

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendment and Compilation of Chapter 15-307,
Hawaii Administrative Rules

December 6, 2021

SUMMARY

1. §§15-307-1 to 15-307-2 are amended.
2. §15-307-4 is amended.
3. §§15-307-6 to 15-307-7 are amended.
4. §§15-307-26 to 15-307-27 are amended.
5. Subchapter 4, consisting of §§15-307-71 to 15-307-79, is repealed.
6. Subchapter 5, consisting of §§15-307-81 to 15-307-84, is repealed.
7. Subchapter 6, consisting of §§15-307-91 to 15-307-97, is repealed.
8. Subchapter 7, consisting of §§15-307-101 to 15-307-110, is repealed.
9. Subchapter 8, consisting of §§15-307-121 to 15-307-131, is repealed.
10. §15-307-144 is amended.
11. §§15-307-146 to 15-307-148 are amended.
12. §15-307-163 is amended.

13. Subchapter 12, consisting of §§15-307-201 to 15-307-212, is repealed.
14. Subchapter 13, consisting of §§15-307-221 to 226 is repealed.
15. §15-307-242 is amended.
16. Chapter 307 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION

CHAPTER 307

STATE ASSISTED LAND AND HOUSING DEVELOPMENT PROGRAM

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Subchapter 5 Procedures to Implement Qualified Resident Preferences in the Initial Sale of Market-Priced Dwelling Units -- Repealed

§§15-307-81 to 15-307-84 Repealed

Subchapter 6 Rental of Dwelling Units -- Repealed

§§15-307-91 to 15-307-97 Repealed

Subchapter 7 Repurchase of Dwelling Units Subject to Restrictions -- Repealed

§§15-307-101 to 15-307-110 Repealed

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Subchapter 12 Owner Occupancy Waiver Procedures
-- Repealed

§§15-307-201 to 15-307-212 Repealed

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Historical Note: Chapter 307 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 373 of Title 6, Hawaii Administrative Rules. [Eff 1/9/89; am 8/3/92; R 10/25/99], and Chapter 175 of Title 15, Hawaii Administrative Rules [Eff 10/25/99; R 12/04/10].

SUBCHAPTER 1

GENERAL PROVISIONS

§15-307-1 Purpose. These rules are adopted under chapter 91, HRS, and implement the provisions of chapter 201H, HRS, providing for the development and construction of housing projects; the development and construction of mixed-use development projects; interim and construction loans; regional infrastructure grants and loans; and the provisions of loans and guarantees to qualified persons. [Eff 12/04/10; am and comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-5, 201H-16, 201H-93, 201H-94, 201H-96, 201H-143, 201H-40, 201H-41, 201H-45, 201H-47, 201H-51, 201H-52) (Imp: HRS §§201H-4, 201H-94, 201H-96, 201H-143, 201H-40, 201H-41, 201H-45, 201H-47, 201H-51, 201H-52, Acts 130 and 131, SLH 2016)

§15-307-2 Definitions. As used in this chapter: "Administrator" means the executive director employed by the board or the executive director's designated representative.

"Assets" means total cash, securities, and real and personal property less any outstanding liabilities secured by the assets.

"Assisted project" means a project which is initiated and developed by an entity other than the corporation, and which is being provided state assistance to lower sales prices or rental rates. Such assistance may include, but is not necessarily limited to, interim and permanent financing, expedited processing of projects, tax credits, general excise tax exemptions, and rental assistance.

"Board" means the board of directors of the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"Contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS.

"Corporation" means the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"County" includes the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu, and unless the context requires a different meaning, it shall mean the county in which the project is situated.

"Design professional" means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464, HRS.

"Develop" or "development" means the planning, financing, acquisition of real property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Diversified agricultural use" means use of an agricultural lot for the cultivation of crops, including flowers, vegetables, foliage, fruit, forage, and aquaculture.

"Dwelling" means a structure designated for residential use.

"Dwelling unit" or "unit" means the structure and land upon which the structure is constructed, whether on fee simple or leasehold property, developed pursuant to chapter 201H, HRS, which is intended for residential purposes. It may also mean improved or unimproved real property which is developed for residential purposes pursuant to the provisions of chapter 201H, HRS.

"Elder" means a person who is a qualified resident of the State and who has attained the age of sixty-two.

"Eligible contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS, who:

- (1) Is determined by the board to be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project; and
- (2) Meets all other requirements that the board deems to be just and reasonable, and all other requirements provided in these rules

"Eligible developer" means an individual, partnership, cooperative, including limited equity housing cooperatives (as defined in chapter 421H, HRS), firm, nonprofit or profit corporation, limited liability company, or public agency which the corporation has certified pursuant to the provisions of section 15-307-24 of these rules.

"Former owner" means a former owner of a dwelling unit:

- (1) From whom the dwelling unit was repurchased pursuant to section 201H-47, HRS; or
- (2) Who has obtained a waiver of repurchase rights from the corporation under section 201H-47, HRS.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of its political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development for qualified persons in the State. Government assistance program includes, but is not limited to, the following:

- (1) Any program specified, allowed, or eligible for assistance under chapter 201H, HRS;

- (2) Any program specified, allowed, or eligible for assistance under laws, rules, or regulations of the United States Department of Housing and Urban Development and the United States Department of Agriculture; or
- (3) Any program regulated by either the corporation, counties, or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

"Homeless" means those who meet one or more of the four categories of homelessness established by the United States Department of Housing and Urban Development, as follows:

- (1) Individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who is exiting an institution where he or she resided for ninety days or less and who resided in an emergency shelter or a place not meant for human habitation immediately before entering that institution;
- (2) Individuals and families who will imminently lose their primary nighttime residence;
- (3) Unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes; or
- (4) Individuals and families who are fleeing, or are 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.

"Household" means an individual; or two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the household's need and who may, but need not be, related by blood, marriage, or operation of law, including foster children and hanai children and whose head of household has reached the age of majority, or is otherwise legally emancipated.

"HRS" means the Hawaii Revised Statutes.

"Improvement" means an addition, renovation, or replacement to the dwelling unit which enhances the value of the property, and for which labor and capital are expended. Improvements do not include repairs or maintenance of the property.

"Lower cost housing", in the context of identifying the persons or families intended to be served by such housing, primarily includes housing for persons or families whose incomes are identified as one hundred forty per cent or less of the area median income for each of the counties of Hawaii, Maui, Honolulu, and Kauai as determined by the United States department of housing and urban development from time to time, and as adjusted by family size. For the purpose of these rules, such persons or families include persons or families within the following income groups:

- (1) "Very low income" -- those earning fifty per cent of the area median income and below;
- (2) "Low income" -- those earning above fifty per cent up to eighty per cent of the area median income;
- (3) "Low-moderate income" -- those earning above eighty per cent up to one hundred twenty per cent of the area median income; or
- (4) "Moderate income" - those earning above one hundred twenty per cent up to one hundred forty per cent of the area median income

"Mixed-use developments" means a development that contains affordable residential dwelling units that may be combined with governmental, educational, commercial, cultural, institutional, or industrial uses; is approved by the county in which the project is located; and is subject to:

- (1) Chapter 104, HRS;
- (2) Title 40 United States Code sections 3141, 3142, 3143, 3144, 3146, and 3147; or
- (3) A project labor agreement by law or contract in the construction of the project

"Mixed-use transit-oriented developments" means a mixed-use development within county-designated transit-oriented development zones or within a one-half-mile radius of public transit stations, if a county has not designated transit-oriented development zones.

"Mortgage payment" means the owner's payment on any mortgage which is necessary for financing the purchase of an owner's dwelling unit. It may also include payments for lease rent, real property taxes, mortgage insurance, association fees, and any other expenses directly related to financing the purchase of the owner's real property or to maintaining an ownership interest in the real property.

"Owner" means the owner of a dwelling unit.

"Qualified resident" means the same as defined under section 201H-32, HRS.

"Plans and specifications" includes construction plans and specifications and any other documents that may be required by the county in the processing of the plans and specifications for the issuance of permits for construction and building of improvements within a project.

"Project" or "housing project" means a plan, design, or undertaking by the corporation or an eligible developer for the development of dwelling units, and includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project, assisted project, or sponsored project.

"Qualified appraiser" means a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, Hawaii Revised Statutes.

"Regional infrastructure improvement" means improvements that would increase the capacity of the infrastructure facilities, including regional sewer systems, water systems, drainage systems, roads, and telecommunications and broadband, if the project improvement increases the capacity to accommodate future growth, and not solely benefit one particular project.

"Rules" means these rules.

"Special needs housing" means housing for persons for whom social problems, age, or physical or mental handicaps impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions.

"Sponsored project" means a project which is initiated by the corporation, and is usually located on lands owned by the corporation. The corporation may or may not act as the developer of a project which it sponsors.

"Starter home" means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating needless design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary.

"State" means the State of Hawaii.

"Subaccount" means an accounting set-aside within the dwelling unit revolving fund established pursuant to section 201H-191, HRS, for a specific county for the purpose of administering funding sources for regional infrastructure improvements by or for the benefit of that county.

"Subdivision and construction documents" includes all subdivision documents and plans and specifications.

"Subdivision documents" includes preliminary maps, final maps, subdivision construction plans and specifications, and any other document that may be required by the State or county in the processing of applications and permits relating to the development of the project.

"Subsidies" means the difference between all costs expended by the corporation, less any recoveries by the corporation. It also includes unrecovered development, land, financing and carrying costs.

"Substantial construction defect" means a defect or deficiency in a dwelling unit which affects its structural integrity, habitability, or appearance and which is not caused by the act or omission of the owner or a person hired, retained, or engaged by the owner. This includes, but is not necessarily limited to, structural defects such as shifting foundations and bearing walls, structural deficiencies due to the use of defective or undersized materials, defects affecting the health and safety of occupants, and shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

"Sustainable affordable leases" means the same as defined in section 516-1, HRS.

"Value" means the value of a property as determined by a qualified appraiser. [Eff 12/04/10; am and comp 4/28/17; am and comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-16, 201H-93, 201H-94, 201H-96, 201H-143, 201H-40, 201H-41, 201H-42) (Imp: HRS §§201H-1, 201H-4, 201H-8, 201H-33, 201H-38, 201H-40, 201H-41, 201H-94, 201H-96, 201H-94, 201H-143, 201H-144, 201H-151, 201H-161, 201H-162, Acts 131 and 132, SLH 2016)

§15-307-3 References to other chapters. To the extent appropriate for the implementation of chapter 201H, HRS, references in documents, forms, and similar instruments of the corporation to chapters 201E, 201G, 356, 359, and 359G, HRS, shall be treated as references to chapter 201H, HRS. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-4)

§15-307-4 Development by corporation. (a) The corporation may develop land or housing projects in accordance with the provisions of chapter 201H, HRS:

- (1) On its own behalf;
- (2) On behalf of, or in partnership with any government agency, or any landowner, or developer; or
- (3) With an eligible developer or contractor.

(b) The corporation may develop housing projects for employees, teachers or other government workers, and university and college students and faculty, nonprofit organizations, and government agencies for special needs housing projects primarily designed to meet the needs of elderly, persons with disabilities, displaced or homeless persons and their families, and other groups with special needs. The corporation may establish preferences and other necessary requirements and conditions for such housing projects on a project-by-project basis.

(c) The corporation shall offer not less than ten per cent of the total number of finishedouselots in a single family project of fifty or more units to owner-builders or nonprofit organizations assisting owner-builders in the construction of units thereon. This requirement does not apply to assisted projects which are not initiated by the corporation.

(d) The corporation may incorporate starter homes into any lower cost housing project developed by the corporation. The corporation shall determine the number of starter home units to be included in each particular project on a project-by-project basis.

- (1) Building, setback, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes shall be in compliance with the design and construction requirements of the county in which the lower cost housing project is located.
- (2) The sale of starter home units by the corporation shall meet all requirements set forth in chapter 15-308, Hawaii Administrative Rules. [Eff 12/04/10; am and comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §201H-4, 201H-33, 201H-40) (Imp: HRS §§201H-12, 201H-33, 201H-40, Act 131, SLH 2016)

§15-307-5 Public information. The administrator may disseminate information and render assistance to the public in order that the provisions of the programs of the corporation may be understood and implemented effectively. The administrator may use all available media or publications to distribute these rules or a summary thereof to the public. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-307-6 Public meeting or informational hearing. The corporation may hold or cause to be held informational hearings on any project proposed to be developed by the corporation as it deems necessary to receive and study community reaction to the proposed project. [Eff 12/04/10; am and comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-4, 201H-6)

§15-307-7 Fees. The corporation shall have the right to charge reasonable fees for processing any instrument or taking any action required under this chapter. These fees shall be nonrefundable. Such fees shall be as prescribed by the exhibit at the end of this chapter entitled "Fees", dated _____ . [Eff 12/04/10; am and comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-16, 201H-100) (Imp: HRS §§201H-4, 201H-16, 201H-100)

SUBCHAPTER 2

DEVELOPMENT OF HOUSING PROJECTS

§15-307-21 Purpose. The purpose of this subchapter is to establish a procedure for the corporation to initiate by itself or with an eligible developer or contractor, or to enter into agreements with eligible developers or contractors, for the development of housing projects. This subchapter shall govern the development of real property and the construction of units thereon. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS Chapter 201H, §201H-33) (Imp: HRS §201H-33)

§15-307-22 Development by corporation. The corporation may develop land or housing projects in accordance with the provisions set forth in chapter 201H, HRS:

- (1) On its own behalf;
 - (2) With an eligible developer or contractor; or
 - (3) With a State or county agency.
- [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §§201H-4, 201H-33, 201H-40, Act 131, SLH 2016)

§15-307-23 Project proposal; who may submit.

(a) Any individual, partnership, profit or nonprofit corporation, or public agency, upon having filed application with the corporation as required by section 15-307-24, may submit project proposals for review and certification by the corporation.

(b) A project proposal may be submitted to the corporation together with the application required under section 15-307-24. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §§201H-33, 201H-38, 201H-40, 201H-41, 201H-42

§15-307-24 Eligible developer, information required; determination by corporation. (a) An individual, partnership, limited liability company, cooperative, including a limited equity housing cooperative as defined in chapter 421H, HRS, firm, a profit or a nonprofit corporation, or a public agency that desires to be considered to develop a project either together with the corporation, or independent of the corporation, and who, in connection with the development of a project will need assistance such as acquisition of land or development rights to land, financing, subsidies, exemptions from general excise taxes, or expedited processing of a project under the provisions of chapter 201H, HRS, and the rules promulgated thereunder, shall submit to the corporation a developer's application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. Information requested may include, but is not necessarily limited to:

- (1) Name, address, email address, and telephone number of the applicant and each member of the project team, and evidence of the applicant's status as a corporation, partnership, joint venture or other business organization;

- (2) A summary of the role and responsibilities of each team member as it pertains to the project;
- (3) If the applicant is a corporation, certified copies of the articles of incorporation, and the names, addresses, email addresses, and telephone numbers of each of the officers and directors of the corporation, and of any shareholder of the corporation holding more than twenty-five per cent of the outstanding shares issued by the corporation. If the applicant is a partnership, joint venturer, or sole proprietorship, certified copies of the partnership, joint venture agreement or proprietorship, as applicable, and the names, addresses, email addresses, and telephone numbers of each of the individual partners, joint venturers, or owners;
- (4) A resume of the applicant's experience in the development of housing projects including a list and a brief description of the projects in which the applicant participated;
- (5) The name, title, address, email address, and telephone number of the person to whom communications should be addressed;
- (6) Evidence of the applicant's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, develop, and construct the project;
- (7) A current certificate of good standing from the department of commerce and consumer affairs, tax clearance from the department of taxation, and certification of compliance with department of labor and industrial relations requirements;
- (8) Evidence of the applicant's capability to develop, own, manage, and provide appropriate services in connection with housing;

- (9) Evidence of the applicant's credit worthiness including the following financial information, which shall be kept confidential to the extent permitted by law:
 - (A) The most recent year's financial statements. If the statements are unaudited, tax returns shall be provided. In the event the applicant is an entity not yet formed, federal and state tax returns and financial statements for the previous year of the applicant entity, or additional information the corporation may require;
 - (B) Interim balance sheets and income statements of the applicant and principal developer if the fiscal year-end data is over nine months old;
 - (C) Tax returns if the applicant or guarantor is an individual;
 - (D) Articles of incorporation, bylaws, resolutions, and certificates of good standing as are appropriate to support corporate actions; and
 - (E) Any other financial data deemed appropriate by the corporation for proper credit-worthiness analysis;
- (10) The applicant's ties to the community and support from local community groups;
- (11) Description of all housing projects or facilities owned or operated by the applicant;
- (12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;

- (13) A description of the applicant's past or current business experience or involvement in any programs or of its provision of services, other than housing, if any, that would give evidence of the applicant's management capabilities;
- (14) Evidence of ability to secure the necessary performance or payment bond or other evidence of surety and the ability to perform the work required to be performed in the housing project proposed;
- (15) A statement of the applicant's past or current involvement with the corporation or its predecessors, and the assistance, if any, received from those entities;
- (16) A project proposal in substantial compliance with section 15-307-26, which the applicant intends to submit to the corporation for approval; and
- (17) Any other information that the corporation deems necessary to determine the qualification of the applicant.

(b) The board may certify that the applicant is an eligible developer for the purposes of development of housing projects approved by the corporation under chapter 201H, HRS, if the board finds that the applicant:

- (1) Has demonstrated compliance with all laws, ordinances, rules, and other governmental requirements that the applicant is required to meet;
- (2) Has the necessary experience;
- (3) Has adequate and sufficient financial resources and support and has secured or has demonstrated the ability to secure a performance or payment bond, or other surety to develop housing projects of the size and type which the applicant proposes to develop; and

- (4) Has complied with the requirements of a government assistance program approved by the corporation, or met all other requirements that the corporation determines to be appropriate and reasonable. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-40)

§15-307-25 Community input on project proposals.

An eligible developer shall conduct or participate in at least one public meeting in the community or development plan area in which the proposed project is located to solicit community input on the proposed project. The public meeting shall take place prior to corporation action on the project proposal. The eligible developer shall consult with affected community groups such as neighborhood boards, homeowners' associations, surrounding property owners, and the council member for the region. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §§103-24.6, 201H-33)

§15-307-26 Project proposal; minimum requirements. (a) A project proposal, whether submitted by an applicant or eligible developer, or initiated by the corporation for development by the corporation, in order to be considered for approval by the board for processing under the provisions of chapter 201H, HRS, shall contain, as the corporation may determine to be applicable, the following minimum information:

- (1) Name and address of the eligible developer;
- (2) Evidence that the eligible developer has met the requirements of chapter 201H, HRS, applicable to eligible developers, and the requirements of section 15-307-24 of these rules;

- (3) A master plan of the proposed project, which shall show all or as much of the following information as may be required by the corporation:
 - (A) Evidence of site control (such as a deed, agreement of sale, commitment letter, or development agreement), and names and addresses of all legal and equitable holders of an interest in the land and a complete description of each holder's interest in the land;
 - (B) An accurate description of the land, preferably the metes and bounds, boundary description of the property, file plan, or preliminary plat, its geographic and relative location within a larger tract of land, with descriptions of adjacent or surrounding subdivisions or other improvements on land;
 - (C) Approximate number of dwelling units, within the proposed project, including the approximate number of dwelling units for very low, low, low-moderate, and moderate-income households. Pursuant to section 15-307-52 of these rules, unless the project is otherwise subject to the requirements of a government assistance program approved by the corporation, more than 50 per cent of total dwelling units shall be for very low, low, low-moderate, and moderate-income households;
 - (D) The total area of the proposed project;
 - (E) Site plan showing the general development of the site, including the locations and descriptions of proposed and existing buildings, parking areas, and service areas; unusual site features; proposed and existing major streets in and adjacent to the proposed

- project; and proposed and existing major drainage facilities;
 - (F) Methods of sewage and solid waste disposal and sources of water and other utilities;
 - (G) Description of land contours;
 - (H) Location and description of existing historical or significant landmarks or their natural features within and adjacent to the proposed project;
 - (I) Description of existing improvements within and adjacent to the proposed project, as well as off-site and on-site infrastructure and improvements requirements;
 - (J) Proposed and existing uses of each phase of the proposed project, and existing uses of lots adjacent to the proposed project for parks and other public places or spaces within adjoining properties; and
 - (K) Shoreline setbacks as may be required by chapter 205A, HRS.
- (4) Preliminary plans and specifications of typical housing units and other improvements in the project, including the number of proposed housing units, the number and types of structures, the number of stories, the number of units by size (number of bedrooms and bathrooms), any special features or amenities, use of natural resources such as solar or other renewable energy, grid interactive and efficient conservation devices and energy efficient designs to be utilized, conservation devices and energy efficient designs to be utilized, a description of the types of indigenous land plant species which shall be used for the landscaping of the housing project, if applicable, and the projected sales prices or rental rates for the units;

- (5) Proposed financing of the project, including:
 - (A) The manner in which the project will be financed during the development and construction of the project and upon completion of the project;
 - (B) The sources of repayment of such financing;
 - (C) Estimated start-up expenses and the sources of funds to meet these expenses;
 - (D) The net equity, if any, which the developer intends to contribute to the proposed project; and
 - (E) Budgets and cashflow requirements;
- (6) Development timetable, market analysis, sales marketing program, and other activities relating to a successful development of the project to completion;
- (7) Description of the manner in which the proposed project addresses the housing needs of lower income families;
- (8) Description of the land for the proposed project as to present use, soil classification, agricultural importance as determined by the land evaluation and site assessment commission, flood, and drainage conditions;
- (9) An assessment of the effects of the development of the proposed project upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, or other resources of the area;
- (10) Availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, police and fire protection, the adequacy thereof, and whether public agencies providing the services or facilities would be unreasonably burdened by the development of the proposed project;

- (11) Specific requests to the corporation for participation by the corporation for financial or other assistance, description of the state subsidies required and applied for, and financial and other assistance provided for by other governmental agencies;
- (12) A summary of comments from the community or community groups;
- (13) If the proposal for the development will cause displacement, the proposal shall include a program of housing accommodation for displaced persons;
- (14) Applicable provisions of existing state and county general plans, development plans, community development plans, and other comparable plans developed or adopted by the state or county government in which the proposed project is situated, county zoning of the area and other applicable land use requirements, and if known, any substantial difference in the proposed project from the respective county general plan or development, or community development plan, or other county plans and zoning and other land use requirements, and the reasons for varying from the respective county requirements;
- (15) Specific requests for exemption from existing laws, charter provisions, ordinances and rules relating to the proposed project, including requests for exemption from subdivision standards and building codes, density, height, set back, parking, street width, open space, park dedication, and other specific land use requirements;
- (16) Any other information that the corporation finds necessary to make an environmental assessment and to determine whether or not the proposed project complies as closely as possible with existing laws, charter

provisions, ordinances, and rules, and is suitable under and meets the intent and purposes of chapter 201H, HRS.

[Eff 12/04/10; am and comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §§103-24.6, 201H-33, Act 131, SLH 2016)

§15-307-27 Review of application and project; criteria for selection of proposals. The administrator shall review the application and project proposals to determine if the applicant qualifies by experience and financial responsibility and support to develop housing projects of the size and type proposed to be developed, and to determine if the proposed project meets certain minimum requirements, as follows:

The proposed project:

- (1) Is reasonably necessary and suitable for the development of lower cost housing units in the State, at the proposed location;
- (2) Is primarily designed for lower cost housing;
- (3) Follows existing laws, charter provisions, ordinances, and rules as closely as is consistent with the production of lower cost housing in the State;
- (4) Meets minimum standards of good planning, zoning, design, pleasant amenities, and a coordinated development;
- (5) Is consistent with the housing objectives and policies of the Hawaii state plan;
- (6) Does not adversely affect surrounding property;
- (7) Does not unduly burden existing water systems, sewage and other waste disposal systems, transportation systems, roadway, drainage, street lighting, open spaces, parks, and other recreational areas, public utilities, and public services, or includes, as part of the proposed project, the

- development of such systems, facilities, and services at reasonable cost;
- (8) Utilizes natural resources such as solar or other renewable energy, grid interactive and efficient as well as energy-conserving devices to the extent reasonable and practicable;
 - (9) Utilizes indigenous species of plants whenever and wherever feasible in the landscaping of the housing project; and
 - (10) Meets other minimum requirements established by the corporation and adopted as rules of the corporation pursuant to chapters 91 and 201H, HRS. [Eff 12/04/10; comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-40) (Imp: HRS §103-24.6)

§15-307-28 Processing of proposal. (a) The administrator shall, upon receipt of an application or project proposal or both, time stamp the same as received and review the application for completeness and compliance with applicable rules under this subchapter. An incomplete application shall be returned to the applicant. The administrator shall, upon certifying that the application or project proposal is complete and is in compliance with sections 15-307-23, 15-307-24, and 15-307-26 of this subchapter, inform both the applicant and the board that a recommendation of approval or disapproval should be made within ninety days. The administrator shall invite comments from appropriate agencies in the review of the proposal for appropriateness, technical compliance, and feasibility.

(b) After review of the proposal for appropriateness, technical compliance and feasibility, the administrator may submit the proposal with a recommendation for approval, contingent approval, or disapproval to the board. Any proposal forwarded to the board by the administrator may be rejected, accepted, deferred, or re-referred to the administrator for further review and recommendation. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-33)

\$15-307-29 Agreement with eligible developer or contractor; form of agreement. (a) The administrator, upon approval by the board, may enter into an agreement with an eligible developer or contractor, to develop a housing project; provided that the plans and specifications of the housing project provide for the rental of units to eligible tenants or the sale of units in fee simple or in leasehold either to the corporation or to the purchaser. In the case of for-sale projects, the sale of the units shall be subject to all of the provisions in sections 201H-47, 201H-49, and 201H-50, HRS, including the shared appreciation equity program, except for units which are to be sold at market prices.

(b) The agreement shall be subject to modification, and shall include, but not be limited to the following applicable terms, conditions, and covenants:

- (1) Purpose of the agreement, which shall include the development of lower cost housing;
- (2) A description of the role and responsibility of the corporation, the eligible developer or contractor, and other parties to the agreement, including the manner of compensating each party and the amount of profit for work performed;
- (3) Project concept and cost;
- (4) Time required to complete the project;

- (5) Delivery of dwelling units;
 - (6) Sales prices or rents of dwelling units;
 - (7) Construction agreements (when one of the parties is a contractor);
 - (8) Insurance and bonding or surety requirements;
 - (9) Inspection requirements and procedures;
 - (10) Manner in which progress payments will be made; and
 - (11) Such standard clauses that the corporation determines to be required, including, but not limited to, the following:
 - (A) Indemnity;
 - (B) Severability;
 - (C) Termination; and
 - (D) Assignability.
- [Eff 12/04/16; comp 4/28/17;
comp **JAN 15 2022**] (Auth: HRS §§201H-4,
201H-33) (Imp: HRS §§201H-33, 201H-38)

§15-307-30 State land use district boundary amendments. Upon receipt of any project proposal from an eligible developer that requires a state land use district boundary amendment by the state land use commission, the corporation may, concurrently with its review of the application and the project proposal, petition the state land use commission for a state land use district boundary amendment as provided in chapter 205, HRS. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-38)

§15-307-31 Other uses within housing project development. The corporation may designate portions of the land for commercial, industrial, and other uses. In the designation of such commercial, industrial, and other uses, the corporation shall consider the extent to which the proposed uses and the development thereof:

- (1) Conform to the objectives and policies of the Hawaii state plan;
- (2) Provide employment opportunities for the community;
- (3) Provide necessary and convenient amenities to the residents within the development;
- (4) Impact upon the suitability of the dwelling units within the development in the proximity of the proposed uses; and
- (5) Affect the economic feasibility of the development. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33, 201H-44) (Imp: HRS §201H-44, Act 131, SLH 2016)

SUBCHAPTER 3

INDEPENDENT DEVELOPMENT OF PROJECTS

§15-307-51 Purpose. The purpose of this subchapter is to establish a procedure for eligible developers to develop housing projects pursuant to agreements with the corporation. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS 201H-4, 201H-33) (Imp: HRS §201H-42)

§15-307-52 Project primarily designed for lower income housing; determination by corporation. (a) A project shall be primarily designed for lower income housing if the project meets the requirements set forth in section 15-307-26, or a government assistance program approved by the corporation.

(b) An eligible developer may submit a project proposal to the corporation for the corporation to determine if the project is primarily designed for lower income housing, and whether the corporation is willing to enter into an agreement with the eligible developer for the housing project.

(c) The project proposal to be submitted by the eligible developer shall contain the information required under section 15-307-26.

(d) An eligible developer shall conduct or participate in at least one public meeting in the community or development plan area in which the proposed project is located to solicit community input on the proposed project. The public meeting shall take place prior to corporation action on the project proposal. The eligible developer shall consult with affected community groups such as neighborhood boards, homeowners' associations, surrounding property owners, and the council member for the region. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-41)

§15-307-53 Required conditions of agreements.

If the corporation determines that the proposed project is primarily designed for lower income housing, and the corporation desires to enter into an agreement with the eligible developer, the agreement with the eligible developer for the development of housing projects shall include the following conditions:

- (1) That the eligible developer may furnish a performance or material house bond, issued by sureties that shall be satisfactory to the corporation, in favor of the corporation, to assure the timely and complete performance of the housing project;
- (2) That the plans and specifications of the housing project provide for the rental of units to eligible tenants or the sale of units in fee simple or in leasehold either to the corporation or to the purchaser. In the case of for-sale projects, the sale of the units shall be subject to all of the provisions in sections 201H-47, 201H-49, and 201H-50, HRS, including the shared appreciation equity program, except for

units which are to be sold at market prices;
and

- (3) That the housing project encompasses the use of lands adequately suited to size, design, and types of occupancies designated for projects primarily designed for lower income housing, properly located for occupancy by the groups for which the development is designed, or appropriate in its situation and surroundings for more intensive or denser zoning. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-41)

§15-307-54 Conditions imposed at discretion of corporation. The corporation may include such conditions as it may deem to be appropriate, to assure that the project will be developed and the units sold or rented primarily as lower income housing. By agreement, the corporation may provide that all or a portion of the housing to be placed under the control of the corporation, is to be rented or sold by the corporation or to be sold to the corporation upon completion of all or a portion of the units. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-41)

§15-307-55 Processing of proposal; agreement with eligible developer. Processing of proposals and agreements with eligible developers shall be in accordance with sections 15-307-27 and 15-307-28. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §201H-42)

SUBCHAPTER 4 -- REPEALED

§15-307-71 REPEALED. [R **JAN 15 2022**]

§15-307-72 REPEALED. [R **JAN 15 2022**]

§15-307-73 REPEALED. [R JAN 15 2022]

§15-307-74 REPEALED. [R JAN 15 2022]

§15-307-75 REPEALED. [R JAN 15 2022]

§15-307-76 REPEALED. [R JAN 15 2022]

§15-307-77 REPEALED. [R JAN 15 2022]

§15-307-78 REPEALED. [R JAN 15 2022]

§15-307-79 REPEALED. [R JAN 15 2022]

SUBCHAPTER 5 -- REPEALED

§15-307-81 REPEALED. [R JAN 15 2022]

§15-307-82 REPEALED. [R JAN 15 2022]

§15-307-83 REPEALED. [R JAN 15 2022]

§15-307-84 REPEALED. [R JAN 15 2022]

SUBCHAPTER 6 -- REPEALED

§15-307-91 REPEALED. [R JAN 15 2022]

§15-307-92 REPEALED. [R JAN 15 2022]

§15-307-93 REPEALED. [R JAN 15 2022]

§15-307-94 REPEALED. [R JAN 15 2022]

§15-307-95 REPEALED. [R JAN 15 2022]

\$15-307-96 REPEALED. [R JAN 15 2022]

\$15-307-97 REPEALED. [R JAN 15 2022]

SUBCHAPTER 7 -- REPEALED

\$15-307-101 REPEALED. [R JAN 15 2022]

\$15-307-102 REPEALED. [R JAN 15 2022]

\$15-307-103 REPEALED. [R JAN 15 2022]

\$15-307-104 REPEALED. [R JAN 15 2022]

\$15-307-105 REPEALED. [R JAN 15 2022]

\$15-307-106 REPEALED. [R JAN 15 2022]

\$15-307-107 REPEALED. [R JAN 15 2022]

\$15-307-108 REPEALED. [R JAN 15 2022]

\$15-307-109 REPEALED. [R JAN 15 2022]

\$15-307-110 REPEALED. [R JAN 15 2022]

SUBCHAPTER 8 -- REPEALED

\$15-307-121 REPEALED. [R JAN 15 2022]

\$15-307-122 REPEALED. [R JAN 15 2022]

\$15-307-123 REPEALED. [R JAN 15 2022]

\$15-307-124 REPEALED. [R JAN 15 2022]

§15-307-125 REPEALED. [R JAN 15 2022]

§15-307-126 REPEALED. [R JAN 15 2022]

§15-307-127 REPEALED. [R JAN 15 2022]

§15-307-128 REPEALED. [R JAN 15 2022]

§15-307-129 REPEALED. [R JAN 15 2022]

§15-307-130 REPEALED. [R JAN 15 2022]

§15-307-131 REPEALED. [R JAN 15 2022]

SUBCHAPTER 9

REPURCHASE OR REPAIR OF DWELLING UNITS HAVING SUBSTANTIAL CONSTRUCTION DEFECTS

§15-307-141 Purpose. The purpose of this subchapter is to set forth the manner in which the corporation shall exercise the right conferred by section 201H-51, HRS, to repurchase or repair dwelling units which have substantial construction defects. [Eff 12/04/10; comp 4/28/17; comp JAN 15 2022] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS §201H-51)

§15-307-142 Applicability. Unless otherwise provided herein, this subchapter applies to all dwelling units for which the restrictions set forth in section 201H-47, HRS, are in effect. [Eff 12/04/10; comp 4/28/17; comp JAN 15 2022] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS §§201H-47, 201H-51)

§15-307-143 Notice of existence of substantial construction defect. (a) Prior to commencing any legal proceeding against the corporation for claims arising out of a substantial construction defect in a dwelling unit to which this subchapter applies, the owner shall deliver to the corporation by mail, postage prepaid, or in person a notice of substantial construction defect.

(b) Upon receipt of the notice, the corporation may, but shall not be obligated to, take one of the following actions:

- (1) Execute a repurchase agreement with the owner;
- (2) Execute a repair and rental agreement with the owner; or
- (3) Execute a statement of intent to enforce its repurchase right, and deliver the statement to the owner.

(c) If within ninety days from receipt of the notice of construction or soil defect, the corporation fails to take any action authorized under subsection (b), then the owner after the expiration of the ninety day period shall have the right to start legal proceedings arising out of the construction or soil defect against the corporation.

(d) If the corporation takes an action described under subsection (b) within ninety days after the receipt of the notice of construction or soil defect, then the owner shall be precluded from starting any legal proceedings arising out of the construction or soil defect against the corporation.

(e) Observance of the requirements of this section does not toll any period of limitations imposed under chapter 657, HRS. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS §201H-51)

§15-307-144 Repurchase of dwelling unit. (a)

Upon receipt of a notice of construction or soil defect, the corporation shall review the notice and conduct an investigation to determine if a substantial construction or soil defect exists in the dwelling unit and if at least one of the following conditions also exists:

- (1) The dwelling unit has been found to be unsafe by the building department of the county in which the dwelling unit is situated;
- (2) The corporation determines that the construction or soil defect cannot be repaired or it will not be economically feasible to repair the construction or soil defect; or
- (3) The corporation determines that the construction or soil defect is of such a magnitude that it will take longer than one year to repair.

(b) If the corporation determines that there is a substantial construction or soil defect in the dwelling unit and at least one of the conditions set forth in paragraph (a)(1), (a)(2) or (a)(3) also exists, then the corporation, upon approval by the board, may, but shall not be obligated to:

- (1) Enter into a repurchase agreement with the owner and repurchase the dwelling unit; or
- (2) If the owner fails to enter into a repurchase agreement, then execute and deliver to the owner a statement of intent to enforce its repurchase right within the ninety day period prescribed under section 15-308-89 and repurchase the dwelling unit without the owner's consent.

(c) If the corporation repurchases the dwelling unit pursuant to section 201H-51, HRS, then the repurchase shall include the transfer by the owner to the corporation of the owner's right, title, and interest in the dwelling unit and rights with respect to the dwelling unit as more fully described in

paragraph (d)(2) and the repurchase price shall be established pursuant to section 15-308-85.

(d) The repurchase agreement between the owner and the corporation shall include at least the following:

- (1) A release and indemnification by the owner in favor of the corporation relating to any liability arising out of the and any work performed by design professionals and contractors to repair the dwelling unit.
- (2) A covenant that the owner shall, pursuant to the repurchase agreement, transfer to the corporation all of the owner's right, title, and interest in the dwelling unit and all of the owner's rights with respect to the dwelling unit, including, but not limited to, all of the rights of the owner under instruments such as the deed or lease and contracts of warranty, claims for relief under contracts, and claims for relief for tortuous conduct.

(e) If the corporation repurchases the dwelling unit pursuant to section 201H-51, a displacee certificate, effective for ten years, shall be issued to the owners. Only one displacee certificate shall be issued for each dwelling unit repurchased.

[Eff 12/04/10; comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51)
(Imp: HRS §201H-51)

§15-307-145 Repair of repurchased dwelling unit.

(a) After a dwelling unit is repurchased by the corporation pursuant to section 201H-51, HRS, the corporation shall determine whether or not the dwelling unit should be repaired.

(b) If the corporation determines that the dwelling unit should be repaired, then it may retain the services of one or more design professionals and contractors for the purpose of repairing the dwelling unit.

(c) If the corporation determines that the dwelling unit should not be repaired, then it may retain the services of one or more contractors for the purpose of destroying the dwelling unit.

[Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-51) (Imp: HRS §201H-51)

§15-307-146 Resale or rental of repaired dwelling unit. (a) After a repurchased dwelling unit is repaired by the corporation, the dwelling unit shall be first offered for sale to the former owner pursuant to section 15-307-147(a).

(b) If the former owner fails to exercise his or her first right of refusal provided for under section 15-307-147(a), then the corporation may proceed to resell or rent the repaired dwelling unit pursuant to section 15-308-61; provided, however, that any sale of the dwelling unit shall be subject to the former owner's rights under section 15-307-147(c).

[Eff 12/04/10; comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51)
(Imp: HRS §201H-51)

§15-307-147 Former owner's right of first refusal. (a) A former owner of a dwelling unit shall have the right of first refusal regarding the resale by the corporation of a dwelling unit repurchased from him or her under this subchapter; provided, however, that the former owner has not yet purchased a dwelling unit pursuant to section 15-307-148.

(b) Under this section, after a dwelling unit repurchased from the former owner by the corporation under this subchapter is repaired, the corporation shall first offer the dwelling unit for sale to the former owner for a price equal to the repurchase price paid by the corporation for the dwelling unit and subject to the restrictions set forth in sections 201H-47 and 201H-34, HRS, and the shared appreciation program restriction in effect at the time of repurchase. If the former owner rejects the offer,

then the corporation may offer the dwelling unit for sale to persons other than the former owner at the price and subject to the restrictions set forth in this subsection.

(c) If the corporation is unable to sell the dwelling unit under the terms and conditions set forth in subsection (b), then the corporation may offer the dwelling unit for sale under new terms and conditions that may differ from those specified in subsection (b); provided, however, that the corporation shall first offer the dwelling unit for sale to the former owner under the new terms and conditions. If the former owner rejects the offer, then the corporation may offer the dwelling unit for sale to persons other than the former owner under the new terms and conditions. [Eff 12/04/10; comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-35, 201H-51) (Imp: HRS §201H-51)

§15-307-148 Former owner's right to preference.

(a) A former owner of a dwelling unit repurchased by the corporation under this subchapter shall have the right to a preference in all other projects of the corporation; provided, however, that the former owner has not repurchased a dwelling unit pursuant to section 15-307-147.

(b) For the purpose of this section, the former owner's right to a "preference" means that the former owner has the right superior to any other person to purchase or rent a dwelling unit in any project of the corporation.

(c) In order to be entitled to a preference, the former owner shall deliver by mail, postage prepaid, or in person to the corporation a request for preference and the effective displacee certificate issued by the corporation.

(d) Upon receipt of a request for preference, the corporation shall provide information to the former owner regarding available projects.

(e) If the former owner exercises a right of preference with respect to a project, the corporation shall offer to sell or rent a dwelling unit in that project to the former owner; provided, however, that the former owner meets the eligibility requirements imposed under chapter 201H, HRS, and under this chapter. The corporation, upon approval by the board, may, although it shall not be obligated to, waive one or more eligibility requirements to permit the former owner to purchase or rent the dwelling unit in the project. [Eff 12/04/10; comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS §201H-51)

§15-307-149 Former owner's right to relocation assistance when the corporation repurchases a dwelling unit without the former owner's consent. If the corporation repurchases a dwelling unit without the former owner's consent, then the former owner shall be entitled to relocation assistance as provided for in chapter 111, HRS, and chapter 15-307, Hawaii Administrative Rules. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS Chapter 111, HRS §201H-51)

§15-307-150 Repair and rental agreement.

(a) If the corporation receives a notice of substantial construction defect and determines that the dwelling unit has a substantial construction or soil defect, then the corporation, upon approval of the board, may, but shall not be obligated to, enter into a repair and rental agreement with the owner.

(b) If the corporation enters into a repair and rental agreement with the owner, the corporation shall enter into contracts with such design professionals and contractors whose services are reasonably necessary to repair the dwelling unit. Under the terms of the contracts, the corporation, and not the owner, shall be responsible for making payments due to

the design professionals and contractors under the contracts.

(c) If the corporation determines that the owner will be substantially deprived of the use of the dwelling unit during the time it is being repaired pursuant to a repair and rental agreement, the corporation shall pay rent to the owner during the period of time the dwelling unit is being repaired. The amount of rent to be paid shall be determined by the corporation; provided, however, that the rent paid shall not exceed the amount of the mortgage payments being made by the owner on the dwelling unit.

(d) The repair and rental agreement provided for under this section shall include at least the following:

- (1) The scope of repair to be performed on the dwelling unit;
- (2) The amount of rent to be paid to the owner, if any; and
- (3) A release and indemnification by the owner in favor of the corporation relating to any liability arising out of the construction or soil defect and the work performed by the design professionals and contractors to repair the dwelling unit. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51) (Imp: HRS §201H-51)

§15-307-151 Legal action on behalf of corporation. (a) If the corporation expends moneys to repurchase or repair and rent a dwelling unit pursuant section 201H-51, HRS, then the corporation, upon approval by the board, shall have the authority to take legal action against the developer, co-developer, general contractor, and their subcontractors, consultants and other parties involved with the development, construction, or sale of the dwelling unit or with the substantial construction defect in order to recover the moneys expended.

(b) The corporation, upon approval by the board, shall have the authority to retain attorneys and expert witnesses and incur the expenses reasonably necessary for the legal action to recover the moneys expended.

(c) The corporation shall not be barred from bringing a legal action under this section notwithstanding any period of limitations set forth in chapter 657, HRS. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-51)

§15-307-152 Legal action on behalf of owner.

(a) For the purpose of this section, the term "dwelling unit" means all residences developed, constructed, financed, or sold pursuant to chapter 201G, HRS, regardless of whether or not the restrictions set forth in section 201H-47, HRS, remain in effect. The term "land" means vacant lots developed, constructed, financed, or sold pursuant to chapter 201H, HRS, regardless of whether or not the restrictions set forth in section 201H-47, HRS, remain in effect.

(b) If a dwelling unit or land is found to have a substantial construction or soil defect, the corporation, upon approval of the board, may, but shall not be obligated to, file a legal action on behalf of the owner of the dwelling unit for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants and other parties involved with the development, construction, or sale of the dwelling unit or with the construction or soil defect.

(c) Before the corporation may file or participate in any legal action on behalf of the owner, the corporation shall enter into an agreement approved by the board, with the owner relating to the corporation's participation in the legal action. The agreement shall include, but shall not be limited to, provisions as to the following:

- (1) The scope of the corporation's participation in the legal action;
 - (2) The responsibility for payment of the expenses of litigation, including attorneys' fees and expert witnesses' fees; and
 - (3) The allocation of any damages awarded in the legal action or of any proceeds from settlement of the legal action.
- (d) The corporation, upon approval of the board, shall have the authority to retain attorneys and expert witnesses and incur the expenses reasonably necessary for the legal action.
- (e) The corporation shall not be barred from bringing a legal action under this subsection notwithstanding any period of limitations set forth in chapter 657, HRS. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-51)

SUBCHAPTER 10

PROJECT FINANCING OF LOANS AND MORTGAGE AND SECURITY REQUIREMENTS

§15-307-161 Purpose. The purpose of this subchapter is to set forth the rules relating to the interim and permanent financing of housing projects. [Eff 12/04/10; am and comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-51, 201H-191) (Imp: HRS §201H-40, 201H-123, 201H-96)

§15-307-161.5 Applications for program funds. Applicants desiring to utilize fund moneys under this program shall submit to the corporation an application containing the information required under sections 15-307-24 and 15-307-26 of these rules. [Eff 4/28/17; comp **JAN 15 2022**] Auth: HRS §§201H-4, 201H-51, 201H-191) (Imp: HRS §201H-40, 201H-123, 201H-96)

§15-307-162 Interim financing. (a) Interim loans for approved projects shall be funded in accordance with section 201H-43, HRS, and will be available to developers who qualify in accordance with this chapter.

(b) A developer shall satisfy the corporation that the developer or contractor is a sound credit risk and has the ability to repay the money borrowed.

(c) Upon the report and recommendation of the administrator, the corporation, through board action, may at any time thereafter approve or disapprove the loan.

(d) The loan amount shall not exceed the actual cost of the project including the land cost, total construction contract price, architectural and engineering fees, interest on the loan, legal and accounting expenses, construction insurance and performance bond premiums, charges for appliances, and such other related expenses and costs as are directly attributable to the development and construction of the project; provided that in no event shall the loan amount exceed a percentage of the total value of the project as determined by the corporation for such project.

(e) Mortgage and security requirements shall conform to section 201H-43, HRS, and may include the condition that no disbursements of the loan fund will be made by the corporation until the corporation receives satisfactory evidence that there is available permanent financing or other means of repayment covering the project or the individual dwelling units that are for sale.

(f) A building and loan agreement and other security agreements, as appropriate, shall be executed on approval of the interim loan upon such terms and conditions as may be required by the corporation.

(g) The corporation may participate with private lenders in the provision of interim loans to developers. [Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-43) (Imp: HRS §§201H-43, 201H-144)

§15-307-163 Permanent financing. (a) Permanent loans for approved multifamily housing projects with five or more residential units may be available to developers who qualify in accordance with this chapter; provided that the project financing does not include a loan or grant from the corporation's rental housing revolving fund. The corporation may accept or deny a request for a permanent loan for a project. The corporation may also defer action on any request for a permanent loan and may request that additional information be submitted.

(b) Permanent loans shall be subject to the following underwriting standards and additional conditions:

- (1) A debt coverage ratio of not less than 1.00x on hard debt service requirements for the duration of the amortization period of the loan;
- (2) A loan-to-value ratio of the total loan amount to the total appraised value, shall not exceed one hundred per cent; and

(c) The corporation shall objectively review each project on a case-by-case basis. The corporation shall also set forth the terms and conditions of the loan, including the interest rate, repayment requirements, appropriate security, and the like.

(d) The corporation shall take all reasonable steps necessary to ensure that projects funded shall remain affordable for the economic life of the project or for the full loan term.

(e) The corporation shall ensure that loans are secured to safeguard against a change in the use or ownership of the project, or the project no longer fulfilling the intended purpose for which the loan was provided. The corporation may also include the condition that no disbursements of the loan fund will be made by the corporation until the corporation receives satisfactory evidence that there is available other means of repayment covering the project. Loans may be secured through any of the following means:

- (1) Use of a subordinated mortgage;

- (2) Development of a project on government-owned land with conditions attached to the land;
- (3) Use of a regulatory agreement; or
- (4) Any of a combination of the above.
- (f) The corporation shall establish provisions for monitoring the following:
 - (1) The progress of projects receiving permanent loans under these rules; and
 - (2) Compliance with the terms and conditions of the loan.
- (g) The corporation may charge a compliance monitoring fee, which shall be as presented in the exhibit at the end of this chapter entitled "Fees" dated _____. The corporation shall have the right to rescind or recapture moneys loaned if the terms of the contract are not fulfilled.
- (h) If the corporation accepts a request for a permanent loan for a project, the corporation must make specific findings that the use and application of program funds for the project are consistent with the purposes of this chapter.
- (i) The corporation may participate with private lenders in the provision of permanent loans to developers. [Eff 4/28/17; am and comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-191) (Imp: HRS §201H-191)

SUBCHAPTER 11

DEFAULT

§15-307-171 Default. In the event any loan made under this chapter becomes delinquent, the corporation may proceed with foreclosure action in accordance with chapter 667, HRS, or may pursue any other civil remedy permitted by law.
[Eff 12/04/10; comp 4/28/17; comp **JAN 15 2022**]
(Auth: HRS §201H-4) (Imp: HRS §§201H-45, 201H-164, HRS Chapter 667)

SUBCHAPTER 12 -- REPEALED

\$15-307-201 REPEALED. [R JAN 15 2022]
 \$15-307-202 REPEALED. [R JAN 15 2022]
 \$15-307-203 REPEALED. [R JAN 15 2022]
 \$15-307-204 REPEALED. [R JAN 15 2022]
 \$15-307-205 REPEALED. [R JAN 15 2022]
 \$15-307-206 REPEALED. [R JAN 15 2022]
 \$15-307-207 REPEALED. [R JAN 15 2022]
 \$15-307-208 REPEALED. [R JAN 15 2022]
 \$15-307-209 REPEALED. [R JAN 15 2022]
 \$15-307-210 REPEALED. [R JAN 15 2022]
 \$15-307-211 REPEALED. [R JAN 15 2022]
 \$15-307-212 REPEALED. [R JAN 15 2022]

SUBCHAPTER 13 -- REPEALED

\$15-307-221 REPEALED. [R JAN 15 2022]
 \$15-307-222 REPEALED. [R JAN 15 2022]
 \$15-307-223 REPEALED. [R JAN 15 2022]
 \$15-307-224 REPEALED. [R JAN 15 2022]

§15-307-225 REPEALED. [R JAN 15 2022]

§15-307-226 REPEALED. [R JAN 15 2022]

SUBCHAPTER 14

REGIONAL INFRASTRUCTURE FINANCING

§15-307-241 Purpose. The purpose of this subchapter is to set forth the rules relating to use of the dwelling unit revolving fund for grants or loans to finance regional infrastructure improvements. [Eff 4/28/17; comp JAN 15 2022] (Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-242 Regional infrastructure subaccounts; generally. (a) Upon request of a county government, the corporation may establish a regional infrastructure subaccount within the dwelling unit revolving fund for that county pursuant to the requirements of §201H-191.5. Each county subaccount so established may be used to provide grants and loans to state agencies, or loans to counties or private developers, to cover eligible costs of regional infrastructure improvements within that specific county.

(b) Regional infrastructure subaccount funds may be utilized for the planning, design, feasibility studies, construction, and materials for infrastructure improvements that would increase the capacity of the infrastructure facilities, including regional sewer systems, water systems, drainage systems, roads, and telecommunications and broadband. The corporation may also use subaccount funds to repay private investors for their investment plus any interest accrued on their investments made into the subaccounts to finance, in whole or in part, infrastructure improvements that would increase the capacity of said infrastructure facilities.

(c) The corporation may, from time to time and at its sole discretion, determine that there are sufficient funds available in the dwelling unit revolving fund to transfer to regional infrastructure subaccounts for the purpose of making regional infrastructure grants and loans to State departments and agencies, or regional infrastructure loans to county departments and agencies and private entities.

(d) The corporation may assess fees, including application, origination and servicing fees, as prescribed by the exhibit at the end of this chapter entitled "Fees", dated _____ to cover the administrative expenses of originating and managing the subaccounts. The fees shall be deposited into the dwelling unit revolving fund. [Eff 4/28/17; am and comp 4/28/17; am and comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: HRS §§201H-4, 201H-191.5)

§15-307-243 Commitment of subaccount funds. (a) Regional infrastructure subaccount fund loans may be committed in participation with other lenders.

(b) The corporation shall not issue nor make any commitment of regional infrastructure subaccount funds for any project unless the board has first made a determination that the purposes and amounts for which regional infrastructure subaccount funds are to be applied are consistent with the purposes of the program. All commitments of regional infrastructure subaccount funds shall be made subject to the availability of program funds. [Eff 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: HRS §201H-191.5)

§15-307-244 Regional infrastructure financing. (a) Loan amounts shall not exceed the actual cost of the infrastructure project, including total construction contract price, architectural and engineering fees, interest on the loan, legal and accounting expenses, construction insurance and performance bond premiums, and other such related

expenses and costs as are directly attributable to the development and construction of the regional infrastructure project; provided that in no event shall the loan amount exceed a percentage of the total value of the infrastructure project as determined by the corporation for such project.

(b) Payments of regional infrastructure loans may include loan repayments, the value of credits or reservations for infrastructure capacity, and in-kind payments of improved real property; provided that the value of the credits or reservations, the appraised value of the improved property, and other loan payments, if applicable, shall not be less than the loan amount. [Eff 4/28/17; comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-245 Processing of regional infrastructure project proposals. (a) An applicant shall make a written request including and supported by information, materials, forms and exhibits about the project as set forth in §15-307-26, above, as applicable to the project, and such additional information as may be required by the corporation.

(b) The administrator shall, upon receipt of an application or project proposal or both, time stamp the same as received and review the application for completeness and compliance with applicable rules under this subchapter. An incomplete application shall be returned to the applicant.

(c) After review of the application for appropriateness, technical compliance and feasibility, the administrator may submit the proposal with a recommendation for approval, contingent approval, or disapproval to the board.

(d) The board may recommend that a request for regional infrastructure subaccount funds be allocated or may deny a request for regional infrastructure subaccount funds for a project. The board may also defer action on any request for regional infrastructure subaccount funds and may request that additional information be submitted. If the board recommends that a request for regional infrastructure

subaccount funds be allocated for a project, the board shall make specific findings that the use and application of regional infrastructure subaccount funds for the project are consistent with the purposes of this subchapter. [Eff 4/28/17;
comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5)
(Imp: §201H-191.5)

§15-307-246 Evaluation of requests for program funds; criteria for selection of proposals. (a) The corporation or its designee(s) shall review each request for regional infrastructure subaccount funds to verify that the infrastructure project meets the requirements and purposes of this subchapter. If it is determined that the project does not meet the requirements and purposes of this subchapter, staff shall notify the applicant that the application for program funds will not be processed for action and state the reasons the application will not be processed. Staff shall review and evaluate projects only if the infrastructure project meets the minimum threshold requirements set forth in section 15-307-247 and the applicant submits a complete application.

(b) Funds shall be made available on a case-by-case basis. In selecting regional infrastructure projects for funding assistance under this subchapter, the corporation shall give consideration to the following factors:

- (1) The relative merits of the project including the need for the project, public benefits, and project readiness;
- (2) The ability of the applicant to deliver the project as planned, fulfill project commitments, and ensure compliance with the terms of the financing agreement;
- (3) The creditworthiness of the applicant;
- (4) The extent of local government support or the support of any other governmental body whose purview involves statewide community planning or permitting;

- (5) The recommendations of the Hawaii interagency council for transit-oriented development;
- (6) The amount of affordable rental housing development the proposed regional infrastructure project will support once completed, as measured by unit count; and
- (7) The amount of funding requested relative to the total cost of the infrastructure project. [Eff 4/28/17; comp **JAN 15 2022**]
(Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-247 Eligible regional infrastructure projects; minimum requirements. Proposed regional infrastructure project applicants shall meet the following minimum threshold requirements to be considered for financing assistance under this subchapter:

- (1) The proposed regional infrastructure project is for the benefit of housing and mixed-use transit-oriented development projects;
- (2) The proposed regional infrastructure project is located in an area designated for planned growth and will increase the capacity of the infrastructure facilities;
- (3) The project has the support of the applicable county planning and housing agencies;
- (4) The project has the support of the applicable state departments or agencies; and
- (5) The project has the support of the applicable mayor and the county legislative body, as evidenced by one or more the following:
 - (A) Written letter of support from the mayor of the county in which the project is located;

- (B) Certified copies of resolutions in support of the project adopted by the county legislative body in which the project is located; or
- (C) Minutes, reports, or memoranda of actions taken by a county legislative body in which the project is located in support of the project. [Eff 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-248 Conditions for subaccount funds.

(a) The administrator and state departments or agencies, counties, or private developers, upon approval by the board, may enter into an agreement, including a loan agreement, development agreement, or regulatory agreement, evidencing the eligible developer's obligation to develop the project in a manner that carries out the intent and purpose of this program.

(b) The corporation shall require the eligible developer to prepare and maintain such records, including cost certifications, necessary to show that subaccount funds are being used in a manner meeting program requirements.

(c) Eligible developers shall also provide periodic written reports to the corporation on the progress of the project. Written reports shall be submitted at a minimum on an annual basis; provided that the corporation shall receive a report subsequent to any of the following events:

- (1) Non-payment of interest or principal;
- (2) Breach of contractual obligations related to all involved parties;
- (3) Illegality;
- (4) Default of a major contract counterparty;
- (5) Regulatory or policy changes;
- (6) Construction delays;
- (7) Significant deviation from projected costs and cash flows;
- (8) Sudden increase in costs; or

- (9) Force majeure events that affect the economic value of the project.

[Eff 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-249 Audit and cost certifications. All books and records of a project shall be subject to audit and all expenditures of a project shall be subject to cost certification. [Eff 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

§15-307-250 Compliance monitoring; penalties for non-compliance. (a) The corporation may perform an audit at least once a year until a regional infrastructure project is completed, but shall have access to all books and records upon notice to the eligible developer.

(b) The penalty for non-compliance with program rules and requirements is at the discretion of the corporation. For projects receiving program funds in the form of loans, foreclosure proceedings is one alternative. For projects receiving grants, the corporation may undertake legal proceedings to secure specific performance. In all cases, the corporation reserves the right to pursue any and all legal remedies to recapture the funds awarded, to seek specific performance, or other actions that it deems necessary.

(c) Upon determination by the corporation of non-compliance with program rules and requirements, the owner shall be notified and given sixty calendar days to correct the violations. The corporation may extend the correction period, up to a total of six months if it is determined that good cause exists for granting such an extension." [Eff 4/28/17; comp **JAN 15 2022**] (Auth: HRS §§201H-4, 201H-191.5) (Imp: §201H-191.5)

FEEES

Effective _____

Fees may be charged by the Hawaii Housing Finance and Development Corporation as follows:

PURPOSE	AMOUNT CHARGED
Developer's Non-refundable 201H Application Fee	\$2,000
Developer's Non-refundable DURF Application Fee	\$2,000
Developer's Non-refundable Project Ground Lease Extension or Modification Application Fee	\$2,000
Developer's DURF Loan Financing Fee**	1% to 2.5% of loan amount
Interest on DURF Interim Loan**	0% to 8.5% compounded annually
Interest on DURF Permanent Loan**	The applicable federal rate ("AFR") as determined by the Internal Revenue Service, plus 3%
DURF Permanent Loan Compliance Monitoring Fee**	\$35 per unit per year for all project units excluding managers units.
Administrative Fee (assessed to developers)**	\$0 to \$2,500 per unit
Regional Infrastructure Loan Application Fee**	\$2,000
Regional Infrastructure Loan Origination Fee**	1.0% of loan amount
Regional Infrastructure Loan Amendment Fee**	\$2,000

PURPOSE	AMOUNT CHARGED
Regional Infrastructure Loan Servicing Fee, per year for the loan term**	0.30% of loan amount, compounded annually
Interest on Regional Infrastructure Loan to Private entity or county department or agency**	1.0% plus the actual interest rate paid by the State on the loan funds, compounded annually
Interest on Regional Infrastructure Loan to State department or agency**	0% - 1.0% plus the actual interest rate paid by the State on the loan funds, compounded annually
** May be adjusted by the Board on a case-by-case basis.	

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

The amendments to and compilation of chapter 15-307, Hawaii Administrative Rules, on the Summary Pages dated December 6, 2021, took place on December 7, 2021, following a public hearing held on July 26, 2021, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on June 22, 2021.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S
OFFICE

22 JAN -5 P1:35



DONN MENDE, Chairperson
Hawaii Housing Finance and
Development Corporation

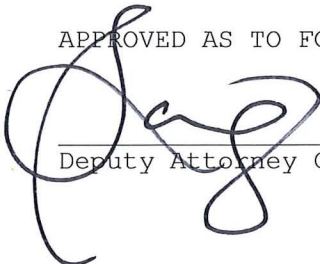
APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Date: 1/05/2022

APPROVED AS TO FORM:



Deputy Attorney General

Filed

