



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

GLENN M. OKIMOTO
DIRECTOR

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 ISSUANCE OF DIRECT LEASE TO MID PAC PETROLEUM, LLC,
KAWAIHAE HARBOR, KAWAIHAE 1ST, SOUTH KOHALA, ISLAND OF HAWAII,
TAX MAP KEY: 3RD DIVISION, 6-1-03: PORTION OF 24**

BACKGROUND:

At its meeting on December 12, 2008, Agenda Item M-3 (attached as Exhibit A), the Board of Land and Natural Resources authorized the issuance of a direct lease to Mid Pac Petroleum, LLC ("Mid Pac"), to operate, use, maintain and repair an existing bulk fuel storage, bulk fuel transmission and distribution facility at Kawaihae Harbor, further identified as Tax Map Key: 3rd Division, 6-1-03: Portion of 24.

Due to various factors, issuance of the land board approved lease was delayed. Harbors Division is currently constructing the adjacent 3.1-acre lot into a Container Terminal Facility.

REMARKS:

Over the years, staff has been in discussions with Mid Pac regarding the proposed lease. As a result of the construction project on the adjacent property, Roadway "A" is being amended to be exclusive and the area increased to 7,105 square feet. In addition, Mid Pac was informed that to prevent damage to its existing pipelines within the easement area that crosses over the existing internal roadway, its pipelines need to be buried at a greater depth. Due to the additional costs, Mid Pac has requested that the lease term be revised from seven (7) years to twenty (20) years, commencing March 1, 2013.

Staff has been advised by the Office of the Attorney General to amend the Legal Reference of the prior Board Submittal by adding Section 266.2, Hawaii Revised Statutes.

ITEM M-3

The annual ground and easement lease rental for the first ten (10) years of the proposed lease has been determined by an independent real property appraiser who is licensed by the State of Hawaii as a “Certified General Appraiser,” further described as follows:

1. Annual Rental for the First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof, LESSEE shall pay to LESSOR, for its occupancy and use of the Premises, a total annual rental in the sum of SEVENTY-EIGHT THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS AND SEVENTY-TWO CENTS (\$78,457.72), which total sum is based on the following rental calculations:
 - a. Lease Lot 1’s Annual Rental for First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Lease Lot 1 is the sum of SIXTY-NINE THOUSAND FOUR HUNDRED THREE DOLLARS (\$69,403.00);
 - b. Exclusive Easement A’s Annual Rental for First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Exclusive Easement A is the sum of SEVEN THOUSAND ONE HUNDRED SIXTY-FOUR DOLLARS AND SEVENTY-TWO CENTS (\$7,164.72);
 - c. Non-Exclusive Easement B’s Annual Rental for First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Non-Exclusive Easement B is the sum of THREE HUNDRED NINETY-ONE DOLLARS (\$391.00);
 - d. Non-Exclusive Easement C’s Annual Rental for First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Non-Exclusive Easement C is the sum of EIGHT HUNDRED FORTY-SIX DOLLARS (\$846.00); and,
 - e. Non-Exclusive Easement D’s Annual Rental for First Five (5)-Year Period. During each of the first (1st) through and including the fifth (5th) years of the Lease term, beginning upon the commencement date hereof,

the annual rental for Non-Exclusive Easement D is the sum of SIX HUNDRED FIFTY-THREE DOLLARS (\$653.00).

2. Annual Rental for the Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the first day of the sixth (6th) year of the Lease term, LESSEE shall pay to LESSOR, for its occupancy and use of the Premises, an annual rental in the sum of NINETY THOUSAND TWO HUNDRED TWENTY SIX DOLLARS AND THIRTY-EIGHT CENTS (\$90,226.38), based upon the product of the annual rental for the fifth (5th) lease year (\$78,457.72) and 115%.
 - a. Lease Lot 1's Annual Rental for Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Lease Lot 1 is the sum of SEVENTY-NINE THOUSAND EIGHT HUNDRED THIRTEEN DOLLARS AND FORTY-FIVE CENTS (\$79,813.45);
 - b. Exclusive Easement A's Annual Rental for Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Exclusive Easement A is the sum of EIGHT THOUSAND TWO HUNDRED THIRTY-NINE DOLLARS AND FORTY-THREE CENTS (\$8,239.43);
 - c. Non-Exclusive Easement B's Annual Rental for Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Non-Exclusive Easement B is the sum of FOUR HUNDRED FORTY-NINE DOLLARS AND SIXTY-FIVE CENTS (\$449.65);
 - d. Non-Exclusive Easement C's Annual Rental for Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Non-Exclusive Easement C is the sum of NINE HUNDRED SEVENTY-TWO DOLLARS AND NINETY CENTS (\$972.90); and,
 - e. Non-Exclusive Easement D's Annual Rental for Second Five (5)-Year Period. During each of the sixth (6th) through and including the tenth

(10th) years of the Lease term, beginning upon the commencement date hereof, the annual rental for Non-Exclusive Easement D is the sum of SEVEN HUNDRED FIFTY DOLLARS AND NINETY-FIVE CENTS (\$750.95).

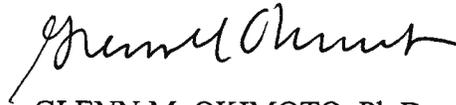
3. Annual Rental for the Third Five (5)-Year Period. The annual rental for the eleventh (11th) through and including the fifteenth (15th) years of the Lease term, beginning upon the first day of the eleventh (11th) year of the Lease term, shall be equal to the fair market rental value of the Premises, as determined by an appraisal conducted by licensed appraiser mutually acceptable to LESSOR and LESSEE.
4. Annual Rental for the Fourth Five (5)-Year Period. The annual rental for the sixteenth (16th) through and including the twentieth (20th) years of the Lease term, beginning on the first day of the sixteenth (16th) year of the Lease term, shall be equal to the product of the annual rental for the fifteenth (15th) year of the Lease term, and 115%.

RECOMMENDATION: That the Board:

1. Amend its prior actions of December 12, 2008, Item M-3 by:
 - a. Adding Section 266.2, Hawaii Revised Statutes, to the Legal Reference.
 - b. Designate Roadway Easement A as Exclusive containing an area of 7,105 square feet.
 - c. Amend the Lease Term to Twenty (20) years to commence March 1, 2013.
 - d. Authorize the rent schedule noted above.
 - e. Amend Item 1 of the Character of Use by adding, “including but not limited to the storage and distribution of petroleum products (including but not limited to ethanol, biodiesel, and other similar substitute for petroleum products).”
2. All other terms and conditions of the Land Board action of December 12, 2008, under agenda Item M-3, remain the same.

3. Other terms and conditions as may be prescribed by the Director of Transportation that best serve the interests of the State.

Respectfully Submitted,



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

Attachment

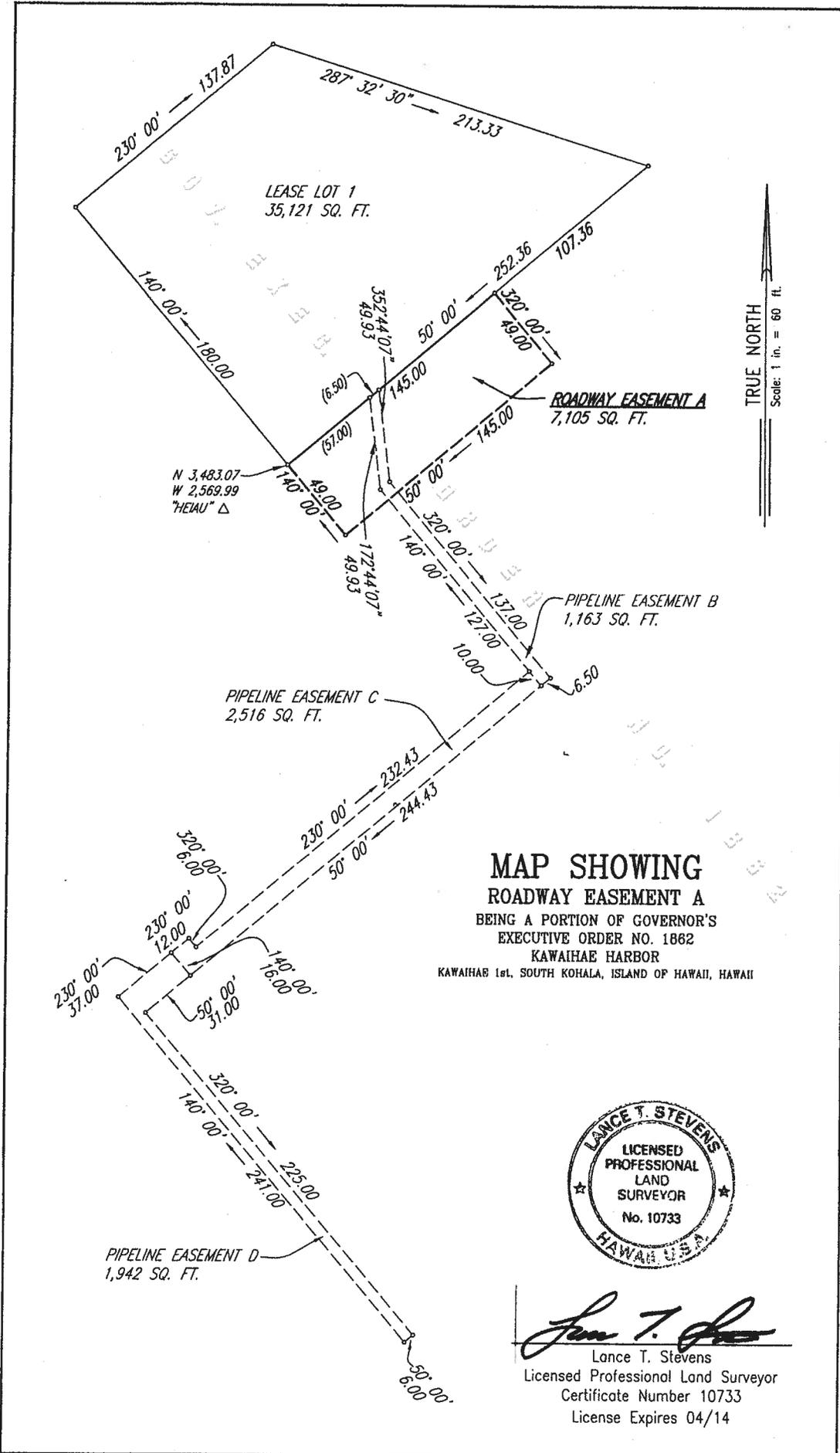
APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member



Exhibit A



**MAP SHOWING
ROADWAY EASEMENT A**

BEING A PORTION OF GOVERNOR'S
EXECUTIVE ORDER NO. 1862
KAWAIHAE HARBOR

KAWAIHAE IsL. SOUTH KOHALA, ISLAND OF HAWAII, HAWAII



Lance T. Stevens
Lance T. Stevens
Licensed Professional Land Surveyor
Certificate Number 10733
License Expires 04/14