

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI 96813**

August 26, 2011

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

Land Board Members:

SUBJECT: APPROVAL OF A RIGHT-OF-ENTRY PERMIT FOR THE DIVISION OF FORESTRY AND WILDLIFE TO ENTER DEPARTMENT OF HAWAIIAN HOME LANDS PROPERTY IN KAU, ISLAND OF HAWAII, TO CONDUCT SURVEYS AND REMOVE AXIS DEER

The Department of Land and Natural Resources (Department) has requested a Right-of-Entry (ROE) permit from the Department of Hawaiian Home Lands to allow for the Division of Forestry and Wildlife (DOFAW) to conduct surveys and remove any Axis deer that may have been introduced to Hawaiian Home Lands property on the Island of Hawaii. The Hawaiian Homes Commission approved the ROE (attachment) at its meeting on May 26, 2011. The Attorney General's Office has advised that Land Board approval is also needed to execute the ROE.

BACKGROUND:

DOFAW Big Island office has received multiple reports of deer sightings in recent months and now has obtained credible evidence confirming those reports. The Department and our natural resource partners are now expanding the survey of areas where deer have been reported, and are developing a response and removal plan to prevent the establishment of the Axis deer on Hawaii. There is now a confirmed sighting of axis deer on the Big Island and we are following up on all reports. The Department considers this a serious problem with far-reaching economic and environmental impacts to the agriculture industry and native ecosystems on the island. Strong, swift actions is needed to protect this island from the introduction of a damaging large animal that could forever change the environmental character of the Big Island. Axis deer are a major threat to destroy crops, possibly introduce new diseases and damage our native forests.

Axis deer have caused extensive problems for agriculture in Maui County. Deer occur where they cannot be safely or easily hunted or controlled. On Maui, deer have moved into ranches,

farmed and urban areas in large herds, resulting in millions of dollars in damages to farmers and other land owners across that island and an increased risk of deer-vehicle collisions.

In the 1960s and 1970s DLNR decided not to introduce deer to the Big Island, because of the expressed concerns of farmers, ranchers and other members of the public. DLNR's experience -- as current management challenges on Lana'i, Maui and Moloka'i have demonstrated -- is that was the right decision. DLNR has the mission to preserve and protect our natural resources, paramount of which are our watersheds and native ecosystems. We will need to take quick and effective action to prevent costly and destructive impacts on the Big Island that will last for generations, perhaps forever. The access to DHHL lands is critical to be able to effectively respond and eradicate this introduced animal.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Approve the Right-of-Entry Permit from the Department of Hawaiian Home Lands onto DHHL property for the purposes of surveying and eradicating axis deer; and
2. Authorize the Division of Forestry and Wildlife Administrator to sign the Right of Entry Permit on behalf of the Board, and authorize the Administrator to extend the term of the ROE and revise the terms of the ROE as the Administrator deems necessary, subject to review and approval by the Department of the Attorney General.

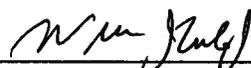
Respectfully submitted,


PAUL J. CONRY
Administrator

Attachments:

Right-of-Entry Permit From the Department of Hawaiian Home Lands

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY PERMIT NO. 436
(INTERIM, USE)

This Right-of-Entry Permit No. 436 dated this _____ day of _____, 20____, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii, 96805 hereinafter as "PERMITTOR", and DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE, whose address is 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813, hereinafter the "PERMITTEE".

PERMITTOR hereby grants to PERMITTEE a Right-of-Entry to traverse upon those certain parcels of Hawaiian home lands situated in Kamao'a-Pu'ueo, Ka'u, island of Hawaii, containing a land area of approximately 10,972 acres, more or less, which is further identified by Tax Map Key Nos. (3)9.3.001:002, :003, :010, :011, :012 and :013, delineated by the gray-shade on the map attached hereto as Exhibit "A" (premises), for purposes of surveying and eradicating Axis deer.

NOW THEREFORE, this Right-of-Entry is granted subject to the following conditions:

1. TERM. The term of this ROE shall be for one (1) year, commencing retroactively as of June 1, 2011 and expiring on May 31, 2012. This Right-of-Entry may be cancelled by PERMITTOR upon thirty (30) days advance notice in writing to PERMITTEE at its sole discretion and for any reason whatsoever.
2. PERMITTED USE. The only purpose for which the premises shall be used is for surveying and eradicating Axis deer. No other uses shall be permitted without the express consent and written approval of PERMITTOR. PERMITTEE'S use shall comply with all applicable governmental laws, regulations, rules, and permitting requirements, pertaining to such use.
3. FEE. The fee for the term of this Right-of-Entry shall be gratis. Further, the standard non-refundable processing (\$100.00) and documentation (\$75.00) fee in the amount of \$175.00 is waived.

4. CONSTRUCTION AND MAINTENANCE. PERMITTEE shall not undertake the construction of any buildings or structures of any kind on the premises. During the period of the Right-of-Entry, PERMITTEE shall keep the premises and all improvements thereon in a strictly clean and sanitary and orderly condition, and shall not make, permit nor suffer any waste, strip, spoil, nuisance, nor any unlawful, improper or offensive use of the premises. PERMITTEE shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or Federal Government authority applicable to the premises and improvements thereon.

5. RIGHT TO ENTER. PERMITTEE shall allow PERMITTOR, State of Hawaii, Department of Hawaiian Home Lands, the agents and representatives thereof, at all reasonable times, free access to the premises for the purpose of examining the same and/or 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 PERMITTEE and PERMITTEE'S use of the Right-of-Entry premises.

6. BREACH. It is expressly agreed that this Right-of-Entry is granted upon the continuing condition that if PERMITTEE shall, thirty (30) days after demand, fail to observe or substantially perform any of the covenants and the agreement herein contained and on its part to be observed or performed, and such failure of substantial compliance shall continue for thirty (30) days after mailing of notice of such failure by Certified Mail to the last known address of PERMITTEE, or if PERMITTEE shall file any debt or proceedings, or take or have taken against it for good cause any proceeding of any kind or character whatsoever under any provisions of the Federal Bankruptcy Act seeking, including but not limited to, any readjustment, arrangement, postponement, composition or reduction of PERMITTOR'S debts, liabilities or obligations, or shall abandon said premises, then and in any such event PERMITTOR may at its option cancel this Right-of-Entry and thereupon take immediate possession of said premises wherefrom without prejudice to any remedy or right of action which PERMITTOR may have.

7. NO TRANSFER, MORTGAGE, AND SUBLEASE. This Right-of-Entry 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 Right-

of-Entry, the premises and the improvements now or hereafter erected thereon.

8. EXPIRATION. Upon the expiration of the Right-of-Entry, 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 property belonging to PERMITTEE.

9. TERMINATION/ABANDONMENT. Upon termination or abandonment of the specified purposes for which this Right-of-Entry is granted, all interests granted by this Right-of-entry and the improvement constructed by PERMITTEE on the premises shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE'S control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.

10. PREMISES. The term "premises", when it appears herein, includes and shall be deemed to include the lands described above and all improvements whenever and wherever erected or placed thereon.

11. SPECIAL CONDITIONS.

A. This document shall incorporate all the terms and conditions as presented and amended under Agenda Item No. D-3 which was approved by the Hawaiian Homes Commission at its regular monthly meeting held on May 26, 2011, attached hereto as Exhibit "B". The amendment as noted, allows PERMITTEE to use all terrain vehicles (ATVs) on and over established roads of the subject parcels as identified and referenced above only. In addition, Commissioner, L. DeMate requested that any hunting be coordinated with local hunting groups to ensure meat is not wasted.

B. The Right-of Entry shall be subject to the review and approval of the Department of the Attorney General.

C. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission. _____

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this Right-of-Entry permit to be executed by their duly authorized officers/individuals as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
May 26, 2011

APPROVED AS TO FORM:



Deputy Attorney General

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Albert "Alapaki" Nahale-a,
Chairman
Hawaiian Homes Commission

PERMITTOR

State of Hawaii
DEPARTMENT OF LAND AND NATURAL
RESOURCES, DIVISION OF FORESTRY
AND WILDLIFE

APPROVED AS TO FORM:

Deputy Attorney General

By _____
Paul Conry, Administrator
Division of Forestry and Wildlife

PERMITTEE

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

On this _____ day of _____, 20____,
before me appeared _____, to me personally known,
who, being by me duly sworn, did say that he is the
_____ and
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
Print Name _____
My commission expires: _____

| | |
|-----------------------------|-------------------|
| Document Date: _____ | # of Pages: _____ |
| Notary Name: _____ | Circuit _____ |
| Doc. Description: _____ | |
| _____ Notary Signature | |
| NOTARY CERTIFICATION | |

- 3) Authorize the Chairman to negotiate and set forth other terms and conditions that may be deemed appropriate and necessary.

MOTION/ACTION

Moved by Commissioner I. Aiu seconded by Commissioner I. Lee Loy. Motion carried unanimously.

DISCUSSION

Chairman Nahale-a re-emphasized Revocable Permits (RP) are month-to-month leases and steps need to be taken to continue to reissue these permits for the next twelve months. A status report is being prepared on all of the land dispositions described under Revocable Permits (RP's), General Leases (GL's) and General Licenses.

ITEM NO: D-2

SUBJECT: Issuance of Right-of-Entry Permit, City and County of Honolulu,
Department of Design and Construction, Papakolea, Island of O'ahu

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner D. Chang. Motion carried unanimously.

ITEM NO: D-3

SUBJECT: Issuance of Right-of-Entry Permit, State Department of Land and Natural
Resources, Ka'u, Island of Hawai'i

RECOMMENDATION

To authorize the issuance of a permit to Department of Land and Natural Resources - Division of Forestry and Wildlife (DLNR - DOFAW) to enter Hawaiian home lands in Ka'u. The purpose of the Right-of-Entry (ROE) shall be for surveying and eradication of Axis deer subject to the conditions listed.

MOTION

Moved by Commissioner T. Morikawa, seconded by Commissioner L. DaMate.

DISCUSSION

Mr. Paul Conroy, DOFAW Administrator, expressed appreciation to the Commission in granting access to DHHL lands in Ka'u to locate and eradicate Axis deer at South Point. DLNR is

EXHIBIT "B"

currently collecting data and plan to survey the area by helicopter to locate the extent of the deer. Eradication of the Axis deer is to preserve the agricultural and koa forest lands as well the water sheds which are unique to the Big Island. The recommendation to remove the Axis deer has been evidenced by the damage caused to the island of Maui in its agricultural and native ecosystems. Mr. Conroy noted that Axis deer has never been introduced on the Big Island. Eminent protection is deemed necessary in protecting the Big Island's ecosystem before damages are elevated. Use of 8 ft fencing may hamper or deter the damage deer have created from striping the bark off of trees. Commissioner L. DaMate, a resident of Ka'u, concurs that the Axis deer is a genuine problem and a danger to the community. She asked that DLNR consider having the Hawaiian homestead community be asked to partner in this endeavor as they are very familiar with the terrain. Mr. Conroy is willing to engage in partnering with anyone who wishes to assist in this effort including land owners. It was suggested to have the carcasses of meat be distributed by the hunters amongst the community. Commissioner L. DaMate recommended a stipulation be added to **"allow Hawaiian homestead members who live in the area be utilized as guides and be part of the working groups."** Chairman Nahale-a noted these two conditions can be incorporated into Item No.18 "All other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission."

A liability issue was addressed. Mr. Conroy indicated DLNR would manage that aspect for volunteers who are deemed agents and who abide by certain guidelines. Testimony from DLNR Chairperson William Aila was circulated among commission members supporting these efforts.

Mr. Conroy requested to utilize ATV's on established roads. Chairman Nahale-a asked for commission input and, if acceptable, consider this request be appended to Items No.9 and 10, Page 2 **"except for established roads"**, enlisting the use of all terrain vehicles (ATV).

AMENDED MOTION #1

Motion by Commissioner I. Lee Loy, seconded by Commissioner T. Morikawa in support.

DISCUSSION.

Concern and apprehension was expressed regarding the usage of ATV's which are known to "tear up" the road sides. Mr. Conroy clarified that state 4-wheel drive state vehicles are not built to sustain the kinds of punishment on unimproved roads whereas ATV's can provide that kind of buffer on harsh lands.

ACTION

Motion carried unanimously.

DISCUSSION

DOFAW Administrator Conroy asked that Item No. 14 be eliminated due to the fact that the state is self-insured and therefore not required to be additionally insured.

AMENDED MOTION #2/ACTION

Moved by Commissioner T. Morikawa, seconded by Commissioner I. Lee Loy to remove Item No. 14. Motion carried unanimously.

ACTION

Motion carried unanimously.

COMMENT

DOFAW Administrator Conroy expressed appreciation in having this request approved. Chairman Nahale-a thanked DLNR for the quick response in handling the eradication efforts. In matters other than the Axis deer, Kekaha community has expressed concern that lands turned over to DHHL have not benefited the beneficiaries namely because the lands are being utilized for hunting purposes. Chairman recommends the two entities come together and work on a viable solution. Commissioner I. Lee Loy suggested the police in Ka'u be notified when the eradication process begins so they can anticipate and co-ordinate in handling any complaints in an appropriate manner.

ITEM NO: D-4

SUBJECT: Issuance of License as Easement, Hawai'i Electric Light Company, Inc.,
Ahualoa, Hamakua, Island of Hawai'i

MOTION/ACTION

Moved by Commissioner T. Morikawa, seconded by Commissioner L. DaMate. Motion carried unanimously.

DISCUSSION

Although not part of this submittal, Commissioner I. Lee Loy queried about a spigot for DHHL beneficiaries. Land Management Administrator Linda Chinn said the license is for HECO to service Board of Water Supply (BOWS). Part of the agreement is to have BOWS provide the spigot for beneficiaries. Discussions are in progress to determine the roles and responsibilities of this tri-party agreement. West Hawai'i District Supervisor Jim DuPont is aware of this process and will determine the placing of the spigot. Ms. Chinn indicated a report to the commission will follow when the issue of the spigot arises.