OFFICE OF THE GOVERNOR

STATE OF HAWAI'I

PROCLAMATION RELATING TO AFFORDABLE 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 Hawaii Housing Finance and Development Corporation (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 2023 report by the University of Hawai'i Research Organization found that Hawai'i has the most restrictive land use regulations in the country, creating barriers to new housing construction, which has increased by less than 1% each year,

resulting in the highest median home prices in the country; 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 U.S. Department of Housing and Urban Development found mixed-financing to be a critical development tool in ensuring the long-term sustainability of public housing projects and encouraging vibrant mixed-income communities; and

WHEREAS, Hawaii Housing Finance and Development Corporation currently uses an affordability threshold of 0% to 140% of the area median income (AMI) across a number of programs and financing mechanisms to encourage the development of affordable housing units for extremely low-income, low-income, moderate-income, and workforce populations; and

WHEREAS, on August 8, 2023, approximately three weeks after the Housing Emergency Proclamation was issued, wildfires on Maui burned thousands of acres of land causing catastrophic loss of life and property in the County of Maui leaving thousands of people without adequate shelter and further exacerbating the housing

shortage in Hawai'i; 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. Emergency Proclamation Execution

Pursuant to sections 127A-12(b)(9) and 127A-12(b)(19), HRS, in order to provide emergency relief consistent with the intent of this Proclamation, I hereby direct the following state officials with housing expertise: the Director of the Office of Planning and Sustainable Development, the Executive Director of the Hawaii Public Housing Authority, and the Executive Director of the Hawaii Housing Finance and Development Corporation to take appropriate action to support and carry out the intent and purposes of this Proclamation. Without limiting the generality of the foregoing, they may 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; encourage housing development; and encourage transit-oriented development (TOD), among other things.

This Proclamation shall not apply to the area affected by the Lahaina wildfire as shown in the attached map.

II. Affordable Housing Projects

A. Definitions

1. Housing, for purposes of this Proclamation, shall include:

   a. Conversion of existing residential units to affordable or subsidized units;

b. Development, redevelopment, or adaptive reuse that results in new residential units offered for sale as owner-occupied units;

c. Development, redevelopment, or adaptive reuse that results in new residential units offered for rental to Hawai'i residents for which the unit will be the renter's principal residence;

d. Renovations, rehabilitation, or repair of existing affordable or subsidized units;

e. Renovations, rehabilitation, or repair of existing units that will be offered for sale as owner-occupied units;

f. Renovations, rehabilitation, or repair of existing units that will be offered for rental to Hawai'i residents for which the unit will be the renter's principal residence; or

g. Infrastructure that will primarily provide services to housing.

2. "Owner-occupied" means a residential unit that, simultaneous to such ownership, serves as the owner's principal residence 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 owner shall be deemed to have complete possessory control even when the owner conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the owner's principal residence during this period.

3. "Principal residence" is used as defined by the State of Hawai'i Department of Taxation.

4. "Affordable housing" is housing that is:

   a. Offered to applicants who earn 0% to 140% of the AMI; or

   b. Department of Hawaiian Home Lands projects as approved by the Hawaiian Homes Commission.

   Affordable housing projects may include mixed-use/mixed income projects that are primarily affordable.

B. State affordable housing projects in which 1) the land is owned by the state and 2) the housing units are owned or have the potential to be owned by right of first refusal by one of the following state housing agencies: Hawaii Public Housing Authority, Hawaii Housing Finance and Development Corporation, Department of Hawaiian Home Lands (or its beneficiaries as owners), or Hawaii Community Development Authority may proceed under this Proclamation.

State agencies with responsibility for the administration, regulation, production, or infrastructure to support housing may proceed under this Proclamation for purposes of recruitment of personnel and procurement.

All other affordable housing projects may apply for consideration to proceed under this Proclamation through certification by the Build Beyond Barriers Working Group.

C. Build Beyond Barriers Working Group

The Build Beyond Barriers Working Group (BBB) is established to facilitate the review and development of affordable 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 BBB will not be a policy making body and will not pursue statutory or administrative rule changes.

The BBB will have three main functions:

1. Inventory, track, and coordinate the progress of projects certified 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, brownfield sites that are developed primarily to provide housing, and transit-oriented development sites; and
2. Review and certify affordable housing projects under this emergency proclamation; and
3. Review and track all other housing projects to assess the workload of housing regulatory agencies.

Affordable housing projects may be certified based on applications submitted to the BBB subject to the attached emergency rules.

The BBB 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 brownfield 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 the Department 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.

D. Determination of Project Eligibility for Certification

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.

E. Certification Requirements

The BBB may certify a project upon finding 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 or the phase thereof is likely to result in the commencement of construction of additional new residential units within 36 months from the issuance of the resolution.

Certification shall be in the form of a resolution issued to the applicant with copies to the appropriate state and county agencies as provided in the project application.

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(a)(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 intended to provide emergency relief under this Proclamation, I hereby suspend the following statutes and regulations:

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 or contractors 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 emergency rules.

Chapter 89, HRS, **Collective Bargaining in Public Employment**, to the extent necessary to allow for personnel or contractors 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 or contractors 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.

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

Chapter 103D, HRS, **Hawaii Public Procurement Code**, to the extent that the department or agency has determined that it is not practicable or advantageous to procure the services required via traditional procurement methods and the procurement promotes the construction, development, redevelopment, repair, renovation, and occupancy of housing. The suspension is for the solicitation process only and is subject to the attached 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. Counties may still update county building codes as authorized by law.

Section 127A-30, HRS, **Rental or sale of essential commodities during a state of emergency; prohibition against price increases**, because the automatic, statewide invocation of this provision is not needed for this emergency. The invocation and suspension of section 127A-30, HRS, contained in my September 8, 2023 Seventh Proclamation Relating to Wildfires is not affected by this Proclamation.

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.

Section 206E-5.6, HRS, **Hawaii Community Development Authority**, and section 15-217-80, Hawaii Administrative Rules ("HAR"), to the extent necessary to allow for the timely development of additional residential units.

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

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 Proclamation Relating to Affordable Housing attached hereto. These rules shall have the force and effect of law.

V. State Cooperation

Pursuant to 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 November 14, 2023, unless terminated or superseded by separate proclamation, whichever shall occur first.

Done at the State Capitol, this 15th day of September, 2023

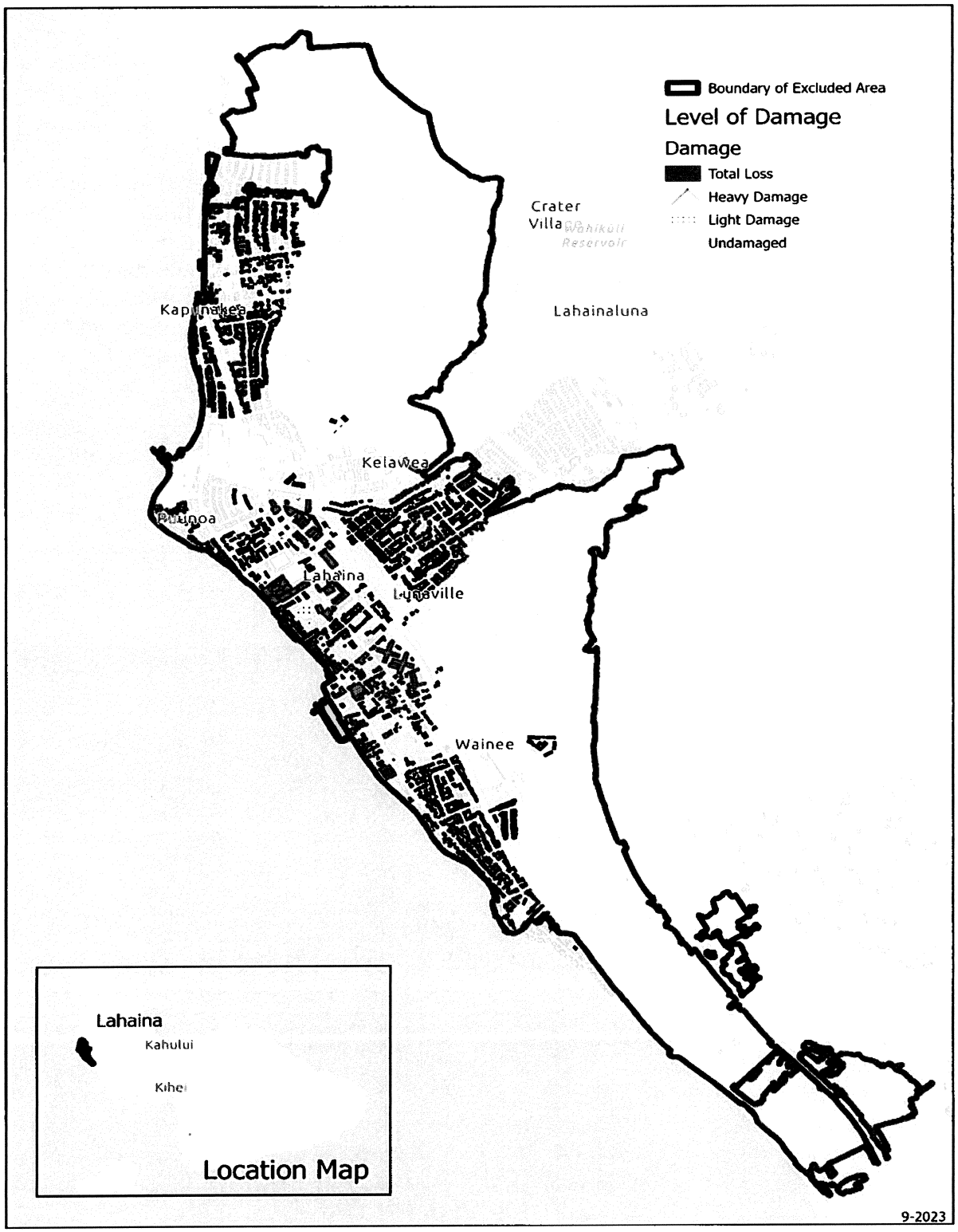
Josh Green, M.D.
Governor of Hawai'i

APPROVED:

Anne E. Lopez
Attorney General
State of Hawai'i

Map of the Area Affected by the Lahaina Wildfire Excluded

Under the Proclamation Relating to Affordable Housing



Rules Relating to the Implementation of the Proclamation Relating to Affordable Housing

§ 1 Purpose and Authority

§ 2 Definitions

§ 3 Applicability of Proclamation and Rules

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

B. Chapter 76, HRS, Officers and Employees

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

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

§ 1 Purpose and Authority

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

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.

"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.

§ 3 Applicability of Proclamation and Rules

Certified projects not subject to the state or county regulations suspended under the Proclamation shall still meet minimum requirements for health and safety, including applicable floodplain management powers and duties necessary for National Flood Insurance Program participation.

§ 4 Build Beyond Barriers Working Group

A. Membership of the BBB shall consist of representatives of the following state agencies and non-state agencies and entities.

1. Office of Planning and Sustainable Development;
2. Hawaii Housing Finance Development Corporation;
3. Land Use Commission;
4. Department of Transportation;
5. Hawaii Public Housing Authority;
6. County mayor of the island where the project is located;
7. The chairs of legislative subject matter committees relating to housing (non-voting members);
8. Department of Land and Natural Resources;
9. State Historic Preservation Division;
10. Commission on Water Resources Management;
11. Department of Health;
12. Department of Business, Economic Development, and Tourism;
13. Department of Budget and Finance;
14. The Island Burial Council of the island where the project is located;
15. County housing, permitting, and regulatory agency representatives of the island where the project is located (limited to a maximum of 3 representatives);
16. County department of water supply representative of the island where the project is located;
17. Hawaiian Electric Co. or Kauai Island Utility Cooperative, as applicable, for the island where the project is located;
18. Honua Consulting, LLC;
19. The Executive Director of Housing Hawaii's Future;

20. Economic Research Organization at the University of Hawai'i ("UHERO");

21. The Executive Director of the Sierra Club of Hawai'i; and

22. The Executive Director of the Land Use Research Foundation.

B. The chair of the BBB shall be one of the state housing officials designated in Section I of the Proclamation. These state housing officials shall decide among themselves the appropriate official to chair a BBB meeting based on the agenda items that will be up for discussion at that meeting.

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

D. The duties of the BBB 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 BBB.

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

§ 5 Certification Application

Project proponents seeking to have the terms of the Proclamation apply to their project shall submit to the BBB 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, including by AMI, 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;

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 30 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; and

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.

§ 6 Project Eligibility

A project is eligible for certification if the BBB 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 successfully completed a housing project, including demonstrating ability to manage 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 certification of the project.

§ 7 Resolutions

Upon acceptance of a project by the BBB, a resolution shall be issued that sets forth the terms of the certification of the project under the Proclamation.

A resolution shall:

1. Describe the land subject to the resolution;
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 the resolution;
4. Provide a termination date; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from the BBB issuing subsequent resolutions;
5. The purpose of the resolution, which shall include the development of housing units and/or infrastructure;
6. A description of the role and responsibilities of the project proponent and other parties to the agreement;
7. A construction commencement deadline set 36 months after certification of the project;
8. Time required to complete construction of the project; and
9. The period of mandatory affordability for applicable residential units.

§ 8 Prioritization of Certified Projects

The BBB 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 number of affordable housing units as a component of the certified project. The amount and mix of affordable housing included in the project may affect the priority given to the project;
2. The status of the financing for the project; and
3. The projected commencement and completion dates for the project.

§ 9 Application of Suspended Laws

A. 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 Hawai'i 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; and

4. For the County of Kaua'i these include the following: All Commercial Districts.

B. 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:

   a. The employee 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; and

c. Each employee is qualified to perform the duties and functions of the position that they are being hired into.

C. 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 section 103D-310(c), HRS, and section 3-122-112, Hawaii Administrative Rules, 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.

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

Section 201H-38(a)(3), HRS, 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.