

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

February 27, 2015

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

PSF No: 13HD-060
Hawaii

Amend Prior Board Action of December 12, 2014, Item D- 7, “Grant a 65-Year Term, Non-Exclusive Easement to Summit Biofuel LLC for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility, Hilo Harbor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-009: portion of parcels 007 & 031.”

The purpose of amendment is to change the name of the grantee from Summit Biofuel LLC to Hoku Kai Biofuels LLC.

BACKGROUND:

The initial request for easement was received by the Hawaii District Land Office (HDLO) on March 13, 2013 from Summit Biofuel LLC with a cover letter from Hoku Kai Biofuels and Summit Biofuel LLC. Charles Barker (Chuck Barker) was registered as the “agent” for both companies with the Department of Commerce and Consumer Affairs, Business Registration Division.

At its meeting of March 28, 2014, under agenda item D-15, the Board approved “in-Concept” granting of a pipeline easement to Hoku Kai Biofuels LLC.

On April 2, 2014, a right-of-entry was issued to Hoku Kai Biofuels LLC for purposes of conducting an environmental assessment, baseline soil sampling and inspection and cleaning of the existing pipeline.

On September 23, 2014, a Draft Environmental Assessment was published in the Environmental Notice citing Hoku Kai Biofuels LLC/Summit Biofuel LLC as the applicant.

On November 23, 2014, a Final Environmental Assessment was published in the Environmental Notice with a Finding Of No Significant Impact, also citing Hoku Kai Biofuels LLC/Summit Biofuel LLC as the applicant.

At its meeting of December 12, 2014, under agenda item D-7, the Board approved the sale of a non-exclusive easement across State land to Summit Biofuel LLC for the purposes of utilizing an existing underground pipeline to transport biofuel from cargo ships to a privately-owned storage facility. A copy of the approved submittal is attached as Exhibit 1.

REMARKS:

Throughout the processing of this application Mr. Barker has alternated the use of the two company names; using one or the other and sometimes both. Due to this inconsistency, staff requested clarification from Mr. Barker prior to the March 28, 2014 Board meeting as to which company would be the grantee. Mr. Barker indicated that after consultation with his associates, the grantee would be Summit Biofuel LLC.

On January 14, 2015, staff was made aware that a change in the principal ownership of Hoku Kai Biofuels LLC had occurred and Mr. Barker was no longer the managing agent of that company. By letters dated January 14, 2015 and January 16, 2015, from each company individually, a request was made to change the grantee name approved at the December 12, 2014 Board meeting from Summit Biofuel LLC to Hoku Kai Biofuels LLC (refer to Exhibit 2).


The privately held parcel of land which the easement will serve has also undergone several changes of ownership. Due to the transient nature of the ownership of the property served by the easement, staff is recommending the easement be issued to the owner of the property served and run with the land until the end of the easement term.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of December 12, 2014, under agenda item D-7 by changing the name of the grantee from Summit Biofuel LLC to Hoku Kai Biofuels LLC subject to the following terms;
 - a. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 2-1-010:043, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document.

2. All terms and conditions listed in its December 12, 2014 approval to remain the same.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Acting Chairperson



EXHIBIT 1

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

December 12, 2014

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

13HD-060

Hawaii

Grant a 65-Year Term, Non-Exclusive Easement to Summit Biofuel LLC for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility, Hilo Harbor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-009: portion of parcels 007 & 031.

APPLICANT:

Summit Biofuel LLC, a Hawaii limited liability corporation.

LEGAL REFERENCE:

Section 171-13, 171-16 & 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)

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 12, 2014 UD

D-7

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 Final Environmental Assessment for the subject project was published in the OEQC's *Environmental Notice* on November 23, 2014 with a Finding Of No Significant Impact (FONSI).

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) Pay for the costs of public notice pursuant to HRS Section 171-16.
- 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.
- 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 B).

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 DOTHAR 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 B). 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 B) 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 into the environment and required clean 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.

At its meeting of March 28, 2014, the Board under agenda item D-15, approved in concept the granting of the subject easement upon the applicant submitting an environmental assessment and the publication of a Finding of No Significant Impact (FONSI). Such findings were published in the Office of Environmental Quality Control (OEQC) bulletin on June 8, 2014.

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.

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.

The Final Environmental Assessment performed in accordance with the prior approval in-concept has produced a Finding of No Significant Impact (FONSI) and was published in the Environmental Notice on November 23, 2014

RECOMMENDATION: That the Board:

1. Grant a 65-Year Term, Non-Exclusive Easement to Summit Biofuel LLC for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility, subject to the terms and conditions cited above, which are by this reference incorporated herein and subject to the following:
 - a. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


William J. Alfa, Jr., Chairperson

EXHIBIT A

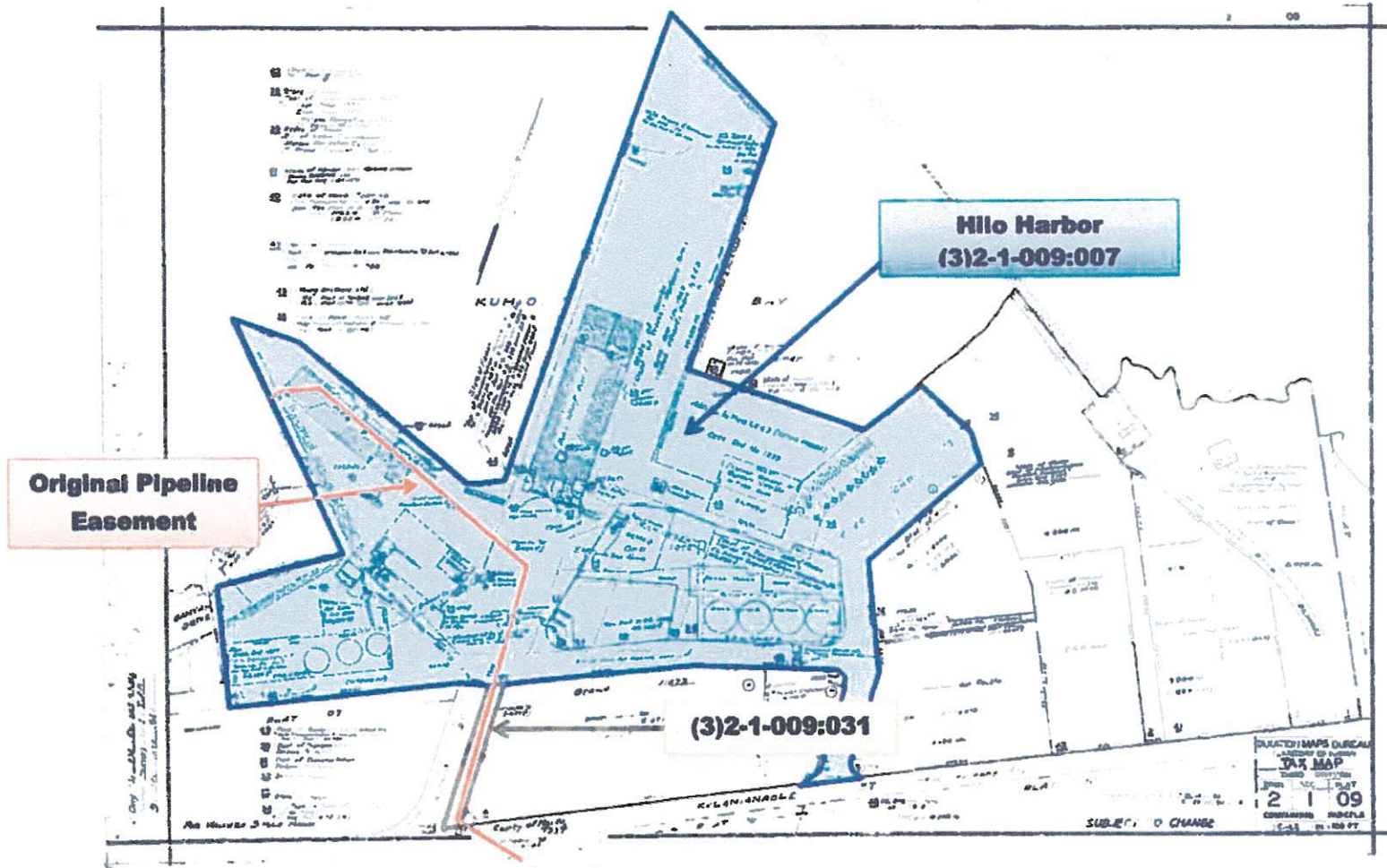


EXHIBIT B

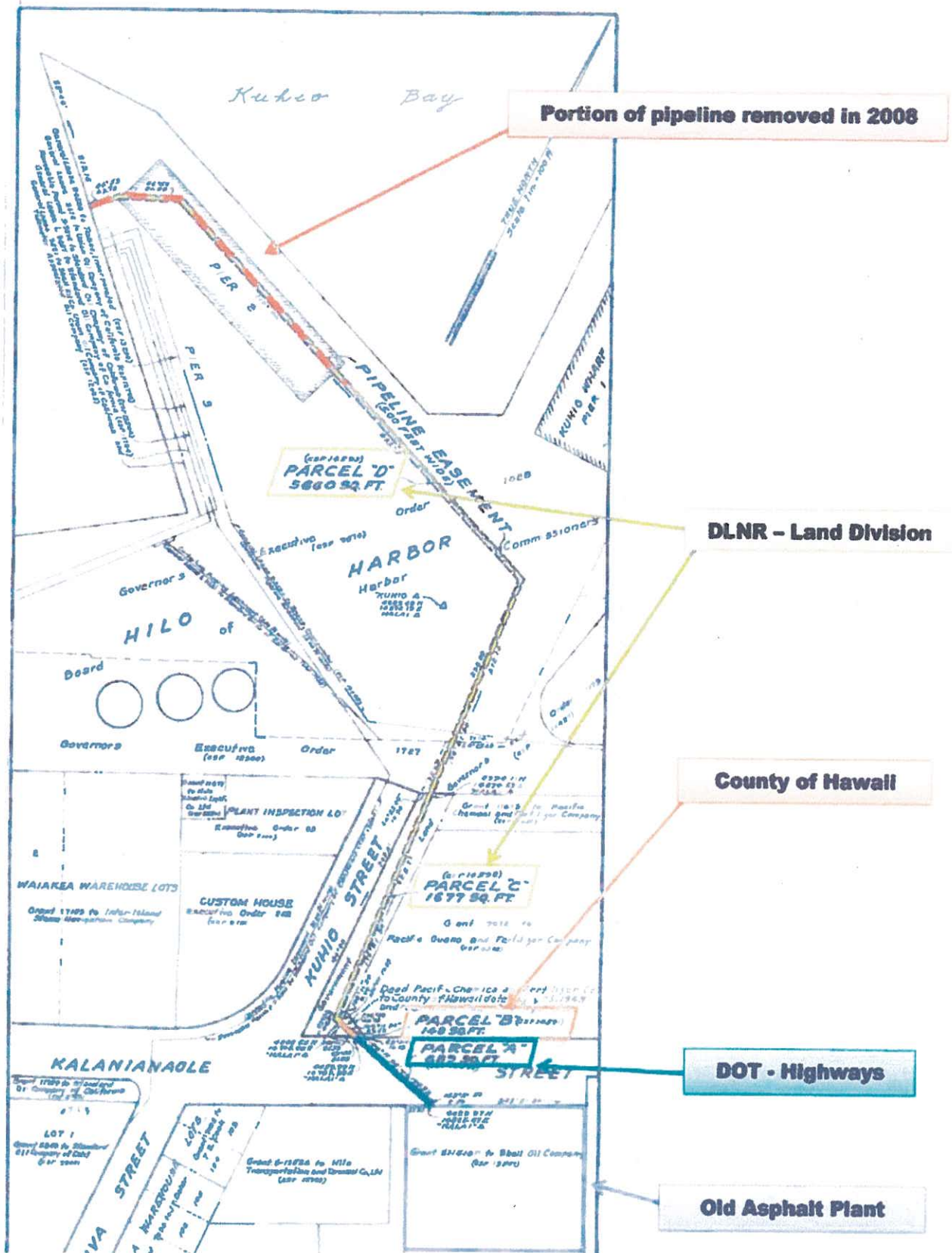


EXHIBIT 2

Hoku Kai Biofuels, LLC

1670 Makaloa Street, Suite 204-102 • Honolulu, HI 96814 • Phone: 808-495-0440
E-Mail: tpiper@hokukai.com

Date: January 14, 2015

Candace M. Martin
Land Manager
State of Hawai'i
Department of Land & Natural Resources
75 Aupuni Street, Room 204
Hilo, HI 96720

Ref. No: 13HD-060

Re: Transfer of Grant of 65-year Term, Non-Exclusive Easement from Summit Biofuel, LLC to Hoku Kai Biofuels, LLC.

2015 JAN 16 P 3:54
RECEIVED
LAND DIVISION
HILO, HAWAII

Aloha Candace:

This letter is to request that Hoku Kai Biofuels, LLC be substituted for Summit Biofuel, LLC as the entity that is approved to proceed with the pipeline easement lease. Hoku Kai Biofuels, LLC is the correct corporate entity to be the future counterparty for the 65-year lease for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility, Hilo Harbor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-009: portion of parcels 007 & 031.

Sincerely,



Michael Petras
Director



Hank Correa
Director



Kevin Gorman
Director

cc: Tad Piper, CFO

Summit Biofuel LLC

43 Kukuau Street
Hilo, Hawai'i 96720

January 16, 2015

Ref. No: 13HD-060

Candace M. Martin
Land Agent
State of Hawai'i
Department of Land & Natural Resources
75 Aupuni Street, Room 204
Hilo, Hawai'i 96720

RECEIVED
LAND DIVISION
HILO, HAWAII

2015 JAN 20 P 2:30

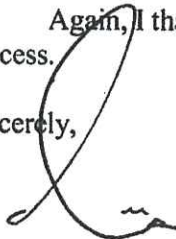
Re: Transfer of Grant of 65-year Term, Non-Exclusive Hilo Harbor Easement
from Summit Biofuel, LLC to Hoku Kai Biofuels, LLC.

Aloha Candace:

I respectfully request that the Grant of a 65-year Term, Non-Exclusive Easement be transferred to **Hoku Kai Biofuels, LLC**, initially submitted concurrently in the names of Hoku Kai Biofuels, LLC and Summit Biofuel. This will replace Summit Biofuel LLC as the recipient of the recent approval granted by the Board of Land and Natural Resources at its December 12, 2014 meeting.

Again, I thank you for your exemplary work throughout the entire course of this approval process.

Sincerely,



Chuck Barker
Summit Biofuel LLC
Tel: 808-747-6141