

OFFICE OF THE GOVERNOR
STATE OF HAWAII

FIFTH PROCLAMATION RELATING TO UNCLE BILLY'S HILO BAY HOTEL

By the authority vested in me by the Constitution and laws of the State of Hawai'i, 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, under 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;

WHEREAS, the State owns multiple properties along Banyan Drive in Hilo, of which many are leased for hotel and resort purposes. These include the property at issue in this Proclamation, which is identified as tax map key numbers (3) 2-1-005:033, 034, 035, and 045 ("property"). The State previously leased the property to hotel operators under long-term ground leases which expired on March 14, 2016, after which tenancy continued on a month-to-month basis;

WHEREAS, a 146-room hotel was built on the property between 1966 and 1970. The hotel was commonly known as Uncle Billy's Hilo Bay Hotel ("hotel");

WHEREAS, the hotel is located in close proximity to the ocean;

WHEREAS, after the ground leases expired, the State became the owner of the hotel and all improvements that had been built on the property;

WHEREAS, the hotel ceased operating on June 19, 2017, and the last month-to-month tenant vacated in August 2020. Prior to the cessation of operations, the condition of the hotel had deteriorated as the result of deferred and ignored maintenance needs. No significant repairs or maintenance have been performed on the hotel since June 2017;

WHEREAS, the property is now abandoned because the hotel cannot safely be repaired and the property is dangerous.

WHEREAS, the condition of the property and hotel has attracted trespassers, enabled drug use, fighting, and other illegal activities, and experienced numerous fires. The Hawaii Police Department has responded to 6,479 calls for service/incidents in the area from September 2018 to April 2023, with an estimated cost for responding to these calls ranges from \$319,000 to \$459,000. The Hawaii Fire Department has responded to 946 calls for service/incidents in the Banyan Drive Peninsula from May 2018 to May 2023, for a cost estimate of \$122,000. The State Division of Conservation and

Resources Enforcement has also conducted numerous sweeps and enforcement actions at the property from 2018 to 2023. The condition of the property presents dangers to trespassers and law enforcement officials alike;

WHEREAS, despite regular security presence, the lack of repairs, maintenance, and operations has contributed to unsafe, unhealthy, and hazardous conditions at the property and abandoned hotel. These include overall structural decay, unabated hazardous materials, fire damage, water intrusion, falling ceilings, exposed rebar, overflowing sewage, mold, and mildew. These unsafe and unhealthy conditions endanger the lives of members of the public, adjoining hotel patrons, and trespassers, as well as law enforcement officers and other first responders who have responded frequently to service/incident calls to the property;

WHEREAS, the property's proximity to the ocean presents ocean and ground water pollution risks should the condition remain unabated;

WHEREAS, to address the continued trespass, other illegal activities, and unsafe and unhealthy conditions at the property, the State must urgently: (1) build a perimeter fence to physically secure the property; (2) demolish and remove the hotel structures and hazardous materials, as repair was determined to be infeasible in an architectural assessment completed for the property, and in any event cannot be completed in time to reduce the public health and safety risks; and (3) restoration of the site, including hazard abatement all to the extent permitted by the available funds;

WHEREAS, on July 18, 2023, I issued my Proclamation Relating to Uncle Billy's Hilo Bay Hotel;

WHEREAS, on September 15, 2023, I issued my Second Proclamation Relating to Uncle Billy's Hilo Bay Hotel;

WHEREAS, on November 9, 2023, I issued my Third Proclamation Relating to Uncle Billy's Hilo Bay Hotel;

WHEREAS, on January 8, 2024, I issued my Fourth Proclamation Relating to Uncle Billy's Hilo Bay Hotel;

WHEREAS, the conditions at the property and hotel continue and will likely result in substantial injury or harm to the population, substantial damage to or loss of property, and substantial damage to or loss of the environment, and therefore constitute an emergency under section 127A-2, HRS;

WHEREAS, it is necessary to supplement my proclamation to ensure a continued and effective response to with respect to the conditions at the hotel; 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 County of Hawai'i, State of Hawai'i. I hereby authorize and invoke the following emergency provisions, if not already effective by virtue of this Proclamation:

I. 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.

II. Suspension of Laws

I hereby exercise my authority under sections 127A-12(b)(8) and 127A-13(a)(3), HRS, and suspend the following state laws, as allowed by federal law, only to the extent necessary to quickly build a perimeter fence or wall to secure the property against further trespass, and to demolish the hotel and bring the property to a safe and healthy condition:

Chapter 6E, HRS, **historic preservation**, to the extent compliance might delay the State in quickly responding to the emergency.

Section 37-41, HRS, **appropriations to revert to state treasury; exceptions**, to the extent that appropriations lapse at the end of the fiscal year prior to completion of the emergency actions.

Section 37-74(d), HRS, **program execution**, except for sub-sections 37-74(d)(2) and 37-74(d)(3), HRS, 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, **lapsing of appropriations**, to the extent that the timing of the procurement of the construction of the emergency permanent repairs may occur the fiscal year following the original emergency proclamation.

Chapter 46, HRS, **county organization and administration**, and all Hawaii County Code provisions, only to the limited extent necessary to carry out emergency functions pursuant to this Proclamation that may be hindered, delayed, or otherwise impeded by county permitting, licensing, zoning, variances, or fees relating to these requirements.

Chapter 53, HRS, **urban renewal**, only to the limited extent necessary to carry out emergency functions pursuant to this Proclamation that may be hindered, delayed, or otherwise impeded by these requirements.

Chapter 89, HRS, **collective bargaining in public employment**, to the extent State personnel are prevented from being assigned or deployed in a timely manner required to respond to the emergency.

Section 103-53, HRS, **contracts with the State or counties; tax clearances, assignments.**

Section 103-55, HRS, **wages, hours, and working conditions of employees of contractors performing services,** to the extent that compliance requires additional time detrimental to the expeditious and efficient execution of emergency actions.

Chapter 103D, HRS, **Hawaii public procurement code,** to the extent that compliance might delay the State in quickly obtaining the goods and services needed to address the emergency.

Chapter 104, HRS, **wages and hours of employees on public works,** to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency actions.

Section 127A-30, HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases,** to prevent the automatic 96-hour operation of this section in the County of Hawai'i, which is unnecessary for this emergency. The invocations and suspensions of section 127A-30, HRS, contained in my March 5, 2024 Tenth Proclamation Relating to Wildfires are not affected by this Proclamation.

Chapter 183C, HRS, **conservation district,** to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Chapter 205A, HRS, **coastal zone management,** to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Chapter 342B, HRS, **air pollution control,** and all applicable provisions of HAR chapter 11-60.1, **air pollution control,** in particular section 11-60.1-33, **fugitive dust,** made under chapter 342B, HRS; to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Chapter 342D, HRS, **water pollution,** to the extent necessary to respond to the emergency, and implementing rules including but not limited to HAR chapters 11-53, 11-54, 11-55, 11-56, and 11-62 to support emergency management functions.

Chapter 342E, HRS, **non-point source pollution management and control,** to the extent necessary to support emergency management functions.

Chapter 342F, HRS, **noise pollution,** to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Chapter 342G, HRS, **integrated solid waste management,** to the extent necessary to perform emergency response during the emergency period.

Chapter 342H, HRS, **solid waste pollution,** to the extent necessary to respond to the emergency, and implementing rules including HAR section 11-58.1 to allow expedited waste management including but not limited to collection, removal, transport, recycling, and disposal activities.

Chapter 342J, HRS, **hazardous waste**, to the extent necessary to respond to the emergency, and implementing rules including HAR sections 11-260.1-279.1 to allow expedited waste management including but not limited to collection, removal, transport, recycling, and disposal activities.

Chapter 342L, HRS, **underground storage tanks**; and all applicable provisions of HAR chapter 11-280.1, **underground storage tanks**, in particular HAR chapter 11-280.1, subchapter 7, **out-of-service UST systems and closure**, made under chapter 342L, HRS; to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Chapter 342P, HRS, **asbestos and lead**, to the extent necessary to respond to the emergency, and implementing rules including but not limited to HAR chapters 11-501, 11-503, and 11-504 to the extent necessary for asbestos abatement purposes.

Chapter 343, HRS, **environmental impact statements**, to the extent compliance might delay or prevent the State from quickly responding to the emergency.

Section 464-4, HRS, **public works**, to the extent that compliance results in any additional delays involved with completing construction drawings through the stamping and signing by a professional engineer.

III. 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.

IV. 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 May 7, 2024, unless terminated or superseded by separate proclamation, whichever shall occur first. Notwithstanding the termination of a disaster emergency relief period, any contracts, agreements, procurements, programs, or employment of personnel entered into, started, amended, or continued by reason of the provisions of the proclamation relating to this emergency shall continue in full force and effect.

Done at the State Capitol, this 8th day of March, 2024



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

APPROVED:



Anne E. Lopez
Attorney General
State of Hawai'i