

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

March 28, 2014

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

13HD-060

Hawaii

Re-Submittal: Approval-in-Concept for Grant of a 65-Year Term, Non-Exclusive Easement to Hoku Kai Biofuels LLC for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility with Issuance of an Immediate Right-of-Entry to Conduct an Environmental Assessment, Baseline Soil Sampling and Pipeline Inspection and Cleaning, Hilo Harbor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-009: portion of parcels 007 & 031.

APPLICANT:

Hoku Kai Biofuels LLC, a Hawaii limited liability corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii identified by Tax Map Key: (3) 2-1-009: portion 007 & 031, as shown on the attached map labeled Exhibit A.

AREA:

7,337 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	General Industrial (MG-1a)

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:

Parcel 007: Encumbered by Governor’s Executive Order No. 3962, dated February 19th, 2003, to Department of Transportation, Harbors Division for commercial maritime, marine, and associated purposes.

Parcel 031: Unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove biofuel transmission pipeline and access vaults under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Sixty-five (65) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The purpose of this submittal is an approval in-concept of a pipeline easement so as to allow the Applicant to conduct an Environmental Assessment in compliance with Chapter 343, HRS.

Regarding the issuance of a right-of-entry to conduct an environmental assessment, soil sampling and inspection and cleaning of existing pipeline, in accordance with the “Division of Land Management’s Environmental Impact Statement Exemption List”, approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to exemption Class No. 1, 4 & 5. Refer to attached 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 at its sole cost and expense shall be required to:

- 1) Publish an environmental assessment with the Office of Environmental Quality Control in compliance with the HRS Chapter 343 and HAR Chapter 11-200, and obtain a Finding of No Significant Impact (FONSI) for the project. The environmental assessment shall encompass the entire project, including related activities proposed for the private property.
- 2) Have the existing pipeline inspected, tested and certified to meet all current federal, state and/or county standards for fuel/biofuel pipelines. The applicant will also provide the Department of Land and Natural Resources, Hawaii District Land Office with the inspection, testing and certification documentation prior to final approval.
- 3) Assume 100% ownership of existing pipeline, including all access vaults.
- 4) Pay for an appraisal to determine the one-time payment.
- 5) Perform all recommended actions stated in the Phase 1 Environmental Site Assessment Reports, dated December 20, 2013, for the pipeline and asphalt plant.

BACKGROUND:

At public auction sale held on March 31, 1967, General Lease No. S-4097 (GL S-4097) was awarded to Shell Oil Company. The property encumbered by GL S-4097 was a five foot wide easement for an underground transmission pipeline which was used to transport asphalt products from the Hilo Harbor dock site, across Kuhio Wharf to Shell Oil's privately-owned asphalt terminal located on the south side of Kalaniana'ole Street (refer to Exhibit C).

At its meeting of October 24, 1980, the Board under agenda Item F-1-b, approved an assignment of GL S-4097 from Shell Oil Company to Pauley Petroleum, Inc. Lease rent payments became delinquent in early 1994, along with the required liability insurance certifications. Repeated attempts to resolve the situation failed.

In a memorandum dated March 9, 1995, Hawaii District Land Office was informed by the Department of Transportation, Harbors Division (DOTHAR) that Pauley

Petroleum, Inc. sold its asphalt terminal to Hondo Oil & Gas Company who subsequently sold the terminal to Clark Enterprises, Inc. Records indicate the lease was not transferred along with the terminal and use of the pipeline ceased in November 1992 when they began shipping the asphalt products in 20' tank containers.

At its meeting of August 11, 1995, the Board under agenda item F-13, as amended, authorized the cancellation of GL S-4097 effective July 9, 1995 for failure to pay lease rents and maintain liability insurance.

On February 19th, 2003, Hilo Harbor Part 1 and Part 2, which included parcel 007, were set aside by Governor's Executive Order No. 3962 (EO3962) to DOT HAR for the purpose of commercial maritime, marine, and associated purposes, subject to existing easements and other encumbrances as documented or noted in the public record.

The legal description for Hilo Harbor Part 2 specifically describes each easement or right-of-way the executive order is subject to and reserves them in favor of the State of Hawaii. Thus, the existing pipeline and easement that crosses the harbor, remain under the management and control of DLNR-Land Division as an unencumbered easement.

The original pipeline easement was 5 feet wide and 1,635 feet long and identified as 4 separate sections; A, B, C and D (refer to Exhibit C). Parcels A and B are under the jurisdiction of DOT-Highways and County of Hawaii respectively; applicant will negotiate approval to utilize those sections independently with those agencies. Parcels C and D are under the authority of DLNR and are the subject properties of this request.

The pipeline is a 10-inch diameter steel pipe wrapped with braided stainless steel heating oil lines and totally encased within another 14-inch diameter steel pipe. The heating lines were used to maintain the viscosity of the asphalt as it flowed through the smaller 10-inch pipeline.

In 2008, Ideal Construction Inc., under contract with DOT HAR-Engineering Branch, cut and removed approximately 300 feet of the asphalt pipeline that was suspended under pier 2 (refer to Exhibit C) because the pipeline was corroding due to saltwater exposure. The cut ends were filled with concrete slurry. During the removal of this section of pipeline, an estimated 400 to 700 gallons of heating oil was released and cleaned up. Based on available information, the pipelines, including the heating oil lines, have not been cleaned and may still contain both asphalt and heating oil.

DISCUSSION:

Applicant has acquired the old Shell Oil Asphalt Plant property and wishes to secure the use of the underground transmission pipeline to facilitate the off-loading of vegetable-

based biofuels from cargo ships to the facility storage tanks. The biofuels will be distributed to various power producers as an alternative to fossil fuels, which is in alignment with the Hawaii Clean Energy Initiative.

On December 20, 2013, the applicant completed a Phase 1 Environmental Site Assessment (ESA1) for both the old Asphalt Plant and the Pipeline from the asphalt plant to the ship-to-shore connections at the pier.

The ESA1 recommendations for the Asphalt Plant require the following:

- Removal of piping and ancillary equipment associated with the asphalt plant (excluding the storage tanks).
- Soil and groundwater sampling.
- Removal of any contaminated soil.
- All storage tanks be repaired or replaced before put back into service.
- Lining of the tank yard.

The ESA1 recommendations for the Pipeline properties require the following:

- Cleaning of the piping to remove any residual petroleum products with proper disposal of the contents.
- Pipeline to be properly tested and repaired, if necessary, prior to being put back into service.
- Soil and groundwater sampling along the property boundary to assess potential existing contamination from the pipeline or surrounding properties.

Applicant is required to perform all recommendations of the ESA1 for both the old Asphalt Plant and Pipeline. Further, the applicant will provide the Department of Land and Natural Resources, Hawaii District Land Office, with the inspection, testing and certification documentation prior to staff returning to the Board for approval of the easement.

Applicant is required to perform an Environmental Assessment on the entire project to identify any significant impacts to the environment. Approval of the request is contingent upon obtaining a Finding of No Significant Impact (FONSI).

Applicant proposes to replace the approximately 300 feet of pipeline removed by DOTHAR with stainless steel piping and expansion joints in compliance with current American Petroleum Industry Standards.

At the expiration of the easement term, DOTHAR will make the determination of whether the pipeline located within parcel 007 is to be removed at the easement holder's sole expense or remain in place. If DOTHAR allows the pipeline to remain in

place, then the easement will provide that ownership of the pipeline, vaults and any other improvements within the easement corridor shall be deemed transferred to DOTHAR, and that the Board shall have no ownership of or liability for these items. With respect to parcel 031 (presently unencumbered), the Board will make the determination of whether the pipeline is to be removed at the easement holder's sole expense or remain in place.

The property is zoned General Industrial and the proposed use conforms to the zoning and surrounding uses.

The 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.

Request for comments were not solicited as the environmental assessment will provide a broader survey of inputs.

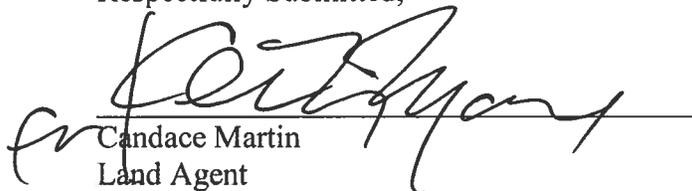
RECOMMENDATION: That the Board:

1. Approve in concept the grant of a 65-year term, non-exclusive easement to Hoku Kai Biofuels LLC for an underground biofuel pipeline purposes with the understanding that the approval in concept shall not be deemed to be an approval for the granting of the easement as staff shall return to the Board at a later date for the approval of the grant of easement disclosing the EA and its Finding of No Significant Impact (FONSI), subject to the terms and conditions cited above, which are by this reference incorporated herein and subject to the following:
 - a. Applicant acknowledges that there is no assurance of a FONSI determination on the proposed grant of easement and no assurance that the Board will approve the granting of an easement after the completion of the Environmental Assessment;
 - b. All costs associated with the necessary compliance with Chapter 343, Hawaii Revised Statutes, baseline soil sampling, inspections, and remediation, shall be borne by Applicant; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Issue an immediate right-of-entry permit to Hoku Kai Biofuels LLC for the purposes of conducting an environmental assessment, baseline soil sampling and pipeline inspection and cleaning on the subject property under the terms and conditions cited above, which are by this reference incorporated herein and

subject further to the following:

- a. The terms and conditions of the most current right-of-entry permit, as may be amended from time to time; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. With respect to the right-of-entry, declare that, after considering the potential effects of the issuance of an immediate right-of-entry as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

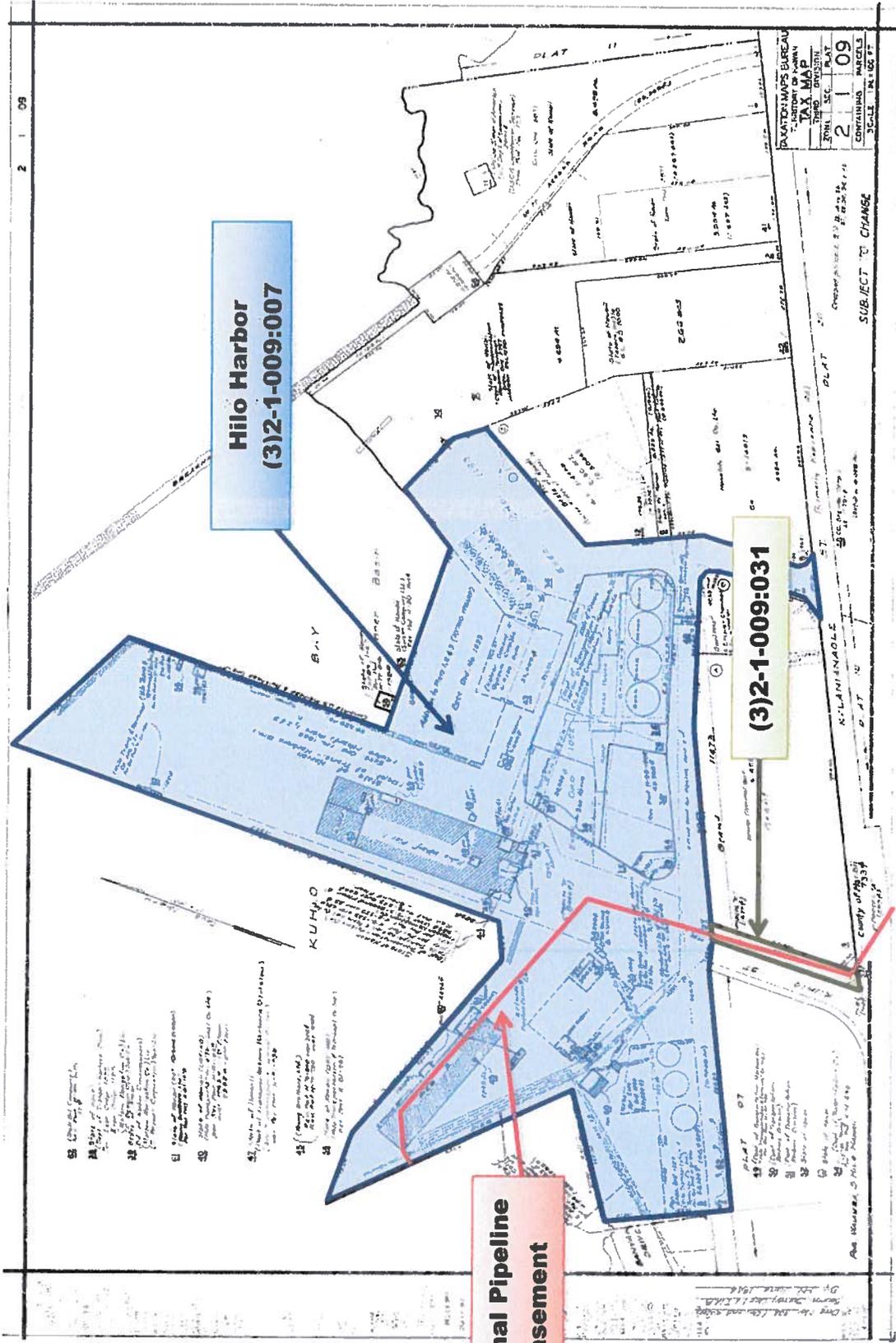
Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


William J. Afla, Jr., Chairperson


EXHIBIT A



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOARDING AND OCEAN RECREATION
BUREAU OF CERTIFICATES
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

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 28, 2014

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of an Immediate Right-of-Entry to Hoku Kai Biofuels LLC

Project / Reference No.: PSF 13HD-060

Project Location: Portion of Government lands of situated at Hilo Harbor, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-1-009:007 & 031.

Project Description: Preparation of an environmental assessment in accordance with the requirements of Hawaii Revised Statutes (HRS) Chapter 343 and Chapter 11-200, Hawaii Administrative Rules (HAR) as it relates to the proposed grant of a non-exclusive, term easement for an underground transmission pipeline to transfer biofuels from cargo ships at Hilo Harbor to off-site, privately-owned storage facilities.

Perform baseline soil sampling of property, pipeline inspection and cleaning in compliance with the Phase 1 Environmental Site Assessment Reports dated December 20, 2013.

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

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

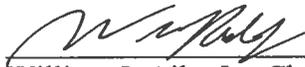
Exemption Class No. 1, which states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing";

Exemption Class No. 4, which states "Minor alterations in the conditions of land, water, or vegetation"; and

Exemption Class No. 5, which states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource".

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

3/17/14

Date

