

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

July 26, 2024

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

Reconsideration of Conditions Imposed for the Partial Withdrawal from Governor's Executive Order No. 4663 (EO 4663) and Reset Aside to the County of Kauai for Housing Purposes; Issuance of Immediate Construction Right-of-Entry to the County of Kauai; Authorize Acceptance of a Bill of Sale from the County of Kauai to the Department of Land and Natural Resources, Division of Forestry and Wildlife (Division), Covering Infrastructure Improvements the County Constructs on Land Set Aside to Division under EO 4663, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-8-005:portions of 002 (known as the Pua Loke Nursery and Arboretum).

CONTROLLING AGENCY:

Division of Forestry and Wildlife.

LOCATION:

Portion of Government lands situated at Nawiliwili, Lihue, Kauai, identified by Tax Map Key: (4) 3-8-005: Portion of 002, as shown in the original submittal labeled Exhibit A.

AREA:

| | |
|--|---------------------------|
| Total parcel area: | 7.319 acres, more or less |
| Area under Executive Order No. 4663: | 5.679 acres, more or less |
| Area to be withdrawn and set aside to COK: | 1 acre, more or less. |

ZONING:

| | |
|--------------------------|------------|
| State Land Use District: | Urban |
| County of Kauai CZO: | Commercial |

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Governor’s Executive Order No. 4662 set aside 1.64 acres to the County of Kauai (COK) for housing and management of memorial and arboretum purposes.

Governor’s Executive Order No. 4663 set aside 5.679 acres to the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife for native plant nursery and base yard purposes.

LOD27664: Electric Transmission Line Easement to Kauai Island Utility Cooperative (KIUC).

LOD27635: Waterline Easement to COK.

PURPOSE OF SET ASIDE:

The purpose of the additional one-acre set-aside is to expand the County’s Kealaula Supportive Housing Project for Homeless Families by approximately 24 units. This project is in concurrence with the Governor’s Tenth Proclamation Relating to Homeless dated March 8, 2024.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This reconsideration is for the transfer of unimproved lands, and as such, is exempt from Chapter 343.

BACKGROUND:

On September 8, 1992, EO 3564 set aside 7.319 acres of TMK (4) 3-8-005:002 to the Division of Forestry and Wildlife for their base yard, nursery, and arboretum site. Approximately 2.64 acres of the area has been managed by the Division as an arboretum and de facto public park, which also contained a small memorial dedicated to the late Senator Spark M. Matsunaga.

On November 19, 2021, three Governor’s Executive Orders were processed:

- EO 4661 cancelled EO 3564, covering 7.319 acres (TMK (4) 3-8-005:002).
- EO 4662 set aside a 1.64-acre portion of TMK (4) 3-8-005:002 to the COK for housing and management of memorial and arboretum purposes.
- EO 4663 reset aside a 5.679-acre portion of TMK (4) 3-8-005:002 to the Division of Forestry and Wildlife for native plant nursery and baseyard site purposes.

<https://files.hawaii.gov/dlnr/reports-to-the-legislature/2022/LD22-Annual-Land-Disposition-FY21.pdf>

No subdivision was done for these set asides and, as a result, there are two EOs encumbering different portions of TMK (4) 3-8-005:002.

At its meeting of June 28, 2024, the Board approved Item D-1, to include Board authorization to approve of and recommend to the Governor issuance of an executive order withdrawing approximately one acre from the Governor's Executive Order No. 4663. The approximately 4.679-acre balance of the parcel would remain set aside to Division of Forestry and Wildlife for its existing native plant nursery and base yard site operations. As part of the vote to approve the staff recommendations in D-1, the Board added a condition "...that prior to the transfer of land to the County, the County shall relinquish or agree to relinquish lands suitable for DLNR's functions that are not in a flood zone or area and are of reasonably equivalent value and proximity to the subject lands in Lihue."

DISCUSSION:

Item D-1 from the June 28, 2024, Board of Land and Natural Resources meeting,

Partial Withdrawal from Governor's Executive Order No. 4663 (EO 4663) and Reset Aside to the County of Kauai for Housing Purposes; Issuance of Immediate Construction Right-of-Entry to the County of Kauai; Authorize Acceptance of a Bill of Sale from the County of Kauai to the Department of Land and Natural Resources, Division of Forestry and Wildlife (Division), Covering Infrastructure Improvements the County Constructs on Land Set Aside to Division under EO 4663, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-8-005:portions of 002 (known as the Pua Loke Nursery and Arboretum)

was approved as amended. The recommendation for this submittal is for the Board to retain the approval for the original June 28, 2024 D-1 submittal recommendations but remove the added condition that "...the County shall relinquish or agree to relinquish lands suitable for DLNR's functions..." so that the county project can proceed with their planned housing project and not jeopardize, among other things, approximately \$3.86 million in federal American Rescue Plan Act funds allocated for the housing project. The Department has done preliminary scoping for the condition and finds that fulfilling the condition would risk lapsing the federal funds currently allocated for a critically needed public works project.

The Division of Forestry and Wildlife is in favor of the transfer. The land approved for transfer would have been a welcome expansion to our existing baseyard, but the lands currently allocated to the Division support our Kauai Branch operations. The conversion of the former arboretum lands by the county for transitional housing serves an urgent public need and would help alleviate people living in unregulated camps that have a negative impact on the Department, the Division, the people living in the camps, and the community. The proliferation of unregulated vagrant camps has negative impacts on public health, safety, and the environment, and any reduction of such camps would have widespread public and environmental benefits. The Department and the Division support the use of the Pua Loke arboretum land for the county's transitional housing initiative as part of the greater public good.

Construction of the office and housing units on the 1.64 acres set aside under EO 4662 to the County is completed. However, the COK Public Housing Department needs an additional acre to expand their Kealaula Supportive Housing Project for Homeless Families by approximately 24 Units.

As part of the transfer, the county has agreed to pay for connecting the Division of Forestry and Wildlife base yard to their newly upgraded sewer system, a tangible benefit that would allow the Division to upgrade its base yard sewage disposal system. Without the county project the cost to run a sewer line to allow the Division to convert its existing cesspool to sewer was estimated at \$2 million. As an addendum to the county project, the county will pay approximately \$500,000 for the conversion. Details of that conversion are included in the June 28, 2024, Item D-1 submittal, as approved.

There has been an ongoing collaboration between the Department and the county over the last 18 months to find suitable lands for Departmental base yard purposes. None of the proposed sites have met the Department's needs, and no lands are readily available. To expedite the encumbrance of the federal funds set to expire at the end of the 2024 calendar year, the Department is willing to set aside an additional one acre of Pua Loke arboretum land while a search for suitable base yard expansion lands continues.

RECOMMENDATION:

That the Board:

1. Remove the Condition Imposed on the June 28, 2024, Board submittal Item D-1 for the *Partial Withdrawal from Governor's Executive Order No. 4663 and Reset Aside to the County of Kauai for Housing Purposes*, specifically:

"...that prior to the transfer of land to the County, the County shall relinquish or agree to relinquish lands suitable for DLNR's functions that are not in a flood zone or area and are of reasonably equivalent value and proximity to the subject lands in Lihue..."

while retaining the approval for the original recommendations from Item D-1.

Item D-1 from the June 28, 2024, Board meeting was approved as amended. The current recommendation is for the Board to retain the approval for the original submittal recommendations but remove the condition so that the county project can proceed and not jeopardize federal American Rescue Plan Act funds allocated for the project.

Respectfully Submitted,



David G. Smith
Administrator

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

Attachments:

Exhibit A – BLNR Submittal Item D-1, June 28, 2024

AMENDED

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

June 28, 2024

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

PSF No.: 24KD-050

KAUAI

Partial Withdrawal from Governor’s Executive Order No. 4663 (EO 4663) and Reset Aside to the County of Kauai for Housing Purposes; Issuance of Immediate Construction Right-of-Entry to the County of Kauai; Authorize Acceptance of a Bill of Sale from the County of Kauai to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), Covering Infrastructure Improvements the County Constructs on Land Set Aside to DOFAW under EO 4663, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-8-005:portions of 002 (known as the Pua Loke Nursery and Arboretum).

CONTROLLING AGENCY :

Division of Forestry and Wildlife (DOFAW).

APPLICANT:

County of Kauai (COK).

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Nawiliwili, Lihue, Kauai, identified by Tax Map Key: (4) 3-8-005:portions of 002, as shown on the attached maps labeled Exhibit A.

AREA:

Total parcel area: 7.319 acres, more or less
Area under Executive Order No. 4663: 5.679 acres, more or less
Area to be withdrawn and set aside to COK: 1 acre, more or less.

as amended
**APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON**

June 28, 2024 KH

ZONING:

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

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

CURRENT USE STATUS:

Governor’s Executive Order No. 4662 setting aside 1.64 acres to the COK for public purposes.

Governor’s Executive Order No. 4663 setting aside 5.679 acres to the Department of Land and Natural Resources (DLNR), DOFAW for native plant nursery and base yard purposes.

LOD27664: Electric Transmission Line Easement to Kauai Island Utility Cooperative (KIUC).

LOD27635: Waterline Easement to COK.

PURPOSE OF SET ASIDE:

The COK would like to have an additional portion of the subject parcel set aside to it in order to expand their Kealaula Supportive Housing Project for Homeless Families by approximately 24 units utilizing portions of DOFAW’s base yard. This project is in concurrence with the Governor’s Tenth Proclamation Relating to Homeless dated March 8, 2024. See attached Exhibit B.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Kealaula O’hana Zone Supportive Housing Project for Homeless Families/ Pua Loke Affordable Housing Development was constructed by the COK on the subject parcel and completed in 2020. This project was done in concurrence with the Governor’s Seventh Supplementary Proclamation Relating to Homeless dated December 16, 2019 and was exempt under the Office of the Governor, State of Hawaii emergency proclamations related to homelessness.

This proposed expansion of the housing project is exempt under the Office of the Governor, State of Hawaii emergency proclamations related to homelessness. See attached Exhibit B at page 3 (“Chapter 343, HRS, Environmental Impact Statements to

the extent necessary to expedite the provision of housing for homeless persons, subject to the attached Governor’s emergency rules”).

For any components of the proposed action not covered by the Governor’s emergency proclamations, 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, such components are exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 1, Item 36 that states, “Transfer of management authority over state-owned land, such as setting aside of State lands” and Type 3, Part 1, Item 7 that states, “Utility service connection and installation.”

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision at Applicant’s own cost, if required;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant’s own cost, if required;
- 3) Provide a final site plan, subject to approval by DOFAW and the DLNR Chairperson; and once completed, these plans will remain subject to change as final construction plans are developed and during permitting;
- 4) COK will pay for and construct DOFAW’s new sewer pump station inclusive of, but not limited to electrical components, force main from the pump station to the County Housing project’s sewer manhole and discharge the effluent to the wastewater treatment plant, abandonment of the existing cesspool, etc. Construction of all sewerage must be completed by the time the Kealahou Supportive Housing Project is completed; and
- 5) COK will pay for and construct a 10ft (2ft below and 8ft above ground) chain link fence that separates the new construction boundary to DOFAW’s land. Fence must be completed by the time the Housing project is completed.

BACKGROUND:

At its meeting of July 26, 2019, under agenda Item C-2, the Board of Land and Natural Resources (Board) approved the cancellation of Executive Order (EO) No. 3564, delegated authority to the Chairperson of the Department of Land and Natural Resources to negotiate and finalize a reset aside to the County of Kauai (COK) for housing and management of memorial and arboretum improvements purposes; reset aside to the Division of Forestry and Wildlife (DOFAW) for native plant nursery and base yard purposes; and authorized the transfer of funds to COK for memorial and arboretum

improvements, Pua Loke Nursery and Arboretum, Lihue, Kauai, Tax Map Key: (4) 3-8-005:002.

At its meeting of July 24, 2020, the Board approved amending its prior Board action on July 26, 2019 to include Board authorization to grant perpetual non-exclusive easements for the project with immediate management and construction rights-of-entry to the Kauai Island Utility Cooperative (KIUC) and the County Board of Water Supply for utility purposes.

REMARKS:

EO 3564, dated September 8, 1992, set aside the subject State lands to DOFAW for their base yard, nursery and arboretum site. In 2019, EO 3564 was cancelled so that a portion of the parcel could be set aside to the COK for public use (housing) purposes. Subsequently, EO 3564 was cancelled, and a portion of the land was set aside to the COK under EO 4662 and the remainder was reset aside back to DOFAW under EO 4663. No subdivision was done for this transaction and, as a result, there are two EOs encumbering different portions of a single parcel at the present time.

Construction of the office and housing units on the land set aside under EO 4662 to the County is completed. However, the COK Public Housing Department is now requesting additional lands to expand their Kealaula Supportive Housing Project for Homeless Families by approximately 24 Units.

According to the COK Public Housing Department, this project will be designed upon a standard to ensure exterior-structural durability for a life cycle of 50 years. The project includes 6 duplex buildings using wood construction on a raised floor frame. The shared sewer system includes a wet well, lift station, standby generator and a separate KIUC service. This was completed in 2020 with the Kealaula O‘hana Zone project at which time included utility connections for future units, a drainage detention basin and offsite infrastructure includes a shared force main sewer to an existing County manhole. This project was done in concurrence with the Governor’s Seventh Supplementary Proclamation relating to the homeless emergency in the State of Hawaii.

The property is bounded on the northwest by the COK Department of Water parking lot, on the northeast by Pua Loke Street, on the southeast by Haleko Road, and on the southwest by a series of commercial and professional buildings surrounded by parking lots. The APE is situated within a built environment which includes buildings, paved parking lots, landscaping, and infrastructure.

DOFAW is currently in the process of expanding their office facilities and nursery on the subject parcel. Although DOFAW was not initially amenable to the COK’s request since DOFAW would be losing portions of a base yard that is utilized by several DLNR divisions and consists of valuable and limited land in Lihue, DOFAW agreed to relinquish the land in exchange for the COK paying for and installing a 10 foot chain

link fence separating DOFAW’s land from the new construction as well as installing a sewer line to the subject property on behalf of DOFAW. DLNR’s consultant will provide DOFAW’s sewer improvement design to the COK to incorporate into their plans for Design-Build solicitation.

The COK was asked to construct the 10 foot chain link fence at an estimated cost of \$55,000 (see attached Exhibit C) as well as DOFAW’s entire sewer pump station inclusive of, but not limited to all electrical, force main from the pump station to the County Housing project’s sewer manhole and discharge the effluent to the wastewater treatment plant, abandonment of the existing cesspool, etc. at an approximate cost of \$500,000 (see attached Exhibit D). Director of Housing Adam Roversi (COK) indicated in an email on Feb. 12: “The Mayor’s Office has agreed that we will design the project to accommodate DOFAW’s wastewater needs and include the installation of the sewer line on DOFAW’s remaining land with the understanding that DOFAW will be solely responsible for its future maintenance and the operation/maintenance of any required pump station on DOFAW’s property.”

The following State and COK agencies were consulted on this action with the results indicated:

| Agency: | Comment: |
|--------------------------------|------------------------------|
| State Department of Health | No response by suspense date |
| Office of Hawaiian Affairs | No response by suspense date |
| COK Department of Public Works | No response by suspense date |
| COK Planning Department | No response by suspense date |
| COK Police Department | No objections |
| COK Fire Department | No response by suspense date |

Finally, staff is including a recommendation below for the issuance of an immediate construction right-of-entry to the COK covering the area to be withdrawn and set-aside to it as well as the area for the DOFAW wastewater pipe that the County has agreed to install. The right-of-entry will continue for a period of one year or until the set-aside is complete, whichever shall first occur. Staff is additionally recommending the Board authorize the Chairperson to extend the right-of-entry for additional one-year periods for good cause shown.

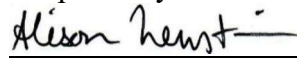
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the withdrawal of lands from EO4663 under DOFAW and the set-aside of the withdrawn area to the County of Kauai, as well as the planned infrastructure improvements on lands to be retained by DOFAW under EO4663, will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental

- assessment.
2. Approve of and recommend to the Governor issuance of an executive order withdrawing approximately 1 acre from the Governor’s Executive Order No. 4663 and subject 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. Approve of and recommend to the Governor the issuance of an executive order setting aside approximately 1 acre of the subject lands to the County of Kauai 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.
 4. Grant an immediate construction right-of-entry to the County of Kauai, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject property for the above-described project, 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 construction right-of-entry form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- C. This construction right-of-entry is effective upon Land Board approval and shall continue for a period of one year or until the set-aside is complete, whichever shall first occur; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown.
5. Subject to the County of Kauai fulfilling all of the requirements listed above, authorize the acceptance of a bill of sale covering the aforementioned chain link fence and sewer pump station, inclusive of, but not limited to all electrical, force main from the pump station to the County Housing project's sewer manhole, from the County of Kauai to the Department of Land and Natural Resources, Division of Forestry and Wildlife upon completion of the improvements 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 bill of sale form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

Land Board Meeting: June 28, 2024; D-1 Approved as amended.

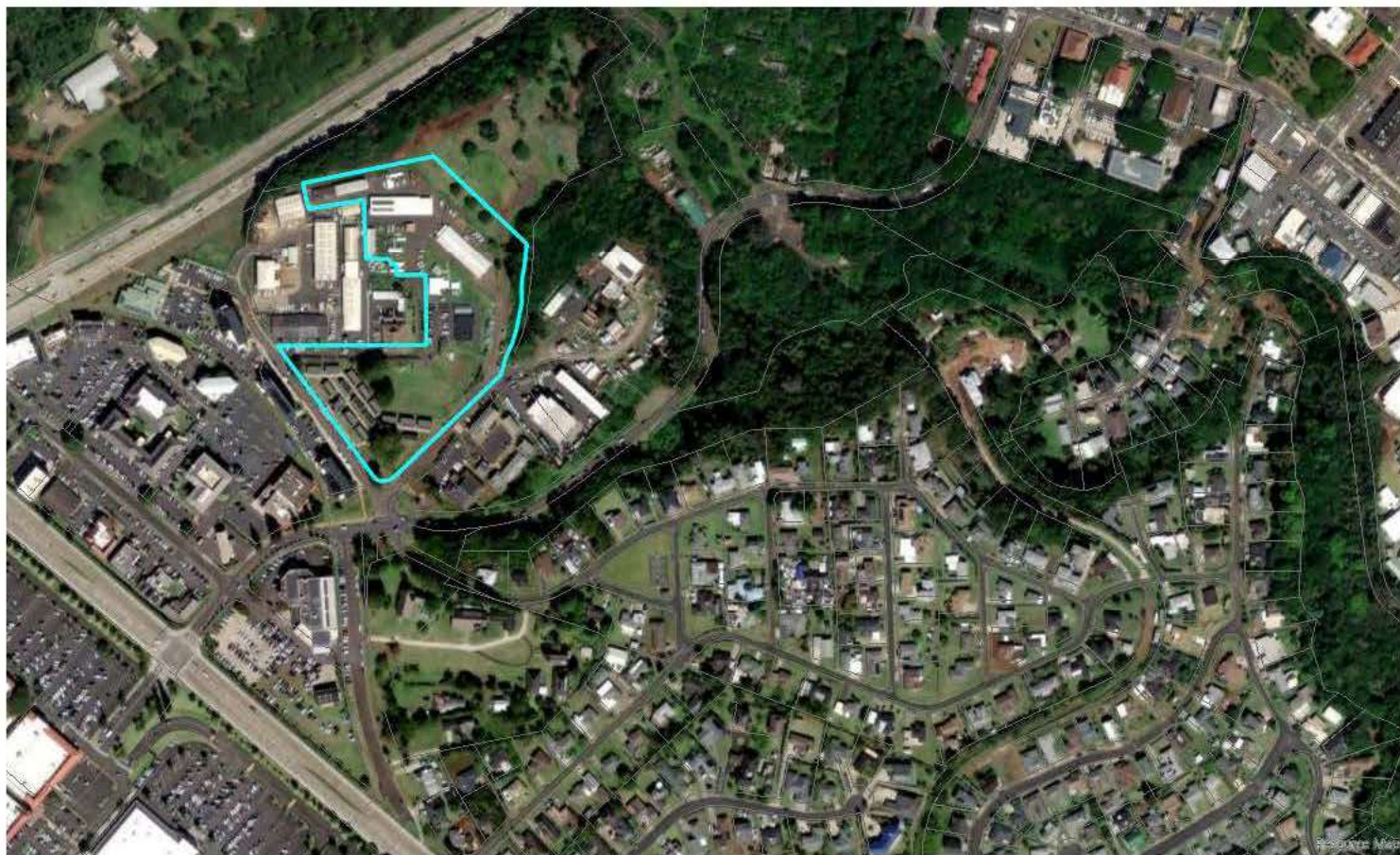
Approved as amended. The Board added a condition¹ in the recommendation section that prior to the transfer² of land to the County, the County shall relinquish or agree to relinquish lands suitable³ for DLNR's functions that are not in a flood zone or area and are of reasonably equivalent value and proximity to the subject lands in Lihue.

¹ In addition to the conditions of the COK paying for an installing the fence and sewer line, pump station, and cesspool closure as shown on Exhibits C and D.

² "Transfer" includes by Executive Order or any invasive or construction Right of Entry.

³ DLNR's acceptance of the lands will need prior Land Board approval.

EXHIBIT A



OFFICE OF THE GOVERNOR

STATE OF HAWAII

TENTH PROCLAMATION RELATING TO HOMELESSNESS

By the authority vested in me as Governor by the Constitution and laws of the State of Hawai'i, in order to provide relief for 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, homelessness is a humanitarian crisis that threatens the health, safety, security, and wellbeing of our community; and

WHEREAS, on January 23, 2023, a Proclamation was issued relating to homelessness that declared an emergency created by homelessness for the people of Hawai'i ("Proclamation"); and

WHEREAS, on January 26, 2023, a second Proclamation was issued relating to homelessness that clarified the terms of the Proclamation; and

WHEREAS, on March 20, 2023, a third Proclamation was issued relating to homelessness that clarified the terms of the Proclamation; and

WHEREAS, on May 19, 2023, a fourth Proclamation was issued relating to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units; and

WHEREAS, on July 18, 2023, a fifth Proclamation was issued related to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units;

WHEREAS, on September 15, 2023, a sixth Proclamation was issued related to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units;

WHEREAS, on November 9, 2023, a seventh Proclamation was issued related to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units;

WHEREAS, on January 8, 2024, an eighth Proclamation was issued related to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units;

WHEREAS, on March 8, 2024, a ninth Proclamation was issued related to homelessness that clarified the terms of the Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units ("Emergency Rules"); and

WHEREAS, based on the ninth Proclamation and the Emergency Rules, the effort to issue development agreements that allow for the construction of homeless dwelling units is underway; and

WHEREAS, more time is needed to continue the construction of homeless dwelling units and to relocate homeless individuals and families to completed dwelling units; and

WHEREAS, the creation of more permanent affordable housing, permanent supportive housing, transitional housing, and shelter space is necessary to protect the health, safety, and welfare, not only for individuals experiencing homelessness, but for all residents of the State, but it must be done in a way that is respectful to our environment, our history, and our *iwi kupuna*.

NOW, THEREFORE, I, Josh Green, M.D., Governor of the State of Hawai'i, hereby determine and proclaim that an emergency contemplated by section 127A-14, Hawaii Revised Statutes (HRS), is continuing in the State of Hawai'i, and in order to promote and protect the public health, safety, and welfare of the people of the State of Hawai'i, and to prepare for and maintain the flexibility to take proactive, preventative, and mitigative measures to minimize the adverse impact that the present emergency may cause on the State, and to work cooperatively and in conjunction with federal and county agencies, do hereby invoke the following measures under the Hawaii Revised Statutes:

I. Suspension of Laws

Section 127A-13(a)(3), HRS, **Additional Powers in an Emergency Period**, to the extent necessary to expedite the acquisition, construction, repair, renovation, and occupancy of housing that is designed exclusively for permanent, temporary, or transitional occupancy by persons experiencing homelessness or at risk of being homeless, and the provision of services to those persons, I hereby suspend the following statutes and regulations:

Section 127A-30, HRS, **Rental or Sale of Essential Commodities During a State of Emergency; Prohibition Against Price Increases**, to prevent the automatic statewide, 96-hour operation of this section, which is unnecessary for this emergency. The invocations and suspensions of section 127A-30, HRS, contained in my May 3, 2024 Eleventh Proclamation Relating to Wildfires are not affected by this Proclamation.

Chapter 6E, HRS, **Historic Preservation** to the extent necessary to expedite the provision of housing for homeless persons, subject to the attached Governor's emergency rules.

Section 37-41, HRS, **Appropriations to Revert to State Treasury; Exceptions**.

Section 37-74(d), HRS, **Program Execution**, except for sections 37-74(d)(2) and 37-74(d)(3), and any such transfers or changes considered to be authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.

Section 40-66, HRS, **Appropriations Lapse When**.

Chapter 46, HRS, **General Provisions**, to the extent prescribed by the counties in order to meet the minimum requirements for health and safety and floodplain management.

Chapter 76, HRS, **Civil Service Law**.

Chapter 89, HRS, **Collective Bargaining in Public Employment**.

Chapter 89C, HRS, **Public Officers and Employees Excluded from Collective Bargaining**.

Section 102-2, HRS, **Contracts for Concessions; Bid Required, Exception**.

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

Section 103-53, HRS, **Contracts with the State or Counties; Tax Clearances, Assignments**.

Section 103-55, HRS, **Wages, Hours, and Working Conditions of Employees of Contractors Performing Services**.

Section 103-55.5, HRS, **Wages and Hours of Employees on Public Works Construction Contracts**.

Section 103-55.6, HRS, **Public Works Construction; Apprenticeship Agreement**.

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

Chapter 103F, HRS, **Purchases of Health and Human Services**.

Chapter 104, HRS, **Wages and Hours of Employees on Public Works**.

Sections 105-1 to 105-10, HRS, **Government Motor Vehicles**.

Chapter 171, HRS, **Public Lands**.

Section 183C, HRS, **Conservation District**.

Chapter 205, HRS, **Land Use Commission** except as it applies to conservation district lands and important agricultural lands.

Chapter 205A, HRS, **Coastal Zone Management**.

Chapter 206E, HRS, **Hawaii Community Development Authority**.

Chapter 237, HRS, **General Excise Tax Law**, to the extent that the suspension shall only apply to qualified persons or firms involved with a newly constructed, or a moderately or substantially rehabilitated, project that is developed under this Proclamation for the provision of housing for homeless persons, subject to the attached Governor's emergency rules. The suspension shall apply to the planning, design, financing, construction, sale, or lease in the State of a project that has been certified under the attached Governor's emergency rules. "Moderate rehabilitation" and "substantial rehabilitation" shall have the same meaning as set forth in section 201H-36(d), HRS.

Sections 302A-1601 through 302A-1608, HRS, **School Impact Fees**.

Chapter 343, HRS, **Environmental Impact Statements** to the extent necessary to expedite the provision of housing for homeless persons, subject to the attached Governor's emergency rules.

Chapter 346, HRS, **Social Services**.

Section 464-4, HRS, **Public Works**.

Sections 601-1.5, 708-817, 708-818, 708-820(1)(c), 708-830.5(1)(d), 708-840(1)(c) and (d), HRS, to the extent these sections contain provisions for the suspension, tolling, extension, or granting of relief from deadlines, time schedules, or filing requirements in civil, criminal, or administrative matters before the courts of the state or to the extent that these sections contain provisions for criminal penalties that are automatically heightened by reasons of any declared disaster or emergency.

Section 127A-25(c), HRS, rules and orders, to the extent the requirement to publish rules adopted pursuant to chapter 127A, HRS, in a newspaper of general circulation in the State shall be suspended inasmuch as the posting of such rules on the applicable state or county government website or by other means of official announcement as provided by this section brings the rules' content to the attention of the general public.

Pursuant to section 127A-25, HRS, I hereby adopt the Rules Relating to Construction of Homeless Dwelling Units attached hereto. These rules shall have the force and effect of law.

II. State Cooperation

Pursuant to Section 127A-12(b), HRS, I hereby direct all state agencies and officers to cooperate with and extend services, materials, and facilities as may be required to assist in all efforts to address the objectives of this Proclamation.

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 the disaster emergency relief period shall commence immediately and continue through July 2, 2024, unless terminated or superseded by separate proclamation, whichever shall occur first.

I FURTHER DECLARE that notwithstanding the termination of this emergency relief period, all contracts and agreements entered into and all procurements started during the emergency relief period shall continue in full force and effect until expiration or termination of the contracts and agreements, and all construction projects commenced during the emergency relief period shall remain covered by the terms of this Proclamation through completion of construction.

I FURTHER DECLARE that this Proclamation or subsequent emergency rules is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of Hawai'i, the counties of this State, or any State or County agencies, departments, entities, officers, employees, or any other person.

Done at the State Capitol, this 3rd day of
May, 2024.



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

APPROVED:

Anne E. Lopez

Anne E. Lopez
Attorney General, State of Hawai'i

Rules Relating to
Construction of Homeless Dwelling Units

- §1 Purpose and Authority
- §2 Definitions
- §3 Applicability of Proclamation and Rules
- §4 Project Eligibility
- §5 Project Agreements

§1 Purpose and Authority.

These rules are intended to expedite and apply only to construction of temporary or permanent housing for people experiencing homelessness or who are at risk of homelessness. Quickly creating such spaces is key to reducing unsheltered homelessness.

Projects that propose to house or serve low-income people living in public housing or people experiencing homelessness or who are at risk of homelessness are eligible for coverage under the Tenth Proclamation Relating to Homelessness issued on May 3, 2024 (“Proclamation”) and these rules.

These rules are adopted pursuant to sections 127A-11, 12, 13, and 25, Hawai'i Revised Statutes (“HRS”), to respond to the homelessness emergency declared by the Governor and have the force and effect of law.

§2 Definitions.

“At risk of homelessness” is defined as:

- (a) An individual who is exiting an institutional facility where he or she resided and who resided in an Emergency Shelter or place not meant for human habitation immediately before entering that institution, provided that no subsequent residence has been identified; and the individual or family lacks the resources or support networks, e.g., family, friends, faith-based, or other social networks, needed to obtain other Permanent Housing.
- (b) An individual or family who will imminently lose their primary nighttime residence, provided that: (i) The primary nighttime residence will be lost within 14 days of the date of application for Homeless assistance; (ii) No subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based, or other social networks, needed to obtain other Permanent Housing; or

- (c) Any individual or family who: (i) is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; (ii) has no other residence; and (iii) lacks the resources or support networks, e.g. family, friends, faith-based, or other social networks, needed to obtain other Permanent Housing.

“Dwelling,” “dwelling unit,” or “unit” means any structure or room, for sale, lease, or rent, that provides shelter. § 356D-1, HRS.

“Emergency Shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time who are not able to stay in a transitional shelter or reside in a dwelling unit. § 346-361, HRS.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an act of Congress or a state law. § 346-361, HRS.

“Homeless facility” means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part and may include emergency or transitional shelters. § 346-361, HRS.

“Institutional facility” means a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;

- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Intellectual disability center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice. HRS § 328C-1.

“Permanent housing” means community-based housing without a designated length of stay. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services for a maximum of twenty-four months to homeless families or individuals qualified by the pertinent provider agency or department to stay in the transitional shelter. § 346-361, HRS.

§ 3 Applicability of Proclamation and Rules

These rules shall apply only to those construction projects of temporary or permanent housing for people experiencing homelessness or who are at-risk of homelessness which are certified by the Governor’s Coordinator on Homelessness (“Coordinator”) as having met the requirements for eligibility set forth in these rules (“Certified Projects”).

Certified Projects do not require further state approvals to proceed with the project. Certified Projects will not be subject to the state regulations suspended under the Proclamation.

Certified Projects are still required to seek applicable county approval in the appropriate county where the project is located. The counties may adopt an expedited approval process to support the provision of housing for homeless individuals and families while still ensuring that improvements constructed pursuant to the Proclamation meet life safety standards as defined by the counties.

The Coordinator may also approve the application of the suspension of laws set forth in the Proclamation for projects proposed by state agencies where the use of the suspended laws shall be for operational functions of the agency or

to repair, renovate, or refurbish existing housing for use or occupancy by people experiencing homelessness.

§ 4 Determination of Project Eligibility.

(a) Project proponents seeking to have the terms of the Proclamation apply to their project shall submit to the Coordinator the following documentation:

- (1) Name, address, email address and telephone number of the project proponent and each member of the project team. If the project proponent is a corporation or other legal entity, evidence of the project proponent's status and registration with the Department of Commerce and Consumer Affairs, and the names, address, email address and telephone number of each officer and director of the entity. The name, address, email address, and telephone number of the main point of contact should be identified;
- (2) Proof that the project proponent has site control such as a deed, agreement of sale, long term lease, or other disposition;
- (3) A description of the project proponent's experience or involvement, if any, in the development of housing or projects of similar scope, size, and complexity;
- (4) A description of the project proponent's past or current experience or involvement, if any, in any programs or its provision of services, including other than housing, that would give evidence of the project proponent's ability to manage a project of this type and scope;
- (5) A conceptual site plan showing the general development of the project site including the locations and descriptions of proposed and existing buildings, parking areas, unusual site features, proposed and existing major drainage facilities;
- (6) A development plan including the number of units, maximum occupancy, construction method, and infrastructure needs. The infrastructure needs should include a description of methods of sewage and solid waste disposal and sources of water and other utilities as well as depth and location of any trenches required;
- (7) The proposed funding for the project, including the manner in which the project will be funded during the development and construction of the project, and upon completion of the project and sources of repayment of financing, if applicable. This should include any proposed grants, donations, loans, bonds, tax credits, or other

sources of financial resources;

(8) The project's method of homeless verification (e.g., homeless verification letter or Homeless Management Information System database); and

(9) The project proponent's plan for obtaining community input (e.g., via Neighborhood Board meeting, neighborhood survey, or community meeting).

(b) Expedited reviews in the following areas shall be completed, as set forth herein, to determine whether the project is likely to have an adverse impact on resources and to define any mitigation and monitoring of impacts needed. Once the reviews are complete, the Coordinator may certify the project and the project may proceed to be developed under the Proclamation. The project proponent shall provide the following information to the Coordinator:

(1) Historical review (DLNR SHPD)

- a. TMK of property;
- b. Preliminary site plan;
- c. Proposed construction methodology;
- d. Proposed underground infrastructure;
- e. Any grading or trenching plans;
- f. Information of historic properties on the project site;
- g. Any prior historical or archaeological studies or reports done; and
- h. Photos of the property.

(2) Environmental issues (DOH HEER)

- a. TMK of property;
- b. Whether the dwelling units or restroom facilities will be serviced through a sewer connection or whether an individual wastewater system will be installed;
- c. Whether an NPDES permit will be required. An NPDES permit is required if:
 - i. 1 acre or more of land will be disturbed (e.g. by grading), either on its own or as part of a larger common plan of development that will disturb 1 or more acres of land; or
 - ii. if there will be any construction-related discharge to state waters (e.g., hydrotesting, dewatering); and
- d. Whether an U.S. Army Corps of Engineers Regulatory Program permit is required because there is anticipated to be the discharge of dredged or fill material into waters of the United States.

(3) Endangered species impacts (DLNR DOFAW)

- a. TMK of property;
- b. Any on-site or nearby streams, waterways, or wetlands;
- c. Any native vegetation on site;
- d. Any known native fauna on site;
- e. Vegetation control anticipated to occur as part of construction, including but not limited to tree trimming or cutting, mowing of grassy areas, or removal of native vegetation;
- f. Any night time construction anticipated, if yes, months during which night time construction will be used;
- g. Lighting plans; and
- h. Whether the property is covered by a habitat conservation plan.

(4) Flood plain management (DLNR Engineering)

- a. TMK of property; and
- b. Floodplain management zone.

If potential adverse impacts are identified, the project will be required to address these impacts in accordance with standard State processes for development projects. These processes include, but are not limited to, the review processes set forth in HRS chapters 6E, 322, 342D, 342E, 343, and Hawai'i Administrative Rules chapters 11-53, 11-55, 11-56, 11-62, 13-275, and 13-284.

Notwithstanding the Proclamation, counties may establish their own process or rules for ensuring that a Certified Project meets life safety standards.

§ 5 Project Development Agreements

If, after reviews under section 4 of these rules are complete and the Coordinator finds that the project proponent has submitted the required project information under Section 4(a), the Coordinator may accept the project as qualified under the Proclamation. Upon acceptance, the Coordinator shall enter into a development agreement with the project proponent.

The terms and conditions of the development agreement shall include:

(a) The purpose of the agreement, which shall include the development of dwelling units for homeless individuals or families;

(b) A description of the role and responsibilities of the project proponent and other parties to the agreement;

(c) Any measures required to mitigate any anticipated adverse effects of the project;

(d) A restrictive covenant requiring the property to be used for dwelling units for homeless individuals or families for a minimum of twenty years. Where the project proponent only has a leasehold interest with a remaining term of less than twenty years the restrictive covenant may be for less than twenty years, but in no case shall it be less than fifteen years with the option to extend the restriction to twenty years if the lease term is extended; and

(e) Standard clauses that the Coordinator determines to be required, including, but not limited to, the following:

1. Indemnity
2. Severability
3. Termination; and
4. Assignability.

A memorandum regarding the development agreement will be recorded at the Bureau of Conveyances or Land Court against the fee simple or leasehold interest, as appropriate.

Once an agreement is executed and the memorandum is filed, a project will be considered “certified” under the Proclamation. An annual review of every project is required to verify compliance with the conditions under the Project Agreement.

(f) The fully executed development agreements will be posted on the Coordinator’s or other government website.

DOFAW Chainlink Fence Materials List

| Quantity | Unit | Description |
|-----------------|-------------|---|
| 850 | Foot | 96" chain link mesh 9ga x 2" Knuckle Twist |
| 100 | Ea | 2 7/8" sch40 12' post |
| 5 | Ea | 4" sch40 x12' post |
| 900 | Foot | 900' - 1 5/8" sch40 rail tube (+coupling or slip joint) |
| 850 | Foot | tension wire 9ga |
| 100 | Ea | 2 7/8" x 1 5/8 rail top cap |
| 5 | Ea | 4" post cap |
| 1000 | Ea | ties |
| 1000 | Ea | hog rings |
| 70 | Ea | 4" tension bands |
| 12 | Ea | 2 7/8" tension bands |
| 6 | Ea | tension bars 3/4" x 96" |
| 6 | Ea | truss rods 3/8" x 12' |
| 6 | Ea | truss tightener |
| 16 | Ea | carriage nuts and bolts 5/16" x 11/4(or 11/2") |
| 72 | Ea | carriage nuts and bolts 3/8" x 11/2" |
| 12 | Ea | rail end cup 1 5/8" |
| 6 | Ea | 2 hole rail end cup 1 5/8" |

Estimated Cost of Parameter Fence

| Item | Cost |
|----------------------------|-----------------|
| Fence Materials W Delivery | \$25,000 |
| Installation | \$30,000 |
| Total | \$55,000 |

DOFAW Pua Loke Baseyard & Septic System Improvements
 Bow Engineering & Development, Inc.
 Project #21048.00

Date: February 5, 2024

| Table 2 - Site & Utility Improvements - 0% Construction Cost Estimate | | | | |
|--|-------|------|--------------|----------------------|
| Item | Qty | Unit | Unit Price | Cost |
| Utility Improvements | | | | |
| Sewer Force Main (2" PVC) | 600 | LF | \$ 100.00 | \$ 60,000.00 |
| Connections to SMH | 2 | EA | \$ 1,500.00 | \$ 3,000.00 |
| Sewer Manhole | 2 | EA | \$ 25,000.00 | \$ 50,000.00 |
| Sewer Pump (E-One) including pump controls, alarm cellular monitoring system, alarm warning light, level controls, guide rail system & appurtenances | 1 | LS | \$ 50,000.00 | \$ 50,000.00 |
| O&M Training to DOFAW staff | 1 | LS | \$ 5,000.00 | \$ 5,000.00 |
| Electrical Equipment | 1 | LS | \$ 30,000.00 | \$ 30,000.00 |
| Topsoil/ grassing/ Maintenance Period | 1,200 | SF | \$ 20.00 | \$ 24,000.00 |
| Subtotal | | | | \$ 222,000.00 |
| Misc. Job Site Cost | | | | |
| Archeological Monitoring & Report | 1 | LS | \$ 6,000.00 | \$ 6,000.00 |
| Erosion Control BMPs | 1 | LS | \$ 3,000.00 | \$ 3,000.00 |
| Construction Management Service | 1 | LS | \$ 40,000.00 | \$ 40,000.00 |
| Restroom Signage | 1 | LS | \$ 2,000.00 | \$ 2,000.00 |
| Portable Toilets | 1 | LS | \$ 5,000.00 | \$ 5,000.00 |
| Field Office | 1 | LS | \$ 5,000.00 | \$ 5,000.00 |
| Project Sign | 1 | LS | \$ 2,500.00 | \$ 2,500.00 |
| Subtotal | | | | \$ 63,500.00 |
| Cesspool Closure | | | | |
| Demolish & Remove Cover | 1 | LS | \$ 10,000.00 | \$ 10,000.00 |
| Pump out Cesspool | 1 | LS | \$ 5,000.00 | \$ 5,000.00 |
| Fill hole with flowable low-strength concrete (6'-dia x 31'-deep) | 32 | CY | \$ 500.00 | \$ 16,000.00 |
| Topsoil/ grassing/ Maintenance Period | 400 | SF | \$ 20.00 | \$ 8,000.00 |
| Subtotal | | | | \$ 39,000.00 |
| SUBTOTAL | | | | \$ 324,500.00 |

| Table 2 - Site & Utility Improvements - 0% Construction Cost Estimate | | | | |
|--|---|----|--------------|----------------------|
| Mobilization | | | | |
| (10% of above subtotals) | 1 | LS | \$ 32,450.00 | \$ 32,450.00 |
| Subtotal Mobilization and Demobilization | | | | \$ 32,450.00 |
| SUBTOTAL | | | | |
| | | | | \$ 356,950.00 |
| Contingency 20% | | | | |
| | | | | \$ 71,390.00 |
| Escalation/ Inflation Factor(20%) [8% per year @ 2.5 years] | | | | |
| | | | | \$ 71,390.00 |
| TOTAL | | | | |
| | | | | \$ 499,730.00 |
| ROUND-OFF TOTAL | | | | |
| | | | | \$ 500,000.00 |