

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

PUBLIC LAND DEVELOPMENT CORPORATION

CHAPTER 302

PUBLIC LAND DEVELOPMENT PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-302-1 Purpose. These rules are adopted under chapter 91, HRS, and implement the provisions of chapter 171C, HRS, **providing for appropriate and culturally-sensitive programs for the optimal use of public land for the economic, environmental, and social benefit of the people of Hawaii.** These rules establish a procedure for the corporation to assist in the development and financing of projects.
[Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-302-2 Definitions. (a) As used in this chapter, unless the context requires otherwise:
"Administrator" means the executive director of the corporation or the executive director's designated representative.
"Board" means the board of directors of the public land development corporation established under chapter 171C, HRS.
"Chairperson" means the chairperson of the board of directors of the public land development corporation.
"Contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS.
"Coordinating entrepreneur" means a qualified person capable of organizing, operating, and assuming the risk for enterprises, including securing land and seed capital, developing or managing commercial or recreational facilities or projects, arranging concession agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of services or products.
"Corporation" means the public land development corporation established under chapter 171C, 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.

"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.

"Culturally sensitive" means being sensitive to the culture and history of the lands to be developed.

"Department" means that department of land and natural resources.

"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 project. It also includes any and all undertakings necessary therefor.

"Direct investment" means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.

"Enterprise" means a business with its principal place of business in Hawaii, which is or proposes to be engaged in recreational and commercial area development, development of new value-added products,

enhancement of existing recreational or commercial commodities, and the application of existing recreation or commercial areas and appurtenance facilities to productive uses.

"HRS" means the Hawaii Revised Statutes.

"Improvement" means an addition, renovation, replacement, repairs or maintenance which enhances the value of the property, and for which labor and capital are expended.

"Party" means each person or agency named or admitted as a party.

"Person" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"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.

"Professional investor" means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, as amended, or any person, partnership, or other entity whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.

"Project" means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.

"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.

"Qualified person" means any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation.

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.

"Seed capital" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.

"Rules" means these rules.

"State" means the State of Hawaii.

"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.

"Value" means the value of a property as determined by a qualified appraiser.

"Value-added" means any activity that increases, by means of development or any other means, the value of public lands. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-302-3 Definitions applied. (a) Unless otherwise specifically stated, the terms used in the rules adopted by the board pursuant to powers granted by statute shall have the meanings given them by such statutes.

(b) A rule which defines a term without express reference defines the terms for all purposes as used both in the statute and in these rules, unless the context otherwise specifically requires. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-302-4 Fees. (a) The corporation may charge reasonable fees and require reimbursements for expenses incurred for processing any instrument or taking any action required under this chapter. These fees shall be nonrefundable.

(b) Fees shall be as prescribed by the exhibit at the end of this chapter entitled "Fees", dated _____, and may be waived or adjusted by the board. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-302-5 Recovery of administrative expenses and attorneys fees. The corporation may recover all relevant administrative expenses and attorneys' fees

from the developer in administering and implementing this chapter. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

SUBCHAPTER 2

DEVELOPMENT OF PROJECTS BY CORPORATION

§13-302-21 Purpose. The purpose of this subchapter is to establish a procedure for the corporation to initiate by itself or with an eligible developer, for the development and implementation of public lands optimization projects where appropriate public lands may be developed or managed to create revenue-generating centers or exploit potential local, national, and international markets. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-22 Development by corporation. The corporation may optimize and develop projects in accordance with the provisions set forth in chapter 171C, HRS:

- (1) On its own behalf; or
- (2) With an eligible developer through direct negotiation, a competitive selection process, or upon initiation by an eligible developer.

[Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-23 Eligible developer; criteria. The corporation may enter into an agreement with an eligible developer that qualifies by experience and financial responsibility and support to develop a project of the size and type proposed to be developed.

The corporation shall determine that the eligible developer:

- (1) Has demonstrated compliance with all applicable laws, ordinances, rules, and other governmental requirements that the developer 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 projects of the size and type which the applicant proposes to develop; and
- (4) Has met all other requirements that the corporation determines to be appropriate and reasonable. [Eff: _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-24 Eligible developer, information required. A qualified person that desires to be considered to develop a project, shall submit to the corporation an application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. The required information 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, sole proprietorship 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 agreement, joint venture agreement or evidence of ownership, 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 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 the project;
- (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 principals, 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;
 - (E) Evidence of up front capitalization sufficient to demonstrate the developer's ability to complete the project; and
 - (F) Any other financial data deemed appropriate by the corporation for proper credit-worthiness analysis; provided the board may accept alternate evidence for items (A), (B), (C), (D) and (E) that it determines to be appropriate for establishing credit worthiness;
- (10) The applicant's ties to the community;
 - (11) A description of all 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, 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 proposed project;
 - (15) A statement of the applicant's past or current involvement with the corporation, and the assistance, if any, received; and
 - (16) Any other information that the corporation deems necessary to determine the qualification of the applicant.
- [Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-25 Eligible project; guidelines. The corporation may develop or enter into an agreement with an eligible developer for the development of a project **if the project:**

- (1) **Makes or seeks to make optimal use of public land for the economic, environmental, or social benefit of the people of Hawaii;**
- (2) **Generates a consistent and sustainable source of revenue for the State, as applicable;**
- (3) To the extent feasible, implements sustainability practices to ensure resource efficiency, including energy (maximize energy efficiency and renewable energy), water, and other resources in planning, design, construction, and operations. Completes the U.S. Green Building Council's Leadership in Energy and Environmental Design or the Green Communities Programs checklist(s) to the extent reasonable and practicable;
- (4) **Encourages development that is sensitive to the cultural or historical resources and the**

- community at or near the proposed location of the project;
- (5) Is appropriate and suitable for the development at the proposed location;
 - (6) Follows existing laws, charter provisions, ordinances, and rules and is consistent with the county community or development plan for the area, as closely as is practical;
 - (7) Is consistent with minimum standards of good planning, zoning, and design;
 - (8) ~~Assess the environmental impact as required HRS Chapter 343 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;~~ Assesses environmental impacts as required under chapter 343, HRS;
 - (9) ~~Utilizes~~ Uses indigenous species of plants whenever and wherever feasible in the landscaping of the project; and
 - (10) Meets other minimum requirements established by the corporation. [Eff]
(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-26 Project concept; minimum requirements. A qualified person that desires to be considered by the corporation for the processing of a project proposal under the provisions of chapter 171C, HRS, shall submit a preliminary project proposal, on forms provided by the corporation, along with any additional information that the corporation may determine to be applicable. The required information may include, but is not necessarily limited to:

- (1) Name and address of the applicant or eligible developer;
- (2) A description of the proposed project including, but not limited to, location, land area, scope, and development concept;
- (3) A justification of the need for the proposed project including estimated revenues that the corporation may derive from such development;
- (4) A description of how the proposed project may impact the surrounding neighborhood;
- (5) The extent to which the proposed project is culturally sensitive;
- (6) Estimated development costs including a budget and cash flow;
- (7) Proposed financing of the project during development and construction and upon completion;
- (8) Time and activity milestones for development of the proposed project;
- (9) Identification of necessary government approvals;
- (10) 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;
- (11) Preliminary proposal application fee; and
- (12) Any other information that the corporation finds necessary. [Eff]
(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-27 Project proposal; additional information. A project proposal made by an eligible developer, in order to be considered for approval by the board for processing under the provisions of chapter 171C, HRS, shall contain, as the corporation

may determine to be applicable, the following information:

- (1) Name and address of the eligible developer;
- (2) A plan of the proposed project, which shall show all or as much of the following information as may be required by the corporation:
 - (A) To the extent the proposed project encompasses other lands not owned by the state, 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) The total area of the proposed project;
 - (D) Preliminary 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.
- (3) Schematics of the improvements in the project, including number and types of structures, the number of stories, any special features or amenities, natural resource 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 project, if applicable, and the projected lease revenues, if any;
- (4) 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;
- (5) Development timetable, market analysis, marketing program, and other activities relating to a successful development of the project to completion;
- (6) Final environmental impact statement or final environmental assessment and finding of no significant impact pursuant to chapter 343, HRS;
- (7) 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 by other governmental agencies;
- (8) A summary of comments from the community or community groups including those obtained from the public meeting conducted pursuant to section 13-302-28;
- (9) If the proposal for the development will cause early termination of any lease, permit or easement and displacement of the holder of such interest prior to the existing termination date, the proposal shall include a relocation program or strategy for such displaced person;
- (10) 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;

- (11) A description of how land planning activities for the project will be coordinated with the county planning departments and the county land use plans, policies, and ordinances;
- (12) Specific project related requests for exemption from existing laws, charter provisions, ordinances and rules of any government agency relating to special improvement district assessments or requirements; land use, zoning, and construction standards for subdivisions, development, and improvement of lands; and the construction, improvement, and sale of homes thereon;
- (13) The extent to which the proposed project will create revenue-generating centers or opportunities exist to exploit potential local, national, and international markets.
- (14) Eligible developer;s project proposal fee; and
- (15) Any other information that the corporation finds necessary 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 171C, HRS.
[Eff _____] (Auth: HRS §171C-4)
(Imp: HRS §§171C-4, 171C-6)

§13-302-28 Community input on project proposals.

| An eligible developer or the corporation shall conduct or participate in at least one public meeting in the county 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 or the corporation shall consult with affected community groups such as neighborhood boards, business associations, homeowners' associations, surrounding property owners, and the state and county legislators for the region. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-302-29 Developer initiated projects; processing of preliminary project proposals and determination by corporation. (a) A qualified person may submit a preliminary project proposal to the corporation.

(b) The preliminary project proposal shall include information on the developer and the project concept as listed in sections 13-302-24 and 13-302-26.

(c) Upon receipt of the preliminary project proposal, the administrator shall time stamp and review the same for completeness. The preliminary project proposal may be deemed incomplete if any of the items listed in sections 13-302-24 or 13-302-26 have not been submitted.

(d) Within ten working days of receipt, the administrator shall make a determination on the completeness of the preliminary project proposal and notify the applicant.

(1) A complete preliminary project proposal shall be accepted for processing.

(2) An incomplete preliminary project proposal shall be returned to the applicant.

(e) Within sixty days of acceptance of the preliminary project proposal for processing, the administrator shall make a preliminary determination on the qualification of the applicant as an eligible developer and the proposed project, and forward a recommendation to the board for action. The

administrator **may invite comments from appropriate agencies in the review of the proposed project for cultural sensitivity, appropriateness, technical compliance, and feasibility.** [Eff]
(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-8)

§13-302-30 Letter of intent; conditions. (a) Upon approval of the preliminary project proposal by the board, the administrator may negotiate and execute a letter of intent, memorandum of understanding, or other agreement which preliminarily commits to a proposed project if the applicant is deemed to be an eligible developer pursuant to section 13-302-23.

(b) The eligible developer shall submit the information set forth in section 13-302-27 in order for the corporation to make a final determination on the proposed project. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-31 Processing of project proposal; determination by corporation. (a) In order for the corporation to process a project proposal, the eligible developer shall submit the additional information required in section 13-302-27.

(b) The administrator shall, upon receipt of the additional information for the project proposal, time stamp the same as received and review the project proposal for completeness. A project proposal may be deemed incomplete if any of the items listed in section 13-302-27 have not been submitted.

(c) The administrator shall make a determination on the project proposal using the guidelines set forth in section 13-302-25 and forward a recommendation to the board for action. The administrator may invite comments from appropriate agencies in the review of a project proposal for cultural sensitivity, appropriateness, technical compliance, and

feasibility. [Eff] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-8)

§13-302-32 Agreement with eligible developer; form of agreement. (a) The administrator, upon approval by the board, may enter into an agreement with an eligible developer to develop a project.

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

- (1) Purpose of the agreement;
- (2) A description of the role and responsibility of the corporation, the eligible developer, 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, including a projected schedule of work identifying appropriate milestones to ensure timely completion;
- (5) Anticipated lease rents, if any;
- (6) Construction agreements (when one of the parties is a contractor);
- (7) Insurance and bonding or surety requirements;
- (8) Inspection requirements and procedures; and
- (9) 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]
~~(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6); and~~

(10) The developer shall be bound by all representations made in seeking approval. Failure to satisfy these representations shall be considered a material default and may result in termination of the agreement. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

SUBCHAPTER 3

FINANCING OF PROJECTS

§13-302-51 Purpose. The purpose of this subchapter is to set forth rules relating to the issuance of revenue bonds to finance the cost of a project or purchase non-public lands to sustain and preserve leisure or recreational enterprises within a contiguous geographic area. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-17)

§13-302-52 Revenue bonds; financing of projects. (a) The corporation may issue revenue bonds to finance the cost of a project, including the acquisition of non-public lands to sustain and preserve leisure or recreational enterprises within a contiguous geographic area, and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in chapter 171C, HRS.

(b) The bonds shall be authorized by resolution of the corporation and issued pursuant to part III of chapter 39, HRS, except as provided in chapter 171C, HRS. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-9)

SUBCHAPTER 4

FINANCIAL ASSISTANCE BY THE CORPORATION

§13-302-61 Purpose. The purpose of this subchapter is to establish a procedure for the corporation to invest or reinvest funds to raise seed capital; make grants, loans, or provide other monetary forms of assistance; or purchase securities to finance or enhance development opportunities.

[Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-17)

§13-302-62 General guidelines. Investments by the corporation with persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the corporation for making investments. Any enterprise applying for an investment shall meet the following standards:

- (1) Have bylaws or policies that describe the manner in which business is conducted;
- (2) Be licensed and accredited, as applicable, in accordance with requirements of federal, state, and county governments;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, sex, including gender identity or expression, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection; and
- (4) Comply with any other requirements as the board may prescribe. [Eff]
(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-63 Types of Investment. (a) The corporation may make the following types of investments:

- (1) Indirect or coventure investments; or
- (2) Direct investments.

(b) A coventure is an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure.

(c) Direct investment by the corporation is an investment in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise. A direct investment made by the corporation may later be classified as a coventure upon an investment by a professional investor after 180 days.

[Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-64 Enterprise application; who may submit. (a) The corporation may solicit applications for the purchase of qualified securities, advertise, accept referrals or unsolicited applications as the board deems appropriate.

(b) Any enterprise may submit application with the corporation as required by section 13-302-64, for review and approval by the corporation.

[Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-65 Eligible enterprise, information required; determination by the corporation. (a) An enterprise that desires the corporation to purchase

its qualified securities, shall submit to the corporation an enterprise application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. Information requested shall include, but is not necessarily limited to:

- (1) Name, address, email address, and telephone number of the applicant and each member of the enterprise team, and evidence of the applicant's status as a corporation, partnership, joint venture, sole proprietorship or other business organization;
 - (2) A business plan, which is consistent with the business and public land development plan, including a description of the enterprise and its management, product, and market;
 - (3) A statement of the amount, timing, and projected use of the capital required;
 - (4) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and
 - (5) Any other information as the corporation shall require.
- (b) The board may approve the purchase of an enterprise's qualified securities if the board finds that:
- (1) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in chapter 171C, HRS;
 - (2) The enterprise has a reasonable chance of success;
 - (3) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;

- (4) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;
- (5) The securities to be purchased are qualified securities as defined in this chapter;
- (6) There is a reasonable possibility that the corporation will recoup at least its initial investment; and
- (7) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the enterprise, and for control by the corporation that it considers prudent over the management of the enterprise, in order to protect the investment of the corporation, including membership on the board of directors of the enterprise, ownership of voting stock, input in management decisions, and the right of access to the financial and other records of the enterprise. [Eff _____]
(Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-66 Processing of enterprise application.

(a) The administrator shall, upon receipt of an enterprise application, time stamp the same as received and review the application for completeness.

(b) Upon completion of the review pursuant to subsection (a), the administrator shall determine whether the application is complete and is accepted for processing. The application may be deemed incomplete by the administrator if any of the items listed in section 13-302-65 have not been submitted.

(c) The administrator shall notify an applicant of its determination within ten working days. An incomplete application shall be returned to the applicant.

(d) The administrator shall, within ninety days of acceptance of the application, make a recommendation to the board for action. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-67 Agreement with enterprise. (a) The administrator, upon approval by the board, may enter into an agreement with the enterprise to purchase qualified securities.

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

(1) Purpose of the agreement;

(2) The manner of ~~payback~~repayment by the enterprise of the funds advanced, granted, loaned, or received from the corporation.

(A) The manner of ~~payback~~repayment may include the payment of dividends, returns from the public sale of corporate securities or products, royalties, and other methods of ~~payback~~repayment acceptable to the corporation, including the liquidation of collateral.

(B) In determining the manner of ~~payback~~repayment, the corporation shall establish a rate of return or rate of interest commensurate with the level of risk to be paid on any investment, loan, or grant of corporation funds under this subchapter. [Eff

] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

§13-302-68 Terms and restrictions. (a) General investment limits and restrictions upon the corporation include the following:

(1) Not more than \$500,000 shall be invested in the securities of any one enterprise, except if, after its initial investment, the corporation finds that (i) additional investments in that enterprise are required to protect the initial investment of the corporation, and (ii) the criteria set forth in subsection 13-302-65(b) are met;

(2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that if a severe financial difficulty of the enterprise occurs which threatens the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and

(3) Not more than fifty per cent of the assets of the corporation shall be invested in direct investments at any time.

(b) Direct investments of the corporation shall be subject to a conclusive finding that a reasonable effort has been made to find a professional investor to make an investment in the enterprise as a coventure, and that the effort was unsuccessful.

(c) Investments may be used for any purposes consistent with the purposes and objectives of this chapter and on such terms and conditions as the corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter.

(d) No investment, loan, grant, or use of corporation funds for the purposes of this chapter

shall be subject to chapter 42F, HRS. [Eff
] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)

SUBCHAPTER 5

SEVERABILITY

§13-302-81 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

FEEES

[Effective _____]

Fees are nonrefundable and may be charged by the corporation as follows:

PURPOSE	AMOUNT CHARGED
Developer's Preliminary Proposal/Application fee	\$500.00
Eligible Developer's Project Proposal fee	\$2,000.00
Enterprise's Application Fee	\$2,000.00
Administrative Fee (assessed to developers)	\$0 to \$2,500 per unit
Consent to Mortgage	\$250.00
Lease Consent	\$250.00
Assignment of Lease	\$250.00
Amendment of Lease	\$250.00
<i>Fees may be adjusted by the Board on a case-by-case basis.</i>	

DEPARTMENT OF LAND AND NATURAL RESOURCES

The adoption of chapter 13-302, Hawaii Administrative Rules, on the Summary Pages dated _____, 2012, took place on _____, 2012, following a public hearing held on _____, 2012, 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 _____, 2012.

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

KALBERT K. YOUNG
Chairperson
Hawaii Public Land
Development Corporation

APPROVED:

NEIL ABERCROMBIE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed