

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

May 24, 2024

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

PSF No.: 24MD-043

Maui

Set Aside to the Department of Transportation for Temporary Housing for Maui Wildfire Survivors Purposes; Issuance of Immediate Construction and Management Right-of-Entry Permit, at Lahaina, Maui, TMK: (2) 4-6-018:017.

APPLICANT:

Hawaii Department of Transportation.

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended. The Governor's Tenth Proclamation Relating to Maui Wildfires, which suspends Chapters 6E, 171 and 343 HRS (among other statutes), to the extent necessary to respond to the wildfire emergency is cited as additional authority for a set aside to the Department of Transportation to build and operate temporary emergency housing.

LOCATION:

Portion of Government Land at Lahaina, Maui, TMK # (2) 4-6-018:017.

AREA:

4.251 acres, more or less.

For additional information, see maps attached as **Exhibit A**.

CURRENT USE:

Vacant and unencumbered.

ZONING:

State Land Use District: Agriculture, Urban.  
County of Maui CZO : Interim.

TRUST LAND STATUS:

Section 5b lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: **NO**

PURPOSE OF SET-ASIDE:

Temporary housing for Maui wildfire survivors purposes.

RIGHT-OF-ENTRY CHARACTER OF USE:

Construction and management of temporary housing for Maui wildfire survivors purposes.

TERM OF RIGHT-OF-ENTRY:

The right-of-entry permit shall continue for one year after execution or until the issuance of the executive order setting aside the land to the Department of Transportation, whichever shall first occur; provided that the Chairperson may continue the right-of-entry permit for additional periods of up to one year for good cause shown.

CONSIDERATION:

Gratis.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to:

**General Exemption Type 1** that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,”

**Part 1, Item 36** that states, “Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor’s executive order.” The proposed set-aside to the Department of Transportation and is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

The Department of Transportation shall be responsible for compliance with Chapter 343, HRS, to the extent applicable to its proposed use of the land. In this regard, staff notes the

Governor’s Tenth Proclamation Relating to Maui Wildfires suspends Chapters 343, 171, and 6E, HRS (among other statutes), to the extent necessary to respond to the wildfire emergency and may be cited as additional authority for the project.<sup>1</sup> See **Exhibit B**.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant’s own cost to the extent required for the preparation of a CSF map approved by DAGS.
- 2) Remove the proposed improvements once the temporary housing project is no longer needed and restore the land to the public trust inventory.

REMARKS:

Maui County sustained a catastrophic disaster on August 8, 2023, known as the Lahaina Wildfires, that devastated Lahaina Town on the West side of the island. By email dated April 21, 2024 from Ed Sniffen, Director, Department of Transportation (DOT), requested the expedited issuance of a right-of-entry permit (ROE) onto the subject State land for due diligence studies including borings and test pit excavations to determine whether the parcel is suitable for emergency housing for Lahaina residents displaced by fire. On April 23, by authority delegated to the Chairperson by Board of Land and Natural Resources’ (Board) action of June 14, 2023, Item D-11, as amended, an ROE was issued to DOT for due diligence studies including borings and test pit excavations to determine whether the parcel is suitable for emergency housing for Lahaina residents displaced by fire. **Exhibit C**.

By letter dated April 26, 2024, DOT, through the Office of the Lieutenant Governor (OLG), requested the set-aside of the subject parcel to DOT for temporary housing for Maui wildfire survivors. **Exhibit D**. DOT is taking the lead for the executive order, construction and even management of the temporary housing. The letter explains that DOT intends to construct as many as ten temporary housing units on the parcel, designed to provide immediate, short-term housing for displaced residents. The letter adds that the OLG and

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<sup>1</sup> Among other statutes, the Governor’s Tenth Proclamation Relating to Maui Wildfires suspends:

Chapter 6E, HRS, historic preservation, only to the extent necessary to: (1) allow for emergency demolition, removal, and disposal of wildfire-generated debris; and (2) allow for the construction or erection of temporary housing for use by displaced victims of the Lahaina wildfires, provided that construction or erection of temporary housing may commence after consultation with, and upon the approval of, the State Historic Preservation Division. Any work performed under this limited suspension shall be subject to cultural, historic, and archaeological monitoring as appropriate. I also order State agencies and personnel, to the extent allowed by law and in consultation with the State Historic Preservation Division, to protect and preserve items of historic or cultural significance to the town and historic character of Lahaina regardless of age, including but not limited to, business signs and other landmarks.

DOT are working with the Department of Human Services to expand the scope of its current contract with HomeAid Hawaii, who is delivering housing support services for other housing relief efforts on Maui, to provide property management services at this parcel for a five-year term following completion of construction. At the end of the five-year term, DOT will remove the temporary housing units and restore the land prior to returning it to the Department of Land and Natural Resources.

Although DOT already has the ROE mentioned above for due diligence studies, it will require an additional ROE to construct the housing and manage the land until the issuance of the executive order. Accordingly, staff is including a recommendation for the issuance of such an ROE below.

The parcel is currently vacant and unencumbered land adjacent to private property owned by Kamehameha Schools. Staff has no objection to the request.

RECOMMENDATION:

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

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, 11-200.1-16, HAR, the set-aside of the subject land to DOT will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Transportation 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.
3. Authorize the issuance of an immediate construction and management right-of-entry permit to the Department of Transportation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
- B. The right-of-entry permit shall continue for of one year after execution or until the issuance of the executive order setting aside the land to the Department of Transportation, whichever shall first occur; provided that the Chairperson may continue the right-of-entry permit for additional periods of up to one year for good cause shown; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Apr 30, 2024

Michael Ferreira  
Land Agent



APPROVED FOR SUBMITTAL:



Apr 30, 2024

Dawn N. S. Chang, Chairperson



# EXHIBIT A

# Maui Wildfire Survivor Temporary Housing – TMK (2) 4-6-018:017

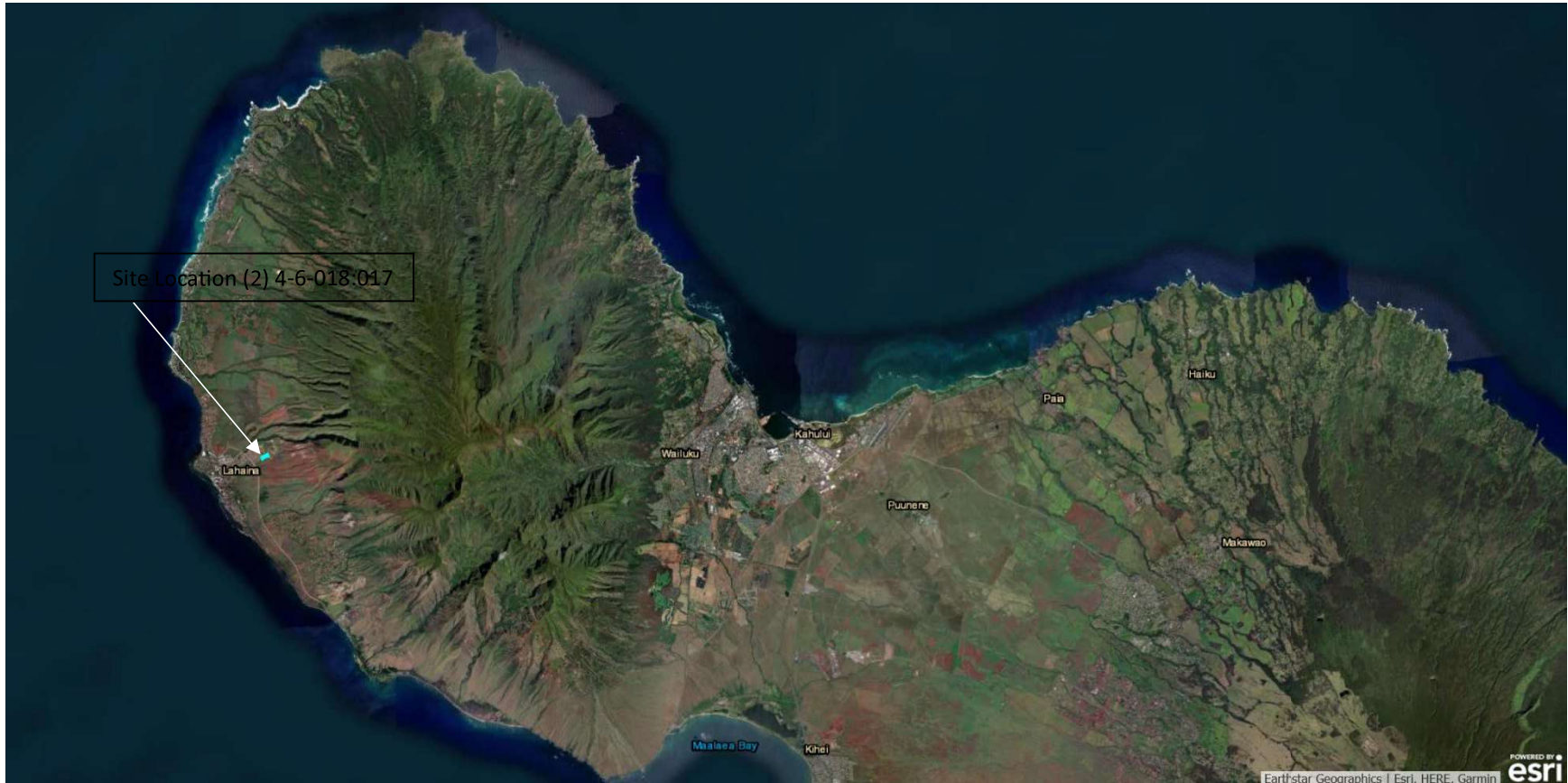


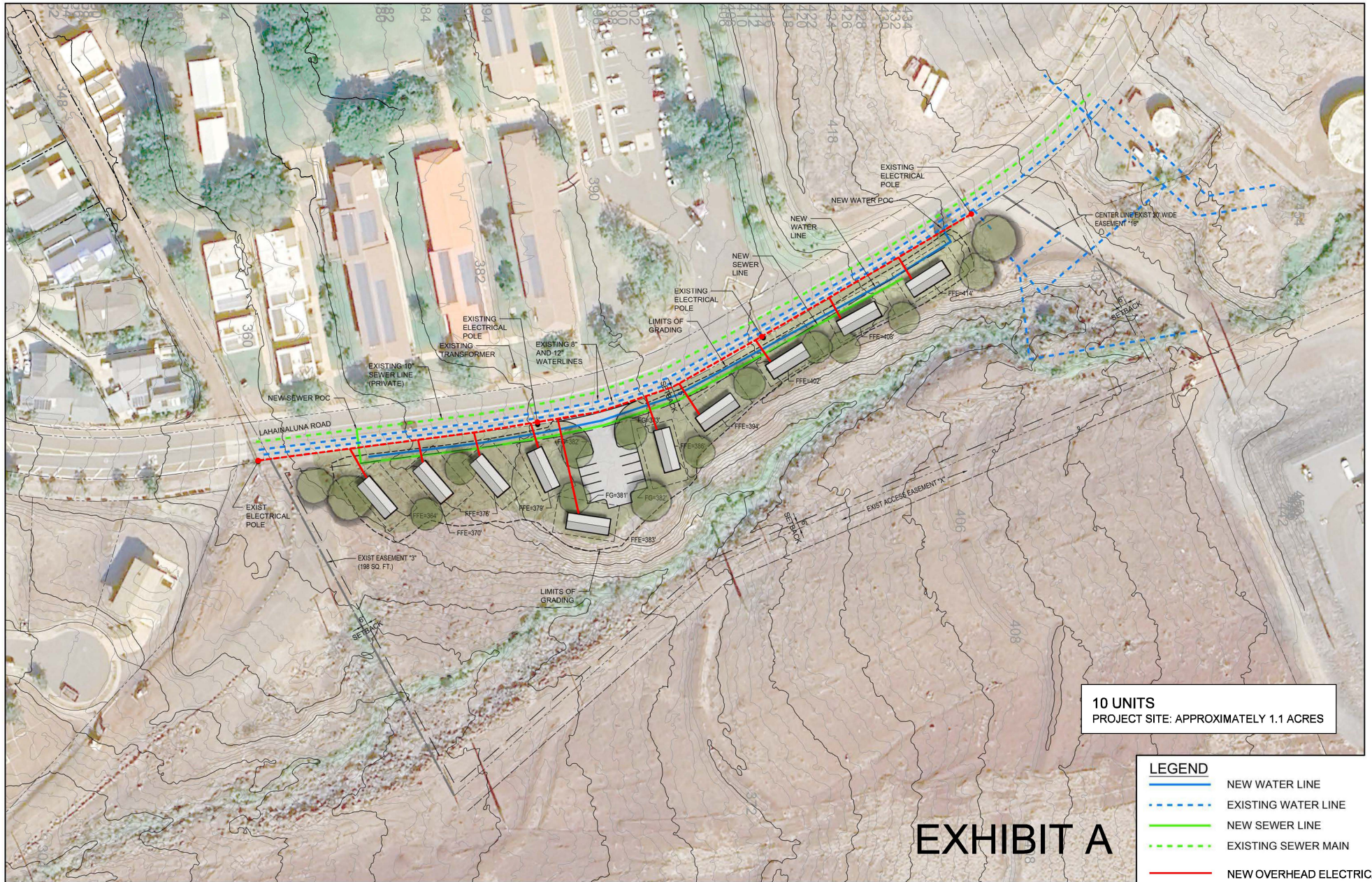
EXHIBIT A

# Maui Wildfire Survivor Temporary Housing – TMK (2) 4-6-018:017



EXHIBIT A





**10 UNITS**  
 PROJECT SITE: APPROXIMATELY 1.1 ACRES

LEGEND	
	NEW WATER LINE
	EXISTING WATER LINE
	NEW SEWER LINE
	EXISTING SEWER MAIN
	NEW OVERHEAD ELECTRICAL
	EXISTING OVERHEAD ELECTRICAL LINE AND POLE

# EXHIBIT A

# EXHIBIT B

OFFICE OF THE GOVERNOR  
STATE OF HAWAII

**TENTH PROCLAMATION  
RELATING TO WILDFIRES**

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**, on August 8, 2023, Acting Governor Sylvia Luke issued the Proclamation Relating to Wildfires and declared a state of emergency to exist in the counties of Maui and Hawai'i;

**WHEREAS**, on August 9, 2023, after wildfires spread considerably and burned a number of structures in and around Lāhainā, Acting Governor Sylvia Luke issued the Second Proclamation Relating to Wildfires, which extended the emergency declaration to the entire State;

**WHEREAS**, also on August 9, 2023, Acting Governor Sylvia Luke issued the Third Proclamation Relating to Wildfires;

**WHEREAS**, on August 10, 2023, I issued the Fourth Proclamation Relating to Wildfires;

**WHEREAS**, on August 13, 2023, I issued the Fifth Proclamation Relating to Wildfires;

**WHEREAS**, on August 19, 2023, I issued the Sixth Proclamation Relating to Wildfires;

**WHEREAS**, on September 8, 2023, I issued the Seventh Proclamation Relating to Wildfires;

**WHEREAS**, on November 6, 2023, I issued the Eighth Proclamation Relating to Wildfires;

**WHEREAS**, on January 5, 2024, I issued the Ninth Proclamation Relating to Wildfires;

**WHEREAS**, these fires have burned thousands of acres, cut off communications, and forced closure of roads and schools, and evacuations in the Kohala Ranch and

**EXHIBIT B**

Kula areas;

**WHEREAS**, the fires have caused significant loss of life and property in Maui County, thousands of people are without adequate shelter, and the town of Lāhainā has been destroyed;

**WHEREAS**, on October 30, 2023, a wildfire ignited in the Mililani Mauka area of Oahu that continues to burn, and which requires considerable county, state, and federal resources to combat;

**WHEREAS**, conditions such as drought continue to exist statewide that contribute to the risk of additional wildfires in all counties. Considerable government resources are required to mitigate these risks and to contain such wildfires as they ignite to protect the life, health, and safety of the public;

**WHEREAS**, it is necessary to continue recovery efforts by federal, state, and county agencies, including ensuring adequate health services, shelter, and housing for survivors, as well as to mitigate conditions contributing to wildfire risks;

**WHEREAS**, it is necessary to supplement the ninth proclamation to ensure a continued and effective statewide response to the wildfire emergency;

**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 emergency;

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

**WHEREAS**, under sections 127A-14 and 127A-16, Hawaii Revised Statutes (HRS), the Governor may determine whether an emergency or disaster has occurred, or whether there is an imminent danger or threat of an emergency or disaster and authorize actions under chapter 127A, HRS, and the expenditure of funds thereunder;

**WHEREAS**, under section 127A-13(a)(3), HRS, the Governor may suspend any law that impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or that conflicts with, emergency functions, including laws specifically made applicable to emergency personnel;

**WHEREAS**, under section 127A-13(a)(2), HRS, the Governor may relieve hardships 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, HRS, 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;

**WHEREAS**, section 127A-9, HRS, provides immunity from civil liability for certain entities and individuals while engaging in emergency management functions, including volunteers whose services are accepted by authorized persons, except in cases of wilful misconduct, gross negligence, or recklessness; and

**NOW, THEREFORE**, I, JOSH GREEN, M.D., Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by section 127A-14, HRS, is occurring in the State of Hawai'i, and do hereby authorize and invoke the following emergency provisions which are expressly invoked, if not already in effect upon this declaration of an emergency:

**I. Invocation of Laws**

Section 121-30, HRS, and I hereby authorize the Adjutant General to activate such units of the Hawai'i National Guard as may be necessary to assist and aid civilian authorities in disaster relief and in averting any imminent public danger and threat and to ensure the compliance with the civil laws of the State of Hawai'i.

Sections 127A-12 and 127A-13, HRS, for county and State agencies to provide emergency relief and engage in emergency management functions as defined in section 127A-2, HRS, as a result of and in response to this event.

Section 127A-13(a)(1), HRS, and determine that disaster-generated debris on private property in impacted areas constitutes an immediate threat to life, public health, and safety, and to the economic recovery of the community at large.

Sections 127A-13(a)(8), 127A-25, and 127A-29, HRS. I hereby order that making any unsolicited offer to an owner of real property located in the areas encompassed by United States Postal ZIP codes 96761, 96767, and 96790 on the island of Maui to purchase or otherwise acquire any interest in the real property is prohibited. I further prescribe and adopt this order as a rule having the force and effect of law under section

127A-25. Any person who intentionally, knowingly, or recklessly makes an unsolicited offer to an owner of real property located in in the areas encompassed by United States Postal ZIP codes 96761, 96767, and 96790 on the island of Maui to purchase or otherwise acquire any interest in the real property shall be guilty of a misdemeanor and upon conviction, the person shall be fined no more than \$5,000, imprisoned no more than one year, or both. The foregoing notwithstanding, it shall be an affirmative defense to prosecution if the property owner to whom the offer was made was not impacted by this wildfire emergency. For purposes of this order, "person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized. "Unsolicited" means not asked for or requested.

Sections 127A-3, 127A-12(a)(5), 127A-13(a)(5), and 127A-13(a)(6), HRS, and the Director of Hawai'i Emergency Management and the Administrator of Emergency Management are directed to take appropriate actions to direct or control, as may be necessary for emergency management:

- a. Alerts, warnings, notifications, and activations;
- b. Warnings and signals for alerts and any type or warning device, system, or method to be used in connection therewith;
- c. Partial or full mobilization of State personnel in advance of or in response to an actual emergency or disaster;
- d. The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after alerts, emergencies, or disasters;
- e. Shut off water mains, gas mains, electric power connections, or suspension of other services; and
- f. Mandatory evacuation of the civilian population.

Section 127A-12(b)(13), HRS, requiring each public utility, or any person owning, controlling, or operating a critical infrastructure, 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; provided that without prejudice to the generality of the foregoing two clauses, the protecting or safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon terms and conditions as I may prescribe.

Section 127A-12(b)(16), HRS, directing all State agencies and officers to cooperate and extend their services, materials, and facilities as may be required to assist in emergency response efforts.

Section 127A-16, HRS, by activating the Major Disaster Fund.

Section 127A-30, HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases**. For the island of Maui only, I hereby invoke, effective for the entire duration of this Tenth Proclamation Relating to Wildfires:

1. Section 127A-30(a)(1), HRS, the prohibition against price increases only for the essential commodity of rentals of residential dwellings. Prices for this essential commodity may not exceed regular prices that were in effect as of August 9, 2023, when Section 127A-30 was invoked in the Second Proclamation Relating to Wildfires, unless authorized by law or this Proclamation. Any additional operating expenses incurred by the landlord, and which can be documented, may be passed on to the tenant. If rent increases are contained in a written instrument that was signed by the tenant before August 9, 2023, the increases may take place under the written instrument. Provided, however, that affordable and workforce housing projects contain limited income housing units that are bound by Federal, State, and County regulatory agreements that ensure the continued affordability of the housing units by allowing reasonable tenancy terms and rental increases while protecting income limited tenants from being “priced” out of their units. Rent adjustments per the established regulatory agreements can balance affordability for residents with the operational and maintenance costs incurred. Rental income from market rate units within the projects is necessary to off-set the cost of limited income affordable units and keep the projects economically viable. This paragraph shall therefore not apply to housing projects where all the units are owned by the same entity and are: (1) subject to a regulatory agreement under chapter 201H, HRS, or chapters 2.96 or 2.97 of the Maui County

Code; and (2) the regulatory agreement subjects units to governmental regulations relating to rent increases; notwithstanding that these housing projects may contain market rate units; and

2. Section 127A-30(a)(2), the prohibition against terminating any tenancy for a residential dwelling unit on Maui, except as suspended in section II, below.

Sections 127A-13(a)(8) and 127A-25, HRS. I hereby order that any tenancy between a hotel, motel, or condominium operated as a hotel or motel on the island of Maui and a person displaced by this wildfire emergency shall not be deemed to create a landlord tenant relationship, nor convert the dwelling unit of the tenancy into a residential dwelling unit, under section 127A-30, chapter 521, and chapter 666, HRS, unless specified otherwise in such tenancy agreement. I further prescribe and adopt this order as a rule having the force and effect of law under section 127A-25, HRS.

Section 201B-9, HRS. Upon the request of the Board of the Hawai'i Tourism Authority, I hereby declare that a tourism emergency exists in the State. I further authorize the Hawai'i Tourism Authority, in coordination with the Department of Budget and Finance, to use monies in the Tourism Emergency Special Fund to respond to the emergency and provide relief under section 201B-10, HRS.

Rules Relating to Immunities for Health Care Practices, as set forth in Exhibit A.

## **II. Suspension of Laws**

I suspend the following specific provisions of law under section 127A-13(a)(3) to the extent that the law impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel:

Chapter 6E, HRS, **historic preservation**, only to the extent necessary to: (1) allow for emergency demolition, removal, and disposal of wildfire-generated debris; and (2) allow for the construction or erection of temporary housing for use by displaced victims of the Lāhainā wildfires, provided that construction or erection of temporary housing may commence after consultation with, and upon the approval of, the State Historic Preservation Division. Any work performed under this limited suspension shall be subject to cultural, historic, and archaeological monitoring as appropriate. I also order State agencies and personnel, to the extent allowed by law and in consultation



with the State Historic Preservation Division, to protect and preserve items of historic or cultural significance to the town and historic character of Lāhainā regardless of age, including but not limited to, business signs and other landmarks.

Section 37-41, HRS, **appropriations to revert to state treasury; exceptions**, to the extent that appropriations lapse at the end of the fiscal year before 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, to the extent that legislative authorization would likely delay appropriation transfers or changes between programs to provide necessary funding to complete the emergency actions.

Section 37-77, HRS, **claims for legislative relief**, and section 662-11, HRS, **compromise**, only to the extent necessary to allow the Attorney General to settle claims presented for payment from the One Ohana Bank Trust Account.

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, provisions applicable to all counties, general provisions**, to the extent necessary to respond to the emergency.

Chapter 76, HRS, **civil service law**, to the extent necessary to respond to the emergency.

Chapter 89, HRS, **collective bargaining in public employment**, to the extent that compliance with this chapter is detrimental to the expeditious and efficient execution of employment actions relating to the emergency.

Chapter 89C, HRS, **public officers and employees excluded from collective bargaining**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency actions.

Chapter 91, HRS, **administrative procedure**, to the extent that any deadlines may be waived or suspended for any emergency rules that are required for the

expeditious provision of housing, housing assistance programs, transportation, relocation assistance, supportive services or programs.

Chapter 92, HRS, **public agency meetings and records**, as follows: section 92-3.7(a), to suspend the physical location requirement for Maui-based boards; section 92-15, for boards with Maui-based members, to suspend the quorum requirements, and to the extent the absence of Maui-based members would prevent a board from meeting them, the voting requirements under section 92-4(a) (executive meetings); section 92-9(b), for Maui-based boards, to suspend the deadline for posting minutes; and section 92-3.1(a), for limited meetings of any board related to the emergency, suspend the requirement for the board's vote and concurrence by the Office of Information Practices.

Section 94-4, HRS, **certificate to same**, and section 3-20-9, HAR, **fees for services**, to the extent necessary to waive fees for copying, certifying, and other services provided by the State Archives Division to victims of the wildfires, provided that: (1) persons requesting services shall provide documentation of State or Federal assistance received or being processed due to the wildfire emergency (i.e., FEMA Disaster assistance ID number, receipts and/or declaration of loss of property, Lāhainā residency, etc.); (2) the services relate to those records needed to show evidence of identity, property, and individual rights that are available at the Public Archives and which the Archives Division would ordinarily be responsible for providing copies of; (3) requestors shall provide exact citations or references regarding the requested records; and (4) processing of requests is on a "first-come-first serve" basis, but priority will be given to those in immediate need to help establish identity.

Section 103-2, HRS, **general fund**, to the extent that compliance results in any additional delays.

Section 103-53, HRS, **contracts with the State or counties; tax clearances, assignments**, only to the extent necessary to waive the Internal Revenue Service (IRS) tax clearance requirement.

Section 103-55, HRS, **wages, hours, and working conditions of employees of contractors performing services**, to the extent that compliance results in any additional delays.

Chapter 103D, HRS, **Hawaii public procurement code**, to the extent that compliance results in any additional delays involved in meeting procurement requirements for selecting contractors in a timely manner to respond to emergency situations.

Chapter 103F, HRS, **purchases of health and human services**, to the extent that compliance results in any additional delays involved in meeting procurement requirements for selecting contractors in a timely manner to respond to emergency situations.

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

Sections 105-1 to 105-10, HRS, **use of government vehicles, limitations**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency actions.

Section 127A-16(a)(2), HRS, **major disaster fund**, only to the extent necessary to suspend the \$10,000,000 limit on expenditures for a single emergency or disaster.

Section 127A-25(c), HRS, **rules and orders**, to the extent the requirement to publish rules adopted under 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.

Section 127A-30, HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases**, except on the island of Maui as described in section I, above. The automatic, statewide invocation of this provision is not needed for this emergency.

Section 127A-30(a)(2), HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases**, is further suspended only to the extent that it would permit the termination of any tenancy for a residential dwelling unit on the island of Maui for a breach of a material term of a rental agreement or lease resulting from a failure to pay all or any portion of the rent or lease, maintenance fees,

utility charges, taxes or other fees required by the rental agreement or lease. The prohibition against residential rental increases on the island of Maui remains in full force and effect as described in section I, above. Additionally, section 521-68, HRS, **landlord's remedies for failure to pay rent** and section 521-71, HRS, **termination of tenancy; landlord's remedies for holdover tenants** and chapter 666, **landlord and tenant**, are suspended to the extent necessary to prohibit the commencement, continuation, or prosecution of an action, to terminate any tenancy for a residential dwelling unit on the island of Maui, for failure to pay all or any portion of the rent, maintenance fees, utility charges, taxes or other fees required for the residential dwelling unit.

Chapter 171, HRS, **public lands, management and disposition of**, to the extent necessary to respond to the emergency.

Chapter 180, HRS, **soil and water conservation districts**, to the extent necessary to respond to the emergency.

Chapter 180C, HRS, **soil erosion and sediment control**, to the extent necessary to respond to the emergency.

Chapter 183, HRS, **forest reserves, water development, zoning**, to the extent necessary to respond to the emergency.

Chapter 183C, HRS, **conservation district**, to the extent necessary to respond to the emergency.

Chapter 183D, HRS, **wildlife**, to the extent necessary to respond to the emergency.

Chapter 184, HRS, **state parks and recreation areas**, to the extent necessary to respond to the emergency.

Chapter 187A, HRS, **aquatic resources**, to the extent necessary to respond to the emergency.

Chapter 195, HRS, **natural area reserves system**, to the extent necessary to respond to the emergency.

Chapter 195D, HRS, **conservation of aquatic life, wildlife, and land plants**, to the extent necessary to respond to the emergency.

Chapter 200, HRS, **ocean recreation and coastal areas programs**, to the extent necessary to respond to the emergency.

Chapter 205, HRS, **land use commission**, to the extent necessary to respond to the emergency.

Chapter 205A, HRS, **coastal zone management**, to the extent necessary to respond to the emergency.

Section 231-28, HRS, **tax clearance before procuring liquor licenses**, section 281-31(s), HRS, **licenses, classes**, section 281-32(a), HRS, **licenses, temporary**, section 281-45(3) and (4), HRS, **no license issued, when**, and section 281-53.5, HRS, **county liquor commissions; criminal history record check**, to the extent necessary to allow licensees of premises that are no longer in operation due to the August 8, 2023 wildfires to transfer their operations to new premises within the County of Maui under temporary licenses or permits, provided that the licensees and their operations were in compliance with these sections before August 8, 2023.

Chapter 269, HRS, **public utilities commission**, to the extent necessary to respond to the emergency during the emergency period.

Chapter 271, HRS, **motor carrier law**, to the extent necessary to respond to the emergency during the emergency period.

Chapter 271G, HRS, **Hawaii water carrier act**, to the extent necessary to respond to the emergency during the emergency period.

Section 321-11, HRS, **subjects of health rules, generally**, and title 11, chapter 22, Hawaii Administrative Rules (HAR), **mortuaries, cemeteries, embalmers, undertakers, and mortuary authorities**, only to the extent necessary to extend the time that a dead human body must be embalmed, cremated, or buried, on the island of Maui from within 30 hours after death to the later of: 30 days after death or 30 days after release from the custody of the coroner, medical examiner, county, or county physician.

Chapter 328, HRS, **food, drugs, and cosmetics**, to the extent necessary to allow a pharmacist to refill active, prescriptions for persons directly impacted by the wildfire emergency if the pharmacist is unable to readily obtain refill authorization from the prescriber, and to dispense without a prescription the drug Paxlovid (nirmatrelvir co-packaged with ritonavir) to persons in the County of Maui in only those instances where

sufficient information is available to allow the pharmacist to assess patient renal and hepatic function and the potential for drug interaction, and it is unnecessary to modify the patient's other medications to avoid potential drug interaction, provided that: (1) the pharmacist may only dispense up to a maximum 30-day supply (5-day supply only for Paxlovid); (2) the prescription is not for a substance listed in schedules II-V appearing in chapter 329, HRS; (3) the medication is essential to the maintenance of life or to the continuation of therapy in a chronic condition; (4) in the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort; (5) any dispensed prescription drug bears a label with the information otherwise required by law, including but not limited to section 328-16, HRS; and (6) the dispensing pharmacist complies with section 328-17.7, HRS, and notifies the prescriber of the emergency dispensing as soon as practicable after such dispensing.

Section 329-38(i)(1), HRS, **prescriptions**, to the extent necessary to waive the requirement that a prescription for controlled substances originate from within the State when prescribed to treat mental, behavioral, neurodevelopmental, or substance-related or addictive disorders.

Section 329-40(b)(7), HRS, **methadone treatment programs**, to the extent necessary to allow the medical director or other program physician of a Maui methadone treatment program to dispense the maximum number of take-home dosages of methadone permitted by federal law to patients who are directly affected by the wildfire emergency during the emergency period, in lieu of the 14-day limit.

Section 329-41(a)(8), HRS, **prohibited acts**, to the extent necessary to allow, subject to any federal regulation, a practitioner who is not physically located in the State to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance for a patient, currently in State, who is directly affected by the wildfire emergency during the emergency period.

Section 329-32, HRS, **registration requirements**, to the extent necessary to allow an out-of-state physician or advanced practice registered nurse with a current and active license, and who holds a current United States Drug Enforcement Administration (DEA) registration in at least one state, to administer, prescribe, dispense, or store a

controlled substance, on the island of Maui without a current Hawaii controlled substance registration; provided that they have never had their professional vocational license or their authority to work with controlled substances revoked or suspended and are hired by a State or county agency or entity, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity. This suspension is contingent on the out-of-state physician or advanced practice registered nurse receiving federal authority from the DEA to administer, prescribe, dispense, or store a controlled substance in Hawaii beforehand and complying with any further instruction from the State Narcotics Enforcement Division (NED).

Chapter 342B, HRS, **air pollution**, to the extent necessary to respond to the emergency, and implementing rules including HAR sections 11-60.1-52 and -53, to the extent necessary to suspend permits and to disallow open burning and agricultural burning on the Islands of Hawai'i and Maui.

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; and to allow the creation of firebreaks on government land in all counties, suspend the requirement to obtain a National Pollutant Discharge Elimination System permit or notice of general permit coverage, provided that such activity implements pollution and erosion control best management practices to minimize debris and sediment runoff and erosion.

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 necessary to respond 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 implementing rules including HAR section 11-280.1, to the extent necessary to respond to the emergency.

Chapter 343, HRS, **environmental impact statements**, to the extent necessary to respond to the emergency.

Chapter 451J, **marriage and family therapists**, to the extent necessary to allow an out-of-state marriage and family therapists with a current and active license, or those previously licensed under Chapter 451J, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 451J-5, HRS, **prohibited acts**, and section 451J-7, HRS, **application for licensure**, to the extent necessary to waive the licensure and accompanying requirements so as to enable out-of-state marriage and family therapists with a current and active license, to engage in telehealth practices with Hawai'i patients without an in-person consultation or a prior existing provider-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Chapter 453, HRS, **medicine and surgery**, and Chapters 16-85, HAR, **medical examiners**, to the extent necessary to allow out-of-state physicians, osteopathic physicians, emergency medical service personnel, and physician assistants with a current and active license, or those previously licensed under Chapter 453, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.



Section 453-1.3, HRS, **practice of telehealth**, to the extent necessary to allow individuals currently and actively licensed under Chapter 453, HRS, to engage in telehealth without an in-person consultation or a prior existing physician-patient relationship; and to the extent necessary to enable out-of-state physicians, osteopathic physicians, and physician assistants with a current and active license, or those who were previously licensed under Chapter 453, HRS, but who are no longer current and active, to engage in telehealth in Hawai'i without a license, in-person consultation, or prior existing physician-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Section 453D-5, HRS, **prohibited acts**, and 453D-7, HRS, **application for licensure as a mental health counselor**, to the extent necessary to allow out-of-state licensed mental health counselors with a current and active license, or those previously licensed under Chapter 453D, HRS, but are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 453D-5, HRS, **prohibited acts**, and section 453D-7, HRS, **application for licensure as a mental health counselor**, to the extent necessary to waive the licensure and accompanying requirements so as to enable out-of-state mental health counselors to engage in telehealth practices with Hawai'i patients without an in-person consultation or a prior existing provider-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Chapter 457, HRS, **nurses**, and chapter 16-89, HAR, **nurses**, to the extent necessary to allow out-of-state licensed practical nurses, registered nurses, advanced practice registered nurses and advanced practice registered nurses with prescriptive authority with a current and active license, or those previously licensed under Chapter 457, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended

and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 461-7, HRS, **temporary license**, section 461-8.5, HRS, **reciprocity**, section 16-95-18, HAR, **license or permit required**, section 16-95-22.5, HAR, **application and requirements for pharmacist license by reciprocity** and section 16-95-23, HAR, **temporary license**, to the extent necessary to allow out-of-state pharmacists to engage in the practice of pharmacy in the State and under this emergency proclamation, provided that: 1) their license is not revoked or suspended by any jurisdiction in which they hold a license; and 2) they are working in a pharmacy, mobile pharmacy in the State that shares common ownership with at least one currently licensed pharmacy in good standing in the State.

Section 461-9(a), HRS, **pharmacists in charge; pharmacy personnel**, and section 16-95-79(a), HAR, **supervision by a registered pharmacist**, and 16-95-80(a), HAR, **physical presence of a registered pharmacist**, to the extent necessary to allow out-of-state pharmacists actively licensed in another state to engage in the practice of pharmacy under Chapter 461, HRS, to receive and review prescriptions by remote data entry and counsel patients regarding the same, provided that: 1) their license is not revoked or suspended in any jurisdiction in which they hold a license; and 2) they are working for a pharmacy, mobile pharmacy or temporary pharmacy in the State that shares common ownership with at least one currently licensed pharmacy in good standing in the State.

Section 461-14, HRS, **permits for operation of pharmacy** and section 16-95-26, HAR, **pharmacy permit**, to the extent necessary to establish and operate mobile or temporary pharmacies, provided that the following conditions are met:

- (1) The mobile or temporary pharmacy meets all applicable federal requirements;
- (2) The mobile or temporary pharmacy shares common ownership with at least one currently licensed pharmacy in good standing in the State;
- (3) The mobile or temporary pharmacy retains records of dispensing and complies with the requirements under section 16-95-93, HAR, **records of**

**dispensing**, section 329-36, HRS, **records of registrants**, section 329-38, HRS, **prescriptions**, section 329-41(a)(6), HRS, **prohibited acts** **B-penalties**, section 329-101, HRS, **reporting of dispensation of controlled substances; electronic prescription accountability system; requirements; penalty**, and section 23-200-12, HAR, **records of controlled substances**;

- (4) The mobile or temporary pharmacy is under the control and management of a licensed pharmacist who is on the premises while prescriptions are being dispensed;
- (5) Reasonable security measures are taken to safeguard the drug supply maintained in the mobile or temporary pharmacy and under section 23-200-11, HAR, **inspections of establishments of registrants**; and
- (6) The mobile or temporary pharmacy ceases the provision of services within 48 hours following the termination of the declared emergency.

Section 461-15(7), HRS, **miscellaneous permits**, and section 16-95-18, HAR, **license or permit required**, and section 16-95-31, HAR, **miscellaneous permit**, to the extent necessary to allow an out-of-state pharmacy or entity to engage in the practice of pharmacy by distributing, shipping, mailing, or delivering prescription drugs or devices to or on the island of Maui; provided that they have never had their license revoked or suspended by any jurisdiction in which they hold a license.

Section 463-10.5, HRS, **guards; registration, instruction, training, testing, and continuing education required; renewal of registration**, to the extent necessary to allow out-of-state licensed guards with a current and active license, or those previously licensed under Chapter 463, HRS, but who are no longer current and active, to engage in the business of guarding statewide without a Hawai'i license; provided that they have never had their license revoked or suspended, have not been convicted of a felony within the last five years, and are hired by a Hawai'i licensed guard agency whose license is current, active, and in good standing.

Section 464-4, HRS, **public works required to be supervised by certain professionals**, to the extent necessary to respond to the emergency.

Chapter 465, HRS, **psychologists**, and Chapter 16-98, HAR, **psychologists**, to the extent necessary to allow out-of-state psychologists with a current and active license, or those previously licensed under Chapter 465, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 465-2, HRS, **license required**, and section 465-15, HRS, **prohibited acts; penalties**, to the extent necessary to waive the licensure and accompanying requirements so as to enable out-of-state psychologists licensed to engage in telehealth practices with Hawai'i patients without an in-person consultation or a prior existing provider-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Chapter 466D, **respiratory therapists**, to the extent necessary to allow an out-of-state respiratory therapist with a current and active license, or those previously licensed under Chapter 466D, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 466J-4, HRS, **licenses required**, section 466J-5, HRS, **radiographers, radiation therapists, and nuclear medicine technologists, qualifications and licenses**, section 11-44-3, HAR, **licenses required**, section 11-44-4, HAR, **application for license**, and section 11-44-5, HAR, **minimum eligibility requirements for license**, to the extent necessary to allow an out-of-state radiographer, radiation therapist, or nuclear medicine technologist, with a current and active registration or certification in good standing with the American Registry of Radiologic Technologists (ARRT) in radiography, radiation therapy technology, or nuclear medicine technology or with the Nuclear Medicine Technology Certification Board (NMTCB) in nuclear medicine technology, or those previously licensed under Chapter 466J, HRS, but who are no

longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or other health care entity that possesses a current and valid radiation facility license. Facilities are required to submit to the Radiologic Technology Board the following information for individuals performing radiologic technology under this exemption: full name; ARRT, NMTCB or previous license number; and a photocopy of the current ARRT or NMTCB credential card.

Section 467-7, HRS, **licenses required to act as real estate broker and salesperson**, as it applies to the management and operation, including rental, of State-owned temporary lodging for persons displaced by the Lāhainā wildfire and those assisting with the Lāhainā wildfire recovery.

Chapter 467E, **social workers**, to the extent necessary to allow an out-of-state clinical social worker with a current and active license, or those previously licensed under Chapter 467E, HRS, but who are no longer current and active, to practice statewide without a Hawai'i license; provided that they have never had their license revoked or suspended and are hired by a State or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 467E-5, HRS, **license required**, and section 467E-13, HRS, **prohibited acts; penalties**, to the extent necessary to waive the licensure and accompanying requirements so as to enable out-of-state social workers to engage in telehealth practices with Hawai'i patients without an in-person consultation or a prior existing provider-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Section 514B-112(c), HRS, **condominium community mutual obligations**, to the extent necessary to allow condominiums and condominium owners to house persons displaced by the wildfire emergency in excess of time limits contained in declarations, by-laws, and house rules.

Section 572-6(a), **application; license; limitations**, to the extent necessary to allow a person applying for a marriage license on the island of Maui to appear via videoconferencing.

Section 16-95-26(b)(1), HAR, **pharmacy permit**, to the extent necessary to reopen existing pharmacy locations in areas impacted by the wildfire emergency without a sink with hot and cold water and sewage outlet, provided that: 1) reasonable alternative sources for water and sanitation are established; and 2) all other requirements under section 16-95-26 are met.

Section 16-95-84, HAR, **transfer of prescriptions**, to the extent necessary to allow a pharmacy or pharmacist whose principal place of business or professional practice is directly impacted by wildfire on the island of Maui to transfer prescription information for the purpose of initial fill or refill dispensing.

Section 23-200-10, HAR, only to the extent necessary to (1) allow registrants whose principal place of business or professional practice is directly impacted by wildfire to relocate controlled substances to another healthcare facility so long as the registrant inventories the relocated substances, segregates the stock of controlled substances, and keeps the substances secure; and (2) allow licensed Hawai'i registrants who may respond to the emergency on the islands of Hawai'i or Maui from another island to prescribe, administer, dispense, or store a controlled substance without the need for a separate controlled substance registration. This suspension is conditioned on the registrant informing the State NED beforehand and complying with any further instruction from NED.

### **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 supersedes the January 5, 2024, Ninth Proclamation Relating to Wildfires. The disaster emergency relief period shall commence immediately and continue through May 4, 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 this 5<sup>th</sup> day of March, 2024



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JOSH GREEN, M.D.,  
Governor of Hawai'i

APPROVED:

*Anne E. Lopez*

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ANNE E. LOPEZ,  
Attorney General, State of Hawai'i

RULES RELATING TO  
IMMUNITIES FOR HEALTH CARE PRACTICES

- §1 Purpose and Authority
- §2 Definitions
- §3 Health Care Response to Emergency
- §4 Immunity of Health Care Facilities
- §5 Immunity of Health Care Professionals
- §6 Immunity of Health Care Volunteers
- §7 Miscellaneous

§1 Purpose and Authority. These rules are adopted pursuant to section 127A-9, 12, 13, 25, 29, and 31, Hawaii Revised Statutes (HRS), to respond to this wildfire emergency and have the full force and effect of law. The following rules are necessary to enable the healthcare system in Hawai'i to continue to function at acceptable levels of service for patients during a time when health care professionals are in short supply.

§2 Definitions. For the purpose of these rules, the following definitions apply:

"Health care facility" means any program, institution, site whether fixed or mobile, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to facilities licensed or certified by DOH pursuant to section 321-11(10), HRS, and others providing similarly organized services regardless of nomenclature, and any state government-operated site providing health care services established for the purpose of responding to this wildfire emergency.

"Health care professional" means marriage and family therapists licensed pursuant to chapter 451J, physicians and surgeons and others licensed pursuant to chapter 453, mental health counselors licensed pursuant to chapter 453D, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, respiratory therapists licensed pursuant to chapter 466D, radiographers, radiation therapists, and nuclear medicine technologists licensed pursuant to chapter 466J, social workers licensed pursuant to chapter 467E, and pharmacists licensed pursuant to



chapter 461 who: (i) are providing health care services at a health care facility in response to this wildfire emergency and are authorized to do so; or (ii) are working under the direction of the Hawai'i Emergency Management Agency (HIEMA) or Hawai'i Department of Health (HDOH) pursuant to any Governor's emergency proclamation or executive order related to this emergency (collectively, "emergency proclamations").

"Health care volunteer" means all volunteers or medical, nursing, social work, pharmacy, or respiratory therapist students who do not have licensure who: (i) are providing services, assistance, or support at a health care facility in response to the wildfire emergency and are authorized to do so; or (ii) are working under the direction of HIEMA or HDOH pursuant to the Governor's emergency proclamations.

§3 Health Care Response to Wildfire Emergency. Health care facilities, health care professionals, and health care volunteers shall render assistance in support of the State's response to the wildfire emergency. For health care facilities, "rendering assistance" in support of the State's response includes cancelling or postponing elective surgeries and procedures as each facility determines to be appropriate under the circumstances presented by the wildfire emergency if elective surgeries or procedures are performed at the health care facility. In addition, for health care facilities, "rendering assistance" in support of the State's response must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients in need of care because of the emergency. For health care professionals, "rendering assistance" in support of the State's response means providing health care services at a health care facility in response to the wildfire emergency, or working under the direction of HIEMA or HDOH pursuant to the Governor's emergency proclamations. For health care volunteers, "rendering assistance" in support of the State's response means providing services, assistance, or support at a health care facility in response to the wildfire emergency, or working under the direction of HIEMA or HDOH pursuant to the emergency proclamations.

§4 Immunity of Health Care Facilities. Health care facilities that in good faith comply completely with all

state and federal orders regarding this emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care facility, which death of or injury to persons, or property damage occurred at a time when the health care facility was rendering assistance to the State by providing health care services in response to the wildfire emergency, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care facility.

§5 Immunity of Health Care Professionals. Health care professionals who in good faith comply completely with all state and federal orders regarding the wildfire emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care professional, which death of or injury to persons, or property damage occurred at a time when the health care professional was rendering assistance to the State by providing health care services in response to the wildfire emergency, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care professional.

§6 Immunity of Health Care Volunteers. Any health care volunteer who in good faith complies completely with all state and federal orders regarding the wildfire emergency, shall be immune from civil liability for any death of or injury to persons, or property damage alleged to have been caused by any act or omission by the health care volunteer at a time when the health care volunteer was rendering assistance to the State by providing services, assistance, or support in response to the wildfire emergency, unless it is established that such death of or injury to persons, or property damage was caused by the willful misconduct, gross negligence, or recklessness of the health care volunteer.

§7 Miscellaneous. (a) Nothing in these rules shall be construed to preempt or limit any applicable immunity from civil liability available to any health care facility, health care professional, or health care volunteer.

(b) If any provision of these rules is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision, which can be given effect

without the invalid provision or application. To achieve this purpose, the provisions of this rule are declared to be severable.

(c) The provisions of these rules shall take effect nunc pro tunc to August 8, 2023, and shall remain in effect for the emergency period, unless terminated by separate proclamation, whichever shall occur first.

# EXHIBIT C

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

April 23, 2024

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

PSF No.: 24MD-043

Maui

Issuance of a Right-of-Entry Permit to the State Department of Transportation to Conduct Due Diligence Studies Including Ground Borings and Test Pit Excavations on State Unencumbered Land to Determine Suitability for Emergency Housing for Lahaina Residents Displaced by Fire, Lahaina, Maui, Tax Map Key: (2) 4-6-018:017.

APPLICANT:

State of Hawaii, Department of Transportation.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (HRS), as amended, and authority delegated to Chairperson by Board action of June 14, 2023, Item D-11, as amended, which authorizes the Chair to approve rights-of-entry onto unencumbered lands. The Governor's Tenth Proclamation Relating to Maui Wildfires, which suspends Chapters 6E, 171 and 343, HRS (among other statutes), to the extent necessary to respond to the wildfire emergency, is cited as additional authority for issuance of the right-of-entry.

LOCATION:

Portions of Government land situated at Lahaina, Maui, Tax Map Key: (2) 4-6-018:017.  
**See Exhibit 1.**

AREA:

4.251 acres, more or less.

ZONING:

State Land Use District: Agricultural, Urban

**EXHIBIT C**

County of Maui CZO: Interim

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:

Vacant and unencumbered.

CHARACTER OF USE:

Conduct land surveys and due diligence including borings and test pits.

TERM OF RIGHT-OF-ENTRY:

One year from date of execution. The Chairperson may continue the right-of-entry for additional one-year periods for good cause shown.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to:

General Exemption Type 1: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Part 1, Item 44: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

General Exemption Type 5: "Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource."

Part 1, Item 1: "Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.)."

Part 1, Item 2: "Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping."

Part 1, Item 7: “Conduct subsurface investigations (borings) provided the average surface area disturbed is less than one square foot and the implementation division consults with the State Historic Preservation Division on exempting such borings or investigations.”

The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

In addition, the Governor’s Tenth Proclamation Relating to Maui Wildfires suspends Chapters 343, 171, and 6E, HRS (among other statutes), to the extent necessary to respond to the wildfire emergency, and is therefore cited as additional authority for undertaking the due diligence activities described above.<sup>1</sup>

REMARKS:

Maui County sustained a catastrophic disaster on August 8, 2023, known as the Lahaina Wildfires, that devastated Lahaina Town on the West side of the island. By email dated April 21, 2024 from Ed Sniffen, Director, Department of Transportation (DOT), requested the expedited issuance of a right-of-entry permit (ROE) onto the subject State land for due diligence studies including borings and test pit excavations to determine whether the parcel is suitable for emergency housing for Lahaina residents displaced by fire. The parcel is currently an unencumbered land adjacent to private property owned by Kamehameha Schools. Staff has no objection to the request. If the land is found suitable for housing, a request may be made by DOT or other appropriate agency for the set-aside of the land for emergency housing purposes. Upon receipt, staff will prepare a separate submittal to the Board of Land and Natural Resources for the formal disposition of the land.

RECOMMENDATION: That the Chairperson

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, 11-200.1-16, HAR, this

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<sup>1</sup> Among other statutes, the Governor’s Tenth Proclamation Relating to Maui Wildfires suspends:

Chapter 6E, HRS, historic preservation, only to the extent necessary to: (1) allow for emergency demolition, removal, and disposal of wildfire-generated debris; and (2) allow for the construction or erection of temporary housing for use by displaced victims of the Lahaina wildfires, provided that construction or erection of temporary housing may commence after consultation with, and upon the approval of, the State Historic Preservation Division. Any work performed under this limited suspension shall be subject to cultural, historic, and archaeological monitoring as appropriate. I also order State agencies and personnel, to the extent allowed by law and in consultation with the State Historic Preservation Division, to protect and preserve items of historic or cultural significance to the town and historic character of Lahaina regardless of age, including but not limited to, business signs and other landmarks.

project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.

2. Authorize the issuance of an immediate right-of-entry permit to the Department of Transportation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The ROE is for a term of one year from the date of execution. The Chairperson may continue the right-of-entry for additional one-year periods for good cause shown;
  - B. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Apr 23, 2024

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Michael H. Ferreira  
Land Agent V

APPROVED:



Apr 23, 2024

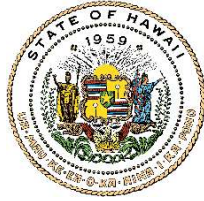
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Dawn N. S. Chang, Chairperson *RT*



**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA

**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621  
HONOLULU, HAWAII 96809

**DAWN N.S. CHANG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**RYAN K.P. KANAKA'OLE**  
FIRST DEPUTY

**DEAN D. UYENO**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

April 23, 2024

Ref. No.: 24MD-043

Edwin H. Sniffen, Director  
Department of Transportation  
869 Punchbowl Street, Room 301  
Honolulu, HI 96813

**Subject:** Issuance of Right-of-Entry Permit to the State Department of Transportation-Highways Division to Conduct Due Diligence Studies Including Ground Borings and Test Pit Excavation on State Unencumbered Land to Determine Suitability for Emergency Housing for Lahaina Residents Displaced by Fire, Lahaina. Maui, Hawaii, Tax Map Key: TMK: (2) 4-6-018:017

Dear Mr. Sniffen:

By email dated April 21, 2024, you requested the issuance of a right-of-entry permit to the State of Hawaii, Department of Transportation (HDOT) to conduct due diligence studies including ground borings and test pit excavations upon the subject unencumbered State land to determine its suitability for emergency housing for Lahaina residents displaced by the wildfire disaster of August 2023.

Pursuant to the authority delegated to the Chairperson by the Board of Land and Natural Resources' action of June 14, 2003, Item D-11, as amended, HDOT, its contractors, consultants, and/or persons acting for or on its behalf, are hereby granted a right-of-entry onto unencumbered State lands located in Maui, identified as Tax Map Key: TMK: (2) 4-6-018:017 for the above-stated purposes, subject to the following conditions:

1. This right-of-entry shall be effective upon our receipt of a copy of this right-of-entry duly executed by an authorized representative of the HDOT, accepting the conditions herein, and shall expire in one (1) year, although the Chairperson is authorized to continue the right-of-entry for additional one-year periods for good cause shown.
2. The HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf procure at their own expense, and maintain during the entire period of this right-of-entry, from an

insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of HDOT, its consultants, contractors and/or persons acting for or on its behalf. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require HDOT, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify HDOT, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and HDOT, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit HDOT, its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve HDOT, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by HDOT, its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

3. At all times herein, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
4. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the project. All trash shall be removed from the area or premises.
5. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.

6. HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf relating to HDOT, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in HDOT, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of HDOT, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
7. All equipment shall be placed within the right-of-entry area or premises described on the attached map.
8. No alcoholic beverages will be served or permitted in the right-of-entry area or premises.
9. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of the HDOT, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by HDOT, its consultants, contractors and/or persons acting for or on its behalf, then the HDOT its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning HDOT, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by HDOT, its consultants, contractors and/or persons acting for or on its behalf.
10. HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf agree

to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while HDOT, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by HDOT, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

11. HDOT, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
12. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the HDOT, its consultants, contractors and/or persons acting for or on its behalf.
13. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
14. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from HDOT, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at HDOT, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
15. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered the HDOT, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
16. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.

Edwin H. Sniffen, Director  
Department of Transportation  
April 23, 2024  
Page 5

17. This right-of-entry is revocable and terminable at any-time for any reason in the sole and absolute discretion of the Chairperson.
18. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
19. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

Should you accept the above terms and conditions please sign in the space provided below and then fax a signed copy of this letter to the Maui District Land Office at (808) 984-8115.

If you have any questions, please contact Michael Ferreira at the Oahu District Land Office at (808) 587-0421. Thank you. <sup>MF</sup>

Respectfully Submitted,



Apr 23, 2024

Dawn N. S. Chang  
Chairperson *RT*

WE CONCUR:

State of Hawaii  
Hawaii Department of Transportation

By 

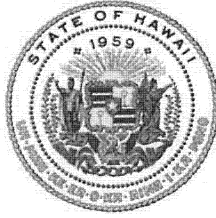
Apr 23, 2024

Its: Director of Transportation

Date:

xc: Maui Land Board Member  
Central File  
District File

# EXHIBIT D



**LIEUTENANT GOVERNOR**  
*Ke Ke'ena O Ka Hope Kia'aina*

**SYLVIA LUKE**  
Hawai'i State Capitol, 5<sup>th</sup> Floor  
415 S. Beretania Street  
Honolulu, Hawai'i 96813  
(808) 586-0255 | [itgov.hawaii.gov](http://itgov.hawaii.gov)

April 26, 2024

Russell Y. Tsuji  
Administrator  
Hawai'i Department of Land and Natural Resources  
Land Division  
1151 Punchbowl Street, Room 220  
Honolulu, HI 96813

Subject: Request for Right of Entry for Temporary Housing Construction for Maui  
Wildfire Survivors, Parcel TMK: (2) 4-6-018:017

Aloha Administrator Tsuji,

I am writing on behalf of the Office of the Lieutenant Governor and the Hawai'i Department of Transportation (DOT). Both entities are dedicated to providing immediate relief and support to communities affected by natural disasters. The recent wildfires on Maui have left many residents without shelter and in immediate need of temporary housing.

We, on behalf of the State Department of Transportation (DOT) are formally requesting an immediate management and construction right of entry be issued to DOT to the lands managed by the Hawai'i Department of Land and Natural Resources (DLNR) for the purpose of constructing temporary housing units for the wildfire survivors. The specific parcel under consideration for this project is located at TMK: (2) 4-6-018:017, which has been identified as a suitable site for temporary housing due to its proximity to affected areas and accessibility for construction and resident services.

Our proposed plan for the parcel includes the following considerations:

**EXHIBIT D**

1. DOT will conduct and execute planning, design, construction, and equipment for as many as ten temporary housing units, designed to provide immediate, short-term housing for displaced residents.
2. DOT requests a set aside (Executive Order) for the land identified as TMK: (2) 4-6-018:017.
3. Pending negotiation, the Office of the Lieutenant Governor and DOT are working with the Department of Human Services to expand the scope of their current contract with HomeAid Hawaii, who is delivering housing support for non-FEMA eligible households at the State Kala'iola project, to provide property management services at this parcel for a five-year term following completion of construction.
4. After the term of five years from the date of completed construction has ended, DOT will conduct and execute demolition of the temporary housing units and restoration of the land prior to the return of the parcel to DLNR.
5. Coordination with local utilities and infrastructure to provide essential services to the temporary housing community.

We request that DLNR expedite the review of this right of entry and set aside request due to the urgent need for housing solutions for the wildfire survivors. Our team is ready to meet with DLNR officials to discuss the proposal in further detail and to address any concerns or requirements you may have.

Please do not hesitate to contact me directly at (808) 586-0255 or via email at Riley.Fujisaki@Hawaii.gov should you require any additional information or wish to arrange a meeting.

Sincerely,

A handwritten signature in blue ink that reads "Riley Fujisaki". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Riley Fujisaki  
Chief of Staff  
Office of the Lieutenant Governor

cc: Department of Transportation, Director Ed Sniffen



**END**