

2023

# Act 279 Working Group Report

HOUSE OF REPRESENTATIVES  
*Hale o nā Luna Maka ‘āinana*  
STATE OF HAWAII | THIRTY-SECOND LEGISLATURE  
Prepared by the House Majority Staff Office



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# CHAPTER 1: INTRODUCTION

## Chapter 1: Introduction

### BACKGROUND

The Department of Hawaiian Home Lands (Department) plays a crucial role in addressing the housing needs of native Hawaiians by providing affordable homes on Hawaiian home lands. Established in 1921 by the United States Congress with the enactment of the Hawaiian Homes Commission Act of 1920, as amended, the Department aims to protect and improve the lives of native Hawaiians by enabling native Hawaiians to return to their lands and preserve their values, traditions, and culture.

One primary responsibility of the Department is to administer the homesteading program and provide its native Hawaiian beneficiaries with 99-year homestead leases for residential, agricultural, or pastoral purposes on the roughly 200,000 acres of land that are currently under the Department's land trust on the islands of Hawai'i, Kaua'i, Lāna'i, Maui, Moloka'i, and O'ahu. However, the needs of native Hawaiian beneficiaries have far surpassed the current supply and resources of the Department. As of December 31, 2022, there are over 29,000 applicants waiting to receive a homestead lease, many of whom have been on the waitlist for decades and many others who may never get their chance for a homestead lease.

The Department faces multi-faceted challenges in fulfilling its mission to develop and deliver land to native Hawaiians, such as lack of beneficiary-preferred land, cost of infrastructure, and capital for mortgage financing. Recognizing the importance of the Department's mission, the Legislature enacted Act 279, Session Laws of Hawaii 2022 (Act 279), which appropriated a historic \$600,000,000 to the Department to ensure critical long-term access to adequate funding for the Department to address these challenges and fulfill its mission to native Hawaiian beneficiaries.

# CHAPTER 1: INTRODUCTION

## ACT 279 WORKING GROUP

Due to the historic nature of Act 279, the House of Representatives established the Act 279 Working Group (Working Group) via adoption of House Resolution No. 10, Regular Session of 2023, to oversee the Department's execution of the \$600,000,000 appropriated by Act 279 prior to the constitutionally-mandated lapse date of June 30, 2024<sup>1</sup>.

The Working Group consists of the following members:

- (1) The Honorable Lisa Marten, Representative from House District 51, who serves as Chair;<sup>2</sup>
- (2) The Honorable Daniel Holt, Representative from House District 28;
- (3) The Honorable Scott Y. Nishimoto, Representative from House District 23;
- (4) The Honorable Mahina Poepoe, Representative from House District 13;
- (5) The Honorable David A. Tarnas, Representative from House District 8; and
- (6) The Honorable Gene Ward, Representative from House District 18.

The Working Group held four public hearings with the Department to discuss ongoing and potential projects and other means of utilizing the \$600,000,000. The Department continuously provided updated project matrices that contain a comparison of the Strategic Plan to Implement Act 279 of 2022 (Strategic

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<sup>1</sup> Act 279 specifies a lapse date of June 30, 2025, for its appropriation. However, [Article VII](#), section 11 of the Hawai'i State Constitution requires unencumbered general funds to lapse one year past the end of a two-year fiscal biennium in which the funds are appropriated. Act 279 appropriated funds during the 2021-2023 fiscal biennium, therefore requiring those funds to lapse on June 30, 2024. At the request of the former Working Group Chair Troy N. Hashimoto, the Department of the Attorney General confirmed that the lapse date for Act 279 funds is June 30, 2024

<sup>2</sup> Representative Marten was named as Chair on November 27, 2023, in place of Representative Troy N. Hashimoto who served as Chair of the Working Group prior to being appointed to the Hawaii State Senate.

# CHAPTER 1: INTRODUCTION

Plan)<sup>3</sup>, developed under former Governor David Y. Ige's administration, and current and projected encumbrances, including a breakdown of the cost of each project.

The Strategic Plan originally anticipated expending approximately \$540,000,000 of Act 279 funds. However, under the current administration, it appears that the Department is on track to utilize the entirety of Act 279 funds before the lapse date. The legislation proposed in this report to allow the Department until fiscal year 2024-2025 to encumber the funds, as was the original legislative intent, is merely a precaution for unforeseen circumstances.

All materials provided to the Working Group during the public hearings can be accessed on the [Act 279 Working Group page](#) on the Hawai'i State Legislature's website.

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<sup>3</sup> The Strategic Plan was completed in November 2022 and submitted to the Legislature on December 6, 2022.

# CHAPTER 2: ACT 279 PROJECTS

## Chapter 2: Act 279 Projects

### ENCUMBERED PROJECTS

As of December 12, 2023, there were 10 encumbered projects, totaling \$192,641,367 for fiscal year 2022-2023, and one encumbered project, totaling \$2,000,000 for fiscal year 2023-2024. A large portion of the encumbered funds is for the acquisition and development of land for various projects statewide. Act 279 enabled the Department to acquire new lands, either by utilizing Act 279 funds directly or through alternative financing mechanisms. This will allow the Department to develop housing on lands that are not included in the Department's land trust, further increasing the housing supply for native Hawaiians.

One project of importance is the Pu'unani Homestead Subdivision project in Waikapū, Maui, which had its groundbreaking ceremony on May 24, 2023, with infrastructure already being developed. There are 161 residential lots that are to be developed under this project, including 137 turn-key homes and 24 vacant lots. This project utilized affordable housing credits to acquire the necessary land, allowing the Department to use Act 279 funds mostly for necessary infrastructure development. The significance of this project lies in its integration of multiple financing mechanisms and varied approaches to provide beneficiaries different housing development options. The Department is working with various developers and organizations to provide beneficiaries with a range of affordable housing options, such as turn-key projects, gap financed mortgages, Low-Income Housing Tax Credit (LIHTC) rent-to-own projects, and owner-builder projects.

Other encumbered projects include Waiehu Mauka and Wailuku on Maui, Hanapēpē residential lots on Kaua'i, and the acquisition of land in Kaumana on Hawai'i Island and Kaupē'a on O'ahu.

## CHAPTER 2: ACT 279 PROJECTS

### PROJECTED PROJECTS

The remainder of Act 279 funds are expected to be encumbered in fiscal year 2023-2024. As of December 12, 2023, the Department reported that they project an additional \$563,707,240 in encumbrances in fiscal year 2023-2024, bringing the total cumulative encumbrances and projected encumbrances for fiscal years 2023 and 2024 to \$758,348,607. This exceeds the funding appropriated in Act 279 by \$158,348,607.

One projected project to note is the development of land in East Kapolei on O‘ahu. Similar to the Pu‘unani Homestead Subdivision project, this project is anticipated to use various approaches and mechanisms to reduce the number of beneficiaries on the waitlist by providing affordable housing options. This project will potentially generate up to 700 single-family residential units, with most of Act 279 funds being used to establish the main infrastructure for those units. For the actual development of residential units, the Department inserted a stipulation that the developer of those units utilize a LIHTC rent-to-own approach when developing the units, which will further reduce the costs for Department beneficiaries. The Department is also working with Habitat for Humanity to establish owner-builder developments on these lots to allow beneficiaries to build their own homes.

While the original plan for East Kapolei was to include multi-family rental units in addition to single-family residential units, after many discussions with beneficiaries, the Department concluded that a vast majority of beneficiaries prefer single-family housing rather than rentals. As a result, the Department no longer plans to develop multi-family residential units in East Kapolei.

As new potential project opportunities become available due to responses to Requests for Proposals and as new information is learned about potential projects under investigation, the portfolio of projects under consideration is being continually revised. However, as reported in the December 11, 2023, public hearing, the Department is moving ahead on four projects on O‘ahu, one project on Kaua‘i, two projects on Hawai‘i Island, four projects on Maui, one project on Moloka‘i, and one project on Lāna‘i.

## CHAPTER 2: ACT 279 PROJECTS

### HOMEOWNERSHIP INDIVIDUAL ASSISTANCE PROGRAM

Act 279 not only sought to assist the Department through its traditional homestead lease program, but also authorized the Department to look at alternatives for getting native Hawaiians into housing. While a majority of the \$600,000,000 will be directed toward land acquisition and new homestead lot development, the Department is expected to allocate roughly 10 percent of the funds for new and innovative programs to address common barriers to homeownership for beneficiaries.

Common barriers that prevent homeownership amongst beneficiaries typically include:

- (1) Lack of sufficient savings for a down payment;
- (2) High debt;
- (3) No credit history or a low credit score; and
- (4) Periodic challenges with monthly mortgage payments or past due mortgage payments due to unemployment or other unfortunate circumstances that affect household income and expenses.

A preliminary idea stated in the Strategic Plan was to develop a Down Payment Assistance Program, which could assist certain beneficiaries who are first-time home buyers with the down payment required for the mortgage on a turn-key home or owner-builder project on a homestead lot.



# CHAPTER 3: LEGISLATIVE PROPOSALS FROM THE DEPARTMENT

## Chapter 3: Legislative Proposals from the Department

Act 279 further requires the Department to submit legislative proposals to the Legislature. During the October 23, 2023, public hearing, the Department presented [10 legislative proposals](#) specific to Act 279; copies of the bill drafts can be accessed on the [Government Relations](#) page on the Department's website.

In the legislative proposals, the Department emphasized the importance of efficient communication and collaboration with pertinent state agencies by including a Department representative on various state boards and commissions relating to the development of housing in the State, such as the Hawai'i Housing Finance and Development Corporation, Hawai'i Community Development Authority, and Commission on Water Resource Management. The Department reached out to the agencies on whose boards they are requesting representation and at the December 11, 2023, public hearing, reported progress in securing support from the Hawai'i Housing Finance and Development Corporation and Commission on Water Resource Management.

In an effort to ensure timely development of housing for beneficiaries, the Department is proposing to assume responsibility for reviewing the impact of proposed projects on historic properties or burial sites for lands under its jurisdiction. The Department also will be seeking authorization to retain independent legal counsel to assist the Hawaiian Homes Commission in making well-informed decisions regarding land acquisition and other initiatives or issues.

To reduce the cost of developing housing, thereby creating more housing for beneficiaries, the Department is proposing to exempt any development of homestead lots or housing for the Department from general excise taxes and use taxes. Furthermore, the Department is seeking to make permanent the exclusion of housing developed by the Department from school impact fees, which is temporarily permitted by Act 197, Session Laws of Hawaii 2021.

## CHAPTER 3: LEGISLATIVE PROPOSALS FROM THE DEPARTMENT

Regarding the Hawaiian Homes Commission Act, 1920, as amended, the Department is seeking to increase the loan limit for direct loans to 75 percent, rather than 50 percent, of the maximum single residence loan amount allowed in Hawai'i by the Federal Housing Administration. In addition, the Department proposes to increase the allowable loan term for direct loans made available to 45 years, rather than the current 30 years.

[Article VII](#), section 11 of the Hawai'i State Constitution requires unencumbered general fund appropriations to lapse one year after the end of the fiscal biennium in which the funds are appropriated. Act 279 appropriated funds during the 2021-2023 fiscal biennium, therefore requiring those unencumbered funds to lapse on June 30, 2024. To ensure that the unencumbered funds are used entirely, the Department is proposing to appropriate the remaining balance of the \$600,000,000 for fiscal year 2024-2025, as originally intended by Act 279.

This is intended to be a summary of the Department's legislative proposals only. It is not the intent of this Working Group to adopt the 10 legislative proposals as the final recommendations of this Working Group.

# CHAPTER 4: RECOMMENDATIONS

## Chapter 4: Recommendations

The Working Group was tasked with providing recommendations to the House of Representatives. The Working Group has worked with the Department and notes the efforts of the Department to maximize the \$600,000,000 to ensure that their native Hawaiian beneficiaries have sufficient and affordable housing options. The Working Group also notes that there are now more native Hawaiian families living in the continental United States than Hawai'i. It is imperative that the State provide necessary affordable housing in a timely manner to ensure that native Hawaiian families remain in their homeland for generations. Act 279 is the starting point to achieving this goal, and its continued success must be supported for the benefit of all native Hawaiians.

Therefore, one of the recommendations of the Working Group is to let the unencumbered funds from the original \$600,000,000 appropriation under Act 279 lapse on June 30, 2024, then in fiscal year 2024-2025 appropriate an amount that is equal to the amount of funds that were lapsed on June 30, 2024. While the Department has a projected encumbrance exceeding the original Act 279 \$600,000,000 appropriation, the Working Group wants to ensure that the Department has sufficient time to thoroughly vet projects, thereby providing the best possible housing developments for the beneficiaries. This recommendation follows the original intent of Act 279, which was to allow the Department until fiscal year 2024-2025 to encumber funds necessary to achieve its mission for native Hawaiian beneficiaries.

The Working Group also recommends continued oversight of projects developed under Act 279. Act 279 has proven to be instrumental in promoting and assisting the constitutionally driven mission of the Department. The work of the Working Group allowed the public to see the Department's plans for the funds appropriated pursuant to Act 279. Continued oversight will ensure the public remains informed and updated on the efforts of the Department, while also enabling the Legislature to ensure that funds are being appropriately utilized.