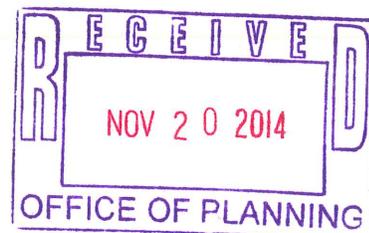




U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office for Coastal Management  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910

NOV 14 2014

Mr. Leo Asuncion, Manager  
Hawaii Coastal Zone Management Program  
Department of Business, Economic Development and Tourism  
235 S. Beretania St., 6<sup>th</sup> Floor  
P.O. Box 2359  
Honolulu, HI 96804



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Dear Mr. Asuncion:

Thank you for the Hawaii Department of Business, Economic Development and Tourism's September 25, 2014, request that federal consistency procedures for emergency proclamations issued by the Governor or a mayor and changes to Hawaii's planning statutes be incorporated into the Hawaii Coastal Zone Management Program (CZMP). You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's<sup>1</sup> *Program Change Guidance (July 1996)*. The Office for Coastal Management received the submission on October 2, 2014, and the Office for Coastal Management's decision deadline was extended to November 17, 2014.

Based on our review of your submission, we concur that the changes are RPCs and we partially approve the incorporation of the changes as non-enforceable policies of the Hawaii CZMP. Federal Consistency will apply to the approved changes only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4) and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and please send a copy of the notice to the Office for Coastal Management.

### **CHANGES APPROVED**

See enclosed list of the changes incorporated into the Hawaii CZMP.

### **QUALIFICATIONS**

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or

<sup>1</sup> NOAA's Office for Coastal Management was formerly the Office of Ocean and Coastal Resource Management and the Coastal Services Center; these two offices were integrated in September 2014 into the Office for Coastal Management.

document (hereinafter “referenced policy”), the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no referenced policy in these approved enforceable policies may be applied for federal consistency unless that referenced policy been separately approved by the Office for Coastal Management.

### **CHANGES NOT APPROVED**

The Office for Coastal Management has not approved HRS 226-9(b)(7) because this section imposes policies on federal agencies or federal lands. The CZMA does not authorize states to establish regulatory standards for federal lands or waters and, in fact, excludes federally controlled lands and waters from the state’s coastal zone. *See* 16 U.S.C. § 1453(1). Since Hawaii has no regulatory authority over federal agencies under the CZMA, HRS Chapter §226-9(b)(7), described below could not be legally binding under state law, as required by CZMA section 304(6a).

HRS 226-9(b)(7) states that the policy of Hawaii is to pursue the return of federally controlled lands in the state that “are not required for either the defense of the nation or for other purposes of national importance, and promote the mutually beneficial exchanges of land between federal agencies, the State, and the counties.”

### **PUBLIC AND FEDERAL AGENCY COMMENTS**

The Office for Coastal Management received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Ben Reder at (808) 725-5281, if you have any questions.

Sincerely,



Joelle Gore, Acting Chief  
Stewardship Division

Enclosure(s): Policies Approved and Incorporated into the Hawaii Coastal Zone Management Program

Enclosure to the Office for Coastal Management's November 14, 2014, Approval of the Incorporation of Changes to the Hawaii Coastal Zone Management Program

Changes marked with an asterisk (\*) are incorporated into the Hawaii Coastal Zone Management Program, but do not contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
<b>ADDED:</b>		mm/dd/yyyy	mm/dd/yyyy
Federal Consistency Procedures for Governor or Mayor Issued Emergency	Pursuant to Act 111, SLH 2014, emergency powers are conferred on the Governor or a mayor to deal with disasters or emergencies.	11/14/2014	11/14/2014
*HRS Chapter 226, Hawaii State Planning Act	Act 100, SLH 1978, and as amended as of 2014 (Act 133, Act 155, SLH 2014)	06/30/2014	06/30/2014
<b>MODIFIED:</b>			
*HRS Chapter 225M was amended by adding HRS 225M-2(b)(9), Climate adaptation planning.	Act 83, SLH 2014	06/09/2014	07/01/2014
<b>DELETED:</b>			
HRS Chapter 225, Policy Planning	Repealed by Act 100, SLH 1978	Repealed 05/22/1978	Repealed 05/22/1978