



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

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IN REPLY REFER TO:

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

HAWAII

REQUEST FOR APPROVAL TO ISSUE A LEASE BY DIRECT NEGOTIATION TO BIG ISLAND ENERGY COMPANY, LLC FOR FUELING OPERATIONS AND FUEL STORAGE FACILITY AT A PORTION OF KAWAIHAE HARBOR, SOUTH KOHALA, ISLAND OF HAWAII, TAX MAP KEY NO. 3RD/6-1-03:32 AND 23 (PORTION), GOVERNOR'S EXECUTIVE ORDER NO. 1988.

LEGAL REFERENCE:

Sections 171-6, 171-11, 171-13, 171-17, and 171-59, Hawaii Revised Statutes, as amended.

APPLICANT:

Big Island Energy Company, LLC, dba Akana Petroleum (BIEC) ("Applicant"), is a domestic Limited Liability Company (LLC), whose business registration address is 16 Hobron Ave Kahului, Hawaii 96732; and, mailing address is 50 Kukila Street, #C, Hilo, Hawaii 96720.

CHARACTER OF USE:

To allow Applicant and its permitted agents (assignees, contractors, sub-contractors, and agents) to receive fuel directly from vessels berthing at the Harbors Division's Kawaihae Harbor pier improvements, and transmit through Applicant's easement to store and distribute fuel from the Applicant's storage facility.

LOCATION:

Portion of governmental lands situated at Kawaihae Harbor, South Kohala, Island of Hawaii, Tax Map Key No. 3rd / 6-1-03: 32 and 23 (Portion) Governor's Executive Order No. 1988, as shown on the attached map labeled Exhibit "A."

AREA:

Approximately 110,163 sq. ft. and 6,421 sq. ft. of nonexclusive subsurface pipeline easement depicted on the attached map Exhibit "B".

CONSIDERATION:

To be determined by appraisal pursuant to HRS 171-17(b)

ZONING:

State Land Use District: Urban
County of Hawaii: MG-1a

TERM:

Fifty-Five (55) Years. The Applicant will invest a minimum of \$700,000 to improve the facility. The Department of Transportation (DOT) requests your approval for a reduction or waiver in rent not to exceed one (1) year subject to the DOT's review of the Applicant's plans for compliance with HRS 171-6(7) as a substantial improvement.

COMMENCEMENT DATE:

As determined by the Director of Transportation

TRUST LAND STATUS:

A portion of the subject property was acquired pursuant to Section 5(a) of The Admissions Act, and the remainder of the subject property was acquired pursuant to Public Law 88-233.

CURRENT USE STATUS:

Applicant receives fuel directly from a vessel berthing at the Harbors Division's Hilo Harbor and transports fuel to its Kawaihae Harbor storage facility. Currently, Applicant has an existing month-to-month permit. Applicant requests a lease to receive fuel directly from vessels berthing at the Harbors Division's Kawaihae Harbor pier improvements, and transmit through Applicant's easement to store and distribute fuel from the Applicant's storage facility island-wide.

LAND TITLE STATUS:

Acquired by the DOT, Harbors Division, through eminent domain proceedings; issuance of Governor's Executive Order No. 1759.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This use is exempt from Office of Environmental Quality Control requirements pursuant to Hawaii Administrative Rules 11-200-8(a), Exemption Class 2: where "replacement or reconstruction of existing structures and facilities where the new structure will be located, generally on the same site, and will have substantially the same purpose, capacity, density, height and dimensions as the structure replaced."

The Applicant's proposed request for a lease is for an existing facility and easement constructed under Lease No. H-67-1 (June 1, 1967).

Declaration of Exemption was published with the Office of Environmental Quality Control on January 23, 2019.

APPLICANT REQUIREMENTS:

REMARKS:

Applicant and its permitted agents (assignees, contractors, sub-contractors, and agents) request approval to receive fuel directly from vessels berthing at the Harbors Division's Kawaihae Harbor pier improvements, and transmit through Applicant's easement to store and distribute fuel from the Applicant's storage facility island-wide.

Currently, Applicant has an existing month-to-month permit for fuel storage and card lock at the Kawaihae Harbor facility. Applicant requests a lease to invest in its current fuel storage facilities and distribution of fuel island-wide.

The DOT issued a thirty-five (35) year lease (No. H-67-1) to Standard Oil Company of California on June 1, 1967 for 2.529 acres (110,163 sq. ft.). Standard Oil Company of California became Chevron U.S.A., Inc.; and, by Amendment of November 30, 1982, Chevron and the State agreed to Chevron surrendering and abandoning the pipeline easement effective April 15, 1983. By a Second Amendment, the Board of Land and Natural Resources (BLNR), at its December 14, 2001 meeting, approved the extension of the lease to May 31, 2009 for the purpose of constructing, installing, maintaining and operating a nonexclusive subsurface pipeline easement for the transmission of fuel from the pier to the storage facility and added 6,421 sq. ft. to the extended lease.

On October 23, 2008, BIEC executed an Asset Purchase Agreement with Akana Petroleum. During February 2009, Akana Petroleum informed the State that BIEC was authorized to operate and manage its fuel operations at Kawaihae Harbor. In May 28, 2009, BIEC submitted its application for a month-to-month permit instead of extending the Akana Petroleum lease that was expiring on May 31, 2009. As of June 1, 2009, the Akana Petroleum lease was on a hold-over status. BIEC completely acquired Akana Petroleum as of August 17, 2009 and with the acquisition, obtained an indemnity

agreement with Chevron U.S.A., for “covered contamination” that originated from Chevron’s or Akana’s operations and activities on the property prior to August 17, 2009 (see attached Indemnity Agreement).

At the BLNR May 13, 2010 meeting, the State received Board approval to issue BIEC a month-to-month permit; as condition of the month-to-month permit, BIEC agreed to accept the terms and conditions of Lease No. H-67-1. The State issued BIEC a month-to-month permit (Revocable Permit No. H-11-2698).

BIEC requests for a lease to amortize the cost of an estimated over \$700,000 of capital improvement for the card-lock operation to service its customers at both Kawaihae Harbor and in Hilo, and to receive the transmission of fuel from the State’s pier through its easements to Applicant’s current fuel storage facility. Applicant has submitted an application with the County of Hawaii, Planning Department, and has received a Special Management Area Use Permit for the construction of its commercial card-lock operation. The card-lock operation is pending the issuance of building permits.

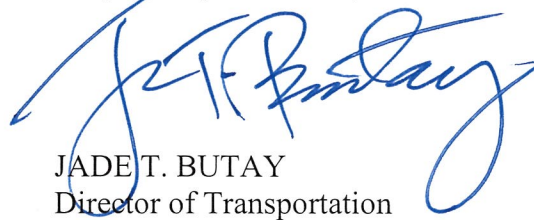
Maritime and maritime-related operations. The Applicant requests to receive fuel at the Harbors Division’s Kawaihae Harbor pier improvements to transmit fuel through Applicant’s easement to its storage facility for the Applicant’s distribution of fuel. Applicant is involved with maritime-related operations.

Disposition Encourages Competition. Currently the pipelines and storage tanks are in operating condition. In this case, disposition to encourage competition flows to the consumer because the Applicant has an indemnity agreement with Chevron U.S.A., for “covered contamination” that originated from Chevron’s or Akana’s operations and activities on the property prior to August 17, 2009. Without the Indemnity Agreement, land costs would have to be included into the customers’ cost of fuel, or other fuels will have to rely more heavily on the deliveries from Hilo Harbor.

RECOMMENDATION:


That the Board authorize the DOT, Harbors Division, to negotiate a lease with the Applicant; provided that lease specifies that State will not own or operate the fuel pipelines or fuel storage facilities; and BIEC indemnifies the State from contamination after August 17, 2009, and through BIEC's Indemnity Agreement with Chevron U.S.A., for "covered contamination" that originated from Chevron's or Akana's operations and activities on the property, and other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Respectfully submitted,



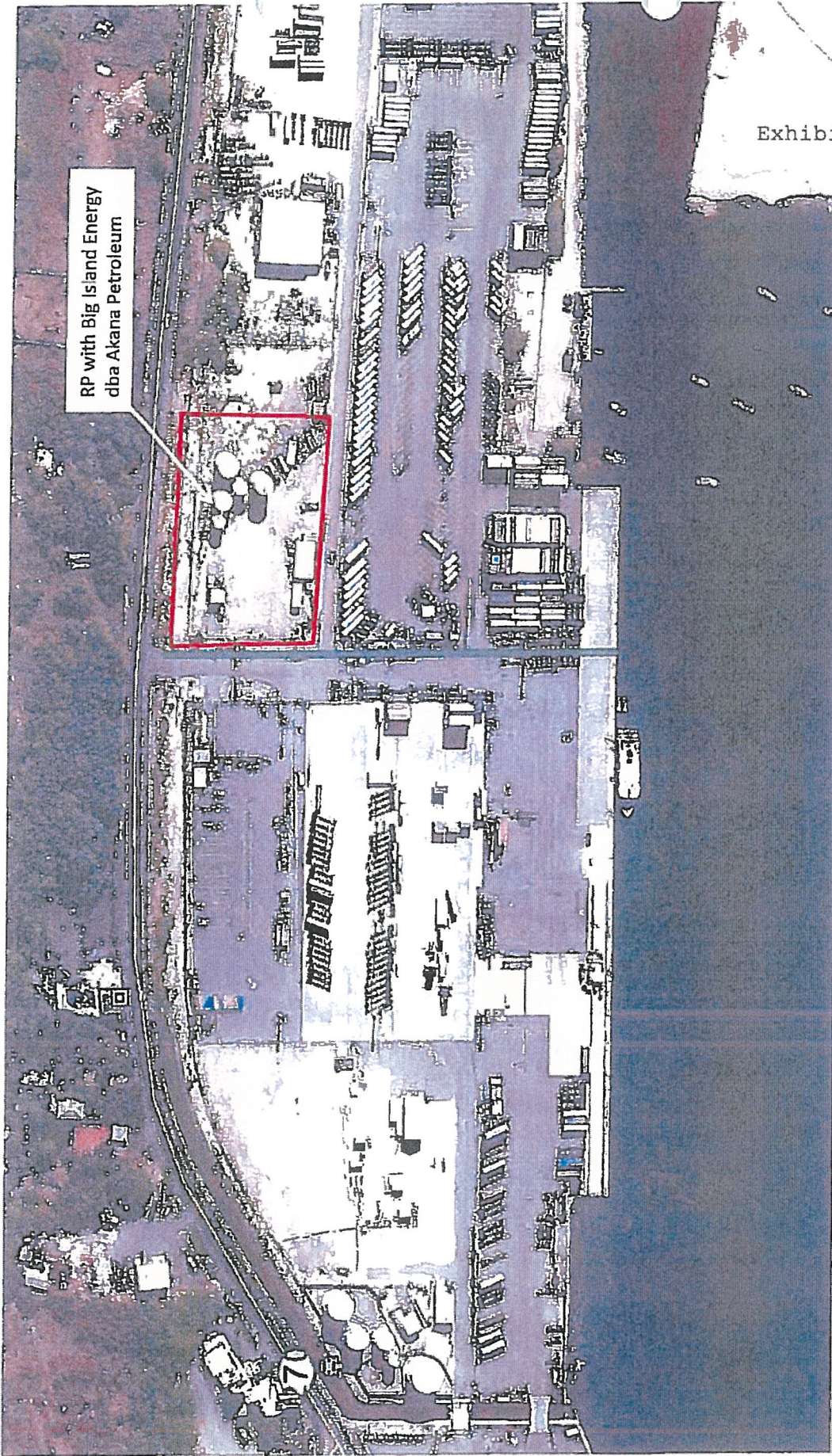
JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE CASE
Chairperson and Member
Board of Land and Natural Resources

Atts: Exhibits "A" and "B"



RP with Big Island Energy
dba Akana Petroleum

Exhibit "A"

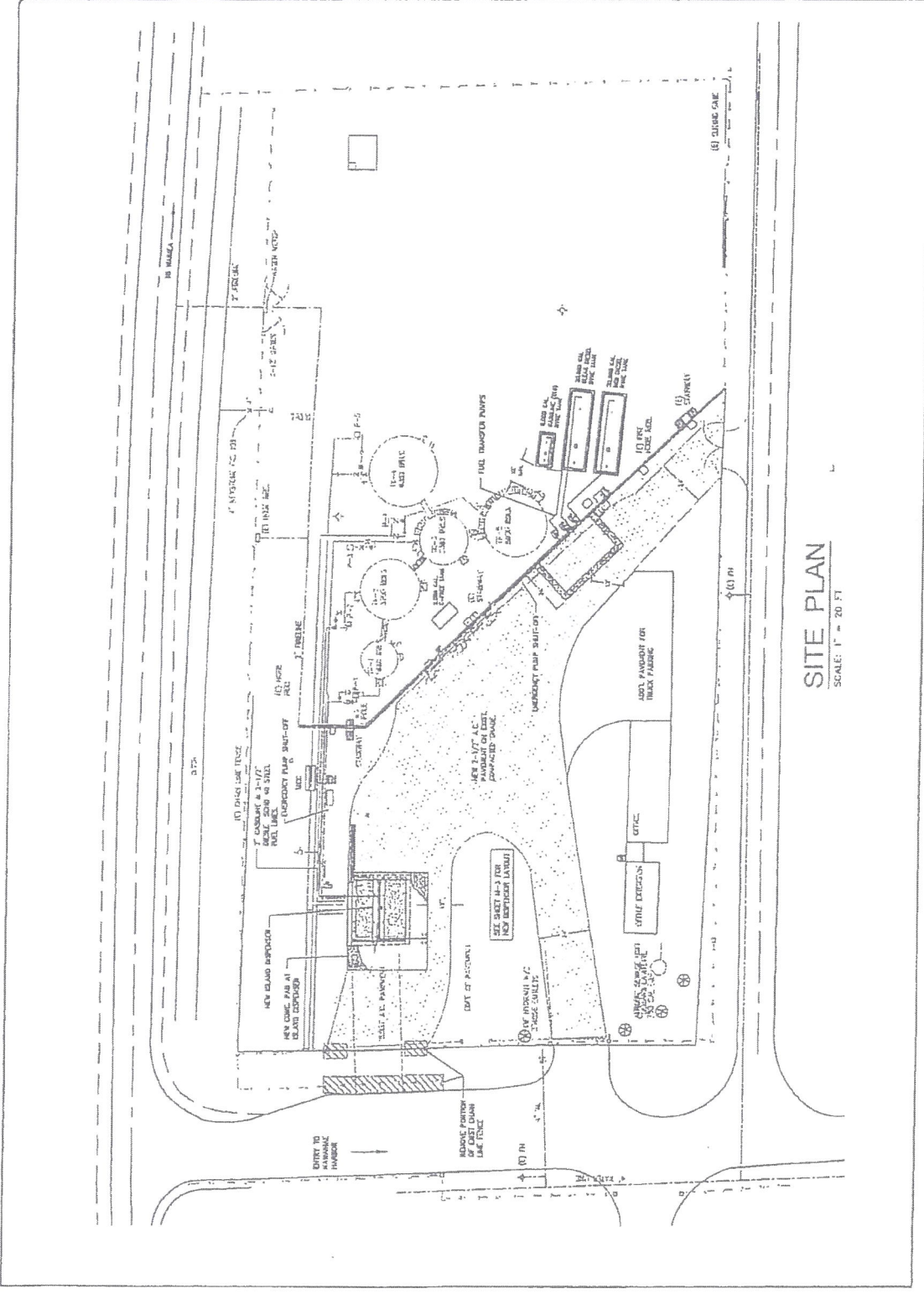


Exhibit "B"