, Hawaii Revised Statutes

APPLICANT: Various

FOR: Authorize the Department of Transportation, by its Director, to sell, at  
public auction, two (2) separate leases for cement silo terminal purposes,  
including the wholesale, storage and distribution of cement, together with  
the option to acquire nonexclusive easements for the offloading and  
subsurface pipeline transmission of bulk cement from ship to terminal.

LOCATION: Barbers Point Harbor, Ewa, Oahu  
Tax Map Key 9-1-14:24P  
Governor’s Executive Order No. 3383 (Exhibit “A”)

AREA: Two separate sites of not less than 100,000 square feet (2.3 acs) to not  
more than 217,800 square feet (5.0 acs) for the terminal operations  
together with the option to acquire, by negotiation, non-exclusive  
easements, as necessary, for offloading and overhead or subsurface  
transmission of bulk cement, and utilities. Final areas and actual ground  
sites to be determined by survey map and description as provided by lessee  
subject to coordination with and approval by Harbors Division.

Each leasehold shall be located within the wavy crosshatched area Mauka  
of the existing coal conveyance system owned and operated by Briggs  
Pacific Inc. for AES Barbers Point Hawaii, Inc., as indicated on the  
Barbers Point Harbor Plan attached hereto as Exhibit “B.”

ITEM K-1  
Exhibit "B"
TERM: Thirty-five (35) years

For the first fifteen (15) years of the lease term, the minimum annual rental shall be the fair market rental as determined by independent appraisal for the first five (5)-year period; one hundred fifteen percent (115%) of the minimum annual rental of the fifth (5th) year for the second five (5)-year period; and one hundred fifteen percent (115%) of the minimum annual rental of the tenth (10th) year for the third five (5)-year period. For the remaining term of the lease, the minimum annual rental shall be renegotiated six (6) months prior to the end of the 15th and 25th years.

UPSET MINIMUM ANNUAL RENTAL: Fair market rental as determined by independent appraisal, the cost of which shall be divided evenly between and charged to each lessee.

ADDITIONAL RENTAL: Wharfage rates, pipeline tolls and other applicable user fees as required pursuant to the Hawaii Administrative Rules, Commercial Harbors and Tariff.

WAIVER: Minimum annual rental for the first year, or when the lessee begins to conduct operations on the premises, whichever first occurs, commencing on the date a construction right-of-entry is granted.

COMMENCEMENT DATE: To be determined by the Director of Transportation.

IMPROVEMENT BOND: Cash or surety bond in an amount prescribed by the Director of Transportation, to be filed with the Harbors Division and released only after all terminal and offsite improvements are completed to the satisfaction of Harbors Division. The construction/installation of all terminal and offsite improvements shall be completed within two (2) years following the effective date of the lease. Time extensions of six months duration, but no more than an aggregate of one year, may be granted at the discretion of the Director of Transportation for the completion of the terminal and offsite improvements. The bond may be released to the lessee upon the completion of all improvements to the satisfaction of Harbors Division.
IMPROVEMENT REQUIREMENT: Each lessee shall expend not less than $10,000,000.00 for the design and construction of onsite and offsite improvements necessary to the operation of the cement terminal. All construction drawings must be prepared, signed and stamped by a qualified engineer or architect licensed in the State of Hawaii. And submitted to Harbors Division for review and approval before the commencement of any construction work. All offsite utility systems and connections shall be placed underground.

PERFORMANCE BOND: Cash deposit or surety bond in the amount equal to one-fourth (1/4) of the annual rental payable to insure compliance with the terms and conditions of the lease. This bond may be released and/or reimposed in accordance with law.

COMMENTS: Each lessee must comply with applicable governmental requirements including, but not limited to, the following:

1. Department of Health rules and regulations, including environmental impact statement requirements (EIS) pursuant to Chapter 343, Hawaii Revised Statutes, as amended.

2. City & County of Honolulu laws, rules and ordinances pertaining to zoning, subdivision, grading and building requirements.

3. Prior review and approval of all construction drawings and specifications by the Harbors Division before the commencement of any and all work activity. All such drawings must be prepared and signed by a professional engineer or architect licensed in the State of Hawaii.

4. Sole responsibility, at no cost to the State, for the installation and construction of utilities, and associated improvements, and the removal and disposal of same and restoration of affected areas to the satisfaction of Harbors Division promptly following the expiration or early termination of the lease. All offsite utility systems within the boundaries of Barbers Point Harbor shall be placed underground.
5. Subdivision plans for each leasehold shall be coordinated with and first approved by the Harbors Division before submitted to the City and County of Honolulu for approval.

RECOMMENDATION: Approval by the Board of Land and Natural Resources subject to the foregoing terms and conditions, incorporated herein by reference, and further subject to the following:

A. Applicable terms and conditions of the standard lease form, including a mutual agreement between the State of Hawaii and the lessee for mutual termination of the lease after the first ten (10) years upon the giving of a one (1) year advance written notice and to exempt the lessee from penalties it may incur from State law and/or departmental requirements as may now exist or be imposed in the future. In this connection, the State shall have the right to retain all or a portion of the improvements built since the inception of the lease, or require the lessee to remove all or a portion of such improvements at no cost or expense to the State of Hawaii. The State release the performance bond to the lessee subsequent to the complete and satisfactory removal of improvements as may be required by the State.

B. Grant immediate construction right-of-entry for construction purposes to each lessee, its consultants, contractors, and subcontractors subject to such terms and conditions as may be prescribed by the Director of Transportation including, but not limited to, the payment of minimum annual rental, cumulative additional rental, and other applicable charges after the first twelve months of the date of issuance of this construction right-of-entry.

Respectfully submitted,

KAZU HAYASHIDA
Director of Transportation

Attachments

APPROVED FOR SUBMITTAL:

Chairperson and Member
Mr. Anders G. O. Nervell  
Attorney at Law  
Stanton Clay Chapman Crumpton & Iwamura  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  

Dear Mr. Nervell:

Subject: Petition for Designation of Easements 60000, 70000 to 70004, Hawaiian Cement, Harbor Lease No. H-98-10, Kalaeloa Barbers Point Harbor, Oahu

Thank you for your transmittal letter of October 30, 2003 forwarding the original Petition for Designation of Easement 60000 for electrical purposes affecting Lot 9540 and Petition for Designation of Easement 70000 and 70004, inclusive, for various purposes and affecting Lot 9540; for your client Hawaiian Cement under Harbor Lease No. H-98-10, situated at Kalaeloa Barbers Point Harbor, Oahu.

The Hawaiian Cement lease will require an amendment to incorporate the subject easements, which will require the approvals of the Board of Land and Natural Resources and the Department of the Attorney General. In addition, the subject easements will be assessed a fair market rental that will be determined by an independent appraiser who will be selected and appointed by the State of Hawaii, whose fee shall be reimbursed by Hawaiian Cement.

We anticipate presenting our request to the Land Board at their meeting to be held on February 13, 2004. A draft of our lease amendment to the Hawaiian Cement lease will be sent to your office for your review and comment.

Upon approval by the Land Board, we will forward the draft of the lease amendment together with the Petition for Designation of Easements 60000, 70000 and 70004 affecting Lot 9540 to the Department of the Attorney General for their review and approval as to form.

Should you have any questions, please call Mr. Derrick Lining, Property Manager, at 587-1944.

Very truly yours,

GLENN M. OKIMOTO  
Harbors Administrator

Exhibit "E"
February 12, 2003

Mr. Dane Wuritzer
Manager, Engineering and Environmental
Hawaiian Cement
91-055 Kaomi Loop
Kapolei, Hawaii 96707-1709

Dear Mr. Wuritzer:

Subject: Designation of Easements 70000 to 70004 for Land Court Application 1069, Affecting Lot 9540 for Electrical Power, Pipelines and Rails, Harbor Lease No. H-98-10, Kalaeloa Barbers Point Harbor, Kapolei, Oahu

Thank you for your letter of December 13, 2002 together with your submittal of your proposed survey map prepared by Control Point Surveying, Inc. which identifies the various easements for electrical power, pipelines and rails for the purpose of Designation of Easements 70000 to 70004 for Land Court Application 1069, situated at Kalaeloa Barbers Point Harbor, Kapolei, Oahu.

We have reviewed the proposed survey map and its easements and have no objections, subject to the following:

1. The proposed Designation of Easements will require an amendment of your lease which requires the approvals of the Board of Land and Natural Resources and the Department of the Attorney General.

2. The existing aboveground cement pipeline shall be required to be relocated underground in the event future redevelopment of the area occurs.

3. Identify the various easements as a non-exclusive or exclusive easement.

4. Rental shall be assessed from the date of installation and shall be based on an independent appraisal, which cost shall be reimbursed to the State.
Enclosed is the executed letter to the City and County of Honolulu, Department of Planning and Permitting authorizing Control Point Surveying, Inc. to act as your agent.

Should you have any questions, please call Mr. Derrick Lining, Property Manager, at 587-1944.

Very truly yours,

G. M. Okimoto
Harbors Administrator

Enc.