

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

June 8, 2018

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

PSF No.: 18HD-049

Hawaii

Request to Authorize: (i) Chairperson to Negotiate and Execute of Memorandum of Agreement between Kaumalumalu, LLC (“Owner”) and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management (“CWRM”), for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (ii) Preliminary Approval for Acquisition on Behalf of CWRM of Perpetual, Non-Exclusive Easement on Private Land Owned by Owner for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (iii) Set-aside of the Easement so Acquired from the Owner to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto the Owner’s Lands for Survey and Construction Purposes, Kaumalumalu & Pahoehe 1st, North Kona, Hawaii, Tax Map Keys: (3) 7-7-001:016 and 018 (pors.)

APPLICANT:

Department of Land and Natural Resources, Commission on Water Resource Management (“CWRM”).

PRIVATE LANDOWNER:

Kaumalumalu, LLC, a Hawaii limited liability company (“Owner”).

LEGAL REFERENCE:

Sections 107-10 and 171-30 and -55, Hawaii Revised Statutes (“HRS”), as amended, and Chapter 101, HRS, as may be necessary.

LOCATION:

Private lands located at Kaumalumalu & Pahoehe 1st, North Kona, Hawaii, identified by Tax Map Keys: (3) 7-7-001:016 and 018 (pors.), as shown on the attached maps labeled **Exhibits A1 & A2.**

AREA:

To be determined by survey.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	Agriculture

CURRENT USE:

The proposed easement is located on private lands used for agricultural purposes. The easement will affect unimproved portions of the parcels.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain repair, replace and abandon/seal deep monitor well for data collection purposes, together with right-of-way for access to same.

TERM OF THE EASEMENT:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent.

PURPOSE:

The proposed easement will be for deep monitor well and right-of-way purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3, Item Nos. 5 and 13. See **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>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

CWRM shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at CWRM's own cost;
- 2) Pay for an appraisal to determine the consideration payable for the easement; and
- 3) Obtain a title report to ascertain ownership, where necessary, at CWRM's own cost and subject to review and approval by the Department.

REMARKS:

CWRM received a \$2 million capital improvement project funding in 2016 for plans, land acquisition, design and construction to construct and/or repair deep monitor wells statewide to monitor the health of drinking water aquifers and other related costs. One of the well sites identified is at Kaumalumalu & Pahoehe 1st, North Kona, Hawaii, TMK Nos. (3) 7-7-001:016 and 018 (pors.), hereinafter collectively referred to as the ("Property"). There is another well site identified in a companion submittal before the Board of Land and Natural Resources ("Board") today for the Kaloko Deep Monitor Well.

The Department's Engineering Division is assisting CWRM with developing the plans and specifications for solicitation. A contractor must be selected by June 30, 2018 in order to encumber the funds or they will lapse.

CRWM is requesting the Board authorize the Chairperson to negotiate and execute a Memorandum of Agreement ("MOA") between the Owner and the Department, on behalf of CWRM. The MOA will delineate the responsibilities of the Department and Owner. Also, CWRM is requesting the Board's preliminary approval for the purchase of the easement on subject private lands. Details regarding the size, location, improvements and compensation will be determined based on a survey, recommendations from CWRM's consultants and certified appraisals of the final easement area.

Finally, CWRM is requesting the Board's approval to secure a right-of-entry ("ROE") permit to conduct a topographic survey, develop a right-of-way and construct a new deep monitor well for data collection purposes, which will expire upon execution of the easement document. The right-of-way will have restricted access and will not be a public

road. Once the easement is issued, it will be set aside to CWRM by executive order.

The Owner is willing to enter into a MOA with the Department and grant access to the property. A draft of the ROE is attached as **Exhibit C**.

A draft of the submittal was disseminated to agencies listed below with the results indicated:

Agency	Comment
DLNR – SHPD	No response by suspense date.
DLNR – Engineering	No comment.
DLNR – DOFAW	No comment.
DLNR – OCCL	No response by suspense date.
County of Hawaii – Department of Water Supply	No response by suspense date.
County of Hawaii – Planning	No response by suspense date.
County of Hawaii – Public Works	No response by suspense date.
Office of Hawaiian Affairs	See discussion below.

The Office of Hawaiian Affairs (“OHA”) commented that although the construction of the monitoring well may be exempt from the preparation of an environmental assessment under the DLNR exemption list, the construction of a road to access the well site is not exempt. Staff believes that the exemption for construction of new small facilities (under which the well is being constructed) must necessarily include right-of-way to access the facilities. Staff reiterates that use of the right-of-way will be restricted to the Owner and CWRM – it will not be open to the public as an access road. Accordingly, staff believes the exemption from the preparation of an environmental assessment under Chapter 343, HRS, is appropriate. The gravel right-of-way will be about eight feet wide and under 1,000 yards in length.

Staff will return to the Board at a later date to report on the value of the easement as determined by appraisal and verification of title of the property. At that time, staff will request final approval to acquire the easement.

RECOMMENDATION: That the Board:

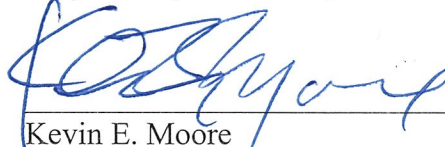
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the Chairperson to negotiate terms and conditions of and sign a Memorandum of Agreement between Kaumalumalu, LLC and the Board of Land

and Natural Resources, on behalf of the Commission on Water Resource Management, under the terms and conditions cited above, and further subject to the following:

- A. The standard terms and conditions of the most current memorandum of agreement 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.
3. Grant preliminary approval for the acquisition of easement on the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current easement on private property document form, as may be amended from time to time;
 - B. Staff shall return to the Board for final approval for acquisition of the easement to report on the easement costs and status of title on the private parcels;
 - C. Eminent domain proceedings, as may be necessary for the acquisition, pursuant to Chapter 101, HRS;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources, Commission on Water Resource Management, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

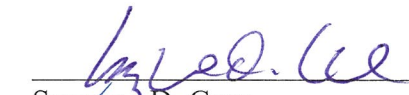
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the negotiation and execution of a right-of-entry permit to the Department of Land and Natural Resources, Commission of Water Resource Management, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, 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.

Respectfully Submitted,

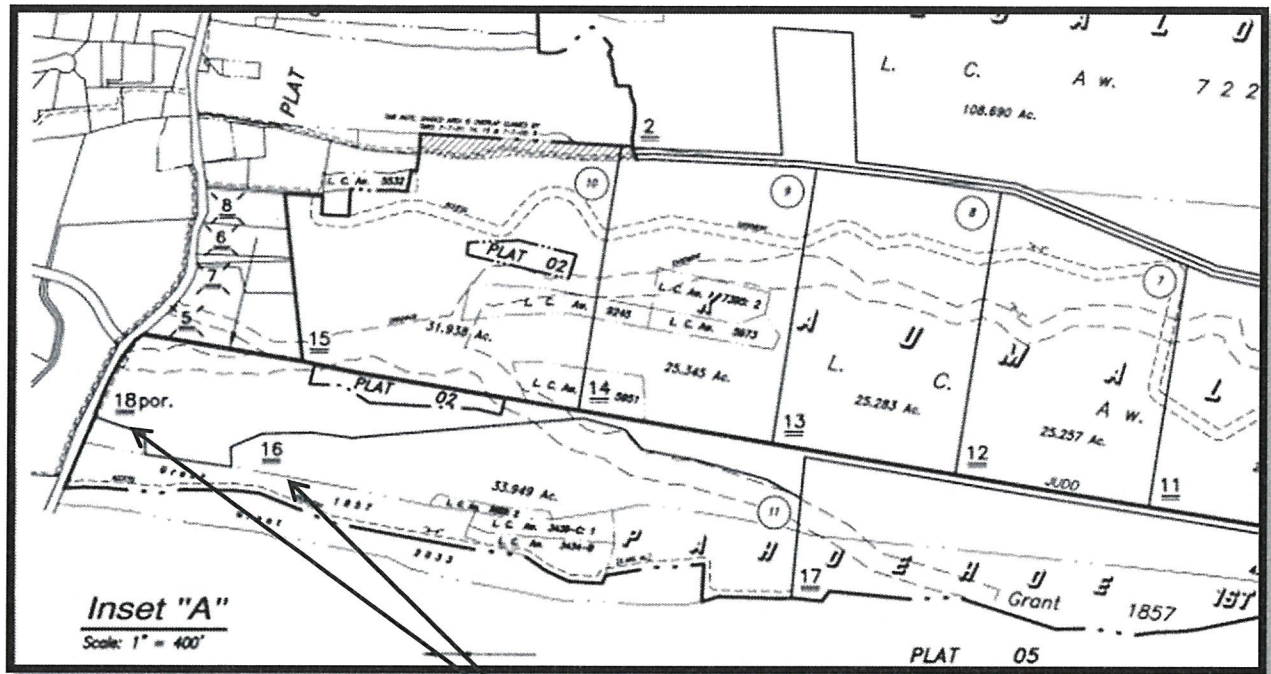


Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson



TMK Nos. (3) 7-7-001:016 & 018 (pors.)

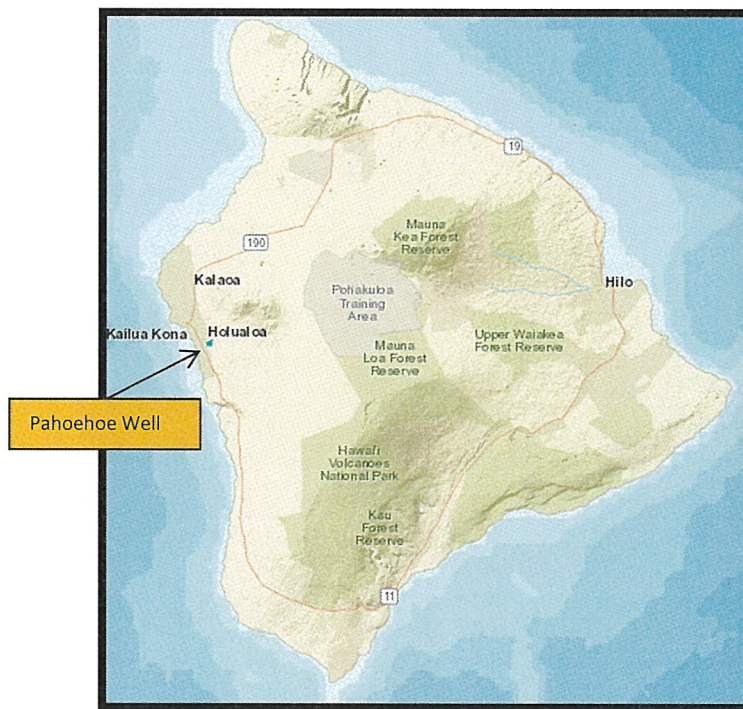
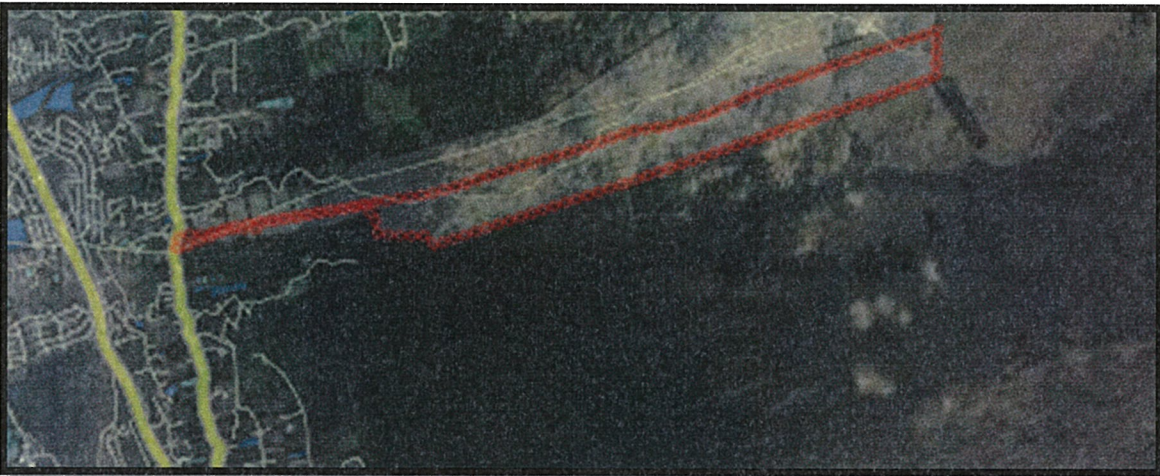


Exhibit A1

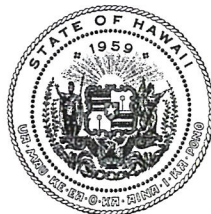


TMK No. (3) 7-7-001:016 (por.)



TMK No. (3) 7-7-001:018 (por.)

Exhibit A2



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 8, 2018

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request to Authorize: (i) Chairperson to Negotiate and Execute of Memorandum of Agreement between Kaumalumu, LLC ("Owner") and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM"), for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (ii) Preliminary Approval for Acquisition on Behalf of CWRM of Perpetual, Non-Exclusive Easement on Private Land Owned by Owner for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (iii) Set-aside of the Easement so Acquired from the Owner to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto the Owner's Lands for Survey and Construction Purposes.

Project / Reference No.: PSF No. 18HD-049

Project Location: Kaumalumu & Pahoehe 1st, North Kona, Hawaii, Tax Map Keys: (3) 7-7-001:016 and 018 (pors.)

Project Description: Request to Authorize: (i) Chairperson to Negotiate and Execute of Memorandum of Agreement between Kaumalumu, LLC ("Owner") and the Board of Land and Natural Resources, on Behalf of the Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM"), for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (ii) Preliminary Approval for Acquisition on Behalf of CWRM of Perpetual, Non-Exclusive Easement on Private Land Owned by Owner for the Pahoehe Deep Monitor Well and Right-of-Way Purposes; (iii) Set-aside of the Easement so Acquired from the Owner to CWRM; and (iv) Negotiation and Execution of a Right-of-Entry Permit for CWRM onto the Owner's Lands for Survey and Construction Purposes.

Exhibit B

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

Exemption Class No. and Item No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3, that states "Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alternation and modification of same including but not limited to:...(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities", Item No. 5 that states "Construction on state lands of roadways with distances less than 1,000 yards (excluding access roads) and walkways," and Item No. 13, that states "Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment."

Cumulative Impact of Planned Successive Actions in Same Place Significant: No. The request is a single occurrence in the area.

Action May Have Significant Impact on Particularly Sensitive Environment: No. The action proposed will have no significant impact to the environment.

Analysis: Deep monitor wells have been constructed statewide and maintained to monitor the health of drinking water aquifers and other related purposes for many years. The proposed project involves the construction of right-of-way and the drilling of a well on the subject land, both of which activities fall within the exemption for construction and location of new small facilities. This is a discrete project with limited impact on the environment. As such, staff believes that the project is exempt from the preparation of an environmental assessment.

Consulted Parties: The following agencies were consulted with the results indicated:

Agency	Comment
DLNR – SHPD	No response by suspense date.
DLNR – Engineering	No comment

Agency	Comment
DLNR – DOFAW	No comment.
DLNR – OCCL	No response by suspense date.
County of Hawaii – Department of Water Supply	No response by suspense date.
County of Hawaii – Planning	No response by suspense date.
County of Hawaii – Public Works	No response by suspense date.
Office of Hawaiian Affairs	Commented that construction of an access road to the well site may not be exempt under Chapter 343, HRS.

Declaration:

It is 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.

DRAFT

TEMPORARY RIGHT OF ENTRY AGREEMENT

THIS TEMPORARY RIGHT OF ENTRY AGREEMENT, made and entered into by and among Kaumalumu, LLC, a Hawaii limited liability company (herein referred to as "OWNER"); and Department of Land and Natural Resources (herein referred to as "DEPARTMENT");

WITNESSETH:

WHEREAS, OWNER is the owner of the Pahoeohoe Well Site (the "Well Site"), located on a portion of Tax Map Key Parcel No. (3) 7-7-001:016 ("Parcel 16") as approximately shown in Exhibit "A", attached hereto and made a part hereof, and adjacent Tax Map Key Parcel No. (3) 7-7-001:018 ("Parcel 18"), on the Island of Hawaii, as shown in Exhibit "A", attached hereto and made a part hereof (Parcel 16 and Parcel 18 are hereinafter collectively referred to as the "Property"); and

WHEREAS, DEPARTMENT is desirous of obtaining a right to enter onto portions of the Property shown on Exhibit "A" attached hereto (such portions are hereinafter collectively referred to as the "Right of Entry Area")

for the limited purposes of conducting a topographic survey, installing an access road, and constructing a new deep monitor well

; and

WHEREAS, OWNER is willing to grant such right of entry to DEPARTMENT upon the following terms and conditions;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

Attachment 2

ImanageDB:4273936.2

Exhibit C

1. OWNER hereby grants to DEPARTMENT a non-exclusive, temporary, limited right-of-entry to enter upon the Right of Entry Area, for a period commencing on the date hereof and ending on the earlier of December 31, 2025 or execution by the parties and acceptance by DEPARTMENT of the Grant of Easement described in Section 18 below, unless sooner terminated as provided herein. This Right of Entry is granted for the limited purpose of: (i) conducting a topographic survey of the Right of Entry Area; (ii) installing an access road (the "Access Road"); and (iii) constructing a new deep monitor well (the "New Well") at the approximately location of the Well Site, all under the terms and conditions set out in this Agreement.

The Access Road and the New Well shall be at such locations and pursuant to plans and specifications approved in advance by Owner, in Owner's sole and absolute discretion. OWNER shall have the right to use the Right of Entry Area; provided that such use by OWNER shall not interfere with DEPARTMENT'S rights provided herein.

2. OWNER reserves the right to cancel this Right of Entry Agreement for any reason or no reason upon thirty (30) days written notice to DEPARTMENT. If this Right of Entry Agreement is terminated, OWNER, in its sole discretion, may order the DEPARTMENT to remove all or part of any items placed or constructed by the DEPARTMENT on the Property and instruct the DEPARTMENT to return the Property to its original state. DEPARTMENT shall solely bear the cost of such a removal and restoration.

3. DEPARTMENT must comply with all of the OWNER's Rules and Regulations, and all County, State and Federal laws, rules and regulations. DEPARTMENT shall use due care and diligence in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by OWNER and as will not occasion (a) any material interference with OWNER's existing uses or improvements on the

Property or with the customary access to or from the Property, or (b) any damage or injury to the Property or improvements thereon, or to any agents, servants or employees of OWNER.

DEPARTMENT designates _____ (Phone: 808 _____) (Email: _____) as its representative to Owner. Such representative shall promptly respond to any inquiries from OWNER during the term of this Agreement. DEPARTMENT will notify _____ ((808) _____) at least forty-eight (48) hours prior to entering the Property.

4. DEPARTMENT shall not assign or delegate any of its rights under this Agreement, nor permit agents or third party entities onto the Property without prior written consent from OWNER.

5. DEPARTMENT shall be responsible for damages or injury to persons or Property caused by DEPARTMENT in the course of conducting their topographic survey and Access Road and New Well construction on OWNER's property. DEPARTMENT will be responsible to repair any damage to OWNER's real or personal property resulting from DEPARTMENT's activity on OWNER's property. The obligations of DEPARTMENT under this Section shall survive termination of this Agreement. OWNER and DEPARTMENT agree that nothing in this Agreement shall be construed or interpreted as an indemnification. —

6. DEPARTMENT shall keep the Property at all times free and clear of all liens, charges and encumbrances of every nature. DEPARTMENT shall be responsible to resolve any lien imposed against the Property or any part thereof, and arising out of any work done by or for DEPARTMENT hereunder. DEPARTMENT will cause any such claim for a lien to be discharged immediately, but in no event later than thirty (30) days of the filing thereof.

7. DEPARTMENT understands and acknowledges that the Property may be dangerous by reason of natural conditions or otherwise. OWNER hereby warns DEPARTMENT that dangerous or hazardous conditions on the Property may exist. OWNER has not conducted any inspection of the Property in connection with DEPARTMENT's planned use of the Property. DEPARTMENT hereby assumes all risk of death, bodily harm, personal injury, emotional distress and/or property damages suffered or incurred by DEPARTMENT, and arising (directly or indirectly) from its entry onto the Property, and accepts the Property "AS IS, WHERE IS, WITH ALL FAULTS." OWNER has not made any representation or warranty, express or implied, regarding any aspect of the property, including but not limited to the implied warranties or merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value. OWNER agrees to waive the insurance requirement for DEPARTMENT with the understanding that DEPARTMENT is an agency of the State of Hawai'i and is self-insured against losses including general liability and property damage which may involve claims and demands for loss, damage or destruction of property and personal injury or death.

8. DEPARTMENT shall not undertake to perform any sitework without the prior written consent of OWNER. In connection therewith, DEPARTMENT shall deliver to OWNER a sitework plan showing existing contours and depicting any sitework performed to improve drainage of the Property or to permit the construction of any improvements thereon prior to commencing any sitework.

9. DEPARTMENT shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper use of the Property, or any part thereof, nor, without the prior written consent of the OWNER, remove, destroy, or disturb any archaeological or historical features now present or discovered on the Property.

10. DEPARTMENT shall not bring or permit the introduction onto the Property of any hazardous substances, hazardous wastes, hazardous materials, or toxic substances as such terms are defined in any federal, state or local laws, ordinances, regulations, rules or governmental guidance documents relating to the protection of human health or the environment, including without limitation laws relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, or to the use, handling, storage and transportation of such hazardous materials or substances.

11. DEPARTMENT shall observe and comply with all laws, ordinances, rules and regulations, of the federal, state, municipal, or county governments affecting the Property or the improvements DEPARTMENT will be constructing in connection with this Right of Entry Agreement. DEPARTMENT shall at all times during the term of this Right of Entry Agreement, maintain in effect all permits, approvals, licenses, consents, etc., as required by any applicable law.

12. DEPARTMENT will pay to OWNER on demand all reasonable costs and expenses, including reasonable attorneys' fees, incurred by OWNER in enforcing any of DEPARTMENT's covenants herein contained, in remedying any breach by DEPARTMENT of said covenants or in connection with any litigation commenced by or against DEPARTMENT to which OWNER shall without fault be made a party. This paragraph shall survive the termination of this Agreement.

13. Upon the termination of this Right of Entry Agreement, DEPARTMENT shall remove any trash or other debris generated by its activities on the Property.

14. If DEPARTMENT fails to observe or perform any of the covenants contained in this Right of Entry Agreement, and such failure continues for a period of ten (10) days after written notice of such failure given by the OWNER, then such action shall constitute a

default and OWNER shall be entitled to all remedies available to it by law or in equity, including the right of specific performance, and the right to terminate this Right of Entry Agreement.

15. If DEPARTMENT fails to observe or perform any of the covenants contained in this Right of Entry Agreement, OWNER may undertake such actions as OWNER deems appropriate under the circumstances. If OWNER exercises this right, DEPARTMENT shall promptly reimburse OWNER for any and all costs and expenses incurred by OWNER in connection with such action.

16. The parties agree that no party shall be deemed the drafter of this Right of Entry Agreement, for purposes of interpretation, as both parties are equally participating in the drafting.

17. Neither the failure nor delay on the part of the OWNER to exercise any right or remedy under this Right of Entry Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy, and no waiver of any right or remedy with respect to any occurrence shall be construed as a waiver of such right or remedy with respect to any other occurrence.

18. During the term of this Agreement, at DEPARTMENT's request, the parties agree to negotiate a form of Memorandum of Agreement

and Grant of Easement (the "Grant of Easement") by which OWNER will grant to DEPARTMENT a perpetual, nonexclusive easement affecting the agreed upon location of the New Well and Access Road for purposes of access over the Access Road to the site of the New Well, maintenance of the Access Road and New Well, and deep well monitoring activities. Following the termination of this Right of Entry Agreement, OWNER and

DEPARTMENT will execute a mutually agreed upon Memorandum of Agreement and Grant of Easement.

19. This Right of Entry Agreement contains the entire agreement of OWNER and DEPARTMENT relating to the subject hereof, and supersedes all prior negotiations and agreements between them with respect to any right of entry.

20. This Right of Entry Agreement may only be amended in writing, executed by both OWNER and DEPARTMENT.

21. The laws of the State of Hawai'i shall govern the validity, performance, and enforcement of this Right of Entry Agreement.

22. The term "OWNER" shall mean and include OWNER, and its managers, members, officers, employees, successors and assigns. The term "DEPARTMENT" shall mean and include DEPARTMENT and its employees, contractors and subcontractors.

23. All notices, demands and requests that may or are required to be given hereunder to OWNER or DEPARTMENT shall be in writing and shall be (1) personally delivered, or (2) sent by registered or certified mail, return receipt requested, postage prepaid, addressed as set out below the party's signature, or (3) transmitted by an internationally recognized courier service, or (4) sent by facsimile transmission ("Fax") to the Fax number or by electronic mail ("email"), if any, of such party set forth below. Notices, demands, and requests shall be deemed served or given for all purposes hereunder at the time such notice, demand or request shall be delivered, either personally or by courier service, the Fax or email thereof is received provided a written notice is also sent in the manner described in (1), (2) or (3) above, or within three (3) business days of mailing. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below shall be deemed to be receipt of such notice for the purposes of this Section. OWNER and DEPARTMENT may change its address by

delivering written notice thereof to the other party in the manner set forth hereinbefore, and thereafter such party's notice address shall be the new address.

24. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Right of Entry Agreement this _____ day of _____.

KAUMALUMALU LLC

By: _____
Print name: _____
Its: _____

By: _____
Print name: _____
Its: _____

Notice Address:
P.O. Box 9032
Kailua Kona, Hawaii 96745
Attention: _____
Facsimile No.: _____
Email: _____

OWNER

RECOMMEND APPROVAL:

By: _____
Print name: **XX**
Its: **XX**

APPROVED AS TO FORM:

By: _____
XX

DEPARTMENT OF LAND AND NATURAL RESOURCES

By: _____
Print name: Suzanne D. Case,
Its Chairperson

Notice Address:
1151 Punchbowl Street
Honolulu, HI 96813
Attention: _____;
Facsimile No.: _____
Email: _____

DEPARTMENT

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20____, before me appeared
_____, to me personally known, who, being by me duly sworn, did say that
_____ is the Chairman of the Water Board of the County of Hawai'i and that the seal affixed to
the foregoing instrument is the seal of the Department of Water Supply of the County of
Hawai'i, and that the instrument was signed and sealed in behalf of the Water Board by authority
of said Water Board, and that _____ acknowledged the instrument to be
the free act and deed of the Water Board.

Signature

Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires: _____

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20____, before me appeared
_____, to me personally known, who, being by me duly sworn,
did say that _____ is the _____ of _____,
a Hawai'i limited liability company, and that said instrument was signed in behalf of said
corporation by authority of its Board of Directors; and that said officer acknowledged said
instrument to be the free act and deed of said corporation. .

Signature

Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires:_____

EXHIBIT A
[SHOW WELL SITE, PARCEL 16, PARCEL 18 AND RIGHT OF ENTRY AREA]