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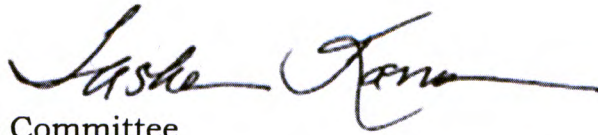
August 24, 2023

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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: HLU-3(5) File

F R O M: Tasha Kama, Chair
Housing and Land Use Committee



SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
STATE EMERGENCY PROCLAMATION RELATING TO HOUSING**
(HLU-3(5))

The attached informational document pertains to Item 3(5) on the Committee's agenda.

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Attachment

OFFICE OF THE GOVERNOR
STATE OF HAWAII
PROCLAMATION RELATING TO HOUSING

By the authority vested in me by the Constitution and laws of the State of Hawai'i, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, JOSH GREEN, M.D., Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, pursuant to Chapter 127A, Hawaii Revised Statutes (HRS), emergency powers are conferred on the Governor of the State of Hawai'i to respond to disasters or emergencies, to maintain the strength, resources, and economic life of the community, and to protect the public health, safety, and welfare; and

WHEREAS, housing is the single biggest household expense in Hawai'i, making up 38% of household spending for our local people and cementing Hawaii's place as the state with the highest cost of living; and

WHEREAS, access to housing for all is essential to the security, health, wellbeing and prosperity of our communities; and

WHEREAS, the severe shortfall of affordable housing had been recognized as early as 1935, when the Territory of Hawai'i passed Act 190, Session Laws of Hawaii 1935, creating the Hawaii Housing Authority; and

WHEREAS, this shortfall has never been adequately addressed, contributing to a 1,200% increase in home prices over the last 45 years, which is double the 600% growth in income over the same period; and

WHEREAS, there is a large segment of the population that earns too much to qualify for traditional affordable housing programs, yet too little to afford to buy or rent market rate housing; and

WHEREAS, this gap is not being addressed by existing housing policy, rendering the need for an increase in *all* housing for our local people all the more visible; and

WHEREAS, the gap population unable to afford housing in Hawai'i includes essential workers, such as healthcare, construction, and educational professionals, who are forced either to move away from the state or to turn down opportunities to work in Hawai'i in the first place; and

WHEREAS, the housing crisis is causing our state to lose talented local people to the lower cost of living on the mainland, and we price ourselves out of the market to attract skilled workers; and

WHEREAS, high housing costs are leading to an increase in emigration from our state, with 20 people leaving the state every day in 2022; and

WHEREAS, this population decline also includes a great loss in our native Hawaiian population, more of whom, according to the U.S. Census Bureau, now live in the continental United States than in Hawai'i for the first time in the state's history; and

WHEREAS, the decrease in our Native Hawaiian population presents a serious danger to the preservation of traditional culture, customs and history; and

WHEREAS, Native Hawaiians represent approximately 21% of Hawaii's population. However, they represent nearly 40% of the state's homeless population. The poverty rate among Native Hawaiians is also significantly higher than the poverty rate for all Hawai'i residents, 12% compared to 9%, or 25% higher than the poverty rate for the entire population (ALICE Report, Aloha United Way, 2022); and

WHEREAS, Native Hawaiians report the highest unemployment rates, lowest median household incomes, and lowest homeownership rates as compared to all other Hawai'i households (American Community Survey, 2019); and

WHEREAS, the Department of Hawaiian Home Lands is responsible for the management of 203,500 acres of trust lands, 9,978 homestead leases statewide, and 46,560 lease applications; however, over 29,124 applicants are on the waiting list, where many have languished for decades waiting for residential, agricultural, or pastoral leases and many have died while so waiting; and

WHEREAS, in a recent analysis of the Department of Hawaiian Home Lands waitlist, 46% of waitlist households were cost burdened paying more than 30% of their monthly income toward housing (HUD, 2017). In addition, 40% of native Hawaiians on the waitlist reported being overcrowded; and

WHEREAS, on May 5, 2022, the Thirty-First State Legislature passed HB 2511 HD2 SD2 CD1, relating to the Department of Hawaiian Home Lands, and which Governor David Y. Ige signed into law as ACT 279 on July 11, 2022; and

WHEREAS, the purpose of Act 279 is to provide the Department of Hawaiian Home Lands a multi-pronged approach to eliminate the long-standing waiting list crisis; and

WHEREAS, Act 279 appropriated a historic \$600,000,000 to the Department of Hawaiian Home Lands to address the needs of native Hawaiians on the Department's waiting list; and

WHEREAS, a 2023 Demographia report placed the median multiple, which is the median house price to median household income multiple, for Honolulu at 11.8, making it the most unaffordable market in the country; and

WHEREAS, Native Hawaiian median household income was \$10,037 less than the median for all Hawai'i households in 2019, leaving them with fewer financial resources to mortgage, qualify or pay for ever-increasing rents (American Community Survey, 2019); and

WHEREAS, living in unaffordable housing is associated with a higher risk of chronic health conditions such as elevated levels of cholesterol, respiratory infections, coronary heart disease, cardiovascular disease, arthritis, stroke and cancer; and

WHEREAS, living in unaffordable housing is also associated with mental health challenges, including chronic stress, anxiety and depression; and

WHEREAS, keiki are especially adversely affected by inadequate housing, which in many cases results in an increased likelihood of child lifetime hospitalizations, cancer, diabetes, obesity, anxiety, depression, and antisocial behaviors; and

WHEREAS, the increasing cost of housing places our communities at greater risk of poverty, with one-quarter of our residents at risk of becoming homeless; and

WHEREAS, kupuna must often pay rapidly increasing rental or mortgage payments out of fixed incomes, contributing to approximately 22,000 living in poverty compared against only 8,135 affordable rental units reserved for the elderly; and

WHEREAS, affordable housing is associated with better health, childhood development, and educational achievement by freeing up more of a family's budget for more nutritious food, access to medical care, and stability where family members can thrive; and

WHEREAS, the responsibility for the development of infrastructure to support housing, which historically had fallen on government, has in recent decades been placed on developers, passing the costs of infrastructure development onto homebuyers and increasing the costs of homes; and

WHEREAS, some of the barriers to developing housing is the lengthy and cumbersome planning, zoning and permitting processes, lack of infrastructure, outdated development plans, the high cost of land and building materials, and the need for new and affordable financing sources for both developers and buyers; and

WHEREAS, the statewide government job vacancy rate is estimated to be about 30% and nearly every department or agency involved in the housing development process is suffering from chronic underemployment, making it nearly impossible for housing to be built in a timely manner; and

WHEREAS, the urgency of the housing shortage in Hawai'i requires that the State, in addition to developing long range plans, develop solutions that can be implemented in the near future to help ease Hawaii's housing shortage; and

WHEREAS, a 2019 report by HHFDC identified that the State needs approximately 10,000 new housing units per year to begin addressing the historical housing shortfall, compared to approximately 4,000 new units currently constructed on average per year; and

WHEREAS, a critical barrier to the speedy development of housing is the lengthy, cumbersome, and antiquated regulatory process, which leads to Hawai'i having the highest level of regulatory restrictions to development in the United States; and

WHEREAS, this process amounts to an average review time for housing development applications equivalent to three times the national average; and

WHEREAS, out of the fifteen housing studies commissioned by the state and counties between 1991 and 2019, all fifteen recommended streamlining the regulatory process; and

WHEREAS, according to a 2021 National Association of Home Builders report, housing regulations, on average across the U.S., add 23.8% to the sales price of any new home, which in Hawai'i equates to a conservative estimate of adding \$233,000 to the cost of a new home; and

WHEREAS, streamlining and supporting the regulatory systems through the provision of additional dedicated review staff and alternative processes among other changes, is necessary to reduce the cost and timeline associated with providing new quality housing for residents of the State; and

WHEREAS, a dedicated working group is required to oversee and monitor progress of housing projects currently in, and coming into, the pipeline, potentially delivering upwards of 40,000 housing units; and

WHEREAS, the need for an immediate and profound solution to Hawaii's housing shortage necessitates the advancement of housing projects in a way that will ensure the production of housing units immediately and going forward; and

WHEREAS, urgent action is needed to combat the ongoing decline in our population, adverse health outcomes for residents of unaffordable homes, and increasing strain on household finances which jeopardize the social and economic fabric of the State; and

WHEREAS, the current threat to the health, safety, and welfare of the people of the State of Hawai'i caused by the lack of affordable housing constitutes an emergency under section 127A-14, HRS, and warrants preemptive and protective actions; and

NOW, THEREFORE, I, JOSH GREEN, M.D., Governor of the State of Hawai'i, hereby determine and proclaim that an emergency or disaster contemplated by section 127A-14, HRS, has occurred in the State of Hawai'i, and in order to promote and protect the public health, safety, and welfare of the people of the State of Hawai'i, and to prepare for and maintain the flexibility to take proactive, preventative, and mitigative measures to minimize the adverse impact that the present emergency may cause on the State and to promote the speedy and safe construction of housing and infrastructure which will minimize the adverse impact that the present emergency may cause on the State, and to work cooperatively and in conjunction with federal and county agencies, do hereby invoke the following measures under the Hawaii Revised Statutes:

I. State Lead Housing Officer

Pursuant to sections 127A-12(b)(9) and 127A(b)(19), HRS, in order to provide emergency relief consistent with the intent of this Proclamation, I hereby direct the appointment of a State Lead Housing Officer who shall take appropriate action to

support and carry out the intent and purposes of this Proclamation. Without limiting the generality of the foregoing, the State Lead Housing Officer shall coordinate with and convene stakeholders, including but not limited to applicable state and county agencies, legislators, non-profit and for profit developers, non-profit housing advocates, the labor and trade industries, and community members, boards, and commissions in order to accelerate permitting processes; eliminate duplication; explore innovative approaches to increase the development of housing, including affordable housing, while maintaining health and safety; share best practices; create working groups to advise on the development of affordable housing; coordinate priority housing projects; regularly review applicable accountability; encourage housing development; and encourage transit oriented development ("TOD"), among other things.

II. Approved Housing Projects

State and county affordable housing projects and private sector mixed-use/mixed-income projects, intended to provide desperately needed housing units, have experienced ongoing delays related to planning, permitting, infrastructure, and financing.

These delays directly contribute to the shortage and increased cost of housing in Hawai'i.

What is needed is a process to promote the expedient development of housing.

Housing, for purposes of this Proclamation, shall be defined as the development of new owner-occupied residential units offered for sale or rental to Hawai'i residents. The development of new residential units shall include multi-unit development or redevelopment projects that replace existing residential units or creates additional residential units; 2) state or county housing projects; 3) infrastructure that will primarily provide services to housing; or 4) Brownfields sites that are developed primarily to provide housing.

State or county housing projects are further defined as housing projects that: 1) utilize state or county land; 2) involve state or county funds; 3) utilize state or county financing; or 4) utilize state or county exemptions or waivers from fees, taxes, zoning, or other restrictions.

A. Build Beyond Barriers Working Group

To accomplish the expedient development of housing the Lead Housing Officer will assemble and chair the Build Beyond Barriers Working Group that will steward housing projects through the development process.

The Build Beyond Barriers Working Group will work to facilitate the review and development of housing projects through a coordinated stakeholder effort and engage entities with key roles in project permitting and site development to increase transparency, coordination, collaboration, and urgency to timely facilitate, coordinate, and align project development and reviews to help prevent further delay of critical

projects. The working group will not be a policy making body and will not pursue statutory or administrative rule changes.

The Build Beyond Barriers Working Group will have three main functions:

1. Inventory, track and coordinate the progress of projects approved by, and project applications to, the State and counties under HRS chapter 201H, non-201H projects with affordable housing units via inclusionary zoning, county affordable housing projects, infrastructure projects related to housing development, and Brownfields sites that are developed primarily to provide housing; and
2. Review, certify, prioritize, inventory, track and coordinate the progress of projects under the Governor's Emergency Proclamation for Housing; and
3. Review and track all other housing projects to assess the workload of housing regulatory agencies.

The Build Beyond Barriers Working Group will be chaired by the Lead Housing Officer.

The Build Beyond Barriers Working Group will be established pursuant to the attached Governor's emergency rules. Housing projects shall be certified based on applications submitted to the Build Beyond Barriers Working Group subject to the attached Governor's emergency rules.

The Build Beyond Barriers Working Group certified projects may be used for the construction of infrastructure projects such as roads, wells, sewer and other utility installations that will serve housing projects. Certified projects may also include Brownfields sites that are developed primarily to provide housing. These projects may service or contain elements other than housing.

Any housing project certified under this Proclamation will be required to pay all mechanics and laborers employed on the project minimum prevailing wages for the corresponding work classifications as determined by the Director of Labor and Industrial Relations pursuant to Chapter 104, HRS, subject to the project labor agreement in place, for the duration of the project until it is completed.

B. Determination of Project Eligibility

The housing projects will be selected based on a combination of factors including, but not limited to, location, total number of units, median income levels for all affordable units, projected construction commencement date, status of entitlements, and financing status.

C. Project Agreements

If the Build Beyond Barriers Working Group finds that (1) the developer has the necessary skill and experience to develop and manage a project of the intended size

and scope; (2) the developer has the necessary resources, including financial resources, to construct and operate the project; and (3) the project is likely to result in the commencement of construction of additional new residential units within 36 months from the execution of the development agreement, the Build Beyond Barriers Working Group may accept the project under the Proclamation. Upon acceptance, the Build Beyond Barriers Working Group shall enter into a development agreement with the developer to set forth the terms of the certification of the project under this Proclamation and the accompanying rules.

The development agreement will be recorded as a deed restriction or as a restriction on the leasehold interest on the property.

Once the development agreement is executed and filed, a project is "certified" under the Proclamation. An annual review by the Governor's office or the Lead Housing Officer of every project is required to verify compliance with the conditions under the development agreement.

The Lead Housing Officer may also determine that certain state or county projects may proceed under this Proclamation without first being certified by the Build Beyond Barriers Working Group.

III. Path Forward

Pursuant to sections 127A-12(b)(1) and (4), HRS, I call on the state and county agencies to cooperate and to forge paths forward to address the affordable housing crisis. The State and the counties should be engaging in discussions regarding mutual aid agreements and what assistance can be provided to speed up the processes that impede the creation of housing across the state.

Pursuant to sections 127A-12(b)(4), (9), (11), (16), and (19), HRS, I direct all state agencies to make the review, planning, approval and processing of permits related to housing a priority.

IV. Suspension of Laws

Section 127A-13(3) HRS, **Additional Powers in an Emergency Period**, to the extent necessary to expedite the construction, repair, renovation, and occupancy of housing and infrastructure projects certified under this emergency Proclamation, I hereby suspend the following statutes and regulations:

Chapter 6E, HRS, **Historic Preservation**, to the extent necessary to expedite the provision of certified housing projects, subject to the attached Governor's emergency rules.

Section 26-35(a)(4), HRS, **Administrative supervision of boards and commissions**.

Section 37-41, HRS, **Appropriations to Revert to State Treasury; Exceptions**.

Section 37-74(d), HRS, **Program Execution**, except for sections 37-74(d)(2) and 37-74(d)(3), and any such transfers or changes considered to be authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.

Section 40-66, HRS, **Appropriations Lapse**.

Chapter 46, HRS, **County Organization and Administration**, to the extent necessary to allow for the construction, repair, renovation, and occupancy of housing and infrastructure projects certified under this Proclamation which suspension shall not include the minimum requirements and standards necessary for health and safety, including applicable floodplain management powers and duties necessary for National Flood Insurance Program participation, for projects certified under this Proclamation. Notwithstanding this Proclamation, counties may establish their own process or rules for ensuring that a Certified Project meets building safety standards.

Chapter 76, HRS, **Civil Service Law**, to the extent necessary to allow for qualified personnel to be hired that would be directly involved in the construction, development or redevelopment of housing, the filling of public housing vacancies, the processing of housing vouchers, or the processing of development related permits, licenses, or approvals, pursuant to the attached Governor's emergency rules.

Chapter 89, HRS, **Collective Bargaining in Public Employment**, to the extent necessary to allow for personnel to be hired that would be directly involved in the construction, development or redevelopment of housing, the filling of public housing vacancies, the processing of housing vouchers, or the processing of development related permits, licenses, or approvals.

Chapter 89C, HRS, **Public Officers and Employees Excluded from Collective Bargaining**, to the extent necessary to allow for personnel to be hired that would be directly involved in the construction, development or redevelopment of housing, the filling of public housing vacancies, the processing of housing vouchers, or the processing of development related permits, licenses, or approvals.

Chapter 92, HRS, **Public Agency Meetings and Records**, to the extent that any notice requirements or any other provisions of Chapter 92 may delay the expeditious action, decision, or approval of any board or agency.

Section 103-2, HRS, **General Fund**.

Chapter 103D, HRS, **Hawaii Public Procurement Code**, to the extent that the department has determined that it is not practicable or advantageous to procure the services required via traditional procurement methods and the procurement promotes the construction, repair, renovation, and occupancy of housing. The suspension is for the solicitation process only and is subject to the attached Governor's emergency rules.

Section 104-2(i)(3), HRS, **Applicability; wages, hours, and other requirements**.

Section 107-24(c), HRS, **Authority and duties of the council**, to the extent necessary to suspend the ability of the state building code council to amend or update the Hawai'i state building codes to allow for consistency and stability in the construction of housing.

Section 201H-36(a)(5)(A), HRS, **Exemption from general excise taxes**.

Section 201H-38(a)(3), HRS, **Housing development; Exemption from statutes, ordinances, charter provisions, and rules**, that requires approval of the legislative body of the county in which the housing project is situated.

Sections 205-3.1(a) and 205-4(a), HRS, **Land Use Commission**, to the extent district boundary amendments involving land areas that are greater than fifteen acres but less than one hundred acres in the agricultural, rural, and urban districts are required to be processed by the land use commission. Petitions for changes in district boundaries of lands greater than fifteen acres but less than one hundred acres in the agricultural, rural, and urban districts shall be subject to the attached Governor's emergency rules.

Section 206E-5.6, HRS, **Hawaii Community Development Authority**, and section 15-218-80, Hawaii Administrative Rules ("HAR"), to the extent necessary to allow for the timely development of additional residential units.

Sections 302-1601 to 1612, HRS, **School Impact Fees**.

Chapter 343, HRS, **Environmental Impact Statements**, to the extent necessary to expedite the provision of approved housing projects, subject to the attached Governor's emergency rules.

Sections 601-1.5, 708-817, 708-818, 708-820(1)(c), 708-830.5(1)(d), 708-840(1)(c) and (d), HRS, to the extent these sections contain provisions for the suspension, tolling, extension, or granting of relief from deadlines, time schedules, or filing requirements in civil, criminal, or administrative matters before the courts of the state or to the extent that these sections contain provisions for criminal penalties that are automatically heightened by reasons of any declared disaster or emergency.

Section 127A-25(c), HRS, rules and orders, to the extent the requirement to publish rules adopted pursuant to chapter 127A, HRS, in a newspaper of general circulation in the State shall be suspended inasmuch as the posting of such rules on the applicable state or county government website or by other means of official announcement as provided by this section brings the rules' content to the attention of the general public.

Pursuant to section 127A-25, HRS, I hereby adopt the Rules Relating to Project Certification Pursuant to the Governor's Emergency Proclamation Relating to Housing attached hereto. These rules shall have the force and effect of law.

V. State Cooperation

Section 127A-12(b), HRS. I hereby direct all state agencies and officers to

cooperate with and extend services, materials, and facilities as may be required to assist in all efforts to address the objectives of this Proclamation.

VI. Severability

If any provision of this Proclamation is rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted, and the remainder of this Proclamation and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

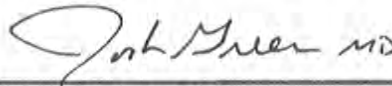
VII. Enforcement

No provision of this Proclamation, or any rule or regulation hereunder, shall be construed as authorizing any private right of action to enforce any requirement of this Proclamation, or of any rule or regulation. Unless the Governor, Director of Emergency Management, or their designee issues an express order to a non-judicial public officer, no provision of this Proclamation, or any rule or regulation hereunder, shall be construed as imposing any ministerial duty upon any non-judicial public officer and shall not bind the officer to any specific course of action or planning in response to the emergency or interfere with the officer's authority to utilize his or her discretion.

I FURTHER DECLARE that this Proclamation is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of Hawai'i, the counties of this State, or any State or County agencies, departments, entities, officers, employees, or any other person.

I FURTHER DECLARE that the disaster emergency relief period shall commence immediately and continue through September 15, 2023, unless terminated or superseded by separate proclamation, whichever shall occur first.

Done at the State Capitol, this 17th day of July, 2023



Josh Green, M.D.
Governor of Hawai'i

APPROVED:



Anne E. Lopez
Attorney General
State of Hawai'i

Rules Relating to Project Certification
Pursuant to the Governor's Emergency Proclamation Relating to Housing

- § 1 Purpose and Authority
- § 2 Definitions
- § 3 Applicability of Proclamation and Rules
- § 4 Build Beyond Barriers Working Group
- § 5 Certification Application
- § 6 Project Eligibility
- § 7 Development Agreements
- § 8 Prioritization of Certified Projects
- § 9 Application of Suspended Laws
 - A. Chapter 6E, HRS, Historic preservation program
 - B. Section 46-4, HRS, County Organization and Administration
 - C. Chapter 76, HRS, Officers and Employees
 - D. Chapter 103D, HRS, Hawaii Public Procurement Code
 - E. Section 201H-38(a)(3), Housing development; exemption from statutes, ordinances, charter provisions, and rules.
 - F. Sections 205-3.1(a) and 205-4, HRS, Land Use Commission
 - G. Chapter 343, HRS, Environmental Impact Statements

§ 1 Purpose and Authority

These rules are intended to expedite the construction, development, and redevelopment of housing under the Governor's Emergency Proclamation Relating to Housing ("Proclamation") through the certification of projects that will be allowed to proceed under the Proclamation. Only projects certified by the Build Beyond Barriers Working Group ("Working Group") are eligible for coverage under the Proclamation and these rules. These rules are intended to clarify the application of the Proclamation to certified projects.

These rules are adopted pursuant to sections 127A-11, 12, 13, and 25, Hawaii Revised Statutes (HRS), to respond to the housing emergency declared by the Governor and have the force and effect of law.

§ 2 Definitions

"Agency" means any department, office, board, or commission of the state or county government that is part of the executive branch of that government.

"Housing" means:

- a. Owner-occupied residential units offered for sale to Hawai'i residents;
- b. Residential units offered under rental agreements with terms of one year or more to Hawai'i residents;
- c. Infrastructure that will primarily provide services to housing;
- d. Brownfields sites that are developed primarily to provide housing; or
- e. State or county housing projects that:
 1. Utilize state or county land;
 2. Involve state or county funds;
 3. Utilize state or county financing; or
 4. Utilize state or county exemptions and waivers.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the state of Hawai'i department of taxation, for a period of not less than five years; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period unless the possessory control is broken as a result of (1) serious illness of any of the owner-occupants; (2) unforeseeable job or military transfer; (3) unforeseeable change in marital status, or change in parental status; or (4) any other unforeseeable occurrence. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Project proponent" means the person or entity applying to have a project certified. This person or entity may be referred to as the developer of the project.

"Significant historic property" means historic property that is significant under Hawaii Administrative Rules ("HAR") sections 13-275-6(b) or 13-284-6(b).

§ 3 Applicability of Proclamation and Rules

The suspension of laws set forth in the Proclamation shall apply only to those projects which are confirmed by the Lead Housing Officer ("LHO") as certified by the Working Group as having met the requirements for eligibility set forth in these rules

("Certified Projects"). The LHO may also determine that certain state or county projects are suitable to proceed without first going through certification.

Certified Projects will not be subject to the state or county regulations suspended under the Proclamation while still ensuring that Certified Projects meet minimum requirements for health and safety, including applicable floodplain management powers and duties necessary for National Flood Insurance Program participation. Certified Projects may utilize alternative processes as set forth in these rules.

§ 4 Build Beyond Barriers Working Group

A. Membership of the Working Group shall consist of representatives of state agencies and representatives of non-state agencies and entities. The members shall be as follows:

1. Representatives from the following state agencies:
 - a. Office of Planning and Sustainable Development;
 - b. Department of Business Economic Development and Tourism;
 - c. Hawaii Housing Finance Development Corporation;
 - d. Department of Land and Natural Resources;
 - e. State Historic Preservation Division;
 - f. Commission on Water Resource Management;
 - g. Land Use Commission;
 - h. Department of Health;
 - i. Department of Transportation;
 - j. Hawaii Public Housing Authority;
 - k. Department of Budget and Finance; and
 - l. The Island Burial Council of the island where the project is located.
2. Representatives of the following non-state entities:
 - a. The chairs of legislative subject matter committees relating to housing (non-voting members only);
 - b. County mayors of the island where the project is located;
 - c. County permitting and regulatory agency representatives of the island where the project is located;
 - d. County department of water supply representatives of the island where the project is located;

- e. Hawaiian Electric Co. or Kauai Island Utility Cooperative, as applicable, for the island where the project is located;
- f. Honua Consulting, LLC;
- g. The Executive Director of Housing Hawaii's Future;
- h. Economic Research Organization at the University of Hawai'i ("UHERO");
- i. The Executive Director of the Sierra Club of Hawai'i;
- j. The Executive Director of the Land Use Research Foundation; and

B. The membership of the Working Group shall meet in a time and manner prescribed by the LHO.

C. Any action taken by the Working Group shall be by a simple majority of the members present at a meeting.

D. The duties of the Working Group will include certification of projects under the Proclamation; evaluation of the progress of certified projects and, where necessary, assist in moving projects through regulatory or review processes; and provide advice to certified projects based on the expertise of members of the Working Group.

E. The LHO shall have the authority to invite participation by subject matter experts to attend any meeting of the Working Group as deemed appropriate and necessary to provide information and support the activities of the Working Group.

F. Members of the Working Group shall have the authority to raise compliance concerns regarding any certified project. The LHO shall investigate and resolve any concerns raised by the Working Group members regarding certified projects. Where the LHO finds that a certified project is in violation of its applicable development agreement, the LHO has the authority to take appropriate corrective action, including, but not limited to, decertification in accordance with the terms of the development agreement.

§ 5 Certification Application

Project proponents seeking to have the terms of the Proclamation apply to their project shall submit to the Working Group the following documentation:

1. Name, address, email address and telephone number of the project proponent and each member of the project team. If the project proponent is a corporation or other legal entity, evidence of the project proponent's status and registration with the Department of Commerce and Consumer Affairs, and the names, address, email address and telephone number of each officer and director of the entity. The name, address, email address, and telephone number of the main point of contact should be identified;

2. Proof that the project proponent has site control such as a deed, agreement of sale, long term lease, option to lease, or other disposition;
3. A description of the project proponent's experience or involvement in the development of housing or projects of similar scope, size, and complexity;
4. A description of the project proponent's past or current experience or involvement in any programs or its provision of services, including other than housing, that would give evidence of the project proponent's ability to manage a project of this type and scope;
5. A conceptual site plan showing the general development of the project site including the locations and descriptions of proposed and existing buildings, parking areas, unusual site features, proposed and existing major drainage facilities, and any proposed and existing ground disturbance;
6. A development plan including the number of units, maximum occupancy, construction method, infrastructure capacity and needs, and an anticipated schedule of construction. The infrastructure needs should include a description of methods of sewage and solid waste disposal and sources of water and other utilities;
7. The proposed financing for the project, including the manner in which the project will be financed during the development and construction of the project, and upon completion of the project and sources of repayment of such financing. This should include any proposed grants, donations, loans, bonds, tax credits, or other sources of financial resources; and
8. The project proponent's plan for obtaining public input, which shall include, but not be limited to, at least one public meeting (e.g., via Neighborhood Board meeting, public hearing, or town hall) during which public input shall be accepted and documented, at least one public notice of wide circulation regarding the project which shall offer the public a period for review and submission of written comments of at least thirty days from the date of publication, and a plan to consult with appropriate stakeholder groups regarding any impacts to environmental or cultural resources, if such impacts are reasonably anticipated;
9. A full list of agency approvals that the project would be required to obtain absent certification, including any waivers, variances, and/or exemptions being sought from said agencies;
10. A summary description of the affected environment, including, but not limited to, suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, United States Department of Agriculture soil maps, state sea level rise exposure area maps, and any technical reports on the project area, including but not limited to geological

surveys, hydrological surveys, biological surveys, historic building or other cultural surveys, and traffic studies;

11. Identification and analysis of impacts, including but not limited to environmental and cultural impacts, including impacts to traditional or customary practices, and alternatives considered; and
12. Proposed avoidance, minimization, or mitigation measures to be implemented for the purpose of limiting any potential environmental or cultural impacts, if appropriate.

§ 6 Project Eligibility

- A. A project is eligible for certification if the Working Group finds that:
 1. the project proponent has the necessary skill and experience to develop and manage a project of the intended size and scope;
 2. the project proponent has the necessary resources, including financial resources or a viable plan to secure financial resources, to construct and operate the project;
 3. the project is likely to result in the commencement of construction of additional new residential units within 36 months from the issuance of the Proclamation; and
 4. the project is unlikely to result in the irreversible and irretrievable commitments of significant environmental or cultural resources, including impacts to traditional or customary practices, that cannot be mitigated.
- B. A project may also be allowed to proceed under the Proclamation if it is a state or county project for which a developer has been retained that has the necessary skill and experience to develop a project of the intended size and scope, the project is likely to result in the commencement of construction of additional new residential units within 36 months from the issuance of the Proclamation, and the project has the necessary resources, including financial resources or a viable plan to secure financial resources, to construct and operate the project. The LHO may approve for the state or county project to proceed under the Proclamation without certification.

§ 7 Development Agreements

Upon acceptance of a project by the Working Group, the project proponent shall enter into a development agreement to set the terms of the certification of the project under the Proclamation.

- A. A development agreement shall:

1. Describe the land subject to the development agreement;
 2. Specify the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings;
 3. Provide, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement; and
 4. Provide a termination date; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from entering subsequent development agreements.
- B. The terms and conditions of the development agreement shall include:
1. The purpose of the agreement, which shall include the development of housing units and/or infrastructure;
 2. A description of the role and responsibilities of the project proponent and other parties to the agreement;
 3. A construction commencement deadline set 36 months after certification of the project;
 4. Time required to complete construction of the project;
 5. The period of mandatory affordability for applicable residential units;
 6. The penalty for sale of residential units with affordability requirements during the mandatory affordability period; and
 7. Standard clauses that the Working Group will determine to be required, including but not limited to, the following:
 - a. Indemnity
 - b. Severability
 - c. Termination;
 - d. Penalties for noncompliance, including, but not limited to, decertification; and
 - e. Assignability.

§ 8 Prioritization of Certified Projects

The Working Group shall prioritize the processing or review of certified projects by applicable state and county agencies. The certified projects may be prioritized based on, but not limited to:

1. The inclusion of affordable housing as a component of the certified project. Affordable housing shall refer to housing that is restricted to buyers earning 140% AMI or below. The amount of affordable housing included in the project may affect the priority given to the project.

2. The status of the financing for the project.

3. The status of entitlements required for the project.

4. The projected commencement and completion dates for the project.

§ 9 Application of Suspended Laws

A. Chapter 6E, HRS, Historic preservation program

Prior to utilizing the suspension of Chapter 6E, HRS, the LHO, in consultation with members of the Working Group, shall make a determination for each certified project as to the effect of the certified project on historic properties, aviation artifacts, or burial sites, especially those listed on the Hawaii register of historic places. The determination of effect shall be made in accordance with the following rules:

1. Projects in Highly Sensitive Areas. Projects located in highly sensitive areas or within a historic district, are presumed to require an archaeological inventory survey ("AIS") unless such survey(s) have already been previously reviewed and accepted by the State Historic Preservation Division ("SHPD") for the same or substantially similar project located in the same project area. The terms under which an AIS must be prepared shall be set forth in the project's development agreement and shall be binding upon the project proponent. Highly sensitive areas are defined as areas known to include a high density of historic, cultural, or archaeological resources, or which have a high propensity to contain a high density of historic, cultural, or archaeological resources.
2. Projects in Moderately Sensitive Areas. Projects located in moderately sensitive areas in which no significant historic properties have been previously identified within the project area, may proceed without further review under this part under an archaeological monitoring program to be implemented by a qualified archaeological firm actively permitted under HAR chapter 13-281. The terms under which the archaeological monitoring program will be implemented shall be set forth in the project's development agreement and shall be binding upon the project proponent. Moderately sensitive areas are defined as areas known to include a medium density of historic, cultural, or archaeological resources.

3. Projects in Nominally Sensitive Areas. Projects located in nominally sensitive areas or where the project area has been substantially disturbed by previous excavation or other ground disturbing work and no significant historic properties have been previously identified, may proceed without further review under this part. Nominally sensitive areas are defined as locations known to include a low density of historic, cultural, or archaeological resources.
4. If human remains are identified during archaeological monitoring and/or project construction, SHPD, the County Coroner's Office and the County Police Department will be immediately notified in accordance with HAR section 13-300-40. The State of Hawai'i Department of Land and Natural Resources SHPD Inadvertent Discovery of Human Skeletal Remains Checklist will be filled out and submitted to SHPD. A state inventory of historic places ("SIHP") request will be completed and submitted to SHPD. All construction work within the vicinity of the finding of a human burial will be stopped, although work in other areas of the project may continue.
5. Physical examination of human skeletal remains may be conducted by a qualified professional to help evaluate ethnicity as deemed necessary. Physical examination shall be conducted in a respectful manner, with a recognition of the sensitivities associated with deceased human beings. Physical examination methods of human remains shall consist only of the observation of metric, non-metric, or other relevant traits needed to suggest ethnicity, or a combination thereof, if necessary. Any intrusive or destructive examination method including, but not limited to, x-ray, radiocarbon dating, and mitochondrial DNA analysis, is prohibited. Photography of human skeletal remains subject to examination pursuant to this subsection shall be prohibited. Failure to comply with this subsection shall constitute a violation of the development agreement.
6. Skeletal remains shall remain in place to the extent feasible until a determination of whether to relocate or preserve the remains in place is made.
7. In the event that human skeletal remains are identified during an archaeological monitoring program for identification purposes or project construction on a certified project in which an inventory survey was not completed, the project proponent shall be responsible for having a qualified professional respectfully examine the remains and make a determination as to: 1) the number of individuals represented, 2) the relevant context in which the remains were found, and 3) the suggested ethnicity of each individual or a finding that ethnicity could not be suggested by reasonable belief.

8. If a qualified professional determines that the remains are likely of Native Hawaiian descent, the project proponent shall publish notice of the find in a newspaper of general circulation in the state within seven days of the discovery. The LHO shall also place the notice on the Office of the Governor website. The notice shall include the following:
 - a. Location of the discovery, including project address and tax map key number (TMK)
 - b. A brief summary of any relevant historic information known about the property
 - c. Contact information for descendants seeking additional information or who may want to request descendancy recognition pursuant to HAR section 13-300-35.
9. The project proponent shall be responsible for assisting any respondents to the public notices in completing timely descendancy claim applications, should such assistance be requested.
10. Within fourteen days of the discovery, the project proponent shall provide a proposed burial treatment plan to the LHO, SHPD, and the island burial council of jurisdiction, which shall include the following:
 - a. A description of proposed treatment of all burial sites including a statement of preservation in place or relocation: (A) In the event preservation in place is proposed, statements describing: (i) Short term measures to immediately protect all burial sites including, but not limited to, fencing, buffers, and site restoration; and (ii) Long term measures to properly manage and protect all burial sites including, but not limited to, buffers, landscaping, and access by known lineal or cultural descendants; (B) In the event relocation is proposed, statements describing: (i) Reasons that warrant relocation; (ii) The methods to be utilized to conduct disinterment; (iii) The location and manner by which Native Hawaiian skeletal remains and any burial goods will be curated where reburial will not occur immediately following disinterment; (iv) The proposed reburial site location mutually agreed upon by the landowner and any recognized lineal descendants; (v) The manner in which the reburial site will be prepared; (vi) Short term measures to immediately protect the reburial site, including but not limited to fencing and buffers; and (vii) Long term measures to properly manage and protect the reburial site including, but not limited, to buffers, landscaping, and access by known lineal or cultural descendants;
 - b. Maps clearly indicating the location of all identified Native Hawaiian burial sites located at the property, including where applicable, the

spatial relationship between Native Hawaiian burial sites and any proposed construction activities, drawn to scale;

- c. Names of any known lineal or cultural descendants recommended by the department and recognized by the council and all respondents to the public notices, and their respective positions regarding burial site treatment;
 - d. Any descendency claim applications associated with the burial(s).
11. Where it is reasonably determined that the remains are of Native Hawaiian descent, the appropriate island burial council shall have sixty days from the date of submission of a proposed burial treatment plan to the LHO, SHPD, and island burial council to determine whether preservation in place or relocation of the remains is warranted.
- a. The project proponent shall be responsible for notifying all descendants and other interested parties by electronic mail of any council meeting during which treatment of the remains will be taken up.
 - b. If the appropriate island burial council fails to render a decision within sixty days of submittal, the project proponent's proposed treatment shall be considered approved. The project proponent may implement the plan with SHPD's concurrence.
12. If a qualified professional determines that the remains are likely not of Native Hawaiian descent or that an ethnicity could not be suggested by reasonable belief, the project proponent shall have fourteen days from the date of discovery to provide a proposed burial treatment plan to the LHO and SHPD. SHPD shall make a determination as to the disposition of the remains within seven days. If within seven days SHPD fails to render a decision thereon, the treatment plan shall be considered approved and the project proponent may implement the plan as proposed.
13. Any certified project that has any historic property within the project area is required to fully identify and inventory all historic properties that may be adversely affected by a project, regardless of integrity or significance. Projects are required to confirm or obtain SIHP numbers for all historic properties located within the project area prior to the start of construction.
14. Any certified project that may adversely affect a significant historic property is required to make a reasonable and good faith effort to avoid or minimize any effect to significant historic properties. If an adverse effect cannot reasonably be avoided, the project shall mitigate the adverse effect. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial,

ethnographic documentation, historic data recovery, and architectural recordation. The terms under which mitigation will be implemented will be reviewed and accepted by the LHO in consultation with SHPD and shall be set forth in the project's development agreement and be binding upon the project proponent.

B. Section 46-4, HRS, County Organization and Administration

Notwithstanding any law to the contrary, each county may adopt reasonable standards to allow the construction of multi-family residential dwelling units on any lot where business activities are permitted as follows:

1. For the County of Hawaii this includes the following: Neighborhood Commercial, General Commercial, Village Commercial, Industrial – Commercial Mixed
2. For the County of Maui these include the following: All Business Districts
3. For City and County of Honolulu these include the following: All Business Districts
4. For the County of Kauai these include the following: All Commercial Districts.

C. Chapter 76, HRS, Officers and Employees

1. Recruitment and hiring of employees under the Proclamation shall follow, to the extent possible, the principles set forth in section 76-1, HRS. To the degree possible, the following shall be followed in the recruitment and hiring of employees:
 - a. Equal opportunity for all in compliance with all laws prohibiting discrimination. No person shall be discriminated against in examination, appointment, reinstatement, reemployment, promotion, transfer, demotion, or removal, with respect to any position when the work may be efficiently performed by the person without hazard or danger to the health and safety of the person or others;
 - b. Impartial selection of individuals for public service by competitive means which are fair, objective, and practical; and
 - c. Equal pay for equal work shall apply between classes for those classes determined to be equal based on objective criteria and adequate job evaluation unless it has been agreed in

accordance with chapter 89 to negotiate the repricing of classes.

2. All employees hired under the Proclamation shall be exempt from civil service and shall be deemed to have been hired as employees engaged in a special or demonstration project approved by the governor. The term of these employees shall be for a period not to exceed one year.
3. Prior to hiring any employee under the Proclamation, the appointing agency shall determine that the employee:
 - a. would be directly involved in the construction, development or redevelopment of housing, the filling of public housing vacancies, the processing of housing vouchers, or in the processing of development related permits, licenses, or approvals; and
 - b. it would be impractical or untimely to hire the employee under the civil service system under chapter 76, HRS.
4. The appointing agency shall ensure that all employees hired under the Proclamation meet the following:
 - a. Persons seeking employment meet the physical and mental requirements necessary for the safe and efficient performance of the duties of the position for which they are being hired and can be expected to continue to meet physical and mental requirements for continued employment.
 - b. Each employee is able to perform their duties satisfactorily and without undue hazard to the employee or others or without undue hardship on the operation of the program.
 - c. Each employee is qualified to perform the duties and functions of the position that they are being hired into.

D. Chapter 103D, HRS, Hawaii Public Procurement Code

Prior to utilizing the suspension of chapter 103D, HRS, the department has determined that it is not practicable or advantageous to procure the services required via traditional procurement methods. This suspension is for the solicitation process only. Pursuant to HRS section 103D-310(c) and HAR section 3-122-112, the procuring officer shall verify compliance (i.e. vendor is required to provide proof of compliance and may use the Hawaii Compliance Express) for all contracts awarded. Copies of the compliance and the award posting are required to be documented in the procurement/contract file.

The award is required to be posted on the Hawaii Awards and Notices Data System (HANDS) pursuant to Procurement Circular PC2019-05 within seven days after award.

- E. Section 201H-38(a)(3), Housing development; exemption from statutes, ordinances, charter provisions, and rules.

Section 201H-38(a)(3) is suspended to allow the counties in which the housing project is to be situated to approve the project, with or without modifications, without requiring the county councils to approve, approve with modification, or disapprove the project by resolution. Instead, the counties may approve, approve with modification, or disapprove the project through action of the planning director of the respective county.

- F. Sections 205-3.1(a) and 205-4, HRS, Land Use Commission

1. Section 205-3.1(a), HRS is suspended to the extent that district boundary amendments involving land areas that are greater than fifteen acres but less than one hundred acres in the agricultural, rural, and urban districts, excluding lands delineated as important agricultural lands, are required to be processed by the land use commission. Any such amendments shall be determined by the appropriate county within sixty (60) days from the date of petition. Should the county fail to render a decision thereon, the petition shall be considered approved, and the project proponent may proceed with the plan subject to the terms and conditions provided in the petition. This suspension does not apply to lands in the conservation district.
2. Section 205-4, HRS is suspended to the extent that it applies to petitions for changes in district boundaries of lands greater than fifteen acres but less than one hundred acres in the agricultural, rural, and urban districts, excluding lands delineated as important agricultural lands. This suspension does not apply to lands in the conservation district.

- G. Chapter 343, HRS, Environmental Impact Statements

Prior to approving the suspension of Chapter 343, HRS, the proposing or approving agency or LHO shall make a determination for each certified project whether the project is likely to cause the irreversible and irretrievable commitment of resources that cannot be mitigated should it be implemented or whether the cumulative impact of planned successive actions in the same place, over time, is likely to be significant, or whether an action that is normally insignificant in its impact to the environment may be significant in a particularly sensitive environment.

The determination of effect shall be made as follows:

1. The proposing or approving agency or LHO, in making the project determination, shall review all documentation provided by the project proponent under Section 5 of these rules and undertake an analysis to determine whether the action qualified under this part merits suspension of chapter 343. In addition, the project proponent shall provide for consideration:
 - a. All comments and responses to the comments received and made pursuant to the project proponent's plan for public input; and
 - b. Any additional documents or information requested by the proposing or approving agency or LHO in consideration of this determination.
2. For projects found to likely not be significant in its impact, project proponents will be allowed to proceed after first electronically publishing the determination on the Office of the Governor website and submitting the determination to the Office of Planning and Sustainable Development Environmental Review Program for publication in the environmental notice bulletin.
3. For projects found likely to cause the irreversible and irretrievable commitment of resources that cannot be mitigated or which may be significant in its impact either cumulatively or because it is being proposed in a particularly sensitive environment, project proponents will be required to go through the Hawaii Environmental Review Process under chapter 343, HRS.
4. Any terms under which a determination has been made shall be set forth in the project's development agreement and shall be binding upon the project proponent.