

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 8, 2019

Ref. No.: RPS-7628

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Authorize Approximately One-Year of Rent Relief under Revocable Permit No. S-7628, William Sanchez Sr., Permittee, Due to Severe Flooding of the Permit Area at Wailua, Lihue (Puna), Kauai, Tax Map Key: (4) 3-9-005:019 & 020.

APPLICANT:

William J. Sanchez Sr., married, Tenant in Severalty.

LEGAL REFERENCE:

Governor's Proclamation dated April 15, 2018, as subsequently supplemented.

LOCATION:

Portion of Government lands situated at Wailua, Lihue (Puna), Kauai, identified by Tax Map Key: (4) 3-9-005:019 & 020, as shown on the attached map labeled Exhibit A.

AREA:

TMK: (4) 3-9-005:019	10.047 acres
TMK: (4) 3-9-005:020	11.283 acres

ZONING:

State Land Use District:	Agriculture
County of Kauai CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO x

CURRENT USE STATUS:

Encumbered under Revocable Permit No. S-7628, William J. Sanchez Sr., Permittee, for pasture purposes.

CHARACTER OF USE:

Pasture purposes.

MONTHLY RENTAL:

\$95.62

RENTAL REOPENINGS:

NA

PERFORMANCE BOND:

Twice the monthly rental amount.

DCCA VERIFICATION:

Applicant/Permittee, as an individual, is not required to register with DCCA.

REMARKS:

The subject parcel was previously encumbered under a fifteen-year pasture lease, identified as General Lease No. S-5346 to Louis K. Rego.

At its meeting of March 22, 1996, item D-15, the Land Board consented to the assignment of General Lease No. S-5346, from Louis K. Rego to William J. Sanchez Sr. General Lease No. S-5346 expired on December 14, 2008.

At its meeting of May 8, 2009, agenda item D-1, the Board of Land and Natural Resources (Board) approved the issuance of Revocable Permit No. S-7628 to William J. Sanchez Sr., for pasture purposes.

In February 2017, Mr. Sanchez visited the Kauai District Land Office to report/complain about the flooding of his pastures by the heavy rains of last year. Mr. Sanchez mentioned that the flooding prevents him from keeping his herd of cattle in the permit area, that the flood waters were creating an unhealthy condition for his cattle and were killing the pasture grasses. Mr Sanchez asked if the State could investigate the conditions of the land in the

higher elevations as the area never flooded so badly in the past. He suspects the topography of the land in the mountain changed, causing the waters to flow differently. Mr. Sanchez believes the flooding problems are also partly due to drainage ditches outside of the permit premises being clogged with overgrown vegetation that interferes with the adequate flow of the surface water run-off away from the permit area.

Staff conducted a site inspection and confirmed that the State pastures were flooded with 2-3 foot deep water. The drainage ditches in the area were overgrown with vegetation, which may restrict the normal flow of the water out of the area. Vehicular accesses through the Sanchez pasture was not possible due to the amount/depth of mud and water in the roadways. The flood situation worsened with the heavy rains of April 2018. As of January 2019, the subject pasture continues to be marshy, but the pasture grasses are finally showing signs of regeneration. (Exhibit B)

Staff contacted the County Department of Parks and Recreation and State Highways Division, to request those agencies to take immediate actions to clear and dredge those sections of the drainage ditches within their respective jurisdiction. The ditches run along the Wailua Golf Course and along the Kaumualii Highway. The county did clear and dredge its section of the ditch along the golf course as requested. However, the Highways Division only trimmed the tops of the vegetation along the highway, which did not improve the condition of the drainage ditch or the flow of water.

The Governor's Proclamation of April 15, 2018 declared the County of Kauai to be a disaster area due to flooding and suspended a number of State laws, including Chapter 171, HRS, to the extent necessary to provide emergency relief as a result of the event. A copy of the Proclamation of April 15, 2018 is attached as Exhibit C. Staff believes that Mr. Sanchez should receive some type of rent relief as a result of not being able to use the revocable permit premises for pasture purposes. Although drainage problems plagued the land prior to the heavy rains of April 2018, staff believes the Board can only provide rent relief for the time the Proclamation is in effect. The Sixth Supplemental Proclamation signed by the Governor on February 12, 2019 extends the disaster relief period to April 13, 2019. (Exhibit D). Accordingly, staff is recommending that Mr. Sanchez be reimbursed for rent for the period April 15, 2018 through April 13, 2019.

Currently there is no better or higher use of the subject parcels and the current use is consistent with the county's zoning, which is agriculture.

Staff is reviewing the current disposition and is planning to issue a longer termed lease through public auction in the immediate future.

Mr. Sanchez has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

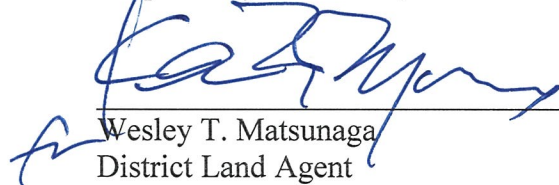
Mr. Sanchez has several other State leases (GLS-5346, 5349, 5519, 5583 & 5659) and permits (RPS-7199 & 7278) for pasture and has been in compliance with all terms and conditions of those leases/permits and is a valued tenant.

No agency or community comments were solicited as the request involves only a temporary waiver of rent to assist Mr. Sanchez and does not involve a new disposition or change in land use.

RECOMMENDATION: That the Board:

1. Authorize approximately one year of rent relief under Revocable Permit No. S-7628 due to severe flooding and recovery of the permit area, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Reimburse Mr. Sanchez for approximately one year of rent for the period April 15, 2018 through April 13, 2019, for a total of approximately \$1,142.96 [\$95.62/monthly rent x 12 months; prorated over 364 days]; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



N Suzanne D. Case, Chairperson

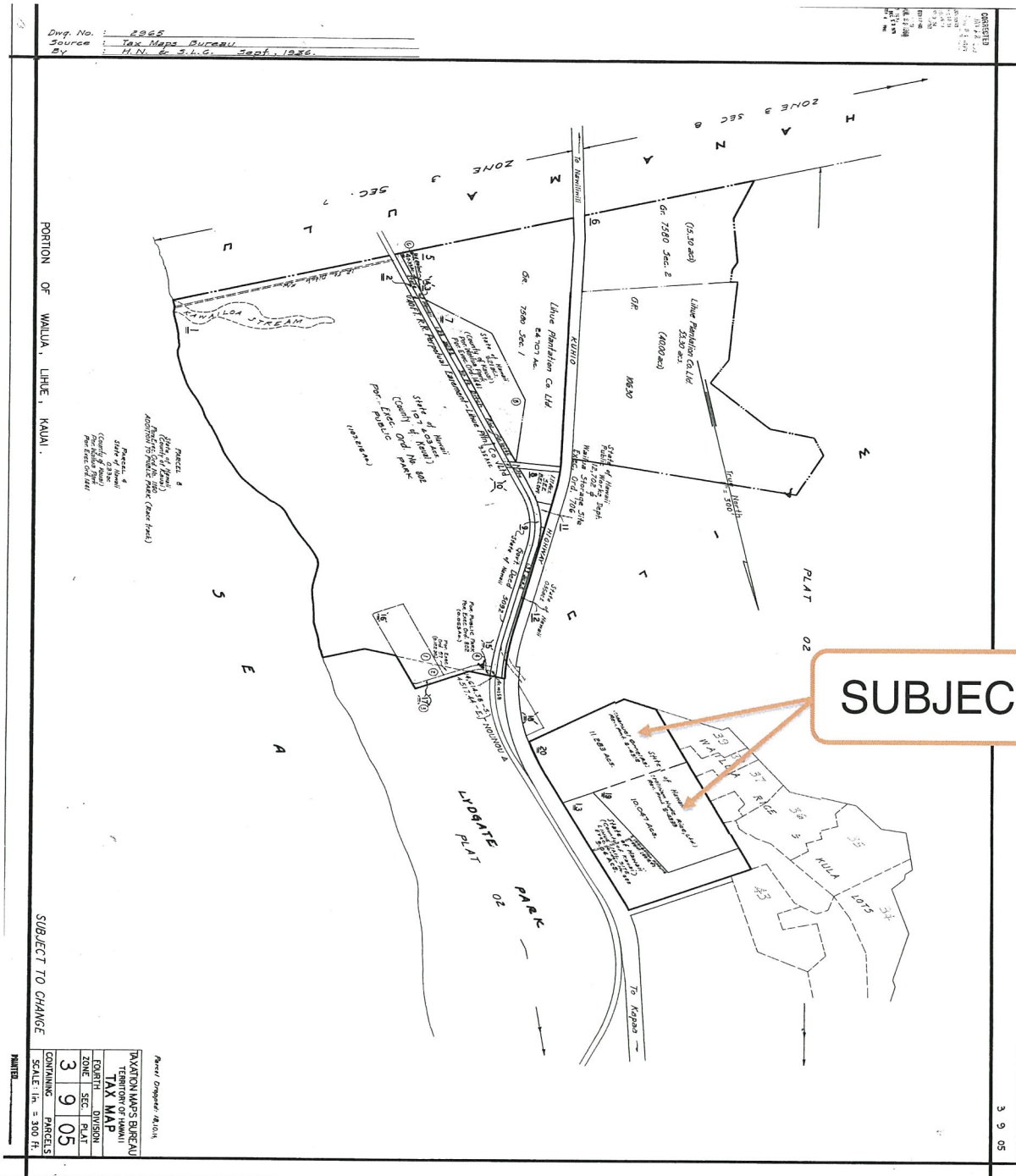


EXHIBIT A

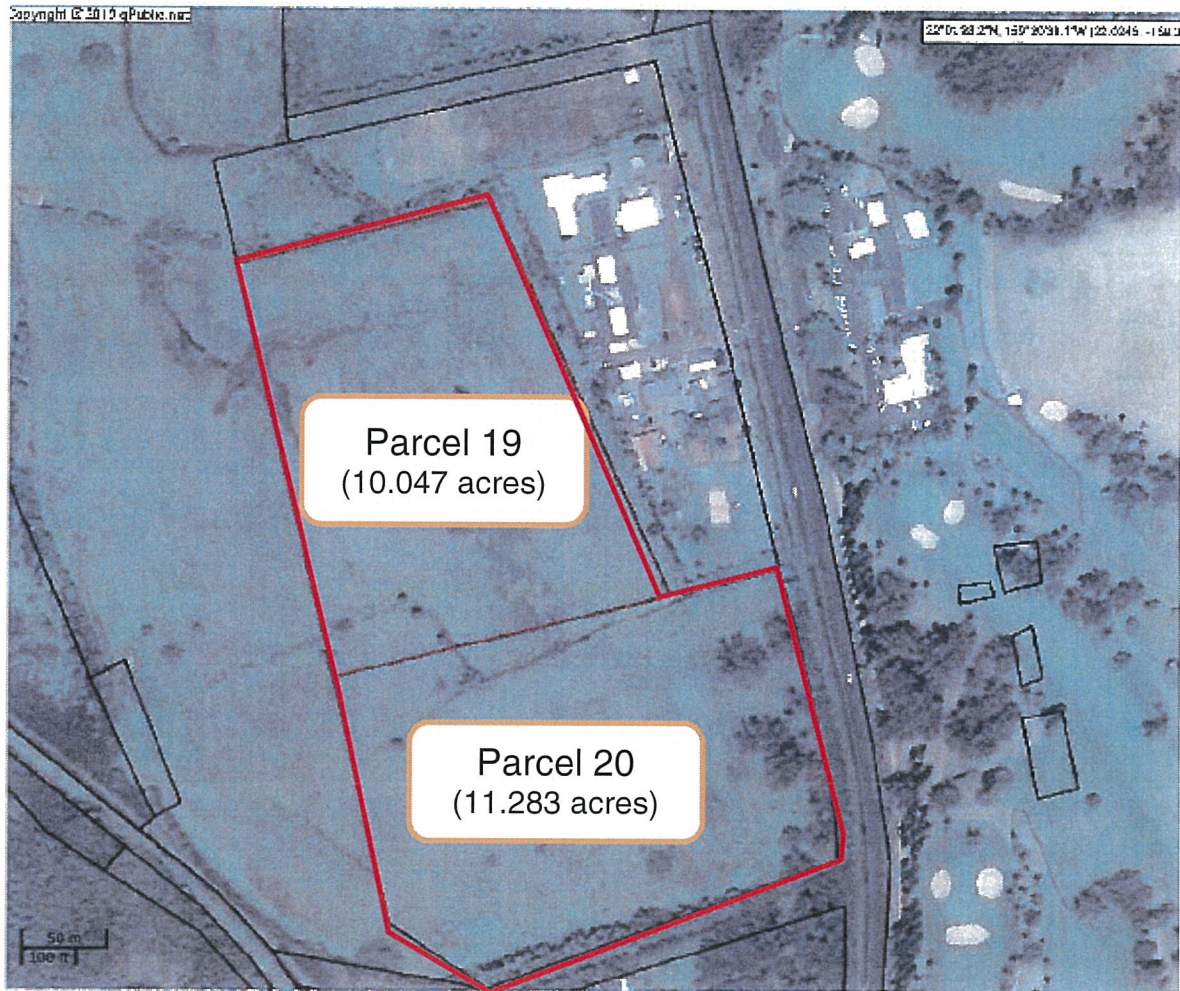


EXHIBIT A

*View of Permit area on date of inspection.
Due to depth of mud and flood waters, staff
could not enter the property.*



EXHIBIT B

View of an adjacent pasture, on
date of inspection.



EXHIBIT B

*Present view of subject pasture (2/01/19).
Grasses still have not fully regenerated/ recovered.
Ground is still in a marshy/swampy condition.*



EXHIBIT B

Present view (2/01/19) of an adjacent pasture.



EXHIBIT B

OFFICE OF THE GOVERNOR
STATE OF HAWAII

PROCLAMATION

By the authority vested in me as Governor 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, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, Hawai'i is suffering a disaster occurrence of heavy rains and flooding beginning April 14, 2018 and continuing, that has caused, and continues to cause, extensive damage to private and public property impacting the County of Kauai, State of Hawai'i, thereby endangering the health, safety, and welfare of the people; and

WHEREAS, this occurrence of a severe, sudden, and extraordinary event of heavy rains and flooding has caused damages, losses, and suffering of such character and magnitude to affect the health, welfare, and living conditions of a substantial number of persons, and to affect the economy of the State, and is expected to be of such a nature as to warrant rehabilitative assistance from the State; and

WHEREAS, the Mayor of the County of Kauai, declared an emergency for the County of Kauai on April 15, 2018 as a result of damage to private and public property and roadways, the saturation and threats of additional damage and injuries from continuing rains and flooding; and

WHEREAS, the Legislature of the State of Hawai'i has appropriated from the general revenues of the State, monies as may be necessary for expenditure by or under the direction of the Governor for the immediate relief of the conditions created by the disaster; and

WHEREAS, in expending such monies, the Governor may allot any portion to any agency, office, or employee of the state or a county for the most expeditious and efficient relief of the conditions created by the disaster; and

WHEREAS, pursuant to sections 127A-14 and 127A-16, Hawaii Revised Statutes, the Governor is authorized to determine whether an emergency or disaster

has occurred, or there is an imminent danger or threat of an emergency or disaster and authorize actions under chapter 127A, Hawaii Revised Statutes, and the expenditure of funds thereunder; and

WHEREAS, pursuant to section 127A-13(a)(3), Hawaii Revised Statutes, the Governor is authorized to suspend any law which impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws specifically made applicable to emergency personnel; and

WHEREAS, pursuant to section 127A-13(a)(2), Hawaii Revised Statutes, the Governor is further authorized to relieve hardship and inequities or obstructions to the public health, safety, and welfare found by the Governor to exist in the laws and to result from the operation of federal programs or measures taken under chapter 127A, Hawaii Revised Statutes, by suspending laws in whole or in part, or by alleviating the provisions of laws on such terms and conditions as the Governor may impose; and

WHEREAS, pursuant to section 127A-12(b)(8), Hawaii Revised Statutes, the Governor may suspend chapter 103D and sections 103-50, 103-53, 103-55, 105-1 to 105-10, and 464-4, Hawaii Revised Statutes, and I find that these provisions, in whole or in part, impede or tend to impede the expeditious discharge of emergency disaster relief functions for this occurrence and that compliance therewith is impracticable due to existing conditions; and

WHEREAS, pursuant to section 127A-12(b)(13), Hawaii Revised Statutes, the Governor may require each public utility, or any person owning, controlling, or operating a critical infrastructure facility as identified by the Governor, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding thereof; and provide for the protection and safeguarding of all critical infrastructure and key resources, including the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the Governor may prescribe; and

WHEREAS, pursuant to section 127A-12(a)(5), Hawaii Revised Statutes, the Governor may direct or control, as may be necessary for emergency management alerts, warnings, notifications, and activations; warnings and signals for alerts and any

type or warning device, system, or method to be used in connection therewith; partial or full mobilization of personnel in advance of or in response to an actual emergency or disaster; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after alerts, emergencies, or disasters; and

WHEREAS, pursuant to section 127A-13(a)(5), Hawaii Revised Statutes, the Governor may shut off water mains, gas mains, electric power connections, or suspension of other services; and

WHEREAS, pursuant to section 127A-13(a)(6), Hawaii Revised Statutes, the Governor may direct and control the mandatory evacuation of the civilian population; and

WHEREAS, pursuant to section 127A-12(b)(16), Hawaii Revised Statutes, the Governor is further authorized to order and direct government agencies, officials, officers, and employees of the State, to take such action and employ such measures for law enforcement, medical, health, firefighting, traffic control, warnings and signals, engineering, rescue, construction, emergency housing, other welfare, hospitalization, transportation, water supply, public information, training, and other emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers; and

WHEREAS, pursuant to section 127A-12(b)(9), Hawaii Revised Statutes, the Governor may appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 78, and 88, such agencies, officers, and other persons as the Governor deems necessary to carry out emergency management functions; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to the provisions of chapter 127A, Hawaii Revised Statutes, provide for the interchange of personnel, by detail, transfer, or otherwise, between agencies or departments of the State; and

WHEREAS, pursuant to section 127A-12(b)(19), Hawaii Revised Statutes, the Governor may take any and all steps necessary or appropriate to carry out the purposes

of chapter 127A, Hawaii Revised Statutes notwithstanding that powers in section 127A-13(a) may only be exercised during an emergency period; and

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by section 127A-14, Hawaii Revised Statutes has occurred in the above areas in the State of Hawai'i, and do hereby proclaim the County of Kauai, State of Hawai'i, to be a disaster area for the purpose of implementing the emergency management functions as allowed by law, authorizing the expenditure of State monies as appropriated for the speedy and efficient relief of the damages, losses, and suffering resulting from the emergency or disaster, and hereby authorize and invoke the following measures under the Hawaii Revised Statutes:

1. Section 127A-16, Hawaii Revised Statutes, by the activation of the Major Disaster Fund.
2. Sections 127A-13 and 127A-12, Hawaii Revised Statutes, I hereby suspend as allowed by federal law and to the extent necessary to provide emergency relief as a result of this event, the following statutes:
 - a. Chapter 6E, Hawaii Revised Statutes, **historic preservation.**
 - b. Section 37-41, Hawaii Revised Statutes, **appropriations to revert to state treasury.**
 - c. Section 37-74(d), Hawaii Revised Statutes, **program execution**, except for sub-sections 37-74(d)(2) and 37-74(d)(3), Hawaii Revised Statutes, and any such transfers or changes shall be considered authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.
 - d. Section 40-66, Hawaii Revised Statutes, **lapsing of appropriations.**
 - e. Chapter 46, Hawaii Revised Statutes, **county organization and Administration** as any county ordinance, rule, regulation, law, or provision in any form applies to any county permitting, licensing, zoning, variance, processes, procedures, fees, or any other

requirements that hinder, delay, or impede the purpose of this Proclamation.

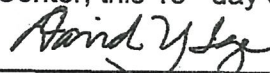
- f. Chapter 89, Hawaii Revised Statutes, **collective bargaining in public employment.**
- g. Chapter 89C, Hawaii Revised Statutes, **public officers and employees excluded from collective bargaining.**
- h. Section 102-2, Hawaii Revised Statutes, **contracts for concessions in government buildings; bid requirements.**
- i. Section 103-2, Hawaii Revised Statutes, **general fund.**
- j. Section 103-50, Hawaii Revised Statutes, **building design to consider needs of persons with disabilities.**
- k. Section 103-53, Hawaii Revised Statutes, **contracts with the State or counties; tax clearances, assignments.**
- l. Section 103-55, Hawaii Revised Statutes, **wages, hours, and working conditions of employees of contractors performing services.**
- m. Chapter 103D, Hawaii Revised Statutes, **Hawai'i public procurement code.**
- n. Chapter 104, Hawaii Revised Statutes, **wages and hours of employees on public works.**
- o. Sections 105-1 to 105-10, Hawaii Revised Statutes, **use of government vehicles, limitations.**
- p. Chapter 171, Hawaii Revised Statutes, **public lands, management and disposition of.**
- q. Chapter 174C, Hawaii Revised Statutes, **state water code.**
- r. Chapter 180, Hawaii Revised Statutes, **soil and water conservation districts.**

- s. Chapter 180C, Hawaii Revised Statutes, **soil erosion and sediment control.**
- t. Chapter 183, Hawaii Revised Statutes, **forest reserves, water development, zoning.**
- u. Chapter 183C, Hawaii Revised Statutes, **conservation district.**
- v. Chapter 183D, Hawaii Revised Statutes, **wildlife.**
- w. Chapter 184, Hawaii Revised Statutes, **state parks and recreation areas.**
- x. Chapter 195, Hawaii Revised Statutes, **natural areas reserves system.**
- y. Chapter 195D, Hawaii Revised Statutes, **conservation of aquatic life, wildlife, and land plants.**
- z. Chapter 198D, Hawaii Revised Statutes, **Hawai'i statewide trail and access system.**
- aa. Chapter 205, Hawaii Revised Statutes, **land use commission.**
- ab. Chapter 205A, Hawaii Revised Statutes, **coastal zone management.**
- ac. Chapter 264, Hawaii Revised Statutes, **highways.**
- ad. Chapter 269, Hawaii Revised Statutes, **public utilities commission.**
- ae. Chapter 286, Hawaii Revised Statutes, **highway safety.**
- af. Chapter 341, Hawaii Revised Statutes, **environmental quality control.**
- ag. Chapter 342B, Hawaii Revised Statutes, **air pollution.**
- ah. Chapter 342D, Hawaii Revised Statutes, **water pollution.**
- ai. Chapter 342E, Hawaii Revised Statutes, **non-point source pollution management and control.**

- aj. Chapter 342F, Hawaii Revised Statutes, **noise pollution.**
 - ak. Chapter 343, Hawaii Revised Statutes, **environmental impact statements.**
 - al. Chapter 343D, Hawaii Revised Statutes, **environmental disclosure.**
 - am. Chapter 344, Hawaii Revised Statutes, **state environmental policy.**
 - an. Section 464-4, Hawaii Revised Statutes, **public works required to be supervised by certain professionals.**
3. Section 127A-12(b), Hawaii Revised Statutes, and in order to provide emergency disaster relief, I hereby direct all state agencies and officers to cooperate with and extend their services, materials, and facilities as may be required to assist in all efforts to eliminate the danger.

I FURTHER DECLARE that a disaster emergency relief period shall commence April 15, 2018, and shall continue until terminated automatically pursuant to section 127A-14, Hawaii Revised Statutes, or by a separate proclamation, whichever occurs first and which period shall also apply to the provisions and applicability of section 127A-30, Hawaii Revised Statutes. Notwithstanding the termination of a disaster emergency relief period, any contracts, agreements, procurements, programs, or employment of personnel entered into by reason of the provisions of this proclamation relating to his emergency shall continue.

Done at the State Emergency Operating Center, this 15th day of April, 2018.



DAVID Y. IGE,
Governor of Hawai'i

APPROVED:



RUSSEL SUZUKI
Attorney General
State of Hawai'i

OFFICE OF THE GOVERNOR
STATE OF HAWAII

SIXTH SUPPLEMENTARY PROCLAMATION

By the authority vested in me as Governor 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, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, pursuant to Chapter 127A, Hawaii Revised Statutes, emergency powers are conferred on the Governor of the State of Hawai'i to deal with 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, it has become necessary to supplement my Proclamation of April 15, 2018, my Supplementary Proclamation of April 18, 2018, my Second Supplementary Proclamation of June 17, 2018, Acting Governor Douglas S. Chin's Third Supplementary Proclamation of August 16, 2018, my Fourth Supplementary Proclamation of October 15, 2018, and my Fifth Supplementary Proclamation of December 14, 2018, relating to heavy rains and flooding; and

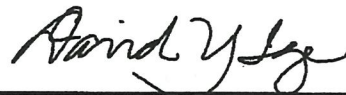
WHEREAS, the conditions giving rise to the emergency continue in the County of Kaua'i, State of Hawai'i and are adversely impacting efforts to repair, reconstruct, improve, and otherwise perform work on various roadways, bridges, infrastructure, and streams;

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by sections 127A-14, 171-85, 209-2, Hawaii Revised Statutes continues only in the County of Kaua'i, State of Hawai'i. I do hereby continue and extend my Proclamation of April 15, 2018, my Supplementary Proclamation of April 18, 2018, my Second Supplementary Proclamation of June 17, 2018, Acting Governor Douglas S. Chin's Third Supplementary Proclamation of August 16, 2018, my Fourth Supplementary Proclamation of October 15, 2018, and my Fifth Supplementary Proclamation of December 14, 2018, relating to heavy rains and flooding shall remain in full force and effect, and are hereby included in the provisions of

this Proclamation to the extent necessary for those engaged in emergency management functions to repair, reconstruct, improve, and otherwise perform work on various roadways, bridges, infrastructure, and streams.

I FURTHER DECLARE that the disaster emergency relief period shall continue until April 13, 2019, unless terminated by a 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 proclamations relating to this emergency shall continue in full force and effect.

Done at the State Capitol, this 12th day
of February, 2019.



DAVID Y. IGE,
Governor of Hawai'i

APPROVED:



CLARE E. CONNORS
Attorney General
State of Hawai'i