

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

January 22, 2016

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

Hawaii

Consent to a Memorandum of Understanding between State of Hawaii, Hawaii Housing Finance and Development Corporation and The United States Department of the Interior, Fish and Wildlife Service to Establish Two No Development Areas of Approximately 2.9 and 1.3 acres as Critical Habitat for Three Endangered Native Plant Species; and

Authorize the Chairperson to Issue Right-of-Entry Permits to The United States Department of the Interior, Fish and Wildlife Service, as needed, in Accordance with the Memorandum of Understanding between State of Hawaii, Hawaii Housing Finance and Development Corporation and The United States Department of the Interior, Fish and Wildlife Service on State Lands located at Kealakehe, North Kona, Hawaii, Tax Map Key: (3)7-4-020:004 portion.

APPLICANT:

State of Hawaii, Department of Business, Economic Development and Tourism, Hawaii Housing Finance and Development Corporation, a governmental agency.

REQUEST:

The State of Hawaii, Hawaii Housing Finance and Development Corporation (HHFDC) is requesting Board consent on a Memorandum of Understanding between the HHFDC and The United States Department of the Interior, Fish and Wildlife Service (FWS) to create two "No Development Areas" which will provide critical habitat for three endangered native plant species upon State lands.

LEGAL REFERENCE:

Section 171-7, 10-13.6 and 201H-10 Hawaii Revised Statutes, as amended.

CURRENT USE STATUS:

Vacant and unencumbered but subject to a Memorandum of Understanding (MOU) between DLNR and HHFDC which transfers the development rights to HHFDC.

LOCATION:

Portion of Government lands of “The Villages of La’i’Opua – Phase 1”, F.P. 2128 situated at Kealakehe, North Kona, Hawaii, identified by Tax Map Key: (3) 7-4-020:004 por., as shown on the attached map labeled Exhibit A.

AREA:

The entire parcel is 36.6 acres more or less of which two areas of 2.9 and 1.3 acres are the subject of this action.

TERM:

20 years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The HHFDC and FWS shall be responsible for ensuring compliance with Chapter 343, HRS.

APPLICANT TERMS AND CONDITIONS:

The HHFDC shall be responsible for providing the State of Hawaii, Department of Land and Natural Resources with a fully executed copy of the Memorandum of Understanding within thirty (30) days of execution.

BACKGROUND:

The subject parcel is currently unencumbered. However, it is subject to a Memorandum of Understanding (MOU) between the Department of Land and Natural Resources (DLNR) and HHFDC. At its meeting of June 22, 1990, item F-4, the Board approved a MOU with an amendment that the final language and form of the MOU was subject to review and change by the Office of the Attorney General (AG).

The final AG approved MOU was fully executed on 1/4/1993 (see attached Exhibit B). The MOU acknowledged the HHFDC responsibility for effectuating the Governor’s Comprehensive Housing Program pursuant to HRS 10-13.6, effectively transferring development rights to HHFDC.

Due to ceded lands litigation filed in 1994, development of La'i'opua was suspended and the balance of the ceded lands portion of La'i'opua were eventually transferred to DHHL with Board approval at its meeting of 8/27/2004, item D-8. The subject parcel was excluded from the transfer and ownership remained with DLNR, but the development rights were reserved by HHFDC for future residential and non-residential development.

On January 28, 2005, the HHFDC Board of Directors approved returning the development rights of the subject parcel to Department of Land and Natural Resources (DLNR) for the development of the Kona Community Hospital by Hawaii Health Systems Corporation. HHFDC retained a reversionary interest to the development rights, to be exercised if the hospital project did not commence by December 31, 2010. The hospital project was planned for an alternate location and the development rights reverted to HHFDC.

On October 17, 2012, the FWS published rules proposing to designate 18,776 acres on Hawaii island as critical habitat for three plant species: wahine noho kula (*Isodendron pyrifolium*), ko'oko'olau (*Bidens micrantha* ssp. *ctenophylla*), and uhiuhi (*Mezoneuron kavaiense*). The entire subject parcel of land is included within the 18,776 acres.

#### REMARKS:

The HHFDC and FWS have worked out an agreement that will allow for critical habitat to be established in two designated areas of the parcel and leave the remaining area of the parcel available for future development. The MOU provides a framework of responsibility for the development, management, and maintenance of the designated critical habitat areas. Refer to attached Exhibit C.

Since DLNR is the landowner, HHFDC and FWS are requesting the Board consent to the Memorandum of Understanding between them and issue right-of-entry permits to FWS, or entities working on its behalf, as needed to establish and maintain the critical habit areas on the subject parcel.

Staff believes that the proposed critical habitat areas are appropriate uses of the lands, and are consistent with the best interests of the public trust.

#### RECOMMENDATION:

1. That the Board consent to a Memorandum of Understanding between the State of Hawaii, Hawaii Housing Finance and Development Corporation and The United States Department of the Interior, Fish and Wildlife Service to establish two no development areas of approximately 2.9 and 1.3 acres as critical habitat for three endangered native plant species on state lands located at Kealakehe, North Kona, Hawaii, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

- A. Review and approval by the Department of the Attorney General; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Chairperson to issue right-of-entry permits to the United States Department of the Interior, Fish and Wildlife Service, as needed in accordance with, for the duration of and under the terms and conditions of the Memorandum of Understanding between the Hawaii Housing Finance and Development Corporation and the United States Fish and Wildlife Service 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;
  - B. This right-of-entry shall be issued at gratis; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



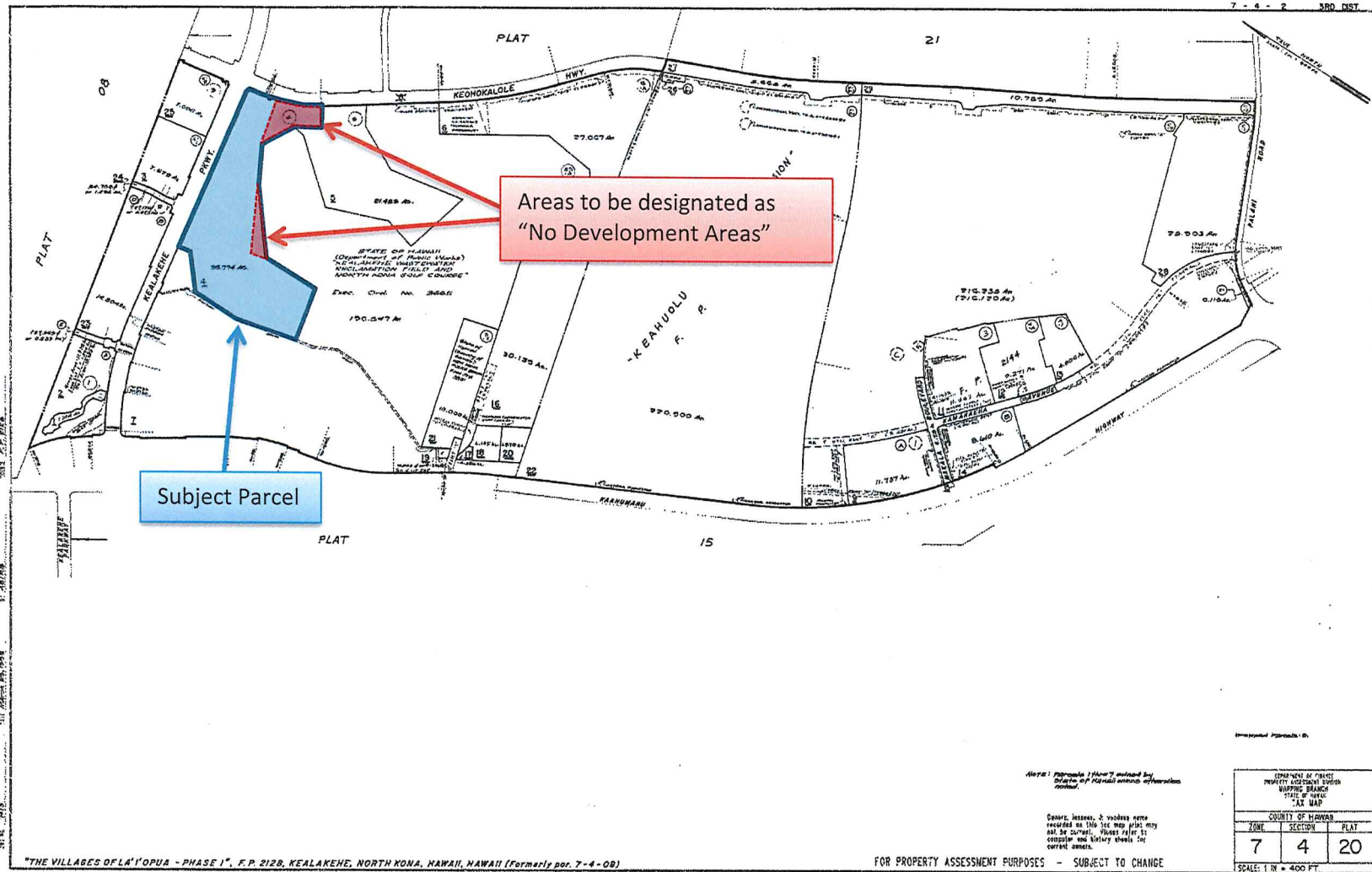
Candace Martin  
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

# EXHIBIT A



"THE VILLAGES OF LA'I OPUA - PHASE I", F.P. 2128, KEALAKEHE, NORTH KONA, HAWAII (Formerly por. 7-4-08)

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

COUNTY OF HAWAII		
ZONE	SECTION	PLAT
7	4	20

SCALE: 1 IN = 400 FT  
PRINTED: .....

MEMORANDUM OF UNDERSTANDING

**PURPOSE:** The purpose of this Memorandum of Understanding between the **DEPARTMENT OF LAND AND NATURAL RESOURCES ("DLNR")** and the **HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HFDC")** is to establish procedures to implement the valuation and compensation for the conveyance of land by DLNR to HFDC for the development of housing projects from the public land trust, as defined in §10-2, Hawaii Revised Statutes, at Lahaina, Maui, and Kealahou, Hawaii, pursuant to Act 318, Session Laws of Hawaii ("SLH") 1992. For the purpose of this Memorandum of Understanding, the public land trust lands are hereinafter referred to as "public lands."

- I. DLNR is the administrator and trustee of the public lands.
- II. HFDC is responsible for effectuating the Governor's Comprehensive Housing Program.
- III. HFDC's housing program includes the utilization of public lands on the Island of Maui as identified by Tax Map Key No. (2) 4-5-21: Por. 3, 4 and 5, for the development of the Lahaina master planned community, and on the Island of Hawaii as identified by Tax Map Key No. (3) 7-4-8: Por. 12 and 17 for the development of the Kealahou master planned community.
- IV. Act 318, SLH 1992 provides for the valuation of and compensation to Office of Hawaiian Affairs ("OHA") for public lands conveyed by DLNR to HFDC for the development of housing projects.

In consideration of the above, the parties hereby agree to the following:

- I. Valuation of housing project lands:
  - A. At the request of HFDC, DLNR shall convey to HFDC the public lands, or so much thereof, as the HFDC shall determine as required at that time for the development of a housing project, said lands hereinafter referred to as "housing project lands." Housing project lands shall be those lands determined by HFDC for residential and non-residential uses. Non-residential uses shall include but not be limited to the following:

1. Recreational community centers
2. Church/day-care facilities
3. Neighborhood/community commercial sites
4. Collector roads
5. State sponsored golf course and clubhouse
6. Reservoir site

Public lands within the Lahaina master planned community and the Kealakehe master planned community designated by HFDC for public and quasi-public uses and facilities, hereinafter referred to as "omitted lands," are not housing project lands and are not intended to be conveyed by DLNR to HFDC. The omitted lands are as follows:

1. Within the proposed Lahaina master planned community:
  - a. North school site
  - b. South school site
  - c. North park site
  - d. South park site
  - e. Electrical substation site
  - f. Existing electrical easement
  - g. Existing waterline easement
  - h. Existing roadway easement
  - i. By-pass road
  
2. Within the proposed Kealakehe master planned community:
  - a. County golf course site
  - b. Kealakehe high school site
  - c. Elementary school site
  - d. Reservoir site--DLNR/DOWALD
  - e. Archaeological park and archaeological (burial) preserve sites
  - f. Uhi Uhi preserve park site
  - g. State Department of Transportation (DOT) mauka-makai roadways and DOT setback along Queen Kaahumanu Highway
  - h. County mid-level regional roadway
  - i. County park facilities

The omitted lands shall be conveyed by DLNR to the appropriate agencies having jurisdiction over their respective uses (i.e., school sites to the State Department of Education, park sites to the County, major highways to DOT, utility sites and easements to utility companies, etc.).

- B. Only housing project lands including residential and non-residential uses shall be appraised for Fair Market Valuation for the purpose of conveyance of public lands by DLNR to HFDC in accordance with the applicable provisions of Act 318, SLH 1992.
- C. Fair Market Valuation of the housing project lands shall be determined on a per acre basis pursuant to appraisals performed in accordance with the Uniform Standards of Professional Appraisal Practices as adopted by the State Department of Commerce and Consumer Affairs, not more than ninety days before the conveyance of the land to HFDC.

II. Method of Compensation to OHA and DLNR when housing project lands are conveyed from DLNR to HFDC:

- A. OHA shall be compensated by either one or more of the following methods with an amount equal to 20% of the Fair Market Value of the housing project lands conveyed:
  - 1. Cash Payment at closing; or
  - 2. Delivery of Purchase Money Mortgage securing any principal balance owing after the date of conveyance together with annual simple interest based on the 15-year treasury rate at the time of closing; or
  - 3. Full or partial payment through the conveyance of parcel(s) of vacant land with off-site infrastructure for residential development; or
  - 4. Full or partial payment through the conveyance of parcel(s) of land with improved residential lots and/or housing units.
  - 5. Any combination of the alternatives above set forth and numbered 1 to 4, inclusive.
- B. DLNR shall convey the housing project lands to HFDC for a consideration of One Dollar (\$1.00).

III. Acquisition processing procedures:

Procedures for the acquisition of public lands by HFDC from DLNR for the development of housing projects shall be in accordance with Act 318, SLH



1992 and HFDC's Action Plan Worksheet dated May 22, 1992.

IV. Attachments:

- A. Act 318, SLH 1992
- B. HFDC Action Plan Worksheet dated May 22, 1992
- C. General Instructions to Appraisers
- D. Uniform Standards of Professional Appraisal Practices

V. Encumbrances:

Except for the public lands at Lahaina already approved for withdrawal from General Lease S-4229, after conveyance of public lands at Lahaina by DLNR to HFDC, DLNR may continue to lease the public lands at Lahaina to Pioneer Mill Co. until expiration of the existing lease.

VI. Subject to approval:

This Memorandum of Understanding shall take effect upon its approval by the Board of Land and Natural Resources of DLNR and the Board of Directors of HFDC.

DEPARTMENT OF LAND AND NATURAL RESOURCES

By [Signature]  
Its Chairman

Date: January 4, 1993

HOUSING FINANCE AND DEVELOPMENT CORPORATION

By [Signature]  
Its Executive Director

Date: Aug 31, 1992

APPROVED AS TO FORM

[Signature]  
Deputy Attorney General

Date: September 21, 1992

# EXHIBIT C

## MEMORANDUM OF UNDERSTANDING

### BETWEEN

#### STATE OF HAWAI'I, HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION

### AND

#### U.S. DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE

**WHEREAS** the United States Department of the Interior Fish and Wildlife Service ("Service") is the federal agency charged with the authority to conserve fish and wildlife nationwide, and to enforce compliance with the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended ("ESA"); and

**WHEREAS** the State of Hawai'i through its Department of Land and Natural Resources ("DLNR") is the owner in fee simple, and Hawai'i Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawaii ("HHFDC") has the rights to develop the 36.6 acre area referred to as Village 9 in North Kona, Hawai'i (Tax Map Key (3) 7-4-020: 004); and

**WHEREAS** by proposed rule published on October 17, 2012, in the Federal Register (77 FR 63928), the Service proposed designating land as critical habitat for three plant species: wahine noho kula (*Isodendron pyrifolium*), ko'oko'olau (*Bidens micrantha* ssp. *ctenophylla*), and uhiuhi (*Mezoneuron kawaiense*) in the lowland dry ecosystem, all of which are listed as endangered species under the ESA (50 CFR §17.12); and

**WHEREAS** the Service and HHFDC (hereafter "Parties") desire to enter into this Memorandum of Understanding ("MOU") and work together to contribute to the conservation and recovery of the three (3) listed plant species – wahine noho kula, ko'oko'olau, and uhiuhi and their lowland dry ecosystem. Relative to other species of their lowland dry ecosystem that may be listed, already or in the future and which may require designated or revised critical habitat, and which may or may not currently be present on this property, this MOU is intended also to contribute to their conservation and recovery as well. The three aforementioned and other listed ESA species, and potential ESA candidate species *Capparis sandwichiana* and *Polyscias (Reynoldsia) sandwicensis*, intended to benefit from this MOU will be collectively referred to hereinafter as "Protected Species"(Exhibit A);

**Whereas** in making a decision whether to exclude land from habitat designation under Section 4 of the ESA, the Secretary of the Interior may consider a number of factors, such as: (1) conservation agreements or partnerships with private parties; (2) other land-management plans, Habitat Conservation Plans and voluntary partnerships with non-Federal parties, or the intention to create such a plan or enter into one of those agreements; (3) how the exclusion will affect the

relationship that the Service has with the particular landowner or community; (4) the economic impact of specifying any particular area as critical habitat; and

**WHEREAS** the intention of HHFDC in entering into this MOU is that the Service consider the existence of this conservation agreement when making decisions regarding critical habitat benefits versus the benefits of excluding the property from designation as critical habitat, in accordance with Section 4(b)(2) of the ESA;

**NOW, THEREFORE**, the Service and HHFDC enter into this MOU to address the conservation of the Protected Species.

## **1.0 AUTHORITY**

The Service enters into this MOU pursuant to the authority provided in Section 1 of the Fish and Wildlife Coordination Act ("FWCA"), 16 U.S.C. 661, and the Fish and Wildlife Act of 1956 ("FWA"), 16 U.S.C. 742a-k. FWCA and FWA grant the Service broad statutory authority to enter into voluntary agreements with non-federal entities, including private landowners, to restore and enhance habitat for federal trust fish, wildlife, and plant resources.

HHFDC enters into this MOU pursuant to Hawai'i Revised Statutes ("Haw.Rev.Stat.") Section 201H-10(a)(1) which grants HHFDC the broad authority to: "[o]btain the aid and cooperation of government agencies in the planning, construction, and operation of housing projects and enter into agreement and arrangements as it deems advisable to obtain aid and cooperation[.]"

## **2.0 TERM OF MOU**

This MOU will become effective upon the date of the last signature and will expire in 20 years ("Termination Date"), or sooner if terminated by either party pursuant to Section 6.0.

## **3.0 SPECIFIC OBLIGATIONS OF EACH PARTY**

### **3.1 Obligations of HHFDC.**

**3.1.1 No Development Area.** HHFDC agrees it will not construct or permit the construction of buildings or other improvements, or undertake or permit any other land disturbance activities, on its dry forest habitat in the portion of Tax Map Key (3) 7-4-020: 004 described in this paragraph and located in North Kona, Hawai'i, and as further identified on the attached Exhibit B (a.k.a. the "No Development Area"). During the term of this MOU, the No Development Area will therefore be available in two areas of 2.9 acres and 1.3 acres for the conservation and recovery of the Protected Species and their lowland dry ecosystem. The No Development Area was delineated by the Service in ArcGIS for: (1) the 2.9-acre area via drawing a line parallel to the Kealakehe Parkway and extending it makai from the Ane Keohokalole Highway to intersect the perimeter of Village 9 at its most northern point along its southern boundary, and (2) the 1.3-acre area by extending the fenceline from the adjacent makai boundary of the new County set aside of 22 acres to intersect the southern boundary of the Village 9 property so the fence encompasses the existing Uhi Uhi tree and provides a minimum 100-ft buffer between

the uhiuhi tree and any fenceline or firebreak. Comprising 2.9 acres and 1.3 acres for a total of 4.2 acres of the total 36.6 acres (11.5%), the No Development Area is shown on the attached Exhibit B.

3.1.2 Covered Conservation Activities. The Service (or entities working under a contract, grant, or cooperative agreement) may undertake conservation activities in the No Development Area including fencing to exclude ungulates, control of non-native plant species, outplanting of Protected Species and other native plant species, provision of supplemental water to outplanted individuals, and other actions (e.g. mulching and fertilizing, predator control, and pest management) to benefit the Protected Species and their lowland dry ecosystem if the Parties enter into a separate agreement providing for this work. As determined by the Parties, such agreement will specify access requirements and may also specify the design and specification of the ungulate-proof fence and firebreak on either side of the fence. Small-scale land disturbance activities for the express purpose of implementing conservation activities described above are allowed.

3.1.3. Funding. HHFDC and DLNR are not obligated to fund or perform any conservation activities in the No Development Area.

3.1.4 HHFDC's Reserved Uses. Notwithstanding Section 3.1.1, HHFDC reserves the right to designate and use the No Development Area for open space, preservation, natural drainage course, passive park, and other uses that do not adversely impact the Protected Species or materially interfere with the Service's permitted activities under Section 3.1.2. In addition, HHFDC further reserves the right to grant one or more conservation or preservation easements affecting the No Development Area. The Service will be given the opportunity by HHFDC to review and approve each proposed use or easement for land within the No Development Area for consistency with the terms and intent of this MOU.

3.1.5 Access. HHFDC is only providing access to the No Development Area from the Ane Keohokalole Highway immediately adjacent to the No Development Area. HHFDC is not granting access to the No Development Area from the Kealakehe Parkway.

3.1.6 Right of Entry. Work or access to the No Development Area by the Service (or entities working under a contract, grant, or cooperative agreement) will require Right of Entry approval by the Department of Land and Natural Resources – Land Division. HHFDC only has development rights for this property and cannot authorize a Right of Entry.

## 3.2 Obligations of the Service.

3.2.1 Work in the No Development Area. The Service shall at all times designate a Service employee to act as the point of contact for this MOU. The Service will develop a work plan describing the activities that will take place in the No Development Area and submit a draft to HHFDC sixty (60) days prior to commencement of activities taking place in the No Development Area. The work plan shall include the schedule and dates of planned activities, list of authorized individuals, and a point of contact. Prior to finalizing the work plan, the Service shall take into account any reasonable concerns or recommendations raised by HHFDC.

3.2.2 **Reporting.** The Service will submit an annual report to HHFDC and DLNR summarizing completed activities in the No Development Area.

3.2.3 **Protection of HHFDC.** The Service or the responsible party conducting work pursuant to a cooperative agreement, grant agreement, or contract with the Service shall ensure that all applicable laws and rules are complied with, including but not limited to ensuring that any necessary permits, especially for work with ESA species, are obtained for work the Service undertakes or funds. Furthermore, HHFDC will have the right to review and approve the scope of work for each cooperative agreement, grant, or contract.

#### **4.0 MODIFICATIONS**

Modifications to this MOU may be proposed by either party and shall become effective upon the written concurrence of both parties.

#### **5.0 DISPUTE RESOLUTION**

5.1 **Dispute Resolution.** The parties recognize that disputes concerning implementation of, compliance with, or termination of this MOU may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree, subject to Section 5.3.

5.2 **Informal and Non-Mandatory Dispute Resolution Process.** Unless the parties agree upon another dispute resolution process, the parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved party will notify the other party of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.
- (b) The party alleged to be in violation will have thirty (30) days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.
- (c) Within thirty (30) days after such response was provided or was due, individual representatives of the parties who have authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution

processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

5.3 Notwithstanding the foregoing provisions of this Section, in case of threat of imminent breach of this agreement, emergency, other imminent harm, or if the parties are unable to reach agreement on a dispute resolution process as described above, the parties shall each be entitled to terminate the MOU pursuant to section 6.0.

## 6.0 TERMINATION

This MOU may be terminated by either party following ninety (90) days written notification to the other party.

## 7.0 MISCELLANEOUS PROVISIONS

7.1 No Partnership. This MOU shall not make or be deemed to make either party to this MOU the agent for or the partner of the other party.

7.2 Notices. Any notice permitted or required by this MOU shall be in writing, delivered personally or by overnight or certified mail, to the persons listed below, or shall be deemed given five (5) business days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as either party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Field Supervisor  
United States Fish and Wildlife Service  
Pacific Islands Fish and Wildlife Office  
300 Ala Moana Boulevard, Suite 3-122  
Honolulu, Hawai'i 96850  
Telephone: 808-792-9400  
Facsimile: 808-792-9580

Executive Director  
Hawai'i Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawai'i 96813  
Telephone: 808-587-0641  
Facsimile: 808-587-0600

7.3 No Federal Contract. Notwithstanding any language to the contrary in this MOU, this MOU is not intended to create, and shall not be construed to create, an enforceable contract between the parties.

7.4 Duplicate Originals. This MOU may be executed in any number of duplicate originals. A complete original of this MOU shall be maintained in the official records of each of the parties hereto.

7.5 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal or state laws, this MOU shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this MOU to maintain a suit for personal injuries or damages pursuant to the provisions of this MOU. The duties, obligations, and responsibilities of the parties to this MOU with respect to third parties shall remain as imposed under existing law.

7.6 Relationship to the Endangered Species Act (ESA) and Other Authorities. The terms of this MOU shall be construed in accordance with the ESA and other applicable federal and state laws. In particular, nothing in this MOU is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this MOU is intended to limit or diminish the legal obligations and responsibilities of the Service pursuant to section 4 of the ESA. In addition, nothing in this MOU will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal laws.

7.7 Availability of Funds. Implementation of this MOU by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOU will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this MOU to expend any federal agency's appropriated funds, unless and until an authorized official of the agency affirmatively acts to commit to such expenditures as evidenced in writing.

7.8 References to Regulations. Any reference in this MOU to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

7.9 Applicable Laws. All activities undertaken pursuant to this MOU must be in compliance with all applicable state and federal laws and regulations.

7.10 Successors and Assigns. The intention of the parties is that this MOU shall apply to their respective successors and assigns.

7.11 No Commitment to Exclude; No Waiver. Nothing in this MOU shall be construed as a commitment by the Service to exclude HHFDC's lands from critical habitat designation now or in the future. However, as set forth above, in accordance with the ESA and in recognition of the cooperative relationship between the Service and HHFDC, the Service shall consider the conservation benefits that are occurring and have been achieved during the term of this MOU when making or revising any critical habitat designations.

7.12 Subject to Approvals by the Board of Directors of HHFDC and the Board of Land and Natural Resources. This MOU shall be subject to approvals by the Board of Directors of HHFDC and the Board of Land and Natural Resources.

7.13 Advance Review of Press Releases. HHFDC will obtain prior approval of all press releases, published advertisements or other statements intended for the public that refer to this MOU or to the Service, or the name or title of any Service employee in connection with this MOU.

7.14 Endorsements; Use of Logo. Nothing in this MOU may be interpreted to imply that the United States, the Department of the Interior, or the Service endorses any action or policy of HHFDC. HHFDC will not take any action or make any statement that suggests or implies such endorsement. Use by HHFDC of any federal insignia, logo or design is prohibited without written authorization of the Service.



**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Memorandum of Understanding to be in effect as of the date of the last signature executed below:

<p style="text-align: center;"><b>UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE</b></p> <p>By: _____</p> <p>Title: Field Supervisor</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF HAWAI'I, HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION</b></p> <p>By: _____</p> <p style="text-align: center;">Craig K. Hirai</p> <p>Title: Executive Director</p> <p>Date: _____</p>
	<p style="text-align: center;"><b>APPROVED AS TO FORM</b></p> <hr/> <p style="text-align: center;">Deputy Attorney General, State of Hawai'i</p> <p>Date: _____</p>

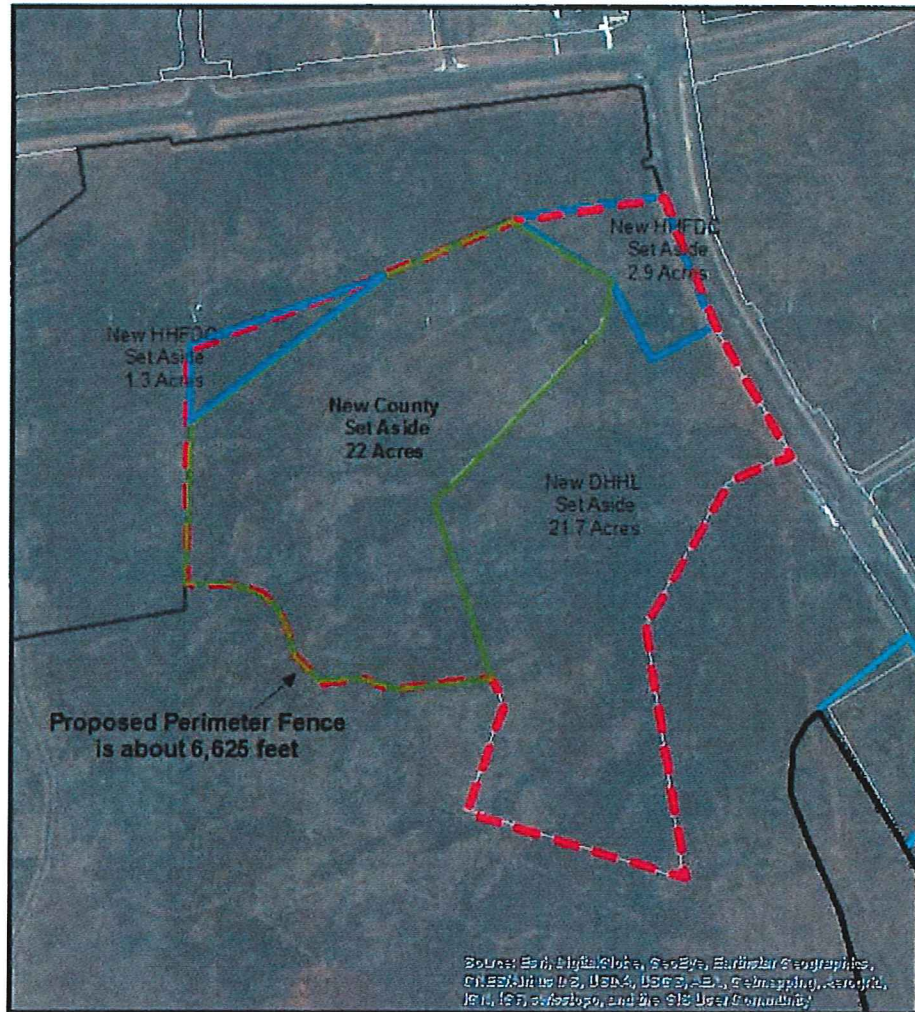
**Attachments:**

- Exhibit A – Protected Species
- Exhibit B – Map of No Development Area

**EXHIBIT A - PROTECTED SPECIES**

Species as recognized under the Endangered Species Act (50 CFR Part 17) or other species of the lowland dry ecosystem	Revised taxonomic name, if appropriate	Status
<b>Plants</b>		
ko'oko'olau ( <i>Bidens micrantha</i> ssp. <i>ctenophylla</i> )		Endangered
hala pepe ( <i>Pleomele hawaiiensis</i> )	<i>Chrysodracon hawaiiensis</i>	Endangered
wahine noho kula ( <i>Isodendrion pyrifolium</i> )		Endangered
uhiuhi ( <i>Mezoneuron kawaiense</i> )		Endangered
ma'aloa ( <i>Neraudia ovata</i> )		Endangered
'aiea ( <i>Nothoctrum breviflorum</i> )		Endangered
loulu ( <i>Pritchardia affinis</i> )	<i>Pritchardia maideniana</i>	Endangered
maiapilo ( <i>Capparis sandwichiana</i> )		No status
'ohe makai ( <i>Reynoldsia sandwichensis</i> )	<i>Polyscias sandwichensis</i>	No status
<b>Animals</b>		
yellow-faced bee ( <i>Hylaeus anthracinus</i> )		Candidate
Blackburn's sphinx moth ( <i>Manduca blackburni</i> )		Endangered

**EXHIBIT B - MAP OF NO DEVELOPMENT AREA**



The State of Hawai'i, Hawai'i Housing Finance and Development Corporation agrees it will not construct or permit the construction of buildings or other improvements, or undertake or permit any other land disturbance activities, on its dry forest habitat in the portion of Tax Map Key (3) 7-4-020: 004 described in this paragraph and located in North Kona, Hawai'i (aka. the "No Development Area"). During the term of this MOU, the No Development Area will therefore be available for the conservation and recovery of the Protected Species and their lowland dry ecosystem. The No Development Area was delineated by the Service in ArcGIS for: (1) the 2.9-acre area via drawing a line parallel to the Kealakehe Parkway and extending it makai from the Ane Keohokalole Highway to intersect the perimeter of Village 9 at its most northern point along its southern boundary, and (2) the 1.3-acre area by extending the fenceline from the adjacent makai boundary of the new County set aside of 22 acres along the subject property so the fence

encompasses the existing Uhi Uhi tree and provides a minimum 100-ft buffer between the uhiuhi tree and any fenceline or firebreak. Comprising a total of 4.2 acres of the total 36.6 acres (11.5%), the No Development Area is shown on the attached Exhibit B.