

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

September 27, 2019

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

PSF No.: 19KD-110

**KAUAI**

Set Aside to the County of Kauai for Proposed Site for Community Gatherings, Base Yard Operations, Storage and Public Parking; Authorize the Chairperson to Negotiate and Approve a Memorandum of Understanding Between the County of Kauai and the Division of State Parks for Proposed Base Yard, Storage, and Public Parking for Shared Use of the Property and Future Facilities Purposes; Issuance of Immediate Construction and Management Right-of-Entry Permit to the County of Kauai, Wainiha, Hanalei, Kauai, Tax Map Key: (4) 5-8-012:009.

**APPLICANTS:**

County of Kauai, a municipal corporation of the State of Hawaii.  
Division of State Parks (DSP), Department of Land and Natural Resources;

**LEGAL REFERENCE:**

Section 171-11, Hawaii Revised Statutes (HRS), as amended.  
Governor's Proclamation dated April 15, 2018, as subsequently supplemented.

**LOCATION:**

Portion of Government lands of Wainiha Hui situated at Wainiha, Hanalei, Kauai, identified by Tax Map Key: (4) 5-8-012:009, as shown on the attached map labeled Exhibit A.

**AREA:**

2.76 acres, more or less.

**ZONING:**

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

**TRUST LAND STATUS:**

Section 5(a) lands of the Hawaii Admission Act

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

YES \_\_\_\_\_ NO   x  

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

For multi-purpose uses.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. This action is further exempt from Chapter 343, HRS, pursuant to Governor's Emergency Proclamation dated April 15, 2018 and Ninth Supplemental Proclamation dated August 6, 2019, for flood relief purposes.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
2. Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

The subject parcel is a 2.76 acre vacant and unencumbered State parcel located in Wainiha, Hanalei, Kauai, identified by Tax Map Key: (4) 5-8-012:009. Over the years, the Kauai District Land Office (KDLO) has received numerous complaints of unauthorized dumping of abandoned vehicles and household trash onto the property. KDLO has had to repeatedly clean-up and remove abandoned vehicles and trash.

Most recently, in the aftermath of the April 2018 flood, the County of Kauai (COK) utilized the property as an emergency transfer station for discarding household trash and flood debris. Due to experiencing the devastation of the area, both COK and the DSP have come to realize that there is a need for government agencies be better prepared for future natural disaster events. As a result, by letter dated August 8, 2019, COK and the DSP requested a set-aside of the vacant State parcel for proposed development of the site for multi-use

purposes that will provide safety and resilience for the community, a site for community gatherings, a base yard operations, storage, and public parking for the residents of the general vicinity. (Exhibit B)

A memorandum of understanding between the COK and the DSP is being drafted, which will be negotiated and approved by the Chairperson of the Board of Land and Natural Resources. The MOU will allow State Parks to utilize a portion of the subject property for a baseyard, storage, and public parking purposes.

The Governor's Proclamation of April 15, 2018 declared the County of Kauai to be a disaster area due to flooding and suspended several State laws, including Chapters 171 and 343, HRS, to the extent necessary to provide emergency relief as a result of the event. A copy of the Emergency Proclamation of April 15, 2018 is attached as Exhibit C. It is hoped that the setting aside of the subject parcel can be accomplished while the Governor's Emergency Proclamation is in full force and effect and are included in the provisions of the Proclamation. The Ninth Supplemental Proclamation signed by the Governor on August 6, 2019 extends the disaster relief period to October 5, 2019. (Exhibit D).

Due to the restrictive timeframe provided staff to obtain Land Board approval by the expiration of the Governor's Emergency Proclamation of October 5, 2019, a request for comments from various governmental agencies and interest groups is being solicited on a parallel track with this submittal.

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 Open.

COK and the DSP are the appropriate agencies to utilize this parcel for the intended uses described.

COK is one of the primary agencies tasked to assist and provide natural disaster relief to the public in times of a natural disaster – and needs this parcel as a critical staging area and support facility to do so.

DSP needs to partner with COK in a shared use agreement to optimize management of both Ha'ena and Napali Coast State Wilderness Parks.

Staff has no objections to the request.

#### RECOMMENDATION:

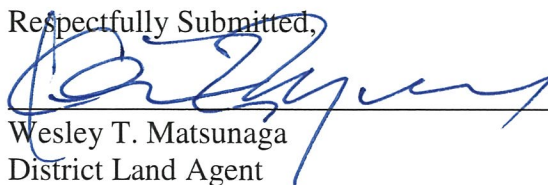
That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Kauai (COK) under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:



- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Chairperson to negotiate and approve a Memorandum of Understanding (MOU) between the County of Kauai (COK) and the Division of State Parks (DSP) for the proposed shared and multi-uses which shall include community gatherings, base yard, storage, and public parking purposes upon the subject property being set aside and subject to the terms and conditions as cited above as may be necessary to carry out the intent of the Board and to best serve the interests of the State.
3. Grant an immediate management and construction right-of-entry to COK, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject property to secure, maintain and manage the property, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current management and construction right-of-entry form, as may be amended from time to time;
  - B. The COK shall consult with the County Planning Department and the Office of Conservation and Coastal Lands relating to a need for obtaining any special permits prior to the commencement of any work activities;
  - C. This management and construction right-of-entry is effective upon Land Board approval and shall continue until the set aside is issued; and
  - D. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,

  
Wesley T. Matsunaga  
District Land Agent



APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson



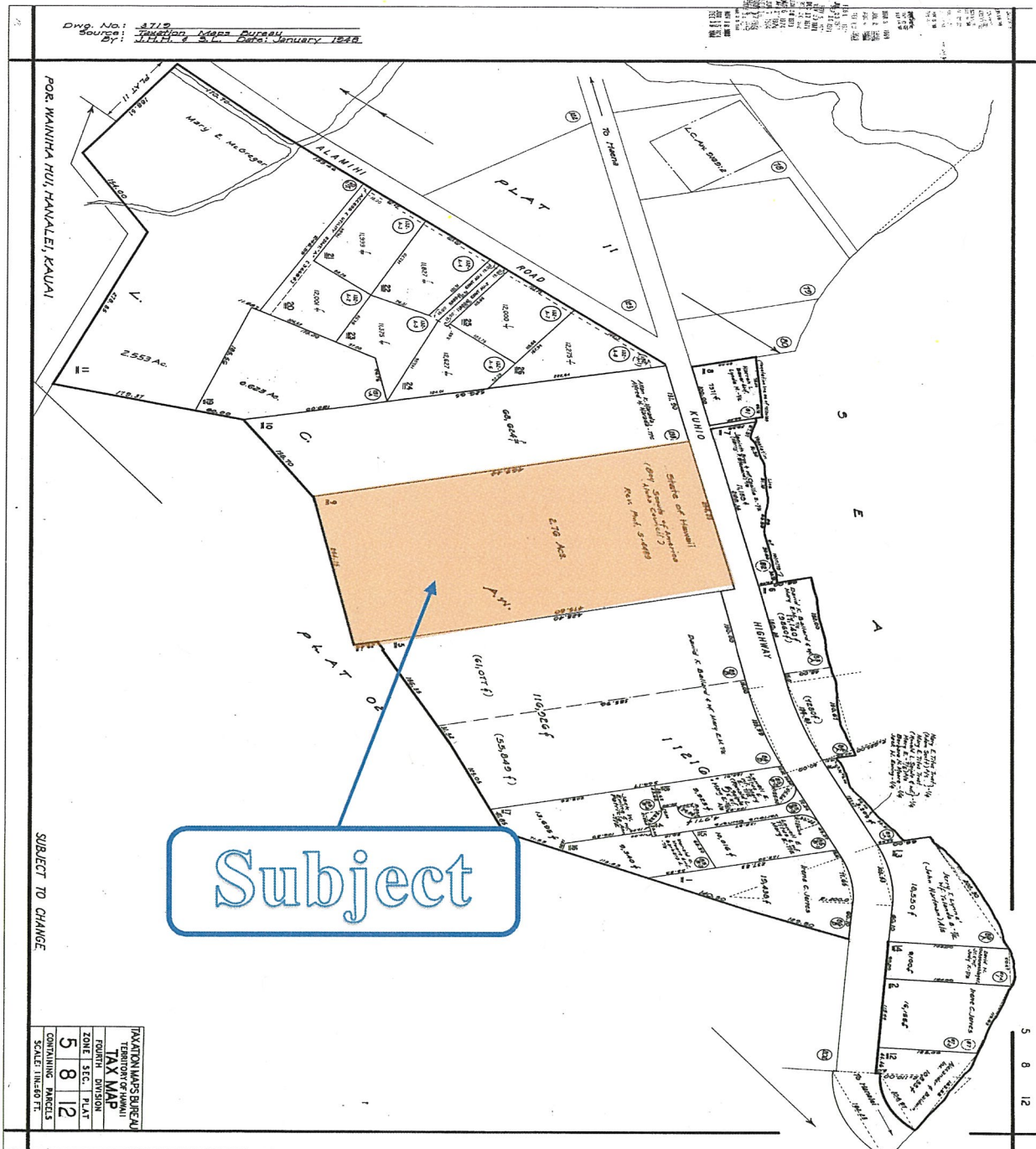
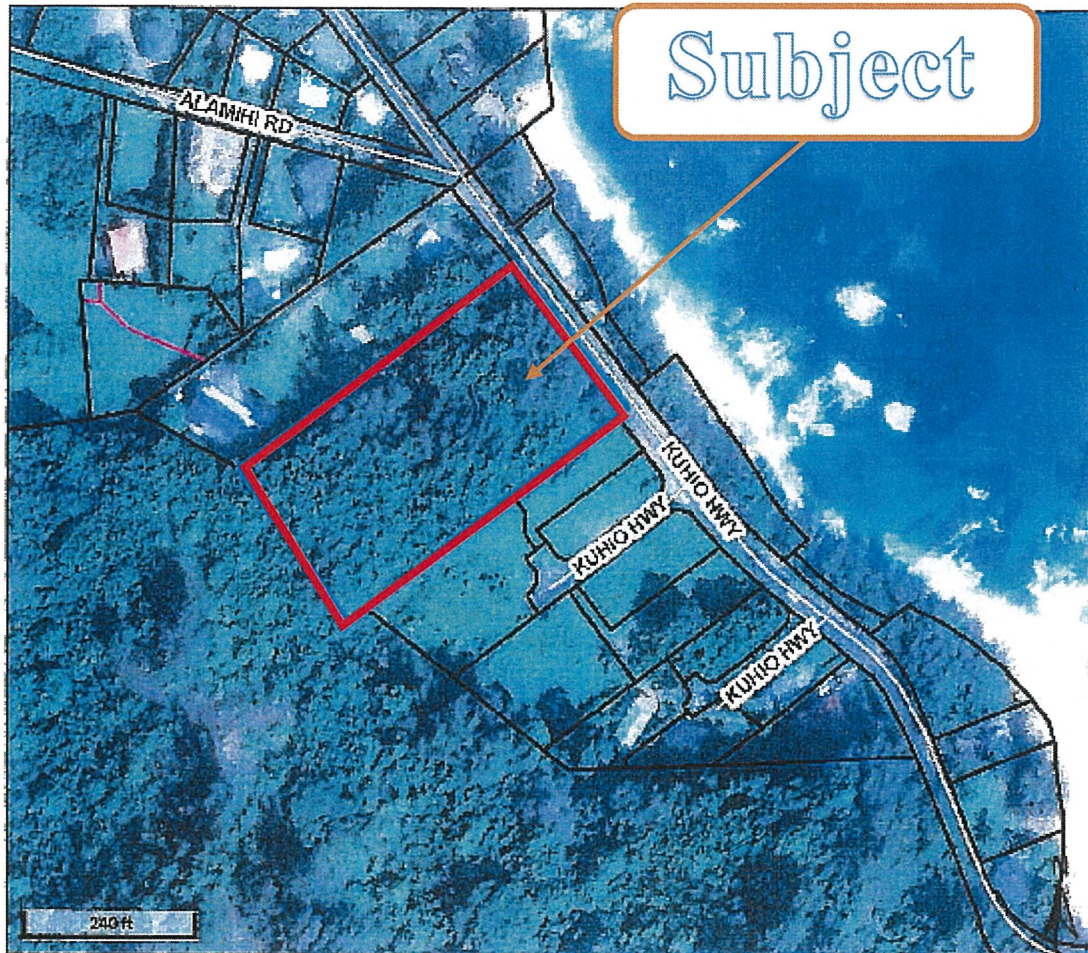


EXHIBIT A



**EXHIBIT A**





**EXHIBIT A**





**EXHIBIT A**





OFFICE OF THE MAYOR  
THE COUNTY OF KAUAI

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

August 8, 2019

Honorable Chair Suzanne Case  
State of Hawai'i  
Department of Land and Natural Resources  
1151 Punchbowl St.  
Honolulu, Hawai'i 96813

RE: SET ASIDE TO COUNTY OF KAUAI AND DLNR DIVISION OF STATE PARKS FOR  
MULTI-PURPOSE IN WAINIHA, HALELE'A, KAUAI, TAX MAP KEY: 5-8-012-009

Dear Honorable Chair Case,

The County of Kaua'i and the Department of Land and Natural Resources Division of State Parks humbly request your consideration for shared land set-aside for the purposes of safety and resilience, community gatherings, base yard operations, and parking located in Wainiha, Halele'a, Kaua'i, Tax Map Key: 5-8-012-009 (shown on the attached map).

This area of 2.76 acres has an Urban State Land Use and is classified as Open by the County of Kaua'i.

The April flood of 2018 identified the need for a County staging area for distribution of resources to community members and a gathering place for these members paramount in this disaster prone area of Kaua'i. With the implementation of Hā'ena State Park Master Plan, the need for a base yard facility and other parking close to the Park became evident.

The County of Kaua'i used the front part of the parcel between April 2018 and May 2019 as an emergency transfer station during the restricted access time post-flood. The County returned the parcel in a clean and debris free order. Previous to this time, the land had been vacant and was littered with rubbish and abandoned vehicles.

We ask that you consider this shared use set-aside by the County of Kaua'i and the Division of State Parks on an underutilized parcel for the greater benefit to the residents and visitors of the State of Hawai'i, and expedite this request under the Governor's Emergency Proclamation.

Respectfully submitted,

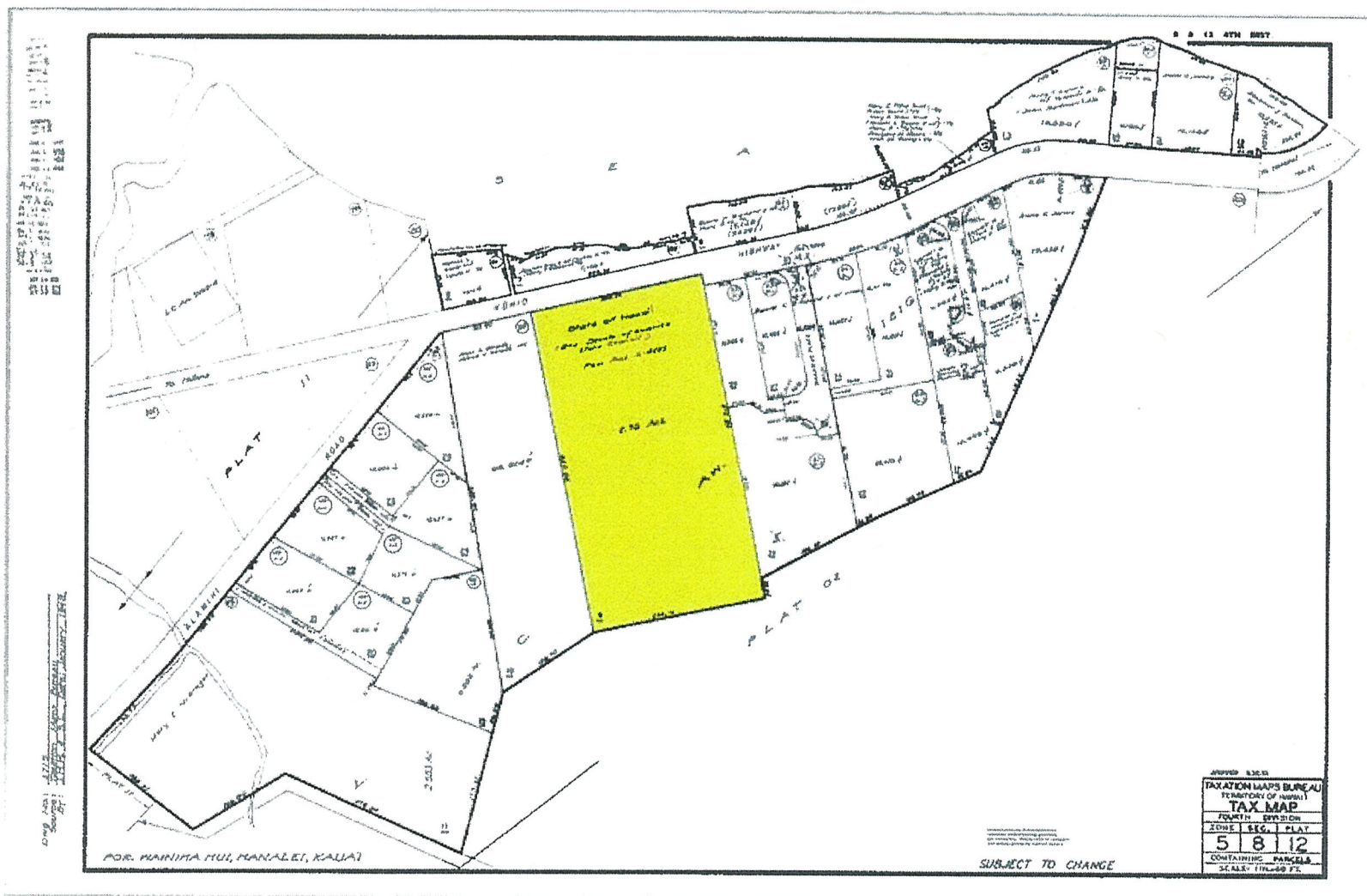
Derek S.K. Kawakami  
Mayor, County of Kaua'i

Curt A. Cottrell  
Administrator, Hawai'i State Parks Division

**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 Hawaii, 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 Hawaii, hereby determine, designate and proclaim as follows:

**WHEREAS**, Hawaii has suffered a disaster occurrence of heavy rains that has caused extensive damage to the slopes adjacent to Kuhio Highway and impacted the communities of Wainiha and Haena in the county of Kauai, State of Hawaii, 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 Legislature of the State of Hawaii 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 Act 49, Regular Session Laws of Hawaii 2017, Section 64, the Governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters or unforeseen emergencies, when the effects of the natural disasters or unforeseen emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided that no funds shall be expended without a formal declaration of a natural disaster or emergency by the Governor; provided further that the Governor shall use the powers conferred under section 127A-13(a), Hawaii Revised Statutes, or any other applicable law to accomplish the purposes of this section; 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

**EXHIBIT C**



**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)(5), Hawaii Revised Statutes, the Governor is authorized to take possession of, use, manage, control, and reallocate any public property of the State, real or personal, required by the governor for the purposes of this chapter, including airports, parks, playgrounds, and schools, and other public buildings; 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 Hawaii, hereby determine that an emergency or disaster contemplated by section 127A-14, Hawaii Revised Statutes has occurred in the State of Hawaii, and do hereby proclaim the District of Hanalei, County of Kauai, State of Hawaii, 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:

- A. Section 127A-16, Hawaii Revised Statutes, by the activation of the Major Disaster Fund.
- B. Sections 127A-13 and 127A-12, Hawaii Revised Statutes, and in order to provide emergency relief as a result of this event, I hereby suspend as allowed by federal law, the following statutes:
  - 1. Chapter 6E, Hawaii Revised Statutes, **historic preservation**.
  - 2. Section 37-41, Hawaii Revised Statutes, **appropriations to revert to state treasury**.
  - 3. 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.
  - 4. Section 40-66, Hawaii Revised Statutes, **lapsing of appropriations**.
  - 5. 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.

6. Chapter 89, Hawaii Revised Statutes, **collective bargaining in public employment.**
7. Chapter 89C, Hawaii Revised Statutes, **public officers and employees excluded from collective bargaining.**
8. Section 102-2, Hawaii Revised Statutes, **contracts for concessions in government buildings; bid requirements.**
9. Section 103-2, Hawaii Revised Statutes, **general fund.**
10. Section 103-50, **building design to consider needs of persons with disabilities.**
11. Section 103-53, Hawaii Revised Statutes, **contracts with the State or counties; tax clearances, assignments.**
12. Section 103-55, Hawaii Revised Statutes, **wages, hours, and working conditions of employees of contractors performing services.**
13. Chapter 103D, Hawaii Revised Statutes, **Hawaii public procurement code.**
14. Chapter 104, Hawaii Revised Statutes, **wages and hours of employees on public works.**
15. Sections 105-1 to 105-10, Hawaii Revised Statutes, **use of government vehicles, limitations.**
16. Chapter 171, Hawaii Revised Statutes, **public lands, management and disposition of.**
17. Chapter 174C, Hawaii Revised Statutes, **state water code.**
18. Chapter 180, Hawaii Revised Statutes, **soil and water conservation districts.**
19. Chapter 180C, Hawaii Revised Statutes, **soil erosion and sediment control.**
20. Chapter 183, Hawaii Revised Statutes, **forest reserves, water development, zoning.**
21. Chapter 183C, Hawaii Revised Statutes, **conservation district.**
22. Chapter 183D, Hawaii Revised Statutes, **wildlife.**
23. Chapter 184, Hawaii Revised Statutes, **state parks and recreation areas.**

24. Chapter 195, Hawaii Revised Statutes, **natural areas reserves system.**
25. Chapter 195D, Hawaii Revised Statutes, **conservation of aquatic life, wildlife, and land plants.**
26. Chapter 198D, Hawaii Revised Statutes, **Hawaii statewide trail and access system.**
27. Chapter 205, Hawaii Revised Statutes, **land use commission.**
28. Chapter 205A, Hawaii Revised Statutes, **coastal zone management.**
29. Chapter 264, Hawaii Revised Statutes, **highways.**
30. Chapter 269, Hawaii Revised Statutes, **public utilities commission.**
31. Chapter 286, Hawaii Revised Statutes, **highway safety.**
32. Chapter 341, Hawaii Revised Statutes, **environmental quality control.**
33. Chapter 342B, Hawaii Revised Statutes, **air pollution control.**
34. Chapter 342D, Hawaii Revised Statutes, **water pollution.**
35. Chapter 342E, Hawaii Revised Statutes, **non-point source pollution management and control.**
36. Chapter 342F, Hawaii Revised Statutes, **noise pollution.**
37. Chapter 343, Hawaii Revised Statutes, **environmental impact statements.**
38. Chapter 344, Hawaii Revised Statutes, **state environmental policy.**
39. Section 464-4, Hawaii Revised Statutes, **public works required to be supervised by certain professionals.**
40. Sections 601-1.5, 708-817, 708-818, 708-820, 708-830.5, and 708-840, Hawaii Revised Statutes, to the extent that 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 reason of any declared disaster or emergency.



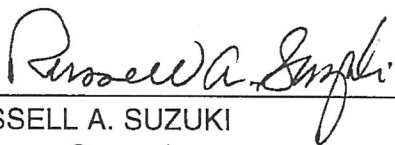
- C. Section 127A-12(b), Hawaii Revised Statutes, and in order to provide emergency disaster relief, I hereby direct all state agencies and officers to cooperate with and extend their services, materials, and facilities as may be required to assist in all efforts to eliminate the danger.

I FURTHER DECLARE that a disaster emergency relief period shall commence April 2, 2018, and shall continue until terminated automatically pursuant to section 127A-14, Hawaii Revised Statutes, or by a separate proclamation, whichever occurs first. 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 Capitol, Honolulu, State  
of Hawaii, this 29<sup>th</sup> day  
of March, 2018.

  
DAVID Y. IGE  
Governor of Hawaii

APPROVED:

  
RUSSELL A. SUZUKI  
Attorney General  
State of Hawaii

OFFICE OF THE GOVERNOR  
STATE OF HAWAII

**NINTH SUPPLEMENTARY PROCLAMATION**

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, 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, my Fifth Supplementary Proclamation of December 14, 2018, my Sixth Supplementary Proclamation of February 12, 2019, my Seventh Supplementary Proclamation of April 12, 2019, and my Eighth Supplementary Proclamation of June 7, 2019, relating to heavy rains and flooding; and

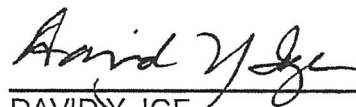
**WHEREAS**, the conditions giving rise to the emergency continue in the County of Kaua'i, State of Hawai'i and are adversely impacting efforts to repair, reconstruct, improve, and otherwise perform work on various roadways, bridges, infrastructure, and streams;

**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 hereby continue and extend my Proclamation of April 15, 2018, and all Supplementary Proclamations set forth above relating to heavy rains and flooding, which shall remain in full force and effect and are 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 October 5, 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  
6<sup>th</sup> day of August, 2019.



DAVID IGE,  
Governor of Hawai'i

APPROVED:



Clare E. Connors  
Attorney General  
State of Hawai'i