

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

June 14, 2019

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

PSF: 17HD-070

Hawaii

Grant of up to 65-Year Term, Non-Exclusive Easement to Ag-Eco Properties, LLC for Access and Utility Purposes, Kaakepa, South Hilo, Hawaii, Tax Map Key: (3) 2-8-011:003.

APPLICANT:

Ag-Eco Properties, LLC, a Hawaii limited liability corporation

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Kaakepa, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-8-011:003, as shown on the attached map labeled Exhibit A.

AREA:

An easement 30 feet wide and approximately 235 feet long totaling 7,050 square feet, more or less. Actual area to be determined by survey.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	Ag-20 (Agriculture minimum 20 acres)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

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.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon 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. 1, Item No. 46, which states "Creation or termination of easement, covenants, or other rights in structures or land." Refer to attached Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

- Applicant's own cost;
- 3) Obtain a like-term access and utility easement across adjacent lands owned by B P Bishop Estate/Kamehameha Schools (KSBE);
 - 4) Install and maintain a locked gate on the south end of the easement to prevent unauthorized access to subject parcel and provide DLNR with access through the gate to the subject parcel.

REMARKS:

The subject parcel is a portion of lands previously leased to Mauna Kea Agribusiness Company, Inc. (Pepeekeo Sugar Company) under General Lease No. S-3585 which was sold by public auction on January 22, 1960 for the purpose of sugar cane cultivation. The lease expired on December 31, 1989, but was held over past its expiration date to accommodate the "final harvest" of the immature sugar cane crop. The final harvest was completed by May 7, 1994. The subject property has remained unencumbered since.

The applicant, Ag-Eco Properties LLC (Ag-Eco) owns 9 contiguous parcels identified as TMKs: (3) 2-8-011:005, 021, 022 and 2-8-010:004, 005, 024, 036, 037 and 038 which run mauka-makai and are bordered by gulches on both sides. The combined total of the nine parcels is 493.02 acres. The 4 makai parcels are legally landlocked; the mauka five parcels have access via a paper road that is not financially feasible for private development because it traverses a substantial gulch before reaching the parcels. Physical access is possible over an existing field road through the subject parcel. The field road was created by the former sugar plantation.

Ag-Eco is seeking purchase of an access and utility easement for its properties over the field road crossing the subject parcel and an adjacent parcel owned by BP Bishop Estate/Kamehameha Schools (KSBE). The applicant has obtained a 5-year right-of-entry from KSBE to use the portion of the field road crossing its adjacent land (refer to attached Exhibit C). If an easement is granted across the subject land, Ag-Eco will seek to obtain a like-term access and utility easement from KSBE.

Staff is recommending a term easement because other alternative accesses may be developed in the future which could render this access unnecessary. The term of the easement is being recommended as an "up to 65-Year" period so that the subject easement will be coterminous with the adjacent easement obtained from KSBE. The subject easement will not be drafted until after an easement from KSBE has been obtained.

Staff is recommending a locked gate across the easement to mitigate random dumping of trash, waste and/or vehicles onto the State land and to deter unauthorized use of the subject parcel.

The submittal was sent out to various agencies and interested parties for comments. The results are shown in the following table:

Federal Agencies	Response
Natural Resource Conservation Service	No Response
State Agencies	Response
DOA	No Response
DHHL	See below for input
DLNR-Forestry & Wildlife	No Objections
DLNR-Historic Preservation	No Response
Hawaii County Agencies	Response
Planning	No Response
Public Works	No Response
Other Agencies & Interested Parties	Response
Office of Hawaiian Affairs	No Response
Kamehameha Schools/Bishop Estate	See Below for input

DHHL voiced no opposition to the easement, however, it requested an analysis of the impacts of the easement on future value and utilization of the subject lands. Staff believes that the easement will provide increased accessibility to the subject land, which in turn increases its value and utilization potential. Further, the development of utilities to the subject lands would also increase the value and utilization potential.

Kamehameha Schools/Bishop Estate commented that its preference is to incur the least amount of encumbrance to its properties. The applicant believes that it will be successful in its bid for a permanent easement due to the development of utilities to the parcel.

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.

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, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental

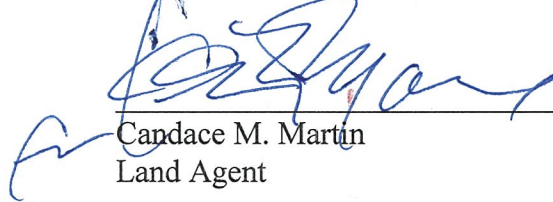
assessment.

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the parcels described as Tax Map Keys: (3) 2-8-011:005, 021, 022 and 2-8-010:004, 005, 024, 036, 037 and 038 provided the succeeding owner (s) have not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of an up to 65-year term non-exclusive easement to Ag-Eco Properties LLC covering the subject area for access and utility purposes 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 term easement document form, as may be amended from time to time;
 - B. The actual term of the easement will be equal to the term of the easement obtained from KSBE across the adjacent parcel or 65-years, whichever is less;
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Keys: (3) 2-8-011:005, 021, 022 and 2-8-010:004, 005, 024, 036, 037 and 038 provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; (2) it is specifically understood and agreed that the easement shall be coterminous with the easement across the adjacent KSBE parcel identified as Tax Map Key: (3) 2-8-011:004; (3) 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;
 - D. Any waste, trash, or other unsightly conditions occurring within the easement area or along its boundaries with the subject parcel shall be remedied by the Grantee;
 - E. In the event of any of the following: (1) Grantee fails or neglects to remedy waste, trash, or other unsightly conditions occurring within the easement area or along its boundaries with the subject parcel; (2) Grantee fails or neglects to maintain the locked gate to secure the subject lands as

referenced in the Applicant Requirements section above; or (3) grantee's access across the adjacent KSBE property is cancelled or denied; then, in any such event, the subject easement shall be terminable upon 60 days' written notice by DLNR. This termination provision shall be binding on the original grantee and any successors and assigns;

- F. Review and approval by the Department of the Attorney General; and
- G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace M. Martin
Land Agent

APPROVED FOR SUBMITTAL:

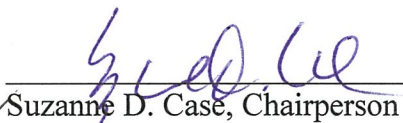
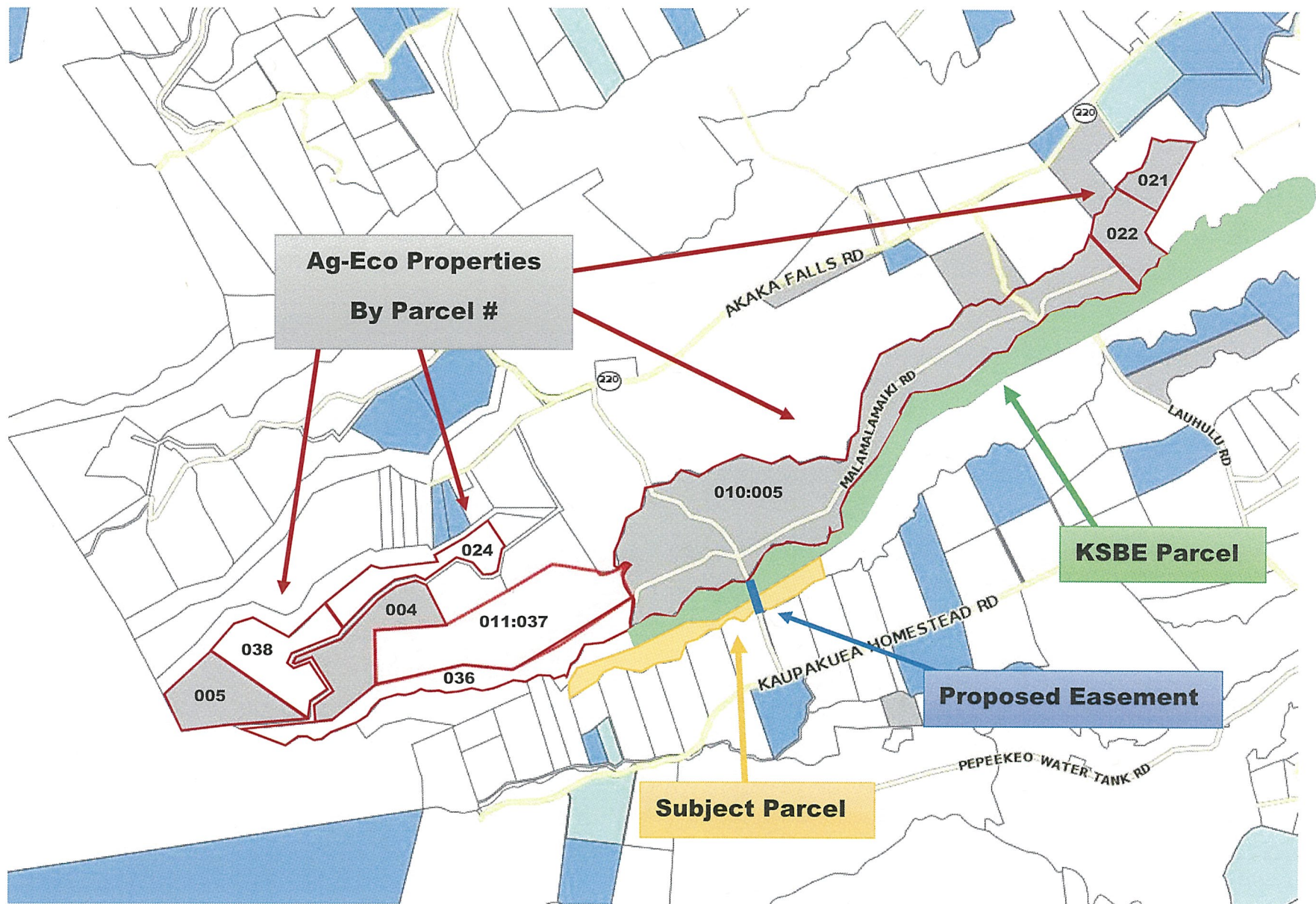
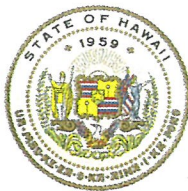

Suzanne D. Case, Chairperson

EXHIBIT A





DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 15, 2019

EXHIBIT B

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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:	Grant of 65-year Term, Non-Exclusive Easement to Ag-Eco Properties, LLC for Access and Utility Purposes.
Project / Reference No.:	PSF 17HD-070
Project Location:	Kaakepa, South Hilo, Hawaii, Tax Map Key: (3) 2-8-011:003.
Project Description:	Easement to allow access and utilities.
Chap. 343 Trigger(s):	Use of State Land.
Exemption Class No.:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with 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. 1, Item 46, "Creation or termination of easement, covenants, or other rights in structures or land."
Cumulative Impact of Planned Successive Actions in Same Place Significant?:	No. The applicant owns 9 contiguous parcels of agricultural lands of which they are seeking an access and utility easement. The proposed easement has been utilized as unauthorized access for years. The applicant is seeking to legitimize the access and to bring in utilities.
Action may have Significant Impact on Particularly Sensitive Environment?:	No. The land is agriculture and has previously been used for sugar production and pasture lands.

Consulted Parties:

State of Hawaii:

DOA, DHHL, DOFAW, Historic Preservation

County of Hawaii:

Planning Department, Public Works

Other Agencies:

Office of Hawaiian Affairs

These agencies were consulted on the propriety of the HRS Chapter 343 exemption, and expressed no comments in opposition to the exemption.

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.



KAMEHAMEHA SCHOOLS®

ROE No.: 328-8/99998439

REVOCABLE RIGHT OF ENTRY AGREEMENT

This REVOCABLE RIGHT OF ENTRY AGREEMENT (the "*Agreement*"), dated June 1, 2016, is by and between the TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, whose address is 567 South King Street, Suite 200, Honolulu, Hawaii 96813 ("*Owner*"), and AG-ECO PROPERTIES LLC., whose address is P.O. Box 1005, Hilo, HI 96721 ("*Permittee*").

Owner hereby grants to Permittee permission to enter, and Permittee hereby accepts such permission to enter, the Property defined in this Agreement, subject to the terms and conditions of this Agreement.

AGREEMENT

A. **Specific Provisions.** The following constitute the "*Specific Provisions*" of this Agreement and are referred to elsewhere in this Agreement. (References in these Specific Provisions to "*Section*" refer to the section number of the General Provisions of this Agreement, which are attached as Exhibit B. All capitalized terms in these Specific Provisions, unless otherwise defined herein, have the meanings given to them in the General Provisions.)

1. **Property:**
(*Section 1*) The Property described in Exhibit A, constituting approximately 3,500 s.f. acres, situated in Kulaikahonu, South Hilo, Hawai'i. Tax Map Key No.: (3) 2-8-011-004 (Por.)
2. **Term:**
(*Section 2*) Five (5) years, commencing on July 1, 2016 and ending on June 30, 2021, unless sooner terminated as provided in this Agreement.
3. **Purpose(s) for Entry:**
(*Section 3*) Entry shall be solely for the following purpose(s):
 - (1) Non-exclusive use over subject TMK to access Permittee's fee simple parcels TMK(s): (3)-2-8,011:005, -022 and -021; TMK(s) (3)-2-8-010: 004, 005, 024, 036, 037 and 038.
 - (2) Road segment is approximately 10' wide by 350' long.
 - (3) Any other use of the surrounding property is strictly prohibited unless approved in writing by Owner.
4. **Insurance:**
(*Section 7*) Minimum Coverage Limits:
 - (1) Comprehensive general liability insurance, including contractual liability insurance in the combined single limit of not less than \$1,000,000.00 per loss and in the aggregate.
5. **Special Terms:** The following items (if any) are "*Special Terms*" to this Agreement. To the extent there is any conflict between these Special Terms and any other terms of this Agreement, these Special Terms shall control:
 - (1) Permittee shall conduct only those activities listed in section 3 above and no other activities.
 - (2) Permittee shall not interfere with or disrupt any of Owner's or Owner's lessees or tenants on the Property.

- (3) Permittee shall exercise due care of public and private safety on the Property and shall comply with all laws, ordinances, and rules and regulations of governmental agencies.
- (4) Permittee shall be responsible for any costs related to improvements, general maintenance and cleaning of the Property.
- (5) Permittee shall be responsible for all costs related to any repairs or replacement for a lost, stolen, or damaged lock, key, gate or gate fixtures caused by Permittee's misuse or neglect.
- (6) Permittee shall inform Owner of any identified hazard, potential hazard and unlawful activities including trespassers on Property.
- (7) Permittee understands that Permittee shall not have the exclusive right to use the roadway. Permittee further understands that Owner may, from time to time, permit others to use the roadway.
- (8) Permittee agrees that Permittee's use of the Property shall be at Permittee's own risk, and Permittee and all persons claiming under, by or through Permittee, releases Owner from all claims and demands of any kind resulting from any accident, damage or injury occurring on the Property.
- (9) Exhibit B, Item 4b, Prior Notice of Each Entry is deleted in its entirety.
- (10) Permittee acknowledges that this parcel is leased to LHF Lopiwa, LLC. Permittee will be required to coordinate access with the Lessee.
- (11) Permittee agrees to provide Lessee with information regarding trespassing and gate/lock issues.
- (12) Permittee acknowledges that this Right of Entry is temporary and that permanent access must be requested by submitting an Easement Request Form to Owner for review. Permittee acknowledges that this is not the Permittee's legal access to the property and Owner does not make any representations as to the Permittee's ability to utilize this route long-term.

B. General Provisions. The terms and conditions of the "*General Provisions*" of this Agreement, which are attached to this Agreement as Exhibit B, incorporated in this Agreement by reference and made a part of this Agreement for all purposes; provided, however, that in the event of a conflict or any inconsistency between the terms and conditions of the Specific Provisions and the General Provisions, the Specific Provisions shall prevail. The terms and conditions of the General Provisions are in a separate exhibit for convenience of reference only.

C. Exhibits. The following are attached as Exhibits and by this reference made a part of this Agreement:

Exhibit A Description of the Property
Exhibit B General Provisions

D. Trustees Not Personally Liable. This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

E. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed a duplicate original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TRUSTEES OF THE ESTATE OF BERNICE
PAUAAI BISHOP

By: *Marissa Harman*
Marissa Harman, Director
Asset Management - Hawai'i Island

"Owner"

AG-ECO PROPERTIES LLC.

By: *Beth Ann Shropshire*
Its: Beth Ann Shropshire, Managing Member

"Permittee"

STATE OF HAWAII

CITY & COUNTY OF HONOLULU

On this 2nd day of Sept. 2016 before me,
personally appeared Beth Ann Shropshire
to me known to be the person described in and who executed the
foregoing instrument and acknowledged that she
executed the same as her free act and deed.

Phyllis A. Bueno Phyllis A. Bueno
Notary Public Print Name

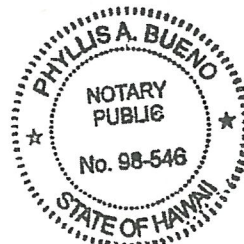
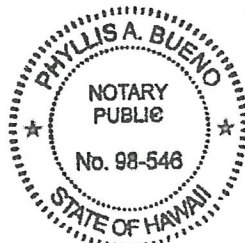
10-25-18
My Commission Expires

Doc. Date: 6-1-16 # Pages 87
Notary Name: Phyllis A. Bueno First Circuit

Doc. Description Revocable right

Center Agreement

Phyllis A. Bueno 9-2-16
Notary Signature Date





KAMEHAMEHA SCHOOLS®

CONSENT

(Revocable Right of Entry Agreement)

THIS CONSENT is attached and made part of that certain Revocable Right of Entry Agreement (the "Agreement") by and between THE TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, as Owner, and AG-ECO PROPERTIES LLC, as Permittee, and is executed this 25th day of October, 2016, by LHF LOPIWA LLC, A Delaware Limited Liability Company (the "undersigned").

The undersigned hereby consents to the Agreement, provided that such consent will not create any liabilities or obligations on the part of the undersigned in connection with the Property. All capitalized terms not defined in this Consent shall have the same meaning as those same capitalized terms defined in the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Consent on the day and year first above written.

LHF Lopiwa LLC,
A Delaware Limited Liability Company

By: LHF Sunbear, Inc.
Its Manager

By: Terry Oliver
Name: Terry Oliver
Title: Hawai'i Operations and Marketing Manager,
GMO Renewable Resources, LLC

"Lessee"

895 KAUHULA ROAD, HILO, HAWAII 96720 TELEPHONE (808) 982-0830 FAX (808) 982-0845

Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop

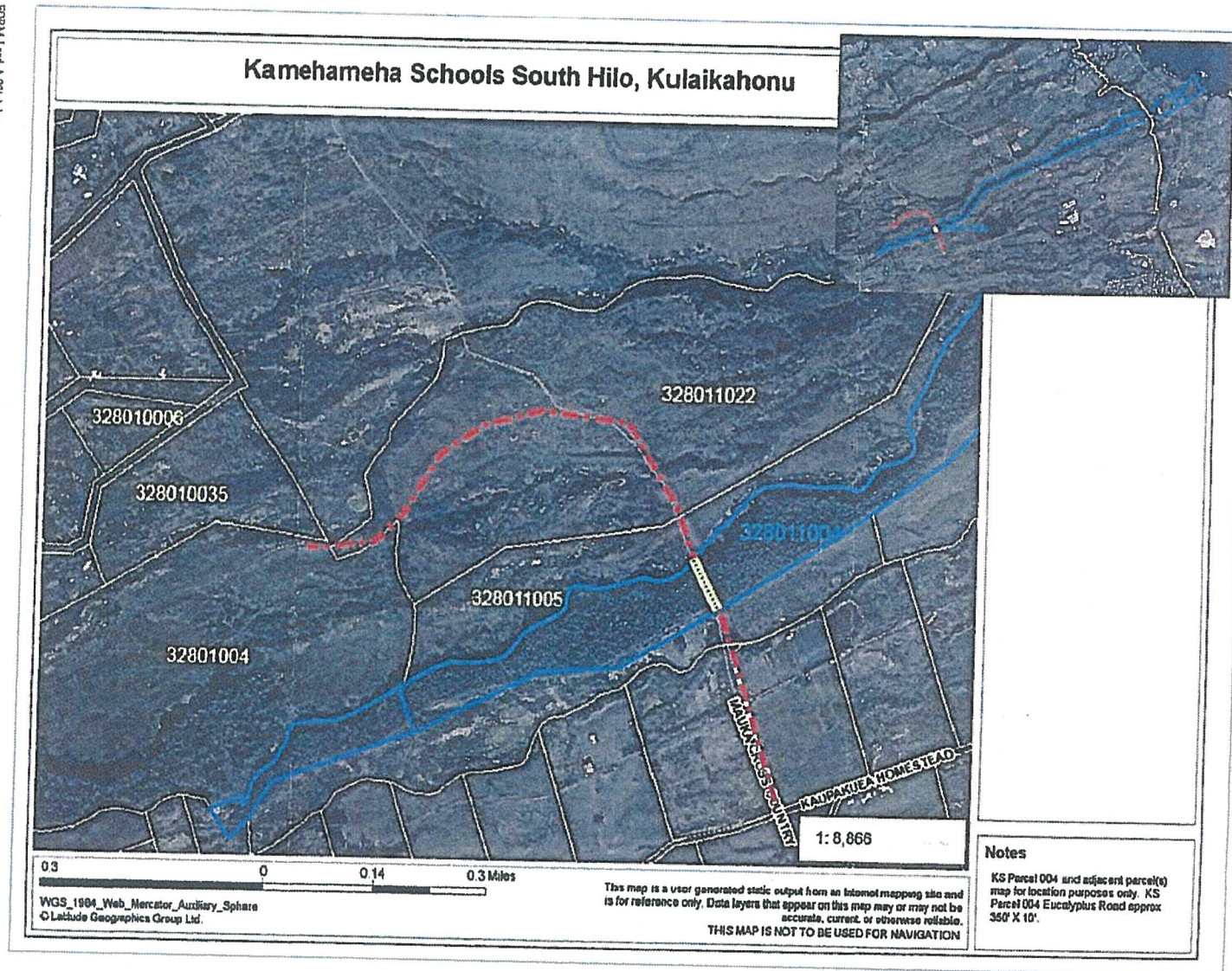


EXHIBIT B
GENERAL PROVISIONS

1. **Grant of Right of Entry.** Owner hereby grants Permittee permission to enter the Property identified in the Specific Provisions and described in Exhibit A attached to this Agreement (the "**Property**") during the Term (as defined below) solely for the purposes stated below, subject to the terms and conditions of this Agreement. Permittee hereby accepts such permission to enter and agrees to comply with all of the terms and conditions of this Agreement.
2. **Term.** The term of this Agreement shall be for the period set forth in the Specific Provisions, beginning and ending on the dates set forth in the Specific Provisions (the "**Term**"); provided, however, that notwithstanding anything in this Agreement to the contrary, Owner may revoke and terminate this Agreement at any time, in Owner's sole discretion, for any or no reason, upon 24 hours prior written notice to Permittee.
3. **Purpose for Entry.** Permittee's entry onto the Property shall be only for the purpose or purposes expressly set forth in the Specific Provisions and for no other purpose or purposes.
4. **Rules and Conditions For Entry.**
 - a. **Authorized Persons.** Only Permittee and its respective agents, employees, contractors, and representatives (collectively, the "**Authorized Persons**") shall be allowed to enter the Property under this Agreement.
 - b. **Prior Notice of Each Entry.** Permittee shall provide Owner not less than 48 hours prior written notice of each entry onto the Property, together with a list of the names of the Authorized Persons who will be entering the Property, the specific purpose for the entry, and an estimate of the anticipated duration of the entry. Actual entry onto the Property shall thereafter conform with the specific terms of the corresponding prior written notice.
 - c. **Performance of Work.** All work must be conducted in accordance with applicable laws and in a safe and workmanlike manner. Permittee and the Authorized Persons shall not unreasonably interfere with any other activities on the Property and shall take all reasonable measures for the prevention of dust, noise and other nuisances originating from the work.
 - d. **Damages; Liens.** All damage or injury to the Property or any improvements or property thereon by Permittee or any Authorized Persons shall be promptly repaired by Permittee at its own cost and expense. Permittee and the Authorized Persons shall not commit any act or neglect that may subject the Property to any lien or encumbrance. Permittee shall promptly discharge any such lien or encumbrance by paying the amount claimed. Permittee shall not leave any equipment or other items on or about the Property without Owner's prior written consent.
 - e. **Compliance with Laws.** Permittee shall comply with all laws, ordinances, and governmental rules and regulations which apply to the Property, the use of the Property, or the work to be performed by Permittee or any Authorized Persons on or with respect to the Property. Without limiting the foregoing, Permittee shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or hazardous materials ("**Hazardous Materials Laws**"). Permittee shall immediately advise Owner in writing of the discovery by Permittee or any Authorized Persons of any occurrence or condition on the

Property or adjoining properties relating to Hazardous Materials Laws. Permittee shall not permit or cause, or allow the Authorized Persons to permit or cause, any hazardous materials to exist on, under or about the Property.

f. Preservation of Historic and Archaeological Sites. Permittee shall take every reasonable precaution to preserve and leave unaltered all places, if any, of historic and/or archaeological interest, including without limitation, structures and sites listed on the Hawaii State Register of Historic Places and/or the National Register of Historic Places, ponds, reservoirs, heiau, altars, agricultural terraces, lo'i, walls, auwai, house platforms, imu, petroglyph sites, cemeteries; and all objects, if any, of historic and/or archaeological interest, including, without limitation, antiquities and specimens of Hawaiian or other ancient art or handicraft which may be found in or on the Property. Upon the discovery of such objects or of any human remains in or on the Property, Permittee shall leave the same untouched and shall immediately notify Owner of the type and location of such discovery.

g. Other Rules and Conditions for Entry. Permittee shall comply with all other reasonable rules and conditions for entry that Owner may from time to time make and provide in writing to Permittee.

5. Right of Entry is Non-Exclusive. The right of entry given to Permittee by this Agreement is non-exclusive. This Agreement is not a lease or a grant of an easement or of any other interest in the Property, and Permittee agrees not to claim any interest in the Property under this Agreement.

6. Risk of Damage to Person or Property; Indemnity. As a material part of the consideration to Owner for this Agreement, Permittee assumes all risk of damage to property and bodily injury or death to persons incurred in, on or about the Property during, or directly or indirectly arising out of, the entry onto the Property by Permittee or any Authorized Persons, regardless of what causes any such damage or injury. Permittee hereby waives all claims which Permittee may have, now or later, against Owner and its trustees, executives, officers, employees, agents, contractors and invitees (collectively, "*Owner and its Agents and Invitees*"), for any such damage, injury or death. Further, Permittee agrees to indemnify, defend and hold harmless Owner and its Agents and Invitees from and against any and all claims, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and costs) (collectively, the "*Claims*") for which Owner and its Agents and Invitees may become liable, including, without limitation, Claims made by any Authorized Persons or any person (including insurance companies and employees) claiming under, or reporting to, or under the supervision or control of Permittee or any Authorized Persons, which Claims, directly or indirectly, arise out of, are caused or occasioned by, or result from: (a) the entry by Permittee or any Authorized Persons onto the Property, (b) the performance by Permittee or any Authorized Persons of work at or about the Property, (c) a breach of this Agreement by Permittee, or (d) acts or omissions of Permittee or any Authorized Persons. Permittee further agrees that in case of any Claim, threatened or actual, against Owner or Owner's Agents or Invitees, upon written request of Owner or Owner's Agents or Invitees, Permittee shall defend the same at Permittee's expense by counsel satisfactory to the person requesting the same. If no request is made for such defense or if Permittee does not provide such defense, then Permittee shall reimburse Owner and its Agents and Invitees for the cost of such defense, and agrees to cooperate with Owner and its Agents and Invitees in such defense, including, but not limited to, the providing of affidavits and testimony upon request of Owner and its Agents and Invitees. The provisions of this section shall survive termination of this Agreement.

7. Insurance. Permittee shall procure and maintain at Permittee's expense during the Term (and shall cause the Authorized Persons to procure and maintain during the Term), the insurance policies and coverages, with the minimum limits, set forth in the Specific Provisions, and upon such terms and conditions as are customarily included in such lines of insurance written for responsible companies in the same type of businesses as the Authorized Persons. Owner shall be an additional insured on all insurance policies

required under this Agreement. Copies of such policies or certificates showing the existence of such policies shall be given to Owner upon execution of this Agreement.

8. **Remedies.** If either party breaches its agreements or obligations under this Agreement, the other party may seek specific performance, damages, and/or any other remedy available at law or in equity. Further, if Permittee breaches any of its agreements or representations, Owner shall have, in addition to all other rights and remedies available at law or in equity, the right to immediately terminate this Agreement upon written notice to Permittee.

9. **Reports; Confidentiality.** Permittee shall promptly furnish to Owner, free of charge and free of limitations on use, copies of all reports, studies, tests and other information relating to the condition of the Property that result from Permittee's entry onto the Property, and, except as otherwise required by law, Permittee shall not disclose such reports, studies, tests and other information to any person or entity, without Owner's prior written consent. This section shall survive termination of this Agreement.

10. **Miscellaneous Provisions.**

a. **Time of the Essence.** Time is of the essence in respect of all provisions of this Agreement in which a definite time for performance is specified.

b. **Legal Action.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Hawai'i. If legal action, declaratory or otherwise, is brought by either party for the determination of any controversy arising hereunder, the recovery of any payment due hereunder or because of the breach or threatened breach of any term, covenant, or provision hereof, the party prevailing in that action shall be entitled to recover from the party not prevailing, the costs of suit and reasonable attorneys' fees.

c. **Invalid Provisions.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted. If a provision hereof is only partially enforceable, it shall be enforced to the fullest extent permissible. The section and/or paragraph headings in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement or any provisions hereof or in any way affect this Agreement.

d. **Waiver or Modification.** Neither this Agreement nor any provision hereof may be waived, terminated, or rescinded except by a written instrument signed by the party charged with the alleged waiver, termination or rescission. Further, neither this Agreement nor any provision hereof may be amended or otherwise modified except by a written instrument signed by the parties to this Agreement.

e. **No Assignment.** Permittee shall not assign, delegate or transfer any right or obligation under this Agreement.

f. **Trustees Not Personally Liable.** This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

g. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns.

[END OF EXHIBIT B]