

WAI Committee

From: Erin Wade <Erin.Wade@co.maui.hi.us>
Sent: Monday, November 27, 2023 1:14 PM
To: Jared P. Agtunong; Stacy Takahashi; WAI Committee
Subject: for our conversations today at committee
Attachments: FEMA-4724-DR-HI PPDR Approval (09152023).pdf; Map.pdf; PublicFacilities.xlsx

Hello! I will have 20 hard copies of all documents. I might like to pull up this map on the screen during discussion if needed. Thank you! ekw



FEMA

September 15, 2023

James DS. Barros
Governor's Authorized Representative
Administrator
Hawaii Emergency Management Agency
4204 Diamond Head Road
Honolulu, Hawaii 96816

Reference: Private Property Debris Removal
FEMA-4724-DR-HI

Dear Mr. Barros:

This letter is in response to your request dated September 1, 2023, requesting that FEMA provide federal assistance for the removal of debris on private property resulting from fires in Maui County, Hawaii. FEMA has discretion under the Stafford Act to provide federal assistance to remove "debris and wreckage" generated by the event, within the incident period, in disaster-designated areas. *See* 44 CFR §§ 206.223(a) and 206.224(a). On August 24, 2023, FEMA issued a Mission Assignment for debris removal activities based upon the State's request for direct federal assistance (DFA) for private property debris removal (PPDR).

Specifically, FEMA may authorize debris removal from private property when it is in the public interest, such as to eliminate immediate threats to public health and safety. *See* 42 U.S.C. § 5173; 44 CFR § 206.224(b). The State of Hawaii has stated that ash from burned residential structures is highly toxic and that its expeditious removal from private property is necessary to protect public health and safety.

FEMA accepts the State of Hawaii's determination that debris on private property poses a threat to public health and safety. As stated in your request, the ash itself contains hazardous materials that may be linked to health hazards, and to protect public health and safety, must be cleared expeditiously. I therefore approve PPDR to abate immediate threats to public health and safety for Maui County as further described below.

In order to receive federal assistance for PPDR, the State must comply with all requirements of Section 407 of the Stafford Act, 44 CFR Part 206, and the Public Assistance (PA) Program and Policy Guide (PAPPG). These requirements include but are not limited to: (1) the applicant unconditionally agrees to indemnify and hold harmless the federal government against any claim arising from debris removal; (2) the work undertaken as part of this PPDR mission must be the legal responsibility of the applicant; and (3) applicants must undertake practical measures to avoid a duplication of federal assistance as required by Section 312 of the Stafford Act. FEMA finds the requirements of Section 407 (b) to be initially satisfied by the State's authorization and

indemnification assurances included in its request. *See* 42 U.S.C. § 5173(b). In Section V (Legal Responsibility and Authority) of its request letter, the State provides that it has legal responsibility to remove the debris. Likewise, Section V. Part F further states that the federal government shall not be liable for any claim based upon the exercise, performance, or failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act. The State agrees to hold and save the United States free from damages due to the requested work in its request for federal assistance. The State must also include provisions to indemnify and hold harmless the federal government against any claim arising from such removal in right-of-entry (ROE) forms distributed to residents of affected communities.

FEMA furthermore appreciates the State's assurance that state and affected local governments will undertake required measures to avoid a duplication of benefits, including by assisting the federal government in recovering any insurance or other proceeds that are paid to any private party for PPDR, for which federal aid or reimbursement was received. *See* 42 U.S.C. § 5155, 44 C.F.R. § 206.253(a), and 2 C.F.R. § 200.406 (requiring that costs claimed by applicants must be reduced by applicable credits). Thus, if the property owner receives assistance for PPDR from any third party, the State and local governments must facilitate reporting and recovering these amounts, which will be offset against PPDR expenses. Likewise, if the disaster is determined to have been caused by any negligent third party, the State must make reasonable efforts to pursue damages and return any duplication of funds to the federal government. *See* page 93 of PAPPG.

The removal of debris necessary to eliminate or abate immediate threats to public health and safety is eligible for federal assistance. Furthermore, FEMA accepts in part the State's determination that PPDR efforts beyond ash removal is necessary to expedite economic recovery of Lahaina and other affected communities. Accordingly, the following types of hazardous debris on private property generated by the event will be considered provisionally eligible for PPDR:

1. Removal of surface ash, which may include 3-6 inches of incidental soil removal;
2. Burned debris, which consists of burned home remains, including burned or partially burned furniture, personal belongings, household appliances (refrigerators, stoves, washers, dryers, etc.), and patio furniture. It does not include burned or partially burned stone, landscaping features, or statues.
3. Hazardous materials and pollutants.
4. Hazardous trees and unsupported walls that are hazardous to debris removal crews.
5. Vehicles, marine vessels, and marine debris.
6. Structural footings, foundations, chimneys, and basements.
7. Hazardous trees that pose a risk of imminent threat of falling on the public right-of-way (ROW), or other public improved property. For any tree on private property that poses a threat to the public ROW, a subject matter expert's (i.e. certified arborist or professional licensed forester) opinion will be required to substantiate that the tree was in fact an eligible hazardous tree (so damaged by fire that it poses an imminent threat of falling onto public ROW or other improved public property).
8. Soil sampling after ash is removed from the ash footprint and excavation of contaminated

soil as needed commensurate with soil sample results. Soil excavation will generally be limited to a maximum of 12 inches below the ash-soil interface. Additional soil removal beyond 12 inches for specific sites requires pre-approval from FEMA.

9. Commercial structures, to include ash, burned debris, foundations, and basements.
10. Demolition of “clearly destroyed” private residential and commercial structures in accordance with FEMA Policy as amended by the 2022 Public Assistance Wildfire Policy Guidance Memorandum:
 - The Applicant must notify FEMA regarding: (a) demolition of private structures is being conducted, and (b) the type of property on which the work is being conducted (i.e. privately-owned residential or commercial property).
 - The determination that a structure is destroyed and/or in immediate danger of collapse must be made by a licensed engineer or other designated official authorized by the state or Maui County.

The following activities are ineligible for federal assistance:

- a. Debris removal from vacant lots, unused areas, unimproved property such as forests, or agricultural lands used for crops or livestock.
- b. The cutting, plugging, and marking of *subsurface* sewer laterals or water lines serving fire-damaged properties (cutting, plugging, and marking surface utilities are eligible; subsurface evaluations of utilities are not eligible).
- c. Off-island disposal of debris with the exception of household hazardous waste (HHW) generated during Phase I HHW removal operations and bulk asbestos-containing material (ACM) generated during PPDR efforts.
- d. Deviations from sequenced debris removal activities as outlined in debris removal operations plans (DROPs), contract scopes of work (SOWs), or similar documents.

While the development, construction, operation, and closing of permanent landfills for all incident-related debris are not eligible for federal assistance from FEMA, we welcome opportunities to assist you with aligning resource gaps with other potential funding opportunities through our Interagency Recovery Coordination (IRC) community of practice, which includes other federal agency partners. Further, IRC philanthropic advisors can support collaborative efforts with non-governmental organizations, philanthropic partners, and the private sector to help foster potential funding for the construction of a memorial to commemorate the lives lost during the incident.

With respect to appropriate backfill associated with contaminated soil removal referenced in Part II. Para D, FEMA recognizes that traditional erosion mitigation measures (e.g. hydro-mulching) may not be effective in arid conditions of Maui. As such, crushed gravel or similar material may be used to backfill excavation areas in lieu of default erosion mitigation measures.

In order to expedite the PPDR mission, please provide to the FEMA debris removal lead as soon as possible: a list of affected properties, ROEs or other authority to enter affected properties for debris removal activities, and a description of the proposed SOW and the debris identified for

each property for removal. Eligible, event-generated private property debris must be identified to FEMA within 60 days of the Recovery Scoping Meeting. *See* 44 C.F.R. § 206.202(d)(1).

If the state intends to perform debris removal activities or request DFA on behalf of public entities and eligible private nonprofits (PA Eligible Applicants), the following procedures will apply:

- The PA Eligible Applicant must notify HI-EMA within 60 days of its Recovery Scoping Meeting whether it wants the state to remove its debris. If the PA Eligible Applicant does not elect to join the state program, it may be eligible for debris removal under its own PW as part of a permanent work project to repair/restore the damaged facility.
- HI-EMA will notify FEMA which PA Eligible Applicants have requested to be included under the state's program as part of the PW formulation process. Separate approval request letters are not necessary.
- FEMA will evaluate whether each property meets PA eligibility requirements (e.g., eligible applicant, facility, legal responsibility, etc.).
- If FEMA approves the property for inclusion for DFA, the PA Eligible Applicant must withdraw any active damages and/or projects duplicating the approved debris removal work. The Applicant should be informed of this requirement by the Recipient in response to their request for inclusion.
- If FEMA denies the property for inclusion for DFA, the PA Eligible Applicant will be moved to its own PW and have appeal rights.

FEMA recognizes debris management efforts associated with this event are expected to include significant cultural, historic, and archaeological resources, particularly in the Lahaina community. To satisfy National Historic Preservation Act (NHPA) Section 106 compliance conditions, FEMA is requiring treatment measures (mitigation) to address potentially adverse effects for large-scale operations. Treatment measures generally include surveys and measures aimed at protecting cultural, religious, historic, and archeological resources (prior to ground disturbing activity); monitoring (during ground disturbing activity); and reporting to the State Historic Preservation Office, Advisory Council on Historic Preservation, and others (after operations have concluded). The agency performing the work will include aforementioned monitoring in their PPDR operations. Eligible monitoring costs will be integrated into the PA grant associated with PPDR operations, or federal costs if work is performed under DFA.

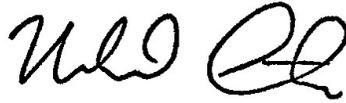
As with all provisional approval of federal assistance, any contract entered into for purposes of carrying out PPDR work or supporting activities must comport with the scope of approved eligible work and allow for accurate tracking of costs associated with the approved scope of federal assistance. All contracts must also comply with the requirements of 2 CFR §§200.317-200.336, the Cost Principles at 2 CFR Part 200, Subpart E, and the PAPPG. Furthermore, failure to comply with any required federal, state, and local laws, regulations, and permits (e.g., environmental) necessary for lawful performance of debris removal could jeopardize FEMA funding.

If you have any questions regarding this letter, please contact Timothy Manner, Federal

James DS. Barros
Private Property Debris Removal
FEMA-4724-DR-HI
Page 5 of 5

Coordinating Officer (FCO), at (202) 531-9544. The conditions of this letter will be incorporated into any future approvals for PPDR for this disaster.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob J Fenton', written in a cursive style.

Robert J. Fenton
Regional Administrator
FEMA Region 9

cc: Tim Manner, Federal Coordinating Officer, FEMA-4724-DR-HI
Heather Smith, Acting Recovery Division Director, FEMA Region 9

County of Maui Owned Properties Impacted by Fire in Lahaina

Parcel ID	Address	RPT Owners	Acres	Structures	Cultural Sites	Pre Fire Use
State of Hawaii Use						
460010010000	WHARF ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.2796	3	None Identified	Harbor Facilities
460020130000	611 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.843	3	Yes	King Kamehameha III Facilities
Rented Space						
450010180000	878 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, H & J WEINBERG FOUND. INC	6.543	7	None Identified	Old Lahaina Shopping Center
450110080000	325 KEAWE ST, LAHAINA, HI 96761	COUNTY OF MAUI, LAHAINA GATEWAY COMMERC	11.363	5	None Identified	Lahaina Gateway Shopping Center
Public Works						
460090170000	750 LUAKINI ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.8623	0	None Identified	Parking Lot
460070030000	576 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.4342	0	None Identified	Parking Lot
460070040000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.7672	0	None Identified	Parking Lot
460070050000	116 PRISON ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.3438	0	None Identified	Parking Lot
460070070000	572 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, ROMAN CATHOLIC CHURCH	0.345	0	None Identified	Parking Lot
460070100000	120 PRISON ST, LAHAINA, HI 96761	COUNTY OF MAUI, RICHARDSON,ALLEN B M	0.8811	0	Yes	Parking Lot
460090610000	LUAKINI ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.1045	0	None Identified	Private Parking Lot
460070360000	500 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.9283	0	Yes	Parking Lot
460110110000	266 DICKENSON ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.2088	0	None Identified	Vacant Lot
460110280000	HONOAPIILANI HWY, LAHAINA, HI 96761	COUNTY OF MAUI	0.0344	0	None Identified	Vacant Lot
450050020000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	1.0065	0	None Identified	Drainage Way/Utility Access
450050130000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, KAA NAPALI ROADS LLC	0.31	0	None Identified	Drainage Way
450050210000	MALA WHARF RD, LAHAINA, HI 96761	COUNTY OF MAUI	1.0206	0	Yes	Vehicle Access
450050220000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.0733	0	Yes	Drainage Way
450080080000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	2.76	0	None Identified	Drainage Way / Vehicle Access
450100060000	KOPI LI ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.92	0	None Identified	Other
450110070000	HONOAPIILANI HWY, LAHAINA, HI 96761	COUNTY OF MAUI	3.382	0	None Identified	Drainage Way
450120030000	OLONA PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.1941	0	None Identified	Drainage Way
450120180000	1377 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.4941	0	None Identified	Shoreline
450120590000	1392 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.098	0	None Identified	Vacant Lot
450300230000	AINAKEA RD, LAHAINA, HI 96761	COUNTY OF MAUI	0.0515	0	None Identified	Pedestrian Access / Tel Facility Easement
460050710000	KAEO PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.036	0	None Identified	Utility Access
460280540000	PUALEI DR, LAHAINA, HI 96761	COUNTY OF MAUI	0.0469	0	None Identified	Vacant Lot
450300920000	KAHOMA ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.0317	0	None Identified	Driveway Access
450301040000	AINAKEA RD, LAHAINA, HI 96761	COUNTY OF MAUI	0.0436	0	None Identified	Pedestrian Access
450301370000	MALO ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.9317	0	None Identified	Vehicle Access
470010300000	LAUNIUPOKO, LAHAINA, HI 96761	COUNTY OF MAUI	115.065	0	Yes	Vacant Land / Other
460010040000	MARKET ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.1073	0	None Identified	Vacant Lot
450340430000	LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI	0.8082	0	None Identified	Vacant Lot
450340460000	LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.4854	0	None Identified	Vacant Lot
450040110000	41 ALA MOANA ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.5492	0	Yes	Vacant Lot

Parcel ID	Address	RPT Owners	Acres	Structures	Cultural Sites	Pre Fire Use
Parks and Recreation						
450300160000	1357 AINAKEA RD, LAHAINA, HI 96761	COUNTY OF MAUI	2.03	0	None Identified	Wahikuli Terrace Park
460070010000	162 SHAW ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	2.008	0	Yes	Malu Ulu O Lele Park / Moku'ula
460070020000	550 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	7.504	0	Yes	Malu Ulu O Lele Park / Moku'ula
470010170000	LAUNIUPOKO, LAHAINA, HI 96761	COUNTY OF MAUI	5.697	0	Yes	Launiupoko Beach Park
460120050000	245 SHAW ST, LAHAINA, HI 96761	COUNTY OF MAUI	22.219	7	None Identified	Lahaina Recreation Center & Park
460150040000	LAHAINA, LAHAINA, HI 96761	COUNTY OF MAUI	15.429	1	None Identified	Lahaina Recreation Park
460330010000	PUALEI DR, LAHAINA, HI 96761	COUNTY OF MAUI	1.4148	0	Yes	Puamana Park
460260400000	, LAHAINA, HI 96761	COUNTY OF MAUI	0.3502	0	None Identified	Pau Nau Park
460080430000	636 LUAKINI ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.3898	2	Yes	Hale Aloha Church
460080440000	187 PRISON ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.82	1	Yes	Lahaina Prison
450340470000	LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI	2.2694	0	None Identified	Kelaweia Mauka Park
460010090000	648 WHARF ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	1.94	1	Yes	Old Courthouse / Banyan Tree
460010100000	687 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.2302	1	Yes	Library
450040120000	5 ALA MOANA ST, LAHAINA, HI 96761	COUNTY OF MAUI	2.468	0	Yes	Puupiha Cemetery
460030180000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.0251	0	None Identified	Shoreline Access
Housing and Human Concerns						
460090580000	767 LUAKINI ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.0964	1	None Identified	Lahaina Crossroads Residential Apartments
460340430000	120 LEOLEO ST, LAHAINA, HI 96761	COUNTY OF MAUI	1.8572	3	None Identified	Hale Mahaolu Komohana Hale
460260570000	380 LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI	1.864	2	Yes	West Maui Senior Center
460150030000	15 IPU WAI LN, LAHAINA, HI 96761	COUNTY OF MAUI, KA HALE A KE OLA HOMELESS RI	5	10	None Identified	Ka Hale A Ke Ola Homeless Resource Center
Environmental Management						
460070350000	FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.083	1	Yes	DEM-Wastewater Facility WWPS
460050160000	356 FRONT ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.1044	1	None Identified	DEM-Wastewater Facility WWPS
450300420000	KOMOHANA PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.0161	0	None Identified	Sewer Utility Access
450300520000	HAMAU PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.0173	0	None Identified	Sewer Utility Access
450040630000	ALA MOANA ST, LAHAINA, HI 96761	COUNTY OF MAUI - DEPT OF PUBLIC WORKS, STATE	0.4068	1	Yes	DEM-Wastewater Facility WWPS
450210250000	HONOAPIILANI HWY, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.2421	1	None Identified	Other: Former DEM-WWRD Pump Station
450300040000	HIKI PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.0244	0	None Identified	Sewer Utility Access
450300130000	MALOLO PL, LAHAINA, HI 96761	COUNTY OF MAUI	0.0178	0	None Identified	Sewer Utility Access
450300150000	MALO ST, LAHAINA, HI 96761	COUNTY OF MAUI	0.242	1	None Identified	DEM-Wastewater Facility WWPS
Water Department						
450210170000	WAHIKULI RD, LAHAINA, HI 96761	COUNTY OF MAUI- DEPT OF WATER SUPPLY,	0.918	1	Yes	DWS Water Tank
460180190000	LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	2.07	1	None Identified	DWS Water Tank
450140580000	WAHIKULI, LAHAINA, HI 96761	COUNTY OF MAUI, STATE OF HAWAII	0.0655	0	None Identified	Other / Planned Water Tank Location
450310010000	RESERVOIR LOT, LAHAINA, HI 96761	COUNTY OF MAUI- DEPT OF WATER SUPPLY,	1.015	4	None Identified	DWS Baseyard
450340450000	LAHAINALUNA RD, LAHAINA, HI 96761	COUNTY OF MAUI	1.018	1	None Identified	DWS Water Tank