

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

June 8, 2018

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

STATEWIDE

Delegation of Authority to Approve Rights-of-Entry to Utilize State Lands Statewide to Assist in Emergency Relief Efforts Upon the Issuance of a Governor's Emergency Proclamation

BACKGROUND:

Beginning April 14, 2018, heavy rains and flooding resulted in significant damage and losses on the Island of Kauai. In order to expedite emergency response and recovery, on April 15, 2018, the Governor signed an emergency proclamation declaring the County of Kauai a disaster area for the purposes of implementing the State's emergency management functions, authorizing the expenditure of State monies, and suspending of a number of State statutes for emergency relief. Chapter 171, Hawaii Revised Statutes (HRS), was included in the Governor's Proclamation as part of the suspended statutes, as well as Chapter 343, HRS.

Additionally on May 3, 2018, the Governor signed an emergency proclamation in response to the lava flow emerging at the Leilani Estates residential subdivision located within Kilauea's East Rift Zone, declaring the Leilani Estates subdivision and East Rift Zone disaster areas, for the purpose of implementing emergency management functions. Unlike the previous emergency proclamation, Chapters 171 and 343, HRS were not suspended. However, in response to the continuing threat posed by the lava flows, the Governor issued a supplementary proclamation on May 9, 2018 expanding the scope and application of the prior proclamation to provide further emergency disaster relief, in which Chapters 171 and 343, HRS, were suspended. The May 3, 2018 proclamation and the May 9, 2018 supplemental proclamation are attached as Exhibits A and B, respectively.

As a result of these natural disasters, Land Division has received multiple inquiries for the use of State lands on the islands of Kauai and Hawaii by other State and County agencies for various emergency relief purposes, including the temporary storage of storm debris and relocation of displaced residents. Despite the language in the proclamations, the Department would still execute rights-of-entry for the use of State lands in order to document their authorized use and to also address potential issues of liability and indemnity. Upon inquiring with the Department of the Attorney General, it was suggested staff seek Board approval for dispositions involving an interest in land. At its meeting on April 27, 2018, under agenda item D-8, the Board approved the after the fact delegation of authority to the Chairperson to approve rights of entry on Kauai to assist in the emergency relief efforts.

In order to effectively respond in the event of a future disaster, the Board is now requested to delegate to the Chairperson the authority to approve rights-of-entry for use of State lands on a statewide basis to assist in ongoing emergency relief efforts in the event of the issuance of an emergency proclamation by the Governor. This delegation of authority would be triggered by the issuance of an emergency proclamation by the Governor that at minimum waives Chapters 171 and 343, HRS, and allow the Chairperson to approve rights-of-entry for the duration that the emergency proclamation is in effect. The delegation would apply to all lands under the Board's jurisdiction.

For agencies other than the Department, the Board is requested to delegate the authority to approve rights-of-entry for land under their management jurisdiction to their respective directors. The appropriate managing agency will be responsible for processing rights-of-entry and obtaining its Director's approval with no additional approval from the Board or the Chairperson required. Any right-of-entry approved pursuant to this delegation would be consistent with the proclamation and be valid for a term of no longer than two (2) years. Additionally, the Board is asked to approve after the fact any rights-of-entry previously authorized by the Chairperson pursuant to the Governor's Emergency Proclamation dated May 3, 2018 and Supplementary Proclamation dated May 9, 2018.

RECOMMENDATION: Subject to the terms and conditions cited above, that the Board:

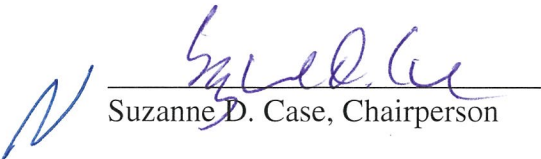
- 1) Delegate to the Chairperson and all other Department directors the authority to approve rights-of-entry for the use of State lands under the management jurisdiction of each respective agency on a statewide basis to assist in emergency relief efforts consistent with the issuance of a Governor's Proclamation, including the delegation of authority after the fact for the proclamations dated May 3, 2018 and supplemental proclamation dated May 9, 2018.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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 Hawai'i, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, DAVID Y. IGE, Governor of the State of Hawai'i, 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 Hawai'i, State of Hawai'i, began erupting on January 3, 1983, and has continued erupting for more than thirty-five (35) years with the majority of lava flows advancing to the South; and

WHEREAS, a lava flow has emerged in the Leilani Estates residential subdivision located within the East Rift Zone, resulting in lava flowing over streets and prompting a mandatory evacuation of the subdivision; and

WHEREAS, all information indicates that the current lava flow will continue to advance; and

WHEREAS, previous lava flows 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, the current flow also exhibits characteristics similar to the 1960 Kapoho eruption, which caused significant damage to public and private property in the lower Puna region of the County of Hawai'i; 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 May 3, 2018, the Acting Mayor of Hawai'i County proclaimed and declared that a local state of emergency exists in the County of Hawai'i, State of

EXHIBIT "A"

Hawai'i, due to the advancing lava flow in the district of Puna, County of Hawai'i; 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 Legislature of the State of Hawai'i has appropriated from the general revenues of the State, monies as may be necessary for expenditure by or under the direction of the Governor for the immediate relief of the conditions created by the disaster; and

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

WHEREAS, pursuant to sections 127A-14 and 127A-16, Hawaii Revised Statutes, the Governor is authorized to determine whether an emergency or disaster has occurred, or there is an imminent danger or threat of an emergency or disaster and authorize actions under chapter 127A, Hawaii Revised Statutes, and the expenditure of funds thereunder; and

WHEREAS, pursuant to section 127A-13(a)(3), Hawaii Revised Statutes, 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 to conflict with, emergency functions, including laws specifically made applicable to emergency personnel; and

WHEREAS, pursuant to section 127A-13(a)(2), Hawaii Revised Statutes, the Governor is further authorized to relieve hardship and inequities or obstructions to the public health, safety, and welfare found by the Governor to exist in the laws and to result from the operation of federal programs or measures taken under chapter 127A, Hawaii Revised Statutes, by suspending 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 127A-12(b)(8), Hawaii Revised Statutes, 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, and I find that these provisions, in whole or in part, impede or tend to impede the expeditious discharge of emergency disaster

relief functions for this occurrence and that compliance therewith is impracticable due to existing conditions; and

WHEREAS, pursuant to section 127A-12(b)(13), Hawaii Revised Statutes, the Governor may require each public utility, or any person owning, controlling, or operating a critical infrastructure facility as identified by the Governor, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding thereof; and provide for the protection and safeguarding of all critical infrastructure and key resources, including the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the Governor may prescribe; and

WHEREAS, pursuant to section 127A-12(a)(5), Hawaii Revised Statutes, the Governor may direct or control, as may be necessary for emergency management alerts, warnings, notifications, and activations; warnings and signals for alerts and any type or warning device, system, or method to be used in connection therewith; partial or full mobilization of personnel in advance of or in response to an actual emergency or disaster; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after alerts, emergencies, or disasters; and

WHEREAS, pursuant to section 127A-13(a)(5), Hawaii Revised Statutes, the Governor may shut off water mains, gas mains, electric power connections, or suspension of other services; and

WHEREAS, pursuant to section 127A-13(a)(6), Hawaii Revised Statutes, the Governor may direct and control the mandatory evacuation of the civilian population; and

WHEREAS, pursuant to section 127A-12(b)(16), Hawaii Revised Statutes, the Governor is further authorized to order and direct government agencies, officials, officers, and employees of the State, to take such action and employ such measures for law enforcement, medical, health, firefighting, 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 127A-12(b)(9), Hawaii Revised Statutes, 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 management 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 the provisions of chapter 127A, Hawaii Revised Statutes, provide for the interchange of personnel, by detail, transfer, or otherwise, between agencies or departments of the State; and

WHEREAS, pursuant to section 127A-12(b)(19), Hawaii Revised Statutes, the Governor may take any and all steps necessary or appropriate to carry out the purposes of chapter 127A, Hawaii Revised Statutes notwithstanding that powers in section 127A-13(a) may only be exercised during an emergency period; and

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by section 127A-14, Hawaii Revised Statutes, threatens the State of Hawai'i in the above areas in the State of Hawai'i, and do hereby proclaim these areas to be disaster areas for the purpose of implementing the emergency management functions as allowed by law, authorizing the expenditure of State monies as appropriated for the speedy and efficient relief of the damages, losses, and suffering resulting from the emergency or disaster, and hereby authorize and invoke the following measures under the Hawaii Revised Statutes:

1. Section 127A-16, Hawaii Revised Statutes, by the activation of the Major Disaster Fund.
2. Sections 127A-13 and 127A-12, Hawaii Revised Statutes, and in order to provide emergency relief as a result of this event, I hereby suspend as allowed by federal law, the following statutes:
 - a. Section 37-41, Hawaii Revised Statutes, **appropriations to revert to state treasury.**

- b. Section 37-74(d), Hawaii Revised Statutes, **program execution**, except for sub-sections 37-74(d)(2) and 37-74(d)(3), Hawaii Revised Statutes, 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.
 - c. Section 40-66, Hawaii Revised Statutes, **lapsing of appropriations**.
 - d. Chapter 89, Hawaii Revised Statutes, **collective bargaining in public employment**.
 - e. Chapter 89C, Hawaii Revised Statutes, **public officers and employees excluded from collective bargaining**.
 - f. Section 102-2, Hawaii Revised Statutes, **contracts for concessions in government buildings; bid requirements**.
 - g. Section 103-2, Hawaii Revised Statutes, **general fund**.
 - h. Section 103-53, Hawaii Revised Statutes, **contracts with the State or counties; tax clearances, assignments**.
 - i. Section 103-55, Hawaii Revised Statutes, **wages, hours, and working conditions of employees of contractors performing services**.
 - j. Chapter 103D, Hawaii Revised Statutes, **Hawaii public procurement code**.
 - k. Chapter 104, Hawaii Revised Statutes, **wages and hours of employees on public works**.
 - l. Sections 105-1 to 105-10, Hawaii Revised Statutes, **use of government vehicles, limitations**.
3. Section 127A-12(b)(13), Hawaii Revised Statutes, and I hereby require each public utility, or any person owning, controlling, or operating a critical infrastructure, to protect and safeguard its or the person's property, or to

provide for the protection and safeguarding thereof; and provide for the protection and safeguarding of all critical infrastructure and key resources, including the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as I may prescribe; and the Director of Emergency Management and the Administrator of Emergency Management of the Hawai'i Emergency Management Agency are directed to identify critical infrastructure to be protected or safeguarded and establishing the terms and conditions for the regulation or prohibition of public entry thereon, or the permission of the entry thereon.

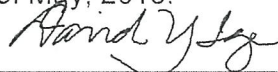
4. Sections 127A-12(a)(5), 127A-13(a)(5), and 127A-13(a)(6), Hawaii Revised Statutes, and the Director of Emergency Management or Administrator of Emergency Management of the Hawai'i Emergency Management Agency are directed to take appropriate actions to direct or control, as may be necessary for emergency management:
 - a. Alerts, warnings, notifications, and activations;
 - b. Warnings and signals for alerts and any type or warning device, system, or method to be used in connection therewith;
 - c. Partial or full mobilization of personnel in advance of or in response to an actual emergency or disaster;
 - d. The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after alerts, emergencies, or disasters;
 - e. Shut off water mains, gas mains, electric power connections, or suspension of other services; and
 - f. Mandatory evacuation of the civilian population.
5. Section 127A-12(b)(16), Hawaii Revised Statutes, and in order to provide emergency disaster relief, I hereby direct all state agencies and officers to

cooperate with and extend their services, materials, and facilities as may be required to assist in all efforts to eliminate the danger.

6. Section 127A-30, Hawaii Revised Statutes, relating to any prohibited increase in the selling price of any commodity, whether at the retail or wholesale level, in the area that is the subject of this disaster Proclamation shall continue for the period of this Proclamation for all:
 - a. Food, water, or ice; and
 - b. Services of any type; and
 - c. Any building or construction materials, merchandise, supplies, equipment, resources, or products that the seller or contractor knows or should know are intended for use on any road, structure, facility, improvement, or property damaged by the lava flow.

I FURTHER DECLARE that a disaster emergency relief period shall commence May 3, 2018, and continue until terminated automatically pursuant to section 127A-14, Hawaii Revised Statutes, or by a separate proclamation, whichever occurs first and which period shall also apply to the provisions and applicability of section 127A-30, Hawaii Revised Statutes as provided herein. Notwithstanding the termination of a disaster emergency relief period, any contracts, agreements, procurements, programs, or employment of personnel entered into by reason of the provisions of this proclamation relating to this emergency shall continue.

Done at the State Capitol, this 3rd day of May, 2018.



DAVID Y. IGE,
Governor of Hawai'i

APPROVED:



for RUSSELL A. SUZUKI
Attorney General
State of Hawai'i

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 Hawai'i, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, pursuant to Chapter 127A, Hawaii Revised Statutes, emergency powers are conferred on the Governor of the State of Hawai'i 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 May 3, 2018, relating to lava flows which continues, thereby endangering communities in the Puna District of the County of Hawai'i, State of Hawai'i, in order to provide additional assistance; and

WHEREAS, the lava flow that emerged in the Leilani Estates residential subdivision and adjoining areas located within the East Rift Zone has expanded, continues and, based upon all scientific information available, is expected to continue to flow and advance; and

WHEREAS, the United States Geological Survey has reported that thousands of earthquakes occur every year in the State of Hawaii, some of which are caused by eruptive processes within the active volcanoes; and

WHEREAS, numerous earthquakes, believed to have been caused by volcanic eruptive processes within the active volcanoes, have occurred causing additional damage to property and preceding additional fissures of lava eruptions have developed; and

WHEREAS, at least 36 structures, including 27 residential homes, have been destroyed by the advancing lava flow thereby causing additional losses, suffering, and displaced persons with additional properties expected to be destroyed as the lava continues to flow and advance; and

WHEREAS, officials expect the need to improve, re-establish, or build alternate emergency roadways to allow ingress and egress to areas that may be cut off from access by the lava flow; and

WHEREAS, I have determined that Puna Geothermal Venture, a project owned by Ormat Technologies Inc., a global renewable energy provider, and operated for the purpose of generating electricity through the conversion of geothermal energy is at increased risk of damage or destruction as a result of advancing lava; and

WHEREAS, I have determined that the facilities operated by Puna Geothermal Venture pose an increased risk to the health and safety of the public should the facilities be damaged or destroyed by lava due to the storage and/or presence of flammable and dangerous gases located in the facility or on the property; and

WHEREAS, state and county officials are concerned that protective measures taken by Puna Geothermal Ventures are inadequate to properly ensure the health and safety of the public; and

WHEREAS, Pursuant to the laws of the State of Hawai'i, including but not limited to sections 127A-13(a)(1), Hawaii Revised Statutes, the Governor of the State of Hawai'i is authorized to provide for the isolation or closing of property which is a source of contamination or is in a dangerous condition in any case where, in the governor's opinion, the existing laws are not adequate to assure the public health and safety, and designate as public nuisances acts, practices, conduct, or conditions that are dangerous to the public health or safety or to property; and

WHEREAS, Pursuant to the laws of the State of Hawai'i, including but not limited to sections 127A-13(a)(10) and 127A-21, Hawaii Revised Statutes, the Governor of the State of Hawai'i is authorized to assure the continuity of service by critical infrastructure facilities, both publicly and privately owned, by regulating or, if necessary to the continuing of the service thereof, by taking over and operating the same or acquiring such facilities through requisition; and

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by section 127A-14, Hawaii Revised Statutes, continues and does threaten the State of Hawai'i in the County of Hawai'i, and do hereby proclaim these areas to be disaster areas for the purpose of implementing the emergency management functions as allowed by law, authorizing the expenditure of State monies as appropriated for the speedy and efficient relief of the damages, losses, and suffering resulting from the emergency or disaster, by expanding the scope and application of my Proclamation in order to provide further emergency disaster relief by including the protection of the public and any relocation, repair, modification, and/or establishment of county or state government roadways, facilities or sites, including, but not limited to those relating to the operations of police, fire, emergency management, public transportation, solid waste management, transitional or emergency housing, or other government functions and hereby authorize and invoke the following measures under the Hawaii Revised Statutes:

1. Sections 127A-13 and 127A-12, Hawaii Revised Statutes, and in order to provide emergency relief as a result of this event, I hereby suspend as allowed by federal law, the following additional statutes:
 - a. Chapter 6E, HRS, **historic preservation** except for those provisions relating to burial sites.
 - b. Chapter 101, HRS, **eminent domain**.
 - c. Chapter 171, HRS, **public lands, management and disposition of**.
 - d. Chapter 174C, HRS, **state water code**.

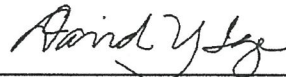
- e. Chapter 180, HRS, **soil and water conservation districts.**
- f. Chapter 180C, HRS, **soil erosion and sediment control.**
- g. Chapter 183, HRS, **forest reserves, water development, zoning.**
- h. Chapter 183C, HRS, **conservation district.**
- i. Chapter 183D, HRS, **wildlife.**
- j. Chapter 184, HRS, **state parks and recreation areas.**
- k. Chapter 195, HRS, **natural areas reserves system.**
- l. Chapter 195D, HRS, **conservation of aquatic life, wildlife, and land plants.**
- m. Chapter 198D, HRS, **Hawaii statewide trail and access system.**
- n. Chapter 200, HRS, **ocean recreation and coastal areas programs.**
- o. Chapter 205, HRS, **land use commission.**
- p. Chapter 205A, HRS, **coastal zone management.**
- q. Chapter 264, HRS, **highways.**
- r. Chapter 269, HRS, **public utilities commission.**
- s. Chapter 286, HRS, **highway safety.**
- t. Chapter 291, Hawaii Revised Statutes, **traffic violations**, to the extent necessary for any state, county, or federal official, employee, agent, contractor, volunteer, or representative to move any vehicles, construction equipment, farm equipment, mobile equipment, or other types of vehicles, equipment, or things not normally licensed for operation or travel on the highways or roadways for the purpose of this emergency or disaster.
- u. Chapter 341, HRS, **environmental quality control.**
- v. Chapter 342B, HRS, **air pollution.**

- w. Chapter 342D, HRS, **water pollution**.
 - x. Chapter 342E, HRS, **non-point source pollution management and control**.
 - y. Chapter 342F, HRS, **noise pollution**.
 - z. Chapter 342H, HRS, **solid waste pollution**.
 - aa. Chapter 343, HRS, **environmental impact statements**.
2. Sections 127A-12(b)(5), and 127A-12(b)(13)-(16), Hawaii Revised Statutes, and I hereby direct county and state officials to identify, including making any investigation or survey pursuant to section 127A-24, Hawaii Revised Statutes, any public utility, critical infrastructure, facility, structure, item, or property that may pose a heightened risk to the public should any of these come in contact with advancing lava and direct any person owning, controlling, or operating any of these to protect and safeguard its or the person's property, and pursuant to Section 127A-11, Hawaii Revised Statutes, I further direct the Director of Emergency Management, the Administrator of Emergency Management of the Hawai'i Emergency Management Agency, the Mayor of Hawai'i County, and the Administrator of the Hawai'i County Civil Defense Agency to coordinate with appropriate county, state and federal agencies and identify subject matter experts as needed to assist them in determining what affirmative actions should be taken to safeguard the public health and safety should any property owner refuse or is otherwise unable to take appropriate actions to safeguard the health and safety of the public, including, in addition to any other authority provided by law, summary abatement pursuant to section 127A-13(a)(1), Hawaii Revised Statutes, or taking over any facility pursuant to Section 127A-13(a)(10), Hawaii Revised Statutes or requisition pursuant to section 127A-21, Hawaii Revised Statutes, to safeguard the public health and safety.

3. Section 127A-30, Hawaii Revised Statutes, relating to any prohibited increase in the selling price of any commodity, whether at the retail or wholesale level, in the area that is the subject of this disaster Proclamation is hereby expanded in scope and shall continue in its entirety for the period of this Proclamation.

I FURTHER DECLARE that a disaster emergency relief period shall continue through July 8, 2018, except that any contracts, agreements, procurements, programs, projects or employment of personnel employment entered into under this emergency or by reason of the provisions of any of my Proclamations relating to this emergency shall continue until completed or they are no longer needed for purposes of this emergency or any of my Proclamations relating to this emergency.

Done at the State Capitol, this 9th day of
May, 2018.



DAVID Y. IGE,
Governor of Hawai'i

APPROVED:



RUSSELL A. SUZUKI
Attorney General
State of Hawai'i