

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

May 08, 2015

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO NEGOTIATE, SIGN, EXECUTE, AND AMEND A MEMORANDUM OF AGREEMENT WITH FINANCE FACTORS, LIMITED FOR THE ESTABLISHMENT OF A PUBLIC ACCESS ROUTE TO THE HILO FOREST RESERVE, SOUTH HILO, HAWAI'I, TMK: (3) 2-8-001:002

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HAWAI'I REVISED STATUTES, ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE SUBJECT MEMORANDUM OF AGREEMENT

SUMMARY:

The Division of Forestry and Wildlife (DOFAW) requests that the Board of Land and Natural Resources (BLNR) authorize the Chairperson to negotiate, sign, execute, and amend a Memorandum of Agreement (MOA) between the BLNR and Finance Factors, Limited (FFL) for the establishment of a public access route to the Hilo Forest Reserve (Draft MOA attached). Additionally, DOFAW requests that the BLNR approve a declaration that the establishment of the public access route, as proposed within the MOA, is exempt from the requirement of Chapter 343, Hawai'i Revised Statutes (HRS) to prepare an environmental assessment.

BACKGROUND:

Substantial portions of the Hilo Forest Reserve are landlocked by surrounding private lands. The subject MOA provides a new access point for public use of the Hilo Forest Reserve and helps to achieve other Forest Reserve management objectives; fulfills the purpose of DOFAW's Wildlife Access and Acquisitions Program; and facilitates County of Hawai'i efforts to implement the public access requirements of Chapter 46-6.5, HRS and Chapter 34, Hawai'i County Code.

DOFAW has been working on the development of the subject access route for several years, in conjunction with the County of Hawai'i Game Management Advisory Commission, the County Planning Department, and FFL. On February 01, 2012, the owner of parcel (3) 2-8-003-001 granted to the County, as a condition of subdivision approval, "a perpetual easement for pedestrian and vehicular public access [over and across the owner's property] that connects to the Hilo Forest Reserve in the vicinity of TMK (3) 2-8-001-003." TMK (3) 2-8-001-003 is 1,056 acres of State-owned Forest Reserve at Honomū, South Hilo, and is a Public Hunting Area (part of Unit B).¹ However, the County easement connects to the Hilo Forest Reserve at TMK (3) 2-8-001-002, which is 1,735 acres owned by FFL at Makahanaloa,² South Hilo, next to the State-owned Forest Reserve (please see Draft MOA, Exhibit A, Attachment 1).

Due to (1) the alignment of the County easement, and (2) the four-cornered configuration of the boundary between the subdivided property, the FFL property, and adjacent State and private property, it is impossible to walk or drive from the County easement to the adjacent State-owned Forest Reserve without trespassing on private property. Therefore, DOFAW and FFL crafted an agreement that allows pedestrian access from the County easement across FFL's private property into the State-owned Forest Reserve.

DISCUSSION:

Finance Factors, Limited recognizes and desires to further the public interest in providing and facilitating public access to Hilo Forest Reserve. However, FFL is actively marketing its property for sale and does not want to encumber it with a long-term access agreement. Therefore, DLNR and FFL prepared a draft MOA (attached)—with input from the Deputy Attorney General—for establishing an access route that will provide both public access and DOFAW management access to the Hilo Forest Reserve for a two-year period. DOFAW is interested in acquiring the FFL property as an addition to the Hilo Forest Reserve, and the U.S. Fish and Wildlife Service is interested in acquiring it as an addition to the Hakalau National Wildlife Refuge.

Pursuant to Chapter 198D, HRS, DLNR's Nā Ala Hele Program (NAH) is responsible for the management, maintenance, development, and regulation of trails and accesses in the State. The NAH mandate is to plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the statewide trail and access program. DLNR, through its NAH, may enter into agreements with owners of public or private land to

¹ The State-owned Hilo Forest Reserve at Honomū is next to an additional 3,982 acres of the State-owned Hilo Forest Reserve at Kaiwiki, Hāmākua, TMK (3) 2-9-005-001, that is also part of Hunting Unit B. Kaiwiki mauka connects to the Hakalau National Wildlife Refuge (24,448 acres).

² An ancient leaping place for souls. A sacred bamboo grove called Hō-mai-ka-'ohe (hand me the bamboo) was planted here by the god Kāne; bamboo knives used for circumcision came from this grove. (Place Names of Hawai'i 189).

Awarded to William C. Lunalilo, RP 7129, LCAW 8559.

defend an owner from claims made by public users of the owner's land and to indemnify an owner for property losses incurred due to public use.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The MOA is an agreement between DLNR and FFL for public access and related management operations on a footpath across a strip of land, located on the FFL property, that is ten (10) feet wide and sixty-one and one-half (61.5) feet long, and is within the State Conservation Land Use District, Resource Subzone, along its boundary with the State Agricultural Land Use District. The terms of the MOA require that DOFAW (1) provide all needed development, improvements, and maintenance along the Access Footpath to establish safe public access suitable for pedestrians, and (2) place signage to direct and inform users about access requirements, applicable rules, and potential hazards. These are minor actions that will probably have minimal or no significant effects on the environment and are exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules, under the following exemption classes (Exemption List for the Division of Forestry and Wildlife of the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 12, 2008):

Exemption Class #1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Exemption Class #3: 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 alteration and modification of same [].

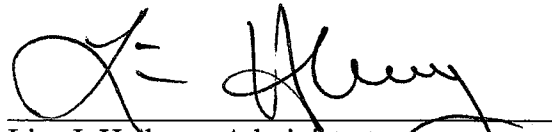
Exemption Class #4: Minor alteration in the conditions of land, water, or vegetation.

RECOMMENDATIONS:

That the Board:

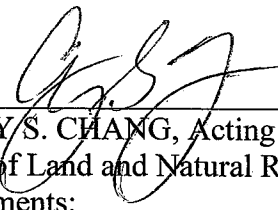
1. Authorize the Chairperson to negotiate, sign, execute, and amend a Memorandum of Agreement between the Board of Land and Natural Resources and Finance Factors Limited for the establishment of a public access route to the Hilo Forest Reserve, pursuant to the terms in Exhibit A and subject to approval by the Attorney General.
2. Approve a declaration of exemption from the requirement of Chapter 343, Hawai'i Revised Statutes to prepare an environmental assessment for the actions proposed in this Memorandum of Agreement.

Respectfully submitted,



Lisa J. Hadway, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



CARTY S. CHANG, Acting Chairperson
Board of Land and Natural Resources
Attachments:

1. Draft Memorandum of Agreement

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Total Number of Pages: 16

**MEMORANDUM OF AGREEMENT
BETWEEN
FINANCE FACTORS, LIMITED
AND THE
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES,
DIVISION OF FORESTRY AND WILDLIFE,
NĀ ALA HELE TRAIL AND ACCESS PROGRAM
FOR THE ESTABLISHMENT OF A PUBLIC ACCESS ROUTE
TO THE HILO FOREST RESERVE**

This Memorandum of Agreement ("MOA") made and entered into on this _____ day of _____, 2015, by and between FINANCE FACTORS, LIMITED, created in 1952 and hereinafter referred to as "FFL," and the State of Hawai'i by its Department of Land and Natural Resources (hereinafter referred to as "DLNR"), Division of Forestry and Wildlife, Nā Ala Hele Trail and Access Program (hereinafter referred to as "NAH)."

property and the State property for an additional eleven and one-half (11.5) feet, as shown on the map as Easement 1, which description and map are attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, FFL recognizes and desires to further the public interest in providing and facilitating public access to Hilo Forest Reserve, recognizing also the necessity of effective management, maintenance, and control of public access through or near private lands for the public health, safety and welfare; and

WHEREAS, DLNR, through its Nā Ala Hele Trails and Access Program, may enter into agreements to defend and indemnify owners of private lands to establish public accesses in the manner provided for in section 198D-7.5, HRS; and

WHEREAS, DLNR and FFL have a mutual interest in management, maintenance, and regulated control of the Access Footpath for both public and private use; and

WHEREAS, DLNR agrees to maintain and manage the Access Footpath for public use, to take enforcement action against illegal activities associated with public use of the Access Footpath to the extent authorized under this MOA and as allowed by law, and to take appropriate enforcement action against unpermitted use associated with public use of the Access Footpath; and

WHEREAS, DLNR shall conduct scheduled periodic inspections of the Access Footpath at DLNR's expense, but in coordination and cooperation with FFL, to assess surface conditions, monitor public access, and address any environmental or enforcement issues; and

NOW, THEREFORE, it is mutually agreed that both parties hereto shall adhere to the following duties and obligations:

DLNR shall:

1. Develop and administer a management plan for public access along the Access Footpath. Administration shall include reasonable on-site monitoring to verify that access users are in compliance with the management plan. The management plan will describe allowable uses and applicable Hawai'i Administrative Rules and will include a map depicting the Access Footpath and describing the permitted course of pedestrian travel, and will also include DLNR Division of Conservation and Resources Enforcement (DOCARE) contact information. DLNR shall immediately inform FFL of any security concerns that DLNR becomes aware of and of DLNR's intended response. Entrants shall be expressly prohibited by DLNR from stopping (unless in an emergency), hunting, or hiking on any FFL property, and use of FFL property shall be limited to transiting the portions of the Access Footpath indicated on Exhibit "A" attached

including the passage of emergency personnel and equipment necessary for wildfire suppression, search and rescue, or other emergency and disaster response activities.

6. Allow DLNR to place mutually approved signage on FFL lands adjacent to the Access Footpath.
7. Allow DLNR to close access to the public along the Access Footpath upon DLNR assessment that the Access Footpath conditions are too hazardous or dangerous for continued public access or for any other reason as determined by DLNR.
8. Provide DLNR with a contact list of all lessees and other individuals and agents associated with FFL operations that require habitual and frequent use of the Access Footpath, and insure that these lessees, individuals and agents are aware of this MOA and the terms herein. DLNR agrees that FFL and these additional parties are not responsible for any theft, vandalism, or dumping on or nearby the Access Footpath not caused by them.

DLNR and FFL shall jointly:

Collaborate, as necessary, on determining the potential improvements to and maintenance of the Access Footpath, other infrastructure to ensure the safety of the users, and FFL's interest in preserving the agricultural uses of the property. Notwithstanding the foregoing collaboration, DLNR shall be ultimately responsible for implementing all measures necessary to ensure safety for the public's use of the Access Footpath as described herein.

INDEMNIFICATION

DLNR shall fully defend and indemnify FFL, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners against any claims made by public users of FFL's land and property losses due to the public's use of the Access Footpath pursuant to this Memorandum of Agreement, to the extent allowed and provided by the law and Chapter 198D, Hawai'i Revised Statutes, as amended, and subject to the provisions of said chapter of the Hawai'i Revised Statutes. The provisions of this paragraph shall survive termination of this Memorandum of Agreement but shall be effective only for losses and claims that arise during, or that are attributable to occurrences during, the period in which this Memorandum of Agreement is or was in effect.

FINANCE FACTORS, LIMITED

By _____

Title _____

STATE OF HAWAI'I,
DEPARTMENT OF LAND AND NATURAL
RESOURCES

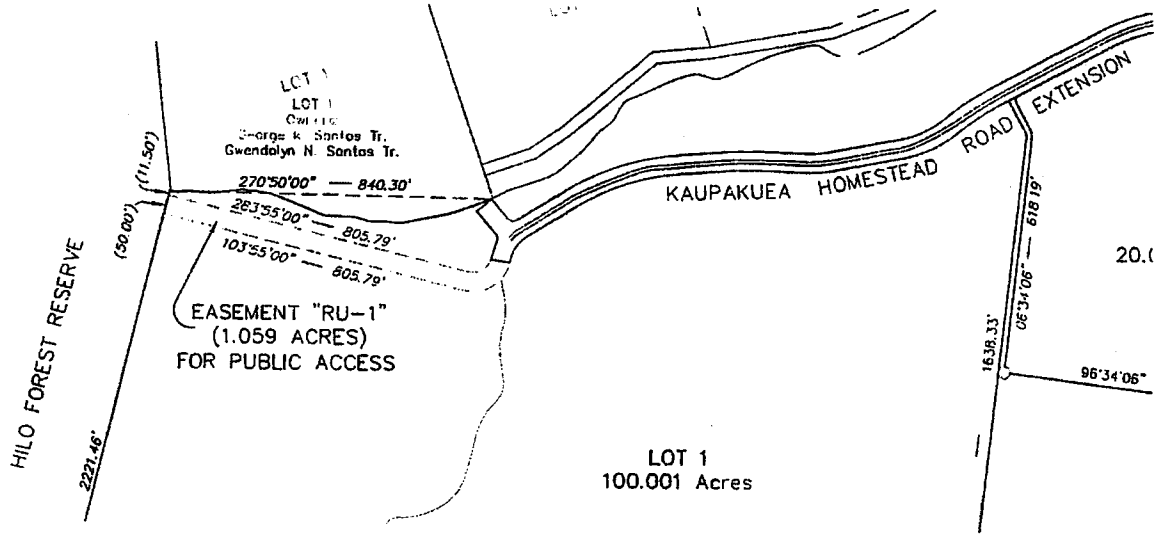
By _____
Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit "B"

Portion of Proposed Subdivision Map



WITNESSETH:

Recitals:

1. Whereas, Owner owns the parcel of real property (designated as Tax Map Key 3rd 2-8-003-001; and
2. Whereas, the Owner has applied to subdivide the above-described parcel of land into six parcels (SUB-11-001057);
3. The subdivision received Tentative Approval on December 14, 2001 with a number of conditions including:

The subdivider shall develop and implement a public access plan (per Chapter 34, Hawai'i County Code), for the proposed subdivision to provide pedestrian and vehicular public access that connects to the Hilo Forest Reserve in the vicinity of TMK (3) 2-8-001: 003. The plan shall clearly address each of the elements included in the enclosed Planning Department's Public Access Guide, "What should be included in a Public Access Plan."

4. The purpose of this grant of easement is to provide the pedestrian and vehicular access as required as a condition of the subdivision approval

NOW, THEREFORE, Grantor, in consideration of the sum of ONE DOLLAR (\$1.00) to Grantor paid by Grantee, the receipt of which is hereby acknowledged, and of the covenants of Grantee as hereinafter contained, does hereby grant, bargain, sell and convey unto Grantee, a perpetual easement for *pedestrian and vehicular public access that connects to the Hilo Forest Reserve in the vicinity of TMK (3) 2-8-001: 003*, over and across that portion of Tax Map Key (3) 2-8-003-001, said easement is described by metes and bounds in the attached Exhibit "A" and is shown on the portion of the subdivision map attached as Exhibit "B".

Grantee hereby covenants and agrees to and with Grantor that Grantee's and public's use of said Easement shall be at all users' use sole risk, and that all users shall defend, indemnify and save harmless Grantor and the owners from time to time of said Easement from and against any and all loss or damage to the property and from and against all liability, claims, suits and actions by whomsoever brought on account of injury to or death of persons when such loss, damage, injury or death is caused by or arises or results, directly or indirectly, from the use of said Easement or the exercise of rights herein granted by Grantee, its agents, guests or invitees, and that said users shall defend, indemnify and save harmless the Grantor and the owners from time to time of said Easement from and against all damages, costs, attorneys' fees, expenses or liabilities incurred or resulting from any such claim or demand or any action or proceeding brought therein.

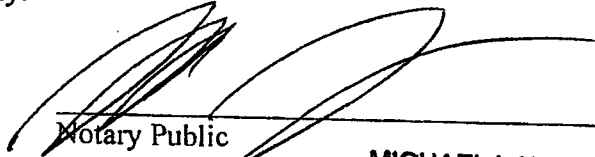
The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 1st day of February, 2012, before me personally appeared **TERESA L. PREKASKI**, to me known to be the person (or who provided satisfactory evidence of her identity) described in and who executed the foregoing **Grant of Easement for Public Access** and, being duly sworn, did say that:

1. She is the Manager of **KAUPAKUEA FARMS, LLC**, a Hawaii Limited Liability Company;
2. She is duly authorized to execute the foregoing instrument on behalf of and binding the company; and
3. She acknowledged that she executed the same as her free act and deed acting in that capacity on behalf of the company.





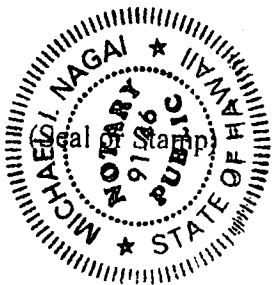
 Notary Public
 State of Hawaii

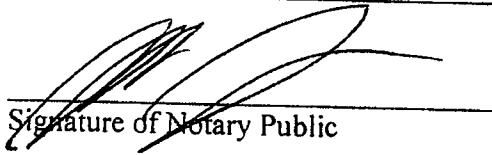
MICHAEL I. NAGAI
 Expiration Date: January 21, 2015

Printed or Typed Name of Notary _____
 My commission expires: _____

NOTARY CERTIFICATION
 Made pursuant to Chapter 456, Hawaii Revised Statutes and
 Hawaii Administrative Rules §5-11-8

Document Description: Dedication Agreement for Variance
 Document Date: Feb 1, 2012
 (If undated, insert "undated")
 Number of pages: **SEVEN 13**
 Circuit of Notarial act: Third Circuit
 Printed name of Notary: **Michael I. Nagai**





 Signature of Notary Public
Feb 1, 2012

 Date of Certification

MICHAEL I. NAGAI
 Expiration Date: January 21, 2015

Exhibit "A"

EASEMENT RU-1

OVER AND ACROSS LOT 1 OF MAKAHANALOA LOTS
PORTION OF R. P. 7129, L. C. AW. 8559-B, APANA 17 AND 18
TO WILLIAM C. LUNAI, II, O

Land situated at Makahanaloa, South Hilo, Island of Hawaii, Hawaii

Beginning at the northeast corner of this easement, also being a southeast corner of Kaupakuea Homestead Road Extension (50-foot wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "AI ALA" being 1,414.90 feet South and 13,582.30 feet West and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|--|
| 1. | 13° 02' 50" | 8.16 feet | along other lands of Lot 1 of Makahanaloa Lots; |
| | | | Thence, on a curve to the right with a radius of 100.00 feet, the chord azimuth and distance being: |
| 2. | 60° 49' 20" | 136.64 feet | along same; |
| 3. | 103° 55' 00" | 805.79 feet | along same; |
| 4. | 193° 55' 00" | 50.00 feet | along the Hilo Forest Reserve; |
| 5. | 283° 55' 00" | 805.79 feet | along other lands of Lot 1 of Makahanaloa Lots; |
| | | | Thence, on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 6. | 240° 49' 20" | 68.32 feet | along same; |
| 7. | 278° 22' 00" | 50.00 feet | along Kaupakuea Homestead Road Extension (50-foot wide) to the point of beginning and containing an area of 1.059 Acres, more or less. |



Niels Christensen
Niels Christensen
Licensed Professional Land Surveyor 9077
The Independent Hawaii Surveyors, LLC
P. O. Box 577
Hilo, Hawaii 96721