Set Aside to Hawaii Housing Finance and Development Corporation for Affordable Housing and Related Purposes with an Immediate Management Right-of-Entry, Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-020:004.

APPLICANT:

Hawaii Housing Finance and Development Corporation (HHFDC), an attached agency of the Department of Business, Economic Development and Tourism, a governmental entity.

LEGAL REFERENCE:

Sections 171-11, 55, and Sections 10-13.6, Hawaii Revised Statutes (HRS), as amended.

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, as shown on the attached map labeled Exhibit A.

AREA:

35.744 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO
CURRENT USE STATUS:

Vacant and Unencumbered, however, parcel is part of the Villages of La'i'Opua, a master planned community by Hawaii Housing Finance and Development Corporation (HHFDC).

PURPOSE:

Affordable Housing and Related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) 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. 1, Item No. 43, “Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor’s executive order.” (Refer to attached Exhibit B).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject parcel is currently unencumbered. However, it is subject to a Memorandum of Understanding (MOU) between the Board of Land and Natural Resources 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 January 4, 1993. The MOU acknowledged HHFDC responsibility for effectuating the Governor’s Comprehensive Housing Program pursuant to §10-13.6, HRS, effectively transferring development rights to HHFDC. The plan was for HHFDC to develop a master planned community known as the Villages of La'i'opua consisting of approximately 3,300 residential units on about 808 acres of lands.

Due to the ceded lands litigation filed in 1994, development of the Villages of La'i'opua was suspended and the balance of the ceded lands portion were eventually transferred to DHHL with Board approval at its meeting of August 27, 2004, item D-8. However, the subject parcel was excluded from the transfer to be held by HHFDC for future hospital and 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 has been planned for an alternate location and the development rights reverted to the HHFDC.

On November 15, 2011, the HHFDC Board of Directors approved the subordination of HHFDC’s development rights for the Kona Judiciary Complex to be developed on the subject parcel with any remaining area to be available to HHFDC for development of affordable housing. The development rights were to revert to HHFDC if the Kona Judiciary Complex was not complete by December 31, 2016. The Kona Judiciary Complex has been sited at an alternate location.

DLNR has maintained ownership and management of the subject parcel until such time that HHFDC indicated it was ready to develop the property. By letter dated August 29, 2017, the County of Hawaii (CoH) requested a right-of-entry onto approximately 5 acres of the subject parcel for the purpose of establishing an emergency homeless encampment. The CoH has also requested a long-term lease from HHFDC for 15-20 acres of the subject parcel for development of a more permanent facility.

After consultation between DLNR, HHFDC and CoH, the most practical course of action is for DLNR to set aside the subject parcel to HHFDC who will then work directly with CoH to issue the right-of-entry, ensure compliance with Chapter 343, subdivide the parcel, designate any necessary access/utility easements, negotiate a long-term lease and/or any other actions required to develop the property.

Therefore, HHFDC has requested that DLNR set aside the subject parcel to HHFDC for the purpose of developing affordable housing and related purposes. It is also requesting an immediate right-of-entry for management purposes. The requested action was approved by the HHFDC Board of Directors at its meeting of September 14, 2017 (refer to Exhibit C).

**RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Hawaii Housing and Finance Development Corporation 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.

3. Authorize the issuance of an immediate right-of-entry permit to Hawaii Housing and Finance Development Corporation for the purpose of management and control of the subject parcel 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 right-of-entry permit form, as may be amended from time to time;

B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

[Signature]

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

[Suzanne D. Case, Chairperson]
Subject Parcel
TMK: (3) 7-4-020:004
EXEMPTION NOTIFICATION

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

Project Title: Set Aside to Hawaii Housing Finance and Development Corporation for Affordable Housing and Related Purposes with an Immediate Management Right-of-Entry

Project / Reference No.: PSF 17HD-122

Project Location: Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-020:004.

Project Description: Transfer of management and control of the subject parcel to the Hawaii Housing Finance and Development Corporation for the development of affordable housing and related purposes. This transfer completes a prior authorization effectuating the Governor’s Comprehensive Housing Program pursuant to HRS 10-13.6.

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 43, “Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor’s executive order.”

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Consulted Parties: County of Hawaii: Planning Dept. and Office of Housing and Community Development
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.
EXHIBIT C

Reviewed and Approved by the Executive Director
September 14, 2017

FOR ACTION

I. REQUEST

Approve: (1) HHFDC Request For a Set Aside, (2) Right-of-Entry to the County of Hawaii, (3) Subdivision, (4) Issuance of a Ground Lease to the County of Hawaii, and (5) Easements For Access and Utilities at Village 9 of the Villages of La‘i‘opua at Kealakehe, North Kona, Hawaii, TMK No.: (3) 7-4-020: 004 (Portion of)

II. FACTS

Name: Village 9 The Villages of La‘i‘opua
Location: Kealakehe, North Kona, Hawaii
Land Ownership: State of Hawaii Department of Land and Natural Resources (DLNR)
HHFDC Involvement: Former Master Developer (Reversionary Interest)
Type: Master Planned as Residential
LUC Classification: Urban
Zoning: Agriculture (A-5A)
Tax Map Key: (3) 7-4-020: 004 (portion of)
Acres: 35.774 Acres
Contact: Roy Takemoto, Executive Assistant Office of the Mayor, County of Hawaii 25 Aupuni Street, Suite 2603 Hilo, HI 96720

A. The Hawaii Housing Finance and Development Corporation (HHFDC) and its predecessor agencies, were the master developer of the Villages of La‘i‘opua master planned community, initially called the Kealakehe Master Planned Community, in Kealakehe, North Kona, Hawaii, TMK (3) 7-4-020: 001 to 008; (3) 7-4-021: 001 to 016, and 020 (por.)(VOLA). VOLA was a master planned community in Kealakehe, Hawaii, consisting of approximately 3,300 residential units and other community facilities on approximately 808 acres, excluding the Kealakehe Golf Course.

B. The Department of Land and Natural Resources (DLNR) was the landowner. Approximately 700 acres of the project site is ceded lands.

C. HHFDC was the master developer of VOLA, initially called the Kealakehe Master Planned Community, pursuant to a Memorandum of Understanding with DLNR dated January 4, 1993 and Section 10-13.6, HRS.

D. The Final Environmental Impact Statement (Final EIS) for the Kealakehe Planned Community dated September 20, 1990 was published in the OEQC Bulletin in September 1990 and approved by the Governor on September 27, 1990.
E. Pursuant to For Action dated February 14, 1997 and Village 3 Transfer Agreement dated April 22, 1997, Village 3 at VOLA was transferred to the Department of Hawaiian Home Lands (DHHL).

F. Pursuant to For Action dated February 17, 2000 and Village 4 Transfer Agreement dated April 20, 2000, Village 4 and the adjacent former neighborhood park site at VOLA was transferred to DHHL.

G. On November 15, 2001, the HHFDC Board approved the execution of a transfer agreement with the County of Hawaii for a set aside of approximately one-half of Village 8 at VOLA, TMK (3) 7-4-020: 025, for a County office building. Executive Order No. 3952 dated October 25, 2002 was issued to the County of Hawaii for West Hawaii County Office Building purposes.

H. Due to the ceded lands litigation filed in 1994, development at VOLA was suspended and the balance of the ceded lands portion of VOLA was eventually sold to DHHL pursuant to a Transfer Agreement dated December 30, 2004, and amended by First Amendment of Transfer Agreement dated May 2, 2006 (Transfer Agreement).

I. Village 9 of VOLA, TMK (3) 7-4-020: 004, was excluded from the Transfer Agreement (Village 9). See attached Exhibit A. On January 28, 2005, the Board of Directors of HHFDC's predecessor agency, the Housing and Community Development Corporation of Hawaii (HCDCH), approved the returning of HCDCH's development rights to Village 9 to DLNR for the development of the Kona Community Hospital to be commenced by December 31, 2010, however, if no development is done, the development rights reverts back to HHFDC. The Final EIS for VOLA allocated 308 single-family and multi-family residential units for Village 9. The Kona Community Hospital did not commence construction by December 31, 2010 so the development rights to Village 9 reverted back to HHFDC.

J. On November 10, 2011, the HHFDC Board approved the subordination of HHFDC's development rights to up to 10 acres at Village 9 for the Kona Judiciary Complex.

K. On October 7, 2013, the Department of Accounting and General Services (DAGS), as development manager for the Judiciary, informed HHFDC that it was terminating its interest in Village 9 for the Kona Judiciary Complex because the U.S. Fish and Wildlife Service (FWS) was proposing to designate Village 9 as a critical habitat for endangered plants, and because the Department of Transportation (DOT) was permitting an access to Village 9 only at the intersection across from the public road shown as Main Street on the attached Exhibit A, and was not permitting a right-in, right-out access to Kealakehe Parkway for the Kona Judiciary Complex.

L. Pursuant to a For Action dated July 9, 2015 and Board of Land and Natural Resources' (BLNR) approval on December 9, 2016, on February 8, 2016, HHFDC executed a Memorandum of Understanding (MOU) with FWS for the setting aside of two No Development Areas totaling 4.2 acres at Village 9. See the areas outlined in blue on the attached Exhibit B. The rest of Village 9 can be developed.
III. DISCUSSION

A. By the attached letter dated August 29, 2017 labelled as Exhibit C, the County of Hawaii requested DLNR for a portion of Village 9 for the following:

1. A set aside or ground lease to a 15- to 20-acre area of the makai portion of Village 9 shown in yellow on the attached Exhibit C divided from the rest of the property by an access road across Kealakehe Parkway from Main Street for permanent housing to accommodate the homeless population—e.g., transitional housing and chronic homeless housing; and

2. An immediate right-of-entry to 5 acres within the yellow area of the County’s requested set aside or ground lease area to relieve the demand at the emergency encampment the County has set up at Hale Kikaha, pending consummation of the set aside or ground lease. The proposed access to the right-of-entry area would be on a sewer easement along the makai boundary of Village 9 on the adjacent parcel, TMK (3) 7-4-020: 007, set aside to the County for Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park Purposes (E.O. No. 4355). The proposed uses of the right-of-entry area include temporary shelter, support infrastructure, services, parking and security.

B. Village 9 has no water source allocation nor reserved allocation at the Kealakehe Wastewater Treatment Plant.

C. If a portion of Village 9 is conveyed to the County, proposed conditions for the conveyance are as follows:

1. The access road will be the boundary of the subdivision, and either the access road or access over the road will be conveyed with the County parcel;

2. Sewer allocation from the Kealakehe Wastewater Treatment Plant and water allocation for developments on Village 9 will be from the County’s allocation (not from allocations for Kamakana Villages);

3. The County will complete the subdivision of the County parcel and the access road, as approved by HHFDC;

4. Prior to grubbing and grading on the County parcel, the County will have an archaeologist and a biologist do a field check to avoid negative impacts to any archaeological site, endangered species, or the critical habitat;

5. The County acknowledges that Village 9 is ceded land and is subject to the requirement that in accordance with HRS Section 10-13.5, twenty per cent (20%) of all funds the County derives from the premises (Village 9), other than rent from affordable housing as approved by HHFDC, shall be paid quarterly to HHFDC, by the end of the calendar month following the quarter for which such amount is based. The amount shall be submitted in

---

1 E.O. No. 3665 was cancelled by E.O. No. 4354 and a new E.O. No. 4355 was issued for TMK No. (3) 7-4-020: 007 dated January 28, 2011 to include Public Park Purposes.
arrears with an itemized list of all funds the County derives from the premises, other than rent from leases of affordable housing, for the quarter upon which such amount is based;

6. Compliance with Chapter 343, HRS; and

7. The ground lease shall be issued to the County and the County shall commence construction of the permanent facilities on the County parcel within 5 years of the date of this For Action, unless otherwise extended at the sole discretion of the Executive Director.

D. The land is owned by DLNR so a right-of-entry could be issued to the County pending issuance of a ground lease, as follows:

1. DLNR issues an immediate right-of-entry permit to the County after BLNR approval; or

2. DLNR issues HHFDC a management right-of-entry and consents (if applicable) to a sub-right-of-entry from HHFDC to the County after BLNR approval.

This For Action seeks approval of the County’s requested right-of-entry at Village 9 for an emergency encampment for the homeless in the most expeditious manner acceptable to all parties.

E. This For Action also seeks approval of HHFDC’s request for a set aside of all of Village 9 from DLNR for affordable housing and the County’s proposed permanent facilities to service the homeless population, a subdivision of Village 9 for the access road and a subdivision of the County’s parcel from the balance of the site, HHFDC’s issuance of a 65-year ground lease to approximately 15- to 20 acres of Village 9 to the County of Hawaii at $1/year for permanent facilities to service the homeless population, and a non-exclusive easement for access and utility purposes to service both parcels created by the subdivision.

F. Upon subdivision, a non-exclusive easement will be needed for legal access and utility purposes to service both the County parcel and the balance of Village 9 site since both parcels will be sharing an access roadway, as follows:

<table>
<thead>
<tr>
<th>Grantor:</th>
<th>DLNR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grantee:</td>
<td>DLNR^2</td>
</tr>
<tr>
<td>Benefitted Properties:</td>
<td>County Parcel</td>
</tr>
<tr>
<td>Purpose:</td>
<td>Access and utility purposes</td>
</tr>
<tr>
<td>Consideration:</td>
<td>Gratis</td>
</tr>
</tbody>
</table>

G. The Final EIS for VOLA allocated 308 single-family and multi-family residential units for Village 9. The County shall be responsible for compliance with HRS Chapter 343.

H. Village 9 is 35.774 acres. The usable land area of Village 9 after the issuance of a ground lease to the County will be about 11- to 17- acres as follows:

^2 DLNR is the fee simple owner of the easement area and both of the benefitted properties so DLNR is the proposed Grantor and Grantee of the easements. The easements are required to provide legal access to the ground lessees of the benefitted properties.
FWS No Development Area 4.2 acres
Ground Lease to County 15 to 20 acres
HHFDC Balance 11 to 17 acres

If water and sewer allocations can be obtained, HHFDC proposes that the balance of Village 9 be developed in leasehold as an affordable multi-family rental housing project. At a density of 10 units per acre, the balance of Village 9 could result in approximately 110 to 170 affordable rental units.

IV. RECOMMENDATION

That the HHFDC Board of Directors approve the following for Village 9 at the Villages of La'ī'opu, at Kealakehe, North Kona, Hawaii, TMK (3) 7-4-020: 004, substantially as described in this For Action:

A. Request to DLNR for a set aside of Village 9 to HHFDC for affordable housing and permanent facilities to service the homeless population;

B. A right-of-entry to the County of approximately 5 acres at Village 9 to establish an emergency encampment for the homeless;

C. Subdivision of Village 9 for an access road and the County parcel to enable HHFDC to issue a ground lease of approximately 15-20 acres of Village 9 to the County of Hawaii;

D. Issuance of a ground lease to approximately 15-20 acres of Village 9 to the County of Hawaii at $1/year for 65 years for permanent facilities to service the homeless population;

E. Non-exclusive easements for access and utility purposes for the benefit of the County parcel and the balance of the Village 9 site; and

F. The Executive Director shall be authorized to take all actions necessary to effectuate the purpose of this For Action;

Subject to the following:

G. Approval of the set aside by BLNR and the Governor;

H. The conditions substantially as described in this For Action;

I. Issuance of the ground lease to the County and commencement of construction of the permanent facilities to service the homeless population on the County parcel within 5 years from the date of this For Action, unless otherwise extended at the sole discretion of the Executive Director;

J. Approval as to form of the applicable documents by the Department of Attorney General and execution by the Executive Director; and

K. Compliance with all laws and rules, and such other terms and conditions as may be required by the Executive Director.
Attachment: Exhibit A – Area Map
Exhibit B – FWS No Development Areas
Exhibit C – County Request for Village 9 Dated 8/29/17

Prepared by: Stan S. Fujimoto, Project Manager
Reviewed by: Richard Prahler, Development Branch Chief

Approved by The Board of Directors at its meeting on SEP 14 2017
FINANCE BRANCH
Please take necessary action.

EXECUTIVE DIRECTOR

For Action – September 14, 2017
EXHIBIT B - MAP OF NO DEVELOPMENT AREA
August 29, 2017

Suzanne Case, Chairperson
State of Hawai'i, Department of Land and Natural Resources
Office of the Chairperson
1151 Punchbowl Street
Honolulu, HI 98813

Dear Ms. Case:

RE: Request for Right-of-Entry to Establish an Emergency Homeless Encampment; Kealakehe, North Kona, TMK: (3) 7-4-020:004 por. (approximately 5-acre portion)

The County of Hawai'i hereby requests a right-of-entry to an approximately 5-acre portion of the subject parcel referred to as Village 9 of La'i 'Opu'a Villages to establish an encampment for the homeless. The County currently operates an emergency encampment on the site of the County's Hale Kikaha homeless shelter in the Kona Industrial area. However, this site does not have adequate area to accommodate the demand.

We have coordinated with the Hawai'i Housing Finance & Development Corporation (HHFDC), who holds development rights for the subject parcel. The ultimate request that we have presented to HHFDC is to subdivide a 15-20 acre portion of the subject Village 9 parcel to enable the County to develop permanent facilities to service the homeless population. The 5-acre right-of-entry is within this proposed 15-20 acre future lot. The County would request an E.O. or lease for the future lot. Because of the pressing homeless needs, this right-of-entry would enable the setup of immediate emergency facilities while the E.O. or lease is being consummated.

1 According to the Final EIS for the Kona judiciary complex site selection, the Board of Directors of the Housing and Community Development Corporation of Hawaii (HHFDC's predecessor), approved the return of HHCDCH's development rights to Village 9 to DLNR for the development of the Kona Community Hospital.

Since development had not commenced by December 31, 2010, the development rights were to revert back to HHFDC. Since development had not commenced by that date, HHFDC currently claims a revisionary interest in the subject Village 9 parcel (Group 70 International, December 2011, Final EIS for the Kona Judiciary Complex Site Selection, p. 4-10).

County of Hawai'i is an Equal Opportunity Provider and Employer.

EXHIBIT C
Ms. Suzanne Case  
August 29, 2017  
Page 2  

The 5-acre right-of-entry is at the makai portion of the subject parcel (see Attachment A). The proposed access is from Kealakehe Parkway via an existing gravel road that runs along the makai boundary of the subject Village 9 parcel. This gravel road is on a County E.O. parcel (E.O. #3665) within a sanitary sewer easement (see Attachment B). The proposed uses of the 5 acres include:

- Temporary shelter—canopy tents and cots to be permitted under the building code as temporary structures;
- Support infrastructure—portable toilets; temporary waterline or water truck; showers and wash basins; trash receptacles; secure personal storage;
- Services—one or more of the canopy tents would be used as a gathering area to provide services such as food, medical, VA counseling, jobs counseling, housing counseling, substance abuse counseling, and mental health assistance;
- Parking—for service providers and the homeless with vehicles;
- Security—check-in station and 24/7 hired security.

Grubbing and grading would be limited to the 5 acres. The Final EIS for the Judiciary building site selection identified a potential historic trail and excavation site on the subject parcel. We will have an archaeologist and a biologist do a field check of the 5-acre site to avoid impacts to any archaeological site, endangered species, or the critical habitat.

We appreciate your attention to this request.

\[Thank you again!\]

Yours truly,

Harry Kim  
Mayor

C: DLNR District Land Agent (attention: Gordon Helt)  
Governor’s Office (attention: Denise Isori-Matsubara)  
HHFDC (attention: Craig Hirai, Stanley Fujimoto)

Attachments:
A. Location Map  
B. Tax Map

County of Hawai‘i is an Equal Opportunity Provider and Employer.