

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 Hawai'i, in order to protect the health, safety, and welfare of the people, I, NEIL ABERCROMBIE, Governor of the State of Hawai'i, hereby determine, designate, and proclaim as follows:

**WHEREAS**, during the period of May 28 to June 5, 2012, the Miloli'i Wildfire burned approximately 247 acres of forested public lands within Nā Pali-Kona Forest Reserve, Pu'u ka Pele Forest Reserve and Ku'ia Natural Area Reserve on the Island of Kauai; and

**WHEREAS**, shortly thereafter, between June 28 and July 3, 2012, a second wildfire, the Hikimoe Wildfire, burned an additional 765 acres in the adjacent Pu'u ka Pele Forest Reserve; and

**WHEREAS**, shortly thereafter, between August 16 and August 22, 2012, a third and much larger fire burned an estimated 2000 acres of State lands on Kauai; and

**WHEREAS**, in total, between the two initial fires, 1,012 acres of forested public lands were burned impacting five different watersheds, including Hikimoe, Hā'ele'ele, Mākaha, Miloli'i, and Ka'ula'ula; and

**WHEREAS**, this fire season and these three wildfires represent one of the largest and most significant wildfire events on the Island of Kauai since the 1960s ; and

**WHEREAS**, the Miloli'i fire burned 149 acres of designated critical habitat for 29 different threatened and endangered plant species and ecosystems in the vicinity of Pa'aiki Gulch as well as a portion of the K u'ia Natural Area Reserve ; and

**WHEREAS**, the United States Congress passed the Endangered Species Act in 1973 to recognize that our rich natural heritage is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” It further expressed concern that many of our nation’s native plants and animals were in danger of becoming extinct; and

**WHEREAS**, species may be listed as either endangered or threatened; “endangered” means a species is in danger of extinction throughout all or a significant portion of its range, and “threatened” means a species is likely to become endangered within the foreseeable future; and

**WHEREAS**, when a species is proposed for listing as endangered or threatened under the Endangered Species Act, the U.S. Fish and Wildlife Service must consider whether there are areas of habitat believed to be essential to the species' conservation. Those areas may be proposed for designation as "critical habitat"; and

**WHEREAS**, critical habitat for threatened and endangered species has been directly impacted by the fire and will continue to degrade with secondary impacts such as soil erosion and invasion by invasive plants; and

**WHEREAS**, the native plants and animals of Hawai‘i, including those that are threatened and endangered, are important elements of Hawaiian culture; and

**WHEREAS**, the Hikimoe fire quickly spread over three different ridgelines burning valuable timber plantations and destroying the native vegetation along the ridge slopes; and

**WHEREAS**, 70 percent of the area subject to the wildfire were severely burned with little remaining live vegetation above and below ground; and

**WHEREAS**, live vegetation holds soil in place preventing landslides and soil loss due to wind or rain erosion; and

**WHEREAS**, stabilizing the ground after fires of this magnitude is critical to preventing the destructive results of erosion and flooding. Debris will wash down into streams and block natural flow causing increased risk of flash floods, property damage to roads and Polihale State Park, and damage to coral reefs and fisheries below the burned area; and

**WHEREAS**, intensive re-vegetation and reforestation efforts are required to establish vegetation cover to provide immediate soil stabilization and prevent the establishment of invasive species; and

**WHEREAS**, invasive species are non-native plants or animals whose introduction causes or is likely to cause economic or environmental harm or harm to human health; and

**WHEREAS**, invasive species are already documented in the area and will likely become established if immediate action is not taken to reduce their populations and establish a non-invasive plant cover; and

**WHEREAS**, invasive species can establish and colonize sites after major fires events; and

**WHEREAS**, the wildfires left behind fire weakened timber and exposed rocks and soil which have created immediate hazards to public health and safety including the possibility of falling, dead trees (widowmakers), and unstable ground and soil that could result in serious injuries; and

**WHEREAS**, burned trees become hazardous as their root systems are no longer present and within 5 to 10 years it is expected that additional trees may perish and become hazardous for the public if not acted upon soon; and

**WHEREAS**, salvage recovery of lumber and woody biomass from dead or dying trees will control remaining fire hazards, limit flooding potential, and provide the community and public with economic opportunities; and

**WHEREAS**, removal of hazardous trees and conditions along roadways and trails is critical to ensure public safety both from tree fall and from increased risk of flash flooding, exasperated by fallen logs; and

**WHEREAS**, in addition to lowering the risk of a flooding event, clearing these trees will also provide important hazardous fuel reduction along roads, trails and surrounding infrastructure to minimize the threat of future fires; and

**WHEREAS**, a comparable fire occurred in Kula Forest Reserve on Maui in 2007 that burned approximately 2,300 acres of forest land. During the following rainy season, burned trees that were not removed combined with a flash flood and resulted in intense flooding in the region below the forest reserve. Because immediate action was not taken to remove dead and downed trees, flooding intensified. This flooding event alone caused a total of \$1.2 million in property damage. As demonstrated by the Maui forest fires, flash floods can be worse in the rainy season following a forest fire; and

**WHEREAS**, flash flood events are recorded in the Hikimoe and Miloli'i Wildfire areas and flooding is expected to intensify after fires due to downed debris and loss of vegetation and soil; and

**WHEREAS**, in 2008 the Polihale State Beach Park was closed due to flash flooding destroying facilities in the park, and Polihale State Beach Park is directly downstream from the Hikimoe fire area; and

**WHEREAS**, steep slope and soil conditions pose increased risks of injuries due to falling for recreational users of Nā Pali-Kona Forest Reserve, Pu'u ka Pele Forest Reserve and K u'ia Natural Area Reserve; and

**WHEREAS**, the majority of the soils in this area are classified as highly erodible and subject to high rates of erosion now that they are exposed. Protecting this area from erosion and replanting the area is a critical step in protecting downstream beaches and coral reefs from debris and soil runoff; and

**WHEREAS**, top soil is important for plant nutrition and stabilization. Loss of top soil may lead to permanent vegetation loss in the area, such as on Kaho'olawe, which would ultimately result in a permanent loss of recreation activities in the area; and

**WHEREAS**, debris wash down during rain events can clog harbors, inhibiting use and damaging infrastructure as well as prevent access to beach areas; and

**WHEREAS**, following the initial soil stabilization measures, the State will focus on replanting the area primarily with native plants to provide habitat for threatened and endangered species. Native plants are not anticipated to re-establish on their own; and

**WHEREAS**, the average rainy season in the Hikimoe and Miloli'i Wildfire area begins in November but heavy rains can be expected as early as October; and

**WHEREAS**, immediate action is needed to mitigate damage triggered by the beginning of the rainy season; and

**WHEREAS**, downstream soil erosion deposits onto fringing coral reef ecosystems. The direct effects of increased soil runoff on coral reefs are a reduction in the number of fish, decreased coral cover, a change in the types of fish found, and the loss of overall fish species on the reef; and

**WHEREAS**, the people of Hawai'i depend on healthy coral reefs and ocean resources for a subsistence food source and recreation; and

**WHEREAS**, Pu‘u ka Pele and Nā Pali-Kona Forest Reserves represent one of the heaviest used public recreational areas on Kaua‘i. Because of the hazardous conditions caused by the wildfires, these threats must be removed or otherwise mitigated. Accessing the burned areas could be very hazardous and potentially fatal for the public until risks are mitigated; and

**WHEREAS**, Pu‘u ka Pele and Nā Pali-Kona Forest Reserves are the highest used hunting areas on Kaua‘i and hunters use these food resources for subsistence for their families; and

**WHEREAS**, restoration of road and trail infrastructure is necessary to provide immediate access to burned sites to conduct mitigation measures as well as prevent further erosion from road ways opened up for fire breaks during fire suppression activities; and

**WHEREAS**, I find that these state of affairs and circumstances are of such a grave nature as to affect the health and safety of the public and the public's natural resources, and require the invocation of provisions of chapter 128, Hawai‘i Revised Statutes, that are effective only during a period of civil defense emergency; and

**WHEREAS**, the Legislature of the State of Hawai‘i has appropriated from the general revenues of the State, monies as may be necessary for expenditures by or under the direction of the Governor for the immediate relief of the conditions created by the emergency; and

**WHEREAS**, in expending such monies, 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 emergency; and

**WHEREAS**, section 127-10, Hawai‘i Revised Statutes, provides that when sections 127-1 to 127-9, Hawai‘i Revised Statutes, are not in effect, the Governor may exercise any and all powers contained in chapter 128, Hawai‘i Revised Statutes, in order to provide other disaster relief (the carrying out of all functions, except military, to minimize and repair injury and damage resulting from disasters caused by fire, flood, and other natural causes), and all

provisions of law provided in chapter 128, Hawai'i Revised Statutes, 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 Hawai'i 1961, sections 127-1 to 127-9, Hawai'i Revised Statutes, have been indefinitely suspended and are not in effect, allowing the provisions of chapter 128, Hawai'i Revised Statutes, to be applicable to other disaster relief; and

**WHEREAS**, pursuant to section 128-8(4), Hawai'i Revised Statutes, the Governor is authorized to suspend any law which impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions; and

**WHEREAS**, pursuant to section 128-9(8), Hawai'i 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 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 128-10(10), Hawai'i Revised Statutes, the Governor may suspend chapter 103D and sections 103-50, 103-50.5, 103-53, 103-55, 105-1 to 105-10, and 464-4, Hawai'i Revised Statutes, and I find that these provisions, in whole or in part, impede or tend to impede the expeditious discharge of emergency functions for this occurrence and that compliance therewith is impracticable due to existing conditions; and

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

**NOW, THEREFORE**, I, NEIL ABERCROMBIE, Governor of the State of Hawai'i, hereby determine that a danger or threat of disaster contemplated by chapters 127 and 128, Hawai'i Revised Statutes, currently exists within the burned areas of the Pu'u ka Pele and Nā Pali-Kona Forest Reserves in the County of Kauai, State of Hawai'i; and do hereby proclaim this area to be a disaster area for the purpose of authorizing and invoking the following measures under the Hawai'i Revised Statutes:

1. Section 127-11, Hawai'i Revised Statutes, by the activation of the Major Disaster Fund.
2. Pursuant to sections 128-8(4), 128-9(8), and 128-10(10), Hawai'i Revised Statutes, I hereby suspend the following statutes, as allowed by federal law, to the extent necessary for the reforestation of burned areas of Pu'u ka Pele and Nā Pali-Kona Forest Reserves, or other actions, as needed, for the purpose of mitigating the post-fire damage and to eliminate the threat to public health and safety from potentially devastating post-fire effects in the County of Kauai:
  - a. Chapter 6E, historic preservation, except for provisions relating to burial sites.
  - b. Section 37-41, appropriations to revert to state treasury.
  - c. Section 37-74(d), program execution.
  - d. Section 40-66, appropriations lapse.
  - e. Chapter 46, county organization and administration.
  - f. Chapter 89, collective bargaining in public employment.
  - g. Chapter 89C, public officers and employees excluded from collective bargaining.
  - h. Section 103-2, general fund.
  - i. Section 103-53, contracts with the State or counties; tax clearances, assignments.
  - j. Chapter 103D, procurement code.
  - k. Chapter 104, wages and hours of employees on public works.
  - l. Sections 105-1 to 105-10, government motor vehicles.
  - m. Chapter 142, animals, brands, and fences.
  - n. Chapter 150A, plant and animal quarantine.

- o. Chapter 171, public lands.
- p. Chapter 183, forest reserves.
- q. Chapter 183C, conservation district.
- r. Chapter 183D, wildlife.
- s. Chapter 184, state parks.
- t. Chapter 195, natural area reserves system.
- u. Chapter 195D, conservation of aquatic life, wildlife, and land plants.
- v. Chapter 197, general provisions relating to aquatic resources and wildlife.
- w. Chapter 205A, coastal zone management.
- x. Section 209-9, rental or sale of essential commodities during a state disaster.
- y. Chapter 343, environmental impact statements.
- z. 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 Hawai'i, this  
\_\_\_\_ day of \_\_\_\_\_

11th Jan 2013

  
NEIL ABERCROMBIE  
Governor of Hawai'i

APPROVED:

  
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DAVID M. LOUIE  
Attorney General of Hawai'i