

OFFICE OF THE GOVERNOR
STATE OF HAWAII

**NINTH PROCLAMATION
RELATING TO AXIS DEER**

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, ANNE E. LOPEZ, Acting Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

WHEREAS, pursuant to Chapter 127A, Hawaii Revised Statutes (HRS), emergency powers are conferred on the Governor of the State of Hawai'i to respond to 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, on March 23, 2022, May 23, 2022, July 22, 2022, September 20, 2022, November 18, 2022, January 17, 2023, March 18, 2023, and May 17, 2023, Proclamations were issued declaring an emergency as a result of emergency conditions caused by the overpopulation of axis deer in the County of Maui; and

WHEREAS, according to data from the U.S. Department of Agriculture for the year 2022, Maui County continues to be designated as a primary natural disaster area due to drought conditions; and

WHEREAS, despite ongoing efforts, axis deer have propagated to approximately 60,000 or more, which 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 much of the vegetation that is already scarce due to persistent 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 persistent drought conditions have continued to exacerbate the

problems associated with the overpopulation of axis deer in Maui County; and

WHEREAS, in September 2022, the Hawaii Department of Agriculture opened an emergency loan program to assist farmers with the costs associated with the overpopulation of axis deer in Maui County, wherein the low-interest emergency loans will offer some relief for farmers and ranchers in managing their losses and assisting with the cost of fencing and other mitigation measures; and

WHEREAS, the ongoing drought underlying the axis deer crisis is anticipated to continue indefinitely, and farmers and ranchers will continue to suffer damages and economic losses due to the overpopulated axis deer encroaching and devastating their operations; and

WHEREAS, on May 23, 2023, the Hawaii Board of Agriculture reopened and modified the parameters of the Hawaii Department of Agriculture's Emergency Loan Program to provide continued relief due to the overpopulation of the axis deer in Maui County; and

WHEREAS, on May 23, 2023, the Board of Agriculture increased the maximum loan amount from One Hundred Fifty Thousand dollars to Three Hundred Fifty Thousand dollars; and

WHEREAS, as of May 23, 2023, seven loans have been approved totaling \$790,420.00; and

WHEREAS, farmers and ranchers continue to require sufficient time to accurately assess the impacts that are being and will continue to be incurred by their respective operations in order to identify and quantify the level of financial support they will need to sustain their business and prevent a major loss and closure of agricultural operations in Maui County; and

WHEREAS, the effects of the large numbers of axis deer migrating into agricultural and developed areas include the possible spread of disease in the environment; and

WHEREAS, the high axis deer population comingling with livestock is suspected to be behind the largest bovine tuberculosis (bTB) outbreak on Molokai in the past 50 years; and

WHEREAS, the Hawaii Department of Land and Natural Resources has tested

hundreds of animals, including axis deer, no positive results have been detected; and

WHEREAS, during the second week of January 2023, the Hawaii Department of Agriculture visited with ranchers on Molokai to discuss the bTB outbreak and will continue to communicate with ranchers and monitor the bTB outbreak; and

WHEREAS, although control measures over the past year have minimized the potential for spread to and between livestock, axis deer can serve as a reservoir for infection and reinfection of livestock operations on Molokai and therefore reducing axis deer numbers is crucial to preventing further outbreaks; and

WHEREAS, techniques have been implemented to prevent infected axis deer from close contact with livestock, such as increasing fence heights, however, such measures are costly to farmers and ranchers; and

WHEREAS, continued mitigation procedures are required to control the bTB outbreak and salvage the economic viability and production of livestock on Molokai, including the United States Department of Agriculture, Wildlife Services, will be conducting studies to determine the role and extent axis deer play in the current outbreak; 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, up until the 2022 Legislature, current staffing levels of the Maui Branch of the Department of Fish and Wildlife (DOFAW) have prevented staff from being primarily assigned to address the axis deer overpopulation; and

WHEREAS, three full-time equivalent positions have been approved pursuant to Act 248, 2022 Haw. Sess. Laws, namely, two Natural Resources Specialists and one Technician within the Maui Branch of the DOFAW; and

WHEREAS, these new positions are in the process of being filled and will be specifically assigned going forward to address the axis deer overpopulation so that existing management responsibilities within the Maui Branch of the DOFAW are not

jeopardized; and

WHEREAS, various axis deer mitigation measures have been, and continue to be implemented, including, but not limited to procuring fencing materials that are available nationwide but not locally, fence installation contracts, and other ungulate control equipment and devices for axis deer control projects; and

WHEREAS, due to lack of deer trap vendors nationwide, there have been delays in securing the services of deer trap vendors who are available to fabricate traps on the Island of Maui, but recently DOFAW has been in communication with a vendor that will be available in the near future to fabricate four deer traps on Maui and train local fabricators so that DOFAW can continue to fabricate them once the vendor leaves Maui; and

WHEREAS, spatially-explicit actions plans are being developed by DOFAW to assist landowners with tools and methods to identify appropriate harvest levels to discourage migration and increase of the axis deer population in the agricultural areas; and

WHEREAS, DOFAW have large, strategic deer fence construction projects in the works in West Maui; and

WHEREAS, DOFAW has a number of orders and purchases that are still in process and without the suspension of laws pursuant to this Proclamation, DOFAW will require several additional months of lead time to restart the procurement process; and

WHEREAS, DOFAW is currently utilizing the Eighth Emergency Proclamation, dated May 17, 2023, to extend general funding that was allocated for fiscal year 2023, but has indicated that it requires more time to encumber the funds as to not lose it; and

WHEREAS, without the suspension of laws pursuant to this Proclamation, the mitigation measures could not be implemented in an efficient and timely manner; 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, HRS, and warrants preemptive and protective actions;

NOW, THEREFORE, I, ANNE E. LOPEZ, Acting 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 planning and 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:

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

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 actions.

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 actions.

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**, chapter 12-402 Rules for the Lanai 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 actions.

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 actions.

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 (IRS) 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.

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 actions.

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 actions.

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 planning or activities or requires additional time detrimental to the expeditious and efficient execution of emergency actions.

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 342D, HRS, **water pollution**, and chapters 11-54, **water quality standards**, and 11-55, HAR, **water pollution control**, to the extent that compliance requires additional time detrimental to the expeditious and efficient execution of emergency actions.

Chapter 342H, HRS, **solid waste pollution**, and chapter 11-58.1, HAR, **solid waste management control**, to the extent that compliance requires additional time detrimental to the expeditious and efficient execution of emergency actions.

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

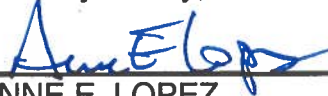
If any provision of this Proclamation is rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted, and the remainder of this Proclamation and the application of such provision to other persons or circumstances shall not be affected 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.

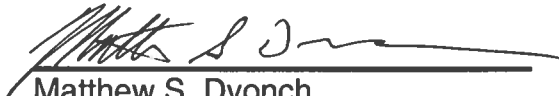
I FURTHER DECLARE that the disaster emergency relief period shall commence immediately and continue through September 13, 2023, unless terminated or superseded by separate proclamation, whichever shall occur first.

Done at the State Capitol, this
14th Day of July, 2023



ANNE E. LOPEZ,
Acting Governor of the State of Hawai'i

APPROVED:



Matthew S. Dvonch
*Acting Attorney General
State of Hawai'i*