

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

October 28, 2022

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO THE
CHAIRPERSON TO NEGOTIATE AND ENTER INTO A MEMORANDUM
OF UNDERSTANDING WITH THE DEPARTMENT OF HAWAIIAN
HOMELANDS FOR THE CONTROL OF FERAL UNGULATES AT
WAIOHULI, MAUI, TMK No. (2) 2-2-002:014, USING PUBLIC HUNTING
METHODS

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION OF THE
PROJECT FROM CHAPTER 343, HAWAII REVISED STATUTES

SUMMARY

Since their introduction to Maui in 1959, axis deer have expanded in range and numbers and now number more than 50,000 animals, significantly harming natural resources and economic interests. The growing deer population impacts watersheds, native ecosystems, farms, ranchlands, and residential and resort lands, causes erosion that damages coral reefs and marine ecosystems, and creates safety concerns due to potential collisions with vehicles on roadways and aircraft on runways. While fencing and ungulate control methods are effective at the spatial scale of management units, island-wide control of the greater population has remained elusive. However, a recent assessment of the population and methods currently in place and available for the control of axis deer on Maui, suggest cause for cautious optimism that the development and deployment of a spatially explicit, population control strategy could be effective in reducing numbers at the island-wide scale. The reason for this optimism is that some landowners and partners have significantly increased harvest levels on lands under their control and there are new tools and incentives being employed that appear to be increasingly effective. Through this planning and control strategy, it may be possible to establish a large network of spatial management units, document current harvest rates in those units, determine the desired target rate needed to achieve control, and help

landowners to achieve those target levels. The success of this strategy will depend largely on the effective application of control measures in sufficient management units to overcome population growth and begin a drawdown of the population – in effect, to transition enough units from sources to sinks. Central to the success of that effort is the land at Waiohuli, Maui, where a very large population of axis deer continues to expand with little or no control in place. The purpose of this project is to establish and implement control measures on those lands.

BACKGROUND

Axis deer (*Axis axis*) are not native to the Hawaiian Islands and were introduced to Maui in 1959. In Hawaii, axis deer do not have any natural predators to help keep the population in check. As a result, their population has increased in number and range due to very high annual population growth, estimated to be 20-30%. The highest densities on Maui are found in the upcountry areas but the population has expanded east to Hana and across the central valley, well into west Maui. The current deer population on Maui is over 50,000 and will continue to grow and expand into new areas unless additional measures are established to control the population (figure 1).

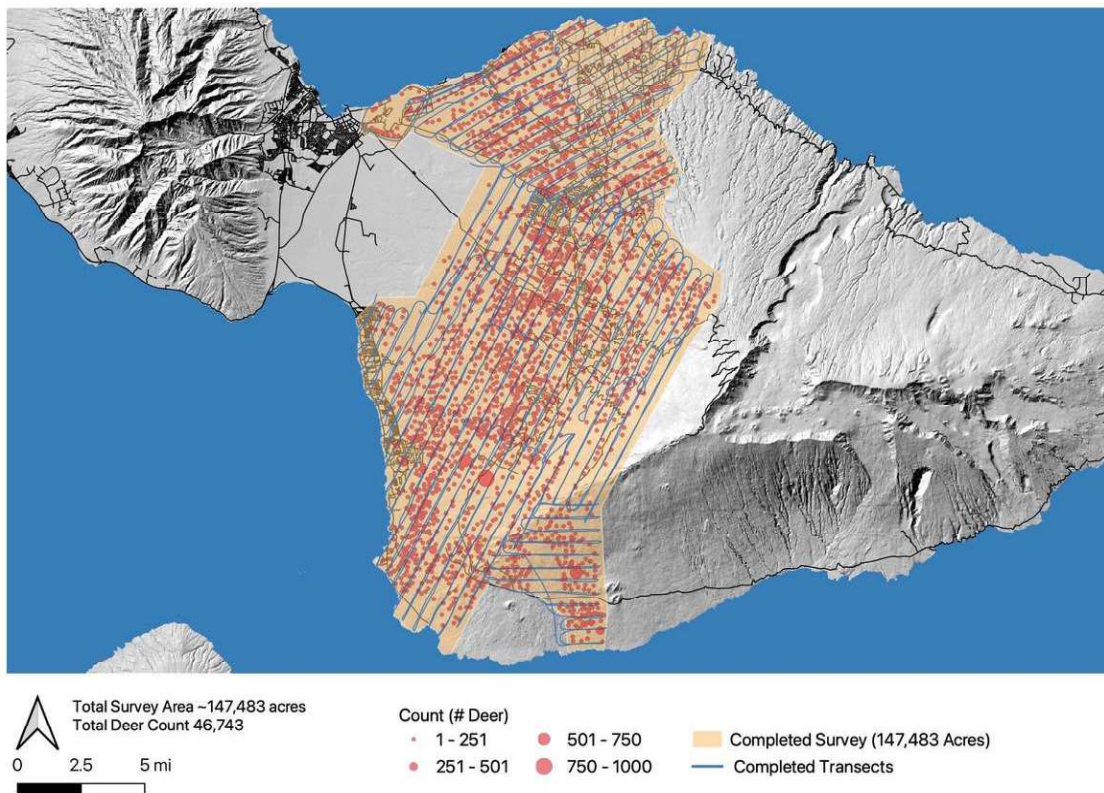


Figure 1. Results of a survey of the core population area of axis deer on Maui. The total number of deer counted was 46,743. Additional deer numbers in the un-surveyed areas are expected to put the total island-wide deer population at >50,000. Survey and map courtesy of the County of Maui and Jake Muise.

The large deer population in Maui is a threat to native ecosystems, coral reefs, agricultural interests, and public safety as the population expand into roadways and more urbanized areas. Most native plants are highly vulnerable to impacts from axis deer because they evolved in the absence of browsing and grazing mammals and lack natural defenses that would otherwise typically evolve with those pressures over evolutionary time. The impacts of deer on native ecosystems are profound, resulting in ecosystem modification, rapid destruction of vegetation communities, and loss of soil retention capacity. Deer also impact pastures and farms by consuming forage and crops, resulting in lost revenues and erosion of soils, which are transported downstream during rains. Sedimentation fouls marine waters, killing coral reefs and impacting fisheries and the people and businesses that depend on those resources. Deer are also a roadway hazard that cause vehicle strikes and are a threat to aviation safety when they occur near airport runways.

The Division of Forestry and Wildlife is responsible for the management of wildlife, watersheds, endangered species, and native ecosystems on lands under its jurisdiction, including Forest Reserves, Natural Area Reserves, and Wildlife Sanctuaries. Control of introduced species such as axis deer and other feral ungulates is a priority objective of management efforts because those threats are so detrimental and widespread. The Division collaborates broadly with agency and landowner partners to carry out its mission on priority lands outside Division reserves. That work has included collaborative efforts over the last 20 years focused on addressing issues related to the expanding axis deer population on Maui, including the development of the Maui Axis Deer Management Plan in 2012 (Exhibit A) and participation in an interagency task force led by the Maui County Council.

The task force is currently engaged in the development of an action plan that builds on previous efforts and is expected to improve the effectiveness of population control efforts on Maui. While previous efforts to control the island-wide population have met with limited success, there is cause for measured optimism that the current action plan in development may result in increased success because of recent developments. Those developments include 1) completion of an improved deer population survey (figure 1), 2) increased harvest, participation, and commitment from large landowners with high deer population numbers, and 3) development of new incentives, tools, and methods that are increasing harvest rates. The latter include increased access to private lands by public hunters, increased rates of harvest under wildlife control permits, state and county funding, and employment of professional contract services that can offset costs through the sale of the meat harvested. As a result of those developments, DOFAW's axis deer harvest records indicate that approximately 10,000 deer were harvested on Maui in 2021. While this level of harvest does not appear to be sufficient to reverse the increasing trend of the population, it does suggest that expanded application of measures to increase harvest levels may be sufficient to gain the desired level of population control. Toward that aim, the task force is incorporating these components into the development of a spatially explicit action plan that identifies the harvest levels needed to draw the population down based on population distribution, abundance, and growth rates, current methods and harvest levels employed, and

recommendations for approaches that may be employed to achieve island-wide harvest levels. The action plan will enable managers to work with individual landowners to identify specific harvest targets for their lands and assist and incentivize them to achieve those harvest levels by connecting them with applicable tools and methods.

Among key landowners whose upcountry lands harbor exceptionally high numbers of axis deer are the Department of Hawaiian Homelands (DHHL), whose lands at Waiohuli (TMK (2) 2-2-002:014)) contain some of the highest densities on Maui. Control of deer on those lands is an important component of the action plan because the lands are large, being approximately 4,833 acres, central to the overall deer population, and currently lacking any meaningful control efforts.



Figure 2. Location of the DHHL lands at Waiohuli, TMK (2) 2-2-002:014, shown in red with blue outline.

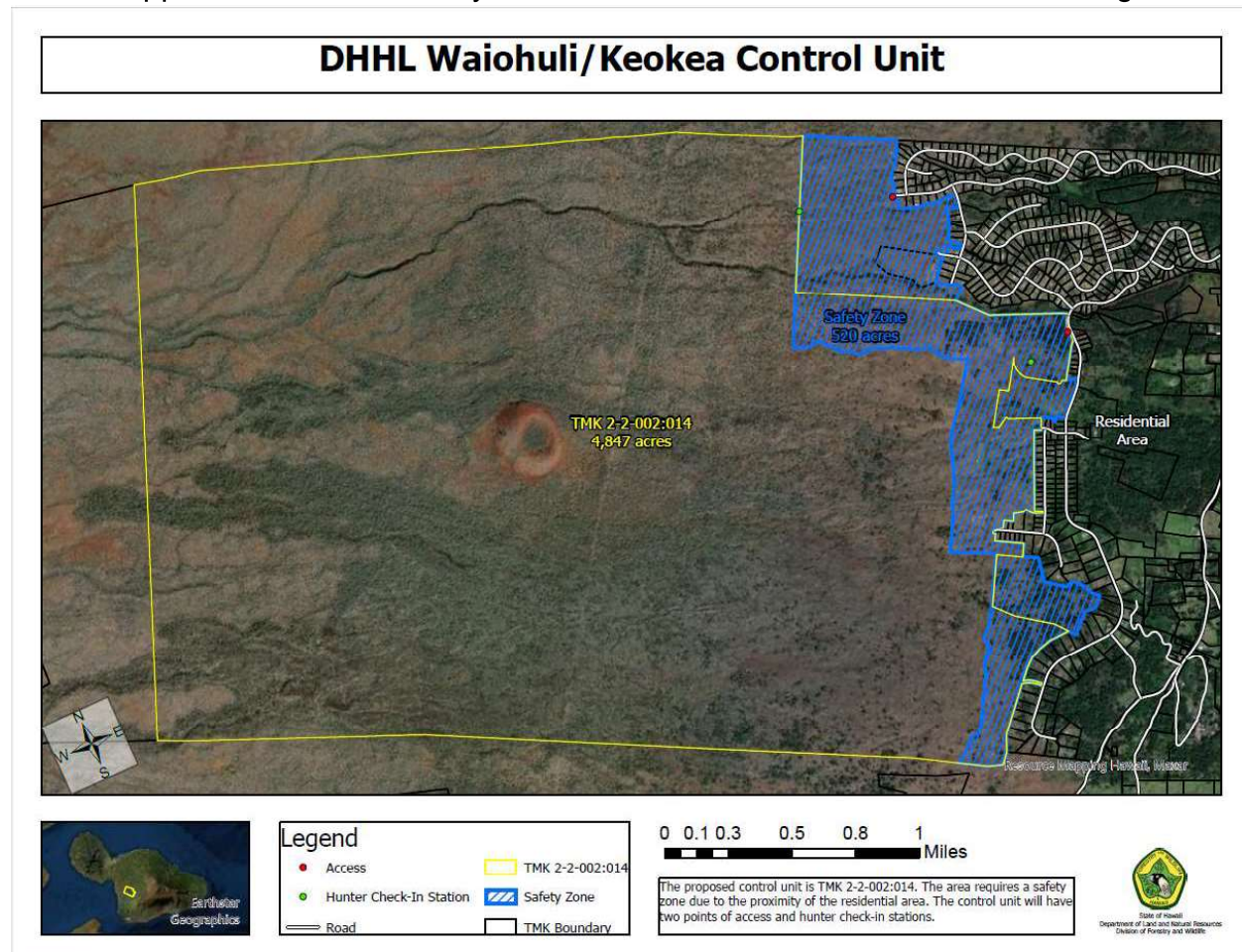
From a population dynamics perspective, the DHHL lands at Waiohuli are currently a population source for adjacent areas. Control of deer on those lands is a key component of the overall effort to reduce the island-wide population. To achieve that objective, the Department contacted DHHL with a request to collaborate to develop a right of entry and agreement to establish axis deer control efforts on the lands at Waiohuli. Pursuant to that request, the Hawaiian Homes Commission on August 15, 2022, approved the issuance of a Right-of-Entry to DLNR (Exhibit B) and authorized the Chair of the Hawaiian Homes Commission to negotiate and enter into a Memorandum of Understanding with the department to implement the control efforts.

The Division of Forestry and Wildlife has extensive experience and expertise in the control of feral ungulates and employs a range of tools and methods for that work. The selection of approaches and methods employed is based on an assessment of the control objectives, type of habitat, location, terrain, canopy cover, target species, and other considerations to select those methods that will ensure safe, feasible, and effective operations. A detailed description of methods and approaches is provided in DOFAW Technical Report 07-01 (Exhibit C). In general, the Division seeks to employ public hunting methods for the control of feral ungulates where it is safe, feasible, and effective to do and to employ staff or other control methods after determining that public hunting will not be sufficient to achieve the target control numbers. Based on an assessment of the control objectives for the subject DHHL lands, the Division believes that managed deployment of public hunters to that parcel will be effective in reducing the axis deer population on those lands and maintaining sustained population control, consistent with the objectives of the island-wide action plan. This submittal requests approval to enter a Memorandum of Understanding with DHHL to implement those objectives (Exhibit D).

PROJECT DESCRIPTION

The Division proposes to implement the purposes of the MOU through the issuance of wildlife control permits to qualified applicants, pursuant to §§13-124-7 and 13-123-2.2, Hawaii Administrative Rules, to participate in efforts to control axis deer on the subject property. Each wildlife control participant will receive a permit containing terms and instructions, including but not limited to the designation of closed areas and safety zones, authorized control units, days, times, means of taking, authorized vehicles, and procedures for checking in and out of the wildlife control unit. The Division will establish a reservation system to manage the control operations. Reservations will be booked on a first come first serve basis and will enable staff to limit the number of hunters allowed each day to safe and appropriate numbers. All activities will be conducted in compliance with the Right-of-Entry issued by DHHL to DLNR, consistent with the terms of the MOU executed between those departments.

The subject parcel comprises approximately 4,833 acres of land within the ahupua'a of Waiohuli and Keokea, extending from 650 to 2,400 feet in elevation (figure 2). Rainfall averages 15-25 inches per year, with a habitat that is characterized primarily by alien dry forest and grassland. In addition, certain portions of the parcel in the southwest corner support remnant native dry forest habitat that is fenced and under management



for native habitat restoration. Access to the parcel for the purposes of this project will be through designated roads from Kula Highway. A safety zone will be established throughout the upper portions of the parcel to ensure that all control activities are conducted well within the lower open range sections of the parcel. All hunters will be required to check in and out each day. Staff and enforcement officers will be available to check hunters in and out and patrol the area.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

Governor Ige has issued a fourth proclamation relating to axis deer, directing state and county agencies to take immediate action to cull axis deer and reduce the population to sustainable numbers, and suspending Chapter 343, HRS, in support of that effort. In addition, in accordance with the requirements of Chapter 343, HRS, Hawaii Administrative Rule Section 11-200-8(6), the Exemption List for the Division of Forestry and Wildlife, Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on November 10, 2020, the subject project is exempt from the preparation of an environmental assessment pursuant to the following exemption classes:

General Exemption Type 1

Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

PART 2

1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that is necessary to protect public health, safety, welfare, or public trust resources.
2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.

General Exemption Type 4

Minor alterations in the conditions of the land, water, or vegetation.

PART 2

1. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources.

RECOMMENDATION

That the Board

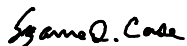
1. Authorize the Chairperson to negotiate and enter a Right-of Entry and a Memorandum of Understanding with the Department of Hawaiian Homelands for the implementation of wildlife control operations for the control of axis deer in DHHL lands at Waiohuli (TMK No. (2) 2-2-002:014), in compliance with the Right-of-Entry issued by DHHL to DLNR for that purpose, subject to review and approval by the Department of the Attorney General.
2. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL



Suzanne Case, Chairperson
Board of Land and Natural Resources

**STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME LANDS**

RIGHT-OF-ENTRY NO. 717

This Right-of-Entry ("ROE") No. 717 is dated and effective as of this ____ day of _____, 2022, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawai'i, 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter as "PERMITTOR," and State of Hawaii, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawai'i 96813, hereinafter the "PERMITTEE."

PERMITTOR hereby grants to PERMITTEE a ROE upon that certain parcel of Hawaiian home lands in Waiohuli, Island of Maui, Hawai'i, for the non-exclusive, use of approximately 4,847 acres of Hawaiian Home Lands, identified as Tax Map Key No. (2) 2-2-002:014 and designated safety zones and access which are hereinafter referred to collectively as the "Premises," as further described in the site plan rendering attached hereto as Exhibit "A", subject to the following conditions:

1. TERM. The term of the ROE shall be month-to-month up to twelve (12) months, commencing upon execution of the ROE document. This ROE may be terminated by PERMITTOR or PERMITTEE at PERMITTOR's and PERMITTEE's sole discretion for any reason whatsoever, at any time during the twelve (12) month period, upon thirty (30) days advance notice in writing to either party;
2. PERMITTED USE. The Premises shall be used for the purpose of axis deer population control activities, as indicated in this ROE and further described in the attached hunting control Memorandum of Understanding (MOU) through which PERMITTOR and PERMITTEE shall conduct the described hunting control activities, which is attached as Exhibit "B". No other uses or sub-tenancy shall be permitted without the express written approval of PERMITTOR. PERMITTEE'S use shall comply with all applicable governmental laws, regulations, rules and permitting requirements, pertaining to such use. No member of the public or DHHL beneficiary entering the Premises under the authority of this ROE and the MOU to conduct control activities shall be permitted any

other use of the Premises aside from those described in the MOU;

3. FEE. The fee for the use of this ROE shall be gratis and the standard nonrefundable processing and documentation fee of \$175.00 shall be waived;
4. CONSTRUCTION AND MAINTENANCE. During the period of the ROE, PERMITTEE shall keep the Premises and all improvements thereon in a strictly clean, sanitary, and orderly condition, and shall not make, permit, nor suffer any waste, spoil, nuisance, nor any unlawful, improper, or offensive use of the Premises. PERMITTEE shall comply with all rules, regulations, ordinances and laws of the State of Hawai'i and any other municipal and federal government authority applicable to the Premises and the improvements thereon;
5. RIGHT TO ENTER. PERMITTEE shall allow PERMITTOR, and the agents and representatives thereof, at all reasonable times, free access to the Premises for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, or for the performance of any public or official duties. In the exercise of such rights, PERMITTOR and government officials shall not interfere unreasonably with the use and enjoyment of the Premises by PERMITTEE and any entrants to the Premises if legally admitted in accordance with the MOU;
6. NO TRANSFER, MORTGAGE, AND SUBLEASE. This ROE shall be non-transferable, and PERMITTEE may not in any manner transfer to, mortgage, pledge, sublease, sublet, or otherwise hold or agree so to do, for the benefit of any other person or persons or organization of any kind, its interest in this ROE, the Premises and the improvements now or hereafter erected thereon;
7. EXPIRATION. Upon the expiration of the ROE, or its sooner termination as herein provided, PERMITTEE shall peaceably and quietly leave and surrender and deliver up to PERMITTOR possession of the Premises. This includes the clean-up and removal of all tools, equipment, improvements brought or placed upon the Premises, and other property belonging to PERMITTEE during the term of this ROE, if any, but shall not apply in regard to axis deer carcasses or personalty of removal and control participants or entrants unless expressly indicated in the MOU or by PERMITTEE;

8. TERMINATION/ABANDONMENT. Upon termination or abandonment of the specified purposes for which this ROE is granted, all interests granted by this ROE shall revert to PERMITTOR;
9. PREMISES. The term "Premises", when it appears herein, includes and shall be deemed to include the lands described above and all improvements within the ROE whenever and wherever erected or placed thereon, if any;
10. SELF-INSURANCE. The State of Hawai'i, as a sovereignty, is self-insured and therefore insurance, including but not limited to, public liability, property damage, and fire, is not required;
11. NON-DISCRIMINATION. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or HIV (human immunodeficiency virus) infection.
12. PERMITTEE'S RESPONSIBILITIES. The PERMITTEE shall be responsible for injury caused by the PERMITTEE'S officers and employees in the course and scope of their employment to the extent that the PERMITTEE'S liability for such damage or injury has been determined by a court or otherwise agreed to by the PERMITTEE. The PERMITTEE shall pay for such damage and injury to the extent permitted by law provided that an appropriation is enacted and funds have been encumbered and released for the purpose;
13. PERMITTOR'S RESPONSIBILITIES. The PERMITTOR shall be responsible for injury caused by the PERMITTOR'S officers and employees in the course and scope of their employment to the extent that the PERMITTOR'S liability for such damage or injury has been determined by a court or otherwise agreed to by the PERMITTOR. The PERMITTOR shall pay for such damage and injury to the extent permitted by law provided that an appropriation is enacted and funds have been encumbered and released for the purpose;
14. HAZARDOUS MATERIAL. PERMITTEE, to the best of its ability, shall not cause or permit the escape, disposal, or release of any hazardous materials. PERMITTEE shall not allow the storage or use of such materials in any manner not

sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be bought onto the premises any such materials except to use in the ordinary course of PERMITTEE'S business, and then only after written notice is given to the PERMITTOR of the identity of such materials and upon PERMITTOR'S consent, which consent may be withheld at the PERMITTOR'S sole and absolute discretion.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment;

Furthermore, deer carcasses shall not be considered as hazardous materials.

15. PERMITTEE'S FINANCIAL OBLIGATION AND COMMITMENT. PERMITTEE'S financial obligation and commitment to make payments or reimbursements of any kind under this ROE shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment or reimbursement

15. SPECIAL CONDITIONS.

- A. PERMITTEE shall conduct activities to control axis deer;
- B. PERMITTEE acknowledges that PERMITTOR has not made and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises or their suitability for control activities of axis deer. PERMITTEE accepts that entry upon the lands is with full assumption of all risks and consequences thereof;

- C. PERMITTEE acknowledges and agrees that axis deer control activities will not commence until after the development and implementation of the axis deer removal plan designed by PERMITTOR and respective approving authorities;
- D. Entry under this ROE is limited to PERMITTEE's employees, partners, agents, contractors, and subcontractors solely for conducting the purpose stated in the attached MOU and herein. All employees, contractors, and other parties who are authorized by PERMITTEE must be identified in writing to PERMITTOR prior to access to the Premises;
- E. PERMITTEE shall exercise due care and diligence to prevent injury to persons and damage to property belonging to the PERMITTOR;
- F. All archaeological/cultural sites noted on the Premises shall be respected, protected, and preserved; and
- G. This ROE is subject to other terms and conditions that may be deemed prudent by the Chairman of the Hawaiian Homes Commission and approved by the PERMITTEE.
16. SEVERABILITY. Whenever possible, each provision of the ROE shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the ROE should be prohibited or invalidated under applicable law or for any other reason, such provision shall not invalidate any other portion of the ROE;
17. SINGULAR/PLURAL. The singular and plural depend on their appropriate use;
18. ENTIRE AGREEMENT. This ROE, exhibits, and any agreed amendments thereto, constitute the entire agreement of the parties and all covenants, promises, representations, and agreements existing are contained herein, and shall be binding upon, apply, and inure to the benefit of the successors of PERMITTEE and PERMITTOR;
19. REPRESENTATIONS. PERMITTEE agrees that it has executed this ROE as a result of its own inspection of the

Premises and the vicinity in and around the Premises and not as a result of any representation made by PERMITTOR or its employees or agents, as to quantity, quality, value, or accessibility to gorse within the Premises;

20. MISCELLANEOUS.

- A. CONSENT. Whenever under the terms of this Agreement the consent or approval of either party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the party receiving any request or consent or approval shall fail to act upon such request within thirty (30) calendar days after receipt of written request therefor, such consent or approval shall be presumed to have been given;
- B. BIND AND INURE. This ROE shall be binding upon and inure to the benefit of PERMITTOR and PERMITTEE and their respective representatives, successors, and successors-in-trust;
- C. APPLICABLE LAW, SEVERABILITY. This ROE shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this ROE is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected;
- D. PARAGRAPH HEADINGS. The headings of paragraphs in this ROE are inserted only for convenience and shall in no way define, describe, or limit the scope or intent or any provision of this ROE;
- E. INCORPORATION OF AGREEMENTS. This ROE incorporates that certain Memorandum of Understanding by and between DHH and DLNR for Cooperative Axis Deer Control Efforts at Hawaiian Home Lands in Waiohohi, Island of Maui, State of Hawai'i entered into on _____, 2022, and supersedes all other prior oral or written letters, agreements, or understandings relating to the subject matter hereof. This ROE may not be modified or amended, not any of the provisions hereof waived, except by an instrument in writing signed by the parties hereto;

21. MODIFICATIONS OF ROE. Any modification, alteration, amendment, or change, or extension of any term,

provision, or condition of this ROE shall be made by written amendment to this ROE signed by PERMITTEE and PERMITTOR.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers as of the day and year first above written, and the PERMITTEE has caused the seal of the Department of Land and Natural Resources to be hereunto affixed.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
August 15, 2022

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

By _____
WILLIAM J. AILĀ, JR. Chairman
Hawaiian Homes Commission

PERMITTOR

APPROVED AS TO FORM:

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES

Deputy Attorney General
State of Hawaii

By _____
SUZANNE D. CASE
Chairperson

PERMITTEE

Approved by the Board of
Land and Natural Resources
at its meeting held on
_____.

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, ____, before me appeared WILLIAM J. AILĀ, JR., to me personally known, who, being by me duly sworn, did say that he is the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ or Undated at time of notarization

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

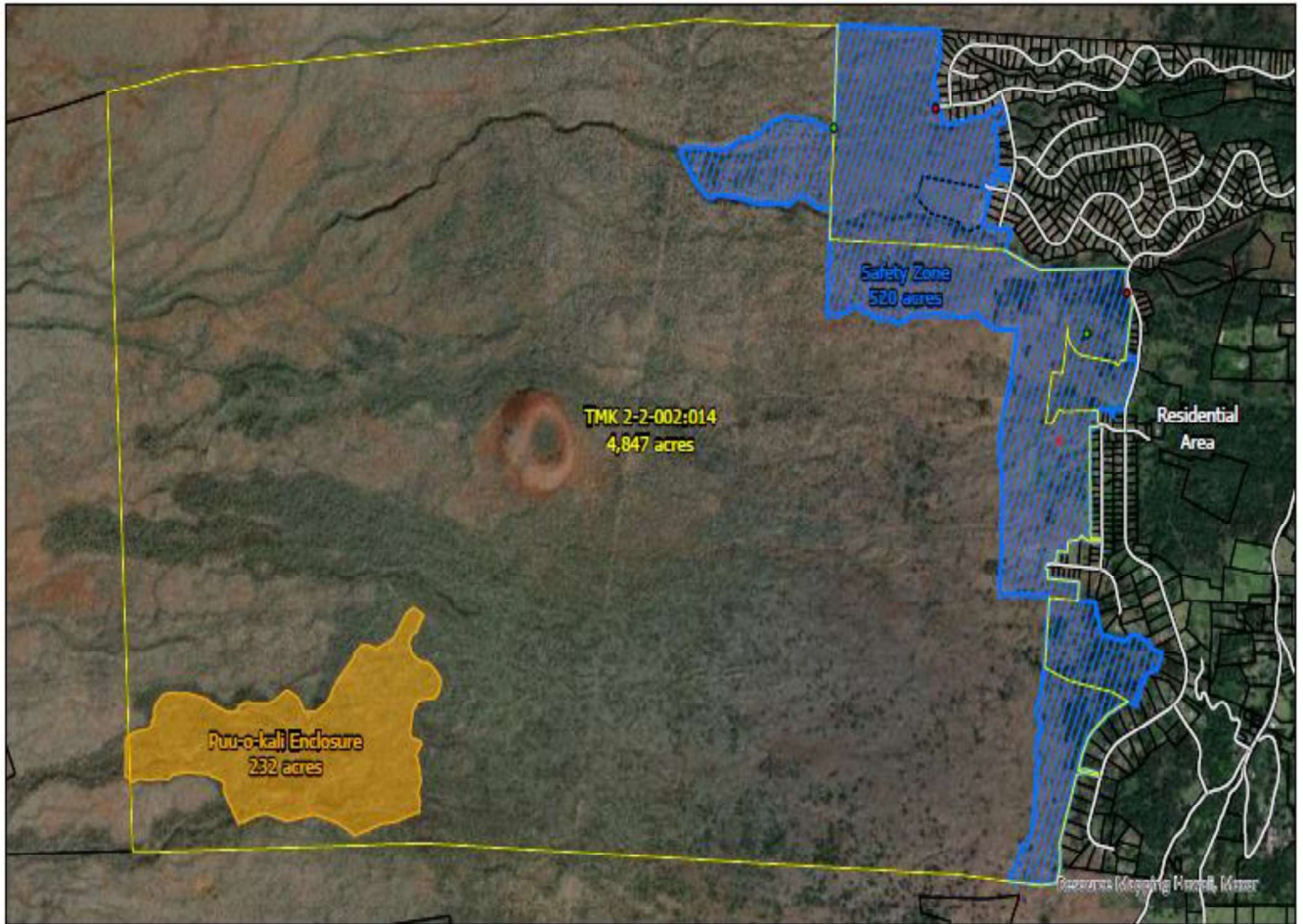
Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

Exhibit "A". Site Plan of the Waiohuli Deer Control Project

DHHL Waiohuli/Keokea Control Unit



Legend	
● Access	 Safety Zone
● Hunter Check-in Station	 TMK Boundary
 Road	 Enclosure
 TMK 2-2-002:014	



The proposed control unit is TMK 2-2-002:014. The area requires a safety zone due to the proximity of the residential area. The control unit will have two points of access and hunter check-in stations.

