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 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, pursuant to section 127-10 and chapter 128, Hawaii Revised Statutes, emergency powers are conferred on the Governor of the State of Hawaii to deal with disasters or emergencies, to maintain the strength, resources and economic life of the community, and to protect the public health, safety and welfare; and

WHEREAS, as a result of the United States Department of Defense's former ownership and use of lands (including waters) in the State of Hawaii for military training purposes, dangerous munitions and explosives, including unexploded ordnance, discarded military munitions, munitions constituents which pose an explosive hazard, and other types of hazardous substances, are present on lands owned by the State of Hawaii, the County of Hawaii and the City and County of Honolulu; and

WHEREAS, the United States Department of Defense has declared that it is committed to protecting human health and the environment and improving public safety by cleaning up dangerous munitions and explosives and other contamination at these former military properties; and

WHEREAS, the Defense Environmental Restoration Program (DERP) was established by the United States Congress to clean up properties formerly used by the military services, and the U.S. Army Corps of Engineers is responsible for carrying out portions of the Program; and

WHEREAS, the U.S. Army Corps of Engineers has identified numerous lands owned by the State of Hawaii, the County of Hawaii and the City and County of Honolulu which are eligible for preliminary assessment, remedial investigation and remedial action under DERP; and

WHEREAS, the U.S. Army Corps of Engineers has not yet determined the ownership of all lands located in the State of Hawaii that are eligible for inclusion in the DERP; and

WHEREAS, because lands throughout the State of Hawaii have been used by the United States Department of Defense, it is anticipated that in addition to lands owned by the State of Hawaii, the County of Hawaii and the City and County of Honolulu, lands owned by the County of Maui, the County of Kauai, and the County of Kalawao may be found to be eligible for preliminary assessment, remedial investigation and remedial action under the DERP in the future; and

WHEREAS, there are an estimated 128,790 acres of land in the State of Hawaii that are eligible for remediation by the U.S. Army Corps of Engineers under the DERP within the next five years, of which the State of Hawaii owns over 37,000 of those acres; and

WHEREAS, the U.S. Army Corps of Engineers presently has funds available for preliminary assessment, remedial investigation and remedial action in the district of Hawaii under the DERP; and

WHEREAS, the level of funding available over the next five years for the district of Hawaii is estimated to exceed one hundred million dollars; and

WHEREAS, the remediation work conducted under the DERP by the U.S. Army Corps of Engineers involves three phases of assessment and work; and

WHEREAS, during the first phase of remediation, the U.S. Army Corps of Engineers conducts a preliminary assessment and site inspection to determine if the site poses a significant threat, whether a detailed investigation is needed, and whether an immediate response is needed, and collects data that will be used to prioritize the site for future cleanup action; and

WHEREAS, during the second phase the U.S. Army Corps of Engineers, or its contractors, performs a remedial investigation and feasibility study that determines the nature and extent of the contamination, reviews different alternatives for remedial action, develops a proposed plan for remedial action and prepares a decision document to identify the remedial alternative chosen for implementation; and

WHEREAS, during the third phase the U.S. Army Corps of Engineers, or its contractors, will execute the remedial actions set forth in the decision document; and

WHEREAS, during the preliminary assessment and remedial investigation phases the U.S. Army Corps of Engineers, or its contractors, may encounter munitions, explosives or other hazardous substances that require immediate removal action because they pose an imminent threat to human health and safety or to the environment; and

WHEREAS, during the preliminary assessment and remedial investigation phases the U.S. Army Corps of Engineers does not know and cannot adequately anticipate what, if any, munitions, explosives or other hazardous substances that require immediate removal action will be found on any particular site or where within the site the munitions, explosives or other hazardous substances will be found; and

WHEREAS, when munitions, explosives or hazardous substances that pose an imminent threat to human health and safety are found on or under State of Hawaii or county lands, including, for example, public beach areas, removal actions should be undertaken as expeditiously as possible to minimize the risk of injury or death to members of the public caused by contact with the dangerous items and substances; and

WHEREAS, the lack of advance knowledge regarding the presence, location and type of munitions, explosives and other hazardous substances together with the need for immediate removal action does not allow the State of Hawaii, the County of Hawaii, the County of Maui, the County of Kauai, the County of Kalawao or the City and County of Honolulu adequate time to comply with Hawaii's environmental and land use laws while also ensuring the protection of public health, safety and welfare; and

WHEREAS, I find that these state of affairs and circumstances are of such a grave nature as to affect the health, safety and welfare of the public and that these circumstances require the invocation of provisions of Chapter 128, Hawaii Revised Statutes, that are effective only during a period of civil defense emergency; and

WHEREAS, section 127-10, Hawaii Revised Statutes, provides that when sections 127-1 to 127-9, Hawaii Revised Statutes, are not in effect, the Governor may exercise any and all powers contained in chapter 128, Hawaii Revised Statutes, in order to provide other disaster relief and that all provisions of the law provided in chapter 128, Hawaii Revised Statutes, during such period are made applicable to other disaster relief, including without limitation, provisions making or authorizing appropriations or expenditures; and

WHEREAS, pursuant to Act 35, Regular Session Laws of Hawaii 1961, sections 127-1 to 127-9, Hawaii Revised Statutes, have been indefinitely suspended and are not in effect, the provisions of chapter 128, Hawaii Revised Statutes, are applicable to other disaster relief; and

WHEREAS, pursuant to section 127-10, Hawaii Revised Statutes, other disaster relief includes, but is not limited to, the preparation for and the carrying out of all functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by fire, flood, tidal wave, volcanic eruption, earthquake, or other natural causes and major disasters

caused by acts of man, including massive oil spills, nuclear accidents, airplane crashes and civil disturbances; and

WHEREAS, pursuant to section 128-8(4), Hawaii Revised Statutes, 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 conflicts with, disaster relief or other emergency functions; and

WHEREAS, pursuant to section 128-9(8), Hawaii Revised Statutes, the Governor is further authorized to relieve hardship and inequities or obstructions to the public health, safety, and welfare found by the Governor to exist in the laws and to result from the operation of federal programs or measures taken under chapter 128, by suspending 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 128-10(5), Hawaii Revised Statutes, 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, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers; and

WHEREAS, pursuant to section 128-10(6), Hawaii Revised Statutes, the Governor is further authorized to take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the Governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings; and

WHEREAS, pursuant to section 128-10(15), Hawaii Revised Statutes, the Governor may take any and all steps necessary or appropriate to carry out the purposes of chapter 128 and to provide for civil defense and other emergency functions.

NOW, THEREFORE, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine that the presence of dangerous munitions, explosives and other hazardous materials present on government lands owned by the State of Hawaii and each county in Hawaii as a result of former military use is a serious threat to the public health, safety and welfare as contemplated by section 127-10, and chapter 128, Hawaii Revised Statutes.

FURTHER, I find that public health, safety and welfare mandate that the U.S. Army Corps of Engineers be permitted to carry out DERP work on State of Hawaii and county lands as expeditiously as possible and hereby direct all state and county agencies and officers to cooperate to the fullest extent with the U.S. Army Corps of Engineers in carrying out DERP work on lands owned by the State of Hawaii or any county within the state of Hawaii.

FURTHER, pursuant to sections 128-8(4), 128-9(8), and 128-10(10), Hawaii Revised Statutes, I hereby suspend the following statutes, as allowed by federal law, to the extent necessary to permit the U.S. Army Corps of Engineers to conduct removal actions under the DERP in the course of conducting preliminary assessments, site inspections, and remedial investigations on State of Hawaii, county of Hawaii and City and County of Honolulu lands as expeditiously as practicable:

1. Chapter 46, **county organization and administration**
2. Chapter 6D, **protection of caves**
3. Chapter 6E, **historic preservation**
4. Chapter 6K, **Kaho`olawe island reserve**
5. Chapter 115, **public access to coastal and inland recreational areas**
6. Chapter 171, **public lands, management and disposition of**
7. Chapter 183, **forest reserves, water development, zoning**

8. Chapter 183C, **conservation district**
9. Chapter 183D, **wildlife**
10. Chapter 184, **state parks and recreation areas**
11. Chapter 187A, **aquatic resources**
12. Chapter 188, **fishing rights and regulations**
13. Chapter 190, **marine life conservation program**
14. Chapter 195, **natural areas reserves system**
15. Chapter 195D, **conservation of aquatic life, wildlife, and land plants**
16. Chapter 197, **general provisions relating to aquatic resources and wildlife**
17. Chapter 200, **ocean recreation and coastal areas program**
18. Chapter 205A, **coastal zone management**
19. Section 209-9, **rental or sale of essential commodities during a state disaster; prohibition against price increases**
20. Chapter 342B, **air pollution control**
21. Chapter 342D, **water pollution**
22. Chapter 342E, **nonpoint source pollution management and control**
23. Chapter 342F, **noise pollution**

24. Chapter 343, **environmental impact statements**

25. Chapter 344, **state environmental policy**

I FURTHER DECLARE that the provisions of this emergency proclamation shall terminate on June 30, 2016, unless terminated at an earlier date by me.

Done at the State Capitol,
State of Hawaii, this 14th
day of June, 2011.

NEIL ABERCROMBIE
Governor of Hawaii

APPROVED:

DAVID M. LOUIE
Attorney General
State of Hawaii