EXECUTIVE ORDER NO. 07-10

WHEREAS, it has been determined that it is in the public interest that a large capacity ferry vessel service should commence as soon as possible to provide inter-island ferry service between the islands of Oahu, Maui, Kauai, and Hawaii, using state harbor facilities on each island while harbor improvements continue to be constructed and used while any environmental studies, including any environmental assessments or environmental impact statements, are conducted and prepared; and

WHEREAS, section 4(a) of Act 2, Second Special Session Laws of Hawaii 2007 ("Act 2"), permits a large capacity ferry vessel company to operate if it complies with conditions enumerated in section 4(a) of Act 2 and any other conditions or protocols the Governor of Hawaii deems necessary and appropriate to protect the State's environment, and establishes by executive order pursuant to section 4(a)(3) of Act 2; and

WHEREAS, section 4(c) of Act 2 provides that the Governor of Hawaii may establish by executive order conditions and protocols to mitigate significant environmental effects that the Governor determines, in the Governor's judgment, are likely to be caused by a large capacity ferry vessel company's inter-island operations ("conditions and protocols"); and

WHEREAS, the Governor of Hawaii has considered the effects that operations of a large capacity ferry vessel may have on:

(1) Ocean life and marine animals and plants, including a whale avoidance policy and procedures;
(2) Water resources and quality;
(3) Harbor infrastructure;
(4) Vehicular traffic;
(5) Public safety and security;
(6) Controlling the spread of invasive species;
(7) Cultural resources, including hunting, fishing, and native Hawaiian resources; and
(8) Economic consequences and impact; and

WHEREAS, the Governor of Hawaii has considered other natural resource and community concerns that the Governor deemed it appropriate to consider; and

WHEREAS, the Governor of Hawaii has considered establishing conditions and protocols that would require State of Hawaii Department of Agriculture (DOA) inspectors and State of Hawaii Department of Land and Natural Resources (DLNR) conservation and resources enforcement personnel on each inter-island voyage conducted by a large capacity ferry vessel company, but has not found the same to be necessary and appropriate; and

WHEREAS, the Governor of Hawaii has considered such other facts and matters as required by Act 2;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, pursuant to the provisions of section 4(c) of Act 2, do hereby establish the following conditions and protocols:

A. Ocean Life and Marine Animals and Plants

1. The large capacity ferry vessel company ("company") shall agree to request that National Marine Fisheries Service (NMFS) certified fisheries observers, currently residing in Hawaii, such as graduates and members of Alu Like's Marine Stewardship Program, be onboard its vessels to help monitor and document all marine life sightings and potential impacts to marine life by its vessels, to warn the bridge in a timely manner about potential impacts, to collect data on appropriate NMFS forms of general and unusual marine life observations, to appropriately document observations, and, in the event of an interaction with an endangered species by one of its vessels, to document and follow applicable federal requirements, if any.

2. (a) The company shall agree that company vessels shall avoid operating within the boundaries of the Hawaiian Islands Humpback Whale National Marine Sanctuary or in waters less than 100 fathoms from January 1 to April 30 of each calendar year unless: (i) the Master of the vessel

determines that this operation is in the interest of passenger safety and comfort or vessel safety; or (ii) the vessel is making an immediate approach to or departure from the ports of Honolulu, Kahului, Nawiliwili or Kawaihae.

(b) The company shall agree that if the Master of a vessel makes a determination that operation within the boundaries of the Hawaiian Islands Humpback Whale National Marine Sanctuary or in waters less than 100 fathoms from January 1 to April 30 of each calendar year other than when the vessel is making an immediate approach to or departure from the ports of Honolulu, Kahului, Nawiliwili, or Kawaihae ("said operation") is in the interest of passenger safety and comfort or vessel safety, the Master shall, when feasible, refer to and consider existing data on aerial and shore-based systematic surveys of whale densities to select areas of lesser densities.

(c) The company shall agree that if the Master of a vessel makes a determination that "said operation" is in the interest of passenger safety and comfort or vessel safety, the vessel shall not exceed twenty-five knots at any time during "said operation."

(d) The company shall agree that if the Master of a vessel makes such a determination that "said operation" is in the interest of passenger safety and comfort or vessel safety; the Master shall, with respect to "said operation": (i) document this determination in the vessel's log book with a certification by the Master that the vessel did not exceed twenty-five knots during "said operation," (ii) document the time, location, course and any evasive actions taken by the vessel, and (iii) provide a copy of the vessel log book entry(ies) to the Director of Transportation and the Chairperson of the Board of Land and Natural Resources.

3. The company shall agree to post two persons to act as whale lookouts on any vessel and allow for direct communications between the lookouts and the Master of the vessel, and the observers identified in Section A.1 may serve as these whale lookouts.

4. The company shall agree that each vessel shall maintain a minimum of 500 meters distance from whales whenever possible when whales are sighted.

5. The company shall agree to utilize radar, night vision equipment, and bow-mounted cameras to detect whales and to try to avoid collisions.

6. The company shall agree that any vessel's Master shall document and report any collision or whale approach less than 100 meters from the vessel, that in the event of a collision, the company shall document observable damage or injury to the whale and, if safe and possible, remain on scene with the whale until rescue response arrives, and within twenty-four hours of any whale collision, provide a detailed written report of the collision to the Director of Transportation and the Chairperson of the Board of Land and Natural Resources.

7. The company shall agree that it shall designate a crew member or crew members to be trained by the Department of Land and Natural Resources to monitor its vessel for downed seabirds. Between September 15 and December 15 of each calendar year, prior to evening departures from the ports of Nawiliwili, Kahului and Honolulu and prior to morning departures from any harbor after being docked overnight, the company shall agree to retrieve and care for any and all downed seabirds on a vessel in accordance with DLNR policies and procedures, if any.

B. Water Resources and Quality

1. The company shall agree to comply, at all times, with HRS chapter 342D, "Water Pollution," and such other laws, rules or regulations adopted by the State of Hawaii, Department of Health (DOH), Clean Water Branch, if any, as may apply to vessel operations in the State of Hawaii.

2. The company shall agree that it will not, at any time, discharge wastewater into the ocean, including but not limited to the coastal waters of the State of Hawaii, and that in the event of any discharge, the company shall

document and report said discharge to the Director, DOH, within twenty-four hours of discharge.

C. Vehicular Traffic

1. The company shall agree to complete traffic studies, including traffic counts, with the first studies to be furnished to the State Department of Transportation (DOT) by January 1, 2008, but furnishing such studies shall not be a condition precedent to commencing operations before January 1, 2008.

2. The company shall agree to implement a vehicle movement and management plan for each port of operation as may be directed by the DOT.

3. The company shall agree that the traffic studies shall be used to adjust vessel arrival and departure schedules as necessary to lessen the impact of ferry vehicular traffic on local traffic patterns in the immediate vicinity of each operating port (with any adjustments to vessel arrival and departure schedules subject to advance DOT approval).

4. The company shall agree to: (a) design its harbor facilities to, insofar as practicable, hold departing vehicles within the terminal area; (b) employ trained staff to manage traffic entering and exiting each port terminal facility; (c) permit vehicles to enter each port terminal facility a minimum of two hours prior to the departure of the vessel to reduce local traffic impacts; and (d) as required by DOT, retain and post security guards or off-duty police officers to direct traffic, control signals, and respond to unforeseen traffic problems during vehicle loading or unloading in ports of operation.

D. Public Safety and Security

1. The company shall agree that, prior to the commencement of operations, a Facility Security Plan (FSP), by operational port, and a Vessel Security Plan (VSP) shall have been submitted for approval to the United States Coast Guard, and if necessary for operation, approved by the United States Coast Guard.

2. The company shall agree to coordinate its operational plans as necessary with county fire and police departments.

E. Invasive Species

1. The company shall agree to conduct agricultural screenings of its passengers and visual inspections and agricultural screening of all vehicles, including visual inspection of engines, interiors, undercarriages, wheel wells, trunks, beds of pickup trucks, and trailered equipment and vehicles.

2. The company shall agree that vehicles that have not been inspected and screened will not be allowed to board, and that vehicles containing prohibited items will not be allowed to board.

3. The company shall agree that passengers will be notified in advance that all vehicles, camping, hiking, hunting, snorkeling, diving, fishing, and boating equipment (including boats and trailers) should be thoroughly washed with fresh water and be free of any debris.

4. The company shall agree that passengers will be notified in advance that all vehicles, including "off road" or four-wheel drive vehicles, including trucks, dirt bikes, and all-terrain vehicles, will be subject to screening and inspection, including for dirt or mud.

5. The company shall agree that it will not permit boarding of any vehicles that are excessively dirty, muddy, or have caked-on mud on a vehicle and/or its tires.

6. The company shall agree that it will allow living plants and propagative plant parts (e.g., roots and root stock) on the vessel only if accompanied by a valid DOA certificate of inspection, and that the company shall permit no other living plants on the vessel.

7. The company shall agree to permit DOA inspections of cut or harvested flowers, foliage, fruits, vegetables and/or other non-propagative plant parts.

8. The company shall agree to permit only the following animals on the vessel without a DOA certificate: Domestic cats, dogs, pigeons, and rabbits.

9. The company shall agree to permit domestic livestock and poultry, limited to domestic cattle, horses, donkeys, goats, sheep, chickens and roosters, on the vessel only if accompanied by a valid DOA certificate.

10. The company shall agree not to permit swine of any kind on the vessel, including but not limited to, pigs, pot-bellied pigs, hogs, boars, and sows.

11. The company shall agree to notify passengers in advance that valid hunting licenses are required by DLNR in the State of Hawaii, prior to hunting.

12. The company shall agree that transport of fishing nets of any kind is prohibited and to notify passengers that transport of fishing nets of any kind is prohibited.

13. The company shall agree that transport of rocks, soil, sand, dirt, or dead coral, except for soil or dirt in potted plants inspected and cleared for transport by the DOA, is prohibited, and to notify passengers that transport of such items is prohibited.

14. The company shall agree to provide boot scrubbers approved by DOA at each of its port terminal facilities.

15. The company shall agree to require passengers to declare, orally or in writing, all plants, fruits, seeds, and any other biological medium.

16. The company shall agree to confiscate any "pests for control or eradication purposes" and invasive species, and to work with the DOA on learning how to screen for and identify the same.

17. The company shall agree to fully cooperate in any risk assessment that may be performed by DOA, including but not limited to any Maritime Risk Assessment with USDA's Western Region and Center for Plant Health Science and Technology.

18. The company shall agree to fully cooperate with any monitoring or inspections by any state officials, employees, or contractors.

F. Cultural and Natural Resources

1. The company shall agree that transport of iwi or human bones is prohibited and to notify passengers that transport of iwi or human bones is prohibited.

2. The company shall agree that transport of opihi, lobster, or other crustaceans is prohibited and to notify passengers that transport of opihi, lobster, or other crustaceans is prohibited.

3. The company shall agree: (a) that live or dead fish or live coral, may only be transported with a valid commercial marine license issued by DLNR except that recreational fishers may transport fish subject to any limitations established by DLNR and, (b) to notify passengers that marine life, including live or dead fish or live coral, may only be transported with a valid commercial marine license issued by DLNR except that recreational fishers may transport fish subject to any limitations established by DLNR.

4. The company shall agree to provide to passengers information provided by the State of Hawaii and/or the counties concerning restrictions on the use of cultural and natural resources, including but not limited to hunting and fishing rules and camping permit requirements.

5. The company shall agree that transport of cut logs, cut trees, and tree limbs is prohibited, and to notify passengers that the transport of cut logs, cut trees, and tree limbs is prohibited.

6. The company shall agree to consider adding a cultural briefing on Hawaii's cultural and natural resources to its on-board programming and education.

G. OTHER

1. The company shall agree to consider whether to establish a special transport rate for agricultural products.

2. The company shall agree to fully cooperate with any risk assessment conducted by or authorized by the State of Hawaii Department of Transportation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Hawaii.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 4th day
of November, 2007.

LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

MARK J. BENNETT
Attorney General