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DEPARTMENT OF THE NAVY
COMMANDER, NAVY REGION HAWAII
850 TICONDEROGA STREET, STE. 110
PEARL HARBOR, HI 96860-5101

PROCEDURAL AGREEMENT REGARDING THE MEANS FOR REGULAR
INTERVAL CLEARANCE AND REMOVAL OF NEWLY DISCOVERED
PREVIOUSLY UNDETECTED ORDNANCE
PURSUANT TO TITLE X OF THE FISCAL YEAR 1994 DEPARTMENT OF
DEFENSE APPROPRIATIONS ACT, PUBLIC LAW 103-139, 107 STAT. 1418

I. PARTIES AND INTRODUCTION

- A. The parties to this agreement are the United States Department of the Navy and the State of Hawai'i.
1. "The Navy," as referred to herein, means the United States Department of the Navy.
 2. "The State," as referred to herein, means the State of Hawai'i.
 3. "The KIRC," as referred to herein, means the Kaho'olawe Island Reserve Commission, on behalf of the State.
 4. "Commander, Navy Region Hawai'i," as referred to herein, shall include any person the Commander designates to act on the Commander's behalf with respect to matters covered by this agreement.
- B. Title X of the Fiscal Year 1994 Department of Defense Appropriations Act, Public Law 103-139, 107 Stat. 1418 (referred to herein as "Title X"), was enacted into law on November 11, 1993.
- C. Sections 10001(a) and (b) of Title X provided for the United States of America, through the Secretary of the Navy, to convey and "to return to the State of Hawai'i the Island of Kaho'olawe."
- D. On May 9, 1994, the "Quitclaim Deed from the United States of America to the State of Hawai'i for the Island of Kaho'olawe, Hawai'i" was recorded with the State of Hawai'i Bureau of Conveyances as Document No. 94-076277 (referred to herein as "the deed").
- E. Title X also required the Secretary of the Navy to transfer "the control of access to the State of Hawai'i within no more than ten years from the date of enactment of this Act or when activities required by this Act, including ordnance clearance or removal activities and environmental remediation activities are completed, whichever comes first."
- F. As indicated on page 4 of the deed, the United States of America reserved unto itself the "right in perpetuity of access to the island for the purpose of

ordnance clearance, removal or environmental restoration activities involving newly discovered previously undetected ordnance and to carry out any obligations arising out of any responsibilities and liabilities of the United States under the MOU and Title X of Public Law 103-139."

- G. Section 10002(a)(2) of Title X directed the Secretary of the Navy to enter into a Memorandum of Understanding with the State of Hawai'i and required that the Memorandum of Understanding address, among other subjects, the "terms and conditions" of "the means for regular interval clean-ups and removal of newly discovered previously undetected ordnance by the Navy. Under any such terms and conditions, the Secretary shall be assured full and necessary access to carry out the obligations of the Secretary arising out of the responsibilities and liabilities of this title."
- H. On May 6, 1994, the "Memorandum of Understanding between the United States Department of the Navy and the State of Hawai'i Concerning the Island of Kaho'olawe, Hawai'i" was recorded with the State of Hawai'i Bureau of Conveyances as Document No. 94-075038 (referred to herein as "the MOU").
- I. Section XI of the MOU states: "The Navy and the KIRC, on behalf of the State, shall develop an agreement by May 9, 1998, regarding procedures by which the Navy may conduct regular interval clearance and removal of newly discovered, previously undetected ordnance." The parties informally agreed to delay development and execution of this agreement. This document is the agreement described in Section 10002(a)(2)(vi) of Title X and Section XI of the MOU.
- J. Pursuant to Section VI of the MOU, the KIRC submitted a Use Plan to the Navy upon which the Navy developed a Cleanup Plan. Section VI.C of the MOU states that the "Navy's cleanup plan shall consist of a two-tiered standard of ordnance clearance or removal and environmental restoration" and describes the Tier I and Tier II standards.
- K. On June 30, 1998, the Navy published its Kaho'olawe Island Reserve UXO Clearance Project Cleanup Plan, prepared by Parsons-UXB Joint Venture for the Pacific Division of the Naval Facilities Engineering Command (referred to herein as "the cleanup plan").
- L. Documents to be recorded with the State Bureau of Conveyances will provide metes and bounds, or a suitable substitute, descriptions of the lands that the Navy cleared to the Tier I or Tier II standards between 1998 and 2003.

- II. PROCEDURES FOR THE REGULAR INTERVAL CLEARANCE AND REMOVAL OF NEWLY DISCOVERED PREVIOUSLY UNDETECTED ORDNANCE
- A. As provided below, the Navy shall conduct regular interval clearance and removal of newly discovered, previously undetected ordnance on the island of Kaho'olawe.
- B. Navy actions: Following November 11, 2003, the Navy will respond to newly discovered, previously undetected ordnance located by the KIRC on the island of Kaho'olawe.
1. Commander, Navy Region Hawai'i will provide a response to ordnance found on (a) the surface of the island of Kaho'olawe and/or (b) the subsurface if the subsurface item is within an area and depth recorded as having been cleared to the Tier II standard.
 2. Commander, Navy Region Hawai'i will advise the KIRC in writing of the entity to be contacted when ordnance is located and a response is requested. Commander, Navy Region Hawai'i, Director of Operations, Code N3 will be the KIRC's point of contact until advised otherwise.
 3. Prompt response: Commander, Navy Region Hawai'i will, in response to a KIRC notification and request, provide a prompt response when ordnance has been found on the surface within an area in which human access occurs regularly and a prompt response to the ordnance is necessary to ensure human safety.
 4. Deferred response: Commander, Navy Region Hawai'i will, as a regular interval clearance and removal of newly discovered previously undetected ordnance, provide a deferred response when Commander Navy Region Hawai'i, in consultation with the KIRC, determines that a sufficient number and types of ordnance have been located by the KIRC to warrant the mobilization of an 3 or 4-member ordnance response team to Kaho'olawe for a 5-day level of effort.
 5. For a response under subparagraphs B.3 or B. 4 above, Commander, Navy Region Hawai'i will:
 - i. provide KIRC with a demolition plan;
 - ii. provide and transport to Kaho'olawe an ordnance response team with explosives and explosives devices necessary to conduct the response;

- iii. maintain responsibility for the safe storage and transport of explosives and explosive devices necessary to conduct the response;
 - iv. coordinate with the KIRC the dates for response; and
 - v. provide an after action report to the KIRC.
- C. KIRC Actions: After November 11, 2003, the KIRC will take the following actions to facilitate the Navy's response to newly discovered previously undetected ordnance.
- 1. The KIRC will record and visually mark the location of any ordnance, conduct a preliminary review of the nature of the ordnance, and insure all persons are kept a safe distance from the ordnance until a response is accomplished.
 - 2. The KIRC will notify Commander, Navy Region Hawai'i or the point of contact identified pursuant to subparagraph II.B.2 above of newly discovered, previously undetected ordnance including information regarding the nature of the ordnance and its location, and request a response.
 - i. The KIRC will provide a prompt notification when the KIRC finds ordnance on the surface within an area where human access occurs regularly.
 - ii. The KIRC will provide a deferred notification when the KIRC has identified a sufficient number and types of ordnance to warrant the mobilization of a 3 or 4- member ordnance response team to Kaho'olawe for a 5-day level of effort.
 - 3. The KIRC will, in coordination with the Navy, seek and acquire any permits or approvals required for these response actions by the United States Environmental Protection Agency and/or the State Department of Health.
 - 4. The KIRC will, in coordination with the Navy, perform and complete any consultations required for these response actions with Federal or State agencies and regulators, including but not limited to the State Historic Preservation Division; the National Marine Fisheries Service; and the United States Fish and Wildlife Service.

5. The KIRC will undertake any and all actions to allow the response to be conducted, including any action required as a result of any permit or consultation conducted pursuant to subparagraph C.4 above, such as, but not limited to, any construction of protective works necessary to protect against explosive risk to persons, natural resources or archaeological resources; any required monitoring; and any required post-action reporting.
 6. The KIRC will support the ordnance response team's safe access to the island, including but not limited to:
 - i. coordinating the dates when the response can be scheduled by Commander, Navy Region Hawai'i to prevent interference with the responders' ability to perform the response;
 - ii. coordinating helicopter entry into air space and identifying safe landing locations on the island;
 - iii. transporting the response team to the site(s);
 - iv. insuring that all persons are kept or removed from the potentially affected area during an ordnance response and that the public is not allowed access to the island when deferred response demolition operations are being conducted;
 - v. enforcing explosive arc and fragmentation exclusion areas; and
 - vi. providing command and control communications for demolition operations.
 7. The KIRC will enter into its data system the information provided to the KIRC by the Commander, Navy Region Hawai'i in the after-action report.
- D. At any time, the Commander, Navy Region Hawai'i's ordnance response team or the KIRC representative may choose not to proceed with a response if either party determines safety has been or will be compromised. The operation will not proceed until both agree that the safety issue has been resolved.
- E. Between November 11, 2003 and March 12, 2004, the procedures described in Section II, including but not limited to those in subparagraphs II.C.6. i – vi, may be modified by mutual agreement.

III. NAVY ACCESS AFTER NOVEMBER 11, 2003

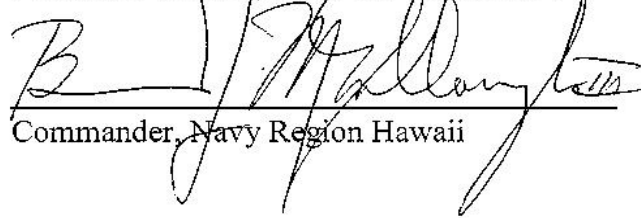
- A. On November 11, 2003, in accordance with Title X, control of access to Kaho'olawe passes from the United States to the State of Hawai'i.
- B. To allow the Navy and its contractor to address as many acres as possible before November 11, 2003, ordnance clearance, demobilization and inspection of the work will continue past that date but be completed no more than 120 days thereafter. The parties agree that, if necessary, demobilization activities may be conducted beyond March 12, 2004.
 - 1. The Navy and its contractor are authorized access to the island of Kaho'olawe and its surrounding waters specifically from November 11, 2003 through March 12, 2004, for the purposes of continuing the initiated work, ordnance clearance, contract close-out, quality assurance/quality control activities under the contract, and the development of materials for required documents to be recorded with the State Bureau of Conveyances.
 - 2. Between November 11, 2003 and March 12, 2004, all existing Navy contractor standard operating procedures will remain in effect. The island will remain an active industrial work site until demobilization is complete. The KIRC will abide by the contractor's Range Control standard operating procedures during this period and will require that, as a condition of being allowed access, anyone to whom the KIRC grants access will abide by those procedures. The KIRC will limit the granting of access during this period taking into account the required safety separation between the work and any visitors.
 - 3. The parties may extend or amend this access approval as necessary.
- C. The KIRC will require no additional documents from the Navy, its contractors or its agents in accessing the island for the purposes and procedures described in the MOA, except as provided for in this document.
- D. The State will establish reasonable criteria for access by the Navy or its agents for purposes under Title X that are not specifically covered in this document.
- E. Nothing in this document limits or modifies the rights reserved by the United States in the deed.

IV. MOU IMPLEMENTATION

- A. The parties agree that this document fulfills any requirements of Section 10002(a)(2)(vi) of Title X and/or Section XI of the MOU.
- B. Nothing in this document shall be constructed as obligating funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.
- C. Nothing in this document is intended to modify any provision of Title X, the MOU, or the deed.
- D. If a dispute cannot be resolved between the Chair of the KIRC and the Commander, Navy Region Hawai'i, the parties will attempt to resolve it through mutual agreement of the Governor of the State of Hawai'i and the Assistant Secretary of the Navy (Installations & Environment) or their designated representatives. This provision does not waive any legal remedy or right available to either party.
- E. This MOA may be amended by the mutual agreement of the parties.

SIGNATURES IN AGREEMENT

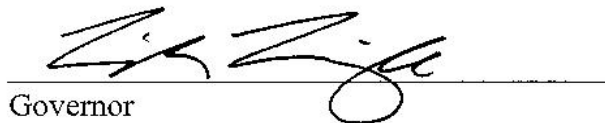
UNITED STATES DEPARTMENT OF THE NAVY
FOR THE SECRETARY OF THE NAVY



Commander, Navy Region Hawaii

28 Oct 03
Date

STATE OF HAWAII



Governor

Nov. 11, 2003
Date



Chair, Kaho'olawe Island Reserve Commission

NOV 06 2003
Date