

Memorandum of Understanding
among
the Federal Emergency Management Agency,
the National Park Service, and
the Federal Highway Administration
for
Unified Federal Review
of
the Pu‘u ‘Ō‘ō Volcanic Eruption and Lava Flow

I. Purpose

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA), the U.S. Department of the Interior (DOI) National Park Service (NPS), and the U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA) (collectively, the “Parties,” or individually, a “Party”) enter into this Memorandum of Understanding (MOU) to unify and expedite the environmental and historic preservation (EHP) reviews for disaster recovery projects associated with the Presidentially declared Pu‘u ‘Ō‘ō Volcanic Eruption and Lava Flow Disaster (FEMA-4201-DR-HI) (Disaster). This MOU is to formalize the commitments among the Parties to work together to facilitate uniformity, consistency, and transparency by setting forth roles and responsibilities for Lead and Cooperating Agencies, establishing interagency communication protocols (or procedures), and identifying EHP priorities related to the Disaster.

II. Background

Lava flows associated with the Disaster present a high risk that State Highway 130 in the Puna District, Hawaii County, Hawaii, will be made impassable and closed to traffic north of the Village of Pahoa. As Highway 130 is the only arterial road connecting communities in lower Puna with the rest of the Island of Hawaii, the State of Hawaii Department of Transportation (State) and the County of Hawaii Department of Public Works (County) began constructing a temporary, emergency access route (temporary route) over the alignment of Chain of Craters – Kalapana Road / Highway 130 (Chain of Craters Road) previously covered by the 1983 Kilauea lava flows. The temporary route on Chain of Craters Road is comprised of a 3.4-mile segment owned by the County and a 5.5-mile segment within Hawai‘i Volcanoes National Park (HVNP) administered by NPS. Under its Public Assistance Program, FEMA intends to provide financial assistance to the State and County for eligible work to implement emergency measures or otherwise protect public infrastructure, which could include reimbursing eligible costs to construct the temporary route on Chain of Craters Road. Similarly, FHWA may provide reimbursement funding under their Federal Highway Administration Emergency Relief Program for Federal-Aid Highway Emergency Relief Program to the State, County as a sub-recipient to the State, and NPS for eligible work. Appendix C contains a summary of each Party’s authorities and programs that may be utilized during the Disaster.

As a result of the Disaster, the Parties have identified the need for coordination in order to expedite EHP reviews necessary to fulfill the requirements of the National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA), and other applicable Federal, state, and local regulations.

Additionally, the Parties acknowledge that as of July 30, 2014, DHS, DOI, and DOT had all signed the MOU Establishing the Unified Federal Environmental and Historic Preservation Review Process (UFR). The UFR formalizes these federal agencies' commitments to expedite and unify EHP reviews for disaster recovery projects, consistent with applicable law.

III. Existing Agreements

To help provide a coordinated and interagency approach, the Parties have shared existing agreements with each other that will be utilized during the disaster recovery period to expedite EHP reviews and have attached them as Appendix D to this MOU. The following is a list of existing Programmatic Agreements, Mission Assignment Agreements, Memorandum of Agreements, or MOUs potentially applicable to the Disaster:

- A. Programmatic Agreement among the Federal Emergency Management Agency, the Hawaii State Historic Preservation Officer, the State of Hawaii Department of Defense, and the Advisory Council on Historic Preservation;
- B. U.S. Fish and Wildlife Service Programmatic Informal Consultation with the Federal Highway Administration for Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii;
- C. Agreement between the County of Hawaii and the National Park Service for the Construction of an Emergency Access Route within Hawai'i Volcanoes National Park.

IV. Responsibilities of Parties

Disaster recovery projects may involve funding, permitting, or approval from several Federal agencies, in addition to tribal, state, and local entities. Each Party will be responsible for identifying issues that must be addressed to satisfy NEPA, ESA Section 7, and NHPA Section 106 and to coordinate these issues with other Parties. The following describes each Party's responsibilities regarding Chain of Craters Road temporary route construction. If other projects involving funding, permitting, or approval from multiple Parties are identified in the future, these can be included in this MOU by amendment in accordance with Stipulation VII below.

- A. NEPA: NPS is the Lead Federal Agency for Chain of Craters Road temporary route construction occurring within HVNP. NPS agreed to alternative NEPA arrangements with the Council on Environmental Quality for Chain of Craters Road temporary route construction occurring within HVNP. FEMA is a Cooperating Agency for Chain of Craters Road temporary route construction occurring within HVNP and eligible for

FEMA funding. FEMA is the Lead Federal Agency for Chain of Craters Road temporary route construction occurring outside HVNP and eligible for FEMA funding. FEMA's provision of funding for Chain of Craters Road temporary route construction occurring outside HVNP is statutorily excluded from NEPA review. FHWA may be a Lead or Cooperating Agency in the future if Chain of Craters Road temporary route construction is eligible for FHWA funding.

- B. ESA Section 7: NPS is the Lead Federal Agency for Chain of Craters Road temporary route construction occurring within and outside HVNP. NPS agreed to emergency formal consultation with DOI Fish and Wildlife Service (FWS). FEMA is a Cooperating Agency for Chain of Craters Road temporary route construction eligible for FEMA funding. FHWA may be a Cooperating Agency in the future if Chain of Craters Road temporary route construction is eligible for FHWA funding.
- C. NHPA Section 106: NPS is the Lead Federal Agency for Chain of Craters Road temporary route construction occurring within HVNP. NPS has consulted with the Hawaii State Historic Preservation Officer (SHPO) for the Chain of Craters Road temporary route construction occurring within HVNP. FEMA is a Cooperating Agency for Chain of Craters Road temporary route construction occurring within HVNP and eligible for FEMA funding. FHWA is the Lead Federal Agency for Chain of Craters Road temporary route construction occurring outside HVNP. FHWA has consulted with SHPO for the Chain of Craters Road temporary route construction occurring outside HVNP. FEMA is a Cooperating Agency for Chain of Craters Road temporary route construction outside HVNP and eligible for FEMA funding. SHPO has concurred with "no adverse effect" determinations made by both Lead Federal Agencies.

V. Commitments of Agencies

The Parties hereby commit, to the extent practicable, to early involvement and cooperation to ensure timely decisions are made and that the responsibilities of each Party are met. The Parties commit to working together and, as appropriate, with Native Hawaiian Organizations, State of Hawaii agencies, local governments, and other interested stakeholders. In particular, the Parties agree to the following:

- A. Timely Coordination: Cooperating Agencies will submit reviews in accordance with the timeline for each project established by the Lead Agency with the concurrence of the Cooperating Agencies.
- B. Project Meetings: Parties will meet every two (2) weeks to share project developments, project status, and project reviews. Conference calls may be held in lieu of in-person meetings.
- C. Interagency Communication: Cooperating Agencies will notify the Lead Agency and the other Parties when it determines that it has no related action and further participation is no longer warranted.

- D. Project Development: The Lead Agency, in conjunction with Cooperating Agencies, will provide recommendations for avoidance, minimization, and mitigation at the earliest stage possible in project development.
- E. Personnel and Expertise: Cooperating Agencies will provide appropriate personnel and/or expertise to the Lead Agency, as appropriate, and as resources allow. Personnel responsible for maintaining the terms of this MOU for each Party and contact information are provided in Appendix B.
- F. Data and Studies: Cooperating Agencies will be responsible for the provision of any information necessary to complete application reviews and authorizations in accordance with the target timeline established by the Lead Agency with the concurrence of the Cooperating Agencies. The Lead Agency, where appropriate, will provide to the Cooperating Agencies, Applicant, or prospective Applicant relevant studies, data (such as maps), and any other information concerning the status of matters the Party considers relevant, including matters that may be under consideration.

VI. Duration

This MOU shall remain in effect for three (3) years from the date of execution. Prior to such time, the Parties may consult to reconsider the terms and/or extension of this MOU. Any extension shall be made in writing. Prior to such an extension, the Parties may amend this MOU in accordance with Stipulation VII below.

VII. Amendments

This MOU may be amended when such an amendment is agreed to in writing by all Parties. The amendment will be effective on the date the amended MOU has been signed by all Parties.

VIII. Termination

If any Party determines that the terms of the MOU will not or cannot be carried out, the Party shall immediately consult with the other Parties to develop an amendment in accordance with Stipulation VII above. If, within thirty (30) days of such consultation, an amendment cannot be reached, any Party may terminate this MOU upon written notification to the other Parties via the points of contact as listed in Appendix B.

IX. Issue Resolution

Any issue or dispute that arises between or among the Parties during the operation of this MOU shall be addressed expeditiously to avoid delay in making the Federal agency decision(s) on a

proposed project. This provision is intended to ensure that all Parties work as collaboratively and quickly as possible to resolve any issues or disputes that could delay a Federal agency decision.

Federal agencies involved in reaching a Federal agency decision(s) for a proposed disaster recovery project will seek to resolve issues or disputes at the earliest possible time through discussion at the lowest appropriate organizational level, i.e., project-level staff who have day-to-day involvement in a project. If an issue cannot be resolved through meetings among the project-level staff after thirty (30) days, then the staff will notify the appropriate agency personnel having management responsibilities over this issue. The management staff will enter discussions to resolve the issue or dispute and will have ten (10) days in which to do so, unless, at the end of the ten- (10-) day period, all management staff involved in the issue or dispute agree that progress toward resolution is being made, in which case the discussions may be extended for an additional ten (10) days. Where appropriate, the project Applicant should be engaged and its issues should also be addressed through this collaborative process.

Should discussions among those managers fail to achieve resolution within twenty (20) days or where there are no such personnel with management responsibilities in an agency involved, then the dispute will be elevated to senior agency officials. The senior agency officials will promptly contact his/her counterparts at the other agencies involved in the dispute to expeditiously address the matter and to avoid delay in the timely completion of the Federal agency decision. If a resolution of the matter cannot be achieved at this level within ten (10) days, the matter will be elevated to the relevant signatories of this agreement for resolution.

If an agency has vested, by regulation, the ultimate decision-making authority for a Federal agency decision in a particular agency official, then that official will participate as the senior agency official but will notify his/her headquarters office of the nature of the issue and his/her participation in this process.

In the event a matter is elevated to the signatories of this MOU and FEMA was not already a Party to the issue elevation process, then the FEMA Administrator will join the process.

As appropriate, the agency whose Federal agency decision is the subject of the issue or dispute will provide the other agencies involved in the issue or dispute with the necessary guidance and direction regarding the proper application of its relevant authorities. Nothing herein precludes any Party involved in the issue from consulting with relevant offices of other executive branch departments or agencies.

X. Appendices

This section lists additional information and resources to be incorporated into this MOU as attachments.

A. Definitions: This appendix describes technical and operational terms used in this MOU.

- B. Points of Contact: This appendix designates responsible parties for maintaining the terms of this MOU and provides contact information.
- C. Brief Agency Description: The purpose of this appendix is to educate Parties on each others' organization, roles, authorities, and programs to increase transparency and improve coordination for the disaster recovery process.
- D. Agreements: Relevant agreement documents are listed in Stipulation III of this MOU and attached in this appendix.

XI. Execution and Implementation

This MOU and any amendments may be executed in counterparts, with a separate page for each Party, and shall become effective on the date of the final signature. FEMA shall ensure that each Party is provided with a complete copy of this MOU, including an original set of signatures.

XII. Signatures

Federal Emergency Management Agency

By: *Karen Armes*
Karen Armes, Acting Regional Administrator, Region IX

Date: 4/24/15

By: *Alessandro Amaglio*
Alessandro Amaglio, Regional Environmental Officer, Region IX

Date: 4/9/15

National Park Service

By: *Cindy Orlando*
Cindy Orlando, Superintendent, Hawai'i Volcanoes National Park

Date: 3.31.15

Federal Highway Administration

By: *Mayela Sosa*
Mayela Sosa, Division Administrator, Hawaii Division

Date: 30 Mar 2015

Appendix A: Definitions

Applicant: A recipient of FEMA Public Assistance funds.

Chain of Craters Road: The route with western terminus at Crater Rim Drive in HVNP and eastern terminus at Pahoia-Kalapana Road (Highway 130) near the Village of Kalapana; some segments also known as Chain of Craters – Kalapana Road; some segments also known as Kaimu – Chain of Craters Road; some segments also known as Highway 130; some segments also known as Highway 130 extension.

Construction: Work necessary to cut, grade, and surface the temporary route; does not include public or private use of the temporary route except for authorized vehicles, maintenance of the temporary route, closure of the route, or post-closure activities.

Disaster: The Presidentially declared Pu‘u ‘Ō‘ō Volcanic Eruption and Lava Flow Disaster (FEMA-4201-DR-HI); also known as the June 27th lava flow.

Party: A signatory to the MOU.

Temporary route: A temporary, emergency access route approximately 20 to 30 feet wide, with two lanes, consisting of crushed gravel.

Appendix B: Points of Contact

Federal Emergency Management Agency (FEMA)

Alessandro Amaglio, Regional Environmental Officer
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA 94607-4052
(510) 627-7284
alessandro.amaglio@fema.dhs.gov

National Park Service (NPS)

Cindy Orlando, Superintendent
Hawai'i Volcanoes National Park
P.O. Box 52 / One Crater Rim Drive
Hawai'i Volcanoes National Park, HI 96718
(808) 985-6025
cindy_orlando@nps.gov

Federal Highway Administration (FHWA)

John Lairet, Programs and Project Development Team Leader
Hawaii Division Office
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-306
Honolulu, HI 96850
(808) 541-2305
john.lairet@dot.gov

Appendix C: Brief Agency Descriptions

Federal Emergency Management Agency

The U.S. Department of Homeland Security Federal Emergency Management Agency (FEMA) coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror. The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 is the authority by which a presidential disaster declaration of an emergency triggers financial and physical assistance through FEMA. The mission of FEMA's Public Assistance (PA) Grant Program is to provide assistance to state, tribal, and local governments and certain types of private nonprofit (PNP) organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the President. Through the PA Program, FEMA provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures during the recovery process.

National Park Service

The National Park Service is an agency of the U.S. Department of Interior. It was established in 1916 "to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations" (USC Title 16, Sec. 1). Hawai'i Volcanoes National Park was established on August 1, 1916, the 15th National Park in a system that now numbers 405 areas. The park is located in the state of Hawaii, on the southeastern part of the Island of Hawaii, in the districts of Ka'u and Puna. Hawai'i Volcanoes National Park extends from sea level to 13,677 feet (4,169 meters) and encompasses the summits and rift zones of two of the world's most active volcanoes, Kilauea and Mauna Loa for a total area of 333,086 acres. The mission of Hawai'i Volcanoes National Park is to protect, conserve, and study the volcanic landscapes and associated natural and cultural resources and processes, and to facilitate safe public access to active volcanism, diverse geographic settings, and wilderness for public education and enjoyment.

Federal Highway Administration

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation that supports state and local governments in the design, construction, and maintenance of the nation's highway system (Federal Aid Highway Program) and various federally and tribal owned lands (Federal Lands Highway Program). Through financial and technical assistance to state and local governments, the Federal Highway Administration is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.

Appendix D: Agreements

PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER,
THE STATE OF HAWAII DEPARTMENT OF DEFENSE, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, assists States, communities, and other eligible entities with disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and the repair, restoration and replacement of public infrastructure (Programs), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5206) (Stafford Act), the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.), and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR); and

WHEREAS, FEMA has determined that implementation of the Programs may affect properties in the State of Hawaii listed in or eligible for the National Register of Historic Places (National Register) (historic properties), and has consulted with the Hawaii State Historic Preservation Officer (Chairperson, State of Hawaii, Department of Land and Natural Resources) (SHPO), and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR Part 800, the regulations implementing Sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2) (NHPA); and

WHEREAS, FEMA has determined that implementation of the Programs may affect historic properties with religious and cultural significance to Native Hawaiian organizations. FEMA has notified the Office of Hawaiian Affairs (OHA) about this Programmatic Agreement (Agreement), and will consult with OHA to identify Native Hawaiian organizations that may participate in the terms of this Agreement to help fulfill the requirements of Section 106; and

WHEREAS, as a result of a Presidentially declared Emergency or Disaster (Disaster), the State of Hawaii will receive financial and technical assistance from FEMA, and in turn will provide assistance to qualified applicants to alleviate the effects of the Disaster, and as such the State of Hawaii Department of Defense, State Civil Defense (SCD), will be responsible for administering the Programs, has participated in this consultation, and has been invited to execute this Agreement; and

WHEREAS, the signatories agree that implementation of the Programs will be more effective if, pursuant to 36 CFR § 800.14(b), an Agreement is established to: specify procedures, roles, and responsibilities in the historic review process; eliminate further SHPO and ACHP review of certain routine activities with little potential to adversely affect historic properties; and promote efficiency so that the effects of the Programs on historic properties are considered while delays to FEMA's delivery of disaster assistance are minimized;

NOW, THEREFORE, FEMA, the SHPO, SCD, and ACHP agree that the Programs will be administered pursuant to the following Stipulations to satisfy FEMA's Section 106 responsibilities for all of its Undertakings, and effectively integrate historic preservation considerations with the needs of FEMA's Undertakings. FEMA will not fund any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, SCD, and ACHP, FEMA will require that the following Stipulations be implemented:

I. LEAD AGENCY COORDINATION

FEMA, when determined to be the Lead Agency, will coordinate the Section 106 activities of any other Federal agencies that participate in an Undertaking related to FEMA Programs. FEMA will resolve any disputes among signatory or consulting parties to this Agreement, according to the terms of this Agreement.

II. APPLICABILITY

This Agreement applies to all FEMA Programs for every past, present, or future Disaster, through December 31, 2015 [Stipulation XIII. A. Duration]. If agreed to otherwise in writing by FEMA, the SHPO, and ACHP, this Agreement may be suspended for a specific Disaster.

III. GENERAL

A. Professional Qualifications:

1. FEMA's cultural resource staff, and any such State agency or consultant staff contracted by FEMA, will meet the Secretary of Interior's (Secretary's) *Professional Qualifications Standards (Qualifications)*, as determined by FEMA's Federal Preservation Officer (FPO) or designee, for their respective disciplines.
2. The signatories acknowledge that Native Hawaiian organizations possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them.

B. Time designations: All time designations will be in calendar days. If any party does not comment on a proposed action within time frames stipulated in this Agreement, FEMA may assume that party's concurrence with FEMA's determination, and proceed in accordance with this Agreement.

C. FEMA responsibilities:

1. Will identify and evaluate historic properties. FEMA may request Federal, State agency, or applicant staff who meet the *Qualifications*, as determined by FEMA's FPO or designee, to identify and evaluate historic properties on behalf of FEMA, as described in 36 CFR § 800.4(b-c). FEMA will provide 100 percent funding for these delegated activities through standard procurement procedures (Form 40-1) under the Stafford Act.
2. Will review any National Register eligibility determinations resulting from these delegated activities.

3. Will provide the SHPO and ACHP with an annual report on this Agreement for the previous calendar year, on March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement this Agreement, and recommend any actions or revisions to be considered during the next year. These parties will review this information to determine if amendments are necessary.

D. The SHPO, at its discretion, may:

1. Delegate any or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff, but who may serve as SHPO representatives for decisions and actions required by this Agreement. The SHPO will consult with FEMA about the selection of any representatives, the scope of their responsibilities, and implementing procedures for their decisions and actions.
2. Prepare documentation about the effects of Undertakings on historic properties. The SHPO may delegate the responsibility for preparing documentation about effects of Undertakings on historic properties to a preservation consultant hired by an applicant, who meets the *Qualifications*. This will be a reimbursable expense for the applicant, subject to the cost-share provisions of the FEMA-State Agreement. The applicant will submit in writing the names and qualifications of potential consultants to the SHPO for approval. The SHPO will comment on the consultants submitted for consideration within 5 days of receipt of this information.
3. Request that FEMA convene a pre-disaster coordination conference/meeting with the SHPO, and annual review conferences/meetings as needed, to establish points of contact and protocols for implementation of this Agreement.

E. SCD responsibilities:

SCD will ensure that all applicants are fully informed about their responsibilities as stipulated in this Agreement. This includes providing applicants with guidance about in kind repairs, pursuant to the Secretary's *Standards for the Treatment of Historic Properties 1995 (Standards)*, and ensuring that applicants understand and acknowledge any additional stipulations placed on Undertakings as a result of Section 106 consultation or other terms of this Agreement. SCD will also ensure that all applicants understand that failure to comply with these terms will jeopardize Federal funding of an Undertaking.

F. ACHP responsibilities:

If the State of Hawaii Department of Land and Natural Resources is an applicant for FEMA assistance, or if FEMA determines that SHPO review of an Undertaking may appear to be a conflict of interest, ACHP will review the Undertaking in lieu of the SHPO.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF A DISASTER

- A. Upon declaration of a Disaster, FEMA will meet with the SHPO and SCD to establish points of contact and protocols for implementation of this Agreement. The SHPO may, and SCD will, attend a Disaster scoping meeting(s); and FEMA and SCD, as appropriate, will present information about the Section 106 review process to all applicants. For the declared Disaster area, the SHPO will provide or make available to the extent possible to FEMA, in writing, or in electronic form clearly accessible by FEMA:
1. All information regarding properties in the State of Hawaii Inventory of Historic Properties (including the Hawaii Register of Historic Places).
 2. Any information that may identify areas with a high potential for archaeological resources. However, the SHPO may determine that it does not have such information, or that the information is not useful in identifying such areas.
 3. Any information that may identify areas where archaeological resources do not exist. However, the SHPO may determine that it does not have such information, or that the information is not useful in identifying such areas.
- B. FEMA may obtain information about Traditional Cultural Properties from Native Hawaiian organizations: these are properties with sacred, religious and cultural significance to Native Hawaiians. If FEMA requests, the SHPO: (1) may advise FEMA about consultation with Native Hawaiian individuals or organizations; (2) will advise FEMA about evaluating properties of traditional, religious and cultural significance to Native Hawaiians; and (3) will advise FEMA on how to avoid, minimize, or mitigate effects to such properties.
- C. Prior to implementation of the Programs, FEMA will, to the extent practicable:
1. Develop with and provide to the SHPO a list of historic properties (standing structures) that have not retained integrity as a result of the Disaster. This Agreement will apply only to historic properties that retain integrity pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a property has retained integrity, through consultation not to exceed 14 days, FEMA may review any related Undertakings pursuant to Stipulations V. through VIII., or will proceed to Stipulation XI. C. through XI. I (Dispute Resolution).
 2. Consult with any other Federal agencies with jurisdiction for Undertakings, to ensure compliance with applicable historic laws and regulations, and to mutually determine the lead Federal agency for specific Undertakings.
- D. At the time of the Disaster scoping meeting(s), the SHPO:
1. Will provide or make available to FEMA any information that the SHPO has about unevaluated properties that are not in the Hawaii Inventory of Historic Properties, but may be historic.

2. Will identify SHPO staff or consultants who may assist FEMA with its Section 106 responsibilities, and identify any specific activities that the SHPO may be able to perform at FEMA's request; and
3. If FEMA requests, may assist in identifying Native Hawaiian individuals or organizations with jurisdiction or a demonstrated interest in Undertakings, historic properties, or properties of religious and cultural significance in the Disaster area. FEMA will contact these interested parties to inform them of this Agreement and to request information on damaged historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)].
- B. As a result of or in anticipation of a Disaster, FEMA may be requested to perform or fund emergency protective measures, in response to an immediate threat to human health and safety or improved property, that may adversely affect historic properties, or properties listed in the Hawaii Inventory of Historic Properties. For any Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature, FEMA may conduct an expedited review:
 1. The expedited review period will begin when FEMA determines that an emergency action is required, and will remain in effect until the review is complete, but for not more than 30 days.
 2. The FCO or designee will certify in writing to the FPO or designee a potential need for FEMA to conduct an expedited review for individual Undertakings. Should the FPO or designee concur, he/she will then certify this need in writing to the SHPO. Should FEMA find it necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, request an extension from ACHP in writing. FEMA will immediately assume ACHP's concurrence unless notified otherwise.
- C. If the expedited review procedures apply, FEMA may fund an emergency action after completing the following review:
 1. FEMA will provide the SHPO with available information about the condition and historical status of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information in writing, or through telephone conversations, electronic media, or meetings, at its discretion. The SHPO may provide comments to FEMA within 3 days of receipt of the information, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 2. Should the SHPO not comment within 3 days, FEMA may fund the action based on available information.

3. If FEMA objects to any SHPO comments, or if the SHPO objects to FEMA's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, FEMA will consult with the SHPO and attempt to resolve the dispute within 3 days of receipt of the objection. If the dispute is not resolved, FEMA will request ACHP's advice in accordance with 36 CFR § 800.2(b)(2). ACHP will advise FEMA within 3 days of receipt of the request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. PROGRAMMATIC ALLOWANCES

- A. FEMA will determine if the actions of an Undertaking conform to the Programmatic Allowances (Allowances) in Appendix A. If so, FEMA will document this determination in the project file and may fund the Undertaking.
- B. For all other activities, FEMA will conduct Section 106 review pursuant to Stipulation V. or VII.

VII. STANDARD PROJECT REVIEW

Except as described in Stipulation VI., FEMA will conduct the standard project review for all non-emergency Undertakings:

- A. Area of Potential Effects (APE): For standing structures, the APE will be the individual facility [as defined in 44 CFR § 206.201(c)] when a proposed Undertaking is limited to the repair or rehabilitation of the facility's interior and/or exterior. FEMA will determine the APE, and may consult with the SHPO, for all other Undertakings, including APEs for ground disturbing activities.
- B. If FEMA determines that there is a reasonable potential for archeological properties to be within the APE, FEMA will also determine the level of effort necessary to identify and define the limits of these properties.
- C. FEMA will identify and evaluate properties to determine if they are listed in or eligible for the National Register. If FEMA does not identify any historic properties, or determines that an Undertaking avoids archeological historic properties (both directly and indirectly) or character-defining features of historic standing structures, FEMA will make a documented determination of "no historic properties affected" as described in 36 CFR § 800.4(d)(1). Unless the SHPO or any other consulting party objects within 21 days of receipt of this documented determination, FEMA will complete the review and may fund the Undertaking. If the SHPO or any other consulting party objects to the determination, FEMA may request ACHP review, as described in 36 CFR § 800.4(d)(1)(ii), or will proceed as follows:
- D. If FEMA determines that an Undertaking may affect historic properties, FEMA will apply the criteria of adverse effect, described in 36 CFR § 800.5(a)(1), or determine whether the Undertaking meets the *Standards*, or any other applicable Secretary standards or guidelines.

1. FOR STANDING STRUCTURES:

- a. If FEMA, in consultation with the SHPO, determines that the Undertaking does not meet the adverse effect criteria, or that it meets the applicable *Standards*, FEMA will make a determination of “no adverse effect,” as described in 36 CFR § 800.5(b), notify the SHPO and any other consulting party, and provide project documentation described in 36 CFR § 800.11(e). Unless the SHPO or any other consulting party objects within 21 days of receipt of this documented determination, FEMA will complete the review and may fund the Undertaking.
- b. If the SHPO or any other consulting party objects to the “no adverse effect” determination, FEMA will require the applicant to revise the scope of work, in consultation with the objecting party, to clearly conform to the applicable *Standards*. FEMA will also review the revised scope of work for funding eligibility. If the applicant revises the scope of work accordingly, FEMA will notify the SHPO and any other consulting party, complete the review, affirm its original determination, and may fund the Undertaking.
- c. If the objection is not resolved through revision of the Undertaking as described above, FEMA may proceed in accordance with 36 CFR § 800.5(c)(2-3), or will initiate adverse effect consultation pursuant to Stipulation VIII.

2. FOR ARCHEOLOGICAL PROPERTIES:

If the SHPO or any other consulting party objects to FEMA’s “no adverse effect” determination, or to its determination that identified historic properties will be avoided (both directly and indirectly) through project redesign, procedures, or requirements agreed to among all consulting parties, FEMA may request ACHP review under 36 CFR §§ 800.4(d)(1) or 800.5(c)(3), or will initiate adverse effect consultation pursuant to Stipulation VIII.

VIII. RESOLUTION OF ADVERSE EFFECTS ON HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, it will also determine whether the effects of the Undertaking will be resolved with a Memorandum of Agreement (MOA), in accordance with 36 CFR § 800.6(b), or with a Secondary Programmatic Agreement (Secondary Agreement). FEMA will notify the SHPO, ACHP, and any other consulting party of these determinations and provide documentation described in 36 CFR § 800.11(e).
 1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate measures to minimize or mitigate adverse effects on historic properties. The MOA may include feasible measures that may serve an equal or greater public benefit than recordation or archeological data recovery, while promoting the preservation of historic properties. FEMA may develop a list of such measures in consultation with any consulting parties. These measures may include, but are not limited to: preservation planning, interpretive programs, mitigation banking, technical preservation

studies and experiments, or development of a historic properties database using Geographic Information Systems.

2. Secondary Programmatic Agreement: FEMA, the SHPO, SCD, ACHP if participating, and any other consulting party may develop a Secondary Agreement to identify programmatic conditions or treatment measures for multiple similar Undertakings by an applicant.
 3. Should FEMA and the SHPO agree that an Undertaking may adversely affect a historic property, but the Undertaking substantially complies with the applicable *Standards*, these parties may also agree that conditions or measures are not necessary, and that an MOA or Secondary Agreement will not be developed. FEMA will confirm this agreement in writing with the SHPO and any other consulting party. Unless any of these parties objects within 21 days of receipt, FEMA will complete the review and may fund the Undertaking. Should FEMA and the SHPO not agree as described above, FEMA will proceed in accordance with Subsection 1. or 2. of this Stipulation, rather than with Stipulation XI.
- B. FEMA will involve the public in the resolution of adverse effects in accordance with 36 CFR § 800.6(a)(4).
- C. Should FEMA determine that an Undertaking may adversely affect a National Historic Landmark (NHL), it will notify the Secretary (through the NHL Program Manager at the National Park Service Pacific Great Basin Support Office in Oakland, California) and invite the Secretary to participate in consultation. When ACHP participates in consultation related to an NHL, it will report the results to the Under Secretary of the Emergency Preparedness and Response Directorate, Department of Homeland Security, and the Secretary.

IX. CHANGES TO AN APPROVED SCOPE OF WORK

SCD will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking involving a historic property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance, or if, for a standing structure, FEMA and the SHPO agree that the change conforms to the *Standards*. If FEMA and the SHPO determine that the change cannot be modified to conform to the *Standards*, FEMA will initiate adverse effect consultation pursuant to Stipulation VIII.

X. UNEXPECTED DISCOVERIES

- A. SCD will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. SCD will require the applicant to stop construction activities in the vicinity of the discovery, and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO. In the case of human remains, SCD will also require the applicant to immediately notify the local law enforcement office and the county coroner/medical examiner. Pursuant to the Hawaii Historic Preservation Program, if the coroner/medical examiner determines that the human remains are or may be of Native Hawaiian origin, the discovery will be treated in accordance with the Hawaii Revised Statutes § 6E, as amended.

- B. FEMA will consult with the SHPO as soon as practicable to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and these parties will mutually agree upon time frames for this consultation. SCD and the applicant may also participate in this consultation. FEMA will then provide the SHPO with written recommendations that take into account the effects of the Undertaking. If the SHPO does not object to FEMA's recommendations within an agreed upon time frame, FEMA will require the applicant to modify the scope of work accordingly.

XI. DISPUTE RESOLUTION

- A. Should the SHPO, SCD, ACHP, or any other consulting party (including consulting parties participating in the review of specific Undertakings subject to this Agreement) object in writing within time frames established by this Agreement to any plans, specifications, determinations, or other actions subject to review pursuant to this Agreement, FEMA will consult with that party for not more than 21 days to resolve the objection. Should FEMA object in writing within established time frames, FEMA will consult with these other parties, as appropriate, for not more than 21 days to resolve the objection.
- B. If the objection is resolved within 21 days, FEMA may proceed with the disputed action in accordance with the resolution.
- C. If FEMA determines within 21 days that the objection cannot be resolved, FEMA will forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, ACHP will:
 - 1. Concur in FEMA's proposed resolution, whereupon FEMA will respond to the objection accordingly; or
 - 2. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the objection; or
 - 3. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).
- D. Should ACHP not respond within 30 days, FEMA may assume ACHP's concurrence in FEMA's proposed resolution.
- E. FEMA will take into account any ACHP recommendations or comments, and any comments from the other signatories or consulting parties, in reaching a final decision regarding the objection. The signatories will continue to implement all other terms of this Agreement that are not subject to objection.
- F. FEMA will provide the signatories with its final written decision regarding any objection resolved pursuant to this Stipulation.

- G. FEMA may authorize any disputed action to proceed, after resolving the related objection pursuant to this Stipulation.
- H. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories, for not more than 21 days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within 14 days after closure of this consultation period, FEMA will provide the other parties with its written decision. FEMA's decision will be final.
- I. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36CFR § 800.4(c)(2).

XII. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consultation with ACHP, FEMA may determine that circumstances justify granting such assistance despite an adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VIII.
- B. SCD will routinely advise its applicants in writing that they may not initiate construction on projects for which they are requesting Federal funds prior to compliance with this Agreement. SCD will also routinely advise its applicants that they will jeopardize Federal funding if such construction is initiated.

XIII. DURATION, AMENDMENTS, AND TERMINATION

- A. Duration: Unless terminated pursuant to Stipulation XIII.C., this Agreement will remain in effect for a specific Disaster until FEMA, in consultation with all other signatories, determines that this Agreement has been fulfilled in a satisfactory manner. Upon such determination, unless amended otherwise, this Agreement will terminate for that Disaster, but will continue for previous or future Disasters. FEMA will provide all other signatories with written notice of its determination and of such termination. Unless amended otherwise, this Agreement will expire on December 31, 2015.
- B. Amendments: Any signatory may propose that this Agreement be amended, whereupon the signatories will consult for not more than 60 days to consider the amendment. The amendment process will comply with 36 CFR §§ 800.6(c)(1) and (7). This Agreement may be amended only upon the written agreement of the signatories. If not amended, this Agreement may be terminated in accordance with Stipulation XIII. C. below. Appendix A, Section B, may be amended in writing by FEMA and the SHPO without amending the Agreement proper.

- C. Termination: Any signatory except SCD may terminate this Agreement by providing a 30-day written notice to the other signatories, provided they consult during this period to seek amendments or other actions that would prevent termination. Should the signatories agree on an alternative to termination, they will proceed in accordance with that agreement. Should consultation fail, the signatory will promptly notify the other signatories in writing of termination. Termination of this Agreement will require compliance with 36 CFR Part 800. This Agreement may be terminated without further consultation by the execution of a subsequent Agreement that explicitly terminates or supersedes it, or by implementation of Program Alternatives, pursuant to 36 CFR § 800.14.

XIV. EXECUTION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement takes effect on the date of signature by ACHP.
- B. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement without its amendment. At FEMA's discretion, any change in the FEMA name, Programs, or organizational structure will not affect this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs pursuant to the Stafford Act and the National Flood Insurance Act, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs.

DEPARTMENT OF HOMELAND SECURITY

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Karen E. Armes
Karen E. Armes, Acting Regional Director, Region IX

Date: 11/30/05

By: Alessandro Amaglio
Alessandro Amaglio, Environmental Officer, Region IX

Date: Nov. 29, 2005

HAWAII STATE HISTORIC PRESERVATION OFFICER

By: Peter T. Young
Peter T. Young, State Historic Preservation Officer

Date: SEP 15 2005

HAWAII STATE CIVIL DEFENSE

By: Edward T. Teixeira
Edward T. Teixeira, Governor's Authorized Representative

Date: Sep. 30, 2008

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler
John M. Fowler, Executive Director

Date: 12/21/05

APPENDIX A: PROGRAMMATIC ALLOWANCES

A. The following Programs and activities will not require review by the SHPO or ACHP pursuant to Stipulation V. or VII.:

- I. Providing Federal assistance to individuals and households pursuant to Section 411 of the Stafford Act, Individual and Family Grant Programs, except for ground disturbing and construction activities related to temporary housing;
- II. Providing Federal assistance pursuant to Section 422 of the Stafford Act, Simplified Procedures, by restoring a facility to its pre-disaster condition, using in kind materials; and
- III. Providing Federal funds for acquiring properties in buyout projects. SCD will ensure that each applicant agrees to secure its property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.

B. The following activities will not require review by the SHPO or ACHP pursuant to Stipulation V. or VII. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

I. **GROUND DISTURBING ACTIVITIES AND SITE WORK**, limited to previously-disturbed soil, both horizontally and vertically

A. Ground disturbing activities related to the repair, in-place replacement, or hardening of:

1. footings, foundations, retaining walls, other earth retaining or slope stabilization systems (such as gabion baskets), and utilities (such as sewer, water, storm drain, electrical, gas, communication, and leach lines, and septic tanks), and
2. culvert systems within rivers, streams, or drainage ways, when the work is performed substantially to pre-disaster conditions, or with a modest increase in size or capacity.

If the repaired or replaced items are at least 50 years of age, this Allowance applies only when the work is performed in kind to exactly match existing materials and form.

- B. Installation of utilities within existing rights-of-way, but not under improved roads or roadways, provided the affected portion of the right-of-way was previously surveyed for cultural resources and does not contain historic properties.
- C. Repair or replacement of driveways, parking lots, and walkways.
- D. Repair or replacement of fencing and freestanding exterior walls, when performed in kind to exactly match existing materials and form.

- E. Repair or replacement of metal utilitarian structures, including exposed major pipelines and pump houses, when performed in kind, or to match the pre-disaster size and configuration with (superior functioning) modern materials. Any finish on modern materials must be compatible with the site and context. Bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
- F. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to ground disturbing activities, or structures installed in historic districts.
- G. Installation of scaffolding or temporary barriers such as chain link fences, polyethylene sheeting, or tarps.
- H. Repair or replacement of hardscaping and related utilities, including paving, planters, trellises, irrigation, and lighting, when performed in kind to match existing materials and form.
- I. Repair or replacement, and upgrades to applicable codes and standards, of piers, docks, boardwalks, boat ramps, and dune crossovers, within existing footprints. This Allowance applies to properties that are at least 50 years of age only when the work is performed in kind to exactly match existing materials and form.
- J. Debris collection from public rights-of-way, transportation, and disposal in existing licensed solid waste facilities. Wood chipping on paved ground, transportation, and legal disposal. This Allowance does not include establishment or expansion of debris staging or disposal areas.
- K. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, when the facility is restored to its pre-disaster condition, and the sediment is used to repair eroded banks, or disposed of at an existing licensed or permitted spoil site.
- L. Dewatering flooded developed areas.

II. BUILDINGS

A. Interior Floors, Walls, Ceilings and Stairs

1. Interior rehabilitation projects limited to repairing, replacing, retaining, preserving, protecting, and maintaining in kind materials and features, consistent with the Secretary's *Standards*.
2. Repair of interior floors, walls, and ceilings to exactly match existing surfaces, including plaster, drywall, and cracks up to one inch wide. Any repair materials will match the color and workmanship of the existing materials. The repairs must be restricted to the damaged area, and care must be taken to avoid adjacent areas. This Allowance does not apply to decorative plaster trim or other finishes that contribute to the architectural significance of the property.

3. Repair or replacement of suspended or glued ceiling tiles.
4. Installation of grab bars, and other minor interior modifications for handicapped accessibility.
5. Non-destructive, concealed, or concealable testing for hazardous materials (lead paint, asbestos, etc.), or for assessment of hidden damages.

B. Utility and Mechanical Systems

1. Minor electrical and plumbing work within buildings, limited to repairing, upgrading, elevation, or in kind replacement, except that fixtures at least 50 years of age will be repaired when possible.
2. Repair, replacement, upgrade, or installation of fire detection and suppression, security alarm, and HVAC systems, provided they do not affect the exterior of a building or require installation of new duct work or surface mounted wiring throughout the interior. Fixtures at least 50 years of age will be repaired when possible.

C. Windows and Doors

1. Repair or replacement of damaged or deteriorated windows and doors, when performed in kind to exactly match existing materials and form.
2. Replacement of window panes in kind or with clear double or triple glazing, provided the work does not alter the existing window materials and form. This Allowance does not apply to archaic or decorative glass. Glazing at least 50 years of age may be treated with clear window films only.
3. Door and window hardware that is at least 50 years of age will be repaired when possible.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive preparation treatments, including but not limited to, water blasting, sandblasting, and chemical cleaning, are not used.
2. Repair or partial replacement of exterior siding, cornices, porches, balustrades, stairs, or trim when performed in kind to exactly match existing materials and form.
3. Repair or replacement of signs or awnings to closely match existing materials and form.
4. Temporary bracing or shoring for stabilization.
5. Anchoring of masonry walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems.

- a. Repair or reconstruction of parapets and chimneys to exactly match all existing materials and visual features. Bracing and reinforcing of fireplaces and chimneys, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
- b. Stabilization of foundations and the addition of foundation bolts, provided that visible masonry foundation mortars match the color, strength, and joint tooling of any foundation mortars that are at least 50 years of age.

E. Roofing

Repair, replacement, or strengthening of roofing, gutters, and downspouts, when performed in kind to exactly match existing materials and form. However, cement asbestos shingles may be replaced with asphalt shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping with compatibly colored materials.
2. Replacement or installation of insulation with an adequate vapor retarder, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to exterior insulation finishing systems (EIFS), urea formaldehyde foam insulation, or any other thermal insulation with water in its chemical composition, when installed within wall cavities or other spaces that are not vented.

G. Seismic Upgrades

Installation of the following seismic upgrades, provided they are not visible on the exterior or within character defining interiors at least 50 years of age: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; anchoring of furniture; plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

III. ROADS AND ROADWAYS

- A. Repair of a road to pre-disaster geometric design standards and conditions, with in kind materials, number and width of lanes, shoulders, medians, curvatures, grades, clearances, and side slopes.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classification of motor vehicles, such as reshaping and compacting roadbed soil, or repairing asphaltic or Portland cement concrete pavement. This Allowance does not apply to brick or stone paving, or to re-grading of native materials to reconstruct the roadbed.
- C. Repair of traffic control devices such as signs, signals, delineators, pavement markings, and ramp and traffic surveillance systems.

- D. Repair of road lighting with in kind systems.
- E. Repair of other road appurtenances in kind, such as curbs, berms, and sidewalks, except for brick sidewalks.
- F. Repair of roadway safety elements in kind, such as barriers, guardrails, and impact-attenuation devices.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

HAWAII DIVISION
DEC 21 2011
RECEIVED



In Reply Refer To:
2012-I-0089

DEC 20 2011

Mr. Pat V. Phung, P.E.
U.S. Department of Transportation
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-306
Honolulu, Hawaii 96850

Subject: Programmatic Informal Consultation with the Federal Highway Administration for Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii

Dear Mr. Phung:

The Federal Highway Administration (FHWA), U.S. Fish and Wildlife Service (Service) and Hawaii Department of Transportation (HDOT) have completed a programmatic informal consultation to improve efficiency of project review for preventive roadway maintenance, including impervious shoulder and guardrail improvements. The footprint of the proposed actions will only be on existing roadways and previously disturbed rights-of-way. Pavement preservation includes preventive maintenance, pavement resurfacing, reconstruction, and construction activities limited to: adjusting manholes, installing centerline and survey monuments, pavement markings, striping, traffic signs, and rumble strips and guardrail and shoulder improvements. The proposed action will not include any realignment of any overhead transmission lines and installation or replacement of highway lighting.

In accordance with section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C 1531 *et seq.*), FHWA has determined these actions are not likely to adversely affect the endangered Hawaiian petrel (*Pterodroma phaeopygia sandwichensis*), threatened Newell's shearwater (*Puffinus auricularis newelli*), the candidate band-rumped storm-petrel (*Oceanodroma castro*), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), and endangered Blackburn's sphinx moth (*Manduca blackburni*; BSM). No critical habitat is located in the right-of-way and therefore will not be affected.

This programmatic consultation provides a framework for making ESA section 7 decisions and will help to expedite environmental review and permitting. As described above, this programmatic consultation covers a variety of routine activities that occur within existing roadways and rights-of-way. Under the terms of this programmatic consultation, FHWA or HDOT will submit a letter to our office describing the proposed action, including

implementation of the applicable conservation measures and a map of the project location. The Service will then review the project and send a concurrence letter within 10 business days of receipt of the complete project description. By October 31 of each year, FHWA will submit a summary report to the Service. An annual meeting will occur between FHWA, the Service and HDOT no later than November 30 to discuss the efficacy of the process.

Covered Actions

1. Pavement preservation involves the application of properly timed surface treatments to ensure that pavements in good condition will remain in good condition. Preservation treatments extend the pavement service life, but generally provide no structural strength.
2. Pavement resurfacing consists of placing the needed thickness of hot mix asphalt on an existing pavement. The resurfacing will return the pavement to a high level of serviceability and provide the necessary structural strength for the pavement design period.
3. Reconstructed pavement or full depth reconstruction results when existing pavement is completely removed to the sub-grade and replaced with new pavement. This type of work is needed when the existing pavement has deteriorated to such a weakened condition that it cannot be salvaged with corrective action. This programmatic agreement covers only the reconstruction of existing pavement. Any other proposed work beyond the pavement reconstruction, would require additional consultation with the Service.
4. Guardrail and shoulder improvements involve replacement or installation of guardrails. Shoulder improvements consist of adding pavement immediately to road surfaces.

Species Descriptions

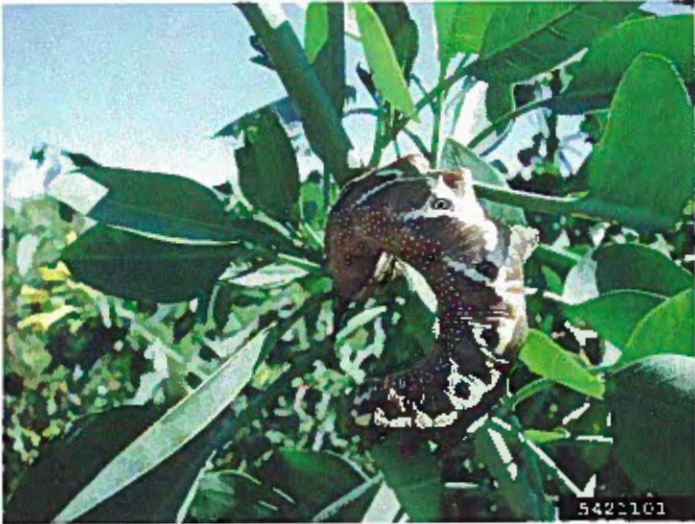
Blackburn's Sphinx Moth (BSM)

BSM is endemic to the Hawaiian Islands and is currently found on the islands of Hawaii, Maui, and Kahoolawe. The current population of the species is unknown and trends in population status have not been determined due to difficulties in estimating population densities. Loss and degradation of habitat for the species continues due to overgrazing by introduced ungulates. Alien arthropods continue to impact the species through predation, competition, and parasitism. In addition, the accidental or intentional release of alien predators and competitors continues to threaten the species (Service 2005). BSM larvae feed upon non-native tree tobacco (*Nicotiana glauca*) which may occupy disturbed areas such as open fields and roadway margins (Figure 1).

Hawaiian Hoary Bat

The Hawaiian hoary bat is known from the islands of Hawaii, Maui, Oahu, Kauai, and Molokai. Population numbers are unknown, but Hawaiian hoary bats are observed regularly only on the islands of Hawaii, Kauai, and Maui, and there have been recent observations on Oahu. There is a general lack of historical and current data on this subspecies, and its present status is not well understood. Threats to the Hawaiian hoary bat include habitat destruction (elimination of roosting sites), and possibly direct and indirect effects of pesticide use, and disease (Service 1998).

Figure 1. Photos of *Nicotiana sp.*, host plant for Blackburn's sphinx moth



Hawaiian hoary bats roost and give birth solitarily in the foliage of trees, both exotic and native (Service 1998). Habitat requirements for the Hawaiian hoary bat are not well known. Bats are most often observed foraging in open areas, near the edges of native forests, or over open water, although this may be due to the ease of detection in these habitats. During the pupping season, females carrying their pups may be less able to rapidly vacate a roost site as the vegetation is cleared. Furthermore, adult female bats may leave their pups in the roost tree while they themselves forage, leaving young bat pups unable to leave a tree that is being felled. Potential adverse effects from such disturbance can be avoided or minimized by not clearing or trimming vegetation taller than 15 feet between June 1 and September 15, the period during which bats are at greater risk.

Seabirds

Seabirds may traverse the project areas at night during the breeding season (February 1 through December 15). Artificial lighting has the potential to attract listed seabirds where they circle the light until they either collide with nearby structures, particularly transmission lines, or fall to the ground from exhaustion. Once grounded, they are vulnerable to predators or often struck by vehicles along roadways. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable.

Avoidance and Minimization Measures

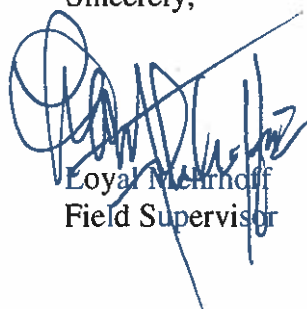
To avoid impacts to listed species; pursuant to this programmatic consultation, the following measures must be implemented:

1. To avoid impacts to listed seabirds, nighttime construction should be avoided during the seabird fledging period, September 15 through December 15. If nighttime construction occurs during other times of year, all lighting should be shielded and directed toward the ground to avoid attracting adult seabirds as they travel from the ocean to their breeding areas. NOTE: nighttime construction may occur on the island of Oahu during the breeding season; however, lights should be shielded and directed toward the ground.
2. To avoid impacts to the Hawaiian hoary bat, trees and shrubs taller than 15 feet will not be trimmed or cleared between June 1 and September 15 (for projects that are federally funded).
3. Since projects will be restricted to paved surfaces that are free of vegetation, impacts to the Blackburn's sphinx moth from shoulder improvements on the islands of Hawaii and Maui, will be negligible.
4. No utilities will be moved or realigned.
5. No highway lighting will be installed or replaced.
6. All work will occur on existing roadways or within paved portion of the rights-of-way.

7. As part of a public outreach program, framed photos containing brief descriptions of the Hawaiian hoary bat, Hawaiian petrel, Newell's shearwater and Blackburn's sphinx moth (preferably on a *Nicotiana* plant) will be hung in common-use areas of HDOT district offices.

We appreciate your efforts to protect listed species. Unless the project description changes, or new information reveals that the effects of the proposed action may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the ESA is necessary. If you have questions regarding these comments, please contact Jodi Charrier, Fish and Wildlife Biologist, Consultation and Technical Assistance Program (phone: 808-792-9400, fax: 808-792-9581).

Sincerely,



Loyal McArthur
Field Supervisor

Literature Cited


- Reynolds, M.H., B.C. Cooper, and R.H. Day. 1997. Radar study of seabirds and bats on windward Hawaii. *Pacific Science* 51:97-106.
- Simons, T.R., and C.N. Hodges. 1998. Dark-Rumped Petrel (*Pterodroma phaeopygia*). The Academy of Natural Sciences and American Ornithologists Union, Philadelphia, PA and Washington D.C. 24 pp.
- U.S. Fish and Wildlife Service (Service). 1983. Hawaiian Dark-Rumped Petrel and Newell's Manx Shearwater Recovery Plan. Department of the Interior, U.S. Fish and Wildlife Service, Portland, Oregon.
- _____. 1998. Recovery plan for the Hawaiian hoary bat (*Lasiurus cinereus semotus*). Department of the Interior, U.S. Fish and Wildlife Service, Portland, Oregon.
- _____. 2005. Recovery plan for the Blackburn's sphinx moth (*Manduca blackburni*). Department of the Interior, U.S. Fish and Wildlife Service, Portland, Oregon.
- Zaun, B. 2007. Biologist, Kilauea National Wildlife Refuge. Breeding Phenology of Newell's Shearwaters.

**Section 7 of the Endangered Species Act of 1973
Programmatic Informal Consultation**

By signing this programmatic agreement, the undersigned acknowledges that the terms of the agreement as outlined by the U.S. Fish and Wildlife Service, dated December 20, 2011, have been read and understood. The Federal Highway Administration Hawaii Division may revoke the programmatic agreement privilege if the undersigned fails to comply with the terms of the programmatic agreement.

Federal Highway Administration

Hawaii Division


Abraham Wong, Division Administrator

JAN 08 2012

Date

Island of Hawaii

HDOT, HWY-H


Salvador Panem, District Engineer

1/10/12

Date

County of Hawaii

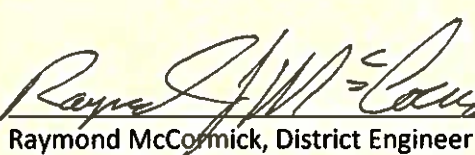

Warren Lee, Director of DPW

28 FEB 2012

Date

Island of Kauai


HDOT, HWY-K


Raymond McCormick, District Engineer

1/27/12

Date

County of Kauai


Larry Dill, County Engineer

1-27-12

Date

Island of Maui

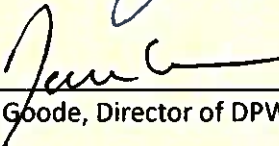
HDOT, HWY-M


Ferdinand Cajigal, District Engineer

1/23/2012

Date

County of Maui


David Goode, Director of DPW

1-23-12

Date

Island of Oahu

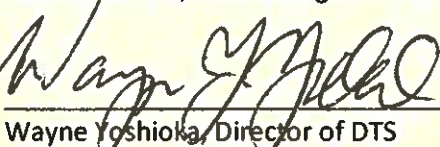
HDOT, HWY-O


Pratt Kinimaka, District Engineer

2-6-12

Date

City and County of Honolulu


Wayne Yoshioka, Director of DTS

2/6/12

Date

Highways Division
HDOT, HWY


Alvin Takeshita, Administrator

3/02/12

Date



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

In Reply Refer To:
2012-I-0089
2013-TA-0336

AUG 08 2013

Mr. Pat V. Phung, P.E.
U.S. Department of Transportation
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-306
Honolulu, Hawaii 96850

Subject: Amendment to the Programmatic Informal Consultation with the Federal Highway Administration for Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii

Dear Mr. Phung:

On December 20, 2011, the Federal Highway Administration (FHWA), U.S. Fish and Wildlife Service (Service) and Hawaii Department of Transportation (HDOT) completed a programmatic informal consultation (*Programmatic Informal Consultation for the Federal Highway Administration's Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii*; Service file 2012-I-0089) addressing potential impacts of preventive roadway maintenance projects to listed species pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). This letter addresses a modification to the protocol for incorporating future projects into the programmatic informal consultation and it addresses the addition of traffic lights to the list of activities covered under the consultation.

Under the original terms of this programmatic section 7 consultation, FHWA or HDOT would submit a letter to the Service describing proposed preventative roadway maintenance actions and request the Service's concurrence that the proposed action is consistent with the programmatic consultation. The Service would then review the project and either send a concurrence letter or contact the action agency to discuss project impacts further.

During a meeting between the Service (Jodi Charrier) and FHWA (Messa Otani) on July 12, 2013, a change to this protocol was agreed upon. This letter serves to document the change as an amendment to the programmatic informal consultation. For future actions where FHWA or HDOT deems it appropriate to address impacts of a proposed project by appending it to the programmatic informal consultation, and the Service concurs, then no formal written reply from

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the Service is necessary. This amendment omits the need for the Service to send a concurrence letter which will further expedite the consultation process for covered preventative maintenance actions.

In the July 12, 2013, meeting, FHWA also requested the Service's concurrence with the FHWA's determination that the replacement of existing traffic lights in Hawaii is not likely to adversely affect listed species or critical habitat and requested this action be added to their list of covered actions in the programmatic consultation. The Service agrees this inclusion will not affect species to a manner not previously considered in the programmatic consultation. Therefore, the replacement of existing traffic lights is hereby incorporated into the programmatic informal consultation.

We thank you for your continued coordination and efforts to conserve listed species. If you have questions regarding these comments, please contact Jodi Charrier, Alternative Energy Coordinator, (phone: 808-792-9400, fax: 808-792-9581).

Sincerely,


705 Loyal Mehrhoff
Field Supervisor



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

In Reply Refer To:
2012-I-0089
2013-TA-0336
2014-TA-0038

NOV 07 2013

Mr. Pat V. Phung, P.E.
U.S. Department of Transportation
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-306
Honolulu, Hawaii 96850

Subject: Second Amendment to the Programmatic Informal Consultation with the Federal Highway Administration for Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii

Dear Mr. Phung:

On December 20, 2011, the Federal Highway Administration (FHWA), U.S. Fish and Wildlife Service (Service) and Hawaii Department of Transportation (HDOT) completed a programmatic informal consultation (*Programmatic Informal Consultation for the Federal Highway Administration's Preventative Maintenance and Shoulder and Guardrail Improvement Projects in the State of Hawaii*; Service file 2012-I-0089) addressing potential impacts of preventive roadway maintenance projects to listed species pursuant to section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The first amendment addressed a modification to the protocol for incorporating future projects into the programmatic informal consultation and added the replacement of existing traffic lights to the list of activities covered under the consultation. This second amendment further refines the processing of projects applicable to the programmatic informal consultation.

Under the original terms of this programmatic section 7 consultation, FHWA or HDOT would submit a letter to the Service describing proposed preventative roadway maintenance actions and request the Service's concurrence that the proposed action is consistent with the programmatic consultation. The Service would then review the project and either send a concurrence letter or contact the action agency to discuss project impacts further.

During a meeting between the Service (Jodi Charrier) and FHWA (Pat V. Phung and Messa Otani) on October 29, 2014, an additional change to this protocol was agreed upon. This letter



serves to document the change as a second amendment to the programmatic informal consultation. Beginning fiscal year 2014, FHWA will be responsible for reviewing all proposed projects to verify applicability of the informal programmatic consultation. FHWA will collate these projects and submit an annual report to the Service for review no later than November 1st of each year. This report will contain a list of all projects, including locations and actions covered, that were appended to the informal programmatic consultation for each fiscal year.

This amendment will further expedite the consultation process and also ensure obligations pursuant to the ESA are met. We thank you for your continued coordination and efforts to conserve listed species. If you have questions regarding these comments, please contact Jodi Charrier, Alternative Energy Coordinator, (phone: 808-792-9400, fax: 808-792-9581).

Sincerely,


For Loyal Mehrhoff
Field Supervisor

AGREEMENT
BETWEEN THE COUNTY OF HAWAII AND
THE NATIONAL PARK SERVICE
FOR THE CONSTRUCTION OF AN EMERGENCY ACCESS ROUTE
WITHIN HAWAII VOLCANOES NATIONAL PARK

This Agreement is between the County of Hawaii, State of Hawaii (“County”), acting through its Mayor, and The National Park Service (“NPS”), a bureau of the United States Department of the Interior (“DOI”), acting through the Superintendent, Hawaii Volcanoes National Park (“Superintendent”).

I. BACKGROUND AND OBJECTIVES

The Chain of Craters Kalapana Road (“Park Road”) within Hawaii Volcanoes National Park (“HAVO” or “Park”) runs from the intersection with Crater Rim Drive to the coast but ends where lava has covered the Park Road approximately 5.5 miles from the boundary of HAVO near the community of Kalapana. In the past, the Park Road had connected to Highway 130 at HAVO’s eastern boundary near the ocean (this segment referred to as the “Historic Chain of Craters-Kalapana Road”). (See Map 1 attached to this Agreement as Attachment 1).

In early September 2014, the ongoing lava flow from Kilauea Volcano’s Pu’u O’o vent, which began on June 27, 2014 (the “June 27 flow”), shifted direction toward the north and east, posing a threat to the community of Pahoa and presenting a high risk that Highway 130, the road leading to the communities in the southeast part of the Island of Hawaii, would be covered by lava and impassible. (See Map 2 attached to this Agreement as Attachment 2).

On September 4, 2014, the Mayor of the County of Hawai`i, State of Hawai`i (“Mayor”) executed an Emergency Proclamation that communities, schools, government facilities, business, and industry would be adversely affected and that it is necessary to take immediate action to mitigate the disastrous effects of the June 27 flow, including but not limited to building alternate routes connecting Puna to other districts of the Island of Hawai`i.

On September 5, 2014, the Governor of the State of Hawai`i (“Governor”) executed a Proclamation that identified two abandoned roads, Railroad Avenue and Government Beach Road, to be improved and used as alternate emergency roadways for ingress and egress to the communities cut off from access by the lava flow. (See Proclamation attached to this Agreement as Attachment 3).

On September 11, 2014, the County began work to improve Railroad Avenue and Government Beach Road for use as emergency access routes, but there is a high probability that these two roads will also be covered by lava in the near future (See Attachment 2). Due to topographic constraints, Government Beach Road is not anticipated to be made passable to the number and types of vehicles that will need access, and its improvement is intended as a

stop-gap measure in case Railroad Avenue is cut off prior to completion of an emergency access route over the Historic Chain of Craters-Kalapana Road alignment.

Once Highway 130 (between Pahoia and Highway 19) and Railroad Avenue are blocked by lava, the residents in the southeast corner of the Island of Hawaii will not have a viable route over land to connect them with the rest of the island.

On September 22, 2014, the Governor executed a Supplementary Proclamation determining that other than the roads identified in the September 11, 2014 Proclamation, the only other possible road that can provide ingress and egress to the impacted areas is the county-owned Chain of Craters Road (Highway 130 per topo map dated 1993) that connects to the Historic Chain of Craters-Kalapana Road, the segment of the road that is within the Park (i.e. the Park Road). (See Supplementary Proclamation attached to this Agreement as Attachment 4).

The segment of the Highway 130 owned by the State of Hawaii has been conveyed to the County of Hawai'i by Executive Order from the Governor.

Therefore, an emergency access route ("Emergency Route") is needed along the lava covered section of the Park Road, as other existing land routes are anticipated to be covered by lava in the near future, and the County and the NPS wish to work together to construct the Emergency Route following the general alignment of the former Park Road as specified in this Agreement.

This Agreement establishes the responsibilities and understandings of the County and the NPS regarding the respective roles of the parties in constructing the Emergency Route. The County shall have the responsibility of constructing the Emergency Route and the NPS shall have the responsibility of oversight of the construction in accordance with NPS standards, rules, and regulations.

II. RESPONSIBILITIES OF THE PARTIES

A. The County agrees to:

1. Subject to the Section II.C.3 of this Agreement, construct the Emergency Route according to the design prepared by the State of Hawaii for the NPS (the "Design" attached or to be attached as Attachment 5 to this Agreement) and under the supervision of the NPS (which also includes staff from the Federal Highway Administration ("FHWA") under an agreement between the NPS and the FHWA) – (the design and construction of the Emergency Route is referred to as the "Project").
2. Waive any and all costs and expenses that it incurs and not seek reimbursement from the NPS for any costs or expenses that it incurs for any work performed on or in relation to the Project, including but not limited to labor and materials.
3. Waive any claim or right to any property or possessory interest, including use rights, in or to any part of the Project or the Emergency Route.

4. That the NPS has exclusive jurisdiction over the area where the Emergency Route is to be constructed (as well as all areas within the Park) and that the NPS's exclusive jurisdiction shall continue after completion of the Emergency Route. The County further agrees that the County, its employees, agents and contractors shall be subject to the jurisdiction of the NPS while they are within the boundary of HAVO and while they are working on the Project within the Park.
5. Follow the direction of the NPS, including FHWA staff working for the NPS, regarding the construction of the Project, and promptly take steps necessary, including the suspension of work, at no cost to NPS, to address any concerns raised by NPS in the construction of the Project.
6. Follow any order of the NPS regarding public health and safety, emergency conditions, or law enforcement matters – such orders may include a stop work order. For the purposes of this provision, NPS staff who may give an order to the County, its agents and contractors include the NPS Key Official, the Superintendent of HAVO, her designated representative, designated FHWA personnel, or any NPS Law Enforcement Ranger giving an lawful order.
7. Provide a health and safety plan for the construction of the Project within 7 days of the Effective Date of this Agreement. The County may have its contractors provide the plan directly to the NPS.
8. Include the following provisions identified in quotations verbatim in any Third-Party Contract for the performance of any work or for fulfilling any obligation related to the Project or for those Third-Party Contracts already executed have the County's contractor execute an amendment or modification of the existing contract to include these provisions. This provision does not apply to contracts or agreements involving the rental of equipment from a contractor or vendor. No contractor shall be allowed into the Park until these provisions are or have been made a part of the contract with the County :

“The Contractor agrees to—

- a. Comply with all applicable laws, regulations, rules, orders, other legal requirements, and NPS policies;
- b. Follow any NPS order to suspend work;
- c. Obtain and provide all warranties that would be given in normal commercial practice from subcontractors, manufacturers or suppliers for work performed and materials furnished:
 - i. For a period of not less than one year; and
 - ii. Executed, in writing, for the benefit of the County and the United States;

- d. Be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence because of, or in any way growing out of or connected to the Project;
 - e. Waive any defense to any claim of breach or negligence based on the contractor's alleged reliance on the County's or NPS' Project monitoring, inspections or tests. All monitoring, inspections or tests are for the sole benefit of the County and / or NPS and do not relieve the Contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss prior to Project acceptance. In addition, such monitoring, inspections or tests do not imply Project acceptance by either the County or NPS, nor does it affect the continuing rights of the County or NPS after Project acceptance.
 - f. Neither the County's nor NPS' review, approval or acceptance of, nor the County's payment for, contractor services shall be construed to operate as a waiver of any rights of the County or NPS, nor of any cause of action that the County or NPS may have, and the Contractor shall be and remain liable to the County and the NPS in accordance with the terms of this Contract and applicable law for all damages for which the Contractor is legally responsible.
 - g. In the event of a conflict between the provisions of this Contract and the provisions of the Agreement between the County and the NPS for the construction of the Emergency Route ("Agreement"), recognize that the terms of the Agreement take precedence and control.
 - h. Obtain and maintain insurance consistent with the requirements of Section VI.A of the Agreement;
 - i. Have no recourse against the United States with respect to any aspect of construction activities and shall not lien any land, structures, fixtures, or improvements associated with this Contract; and
 - j. Be jointly and severally liable under this Contract if the Contractor is comprised of more than one legal entity."
9. Be subject to NPS monitoring and inspection, and provide access to the construction site and construction-related materials and documents.
10. Be subject to NPS inspection of all vehicles that are to be used by the County, its agents of contractors (including any subcontractors) within the Park for the Project before they are allowed to enter the Park.

11. Certify, in writing upon completion of the Project, that all work on or related to the Emergency Route, including any materials used to construct the Emergency Route are free and clear of all debts, liabilities, or obligations.
12. Comply with, and cause its contractors to comply with, the wage requirements of the Davis Bacon Act, 40 U.S.C. § 3142 *et seq.*, and the relevant Department of Labor regulations, 29 C.F.R. Part 5.
13. Ensure that no Third-Party Contract contains a binding arbitration clause or other clause that may interfere with NPS' ability to seek judicial review in its capacity as a third-party beneficiary to the Third-Party Contract.
14. Provide NPS with a copy of all Third-Party Contracts that the County has or will enter into for work on the Project within five days of the Effective Date of this Agreement or with five days of execution of the contract. As part of this requirement, the County shall provide copies of all performance and payment bonds from the County's contractors. This provision does not apply to contracts or agreements involving the rental of equipment from a contractor or vendor.

B. The NPS agrees to:

1. Provide access to the Park to the County for the construction of the Project, subject to any conditions that the NPS imposes for visitor use in the Park, public health and safety, other emergencies, and law enforcement matters.
2. Monitor the construction and provide oversight of the Project (but excluding any oversight or administration of any contracts that the County has with its constructors or subcontractors), including inspections for compliance with the terms of this Agreement, the design, and applicable laws, regulations, and policies during the length of the project.
3. Except as provided in Section VI.B. of this Agreement, waive any and all costs for staff time, administrative oversight, and labor and materials that NPS incurs and not seek reimbursement from the County for any such costs incurred by the NPS for any work performed on the Project.
4. Manage and administer the Emergency Route, subject to the terms of this Agreement, including any maintenance of the Emergency Route (after completion of the Emergency Route as a useable vehicular roadway as long as the current emergency lasts), emergency response, and law enforcement.
5. Notify the County, both the County's Key Official and the Mayor of the County, in the event that work on the road must be stopped and/or the County, its agents and contractors must leave or not be allowed to enter the Park because there is a public safety and public health or other emergency within or near the Park or construction site; such notice shall be provided as soon as practicable and shall include

information about the nature of the emergency and the potential duration of the emergency.

6. To issue stop work orders related to the construction of the Project, other than for issues of public health or safety, only after the NPS Key Official consults with the County Key Officials; any disputes over such stop work orders shall be subject to Section II.C.4. of this Agreement.
7. Allow the use of the Emergency Route if and when the existing access routes to the southeast area of the Island of Hawaii—Highway 130 and Railroad Avenue—are both affected by lava, in whole or in part, which makes these routes impassible; the use of the Emergency Route shall last only as long as there is not a viable alternative route available to access the southeast area of the Island of Hawaii.

C. Both Parties agree:

1. That time is of the essence for the completion of the Project and the Emergency Route and that both parties will work cooperatively to ensure that the Project is completed as quickly and as safely as possible.
2. That neither party is the agent or representative of the other and that NPS and FHWA employees are not the agents of the County and County employees are not the agents of the NPS, the Department of the Interior, nor the FHWA.
3. That the Project as constructed may deviate from the approved Design (Attachment 5) based on conditions encountered in the field as the construction progresses but only with the approval of the NPS.
4. That, in the event that the NPS issues a stop work order for construction related issues, the Key Officials shall use their best efforts to resolve any such dispute and in the event that any dispute cannot be resolved by the Key Officials, the dispute shall be elevated to the Superintendent and the Mayor who shall resolve the dispute as soon as possible between them; either the Mayor or the Superintendent may elevate the dispute to the Regional Director, as set out in Section VII.C. of the Agreement as any time.
5. That the County and the NPS are not establishing a joint venture, a joint enterprise or other entity by entering into this Agreement, and neither is liable for the contracts or actions of the other party relating to this Agreement or otherwise.
6. The NPS shall be solely responsible for management and administration of the Emergency Route, including any maintenance of the Emergency Route (after completion of the Emergency Route as a useable vehicular roadway as long as the current emergency lasts), emergency response and law enforcement.

7. That the County may begin construction when it receives a written Notice to Proceed from the NPS and that the Project is complete when both parties agree, in writing, that the Emergency Route has been constructed according to the Design as modified by any changes that have been agreed to by the parties.
8. That the Emergency Route shall be used for emergency egress and ingress of residents and their invitees, agents, vendors, contractors and service providers in the communities in the southeast area of the Island of Hawaii that are cut off by the closure of the existing routes – Highway 130 and Railroad Avenue—subject to the rules and regulations set by the NPS for use of the Emergency Route, provided that any use of the Emergency Route shall be only when the NPS has determined that the road is safe to use and that both existing routes—Highway 130 and Railroad Avenue—have been closed because they are affected by lava; and provided further that the use of the Emergency Route shall last only as long there is no viable alternative route for residents of the affected area to use to gain access to the rest of the Island of Hawaii. The parties further agree that the Emergency Route is not intended and is not designed for general use by the public and that NPS may establish restrictions for the use of the Emergency Route commensurate with the purposes set forth in this Agreement.
9. That nothing in this Agreement shall preclude the use of the Emergency Route in the future as an emergency access route, to the extent that the route is safe to use, if access along state or county roads to the southeast area of the Island of Hawaii is again cut off and no other viable routes are available.

III. AUTHORITY

- A. NPS enters into this Agreement pursuant to 16 U.S.C. §§ 1-4, 1f, and 6 and 43 U.S.C. § 1473a.
- B. The County enters into this Agreement pursuant to Section 2, -11 and -14 thru -16 of Act 111 of the 2014 Hawai`i State Legislature, the Mayor’s Emergency Proclamation dated September 5, 2014, the Governor of Hawai`i Emergency Proclamation dated September 5, 2014, and also the Governor of Hawai`i Supplementary Emergency Proclamation dated September 22, 2014.

IV. KEY OFFICIALS AND COMMUNICATION

- A. Key Officials: The personnel specified below are considered essential to successful coordination and communication between the Partner and NPS for the work to be performed under this Agreement. Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

For the County:
Warren H.W. Lee
Director, Public Works

For the NPS:
Judy Perez, PE
Central Federal Lands Highway Division, FHWA

Notices: Any notice from one party to the other party required or provided in association with this Agreement shall be delivered in writing, by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party, at the address or contact number indicated in this Article, or at such other address or contact number for such Key Official as may be provided from time to time, and shall be considered delivered upon receipt at the office of such Key Official.

V. TERM OF AGREEMENT

Unless modified by the parties in writing, this Agreement shall be in effect until the County completes the Project: provided that any and all provisions of this Agreement which, by the terms of the provisions or the nature of the provisions, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement; and further provided that any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement. In the event that the County is unable to complete the Project or withdraws from completing the Project, this Agreement shall remain in effect as modified pursuant to Section II.C.3 above.

VI. LIABILITY

A. Insurance

1. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. NPS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the County or a contractor proves to be inadequate or insufficient for any reason.
2. The County and all of its contractors must acquire and maintain the following insurance and comply with the following associated requirements:
 - a. The County and all contractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and workers' compensation, from a responsible company or companies. Unless higher limits are required by the NPS in writing, commercial general liability insurance and automobile insurance shall each have a minimum limitation of One Million Dollars (\$1,000,000) per person

for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. Insurance must be acquired prior to the initiation of any in-Park activities and must be maintained until the Project is accepted as complete by NPS.

- b. The County and contractors, as appropriate, must have appropriate insurance coverage when warranty work is conducted. This provision shall survive termination or expiration of this Agreement. Warranty work requires the Superintendent's prior approval.
3. All insurance policies required by this Agreement, whether or not they were acquired by contractors, shall be payable to the County, and the County shall use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. County expenditure of insurance proceeds shall be in conformance with law, NPS policies, and NPS approvals.
4. All insurance policies required by this Agreement shall name the United States as an additional insured. All insurance policies shall specify that the insurer has no right of subrogation against the United States. If in NPS' judgment the County is unable to meet its obligation to correct the damage, harm, or deficiencies at issue, NPS may file insurance claims and use insurance proceeds consistent with law and NPS policies. This provision does not apply to contracts or agreements involving the rental of equipment from a contractor or vendor.
5. Prior to beginning the work authorized herein, the County shall provide the NPS with copies of Certificates of Insurance demonstrating that the County and contractors have acquired all insurance required by this Article. Insurance coverage shall be reviewed every year beginning on the date of execution of this Agreement and shall be modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies. The County and contractors must immediately notify NPS if an insurance policy is canceled or terminates for any reason. This provision does not apply to contracts or agreements involving the rental of equipment from a contractor or vendor.

B. Liability

1. The County assumes liability for and does hereby agree to save, hold harmless, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys' fees and experts' fees) of any kind and nature whatsoever including fire or other peril, bodily injury, death, or real, personal, or intellectual property damage of any nature whatsoever, and by whomsoever made, in any way arising out of the activities of the County, or the County's employees, agents or contractors (including a contractor's subcontractor) in

furtherance of the Project. This indemnification shall survive the termination or expiration of this Agreement.

2. The County shall pay the United States the full value of all damages to the lands or other property of the United States directly caused by the County, its employees, agents, representatives, or contractors (including a contractor's subcontractor) in connection with any activities under this Agreement.
3. The County shall cooperate with the NPS in the investigation and defense of any claims that may be filed with or against the NPS arising out of the activities of the County, or the County's employees, agents, representatives, or contractors (including a contractor's subcontractor).

VII. DISPUTE RESOLUTION

- A. The parties agree that in the event of a dispute between them, the Key Officials of the NPS and the County shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation and in a manner that is mutually acceptable to the parties.
- B. In the event that the Key Officials are unable to resolve a dispute, then either Key Official, or both, may refer the dispute to the Superintendent of HAVO and the Mayor of the County by writing, email, or phone. In such an event, the Superintendent and the Mayor shall consult as soon as practicable but no later than 12 hours after being notified of the dispute. The Superintendent and the Mayor shall use their best efforts to resolve the dispute and communicate the resolution to the Key Officials.
- C. In the event that the Superintendent and the Mayor are unable to resolve a dispute, then they, or either one of them, may refer the dispute to the Regional Director for resolution. The Regional Director shall resolve the dispute as soon as practicable and the decision of the Regional Director shall be final.

VIII. COMPLIANCE WITH APPLICABLE LAW

- A. The County is responsible for compliance with all applicable federal, state, and local laws, regulations, ordinances, administrative orders and the like for itself, its agents, and its contractors, including those related to environmental protection, and human health and safety.
- B. This Agreement and performance hereunder is subject to all applicable federal laws and regulations whether now in force or hereafter enacted or promulgated. This Agreement and performance hereunder is also subject to applicable federal government policies. Nothing in this Agreement shall be construed as in any way limiting the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.

- C. In addition to other laws, regulations, and policies referenced in this Agreement, the County, where applicable, shall comply with, and assist NPS in complying with additional laws, regulations, Executive Orders and policies including, but not limited to the Americans with Disabilities Act (42 U.S.C. § 12101), Architectural Barriers Act (42 U.S.C. § 4151 *et seq.*), the Rehabilitation Act (29 U.S.C. § 701 *et seq.*, as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq.*), the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*), the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*), Clean Air Act (42 U.S.C. § 7401 *et seq.*), , the Endangered Species Act (16 U.S.C. § 1531 *et seq.*), the National Historic Preservation Act (16 U.S.C. § 470), and the Archaeological and Historic Preservation Act (16 U.S.C. § 469),.

IX. ATTACHMENTS

- A. The following documents are attached to this Agreement and incorporated herein as part of this Agreement.
1. Map of Park Road
 2. Map of June 27th Lava Flow Area
 3. September 5, 2014 Proclamation
 4. September 22, 2014 Supplementary Proclamation
 5. Project Design and Specifications
- B. Any attachment listed above that is not finalized before the effective date of this Agreement shall be deemed to be a part of this Agreement upon the date that the NPS approves of that document.

X. STANDARD AND MISCELLANEOUS CLAUSES

- A. Non-Discrimination: All activities pursuant to this Agreement shall be in compliance with the requirements of *Executive Order 11246*: as amended; *Title VI of the Civil Rights Act of 1964*, as amended, (78 Stat. 252; 42 U.S.C. §§2000d *et seq.*); *Title V, Section 504 of the Rehabilitation Act of 1973*, as amended, (87 Stat. 394; 29 U.S.C. §794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S.C. §§6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- B. Anti-Deficiency Act (*31 U.S.C. §1341*): Nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
- C. Lobbying with Appropriated Moneys (*18 U.S.C. § 1913, as amended*): No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or

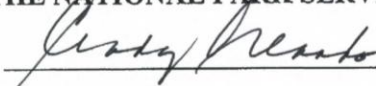
an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at its request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

- D. Merger: This Agreement, including any attachments hereto and documents incorporated by reference herein, contains the sole and entire agreement of the parties with respect to the subject matter of this Agreement.
- E. Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the County.
- F. Waiver: If a party fails to exercise any right or to insist that the other party comply with any obligation, no such failure or insistence shall be a waiver of a right of a party to demand strict compliance with each duty or obligation. No custom or practice of the parties which varies from this Agreement shall constitute a waiver of the right of a party to demand exact compliance. Waiver by one party of any particular default by the other party shall not affect or impair a party's rights in connection with any subsequent default of the same or of a different nature, nor shall any delay or omission of a party to exercise any rights arising from such default affect or impair the rights of that party as to such default or any subsequent default. All waivers of any duty or obligation by a party must be express and evidenced in writing.
- G. Effect of Approval: Any approval or consent given by the NPS regarding any contract or contractor, or by operation of inspection, or any other consent or approval given by the NPS under this Agreement, or NPS's decision to decline review of a Third-Party Contract, does not relieve the County or the County's contractors of responsibility for any errors or omissions, or from the responsibility to comply with the requirements of this Agreement.
- H. Effect of Acceptance: Any acceptance by the NPS of the Emergency Road or any component thereof does not relieve the County or the County's contractors from liability for any known defect, or any latent defect, fraud, or gross mistake or negligence.
- I. Assignment: No part of this Agreement shall be assigned to any other party without prior written approval of the NPS.

- J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.
- K. Member of Congress: Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
- L. No Third-Party Beneficiaries: Unless expressly stated herein, nothing in this Agreement is intended to grant any rights or to provide any benefits to any third-party.
- M. The Effective Date of this Agreement is the date upon which the last party had executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the respective dates indicated:

FOR THE NATIONAL PARK SERVICE

By 

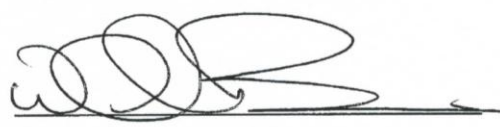
Date: 10.21.14

Cindy Orlando

Superintendent

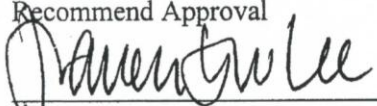
Hawaii Volcanoes National Park

FOR THE COUNTY OF HAWAII

By 

Date: 10.21.14

Recommend Approval



Warren H.W. Lee

Director, Dept. of Public Works

Approval as to Form and Legality

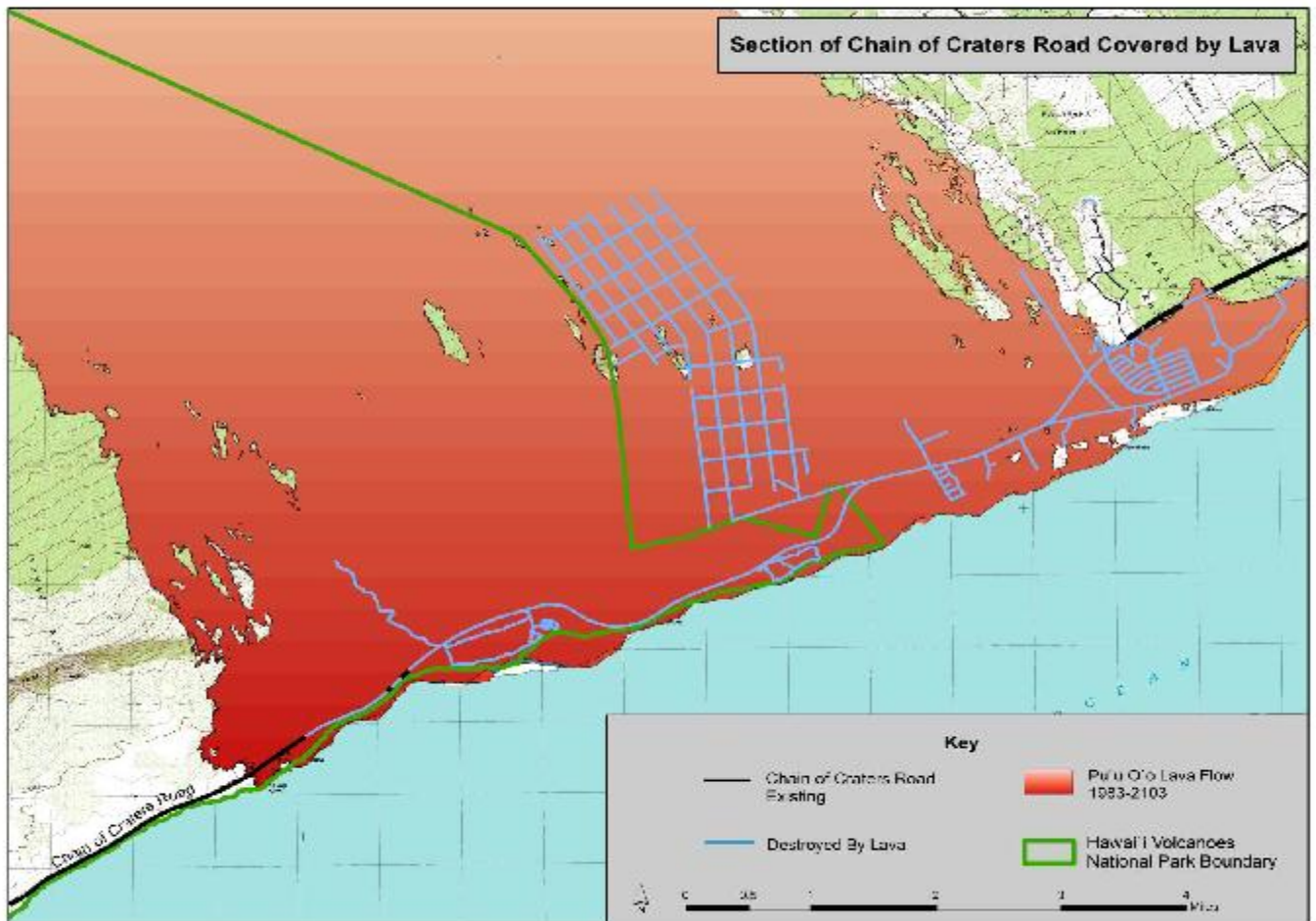


Joseph K. Kamelamela

Deputy Corporation Counsel

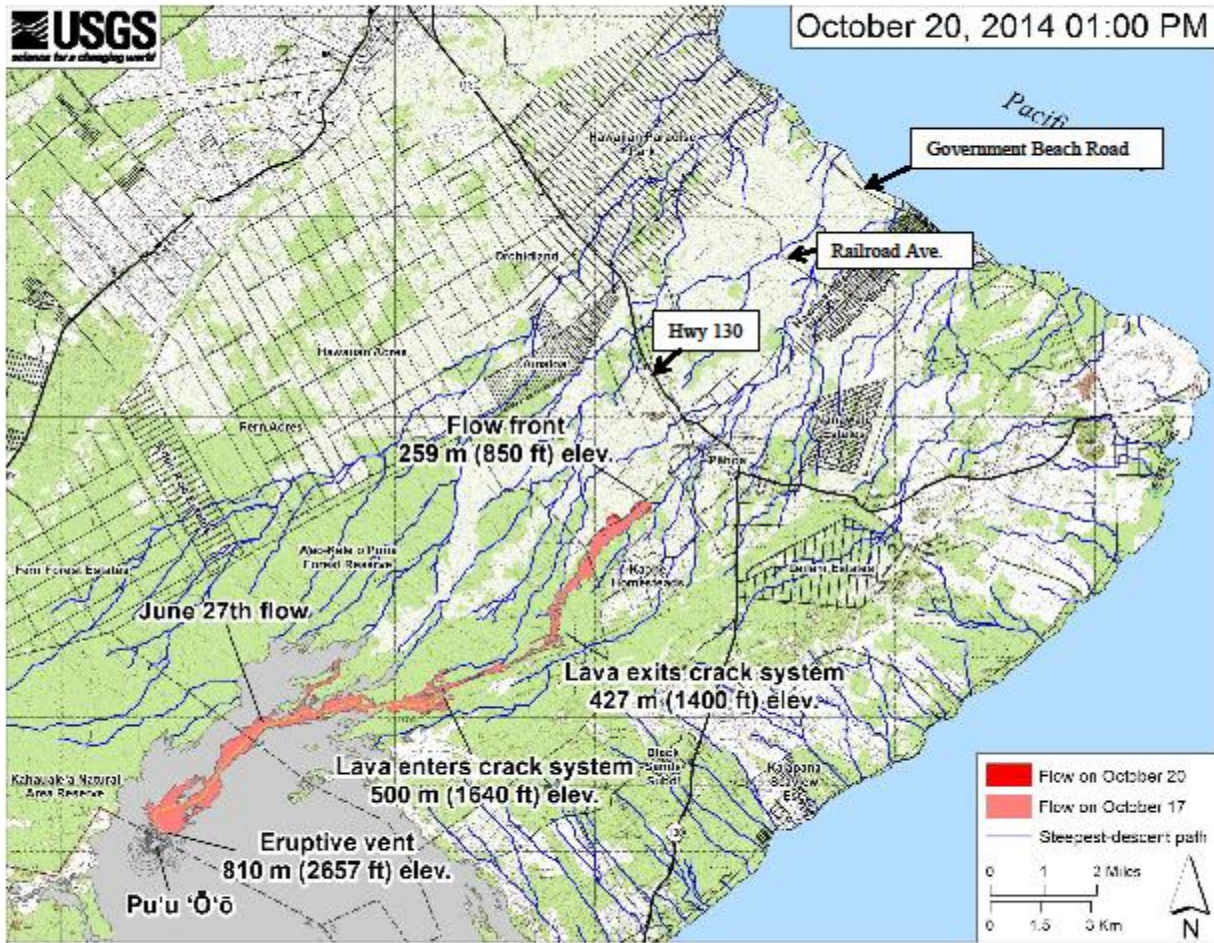
Attachment 1

Map of Park Road



Attachment 2

Map of June 27th Lava Flow Are



Attachment 3

September 5, 2014 Proclamation

OFFICE OF THE GOVERNOR
STATE OF HAWAII

PROCLAMATION

By the authority vested in me as Governor by the Constitution and laws of the State of Hawaii, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine, designate and proclaim as follows:

WHEREAS, the Pu`u `O`o vent in the East Rift Zone of Kilauea volcano located in the county of Hawaii, State of Hawaii, began erupting on January 3, 1983, and has continued erupting for more than thirty-one (31) years with the majority of lava flows advancing to the South; and

WHEREAS, based upon information from the Hawaii Volcano Observatory, United States Geological Survey, on June 27, 2014, new vents opened on the Northeast flank of the Pu`u `O`o vent that has fed, and continues to feed, a narrow lava flow to the East-Northeast and which continues to advance and which is expected to reach the boundary of the Kaohe Homesteads in the county of Hawaii, State of Hawaii as early as September 9, 2014; and

WHEREAS, all information indicates that the current lava flow will continue to advance to the East-Northeast thereby endangering additional communities in the path of the advancing lava flow and, if unimpeded, will cross Highway 130 at an unknown location and time; and

WHEREAS, the Hawaii Volcano Observatory, United States Geological Survey, raised the Volcano Alert Level from a watch to a warning on September 4, 2014; and

WHEREAS, previous lava flows from the Pu`u `O`o vent in the East Rift Zone of Kilauea volcano have caused losses and suffering, including persons being displaced and properties destroyed in the past; and

WHEREAS, this occurrence of a severe and extraordinary event of volcanic eruptions has generated lava flows which are anticipated to cause damages, losses and suffering of such character and magnitude to affect the health, welfare, and living conditions of a substantial number of persons, and to affect the economy of the State; and

WHEREAS, on September 4, 2014, the Mayor of Hawaii county proclaimed and declared that a local state of emergency exists in the county of Hawaii, State of Hawaii, due to the advancing lava flow in the district of Puna, county of Hawaii; and

WHEREAS, the danger of disaster is of such magnitude to warrant preemptive and protective action in order to provide for the health, safety, and welfare of the people; and

WHEREAS, the county of Hawaii has identified two abandoned roads, Railroad Avenue and Government Beach Road, to be improved and used as alternate emergency roadways to allow ingress and egress to areas that may be cut off from access by the lava flow; and

WHEREAS, the Legislature of the State of Hawaii has appropriated from the general revenues of the State, moneys as may be necessary for expenditure by or under the direction of the Governor for the immediate relief in response to an emergency or disaster; and

WHEREAS, pursuant to sections 14 and 16 in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor is authorized to determine whether an emergency or disaster has occurred and authorize the expenditure of funds thereunder; and

WHEREAS, in expending such moneys, the Governor may allot any portion to any agency, office, or employee, federal, state, or county for the most expeditious and efficient relief of the conditions created by the disaster; and

WHEREAS, pursuant to section 13(a)(3) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor is authorized to suspend any law which impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or in conflict with, emergency functions; and

WHEREAS, pursuant to section 13(a)(2) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor is further authorized to relieve hardship and inequities, or obstructions to the public health, safety, or welfare found by the Governor to exist in the laws and to result from the operation of federal programs or measures taken under section 2 of Act 111, Session Laws of Hawaii 2014, by suspending the laws in whole or in part, or by alleviating the provisions of laws on such terms and conditions as the Governor may impose; and

WHEREAS, pursuant to section 12(b)(8) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor may suspend chapter 103D and sections 103-50, 103-53, 103-55, 105-1 to 105-10, and 464-4, Hawaii Revised Statutes (HRS), and I find that these provisions, in whole or in part, impede or tend to impede the expeditious discharge of emergency management functions for this occurrence and that compliance therewith is impracticable due to existing conditions; and

WHEREAS, pursuant to sections 12(a)(5) and 13(a)(6) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor may direct or control, as may be necessary for emergency management partial or full mobilization of emergency management organizations in advance of actual disaster; shutting off water mains, gas mains, electric power connections, or suspension of other services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after disasters; traffic control; the congregation of the public in stricken or danger areas or under dangerous conditions; and the evacuation and reception of the civilian population; and

WHEREAS, pursuant to section 12(b)(16) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor is further authorized to order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, other welfare, hospitalization, transportation, water supply, public information, training, and other emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers; and

WHEREAS, pursuant to section 12(b)(9) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor may appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 78, and 88, such agencies, officers, and other persons as the Governor deems necessary to carry out emergency relief functions; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 2 of Act 111, Session Laws of Hawaii 2014, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State; and

WHEREAS, pursuant to section 12(b)(19) in section 2 of Act 111, Session Laws of Hawaii 2014, the Governor may take any and all steps necessary or appropriate to carry out the purposes of section 2 of Act 111, Session Laws of Hawaii 2014 and to provide for civil defense and other emergency functions;

NOW, THEREFORE, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine that an emergency or disaster contemplated by sections 14 and 16 in section 2 of Act 111, Session Laws of Hawaii 2014, threatens the State of Hawaii in the above areas in the State of Hawaii, and do hereby proclaim these areas to be disaster areas for the purpose of authorizing the expenditure of State moneys as appropriated for the speedy and efficient relief of the damages, losses, and suffering resulting from the disaster, and hereby authorize and invoke the following measures under the Hawaii Revised Statutes:

1. Section 16 in section 2 of Act 111, Session Laws of Hawaii 2014, by the activation of the Major Disaster Fund.
2. Sections 12(b)(8), 13(a)(2), and 13(a)(3) in section 2 of Act 111, Session Laws of Hawaii 2014, in order to provide emergency disaster relief and, to the extent necessary to repair, restore, rebuild, or re-establish, with any necessary improvements, Railroad Avenue, Government Beach Road, or both, located in the Puna District of the county of Hawaii, State of Hawaii, for the limited purpose of emergency ingress and egress of areas isolated

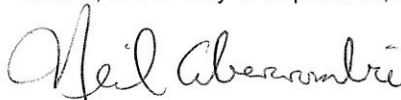
as a result of the lava flow in this event, I hereby suspend as allowed by federal law, the following statutes:

- a. Chapter 6E, HRS, **historic preservation** except for those provisions relating to burial sites.
- b. Section 37-41, HRS, **appropriations to revert to state treasury.**
- c. Section 37-74(d), **program execution**, except for sub-sections 37-74(d)(2) and 37-74(d)(3), HRS, and any such transfers or changes shall be considered authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.
- d. Section 40-66, HRS, **lapsing of appropriations.**
- e. Chapter 89, HRS, **collective bargaining in public employment.**
- f. Chapter 89C, HRS, **public officers and employees excluded from collective bargaining.**
- g. Chapter 101, HRS, **Eminent Domain.**
- h. Section 103-2, HRS, **general fund.**
- i. Section 103-53, HRS, **contracts with the State or counties; tax clearances, assignments.**
- j. Section 103-55, HRS, **wages, hours, and working conditions of employees of contractors performing services.**
- k. Chapter 103D, HRS, **Hawaii public procurement code.**
- l. Chapter 171, HRS, **public lands, management and disposition of.**
- m. Chapter 174C, HRS, **state water code.**
- n. Chapter 180, HRS, **soil and water conservation districts.**
- o. Chapter 180C, HRS, **soil erosion and sediment control.**
- p. Chapter 183, HRS, **forest reserves, water development, zoning.**
- q. Chapter 183C, HRS, **conservation district.**

- r. Chapter 183D, HRS, **wildlife.**
 - s. Chapter 184, HRS, **state parks and recreation areas.**
 - t. Chapter 195, HRS, **natural areas reserves system.**
 - u. Chapter 195D, HRS, **conservation of aquatic life, wildlife, and land plants.**
 - v. Chapter 198D, HRS, **hawaii statewide trail and access system.**
 - w. Chapter 200, HRS, **ocean recreation and coastal areas programs.**
 - x. Chapter 205, HRS, **land use commission.**
 - y. Chapter 205A, HRS, **coastal zone management.**
 - z. Chapter 264, HRS, **highways.**
 - aa. Chapter 269, HRS, **public utilities commission.**
 - ab. Chapter 286, HRS, **highway safety.**
 - ac. Chapter 341, HRS, **environmental quality control.**
 - ad. Chapter 342B, HRS, **air pollution.**
 - ae. Chapter 342D, HRS, **water pollution.**
 - af. Chapter 342E, HRS, **non-point source pollution management and control.**
 - ag. Chapter 342F, HRS, **noise pollution.**
 - ah. Chapter 342H, HRS, **solid waste pollution.**
 - ai. Chapter 343, HRS, **environmental impact statements.**
3. I find that Railroad Avenue or Government Beach Road shall be used for emergency or disaster use only during this emergency or disaster.

I FURTHER DECLARE that a disaster emergency relief period shall commence September 5, 2014, and continue through October 15, 2014, except for any projects initiated under this emergency in which case the provisions shall continue until project acceptance and any final accounting or payment obligations, whichever is later.

Done at the State Capitol, State of
Hawaii, this 5th day of September, 2014.



NEIL ABERCROMBIE
Governor of Hawaii

APPROVED:



DAVID M. LOUIE
*Attorney General
State of Hawaii*

September 22, 2014 Supplementary Proclamation

OFFICE OF THE GOVERNOR
STATE OF HAWAII

SUPPLEMENTARY PROCLAMATION

By the authority vested in me as Governor by the Constitution and laws of the State of Hawaii, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine, designate and proclaim as follows:

WHEREAS, pursuant to section 2 of Act 111, Session Laws of Hawaii 2014, emergency powers are conferred on the Governor of the State of Hawaii to deal with disasters or emergencies, to maintain the strength, resources, and economic life of the community, and to protect the public health, safety, and welfare; and

WHEREAS, it has become necessary to supplement my Proclamation of September 5, 2014, relating to the advancing lava flow which continues to advance thereby endangering communities in the Puna District of the county of Hawaii, State of Hawaii, in order to provide additional assistance; and

WHEREAS, based upon information from the Hawaii Volcano Observatory, United States Geological Survey, the advancing lava flow is anticipated to cross Highway 130 and is expected to continue advancing to the ocean thereby eventually crossing Railroad Avenue and Government Beach Road which are currently being improved to be used as alternate emergency roadways to allow ingress and egress to areas that are expected to be cut off from access by the lava flow; and

WHEREAS, the only other possible road that can be used to allow ingress and egress to the impacted areas is the Chain of Craters Road which originally connected the town of Kalapana to the Hawaii Volcanoes National Park; and

WHEREAS, the Chain of Craters Road was covered by a previous lava flow from the Pu`u `O`o vent in the East Rift Zone of Kilauea volcano thereby forcing its closure; and

WHEREAS, the Chain of Craters Road continues to remain closed; and

WHEREAS, it has become necessary to improve and re-establish the Chain of Craters Road in order that it can be used as an alternate emergency roadway to allow ingress and egress to areas that may be cut off from access by the lava flow.

NOW, THEREFORE, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby further determine that an emergency or disaster contemplated by sections 14 and 16 in section 2 of Act 111, Session Laws of Hawaii 2014, continues to threaten the Puna District of the county of Hawaii, the State of Hawaii, and do hereby proclaim these areas to be disaster areas for the purpose of authorizing the expenditure of State moneys as appropriated for the speedy and efficient relief of the damages, losses, and suffering resulting from the disaster, and hereby supplement my Proclamation of September 5, 2014 in order to provide further emergency disaster relief by including the repair, restoration, rebuilding, or re-establishing of the Chain of Craters Road in the County of Hawaii, State of Hawaii, so that it may be used as an alternate emergency roadway to allow ingress and egress to the areas that may be cut off from access by the lava flow.

I FURTHER DECLARE that the disaster emergency relief period shall continue through December 1, 2014, except for any projects initiated under this emergency in which case the provisions shall continue until project acceptance and any final accounting or payment obligations, whichever is later.

Done at the State Capitol, State of Hawaii, this 22nd day of September, 2014.


NEIL ABERCROMBIE
Governor of Hawaii

APPROVED:



DIANE K. TAIRA
Acting Attorney General

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