

November 16, 2021

MEMO TO: Yuki Lei K. Sugimura, Chair
Infrastructure and Transportation Committee

F R O M: Laksmi Abraham, Legislative Analyst
Richard E. Mitchell, Legislative Attorney

SUBJECT: **FERAL ANIMAL MANAGEMENT ON MAUI** (IT-52)

As you requested, here is a summary of the Governor's Emergency Proclamation, dated November 9, 2021, related to axis deer management:

- The proclamation has a direct impact on the County's FY22 Feral Animal Management Grant program and other deer-management initiatives currently underway or contemplated within the County.
- The proclamation enables "county and state agencies to provide emergency relief and engage in emergency management functions to enable implementation of deer management strategies . . ."
- It suspends a variety of State laws "to the extent that the law impedes or tends to impede or be a detriment to the expeditious and efficient execution of . . . emergency functions . . . to implement deer management strategies . . ."
- It specifically suspends county ordinances, rules, permits, fees and more "to the extent that compliance results in any delays involved in security County permits . . ."
- It also suspends State laws and administrative rules related to indigenous wildlife, endangered and threatened wildlife, and wild birds, "to the extent that compliance results in any delays involved in implementation of axis deer management activities . . ."
- While the proclamation remains active, the County's Feral Animal Management Grant program, managed within the Department of Housing and Human Concerns, is directly implicated. The Department's deadline for receipt of grant applications was November 1, 2021. The Department's selection date for grantees is November 30, 2021.

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- Finally, to the extent the County is currently engaged in or contemplating any other deer management initiatives, those initiatives would similarly likely operate under fewer regulatory hurdles.
- The proclamation is effective through January 7, 2022, unless terminated or superseded by another proclamation.

If you have any other questions, or would like to discuss this further, please contact Laksmi Abraham at 808-342-4165, or Richard Mitchell at 808-270-7662.

it:ltr:052a01

Attachment

OFFICE OF THE GOVERNOR
STATE OF HAWAII

PROCLAMATION

By the authority vested in me by the Constitution and laws of the State of Hawai'i, in order to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, Hawai'i, including the County of Maui (Maui County), has suffered under drought conditions since March, 2019;

WHEREAS, rainfall, stream flow, and ground water levels in Maui County, specifically on the islands of Maui, Molokai, and Lanai, have been and continue to be significantly below normal; and

WHEREAS, current forecasts indicate that drought conditions are likely to persist or intensify for Maui County; and

WHEREAS, in March 2020, the Secretary of the U.S. Department of Agriculture designated Maui County as a primary natural disaster area due to drought conditions. Since that designation, drought conditions have not changed, so Maui County continues as a designated primary natural disaster area; and

WHEREAS, as a result of these conditions, I previously issued my January 27, 2021 Proclamation declaring an emergency, which emergency period has since ended; and

WHEREAS, despite ongoing efforts, axis deer have propagated to numbers that cannot currently be sustained by the environment in Maui County; and

WHEREAS, the axis deer population in Maui County has not been sufficiently reduced through hunting efforts alone; and

WHEREAS, the large number of axis deer in Maui County have devastated pasture forage and most vegetation already scarce due to drought conditions; and

WHEREAS, the devastation of vegetation has forced wildlife, in particular axis deer in Maui County, to migrate into agricultural and developed areas seeking food and water; and

WHEREAS, the increased numbers of axis deer foraging in urbanized areas and along roadways in Maui County have caused a number of traffic accidents that have resulted in injury and death to motorists; and

WHEREAS, the numbers and habitat patterns of axis deer on the island of Maui have driven the deer into the town of Kahului, where approximately 300-500 deer are foraging around the fence line of the Kahului Airport, some entering active runways, thereby potentially creating an unsafe condition for aircraft landing and taking off, and potentially resulting in loss of lives and millions of dollars in aircraft and property damage; and

WHEREAS, immediate measures to appreciably reduce and control axis deer populations in Maui County and to implement deer management strategies, including but not limited to, corralling of axis deer, culling of axis deer to sustainable levels, clearing vegetation along fence lines, and erecting and/or reinforcing or repairing fence lines to keep axis deer away from roadways, airports, and runways are needed to protect the health and welfare of the community; and

WHEREAS, the current threat to the health, safety, and welfare of the people of Maui County caused from the axis deer overpopulation constitutes an emergency under section 127A-14, Hawaii Revised Statutes (HRS), and warrants preemptive and protective actions; and

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine that an emergency or disaster contemplated by section 127A-14, HRS, has occurred in the County of Maui, State of Hawai'i, and do hereby authorize and invoke the following emergency provisions which are expressly invoked, if not already in effect upon this declaration of an emergency:

I. Invocation of Laws

Section 127A-12(b)(13), HRS, requiring each public utility, or any person owning, controlling, or operating a critical infrastructure, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding thereof, and provide for the protection and safeguarding of all critical infrastructure and key resources; provided that without prejudice to the generality of the foregoing two clauses, the

protecting or safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon terms and conditions as I may prescribe.

Section 127A-12(b)(16), HRS, directing all state agencies and officers to cooperate and extend their services, materials, and facilities as may be required to assist in emergency response efforts.

Section 127A-16, HRS, by activating the Major Disaster Fund.

II. **Deer Control**

Pursuant to sections 127A-12 and 127A-13, HRS, the county and state agencies are to provide emergency relief and engage in emergency management functions as defined in section 127A-2, HRS, to enable implementation of deer management strategies, including but not limited to, creating buffers and to erect, reinforce, or repair fence lines to keep the deer away from roadways, airports, and runways, taking action to immediately cull axis deer, and reducing the herds of axis deer to sustainable numbers, so as to provide protection and relief from damages, losses, and suffering caused by the emergency.

III. **Suspension of Laws**

The following specific provisions of law are suspended, as allowed by federal law, pursuant to sections 127A-12(b)(8) and 127A-13(a)(3), HRS, to the extent that the law impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel to the extent necessary for county and state agencies to implement deer management strategies contemplated herein:

Chapter 6E, HRS, **historic preservation**, to the extent that compliance requires additional time detrimental to the expeditious and efficient execution of emergency repairs or work.

Section 37-41, HRS, **appropriations to revert to state treasury; exceptions**, to the extent that appropriations lapse at the end of the fiscal year prior to completion of the emergency repairs or work.

Section 37-74(d), HRS, **program execution**, except for sub-sections 37-74(d)(2) and 37-74(d)(3), HRS, and any such transfers or changes considered to be authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements, to the extent that legislative authorization would likely delay appropriation transfers or changes between programs to provide necessary funding to complete the emergency repairs or work.

Section 40-66, HRS, **lapsing of appropriations**, to the extent that the timing of the procurement of the construction of the emergency permanent repairs may occur the fiscal year following the original emergency proclamation.

Chapter 46, HRS, **county organization and administration**, as any county ordinance, rule, regulation, law, or provision in any form applies to any county permitting, licensing, zoning, variance, processes, procedures, fees, or any other requirements that hinder, delay, or impede efforts to implement deer management strategies, including, but not limited to clearing vegetation from fence lines to create a buffer against the axis deer under this Proclamation, to the extent that compliance results in any delays involved in securing County permits. These would include but not be limited to chapter 20.08, Maui County Code, **soil erosion and sedimentation control**, chapter 12-302, Rules for the Molokai Planning Commission, **special management area rules**, and chapter 12-202, Rules of the Maui Planning Commission, **special management area rules**.

Chapter 89, HRS, **collective bargaining in public employment**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency work.

Chapter 89C, HRS, **public officers and employees excluded from collective bargaining**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency work.

Section 103-2, HRS, **general fund**, to the extent that compliance results in any additional delays.

Section 103-53, HRS, **contracts with the State or counties; tax clearances, assignments**, only to the extent necessary to waive the Internal Revenue Service tax clearance requirement.

Section 103-55, HRS, **wages, hours, and working conditions of employees of contractors performing services**, to the extent that compliance results in any additional delays.

Chapter 103D, HRS, **Hawaii public procurement code**, to the extent that compliance results in any additional delays involved in meeting procurement requirements for selecting contractors in a timely manner to respond to emergency situations or perform emergency work.

Chapter 104, HRS, **wages and hours of employees on public works**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency work.

Sections 105-1 to 105-10, HRS, **use of government vehicles, limitations**, to the extent that compliance with this chapter requires additional time detrimental to the expeditious and efficient execution of emergency work.

Section 127A-30, HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases**, for the reason that the automatic invocation of this provision during an emergency is not needed for this emergency.

Chapter 183D, HRS, **wildlife**, and chapter 13-124, Hawaii Administrative Rules (HAR), **indigenous wildlife, endangered and threatened wildlife and introduced wild birds**, to the extent that compliance results in any delays involved in implementation of axis deer management activities or requires additional time detrimental to the expeditious and efficient execution of emergency work.

Chapter 205A, Part II, HRS, **coastal zone management**, to the extent that compliance results in any additional delays involved with securing approvals from the counties or the Department of Land and Natural Resources for work within the special management area.

Chapter 343, HRS, **environmental impact statements**, and chapter 11-200.1, HAR, **environmental impact statement rules**, to the extent that compliance results in any additional delays involved with the environmental review process.

IV. Severability


If any provision of this Proclamation is rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted, and the remainder of this Proclamation and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

V. Enforcement

No provision of this Proclamation, or any rule or regulation hereunder, shall be construed as authorizing any private right of action to enforce any requirement of this Proclamation, or of any rule or regulation. Unless the Governor, Director of Emergency Management, or their designee issues an express order to a non-judicial public officer, no provision of this Proclamation, or any rule or regulation hereunder, shall be construed as imposing any ministerial duty upon any non-judicial public officer and shall not bind the officer to any specific course of action or planning in response to the emergency or interfere with the officer's authority to utilize his or her discretion.

I FURTHER DECLARE that the disaster emergency relief period shall commence immediately and continue through January 7, 2022, unless terminated or superseded by separate proclamation, whichever shall occur first.

Done in Honolulu, Hawai'i, this
9th day of November 2021.



Clare E. Connors
Attorney General
Acting Governor of Hawai'i