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February 7, 2024

VIA E-MAIL ONLY

Mayor Richard T. Bissen, Jr.
County of Maui
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Re: Maui fires investigation

Dear Mayor Bissen,

As you know, the Department of the Attorney General (Department) is responsible for conducting a comprehensive investigation of the Maui wildfires that occurred on August 8, 2023. In late August 2023, the Department contracted with a team of experts from the Fire Safety Research Institute (FSRI) to review the facts surrounding the Maui fires, analyze existing programs and operational procedures, and provide recommendations for improvement where appropriate. This investigation is of the utmost importance to the Department because of the magnitude of the destruction and loss of life caused by the Maui fires, particularly the Lahaina fire.

It is imperative that FSRI's investigation be completed as soon as possible so that events like this can be prevented in the future. However, due to the difficulties that the Department and FSRI have encountered in obtaining information from the County of Maui (County), this critical task has been delayed. The original timeline for FSRI's investigation was twelve months, with an initial incident timeline report to be provided in three months; an incident analysis report to be provided in six months; and a forward-looking report to be provided in twelve months. I have had to push the deadline for the initial incident timeline from November 2023 to March 2024 – an extension of four months. As a further result, the timelines for completion of each subsequent phase of FSRI's report have also been delayed by several months, and any lessons that could be learned from the investigation are not available to the general public.

Beginning on August 31, 2023, FSRI attempted to obtain information directly from the County of Maui and its various agencies. This approach has worked for FSRI in every previous investigation they have conducted, including their investigation of the 2018 Camp Fire in California – before the Lahaina fire, the deadliest wildfire to occur in the United States in the last

century.* The County of Maui fire department and police department, in particular, initially cooperated with FSRI's requests. Other departments and agencies of the County were less forthcoming, and the Department was forced to serve subpoenas duces tecum on the Maui Emergency Management Agency, Department of Public Works, and Department of Water Supply on November 27, 2023. Shortly thereafter, on November 29, Corporation Counsel Victoria Takayesu insisted that all further information, including documents and interviews with County personnel, be requested from the County via subpoena.

As requested by Corporation Counsel Takayesu, we have issued subpoenas duces tecum for all document requests to the County. Also at the request of Corporation Counsel Takayesu, the Department is making all other requests for information, for the availability of witnesses, and all other communications about this matter through the Corporation Counsel or one of her deputies. Unfortunately, the involvement of Corporation Counsel and outside counsel from the firm of McCorrison Miller Mukai MacKinnon has resulted in inefficiency and obstruction.

Despite best efforts to obtain information from the County through subpoenas duces tecum and interviews with key personnel, we are at almost every turn encountering tactics that appear designed to delay, mislead, and frustrate the goals of the Department and FSRI's investigators. As a result, the Department has found it extremely difficult and time-consuming to obtain information that should be readily available from the County, and that the County should be eager to provide. Below is a non-exhaustive list of examples that demonstrate the problems we continue to encounter.

Delay

On December 29, 2023, the Department served a second set of subpoenas duces tecum to the County. It has now been more than a month since the Maui Police Department (MPD), Department of Fire and Public Safety (MFD), County of Maui, Department of Finance, and Department of Water Supply (DWS) were served with the subpoenas, and the County has still failed to provide many of the subpoenaed documents.

Failure to provide records in the subpoenaed format

Compounding the delay in producing records, the County has repeatedly failed to produce records in a usable format. Rather, the County has produced many records that are or should be available in a text or workbook-type file format as PDF files, which requires FSRI to spend many hours extracting information to get a usable product.

For example, Item 1 of AG Subpoena No. 2023-102 requested Automated Vehicle Location (AVL) data for MFD units assigned to the Lahaina, Kula, and Olinda fires in CSV, XLS, XML, or its native format. Instead, on January 14, 2024, the County produced the same flat PDF maps of MFD units that had already been given to FSRI in mid-November. After a deputy from the Department flagged this issue with formatting, the County finally turned over the data in the subpoenaed format on January 18, 2024.

* Clarification: FSRI personnel have conducted numerous wildfire investigations where they have been able to obtain information directly from agencies without the need for subpoenas. FSRI's investigators have professional relationships with an individual who did participate in the Camp Fire investigation, but FSRI did not perform the investigation itself.

This is only one of many examples and illustrates the amount of time and energy that the Department must expend to obtain a relatively simple set of data.

Problems with formatting are symptomatic of the larger complication that is caused by having all communications go through attorneys rather than directly from FSRI to the County personnel who maintain the records. When records are not provided in the subpoenaed format, a deputy from the Department has to confer with Deputy Corporation Counsel, who then has to interface with their client to obtain the records in the proper format. Requests from the Department to allow FSRI to interface directly with County personnel have been denied.

Providing nonresponsive documents

In response to several of the subpoenas issued by the Department, the County has produced documents that are not responsive to the Department's requests. For example, in response to Item 2 of AG Subpoena No. 2023-104 to MFD, which requested "any and all records of mandatory and/or recommended educational and training requirements for each position within the Fire and Rescue Operations Division," the County instead produced sign-in sheets for trainings attended by MFD personnel. This failure to produce documents that are actually responsive requires attorney time on both sides to correct, and further delays the Department's receipt of real responses from the County.

Withholding of subpoenaed records

The most troubling issue that the Department has encountered in the course of its investigation is the County's withholding of responsive records that the Department knows exist. While there are several examples of this behavior, the most notable and disturbing is the County's failure to respond adequately to AG Subpoena No. 2023-084, which was addressed to the Maui Emergency Management Agency (MEMA) and was served on MEMA and the Department of Corporation Counsel on November 27, 2023.

On December 6, 2023, I sent Corporation Counsel Takayesu a letter requesting that the County either produce documents responsive to AG Subpoena No. 2023-084 or confirm that no such documents existed. By reply letter dated December 13, 2023, Corporation Counsel stated as follows regarding Items 11 and 12 of the subpoena:

11. Rosters, sign-in sheets, logs, and documents, physical or electronic, listing all personnel that staffed the [Emergency Operations Center (EOC)] from 8:00 p.m. on August 7, 2023, through 8:00 p.m. on August 10, 2023, as well as an accounting of the time(s) that each person was present in the EOC.

Response: Some of the records responsive to [Item 11] were uploaded on November 24, 2023, including the EOC sign in/out sheets for August 8, 2023 (please see Bates stamp 16283 through 16287 and the attached

enclosure). An additional responsive record was uploaded on December 6, 2023. There are no other responsive records for this item.

12. All documents, physical or electronic, that were developed in the EOC during the time period from 8:00 p.m. on August 7, 2023, through 8:00 p.m. on August 10, 2023.

Response: *Records responsive to this item were uploaded on December 12, 2023. There may be additional records responsive to this item and the County will supplement this response as we receive additional records.*

On December 11 and 12, 2023, the County produced only three categories of documents responsive to Item 12 of the subpoena: photographs from within the EOC, an event timeline prepared by Everett Balmores of MEMA, and slides from the National Weather Service containing information about Hurricane Dora. The County has not supplemented its production in response to AG Subpoena No. 2023-084 since December 12, 2023. In the course of interviews, attended by County counsel, with County of Maui personnel who were present in the EOC on August 8, however, the Department has learned that other records responsive to Items 11 and 12 of the subpoena exist and are in MEMA's possession, as follows:

Notes prepared by Paul Coe. On January 31, 2024, FSRI interviewed Paul Coe, formerly of MEMA, who served as the Director of the EOC during the fire event. During the interview, Coe stated that he prepared handwritten notes during the incident and left those notes in MEMA's offices when he departed from Maui. Those notes are clearly responsive to Item 12 of AG Subpoena No. 2023-084 and are presumably still in the County's possession. The County has failed to produce any of Coe's notes despite knowing that Coe created those notes.

Notes prepared by Assistant Chief Jeffrey Giese. On January 24, 2024, FSRI interviewed Assistant Chief Jeffrey Giese of MFD. During the interview, Giese stated that he maintained at least two, if not three, notebooks to track incident operations and needs for the Lahaina, Upcountry, and Pulehu Fires. Giese's notes are responsive to Item 12 of AG Subpoena No. 2023-84 and are presumably still within the County's possession. The County has not produced any of Giese's notes despite knowing that these documents exist.

MEMA EOC sign in sheets for August 8. In response to AG Subpoena No. 2023-084 and earlier queries directly from FSRI, the County has produced sign-in sheets for August 7 and 9 showing which MEMA personnel signed in to the EOC on those dates. The County has also produced sheets showing that other, non-MEMA personnel signed in on August 7, 8, and 9. However, the County has not produced any sign-in sheets showing which MEMA personnel signed in or out of the EOC on August 8. On January 25, 2024, FSRI interviewed Rocky Keohuhu-Bolor, formerly of MEMA, who was present in the EOC on August 8. During his interview with FSRI, Keohuhu-Bolor stated that he signed in at the EOC on August 8. Therefore,

a sign-in sheet bearing his signature and those of any other MEMA personnel who signed in to the EOC on August 8 presumably exists but was not produced.

EOC situational awareness board. On January 24, 2024, FSRI interviewed MEMA Secretary Gaye Gabuat. Gabuat stated that a situational awareness board that was displayed electronically within the EOC on August 8. Any photographs, copies, drafts, or other records of the information displayed on the EOC situational awareness board would be responsive to Item 12 of AG Subpoena No. 2023-84. The County has failed to produce any records of the situational awareness board.

Besides the documents listed above, which we have confirmed to exist, the Department has substantial cause to believe that other documents responsive to AG Subpoena No. 2023-084 likely exist but have not been produced. This includes but is not limited to:

214s prepared in the EOC. On January 24, 2024, FSRI interviewed Mahina Martin, who was serving as the “Incident PIO” at the time of the fire event and was present in the EOC on August 8. Martin confirmed in her interview that she completed a 214, also known as an incident activity log, for the fire event, and that her “team” completed others. All 214s prepared in the EOC on August 8 are responsive to Item 12 of AG Subpoena No. 2023-084. The County has not produced the 214s prepared by Martin and her team; nor has it produced any 214s prepared by MEMA personnel. In fact, the County has produced only three 214s dated August 8, 2023. As Coe stated in his interview, 214s that are prepared in the EOC during an incident are typically left with MEMA. Thus, the County’s failure to produce more than three 214s for August 8 is highly unusual given the large number of people who were present in the EOC on that date.

Digital maps reviewed in the EOC. In interviews with FSRI, many individuals who were present in the EOC mentioned that they looked at maps during the fire event that showed traffic control points, the location of the fire(s), evacuation areas, shelters, and so forth. The County has not produced any such maps, or any photographs or copies thereof. It is again highly unusual that not a single copy of these maps was saved, and that no photographs or other copies of the maps were created.

Notes prepared in the EOC. As mentioned above, the County has not turned over any notes kept by personnel who were present within the EOC on August 8, including Paul Coe and Jeffrey Giese. Given the numerous personnel from MEMA and liaisons from other County departments who were present in the EOC on August 8, it is difficult to believe that no notes taken during the fire incident exist.

Again, the purpose of this investigation is to prevent further destruction and loss of life on the breathtaking scale that the town of Lahaina suffered. In light of the importance of this investigation and the public interest in its results, I implore you to direct your attorneys and

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employees to forego their current tactics of delay and evasion, and to make every effort to comply with this investigation. For the subpoenas to which the County has not responded or produced only some of the responsive documents, I urge you to direct your employees to turn over the remaining subpoenaed documents by this **Friday, February 9, 2024**. If the Department continues to waste precious time and resources trying to obtain information from the County, I will have no choice but to seek court intervention and compel obedience to each of the subpoenas that have not been responded to in a full and satisfactory manner.

Sincerely,

Anne E. Lopez

Anne E. Lopez
Attorney General
State of Hawai'i

C: Victoria J. Takayesu, Corporation Counsel, County of Maui
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