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December 6, 2023

VIA E-MAIL ONLY

Victoria J. Takayesu, Corporation Counsel
County of Maui
200 S. High Street
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Re: AG Subpoena Nos. 2023-084, 2023-085, and 2023-086 (collectively, Subpoenas)

Dear Corporation Counsel Takayesu,

I am writing regarding the subpoenas that were issued by the Department of the Attorney General on November 27, 2023 to the Maui Emergency Management Agency (MEMA), the Department of Public Works, County of Maui (DPW), and the Department of Water Supply, County of Maui (DWS).

With respect to AG Subpoena No. 2023-086 issued to DWS, I am aware that the County of Maui ("County") believes that the subpoena calls for confidential information, and that approval from the U.S. Department of Homeland Security is necessary to produce the subpoenaed documents. The County has not related its legal basis for withholding the documents from the Department of the Attorney General. I understand that the County may be willing to provide the subpoenaed documents under the protection of a non-disclosure agreement. Attached to this letter is a draft Confidentiality and Non-Disclosure Agreement (NDA) that is intended to resolve the County's concerns. If the attached NDA does not resolve the County's concerns, please provide your legal basis for withholding the subpoenaed documents within seven (7) days of the date of this letter.

Further, with respect to AG Subpoena No. 2023-084 issued to MEMA and AG Subpoena No. 2023-085 issued to DPW, I understand that the County believes that many of the subpoenaed documents have already been provided to the Department of the Attorney General or its contractor, the Fire Safety Research Institute (FSRI) (collectively, the "Department"). This letter confirms which documents the Department has received in response to the subpoenas and clarifies which documents the Department is waiting to receive. To the extent that MEMA or the

County claims to have fulfilled the request, this letter seeks written confirmation that MEMA has no other responsive documents. To the extent additional responsive documents exist, please deliver the responsive documents within seven (7) days of the date of this letter. Capitalized terms not defined herein have the definitions set forth in the Subpoenas.

Specifically, the Department provides confirmation of the documents it has received, and seeks confirmation regarding the existence of any other responsive documents as follows:

Subpoena No. 2023-084 (MEMA)

Request No. 1

The Department has received the May 2021 EOP and the 2010 EOP. The Department has not received any specific operational and/or tactical plans addressing specific emergencies, and more specifically wildland or WUI fires. Please provide all specific operational and/or tactical plans addressing specific emergencies, including wildland or WUI fires, and all other responsive documents or confirm in writing that no such documents exist.

Request No. 2

The Department has received the West Maui Emergency Plan document dated May 14, 2018. The Department has not received any drafts of, or revisions or updates thereto. Please provide all drafts of and revisions or updates to the May 14, 2018 West Maui Emergency Plan or confirm in writing that no such documents exist.

Request No. 3

The Department has received the May 2021 edition of the Basic Plan. The Department has not received any drafts of or updates to the May 2021 Basic Plan. Please provide all drafts of or updates to the May 2021 Basic Plan or confirm in writing that no such documents exist.

Request No. 4

The May 2021 edition of the Basic Plan that was provided to the Department did not include any of the Functional Annexes or Hazard Annexes listed in the Basic Plan's table of contents. Please provide all such Annexes or confirm in writing which Annexes listed in the Basic Plan, if any, do not exist.

Request No. 5

As stated above, the Department has not received any of the Functional Annexes or Hazard Annexes listed in the May 2021 Basic Plan's table of contents. In addition to the Functional Annexes and Hazard Annexes requested above, please provide all draft versions and all prior completed versions of Functional Annexes or Hazard Annexes that address wildfire or WUI fire-related activities, or confirm in writing that no such documents exist.

Request No. 6

The Department has received only one AAR for a wildfire in the County of Maui (from 2018) and has not received any records of exercises conducted for wildland or WUI fires from 2013-2023. Please provide all other AARs for wildfires or WUI fires from 2013-2023, and all records of County of Maui exercises conducted for wildfires or WUI fires from 2013-2023, or confirm in writing that no such documents exist.

Request No. 7

The Department has received a list of contact information for County personnel across different departments who coordinate with MEMA in the event of an emergency. The Department has not received any other departmental strategic plans, policies, or procedures that support the Maui County EOP. Please provide all departmental strategic plans, policies, or procedures that support the Maui County EOP or confirm in writing that no such documents exist.

Request No. 8

The Department has not received any documents in response to Request No. 8, and is aware that County personnel have requested clarification of what this request seeks. Request 8 seeks information regarding the specific roles that MEMA personnel served in from August 1 through 15, 2023. An example of a record responsive to this request would be a document reflecting the MEMA personnel who served or were scheduled to serve in the EOC on August 8, 2023, what times they served, and the specific roles each employee served on that date.

Please provide all responsive documents or confirm in writing that no such documents exist.

Request No. 9

The Department has not received any documents in response to Request No. 9. On November 21, 2023, County personnel indicated that a responsive list would be provided. The Department is awaiting production of that list. Please provide the list and confirm in writing that no other responsive documents exist.

Request No. 10

The Department has not received any documents in response to Request No. 10. Please provide all responsive documents or confirm in writing that no such documents exist.

Request No. 11

In response to Request No. 11, the Department has only received copies of EOC sign-in sheets for August 7, 9, and 10, 2023, and sign-out sheets beginning on August 20, 2023. The Department has not received any rosters, logs, or other documents listing personnel who staffed

the EOC during the requested period, or any other accounting of the time(s) that each person was present in the EOC during that period. Further, the Department has not received any documents, including sign-in sheets, for August 8, 2023. Please provide all other responsive documents, including but not limited to the sign-in sheets for August 8, 2023, or confirm in writing that no such documents exist.

Request No. 12

The Department has not received any documents in response to Request No. 12, and is aware that County personnel have requested clarification or narrowing of this request. Request 12 seeks all documents that will help to reconstruct the events that took place within the EOC during the requested date range, including but not limited to: all incident notes in any format (electronic, hard copy, photographs of a whiteboard, etc.), taken by all personnel who were present in the EOC, including personnel who have since left County employment; internal or external memoranda; and internal or external requests for supplies, logistics, assets, or other resources.

Please provide all responsive documents or confirm in writing that no such documents exist.

Request No. 13

The Department received copies of text messages from MEMA Administrator Herman Andaya's cell phone from the County on November 24, 2023, and understands that County personnel are still working to provide Andaya's email messages for the requested period. The Department has also been informed that Andaya's cell phone call log shows no activity prior to August 27, 2023, and that his FaceTime call log shows no activity from August 1 through August 26, 2023. Recently, County personnel indicated that phone bills were available for multiple MEMA personnel for the relevant time period, showing calls and texts during the time of the incident. The Department has not yet received any such records.

Please provide all other responsive documents or confirm in writing that all responsive documents besides Andaya's emails have been provided, including (a) all of Andaya's text messages during the relevant period, (b) all other documents that are responsive to this request, including but not limited to (i) other records of phone calls to and from Andaya, and (ii) hard copy communications such as forms or written memoranda sent to or by Andaya, and (c) text messages and records of phone calls from all MEMA personnel for the relevant time period.

Request No. 14

The Department has received a database of communications beginning on August 20, 2023. These documents are not responsive because they are outside of the date range requested. Please provide all responsive documents for the requested period or confirm in writing that no such documents exist.

Request No. 15

The Department is aware that MEMA is in the process of producing IAPs for August 11 - 17, August 19 - September 3, September 5, September 8, and September 15 - October 19, 2023. The Department has not received any IAPs within the requested range of 8:00 p.m. on August 7, 2023, through 8:00 p.m. on August 10, 2023. Please provide all IAPs that were developed during the requested period or confirm in writing that no such documents exist.

Request No. 16

The Department has not received any documents in response to Request No. 16. Please provide all responsive documents for the requested period or confirm in writing that no such documents exist.

Request No. 17

The Department has not received any documents in response to Request No. 17. Please provide all responsive documents for the requested period or confirm in writing that no such documents exist.

Request No. 18

The Department has been provided with links to MEMA's Facebook page, the County of Maui's Facebook page, and an archive of press releases by County of Maui. The Department has also received copies of EAS/WEA messages for August 8-10, 2023. Please provide all other responsive documents or confirm in writing that no such documents exist.

Request No. 19

The Department has not received any documents from MEMA in response to Request No. 19. Please provide all responsive documents or confirm in writing that no such documents exist.

Subpoena No. 2023-085 (DPW)

Request No. 1

County of Maui personnel have stated that there are no documents responsive to this request. Please provide all responsive documents or confirm in writing that no such documents exist.

Request No. 2

On November 24, 2023, the Department received the following Bates numbered documents in response to this request:

- FIRE-MAUICOUNTY-00014702 through -00014726
- FIRE-MAUICOUNTY-00014727 through -00014826

- FIRE-MAUICOUNTY-00014827 through -00014927
- FIRE-MAUICOUNTY-00014928 through -00014941
- FIRE-MAUICOUNTY-00014942 through -00014971
- FIRE-MAUICOUNTY-00014972 through -00015001
- FIRE-MAUICOUNTY-00015002 through -00015032
- FIRE-MAUICOUNTY-00015033 through -00015064

Please provide all other responsive documents or confirm in writing that no such documents exist.

Notwithstanding any clarification made herein, the Department reserves the right to seek additional documents from the County. If any documents identified in the Subpoenas have been destroyed pursuant to the County's document retention policy, please provide a copy of the relevant policy.

We understand that you are working to produce the subpoenaed documents. Please contact Deputy Attorney General Ciara W.K. Kahahane at (808) [REDACTED] or [REDACTED]@hawaii.gov to discuss details regarding the timing and method of production.

Sincerely,



Anne E. Lopez
Attorney General
State of Hawai'i

Attachment: Draft Confidentiality and Non-Disclosure Agreement