

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

November 14, 2014

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

PSF No.: 14HD-177

Hawai'i

Issuance of Right-of-Entry Permit to the County of Hawaii, Fire Department and Department of Public Works, Onto Unencumbered State Lands at Keonepoko Iki and Keonepoko Nui, Puna, Hawaii, Tax Map Key: (3) 1-5-008:001, (3) 1-5-009:018, (3) 1-5-010:012.

APPLICANT:

County of Hawaii, Fire Department and Department of Public Works.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

Proclamation from the Office of the Governor of the State of Hawaii dated September 5, 2014 wherein 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 purpose of section 2 of Act 111, Session Laws of 2014 and to provide civil defense and other emergency functions. The proclamation is a result of the current lava flow and the potential disruption of access and services to the lower Puna district.

LOCATION:

Portion of Government lands of Keonepoko Iki and Keonepoko Nui, Puna, Hawaii, identified by Tax Map Key:

Firebreak: (3) 1-5-008:001,

Railroad right-of-way: (3) 1-5-009:018 and (3) 1-5-010:012,

Both shown on the attached maps labeled Exhibit A.

AREA:

Railroad right-of-way: 14.75 acres, more or less.

Firebreak: 6.25 acres, more or less

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered State Land

CHARACTER OF USE:

Temporary Roadway purposes for TMK's: (3) 1-5-009:018, (3) 1-5-010:012.
Controlled firebreak purposes for TMK: (3) 1-5-008:001

TERM OF RIGHT-OF-ENTRY:

Roadway to be used as an alternative access in the event that Highway 130 is blocked by lava. This right-of-entry will terminate when the County of Hawaii ceases to use it as an alternative access or it is blocked by the continuing lava flow.

Firebreak established to mitigate potential damage and destruction to adjacent residential subdivisions from the lava flow and resulting brush fires it may cause.

CONSIDERATION:

Gratis. Right-of-entry involves a government agency.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Exempt under Governors Proclamation dated September 5, 2014, pursuant to section 12(b)(19) in section 2 of Act 111, Session Laws of Hawaii, 2014. (Exhibit B)

DCCA VERIFICATION:

Not applicable, applicant is a government agency.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

Provide maps indicating location of easements.

REMARKS:

The County of Hawaii Fire Department (HFD) has requested a right-of-entry onto State unencumbered lands identified as Tax Map Key: (3) 1-5-008:001. HFD determined that a fire break along the north-east boundary of parcel is necessary to prevent or at least limit the amount of potential damage that may result in the event of a fire outbreak caused by the current lava flow igniting the thick vegetative brush within the State land.

The County of Hawaii, Department of Public Works (DPW), is requesting a right-of-entry onto unencumbered State lands at Keonepoko-Iki and Keonepoko-Nui, Puna Hilo, Hawaii, identified as Tax Map Keys: (3) 1-5-009:018 and (3) 1-5-010:012. The purpose of this right-of-entry is for the construction of an emergency bypass road as a precautionary measure in the event of a lava flow covering Highway 130, the primary route serving the lower Puna community.

These requests are in response to a Proclamation from the Office of the Governor of the State of Hawaii dated September 5, 2014 wherein 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 purpose of section 2 of Act 111, Session Laws of 2014 and to provide civil defense and other emergency functions. The proclamation is a result of the current lava flow and the potential disruption of access and services to the lower Puna district.

The State land identified by TMK: (3) 1-5-008:001 is approximately 5,100 acres of unencumbered lands situated between Ainaloa Subdivision to the north, Pahoa village to the east, Kaohe Homesteads to the south and the Wao Kele O Puna Natural Area Reserve to the west. Outbreaks from the June 27 lava flow are occurring on the southern edge of this property. The County fire department has determined that a fire break along the northern edge of the State land may deter any chance of a brush fire caused by the active lava flow from entering the populated areas of the Ainaloa Subdivision.

Historically, the railroad served the lower Puna area as a primary means of transporting timber and sugar to the port town of Hilo, the main shipping point for East Hawaii. Although the railroad has been long abandoned, portions of the right-of-way were incorporated as roadways within the Hawaiian Paradise Park and Hawaiian Beaches/Shores subdivisions. The portion of the old railroad right-of-way within the State unencumbered lands the County is asking for access to, had been blocked off from both sides prohibiting access.

With regards to the Railroad right-of-way, the right-of-entry shall be effective October 1, 2014, and shall terminate when the County notifies the Department of Land and Natural Resources, Land Division, that it has ceased using the land as an emergency bypass road and has restricted vehicular access to the land, and Land Division confirms the same in writing after inspection.

The right-of-entry for the emergency firebreak shall be effective October 15, 2014, and shall terminate when the County notifies the Department of Land and Natural Resources, Land Division, that it is no longer necessary to maintain the firebreak for its intended purpose.

Although the Governor's Proclamation authorizes the County of Hawaii to enter onto State lands for the above described purposes, the County has requested a formal authorization to satisfy Federal Emergency Management Agency (FEMA) requirements.

RECOMMENDATION: That the Board

1. Authorize the issuance of a right-of-entry permit to the County of Hawaii covering the subject areas under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



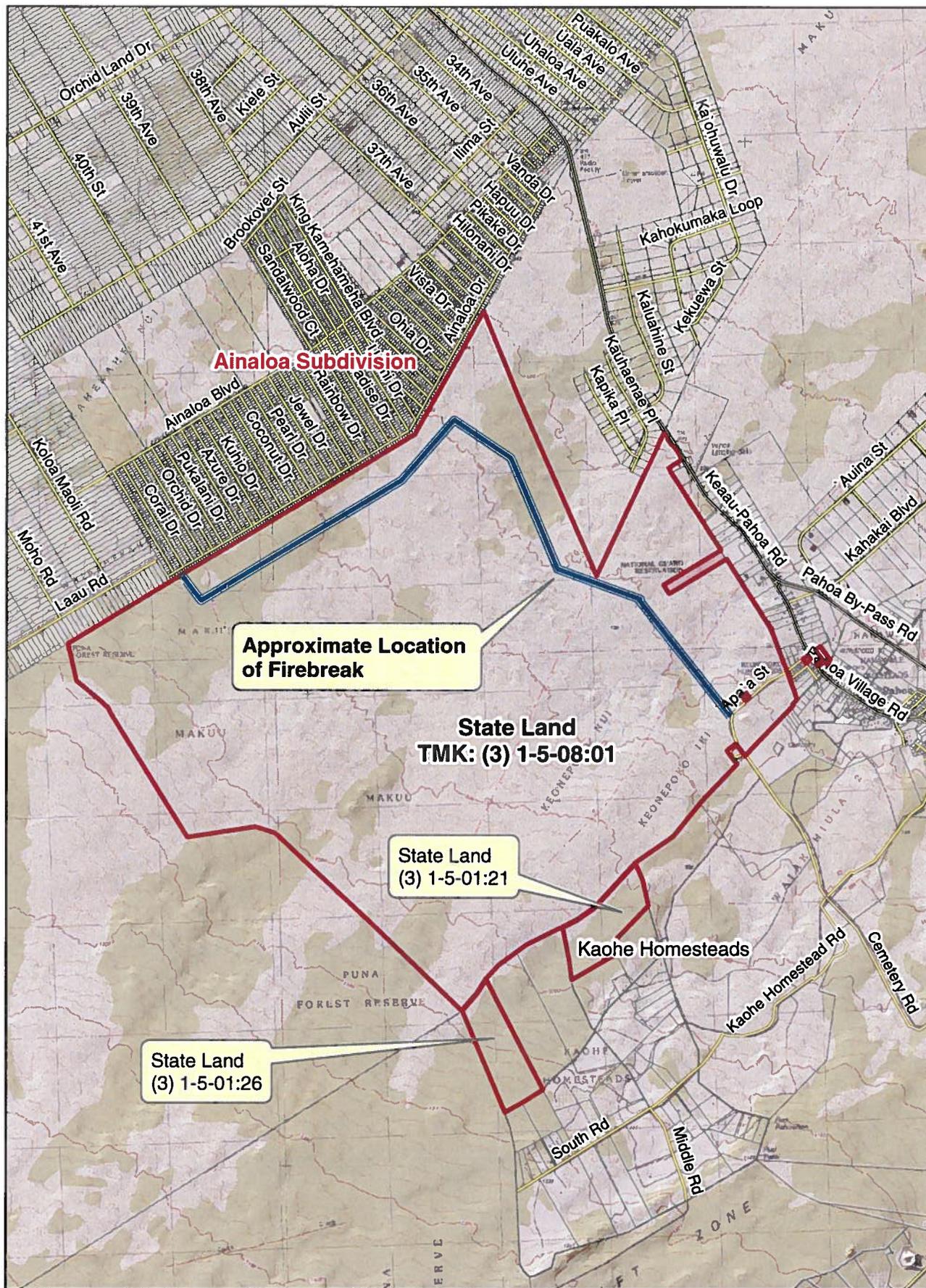
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



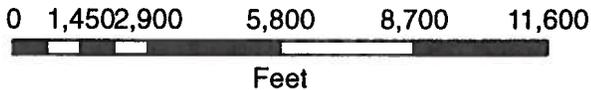


Approximate Location of Firebreak

State Land
TMK: (3) 1-5-08:01

State Land
(3) 1-5-01:21

State Land
(3) 1-5-01:26



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

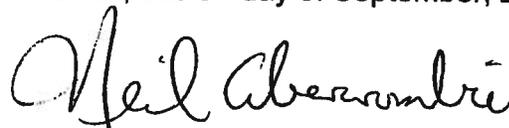
as a result of the lava flow in this event, I hereby suspend as allowed by federal law, the following statutes:

- 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.

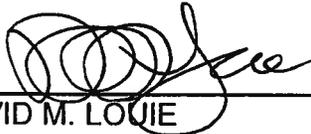
I FURTHER DECLARE that a disaster emergency relief period shall commence September 5, 2014, and continue through October 15, 2014, except for any projects initiated under this emergency in which case the provisions shall continue until project acceptance and any final accounting or payment obligations,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