



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

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

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

OAHU

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.
- LESSEE:** Hawaiian Cement, Lease No. H-98-10.
- 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."

Easement	Sq. Ft.	Description	Exhibit
60000	15,263	Subsurface non-exclusive electrical easement	C
70000	1,599	Rail easement	D
70001	1,599	Rail easement	D
70002	5,757	Pipeline easement	D
70003	536	Electrical easement	D
70004	3,540	Pipeline easement	D

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

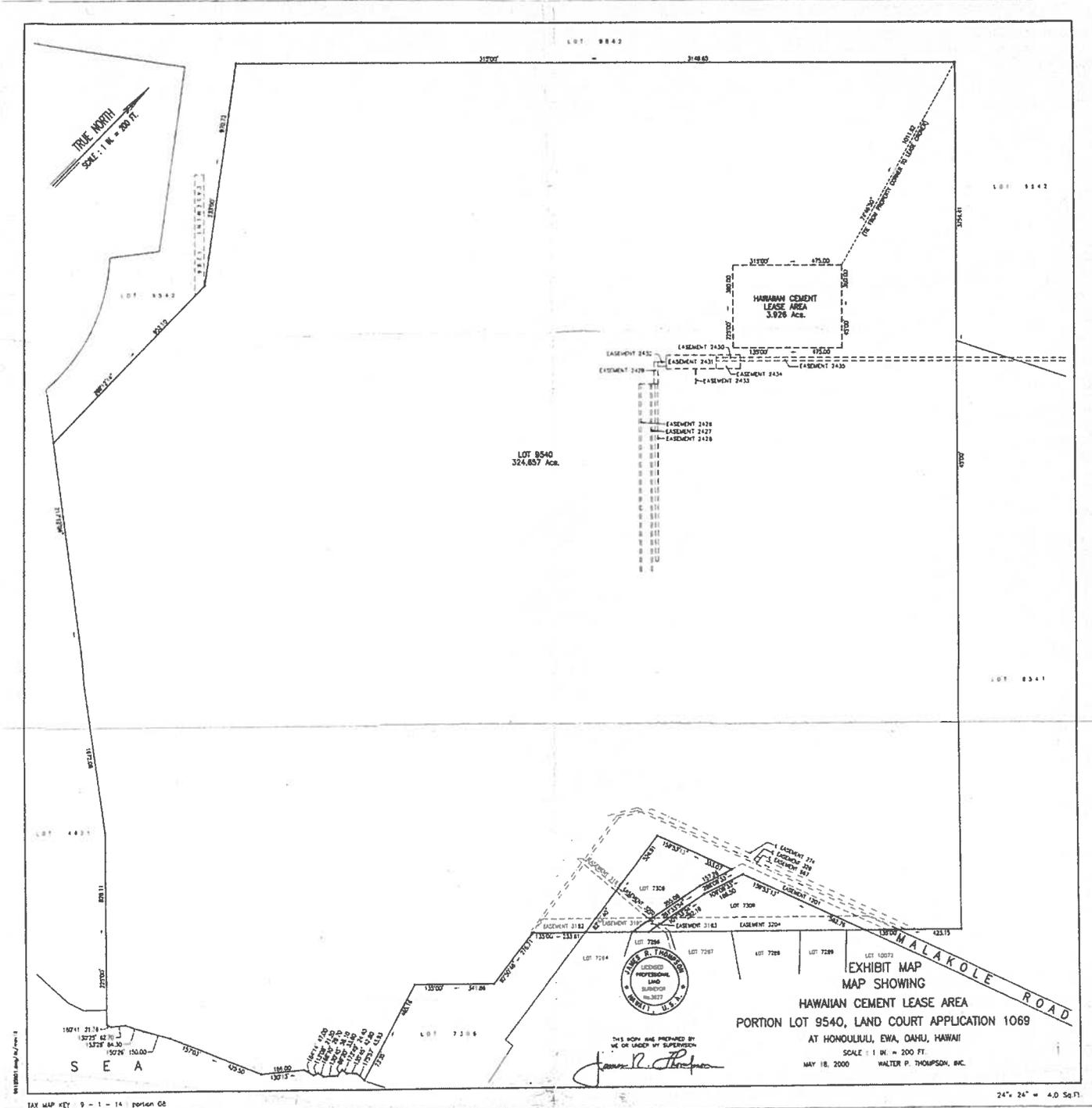


Exhibit "A"



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

IN REPLY REFER TO:

April 24, 1998

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

OAHU

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."

Reviewed by the
this meeting held on

4/24/98

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.

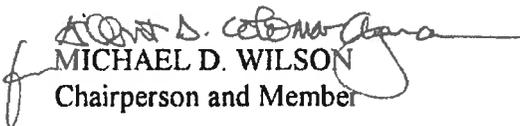
Respectfully submitted,



KAZU HAYASHIDA
Director of Transportation

Attachments

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON
Chairperson and Member

MAP

LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1069
DESIGNATION OF EASEMENT 60000
AFFECTING LOT 9540
AS SHOWN ON MAP 710
AT HONOLULULI, EWA, OAHU, HAWAII

150 South King Street
Suite 101
Honolulu, Hawaii 96814
August 3, 2002

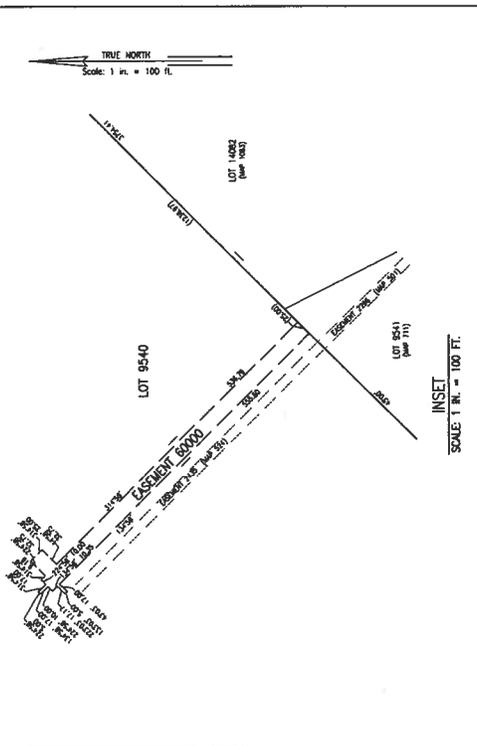
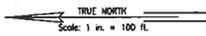
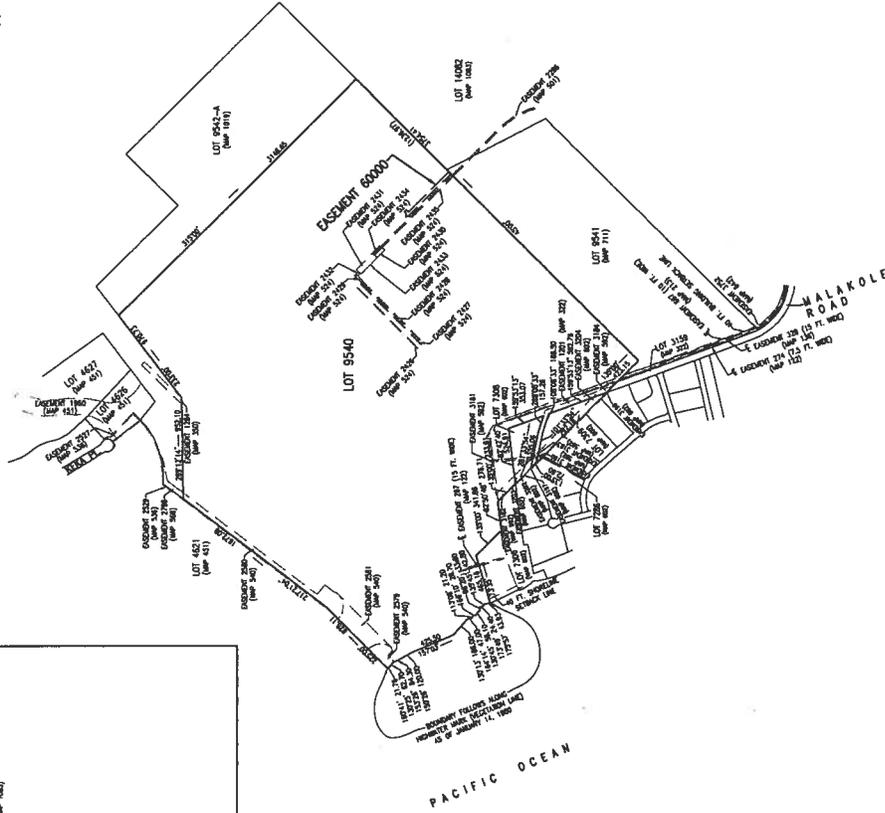
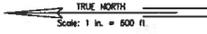
CONTRALPOINT SURVEYING, INC.

By: _____
Licensed Professional Land Surveyor
No. 1100
Land Court Certificate No. 177

OWNER: STATE OF HAWAII
TRANSFER CERTIFICATE OF TITLE:

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED _____
BY ORDER OF THE COURT

REGISTRAR OF THE LAND COURT



INSET
SCALE: 1 IN. = 100 FT.

NOTE:
AREA OF EASEMENT 60000 = 15,263 SQ. FT.
FOR ELECTRICAL PURPOSES IN FAVOR OF
HAWAIIAN ELECTRIC CO.

Exhibit "C"

LAND COURT
STATE OF HAWAII

LAND COURT APPLICATION 1069
DESIGNATION OF EASEMENTS 70000 TO 70004, INCLUSIVE,
AFFECTING LOT 9540
AS SHOWN ON MAP 710
AT HONOLULU, EWA, OAHU, HAWAII

CONTOUR SURVEY, INC.
1100 Kalia Road, Suite 100
Honolulu, HI 96811
Telephone: 808-955-1111

OWNER, STATE OF HAWAII
TRANSFER CERTIFICATE OF TITLE

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT, MADE
BY ORDER OF THE COURT

REGISTER OF THE LAND COURT

ADVANCE PRINT
DATE 12/1/12

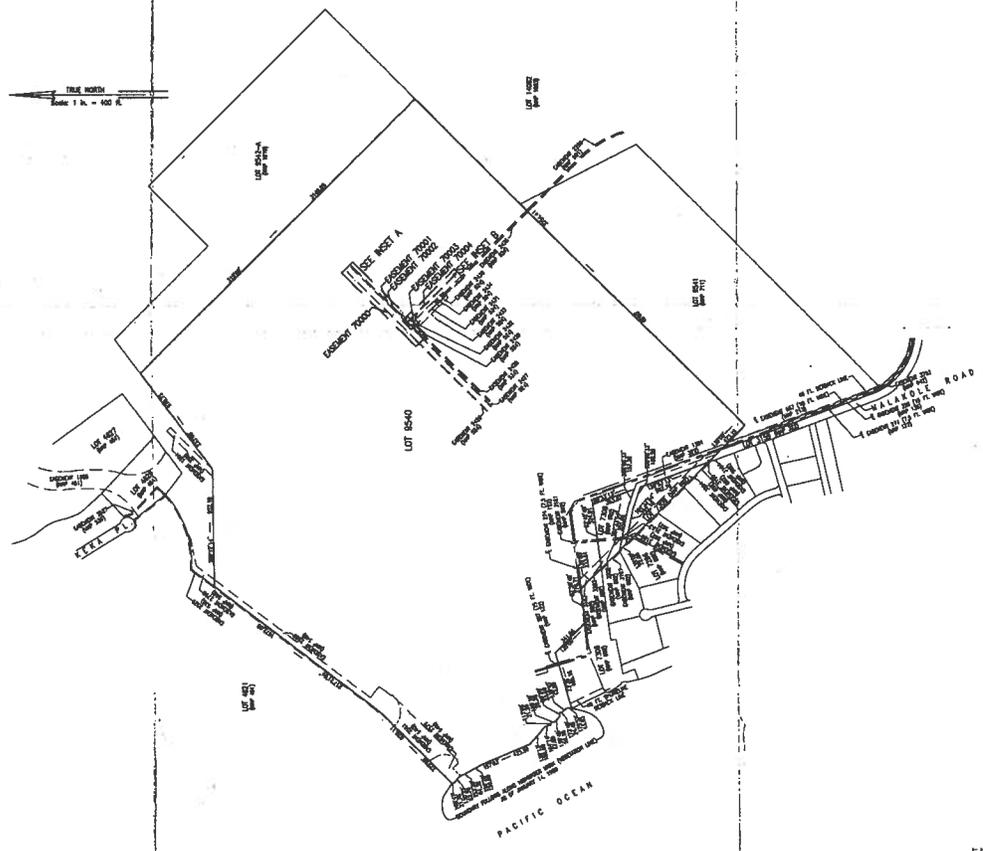
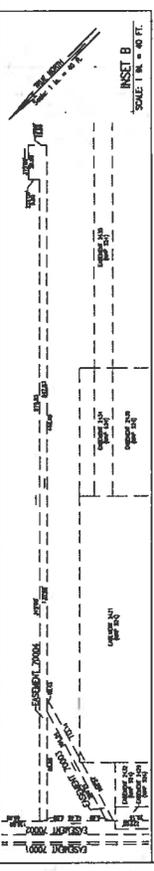
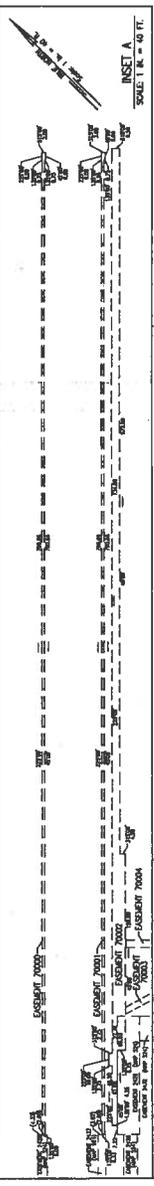


Exhibit "D"

NOTES

NO.	REFERENCE	IN CASE OF
70000	1,500 SQ. FT.	HAWAII COUNTY
70001	1,500 SQ. FT.	HAWAII COUNTY
70002	1,500 SQ. FT.	HAWAII COUNTY
70003	1,500 SQ. FT.	HAWAII COUNTY
70004	1,500 SQ. FT.	HAWAII COUNTY

rls 09.0110

SINGLE
VERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 SO. NIMITZ HWY., HONOLULU, HAWAII 96813-4898

RODNEY K. HARAGA
DIRECTOR

Deputy Director
BRUCE Y. MATSUI
LINDEN H. JOESTING
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:
HAR-PM
3016.04

January 15, 2004

HARBORS DIVISION

JUL 29 11:49

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"

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 SO. NIMITZ HWY., HONOLULU, HAWAII 96813-4898

. R1509.011D

RODNEY K. HARAGA
DIRECTOR

Acting Deputy Director
GLENN M. OKIMOTO

IN REPLY REFER TO:

HAR-PM
2437.03

February 12, 2003

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

Dear Mr. Wurlitzer:

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.

Mr. Dane Wurlitzer
Page 2
February 12, 2003

HAR-PM
2437.03

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,



for GLENN M. OKIMOTO
Harbors Administrator

Enc.

