Routine Program Changes
to
State of Hawaii Coastal Zone Management Program

Request for Concurrence

October 2012

Submitted by:
State of Hawaii Office of Planning
P.O. Box 2359, Honolulu
Hawaii 96804

The copies of session laws, ordinances, and administrative rules for request for incorporation of routine program changes were attached in PDF format in the order of appearance in the list of changes.
### List of Incorporation of Changes

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<th>Date Effective in State</th>
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<tr>
<td>Name/Description of State or Local Law/Regulation/Policy/Program Authority</td>
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<td>Upon OCRM approval</td>
</tr>
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Act 153, Session Laws of Hawaii (SLH) 2011
Relating to Special Management Areas

Hawaii Revised Statutes (HRS) §171-6(19)
SECTION 4. Section 206J-5.5, Hawaii Revised Statutes, is repealed.

SECTION 5. All fund balances remaining unencumbered and unexpended as of June 30, 2011, in the Aloha Tower Fund shall lapse to the credit of the harbor special fund and shall be used for operating expenses for the Aloha Tower development corporation.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 153

A Bill for an Act Relating to Special Management Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the cost of purchasing and importing construction materials, along with the cost of labor, has risen at a rate that has increased the overall cost of projects that, in the past, may have been viewed as insubstantial or minor. Furthermore, the increase in the number of these minor projects and the shortage of personnel that the various county planning departments are experiencing, have significantly slowed the review and processing of minor projects within the special management areas of the counties.

The purpose of this Act is to expedite and facilitate work on projects that have been or may be stalled due to delays relating to special management area permitting requirements.

SECTION 2. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

"§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

(1) Adopt a seal;
(2) Administer oaths;
(3) Prescribe forms of instruments and documents;
(4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
(5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
(6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license,
or permit, and the qualifications of any person to draw, bid, or negotiate for public land;

(7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;

(8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board’s control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;

(9) [Utilize] Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;

(10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;

(11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

(A) Be fined not more than $1,000 a day for the first offense;

(B) Be fined not less than $1,000 nor more than $4,000 per day upon the second offense and thereafter;

(C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;

(D) Assume such costs as may result from adverse effects from such restoration; and

(E) Be liable for administrative costs incurred by the department and for payment of damages;

(13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed $50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);

(15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:
(A) Fined not more than $5,000 per violation for a first violation or a violation beyond five years of the last violation[ ]; provided that, after written or verbal notification from the department, an additional $1,000 per day per violation may be assessed for each day in which the violation persists;

(B) Fined not more than $10,000 per violation for a second violation within five years of the last violation[ ]; provided that, after written or verbal notification from the department, an additional $2,000 per day per violation may be assessed for each day in which the violation persists;

(C) Fined not more than $20,000 per violation for a third or subsequent violation within five years of the last violation[ ]; provided that, after written or verbal notification from the department, an additional $4,000 per day per violation may be assessed for each day in which the violation persists; and

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii [state constitution]; State Constitution.

(16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;

(17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;

(18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter; and

(19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and

(20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.
SECTION 3. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definitions of “development”, “special management area minor permit”, and “special management area use permit” to read as follows:

“Development” means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

1. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
2. Grading, removing, dredging, mining, or extraction of any materials;
3. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
4. Change in the intensity of use of water, ecology related thereto, or of access thereto; and
5. Construction, reconstruction, demolition, or alteration of the size of any structure.

“Development” does not include the following:
1. Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
2. Repair or maintenance of roads and highways within existing rights-of-way;
3. Routine maintenance dredging of existing streams, channels, and drainage ways;
4. Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
5. Zoning variances, except for height, density, parking, and shoreline setback;
6. Repair, maintenance, or interior alterations to existing structures;
7. Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
8. Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
9. Transfer of title to land;
10. Creation or termination of easements, covenants, or other rights in structures or land;
11. Final subdivision approval;
12. Subdivision of land into lots greater than twenty acres in size;
13. Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any land which is so subdivided shall not thereafter qualify for that exception with respect to any subsequent subdivision of any of the resulting parcels;
14. Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
15. Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
16. Nonstructural improvements to existing commercial structures, and
ACT 154

[46] (17) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens;

provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.

“Special management area minor permit” means an action by the authority authorizing development the valuation of which is not in excess of $125,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

“Special management area use permit” means an action by the authority authorizing development the valuation of which exceeds $125,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 154

S.B. NO. 142

A Bill for an Act Relating to Dams and Reservoirs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 179D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall administer the dam and reservoir safety program established by this chapter. In carrying out this chapter, the board shall cooperate, advise, consult, contract, and enter into cooperative agreements with the United States government or any of its agencies, other state agencies, and the county governments or any of their agencies. In the performance of its duties, the board shall:

(1) Establish by rules adopted under chapter 91, policies, requirements, or standards governing the design, construction, operation, maintenance, enlargement, alteration, repair, removal, and inspection of dams, reservoirs, and appurtenant works for the protection of life and property from structural failure of dams and reservoirs;

(2) Conduct investigations and [the collection of] collect data, including technological advances made in dam and reservoir safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, inspection, operation, maintenance, alteration, and enlargement of dams, reservoirs, and appurtenant works. The board may require submission of reports of investigations from all owners;

(3) Conduct investigations and require reports from all owners to be made from time to time, including watershed investigations and
Act 293, SLH 2006, Limu Management Area
HRS §188-22.8
ACT 293

A Bill for an Act Relating to Limu Management Area.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the natural supply of limu along the shores in Ewa beach is rapidly diminishing. This is due in part to overharvesting of limu during the past four years. As a result, many types of limu, including huluhulu waenae, lips, and ‘a‘ala ‘ula, can no longer be found or are at risk of extinction in this area.

The purpose of this Act is to preserve and sustain the limu supply by establishing a limu management area along the shoreline of Ewa beach on Oahu.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§188- Limu management area. (a) There is established a limu management area from the shoreline and extending one hundred fifty feet seaward in Ewa beach from the gurney range to the boat ramp on Muumuu street.

(b) No person, including a person with a commercial fishing license, shall pick, gather, harvest, or otherwise take limu from within the limu management area beginning no sooner than January 1, 2007; provided that this section shall not apply to a person who has obtained a special permit to pick limu for purposes of replanting.

(c) Beginning no sooner than January 1, 2010, a person, including a person with a commercial fishing license, may hand-pick limu in the limu management area from 6:00 a.m. to 6:00 p.m., only during the months of July, November, and December of each year. A maximum of one pound for all types of limu combined may be hand-picked per day by any person, including any person possessing a commercial fishing license.

(d) This section shall not apply to any person exercising native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department of land and natural resources pursuant to Article XII, Section 7 of the Hawaii State Constitution.

(e) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on December 31, 2006.

(Approved July 10, 2006.)

ACT 294


Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Environmental justice is generally understood to require the fair treatment and meaningful involvement of all people regardless of race, color,
Act 76, SLH 2004, relating to Civil Defense Sirens

HRS §205A-2(16)
PART III

SECTION 8. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 9. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 10. This Act, upon its approval, shall take effect retroactive to July 1, 2005.

(Approved May 17, 2004.)

ACT 75  S.B. NO. 2550

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (5):

<table>
<thead>
<tr>
<th>FY 2004-2005</th>
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<tbody>
<tr>
<td>General funds</td>
<td>$26,905,414</td>
</tr>
<tr>
<td>Federal funds</td>
<td>740,909</td>
</tr>
</tbody>
</table>

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for the purposes of this part.

PART II

SECTION 3. There are appropriated from the source and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sum, or so much thereof as may be necessary to fund for fiscal year 2004-2005, salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the department of education who are excluded from collective bargaining:

<table>
<thead>
<tr>
<th>FY 2004-2005</th>
<th></th>
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<tbody>
<tr>
<td>General funds</td>
<td>$1,319,725</td>
</tr>
<tr>
<td>Federal funds</td>
<td>128,805</td>
</tr>
</tbody>
</table>

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved May 17, 2004.)

ACT 76  H.B. NO. 2439

A Bill for an Act Relating to Civil Defense Sirens.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes that civil defense warning or signal devices and sirens are critical to alerting the public to potentially dangerous events and that all efforts should be made to expedite the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens. The legislature recognizes that the construction, installation, and replacement of civil defense warning or signal devices and sirens is frequently delayed due to permit requirements that on balance are not justified given the vital role these devices or sirens play in providing for the safety of the public. The purpose of this Act is to expedite the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens by exempting them from the definition of "development" for purposes of coastal zone management.

SECTION 2. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of "development" to read as follows:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

1. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
2. Grading, removing, dredging, mining, or extraction of any materials;
3. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
4. Change in the intensity of use of water, ecology related thereto, or of access thereto; and
5. Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

1. Construction of a single-family residence that is not part of a larger development;
2. Repair or maintenance of roads and highways within existing rights-of-way;
3. Routine maintenance dredging of existing streams, channels, and drainage ways;
(4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
(5) Zoning variances, except for height, density, parking, and shoreline setback;
(6) Repair, maintenance, or interior alterations to existing structures;
(7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
(8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
(9) Transfer of title to land;
(10) Creation or termination of easements, covenants, or other rights in structures or land;
(11) Subdivision of land into lots greater than twenty acres in size;
(12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
(13) Installation of underground utility lines and appurtenant appurtenant aboveground fixtures less than four feet in height along existing corridors;
(14) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible; and
(15) Nonstructural improvements to existing commercial structures; and
(16) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sires;
provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a sensitive management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.
(Approved May 17, 2004.)

ACT 78
H.B. NO. 2293

A Bill for an Act Relating to Interstate Adult Offender Supervision.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-34, Hawaii Revised Statutes, is amended to read as follows:

“[[§353-34]] Probation services fee: assessment. Any defendant received for supervision pursuant to [section 353-81] chapter 353B shall be assessed a probation services fee pursuant to section 706-648.”

SECTION 2. Section 706-648, Hawaii Revised Statutes, is amended by adding subsection (3) to read as follows:

“(3) Any defendant received for supervision pursuant to [section 353-81] chapter 353B shall be assessed a probation services fee pursuant to this section.”

SECTION 3. Chapter 353, part III, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.
(Approved May 18, 2004.)

ACT 79
S.B. NO. 1362

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-171.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) The department of health shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking employment, or seeking to serve as providers or subcontractors, in positions that place them in direct contact with clients when providing non-witnessed direct mental health

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Rules Regulating State Building Code

Hawaii Administrative Rules (HAR) Chapter 3-180
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-180
Hawaii Administrative Rules

October 13, 2009

SUMMARY

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 14

STATE BUILDING CODE COUNCIL

CHAPTER 180

STATE BUILDING CODE

Subchapter 1 Rules of General Applicability

§3-180-1 Purpose
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indigenous Hawaiian architecture
structures
§3-180-1  Purpose. The purpose of this chapter is to adopt the state building code as required by section 107-25, HRS. [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-2  Scope. This chapter sets forth minimum requirements for the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to buildings or structures. [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-3  Definitions. In this chapter, unless the context otherwise requires:

  "Chapter" means this chapter.
  "ICC" means the International Code Council.
  "Section" means a section of a chapter of the International Building Code.

§3-180-5 Permit authorization. Each county of the State of Hawaii may, by ordinance, require that a permit be obtained from the building official for any area regulated by this chapter. [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

SUBCHAPTER 2

AMENDMENTS TO THE 2006 ICC, INTERNATIONAL BUILDING CODE

§3-180-6 Title and purpose. Section 101.1 is amended to read as follows:


§3-180-7 Scope. Section 101.2 is amended to read as follows:

"101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exceptions:
1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code, if adopted by the county jurisdiction.
2. Existing State-owned buildings undergoing repair, alterations or additions and change of occupancy shall be permitted to comply with the International Existing Building Code, provided the extent of work does not exceed 50 per cent of the appraised value of the building." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-8 Appendices. Section 101.2.1 is amended to
read as follows:

"101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted.

Exceptions:

§3-180-9 Referenced codes. Section 101.4 is amended to read as follows:

"101.4 Referenced codes. The other codes referenced elsewhere in this code shall be considered guidelines of this code to the prescribed extent of each such reference.

101.4.1 Conflicts with other codes. If a referenced code conflicts with another applicable law of the jurisdiction, then said applicable law shall prevail over the guideline in the referenced code.

101.4.2 Fire prevention. Wherever the provisions of the International Fire Code are referenced, the International Fire Code shall apply to matters affecting or relating to structures, processes, and premises from the hazard of fire and explosion arising from the storage, handling, or use of structures, materials, or devices; from conditions hazardous to life, property, or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration, or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-10 Existing structures. Section 102.6 is amended to read as follows:

"102.6 Existing structures. Buildings in existence at the effective date of this code may have their existing use or occupancy continued if such use or occupancy was legal at the effective date of this code, provided the continued use does not constitute a hazard to the general safety and welfare of the occupants and the public." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)


§3-180-16 Fire code defined. Section 202 is amended by adding the definition of “fire code” as follows:


§3-180-17 Group I-1. Section 308.2 is amended to read as follows:

"308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services in an assisted living facility. The residents participate in fire drills, are self-starting, and may require some physical assistance from up to one staff to reach a point of safety in an emergency situation. Facilities with residents who require assistance by more than one staff, are not self-starting, are bedridden beyond 14 days, or require intermittent nursing care beyond 45
§3-180-17

days, shall reside on the first floor in all Type III, IV, and V construction, or shall be classified as Group I-2.

A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-18 Group I-2. Section 308.3 is amended to read as follows:

"308.3 Group I-2. This occupancy shall include buildings and structures used for personal, medical, surgical, psychiatric, nursing, or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

   Hospitals
   Nursing homes (both intermediate-care facilities and skilled nursing facilities)
   Mental hospitals
   Detoxification facilities
   Specialized alzheimer's facilities or areas
   Assisted living facilities (with residents beyond group I-1 limitations for capability)

   A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-19 Residential Group R. Section 310.1 is amended to read as follows:

"310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I. Residential occupancies shall include the following:

   R-1 Residential occupancies where the occupants are primarily transient in nature, including:
       Boarding houses (transient)
       Hotels (transient)
§3-180-19

Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, and facilities providing personal care services that have residents that are capable of self evacuation in an emergency situation, including:
   - Apartment houses
   - Boarding houses (not transient)
   - Convents
   - Dormitories
   - Facilities providing personal care services (with residents that are capable of self evacuation)
   - Fraternities and sororities
   - Hotels (nontransient)
   - Monasteries
   - Motels (nontransient)
   - Vacation timeshare properties

Facilities providing personal care services with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I including:
   - Buildings that do not contain more than two dwelling units
   - Adult facilities that provide accommodations for five or fewer persons of any age for less than 24 hours
   - Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours
   - Congregate living facilities with 16 or fewer persons

Adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code in accordance with Section 101.2.

R-4 Residential occupancies shall include buildings, arranged for occupancy as assisted living facilities including more than five but not more than 16 occupants, excluding staff. Residents shall meet the ability to evacuate requirements and other limitations as required in Group I-1.
§3-180-19

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code, or shall comply with the International Residential Code." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-20 Personal care service defined. The definition of "personal care service" in Section 310.2 is amended to read as follows:

"PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent, health, medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building. The types of facilities providing personal care services shall include, but not be limited to, the following: assisted living facilities, residential care facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-21 Assisted living facilities defined. The definition of "assisted living facilities" in Section 310.2 is amended to read as follows:

"ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services and are licensed by the State." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-22 Fire command station. Section 403.8 is amended to read as follows:

"403.8 Fire command station. Fire command stations shall comply with the fire code and be approved by the fire chief." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-23 Group I-1 assisted living facilities. Section 419.4 is added to read as follows:

"419.4 Group I-1 assisted living facilities. Group I-1
assisted living facilities shall comply with the provisions of Sections 419.4.1 and 419.4.2.

419.4.1 Building story limitations. Buildings shall not exceed one story in Type VB construction, two stories in Types IIB, III, IV, and VA construction, and three stories in Type IIA construction, including any allowable automatic sprinkler increases. Other construction type limitations on stories shall be limited by the provisions of Chapter 5.

419.4.2 Group I-1 smoke barriers. Group I-1 occupancies shall be provided with at least one smoke barrier in accordance with Section 709. Smoke barriers shall subdivide every story used by residents for sleeping or treatment into at least two smoke compartments. Each compartment shall have not more than 16 sleeping rooms, and the travel distance from any point in a smoke compartment to a smoke barrier door shall not exceed 150 feet (45 720 mm). At least 10 square feet (0.93 m²) of refuge area per resident shall be provided within the aggregate area of corridors, treatment rooms, or other low hazard common space rooms on each side of each smoke barrier.” [Eff APR 1 6 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-24 Group I. Section 903.2.5 is amended to read as follows:


§3-180-25 Group R. Section 903.2.7 is amended to read as follows:

“903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area. Exception: R-3 residential occupancies.” [Eff APR 1 6 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-26 Features. Section 911.1 is amended to read as follows:

“911.1 Features. Where required by other sections of this code, a fire command center for fire department operations shall be provided and shall comply with the
§3-180-26

fire code and be approved by the fire chief.”
(Imp: HRS §§107-24, 107-25)

§3-180-27 Gates. Section 1008.2 is amended to read as follows:

“1008.2 Gates. Gates serving the means of egress system shall comply with the requirements of this section. Gates used as a component in a means of egress shall conform to the applicable requirements for doors.

Exceptions:

1. Horizontal sliding or swinging gates exceeding the 4-foot (1219 mm) maximum leaf width limitation are permitted in fences and walls surrounding a stadium.

2. Security gates may be permitted across corridors or passageways in school buildings if there is a readily visible durable sign on or adjacent to the gate, stating ‘THIS GATE IS TO REMAIN SECURED IN THE OPEN POSITION WHENEVER THIS BUILDING IS IN USE’. The sign shall be in letters not less than one inch high on a contrasting background. The use of this exception may be revoked by the building official for due cause.” [Eff APR 16 2010]  (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-28 Accessibility. Chapter 11 is deleted in its entirety and replaced to read as follows:

“Chapter 11 - Accessibility

1101 Scope. Buildings or portions of buildings shall be accessible to persons with disabilities in accordance with the following regulations:

1. For construction of buildings or facilities of the state and county governments, compliance with Section 103-50, HRS, administered by the Disability and Communication Access Board, State of Hawaii.

2. Americans with Disabilities Act, administered and enforced by the U.S. Department of Justice.

3. Fair Housing Act, administered and enforced by the U.S. Department of Housing and Urban Development.

4. Other pertinent laws relating with disabilities shall be administered and enforced by agencies responsible for their enforcement.

Prior to the issuance of a building permit, the owner (or
§3-180-28

the owner's representative, professional architect, or engineer), shall submit a statement that all requirements, relating to accessibility for persons with disabilities, shall be complied with.” [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-29 Unvented attic spaces. Section 1203.2.2 is added to read as follows:

"1203.2.2 Unvented attic spaces. The attic space shall be permitted to be unvented when the design professional determines it would be beneficial to eliminate ventilation openings to reduce salt-laden air and maintain relative humidity 60 per cent or lower to:
1. Avoid corrosion to steel components,
2. Avoid moisture condensation in the attic space, or

§3-180-30 Live loads posted. Section 1603.3 is amended to read as follows:

"1603.3 Live loads posted. Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 100 psf (4.80 kN/m²), such design live loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such notices.” [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)
§3-180-31 Seismic design - short term. Table 1613.5.6(1) is amended to read as follows:

"Table 1613.5.6(1)

<table>
<thead>
<tr>
<th>Seismic Design Category Based On Short-Period Response Acceleration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Value of S&lt;sub&gt;DS&lt;/sub&gt;</strong></td>
</tr>
<tr>
<td>----------------------------</td>
</tr>
<tr>
<td>S&lt;sub&gt;DS&lt;/sub&gt; &lt; 0.167g</td>
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<tr>
<td>0.167g ≤ S&lt;sub&gt;DS&lt;/sub&gt; &lt; 0.33g</td>
</tr>
<tr>
<td>0.33g ≤ S&lt;sub&gt;DS&lt;/sub&gt; &lt; 0.50g</td>
</tr>
<tr>
<td>0.50g ≤ S&lt;sub&gt;DS&lt;/sub&gt; &lt; 0.60g</td>
</tr>
<tr>
<td>0.60g ≤ S&lt;sub&gt;DS&lt;/sub&gt;</td>
</tr>
</tbody>
</table>

(Imp: HRS §§107-24, 107-25)

§3-180-32 Seismic design - 1-second period. Table 1613.5.6(2) is amended to read as follows:

"Table 1613.5.6(2)

<table>
<thead>
<tr>
<th>Seismic Design Category Based On 1-Second Period Response Acceleration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Value of S&lt;sub&gt;DI&lt;/sub&gt;</strong></td>
</tr>
<tr>
<td>----------------------------</td>
</tr>
<tr>
<td>S&lt;sub&gt;DI&lt;/sub&gt; &lt; 0.067g</td>
</tr>
<tr>
<td>0.067g ≤ S&lt;sub&gt;DI&lt;/sub&gt; &lt; 0.133g</td>
</tr>
<tr>
<td>0.133g ≤ S&lt;sub&gt;DI&lt;/sub&gt; &lt; 0.20g</td>
</tr>
<tr>
<td>0.20g ≤ S&lt;sub&gt;DI&lt;/sub&gt; &lt; 0.25g</td>
</tr>
<tr>
<td>0.25g ≤ S&lt;sub&gt;DI&lt;/sub&gt;</td>
</tr>
</tbody>
</table>


§3-180-33 Design rain loads. Section 1611.1 is amended to read as follows:

"1611.1 Design rain loads. Each portion of a roof shall be designed to sustain the load of rainwater that will accumulate on it if the primary drainage system for that portion is blocked plus the uniform load caused by water that rises above the inlet of the secondary drainage system at its design flow. The design rainfall rate shall be based on the 100-year 1-hour rainfall rate indicated in Figure 1611.1 as published by the National Weather Service"
or on other rainfall rates determined from approved local weather data.

Figure 1611.1
100-Year, 1-Hour Rainfall (inches) Hawaii
For SI: 1 inch = 25.4 mm.


§3-180-34 Structural observation defined. The definition of "structural observation" in Section 1702 is amended to read as follows:

"STRUCTURAL OBSERVATION. Structural observation is as defined in chapter 16-115, Hawaii Administrative Rules, implementing chapter 464, Hawaii Revised Statutes. Structural observation does not include or waive the responsibility for the inspection required by Section 109, 1704 or other sections of this code." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)
§3-180-35 General. Section 1704.1 is amended to read as follows:

"1704.1 General. Where application is made for construction as described in this section, the owner or the registered design professional in responsible charge acting as the owner's agent shall employ one or more special inspectors to provide inspections during construction on the types of work listed under Sections 1704 and 1707. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Section 109.

Exceptions:
1. Special inspections are not required for work of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official.
2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by applicable state statutes and regulations governing the professional registration and certification of engineers or architects.
3. Unless otherwise required by the building official, special inspections are not required for occupancies in Group R-3 as applicable in Section 101.2 and occupancies in Group U that are accessory to a residential occupancy including, but not limited to, those listed in Section 312.1." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-36 Statement of special inspections. Section 1704.1.1 is amended to read as follows:


§3-180-37 Report requirement. Section 1704.1.2 is amended to read as follows:

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"1704.1.2 Report requirement. Special inspectors shall keep records of inspections. The special inspector shall furnish inspection reports to the owner and licensed engineer or architect of record. Reports shall indicate that work inspected was done in conformance to approved construction documents. Discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the licensed engineer or architect of record and to the building official. The special inspector shall submit a final signed report to the owner and licensed engineer or architect of record, stating whether the work requiring special inspection was, to the best of the inspector’s knowledge, in conformance to the approved plans and specifications and the applicable workmanship provisions of this code. Prior to the final inspection required under Section 109.3.10, the licensed engineer or architect of record shall submit a written statement verifying receipt of the final special inspection reports and documenting that there are no known unresolved code requirements that create significant public safety deficiencies." [Eff APR 1 6 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)


§3-180-39 Structural observations. Section 1709 is amended to read as follows:

"1709 Structural observations. Structural observations shall be performed in accordance with Section 464-5, Hawaii Revised Statutes, administered and enforced by the Department of Commerce and Consumer Affairs." [Eff APR 1 6 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-40 Splices. Section 1808.2.7 is amended to read as follows:

"1808.2.7 Splices. Splices shall be constructed so as to provide and maintain true alignment and position of the component parts of the pier or pile during installation and subsequent thereto and shall be of adequate strength to transmit the vertical and lateral loads and moments..."
§3-180-40

occurring at the location of the splice during driving and under service loading. Splices occurring in the upper 10 feet (3048 mm) of the embedded portion of the pier or pile shall be capable of resisting at allowable working stresses the moment and shear that would result from an assumed eccentricity of the pier or pile load of 3 inches (76 mm), or the pier or pile shall be braced in accordance with Section 1808.2.5 to other piers or piles that do not have splices in the upper 10 feet (3048 mm) of embedment.“


§3-180-41 Cleanouts. Section 2104.1.9 is added to read as follows:

“2104.1.9 Cleanouts. Cleanouts shall be provided for all grout pours over 5 feet 4 inches in height. Special provisions shall be made to keep the bottom and sides of the grout spaces, as well as the minimum total clear area required by ACI 530.1-05/ASCE 6-05/TMS 602-05 clean and clear prior to grouting.

Exception: Cleanouts are not required for grout pours 8 feet or less in height providing all of the following conditions are met:
1. The hollow masonry unit is 8-inch nominal width or greater with specified compressive strength fₚ less than or equal to 1,500 psi;
2. Fine grout is used complying with ASTM C-476 minimum compressive strength of 2,500 psi; and
3. Special Inspection is provided.”


§3-180-42 Preservative-treated wood. Section 2303.1.8 is amended to read as follows:

“2303.1.8 Preservative-treated wood. Structural lumber, including plywood, posts, beams, rafters, joists, trusses, studs, plates, sills, sleepers, roof and floor sheathing, flooring and headers of new wood-frame buildings and additions shall be:
1. Treated in accordance with AWPA Standard U1 (UC1 thru UC4B) for AWPA Standardized Preservatives, all marked or branded and monitored by an approving agency. Incising is not required, providing that the retention and penetration requirements of these standards are met.

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§3-180-42

2. For SBX disodium octaborate tetrahydrate (DOT), retention shall be not less than 0.28 pcf $B_2O_3$ (0.42 pcf DOT) for exposure to Formosan termites. All such lumber shall be protected from direct weather exposure as directed in AWPA UC1 and UC2.

3. For structural glue-laminated members made up of dimensional lumber, engineered wood products, or structural composite lumber, pressure treated in accordance with AWPA U1 (UC1 thru UC4B) or by Light Oil Solvent Preservative (LOSP) treatment standard as approved by the building official. Water based treatment processes as listed in paragraphs 1 and 2 are not allowed to be used on these products unless specified by a structural engineer for use with reduced load values and permitted by the product manufacturer.

4. For structural composite wood products, treated by non-pressure processes in accordance with AWPA Standard U1 (UC1, UC2 and UC3A) or approved by the building official.

2303.1.8.1 Treatment. Wood treatment shall include the following:

1. A quality control and inspection program which meets or exceeds the current requirements of AWPA Standards M2-01 and M3-03;

2. Inspection and testing for the treatment standards as adopted by this code shall be by an independent agency approved by the building official, accredited by the American Lumber Standards Committee (ALSC) and contracted by the treating company;

3. Field protection of all cut surfaces with a preservative, which shall be applied in accordance with AWPA Standard M-4-02 or in accordance with the approved preservative manufacturer’s ICC-Evaluation Services report requirements.

2303.1.8.2 Labeling. Labeling shall be applied to all structural lumber 2 inches or greater nominal thickness, with the following information provided on each piece as a permanent ink stamp on one face or on a durable tag permanently fastened to ends with the following information:

1. Name of treating facility;
2. Type of preservative;
3. AWPA use category;
4. Quality mark of third party inspection agency;
§3-180-42


All lumber less than 2 inches in nominal thickness, shall be identified per bundle by means of a label consisting of the above requirements. Labels measuring no less than 6 inches by 8 inches shall be placed on the lower left corner of the strapped bundle.

2303.1.8.3 Moisture content of treated wood. When wood pressure treated with a water-borne preservative is used in enclosed locations where drying in service cannot readily occur, such wood shall be at a moisture content of 19 percent or less before being covered with insulation, interior wall finish, floor covering or other material.”


§3-180-43 Fasteners in non-borate-preservative-treated and fire-retardant-treated wood. Section 2304.9.5 is amended to read as follows:

“2304.9.5 Fasteners in non-borate-preservative-treated and fire-retardant-treated wood. Fasteners for preservative-treated and fire-retardant-treated wood, other than Borate (SBX, ZB) or LOSP treatments as approved in Section 2303.1.8 Preservative-treated wood, shall be of hot dipped zinc-coated galvanized steel, stainless steel, silicone bronze or copper. The coating weights for zinc-coated fasteners shall be in accordance with ASTM A 153.

Exception: Fasteners other than nails, timber rivets, wood screws and lag screws shall be permitted to be of mechanically deposited zinc-coated steel with coating weights in accordance with ASTM B 695, Class 55 minimum.

Fastenings for wood foundations shall be as required in AF&PA Technical Report No. 7.”


§3-180-44 Protection against decay and termites. Section 2304.11 is amended to read as follows:

“2304.11 Protection against decay and termites.

2304.11.1 General. Where required by this section, protection from decay and termites shall be provided by the use of naturally durable or preservative-treated wood.

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2304.11.2 Wood used above ground. Structural lumber installed above ground shall be preservative-treated wood in accordance with Section 2303.1.8.

2304.11.2.1 Soil treatment and termite barriers. Where structural lumber of wood frame buildings or structures are supported directly on the ground by a concrete slab, or concrete and/or masonry foundation, Formosan subterranean termite protector shall be provided by either chemically treating the soil beneath and adjacent to the building or structure by a Hawaii-licensed pest control operator, or stainless steel termite barrier, or other termite protection measures approved by the building official.

All soil treatment, stainless steel termite barrier, and termite protection measures shall be installed according to manufacturer’s recommendations for control of Formosan subterranean termites.

2303.11.3 Wood in ground contact. Wood supporting permanent buildings and structures, which is in direct soil contact or is embedded in concrete or masonry in direct contact with earth shall be treated to the appropriate commodity specification of AWPA Standard U1.

Wood in direct soil contact but not supporting any permanent buildings or structures shall be treated to the appropriate commodity specification of AWPA Standard U1 for ground contact.

2304.11.4 Retaining walls. Wood in retaining or crib wall shall be treated to AWPA Standard U1.

2304.11.5 Wood and earth separation. Where wood is used with less than 6-inch vertical separation from earth (finish grade), the wood shall be treated for ground-contact use.

Where planter boxes are installed adjacent to wood frame walls, a 2-inch-wide (51 mm) air space shall be provided between the planter and the wall. Flashings shall be installed when the air space is less than 6 inches (152 mm) in width. Where flashing is used, provisions shall be made to permit circulation of air in the air space. The wood-frame wall shall be provided with an exterior wall covering conforming to the provisions of section 2304.6.

2304.11.6 Under-floor clearance for access and inspection. Minimum clearance between the bottom of floor joists or bottom of floors without joists and the ground beneath shall be 24 inches; the minimum clearance between the bottom of girders and the ground beneath shall be 18 inches.
Exception: Open slat wood decks shall have ground clearance of at least 6 inches for any wood member.

Accessible under-floor areas shall be provided with a minimum 18 inch-by-24 inch access opening, effectively screened or covered. Pipes, ducts and other construction shall not interfere with the accessibility to or within under-floor areas.

2304.11.7 Wood used in retaining walls and cribs. Wood installed in retaining or crib walls shall be preservative treated in accordance with AWPA U1 (Commodity Specifications A or F) for soil and fresh water use.

2304.11.8 Weather exposure. All portions of timbers (over 5-inch nominal width) and glued-laminated timbers that form structural supports of a building or other structure shall be protected by a roof, eave, overhangs, flashings, or similar coverings.

All wood or wood composite panels, in weather-exposed applications, shall be of exterior type.

2304.11.9 Water splash. Where wood-frame walls and partitions are covered on the interior with plaster, tile or similar materials and are subject to water splash, the framing shall be protected with approved waterproof paper conforming to Section 1404.2.

2304.11.10 Pipe and other penetrations. Insulations around plumbing pipes shall not pass through ground floor slabs. Openings around pipes or similar penetrations in a concrete or masonry slab, which is in direct contact with earth, shall be filled with non-shrink grout, RTB, or other approved physical barrier.” [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-45 General. Section 2308.1 is amended to read as follows:

“2308.1 General. The requirements of this section are intended for conventional light-frame construction. Other methods are permitted to be used, provided a satisfactory design is submitted showing compliance with other provisions of this code. Interior non-load-bearing partitions, ceilings and curtain walls of conventional light-frame construction are not subject to the limitations of this section. Alternatively, compliance with AF&PA WFCM shall be permitted subject to the limitations therein and the limitations of this code.” [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)
§3-180-46

§3-180-46 Scope. Section 2701.1 is amended to read as follows:

"2701.1 Scope. This chapter governs the electrical components, equipment and systems used in buildings and structures covered by this code. Electrical components, equipment and systems shall be designed and constructed in accordance with the provisions of the National Electrical Code, NFPA 70." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-47 Scope. Section 2901.1 is amended to read as follows:

"2901.1 Scope. The provisions of this chapter and the Uniform Plumbing Code shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use, or maintenance of plumbing equipment and systems. Plumbing systems and equipment shall be constructed, installed, and maintained in accordance with the Uniform Plumbing Code and adopted amendments. Private sewage disposal systems shall conform to the International Private Sewage Disposal Code." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-48 Scope. Section 3001.1 is amended to read as follows:

"3001.1 Scope. This chapter shall be a guideline and governs the design, construction, installation, alteration, and repair of elevators and conveying systems and their components. If this chapter conflicts with another applicable law of the jurisdiction, then said applicable law shall prevail over this chapter." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-49 Public swimming pools. Section 3109.3 is amended to read as follows:

"3109.3 Public swimming pools. Public swimming pools shall be completely enclosed by a fence at least 4 feet (1290 mm) in height or a screen enclosure. Openings in the fence shall not permit the passage of a 4-inch-diameter (102 mm) sphere. The fence or screen enclosure shall be equipped with self-closing and self-latching gates.

Exception: Swimming, dipping, or wading pools located

§3-180-50 Conformance. Section 3405.1 is amended to read as follows:


§3-180-51 Compliance with other codes. Section 3410.3.2 is amended to read as follows:

"3410.3.2 Compliance with other codes. Buildings that are evaluated in accordance with this section shall comply with the state fire code." [Eff APR 16 2010] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-180-52 Appendix U - Hawaii hurricane sheltering provisions for new construction. Appendix U is added to read as follows:

"APPENDIX U

Hawaii Hurricane Sheltering Provisions for New Construction

Section U101 Community storm shelters. Chapter 4 is amended by adding Section 421 to read as follows:

SECTION 421 Community storm shelters

421.1 General. In addition to other applicable requirements in this code, community storm shelters and the following specific Occupancy Category IV buildings shall be constructed in accordance with ICC/NSSA-500:

1. Designated earthquake, hurricane or other emergency shelters.

2. Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response.

421.1.1 Scope. This appendix applies to the construction of storm shelters constructed as separate detached buildings or constructed as safe rooms within buildings for the purpose of providing safe refuge from storms that produce high winds, such as hurricanes. Such
structures shall be designated to be hurricane shelters.

421.2 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

COMMUNITY STORM SHELTER. A building, structure, or portion thereof, constructed in accordance with ICC 500-08 ICC/NSSA Standard on the Design and Construction of Storm Shelters and designated for use during a severe wind storm event such as a hurricane.

Section U102 Hawaii residential safe room. Chapter 4 is amended by adding Section 422 to read as follows:

SECTION 422 Hawaii residential safe room

422.1 Performance-based design criteria. The residential safe room shall meet the minimum performance specifications of Sections 422.1.1 through 422.9.

422.1.1 Intent and scope. The intent of the residential safe room is to temporarily provide an enhanced protection area, fully enclosed within a dwelling or within an accessory structure to a residence, which is designed and constructed to withstand the wind pressures, windborne debris impacts, and other requirements of this section.

422.1.2 Alternative standards.
1. Manufactured safe room designs subject to approval. A manufactured safe room or safe room kit may be substituted if documentation is submitted and approved by the building official. The safe room shall be engineered, tested, and manufactured to meet or exceed the criteria of this section.

2. FEMA in-residence shelter designs permitted. It shall be permissible to build FEMA In-Residence Shelters of up to 64 square feet of floor area with walls up to 8 feet long that are built in accordance with construction details of FEMA 320.

422.2 Site criteria. Residential safe rooms shall not be constructed within areas subject to stream flooding, coastal flooding or dam failure inundation within any of the following areas:

1. FEMA Special Flood Hazard Areas (SFHA) subject to rainfall runoff flooding or stream or flash flooding;

2. Coastal zones "V" or "A" identified in the Flood Insurance Rate Map (FIRM) issued by FEMA for floodplain management purposes, in which the flood hazard are tides, storm surge, waves, tsunamis, or a combination of these hazards;

3. Areas subject to dam failure inundation as determined
by the Department of Land and Natural Resources.

422.3 **Maximum occupancy.** The safe room is permitted to be used for a maximum occupancy based on at least 15 square feet per person with a maximum of 8 persons in a room of up to 128 square feet of floor area.

422.4 **Provisions for exiting.** The room shall be equipped with an inward-swinging door and an impact-protected operable window suitable for a means of alternative exiting in an emergency.

422.5 **Design for dead, live, wind, rain, and impact loads.**

422.5.1 **Structural integrity criteria.**

1. The residential safe room shall be built with a complete structural system and a complete load path for vertical and lateral loads caused by gravity and wind.

2. The building that the residential safe room is in shall be assumed to be destroyed by the storm and shall not be taken as offering any protective shielding to the safe room enclosure.

3. The ceiling structure and wall shall be capable of supporting a superimposed debris load of the full weight of any building floors and roof above, but not less than 125 psf.

4. The residential safe room enclosure shall be capable of simultaneously resisting lateral and uplift wind pressures corresponding to a 160 mph 3-second peak gust, determined in accordance with ASCE 7, Minimum Design Loads for Buildings and Other Structures, calculated using load and importance Factors of 1.0. The site exposure factor shall be based on exposure C. The gust factor and the directionality factor shall be taken as 0.85. Topographic wind amplification caused by mountainous terrain shall be considered in accordance with the building code. Internal pressure shall be determined in accordance with ASCE 7.

5. The residential safe room shall be anchored to a foundation system capable of resisting the above loading conditions.

422.5.2 **Windborne debris impact protection of building enclosure elements.** The entire enclosure of the safe room, including all walls, ceilings, and openings, fixed or operable windows, and all entry doors into the safe room, shall meet or exceed Level D requirements of ASTM E 1996 (Table 422.5-1). Any wall or ceiling penetration greater
than 4 square inches shall be considered an opening.

**Exception:** Electrical outlet boxes and interior lighting switches not penetrating more than 2.5-inches into the interior wall surface and a plumbing piping or conduit not greater than 1.5-inch in diameter shall be exempted from this requirement.

**422.5.3 Cyclic pressure loading of glazing and protective systems.** Impact protective systems shall meet the ASTM E 1996 cyclic pressure requirement for the loading given in Table 422.5-1.

<table>
<thead>
<tr>
<th>ASTM E 1996 Missile Level Rating</th>
<th>Debris Missile Size</th>
<th>Debris Impact Speed</th>
<th>Enclosure Wall Ceiling, and Floor Cyclic Air Pressure Testing - maximum inward and maximum outward pressures</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>2 x 4 weighing 9.0 lb. +/- 0.25 lb., and with min. length 8 ft. +/- 4-inch</td>
<td>50 ft./sec. or at least 34 mph</td>
<td>35 psf inward 45 psf outward</td>
</tr>
</tbody>
</table>

**422.6 Ventilation.** The residential safe room shall be naturally ventilated to allow the enclosure to have approximately one air change every two hours. This requirement may be satisfied by 12 square inches of venting per occupant. There shall be at least two operable vents. The vents shall be protected by a cowl ing or other device that shall be impact tested to comply with ASTM E 1996 Level D. Alternatively, the room shall be evaluated to determine if the openings are of sufficient area to constitute an open or partially enclosed condition as defined in ASCE 7.

**422.7 Communications.** The residential safe room shall be equipped with a phone line and telephone that does not rely on a separate electrical power outlet. Alternatively, a wireless telephone shall be permitted to rely on an Uninterruptible Power Supply (UPS) battery device.

**422.8 Construction documents.** Construction documents for the residential safe room shall be directly prepared by a Hawaii-licensed professional structural engineer.

**422.9 Special inspection.** The construction or installation of the residential safe room shall be verified for conformance to the drawings in accordance with Chapter
17. **422.10 Notification.** The owner of the residential safe room shall notify the state department of defense and county civil defense agency of the property's Tax map key or global positioning system coordinates.

**Section U03 State- and County-owned public high occupancy buildings - design criteria for enhanced hurricane protection areas.** Chapter 4 is amended by adding Section 423 to read as follows:

**SECTION 423 State- and County-owned public high occupancy buildings - design criteria for enhanced hurricane protection areas**

**423.1 Intent.** The purpose of this section is to establish minimum life safety design criteria for enhanced hurricane protection areas in high occupancy state- and county-owned buildings occupied during hurricanes of up to Saffir Simpson Category 3.

**423.2 Scope.** This section shall apply to state- and county-owned buildings which are of Occupancy Category III and IV defined by Table 1604.5 and of the following specific occupancies:

1. Enclosed and partially enclosed structures whose primary occupancy is public assembly with an occupant load greater than 300.
2. Health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities.
3. Any other state- and county-owned enclosed or partially enclosed building with an occupant load greater than 5,000.
4. Hospitals and other health care facilities having surgery or emergency treatment facilities.

**Exception:** Facilities located within flood zone V and flood zone A that are designated by the owner to be evacuated during hurricane warnings declared by the National Weather Service, shall not be subject to these requirements.

**423.3 Site criteria.**

**423.3.1 Flood and tsunami zones.** Comply with ASCE 24-05, Flood Resistant Design and Construction, based on provisions for Occupancy Category III.

1. Floor slab on grade shall be 1.5 foot above the base flood elevation of the county’s flood hazard map, or at higher elevation as determined by a
modeling methodology that predicts the maximum envelope and depth of inundation including the combined effects of storm surge and wave actions with respect to a Category 3 hurricane.

2. Locate outside of V and Coastal A flood zones unless justified by site-specific analysis or designed for vertical evacuation in accordance with a method approved by the building official. When a building within a V or Coastal A flood zone is approved, the bottom of the lowest structural framing member of any elevated first floor space shall be 2 feet above the base flood elevation of the county’s flood hazard map, or at higher elevation as determined by a modeling methodology that predicts the maximum envelope and depth of inundation including the combined effects of storm surge and wave actions with respect to a Category 3 hurricane.

3. Locate outside of tsunami evacuation zones unless justified by site-specific analysis or designed for vertical evacuation in accordance with a method approved by the building official.

423.3.2 Emergency vehicle access. Provide at least one route for emergency vehicle access. The portion of the emergency route within the site shall be above the 100-year flood elevation.

423.3.3 Landscaping and utility laydown impact hazards. Landscaping around the building shall be designed to provide standoff separation sufficient to maintain emergency vehicle access in the event of mature tree blowdown. Trees shall not interfere with the functioning of overhead or underground utility lines, nor cause laydown or falling impact hazard to the building envelope or utility lines.

423.3.4 Adjacent buildings. The building shall not be located within 1,000 feet of any hazardous material facilities defined by Table 1604.5. Unanchored light-framed portable structures shall be not permitted within 300 feet of the building.

423.4 Enhanced hurricane protection area program requirements.

423.4.1 Applicable net area. At least 50 per cent of the net square feet of a facility shall be constructed to qualify as an enhanced hurricane protection area. The net floor area shall be determined by subtracting from the gross square feet the floor area of excluded spaces,
exterior walls, columns, fixed or movable objects, equipment or other features that under probable conditions cannot be removed or stored during use as a storm shelter.

423.4.2 Excluded spaces. Spaces such as mechanical rooms, electrical rooms, storage rooms, attic and crawl spaces, shall not be considered as net floor area permitted to be occupied during a hurricane.

423.4.3 Occupancy capacity. The occupancy capacity shall be determined by dividing the net area of the enhanced hurricane protection area by 15 square feet net floor area per person.

423.4.4 Toilets and hand washing facilities. Provide a minimum of 1 toilet per 50 enhanced hurricane protection area occupants and a minimum of 1 sink per 100 enhanced hurricane protection area occupants, as determined in accordance with Section 423.4.3, located within the perimeter of the enhanced hurricane protection area. These required toilet and hand-washing facilities are not in addition to those required for normal occupancy and shall be included in the overall facility fixture count.

423.4.5 Accessibility. Where the refuge occupancy accommodates more than 50 persons, provide an ADA-accessible route to a shelter area at each facility with a minimum of 1 wheelchair space for every 200 enhanced hurricane protection area occupants determined in accordance with Section 423.4.3.

423.5 Design wind, rain, and impact loads.

423.5.1 Structural design criteria. The building main wind force resisting system and structural components shall be designed per ASCE 7 for a 115 mph minimum peak 3-second gust design speed with a load factor of 1.6, and an importance factor for Occupancy Category III. Topographic and directionality factors shall be the site-specific values determined in accordance with Appendix W. Design for interior pressure shall be based on the largest opening in any exterior facade or roof surface.

423.5.2 Windborne debris missile impact for building enclosure elements. Exterior glazing and glazed openings, louvers, roof openings and doors shall be provided with windborne debris impact resistance or protection systems conforming to ASTM E1996-05 Level D, i.e., 9 lb., 2 X 4, @ 50 fps (34 mph).

423.5.3 Cyclic pressure loading of impact resistive glazing or windborne impact protective systems. Resistance to the calculated maximum inward and outward pressure shall be designed to conform to ASTM E1996-05.
423.5.4 Windows. All unprotected window assemblies and their anchoring systems shall be designed and installed to meet the wind load and missile impact criteria of this section.

423.5.5 Window protective systems. Windows may be provided with permanent or deployable protective systems, provided the protective system is designed and installed to meet the wind load and missile impact criteria and completely covers the window assembly and anchoring system.

423.5.6 Doors. All exterior and interior doors subject to possible wind exposure or missile impact shall have doors, frames, anchoring devices, and vision panels designed and installed to resist the wind load and missile impact criteria or such doors, frames, anchoring devices, and vision panels shall be provided with impact protective systems designed and installed to resist the wind load and missile impact criteria of this section.

423.5.7 Exterior envelope. The building enclosure, including walls, roofs, glazed openings, louvers and doors, shall not be perforated or penetrated by windborne debris, as determined by compliance with ASTM E1996-05 Level C.

423.5.8 Parapets. Parapets shall satisfy the wind load and missile impact criteria of the exterior envelope.

423.5.9 Roofs

423.5.9.1 Roof openings. Roof openings (e.g., HVAC fans, ducts, skylights) shall be provided with protection for the wind load and missile impact criteria of Sections 423.5.2 and 423.5.3.

423.5.9.2 High wind roof coverings. Roof coverings shall be specified and designed according to the latest ASTM Standards for high wind uplift forces.

423.5.9.3 Roof drainage. Roofs shall have adequate slope, drains and overflow drains or scuppers sized to accommodate 100-year hourly rainfall rates in accordance with Section 1611.1, but not less than 2-inches per hour for 6 continuous hours.

423.6 Ventilation

423.6.1 Mechanical ventilation. Mechanical ventilation as required in accordance with the International Mechanical Code. Air intakes and exhausts shall be designed and installed to meet the wind load and missile impact criteria of Sections 423.5.2 and 423.5.3.

423.6.2 HVAC equipment anchorage. HVAC equipment mounted on roofs and anchoring systems shall be designed and installed to meet the wind load criteria. Roof openings for roof-mounted HVAC equipment shall have a 12-
inch-high curb designed to prevent the entry of rain water.

423.7 *Standby electrical system capability.* Provide a standby emergency electrical power system per Chapter 27 and NFPA 70 Article 700 Emergency Systems and Article 701 Legally Required Standby Systems, which shall have the capability of being connected to an emergency generator or other temporary power source. The emergency system capabilities shall include:
1. An emergency lighting system;
2. Illuminated exit signs;
3. Fire protection systems, fire alarm systems and fire sprinkler systems; and

423.7.1 *Emergency generator.* When emergency generators are pre-installed, the facility housing the generator, permanent or portable, shall be an enclosed area designed to protect the generators from wind and missile impact. Generators hardened by the manufacturer to withstand the area’s design wind and missile impact criteria shall be exempt from the enclosed area criteria requirement.

423.8 *Quality assurance*

423.8.1 *Information on construction documents.* Construction documents shall include design criteria, the occupancy capacity of the enhanced hurricane protective area, and Project Specifications shall include opening protection devices. Floor plans shall indicate all enhanced hurricane protection area portions of the facility and exiting routes there from. The latitude and longitude coordinates of the building shall be recorded on the construction documents.

423.8.2. *Special inspection.* In addition to the requirements of Chapter 17, special inspections shall include at least the following systems and components:
1. Roof cladding and roof framing connections;
2. Wall connections to roof and floor diaphragms and framing;
3. Roof and floor diaphragm systems, including collectors, drag struts and boundary elements;
4. Vertical windforce-resisting systems, including braced frames, moment frames and shear walls;
5. Windforce-resisting system connections to the foundation; and
6. Fabrication and installation of systems or components required to meet the impact-resistance requirements of Section 1609.1.2.

*Exception:* Fabrication of manufactured systems or
components that have a label indicating compliance with the wind-load and impact-resistance requirements of this code.

423.8.3 Quality assurance plan. A construction quality assurance program shall be included in the construction documents and shall include:
1. The materials, systems, components, and work required to have special inspection or testing by the building official or by the registered design professional responsible for each portion of the work;
2. The type and extent of each special inspection;
3. The type and extent of each test;
4. Additional requirements for special inspection or testing for seismic or wind resistance; and
5. For each type of special inspection, identification as to whether it will be continuous special inspection or periodic special inspection.

423.8.4 Peer review. Construction documents shall be independently reviewed by a Hawaii-licensed structural engineer. A written opinion report of compliance shall be submitted to State Civil Defense, the building official, and the owner.

423.9 Maintenance. The building shall be periodically inspected every three years and maintained by the owner to ensure structural integrity and compliance with this section. A report of inspection shall be furnished to the State Civil Defense.

423.10 Compliance re-certification when altered, deteriorated, or damaged. Alterations shall be reviewed by a Hawaii-licensed structural engineer to determine whether any alterations would cause a violation of this section. Deterioration or damage to any component of the building shall require an evaluation by a Hawaii-licensed structural engineer to determine repairs necessary to maintain compliance with this section." [Eff APR 16 2010] (Auth: HRS §§107-29) (Imp: HRS §§107-24, 107-25)

§3-180-53 Appendix W - Hawaii wind design provisions for new construction. Appendix W is added to read as follows:

"APPENDIX W

Hawaii Wind Design Provisions for New Construction

W101 Revisions to chapter 16. When Appendix W is adopted,
wind design shall be in accordance with Chapter 16 as amended by Sections W101.1 through W101.10.

W101.1 Revisions to section 1603.1. Section 1603.1 is amended to read as follows:

1603.1 General. Construction documents shall show the size, section, and relative locations of structural members with floor levels, column centers and offsets dimensioned. The design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.8 shall be indicated on the construction documents.

Exception: Construction documents for buildings constructed in accordance with the conventional light-frame construction provisions of Section 2308 shall indicate the following structural design information:
1. Floor and roof live loads.
2. Ground snow load, P_g.
3. Basic wind speed (3-second gust), and effective wind speed V_{eff} (3-second gust), miles per hour (mph) (km/hr) and wind exposure.
4. Seismic design category and site class.
5. Flood design data, if located in flood hazard areas established in Section 1612.3.

W101.2 Revisions to section 1603.1.4. Section 1603.1.4 is amended to read as follows:

1603.1.4 Wind design data. The following information related to wind loads shall be shown, regardless of whether wind loads govern the design of the lateral-force-resisting system of the building:
1. Basic wind speed (3-second gust), miles per hour (km/hr), V, and effective windspeed V_{eff}.
2. Wind importance factor I, and building category.
3. Wind exposure, if more than one wind exposure is utilized, the wind exposure for each applicable wind direction shall be indicated.
4. The applicable internal pressure coefficient.
5. Components and cladding. The design wind pressures in terms of psf (kN/m^2) used for the design of exterior components, and cladding not specifically designed by the registered design professional.

W101.3 Revisions to section 1609.1.1. Section 1609.1.1 is amended to read as follows:

1609.1.1 Determination of wind loads. Wind loads on every building or structure shall be determined in accordance with Chapter 6 of ASCE 7. Minimum values for Directionality Factor, K_d, Velocity Pressure Exposure Coefficient, K_e, and Topographic Factor, K_t, shall be
determined in accordance with Section 1609. The type of opening protection required, the basic wind speed and the exposure category for a site is permitted to be determined in accordance with Section 1609 or ASCE 7. Wind shall be assumed to come from any horizontal direction and wind pressures shall be assumed to act normal to the surface considered.

Exceptions:
1. Subject to the limitations of Section 1609.1.1.1, the provisions of SBCCI STD 10 shall be permitted for applicable Group R-2 and R-3 buildings.
2. Subject to the limitations of Section 1609.1.1.1, residential structures using the provisions of the AF&PA WFCM.

W101.4 Revisions to section 1609.1.2. Section 1609.1.2 is amended to read as follows:

1609.1.2 Protection of openings. In wind-borne debris regions, glazing in building shall be impact-resistant or protected with an impact-resistant covering meeting the requirements of an approved impact-resisting standard or ASTM E 1996 and ASTM E 1886 referenced therein as follows:
1. Glazed openings located within 30 feet (9144 mm) of grade shall meet the requirements of the Large Missile Test of ASTM E 1996.
2. Glazed openings located more than 30 feet (9144 mm) above grade shall meet the provisions of the Small Missile Test of ASTM E 1996.

Exceptions:
1. Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and a maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7. Attachment in accordance with Table 1609.1.2 is permitted for buildings with a mean roof height of 33 feet (10 058 mm) or less where wind speeds do not exceed 130 mph.
The text content is as follows:

2. Glazing in Occupancy Category I buildings as defined in Section 1604.5, including greenhouses that are occupied for growing plants on a production or research basis, without public access shall be permitted to be unprotected.

3. Glazing in Occupancy Category II, III or IV buildings located over 60 feet (18 288 mm) above the ground and over 30 feet (9144 mm) above aggregate surface roofs located within 1,500 feet (458 m) of the building shall be permitted to be unprotected.

4. Glazing in Occupancy Category II and III buildings that can receive positive external pressure in the lower 60 feet (18 288 mm) shall be assumed to be openings unless such glazing is impact-resistant or protected with an impact-resistant system.

Exception: Glazing in Occupancy Category III buildings defined by Table 1604.5 of the following occupancies shall be provided with windborne debris protection:

1. Covered structures whose primary occupancy is public assembly with an occupant load greater than 300.

2. Health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities.

3. Any other public building with an occupant load greater than 5,000.

Table 1609.1.2
Wind-Borne Debris Protection Fastening Schedule For Wood Structural Panels

<table>
<thead>
<tr>
<th>Fastener Type</th>
<th>Panel span ≤ 4 feet</th>
<th>Panel span &gt; 4 feet and ≤ 6 feet</th>
<th>Panel span &gt; 6 feet and ≤ 8 feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 6 screws</td>
<td>16''</td>
<td>12''</td>
<td>9''</td>
</tr>
<tr>
<td>No. 8 screws</td>
<td>16''</td>
<td>16''</td>
<td>12''</td>
</tr>
</tbody>
</table>

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound = 0.454 kg, 1 mile per hour = 1.609 km/h.

a. This table is based on a maximum wind speed (3-second gust) of 130 mph and mean roof height of 33 feet or less.
b. Fasteners shall be installed at opposing ends of the wood structural panel. Fasteners shall be located a minimum of 1 inch from the edge of the panel.
c. Fasteners shall be long enough to penetrate through the exterior wall covering a minimum of 1.75 inches into wood wall framing; a minimum of 1.25 inches into concrete block or concrete; or into steel framing by at least three threads. Fasteners shall be located a minimum of 2.5 inches from the edge of concrete block or concrete.
d. Where screws are attached to masonry or masonry/stucco, they shall be attached utilizing vibration-resistant anchors having a minimum withdrawal capacity of 490 pounds.

1609.1.2.1 Building with openings. Where glazing is assumed to be an opening in accordance with Section 1609.1.2 #4, the building shall be evaluated to determine if the openings are of sufficient area to constitute an open or partially enclosed building as defined in ASCE 7. Open and partially enclosed buildings shall be designed in accordance with the applicable provisions of ASCE 7. Partially enclosed Group R-3 buildings shall also include a residential safe room in accordance with Section 422.

1609.1.2.2 Louvers. Louvers protecting intake and exhaust ventilation ducts not assumed to be open that are located within 30 ft (9144 mm) of grade shall meet requirements of an approved impact-resisting standard or the Large Missile Test of ASTM E 1996.

W101.5 Revisions to Section 1609.3. Section 1609.3 is amended to read as follows:

1609.3 Basic wind speed and topographic and directionality factors. The basic wind speed, in mph, for the determination of the wind loads shall be determined by Figure 1609.

Special wind regions near mountainous terrain and valleys are accounted within the Topographic Factor defined in Section 1609.3.3. Wind speeds derived from simulation techniques shall only be used in lieu of the basic wind speeds given in Figure 1609 when, (1) approved simulation or extreme-value statistical-analysis procedures are used (the use of regional wind speed data obtained from anemometers is not permitted to define the hurricane wind speed risk in Hawaii) and (2) the design wind speeds resulting from the study shall not be less than the resulting 700-year return period wind speed divided by \( \sqrt{1.6} \).

W101.6 Addition of Section 1609.3.2. Section 1609.3.2 is added to read as follows:

1609.3.2 Effective basic wind speed conversion. For Section 2308.10.1, the provisions of ASCE 7 Section 6.4, and the exceptions permitted under Section 1609.1.1.1, the basic wind speed value used for determination of the wind loads, shall be the Effective Basic Wind Speed, \( V_{eff} \), determined by Figure 1609.1.1.1, which adjusts the basic wind speed for special topographic wind regions.

W101.7 Addition of effective wind speed contour maps. Figures 1609.1.1.1(a) through 1609.1.1.1(f) are added.
Effective Wind Speed Contour for the Island of Hawaii
(for components and cladding with mean roof height less than or equal to 100ft)

Figure 1609.1.1.1(a)
County of Hawaii Effective Basic Wind Speed, $V_{eff}$, for Components and Cladding for Buildings less than 100 feet Tall
Effective Wind Speed Contour for the Island of Maui
(for components and cladding with mean roof height less than or equal to 100 ft)

Major Roads Effective Wind Speed (mph)

<table>
<thead>
<tr>
<th>Land Use</th>
<th>100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>100</td>
</tr>
<tr>
<td>Conservation</td>
<td>110</td>
</tr>
<tr>
<td>Urban</td>
<td>120</td>
</tr>
<tr>
<td>Rural</td>
<td>130</td>
</tr>
<tr>
<td></td>
<td>140</td>
</tr>
<tr>
<td></td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>170</td>
</tr>
<tr>
<td></td>
<td>180</td>
</tr>
</tbody>
</table>

Figure 1609.1.1.1(b)
County of Maui, Island of Maui Effective Basic Wind Speed, $V_{eff}$, for Components and Cladding for Buildings less than 100 feet Tall
Effective Wind Speed Contour for the Island of Molokai
(for components and cladding with mean roof height less than or equal to 100 ft)

<table>
<thead>
<tr>
<th>Major Roads</th>
<th>Effective Wind Speed (mph)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Use</td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>120</td>
</tr>
<tr>
<td>Conservation</td>
<td>130</td>
</tr>
<tr>
<td>Urban</td>
<td>140</td>
</tr>
<tr>
<td>Rural</td>
<td>150</td>
</tr>
</tbody>
</table>

Figure 1609.1.1.1(c)
County of Maui, Island of Molokai Effective Basic Wind Speed, $V_{eff}$, for Components and Cladding for Buildings less than 100 feet Tall
Effective Wind Speed Contour for the Island of Lanai
(for components and cladding with mean roof height less than or equal to 100 ft)

<table>
<thead>
<tr>
<th>Major Roads</th>
<th>Effective Wind Speed (mph)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Use</td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>120</td>
</tr>
<tr>
<td>Conservation</td>
<td>130</td>
</tr>
<tr>
<td>Urban</td>
<td>140</td>
</tr>
<tr>
<td>Rural</td>
<td>150</td>
</tr>
</tbody>
</table>

Figure 1609.1.1.1(d)
County of Maui, Island of Lanai Effective Basic Wind Speed, $V_{eff}$, for Components and Cladding for Buildings less than 100 feet Tall
Figure 1609.1.1.1(e)
City and County of Honolulu Effective Basic Wind Speed, $V_{eff}$, for Components and Cladding for Buildings less than 60 feet Tall
W101.8 Addition of section 1609.3.3. Section 1609.3.3 is added to read as follows:

1609.3.3 Topographic effects. Wind speed-up effects caused by topography shall be included in the calculation of wind loads by using the factor \( K_{st} \), where \( K_{st} \) is given in Figures 1609.3.3(a) through 1609.3.3(f).

Exception: Site-specific probabilistic analysis of directional \( K_{st} \) based on wind-tunnel testing of topographic speed-up shall be permitted to be submitted for approval by the building official.
Wind Topographic Factor (Kzt) for the Island of Hawaii

<table>
<thead>
<tr>
<th>Land use</th>
<th>Kzt Contour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Roads</td>
<td>0.90</td>
</tr>
<tr>
<td>Agriculture</td>
<td>1.0</td>
</tr>
<tr>
<td>Conservation</td>
<td>1.10</td>
</tr>
<tr>
<td>Urban</td>
<td>1.20</td>
</tr>
<tr>
<td>Rural</td>
<td>1.30</td>
</tr>
<tr>
<td>1.40</td>
<td></td>
</tr>
<tr>
<td>1.50</td>
<td></td>
</tr>
<tr>
<td>1.60</td>
<td></td>
</tr>
<tr>
<td>1.80</td>
<td></td>
</tr>
<tr>
<td>2.0</td>
<td></td>
</tr>
<tr>
<td>2.5</td>
<td></td>
</tr>
<tr>
<td>3.0</td>
<td></td>
</tr>
</tbody>
</table>

Figure 1609.3.3(a)
County of Hawaii Peak Gust Topographic Factor Kzt
Wind Topographic Factor (Kzt) for the Island of Maui

<table>
<thead>
<tr>
<th>Major Roads</th>
<th>Kzt Contour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Use</td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>0.80</td>
</tr>
<tr>
<td>Conservation</td>
<td>1.0</td>
</tr>
<tr>
<td>Urban</td>
<td>1.20</td>
</tr>
<tr>
<td>Rural</td>
<td>1.40</td>
</tr>
<tr>
<td></td>
<td>1.50</td>
</tr>
<tr>
<td></td>
<td>1.60</td>
</tr>
<tr>
<td></td>
<td>2.0</td>
</tr>
<tr>
<td></td>
<td>2.50</td>
</tr>
</tbody>
</table>

Figure 1609.3.3(b)
County of Maui, Island of Maui Peak Gust Topographic Factor
Kzt
Wind Topographic Factor (Kzt) for the Island of Molokai

Figure 1609.3.3(c)
County of Maui, Island of Molokai Peak Gust Topographic Factor Kzt
Figure 1609.3.3(d)
County of Maui, Island of Lanai Peak Gust Topographic Factor $K_{zt}$
Figure 1609.3.3(e)
City and County of Honolulu Peak Topographic Factor $K_{zt}$ for Building Heights up to 100 feet\(^a\)\(^b\)

a. Site-specific probabilistic analysis of directional $K_{zt}$ based on wind-tunnel testing of topographic speed-up shall be permitted to be submitted for approval by the building official. For buildings taller than 160 feet, this submittal shall include peak gust velocity profiles for all wind direction sectors.

b. At Exposure B sites with ground elevations less than 500 feet, $K_{zt}$ values ≥1.2 shall be permitted to be reduced for building heights greater than 100 feet by multiplying $K_{zt}$ mapped in Figure 1609.3.3(e) by the height adjustments given in the Table 1609.3.3(e)2. Interpolation is permitted.
Table 1609.3.3(e)2
Height Adjustment of Mapped $K_{zt}$ Values at Sites with Ground Elevation Less than 500 feet

<table>
<thead>
<tr>
<th>Building roof height above ground (ft)</th>
<th>≤100</th>
<th>120</th>
<th>140</th>
<th>160</th>
<th>180</th>
<th>200</th>
<th>220</th>
<th>≥240</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjustment factor to $K_{zt} ≥1.2$</td>
<td>100%</td>
<td>98%</td>
<td>96%</td>
<td>94%</td>
<td>92%</td>
<td>90%</td>
<td>92%</td>
<td>94%</td>
</tr>
</tbody>
</table>

Wind Topographic Factor ($K_{zt}$) for the Island of Kauai

Figure 1609.3.3(f)
County of Kauai Peak Gust Topographic Factor $K_{zt}$

W101.9 Directionality factor. Section 1609.3.4 is added to read as follows:

1609.3.4 Directionality factor. The wind directionality factor, $K_d$, shall be determined from Tables
1609.3.4(a)(1) through 1609.3.4(a)(3) and 1609.3.4(b)(1) through 1609.3.4(b)(3), and Figures 1609.3.4(a)(4) and 1509.3.4(b)(4).

<table>
<thead>
<tr>
<th>Topographic Location on the Island of Hawaii</th>
<th>Main Wind Force Resisting Systems</th>
<th>Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction</th>
<th>Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sites in North Kohala, South Kohala, South Kona, South Hilo, and Puna Districts at an elevation not greater than 3000 ft.</td>
<td>0.65</td>
<td>0.70</td>
<td>0.75</td>
</tr>
<tr>
<td>All other sites</td>
<td>0.70</td>
<td>0.80</td>
<td>0.75</td>
</tr>
</tbody>
</table>

a. The values of $K_d$ for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of $K_d$ based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but $K_d$ shall have a value not less than 0.65.
Table 1609.3.4(a)(2)

<table>
<thead>
<tr>
<th>Topographic Location in the County of Maui</th>
<th>Main Wind Force Resisting Systems</th>
<th>Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction</th>
<th>Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sites on the Island of Maui at an elevation not greater than 1000 ft.</td>
<td>0.60</td>
<td>0.65</td>
<td>0.70</td>
</tr>
<tr>
<td>Sites on the Island of Maui at an elevation greater than 1000 ft.</td>
<td>0.65</td>
<td>0.70</td>
<td>0.75</td>
</tr>
<tr>
<td>All other sites on the Islands of Molokai and Lanai</td>
<td>0.80</td>
<td>0.85</td>
<td>0.80</td>
</tr>
</tbody>
</table>

a. The values of $K_d$ for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of $K_d$ based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but $K_d$ shall have a value not less than 0.60.
### Table 1609.3.4(a)(3)
#### \( K_d \) Values for Main Wind Force Resisting Systems Sited on Oahu, Hawaii

<table>
<thead>
<tr>
<th>Topographic Location on Oahu, Hawaii</th>
<th>Main Wind Force Resisting Systems</th>
<th>Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction</th>
<th>Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean Roof Height less than or equal to 100 ft.</td>
<td>Mean Roof Height greater than 100 ft.</td>
<td>Mean Roof Height less than or equal to 100 ft.</td>
</tr>
<tr>
<td>Sites within valleys at an elevation of at least 50 ft. but not greater than 500 ft.</td>
<td>0.65</td>
<td>0.70</td>
<td>0.70</td>
</tr>
<tr>
<td>Central Oahu above an elevation of 500 ft, the Ewa and Kapolei plains, and coastal areas with ( K_d ) (10m) not greater than 1.2</td>
<td>0.75</td>
<td>0.80</td>
<td>0.75</td>
</tr>
<tr>
<td>All other areas, including Hills, Hillsides, Ridges, Bluffs, and Escarpments at any elevation or height; coastal and inland areas with ( K_d ) (10m) greater than 1.2</td>
<td>0.70</td>
<td>0.75</td>
<td>0.75</td>
</tr>
</tbody>
</table>

a. The values of \( K_d \) for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of \( K_d \) based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but \( K_d \) shall have a value not less than 0.65.
Figure 1609.3.4(a)(4)

K_d Values for Main Wind Force Resisting Systems Sited on Kauai County, Hawaii\textsuperscript{a,b}

a. The values of K_d for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of K_d based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but K_d shall have a value not less than 0.65.
Table 1609.3.4(b)(1)

| Topographic Location on the Island of Hawaii | Components and Cladding | | |
| --- | --- | --- |
| | Mean Roof Height less than or equal to 100 ft. | Mean Roof Height greater than 100 ft. | Occupancy Category IV Buildings and Structures |
| Sites in North Kohala, South Kohala, South Kona, South Hilo, and Puna Districts at an elevation not greater than 3000 ft. | 0.65 | 0.70 | 0.75 |
| All other sites | 0.75 | 0.80 | 0.85 |

a. The values of $K_d$ for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of $K_d$ based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but in any case subject to a minimum value of 0.65.

Table 1609.3.4(b)(2)

| Topographic Location on the County of Maui | Components and Cladding | | |
| --- | --- | --- |
| | Mean Roof Height less than or equal to 100 ft. | Mean Roof Height greater than 100 ft. | Occupancy Category IV Buildings and Structures |
| Sites on the Island of Maui at an elevation not greater than 1000 ft | 0.65 | 0.70 | 0.75 |
| Sites on the Island of Maui at an elevation greater than 1000 ft | 0.70 | 0.75 | 0.85 |
| All other sites on the Islands of Molokai and Lanai | 0.80 | 0.85 | 0.85 |

a. The values of $K_d$ for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of $K_d$ based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but in any case subject to a minimum value of 0.65.
### Table 1609.3.4(b)(3)

**K₀ Values for Components and Cladding of Buildings Sited on Oahu, Hawaii**

<table>
<thead>
<tr>
<th>Topographic Location on Oahu</th>
<th>Components and Cladding</th>
<th>Occupancy Category IV Buildings and Structures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean Roof Height less than or equal to 100 ft.</td>
<td>Mean Roof Height greater than 100 ft.</td>
</tr>
<tr>
<td>Sites within valleys at an elevation of at least 50 ft. but not greater than 500 ft.</td>
<td>0.65</td>
<td>0.70</td>
</tr>
<tr>
<td>Central Oahu above an elevation of 500 ft, the Ewa and Kapolei plains, and coastal areas with ( K₀ (10m) ) not greater than 1.2</td>
<td>0.75</td>
<td>0.80</td>
</tr>
<tr>
<td>All other areas, including Hills, Hillsides, Ridges, Bluffs, and Escarpments at any elevation or height; coastal and inland areas with ( K₀ (10m) ) greater than 1.2</td>
<td>0.70</td>
<td>0.75</td>
</tr>
</tbody>
</table>

a. The values of \( K₀ \) for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.

b. Site-specific probabilistic analysis of \( K₀ \) based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but in any case subject to a minimum value of 0.65.
Figure 1609.3.4(b)(4)

$K_d$ Values for Components and Cladding of Buildings Sited on Kauai County, Hawaii

a. The values of $K_d$ for other non-building structures indicated in ASCE 7 Table 6-4 shall be permitted.
b. Site-specific probabilistic analysis of $K_d$ based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the building official, but $K_d$ shall have a value not less than 0.65.

W101.10 Addition of exposure category maps. Section 1609.4.4 is added to read as follows:

1609.4.4 Exposure category maps. Exposure categories are permitted to be determined using Figures 1609.4.4(a) through 1609.4.4(e).
Exposure Category Zones for the Island of Hawaii
(for buildings with mean roof height less than 100 ft)
(Based on NOAA land cover data 2002 and land satellite images)

Figure 1609.4.4(a)
Exposure Category Zones for Hawaii County
Figure 1609.4.4(b)
Exposure Category Zones for Island of Maui, Maui County
Exposure Category Zones for the Islands of Molokai and Lanai (for buildings with mean roof height less than 100 feet) (Based on NOAA land cover data 2002 and land satellite images)

Exposure B/C Boundary

Elevation Contour (ft)
- 100
- 500
- 1000

Map roads

Land Use
Agriculture
Conservation
Rural
Urban

0 2.5 5 10 Miles

Notes:
1. Intermediate exposure between categories B and C are permitted when substantiated per ASCE 7.
2. For buildings whose mean roof height is less than or equal to 30 ft, exposure category shall be permitted to be evaluated per Section 1609.4.
3. For buildings whose height is equal to or greater than 150 ft, exposure category shall be determined per Section 1609.4.1

Figure 1609.4.4(c)
Exposure Category Zones for Islands of Molokai and Lanai, Maui County
Exposure Category Zonal for Buildings with mean roof height less than 130 ft

(Based on NOAA land cover data 2002 and land satellite images)

Notes:
1. Intermediate exposures between categories B and C are permitted when substantiated per ASCE 7
2. Sites located within the C (coastal) zone shall be permitted to be evaluated for exposure category B for the wind directions where an adjacent B zone exists in the applicable upwind sector.
3. For buildings whose mean roof height is less than or equal to 50 ft, exposure category shall be permitted to be evaluated per Section 1609.4.
4. For buildings whose height is equal to or greater than 130 ft, exposure category shall be determined per Section 1609.4.1.

Figure 1609.4.4(d)
Exposure Category Zones for the City and County of Honolulu
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Exposure Category Zones for the Island of Kauai (for buildings with mean roof height less than 100 feet) (Based on NOAA land cover data 2002 and land satellite images)

Exposure B/C Boundary
Major roads
Elevation Contour (ft)
100
500
1000

Land Use
Agriculture
Conservation
Rural
Urban

Notes:
1. Intermediate exposures between categories B and C are permitted when substantiated per ASCE 7.
2. For buildings whose mean roof height is less than or equal to 30 ft, exposure category shall be permitted to be evaluated per Section 1609.4.
3. For buildings whose mean height is equal to or greater than 100 ft, exposure category shall be determined per Section 1609.4.1.

Figure 1609.4.4(e)
Exposure Category Zones for Kauai County

W102 Revisions to Chapter 23. When Appendix W is adopted, wood construction shall be in accordance with Chapter 23 as amended by Sections W102.1 and W102.2.

W102.1 Revisions to Section 2308.2.1. Section 2308.2.1 is amended to read as follows:

2308.2.1 Basic wind speed greater than 100 mph. Where the Effective Basic Wind Speed exceeds 100 mph, the provisions of the AF&PA WFCM, or the SBCCI SSTD 10 are permitted to be used.

W102.2 Revisions to Table 2308.10.1. Table 2308.10.1 is amended to read as follows:
Table 2308.10.1
Required Rating of Approved Uplift Connectors (pounds)\textsuperscript{a,b,c,d,e,f,g,h,i}

<table>
<thead>
<tr>
<th>Effective Basic Wind Speed</th>
<th>Roof Span (feet)</th>
<th>Overhangs (pounds/ft)\textsuperscript{d}</th>
</tr>
</thead>
<tbody>
<tr>
<td>$V_{em}$, 3-sec gust</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>85</td>
<td>-72</td>
<td>-120</td>
</tr>
<tr>
<td>90</td>
<td>-91</td>
<td>-152</td>
</tr>
<tr>
<td>100</td>
<td>-131</td>
<td>-218</td>
</tr>
<tr>
<td>110</td>
<td>-175</td>
<td>-292</td>
</tr>
<tr>
<td>120</td>
<td>-240</td>
<td>-400</td>
</tr>
<tr>
<td>130</td>
<td>-304</td>
<td>-506</td>
</tr>
</tbody>
</table>

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mile per hour = 1.61 km/hr, 1 pound = 0.454 Kg, 1 pound/foot = 14.5939 N/m.

a. The uplift connection requirements are based on a 30-foot mean roof height located in Exposure B. For Exposure C and for other mean roof heights, multiply the above loads by the adjustment coefficients below.

<table>
<thead>
<tr>
<th>Exposure</th>
<th>Mean Roof Height (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15</td>
</tr>
<tr>
<td>B</td>
<td>1.00</td>
</tr>
<tr>
<td>C</td>
<td>1.21</td>
</tr>
</tbody>
</table>

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mile per hour = 1.61 km/hr, 1 pound = 0.454 Kg, 1 pound/foot = 14.5939 N/m.

b. The uplift connection requirements are based on the framing being spaced 24 inches on center. Multiply by 0.67 for framing spaced 16 inches on center and multiply by 0.5 for framing spaced 12 inches on center.

c. The uplift connection requirements include an allowance for 10 pounds of dead load.

d. The uplift connection requirements do not account for the effects of overhangs. The magnitude of the above loads shall be increased by adding the overhang loads found in the table. The overhang loads are also based on framing spaced 24 inches on center. The overhang loads given shall be multiplied by the overhang projection and added to the roof uplift value in the table.

e. The uplift connection requirements are based upon wind loading on end zones as defined in Figure 6-2 of ASCE 7. Connection loads for connections located a distance of 20 percent of the least horizontal dimensions of the building from the corner of the building are permitted to be reduced by multiplying the table connection value by 0.7 and multiplying the overhang load by 0.8.

f. For wall-to-wall and wall-to-foundation connections, the capacity of the uplift connector is permitted to be reduced by 100 pounds for each full wall above. (For example, if a 500-pound rated connector is used on the roof framing, a 400-pound rated connector is permitted at the next floor level down.)

g. Interpolation is permitted for intermediate values of basic wind speeds and roof spans.

h. The rated capacity of approved tie-down devices is permitted to include up to a 60-percent increase for wind effects where allowed by material specifications.
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i. \( V_{eff} \) is given by Figure 1609.1.1.1." [Eff APR 16 2010


§3-180-54 Appendix X – Hawaii provisions for indigenous Hawaiian architecture structures. Appendix X is added to read as follows:

"APPENDIX X

Hawaii Provisions For Indigenous Hawaiian Architecture Structures

Section X101 General.

X101.1 Scope. The provisions of this appendix shall apply exclusively to Indigenous Hawaiian Architecture Structures. The purpose of these provisions is to acknowledge and establish procedures for designing and constructing indigenous Hawaiian architecture structures.

X101.2 Publications incorporated by reference. The following publications are incorporated by reference and made a part of these provisions. Where there is a conflict between Appendix X and the referenced documents, Appendix X shall prevail.

1. "Hawaiian Thatched House" (1971), by Russell A. Apple, published by the United States Department of the Interior,
2. "Hale Construction Standards" (2000), by Francis Sinenci and Bill Sides,
3. "The Hawaiian Grass House in Bishop Museum" (1988), by Catherine C. Summers, and
4. "Arts and Crafts of Hawaii", Section II, Houses (1957) by Te Rangi Hiroa (Peter H. Buck)

X101.3 Definitions. For purposes of this appendix, the following words and terms shall have the meanings shown herein. Refer to Chapter 2 for general definitions.

CERTIFIED HALE BUILDER. means a person who has obtained a certificate of completion for satisfactorily completing a course in Hawaiian hale construction from the University of Hawaii, or any of its community colleges, or as approved by the Building Official.

GROUP OF STRUCTURES. A group of indigenous Hawaiian architecture structures that are in close proximity to each other and have an aggregate floor area of 1,800 square feet or less.

INDIGENOUS HAWAIIAN ARCHITECTURE STRUCTURE or HALE. A structure that is consistent with the design, construction
methods and uses of structures built by Hawaiians in the 1800's, which uses natural materials found in the Hawaiian islands, and complies with this appendix and references.

**SEPARATION.** The clear distance between two structures.

**SETBACK.** The clear distance between a structure and a property line.

**Section X201 Material requirements.**

**X201.1 Hale materials.** Hale shall be constructed using only materials grown and harvested in the State of Hawaii.

**X201.2 Wood framing material.** The wood members for the hale, such as posts and rafters, shall be, but not limited to hardwoods of unmilled, straight sections of trunks or branches of the following species:

1. Casaurina equisitafolia (ironwood).
2. Prosopis-allid (kiawe).
3. Eucalyptus robusta (eucalyptus).
4. Psidium cattleianum (strawberry guava).
5. Metrosideros polymorpha (ohia).
6. Rizophora mangle (mangrove).

**Exception:** Ardisia elliptica (inkberry) may be used only for roof purlins as an alternative to specified woods listed in Items 1 through 6.

**X201.3 Roofing and siding.** Thatched roofing and siding materials for the hale may be any grass or leaf material grown and harvested in the State of Hawaii, to include but not be limited to pili, kualohia, pceu, kwelu, sugarcane leaves, and ti leaves.

**X201.4 Cord.** Natural or synthetic cord used for lashing structural members of the hale shall be 400 pound test. Cord used for tying floating purlins and thatched materials shall be 100 pound test. All cord used on the hale shall be shades of green, tan, brown or black.

**X201.5 Metal prohibited.** Metal shall not be used for the construction of the hale.

**Section X202 Size and location.**

**X202.1 Height and size limitation.** Hale shall be one-story, detached structure not exceeding 1,800 square feet. Hale shall not exceed the size indicated in Table X202.1.

**Table X202.1**

<table>
<thead>
<tr>
<th>Hale Halawai</th>
<th>Hale Ku'ai</th>
<th>Hale Noa</th>
<th>Hale Wa'a</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 X 60</td>
<td>14 X 20</td>
<td>14 X 24</td>
<td>30 X 60</td>
</tr>
</tbody>
</table>

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**X202.2 Zoning requirements.** Hale shall comply with minimum yard requirements in the zoning codes.

**X202.3 Minimum separation.** The minimum separation between a hale and another structure shall be at least 10 feet for a one-story structure; 15 feet for a two-story structure; or a distance equal to the height of the hale, whichever is more. The minimum separation between two hale shall be at least 10 feet or a distance equal to the height of the taller hale.

**X202.4 Hale Noa.** Hale noa structures may only be constructed on property where a separate residence exists on the property.

**Section X203 Allowable and prohibited uses.**

**X203.1 Allowable uses.** To the extent permitted by other applicable law, allowable uses for hale structures shall be in accordance with Table X203.1.

<table>
<thead>
<tr>
<th>Use</th>
<th>Hale Halawai</th>
<th>Hale Ku'ai</th>
<th>Hale Noa</th>
<th>Hale Wa'a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eating (ai)</td>
<td>Allowed</td>
<td>Allowed</td>
<td>Not permitted</td>
<td>Allowed</td>
</tr>
<tr>
<td>Assembling (halawai)</td>
<td>Allowed</td>
<td>Allowed</td>
<td>Not permitted</td>
<td>Allowed</td>
</tr>
<tr>
<td>Sleeping (moe)</td>
<td>Not permitted</td>
<td>Not permitted</td>
<td>Allowed</td>
<td>Not permitted</td>
</tr>
<tr>
<td>Retailing (e.g., fruits) (ku'ai)</td>
<td>Allowed</td>
<td>Allowed</td>
<td>Not permitted</td>
<td>Allowed</td>
</tr>
<tr>
<td>Storage (papa'a)</td>
<td>Not permitted</td>
<td>Allowed</td>
<td>Not permitted</td>
<td>Allowed</td>
</tr>
</tbody>
</table>

**X203.2 Prohibited uses and activities.** The following uses and activities shall be prohibited from occurring within or near the hale:

1. Cooking.
2. Open flames.
3. Generators.
4. Extension cords.
5. Electrical switches, fixtures, or outlets.
6. Plumbing faucets, fixtures, or drains.
7. Power tools.
8. No screen, mesh, plastic or any other similar material shall be attached to the hale.
9. Hale shall not be used as a food establishment as defined in the administrative rules adopted by the state department of health.

**X203.3 Maintenance.** The hale shall be maintained by the owner to ensure structural integrity. Repairs for
maintenance of the hale shall not require additional building permits.

Section X301 Fire protection.

X301.1 Fire protection classifications. Fire protection for Indigenous Hawaiian architecture structures shall be as required in Table X301.1.

<table>
<thead>
<tr>
<th>Class</th>
<th>Setback Requirements</th>
<th>Fire Protection Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>The structure (or a group of structures) is: 1. Located at least 100 feet from any existing structure on the same or neighboring properties; and 2. Located at least 100 feet from any property line, except as follows: a. If the property line abuts a public way, the 100 feet minimum setback for that property line shall be reduced by the width of the public way, b. If the property line abuts the shoreline, the minimum setback for that property line shall be the shoreline setback, or c. For any hale ku'ai in the agricultural district that is less than 200 square feet, that is completely open on three sides, and that is used as an agricultural products' stand and if the property line abuts a public way, the minimum setback for that property line shall be 15 feet.</td>
<td>No fire protection is required for the structure.</td>
</tr>
<tr>
<td>B</td>
<td>The structure (or a group of structures) that conforms to applicable zoning setback requirements but does not satisfy Class A setback requirements.</td>
<td>Automatic fire sprinkler system shall be installed in accordance with design standards in Section X301.2. An electrical permit is required for fire sprinklers systems.</td>
</tr>
</tbody>
</table>

X301.2 Automatic fire sprinklers. The design standards for automatic fire sprinklers for Class B indigenous Hawaiian architecture structures shall be in accordance with NFPA 13.

Exception: The design standards for automatic fire sprinklers for Class B indigenous Hawaiian architecture
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structures shall be permitted as follows:
1. 18 gallons per minute for a single head at 140 square feet maximum coverage of roof area.
2. 13 gallons per minute for each subsequent head at 140 square feet maximum coverage of roof area per head.
3. The minimum supply pressure at the base of the riser riser shall not be less than 40 pounds per square inch.
4. The minimum residual pressure at the highest sprinkler shall be not less than 12 pounds per square inch.
5. Sprinkler head spacing shall not exceed 14 feet.
6. Sprinkler heads shall be open type upright, pendent, or sidewall with 1/2-inch or 17/32-inch orifice and have a wax corrosion resistant coating.
7. The total number of sprinklers on a branch shall not exceed 6 heads.
8. The total number of sprinklers shall not exceed the quantity shown in Table X301.2(a).

<table>
<thead>
<tr>
<th>Piping Size</th>
<th>Number of Sprinklers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 inch diameter</td>
<td>2 sprinklers</td>
</tr>
<tr>
<td>1¾ inch diameter</td>
<td>3 sprinklers</td>
</tr>
<tr>
<td>1½ inch diameter</td>
<td>5 sprinklers</td>
</tr>
<tr>
<td>2 inch diameter</td>
<td>10 sprinklers</td>
</tr>
<tr>
<td>2½ inch diameter</td>
<td>30 sprinklers</td>
</tr>
<tr>
<td>3 inch diameter</td>
<td>60 sprinklers</td>
</tr>
</tbody>
</table>

9. The pipe schedule table in Item 8 shall not apply to hydraulically designed systems.
10. The water density shall not be less than 0.10 gpm per square foot.
11. The source of water may be by domestic water meters, detector check meter, underground well, storage tank, swimming pool, ponds, etc., but must meet the design requirements for adequate pressure and duration.
12. Water supply shall be sufficient to provide 30 minutes duration.
13. If domestic water meters are used as the source of water for the fire sprinklers, without a storage
tank and booster pump, the maximum number of sprinklers shall not exceed the number shown in Table X301.2(b).

<table>
<thead>
<tr>
<th>Size of Water Meter</th>
<th>Number of Sprinklers</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/8 inch water meter</td>
<td>1 sprinkler</td>
</tr>
<tr>
<td>¾ inch water meter</td>
<td>2 sprinklers</td>
</tr>
<tr>
<td>1 inch water meter</td>
<td>3 sprinklers</td>
</tr>
<tr>
<td>1½ inch water meter</td>
<td>7 sprinklers</td>
</tr>
<tr>
<td>2 inch water meter</td>
<td>11 sprinklers</td>
</tr>
<tr>
<td>3 inch water meter</td>
<td>27 sprinklers</td>
</tr>
</tbody>
</table>

14. The piping material shall be hard drawn copper with silver solder or brazed fittings, or carbon steel with corrosion-resistant coatings. Plastic pipes shall not be allowed, except for below grade supply pipes.

15. Fire sprinkler system shall be actuated by smoke detectors located at the highest points of the roof and spaced as recommended by the manufacturer.

16. Flow control valves shall be either hydraulically or electrically operated with a manual override switch.

17. Where the width of a roof exceeds the width allowed for one row of sprinklers, two or more rows of sprinklers shall be placed such that the entire roof area is protected.

18. Prevailing wind direction shall be considered in the placement of sprinklers.

19. Deflectors for sprinklers shall be parallel with the roof surface or tilted slightly towards the peak of the roof.

20. Fire sprinklers system shall have a local alarm activated by a smoke detector.

X301.3 Certification of water supply. For any hale that requires fire protection pursuant to X301.1, the applicant shall provide a certification from a licensed engineer or a licensed C-20 contractor that the water supply for the fire sprinkler system has been tested and is capable of delivering the required fire flow for 30 minutes duration.

X302 Smoke alarm. Any hale used for sleeping shall have an approved battery operated smoke alarm installed in
§3-180-54

the hale.

Section X401 Design standards.

X401.1 General design standards. All types of hale shall be designed and constructed in accordance with the standards set out in this section.

1. The minimum diameter size of all structural members shall be measured at the member’s midpoint, except that the minimum diameter size of posts shall be measured at the smaller end. For structure sizes not specifically shown in the tables, the requirements in the next larger width size shall be applicable.

2. The specifications for structural members were estimated based on no wind loads. Hale shall be constructed to allow all thatching materials to separate from the structure prior to adding significant loads.

3. The mix formula for mortar specified in these rules shall be one part portland cement, four parts clean sand, and sufficient fresh water to make the mixture workable.

4. Every hale, except hale noa, shall have at least two sides completely open.

5. Lashing and thatching methods shall comply with illustrations found in “Arts and Crafts of Hawaii” or “The Hawaiian Grass House in Bishop Museum” referenced in Section X101.2.

X402 Allowable designs. Hale shall be designed and constructed in accordance with the requirements in Sections 402.1 through 402.4.

X402.1 Hale Halawai. Each end of the hale halawai may be open or thatched. The ends may also be constructed with a thatched roof hip as an alternate design. Hale Halawai shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Halawai shall meet the size and spacing requirements in Table X402.1(a). Foundations for Hale Halawai shall be designed in accordance with Table X402.1(b).
HALE HALAWAI
Open End Style

HALE HALAWAI
Thatched End Style
Table X402.1(a)
Size and Spacing Requirements for Structural Components used in Hale Halawai

<table>
<thead>
<tr>
<th>Size W x L x H</th>
<th>pou kihii</th>
<th>pou kukuna &amp; pou kaha</th>
<th>pou hana &amp; pouomanu</th>
<th>o'a</th>
<th>kua'iole &amp; holo</th>
<th>kauhuhu</th>
<th>lohelau</th>
<th>Maximum post spacing (feet)</th>
<th>Maximum rafter spacing (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12' x 20' x 7'</td>
<td>4</td>
<td>3½</td>
<td>4</td>
<td>3½</td>
<td>2½</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>14' x 24' x 7'</td>
<td>4</td>
<td>4</td>
<td>4½</td>
<td>3½</td>
<td>2½</td>
<td>3</td>
<td>3½</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>24' x 30' x 7'</td>
<td>5½</td>
<td>4½</td>
<td>4½</td>
<td>4</td>
<td>2½</td>
<td>3</td>
<td>3½</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>25' x 50' x 7'</td>
<td>5½</td>
<td>5½</td>
<td>4½</td>
<td>4</td>
<td>2½</td>
<td>3</td>
<td>3½</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>30' x 60' x 7'</td>
<td>6</td>
<td>5½</td>
<td>6</td>
<td>4½</td>
<td>2½</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>3</td>
</tr>
</tbody>
</table>
Table X402.1(b)
Foundation Design for Hale Halawai

<table>
<thead>
<tr>
<th>Size (W x L x H)</th>
<th>Foundation Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>kahua Diameter x Height</td>
</tr>
<tr>
<td>12' x 20' x 7'</td>
<td>3'6&quot;φ x 24&quot;H</td>
</tr>
<tr>
<td>14' x 24' x 7'</td>
<td>3'8&quot;φ x 24&quot;H</td>
</tr>
<tr>
<td>24' x 30' x 7'</td>
<td>4'0&quot;φ x 30&quot;H</td>
</tr>
<tr>
<td>25' x 50' x 7'</td>
<td>4'0&quot;φ x 30&quot;H</td>
</tr>
<tr>
<td>30' x 60' x 7'</td>
<td>4'0&quot;φ x 30&quot;H</td>
</tr>
</tbody>
</table>

X402.2 Hale Ku’ai. Hale Ku’ai shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Ku’ai shall meet the size and spacing requirements in Table X402.2(a). Foundations for Hale Ku’ai shall be designed in accordance with Table X402.2(b).
HALE KU'AI
SHED STYLE

HALE KU'AI
GABLE STYLE
Table X402.2(a)
Size and Spacing Requirements for Structural Components used in Hale Ku’ai

<table>
<thead>
<tr>
<th>Size (W x L x H)</th>
<th>pou kihia</th>
<th>pou kaha</th>
<th>pou hana</th>
<th>pou manu</th>
<th>o’a</th>
<th>kua’iole &amp; holo</th>
<th>kauhulu</th>
<th>lohelau</th>
<th>Maximum rafter spacing (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5' x 10' x 5'</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>9' x 12' x 5'</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>3½</td>
<td>3¾</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>12' x 16' x 5'</td>
<td>4½</td>
<td>3½</td>
<td>4</td>
<td>4</td>
<td>3½</td>
<td>2</td>
<td>4</td>
<td>2½</td>
<td>4</td>
</tr>
<tr>
<td>14' x 20' x 5'</td>
<td>4½</td>
<td>3½</td>
<td>4</td>
<td>4</td>
<td>3½</td>
<td>2½</td>
<td>4½</td>
<td>2½</td>
<td>4</td>
</tr>
</tbody>
</table>

*a The maximum post spacing for pou kihia and pou kaha is five feet.
*b The maximum post spacing for pou hana and pou manu is twelve feet.
402.3 Hale Noa. Hale Noa shall have at least two openings. One opening shall be at least 3 feet wide and 5 feet high, and the other opening shall be at least 2 feet wide and 3 feet high. Hale Noa shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Noa shall meet the size and spacing requirements in Table X402.3(a). Foundations for Hale Noa shall be designed in accordance with Table X402.3(b).
FRAMING SCHEMATIC

Table X402.3(a)
Size and Spacing Requirements for Structural Components used in Hale Noa

<table>
<thead>
<tr>
<th>Size W x L x H</th>
<th>pou kihi</th>
<th>pou kukuna &amp; pou kaha</th>
<th>pou hana</th>
<th>pouomanu</th>
<th>o'a</th>
<th>kua'iole &amp; holo</th>
<th>kauhuhu</th>
<th>lohelau</th>
<th>Maximum post spacing (feet)</th>
<th>Maximum rafter spacing (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9' x 12' x 7'</td>
<td>3½</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>2½</td>
<td>3½</td>
<td>2½</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>12' x 20' x 7'</td>
<td>4</td>
<td>4½</td>
<td>4</td>
<td>3</td>
<td>3½</td>
<td>2½</td>
<td>3½</td>
<td>2½</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>4' x 24' x 7'</td>
<td>5½</td>
<td>4½</td>
<td>4</td>
<td>3</td>
<td>3½</td>
<td>2½</td>
<td>3½</td>
<td>3</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

Minimum Diameter (inches)
402.4 Hale Wa`a. Hale Wa`a shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Wa`a shall meet the size and spacing requirements in Table X402.4.
FRAMING SCHEMATIC

Table X402.4
Size and Spacing Requirements for Structural Components used in Hale Wa’a

<table>
<thead>
<tr>
<th>Size (W x L)</th>
<th>'O'a</th>
<th>kua’iole &amp; holo</th>
<th>kauhuhu</th>
<th>Spacing between Rafters</th>
<th>Minimum Ridge Height (H)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20' x 60'</td>
<td>4&quot;</td>
<td>3&quot;</td>
<td>4&quot;</td>
<td>4' to 5'</td>
<td>22½'</td>
</tr>
<tr>
<td>25' x 60'</td>
<td>5&quot;</td>
<td>3&quot;</td>
<td>4&quot;</td>
<td>4' to 5'</td>
<td>27½'</td>
</tr>
<tr>
<td>30' x 60'</td>
<td>5½&quot;</td>
<td>3&quot;</td>
<td>4&quot;</td>
<td>4' to 5'</td>
<td>27½'</td>
</tr>
</tbody>
</table>
FILL DRY SAND AROUND POST

FILL SPACES BETWEEN OUTER ROCKS WITH MORTAR

32" MIN.

PA POHAKU (FOUNDATION WALL)

KUMU POHAKU (BASE ROCK)

24" MIN.

6" MIN.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES


The adoption of chapter 3-180 shall take effect ten days after filing with Office of the Lieutenant Governor.

RUSS K. SAITO, State Comptroller
Department of Accounting and General Services and Chairperson, State Building Code Council

APPROVED:

LINDA LINGLE, Governor
State of Hawaii

Dated: 4/14/10

APPROVED AS TO FORM:

Deputy Attorney General

Filed

180-82
Rules Regulating Kahekili Herbivore Fisheries Management Area, Maui

HAR Chapter 13-60.7
DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.7
Hawaii Administrative Rules

April 29, 2009

SUMMARY

Chapter 13-60.7, Hawaii Administrative Rules, entitled "Kahekili Herbivore Fisheries Management Area, Maui", is adopted.

This is to certify that this is a true and correct copy of the document on file in the office of the State Department of Land and Natural Resources, Honolulu, Hawaii

JUL 3 1 2009
Date
Chairperson

2865
§13-60.7-1 Purpose. The Kahekili Herbivore Fisheries Management Area, Maui is designated to control the overabundance of marine algae on and about coral reefs within this area by increasing the local abundance of certain herbivorous fishes and sea urchins by fisheries management methods. Natural controls of marine algae are intended to help the marine ecosystem in the area return to a healthy balance. [Eff JUL 25 2009] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §188-53)

§13-60.7-2 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Acanthuridae" means the family of fishes commonly referred to as surgeonfish or tangs
§13-60.7-2

(including but not limited to 'api, kala, kole, manini, and palani).

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Hanakaʻō Beach" means the beach fronting the southern portion of Kāʻanapali Beach on the southern side of Kekaʻa Point (Black Rock).

"Herbivore" means any marine organism that feeds primarily on algae (limu).

"Kahekili Herbivore Fisheries Management Area" ("area") means the marine managed area of north Kāʻanapali, Maui from Kekaʻa Point to Honokowai Park as described in section 13-60.7-3.

"Kāʻanapali Beach" means the north Kāʻanapali beach area from Kekaʻa Point to Honokowai Point.

"Kekaʻa Point" means the prominent lava rock point that separates Hanakaʻō Beach on the south from Kāʻanapali Beach on the north. This point is often referred to as Black Rock.

"Kyphosidae" means the family of fishes commonly referred to as sea chubs, rudderfish, or nenue.

"Scaridae" means the family of fishes commonly referred to as parrotfish or uhu.


§13-60.7-3 Boundaries. (a) The Kahekili Herbivore Fisheries Management Area shall include that portion of submerged lands and overlying waters of the north Kāʻanapali area as follows:

(1) The southern boundary shall begin at the highwater mark of the shoreline on Hanakaʻō Beach and run directly west (90°) to a point offshore along the southern rocky shoreline of Kekaʻa Point for a distance of 335 yards.
(2) The northern boundary shall begin at the highwater mark of the shoreline on the southern end of Honokowai Beach Park and run directly west (90°) to a point offshore for a distance of 1,292 yards.

(3) A straight line shall then run directly north (0°) and connect offshore points of the southern Hanakaʻōʻō Beach boundary with the northern Honokowai boundary.

(b) Boundaries are further described and include both landward and seaward GPS coordinates in the map entitled “Kahekili Herbivore Fisheries Management Area, Maui, Hawaiʻi” attached at the end of this chapter and made a part hereof. [Eff JUL 25 2009] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §188-53)

§13-60.7-4 Regulated activities. (a) No person shall engage in the following activities within the Kahekili Herbivore Fisheries Management Area:

(1) Injure, kill, possess, or remove any fish of the families Kyphosidae (sea chubs, nene), Scaridae (parrotfish, uhu), or Acanthuridae (surgeonfish, tangs).

(2) Injure, kill, possess, or remove any sea urchins.

(3) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any aquatic organism, by any means or for any purpose except as allowed in subsection (b).

(b) A person may engage in the following activities within the Kahekili Herbivore Fisheries Management Area:

(1) Fish for, injure, kill, possess, or remove any fish or invertebrate not prohibited in subsection (1) and subject to the provisions of all other existing statutes and rules.

(2) Use bait and other fish attractants in the process of fishing for any marine life not prohibited in paragraph (1) or other statutes or rules. [Eff JUL 25 2009] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §188-53)
§13-60.7-5 Exceptions; permits. The department may issue permits to engage in activities otherwise prohibited by law and section 13-60.7-4, in accordance with sections 187A-6 and 190-4, Hawaii Revised Statutes, provided that:

(1) The board may impose terms and conditions it deems necessary to carry out the purpose of this chapter, including requiring a report or reports of any marine life taken from the area;

(2) The board may revoke any permit for any infraction of the terms and conditions of the permit;

(3) A person whose permit was revoked shall not be eligible to apply for another such permit until one year after the date of revocation; and


§13-60.7-6 Penalty. Any person violating the provisions of this chapter may be punished as provided by sections 187A-12.5, 188-70, or chapter 199D, Hawaii Revised Statutes, and as may be otherwise provided by law. [Eff JUL 25 2009 ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§188-53, 188-70, 199D)
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-60.7, Hawaii Administrative Rules, on the Summary Page dated April 29, 2009, was adopted on April 29, 2009, following a public hearing held on February 4, 2009, after public notice was given in the Honolulu Star-Bulletin and the Maui News on December 28, 2008.

The adoption of chapter 13-60.7 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Laura H. Thielen, Chairperson
Board of Land and Natural Resources

APPROVED:

Linda Lingle
Governor
State of Hawaii
Dated: 7/15/09

APPROVED AS TO FORM:

Deputy Attorney General

JUL 15 2009
Filed

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Rules Regulating Wildlife Sanctuaries

HAR Chapter 13-126
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

September 9, 2011

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO ISSUE PERMITS UNDER CHAPTER 13-126, HAWAII ADMINISTRATIVE RULES, RULES REGULATING WILDLIFE SANCTUARIES, TO THE CHAIRPERSON, AND THE ADMINISTRATOR AND BRANCH MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE

AND

AUTHORIZE THE CHAIRPERSON, AND THE ADMINISTRATOR AND BRANCH MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE TO DETERMINE AND APPROVE CHAPTER 343, HAWAII REVISED STATUTES (HRS) ENVIRONMENTAL COMPLIANCE REQUIREMENTS, INCLUDING APPROVAL OF DECLARATIONS OF EXEMPTIONS, AS APPLICABLE, FOR PERMITS ISSUED UNDER THE RULES REGULATING WILDLIFE SANCTUARIES.

BACKGROUND

The state wildlife sanctuary system is comprised of 42 wildlife sanctuaries that support many of the most sensitive native habitats in the state, including montane forests, coastal wetlands, and offshore island ecosystems. Wildlife sanctuaries provide managed and protected habitat for Hawaii’s unique plant and wildlife species and are a key component of the department’s strategy for the recovery of endangered species.

Prior to December 2009, activities within wildlife sanctuaries were regulated under Chapter 13-125, Hawaii Administrative Rules (HAR), Rules Regulating Wildlife Sanctuaries. Under those rules, prohibited activities and entry into closed sanctuaries may be allowed by permit issued by the board or its authorized representative. Authorization to issue permits for entry into prohibited sanctuaries was delegated to the Division of Forestry and Wildlife branch biologists.
On December 11, 2009 the Board of Land and Natural Resources unanimously approved the adoption of Chapter 13-126, HAR (Attachment 1), updating the Rules Regulating Wildlife Sanctuaries, and repealing the outdated wildlife sanctuary rules, Chapter 13-125, HAR. The new rules provide a much higher level of protection for wildlife sanctuaries by imposing stricter regulation of entry into and activities within wildlife sanctuaries. Notable changes include:

- A holistic approach for the protection of wildlife and their habitats, including plants, geological features, caves, and cultural and historic resources.
- Clarification and addition of rules to enhance enforcement capability.
- Creation of a new regulatory framework for restricted access to certain sanctuaries, for which some level of human use may be allowed without risk to the resources. For the sanctuaries for which this is applicable, the rules specify the restrictions under which human access is allowed, including for example, restricted access to sensitive areas of the sanctuary, during sensitive times, or restrictions on the number of users.
- Addition of many prohibited activities to enhance protection of biological, cultural, and geological resources. Clarification of the permitting process to authorize certain activities that are otherwise prohibited.
- Establishment of a permit and fee process for commercial use of sanctuaries in which commercial use is allowed, with fees to be deposited into the Endangered Species Trust Fund where they can be tracked and used by the Division.
- Authorization to establish visiting hours to protect natural resources.
- Authorization to temporarily close any sanctuary for up to two years to protect resources or public safety.
- Establishes that all sanctuaries are closed from sunset to sunrise (except Kipuka Ainahou).

The purpose of this submittal is to obtain board approval to delegate certain authorities under the new rules, Chapter 13-126, HAR, from the board to the Chairperson and the Division of Forestry and Wildlife.

AUTHORITY

Pursuant to §183D-4, Hawaii Revised Statutes (HRS), the department shall establish, maintain, manage, and operate wildlife sanctuaries for the purposes of preserving, protecting, conserving, and propagating wildlife. Section 183D-2, HRS, provides that the department shall manage and administer the wildlife and wildlife resources of the State, and have the power to manage and regulate all lands which may be set apart as wildlife sanctuaries. Pursuant to §183D-3, subject to Chapter 91, HRS, the department shall adopt, amend, and repeal rules concerning the preservation, protection, regulation, extension, utilization of, and conditions for entry into
wildlife sanctuaries, protecting and conserving wildlife, and setting fees for activities permitted under Chapter 183D.

Section 13-126-6, HAR, authorizes the board or its authorized representative to close or restrict the public use of all or any portion of a wildlife sanctuary for up to two years, when deemed necessary by the board for the protection of the biological, geological, or cultural resources of the area or the safety and welfare of persons or property. This section also authorizes the board or its authorized representative to renew any such closure.

Section 13-126-7, HAR, authorizes the board or its authorized representative to establish a reasonable schedule of visiting hours for all or portions of any wildlife sanctuary by the posting of appropriate signs indicating the extent and scope of closure.

Section 13-126-9, HAR, authorizes the board or its authorized representative to issue permits to conduct activities otherwise prohibited by chapter 13-126, HAR, for the following purposes:

1. Scientific, research, or education purposes.
2. Conservation and management.
3. Subsistence, traditional, and customary practices by native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources.
4. Any other purpose consistent with chapter 195D, Hawaii Revised Statutes.

Sections 13-126-9 and 10, HAR, provide detailed standard conditions and procedures for the issuance of permits.

Sections 13-126-50 through 13-126-54, HAR, authorize the board or its authorized representative to issue permits for commercial activities within wildlife sanctuaries, and provide criteria for the issuance of those permits.

ANALYSIS

The Rules Regulating Wildlife Sanctuaries, Chapter 13-126, HAR, protect wildlife sanctuary resources by regulating access to sanctuaries, non-commercial activities within sanctuaries, and commercial activities within sanctuaries. Permits issued pursuant to different sections of the rules are likely to differ with regard to their complexity and potential impacts on wildlife sanctuary resources and public access to those resources. In delegating the authority to issue permits, consideration should be given to the complexity of the permit and the potential impacts the activities have on sanctuary resources. For more potentially impactful permits, for which the analysis of impacts is complex, delegation should be to higher levels of leadership within the department. For less impactful and routine permits, for which the analysis of impacts is straightforward, delegation is appropriate to management levels of leadership. The Division provides the following considerations:

Sections 13-126-6 and 13-126-7 authorize the board or its authorized representative to close or restrict access to wildlife sanctuaries that are otherwise not restricted. The issuance of such permits may have significant impacts on some users and a determination of impacts on the public
may be complex. The Division recommends that authority to issue such permits be delegated to the Chairperson.

Section 13-126-9 provides for the issuance of permits for activities that are otherwise prohibited under the rules. These include a wide range of activities, but for which the analysis of impacts is generally straightforward. The Division recommends that authority to issue such permits be delegated to the Administrator of the Division of Forestry and Wildlife.

Sections 13-126-4 and 13-126-5 restrict entry into wildlife sanctuaries or portions of sanctuaries. Permits issued under those sections are for access only, and do not authorize any actual activities that may be prohibited by other rules. These permits are generally routine and the potential impacts from their issuance are relatively straightforward to assess. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

Section 13-126-9(a)(3) provides for the issuance of permits for activities pursuant to subsistence, traditional, and customary practices by Native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources. These permits typically involve access to otherwise closed or restricted sanctuaries and collection of resources that is otherwise legal. These permits are generally routine and the potential impacts from their issuance are relatively straightforward to assess. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

Sections 13-126-50 through 13-126-54 authorize commercial activities but those activities do not include any activities that are otherwise prohibited by rule. Impacts from the issuance of these permits are expected to be minimal since the criteria and specific sanctuaries for which they may be issued are already identified in the rules and have undergone extensive public review and consideration. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

The Division notes that the delegation of authorities to issue permits as identified in table 1 below represent potential procedures that may be followed based on a case-by-case review of permit requests. In some cases, however, such as those dealing with new or unforeseen issues, based on that review, the delegated authority may conclude that a higher authority, or the Board, should review a permit request and determine whether the request should be approved or denied. In those cases the request will be forwarded to the appropriate authority for decision.

The recommendations are summarized in table 1 below.

Table 1. Delegation of authorities under the Rules Regulating Wildlife Sanctuaries, Chapter 13-126, Hawaii Administrative Rules.

<table>
<thead>
<tr>
<th>Section</th>
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<th>Delegation</th>
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<tr>
<td>13-126-4</td>
<td>Prohibited entry</td>
<td>Branch Manager</td>
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<td>Restricted entry</td>
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<td>13-126-6</td>
<td>Closing of areas</td>
<td>Chairperson</td>
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<tr>
<td>13-126-7</td>
<td>Visiting hours</td>
<td>Chairperson</td>
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HRS CHAPTER 343

The Division requests that the Board authorize the department staff identified in table 1 to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for the activities authorized under permits issued pursuant to chapter 13-126, HAR.

Permit requests will be reviewed by the delegated department staff for potential impacts resulting from the requested activities. The delegated staff will make a determination as to whether the activities require preparation of an Environmental Assessment, or, as provided by CH 343, HRS, and chapter 11-200 HAR, determine whether the activities are exempt from the preparation of an Environmental Assessment in accordance with the current Exemption List for the Division of Forestry and Wildlife of the Department of Land and Natural Resources.

For projects that are eligible for a declaration of exemption, the Division will consult with agencies and individuals having expertise before seeking a project exemption as required under Chapter 11-200, HAR. For projects that require the preparation of an environmental assessment, an environmental assessment for the project will be developed and published.

RECOMMENDATION

The Department recommends that the Board:

1. Delegate the authority to issue permits under the Rules Regulating Wildlife Sanctuaries, Chapter 13-126, Hawaii Administrative Rules to the department chairperson and administrator and branch managers of the Division of Forestry and Wildlife as identified in Table 1.

2. Authorize the department chairperson and administrator and branch managers of the Division of Forestry and Wildlife to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for permits issued under the Rules regulating Wildlife Sanctuaries, as detailed in table 1.
Respectfully submitted,

Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

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

Attachment 1: Chapter 13-126, Hawaii Administrative Rules, Rules Regulating Wildlife Sanctuaries
HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5 FORESTRY AND WILDLIFE

PART 2 WILDLIFE

CHAPTER 126

RULES REGULATING WILDLIFE SANCTUARIES

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Historical Note: This chapter is based substantially upon Chapter 13-125 [Eff 9/28/81]
SUBCHAPTER 1

GENERAL PROVISIONS

§13-126-1 Purpose. The purpose of these rules is to conserve, manage, and protect indigenous wildlife and their habitats in sanctuaries.


§13-126-2 Definitions. As used in this chapter unless otherwise provided:

"Abandoned property" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles or vessels that have been left unattended on land owned or controlled by the State for a continuous period of more than twenty-four hours without the written permission of the board or its authorized representative.

"Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

"Aquatic life" means any finfish, crustacean, mollusk (including sea shell and ophihi), live coral, algae or limu, or other marine life, or eggs thereof.

"Authorized representative" means any person authorized by the board of land and natural resources to act for the board including the chairperson, deputy directors, the forestry and wildlife administrator, forestry and wildlife managers, foresters, wildlife biologists, and conservation enforcement officers.

"Bicycle" means any type of non-motorized two or three-wheeled vehicle.

"Board" means the board of land and natural resources.
"Camper" means any person engaged in a camping activity.

"Camping" means being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, any time after one hour after sundown until sunrise in a wildlife sanctuary. Includes the use of a wildlife sanctuary for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Cave" means any naturally occurring void, cavity, recess, or system of interconnected passages large enough for human entry, occurring beneath the surface of the earth or within a cliff or ledge, including the cave resources therein, whether or not an entrance exists or is natural or artificial, and that is of archaeological, geological, biological, or cultural significance. The term includes such forms as a lava tube, natural pit, sinkhole, underwater cave, or other feature that is an extension of the entrance.

"Chairperson" means the chairperson of the board of land and natural resources.

"Commercial activity" means the use of or activity in a state wildlife sanctuary for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise, soliciting, demanding or requesting gifts, money, or services shall be considered commercial activity.
Commercial activities include activities whose base of operations are outside the boundaries of the state wildlife sanctuary, or provide transportation to or from the state wildlife sanctuary.

"Compensation" includes, but is not limited to fees, barter, or services-in-kind.

"Department" means the department of land and natural resources.

"Fishing" means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest aquatic life. The use of any gear, equipment, tool, or other means by any person who is in the water, in a vessel on the water, or on or about the shore to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest aquatic life shall be construed as fishing activity.

"Hunting" means the act of pursuing with the means to take, kill or capture wildlife.

"Indigenous" means any aquatic life, wildlife, or land plant species growing or living naturally in Hawaii without having been brought to Hawaii by humans.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Nude" means uncovered post-pubertal human genitals, pubic areas, or the nipple or areola of post-pubertal human female breasts.

"Paleontological deposit" means any remains or fossils of life forms or surface debris that are over fifty years of age and provide a record of past climates and biota.

"Premises" means any lands within the state wildlife sanctuary system.

"State Wildlife Sanctuary System" means those public lands or lands under the control and management of the Division of Forestry and Wildlife which have been designated as State Wildlife Sanctuaries.
"Subsistence" means harvesting for direct personal or family consumption and not for commercial purposes.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

"Traditional and customary practices" means Native Hawaiian traditional and customary practices as defined under the Hawaii State Constitution, statutes, and case law.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway or highway, including mopeds, bicycles and devices other than bicycles moved by human power.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including, but not limited to, power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, floating gear, dry docks, and any and all other watercraft.

"Wildlife" means any non-domesticated member of the animal kingdom or feral member of any domesticated animal, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.


§13-126-3 Designation of wildlife sanctuaries. The board may declare and establish wildlife sanctuaries for the conservation, management, and protection of indigenous wildlife and their habitats. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3,
§13-126-4 Prohibited entry. It is prohibited for any person to land upon, enter or attempt to enter, or remain in any wildlife sanctuaries identified in Exhibit 1, "List of CLOSED wildlife sanctuaries", located at the end of this chapter and by reference made a part hereof, except as authorized by permit by the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-4, 195D-1, 195D-3, 195D-4, 195D-5, 195D-6)

§13-126-5 Restricted entry. It is prohibited for any person to land upon, enter or attempt to enter, or remain in any wildlife sanctuaries identified in Exhibit 2, "List of RESTRICTED wildlife sanctuaries", located at the end of this chapter and by reference made a part hereof, except as authorized in Exhibit 2 or as authorized by permit by the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4, 195D-1, 195D-3, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-4, 195D-1, 195D-3, 195D-4, 195D-5, 195D-6)

§13-126-6 Closing of areas. The board or its authorized representative may close or restrict the public use of all or any portion of a wildlife sanctuary for up to two years, when deemed necessary by the board for the protection of the biological, geological, or cultural resources of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the board or its authorized
§13-126-5


§13-126-7 Visiting hours. (a) Visiting hours for all sanctuaries, except for Kipuka Ainahou, are restricted to the daylight hours between sunrise and sunset unless otherwise permitted by the board or its authorized representative.


§13-126-9 Permits. (a) The board or its authorized representative may issue permits to conduct activities otherwise prohibited by this chapter for the following purposes:

(1) Scientific, research, or education purposes.
(2) Conservation and management.
(3) Subsistence, traditional, and customary practices by Native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources.
(4) Any other purpose consistent with chapter
195D, Hawaii Revised Statutes.

(b) All permits shall be subject to standard conditions, as approved by the board, including but not limited to the following:

(1) The permittee shall adhere to project specifications given in the permit application and in the permit conditions;

(2) Disturbance of flora and fauna shall be avoided as much as possible;

(3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants’ clothing, equipment, vehicles, and vessels are clean and free of seeds, plant material, dirt, insects, or other animals to lessen the chance of introducing any non-native plants, animals, or other organisms. Should an infestation develop that is attributable to the permittee, whether it occurs during or after the permit period, and even though it may be only indirectly attributable to the project activities, the permittee shall be responsible for eradication by methods specified by the department or the Division of Forestry and Wildlife;

(4) The permit does not exempt the permittee from complying with any other applicable rule or statute; and

(5) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property, however occurring, during any activity related to this permit.

(c) The board or its authorized representative may attach special conditions to the permit, including but not limited to reporting requirements, limitations on the size of groups, or the length of time for which the permit is valid.
(d) Failure to comply with any of the permit conditions shall render a permit void.

(e) All permittees shall carry the permit with them at all times while on the premises and shall, upon request, show the permit to any law enforcement officer, the board, or its authorized representative.

(f) Permits are not transferable. If the permittee is a partnership, joint venture, or corporation, the sale or transfer of 25% or more of ownership interest or stocks by dissolution, merger, or any other means, shall be deemed a transfer for purposes of this subsection and subject to the right of the department to terminate this permit effective the date of the sale or transfer.

(g) The board or its authorized representative may revoke or cancel a permit without prior hearing when an emergency is declared by the department or other proper authority or when the permitted use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the wildlife sanctuary. Notice of the revocation or cancellation shall be given in a fair, reasonable, and expedient manner.

(h) The board or its authorized representative may revoke or cancel any permit:

(1) For any infraction of the terms and conditions of the permit;

(2) Upon a finding that the permitted use threatens to damage the integrity or condition of the natural, geological, or cultural resources in the wildlife sanctuary;

(3) Upon a finding that the permitted use poses a threat to the health, safety, or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the premises; or

(4) Upon closure of a wildlife sanctuary pursuant to section 13-126-6.

(i) The provisions of this section shall not exempt the permittee from complying with any other
§13-126-10 Applications for Permits. (a) All applications for permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

(1) Name of applicant, and if relevant, affiliation and title;
(2) Contact information, including name of primary contact, mailing address, and if available, phone number(s), fax number, and email address;
(3) The period of time for which the permit is requested, not to exceed one year;
(4) The wildlife sanctuary(s) involved;
(5) A map illustrating the premise and the location of the proposed use;
(6) A description of the proposed use;
(7) A discussion of how the proposed use satisfies subsections (b)(1) - (b)(6) below;
(8) An assessment of the potential environmental impact the use may have on the sanctuary or the surrounding area;
(9) Signature of the applicant; and
(10) Any other information as determined by the department.

(b) In evaluating the merits of an application for a permit, the board or its authorized representative shall apply the following criteria:

(1) The proposed use cannot be conducted elsewhere;
(2) The proposed use is consistent with the purpose and objectives of the wildlife sanctuary system;
§13-126-10

(3) The proposed use is consistent with the management plan developed for the sanctuary;

(4) The proposed use provides a benefit (direct or indirect) to the wildlife sanctuary system and/or to individual sanctuaries;

(5) The proposed use will not damage or threaten to damage the integrity or condition of the natural, geological, and/or cultural resources in the wildlife sanctuary and adjacent area or region;

(6) The proposed use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled "Coastal Zone Management," where applicable; and

(7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.

c) The applicant shall have the burden of demonstrating that the proposed use is consistent with the above criteria.

d) The board or its authorized representative may hold a public hearing on an application where determined by the chairperson that the scope of the proposed use or the public interest requires a public hearing. Notice of hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the date, time, and place of the hearing shall be published at least once in a newspaper in the county where the wildlife sanctuary is located.


§13-126-11 Penalties. The penalties for violating any of the provisions of chapter 13-126 are as provided in Hawaii Revised Statutes sections 183D-5, 183D-12, 195D-8, 195D-9, and 195D-27.

§13-126-20


§§13-126-12 - 13-126-19 (Reserved)

SUBCHAPTER 2

PROHIBITED ACTIVITIES

§13-126-20 Unattended and abandoned property.
(a) No person shall abandon motor vehicles or any other property within any state wildlife sanctuary. All such property may be impounded or disposed of by the board or its authorized representative.
(b) Vehicles or other property left unattended that interfere with the safe or orderly management of the premises may be impounded by the board or its authorized representative at any time.
(c) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawaii Revised Statutes.
(d) All impounded property, other than vehicles, shall be moved to a place of storage. The owner shall be assessed moving, storage, and other related costs and shall bear the responsibility for the risk of any loss or damage to the property. Moving, storage, and other related costs shall be assessed pursuant to section 171-31.5, HRS.

§13-126-22  Aircraft. No person shall land, launch, or cause any aircraft to approach within 500 feet of any sanctuary, including airplanes, airships, balloons, gliders, hang gliders, para-gliders, helicopters, parachutes, dirigibles, and other similar means of conveyance, except with the written permission of the board or its authorized representative or in the case of an emergency. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6)

§13-126-23  Animals and plants. (a) No person shall introduce, feed, remove, injure, take, or kill any plant or animal, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board.

(b) The introduction by any person of any animal or plant and the placement, abandonment or leaving of any animal or plant in a state wildlife sanctuary is strictly prohibited except as authorized by permit by the board or its authorized representative. This section shall not apply to dogs when authorized by the hunting rules of the department or service animals accompanying their handlers.

(c) Animal pets are not permitted in wildlife sanctuaries, except as authorized by the board or its authorized representative, or by the rules of the department. Any animal, such as a dog or cat, found
§13-126-25  Roaming and loose in a state wildlife sanctuary may be impounded or destroyed.

(d) No person shall ride horses except in areas designated for this purpose by the board or its authorized representative or by appropriate signs.


§13-126-24  Paleontological, archaeological and historical features. No person shall appropriate, damage, remove, excavate, disfigure, deface, or destroy paleontological objects, objects of antiquity, prehistoric ruins and monuments; provided, however, that the board or its authorized representative may permit qualified persons or institutions to examine ruins, excavate archaeological sites and gather objects of antiquity in accordance with chapter 6E, Hawaii Revised Statutes. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-25  Boating. (a) No person shall beach, park, or launch vessels in any state wildlife sanctuary, except for the coastal and offshore sanctuaries identified in Exhibit 2 of this chapter, for which access below the high water mark is allowed, or except by permit by the board or its authorized representative or in cases of emergency.

(b) No person shall moor or anchor vessels as defined in subsection (a) without the written permission of the board or its authorized representative, except as permitted by the rules of the department or anchoring in cases of emergency.

§13-126-26 Camping. No person shall camp, erect any tent, tarpaulin, or other structure, or use recreational trailers or other camper units within any state wildlife sanctuary, except with the prior written authorization of the board or its authorized representative or as permitted by the rules of the department. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-27 Communication equipment. No person shall install or operate aerials, antennas, transmitters or other radio, telephone, television, or other communication equipment, except hand held devices or equipment installed within vehicles, without the written permission of the board or its authorized representative, or in the case of an emergency. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)


§13-126-29 Explosives. No person shall use or possess fireworks, firecrackers, or explosives, except with the written permission of the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)
§13-126-30 False report. No person shall give a false or fictitious report or other information to any authorized representative investigating an accident or any violation of law or administrative rule.  

§13-126-31 Firearms and other weapons. (a) No person shall use or possess bow and arrows, crossbows, firearms, pellet or BB guns, slingshots, or other implements designed to discharge projectiles except as provided herein.  
(b) Firearms and other weapons may be used or possessed if done so in accordance with section 13-126-35 and other rules of the department, except in sanctuaries that are closed in accordance with section 13-126-6. Firearms and other weapons shall be unloaded when transported through non-hunting areas of the premises.  

§13-125-32 Fires. No person shall discard any lighted objects, or start or maintain a fire, including use of portable stoves or cooking devices.  

§13-126-33 Fishing. No person shall engage or assist in any fishing activity within any state wildlife sanctuary, except for the coastal and offshore sanctuaries identified in Exhibit 2 of this chapter, for which access below the high water mark is allowed, or by permit by the board or its authorized representative.  
§13-126-34 Geological features. No person shall destroy, disturb, or mutilate any geological features or dig or remove sand, earth, gravel, mineral, rock, coral, or any other substance except for digging in sand areas of beaches. No person shall excavate or quarry any stone, or lay, set, or cause any blast or explosion, or assist in these acts, without the written permission of the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)


§13-126-36 Alcohol, intoxication; drug incapacitation. (a) No person shall use or possess narcotics or drugs, provided that a person may use or possess drugs legally prescribed by a physician. No person shall enter or remain within the premises when under the influence of alcohol or illegal narcotics or drugs.

(b) No person shall use or possess alcohol, except with the written permission of the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-37 Memorials and Markers. No person shall install any monument, memorial, tablet, or other commemorative installation, except with the written
§13-126-38 Modelcraft operation. No person shall operate model motorized aircraft, automobile, or watercraft, or other similar models, except with the written permission of the board or its authorized representative. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-39 Portable engines and motors. No person shall operate or use a portable motor driven electric generating plant, pump, compressor, or any other equipment driven by a portable engine or motor, without written permission from the board or its authorized representative, or in the case of an emergency. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-40 Public property and resources. The following activities are prohibited within a state wildlife sanctuary, except as authorized by the board or its authorized representative:

(a) To remove, injure, take, or kill any natural object or plant or animal, either in whole or in part.
(b) To enter into, place any vessel or material in or on, or otherwise disturb, a lake or pond.
(c) To remove, damage, or disturb any historic or prehistoric feature or remains.
(d) To remove, damage, or disturb any geological or paleontological feature or substance.
§13-126-40

(e) To remove, damage, or disturb any equipment, notice, marker, or structure, or the failure to leave any gates as found.

(f) To engage in any construction or improvement except as authorized by the board.

(g) To enter into any cave or lava tube.

§13-126-41 Report of injury or damage. All incidents resulting in injury or death to persons or damage to property shall be reported as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other report that may be required under federal, state, or county laws, ordinances, rules and regulations.

§13-126-42 Residence prohibited. No person shall occupy or establish a temporary or permanent residence within a state wildlife sanctuary except with a permit or other written agreement with the board. [Eff 1/22/2010 ] ((Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-43 Sanitation and litter. (a) All persons shall dispose of garbage, trash, refuse, waste material, and rubbish of any kind only at places designated for its disposal or shall remove it from the premises. No person shall remove refuse or garbage from refuse containers nor remove or relocate such containers.
§13-126-45

(b) No person shall drain or dump garbage, trash, rubbish, refuse, or waste except in places or receptacles provided for this use.

(c) No person shall bring, carry, or transport garbage, trash, rubbish, refuse, or waste from outside the premises for deposit or dumping on the premises.

(d) No person shall pollute or contaminate any watershed or water used for drinking purposes in any manner.

(e) No person shall dispose of fish entrails or other parts of fish or animals in a wildlife sanctuary, or waters within or adjacent to any state wildlife sanctuary, except as authorized by the board or its authorized representative.

(f) No person shall urinate or defecate on the premises other than in the toilet facilities provided. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-44 Swimming; nudity. A person may swim or bathe except in waters and at times where or when these activities are prohibited in the interest of public health or safety. These waters shall be designated by posting of appropriate signs. No person shall bathe, swim, walk, sunbathe, or remain on the premises in the nude, or take outdoor showers in the nude, except for bathing or changing clothes within enclosed facilities provided for those purposes or for the exposed breast of a nursing mother in the act of breastfeeding an infant. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-45 Vehicle operation. (a) No person shall operate any motorized or non-motorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use, except in the case of an emergency.
(b) No person shall drive vehicles, or motorized or non-motorized bikes, faster than posted speed limits (except in the case of an emergency), or in a reckless manner, or in a manner that endangers any person, property, flora, or fauna.

(c) No person shall drive vehicles or any other motorized or drawn equipment over, on, or across any road or bridge if the gross load of the vehicle or equipment exceeds the posted weight limits, unless authorized by the board or its authorized representative.

(d) Except as otherwise authorized by the department or in the case of an emergency, no person shall stop, park, or permit to remain halted a motorized vehicle in a wildlife sanctuary other than in accordance with officially posted signs.

(e) Vehicles parked in violation of posted signs may be impounded by the board or its authorized representative at any time, except in the case of an emergency.

(f) No person shall use any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment.


§§13-126-46 to 13-126-49 (Reserved)

SUBCHAPTER 3

COMMERCIAL AND PRIVATE OPERATIONS

§13-126-50 Commercial activity. (a) No person shall engage in commercial activities of any kind, without a written permit, contract, license, lease,
concession, or other written agreement authorized by the board or its authorized representative.

(b) Commercial activity may be permitted only where and to the extent indicated in Exhibit 3, which is located at the end of this chapter and by reference made a part hereof, and in accordance with all other applicable provisions of this chapter.

(c) For entry into or landing on any wildlife sanctuary by means of any kayak, boat, or other vessel rented from a commercial vendor, a wildlife sanctuary entry sticker obtained from that vendor must be visible on the kayak, boat, or other vessel at all times while in the sanctuary. The commercial vendor will be held responsible for any entry or landing that does not comply with this requirement. Emergency or official government business entries or landings are exempt from this requirement. [Eff 1/22/2010 ]


§13-126-51 Commercial permit criteria. (a) A commercial wildlife sanctuary access permit may be granted for only sanctuaries designated in Exhibit 3 of this chapter, and only when the commercial activity is consistent with the purpose of the wildlife sanctuary system. All commercial permits issued are subject to conditions that are to be determined by the board or its authorized representative and such conditions shall carry out the purpose of the wildlife sanctuary system. Where commercial activities are allowed, as shown on Exhibit 3, the specific limitations for commercial activities set forth in Exhibit 3 are guidelines only, and are not binding on the board or department. If there is a great demand for commercial permits, the board or its authorized representative may determine a method by which commercial operators may be issued permits. The board or its authorized representative may establish a
moratorium on the issuance of commercial permits based on the needs of the sanctuaries.

(b) The board or its authorized representative shall determine the duration of each commercial permit based upon the needs of the wildlife sanctuary for which a permit is sought. Unless earlier terminated, a commercial permit shall automatically expire at the end of its duration. There is no right to a renewal or reissuance of a commercial permit.

(c) Commercial permit applications may be denied based upon subsections (a) and (b) and when:

1. The proposed activity would be detrimental to the wildlife sanctuary habitat or the surrounding area;
2. The proposed activity would be detrimental to public safety;
3. The proposed activity would compromise the quality and nature of the expected experience of other sanctuary users;
4. The size, intensity, or cumulative impacts of the proposed activity would exceed the limits of acceptable change of a wildlife sanctuary;
5. The size, intensity, or nature of the proposed activity would diminish the availability of the wildlife sanctuary for use by the general public;
6. Repairs or improvements are being made to a wildlife sanctuary;
7. The wildlife sanctuary, access, site, or facility for the proposed activity will be in use by other permittees or a government agency;
8. The applicant violated a permit condition or a provision of this chapter or any other rule of the department within one year prior to the date of the application;
9. An emergency is declared by the board or its authorized representative or other proper authority;
(10) The proposed commercial activity is not allowed in the wildlife sanctuary, access, or portion thereof, under the terms of an agreement with a private landowner or another government agency concerning the use of the wildlife sanctuary, access, or portion thereof;
(11) The wildlife sanctuary or portion thereof has been or will be closed or restricted pursuant to section 13-126-6; or

§13-126-52 Advertisements. No person shall display, post, or distribute notices or advertisements, except with the prior written permission of the board or its authorized representative. Permission may be granted only if the notice or advertisement relates to services, goods, or facilities available within the premises and the notices and advertisements are found by the board or its authorized representative to be desirable and necessary for the convenience and guidance of the public, or as otherwise provided under chapter 13-126. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-53 Commercial filming, photography, and videotaping. (a) Before any motion picture is filmed or any video recordings, television production, or sound track is made, which involves the use of professional casts, models, settings, or crews, by any person other than bonafide newsreel or news television personnel, a person shall obtain a written permit approved by the board or its authorized representative
that shall be subject to terms, conditions, and fees set by the board.

(b) Before any still photograph may be taken by a commercial photographer for commercial purposes, a person shall obtain a written permit approved by the board or its authorized representative. The permit shall be subject to terms, conditions, and fees set by the board. [Eff 1/22/2010 ] (Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3, 183D-4)

§13-126-54 Commercial permit suspension and termination. (a) A commercial permit shall automatically terminate when:

(1) An emergency is publicly declared by the department or other proper authority that affects the wildlife sanctuary for which the permit was issued;

(2) The wildlife sanctuary for which the permit was issued, or a portion thereof which is used under the permit, is closed or restricted pursuant to section 13-126-6; or

(3) Fees are not paid when due.

(b) A commercial permit shall automatically be suspended when a permittee has been informed, orally or in writing, by the board or its authorized representative, of an apparent violation, or the permittee has been cited for an alleged violation, of a permit condition, any provision of this chapter, or any other rule of the department, and the permit shall automatically terminate upon a determination by the board or a court that the permittee committed the violation.

(c) A commercial permit shall be automatically suspended when the board or its authorized representative informs the permittee, orally or in writing, that its permitted activity damages or threatens serious damage to the integrity or condition of the wildlife sanctuary or its surrounding

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environment, or threatens the safety of wildlife
sanctuary users, and shall automatically terminate
upon a determination by the board that such harm or
threatened harm occurred. [Eff 1/22/2010 ]
(Auth: HRS §§ 183D-2, 183D-3, 183D-4) (Imp: HRS §§
183D-2, 183D-3, 183D-4)

§13-126-55 Fees. (a) All entry fees collected
for commercial activities in wildlife sanctuaries
shall be deposited into the Endangered Species Trust
Fund.

(b) The base commercial permit processing fee
for entry to, landing on, or launching from a wildlife
sanctuary shall be $10, and also as applicable
(c) Fees for commercial activities accompanied
by a commercial guide shall be:
(1) Price per person for vessel or vehicle
including 1-2 people: $5 or
(2) Price per vessel or vehicle including 3-5
people: $25 or
(3) Price per vessel or vehicle including up to
8 people: $50 or
(4) Price per vessel or vehicle including up to
12 people: $75 or
(5) Price per vessel or vehicle including up to
15+ people: $100 or
(d) Fees for commercial activities not
accompanied by a commercial guide shall be: $3 per
person.

(e) Fees for commercial still Photography or
183D-2, 183D-3, 183D-4) (Imp: HRS §§ 183D-2, 183D-3,
183D-4)

§§13-126-56 to 13-126-59 (Reserved)
DEPARTMENT OF LAND AND NATURAL RESOURCES

The repeal of chapter 13-125, and adoption of chapter 13-126, Hawaii Administrative Rules, on the Summary Page dated December 11, 2009, was adopted on December 11, 2009, following a series of statewide public hearings held between November 3 through 9, 2009 after public notice was given in the Star Bulletin, Garden Island, Maui News, Hawaii Tribune-Herald, and West Hawaii Today on October 4, 2009.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

[Signature]
LAURA H. THIELEN
Chairperson
Board of Land and Natural Resources

APPROVED:

[Signature]
LINDA LINGLE
Governor
State of Hawaii
Dated: 1/8/10

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

JAN 1 2 2010
Filed
<table>
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<th>Name</th>
<th>County</th>
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### Exhibit 2. List of RESTRICTED wildlife sanctuaries

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<tr>
<th>Name</th>
<th>County</th>
<th>Island</th>
<th>District</th>
<th>Tax Map Key</th>
<th>Restrictions</th>
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<td><strong>COASTAL AND OFFSHORE</strong></td>
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<td>Kau</td>
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<td>North Kohala</td>
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<td>Access prohibited in wetland areas bounded by perimeter fence and mauai canal</td>
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<td>Oahu</td>
<td>Koolauloa</td>
<td>(1) 4-2-013:005, 043</td>
<td>Access restricted to the perimeter marked trails and roads, or other marked trails or roads. No motorized vehicles.</td>
</tr>
<tr>
<td>Kanaha Pond</td>
<td>Maui</td>
<td>Maui</td>
<td>Wailuku</td>
<td>(2) 3-8-001:01:09</td>
<td>Parking lot and viewing kiosk on Old Haleakula Hwy open year-round. All other areas closed April 1 - August 30. No vehicles. Access restricted to marked roads and trails only.</td>
</tr>
<tr>
<td><strong>MONTANE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pui Waaawaa Forest Bird Sanctuary</td>
<td>Hawaii</td>
<td>Hawaii</td>
<td>North Kona</td>
<td>(3) 7-1-001:007</td>
<td>No motorized vehicles. Access restricted to marked roads or trails only, or as provided in Chapter 13-122, HAR</td>
</tr>
</tbody>
</table>
## Exhibit 3. List of wildlife sanctuaries in which commercial activities may be permitted

<table>
<thead>
<tr>
<th>Name</th>
<th>County</th>
<th>Island</th>
<th>District</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COASTAL AND OFFSHORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mokuauia Islet</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Koolauloa</td>
<td>50 visitors per day</td>
</tr>
<tr>
<td>Popola</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Koolaupoko</td>
<td>200 visitors per day</td>
</tr>
<tr>
<td>Mokolii Islet (Mokolii only: the larger and northern of the two Islets)</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Koolaupoko</td>
<td>200 visitors per day</td>
</tr>
<tr>
<td><strong>WETLANDS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paiko Lagoon</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Honolulu</td>
<td>20 visitors per day</td>
</tr>
<tr>
<td>Hamakua Marsh</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Koolaupoko</td>
<td>100 visitors per day</td>
</tr>
<tr>
<td>Kawainui Marsh</td>
<td>Honolulu</td>
<td>Oahu</td>
<td>Koolaupoko</td>
<td>100 visitors per day</td>
</tr>
<tr>
<td>Kanahe Pond</td>
<td>Maui</td>
<td>Maui</td>
<td>Wailuku</td>
<td>100 visitors per day</td>
</tr>
</tbody>
</table>
Rules Relating to Littering or Polluting Land Areas Prohibited

HAR §19-42-126
§19-42-126 Littering or polluting land areas prohibited.

(a) No person shall throw, place, leave, deposit or abandon, or cause or permit to be thrown, placed, left, deposited or abandoned any litter within a state harbor, except in receptacles designated by the department for the disposal of such materials. "Litter" as used in this section includes any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses or any other substances which render harbor lands or facilities unsightly, noxious or otherwise unwholesome to the detriment of the public health and welfare and effective and safe operation of the harbor.

(b) No person shall deposit oil, oily refuse, sludge, chemicals or other hydrocarbons on state property except in specially designated collection points. These items may not be left in or near standard refuse containers or anywhere else on harbors property. Penalties, including but not limited to the revocation of mooring permits and the right to use the facilities, may be invoked. [Eff 5/20/82; am 11/7/91; comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)
Rules Relating to Littering or Polluting of Water Prohibited

HAR §19-42-127
§19-42-127 Littering or polluting of water prohibited. No person shall place, throw, deposit, or discharge, or cause to be placed, thrown, deposited, or discharged into the waters of any harbor, river or shore waters of the State any litter, or other gaseous, liquid or solid materials which render the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health and welfare or a navigational hazard. No person shall discharge oil sludge, oil refuse, fuel oil or molasses either directly or indirectly, or pump bilges or ballast tanks containing other than clean water into the waters of any harbor, river or into any shore waters in the State. [Eff 5/20/82; comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)
Ordinance Relating to Shoreline Setback Shoreline Setback and Coastal Protection

Kauai County Ordinance 863,
Article 27, Chapter 8, Kauai County Code 1987
A BILL FOR AN ORDINANCE ESTABLISHING A NEW ARTICLE 27, CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO SHORELINE SETBACK AND COASTAL PROTECTION

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Findings and Purpose. The Council finds that Ka'ūa'i's coastline is subject to a wide variety of natural hazards, such as tsunamis, high surf, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose dangers to people and property located near the shoreline. Proper siting of structures based on hazard recognition and long term planning principles is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources. Furthermore, the Planning Department is in the process of producing coastal erosion hazard maps that will be used as a base for new shoreline setback requirements. Current shoreline setback requirements were established without adequate data on historical shoreline positions and trends. Development and other improvements on coastal lands have occurred without regard to erosion hazards. Because chronically retreatng shorelines eventually threaten these improvements, there has been widespread construction of shore protection structures such as seawalls and revetments. These structures distort the natural shoreline environment, often leading to accelerated erosion on adjoining properties, beach loss, and reduced public access. This pattern of coastal zone development seriously degrades the natural attributes of the Ka'ūa'i coast as documented in the Ka'ūa'i Shoreline Erosion Management Study (September, 1990).

The shoreline environment is one of Ka'ūa'i's most important economic and natural resources. Ka'ūa'i's beaches provide scenic beauty and recreational opportunities for residents and visitors. They are culturally important to the people of Hawai'i. Beaches, dunes, and offshore topographic features also help to minimize risks from coastal hazards by dissipating wave energy, which could otherwise cause significant damage to coastal property. Beaches provide important habitat for seabirds, turtles, monk seals, and other animals and plants. In all of the abovementioned ways, beaches and coastal areas are part of the public trust, and it is government's fiduciary responsibility to protect beaches and coastal areas.

It is important that information regarding natural hazards such as coastal erosion data be incorporated into the planning process at the earliest stages of development, i.e., at the time of zoning, general plan, and development plan changes before lot sizes and shapes are established, so as to give landowners more environmentally sound options and to save decision makers from the agonizing dilemma of choosing between protection of one owner to the detriment of another owner and/or the public.

In order to protect life, property, and coastal resources against coastal hazards, this bill seeks forth a procedure for establishing building setbacks from the shoreline based on scientifically documented rates of shoreline change and the history of coastal hazards in a specific place. Using a precautionary approach, the bill promotes proper siting of structures and reduced use of the shoreline setback area for structures in order to ensure the longevity and integrity of Ka'ūa'i's coastal
and beach resources. Additionally, it imposes stiff penalties for structures illegally built or illegally repaired within the shoreline setback area from the effective date of this ordinance.

The ongoing coastal erosion study by the Planning Department will provide a public database to assist the Planning Department and shoreline setback area owners in this regard. Until the public data base is established, landowners will be allowed to site improvements by developing their own data through scientifically accepted methodologies specified herein. This bill serves as an interim measure until the public database of science-based erosion rates is formally established and new setback rules and ordinance are adopted by the Planning Commission, County Council, and Mayor, as appropriate.

The County is authorized to protect the coastal area pursuant to Public Law No. 92-583, as amended, ("Coastal Zone Management Act"), Chapter 205A, Hawai'i Revised Statutes, as amended, ("Shoreline Protection Act"), Article XI Section 1 of the Hawai'i State Constitution, Public Law 92-583, and the County's police powers to protect public health and safety. This ordinance shall be known as the "Shoreline Setback and Coastal Protection Ordinance."

SECTION 2. Chapter 8 of the Kaua'i County Code 1987 is hereby amended by adding a new article to be appropriately designated and to read as follows:

"ARTICLE 21. SHORELINE SETBACK AND COASTAL PROTECTION

Sec. 8-27.1 Applicability. This Article shall be applicable to all lands within the County of Kaua'i, State of Hawai'i, that are (a) abutting the shoreline, or (b) located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Sec. 8-27.2 Definitions. For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure or activity located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the annual rate of coastal erosion calculated by following a procedure established in the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai'i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai'i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 3.1.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makena side of the
lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

"Board" shall mean the Board of Land and Natural Resources, State of Hawaii.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carpents, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

"Certified Shoreline" means the shoreline established by Board pursuant to HRS 206A-42, as amended.

"Coastal Dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal land, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified professional consultant as defined in this article following procedures described in Section 4.1 of the Hawaii Coastal Hazard Mitigation Guidebook (January 2003). The coastal erosion study shall include but not be limited to:

(1) Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

(2) The method resulting in the larger erosion rate (SCRF/toe of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

(3) Uncertainty or error calculation of the data and the annual erosion rate;

(4) Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

(5) Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.
Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

The coastal erosion study shall consider the purpose of the study—to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kaua'i.

"Department" means the Planning Department of the County of Kaua'i.

"Director" means the Planning Director of the Planning Department of the County of Kaua'i.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"FEMA" means the Federal Emergency Management Agency.

"FIRM" means the Flood Insurance Rate Map.

"Hazard Assessment" means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai'i Coastal Mitigation Guidebook, (January 2000).

"Lot" means a portion of land shown as a unit on an approved and recorded subdivision map.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).

"Minor activity" means an activity that:

1. does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and

2. does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing ( grubbing ) of vegetation, and grading, which are exempt from HRS Chapter 343; and

3. is consistent with the purposes of this article and HRS Chapter 205A, as amended.
“Minor structure” means:

(1) a structure that costs less than $125,000 and provides temporary emergency protective measures for a legally suitable structure that is imminent threat of coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kauai Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

(2) a structure that:

(A) costs less than $125,000; and

(B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformity with HRS Chapter 205A, landscape features, barbecues, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carparks, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawaii Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

(1) was completely built, in its present form, prior to June 22, 1970; or
(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or

(3) Was outside the shoreline setback area when it received either a building permit or board approval; or

"Plan" or "site plan" means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawaii and shall consist of data including but not limited to:

(1) Property boundaries;

(2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;

(3) Topography in and around the proposed construction;

(4) Any and all shoreline hardening;

(5) Flood zones, where applicable;

(6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;

(7) Fences, walls, and any other structures in the shoreline setback area and any potential obstructions to lateral access along the shoreline;

(8) A geo-referenced survey of the site; and

(9) Any other information which identifies the existing condition of the subject parcel of land."

"Primary Coastal Dune" means the first dune encountered mauka of the beach.

"Qualified professional consultant" means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawaii that has experience in coastal processes.

"Qualified Demolition" means the demolition of a structure or structures where such demolition:

(1) Will not adversely affect beach processes;

(2) Will not artificially fix the shoreline;

(3) Will not interfere with public access, except for public safety reasons during demolition operations;

(4) Will not interfere with public views to and along the shoreline, except during demolition operations;

(5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and

(6) Will comply with applicable County Codes.

"Rebuilding" means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.
"Repair" means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure.

"Revetment" shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

"Rocky Shoreline" means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

"Shoreline" is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

"Shoreline Change Reference Feature (SCRF)" means a morphologic feature commonly referred to as the "toe" of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

"Shoreline setback line" is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

"Storm buffer zone" is the first forty feet (40') of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

"Substantial construction" means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

"Temporary structures or activities" means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

"Use" means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.
Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below:

<table>
<thead>
<tr>
<th>If the average lot depth is:</th>
<th>100 feet or less</th>
<th>101 to 120 feet</th>
<th>121 to 140 feet</th>
<th>141 to 160 feet</th>
<th>161 to 180 feet</th>
<th>181 to 200 feet</th>
<th>More than 200 feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Then the minimum setback distance</td>
<td>40 feet</td>
<td>50 feet</td>
<td>60 feet</td>
<td>70 feet</td>
<td>80 feet</td>
<td>90 feet</td>
<td>100 feet</td>
</tr>
</tbody>
</table>

(c) For lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.

<table>
<thead>
<tr>
<th>For structures with a building footprint that is:</th>
<th>Less than or equal to 5,000 square feet</th>
<th>Greater than 5,000 square feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Then the setback distance is:</td>
<td>40 feet plus 70 times the annual coastal erosion rate</td>
<td>46 feet plus 100 times the annual coastal erosion rate</td>
</tr>
</tbody>
</table>

(d) Any shoreline setback line established based on a coastal erosion study may be reviewed by the Planning Commission to ensure that the law has been properly followed.

(e) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most m in (landward) segments of each line shall form the shoreline setback line.

(f) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.

(g) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai‘i.

(h) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.
Sec. 8-27.4 Minimum Shoreline Setback Requirements

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Structures and activities subject to these rules.

All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is submitted with the department showing that the construction is mauka of the shoreline setback area.

Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other debris from the shoreline setback area is prohibited with the following exceptions:

(1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(2) Where the mining or taking is authorized by a variance pursuant to these rules; or

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5, provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The clearing of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, lmu, and debris under HRS section 46-12, provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a dune restoration and re-vegetation program approved by the Director that uses naturally occurring historical endemic plant species.
Sec 8-27.7 Permitted structures and activities within the shoreline setback area.

(a) The following structures and activities are permitted in the shoreline setback area. All structures and activities not specifically permitted in this section are prohibited without a variance.

(1) Existing nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to the effective date of this ordinance.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures or activities" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition, or better, and the director may require a bond to ensure such restoration.

(5) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal existing, marine, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;

(B) The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and

(C) The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HR5 Chapter 205A.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure or activity approved by the Director as a minor structure or activity.

(9) Qualified demolition of existing structures.

(b) The following conditions shall apply to any new structure or activity permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kauai's County Code, relating to coastal high hazard districts and FEMA guidelines regarding FIRM maps.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kauai harmless from and against any and all loss.
liability, claim or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not to be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, so later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

Sec. 8-27.8 Shoreline Setback Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) The request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination or a current certified shoreline survey and coastal erosion information, construction and site plans, a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

(3) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall approve, approve with conditions, or deny an application for approval/determination in accordance with the criteria set forth in this Article. The Director may also issue a determination that the proposed activity or structure is not subject to this Article because it is outside the shoreline setback area.

(4) The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

(A) any newly completed applications for shoreline setback determination,

(B) any newly completed applications for approval for a structure or activity proposed for a shoreline setback area, and
any new shoreline setback determinations or approval or denials by the Director of structures or activities and the reasons therefor, including, but not limited to, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions. The Planning Director may submit copies of the coastal erosion study if applicable.

(5) The Director’s shoreline setback determinations and approvals or denials shall not be final until accepted by the Commission. Notwithstanding commission acceptance, if there is an appeal from the Director’s decision, the shoreline setback determinations, approvals, or denials shall not be final until the Commission completes its decision-making on the appeal.

(6) Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(7) For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habituation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

Sec. 8-37.9 Variance application. (a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) An administrative fee of $300.00. The administrative fee shall be seventy-five hundred dollars ($7,500) if the application
is made after the structure is partially or fully built without the required approvals.

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai`i;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale, showing:
   (A) Existing natural and man-made features and conditions within;
   (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
   (C) The certified shoreline and the shoreline setback line;
   (D) Contours at a minimum interval of two (2) feet unless waived by the director; and
   (E) Proposed development and improvements showing new conditions with a typical section (if so structured).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the
County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than $20,000, provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application. For the purposes of this section “public notice of the application” shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kauai, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal existing, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline;

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 268;

(7) Private facilities or improvements that are clearly in the public interest;

(8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline, provided that, the commission finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause
severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure, provided that the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) The minimum buildable footprint may be reduced to 1500 square feet.

(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal processes, and the rebuilding is not prohibited by Article 23, Chapter 8, Kauai County Code, 1987 as amended.

(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

(1) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(2) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(3) The buildable footprint may be reduced to below 2100 square feet.

(4) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is
not subject to undue risk from erosion, high wave action, or flooding.

(b) A structure or activity may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1985; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 16, Article 1, Kauai County Code, and Drainage, Chapter 22, Article 13, Kauai County Code, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the requested zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.
(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua‘i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and any indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua‘i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Article 24 of the County of Kaua‘i Comprehensive zoning Ordinance, HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua‘i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of an unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua‘i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted thereunder, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.
(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition to any other remedy as may be provided by law.

(c) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

(b) The Director shall enforce this article in accordance with Article 24 of the County of Ka‘u’s Comprehensive Zoning Ordinance and HRS Chapter 205A.

Sec. 8-27.12 Civil fines. (a) Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32. Where a structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars ($1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department’s budget and shall be used for the enforcement and/or education relating to this ordinance.

Sec. 8-27.13 Appeal of Director’s decision. Any person who can show that a direct probable harm to him or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant’s standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedures outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Ka‘u Planning Commission. The Planning Commission’s decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.

Sec. 8-27.14 Promulgation of Rules and Regulations.
This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Ka‘u in existence at the time of adoption of this ordinance. Pursuant to HRS Chapter 51, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.”

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.
SECTION 4. This ordinance shall take effect thirty (30) days after its approval. The requirements of this ordinance shall not affect any application which has been approved by the County Council or the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by: /s/ JOANN A. YUKIMURA
(By Request)

DATE OF INTRODUCTION:
April 25, 2007
Lihue, Kaua‘i, Hawai‘i
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2226, Draft 4, which was adopted on second and final reading by the Council of the County of Kaua‘i at its meeting held on December 19, 2007, by the following vote:

FOR ADOPTION: Bynum, Purfaro, Rapezo, Yukimura
AGAINST ADOPTION: Iseri-Carvalho, Asing
EXCUSED & NOT VOTING: None
RECEIVED FROM VOTING: Kouchi

TOTAL - 4.
TOTAL - 2.
TOTAL - 0.
TOTAL - 1.

Lihu‘e, Hawai‘i
December 20, 2007

Peter A. Nakamura
County Clerk, County of Kaua‘i

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

January 18, 2008

Approved this __ day of

Bryan J. Baptiste
Mayor
County of Kaua‘i
Ordinance Relating to Shoreline Setback Shoreline Setback and Coastal Protection

Kauai County Ordinance 887, Sections 8-27.1, 8-27.3, 8-27.7, 8-27.8 and 8-27.10, Chapter 8, Kauai County Code 1987
A BILL FOR AN ORDNANCE TO AMEND CHAPTER 8, KAUAI COUNTY COE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAI'I:

SECTION 1. Findings and Purpose: The purpose of this bill is to streamline permit procedures by removing unnecessary requirements for structures and activities permitted within the shoreline setback area.

SECTION 2. Chapter 8, Article 27 of the Kauai County Code 1987, as amended, is hereby amended as follows:

"[Sec. 8-27.1 Applicability. This Article shall be applicable to all lands within the County of Kauai, State of Hawaii, that are (a) abutting the shoreline, or (b) located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.]

Sec. 8-27.1 Applicability.
This Article shall be applicable to all lands within the County of Kauai, State of Hawaii, that are:
(a) abutting the shoreline, or
(b) not abutting the shoreline but located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Sec. 8-27.2 Definitions.
For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:
'Adversely affect beach processes' means to pose a potential immediate or future adverse effect on beach processes as a result of a
structure or activity located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the annual rate of coastal erosion calculated by following a procedure established in the Hawai‘i Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai‘i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai‘i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 4.1.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

"Board" shall mean the Board of Land and Natural Resources, State of Hawai‘i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

"Certified Shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal Dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidai or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified professional consultant as defined in this article following procedures described in Section 4.1 of the Hawai‘i Coastal
Hazard Mitigation Guidebook, (January 2005). The coastal erosion study shall include but not be limited to:

1. Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

2. The method resulting in the larger erosion rate (SCRF/toe of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

3. Uncertainty or error calculation of the data and the annual erosion rate;

4. Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

5. Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.

6. Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

7. The coastal erosion study shall consider the purpose of the study—to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kaua‘i.

"Department" means the Planning Department of the County of Kaua‘i.

"Director" means the Planning Director of the Planning Department of the County of Kaua‘i.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"FEMA" means the Federal Emergency Management Agency.

"FIRM" means the Flood Insurance Rate Map.

"Hazard Assessment" means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaiʻi Coastal Mitigation Guidebook, (January 2005).
“Lot” means a portion of land shown as a unit on an approved and recorded subdivision map.
“Makai” means seaward or in a seaward direction.
“Mauka” means landward or in a landward direction.
“Minimum buildable footprint” means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).
“Minor activity” means an activity that:
   (1) costs less than $125,000; and
   (2) does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and
   (3) does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing (grubbing) of vegetation, and grading, which are exempt from HRS Chapter 343; and
   (4) is consistent with the purposes of this article and HRS Chapter 205A, as amended.
“Minor structure” means:
   (1) a structure that costs less than $125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kauai Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or;
   (2) a structure that:
      (A) costs less than $125,000; and
      (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and
      (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and
      (D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and
      (E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory
structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

"Natural catastrophe" is a natural disaster qualifying for a governor's declaration of emergency pursuant to Hawai‘i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

"Nonconforming structure or activity" means a structure or activity which is lawfully existing within the shoreline setback area because it:

(1) Was completely built, in its present form, prior to June 22, 1970; or
(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
(3) Was outside the shoreline setback area when it received either a building permit or board approval; or

"Plan" or "site plan" means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawaii and shall consist of data including but not limited to:

(1) Property boundaries;
(2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
(3) Topography in and around the proposed construction;
(4) Any and all shoreline hardening;
(5) Flood zones, where applicable;
(6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
(7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
(8) A geo-referenced survey of the site; and
(9) Any other information which identifies the existing condition of the subject parcel of land."

"Primary Coastal Dune" means the first dune encountered mauka of the beach.
"Qualified professional consultant" means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai‘i that has experience in coastal processes.

"Qualified Demolition" means the demolition of a structure or structures where such demolition:

1. Will not adversely affect beach processes;
2. Will not artificially fix the shoreline;
3. Will not interfere with public access, except for public safety reasons during demolition operations;
4. Will not interfere with public views to and along the shoreline, except during demolition operations;
5. Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
6. Will comply with applicable County Codes.

"Rebuilding" means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

"Repair" means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure.

"Revetment" shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

"Rocky Shoreline" means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobbles or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

"Shoreline" is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

"Shoreline Change Reference Feature (SCRF)" means a morphologic feature commonly referred to as the "toe" of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

"Shoreline setback line" is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

"Storm buffer zone" is the first forty feet (40') of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.
"Substantial construction" means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

"Temporary structures or activities" means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

"Use" means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

Sec. 8-27.3 Shorelize Setback Determination: Establishment of the Shoreline Setback Line.

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.

Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below:

<table>
<thead>
<tr>
<th>If the average lot depth is:</th>
<th>100 feet or less</th>
<th>101 to 120 feet</th>
<th>121 to 140 feet</th>
<th>141 to 160 feet</th>
<th>161 to 180 feet</th>
<th>181 to 200 feet</th>
<th>More than 200 feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Then the minimum setback distance is:</td>
<td>40 feet</td>
<td>50 feet</td>
<td>60 feet</td>
<td>70 feet</td>
<td>80 feet</td>
<td>90 feet</td>
<td>100 feet</td>
</tr>
</tbody>
</table>

(c) For lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.
<table>
<thead>
<tr>
<th>For structures with a building footprint that is:</th>
<th>Less than or equal to 5,000 square feet</th>
<th>Greater than 5,000 square feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Then the setback distance is:</td>
<td>40 feet plus 70 times the annual coastal erosion rate</td>
<td>40 feet plus 100 times the annual coastal erosion rate</td>
</tr>
</tbody>
</table>

[(d) Any shoreline setback line established based on a coastal erosion study may be reviewed by the Planning Commission to ensure that the law has been properly followed.]

[(e)(d) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most mauka (landward) segments of each line shall form the shoreline setback line.]

[(f)(c) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.]

(f) The Director shall notify the commission at the Commission's next regularly scheduled meeting of the following:

(1) any newly completed applications for shoreline setback determination,

(2) any new shoreline setback determinations made by the Director including, but not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures or activities depicted on a plan drawn to scale, the purpose of the proposed structures and/or activities, the current certified shoreline, the setback calculations and setback line drawn on the plan, and copies of the coastal erosion study, if applicable.

(g) The Director's shoreline setback determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal of the Director's decision, the shoreline setback determinations shall not be final until the Commission completes its decision-making on the appeal.

[(h)(b) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii.]

[(h)(a) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.]
Sec. 8-27.4 Minimum Shoreline Setback Requirements.
   Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Structures and activities subject to these rules.
   All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is filed with the department showing that the construction is mauka of the shoreline setback area.

Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.
   (a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:
      (1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or
      (2) Where the mining or taking is authorized by a variance pursuant to these rules; or
      (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
      (4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.
   (b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a
Sec 8-27.7 Permitted structures and activities within the shoreline setback area.

(a) The following structures and activities are permitted in the shoreline setback area. All structures and activities not specifically permitted in this section are prohibited without a variance.

1. Existing conforming and nonconforming structures/activities.
2. Structure or activity that received a shoreline variance or administrative approval prior to the effective date of this ordinance.
3. A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
4. “Temporary structures or activities” as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition or netter, and the director may require a bond to ensure such restoration.
5. A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.
6. Repairs to a lawfully existing structure, including nonconforming structures, provided that:
   A. The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;
   B. The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and
   C. The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HRS Chapter 205A.
7. Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
8. A structure or activity approved by the Director as a minor structure or activity.
9. Qualified demolition of existing structures.
10. Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and
disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built to address an emergency as declared by the Governor of the State of Hawai‘i, the Mayor of the County of Kaua‘i or any other public official authorized by law to declare an emergency.

(b) The following conditions shall apply to any new structure or activity permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua‘i County Code, relating to coastal high hazard districts and FEMA guidelines regarding [FIRM maps] construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua‘i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) All new structures or activities shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade of the shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended.

[(4) (6)] The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.
Sec. 8-27.8 [Shoreline Setback] Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) [The] For public improvements and facilities whose valuation does not exceed $125,000.00, and repairs to lawfully existing private structures as delineated in Section 8-27.7(a)(6), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination or a current certified shoreline survey and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamp by a licensed surveyor, registered in the State of Hawai‘i, and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall approve, approve with conditions, or deny an application for approval/determination in accordance with the criteria set forth in this Article. The Director may also issue a determination that the proposed activity or structure is not subject to this Article because it is outside the shoreline setback area.

(4) For public improvements and facilities whose valuation exceeds $125,000.00, and private improvements and facilities that are not repairs to lawfully existing structures as delineated in Section 8-27.7(a)(6), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Section 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

(4) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall
make a determination in accordance with the criteria set forth in this Article that the proposed activity or structure is:

(A) Permitted under Section 8-27.7;
(B) Permitted under Section 8-27.7 and subject to conditions;
(C) Not permitted under Section 8-27.7; or
(D) Outside of the shoreline setback area.

The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

[(A) any newly completed applications for shoreline setback determination.]

(B) any newly completed applications for approval for a structure or activity proposed [for a] within the shoreline setback area; and

(C) any new [shoreline setback determinations or approval] approvals or denials by the Director of structures or activities and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions. [The Planning Director may submit copies of the coastal erosion study if applicable.]

The Director's [shoreline setback] structure and activity determinations [and approvals or denials] shall not be final until accepted by the [commission.] Commission. Notwithstanding [commission] Commission acceptance, if there is an appeal from the Director's decision, the [shoreline setback] determinations, approvals, or denials shall not be final until the Commission completes its decision-making on the appeal.

Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where
substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua‘i.

Sec. 8.27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) An administrative fee of $300.00. The administrative fee shall be seventy-five hundred dollars ($7,500) if the application is made after the structure is partially or fully built without the required approvals.

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale, showing:

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;
(D) Contours at a minimum interval of two (2) feet unless waived by the director; and
(E) Proposed development and improvements showing new conditions with a typical section (if a structure).
(6) A copy of the certified shoreline survey map of the property;
(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;
(8) Analysis and report of coastal erosion rates and coastal processes; and
(9) Any other information required by the director.
(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.
(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.
(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:
(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
(2) Protection of a legal structure costing more than $20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;
(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application. For the purposes of this section “public notice of the application” shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kauai, which informs the public of the subject matter of the application and which identifies the date and
time by which a written request for a public hearing must be received by the commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;
(2) Aquaculture;
(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline;
(4) Drainage;
(5) Boating, maritime, or water sports recreational facilities;
(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;
(7) Private and public facilities or improvements that are clearly in the public interest;
(8) Private and public facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;
(9) Private and public facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;
(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.
(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:
(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
(C) The minimum buildable footprint may be reduced to 1500 square feet.
(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;
(12) Rebuilding of an existing dwelling unit.
(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal processes, and the rebuilding is not prohibited by Article 23, Chapter 8, Kauai’s County Code, 1987 as amended.
(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

[(U)] (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

[(C)] (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

[(C)] (iia) The buildable footprint may be reduced to below 2100 square feet.

[(4)] (iv) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding.

(b) A structure or activity may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;
The applicant’s proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

Before granting a hardship variance, the commission must determine that the applicant’s proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1988; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

No variance shall be granted unless appropriate conditions are imposed:

1. To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
2. To minimize and mitigate risk of adverse impacts on beach processes;
3. To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and
4. To minimize adverse impacts on public views to, from, and along the shoreline; and
5. To comply with County Code provisions relating to floodplain management, Chapter 15, Article 1, Kaua‘i County Code, and Drainage, Chapter 22, Article 16, Kaua‘i County Code, respectively.

Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua‘i harmless from and against any and all loss, liability, claim,
or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(b) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance, HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of an unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted thereunder, any permit issued pursuant thereto or
any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

The Director shall enforce this article in accordance with Article 24 of the County of Kauai Comprehensive Zoning Ordinance and HRS Chapter 205A.

Sec. 8-27.12 Civil fines.

(a) Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32. Where a structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars ($1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department’s budget and shall be used for the enforcement and/or education relating to this ordinance.

Sec. 8-27.13 Appeal of Director’s decision.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant’s standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedure outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Kauai Planning Commission. The Planning Commission’s decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.

Sec. 8-27.14 Promulgation of Rules and Regulations.

This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Kauai in existence.
at the time of adoption of this ordinance. Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article."

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua‘i County Code, 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect thirty (30) days after its approval. The requirements of this ordinance shall not affect any application which has been approved by the County Council or the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by: /s/ JAY FURFARO
(By Request)

DATE OF INTRODUCTION:
June 16, 2009
Lih‘u‘e, Kaua‘i, Hawai‘i

V:\OS OFFICE FILES\2009 BILLS\221063 shoreline setback.doc
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2319, Draft 3, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on November 18, 2009, by the following vote:

FOR ADOPTION: Bynum, Chung, Furiafo, Kaneshiro, Kawahara
Kawakami, Asing

AGAINST ADOPTION: None

EXCUSED & NOT VOTING: None

TOTAL - 7,
TOTAL - 0,
TOTAL - 0.

Lihue, Hawai‘i
November 18, 2009

Peter A. Nakamura
County Clerk, County of Kaua‘i

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 1, 2009

Approved this 2nd day of

December, 2009.

Bernard P. Carvalho Jr.
Mayor
County of Kaua‘i
Act 215, SLH 2008, Civil Penalties for Violations on Public Lands

HRS §§171-6(12) and 171-6(15)

Act 217, SLH 2008, Penalties for Violations within the Conservation District

HRS §183C-7(b)
The chief of the highway division of the department of transportation;
A staff member of the department of land and natural resources representing the Lahaina small boat harbor;
The mayor of Maui county;
The director of the department of transportation of Maui county;
The police chief of Maui county;
The fire chief of Maui county;
The administrator of the civil defense agency of Maui county;
A representative of Lahaina Bypass Now;
A representative of the Kaanapali Beach Resort Association;
A representative of the Maui Visitors Bureau;
A Maui-based representative of Island Air;
A Maui-based representative of the Car and Truck Renting and Leasing Association;
A representative of the Maui Hotel and Lodging Association;
A Maui-based representative of the Hawaii Transportation Association;
A representative of the Pacific Radio Group;
A representative of Expeditions Lanai Ferry;
A representative of Molokai Princess Ferry; and
A Maui-based representative of Cruise Lines International Association.

(b) The temporary working group shall develop a West Maui transportation access plan to address road closures in West Maui and may contract with a consultant to develop the plan without regard to chapter 103D, Hawaii Revised Statutes.

(c) The temporary working group shall submit a written report including findings, recommendations, the finalized West Maui transportation access plan, and any necessary proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2009.

(d) The temporary working group shall terminate on June 30, 2009.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $56,000 $01 or so much thereof as may be necessary for fiscal year 2008-2009 for the West Maui transportation access plan temporary working group to develop a West Maui transportation access plan, including the hiring of a technical consultant.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval, except that section 3 shall take effect on July 1, 2008.

(Approved July 7, 2008.)

Note

1. Item vetoed, replaced, and initialed “LL” on July 3, 2008.

ACT 215

H.B. NO. 3178

A Bill for an Act Relating to Civil Penalties for Violations on Public Lands.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. The State must remain vigilant in its duty to protect Hawaii’s natural resources for the benefit of all of its residents and future generations. The leg-
AC 217

APPROVED APR. 7, 1918

The Act shall enter into operation.

AC 216

ABR. NO. 317

Be it enacted by the Legislature of the State of:

SECTION 1. Section 171, Hawaii Revised Statutes, is amended by adding a

be enacted by the Legislature of the State of Hawaii.

A bill for an Act relating to public lands.

AC 217

Passed April 7, 1918

SECTION 2. No sanitary material is undercaded.

SECTION 3. No sanitary material is undercaded.

SECTION 4. The Act shall effect upon approval.

SECTION 5. New sanitary material is undercaded.

Each act inserted and proceedings that were begun before the effective date.

The persons in the departments who were the necessary to curate and control

AC 216

the person in the department.

Do all the things necessary to curate and control.

AC 217

Passed April 7, 1918

including any other provision concerning the year of two prior acts.

For the purpose of inserting the year of two prior acts.

AC 217

Passed April 7, 1918

AC 216

Passed April 7, 1918
ACT 218

(c) This section shall not be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii Constitution.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 7, 2008.)

ACT 218 H.B. NO. 2438

A Bill for an Act Relating to Cigarettes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
REDUCED IGNITION PROPENSITY CIGARETTES LAW"

§ -1 Purpose. It is the intent of this chapter to require that only reduced ignition propensity cigarettes be sold in the State. Although these cigarettes are not guaranteed to self-extinguish, they are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking.

§ -2 Definitions. For the purposes of this chapter, unless the context otherwise requires:

"Cigarette" means:
(1) Any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not the tobacco or substance is flavored, adulterated, or mixed with any other ingredient, with a wrapper or cover that is made of paper or any other substance or material, other than tobacco; or
(2) Any roll for smoking wrapped in any substance containing tobacco, which, due to its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in paragraph (1).

"Dealer" means the same as defined in section 245-1.

"Manufacturer" means:
(1) Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere, and intends to sell these cigarettes:
(A) In this state; or
(B) Anywhere in the United States through an importer;
(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
(3) Any entity that becomes a successor of an entity described in paragraphs (1) or (2).
Act 153, SLH 2011, relating to Special Management Area

HRS §205A-22
SECTION 4. Section 206J-5.5, Hawaii Revised Statutes, is repealed.

SECTION 5. All fund balances remaining unencumbered and unexpended as of June 30, 2011, in the Aloha Tower Fund shall lapse to the credit of the harbor special fund and shall be used for operating expenses for the Aloha Tower development corporation.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 153

A Bill for an Act Relating to Special Management Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the cost of purchasing and importing construction materials, along with the cost of labor, has risen at a rate that has increased the overall cost of projects that, in the past, may have been viewed as insubstantial or minor. Furthermore, the increase in the number of these minor projects and the shortage of personnel that the various county planning departments are experiencing, have significantly slowed the review and processing of minor projects within the special management areas of the counties.

The purpose of this Act is to expedite and facilitate work on projects that have been or may be stalled due to delays relating to special management area permitting requirements.

SECTION 2. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

“§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

1. Adopt a seal;
2. Administer oaths;
3. Prescribe forms of instruments and documents;
4. Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
5. Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
6. Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license,
or permit, and the qualifications of any person to draw, bid, or negotiate for public land;

(7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;

(8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;

(9) Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;

(10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;

(11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
   (A) Be fined not more than $1,000 a day for the first offense;
   (B) Be fined not less than $1,000 nor more than $4,000 per day upon the second offense and thereafter;
   (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
   (D) Assume such costs as may result from adverse effects from such restoration; and
   (E) Be liable for administrative costs incurred by the department and for payment of damages;

(13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed $50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);

(15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:
(A) Fined not more than $5,000 per violation for a first violation or a violation beyond five years of the last violation[;] provided that, after written or verbal notification from the department, an additional $1,000 per day per violation may be assessed for each day in which the violation persists;

(B) Fined not more than $10,000 per violation for a second violation within five years of the last violation[;] provided that, after written or verbal notification from the department, an additional $2,000 per day per violation may be assessed for each day in which the violation persists;

(C) Fined not more than $20,000 per violation for a third or subsequent violation within five years of the last violation[;] provided that, after written or verbal notification from the department, an additional $4,000 per day per violation may be assessed for each day in which the violation persists; and

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii [state constitution].

State Constitution;

Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;

Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;

Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter; [and]

Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and

Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter."

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SECTION 3. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definitions of "development", "special management area minor permit", and "special management area use permit" to read as follows:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

1. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
2. Grading, removing, dredging, mining, or extraction of any materials;
3. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
4. Change in the intensity of use of water, ecology related thereto, or of access thereto; and
5. Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

1. Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
2. Repair or maintenance of roads and highways within existing rights-of-way;
3. Routine maintenance dredging of existing streams, channels, and drainage ways;
4. Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
5. Zoning variances, except for height, density, parking, and shoreline setback;
6. Repair, maintenance, or interior alterations to existing structures;
7. Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
8. Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
9. Transfer of title to land;
10. Creation or termination of easements, covenants, or other rights in structures or land;
11. Final subdivision approval;
12. Subdivision of land into lots greater than twenty acres in size;
13. Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for that exception with respect to any subsequent subdivision of any of the resulting parcels;
14. Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
15. Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
16. Nonstructural improvements to existing commercial structures.
(46) (17) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens;

provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part.

"Special management area minor permit" means an action by the authority authorizing development the valuation of which is not in excess of [125,000] $500,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area use permit" means an action by the authority authorizing development the valuation of which exceeds [125,000] $500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

A Bill for an Act Relating to Dams and Reservoirs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 179D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board shall administer the dam and reservoir safety program established by this chapter. In carrying out this chapter, the board shall cooperate, advise, consult, contract, and enter into cooperative agreements with the United States government or any of its agencies, other state agencies, and the county governments or any of their agencies. In the performance of its duties, the board shall:

(1) Establish by rules adopted under chapter 91, policies, requirements, or standards governing the design, construction, operation, maintenance, enlargement, alteration, repair, removal, and inspection of dams, reservoirs, and appurtenant works for the protection of life and property from structural failure of dams and reservoirs;

(2) Conduct investigations and [the collection of] collect data, including technological advances made in dam and reservoir safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, inspection, operation, maintenance, alteration, and enlargement of dams, reservoirs, and appurtenant works. The board may require submittal of reports of investigations from all owners;

(3) Conduct investigations and require reports from all owners to be made from time to time, including watershed investigations and
Rules regarding Water Quality Standards

HAR §§11-54-4(b)(3) and 11-54-8(b)
(b) To ensure compliance with paragraph (a)(4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

(A) "Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

(B) "Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

(C) "Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/073), February, 1990.

(D) "No Observed Effect Concentration Observed Effect Concentration" (NOEC), means the highest per cent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, an NOEC of 100 percent indicates
that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All state waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11, or other methods specified by the director.

(B) Chronic Toxicity Standards: All state waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

(C) Human Health Standards: All state waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All state waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).

(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved
fraction. All values are expressed in micrograms per liter.

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§11-54-8 Specific criteria for recreational areas.  (a) In inland recreational waters:

1. Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between 25 and 30 days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 8% per cent confidence limit. Inland recreational waters in which

2. enterococcus content does not exceed the standard shall not be lowered in quality.

3. At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.

4. Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.

(b) In marine recreational waters:

1. Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall
§11-54-8

not exceed a geometric mean of [seven] 35 CFU per [one hundred] 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of [100] 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.

(2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed [7] 35 CFU per 100 milliliters.

(3) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)
DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54
Hawaii Administrative Rules

MAY 27 2009

SUMMARY

1. §11-54-4 is amended.
2. §11-54-8 is amended.
3. Chapter 54 is compiled.
HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

§11-54-1 Definitions
§11-54-1.1 General policy of water quality antidegradation
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54-1
§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawai'ian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.
"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai‘i and the Federal Water Pollution Control Act, as amended, (33 USC 1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters," means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt
marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai‘i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai‘i, or the director's duly authorized agent.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

"Existing uses" means those uses actually attained in the water body on or after November 28, 1975 whether or not they are included in the water quality standards.

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated
aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and
§11-54-1

Fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than 30% of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient: (1) headwater zone (elevation above 800 m [2600 ft] or gradient above 30 per cent or both); (2) mid-zone (elevation between 50-800 m [165-2600 ft], or gradient between 5 and 30 per cent or both); and (3) terminal zone (elevation below 50 m [165 ft] or gradient below 5 per cent or both). Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and
contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.
"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2. The State of Hawai'i has those boundaries stated in Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system", means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimitated by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in
well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

"Wetlands" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes: 1) at least periodically the land supports predominantly hydrophytic vegetation; 2) the substratum is predominantly undrained hydric soil; or 3) the substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water. Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp JUN 15 2009] (Auth: HRS §§187A-1, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))
§11-54-1.1

§11-54-1.1 General policy of water quality antidegradation.

(a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp __.JUN 15.2009__] (Auth: HRS §§342D-1, 342D-4, 342D-5; 40 C.F.R. 131.12) (Imp: HRS §§342D-4, 342D-5)

§11-54-2 Classification of state waters. (a) State waters are classified as either inland waters or marine waters.
(b) Inland waters may be fresh, brackish, or saline.

(1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:
(A) Flowing waters.
   (i) Streams (perennial and intermittent);
   (ii) Flowing springs and seeps; and
   (iii) Ditches and flumes that discharge into any other waters of the state;
(B) Standing waters.
   (i) Natural freshwater lakes; and
   (ii) Reservoirs (impoundments);
(C) Wetlands.
   (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
   (ii) Low wetlands (marshes, swamps, and associated ponds).

(2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
(A) Standing waters.
   (i) Anchialine pools; and
   (ii) Saline lakes.
(B) Wetlands.
   (i) Coastal wetlands (marshes, swamps, and associated ponds).
(C) Estuaries.
   (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
   (ii) Developed estuaries.
(c) Marine waters.
(1) All marine waters are either embayments, open coastal, or oceanic waters;
§11-54-2

(2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:
(A) Sand beaches;
(B) Lava rock shorelines and solution benches;
(C) Marine pools and protected coves;
(D) Artificial basins;
(E) Reef flats; and
(F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp JUN 1 5 2009 ] (Auth: HRS §§342D-1, 342D-4, 342D-5)(Imp: HRS §§342D-4, 342D-5)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.
(b) Inland waters.
(1) Class 1.
It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited. Any conduct which results in a demonstrable increase in levels

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§11-54-3

of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.
The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.
The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2.
The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or
control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries.

No new industrial discharges shall be permitted within estuaries, with the exception of:

(A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;

(B) Stormwater discharges associated with industrial activities (defined in 40 C.F.R. Section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and

(C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control."

c) Marine waters.

(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of
these areas shall be protected. No zones of mixing shall be permitted in this class:

(A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or

(B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms). The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.
It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:
§11-54-3

(A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
   (i) Honolulu Harbor, Oahu;
   (ii) Barbers Point Harbor, Oahu;
   (iii) Keehi Lagoon Marina Area, Oahu;
   (iv) Ala Wai Boat Harbor, Oahu; and
   (v) Kahului Harbor, Maui.

(B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. Section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control;" and

(C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control."

(d) Marine bottom ecosystems.

(1) Class I.
   It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most
natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;

(2) Class II.
It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization, (dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §174C, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)
§11-54-4

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

1. Materials that will settle to form objectionable sludge or bottom deposits;
2. Floating debris, oil, grease, scum, or other floating materials;
3. Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
4. High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
5. Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
6. Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) To ensure compliance with paragraph (a)(4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

1. As used in this section:
   A. "Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms.
§11-54-4

The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

(B) "Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

(C) "Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/073), February, 1990.

(D) "No Observed Effect Concentration Observed Effect Concentration" (NOEC), means the highest per cent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, an NOEC of 100 percent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All state waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All
state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11, or other methods specified by the director.

(B) Chronic Toxicity Standards: All state waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

(C) Human Health Standards: All state waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All state waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).

(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

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54-20
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54-21
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<td>Chronic</td>
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<td>phenol(2,3,5,6)</td>
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<tr>
<td>Zinc</td>
<td>22+</td>
<td>22+</td>
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ns - No standard has been developed.
* - Carcinogen.
+ - The value listed is the minimum standard. Depending upon the receiving water CaCO₃ hardness, higher standards may be calculated using the respective formula in the U. S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

(4) The following are basic requirements applicable to discharges to state waters.
These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in paragraph (2).

(A) Continuous discharges through submerged outfalls. The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution. In addition, such discharges shall not contain:

(i) Pollutants in twenty-four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

(B) Discharges without submerged outfalls. The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than 80 per
cent. In addition, no such discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(c) The requirements of paragraph (a)(6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

(d) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to post or order posting in any other appropriate case or to take any enforcement action. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp
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04/17/00; am and comp 10/2/04; am and comp

JUN 15 2009 } (Auth: HRS §§342D-1, 342D-4,
342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5 Uses and specific criteria applicable to
inland waters. Inland water areas to be protected are
described in section 11-54-5.1, corresponding specific
criteria are set forth in section 11-54-5.2; water
body types are defined in section 11-54-1. [Eff
11/12/82; am and comp 10/6/84; am and comp 04/14/88;
am and comp 01/18/90; am and comp 10/29/92, am and
comp 04/17/00; am and comp 10/2/04; comp

(imp: HRS §§342D-4, 342D-5)

§11-54-5.1 Inland water areas to be protected.
(a) Freshwaters.
(1) Flowing waters: perennial streams and
rivers, intermittent streams, springs and
seeps, and man-made ditches and flumes that
discharge into any other waters of the
State.
A) Class 1.a.
(i) All flowing waters within the
natural reserves, preserves,
sanctuaries, and refuges
established by the department of
land and natural resources under
chapter 195, HRS, or similar
reserves for the protection of
aquatic life established under
chapter 195, HRS.
(ii) All flowing waters in national
and state parks.
(iii) All flowing waters in state or
federal fish and wildlife
refuges.

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(iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All flowing waters in Wai-manu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All flowing waters in protective subzones designated under chapter 13-5 of the state board of land and natural resources.

(C) Class 2. All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in §11-54.1.1 to the whole chapter.

(2) Standing waters (natural freshwater lakes and reservoirs):

(A) Class 1.a.

(i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
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(ii) All standing waters in national and state parks.

(iii) All standing waters in state or federal fish and wildlife refuges.

(iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All standing waters in Wai-manu National Estuarine Research Reserve (Hawai‘i).

(B) Class 1.b. All standing waters in protective subzones designated under chapter 13-5 of the state board of land and natural resources.

(C) Class 2. All standing waters in areas not otherwise classified.

(3) Elevated wetlands and low wetlands:

(A) Class 1.a.

(i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All elevated and low wetlands in national and state parks.

(iii) All elevated and low wetlands in state or federal fish and wildlife refuges.

(iv) All elevated and low wetlands which have been identified as a unique or critical habitat for 54-30
threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All elevated and low wetlands in Wai-manu National Estuarine Research Reserve (Hawai‘i).

(B) Class 1.b. All elevated and low wetlands in protective subzones designated under chapter 13-5 of the state board of land and natural resources.

(C) Class 2. All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).

(1) Class 1.a.

(A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(B) All inland brackish or saline waters in national and state parks.

(C) All inland brackish or saline waters in state or federal fish and wildlife refuges.

(D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(E) All inland brackish and saline waters in Wai-manu National Estuarine Research Reserve (Hawai‘i).
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(F) The following natural estuaries: Lumaha'i and Ki-lau-ea estuaries (Kaua'i).

(2) Class 1.b. All inland brackish or saline waters in protective subzones designated under chapter 13-5 of the state board of land and natural resources.

(3) Class 2. All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited (see paragraph 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>250.0*</td>
<td>520.0*</td>
<td>800.0*</td>
</tr>
<tr>
<td></td>
<td>180.0**</td>
<td>380.0**</td>
<td>600.0**</td>
</tr>
<tr>
<td>Nitrate + Nitrite</td>
<td>70.0*</td>
<td>180.0*</td>
<td>300.0*</td>
</tr>
<tr>
<td>Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>30.0**</td>
<td>90.0**</td>
<td>170.0**</td>
</tr>
<tr>
<td>Total Phosphorus (ug P/L)</td>
<td>50.0*</td>
<td>100.0*</td>
<td>150.0*</td>
</tr>
<tr>
<td></td>
<td>30.0**</td>
<td>60.0**</td>
<td>80.0**</td>
</tr>
<tr>
<td>Total Suspended Solids (mg/L)</td>
<td>20.0*</td>
<td>50.0*</td>
<td>80.0*</td>
</tr>
<tr>
<td></td>
<td>10.0**</td>
<td>30.0**</td>
<td>55.0**</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>5.0*</td>
<td>15.0*</td>
<td>25.0*</td>
</tr>
<tr>
<td></td>
<td>2.0**</td>
<td>5.5**</td>
<td>10.0**</td>
</tr>
</tbody>
</table>

* Wet season - November 1 through April 30.
** Dry season - May 1 through October 31.
L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams
pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0
Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.
Temperature - Shall not vary more than one degree Celsius from ambient conditions.
Specific Conductance - Not more than three hundred micromhos/centimeter.
§11-54-5.2

(2) Bottom criteria for streams:

(A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inch) over hard bottoms twenty-four hours after a heavy rainstorm.

(B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inch) over soft bottoms twenty-four hours after a heavy rainstorm.

(C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.

(D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeter (0.005 inch) in diameter.

(E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms.
which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>200.00</td>
<td>350.00</td>
<td>500.00</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₄-N/L)</td>
<td>6.00</td>
<td>10.00</td>
<td>20.00</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>8.00</td>
<td>25.00</td>
<td>35.00</td>
</tr>
<tr>
<td>Total Phosphorus (ug P/L)</td>
<td>25.00</td>
<td>50.00</td>
<td>75.00</td>
</tr>
<tr>
<td>Chlorophyll a (ug/L)</td>
<td>2.00</td>
<td>5.00</td>
<td>10.00</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>1.5</td>
<td>3.00</td>
<td>5.00</td>
</tr>
</tbody>
</table>

L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard

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reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>300.00</td>
<td>550.00</td>
<td>750.00</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₄-N/L)</td>
<td>10.00</td>
<td>20.00</td>
<td>30.00</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>15.00</td>
<td>40.00</td>
<td>70.00</td>
</tr>
<tr>
<td>Total Phosphorus (ug P/L)</td>
<td>60.00</td>
<td>130.00</td>
<td>200.00</td>
</tr>
<tr>
<td>Chlorophyll a (ug/L)</td>
<td>3.50</td>
<td>10.00</td>
<td>20.00</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>4.00</td>
<td>8.00</td>
<td>15.00</td>
</tr>
</tbody>
</table>

$L = \text{liter}$

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

$\mu g = \text{microgram or 0.000001 grams.}$

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.
§11-54-6

(1) As used in this section: "Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater. "Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected.
(A) Class AA.
   (i) Hawaii
       Puako Bay
       Waiulua Bay
       Anaehoomalu Bay
       Kiholo Bay
       Kailua Harbor
       Kealakekua Bay
       Honaunau Bay

       Oahu
       Waialua Bay
       Kahana Bay
       Kaneohe Bay
       Hanauma Bay

       Kauai
       Hanalei Bay

   (ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of

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marine life established under chapter 190, HRS.

(iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries.

(iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(B) Class A.

Hawaii
Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui
Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai
Manele Boat Harbor
Kaumalapau Harbor

Molokai
Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu
Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor

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Haleiwa Boat Harbor
Ko Olina

Kauai
Hanamaulu Bay
Nawiliwili Bay
Kukuiula Bay
Wahiawa Bay
Hanapepe Bay (inside breakwater)
Kikiaola Boat Harbor
Port Allen Boat Harbor

(3) The following criteria are specific for all embayments excluding those described in section 11-54-06(d).(Note that criteria for embayments differ based on fresh water inflow.)

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to Exceed the given value more than Two per cent of The time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>200.00*</td>
<td>350.00*</td>
<td>500.00*</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₄-N/L)</td>
<td>6.00*</td>
<td>13.00*</td>
<td>20.00*</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>8.00*</td>
<td>20.00*</td>
<td>35.00*</td>
</tr>
<tr>
<td>Total Phosphorus (ug P/L)</td>
<td>25.00*</td>
<td>50.00*</td>
<td>75.00*</td>
</tr>
<tr>
<td>Chlorophyll a (ug/L)</td>
<td>1.50*</td>
<td>4.50**</td>
<td>8.50*</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>1.5*</td>
<td>3.00*</td>
<td>5.00*</td>
</tr>
</tbody>
</table>
"Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

"Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this section: "Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a);

(2) Water areas to be protected (measured in a clockwise direction from the first-named to the second-named location, where applicable):

(A) Class AA.
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(i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point;
(ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai;
(iii) Kahoolawe - All open coastal water surrounding the island;
(iv) Lanai - All open coastal waters surrounding the island;
(v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor;
(vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia;
(vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay;
(viii) Niilau - All open coastal waters surrounding the island;

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(ix) All other islands of the state -
All open coastal waters
surrounding the islands not
classified in this section;

(x) All open waters in preserves,
reserves sanctuaries, and refuges
established by the department of
land and natural resources under
chapter 195 or chapter 190, HRS
or similar reserves for the
protection of marine life
established under chapter 190,
HRS, as amended; or in the
refuges or sanctuaries
established by the U.S. Fish and
Wildlife Service or the National
Marine Fisheries Service;

(B) Class A - All other open coastal waters not
otherwise specified.

(3) The following criteria are specific for all
open coastal waters, excluding those
described in section 11-54-6(d). (Note that
criteria for open coastal waters differ,
based on fresh water discharge.)

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>150.00*</td>
<td>250.00*</td>
<td>350.00*</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₄-N/L)</td>
<td>110.00**</td>
<td>180.00**</td>
<td>250.00**</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>3.50*</td>
<td>8.50*</td>
<td>15.00*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5.00**</td>
<td>9.00**</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten percent of the time</th>
<th>Not to exceed the given value more than two percent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Phosphorus (µg P/L)</td>
<td>20.00*</td>
<td>40.00*</td>
<td>60.00*</td>
</tr>
<tr>
<td></td>
<td>16.00**</td>
<td>30.00**</td>
<td>45.00**</td>
</tr>
<tr>
<td>Light Extinction Coefficient (k units)</td>
<td>0.20*</td>
<td>0.50*</td>
<td>0.85*</td>
</tr>
<tr>
<td></td>
<td>0.10**</td>
<td>0.30**</td>
<td>0.55**</td>
</tr>
<tr>
<td>Chlorophyll a (µg/L)</td>
<td>0.30*</td>
<td>0.90*</td>
<td>1.75*</td>
</tr>
<tr>
<td></td>
<td>0.15**</td>
<td>0.50**</td>
<td>1.00**</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>0.50*</td>
<td>1.25*</td>
<td>2.00*</td>
</tr>
<tr>
<td></td>
<td>0.20**</td>
<td>0.50**</td>
<td>1.00**</td>
</tr>
</tbody>
</table>

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.  
"Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.  
Applicable to both "wet" and "dry" conditions:  
PH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.  
Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.  
Temperature - Shall not vary more than one degree Celsius from ambient conditions.  
Salinity - Shall not vary more than ten percent from natural or seasonal changes considering hydrologic input and oceanographic factors.
k units = the ratio of light measured at the water's surface to light measured at a particular depth.
L = liter
Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams

(c) Oceanic waters.
   (1) Definition - "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour;
   (2) Water areas to be protected - Class A - All oceanic waters;
   (3) The following criteria are specific for oceanic waters:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen (ug N/L)</td>
<td>50.00</td>
<td>80.00</td>
<td>100.00</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₃-N/L)</td>
<td>1.00</td>
<td>1.75</td>
<td>2.50</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃+NO₂]-N/L)</td>
<td>1.50</td>
<td>2.50</td>
<td>3.50</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given value</th>
<th>Not to exceed the given value more than ten per cent of the time</th>
<th>Not to exceed the given value more than two per cent of the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Phosphorus (ug P/L)</td>
<td>10.00</td>
<td>18.00</td>
<td>25.00</td>
</tr>
<tr>
<td>Chlorophyll a (ug/L)</td>
<td>0.06</td>
<td>0.12</td>
<td>0.20</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>0.03</td>
<td>0.10</td>
<td>0.20</td>
</tr>
</tbody>
</table>

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of Hawaii Island from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and
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for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

(i) in areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Geometric mean not to exceed the given single value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Dissolved Nitrogen (ug N/L)</td>
<td>100.00</td>
</tr>
<tr>
<td>Nitrate + Nitrite Nitrogen (ug [NO₃⁺NO₂]⁻-N/L)</td>
<td>4.50</td>
</tr>
<tr>
<td>Total Dissolved Phosphorus (ug P/L)</td>
<td>12.50</td>
</tr>
<tr>
<td>Phosphate (ug PO₄ - P/L)</td>
<td>5.00</td>
</tr>
<tr>
<td>Ammonia Nitrogen (ug NH₄ - N/L)</td>
<td>2.50</td>
</tr>
<tr>
<td>Chlorophyll a (ug/L)</td>
<td>0.30</td>
</tr>
<tr>
<td>Turbidity (N.T.U.)</td>
<td>0.10</td>
</tr>
</tbody>
</table>

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

(ii) if nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to...
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Salinity on the basis of a linear least squares regression equation:

\[ Y = MX + B \]

where:
Y = parameter concentration (in \( \text{ug/L} \))
X = salinity (in ppt)
M = regression coefficient (or "slope")
B = constant (or "Y intercept").
The absolute value of the upper 95 percent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>M</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nitrate and Nitrite Nitrogen</td>
<td>−31.92</td>
</tr>
<tr>
<td>(ug ([\text{NO}_3 + \text{NO}_2])-N/L)</td>
<td></td>
</tr>
<tr>
<td>Total Dissolved Nitrogen (ug N/L)</td>
<td>−40.35</td>
</tr>
<tr>
<td>Phosphate</td>
<td>−3.22</td>
</tr>
<tr>
<td>(ug PO4 - P/L)</td>
<td></td>
</tr>
<tr>
<td>Total Dissolved Phosphorus (ug P/L)</td>
<td>−2.86</td>
</tr>
</tbody>
</table>

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in (i) above, also apply.

(iii) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500
meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 μm. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; 54-49
§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

(1) As used in this section: "Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach;

(2) Water areas to be protected:

(A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal Kure Atoll;

(B) Class II - All beaches not in Class I;

(3) The following criteria are specific to sand beaches:

(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inch) twenty-four hours after a heavy rainstorm;

(B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four
§11-54-7

inches) of sediment shall not be less than +100 millivolts;

(C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.

(b) Lava rock shoreline and solution benches.
     (1) As used in this section:
"Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure; Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals;

     (2) Water areas to be protected:
     (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;
     (B) Class II
         (i) All other lava rock shorelines not in Class I;
(ii) The following solution benches:

<table>
<thead>
<tr>
<th>Maui</th>
<th>Oahu</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kihei</td>
<td>Diamond Head</td>
</tr>
<tr>
<td>Papaula Point</td>
<td>Manana Island</td>
</tr>
<tr>
<td></td>
<td>Makapuu</td>
</tr>
<tr>
<td>Kauai</td>
<td>Laie</td>
</tr>
<tr>
<td>Near Hanapepe</td>
<td>Kahuku</td>
</tr>
<tr>
<td>Salt Ponds</td>
<td>Mokuleia</td>
</tr>
<tr>
<td>Milolii</td>
<td>Makua</td>
</tr>
<tr>
<td>Nualolo</td>
<td>Makaha</td>
</tr>
<tr>
<td>Makaha</td>
<td>Maile</td>
</tr>
<tr>
<td>Mahaulepu</td>
<td>Lualualei</td>
</tr>
<tr>
<td>Kuhio Beach Park</td>
<td>Barbers Point</td>
</tr>
<tr>
<td>(Kukuiula)</td>
<td></td>
</tr>
</tbody>
</table>

(3) The following criteria are specific to lava rock shorelines and solution benches:

(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inch) for longer than twenty-four hours after a heavy rainstorm;

(B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. Section 1311) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards 54-52
for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this section:
"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna;
"Protected coves" means small inlets which are removed from heavy wave action or surge;

(2) Water areas to be protected;
(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish
and Wildlife Service or the National Fisheries Service;
(ii) Hawaii
Honauanau
Kiholo

(A) Class II

<table>
<thead>
<tr>
<th>Hawaii</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kalapana</td>
<td>Hana</td>
</tr>
<tr>
<td>Pohakuloa</td>
<td>Keanae</td>
</tr>
<tr>
<td>Kapalaoa</td>
<td>Napili</td>
</tr>
<tr>
<td>Kapoho</td>
<td>Puu Olai to</td>
</tr>
<tr>
<td>King's Landing</td>
<td>Cape</td>
</tr>
<tr>
<td>(Papai)</td>
<td>Hanamanioa</td>
</tr>
<tr>
<td>Hilo</td>
<td>Kipahulu</td>
</tr>
<tr>
<td>Leileiwi Point</td>
<td></td>
</tr>
<tr>
<td>Wailua Bay</td>
<td>Molokai</td>
</tr>
<tr>
<td></td>
<td>Cape Halawa</td>
</tr>
<tr>
<td></td>
<td>Kalaupapa</td>
</tr>
<tr>
<td></td>
<td>South Coast</td>
</tr>
</tbody>
</table>

Oahu
Diamond Head
Halona Blowhole to Makapuu
Mokuleia
Kena Point
Makua
Punaluu

Kauai
Kealia
Mahaulepu
Hanamaulu
Poipu
Puolo Point

(3) The following criteria are specific to marine pools and protected coves:
(A) In marine pools and coves with sand bottoms, oxidation - reduction potential (EH) in the uppermost ten
centimeters (four inches) of sediment shall not be less than +100 millivolts;
(B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter;
(F) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
   (i) No thicker than an equivalent of five millimeters (0.20 inch) on hard bottoms (other than living corals);
   (ii) No thicker than an equivalent of ten millimeters (0.40 inch) on soft bottoms;
(D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
(d) Artificial basins.
(1) As used in this section:
"Artificial basins" means dredged or quarried channels or harbors, and harbor-
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associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.

(2) Class II water areas to be protected are as follows:
(A) Shallow draft harbors:

Hawaii
Wailoa River Boat Harbor
Mahukona Harbor
Keauhou Harbor
Kailua-Kona Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor

Maui
Maalaea Boat Harbor
Lahaina Boat Harbor
Hana Harbor

Lanai
Manele Boat Harbor
Kaumalapau Harbor

Molokai
Kalaupapa Anchorage
Kaunakakai Small Boat Harbor
Hale o Lono Harbor

Oahu
Heeia Kea Boat Harbor
Kaneohe Marine Corps Air Station
Kaneohe Yacht Club
Hawaii Kai Marina (Kuapa Pond)
Pokai Bay
Waianae Boat Harbor
Keehi Marine Center
La Mariana Sailing Club
Haleiwa Harbor
Makani Kai Marina
Keehi Boat Harbor

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Ala Wai Boat Harbor:
   Ala Wai Fuel Dock
   Hawaii Yacht Club
   Waikiki Yacht Club
Ko Olina

Kauai
   Nawiliwili Small Boat Harbor
   Kukuiula Boat Harbor
   Kikiaola Boat Harbor
   Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii
   Kuhio Bay (Hilo Harbor)
   Kawaihae Deep Draft Harbor

Maui
   Kahului Harbor

Molokai
   Kaunakakai Barge Harbor

Oahu
   Honolulu Harbor
   Barbers Point Harbor
   Kewalo Basin

Kauai
   Nawiliwili Harbor
   Port Allen Harbor

(3) Specific criterion to be applied - Oxidation
    - reduction potential (EH) in the uppermost
    ten centimeters (four inches) of sediment
    shall not be less than -100 millivolts.

(e) Reef flats and reef communities.

(1) As used in this section:

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"Nearshore reef flats" means shallow platforms of reef rock, rubble, and sand extending from the shoreline. Smaller, younger flats projected out as semicircular aprons while older, larger flats form wide continuous platforms. Associated animals are mollusks, echinoderms, worms, crustaceans (many living beneath the surface), and reef-building corals. "Offshore reef flats" means shallow, submerged platforms of reef rock and sand between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats. "Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves. "Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty
feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:
(A) Class 1.
   (i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

   (ii) Nearshore reef flats:
       Hawaii                      Maui
       Puako                      Honolua
       Lanai                      Oahu
       Northwest Lanai Reef      Hanauma Bay
       Molokai                    Kauai
       Western Kalaupapa          Nualolokai
       Southeast Molokai Reef     Hanalei
       Honomuni Harbor            (Anini to
       Kulaalamahi Fishpond       Haena)

   (iii) Offshore reef flats:
       Moku o Loe (Coconut Island,
                    Kaneohe Bay, Oahu)
       Kure Atoll
       Pearl and Hermes Atoll
       Lisianski Island
       Laysan Island

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Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:
Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)
1960 Lava Flow (Kapoho)
1969 Lava Flow (Apuna Point)
1970 Lava Flow (Apuna Point)
1971 Lava Flow (Apuna Point)
1972 Lava Flow (Apuna Point)
1973 Lava Flow (Apuna Point)

Maui
Hana Bay
Makuleia Bay (Honolua)

Molokini Island
All wave exposed reef communities

Molokai
Moanui Kahinapohaku Waikolu -
Kalawao
Halawa Bay

Oahu
Sharks Cove (Pupukea)
Moku Manu (Islands)
Outer Hanauma Bay
Waimea Bay
Kawela Bay
Kahana Bay

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Kauai
Ke`e Beach
Poipu Beach
Kipu Beach

Niihau
All wave exposed communities

Lehua (off Niihau)
All wave exposed communities

(v) Protected reef communities:

Hawaii
Puako
Honaunau
Kealakekua
Kiholo
Anaehoomalu
Hapuna
Kahaluu Bay
Keaweula (North Kohala)
Milolii Bay to Keawaiki
Kailua-Kaiwi (Kona)
Onomea Bay
1801 Lava Flow (Keahole or Kiholo)
1850 Lava Flow (South Kona)
1859 Lava Flow (Kiholo)
1919 Lava Flow (Milolii)
1926 Lava Flow (Milolii)

Maui
Honolua

Ahihi-La Perouse (including 1790
Lava Flow at Cape Kinau)

Molokini Island
All protected reef communities
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Lanai
Manele
Hulopoe

Molokai
Southeast Molokai
Kalaupapa
Honomuni Harbor

Oahu
Hanauma Bay
Moku o Loe
(Coconut Island,
  Kaneohe Bay)

Kauai
Hoai Bay (Poipu)

Northwestern Hawaiian Islands
Kure Atoll Lagoon
Pearl and Hermes Lagoon
Lisianski Lagoon
Maro Reef Lagoon
French Frigate Shoals Lagoon

(B) Class II.
(i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director, considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii
Blonde Reef (Hilo Harbor)
Kawaihae Small Boat Harbor

Maui
Lahaina Harbor
Kahului Harbor

Lanai

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Manele

Molokai
Kaunakakai Harbor
Hale o Lono Harbor
Palaau (2.4 kilometers/1.5 mile, east of Pakanaka Fishpond)

Oahu
Keehi Boat Harbor
Ala Moana Reef
Honolulu Harbor
Heeia Harbor
Kaneohe Yacht Club
Ala Wai Harbor
Haleiwa Boat Harbor
Maunalua Bay
Pearl Harbor
Kaneohe Bay
Kahe

All other nearshore reef flats not in Class I;
(ii) Offshore reef flats:
Oahu
Kapapa Barrier Reef
Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or protected reef communities not in Class I.

(3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits

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shall be issued pursuant to chapter 342, HRS.

(A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;

(B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;

(C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
   (i) No thicker than an equivalent of two millimeters (0.08 inch) on living coral surfaces;
   (ii) No thicker than an equivalent of five millimeters (0.2 inch) on other hard bottoms;
   (iii) No thicker than an equivalent of ten millimeters (0.4 inch) on soft bottoms;

(D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required. Permanent benchmark stations may be

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required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(f) Soft bottom communities.

(1) As used in this section:
"Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.

(2) Water areas to be protected:
Class II - All soft bottom communities;

(3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 54-65
§11-54-8 Specific criteria for recreational areas.  (a) In inland recreational waters:

(1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between 25 and 30 days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit. Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.

(2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.

(4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.

(b) In marine recreational waters:
(1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall
not exceed a geometric mean of 35 CFU per
100 milliliters in not less than five
samples which shall be spaced to cover a
period between twenty-five and thirty days.
No single sample shall exceed the single
sample maximum of 104 CFU per 100
milliliters or the site-specific one-sided
75 per cent confidence limit. Marine
recreational waters along sections of
coastline where enterococcus content does
not exceed the standard, as shown by the
geometric mean test described above, shall
not be lowered in quality.

(2) At locations where sampling is less frequent
than five samples per twenty-five to thirty
days, no single sample shall exceed the
single sample maximum nor shall the
geometric mean of these samples taken during
the thirty-day period exceed 35 CFU per 100
milliliters.

(3) Raw or inadequately treated sewage, sewage
for which the degree of treatment is
unknown, or other pollutants of public
health significance, as determined by the
director of health, shall not be present in
natural public swimming, bathing or wading
areas. Warning signs shall be posted at
locations where human sewage has been
identified as temporarily contributing to
the enterococcus count. [Eff 11/12/82; am
and comp 10/6/84; am and comp 04/14/88; am
and comp 01/18/90; am and comp 10/29/92, am
and comp 04/17/00; am and comp 10/2/04; am

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§11-54-9 Zones of mixing. (a) As used in this section "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

(c) Establishment, renewal, and termination.

(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe;

(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter;

(3) Whenever an application is approved, the director shall establish the zone of mixing,
taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water;

(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit;

(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
(D) The discharge occurring or proposed to occur does not violate the basic

§11-54-9
standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control;

(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:

(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;

(B) The director may issue a zone of mixing for a period not exceeding five years;

(C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the

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director. A program of research to
develop reasonable alternatives to the
methods of treatment or control in use
by the applicant may be required if
research is deemed prudent by the
director; and
(D) In order to prevent high temperature
discharges from violating section 11-
54-04(a)(4), no new or increased
domestic, industrial, or other
controllable source shall discharge at
a maximum temperature which will cause
temperatures to exceed 3 degrees
Celsius above ambient, or 30 degrees
Celsius, whichever is less, within one
meter of the bottom within a zone of
mixing. For discharges with or without
submerged outfalls, the director may
make a limited allowance for higher
discharge temperatures if there is
satisfactory demonstration that the
elevated temperature will not cause
damage to the local aquatic community
(7) Any zone of mixing established pursuant to
this section may be renewed from time to
time on terms and conditions and for periods
not exceeding five years which would be
appropriate on initial establishment of a
zone of mixing, provided that the applicant
for renewal had met all of the conditions
specified in the immediately preceding
mixing, and provided further that the
renewal and the zone of mixing established
in pursuance thereof shall provide for the
discharge not greater in quantity of mass
emissions than that attained pursuant to the
terms of the immediately preceding zone of
mixing at its expiration. Any new zones of
mixing or requests for zone of mixing
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renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing;

(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law;

(9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency;

(10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action;

(11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received;

(12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall
§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 1998, unless otherwise specified.


"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" means the same thing as defined in Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in Section 502(12) of the Act.

"Duly authorized representative" means a person or position as defined in 40 CFR Section 122.22(b).

"HRS" means the Hawaii Revised Statutes.
§11-54-9.1

"License or permit" means any permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.

"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."

"Navigable waters" means the waters of the United States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

"Pollutant" means the same thing as defined in Section 502(6) of the Act.

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards. A water quality certification is required by Section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to Section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.
"Waters of the United States" or "waters of the U.S." means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
   a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
   b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
   c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 54-75]
§11-54-9.1


§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

(2) A statement that the director has either:
   (A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or
   (B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a)(3)

(3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and

(5) Other information the director determines to be appropriate.

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§11-54-9.1.01

(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility.

(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02
§11-54-9.1.02  Water quality certification; contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

(2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);

(3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;

(4) Associated existing or pending federal and environmental permits and corresponding file numbers;

(5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;

(6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;

(7) If applicable, a description of the function and operation of equipment or facilities to
control discharges, including specification of the methods of control to be used;

(8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;

(9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);

(10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);

(11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);

(12) Additional information regarding any irregularities or unique features of the project; and

(13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until
§ 11-54-9.1.02

the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of $1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

(1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;

(2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the
§11-54-9.1.03

Discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an After the Fact water quality certification application as follows: After the Fact water quality certification application may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met: (1) the project or activity is not the subject of an on-going enforcement action by the federal, state or county government; (2) any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible, and (3) the project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under section 11-54-9.1 is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in
§11-54-9.1.03  
ac accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 1 5 2009  ]


§11-54-9.1.04  Water quality certification; waiver. (a) If the director fails or refuse to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application. 

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR Sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 1 5 2009  ]
§11-54-9.1.05


§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

(b) In any case where:

(1) A certification or waiver was issued without applicable water quality standards;

(2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or

(3) The director determines that the activity is violating new water quality standards.

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to Section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action.
§11-54-9.1.05

authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2003 ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2003 ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2003 ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)
§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)
§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.
(b) Where applicable, analysis to determine compliance with these rules shall be by:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Reference</th>
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</thead>
<tbody>
<tr>
<td>Sample Collection (Phytoplankton and other Bioassays)</td>
<td>Standard Methods for the Examination of Water and Waste Water, twentieth edition, APHA</td>
</tr>
</tbody>
</table>
Toxicity Test

EPA/600/4-91/002 Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, July 1994,
or:

or:


Quality Control (Bacteriological and Biology) and Chemistry


Kona Coast Area Specific Standards

Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and 54-87
§11-54-10


or:

As otherwise previously specified or approved by the director.

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp June 15, 2009] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-11 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change.

Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp June 15, 2009] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-12 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this 54-88
chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp JUN 15 2009] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHIYOME LEINAIA FUKINO, M.D.
Director of Health

LINDA LINGLE
Governor
State of Hawaii

Dated: JUN 5 2009

JUN 05 2009
Filed

APPROVED AS TO FORM:

EDWARD G. BOHLEN
Deputy Attorney General
Rules Regulating Conservation District

REGARDING: Amendments to Title 13, Chapter 5, Hawaii Administrative Rules (Conservation District)

PETITIONER: Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL)

LOCATION: Statewide

BACKGROUND

The Department has 15 years of experience in implementing Chapter 13-5, Hawaii Administrative Rules (HAR). Over this period the Department has identified strengths and weaknesses through the application of the rules. Many elements within the rules could be modified, deleted or added to lead to improvements in work efficiency that will contribute positively to OCCL’s core objectives related to natural resource conservation, and will benefit Conservation District owners and agencies alike by streamlining administrative permitting for more routine, non-intrusive, and beneficial uses.

In addition, there exist undesignated conservation lands in the State that should be given subzone classifications. Subzone classifications are conducted through the rule amendment process and coordinating subzone classifications and rule changes through a single effort would be most efficient.

The OCCL requests to amend its administrative rules, Chapter 13-5, HAR, relating to the Conservation District (Exhibit 1). The purpose of this staff report is to provide the Board of Land and Natural Resources (Board) with the final proposed amendments to Chapter 13-5, HAR.

COMMENTARY AND EXPLANATION OF PROPOSED CHANGES TO THE CONSERVATION DISTRICT RULES

§13-5-2 Definitions

- Amend “Accessory use” to provide clarity and more flexibility for accessory uses. An accessory use is subordinate to the principle use found on the same property.
- Add “Average annual coastal erosion rate” to support the new shoreline set setback provisions being proposed in this rule amendment.
• Add "Cabin" to provide large landowners with an opportunity to use, enjoy, and manage remote or large land areas. The allowable size is 600 square feet. Also stipulated that it cannot be used for commercial purposes.
• Add "Clearing" to distinguish it from grubbing or grading.
• Add "Coastal erosion study" to define the standards used to calculate an erosion rate to be used in a shoreline setback calculation.
• Add "Coastal high hazard area" to distinguish it from areas outside of the coastal high hazard area.
• Add "Comprehensive management plan" to provide for the preparation of a comprehensive management plans, as in the Mauna Kea Comprehensive Management Plan.
• Add "Emergency" to articulate circumstances under which the Chairperson or the Deputy Director in the absence of the Chairperson can authorize actions to alleviate an emergency.
• Add "Flood zone" to distinguish it from areas that are not within the flood zone.
• Amend "Historic property" to be consistent with Historic Preservation rules.
• Add "Imminently threatened" to provide guidelines to help determine under what conditions a situation may qualify as an emergency and a threat to public health, safety and welfare.
• Add "Invasive species." This definition will support the Department’s efforts to remove invasive plants and animals from the State’s natural areas.
• Amend "Land use" to stipulate that a use must be in place for more than thirty (30) days, rather than the current fourteen (14) days to be considered a land use under Title 13-5, HAR. Thus, temporary uses could take place in the conservation district for up to 30 days without a permit under Title 13-5, HAR.
• Amended "Management plan" to clarify that certain management plans may be specific, such as aquaculture, forestry, and agriculture projects. The ability of the Department to require broader plans covering larger geographic areas is provided by adding a definition of "Comprehensive Management Plan" to this chapter – e.g., Mauna Kea Comprehensive Management Plan (see above).
• Added or refined definitions for "Minor alteration," "Moderate alteration," and "Major alteration" to clarify under what circumstances and permit levels (e.g., B-1, C-1, or D-1) these uses can be undertaken in the Conservation District.
• Defined "Minor repair" to clarify under what circumstances such repairs can be undertaken without a permit (e.g., A-1). Also included language to clarify that any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with §183-44, and §183B-2 HRS.
• Repeal "Natural area reserve" as this will also be repealed as an identified land use in §13-5-22, HAR. Referring to this as a "Board Permit" has inhibited land conservation/preservation efforts by private landowners because of the regulatory burden. Staff feels that this category of uses has been over regulated. Furthermore, the Board of Land and Natural Resources is already considering many of these actions via existing
programs in the DLNR such as Forest Stewardship and/or Watershed Partnerships. Such uses could be proposed under Public Purpose.

Additionally, staff is recommending that a new provision be added to the rules titled “Land and Resource Management.” This section will include a range of administrative, or “no permit” requirements for basic land and resource management actions such as routine weed control, clearing of understory, out-planting of rare plants, predator and ungulate control, tree pruning, fence maintenance, fence building, etc. The overall purpose is to streamline the permit process to encourage landowners to implement conservation practices that improve our island’s ecosystems.

- Amend “Nonconforming use” to make the definition consistent with the definition in Chapter 183C, HRS.
- Repeal ‘Plant sanctuary” for the same reason that “natural area reserve” will be repealed (see above).
- Add “Presiding officer” to be consistent with the Rules of Practice and Procedure under Tile 13-1, HAR.
- Add “Public purpose use” to include different types public and private uses that further public policy and the purpose of the conservation district. Clarified that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as “Renewable energy facilities.” However, we have stipulated that an independent non-governmental regulated public utility may be considered a public purpose use under the definition of public purpose use.
- Add “Repair, maintenance, operation” to articulate a maximum threshold for uses that may be processed as minor actions or requiring no permit.
- Add “Shelter” since this has been added as an identified use in the conservation district to include a maximum floor area of 600 square feet.
- Add “Shoreline” to support the provision of a new shoreline setback system in the conservation district.
- Amend “State marine waters” to include those areas seaward of the “shoreline”.
- Amend “Submerged lands” to include those areas seaward of the “shoreline”.
- Amend “Topographical features” to include additional landforms such as rivers, gulches, beaches, submerged lands, unimproved roads and trails.
- Add “Transit rental” to distinguish it from long-term rentals. A transit rental is a single-family residence or structure used for rental purposes for less than one hundred eighty consecutive days.
- Amend “Water system” by replacing “consumers” with “water users”.
- Repeal “Wildlife sanctuaries” for the same reason that “natural area reserve” and “plant sanctuary” will be repealed (see above).

Miscellaneous Amendments

§13-5-6 Penalty

Add a new subsections (d), (e), (f), clarifying that uses may not be conducted in the conservation district without first obtaining a permit or authorization from the department; requiring violators to record terms and conditions of a Board action with the property deed (this insures that future owners will be made aware of any
unresolved regulatory issues); and provide for the adoption of an administrative sanction schedule.

§13-5-7 Nonconforming Uses and Structures
Moved this section from the back of the chapter to the front of the chapter since it seems to drive so many land use issues in the conservation district. Also proposing various changes to this section to facilitate and streamline permitting, including an expedited review to rebuild structures for projects that had been previously issued a CDUP, or for some nonconforming uses. Added language to clarify that the repair of structures shall be subject to development standards set forth in this chapter (e.g., shoreline setbacks, maximum developable area, etc.), and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification.

With respect to the replacement of nonconforming structures, added additional provisions under section 13-5-22 (P-8) “Structures existing,” such that it would possible to rebuild a nonconforming single family residence under a “site plan approval” provided that setbacks and other standards are satisfied (see Section 13-5-22 (P-8).

There would be a two-year window in which to apply to rebuild a structure. Failure to meet this two-year time frame would mean that the permittee would most likely be required to file for a major permit to re-establish the structure or use. Should the site plan approval process be executed, certain building and/or shoreline setback requirements would have to be complied with as explained in the rules. For instance, if a nonconforming residence is destroyed or severely damaged by coastal erosion, the owner will not be able to reconstruct the residence in its former position, but would most likely have to place the residence further landward from the shoreline, subject to a shoreline certification and prevailing shoreline setback requirements. Similarly, if a nonconforming residence that encroaches into a side yard setback is destroyed, the residence may be reconstructed but must respect the prevailing setback requirements. The main purpose for allowing the rebuilding of a non-conforming residence (or other types of structures) is because there are residences in subzones (Limited/Protective) in which such structures are not currently allowed. The Department is willing to make exceptions to allow for re-construction, but only if reconstruction complies with all other zoning standards, such as setbacks, floor area, height, etc. If the landowner desires to deviate from any of these standards, they would be required to seek discretionary permit or exemption from the Board.

Also amended with language to clarify that damaged nonconforming structures are subject to the Chapter and that voluntary demolition of a nonconforming structure results in its discontinuance similar to when it is destroyed. Also clarifies that dwellings that are destroyed that already have a permit may be rebuilt with a Site Plan Approval, under section 13-5-22, (P-8). Clarify subsection (e) to replace the word “reconstruction” with “maintenance,” since reconstruction of non-conforming structures is not allowed except in conformity
with the Chapter, which could involve changes in the location or size of such structures.

§13-5-10  
Subzones, generally  
In subsection (c) replace the word “permitted” with “identified” to be consistent with language in Subchapter 3. The word permitted gives the false impression that the approval process in ministerial or non-existent. Permits for land uses in the Conservation District are approved on a discretionary basis by the Department or Board. This change also occurs in Sections 13-5-(10-14).

§13-5-13  
Resource (R) subzone  
Modify objective statement to make it more consistent with overall conservation district objectives to protect and conserve the natural resources of the state. Amend subsection (5) to make it consistent with definitions under Section 13-5-2 regarding the shoreline location.

§13-5-16  
Designation of subzones  
Increase application fee for subzone designations from $100 to $500 and stipulate that the public hearing fee shall include publication costs. Subzone designations are a lengthy and resource intensive process. The Department should defray some of these costs by increasing fees. Department staff may spend up to 40 hours processing a petition for a subzone designation. This equates to between $1,000-$1,500 if translated into billable hours. As a public hearing is required, Chapter 183C, HRS requires the Department to publish the action three (3) consecutive weeks in the newspaper. Publication costs have increased significantly.

§13-5-17  
Boundary determinations; criteria  
Increase application fee from $50 to $100. Add fifth criteria for determining a subzone boundary to include property boundaries and clarified that property metes and bounds needs to be identified when a subzone boundary follows a property boundary.

§13-5-22  
Identified land uses in the protective subzone  
“Data Collection.” Clarifying what activities that do not require a permit (e.g., archaeological, botanical surveys), or temporary (less than 30 days). Clarifies what types of data collection require a Site Plan Approval (e.g. corings and excavations). Also clarifies that data collection involving the installation of larger equipment requires a Departmental Permit, and facilities that are larger than 500 square feet, or cause significant ground disturbance require a Board Permit.  
“Fishponds.” Removing the A-1 (no permit) requirement as it is redundant. It is redundant because repair of all structures and land uses is covered in a comprehensive manner in section 13-5-22 (P-8) so there is no need to “call out” fishpond repair as a separate element. Also under D-1 remove the word repair as this suggest that you have to get a Board Permit to repair a fishpond. This is overly restrictive. However, retain the requirement that fishpond construction or reconstruction requires a Board Permit.  
“Landscaping.” Removing the term “landscaping from this section as landscaping would not normally be allowed in the Protective subzone, except for existing
developed lots in the "P" subzone. Replacing this section with "Removal of Invasive Species." Further modified this section to provide for the removal of invasive species (not just invasive plants as previously proposed). Included language that the use of chemical controls must be in accordance with state and federal laws. No permit is required for an area under an acre. Removed any references to invasive species lists, as this is confusing. The purpose of these amendments is to promote the removal of plants and trees that are dangerous to our ecology. Will rely on DLNR resource managers, field specialists, and existing authorities to determine what types if invasive species may be removed within the conservation district. Also changed "natural or cultural" to "natural and cultural."

"Public Purpose Use." Combining governmental and nongovernmental actions into one identified use, expanding the list of potential public purpose uses. Removed the word "mandated" public service. Not all public purpose uses are mandated. Included a section for Site Plan Approval for the installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers. Clarified that such uses covered under public purpose uses can only be for non-profit uses with the exception that a regulated public utility may be considered to be engaged in a public purpose use.

"Sanctuaries." Removing this as an identified use. Having this as a "Board Permit" has inhibited land conservation/preservation efforts by private landowners due to the regulatory burdens (e.g., CDUA/EA). Such uses are clearly in the interest of conservation and they should not be "regulated away." Furthermore, the Board of Land and Natural Resources is already considering many of these actions via existing programs in the DLNR such as Forest Stewardship and/or Watershed Partnerships. Such uses could be proposed under Public Purpose.

Additionally, staff is recommending that a new provision be added to the rules titled "Land and Resource Management." This section will include a range of administrative, or "no permit" requirements for basic land and resource management actions such as routine weed control, clearing of understory, outplanting of rare plants, predator and ungulate control, tree pruning, fence maintenance, fence building, etc. The overall purpose is to streamline the permit process to encourage landowners to implement conservation practices.

"Structures and Land Use, Existing." Current rule contains inconsistencies. For instance, existing rules allows for the replacement of structures or facilities without a permit, but requires a Departmental Permit to demolish a structure. Proposed changes would include wording expressively allowing for minor repairs and maintenance without a permit; allow for demolition, minor alterations, or replacement under a Site Plan Approval; and require Departmental or Board Permits for major alterations or expansions. Revised language to be consistent with definition of "Minor repair" and to indicate under which circumstances minor repair, maintenance, and operation to existing structures and uses can be conducted. Also clarified that "minor alteration" of existing structures and uses requires a Site Plan Approval. "Minor alteration" is defined in the rules as an alteration that does not result in more than a ten percent increase in the size of the structure, facility, or use. Changes are meant to streamline the permitting process to repair structures and to allow for the replacement of some structures and uses.
that had pre-existing conservation district use permits or were a nonconforming structure or use, subject to existing zoning and development standards, including shoreline certification.

Regarding replacement or reconstruction of nonconforming structures: clarified that only a single-family residence can be replaced via a Site Plan Approval. Also stipulated that such replacement is subject to development standards set forth in the rules, such as shoreline setback, shoreline certification, and other requirements as applicable. The explanation for this change is that while there may be circumstances in which the rules may not allow for the replacement of nonconforming structures or uses after they are destroyed or removed, the Department has no desire to completely divest a homeowner from the continued use of their property for residential purposes, where the subzone might otherwise prohibit such use after the structure is destroyed.

“Structures Accessory.” Current rule contains a major inconsistency. Allows for accessory structures in the Protective subzone without a Site Plan Approval, while accessory uses in the Limited subzone require a Site Plan Approval. [It appears that the less restrictive subzone is more restrictive.] New rule would require a Site Plan Approval for all accessory uses so there is parity throughout the subzones. Also deleted reference to HAR 11-200-8, for exemptions. This may give the impression that if a use is not identified in the exempt classes of action under Section 11-200-8, HAR (OEQC rules), it cannot be processed as an accessory structure or use under 13-5, HAR (OCCL rules). Our decision to process an action at a particular discretionary level should not be tied to a separate statute and rule beyond the purview of the department.

“Tree Removal.” This section has been substantially revised to make it consistent with an earlier section of the rule that allows for the removal of invasive trees without a permit. Proposing to simplify the process by recommending the repeal of sections that govern tree removal based on the number of trees removed. Provides that a Site Plan Approval is required to remove individual trees (non-commercial), provided that each tree is replaced on a one-to-one basis. Another major change is that we have decided to remove any reference to the size of a tree in the rules, thus no definition for tree is needed. It is anticipated that the removal of all dead, dying, diseased, hazardous, and invasive trees will be allowed. Staff is amenable to reducing some of the regulatory burdens for tree removal, especially invasive trees, but we need to maintain some oversight of tree removal action—e.g. removal of koa for profit. Additional guidelines for tree removal will fall under “landscaping,” or “sustainable commercial forestry.”

**Newly identified land uses**

OCCL is proposing the addition of (5) five new identified land uses under the Protective subzone. Because the rules are based on a hierarchy of uses from Protective to General, these uses could also be proposed in the Limited, Resource, and General subzones. The proposed identified uses are: 1) power generation from renewable sources; 2) land and resource management; 3) telecommunications; 4) shoreline erosion control; and 5) beach restoration.

Inclusion of “Power Generation from Renewable Sources” will provide opportunities to develop alternatives sources of energy to coal and oil on
conservation lands including, but not limited to, wind, hydro, geothermal and biomass. Also clarified that renewable energy projects, shall be “expedited in the application review and decision-making process” and require a management plan.

The “Land and Resource Management” section will allow landowners to take care of their land with minimal interference from government (e.g., tree pruning, fence mending, clearing sand from stream mouths, weeding, clearing of understory, chemical control use in an area less than an acre in accordance with state and federal law, etc., may be done without a permit). More substantive actions including, but not limited to, new fences, shelters and erosion mitigation measures may be permitted by Departmental Permit. Coupled with the revised and streamlined provisions under the removal of “invasive species,” the Division of Forestry and Wildlife and landowners, such as The Nature Conservancy, will be able to manage their lands without being overly burdened by regulations.

Basic land and resource management would include invasive plant control, clearing of understory, out-planting of native or endemic plants, and invasive aquatic organism control. A provision that small ex-closure fences can be used to protect single plant or small native wildlife communities (less than one acre) has been included. Also included language that allows the Department or BLNR to require higher level permits if necessary. Also, under erosion control, excluded shoreline erosion control structures, which are handled as a Board Permit under §13-5-22 (P-15) of the rules.

A cabin, road construction, major erosion control projects and water systems are also uses that could be applied for under this new identified land use.

“Telecommunications” uses specify minor and major permits for a variety of situations.

“Shoreline Erosion Control” was moved to Protective subzone and modified to include a variety of erosion alternatives including sand placement. Clarified that an application for this use must show that: (1) the applicant would be deprived of all reasonable use of such land or building without the permit; and (2) public facilities (e.g. public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g. relocation); and (3) the use will not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. This use requires a shoreline certification.

“Beach Restoration” was added to provide for major and minor permits consistent with the State’s programmatic agreement with the U.S Army Corps of Engineers for Small Scale Beach Nourishment.

§13-5-23 Identified uses in the limited subzone

“Botanical Gardens and Private Parks” would be repealed from this section and would be placed in section 13-5-25, HAR under Resource subzone.
"Erosion Control" moved to Section §13-5-22, HAR Protective subzone along with "Seawalls and Shoreline Protection" that is now "Shoreline Erosion Control."

"Agriculture" has been amended to include agricultural water systems.

"Landscaping and Removal of Noxious Plants" amended to "Landscaping" Everything having to do with removal of invasive plants is handled under 13-5-22. Landscaping is allowed by permit in the Limited subzone, unlike the Protective subzone (where landscaping is not allowed, unless the lot is already developed). Landscaping may occur with a Site Plan Approval in an area less than 2,000 square feet, provided endemic or indigenous plants are given preference. A Departmental permit is required for landscaping up to 10,000 square feet and landscaping over one 10,000 square involving grubbing and grading requires a Board Permit. Under all categories of permits for landscaping, revised language to qualify that if chemical controls are used, it must be in accordance with state and federal laws and that the introduction of invasive species is prohibited.

"Single Family Residence" currently allows for dwellings in the floodplain or coastal high hazard area. However, the objectives of the Limited (L) subzone are set forth in §13-5-12, HAR as limiting uses where natural conditions suggest constraints on human activities. These areas have typically included steep slopes and areas subject to flood hazards. The Department and Board historically took the position that single family residential development is incompatible with the objectives of the "L" subzone, since these are areas prone to natural hazards and unsuitable for human settlements. This policy changed in 1994 with the adoption of Title 13-5, HAR. Section 13-5-23 (L-5) currently provides for potential uses of Limited subzone, only when the residence is located in a floodplain or coastal high hazard area.

Although this provision appears to be counterintuitive, the thinking at the time of the 1994 rule amendment was that since the Counties allow for residential uses in flood zones through the imposition of special construction standards recommended by the Federal Emergency Management Agency (FEMA), that these uses could also be accommodated in the Conservation District under FEMA building guidelines. The rule was enacted to ensure parity between Conservation District land, and lands under County jurisdictions in flood hazard areas, where construction is allowed provided that flood mitigation measures are implemented (e.g., raising floor of the structure above the area subject to flood waters).

The October 1997 Discussion Draft of the Conservation District Management Plan, it is noted that construction in the flood and coastal high hazard zones is a recognized use in the Conservation District as these structures are adequately addressed by the county flood regulations. This discussion reasoned that the objectives of the Conservation District laws and rules are for the protection of the

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1 It is noted that the October 1997 Discussion Draft of the Conservation District Management Plan was never adopted by the BLNR. It is though a public record and contains references to the reasoning for the rule.
environment and ecosystem. Based thereon, construction in areas in which structures would increase runoff, erosion, pollution, and siltation is discouraged. While the BLNR was and remains concerned with the risk to human life and structures in areas prone to flooding, the Discussion Draft noted that these concerns could be adequately addressed by county regulations mitigating against flooding, and ultimately by federal flood insurance guidelines that would provide for a remedy to homeowners whose homes may be damaged in the event of a flood or tsunami. However, this does not mean that single-family residences will always be approved in areas prone to flood hazards. It just means that they are entitled to apply for a use. Each case is reviewed based on its own merits. Other resource concerns and constraints can be a significant factor in the decision whether or not to permit a use in any subzone.

Staff is recommending a small change for this section. The word “floodplain” should be changed to “flood zone.” Also recommending adding language that the flood zone is defined by the boundaries of the Federal Insurance Rate Maps (FIRM).

“Structures, Accessory” should be repealed since accessory structures would be handled in Protective subzone and would therefore also be covered in the Limited subzone as a function of the hierarchal structure of the rules from the Protective subzone down to the General subzone.

“Wilderness Camp” has been added to provide opportunities for profit or non-profit outdoor educational and/or recreational centers in appropriate areas of the Conservation District. The application for such a use requires a management plan approved simultaneously with the permit. Overnight accommodations are in tents and that facilities may include only one meeting shelter not to exceed 600 square feet.

§13-5-24

**Identified land uses in the resource subzone**

“Aquaculture” amended to clarify that the application for such a use requires a management plan, approved simultaneously with the permit, not a management plan that has already been approved.

“Astronomy Facilities” also amended to clarify that the application for such a use requires a management plan approved simultaneously with the permit, not a management plan that has already been approved.

“Commercial Forestry” amended to clarify that the use is limited to “sustainable commercial forestry” and also clarify that the application for such a use requires a management plan approved simultaneously with the permit, not a management plan that has already been approved.

“Landscaping” repealed from §13-5-24 (R-5). Provisions for landscaping are handled under §13-5-23 (L-7), HAR. Since the rule is hierarchal, all landscaping in the Resource and General subzones would be subject to the standards set in §13-5-23 (L-7), HAR.

“Marine Construction” amended to accommodate maintenance dredging projects. The current rule requires a Departmental Permit for maintenance dredging. This is unnecessary and redundant as other State departments regulate this activity.
Also, provides new description of marine dredging and also includes other types of marine construction, including piers, marinas, artificial reefs, etc.

"Mining and Extraction" amended to clarify that the application for such a use requires a management plan, approved simultaneously with the permit

"Botanical Gardens, Private Parks, and Nature Centers" has been moved from the Limited subzone and placed in the Resource subzone. Facilities can have not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet.

§13-5-25 Identified land uses in the general subzone
Land Uses Not Previously Identified. Replace Previously with "Otherwise" to indicate that this section is for uses that are not otherwise identified in the rules.

§13-5-30 Permits, generally
Clarified that in addition to a Management Plan, a Comprehensive Management Plan may be required.
Also added language that encourages applicants to seek a determination from the Department on the type of permit required for a land use.
Repeal subsection (d). This section essentially exempts certain land uses from the requirements of a CDUA. For instance, if an applicant is able to comply with Chapter 171, Hawaii Revised Statutes and obtain a lease for the use of submerged land, the CDUA appears to be waved. This language is inconsistent with 183C, HRS. Because the public leasing law is focused more on property management rather than natural resource management, this would either mean that the natural, cultural, and public use resources would not be properly protected, or it would place the burden of considering natural resource impacts, impacts to public use, and other potential impacts and conflicts on the Division that is not typically organized or trained to address these matters (i.e., as land agents). Some of the divisions do not have adequate permit application processes in place to properly consider the natural resource impacts of projects on submerged lands and resources. Considering natural and cultural impacts is one of the main functions of the Conservation District Use Application process and the Office of Conservation and Coastal Lands. Furthermore, this provision may exceed the authority of Chapter 183C, HRS that requires conservation district use permits for all major land uses and appears to be inconsistent with Chapter 190D, HRS.

§13-5-31 Permit applications
Clarifies that a CDUA may be submitted to the Department with a draft or final environmental assessment, environmental impact statement, or an exemption request from Chapter 343, HRS.
Clarified that the only application requirement that can be waived under this provision is a shoreline certification. No other application requirements can be waived under this provision. Shoreline certification application requirement requires a waiver provision because not all uses occur near the shoreline in the Conservation District. Shoreline certifications can only be waived when the applicant can provide evidence to the satisfaction of the Department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to,
proximity to the shoreline, topography, properties between the shoreline and applicant’s property, elevation, and the history of coastal hazards in the area, and the proposed activities will not adversely affect the beach process or interfere with public access or public views to and along the shoreline. Clarified for State owned lands, that the application shall be reviewed for completeness within 60 days from the date filed with the department.

§13-5-32 Fees
This section is amended to exempt state agencies from filing fees.

§13-5-33 Departmental permits
Increase the application-filing fee for Departmental Permits from $50 to $250. The application fee increase from $50 to $250 is intended to defray some of the administrative costs associated with the processing of an application. The increases are justified. Staff man-hours per application if translated into actual costs far exceed an application fee for a permit. In addition, the cost of running a public hearing for a CDUA includes publication costs, any site rental fees and travel costs. This would rarely cost less than $500. If the hearing is on a neighbor island, the cost could exceed $1,000.

Amend language in subsection (g) to clarify who may appeal the Chairperson’s decision on a Departmental Permit.

Repeal language in subsection (j) to clarify that the decision to bump a Departmental Permit up to a Board Permit is not based on the “necessity of an EIS.” This could be construed to mean that a Board Permit would be required in all cases that an environmental document was necessary. As this may not always be the case, and we feel that this language is unnecessary.

§13-5-34 Board permits
Increase the application-filing fee for Board Permits from $100 to not less than $250, or equal to 2.5 % of the total project cost up to a maximum of $2,500. Board permits generally involve major projects costing hundreds of thousands or even millions of dollars, such as major offshore aquaculture projects, multi-million dollar homes, etc. Staff man-hours per major application if translated into actual costs can range from a few hours of work to many days of work. More expensive projects generally translate into more staff time. The permit processing requirements for these larger projects can be time consuming and costly in terms of publication fees for hearings, travel, and occasional contested case hearings.

§13-5-35 Emergency permits
The current rules provide a process for emergency repairs due to a natural disaster such as a hurricane (e.g., Hurricane Iniki, 2002), but lack a general mechanism to address singular non-natural disaster events. This provision would allow the Chairperson or the Deputy Director in the absence of the Chairperson to issue an emergency authorization to alleviate a threat to public health, safety and welfare, in isolated situations, such as episodic shoreline erosion, rock or landslides, etc.
Included language requiring “contingencies for removal methods (e.g., removal of the temporary emergency measures), estimates for the duration of the emergency measures, and future response plans.” In addition, removed vague language that could have allowed the emergency measures to remain in place indefinitely. Inserted new language that clarifies that the issuance of emergency permits does not apply to an agency of the county, state, or federal government, or an independent non-governmental regulated public conducting repair, maintenance or operation for a public purpose use, which shall have a letter (A) identified land use designation.

The reason for this is that the Department does not wish to constrain a public utility from restoring a critical public utility in an emergency situation that would have otherwise required an emergency permit, provided that the utility company provides a post-emergency repair report describing the work that was conducted to the Department within thirty days of the repair work. Removed language that could allow the enlargement of structures or uses that are being repaired or reconstructed in the wake of a natural disaster. Added language providing that structures and uses damaged as a result of natural disasters may be repaired or reconstructed in conformance with §13-5-22 (P-8) of the rules. This ensures consistency throughout the rules for the repair and reconstruction of all structures that are either damaged or destroyed as a result of natural hazards, voluntary destruction, or other means.

§13-5-38 Site Plan Approvals
Added language to include fire protection.

§13-5-39 Management Plans
New language is proposed to allow the Department or Board to require the preparation of a Comprehensive Management Plan. Clarified that a management plan must be approved simultaneously with the permit (e.g., CDUP). A management plan requirement has been added to a number of the previously identified and newly proposed identified uses. Language has been added to Exhibit 3 (Management plan requirements), which provides for status-updates, and reporting frequencies, and a description of the annual reporting requirements.

§13-5-40 Hearings
Adding language to subsection (c) to clarify that rule amendments require not less than 30 days prior notice in accordance with Chapter 91, HRS. Notices of public hearings for conservation district use applications require no less than 20 days notice in accordance with Chapter 183C, HRS.

§13-5-41 Single family residences; standards
Provides for minor deviations from SFR standards such as maximum square footage and height, but limits the deviation to 15 percent. Subsection (c) prohibits the construction of an SFR in the Conservation District where the same lot provides for residential development under a different land use district.
§13-5-41.1 **Fire protection zones**
Add new section to provide for fire protection zones with new Exhibit 5.

§13-5-42 **Standard conditions**
Changed the word “applicant” to “permittee” in all of the standard conditions. Subsection (a) (5) prohibits transient rentals, excluding campsites. Transient rentals create a resort-like atmosphere, and can increase pressure and impacts on natural resources. This is clearly inconsistent with conservation objectives. Added language to standard condition # 8 to clarify that any work or construction to be done on the land must be done within a specific timeframe, “unless otherwise authorized.” Added five new standard conditions to manage various issues, including constraining the spread of vegetation below the shoreline; requiring permittees to obtain county building and grading permits for authorized conservation district uses; controlling artificial light; calling for the protection of beaches and coastal dunes; and for the protection of traditional, customary or religious practices of native Hawaiians. Subsection (b) clarifies that permits are not automatically void, and allows the Chairperson or Board to consider the matter should non-compliance arise. Amend subsection (c) to clarify that the Board may consider deviations to standards or criteria, and not just consider deviations to standard conditions.

§13-5-43 **Time extensions**
Subsection (d) is simplified by stating that time extension requests should be submitted prior to the expiration deadline. A new subsection (e) is added to allow for extension request (grace period) up to one year after the permit has expired.

**SUBZONE DESIGNATIONS**

Proposing to designate new subzones for lands that are currently undesignated. These are lands that were rezoned to Conservation District as a result of the 1995, Land Use Commission Boundary Review.

**HAWAII**

**Kailua - USGS Quadrangle No. H-7**

**DESCRIPTION OF AREA AND CURRENT LAND USE:**

The petition area occurs within the Kailua United States Geological Services (USGS) quadrangle No. H-7 of the Administrative Rules (13-5, HAR). The subject lands are located in the District of North Kona, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural District to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. A93-694BR. The affected parcels with their intended subzone designations are located on Exhibit A and are identified as follows:

(3) 7-3-001:002, 7-4-001:002, 7-4-001:003, 7-5-013:022
Total = 915 acres

Few of the native forests of Kona are in the Conservation District, though they support many rare native species and natural community types. In the higher elevations, the dry zone supports forests dominated by ohia and mamane mixed with koa and sandelwood. Lower areas are wetter and the resources are more scattered, except on the a’a lava flows. The mid elevation forests have been thinned or eliminated in areas by grazing or logging, but some areas still provide excellent habitat for several rare birds. Five endangered bird species have been reported from the Kona area: Akepa, Akiapolaau, Alala, Hawaiian Creeper and Io.

These lands abut or are adjacent to the North Kona Forest. These lands contain areas for watershed protection, public hunting, and recreation and opportunities to reestablish koa forest on the mauka portion, and reforest with non-active species on the makai portion. The Alala Recovery Plan identifies portions of the area as essential habitat for the alala. According to the DLNR Threatened and Endangered Plant and Fire Map, the area has been identified as having high concentration of plant taxa listed or under review for endangered or threatened status.

The proposed additions of the North Kona Forest Reserves will protect wildlife habitats and watersheds, and provide recreational opportunities or wilderness experience and scenic amenities.

RECOMMENDATION:

The subject lands contain native Hawaiian bird species as well as native Koa, Ohia, Apapane and Montane species. In addition the area serves as a watershed and water recharge area, and provides for recreational opportunities.

Based on the subzone classification requirements, the endangered species found within the parcels, the adjoining Resource subzone designations, and the potential for multiple uses, staff recommends that this subzone be designated as Resource (R) subzone.

**Puu Pohakuloa & Papa - USGS Quadrangle Nos. H-20 & H-21**

The petition areas occur within the Puu Pohakuloa and Papa United States Geological Service (USGS) quadrangles Nos. H-20 and H-21 of the Administrative Rules (13-5, HAR). The subject lands are located in the District of South Kona, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-695. The affected parcels with their intended subzone designations are located on Exhibits B & C and are identified as follows:

(3) 8-7-001:008, 8-7-001:012, 8-7-012:005, 8-9-001:002

Total = 3,818 acres
The subject lands (except for parcel 8-9-00100:2) adjoin the South Kona Forest Reserve. These lands need protection because they encompass unique physiographic or ecological areas as well as areas necessary for providing parklands, wilderness reserves and the conservation of natural ecosystems.

The lands contain watershed and water resource areas worthy of protection. The areas include lands necessary for the conservation, preservation and enhancement of sites of unique physiographic or ecological significance. The area also includes land necessary for providing and preserving parklands, wilderness reserves and for conserving natural ecosystems of endemic plants and wildlife for forestry and other uses. The subject lands contain intact native forest with less common and rare native forest bird habitat, public hunting for pigs and goats and areas for forestry management.

The South Kona Forest Reserve enhances and protects the watersheds, provides habitats for rare and endangered species and protects native forests. In the higher elevations, the dry zone supports forests dominated by ohia and mamane mixed with koa and sandalwood. Lower areas are wetter and the resources are more scattered. The vegetation in this area ranges from fair to grazed. There is also an endangered Palila habitat found in one of the parcels. In addition rare plants and invertebrates have been reported in the area. These areas are known as a native forest bird habitat area. Four species of native Hawaiian bird species are known to be endangered and are known to exist in this area. These species are Hawaiian Akepa, Hawaiian Honeycreeper, akiapolaau, alala and io. The watershed areas of Kona are separated vertically (by ownership of ahupuaas, while the native plants and animals are distributed horizontally in elevation bands. As a result conservation areas are separated by large gaps. Bridging these gaps to provide habitat management in key areas is considered essential for the long-term survival of Kona’s native species.

**RECOMMENDATION:**

Based on the subzone classification requirements in conjunction with the information for the parcel, staff recommends that these parcels be placed in the Resource (R) subzone. This is due to the fact that this area contains important watershed and water resource areas, but is also suited for multiple uses, such as recreation. These lands contain native forest species, unique habitats and unique physiographic characteristics that warrants a high level of protection.

**Punaluu & Naalehu - USGS Quadrangle Nos. H-42 & H-43**

**DESCRIPTION OF AREA AND CURRENT LAND USE:**

The petition areas occur within the Punaluu and Naalehu United States Geological Service (USGS) quadrangles Nos. 42 and 43 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Kau, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to Order, filed June 28, 1994, via Docket No. A93-693BR. The affected parcels with their intended subzone designations are located on Exhibit D and are identified as follows:
These former agricultural lands adjoin Kau Forest Reserve that contains watershed as well as water recharge areas. The Kau Forest Reserve contains viable montane, koa and ohia forests. Some of these lands contain pockets of apapane vegetation as well. Within the forested area of the parcel there are four endangered Hawaiian forest bird populations, which are Hawaiian Akepa, Hawaiian Honeycreeper, Akiapolaau, and Ou. These populations are entirely dependent upon native Hawaiian forest ecosystems for food, shelter and nesting sites.

These parcels contain watersheds and water resources. The State Water Resources Protection Plan states, “Adequate management and control of watersheds is a prerequisite for our two major concerns—retaining sufficient acreage of watersheds to insure infiltration into groundwater aquifers to meet our needs, and to protect the quality of our raw water. It is vital that a minimum area of conservation lands be set aside for watersheds for infiltration.” The interior forested portions of the Big Island serve as watershed or water recharge areas.

RECOMMENDATION:

Based on the potential for multiple uses of these lands, their former use as agricultural lands, and the subzone designation on the abutting forest reserve lands, staff recommends these lands for inclusion in the Resource (R) subzone.

MAUI

Wailuku - USGS Quadrangle No. M-5

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within the Wailuku United States Geological Service (USGS) quadrangle No. M-5 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Wailuku, Island of Maui. The petition area is owned by the Maui County Land Trust. A portion of this parcel was designated from the Urban to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed November 20, 1990, via Docket No. A89-650. The affected area and its intended subzone designation is located on Exhibit E and is identified as follows:

(2) 3-2-010:001p²

Total = 26 acres

The petition area includes some land that is highly unusable due to extreme slopes along coastal areas. The parcel includes dunes, coastal dry herbland/shrublands and fresh/brackish wetlands. There are endangered bird habitats located within this area as well as uncommon plant species habitats. In addition, portions of the parcel are home to uncommon communities of an

² Denotes that the petition area constitutes only a portion of the overall parcel.
endangered dwarf naupaka (Scaevola coriacea). This site may also serve as an archeological resource due to the sand dunes. It is common knowledge that this area is replete with *Iwi*.

The petition area surrounds a federally designated wetland of 20+ acres (when flooded). The wetland found in this area provides habitat for endangered Hawaiian stilts and coots as well as migrant bird species and indigenous black crowned night herons. Waihee coastline and Waihee Stream enhances its value as an open space resource.

The petition area contains uncommon plant communities and an endangered dwarf naupaka (Scaevola coriacea). The wetland provides habitat for endangered Hawaiian stilts and coots, as well as migrant bird species and the indigenous black crowned night herons. The area is found within close proximity of Macadamia Nut Orchards.

**RECOMMENDATION:**

Based on the subzone classification requirements in conjunction with the information for the parcel provided we recommend that this land be classified as Protective (P). This is due to the fact that this area possesses a unique endangered dwarf naupaka plant community. In addition this area provides habitat for endangered Hawaiian stilts and coots as well as migrant bird species and the indigenous black crowned night herons.

**Haiku - USGS Quadrangle No. M-10**

**DESCRIPTION OF AREA AND CURRENT LAND USE:**

The petition areas occur within the Haiku United States Geological Service (USGS) quadrangle No. M-10 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Paia-Haiku, Island of Maui. East Maui Irrigation Company owns these lands. A portion of parcel seven (7) and all of parcel twelve (12) were designated from the Agricultural District to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1995, via Docket No. A94-713BR. The affected parcels and their intended subzone designations are located on Exhibit F and are identified as follows:

(2) 2-8-008:007p, 2-8-008:012

Total = 932 acres

The University of Hawaii Water Resources Center identified this area as having water resources protection and enhancement values. The petition area is a healthy forested area and a former forest reserve. In addition there is a watershed located in the petition area. Due to both of these valuable resources within the area it provides unique habitat space for many endangered species. There are unique bird habitats found within the petition area. It has also been noted that this area serves as a scenic and recreational area.

The petition area is located along the northern slope of Haleakala between Honopou and Opana Gulches between the 700 and 1220-foot contours.
The petition area has been designated as a watershed resource. The Hawaii Water Code and State Water Resources Protection Plan call for increased protection of watersheds. This plan points out that retaining sufficient acreage of watersheds to insure infiltration into groundwater aquifers to meet need and to protect the quality of raw water is crucial.

On Maui, an endangered forest bird habitat range has been identified in the East Maui region. This area provides habitats for rare and endangered species, protects native plant species and protects the existing watershed area. Bird habitat ranges have been identified in this region to outline the space required for the continued existence and growth of bird species.

RECOMMENDATION:

On behalf of the landowner, comments were received requesting that the area be placed within the General subzone, one of the least restrictive subzones. Currently, the land is undesignated. In order to apply for any type of land use, the land needs to be designated. Given the options to remain undesignated, to petition to place the land in the General subzone or to have it placed in the Resource subzone, the landowner is amendable to placing the land in the Resource subzone as a petition to redesignate the subzone could be filed at a later time should the landowner choose to do so.

Based on the subzone classification requirements in conjunction with the information for the parcel provided we recommend that these lands be designated as Resource (R). This is due to the fact that the petition areas include a watershed as well as a former forest reserve with similar zoning.

Kaupo - USGS Quadrangle No. M-15

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within the Kuapo United States Geological Service (USGS) quadrangle No. M-15 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Hana, Island of Maui. The National Park Service owns these lands. A portion of these parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 29, 1995, via Docket No. A94-709BR. The affected parcels and their intended subzone designation are located on Exhibit G and are identified as follows:

(2) 1-6-010:001p, 1-6-010:006p

Total = 273 acres

These two parcels contain a stream, referred to as Alelele Stream. The stream encompasses aquatic, riparian, cultural and recreational value. Streams are a protected resource due to their connection with all surrounding ecosystems. The Alelele Stream has been classified as a special stream due to its possession of outstanding aquatic resources or outstanding riparian resources associated with water bird recovery habitat. The stream is also noted for containing native Hawaiian stream fish.
Alelele Stream contains both unique flora and fauna habitats. Alelele Stream is one of Maui's sixteen special streams. Freshwater streams have a multitude of values such as providing irreplaceable habitat for aquatic and riparian flora and fauna. They support and define estuarine ecosystems.

RECOMMENDATION:

Streams provide an irreplaceable habitat area for flora and fauna of Hawaii. The special stream found within the parcels contains unique aquatic species, water bird recovery habitats and excellent riparian habitats, which must be protected.

Based on the subzone classification requirements, the fragility of ecosystems existing within the parcel and the information provided, staff recommends that the petition area be designated as Protective (P) subzone.

OAHU

Kaena - USGS Quadrangle No. O-1

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within Kaena United States Geological Service (USGS) quadrangle No. 1 of the Hawaii Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of the North Shore, Island of Oahu. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife, Division of State Parks, or the Land Division. These parcels3 were redesignated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-691. The affected parcels and their intended subzone designation is located on Exhibit H and are identified as follows:


Total = 969 acres

The slope found within the various parcels ranges from less than 10% to more than 20% in specific regions. The affected parcels are located between Kaena Point and Mokuleia roughly bounded by Puu Pueo on the west, following the 800 foot contour along the south, the existing shoreline on the north with the exception of Camp Erdman and a dwelling unit adjacent to Camp Erdman, and Keekee Gulch up to the 800 foot contour on the east.

The subject parcels contain rare and endemic plants as well as scenic and recreational resources indicative of the northwestern extent of the island of Oahu. There is a Natural Area Reserve and

3Only portions of parcels 6-9-001:004, 6-9-003:002, 6-9-003:003, 6-9-004:019, 6-9-005:007 were redesignated to Conservation.
a Forest Reserve located adjacent to these lands. Portions of the upper slopes of these lands provide habitat for rare and endangered species and protect native forests. In addition, these areas are one of the only examples left on Oahu of a healthy shrub land area. The coastal areas are normally dry with interspersed sand dunes that have been heavily damaged by erosion and off road vehicles. Some of these parcels are currently encumbered as part of the Kaena Point State Park.

It has also been noted that this site may be a potential recreational use area. The proposed reclassification will impact favorably the preservation and maintenance of valued cultural, historical and natural resources.

RECOMMENDATION:

The OCCL received one comment regarding placing portions of this area in the Limited subzone. A nearby leaseholder requested that the area be put in the General subzone so that more proposed uses could be applied for. However, Conservation District land in close proximity to the area lies within the Limited subzone and the land fits the criteria for the Limited subzone designation.

These areas contain landforms that necessitate rare native plant species. In addition, the lands contain areas that are subject to severe erosion. These lands are important for scenic and recreational values. Based on the subzone classification requirements, in conjunction with the information for the parcels provided, staff recommends that these lands be designated as Limited (L) subzone.

Honolulu - USGS Quadrangle No. O-13

DESCRIPTION OF AREA AND CURRENT LAND USE:

The subject parcels occur within the Honolulu United States Geological Service (USGS) quadrangle No. 013 of the Administrative Rules. (Title 13-5, HAR). The subject lands are located in the District of East Honolulu, Island of Oahu. These parcels are owned by the State of Hawaii and are under the management of the Division of State Parks. These parcels were designated from the Urban to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-692. The affected parcels and their intended subzone designation is located on Exhibit I and are identified as follows:

    (1) 3-1-042:010, 3-1-042:021, 3-1-042:023, 3-1-042:024, 3-1-042:025, 3-1-042:036
    3-1-042:037

Total = 24 acres

The parcels are located with the boundaries of the Diamond Head State Monument and are adjacent to Diamond Head Road. These parcels have scenic, recreational, historical and cultural value. The Diamond Head State Monument serves as a recreational site for hiking and picnicking. This area is considered to contain unique physiographic features.
RECOMMENDATION:

The Diamond Head State Monument serves as a parkland and recreation site to numerous visitors throughout each year. It can also be considered a historic site.

Based on the subzone classification requirements, the potential for multiple use, the adjoining subzone classification, in conjunction with the information for the parcels provided, staff recommends that these lands be designated as Resource (R) subzone.

**Koko Head - USGS Quadrangle No. O-15**

DESCRIPTION OF AREA AND CURRENT LAND USE:

The subject parcels occur within the Koko Head United States Geological Service (USGS) quadrangles No. O-15 of the Administrative Rules (Title 13-5, HAR Exhibit 1). The subject lands are located in the District of Koolaupoko, Island of Oahu. Parcels (1) 4-1-008:013, 4-1-010:007, and 4-1-010:074 are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Land Division, but are currently being set aside to the Division of Forestry and Wildlife. Parcel (1) 4-2-006:002 is set aside by Governor’s Executive order to the Department of Human Services for Kawaiola Training School. A portion of each of these parcels was designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-690. The affected parcels and their intended subzone designation are located on Exhibit J and are identified as follows:

(1) 4-1-008:013p, 4-1-010:074p, 4-1-10:093p, 4-2-006:002p

Total = 456 acres

These parcels form a portion of the flanks of Mt. Olomana, which is largely in the Conservation District, Protective Subzone. In January 1991, the Board of Land and Natural Resources designated Mt. Olomana as a “Significant Geological and Unique Area on Oahu,” thus allowing it to be placed within the Protective subzone. “The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted watersheds...significant...geological...sites.” The developed portion of the Kawaiola Training School (TMK: 4-1-006:002) is not within the Conservation District portion of the parcel, except for a water tank and access road. This subzone designation would not affect the existing uses on the parcel. Staff recommends that all of these parcels be included within the Resource subzone.

RECOMMENDATION:

Based on the subzone classification requirements and the intended purpose of the surrounding lands, staff recommends that these lands be designated as Resource (R) subzone.

ADDITIONAL AMENDMENTS

Exhibit 3 Management plan requirements
This section was amended to ensure that the information for management plans that is provided to the department is meaningful and not redundant. Management plans should contain Best Management Practices and reporting/monitoring requirements.

Exhibit 4  **Single family residential standards**
Imposing a limitation on the size of single-family residences protects areas from over speculation and excessive quasi-urban development. Some of the existing standards governing development of single-family residences remain unclear, inflexible, and confusing at times. Proposed changes are as follows:

- **Minimum Lot Size**: Repeals minimum lot size requirement.
- **Minimum Setback**: Allow extensions of eves and decks. Includes process for calculating minimum shoreline setback based on erosion rates.
- **Shoreline Setbacks**: Added standards for calculating shoreline setbacks using an annual erosion rate and standard setback for smaller lots.
- **Maximum Developable Area (MDA)**: Simplifies living area calculation for a graduated scale for MDA as a function of lot size. For instance, for lots less than 14,000 square feet, MDA is 25 percent of total lot area. The proposed rule provides for a deviation in MDA of up to 15 percent, as approved by the BLNR. Thus, all development, whether the primary residence, decks, and pools, must be contained within the MDA, with the possibility of a 15 percent deviation as approved by the BLNR.
- **Revised “Maximum height limit” to “Maximum allowable building envelope.”** It is believed that a “buildable envelope approach” rather than a ”maximum height limit” approach would be better and would reduce impacts on natural topography and view planes.

Exhibit 5  **Fire Buffer Standards**
Designed to create and maintain fire protection zones in the Conservation District via Site Plan Approval.

**STAFF ANALYSIS:**

Statutes and rules that govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- §§91-2 to 7, Hawaii Revised Statues (HRS) [Administrative Procedures];
- §§201M-2 to 4, HRS [Small Business Regulatory Flexibility Act];
- §183 (c)-4, HRS [Conservation District Zoning, Amendments];
- §13-1, Hawaii Administrative Rules (HAR) [Rules of Practice and Procedure]; and
- §13-5-5, HAR [Amendments].

Petitions to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorization for both public hearing and final approval. Further the Governor of the State of Hawaii has issued Administrative Directive No. 09-1 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address
certain policy topic areas. By this submittal, staff proposes that the general content of this petition be transmitted to the Governor's office with a request for approval.

Public Purview
The first major step to amend the administrative rules is to hold a Public Hearing to inform and to receive testimony from the public. Information/notification regarding the proposed rule amendments was presented to the public thru:

- **Two Board of Land and Natural Resource's Meetings** held on February 11, 2010 and on December 1, 2010. The staff report regarding the applicable proposed amendments were posted online to the Department's website prior to both meetings and the current draft continues to be available online;
- **Two press releases** regarding informational meetings and the second round of public hearings;
- **Public notices** that ran for three consecutive weeks in a Kauai, Maui, Oahu, Hilo and Kona newspaper in the summer of 2010 and again in the beginning of 2011 (Total of 30 occasions of publication);
- **Informational meetings** that were held on Kauai, Oahu, Maui, Molokai, Kona & Hilo prior to the first round of Public Hearings. At these informational meetings, presentations regarding the proposed amendments were given followed by a question and answer session and notification of future public hearings (Total of 6 public informational meetings);
- **Two rounds of Public Hearings** were held on Kauai, Oahu, Maui, Molokai, Kona and Hilo. (Total of 12 Public Hearings). Based upon public input received during the first round of public hearings, considerable revisions were made to the first proposed draft amendments. Therefore a second series of hearings was conducted;
- **Two e-mail blast** to all Legislators in the House and Senate notifying them of the proposed amendments and the public hearings encouraging them to notify their constituents;
- Copies of the proposed and revised amendments were forwarded to **20 State Libraries**, the four District Land Offices (Kauai, Oahu, Maui, Hawaii) and were also available at the Department; and
- **Our website** at hawaii.gov/dlnr/occl. During the process, the first draft of rules were posted here. After the first round of Public Hearings, a comment letter explaining proposed revisions to the rules was posted to the site. The revised rule amendments were also posted. The current proposed rules is posted on our website.

In addition, some stakeholders met with the OCCL to discuss some of their concerns. Individuals who phoned the OCCL were encouraged to send written testimony to document their comments. The rule amendments did receive coverage by the media. On Thursday, August 12, 2010, the proposed amendments made the front page of the Star Advertiser and an editorial followed on August 17, 2010. The Honolulu Weekly and the online "Civil Beat" and 'Hawaii Reporter' also covered the proposed amendments. A televised story regarding the amendments were featured on the KHON 6 pm news on July 29, 2010.

There were several hundred attendees at the various public meetings throughout the State. Approximately 120 written letters and hundreds of e-mail inquiries were received. One of the major criticisms during the first round of public hearings was that the rule revision process was
rushed and there was a lack of notification regarding the proposed changes. While Staff does not agree with this assessment, the process of the second round of public hearings should have alleviated that concern.

**Small Business Impact**
Regarding small businesses, comments received after the second series of public hearings included 3 planning firms, an orchid grower, an architect, a private park owner and an aquaculturalist. The orchid grower lives on Conservation land and expressed that he was grateful of the proposed changes; and the aquaculturalist was concerned with a proposed subzone to adjacent State land. All were concerned with the language of the proposed rules and requested clarification or proposed language to improve the final wording of the rules.

Large landowners and ranchers may also be comparable to a small business. Two large landowners with property in the Limited subzone of the Conservation District expressed some consternation regarding the lack of identified land uses for this particular subzone. Ranchers requested that water systems beyond a 'public purpose' use be identified.

Some adjustments were made to the rules based upon comments received from the public. Wilderness Camps is a new identified land use in the Limited subzone and Water Systems have been identified as a use under Land and Resource Management.

No substantive comments were received in regards to potential impacts the proposed rules would have on any small business. Staff is of the opinion that the proposed rule amendment will not impact or affect small business.

**DISCUSSION**
Commentary regarding the first round of public hearings is noted as Exhibit 2.

**2nd Public Hearing Process Commentary**
With the refinement of the rules due to the first series of public hearings, the amount of comments received decreased considerably. Our proposed new definition 'invasive species', new identified land uses: P-4 Removal of Invasive Species and P-13 Land and Resource Management received a significant amount of similar testimony. The concern appears to be the belief that the amended sections would allow unregulated animal culling and wide use of poisons, herbicides and bio-controls within the Conservation District.

Staff was surprised at how much attention was focused on the unsubstantiated belief that the proposed rule changes would result in mistreatment of animals and invasive plants. Under the current rules, noxious plants may be removed without a permit. Under the proposed rule, invasive plants could be removed in an area of up to one acre without a permit, or more than one acre with a Site Plan Approval. The proposed rule is more effective at protecting Hawaii's native plants by including a definition of "Invasive Species," and by changing the reference to such plants, yet allows staff to retain some oversight to ensure that such actions do not cause unpermitted clearing of large areas, which could result in secondary or off site impacts. In addition, the removal of invasive plants is not to be confused with "landscaping" which is regulated in the rules via minor and major permits. We feel strongly that the rules guard against abuse of this provision and that it will not be used as a smokescreen by landowners with ulterior motives.
The definition of "invasive species" includes a reference to animals in order to support actions by DOFAW that take place within Conservation District lands including actions that involve land uses such as exclusionary fences, traps, etc.

New identified land use, P-12 Power Generation from Renewable Resources received a number of negative comments with concerns regarding: the potential to site a facility in the Protective subzone, the residual affects on the environment and an 'expedited' process. Staff notes, this proposed land use most likely would have formerly been identified and processed as a 'Public Purpose' land use. Major land uses within the Conservation District require 343, HRS compliance and shall be vetted in an open public process. Although these concerns are not unfounded, public purview will insure proper siting and mitigation of potential affects to the land and the resources.

A number of comments were also received regarding the narrowing of who may appeal decisions made by the Department (§13-5-33, Departmental permits (f)). The language regarding who may appeal a Chairperson's decision was added for consistency with Chapter 13-1-31, HAR that recognizes parties in a contested case proceeding. §13-5-3 Appeals has only been slightly amended to include the board and continues to state: Any final order of the department or board based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found.

Tree removal received a number of comments with the main theme being that all trees are a resource (native or non) and that trees would be removed with no oversight. Dead/diseased trees for non-commercial purposes and trees that pose a hazard are allowable uses that don’t require a permit. Staff believes this is reasonable and allows property owners to manage their land and take care of a hazardous situation without the burden of government regulation.

With the existing rules, you could remove up to five trees under a Departmental permit or more than five trees under a Board permit. With the proposed rules, you may selectively remove trees for non-commercial purposes provided that each tree is replaced on a one-to-one basis with trees that are appropriate to the site with preference to endemic or indigenous trees under a Site Plan Approval. Although the authorization requirement has been reduced, the proposed action has become much more stringent by requiring a one-to-one replacement. Potential fines of up to $15,000 per unauthorized tree removed may act as a deterrent to prevent noncompliance with the new rules.

A number of comments were received regarding nonconforming uses, the ability to replace and reconstruct a nonconforming structure and poorly sited nonconforming structures. While staff may agree with some of these concerns, §183C-5, HRS states: Neither this chapter nor any rules adopted hereunder shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land was use on October 1, 1964...All such existing uses shall be nonconforming uses.

The OCCL has assessed all verbal, written, and e-mailed comments that have been received on this matter. This input has been helpful in formulating applicable revisions to improve the Conservation District Administrative Rules. The second series of hearings and collection of
public input has resulted in better-defined administrative rules to regulate the Conservation District.

RECOMMENDATION

Based on the preceding analysis, Staff recommends the Board of Land and Natural Resources:

1. Grant the Office of Conservation and Coastal Lands request to amend Chapter 13-5, Hawaii Administrative Rules noted as **Exhibit 1**; and

2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for Submittal:

WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources
1. Chapter 5 of Title 13, Hawaii Administrative Rules, entitled "Conservation District", is amended and compiled to read as follows:
"HAWAII ADMINISTRATIVE RULES"

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

Subchapter 1  General Provisions

§13-5-1  Purpose
§13-5-2  Definitions
§13-5-3  Appeals
§13-5-4  Mediation
§13-5-5  Amendments
§13-5-6  Penalty

§13-5-7  to 13-5-9 (Reserved)
§13-5-7  Nonconforming uses and structures
§13-5-8  to 13-9 (Reserved)

Subchapter 2  Subzones

§13-5-10  Subzones; generally
§13-5-11  Protective (P) subzone
§13-5-12  Limited (L) subzone
§13-5-13  Resource (R) subzone
§13-5-14  General (G) subzone
§13-5-15  Special (S) subzone
§13-5-16  Designation of subzones
§13-5-17  Boundary determinations; criteria
§13-5-18  to 13-5-21 (Reserved)

Subchapter 3  Identified Uses and Required Permits

§13-5-22  Identified land uses in the protective subzone
§13-5-23 Identified land uses in the limited subzone
§13-5-24 Identified land uses in the resource subzone
§13-5-25 Identified land uses in the general subzone
§13-5-26 to 13-5-29 (Reserved)

Subchapter 4 Procedures for Permits, Site Plan Approvals, and Management Plans

§13-5-30 Permits, generally
§13-5-31 Permit applications
§13-5-32 Fees
§13-5-33 Departmental permits
§13-5-34 Board permits
§13-5-35 Emergency permits
§13-5-36 Temporary variance
§13-5-37 [Reserved]
§13-5-38 Site plan approvals
§13-5-39 Management plan approvals
§13-5-40 Hearings
§13-5-41 Single family residences
§13-5-41.1 Fire buffer zone
§13-5-42 Standard conditions
§13-5-43 Time extensions
§13-5-44 Revocation of permits
§13-5-45 Severability

Historical Note: This chapter is based substantially upon chapter 13-2. [Eff 6/22/81; am and comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R 07/01/1994]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-5-1 Purpose. The purpose of this chapter is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote
their long-term sustainability and the public health, safety, and welfare. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-1)

§13-5-2 Definitions. As used herein unless otherwise provided:

"Accessory use" means [use of land or of a building or a portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use] a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or fresh water environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Average annual coastal erosion rate" means the average annual rate of shoreline change as determined by the coastal erosion study performed under this chapter.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Cabin" means a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads. The cabin cannot be used as a principal residence, for rental, or any commercial purposes.

"Chairperson" means the chairperson of the board of land and natural resources.

"Clearing" means the removal of vegetation, with no ground disturbance.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to
carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the shoreline change reference feature. The coastal erosion study shall be carried out by a qualified professional consultant following procedures described in the Hawaii Coastal Hazard Mitigation Guidebook, or other credible publications that provide similar procedures.

"Coastal high hazard area" means an area where wave action or high velocity water or both can cause structural damage in the hundred year flood, primarily defined as an area where a three foot or greater wave height could occur (VE Zone), in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; provided, however, that the use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables and other accessory structures for electronic, radio frequency, or microwave transmissions or receptions.

"Comprehensive management plan" means a comprehensive plan to manage multiple uses and activities in order to protect and conserve natural and cultural resources.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Departmental permit" means a permit approved by the chairperson.

"Emergency" means an imminently dangerous situation that poses a substantial threat to public
health, safety, and welfare as declared by the chairperson, or deputy director in the absence of the chairperson.

"Flood zone" means those areas in the "V" or "A" zones that require mandatory flood insurance, in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.

"Grading" means the excavation of earth material, fill, or combination thereof.

"Grubbing" means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.

["Hearing officer" means a person or persons designated or appointed by the board or chairperson to conduct public hearings or proceedings on behalf of the board.]

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old, or otherwise defined in section 6E-1, HRS.

"Imminently threatened" means an inhabited dwelling, essential cultural or natural resource, or other (non-movable) major structure or public facility that is in danger of destruction or severe damage due to natural hazards. For coastal erosion, "imminently threatened" shall mean a distance of twenty feet or less from an actively eroding shoreline or erosion that will threaten the structure in less than six months.

"Invasive species" means any terrestrial or aquatic plant or animal that can directly or indirectly injure or cause damage to the environment, native species, natural or cultural resources, navigation, or to the public health, safety and welfare.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their
Own Lands and House Lots, and Certain Other [Privileges,] Privileges", as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Land use" means:

1. The placement or erection of any solid material on land if that material remains on the land more than [fourteen] thirty days, or which causes a permanent change in the land area on which it occurs;

2. The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

3. The subdivision of land; or

4. The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use.

"Management plan" means a [comprehensive] project or site based plan to protect and conserve natural and cultural resources [plan for carrying out multiple land uses].

"Minor alteration" means work done to an existing structure, facility, or use that results in a ten per cent or less increase in the size of the structure, facility, or use.
"Minor repair" means routine work done to an existing structure, facility, use, land, and equipment, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.

"Moderate alteration" means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty percent increase, in the size of the structure, facility, or use.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block, or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.

["Natural area reserve" means those state lands that have been designated as part of the Hawaii natural area reserve system by the department pursuant to section 195-4, HRS.]

"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established [immediately] prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

["Plant sanctuary" means an area of land set aside to preserve, protect, conserve, and manage particular plant species.]

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Public purpose use" means not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that
An independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty percent of the replacement value of the structure or use.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Shelter" means a structure used for sheltering from the elements, with a maximum floor area of six hundred square feet.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, HRS.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the upper reaches of the wash of the waves on shore) shoreline seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.
"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the [upper reaches of the waves on shore] shoreline seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district [which] that is identified by boundaries and resource characteristics pursuant to this chapter.

"Temporary variance" means an exception to zoned use, where good cause is shown and where the proposed variance is for a use determined to be in accordance with good conservation practices.

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as, but not limited to, mountains, hills, valleys, rivers, gulches, streams, wetlands, shorelines, beaches, submerged lands, roads, unimproved roads, trails, and other such [structures] features.

"Transient rental" means the use of a single family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

"Transportation system" includes the means to transport people, animals, or goods or any combination thereof from one place to another, including roads, harbors, airways, and their related facilities.

"Water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g., ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of a surface water collection system) [which] that furnishes a supply of water to [consumers] water users. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

"Wilderness area" means an area designated by the department having a diversity and abundance of native flora and fauna, geological formation, or both, largely
undisturbed by human influences, in which the
introduction of non-indigenous plants and animals,
mining, grazing of domestic animals, removal of
vegetation, overnight camping, and the construction of
roads or structures is prohibited or restricted.

["Wildlife sanctuary" means an area of land or
water designated by the department to preserve,
protect, conserve, and manage wildlife, where hunting
and other activities may be restricted.] [Eff
12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-2)

§13-5-3 Appeals. Any final order of the
department or board based upon this chapter may be
appealed to the circuit court of the circuit in which
the land in question is found. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

Note: See chapter 91, Hawaii Revised Statutes and
Hawaii Rules of Civil Procedure.

§13-5-4 Mediation. Upon receipt of a request or
on the board's own initiative, the board may request
that the petitioner and any affected persons identified
as necessary to the resolution of the dispute to
participate in mediation. Participation by the parties
shall be voluntary. All requests dealing with the same
subject matter shall be consolidated in a single
mediation. [Eff 12/12/94; comp ]
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-5 Amendments. (a) Whenever any landowner
or government agency whose property is directly
affected by this chapter makes an application to change
the boundaries or identified land uses of any subzone,
rezone a subzone, establish a new subzone with certain
identified land uses or when a person seeks to
otherwise amend this chapter, or where the board
§13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a [hearing] presiding officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

(e) Any terms or conditions imposed by the board for a violation of this chapter shall be recorded with the deed instrument.

(f) For the purpose of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule. [Eff 12/12/94; am and comp

§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.
(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.

(c) The repair of structures shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, shoreline setback, and shoreline certification.

(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter, except as provided under section 13-5-22(P-8).

(e) Repairs or maintenance of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964 or at the time of its inclusion into the conservation district.

(f) The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant. [Eff and comp]

(Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

SUBCHAPTER 2

SUBZONES

§13-5-10 Subzones; generally. (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone Designations, dated January 27, 2011." Designations: (new date), which is located at the end of this chapter and made a part of this section. Subzone designations of conservation district lands are delineated on maps on file with the department.
(b) Lands in the conservation district are classified into one of the following subzones:

(1) Protective;
(2) Limited;
(3) Resource;
(4) General; or
(5) Special.

(c) Land uses identified in a subzone shall be restricted to those uses provided for in this chapter. [Eff 12/12/94; am 2/1/99; am 1/28/02; am 4/27/02; am 4/10/03; am 07/28/06; am 4/7/2011; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

(b) The (P) subzone shall encompass:

(1) Lands and waters necessary for protecting watersheds, water sources, and water supplies;

(2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance;

(3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and

(4) All land encompassing the Northwestern Hawaiian islands except Midway island.

(c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5-22. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)
§13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The (L) subzone shall encompass:

(1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal government; and

(2) Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity, or landslides, or which have a general slope of forty percent or more.

(c) [Land] Identified land uses [permitted] in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-13 Resource (R) subzone. (a) The objective of this subzone is to [develop] ensure, with proper management, [areas to ensure sustained] the sustainable use of the natural resources of those areas.

(b) The (R) subzone shall encompass:

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;

(2) Lands suitable for growing and harvesting of commercial timber or other forest products;

(3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

(5) Lands and state marine waters seaward of the [upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore]
shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

(c) [Land] Identified land uses [permitted] in the resource (R) subzone are restricted to those listed in section 13-5-24. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

(b) The (G) subzone shall encompass:

(1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and

(2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

(c) [Land] Identified land uses [permitted] in the general (G) subzone are restricted to those listed in section 13-5-25. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-15 Special (S) subzone. The objective of this subzone is to provide for sustainable use of areas possessing unique developmental qualities [which] that complement the natural resources of the area. The special subzones are listed in Exhibit 2, entitled "Special [Subzones-]\ Subzones", dated September 6, 1994[—], which is located at the end of this chapter and made a part of this section. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-16 Designation of subzones. (a) A landowner or government agency whose property is
directly affected by this chapter may apply to the department to establish a new subzone, rezone an existing subzone, or change a boundary or identified land uses of a subzone. The board can initiate action under this section.

(b) The application shall include the following:
(1) Name of applicant;
(2) Name of landowner(s), if different from applicant, or any person or entity with the landowner's written consent;
(3) Property description of land being affected by tax map key parcel (metes and bounds may be required when the department deems necessary);
(4) Map of area drawn to scale;
(5) Background of applicable land use commission petition, including a final decision and order (for new subzone designations);
(6) Existing subzone classification or land use zoning designations of subject property and surrounding properties;
(7) Geographic characteristics:
   [(a)] General topography, geologic conditions, and slope; and
   [(b)] Soils types and productivity rating (e.g., Agricultural Lands of Importance to the State of Hawaii (ALISH) and proposed Land Evaluation and Site Assessment (LESA));
(8) Climatic characteristics (e.g., rainfall, predominant wind direction annually);
(9) Hydrological characteristics (e.g., surface water, groundwater, drainage patterns) and applicable water area classification, if applicable, (e.g., restricted watershed, groundwater recharge area);
(10) Biological (flora and fauna) characteristics (e.g., vegetation, wildlife, specific identified species, or habitat of identified threatened or endangered species);
(11) A list of historic properties in the project area;
(12) Scenic or visual resources (e.g. significant view planes and geological features);
(13) Infrastructure evaluations (e.g. roads and access, water systems, sewage systems, drainage systems, recreational facilities, community population, income and household characteristics, and utilities availability);
(14) Review of property characteristics in relation to subzone objectives;
(15) Evaluation and recommendation of appropriate subzone designation and boundary characteristics; and
(16) Application fee of $100 and public hearing fee of $250 plus publication costs.
(c) The change in boundary or land use shall be put in the form of a proposed administrative rule change by the applicant. Designation of subzones shall be processed as an administrative rule amendment, and, as such, shall be in accordance with departmental rules and applicable statutes, and shall include a public hearing. [Eff 12/12/94; am and comp ]
(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

Note: See §13-5-5 section 13-5-5.

§13-5-17 Boundary determinations; criteria. (a) Prior to the department receiving for processing any application for a permit, if the applicant's proposed land use lies within fifty feet of a subzone boundary, the applicant shall first notify the department of the intended use and seek a determination of the precise boundary of the subzone with respect to the parcel in question. Applications shall be accompanied by a fee of $100.

(b) The notification shall include all relevant information, including topographical maps, subzone maps, and tax maps.

(c) The department shall have thirty days within which to issue its determination, after which the party seeking the permit is free to make application.

(d) The applicant can appeal the departmental
determination to the board. The board shall resolve any uncertainty regarding the location of the subzone boundary and the board's determination shall be final.

(e) In all cases, the determination of subzone boundaries shall utilize the following criteria:

(1) The boundary shall follow natural or fixed physical features;

(2) The boundary shall be defined by a series of straight lines;

(3) Where coterminous with forest reserve boundaries, the boundary shall be determined by metes and bounds descriptions of the forest reserve; [Fed]

(4) Where a subzone boundary follows an elevation, the boundary shall be determined by reference to topographical maps or other evidence that may be used to establish elevation; or

(5) Where the subzone boundary follows a property boundary the boundary shall be defined by the metes and bounds of the property boundary.

[Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

SUBCHAPTER 3

IDENTIFIED LAND USES AND REQUIRED PERMITS

§13-5-22 Identified land uses in the protective subzone. (a) If a proposed use in the protective subzone is not presented below, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule amendment to have the proposed use added to the identified land uses.

(b) Identified land uses in the protective subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;
(2) Identified land uses beginning with letter (B) require a site plan approval by the department; 
(3) Identified land uses beginning with letter (C) require a departmental permit; and 
(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

P-1 DATA COLLECTION

(A-1) Basic data collection, research, education, and resource evaluation [which] that is temporary (less than thirty days) and results in negligible ground disturbance (small gages or monitoring devices) and does not involve a land use (e.g., botanical, archaeological, faunal surveys).

(B-1) Basic data collection, research, education, and resource evaluation [as identified in the exempt classes established in section 11.200-8] that results in a minor disturbance to natural resources or land (e.g., corings, excavations, etc.).

(C-1) Basic data collection, research, education, and resource evaluation [which] that involves a land use [with incidental] causing ground disturbance from installation of equipment (e.g., [rain gauges or] meteorological towers, radio towers, or test wells).

(D-1) Data collection, research, education, and resource evaluation that involves [a] permanent facilities or structures larger than 500 square feet or a land use causing significant ground disturbance or impact to a natural resource (e.g., exploratory wells).

P-2 FISHPONDS

[(A 1) Repair, strengthening, reinforcement or maintenance of a fishpond under an approved

conservation district use permit and approved management plan.)

(D-1) Fishpond reconstruction or construction of a new fishpond. [Restoration or repair of a fishpond under an approved management plan, where restoration is the act or process of returning the property to a state of utility through repair or alteration which makes possible an efficient contemporary use, such as aquaculture.] A management plan approved simultaneously with the permit, is also required.

P-3 KULEANA LAND USES

(D-1) Agriculture and a single family residence, if applicable, when such land use was historically, customarily, and actually found on the property. Agriculture means the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, and subsistence livestock.

P-4 [LANDSCAPING] REMOVAL OF [NOXIOUS PLANTS]

INVASIVE SPECIES

(A-1) Removal of [noxious plants for maintenance purposes without the use of power tools] invasive species including chemical and mechanical control methods, not to exceed one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that [does not] results in no, or [significant] only minor ground disturbance. [(e.g. weeding). Noxious plants are defined in chapter 152, HRS, and chapter 4-68, subtitle 6.] The department or board reserves the right to require site plan approval, departmental or board approval if it is determined that the proposed action may cause
secondary impacts on natural or cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the state. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.

B-1 Removal of invasive species including chemical and mechanical control methods, in an area greater than one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in no, or only minor ground disturbance. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause secondary impacts on natural and cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.

[(C-1) Landscaping, defined as alteration (including clearing) of plant cover. Such alteration shall be limited to plant materials that are endemic or indigenous and similar in character and appearance to existing vegetation in the surrounding area. Natural vegetative plant cover, where disturbed, shall be restored or replaced with endemic or indigenous planting. The introduction of alien plant species is prohibited in the protective subzone.]

P-5 MOORINGS AND AIDS TO NAVIGATION

5-21
(C-1) Moorings and aids to navigation. This requirement is satisfied by obtaining a permit pursuant to chapter 200, HRS.

P-6 PUBLIC PURPOSE USES

(B-1) Installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers.

(D-1) Land uses undertaken by the State of Hawaii or the counties to fulfill a mandated governmental function, activity, or service for public. Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit [and] the public in accordance with public policy and the purpose of the conservation district. [Such land uses may include transportation systems, water systems, communications systems, and recreational facilities.

(D-2) Transportation systems, transmission facilities for public utilities, water systems, energy generation facilities utilizing the renewable resources of the area (e.g., hydroelectric or wind farms) and communications systems and other such land uses which are undertaken by non-governmental entities which benefit the public and are
consistent with the purpose of the
conservation district.

P-7 SANCTUARIES

(D-1) Plant and wildlife sanctuaries, natural area
reserves (see chapter 195, HRS) and
wilderness and scenic areas, including
habitat improvements under an approved
management plan.

P-8 P-7 SIGNS

(B-1) Signs, including safety signs, danger signs,
no trespassing signs, and other informational
signs. No signs shall exceed twelve square
feet in area and shall be non-illuminated.
All signs shall be erected to be self-
supporting and be less than or equal to eight
feet above finished grade.

P-9 P-8 STRUCTURES AND LAND USES, EXISTING

(A-1) [Replacement or reconstruction of existing
structures and facilities as identified in
the exempt classes established in section 11-200-8, except as provided in section 13-5-37
where the new structure will be located
approximately on the same site and will have
substantially the same purpose, capacity,
density, height, and dimensions as the
structure replaced.] Minor repair,
maintenance, and operation to an existing
structure, facility, use, land, and
equipment, whether it is nonconforming or
permitted, that involves mostly cosmetic work
or like-to-like replacement of component
parts, and that results in negligible change
to or impact to land, or a natural and
cultural resource. Any repair, strengthening,
reinforcement, and maintenance of a fishpond
shall be in accordance with section 183-44
HRS, and section 183B-2 HRS.

(B-1) Demolition, removal, or minor alteration
of existing structures, facilities, land, and
equipment. Any historic property shall be
evaluated by the department for historical
significance.

(B-2) Replacement or reconstruction of existing
structures and facilities under a previously
approved conservation district use permit
where the new structure will be located
approximately on the same site and will have
substantially the same purpose, capacity,
density, height, and dimensions as the
structure replaced. Reconstruction or
replacement of structures and facilities
shall be subject to development standards set
forth in this chapter, and other requirements
as applicable, including, but not limited to
a county building permit, shoreline setback,
and shoreline certification. No enlargement
of the structures and facilities is permitted
under this section. The provisions of this
section will not be applicable upon failure
to file an application to replace or
reconstruct structures and facilities within
two years of the demolition or destruction of
structures and facilities.

(B-3) Replacement or reconstruction of an existing
nonconforming single family residence, where
the new single family residence will be
located approximately on the same site and
will have substantially the same purpose,
capacity, density, height, and dimensions as
the single family residence replaced.
Reconstruction or replacement of any single
family residence shall be subject to
development standards set forth in this
chapter, and other requirements as
applicable, including, but not limited to a
county building permit, shoreline setback,
and shoreline certification. No enlargement
of the single family residence is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct a single family residence within two years of the demolition or destruction of the single family residence.

(C-1) Moderate alteration of existing structures, facilities, uses, and equipment.

[(C-2)+(D-1)] [Operations, repair, maintenance, or renovation] Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original [permit or which are different from the department approved construction plans, where applicable] use or different from what was allowed under the original permit. When county permit(s) are required [the department shall approve] for the associated plan(s), the department’s approval shall also be required.

Note: [for] For nonconforming uses, see [section 13-5-37] section 13-5-7.

[(D-1)] Demolition, grading, removal or alteration of topographic features.

[P-10] P-9 STRUCTURES, ACCESSORY

[(A-1)+(B-1)] Construction or placement of structures accessory to existing facilities [as identified in the exempt classes established in section 11-200-9] or uses.

[P-11] P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY

(C-1) Consolidation and resubdivision into an equal number of lots that does not result in increased density.

(C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the
objectives of the subzone. Consolidation followed by resubdivision shall constitute a subdivision.

(D-1) Subdivision of property into two or more legal lots of record [which] that serves a public purpose and is consistent with the objectives of the subzone.

P-12 TREE REMOVAL

(A-1) Removal of dead or diseased[+] trees for non-commercial purposes.

[(1) Non-native trees; or
(2) Native trees less than six inches in diameter measured at ground level.]

(A-2) Removal of trees [which] that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the [tree] trees [if it was six inches or greater in diameter measured at ground level].

(B-1) Selective removal of individual trees (except that a permit is not required for tree removal allowed under P-4 (A-1) and P-11 (A-1), (A-2)) for non-commercial purposes provided that each tree is replaced on a one-to-one-basis with trees that are appropriate to the site location with preference to trees that are endemic or indigenous to Hawaii.

[(C-1) Removal of invasive not more than five trees or more than five trees less than six inches in diameter measured at ground level.]

(D-1) Removal of more than five trees, six inches or greater in diameter measured at ground level.]

P-12 POWER GENERATION FROM RENEWABLE RESOURCES

(D-1) Hydroelectric, wind generation, ocean thermal energy conversion, wave, solar, geothermal, biomass, and other renewable power generation facilities from natural resources; includes
generation, conversion, and transmission facilities and access roads. Renewable energy projects shall minimize impacts to natural, cultural and recreational resources, and shall be expedited in the application review and decision-making process. A management plan approved simultaneously with the permit, is also required.

P-13 LAND AND RESOURCE MANAGEMENT

(A-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area less than one acre.

(A-2) Planting of native and endemic plants, fence maintenance, including new fence ex-closures for single plant or small native wildlife communities, in an area less than one acre. The department or board reserves the right to require a site plan approval or a departmental permit or a board permit if it is determined that the proposed action may cause secondary impacts on natural or cultural resources.

(A-3) Clearing of sand or silt from stream mouths, canals, drainage pipes, or other features for state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.

(B-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre. The department or
board reserves the right to require
departmental or board approval if it is
determined that the proposed action may cause
secondary impacts on natural or cultural
resources, or the surrounding community.

(B-2) Planting of native and endemic plants, fence
maintenance, including new fence ex-closures
for single plant or small native wildlife
communities, in an area greater than one
acre. The department or board reserves the
right to require departmental or board
approval if it is determined that the
proposed action may cause secondary impacts
on natural or cultural resources.

(B-3) Clearing land for fire pre-suppression and
prevention, under a fire buffer plan approved
by the department.

(C-1) Installation of a new fence or shelter.

(C-2) Erosion control, including replanting of
trees and groundcover, placement of
biodegradable or synthetic materials for
slope stabilization, construction of minor
swales and check dams, not to include
shoreline erosion control structures.

(D-1) Cabin.

(D-2) Road construction and major erosion control
projects.

(D-3) Water systems.

P-14 TELECOMMUNICATIONS

(B-1) Installation of new antenna(s) on an existing
telecommunications tower, including support
equipment.

(C-1) Construction of new tower at an existing site
that is lower than existing towers and does
not result in adverse visual impacts, and
that is part of a site and system master
plan.

(D-1) New telecommunications facility. A management
plan approved simultaneously with the permit,
is also required.
P-15 SHORELINE EROSION CONTROL

(D-1) Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation); and (3) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. Requires a shoreline certification.

P-16 BEACH RESTORATION

(C-1) Sand placement not to exceed 10,000 cubic yards per occasion, with minor sand retention structures, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.

(D-1) Sand placement in excess of 10,000 cubic yards including structures necessary to retain sand, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.

§13-5-23 Identified land uses in the limited subzone. (a) In addition to the land uses identified [herein] in this section, all identified land uses and
their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the limited subzone and their required permits (if applicable), are listed below:

1. Identified land uses beginning with letter (A) require no permit from the department or board;
2. Identified land uses beginning with letter (B) require a site plan approval by the department;
3. Identified land uses beginning with letter (C) require a departmental permit; and
4. Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

L-1 AGRICULTURE

(C-1) Agriculture, within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.

(D-1) Agriculture, within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan approved simultaneously with the permit, is also required.

(D-1) Agricultural water systems, including pipelines.

[L-2 BOTANICAL GARDENS AND PRIVATE PARKS]
(D-1) Botanical gardens and private parks under an approved management plan.

L-3 EROSION CONTROL

(D-1) Erosion control, flood control, and other hazard prevention devices or facilities.

[L-4] (L-2) LANDSCAPING [AND REMOVAL OF NOXIOUS PLANTS]

[(C-1)] (B-1) Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

[C-2] (C-1) [Removal of noxious plants for maintenance purposes in an area less than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing)] Landscaping (including clearing, grubbing, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of less than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

(D-1) [Removal of noxious plants for maintenance purposes in an area of more than ten thousand]
square feet that results in significant
ground disturbance (e.g. clearing or
grubbing). Landscape (including clearing,
grubbing, grading, and tree removal),
including chemical and mechanical control
methods, in accordance with state and federal
laws and regulations, in an area of or more
than 10,000 square feet. Any replanting shall
be appropriate to the site location and shall
give preference to plant materials that are
endemic or indigenous to Hawaii. The
introduction of invasive plant species is
prohibited.

[L-5] SEAWALLS AND SHORELINE PROTECTION

(D-1) Seawalls, shoreline protection devices, and
shoreline structures.]

[(L-6)](L-3) SINGLE FAMILY RESIDENCE

(D-1) A single family residence in a [floodplain]
flood zone or coastal high hazard area
declared by the boundaries of the Federal
Insurance Rate Maps (FIRM) that conforms to
applicable county regulations regarding the
National Flood Insurance Program and single
family residential standards as outlined in
this chapter.

[L-7] STRUCTURES, ACCESSORY

(B-1) Construction or placement of structures
accessory to an existing structure, building,
or facility under an existing conservation
district use permit. Accessory uses shall be
allowed only if they are consistent with the
purpose of the conservation district.]
L-4 WILDERNESS CAMP

(D-1) Establishment providing educational and recreational programs for youth and adult groups, including campsites for overnight accommodations in tents. Facilities may include unimproved access road or trail(s), portable restrooms, and one meeting shelter not to exceed 600 square feet. A management plan, approved simultaneously with the permit, is also required. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-24 Identified land uses in the resource subzone. (a) In addition to the land uses identified [herein] in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in [sections] section 13-5-22 or [section] section 13-5-23, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

(3) Identified land uses beginning with letter (C) require a departmental permit; and
(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

R-1 AQUACULTURE

(D-1) Aquaculture under [an approved] a management plan, approved simultaneously with the permit, is also required.

R-2 ARTIFICIAL REEFS

(D-1) Artificial reefs.

R-3 ASTRONOMY FACILITIES

(D-1) Astronomy facilities under [an approved] a management plan approved simultaneously with the permit, is also required.

R-4 COMMERCIAL FORESTRY

(D-1) [Commercial] Sustainable commercial forestry under [an approved] a management plan, approved simultaneously with the permit, is also required.

R-5 LANDSCAPING

(B-1) Landscaping, defined as alteration of plant cover, including trees, in an area of ten thousand square feet or less.

(C-1) Landscaping, defined as alteration of plant cover, including trees, in an area of more than ten thousand square feet.

R-6 MARINE CONSTRUCTION

(E-1) Maintenance dredging not to exceed the dredging limits for the area as previously authorized [by board permit] and dredged.
(D-1) [Marine construction, dredging, filling, or any combination thereof of submerged lands.] Dredging, filling, or construction on submerged lands, including construction of harbors, piers, marinas, and artificial reefs.

[R-7] R-6 MINING AND EXTRACTION

(D-1) Mining and extraction of any material or natural resource under a management plan approved simultaneously with the permit, is also required.

[R-8] R-7 SINGLE FAMILY RESIDENCE

(D-1) A single family residence that conforms to design standards as outlined in this chapter.

R-8 BOTANICAL GARDENS, PRIVATE PARKS, AND NATURE CENTERS

(D-1) For a profit or non-profit establishment featuring plants or other natural resources and offering tours or other nature-based, outdoors educational and recreational activities, primarily during daylight hours. Facilities may include access road, restrooms, shelters, and not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet, under a management plan approved simultaneously with the permit, is also required. [Eff 12/12/94: am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-25 Identified land uses in the general subzone. (a) In addition to the land uses identified [herein] in this section, all identified land uses and their associated permit or site plan approval

5-35
requirements listed for the protective, limited, and resource subzones also apply to the general subzone, unless otherwise noted.

(b) If a proposed use [subzone] is not presented below or in [sections] section 13-5-22, [23] section 13-5-23, or [24] section 13-5-24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with the letter [prefix] (A) require no permit from the department or board;
(2) Identified land uses beginning with the letter [prefix] (B) require site plan approval by the department;
(3) Identified land uses beginning with the letter [prefix] (C) require a departmental permit; and
(4) Identified land uses beginning with the letter [prefix] (D) require a board permit and, and where indicated, a management plan.

G-1 OPEN SPACE

(D-1) Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.

G-2 LAND USES NOT [PREVIOUSLY] OTHERWISE IDENTIFIED

(D-1) Land uses not [previously] otherwise identified in [sections] section 13-5-22, [23] section 13-5-23, or [24] section 13-5-24, which are consistent with the objectives of the general subzone. [Eff 12/12/94; am
and comp ] (Auth: HRS §183C-3) (Imp: HRS §163C-4)

SUBCHAPTER 4

PROCEDURES FOR PERMITS, SITE PLAN APPROVALS,
AND MANAGEMENT PLANS

§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, or comprehensive management plans, and temporary variances. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson or [his] a designated representative. If there is question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.

(b) Unless provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

(1) Departmental permit (see section 13-5-33);
(2) Board permit (see section 13-5-34);
(3) Emergency permit (see section 13-5-35);
(4) Temporary variance (see section 13-5-36);
[(5) Nonconforming uses (see section 13-5-37);
(6)] (5) Site plan approval (see section 13-5-38); or
[(7)] (6) Management plan or comprehensive management plan (see section 13-5-39).

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

(1) The proposed land use is consistent with the purpose of the conservation district;
(2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;

(3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management," where applicable;

(4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region;

(5) The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;

(6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;

(7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and

(8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria.

[(d) For uses on submerged lands and in state marine waters the requirements of this chapter are satisfied by complying with provisions of chapters 171 (public lands), 184 (state parks), 187A, 188, 189, and 190 (marine life management), 190D (ocean leasing), 195 (natural area reserves system), 195D (conservation of aquatic life and wildlife), and 200 (boating and ocean recreation), or their implementing rules.] [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)
Note: For regulation of activities in:
State Parks; see Chapter 13-146.
Forest Reserves; see Chapter 13-104.
Natural Area Reserves System; see Chapter 13-209.
Unencumbered Lands; see Chapter 13-221.
Marine Life Conservation Districts; see Title 13, Subtitle 4, Part 1.
Marine Fisheries Management Areas; see Title 13, Subtitle 4, Part 2.
Freshwater Fisheries Management Areas; see Title 13, Subtitle 4, Part 3.
Ocean Waters, Navigable Streams and Beaches; see Title 13, Subtitle 11, Part 3.

§13-5-31 Permit applications. (a) Applications for all permits and approvals provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

1. A draft or final environmental assessment, [or] draft or final environmental impact statement, proof of an exemption or request for an exemption from the chapter 343, HRS, process, as applicable;
2. Associated plans such as location map, site plan, floor plan, elevations, and landscaping plans drawn to scale;
3. The proposed land use shall address their relationship with county general plans and development plans;
4. Any other information as determined by the department;
5. Signature of the landowner;
6. Applicable fees; [and]
7. A minimum of twenty copies (only one original copy required for site plan approval) of the application and all attachments[–]; and
8. A shoreline certification. The department may waive a certified shoreline when the applicant can provide evidence to the
satisfaction of the department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, the history of coastal hazards in the area, and whether the proposed use will or will not adversely affect the beach process or interfere with public access or public views to and along the shoreline.

(b) For [State] state and public lands, the State of Hawaii or government entity with management control over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel(s), the application shall be signed by landowners whose property interests constitute or exceed eighty-five [percent] per cent of the fee ownership of the subject parcel(s).

(c) [Any] Except for state-owned land, any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. For applications including state-owned land, the department shall review the application for completeness within sixty days from the date the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred [and] eighty day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred [and] eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a
decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions contained in section 13-5-42.

(e) No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana land as defined in this chapter:

(1) Deed of property;
(2) Land Commission Award (LCA) number;
(3) Land Patent Grant documentation;
(4) Documentation showing current ownership of the kuleana;
(5) Tax map key number;
(6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
(7) Identify legal access to the kuleana; and
(8) Identification of uses to which the kuleana land was historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.  [Eff 12/12/94; am and comp]  

§13-5-32 Fees. Each application shall be accompanied by [such] the filing fees [as] specified in this chapter. All fees shall be in the form of [each] certified or cashier's check, and payable to the State of Hawaii. The application fee for state projects shall be waived.  [Eff 12/12/94; am and comp]  

[Auth: HRS §183C-3] (Imp: HRS §183C-3)
§13-5-33 Departmental permits. (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.

(b) In those applications whose identified land uses require a combination of board permit(s) and departmental permit(s), a board permit shall be required covering all of the proposed uses.

(c) The application for a departmental permit shall be accompanied by:

   (1) An application fee of [§50] $250; and

   (2) A public hearing fee of $250, plus publication costs, if applicable.

(d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(e) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:

   (1) Type of permit sought;

   (2) Applicant;

   (3) Location of affected land (by island, district, and tax map key number);

   (4) Preliminary environmental determination; and

   (5) A brief description of their proposed use, including specifically any proposed use of public lands.

(f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:

   (1) The name and address of the requestor;

   (2) The departmental permit for which the requestor would like to receive notice of departmental determination; and

   (3) The date the notice was published in the OEQC bulletin.

The department is not obligated to notify any person of its determination who does not strictly comply with
this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) [Any person] The permit applicant or any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the use that their interest is so clearly distinguishable from that of the general public may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend, or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use[, the necessity of an environmental impact statement,] or the public interest requires a board permit. [Eff 12/12/94; am and comp

§13-5-34 Board permits. (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

§13-5-34 Board permits. (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.
(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:

1. [An application fee of $100, plus an additional $100 per potential developed acre, or major fraction thereof.] The application fee which is equal to 2.5 per cent of the total project cost, but no less than $250, up to a maximum of [[$2,000] $2,500; and

2. A public hearing fee of $250 plus publication costs, if applicable.

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1[. subpart 5]. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-35 Emergency permits. (a) [In the event of an emergency, repair and reconstruction shall be expedited via the issuance of an emergency permit. (b) The following actions shall be processed as a departmental permit:

1. Repair or reconstruction of a structure to the same condition as existed prior to the damage. Permits under this clause shall be expedited by the department;

2. Reconstruction involving minor deviations (no more than twenty per cent increase in footprint) of the damaged structure, such as enlargements of a dwelling or additions to the structure, and

3. The chairperson may designate a time frame during which authorization shall not be required for activities exempt from the building permit requirements as set forth in the applicable county building code, provided that repairs exempt from the building code...
requirements shall not include any addition, change, or modification in construction or land use.

(c) The department may elect to route certain applications as board permits. This may occur when an application involves one or more of the following situations:

(1) Substantial enlargement of a structure (twenty per cent or more);
(2) Change in land use;
(3) Substantial change in the height of the structure (for example, second floor additions); or
(4) Where the department determines that a potential for substantial adverse environmental impact exists.

(d) The repair, reconstruction, or modification under this chapter are only for land uses that have been established or are legally nonconforming.] Notwithstanding any provision of this chapter, the chairperson or deputy director in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department. Further, the provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repair, maintenance, or operation for a public purpose use, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-emergency repair report.
describing the work that was conducted within thirty days of the date of the emergency repair.

(b) Where a natural disaster has occurred, such as a hurricane, flood, tsunami, volcanic eruption, earthquake, fire, or landslide, damaged structures and land uses may be repaired or reconstructed in conformance with section 13-5-22 (P-8). The provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repairs or reconstruction of such structures and land uses for public purpose uses, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

(c) If there is a question regarding the legality of a land use or structure, the burden of proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in [section 13-5-37] section 13-5-7.

(d) Repair and [replacement] reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.

(ef) This section shall be effective for the period of time specified by the chairperson.

(e) The application fee for an emergency permit shall be waived. [Eff 12/12/94; am and comp ] (Auth: HRS §§183C-3) (Imp: HRS §§183C-3, 183C-5, 183C-6)

§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:
(1) There are special and unique circumstances applying to the proposed land use at its particular location;
(2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property;
(3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and
(4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.

(b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication [thereafter] thereafter shall be approved.

(c) Temporary variances require a board permit.

(d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.

(e) The application for temporary variance shall be accompanied by:

(1) An application fee of [§100–] $250; and
(2) A public hearing fee of $250, plus publication costs, if applicable. [Eff 12/12/94; am and comp (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)]

[§13-5-37 Noneconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of noneconforming uses as defined in this chapter. The burden of proof to establish that the land use or structure is legally noneconforming shall be on the applicant.

(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and
actually found on the particular lot including, if applicable, a single family residence.

(c) Any structures may be subject to conditions to ensure they are consistent with the surrounding environment.

(d) If a nonconforming structure is destroyed by any means to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

(e) Repairs or maintenance reconstruction of the nonconforming structure shall not exceed the size, height or density of the structure which existed immediately prior to October 1, 1964 or at its inclusion into the conservation district. [Eff 12/12/94; R ] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

(a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall [first obtain department approval] be approved by the department before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of $50. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

§13-5-39 Management plan approvals. (a) Where required, management plans shall be submitted with the board permit application and shall include the requirements listed in Exhibit 3, entitled "Management Plan Requirements", dated [September 6, 1994.] (new date), which is located at the end of this chapter and made a part of this section.
(b) The department or board may require the preparation of a comprehensive management plan where it finds that further development may lead to significant natural, cultural, or ecological impacts within the conservation district. The geographic area, specific resources to be protected and conserved, and other content of a comprehensive management plan shall be determined by the department or board.

[ Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-40 Hearings. (a) Public hearings shall be held:

(1) On all applications for a proposed use of land for commercial purposes, (excluding site plan approvals);

(2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;

(3) On applications requiring a board permit in the protective subzone; and

(4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the
property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4, 183C-6)

§13-5-41 Single family residences[; standards].
(a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards, dated [September 9, 2005. ] (new date), located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.

(c) No single family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 12/12/94; am 11/14/05; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements
listed in Exhibit 5, entitled "Fire Buffer Zone Standards", dated (new date), which is located at the end of this chapter and made a part of this section. [Eff and comp

Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use [allowed] permitted within the conservation district is subject to the following standard conditions:

1. The [applicant] permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

2. The [applicant] permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

3. The [applicant] permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;

4. The [applicant] permittee shall comply with all applicable department of health administrative rules;

5. The single family [dwelling] residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;

6. The [applicant] permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of
the deed instrument, prior to submission for approval of subsequent construction plans;

(7) Before proceeding with any work authorized by the department or the board, the [applicant] permittee shall submit four copies of the construction plans and specifications to the chairperson or [his] an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the [applicant] permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

(8) [Any] Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and [— unless otherwise authorized,] shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;

(9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

(10) The [applicant] permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

(11) In issuing the permit, the department and board have relied on the information and data [which] that the [applicant] permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or
revoked, in whole or in part, and the
department may, in addition, institute
appropriate legal proceedings;

(12) When provided or required, potable water
supply and sanitation facilities shall have
the approval of the department of health and
the [board] county department of water supply;

(13) Provisions for access, parking, drainage,
fire protection, safety, signs, lighting, and
changes on the landscape shall be provided;

(14) Where any interference, nuisance, or harm may
be caused, or hazard established by the use,
the [applicant] permittee shall be required
to take measures to minimize or eliminate the
interference, nuisance, harm, or hazard;

(15) Obstruction of public roads, trails, lateral
shoreline access, and pathways shall be
avoided or minimized. If obstruction is
unavoidable, the [applicant] permittee shall
provide alternative roads, trails, lateral
beach access, or pathways acceptable to the
department;

(16) Except in case of public highways, access
roads shall be limited to a maximum of two
lanes;

(17) During construction, appropriate mitigation
measures shall be implemented to minimize
impacts to off-site roadways, utilities, and
public facilities;

(18) Cleared areas shall be revegetated, in
accordance with landscaping guidelines
provided in this chapter, within thirty days
unless otherwise provided for in a plan on
file with and approved by the department;

(19) Use of the area shall conform with the
program of appropriate soil and water
conservation district or plan approved by and
on file with the department, where
applicable;

(20) Animal husbandry activities shall be limited
to sustainable levels in accordance with good
soil conservation and vegetation management practices; [and]

(21) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;

(22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;

(23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

(24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;

(25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

[(21)](26) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.
(c) Deviation from any of the conditions, standards, or criteria provided herein in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

1. The deviation is necessary because of the lack of practical alternatives;
2. The deviation shall not result in any substantial adverse impacts to natural resources;
3. The deviation does not conflict with the objective of the subzone; and
4. The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before such an occurrence constitutes cause for permit revocation. [Eff 12/12/94; am and comp Auth: HRS §183C-3] (Imp: HRS §§183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) [All] Unless otherwise authorized, all time extensions shall be submitted to the department [thirty days before] prior to the expiration deadline. [If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the board for review.]

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the
board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

Temporary variances are excluded from this provision. [Eff 12/12/94; am and comp ]
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-44 Revocation of permits. In any case where a permittee has failed to comply with [any] one or more of the conditions contained in a permit, the board may direct the chairperson to revoke the permit.

[Eff 12/12/94; am and comp ]
(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-7)

§13-5-45 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected.” [Eff 12/12/94; am and comp ]
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on ____________, and filed with the Office of the Lieutenant Governor.
DRAFT

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

APPROVED AS TO FORM:

Deputy Attorney General
Exhibit 1

Subzone Designations: [April 21, 2011](new date)

(1) "H-1, Makalawena," Hawaii, June 4, 1978
(2) "H-2, Keahole Point," Hawaii, August 23, 1985
(3) "H-3, Mahukona," Hawaii, August 23, 1985
(4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
(5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
(6) "H-6, Kiholo," Hawaii, August 23, 1985
(7) "H-7, Kailua," Hawaii, [August 23, 1985](new date)
(8) "H-8, Kealakekua," Hawaii, June 4, 1978
(9) "H-9, Honauau," Hawaii, December 14, 2001
(10) "H-10, Kaulua Point," Hawaii, June 4, 1978
(11) "H-11, Milolii," Hawaii, August 23, 1985
(12) "H-12, Manuka Bay," Hawaii, June 4, 1978
(13) "H-13, Hawi," Hawaii, June 4, 1978
(14) "H-14, Kawaihae," Hawaii, June 4, 1978
(15) "H-15, Puu Hinai," Hawaii, June 4, 1978
(16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
(17) "H-17, Hualalai," Hawaii, June 4, 1978
(18) "H-18, Puu Lehua," Hawaii, June 4, 1978
(19) "H-19, Kaunene," Hawaii, June 4, 1978
(20) "H-20, Puu Pohakuloa," Hawaii, [August 23, 1985](new date)
(21) "H-21, Papa," Hawaii, [June 4, 1978](new date)
(22) "H-22, Pohue Bay," Hawaii, August 23, 1985
(23) "H-23, Puu Hou," Hawaii, June 4, 1978
(26) "H-26, Nohoahoea," Hawaii, June 4, 1978
(27) "H-27, Keamuku," Hawaii, June 4, 1978
(28) "H-28, Naohueleehua," Hawaii, August 23, 1985
(29) "H-29, Puu O Uo," Hawaii, August 23, 1985
(30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
(31) "H-31, Aika Cone," Hawaii, June 4, 1978
(32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
(33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
(34) "H-34, Ka Lae," Hawaii, June 4, 1978
(36) "H-36, Makahalau," Hawaii, June 4, 1978
(37) "H-37, Ahumoa," Hawaii, June 4, 1978
(38) "H-38, Puu Koli," Hawaii, June 4, 1978
(40) "H-40, Mauna Loa," Hawaii, June 4, 1978
(41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978
(42) "H-42, Punalu'u," Hawaii, [August 23, 1985] (new date)
(43) "H-43, Naalehu," Hawaii, [June 4, 1978] (new date)
(44) "H-44, Honokaa," Hawaii, June 4, 1978
(45) "H-45, Umioka," Hawaii, June 4, 1978
(47) "H-47, Puu Oo," Hawaii, June 4, 1978
(48) "H-48, Puu Ulaula," Hawaii, June 4, 1978
(49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
(50) "H-50, Wood Valley," Hawaii, June 4, 1978
(51) "H-51, Pahala," Hawaii, June 4, 1978
(52) "H-52, Kukaiau," Hawaii, June 4, 1978
(53) "H-53, Keanakolu," Hawaii, June 4, 1978
(54) "H-54, Puu Akala," Hawaii, June 4, 1978
(55) "H-55, Upper Pi'ihonua," Hawaii, June 4, 1978
(56) "H-56, Kulani," Hawaii, June 4, 1978
(57) "H-57, Kilauea Crater," Hawaii, August 23, 1985
(58) "H-58, Kau Desert," Hawaii, June 4, 1978
(59) "H-59, Nahilukakani Point," Hawaii, June 4, 1978
(60) "H-60, Papaalooa," Hawaii, October 22, 1993
(61) "H-61, Akaka Falls," Hawaii, November 23, 1987
(63) "H-63, Puu Makaala," Hawaii, June 4, 1978
(64) "H-64, Volcano," Hawaii, June 4, 1978
(65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978
(66) "H-66, Papaikou," Hawaii, June 4, 1978
(67) "H-67, Hilo," Hawaii, June 4, 1978
(68) "H-68, Mountain View," Hawaii, June 4, 1978
(69) "H-69, Kalalua," Hawaii, June 4, 1978
(70) "H-70, Kalapana," Hawaii, August 23, 1985
(71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
(72) "H-72, Pahoa North," Hawaii, June 4, 1978
(73) "H-73, Pahoa South," Hawaii, June 4, 1978
(74) "H-74, Kapoho," Hawaii, June 4, 1978
(75) "M-1, Honolua," Maui, June 4, 1978
(76) "M-2, Lahaina," Maui, June 4, 1978
(77) "M-3, Olowalu," Maui, June 4, 1978
(78) "M-4, Kahakuloa," Maui, June 4, 1978
(79) "M-5, Wailuku," Maui, [June 4, 1978] (new
date)
(80) "M-6, Maalaea," Maui, June 4, 1978
(81) "M-7, Paia," Maui, June 4, 1978
(82) "M-8, Puu O Kali," Maui, June 4, 1978
(83) "M-9, Makena," Maui, June 4, 1978
(84) "M-10, Haiku," Maui, [August 23, 1985]
(new date)
(85) "M-11, Kilohana," Maui, August 23, 1985
(86) "M-12, Lualailua," Maui, June 4, 1978
(87) "M-13, Keanae," Maui, June 4, 1978
(88) "M-14, Nahiku," Maui, June 4, 1978
(89) "M-15, Kaupo," Maui, [June 4, 1978] (new
date)
(90) "M-16, Hana," Maui, August 23, 1985
(91) "M-17, Kipahulu," Maui, July 25, 1988
(92) "Mo-1, Ilio Point," Molokai, June 4, 1978
(93) "Mo-2, Molokai Airport," August 23, 1985
(94) "Mo-3, Kaunakakai," Molokai, August 23,
1985
(95) "Mo-4, Kamalo," Molokai, June 4, 1978
(96) "Mo-5, Halawa," Molokai, June 4, 1978
(97) "Lanai," June 4, 1978
(98) "Kahoolawe," June 4, 1978
(99) "0-1, Kaena," Oahu, [June 4, 1978] (new
date)
(100) "0-2, Waianae," Oahu, December 13, 2002
(101) "0-3, Waimea," Oahu, January 27, 2011
(102) "0-4, Haleiwa," Oahu, August 23, 1985
(103) "0-5, Schofield Barracks," Oahu, June 4,
1978
(104) "0-6, Ewa," Oahu, June 4, 1978
(105) "0-7, Kahuku," Oahu, June 4, 1978
(106) "0-8, Hauula," Oahu, June 4, 1978
(107) "0-9, Waipahu," Oahu, June 4, 1978
(108) "0-10, Puuloa," Oahu, August 23, 1985
(109) "0-11, Kahana," Oahu, March 24, 1994
(110) "0-12, Kanekoa," Oahu, [March 24, 1994]
     (new date)
(111) "0-13, Honolulu," Oahu, [April 21, 2011]
     (new date)
(112) "0-14, Mokapu," Oahu, August 23, 1985
(113) "0-15, Koko Head," Oahu, [August 23, 1985]
     (new date)
(114) "K-1, Makaha Point," Kauai, June 4, 1978
(115) "K-2, Kekaha," Kauai, June 4, 1978
(116) "K-3, Haena," Kauai, August 12, 1992
(117) "K-4, Waimea Canyon," Kauai, June 4, 1978
(118) "K-5, Hanapepe," Kauai, June 4, 1978
(119) "K-6, Hanalei," Kauai, June 4, 1978
(120) "K-7, Waialeale," Kauai, June 4, 1978
(121) "K-8, Koloa," Kauai, August 23, 1985
(122) "K-9, Anahola," Kauai, June 9, 2006
(123) "K-10, Kapaa," Kauai, June 9, 2006
(124) "K-11, Lihue," Kauai, August 23, 1985
Exhibit 2
Special Subzones: September 6, 1994

(1) Hawaii Loa college special subzone. Subzone designation for educational purposes as delineated on map entitled "0-12, Kaneohe," Oahu;

(2) Haka site special subzone. Subzone designation for cemetery purposes as delineated on map entitled "0-12, Kaneohe," Oahu;

(3) Kapakahi Ridge special subzone. Subzone designation for nursing or convalescent home purposes as delineated on map entitled "0-13, Honolulu," Oahu;

(4) Sea Life park special subzone. Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "0-15, Koko Head," Oahu;

(5) Milolii-Hoopupoa special subzone. Subzone designation for Milolii-Hoopupoa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991, as delineated on map entitled "H-11, Milolii," Hawaii;

(6) Hale O Ho'oponopono special subzone. Subzone designation for educational purposes as delineated on map entitled "H-9, Honaunau," Hawaii;

(7) Lihau Valley special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-3, Haena," Kauai.
Exhibit 3
Management Plan Requirements: [September 6, 1994] (new date)

1 General [Description] description of the proposed use (e.g., forestry, fishpond, astronomy, aquaculture, agriculture).
   [___ Proposed land use in general terms
   ___ How proposed land use is consistent with the purpose of the conservation district and the property's subzone
   ___ Location map, drawn to scale

2 Existing conditions on parcel
   ___ Ownership
   ___ Resources (e.g. biological, archeological, geological)
   ___ Presence of threatened or endangered species
   ___ Constraints (e.g. flood plain, tsunami, volcanic, topography)
   ___ Existing land uses
   ___ Existing Conservation District Use Permits (CDUPs)
   ___ Access
   ___ Soils

3 Proposed land uses on parcel
   ___ For each proposed land use:
   ___ Description of proposed land use
   ___ Site plan
   ___ Justification that it is an identified land use for the subzone
   ___ Relationship to existing and other proposed land uses
   ___ Expected timing
   ___ Monitoring strategies
   ___ Environmental assessment
   ___ Site plan showing location of all existing and proposed land uses
   ___ Steps to ensure that historic preservation concerns are met

2 Project location (e.g., island map, location map, site plan (drawn to scale)).
3 Natural resource assessment including descriptive information about the natural resources in the project vicinity such as biological, archaeological, cultural, geological, coastal, recreational, and scenic resources, where applicable. The presence of any threatened or endangered species shall be disclosed.

4 Natural hazard assessment including descriptive information of erosion, flooding, slope, tsunami, and volcanic hazards, where applicable.

5 A description of best management practices used during project construction and implementation (e.g., mitigation measures).

6 A description of the best management practices to be used during the lifetime of the project (e.g., mitigation measures).

7 A description of the conservation methods and applications to be used in the short term and long term (e.g., mitigation measures).

8 Description of existing uses and facilities, if any.

9 Description of proposed facilities and uses, including phases, if applicable.

10 Reporting Activity schedule
   [___ Time duration of management plan (start and end dates)]
   [___ Annual reporting schedule]
   Project schedule including description of project sequencing from project construction to project completion and on-going maintenance plans, including a description and timing of natural resource monitoring and maintenance plans.
   [___ Annual reporting requirements] A description of the annual reporting requirements.

11 Any other information or data, as required by the department.
Exhibit 4
Single Family Residential Standards: [September 9, 2005] (new date)

[Minimum Lot Size: 10,000 square feet]

Exceptions:
1) Kuleana
2) nonconforming use
3) lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et al. v. Heirs of Ahi, et al., Civil No. 30, Fifth Circuit Court, State of Hawaii.]

Minimum Setback: For lots under [10,000 square feet to] one acre:

Front: 15 feet
Sides: 15 feet
Back: 15 feet

For lots over one acre:

Front: 25 feet
Sides: 25 feet
Back: 25 feet

Allowable building area extensions 36 inches in 15-foot setback 42 inches in 25-foot setback (e.g., eaves and decks).

Exceptions: Site characteristics and lot shape may be a factor in adjusting
minimum setbacks when so determined by the board.

Shoreline Setback: The shoreline setback line shall be established based on a setback distance from the certified shoreline of 40 feet plus 70 times the average annual coastal erosion rate, based on a coastal erosion study as defined in this chapter. No shoreline setback shall be established for any lot subject to this chapter unless the application for a shoreline setback line includes a shoreline survey certified by the department not more than 12 months prior to submission of the permit application. The shoreline setback line shall be based on the average lot depth (ALD)\(^1\) measured from the current shoreline.

For lots with an ALD of two hundred feet or less, the shoreline setback line shall be established based on the ALD of the lot, as provided in Table 1, or based on 40-feet plus 70 times the annual

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\(^1\) Average lot depth (ALD) shall be calculated as follows: (1) measure the two sides of the property that are at or near right angles to the shoreline; (2) measure the length of a line connecting the mid-point of the seaward (shoreline) side of the property to the mid-point of the landward side of the property; (3) add these three (right, left, center lines) measurements together for a total; (4) divide the total by three to obtain the ALD.
erosion rate. The applicant may choose the lesser of the two methods, but in no case shall the shoreline setback line be calculated to be less than 40 feet.

The department may waive the requirement for coastal erosion study based on supportive documentation from the applicant. Such documentation may include, but is not limited to, county or state approved coastal erosion rate data provided through the University of Hawaii, School of Ocean, Earth Science, and Technology, or evidence that the erosion rate is zero.

<table>
<thead>
<tr>
<th>TABLE 1: AVERAGE LOT DEPTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the average lot depth is:</td>
</tr>
<tr>
<td>Then the minimum setback distance is:</td>
</tr>
</tbody>
</table>

Maximum Developable Area (MDA): Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: [all enclosed (on
three sides minimum, with
floor or roof structure
above) living areas, above
grade decks in excess on 4'
0" in width,] all floor areas
under roof, including first,
second, and third story
areas, decks, pools, saunas;
garage or carport, and other
above ground structures.
(+swimming pools, saunas or
other developed water
features—excluding naturally
existing ponds, tidepools,
etc.,) play courts, or any
other standing structures,
which are accessory to the
approved land use.)

For lots up to 14,000 square
feet, the maximum developable
area is 25 per cent of total
lot area.

For lots [10,000] over 14,000
[sq. ft.] square feet to one
(1) acre [+], the maximum
developable area is 3,500
square feet.

For lots larger than one (1)
acre [+], the maximum
developable area is 5,000
square feet.

Exceptions: Site
characteristics and the
degree of pre-existing site
disturbance may be a further
limiting factor in the
calculation of maximum
developable area when so
determined by the board.
[Maximum Height Limit+] Maximum Allowable Building Envelope:  [The maximum height of the building shall not exceed twenty-five feet measured from the highest point of the roof structure (excluding any allowed chimney, antenna, vents, or similar protrusions) down to the lower of the existing or finished grade at the lowest corner of the building.] No portion of any building (excluding any allowed chimney, antenna, vents, solar panels or other renewable energy structures, or similar structures) shall protrude above the maximum allowable building envelope. The top of the maximum allowable building envelope shall be a vertical plane parallel to and twenty-five feet above the existing grade measured by vertical plumb line.

Exceptions: [Tsunami or flood-prone areas] Areas within the flood zone may allow consideration for additional heights above the maximum allowable building envelop to [height limits to satisfy flood insurance ordinances] comply with the National Flood Insurance Program requirements when so determined by the board.
Compatibility Provisions:

Compatibility with surrounding environs. Structure is designed in accordance with standard conditions and criteria, including:

- Landscaping - screening of structures
- Color of paint/surface of structure and roof - earth tones, or compatible with surrounding area
- [DOH] Department of Health wastewater permit/water collection system approval
- Grading/contouring of property kept to minimum with consideration of slope
- All structures connected, or best alternative
- In conformance to applicable building and grading code and shoreline setback provisions
- One kitchen[^1]²

[^1]² "Kitchen" means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook, and refrigerate food and wash cooking utensils and dining implements.
Exhibit 5
Fire Buffer Zone Standards: (new date)

Design standards for creation and maintenance of fire buffer zones along the urban/conservation interface. Fire buffer zones shall be approved via site plan approval.

PURPOSE The goal of a fire buffer zone is to reduce the risk of fire spreading to an area, and to reduce the speed at which fire spreads, should one occur. This is accomplished by (1) reducing the amount of available fuels, (2) reducing the continuity of available fuels, both horizontally through the proper spacing of trees and shrubs, and vertically by removing the ladder of fuels that can carry fire from the surface to the tree crowns, (3) developing a high-canopy forest, (4) replacing highly-flammable flora with drought and fire resistant indigenous, endemic, or Polynesian-introduced species, and (5) encouraging community stewardship of lands in the Conservation District.

APPLICATION REQUIREMENTS

- Parcel is considered a high-risk fire prone area by an authority recognized by the department (e.g., Division of Forestry and Wildlife, or the County Fire Department).

- If landscaping is to occur on neighboring parcels, the applicant should have permission of the neighboring landowner. The chairperson may sign as landowner for parcels owned by the State.

- A Site Plan should include three elements: (1) location maps, (2) an implementation plan, and (3) a maintenance plan.

- Maps for the area should identify: topography, drainage patterns, land ownership, dominant flora
and fauna, trees greater than ten inches in diameter measured at 4.5 feet above the ground, endangered and threatened trees, and other indigenous, endemic, or Polynesian-introduced trees or shrubs, infrastructure, and known historical or archaeological sites.

- The implementation plan should show the final design of the fire protection zone, how impacts to endangered or threatened trees or shrubs, or historical or archaeological sites will be mitigated.

- The management plan should discuss how and when the fire protection zone will be maintained.

- The size of the fire buffer zone will be based upon the slope of the area, as shown in Table 2. Distances are measured from the outside of the main structure, as measured from the outside eaves and/or any attached structures.

<table>
<thead>
<tr>
<th>TABLE 2: AREA OF DEFENSIBLE SPACE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ZONE</strong></td>
</tr>
<tr>
<td>1 Area of maximum reduction</td>
</tr>
<tr>
<td>2 Area of fuel reduction</td>
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<tr>
<td></td>
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<tr>
<td></td>
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<tr>
<td>3 Transition Zone</td>
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<tr>
<td></td>
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</tr>
</tbody>
</table>
DESIGN ELEMENTS

The following are acceptable design elements for each zone:

Zone 1:
- Removal of all flammable vegetation.
- Pruning of existing trees to a height of ten feet above the ground or to one-half the height of the tree, whichever is the lowest.
- Planting of drought and fire resistant indigenous, endemic, or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of all ladder fuels beneath existing trees.

Zone 2:
- Thinning of trees and shrubs so that they stand solo, or in clumps of two or three. Recommended space between crowns is based upon slope, as summarized in Table 3.

<table>
<thead>
<tr>
<th>SLOPE</th>
<th>TREE CROWN SPACING</th>
<th>SHRUB CLUMP SPACING</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10%</td>
<td>10 feet</td>
<td>2½ x shrub height</td>
</tr>
<tr>
<td>11-20%</td>
<td>15 feet</td>
<td>3x shrub height</td>
</tr>
<tr>
<td>21-40%</td>
<td>20 feet</td>
<td>4x shrub height</td>
</tr>
<tr>
<td>&gt;40%</td>
<td>30 feet</td>
<td>6x shrub height</td>
</tr>
</tbody>
</table>

- Removal of ladder fuels.
- Mowing or cutting grasses as needed to keep them at a maximum height of 6-8 inches.
- Pruning of tree branches to a height of at least ten feet.
- Replanting of drought and fire resistant indigenous, endemic or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of dead trees.
- Annual maintenance thinning of trees as they grow in size.
- Annual removal of dead stems and branches.

Zone 3:

- Thinning of trees, with spacing based upon the tree diameter measured at 4.5 foot above the ground, as outlined in Table 4.

**Table 4: Minimum Tree Spacing for Zone 3**

<table>
<thead>
<tr>
<th>Tree Diameter (inches)</th>
<th>Average Stem Spacing (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>10</td>
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<tr>
<td>4</td>
<td>11</td>
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<td>12</td>
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<td>21</td>
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<tr>
<td>13</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tree Diameter (inches)</th>
<th>Average Stem Spacing (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>24</td>
</tr>
<tr>
<td>15</td>
<td>26</td>
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<tr>
<td>16</td>
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<td>23</td>
<td>40</td>
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<tr>
<td>24</td>
<td>42</td>
</tr>
</tbody>
</table>
- Pruning of tree branches to a height of at least ten feet along fire or access roads.
- Annual maintenance thinning as trees grow in size.

MAINTENANCE GUIDELINES

Zones 2 and 3 are subject to the following maintenance guidelines:

- Any replanting should only be done with indigenous, endemic, or Polynesian-introduced trees and shrubs.
- No grubbing or grading is allowed for this land use.
- Slash (limbs, branches, and other woody debris) should be disposed of by removing it from site, chipping and distributing over the ground, or lopping and scattering.
- Tree stumps should remain in the ground.
- Surface (drip) irrigation lines are allowed to support new plantings.
- Applicant should provide the Office of Conservation and Coastal Lands with photographs of completed work.
October 11, 2010

SUBJECT: Response to Comments Received on a Proposal to Amend Chapter 5 of Title 13, Hawaii Administrative Rules, Entitled “Conservation District”

Dear Commenter:

Thank you for your recent comments on the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Land’s (OCCL) proposal to amend Chapter 5, Title 13 Hawaii Administrative Rules entitled “Conservation District.” The Department received approximately 90 written letters, hundreds of e-mail inquiries, and several hundred attendees at various public meetings on this matter throughout the State.

We have assessed all verbal, written, and e-mail comments that have been received on this matter. This input has been tremendously helpful in helping the Department improve its Administrative Rules.

We have posted a newly revised copy of the proposed rules on our website (http://hawaii.gov/dlnr/occl/), and have highlighted the various sections that have been further changed as a result of this process. For your ease of review, we have highlighted the sections that were changed in *aqua blue*, as well as *italics*. You may wish to compare this amended version of the proposed rule with the first draft that was the subject of all of the public hearings. Both drafts have been posted on our website so you can compare them.

The purpose of the letter is to provide you with access to these documents on our website, to provide you with a general discussion of many of the changes that have been made as a result of yours and other comments, and to inform you of when the proposed amended rule will be scheduled for decision-making by the Board of Land and Natural Resources (BLNR). This letter is not a point-by-point discussion of every comment contained in your comment letter. If there are changes that you do not like, if you feel that your comments or concerns have not been addressed, you may testify on this matter at the regular BLNR meeting in which this matter will be scheduled for decision-making. Prior to the BLNR meeting on this matter, a staff report will be posted on the Department’s website that will discuss ALL of the changes proposed.

EXHIBIT 2
§13-5-2 Definitions

Further refined the definition of “Accessory use” to ensure that it is subordinate to the principle use found on the same and not an abutting property.

Reduced the allowable size of a “Cabin” to 600 square feet. Also stipulated that it cannot be used for commercial purposes.

Corrected the definition of “Historic property” to make it consistent with Chapter 6E-1, Hawaii Revised Statues (HRS).

Changed the definition of “Invasive plant” to “Invasive species” as found in statute under §520A-2, HRS. This definition will support the Department’s efforts to remove invasive plants and animals from the State’s natural areas.

Added or refined definitions for “Minor alteration,” “Moderate alteration,” and “Major alteration” to clarify under what circumstances and permit levels (e.g., B-1, C-1, or D-1) these uses can be undertaken in the Conservation District.

Defined “Minor repair” to clarify under what circumstances such repairs can be undertaken without a permit (e.g., A-1). Also included language to clarify that any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with §183-44, and §183B-2 HRS.

Refined “Public purpose use” to clarify that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as “Renewable energy facilities.” However, we have stipulated that an independent non-governmental public utility regulated utility may be considered a public purpose use under the definition of public purpose use.

Refined the definition of “Shelter” to include a maximum floor area of 600 square feet.

Added additional features to “Topographical features” such as “unimproved roads” and “trails.”

Modified the definition of “Transient rental” to indicate that a transient rental is a single family residence or structure used for rental purposes for less than one hundred eighty consecutive days.

General Provisions

§13-5-6

Under “Penalty,” restored language that requires violations to be resolved prior to filing for a Conservation District Use Application (CDUA).
§13-5-7

Under “Nonconforming uses and structures,” added language to clarify that the repair of structures shall be subject to development standards set forth in this chapter (e.g., shoreline setbacks, maximum developable area, etc.), and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification.

Under criteria for determining subzones, changed the word “may” back to “shall” which is how it appears in the original rule.

Under criteria for determining subzone boundaries, it has been clarified that property metes and bounds needs to be identified when a subzone boundary follows a property boundary.

§13-5-22 Identified Uses, Protective Subzone

Removal of Invasive Species: Further modified this section to provide for the removal of invasive species (not just invasive plants as previously proposed). Included language that the use of herbicides and bio-controls must be in accordance with state and federal laws. Removed any references to invasive species lists, as this is confusing. Will rely on DLNR resource managers, field specialists, and existing authorities to determine what types of invasive species may be removed within the conservation district. Also changed “natural or cultural” to “natural and cultural.”

Public Purpose Use: Included a section for new Site Plan Approval for the installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers. Clarified that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as “Renewable energy facilities.” However, it is stipulated that an independent non-governmental public utility regulated utility may be considered a public purpose use under the definition of public purpose use.

Structures and Land Uses, Existing: Revised language to be consistent with definition of “Minor repair” and to indicate under which circumstances minor repair, maintenance, and operation to existing structures and uses can be conducted. Also clarified that “minor alteration” of existing structures and uses requires a Site Plan Approval. “Minor alteration” is defined in the rules as an alteration that does not result in more than a ten percent increase in the size of the structure, facility, or use.

Placement or Reconstruction of Nonconforming Structures: Clarified that only a single family residence can be replaced via a Site Plan Approval. Also stipulated that such replacement is subject to development standards set forth in the rules, such as shoreline setback, shoreline certification, and other requirements as applicable. The explanation for this change is that while there may be circumstances in which the rules may not allow for the replacement of nonconforming structures or uses after they are destroyed or removed, the Department has no desire to completely divest a homeowner from the continued use of their property for residential purposes, where the subzone might otherwise prohibit such use after the structure is destroyed.
**Power Generation from Renewable Resources:** Clarified that geothermal and biomass may be proposed as a use in the conservation district. Also clarified that renewable energy projects, shall be “expedited in the application review and decision-making process,” rather than “given preference,” as was previously proposed and criticized.

**Land and Resource Management:** Revised the language to include invasive plant control, clearing of understory, out-planting of native or endemic plants, and invasive aquatic organism control. Included a provision that small ex-closure fences can be used to protect single plant or small native wildlife communities (less than one acre). Also included language that allows the Department or BLNR to require higher level permits if necessary. Also, under erosion control, excluded shoreline erosion control structures, which are handled as a Board Permit under §13-5-22 (P-15) of the rules.

**Shoreline Erosion Control:** Clarified that an application for this use must show that: (1) the applicant would be deprived of all reasonable use of such land or building without the permit; and (2) public facilities (e.g. public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g. relocation); and (3) the use will not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. This use requires a shoreline certification.

**§13-5-23 Identified Uses, Limited Subzone**

**Landscaping:** Under all categories of permits for landscaping, revised language to qualify that if herbicides are used, it must be in accordance with state and federal laws and that the introduction of invasive species is prohibited.

**§13-5-24 Identified Uses, Resource Subzone**

**Wilderness Camp:** Clarified that a wilderness camp can be for profit or non-profit. Clarified that overnight accommodations are in tents and that facilities may include only one meeting shelter not to exceed 600 square feet.

**Camp Site:** Deleted this identified use from the rules. The explanation is that such facilities can have potentially significant impacts and might be better suited for other state land use districts.

**Botanical Gardens, Private Parks, and Nature Centers:** Revised language to clarify that such facilities can have not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet.

**§13-5-30 Permits Generally**

Clarified that in addition to a Management Plan, a Comprehensive Management Plan may be required. Also added language that encourages applicants to seek a determination from the Department on the type of permit required for a land use.
§13-5-31 Permit Applications

Clarified that the only application requirement that can be waived under this provision is a shoreline certification. No other application requirements can be waived under this provision. Shoreline certification application requirement requires a waiver provision because not all uses occur near the shoreline in the Conservation District. Shoreline certifications can only be waived when the applicant can provide evidence to the satisfaction of the Department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant’s property, elevation, and the history of coastal hazards in the area, and the proposed activities will not adversely affect the beach process or interfere with public access or public views to and along the shoreline. This recommendation must be based on a report written by a qualified professional consultant.

§13-5-35 Emergency Permits

Deleted the word “designee” from part (a) so that only the Chairperson can authorize an emergency permit. Also removed the word “designee” from the definition of Emergency. Included language requiring “contingencies for removal methods (e.g., removal of the temporary emergency measures), estimates for the duration of the emergency measures, and future response plans.” In addition, removed vague language that could have allowed the emergency measures to remain in place indefinitely. Inserted new language that clarifies that the issuance of emergency permits does not apply to an agency of the county, state, or federal government, or an independent non-governmental public utility regulated utility conducting repair, maintenance or operation for a public purpose use, which shall have a letter (A) identified land use designation. The reason for this is that the Department does not wish to constrain a public utility from restoring a critical public utility in an emergency situation that would have otherwise required an emergency permit, provided that the utility company provides a post-emergency repair report to the Department within thirty days of the repair work. Removed language that could allow the enlargement of structures or uses that are being repaired or reconstructed in the wake of a natural disaster. Added language providing that structures and uses damaged as a result of natural disasters may be repaired or reconstructed in conformance with §13-5-22 (P-8) of the rules. This ensures consistency throughout the rules for the repair and reconstruction of all structures that are either damaged or destroyed as a result of natural hazards, voluntary destruction, or other means. In addition, stipulated that the public utility, or agency of the county, state, or federal government must provide the Department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

§13-5-39 Management Plans

Added new language allowing the Department or BLNR to require the preparation of a Comprehensive Management Plan, and restored language that requires annual reporting requirement for all management plans. Clarified that a management plan must be approved simultaneously with the permit (e.g., CDUP), and added a management plan requirement to a number of the previously identified and newly proposed identified uses.
Exhibit 4

The Department had previously suggested that an applicant could potentially apply for an additional 2,000 square feet of maximum developable area (MDA). This has been deleted. The proposed rule already provides for a deviation in MDA of up to 15 percent, as approved by the BLNR. Thus, all development, whether the primary residence, decks, and pools, must be contained within the MDA, with the possibility of a 15 percent deviation as approved by the BLNR.

Revised “Maximum height limit” to “Maximum allowable building envelope.” It is believed that a “buildable envelope approach” rather than a "maximum height limit" approach would be better and would reduce impacts on natural topography and view planes.

Thank you for your interest in this process. For your information, this matter will be scheduled for decision-making by the Board of Land and Natural Resources (BLNR) at one of the two BLNR meetings in November 2010. Please contact me at (808) 587-0377 if you have any questions. Please visit our website at http://hawaii.gov/dlnr/occl/.

Sincerely,

[Signature]

Samuel J. Lemme, Administrator
Subzone Maps
This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Conservation District

USGS Quadrangle H-7:

Kailua-Kona

Exhibit A - Proposed Subzone Designations: Kailua, Hawaii
Exhibit B - Proposed Subzone Designations: Puu Pohakuola, South Kona, Hawaii.
This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretation or any other use beyond the limits of its data.

Conservation District

Proposed General

Proposed Limited

Proposed Protective

Proposed Resource

Proposed Special

USGS Quadrangle H-21:

Waiakoloa

Makaha

Kahua

Mokuleia

Exhibit C - Proposed Subzone Designations: Papa, South Kona, Hawaii

TMK (5) 8-9-100-002
Exhibit D - Proposed Subzone Designations: Kau, Hawaii

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.
This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit E - Proposed Subzone Designations: Wailuku, Maui

Waihee

USGS Quadrangle M-5:

TMK (2) 3-2-06:001
This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.
Exhibit G - Proposed Subzone Designation: Kaupo, Maui

The map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.
Exhibit H

Proposed Subzone Designations: Kaena, Oahu

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.
Exhibit I - Proposed Subzone Designations: Honolulu, Oahu

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.
Exhibit J - Proposed Subzone Designations: Kailua & Waimanalo, Oahu

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of this data.
DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-5
Hawaii Administrative Rules

August 12, 2011
HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

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§13-5-2 Definitions
§13-5-3 Appeals
§13-5-4 Mediation
§13-5-5 Amendments
§13-5-6 Penalty
§13-5-7 Nonconforming uses and structures

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§13-5-11 Protective (P) subzone
§13-5-12 Limited (L) subzone
§13-5-13 Resource (R) subzone
§13-5-14 General (G) subzone
§13-5-15 Special (S) subzone
§13-5-16 Designation of subzones
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5-1
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Historical Note: This chapter is based substantially upon chapter 13-2. [Eff 6/22/81; am and comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R 07/01/94]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-5-1  Purpose. The purpose of this chapter is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-1)

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§13-5-2  Definitions. As used herein unless otherwise provided:
"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or fresh water environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Average annual coastal erosion rate" means the average annual rate of shoreline change as determined by the coastal erosion study performed under this chapter.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Cabin" means a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads. The cabin cannot be used as a principal residence, for rental, or any commercial purposes.

"Chairperson" means the chairperson of the board of land and natural resources.

"Clearing" means the removal of vegetation, with no ground disturbance.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the shoreline change reference feature. The coastal erosion study shall be carried out by a qualified professional consultant following procedures described in the Hawaii Coastal Hazard Mitigation Guidebook, or other credible publications that provide similar procedures.

"Coastal high hazard area" means an area where wave action or high velocity water or both can cause structural damage in the hundred year flood, primarily
defined as an area where a three foot or greater wave height could occur (VE Zone), in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; provided, however, that the use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables and other accessory structures for electronic, radio frequency, or microwave transmissions or receptions.

"Comprehensive management plan" means a comprehensive plan to manage multiple uses and activities in order to protect and conserve natural and cultural resources.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Departmental permit" means a permit approved by the chairperson.

"Emergency" means an imminently dangerous situation that poses a substantial threat to public health, safety, and welfare as declared by the chairperson, or deputy director of the department in the absence of the chairperson.

"Flood zone" means those areas in the "V" or "A" zones that require mandatory flood insurance, in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.
"Grading" means the excavation of earth material, fill, or combination thereof.

"Grubbing" means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old, or otherwise defined in section 6E-1, HRS.

"Imminently threatened" means an inhabited dwelling, essential cultural or natural resource, or other (non-movable) major structure or public facility that is in danger of destruction or severe damage due to natural hazards. For coastal erosion, "imminently threatened" shall mean a distance of twenty feet or less from an actively eroding shoreline or erosion that will threaten the structure in less than six months.

"Invasive species" means any terrestrial or aquatic plant or animal that can directly or indirectly injure or cause damage to the environment, native species, natural or cultural resources, navigation, or to the public health, safety and welfare.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Land use" means:

(1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;

(2) The grading, removing, harvesting, dredging,
mining, or extraction of any material or natural resource on land;

(3) The subdivision of land; or

(4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use.

"Management plan" means a project or site based plan to protect and conserve natural and cultural resources.

"Minor alteration" means work done to an existing structure, facility, or use that results in a ten per cent or less increase in the size of the structure, facility, or use.

"Minor repair" means routine work done to an existing structure, facility, use, land, and equipment, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.

"Moderate alteration" means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty per cent increase, in the size of the structure, facility, or use.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block, or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.
"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Public purpose use" means not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty percent of the replacement value of the structure or use.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Shelter" means a structure used for sheltering from the elements, with a maximum floor area of six hundred square feet.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge
of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, HRS.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the shoreline seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the shoreline seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district that is identified by boundaries and resource characteristics pursuant to this chapter.

"Temporary variance" means an exception to zoned use, where good cause is shown and where the proposed variance is for a use determined to be in accordance with good conservation practices.

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as, but not limited to, mountains, hills, valleys, rivers, gulches, streams, wetlands, shorelines, beaches, submerged lands, roads, unimproved roads, trails, and other such features.

"Transient rental" means the use of a single-family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

"Transportation system" includes the means to transport people, animals, or goods or any combination
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d委托从一个地方到另一个地方，包括道路，港口，空运，以及相关的设施。

"水系统"意味着网络的管道，存储，泵，水源，和其他附件（例如，沟渠，通道，运河，水槽，喷头，御水线，排水系统等，所有都构成表面水收集系统）以提供给水用户。水源可能包括引水，蓄水池，或井，且可能包括水处理设施以实现必要的水质标准。

"荒野区域"意味着一个被指定出于的区域，该区域有着多样性且丰富动植物，地质构造，或两者，主要未受到人类影响，在其中的非土著植物和动物的引进，矿产，放牧，动植物的去除，植被的移除，露营，和道路或结构的建设是禁止的或受限制的。【生效12/12/94；修正和完成】(主: HRS §183C-3) (修: HRS §183C-2) DEC 5 2011

§13-5-3 上诉。任何最后决定的部门或委员会基于本章的决定可能会被提起上诉到在该土地所在区域的巡回法院。【生效12/12/94；修正和完成】(主: HRS §183C-3) (修: HRS §183C-8) DEC 5 2011

Note: See chapter 91, Hawaii Revised Statutes and Hawaii Rules of Civil Procedure.

§13-5-4 仲裁。在收到请求或由委员会主动发起的请求时，委员会可能会要求提出请求者和所有受影响的人员参加调解。所有请求处理相同的主题将汇总在一个单个
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mediation. [Eff 12/12/94; am and comp (Auth: HRS §183C-3) (Imp: HRS §183C-3)
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§13-5-5 Amendments. (a) Whenever any landowner or government agency whose property is directly affected by this chapter makes an application to change the boundaries or identified land uses of any subzone, rezone a subzone, establish a new subzone with certain identified land uses or when a person seeks to otherwise amend this chapter, or where the board proposes to make a change or changes itself, the change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

(b) Procedures for amending this chapter are prescribed in section 183C-4, HRS, as amended and chapter 13-1, subchapter 3. [Eff 12/12/94; am and comp (Auth: HRS §183C-3) (Imp: HRS §183C-4)
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§13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a presiding officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

(e) Any terms or conditions imposed by the board for a violation of this chapter shall be recorded with the deed instrument.
§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.

(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.

(c) The repair of structures shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, shoreline setback, and shoreline certification.

(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter, except as provided under section 13-5-22(p-8).

(e) Repairs or maintenance of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964 or at the time of its inclusion into the conservation district.

(f) The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant. [Eff and comp ]

(Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)
§13-5-10  **Subzones; generally.** (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone Designations: August 12, 2011", which is located at the end of this chapter and made a part of this section. Subzone designations of conservation district lands are delineated on maps on file with the department.

(b) Lands in the conservation district are classified into one of the following subzones:

1. Protective;
2. Limited;
3. Resource;
4. General; or
5. Special.

(c) Land uses identified in a subzone shall be restricted to those uses provided for in this chapter. [Eff 12/12/94; am 2/1/99; am 1/28/02; am 4/27/02; am 4/10/03; am 07/28/06; am 4/7/2011; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-11  **Protective (P) subzone.** (a) The objective of this subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

(b) The (P) subzone shall encompass:

1. Lands and waters necessary for protecting watersheds, water sources, and water supplies;
2. Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance;
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(3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and

(4) All land encompassing the Northwestern Hawaiian islands except Midway island.

(c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5-22. [Eff 12/12/94; am and comp HRS §183C-3) (Imp: HRS §183C-4) DEc - 5 2011]

§13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The (L) subzone shall encompass:

(1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal government; and

(2) Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity, or landslides, or which have a general slope of forty per cent or more.

(c) Identified land uses in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff 12/12/94; am and comp HRS §183C-3) (Imp: HRS §183C-4) DEc - 5 2011]

§13-5-13 Resource (R) subzone. (a) The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

(b) The (R) subzone shall encompass:

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
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(2) Lands suitable for growing and harvesting of commercial timber or other forest products;

(3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

(5) Lands and state marine waters seaward of the shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

(c) Identified land uses in the resource (R) subzone are restricted to those listed in section 13-5-24. [Eff 12/12/94; am and comp]

§13-5-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

(b) The (G) subzone shall encompass:

(1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and

(2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

(c) Identified land uses in the general (G) subzone are restricted to those listed in section 13-5-25. [Eff 12/12/94; am and comp]

§13-5-15 Special (S) subzone. The objective of this subzone is to provide for sustainable use of areas possessing unique developmental qualities that complement the natural resources of the area. The special subzones are listed in Exhibit 2, entitled
§13-5-16 Designation of subzones. (a) A landowner or government agency whose property is directly affected by this chapter may apply to the department to establish a new subzone, rezone an existing subzone, or change a boundary or identified land uses of a subzone. The board can initiate action under this section.

(b) The application shall include the following:

(1) Name of applicant;
(2) Name of landowner(s), if different from applicant, or any person or entity with the landowner's written consent;
(3) Property description of land being affected by tax map key parcel (metes and bounds may be required when the department deems necessary);
(4) Map of area drawn to scale;
(5) Background of applicable land use commission petition, including a final decision and order (for new subzone designations);
(6) Existing subzone classification or land use zoning designations of subject property and surrounding properties;
(7) Geographic characteristics:
   (A) General topography, geologic conditions, and slope; and
   (B) Soils types and productivity rating (e.g., Agricultural Lands of Importance to the State of Hawaii (ALISH) and proposed Land Evaluation and Site Assessment (LESA));
(8) Climatic characteristics (e.g., rainfall, predominant wind direction annually);
(9) Hydrological characteristics (e.g., surface water, groundwater, drainage patterns) and applicable water area classification, if
applicable, (e.g., restricted watershed, groundwater recharge area);

(10) Biological (flora and fauna) characteristics (e.g., vegetation, wildlife, specific identified species, or habitat of identified threatened or endangered species);

(11) A list of historic properties in the project area;

(12) Scenic or visual resources (e.g., significant view planes and geological features);

(13) Infrastructure evaluations (e.g., roads and access, water systems, sewage systems, drainage systems, recreational facilities, community population, income and household characteristics, and utilities availability);

(14) Review of property characteristics in relation to subzone objectives;

(15) Evaluation and recommendation of appropriate subzone designation and boundary characteristics; and

(16) Application fee of $500 and public hearing fee of $250 plus publication costs.

(c) The change in boundary or land use shall be put in the form of a proposed administrative rule change by the applicant. Designation of subzones shall be processed as an administrative rule amendment, and, as such, shall be in accordance with departmental rules and applicable statutes, and shall include a public hearing.  [Eff 12/12/94; am and comp 2011]

(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

Note: See section 13-5-5.

§13-5-17 Boundary determinations; criteria. (a) Prior to the department receiving for processing any application for a permit, if the applicant's proposed land use lies within fifty feet of a subzone boundary, the applicant shall first notify the department of the intended use and seek a determination of the precise boundary of the subzone with respect to the parcel in
question. Applications shall be accompanied by a fee of $100.

(b) The notification shall include all relevant information, including topographical maps, subzone maps, and tax maps.

(c) The department shall have thirty days within which to issue its determination, after which the party seeking the permit is free to make application.

(d) The applicant can appeal the departmental determination to the board. The board shall resolve any uncertainty regarding the location of the subzone boundary and the board's determination shall be final.

(e) In all cases, the determination of subzone boundaries shall utilize the following criteria:

(1) The boundary shall follow natural or fixed physical features;

(2) The boundary shall be defined by a series of straight lines;

(3) Where coterminous with forest reserve boundaries, the boundary shall be determined by metes and bounds descriptions of the forest reserve;

(4) Where a subzone boundary follows an elevation, the boundary shall be determined by reference to topographical maps or other evidence that may be used to establish elevation; or

(5) Where the subzone boundary follows a property boundary, the boundary shall be defined by the metes and bounds of the property boundary. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

SUBCHAPTER 3

IDENTIFIED LAND USES AND REQUIRED PERMITS

§13-5-22 Identified land uses in the protective subzone. (a) If a proposed use in the protective subzone is not presented below, an applicant may request a temporary variance, petition the land use
commission for a land use district boundary change, or initiate an administrative rule amendment to have the proposed use added to the identified land uses.

(b) Identified land uses in the protective subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

(3) Identified land uses beginning with letter (C) require a departmental permit; and

(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

P-1 DATA COLLECTION

(A-1) Basic data collection, research, education, and resource evaluation that is temporary (less than thirty days) and results in negligible ground disturbance (small gages or monitoring devices) and does not involve a land use (e.g., botanical, archaeological, faunal surveys).

(B-1) Basic data collection, research, education, and resource evaluation that results in a minor disturbance to natural resources or land (e.g., corings, excavations, etc.).

(C-1) Basic data collection, research, education, and resource evaluation that involves a land use causing ground disturbance from installation of equipment (e.g., meteorological towers, radio towers, or test wells).

(D-1) Data collection, research, education, and resource evaluation that involves permanent facilities or structures larger than 500 square feet or a land use causing significant
ground disturbance or impact to a natural resource.

P-2 FISHPONDS

(D-1) Fishpond reconstruction or construction of a new fishpond. A management plan approved simultaneously with the permit, is also required.

P-3 KULEANA LAND USES

(D-1) Agriculture and a single family residence, if applicable, when such land use was historically, customarily, and actually found on the property. Agriculture means the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, and subsistence livestock.

P-4 REMOVAL OF INVASIVE SPECIES

(A-1) Removal of invasive species including chemical and mechanical control methods, not to exceed one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in no, or only minor ground disturbance. The department or board reserves the right to require site plan approval, departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the State. For existing developed lots, compliance with
section 13-5-23(L-2) satisfies the requirements of this section.

(B-1) Removal of invasive species including chemical and mechanical control methods, in an area greater than one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in no, or only minor ground disturbance. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural and cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the State. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.

P-5 MOORINGS AND AIDS TO NAVIGATION

(C-1) Moorings and aids to navigation. This requirement is satisfied by obtaining a permit pursuant to chapter 200, HRS.

P-6 PUBLIC PURPOSE USES

(B-1) Installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers.

(D-1) Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are
not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

P-7 SIGNS

(B-1) Signs, including safety signs, danger signs, no trespassing signs, and other informational signs. No signs shall exceed twelve square feet in area and shall be non-illuminated. All signs shall be erected to be self-supporting and be less than or equal to eight feet above finished grade.

P-8 STRUCTURES AND LAND USES, EXISTING

(A-1) Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with section 183-44 and 183B-2, HRS.

(B-1) Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance.

(B-2) Replacement or reconstruction of existing structures and facilities under a previously approved conservation district use permit.
where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced. Reconstruction or replacement of structures and facilities shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, shoreline setback, and shoreline certification. No enlargement of the structures and facilities is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct structures and facilities within two years of the demolition or destruction of structures and facilities.

(B-3) Replacement or reconstruction of an existing nonconforming single family residence, where the new single family residence will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the single family residence replaced. Reconstruction or replacement of any single family residence shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, shoreline setback, and shoreline certification. No enlargement of the single family residence is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct a single family residence within two years of the demolition or destruction of the single family residence.

(C-1) Moderate alteration of existing structures, facilities, uses, and equipment.
(D-1) Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required.

Note: For nonconforming uses, see section 13-5-7.

P-9 STRUCTURES, ACCESSORY

(B-1) Construction or placement of structures accessory to existing facilities or uses.

P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY

(C-1) Consolidation and resubdivision into an equal number of lots that does not result in increased density.

(C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone.

(D-1) Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone.

P-11 TREE REMOVAL

(A-1) Removal of dead or diseased trees for non-commercial purposes.

(A-2) Removal of trees that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the trees.

(B-1) Selective removal of individual trees (except that a permit is not required for tree removal allowed under P-4 (A-1) and P-11 (A-
hydroelectric, wind generation, ocean thermal energy conversion, wave, solar, geothermal, biomass, and other renewable power generation facilities from natural resources; includes generation, conversion, and transmission facilities and access roads. Renewable energy projects shall minimize impacts to natural, cultural, and recreational resources, and shall be expedited in the application review and decision-making process. A management plan approved simultaneously with the permit, is also required.

P-13 LAND AND RESOURCE MANAGEMENT

(A-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area less than one acre.

(A-2) Planting of native and endemic plants and fence maintenance. New fence ex-closures for small native plants or wildlife communities, in an area less than one acre. The department or board reserves the right to require a site plan approval or a departmental permit or a board permit if it is determined that the proposed action may cause secondary impacts on natural or cultural resources.

(A-3) Clearing of sand or silt from stream mouths, canals, drainage pipes, or other features for
state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.

(B-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources, or the surrounding community.

(B-2) Planting of native and endemic plants and fence maintenance. New fence ex-closures for native plants or small native wildlife communities, in an area greater than one acre. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources.

(B-3) Clearing land for fire pre-suppression and prevention, under a fire buffer plan approved by the department.

(C-1) Installation of a new fence or shelter.

(C-2) Erosion control, including replanting of trees and groundcover, placement of biodegradable or synthetic materials for slope stabilization, construction of minor swales and check dams, not to include shoreline erosion control structures.

(D-1) Cabin.

(D-2) Road construction and major erosion control projects.

(D-3) Water systems.
P-14 TELECOMMUNICATIONS

(B-1) Installation of new antenna(s) on an existing telecommunications tower, including support equipment.

(C-1) Construction of a new tower at an existing site that is lower than existing towers and does not result in adverse visual impacts, and that is part of a site and system master plan.

(D-1) New telecommunications facility. A management plan approved simultaneously with the permit, is also required.

P-15 SHORELINE EROSION CONTROL

(D-1) Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification.

P-16 BEACH RESTORATION

(C-1) Sand placement not to exceed 10,000 cubic yards per occasion, with minor sand retention structures, extraction of sand from submerged lands, and transportation or transmission of
sand from an offshore extraction site to the replenishment site.

(D-1)
Sand placement in excess of 10,000 cubic yards including structures necessary to retain sand, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.
[Eff 12/12/94; am and comp (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-23 Identified land uses in the limited subzone. (a) In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

(3) Identified land uses beginning with letter (C) require a departmental permit; and

(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

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L-1 AGRICULTURE

(C-1) Agriculture, within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.

(D-1) Agriculture, within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan approved simultaneously with the permit, is also required.

(D-1) Agricultural water systems, including pipelines.

L-2 LANDSCAPING

(B-1) Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

(C-1) Landscaping (including clearing, grubbing, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of less than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.
Landscaping (including clearing, grubbing, grading, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of or more than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

SINGLE FAMILY RESIDENCE

A single family residence in a flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter.

WILDERNESS CAMP

Establishment providing educational and recreational programs for youth and adult groups, including campsites for overnight accommodations in tents. Facilities may include unimproved access road or trail(s), portable restrooms, and one meeting shelter not to exceed 600 square feet. A management plan, approved simultaneously with the permit, is also required. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)
listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22 or 13-5-23, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

1. Identified land uses beginning with letter (A) require no permit from the department or board;
2. Identified land uses beginning with letter (B) require a site plan approval by the department;
3. Identified land uses beginning with letter (C) require a departmental permit; and
4. Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

R-1 AQUACULTURE

(D-1) Aquaculture under a management plan, approved simultaneously with the permit, is also required.

R-2 ARTIFICIAL REEFS

(D-1) Artificial reefs.

R-3 ASTRONOMY FACILITIES

(D-1) Astronomy facilities under a management plan approved simultaneously with the permit, is also required.
R-4 COMMERCIAL FORESTRY

(D-1) Sustainable commercial forestry under a management plan, approved simultaneously with the permit, is also required.

R-5 MARINE CONSTRUCTION

(A-1) Maintenance dredging not to exceed the dredging limits for the area as previously authorized and dredged.

(D-1) Dredging, filling, or construction on submerged lands, including construction of harbors, piers, marinas, and artificial reefs.

R-6 MINING AND EXTRACTION

(D-1) Mining and extraction of any material or natural resource under a management plan approved simultaneously with the permit, is also required.

R-7 SINGLE FAMILY RESIDENCE

(D-1) A single family residence that conforms to design standards as outlined in this chapter.

R-8 BOTANICAL GARDENS, PRIVATE PARKS, AND NATURE CENTERS

(D-1) For a profit or non-profit establishment featuring plants or other natural resources and offering tours or other nature-based, outdoors educational and recreational activities, primarily during daylight hours. Facilities may include access road, restrooms, shelters, and not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet, under a management plan approved simultaneously with the permit, is also
§13-5-25 Identified land uses in the general subzone. (a) In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective, limited, and resource subzones also apply to the general subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, 13-5-23, or 13-5-24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with the letter (A) require no permit from the department or board;

(2) Identified land uses beginning with the letter (B) require site plan approval by the department;

(3) Identified land uses beginning with the letter (C) require a departmental permit; and

(4) Identified land uses beginning with the letter (D) require a board permit and where indicated, a management plan.

G-1 OPEN SPACE

(D-1) Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.
(D-1) Land uses not otherwise identified in section 13-5-22, 13-5-23, or 13-5-24, which are consistent with the objectives of the general subzone. [Eff 12/12/94; am and comp DEC - 5 2011] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

SUBCHAPTER 4

PROCEDURES FOR PERMITS, SITE PLAN APPROVALS, AND MANAGEMENT PLANS

§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, or comprehensive management plans, and temporary variances. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson or a designated representative. If there is any question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.

(b) Unless provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

1. Departmental permit (see section 13-5-33);
2. Board permit (see section 13-5-34);
3. Emergency permit (see section 13-5-35);
4. Temporary variance (see section 13-5-36);
5. Site plan approval (see section 13-5-38); or
6. Management plan or comprehensive management plan (see section 13-5-39).
§13-5-30

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

(1) The proposed land use is consistent with the purpose of the conservation district;

(2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;

(3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable;

(4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;

(5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;

(6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;

(7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and

(8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria. [Eff 12/12/94; am and comp DEC - 5 2011 ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

Note: For regulation of activities in: State Parks; see Chapter 13-146. Forest Reserves; see Chapter 13-104.
§13-5-31 Permit applications. (a) Applications for all permits and approvals provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

(1) A draft or final environmental assessment, draft or final environmental impact statement, or proof of an exemption or request for an exemption from the chapter 343, HRS, process, as applicable;

(2) Associated plans such as location map, site plan, floor plan, elevations, and landscaping plans drawn to scale;

(3) The proposed land use shall address their relationship with county general plans and development plans;

(4) Any other information as determined by the department;

(5) Signature of the landowner;

(6) Applicable fees;

(7) A minimum of twenty copies (only one original copy required for site plan approvals) of the application and all attachments; and

(8) A shoreline certification. The department may waive a certified shoreline when the applicant can provide evidence to the satisfaction of the department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave
§13-5-31

inundation). Factors to be considered shall include but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, the history of coastal hazards in the area, and whether the proposed use will or will not adversely affect the beach process or interfere with public access or public views to and along the shoreline.

(b) For state and public lands, the State of Hawaii or government entity with management control over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel(s), the application shall be signed by landowners whose property interests constitute or exceed eighty-five per cent of the fee ownership of the subject parcel(s).

(c) Except for state-owned land, any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. For applications including state-owned land, the department shall review the application for completeness within sixty days from the date the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred eighty day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions
contained in section 13-5-42.

(e) No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana land as defined in this chapter:

(1) Deed of property;
(2) Land Commission Award (LCA) number;
(3) Land Patent Grant documentation;
(4) Documentation showing current ownership of the kuleana;
(5) Tax map key number;
(6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
(7) Identification of legal access to the kuleana; and
(8) Identification of uses to which the kuleana land was historically, customarily, and actually found on the particular lot including, if applicable, a single family residence. [Eff 12/12/94; am and comp DEC - 5 2011] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

§13-5-32 Fees. Each application shall be accompanied by the filing fees specified in this chapter. All fees shall be in the form of certified or cashier's check, and payable to the State of Hawaii. The application fee for state projects shall be waived. [Eff 12/12/94; am and comp DEC - 5 2011] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-33 Departmental permits. (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.
(b) In those applications whose identified land uses require a combination of board permit(s) and departmental permit(s), a board permit shall be required covering all of the proposed uses.
(c) The application for a departmental permit shall be accompanied by:
   (1) An application fee of $250; and
   (2) A public hearing fee of $250, plus publication costs, if applicable.
   (d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.
   (e) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:
      (1) Type of permit sought;
      (2) Applicant;
      (3) Location of affected land (by island, district, and tax map key number);
      (4) Preliminary environmental determination; and
      (5) A brief description of their proposed use, including specifically any proposed use of public lands.
   (f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:
      (1) The name and address of the requestor;
      (2) The departmental permit for which the requestor would like to receive notice of departmental determination; and
      (3) The date the notice was published in the OEQC bulletin.
The department is not obligated to notify any person of its determination who does not strictly comply with this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply
with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) The permit applicant or any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the use that their interest is so clearly distinguishable from that of the general public may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend, or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use or the public interest requires a board permit.

§13-5-34  Board permits.  (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:
§13-5-34

(1) The application fee which is equal to 2.5 percent of the total project cost, but no less than $250, up to a maximum of $2,500; and

(2) A public hearing fee of $250 plus publication costs, if applicable.

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-35 Emergency permits. (a) Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department. Further, the provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repair, maintenance, or operation for a public purpose use, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-emergency repair report describing the work that was conducted within thirty days of the date of the emergency repair.
§13-5-36

(b) Where a natural disaster has occurred, such as a hurricane, flood, tsunami, volcanic eruption, earthquake, fire, or landslide, damaged structures and land uses may be repaired or reconstructed in conformance with section 13-5-22 (P-8). The provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repairs or reconstruction of such structures and land uses for public purpose uses, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

(c) If there is a question regarding the legality of a land use or structure, the burden of proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in section 13-5-7.

(d) Repair and reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.

(e) The application fee for an emergency permit shall be waived. [Eff 12/12/94; am and comp DEC - 5 2011 ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-5, 183C-6)

§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:

(1) There are special and unique circumstances applying to the proposed land use at its particular location;

(2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and
§13-5-36

safety or that there are no other reasonable economic uses of the property;

(3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and

(4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.

(b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication thereafter shall be approved.

(c) Temporary variances require a board permit.

(d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.

(e) The application for temporary variance shall be accompanied by:

(1) An application fee of $250; and

(2) A public hearing fee of $250, plus publication costs, if applicable. [Eff 12/12/94; am and comp DEC-5-2011]

(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

§13-5-37 REPEALED

§13-5-38 Site plan approvals. (a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall be approved by the department before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of $50. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 133C-6)
§13-5-39 Management plan approvals. (a) Where required, management plans shall be submitted with the board permit application and shall include the requirements listed in Exhibit 3, entitled "Management Plan Requirements: August 12, 2011", which is located at the end of this chapter and made a part of this section.

(b) The department or board may require the preparation of a comprehensive management plan where it finds that further development may lead to significant natural, cultural, or ecological impacts within the conservation district. The geographic area, specific resources to be protected and conserved, and other content of a comprehensive management plan shall be determined by the department or board.

(c) An annual report to the department is required which shall include the status of compliance of the permit conditions and the implementation of land uses pursuant to the approved management plan schedule. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

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§13-5-40 Hearings. (a) Public hearings shall be held:

(1) On all applications for a proposed use of land for commercial purposes, (excluding site plan approvals);

(2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;

(3) On applications requiring a board permit in the protective subzone; and

(4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent
or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp

§13-5-41 Single family residences. (a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen per cent.

(b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.

(c) No single family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 12/12/94;
§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements listed in Exhibit 5, entitled "Fire Buffer Zone Standards: August 12, 2011", which is located at the end of this chapter and made a part of this section. [Eff and comp Dec 5 2011 ] Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use permitted within the conservation district is subject to the following standard conditions:

(1) The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

(2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

(3) The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;

(4) The permittee shall comply with all applicable department of health administrative rules;

(5) The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;
§13-5-42

(6) The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

(7) Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

(8) Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;

(9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

(10) The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

(11) In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be
modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

(12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;

(13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;

(14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

(15) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;

(16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;

(17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

(18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;

(19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;

(20) Animal husbandry activities shall be limited to sustainable levels in accordance with good
§13-5-42

soil conservation and vegetation management practices;

(21) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;

(22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;

(23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

(24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;

(25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

(26) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.
(c) Deviation from any of the conditions, standards, or criteria provided in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

1. The deviation is necessary because of the lack of practical alternatives;
2. The deviation shall not result in any substantial adverse impacts to natural resources;
3. The deviation does not conflict with the objective of the subzone; and
4. The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before the deviation occurs constitutes cause for permit revocation. [Eff 12/12/94; am and comp DEC 5 2011]

Auth: HRS §183C-3) (Imp: HRS §§183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline.

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.
§13-5-43

(f) Temporary variances are excluded from this provision. [Eff 12/12/94; am and comp (AUTH: HRS §183C-3) (IMP: HRS §183C-3)]

§13-5-44 Revocation of permits. In any case where a permittee has failed to comply with one or more of the conditions contained in a permit, the board may direct the chairperson to revoke the permit. [Eff 12/12/94; am and comp (AUTH: HRS §183C-3) (IMP: HRS §§183C-3, 183C-7)]

§13-5-45 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected.” [Eff 12/12/94; am and comp (AUTH: HRS §183C-3) (IMP: HRS §183C-3)]
DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to and compilation of Chapter 13-5, Hawaii Administrative Rules, on the Summary Page dated August 12, 2011 were adopted on August 12, 2011, following public hearings (twelve occasions) held on Kauai, Oahu, Molokai, Maui, Kailua-Kona, Hawaii and Hilo, Hawaii. Notice of the public hearings were published by the Honolulu Star Advertiser; the Garden Island; Maui News Today; the Hawaii Tribune-Herald; and West-Hawaii Today on: July 7, 14, & 21, 2010, December 25, 2010 & January 1 & 8, 2011.

The amendments and compilation shall take effect ten days after filing with the Office the Lieutenant Governor.

/s/ William J. Aila  
WILLIAM J. AILA, Jr.  
Chairperson, Board of  
Land and Natural Resources

APPROVED:

/s/ Neil Abercrombie  
NEIL ABERCROMBIE  
Governor  
State of Hawaii

Dated: November 23, 2011

November 23, 2011  
Filed

APPROVED AS TO FORM:

/s/ Pamela K. Matsukawa  
Deputy Attorney General
Chapter 13-5
Exhibit 1

Exhibit 1
Subzone Designations: August 12, 2011

(1) "H-1, Makalawena," Hawaii, June 4, 1978
(2) "H-2, Keahole Point," Hawaii, August 23, 1985
(3) "H-3, Mahukena," Hawaii, August 23, 1985
(4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
(5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
(6) "H-6, Kiholo," Hawaii, August 23, 1985
(7) "H-7, Kailua," Hawaii, August 12, 2011
(8) "H-8, Kealakekua," Hawaii, June 4, 1978
(9) "H-9, Honau,au," Hawaii, December 14, 2001
(10) "H-10, Kauluoa Point," Hawaii, June 4, 1978
(11) "H-11, Milolii," Hawaii, August 23, 1985
(12) "H-12, Manuka Bay," Hawaii, June 4, 1978
(13) "H-13, Hawi," Hawaii, June 4, 1978
(14) "H-14, Kawaihae," Hawaii, June 4, 1978
(15) "H-15, Puu Hinai," Hawaii, June 4, 1978
(16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
(17) "H-17, Hualalai," Hawaii, June 4, 1978
(18) "H-18, Puu Lehua," Hawaii, June 4, 1978
(19) "H-19, Kaunale," Hawaii, June 4, 1978
(20) "H-20, Puu Pohakuloa," Hawaii, August 12, 2011
(21) "H-21, Papa," Hawaii, August 12, 2011
(22) "H-22, Pohue Bay," Hawaii, August 23, 1985
(23) "H-23, Puu Hou," Hawaii, June 4, 1978
(26) "H-26, Nohoanohae," Hawaii, June 4, 1978
(27) "H-27, Keamuku," Hawaii, June 4, 1978
(28) "H-28, Naohueleehua," Hawaii, August 23, 1985
(29) "H-29, Puu O Uo," Hawaii, August 23, 1985
(30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
(31) "H-31, Arika Cone," Hawaii, June 4, 1978
(32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
(33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
(34) "H-34, Ka Lae," Hawaii, June 4, 1978
Chapter 13-5
Exhibit 1

(36) "H-36, Makahalau," Hawaii, June 4, 1978
(37) "H-37, Ahumoa," Hawaii, June 4, 1978
(38) "H-38, Puu Koli," Hawaii, June 4, 1978
(40) "H-40, Mauna Loa," Hawaii, June 4, 1978
(41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978
(42) "H-42, Punaluu," Hawaii, August 12, 2011
(43) "H-43, Naalehu," Hawaii, August 12, 2011
(44) "H-44, Honokaa," Hawaii, June 4, 1978
(45) "H-45, Umioka," Hawaii, June 4, 1978
(47) "H-47, Puu Oo," Hawaii, June 4, 1978
(49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
(50) "H-50, Wood Valley," Hawaii, June 4, 1978
(51) "H-51, Pahala," Hawaii, June 4, 1978
(52) "H-52, Kukaiau," Hawaii, June 4, 1978
(53) "H-53, Keanakolu," Hawaii, June 4, 1978
(54) "H-54, Puu Akala," Hawaii, June 4, 1978
(55) "H-55, Upper Piihonua," Hawaii, June 4, 1978
(56) "H-56, Kulani," Hawaii, June 4, 1978
(57) "H-57, Kilauea Crater," Hawaii, August 23, 1985
(58) "H-58, Kau Desert," Hawaii, June 4, 1978
(59) "H-59, Naliikakani Point," Hawaii, June 4, 1978
(60) "H-60, Papaaloa," Hawaii, October 22, 1993
(61) "H-61, Akaka Falls," Hawaii, November 23, 1987
(63) "H-63, Puu Makaala," Hawaii, June 4, 1978
(64) "H-64, Volcano," Hawaii, June 4, 1978
(65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978
(66) "H-66, Papaikou," Hawaii, June 4, 1978
(67) "H-67, Hilo," Hawaii, June 4, 1978
(68) "H-68, Mountain View," Hawaii, June 4, 1978
(69) "H-69, Kalalua," Hawaii, June 4, 1978
(70) "H-70, Kalapana," Hawaii, August 23, 1985
(71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
(72) "H-72, Pahoa North," Hawaii, June 4, 1978
(73) "H-73, Pahoa South," Hawaii, June 4, 1978
(74) "H-74, Kapoho," Hawaii, June 4, 1978
(75) "M-1, Honolua," Maui, June 4, 1978
(76) "M-2, Lahaina," Maui, June 4, 1978
(77) "M-3, Olowalu," Maui, June 4, 1978
(78) "M-4, Kahakuloa," Maui, June 4, 1978
(79) "M-5, Wailuku," Maui, August 12, 2011
(80) "M-6, Maalaea," Maui, June 4, 1978
(81) "M-7, Paia," Maui, June 4, 1978
(82) "M-8, Puu O Kali," Maui, June 4, 1978
(83) "M-9, Makena," Maui, June 4, 1978
(84) "M-10, Haiku," Maui, August 12, 2011
(85) "M-11, Kilohana," Maui, August 23, 1985
(86) "M-12, Lualailua," Maui, June 4, 1978
(87) "M-13, Keanae," Maui, June 4, 1978
(88) "M-14, Nahiku," Maui, June 4, 1978
(89) "M-15, Kaupo," Maui, August 12, 2011
(90) "M-16, Hana," Maui, August 23, 1985
(91) "M-17, Kipahulu," Maui, July 25, 1988
(92) "Mo-1, Ilio Point," Molokai, June 4, 1978
(93) "Mo-2, Molokai Airport," August 23, 1985
(94) "Mo-3, Kaunakakai," Molokai, August 23, 1985
(95) "Mo-4, Kamalo," Molokai, June 4, 1978
(96) "Mo-5, Halawa," Molokai, June 4, 1978
(97) "Lanai," June 4, 1978
(98) "Kahoolawe," June 4, 1978
(99) "0-1, Kaena," Oahu, August 12, 2011
(100) "0-2, Waianae," Oahu, December 13, 2002
(101) "0-3, Waimea," Oahu, January 27, 2011
(102) "0-4, Haleiwa," Oahu, August 23, 1985
(103) "0-5, Schofield Barracks," Oahu, June 4, 1978
(104) "0-6, Ewa," Oahu, June 4, 1978
(105) "0-7, Kahuku," Oahu, June 4, 1978
(106) "0-8, Hauula," Oahu, June 4, 1978
(107) "0-9, Waipahu," Oahu, June 4, 1978
(108) "0-10, Puuloa," Oahu, August 23, 1985
(109) "0-11, Kahana," Oahu, March 24, 1994
(110) "0-12, Kaneohe," Oahu, March 24, 2011
(111) "0-13, Honolulu," Oahu, August 12, 2011
(112) "0-14, Mokapu," Oahu, August 23, 1985
(113) "0-15, Koko Head," Oahu, August 12, 2011
(114) "K-1, Makaha Point," Kauai, June 4, 1978
(115) "K-2, Kekaha," Kauai, June 4, 1978
(116) "K-3, Haena," Kauai, August 12, 1992
(117) "K-4, Waimea Canyon," Kauai, June 4, 1978
(118) "K-5, Hanapepe," Kauai, June 4, 1978
(119) "K-6, Hanalei," Kauai, June 4, 1978
(120) "K-7, Waialeale," Kauai, June 4, 1978
(121) "K-8, Koloa," Kauai, August 23, 1985
(122) "K-9, Anahola," Kauai, June 9, 2006
(123) "K-10, Kapaa," Kauai, June 9, 2006
(124) "K-11, Lihue," Kauai, August 23, 1985
Exhibit 2
Special Subzones: September 6, 1994

(1) Hawaii Loa college special subzone. Subzone designation for educational purposes as delineated on map entitled "0-12, Kaneohe," Oahu;

(2) Haka site special subzone. Subzone designation for cemetery purposes as delineated on map entitled "0-12, Kaneohe," Oahu;

(3) Kapakahí Ridge special subzone. Subzone designation for nursing or convalescent home purposes as delineated on map entitled "0-13, Honolulu," Oahu;

(4) Sea Life park special subzone. Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "0-15, Koko Head," Oahu;

(5) Milolii-Hoopuloa special subzone. Subzone designation for Milolii-Hoopuloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991, as delineated on map entitled "H-11, Milolii," Hawaii;

(6) Hale O Ho'oponopono special subzone. Subzone designation for educational purposes as delineated on map entitled "H-9, Honaunau," Hawaii;

(7) Limahuli Valley special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-3, Haena," Kauai.
Chapter 13-5
Exhibit 3

Exhibit 3
Management Plan Requirements: August 12, 2011

1. General description of the proposed use (e.g., forestry, fishpond, astronomy, aquaculture, agriculture).

2. Project location (e.g., island map, location map, site plan (drawn to scale)).

3. Natural resource assessment including descriptive information about the natural resources in the project vicinity such as biological, archaeological, cultural, geological, coastal, recreational, and scenic resources, where applicable. The presence of any threatened or endangered species shall be disclosed.

4. Natural hazard assessment including descriptive information of erosion, flooding, slope, tsunami, and volcanic hazards, where applicable.

5. A description of best management practices used during project construction and implementation (e.g., mitigation measures).

6. A description of the best management practices to be used during the lifetime of the project (e.g., mitigation measures).

7. A description of the conservation methods and applications to be used in the short term and long term (e.g., mitigation measures).

8. Description of existing uses and facilities, if any.

9. Description of proposed facilities and uses, including phases, if applicable.

10. Activity schedule
Project schedule including description of project sequencing from project construction to project completion and on-going maintenance plans,
including a description and timing of natural resource monitoring and maintenance plans. A description of the annual reporting requirements.

11 Any other information or data, as required by the department.
Chapter 13-5
Exhibit 4

Exhibit 4
Single Family Residential Standards: August 12, 2011

Minimum Setback:
For lots under one acre:
Front: 15 feet
Sides: 15 feet
Back: 15 feet

For lots over one acre:
Front: 25 feet
Sides: 25 feet
Back: 25 feet

Allowable building area extensions 36 inches in 15-foot setback 42 inches in 25-foot setback (e.g., eaves and cantilevered decks).

Exceptions: Site characteristics and lot shape may be a factor in adjusting minimum setbacks when so determined by the board.

Shoreline Setback:
The shoreline setback line shall be established based on a setback distance from the certified shoreline of 40 feet plus 70 times the average annual coastal erosion rate, based on a coastal erosion study as defined in this chapter. No shoreline setback shall be established for any lot subject to this chapter unless the application for a shoreline setback line
includes a shoreline survey certified by the department not more than 12 months prior to submission of the permit application. The shoreline setback line shall be based on the average lot depth (ALD)\(^1\) measured from the current shoreline.

For lots with an ALD of two hundred feet or less, the shoreline setback line shall be established based on the ALD of the lot, as provided in Table 1, or based on 40-feet plus 70 times the annual erosion rate. The applicant may choose the lesser of the two methods, but in no case shall the shoreline setback line be calculated to be less than 40 feet.

The department may waive the requirement for coastal erosion study based on supportive documentation from the applicant. Such documentation may include, but is not limited to, county or state approved coastal erosion rate data provided through the University of Hawaii, School of Ocean,

\(^1\) Average lot depth (ALD) shall be calculated as follows: (1) measure the two sides of the property that are at or near right angles to the shoreline; (2) measure the length of a line connecting the mid-point of the seaward (shoreline) side of the property to the mid-point of the landward side of the property; (3) add these three (right, left, center lines) measurements together for a total; (4) divide the total by three to obtain the ALD.
Earth Science, and Technology, or evidence that the erosion rate is zero.

<table>
<thead>
<tr>
<th>Table 1: Average Lot Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the average lot depth is:</td>
</tr>
<tr>
<td>Then the minimum setback distance is:</td>
</tr>
</tbody>
</table>

Maximum Developable Area (MDA):

Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures.

For lots up to 14,000 square feet, the maximum developable area is 25 per cent of total lot area.

For lots over 14,000 square feet to one (1) acre, the maximum developable area is 3,500 square feet.
For lots larger than one (1) acre, the maximum developable area is 5,000 square feet.

Exceptions: Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board.

Maximum Allowable Building Envelope:

No portion of any building (excluding any allowed chimney, antenna, vents, solar panels or other renewable energy structures, or similar structures) shall protrude above the maximum allowable building envelope. The top of the maximum allowable building envelope shall be a vertical plane parallel to and twenty-five feet above the existing grade measured by vertical plumb line.

Exceptions: Areas within the flood zone may allow consideration for additional heights above the maximum allowable building envelope to comply with the National Flood Insurance Program requirements when so determined by the board.

Compatibility Provisions:

Compatibility with surrounding environs. Structure is designed in accordance with standard
conditions and criteria, including:
- Landscaping - screening of structures
- Color of paint/surface of structure and roof - earth tones, or compatible with surrounding area
- Department of Health wastewater permit/water collection system approval
- Grading/contouring of property kept to minimum with consideration of slope
- All structures connected, or best alternative
- In conformance to applicable building and grading code and shoreline setback provisions
- One kitchen\(^2\)

\(^2\) "Kitchen" means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook, and refrigerate food and wash cooking utensils and dining implements.
Exhibit 5
Fire Buffer Zone Standards: August 12, 2011

Design standards for creation and maintenance of fire buffer zones along the urban/conservation interface. Fire buffer zones shall be approved via site plan approval.

PURPOSE The goal of a fire buffer zone is to reduce the risk of fire spreading to an area, and to reduce the speed at which fire spreads, should one occur. This is accomplished by (1) reducing the amount of available fuels, (2) reducing the continuity of available fuels, both horizontally through the proper spacing of trees and shrubs, and vertically by removing the ladder of fuels that can carry fire from the surface to the tree crowns, (3) developing a high-canopy forest, (4) replacing highly-flammable flora with drought and fire resistant indigenous, endemic, or Polynesian-introduced species, and (5) encouraging community stewardship of lands in the Conservation District.

APPLICATION REQUIREMENTS

• Parcel is considered a high-risk fire prone area by an authority recognized by the department (e.g., Division of Forestry and Wildlife, or the County Fire Department).

• If landscaping is to occur on neighboring parcels, the applicant should have permission of the neighboring landowner. The chairperson may sign as landowner for parcels owned by the State.

• A Site Plan should include three elements: (1) location maps, (2) an implementation plan, and (3) a maintenance plan.

• Maps for the area should identify: topography, drainage patterns, land ownership, dominant flora
and fauna, trees greater than ten inches in diameter measured at 4.5 feet above the ground, endangered and threatened trees, and other indigenous, endemic, or Polynesian-introduced trees or shrubs, infrastructure, and known historical or archaeological sites.

- The implementation plan should show the final design of the fire protection zone, how impacts to endangered or threatened trees or shrubs, or historical or archaeological sites will be mitigated.

- The management plan should discuss how and when the fire protection zone will be maintained.

- The size of the fire buffer zone will be based upon the slope of the area, as shown in Table 2. Distances are measured from the outside of the main structure, as measured from the outside eaves and/or any attached structures.

<table>
<thead>
<tr>
<th>TABLE 2: AREA OF DEFENSIBLE SPACE</th>
</tr>
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<tbody>
<tr>
<td>ZONE</td>
</tr>
<tr>
<td>1 Area of maximum reduction</td>
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<tr>
<td>2 Area of fuel reduction</td>
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<tr>
<td>3 Transition Zone</td>
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</table>
DESIGN ELEMENTS

The following are acceptable design elements for each zone:

Zone 1:
- Removal of all flammable vegetation.
- Pruning of existing trees to a height of ten feet above the ground or to one-half the height of the tree, whichever is the lowest.
- Planting of drought and fire resistant indigenous, endemic, or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of all ladder fuels beneath existing trees.

Zone 2:
- Thinning of trees and shrubs so that they stand solo, or in clumps of two or three. Recommended space between crowns is based upon slope, as summarized in Table 3.

<table>
<thead>
<tr>
<th>SLOPE</th>
<th>TREE CROWN SPACING</th>
<th>SHRUB CLUMP SPACING</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10%</td>
<td>10 feet</td>
<td>2½ x shrub height</td>
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<tr>
<td>11-20%</td>
<td>15 feet</td>
<td>3x shrub height</td>
</tr>
<tr>
<td>21-40%</td>
<td>20 feet</td>
<td>4x shrub height</td>
</tr>
<tr>
<td>&gt;40%</td>
<td>30 feet</td>
<td>6x shrub height</td>
</tr>
</tbody>
</table>

- Removal of ladder fuels.
- Mowing or cutting grasses as needed to keep them at a maximum height of 6-8 inches.
Chapter 13-5
Exhibit 5

- Pruning of tree branches to a height of at least ten feet.
- Replanting of drought and fire resistant indigenous, endemic or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of dead trees.
- Annual maintenance thinning of trees as they grow in size.
- Annual removal of dead stems and branches.

Zone 3:

- Thinning of trees, with spacing based upon the tree diameter measured at 4.5 foot above the ground, as outlined in Table 4.

Table 4: Minimum Tree Spacing for Zone 3

<table>
<thead>
<tr>
<th>Tree Diameter (inches)</th>
<th>Average Stem Spacing (feet)</th>
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<tbody>
<tr>
<td>3</td>
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<table>
<thead>
<tr>
<th>Tree Diameter (inches)</th>
<th>Average Stem Spacing (feet)</th>
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<tbody>
<tr>
<td>14</td>
<td>24</td>
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<td>42</td>
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</tbody>
</table>
Pruning of tree branches to a height of at least ten feet along fire or access roads.
Annual maintenance thinning as trees grow in size.

MAINTENANCE GUIDELINES

Zones 2 and 3 are subject to the following maintenance guidelines:

- Any replanting should only be done with indigenous, endemic, or Polynesian-introduced trees and shrubs.
- No grubbing or grading is allowed for this land use.
- Slash (limbs, branches, and other woody debris) should be disposed of by removing it from site, chipping and distributing over the ground, or lopping and scattering.
- Tree stumps should remain in the ground.
- Surface (drip) irrigation lines are allowed to support new plantings.
- Applicant should provide the Office of Conservation and Coastal Lands with photographs of completed work.
Ordinance Relating to the Special Management Area

City and County of Honolulu Revised Ordinance 11-28, §§25-1.3 and 25-3.3(e)
TO AMEND CHAPTER 25, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, RELATING TO THE SPECIAL MANAGEMENT AREA.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and intent. The purpose of this ordinance is to make amendments to the Special Management Area Ordinance consistent with state Coastal Zone Management policies mandated by recent amendments to Chapter 205A, Hawaii Revised Statutes, pursuant to Act 153, Session Laws of Hawaii 2011. These policy revisions are intended, in part, to help expedite and facilitate work on projects that have been or may be stalled due to delays relating to Special Management Area permitting requirements.

SECTION 2. Section 25-1.3, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by amending the definitions of “Development,” “Special management area minor permit,” and “Special management area use permit” to read as follows:

“Development” means any of the uses, activities or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2).

(1) “Development” includes but is not limited to the following:

(A) The placement or erection of any solid material or any gaseous, liquid, solid or thermal waste;

(B) Grading, removing, dredging, mining or extraction of any materials;

(C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;

(D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and

(E) Construction, reconstruction, demolition or alteration of the size of any structure.

(2) “Development” does not include the following:
A BILL FOR AN ORDINANCE

(A) Construction or reconstruction of a single-family residence that is less than 7,500 square feet of floor area and is not part of a larger development; provided that, for the purposes of this definition, "floor area" shall mean floor area as defined under Section 21-10.1;

(B) Repair or maintenance of roads and highways within existing rights-of-way;

(C) Routine maintenance dredging of existing streams, channels and drainageways;

(D) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

(E) Zoning variances, except for height, density, parking and shoreline setback;

(F) Repair, maintenance or interior alterations to existing structures;

(G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

(H) The use of any land for the purpose of cultivating, planting, growing and harvesting of plants, crops, trees and other agricultural, horticultural or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes subject to review by the authority in accordance with paragraph (3);

(I) The transfer of title to land;

(J) The creation or termination of easements, covenants or other rights in structures or land;

(K) Final subdivision approval;

[(K)](L) The subdivision of land into lots greater than 20 acres in size;
A BILL FOR AN ORDINANCE

[(L)](M) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided, that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

[(M)](N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

[(N)](O) Structural and nonstructural improvements to existing single-family residences including additional dwelling units, where otherwise permissible;

[(O)](P) Nonstructural improvements to existing commercial structures; and

[(P)](Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.

(3) Cumulative Impact. Whenever the authority finds that any use, activity, or operation excluded in paragraph (2) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this chapter.

(4) Significant Effect. Whenever the authority finds that a use, activity, or operation excluded in paragraph (2) may have a significant environmental or ecological effect on the special management area or special wetlands areas, that use, activity, or operation shall be defined as "development" for the purposes of this chapter."

""Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of [$125,000.00] $500,000.00 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects."

""Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds [$125,000.00] $500,000.00 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects."
SECTION 3. Section 25-3.3, Revised Ordinances of Honolulu 1990, as amended ("Procedural guidelines"), is amended by amending subsection (e) as follows:

"(e) Determination.

(1) For the purposes of this chapter, other than special requirements for shoreline lots as provided in Section 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under Section 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.

(2) The director shall issue a special management area minor permit where the director finds that the development proposal:

(A) Has a valuation or fair market value not in excess of [$125,000;] $500,000.00; and

(B) Will not significantly affect the special management area and/or special wetland area.

The director shall grant, grant with conditions or deny an application for a minor permit within 45 days of receipt of a completed application."

SECTION 4. Ordinance material to be repealed is bracketed and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.
SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

July 11, 2011
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this 20th day of October, 2011.

PETER B. CARLISLE, Mayor
City and County of Honolulu
ORDINANCE 11–28

BILLS 48 (2011), CD1

Introduced: 07/11/11  By: ERNEST MARTIN (BR)

Title: A BILL FOR AN ORDINANCE TO AMEND CHAPTER 25, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, RELATING TO THE SPECIAL MANAGEMENT AREA.

Links: BILL 48 (2011)
BILL 48 (2011), CD1
CR-291
CR-314

Voting Legend: Y = Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

BERNICE K. N. MAU, CITY CLERK

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER
Subdivision Code and Zoning Code regarding Storm Water Management

Hawaii County Ordinance 07-56,
Hawaii County Code §§23-92 and 25-2-71(e), 25-2-72(3)
AN ORDINANCE AMENDING CHAPTERS 23 (SUBDIVISION CONTROL CODE) AND 25 (ZONING CODE), HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO STORMWATER MANAGEMENT

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Purpose. The purpose of this ordinance is to require new development to manage storm water runoff to reduce the potential that it will cause water pollution. The ordinance is intended to comply with Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

The ordinance requires that new subdivisions, and new buildings which need plan approval, discharge their storm water, up to a specified limit, into drywells or infiltration basins, or use other methods that will filter out suspended solids from storm water. These requirements will be enforced at the time of subdivision approval for new subdivisions, and at plan approval for new buildings.

SECTION 2. Chapter 23, article 6, section 23-92, Hawai'i County Code 1983 (2005 Edition, as amended), is amended to read as follows:

"Sec. 23-92. [Land surface Drainage.
Grading shall be done and drainage structures shall be provided by the subdivider as are deemed essential by the director of public works or sanitary engineer to protect roadways and the public.]

Drainage, flood, and erosion mitigation measures.

(a) The subdivider shall construct a storm water disposal system to contain run-off caused by the subdivision improvements within the boundaries of the subdivision, up to the expected one-hour, ten year storm event, as shown in Plate 1 of the Department of Public Works "Storm Drainage Standards", dated October 1970, or any approved revisions, unless those standards specify a greater recurrence interval, in which case, the greater interval shall
be used. The amount of expected runoff shall be calculated according to the
Department of Public Works “Storm Drainage Standards”, dated October
1970, or any approved revisions thereto, or by any nationally-recognized
method meeting with the approval of the director of public works. Runoff
calculations shall include the effects of all required subdivision
improvements, and lot improvements that may be allowed by existing
zoning.
(b) Storm water shall be disposed into drywells, infiltration basins, or other
infiltration methods. The subdivision shall not alter the general drainage
pattern above or below the subdivision.
(c) Subdivider shall also comply with the requirements of Chapter 27, Hawai‘i
County Code.”

SECTION 3. Chapter 25, article 2, sections 25-2-71 and 25-2-72, Hawai‘i
County Code 1983 (2005 Edition, as amended), is amended to read as follows:

“Section 25-2-71. Applicability; plan approval required.
(a) Plan approval shall be required prior to the construction or installation of
any new structure or development or any addition to an existing structure or
development in all districts except in the RS, RA, FA, A and IA districts,
and except for the construction of one single-family dwelling and any
accessory buildings per lot.
(b) Plan approval shall be required in all districts prior to the change of the
following uses in existing buildings:
(1) Residential to commercial use;
(2) Warehouse and manufacturing to retail use.
(c) Plan approval shall be required in all applicable districts prior to the
construction or establishment of the following improvements and uses:
(1) Bed and breakfast establishments as permitted under section 25-4-7.
(2) Public uses, structures and buildings and community buildings, as
permitted under section 25-4-11.
(3) Telecommunication antennas and towers, as permitted under section
25-4-12.
(4) Temporary real estate offices and model homes, as permitted under
section 25-4-8.
(5) Utility substations, as authorized under section 25-4-11.
(d) Plan approval shall be required in the RA and FA district prior to the
construction or installation of any new structure or development, or of any
addition to an existing structure or development which is to be used for
minor agricultural products processing.
(e) Plan approval shall be required in the A district prior to the development of
any trailer park or major agricultural products processing facility. The
director shall determine whether an agricultural products processing facility
shall be considered major or minor at the time of building permit review, or
earlier at the applicant’s request.
(f) Plan approval may be required as a condition of approval of any use permit, variance, or other action relating to a specific use, in which case the use or development so conditioned may not be established until plan approval has been secured.

Section 25-2-72. Application for plan approval; requirements.

An application for plan approval shall be on a form approved for such purpose by the director and shall be accompanied by:

(1) A site plan, drawn to scale and fully dimensioned indicating clearly the following information:
   (A) The location and dimension of the building site;
   (B) The location, size, height, and use of all existing and proposed structures;
   (C) All yards and open spaces;
   (D) Location, height, and material of all fences and walls;
   (E) The standard of improvement and location, number, and size of parking spaces, arrangement and on-site circulation of all off-street parking and loading facilities including points of access thereto from adjoining streets;
   (F) The location, general nature, and type, and protection or shielding devices of all exterior lighting;
   (G) All proposed landscaping and planting; and
   (H) All proposed street dedication and improvement if any.

(2) Any other information required by rules adopted by the director in accordance with chapter 91, Hawaii Revised Statutes.

(3) A site drainage plan [under sec. 27-20] approved by the director of public works, where plan approval is required under sec. 25-2-71(a), (c)(2) and (c)(5), (d), (e), or (f). The site drainage plan shall comply with sec. 27-20(a) and (b) and sec. 27-24, and shall include a storm water disposal system to contain run-off caused by the proposed development, within the site boundaries, up to the expected one-hour, ten year storm event, as shown in the Department of Public Works “Storm Drainage Standards”, dated October 1970, or any approved revision, unless those standards specify a greater recurrence interval. The amount of expected runoff shall be calculated according to the Department of Public Works “Storm Drainage Standards”, dated October 1970, or any approved revision, or by any nationally-recognized method meeting with the approval of the director of public works. Runoff calculations shall include the effects of all improvements. Storm water shall be disposed into drywells, infiltration basins, or other approved infiltration methods. The development shall not alter the general drainage pattern above or below the development.”
SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5. Material to be repealed is bracketed. New material is underscored. In re-printing this ordinance, the brackets, bracketed material and underscoring need not be included.

SECTION 6. This ordinance shall take effect upon its approval.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawaii

Date of Introduction: March 9, 2007
Date of 1st Reading: March 9, 2007
Date of 2nd Reading: March 21, 2007
Effective Date: April 12, 2007

REFERENCE: Comm. 178.4
OFFICE OF THE COUNTY CLERK  
County of Hawai‘i  
Hilo, Hawai‘i

Introduced By: K. Angel Pilago  
Date Introduced: March 9, 2007  
First Reading: March 9, 2007  
Published: March 17, 2007  

REMARKS: 

Second Reading: March 21, 2007  
To Mayor: April 5, 2007  
Returned: April 13, 2007  
Effective: April 12, 2007  
Published: April 23, 2007  

REMARKS: 

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I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO FORM AND LEGALITY:

DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAI‘I

Date April 10, 2007

Approved/Disapproved this 12th day of April, 2007

COUNCIL CHAIRMAN
COUNTY CLERK

Bill No.: 52 (Draft 3)  
Reference: C-178.4/PC-17  
Ord No.: 07 56
Rules Regulating Special Management Areas for the County of Kauai

Special Management Area Rules and Regulations of the County of Kauai
§§1.4(F), (U) and (V)
SPECIAL MANAGEMENT AREA
RULES AND REGULATIONS

COUNTY OF KAUA‘I - STATE OF HAWAI‘I

As Amended October 2011
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Section 4.0 Special Management Area Guidelines

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Section 6.0 Consultation and Initial Determination

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SECTION 1.0 GENERAL PROVISIONS

1.1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai‘i Revised Statutes (HRS), as amended, the rules and regulations hereinafter contained are hereby established and shall apply to all lands within the Special Management Area of the County of Kaua‘i.

1.2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai‘i. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to publicly-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

1.3 Title

These Rules and Regulations shall be known as the "Special Management Area Rules and Regulations of the County of Kaua‘i."

1.4 Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

(These definitions are intended to clarify, not to replace nor to negate the definitions in Chapter 205A, HRS, as amended.)

A. "Applicant" includes any individual, organization, partnership, firm, association, trust, estate,
private corporation, or other legal entity, including any utility or any agency, department, commission, or board of government who seeks permission or authorization which the Director or Planning Commission may grant under these Rules and Regulations; provided that the individual or entity must have a controlling interest (75% or more of the equitable and legal title) of the lot, or must have a recorded lease to the land having a stated term of not less than five (5) years, or must have the full authorization of another having the controlling interest or recorded lease for a state term of not less than five (5) years.

B. "County Engineer" means the head of the Department of Public Works of the County of Kaua'i.

C. "County" means the County of Kaua'i.

D. "Crops" means agricultural produce or parts(s) of plants or trees cultivated for commercial or personal use including, but not limited to, the raising of livestock.

E. "Debris Line" or "Line of Debris" means a line marking the landward limit of debris deposits, resulting from wave uprush.

F. "Development" means any of the following uses, activities, or operations on land or in or under water within a Special Management Area:

1. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

2. Grading, removing, dredging, mining, or extraction of any materials;

3. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;

4. Change in the intensity of use of water, ecology related thereto, or access thereto; and

5. Construction, reconstruction, demolition, or alteration of the size of any structure.
"Development" does not include the following:

(1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;

(2) Repair or maintenance of roads and highways within existing rights-of-way;

(3) Routine maintenance dredging of existing streams, channels, and drainage ways;

(4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

(5) Zoning variances, except for height, density, parking, and shoreline setback;

(6) Repair, maintenance, or interior alterations to existing structures;

(7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

(8) Uses of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

(9) Transfer of title to land;

(10) Creation or termination of easements, covenants, or other rights in structures or land;

(11) Final Subdivision Approval;

(12) Subdivision of land into lots greater than twenty acres in size;

(13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any land which is so subdivided shall not thereafter qualify for this
exception with respect to any subsequent subdivision of any of the resulting parcels;

(14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

(15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;

(16) Nonstructural improvements to existing commercial structures; and

(17) Amendment of the County general plan, development plans, State land use district boundaries, and zoning changes;

provided that whenever the Director or Planning Commission finds that any excluded use, activity, or operation may have cumulative impact or, or a significant environmental or ecological effect on a Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of this part.

G. "Director" means the Planning Director of the Planning Department, County of Kaua'i, or the Director's authorized designee.

H. "Environmental Impact Statement" ("EIS") means an informational document prepared in compliance with HRS Chapter 343 and the Environmental Quality Commission's Rules and Regulations, and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

I. "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

J. "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.
K. "Owner" means the holder or holders of at least seventy-five percent (75%) of the equitable and legal title of a lot, and shall include lessees of real property that hold a recorded lease for a state term of not less than five (5) years and that present certification of approval from the legal owner.

L. "Person" includes any individual, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity including any utility or any agency, department, commission, or board of government.

M. "Planning Commission" means the Planning Commission of the County of Kaua'i.

N. "Planning Department" means the Planning Department of the County of Kaua'i.

O. "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

P. "Shoreline Armoring Device" means a structure or improvement built to artificially fix the shoreline and poses an immediate and future adverse effect on beach process as a result of the structure or improvement located within the coastal hazard zone.

Q. "Shoreline Survey" shall mean the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a land surveyor registered in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chair of the Board of Land and Natural Resources.

R. "Single-Family Residence" means a detached building designed for and/or used as the complete facility for the cooking, sleeping, and living area of a single family only and occupied by no more than one family, including uses normally considered accessory to the single family facilities provided that such uses are in compliance with all requirements of any County or State regulations, statute or ordinance. A single family shall include all
persons living in a dwelling related by blood, marriage or adoption or a
group comprised of not more than five persons not related by blood,
marrige or adoption. For purposes of these Rules and Regulations, a
guest house shall not be considered an accessory use.

S. "Special Management Area" means the land extending inland from the
shoreline as delineated on the maps filed with the Planning Commission
as of June 8, 1977 or as amended pursuant to HRS Section 205A-23 and
Section 18.0 of these Rules and Regulations.

T. "Special Management Area Emergency Permit" means a permit issued by
the Director, pursuant to the authority provided to the Director by the
Planning Commission and defined in these Rules and Regulations,
authorizing development in a case of emergency requiring immediate
action to prevent substantial physical harm to persons or property or to
allow the reconstruction of structures damaged by natural hazards to their
original form, provided that such structures were previously found to be in
compliance with requirements of the Federal Flood Insurance Program.

U. "Special Management Area Minor Permit" means a permit issued by the
Director, pursuant to the authority provided to the Director by the Planning
Commission and defined in these Rules and Regulations, authorizing
development the valuation of which is not in excess of $500,000 and
which has no significant adverse environmental or ecological effect, taking
into account potential cumulative effects.

V. "Special Management Area Use Permit" means a permit issued by the
Planning Commission authorizing development, the valuation of which
exceeds $500,000 or which may have a significant adverse environmental
or ecological effect, taking into account potential cumulative effects.

W. "State Plan" means the adopted State Plan of the State of Hawai‘i, as
reflected by Chapter 226, HRS, and any amendments thereto.

X. "Structure" includes, but is not limited to any building, road, pipe, flume,
conduit, siphon, aqueduct, telephone line, and electrical power
transmission and distribution line.

Y. "Use" is:

(1) Any purpose for which a structure or a tract of land is designed,
arranged, intended, maintained, or occupied.
(2) Any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.

Z. "Valuation" shall be determined by the Director and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined above, the fair market value of the development.

AA. "Vegetation Line" means a line marking the seaward limit of natural terrestrial growth.

BB. "Vegetation Growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same naturally rooted and growing.

SECTION 2.0 SPECIAL MANAGEMENT AREA

Special Management Areas as delineated on the maps filed with the Planning Commission and the office of the County Clerk as of June 8, 1977 or as amended pursuant to Section 205A-23, HRS, and Section 18.0 of the Rules and Regulations shall be the official Special Management Area to be administered and enforced under these Rules and Regulations.

SECTION 3.0 OBJECTIVES AND POLICIES OF THE HAWAII COASTAL ZONE MANAGEMENT ACT

The objectives and policies of the coastal zone management program are those set forth in Section 205A-22, as amended. These objectives and policies shall serve as guidelines in the implementation of the rules in this Chapter.

SECTION 4.0 SPECIAL MANAGEMENT AREA GUIDELINES

The following guidelines shall be used by the Director and the Planning Commission for the review of developments proposed in the Special Management Area:

A. All development in the Special Management Area shall be subject to reasonable terms and conditions set by the Director or the Planning Commission to insure that:
(1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;

(2) Adequate and properly located public recreation areas and wildlife preserves are reserved;

(3) Provisions are made for solid and liquid waste treatment, disposition, and management that will minimize adverse effects upon special management area resources; and

(4) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

B. No development shall be approved unless the Director or the Planning Commission has first found that:

(1) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;

(2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and

(3) The development is consistent with the County general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

C. The Director or the Planning Commission shall seek to minimize, where reasonable:
(1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(2) Any development that would reduce the size of any beach or other area usable for public recreation.

(3) Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the Special Management Area and the mean high tide line where there is no beach.

(4) Any development that would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.

(5) Any development that would adversely affect water quality, existing areas of open water free of visible structure, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

SECTION 5.0 DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW

Any use, activity, or operation proposed within the Special Management Area defined as a "development" pursuant to Section 1.4 H. above shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations. Such review shall be pursuant to the objectives, policies and guidelines set forth in Sections 1.2, 3.0, and 4.0 and the procedures set forth in Sections 7.0 and 8.0.

SECTION 6.0 CONSULTATION

Any person contemplating development within the Special Management Area may contact the Planning Department for procedures and general information that may have a direct influence on his proposed development.

Any person proposing a use, activity, or development in the Special Management Area must first comply with the procedure for initial evaluation and assessment as explained in Section 7.0, and then, if necessary, must follow the application procedures set forth in Section 8.0. If, however, a person determines that the person's proposed development
is in excess of $500,000 or will have a significant adverse effect on the Special Management Area, the person may apply directly for a permit pursuant to Section 8.0 and waive the Assessment Procedures in Section 7.0. Otherwise, the proposal shall be subject to assessment.

SECTION 7.0 FILING, ASSESSMENT, AND DETERMINATION PROCEDURE

7.1 Filing

If an applicant believes that the proposed use, activity, or development may be exempt from the formal application procedure, may be eligible for a Minor Permit, or may have a valuation of less than $500,000, that applicant must file the following with the Planning Department:

A. A tax map key description of the property on which the applicant proposes the project.

B. A plot plan of the property, drawn to scale with all proposed structures shown thereon, and any other information necessary to a proper determination relative to the specific request.

C. A written description of the proposed project and a statement of objectives.

D. A statement of the valuation of the proposed development.

E. An EIS, if required under Chapter 343, HRS, or when required by the Director, Planning Department, or Planning Commission.

F. A statement addressing any affected Native Hawaiian customary and traditional rights protected under Article XII, Section 7 of the Hawai‘i State Constitution.

G. A written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State’s Coastal Zone Management Act (Chapter 205A, HRS) and the guidelines of the Special Management Area as provided herein. This written statement should include the relationship of the proposed action to land use plans of the affected area, an analysis of the probable impact of the proposed action on the environment, a listing of probable adverse environmental effects that cannot be avoided, an evaluation of alternatives to the proposed action, a discussion of mitigating
measures proposed to minimize impacts, and a listing of any irreversible
and irretrievable commitment of resources.

H. A shoreline survey when the parcel abuts the shoreline and when required
by the Planning Department.

I. Any other relevant plans or information required by the Department.

7.2 Assessment

The Director shall assess the proposal upon the person's compliance with Section 7.1,
based on the following criteria:

A. The valuation of the proposal.

B. The potential effects and the significance of each specific circumstance of
the proposed development according to the Significant Adverse Effect
Criteria established by Section 7.4.

C. The nature of the development.

7.3 Determination

The Director within thirty (30) calendar days after the receipt of all filing requirements or
within a longer period as agreed to by the applicant, shall consider the proposal
together with all accompanying data and shall issue a determination subject to
considerations or alterations. The Director shall notify the person of the Director's
determination.

A. Where the Director finds that the proposal is not a development, as
defined in Section 1.4H; the Director shall determine that the proposal is
exempt from these Rules and Regulations.

B. Where the Director finds that the proposal:

(1) is a development, as defined in Section 1.4 H; and

(2) is not in excess of $500,000; and

(3) is consistent with the County general plan and zoning ordinances; and
(4) will not have a significant adverse effect on the Special Management Area;

the Director shall issue a Special Management Area Minor Permit and may impose any reasonable terms and conditions deemed necessary to meet the objectives and policies enumerated in Section 3.0, and the guidelines provided in Section 4.0.

C. Where the Director finds that the proposal:

(1) is a development, as defined in Section 1.4 H; and

(2) is in excess of $500,000; or

(3) directly facilitates commercial boating and vessel activities or operations excluding actions under the jurisdiction of the State Department of Land and Natural Resources-Division of Boating and Ocean Recreation, State Department of Transportation, and or Federal Agencies; or

(4) directly involves the construction of a Shoreline Armoring Device; or

(5) may have a significant adverse effect on the Special Management Area;

the Director shall inform the person of the following:

(a) the requirement of an application pursuant to Section 8.0; and

(b) the public hearing requirements, pursuant to Section 9.0; and

(c) the Planning Commission's requirements for action, pursuant to Section 10.0; and

(d) the area of critical concern to delineate the scope of information which the applicant must address.

D. The Director shall maintain records of the Director's determinations in writing to the Planning Commission. The Director shall also post his determination on a Minor permit to a publicized website. The information posted to the website shall include the date of the Director's
determination, permit number, TMK, location, and activity/structure. This information shall be posted within five (5) business days of the Director's determination.

7.4 Significant Adverse Effect Criteria

In considering the significance of potential environmental effects, the Director, Planning Department, and Planning Commission shall consider the sum of those effects that adversely affect the quality of the environment, and shall evaluate the overall and cumulative adverse effects of the proposal.

A "significant adverse effect" may vary with the individual setting and circumstances of particular proposals. Generally, however, any proposal which may have a major adverse effect on the quality of the environment or adversely affect the economic or social welfare of an area, or would possibly be contrary to the objectives, policies and guidelines of these Rules and Regulations, the County's General Plan, Development Plans, zoning and subdivision ordinances, or the State Plan, would likely result in a "significant adverse effect."

In determining whether a proposal may have a significant adverse effect on the environment, the Director, Planning Department, and Planning Commission shall consider every phase of a proposal and expected consequences, either primary or secondary, and the cumulative as well as the short or long-term effect of the proposal. The Director, Planning Department, and Planning Commission should bear in mind that, in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposal:

A. Involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but limited to, historic sites, Special Treatment Districts as established in the County Comprehensive Zoning Ordinance, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;

B. Curtails the range of beneficial uses of the environment;

C. Conflicts with the County's or the State's long-term environmental policies or goals;

D. Substantially affects the economic or social welfare and activities of the community, County or State;

E. Involves substantial secondary impacts, such as population changes and effects on public facilities;
F. In itself has no significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;

G. Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;

H. Detrimentally affects air or water quality or ambient noise levels; or

I. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.

SECTION 8.0 APPLICATION PROCEDURE

Any applicant who has received a determination under Section 7.3 that the proposal is neither exempt, nor that it conforms to the requirements for a Minor Permit, or any applicant who has determined that the proposal is in excess of $500,000 or will have a significant adverse effect, shall apply for a Special Management Area Use Permit.

The applicant shall be responsible for submitting a completed form provided by the Planning Department. Such form shall be accompanied by:

A. In the case of applicants whose proposals have not been assessed, all informational requirements of Section 7.1.

B. A filing and processing fee as set annually by the Director to cover the actual costs of publication plus $100 for processing; provided, however, that if applications for other permits which require public hearings to be conducted by the Planning Commission are filed for the same development, and if public hearings for the permit applications are to be held simultaneously, only one filing and processing fee will be required.

Upon compliance with the foregoing procedures, the Director shall notify the applicant by mail that this application has been accepted. The Director shall also circulate the application to appropriate government agencies for their comments and recommendations.
SECTION 9.0 PUBLIC HEARINGS

A. The Planning Commission shall conduct a public hearing within a period of sixty (60) calendar days from the date of acceptance of a properly filed and completed application as determined by the Planning Department, unless the sixty-day period is waived by the applicant. The Planning Commission shall give written notice to the applicant, and notice shall also be published once within the County of Kaua‘i and once in a newspaper of general circulation in the State at least twenty (20) calendar days prior to the date of the public hearing in a publication pursuant to HRS Section 1-28.5.

B. The notice of the public hearing shall state:

1. The location of the property involved;
2. The land area of the proposed development;
3. The nature of the proposed development;
4. The date, time, and place of the hearing; and

C. In the event a project being considered for a Special Management Area Permit also requires other permits or approvals, the Planning Commission may conduct joint hearings.

D. At least twenty (20) calendar days prior to the scheduled date of such hearing, the applicant shall either hand-deliver written notices to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kaua‘i or send by certified mail written notices to the addresses shown on such Real Property Assessment Notice List for at least eighty-five percent (85%) of all tax map key parcels within 300 feet from the nearest point of the tax map key parcel involved in the petition. For purpose of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent addressed “To the Residents, Care of the Manager,” followed by the name and address of the condominium involved. The notice shall include the same
information contained in the published written notice and shall be in a form approved by the Planning Director.

E. At least seven (7) calendar days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit describing the mailing or delivery of such notice, including a list of persons to whom such notices were sent.

F. If the applicant fails to comply with foregoing notification requirements, the public hearing shall be postponed and the applicant shall pay for the cost of republication and processing, which shall be same amount set forth in Section 8.0 above, and shall follow the same notification requirements of this section to re-notify affected persons. The Planning Commission shall reschedule another hearing within sixty (60) calendar days after the receipt of the fee.

SECTION 10.0 ACTION

The Planning Commission shall act by majority vote of its total membership upon an application within sixty (60) calendar days after the conclusion of the hearing, except in the case of emergency (see Section 11.0 below) and minor permits (which do not require Commission action), or in cases where the Planning Commission requires further information or finds that the issues require further classification, or where an extension has been agreed to by the applicant. The Planning Commission should grant the Permit if it determines that the proposed development meets the criteria of Section 4.0 of this Chapter, and the Planning Commission may impose restrictions and conditions on the permit as appropriate. Such action shall be final, but shall be appealable to the Circuit Court of the State of Hawai‘i in accordance with HRS Chapter 91. If the Planning Commission has not acted within sixty (60) calendar days after the conclusion of the hearing, the application will be automatically listed on the agenda for the next meeting of the Planning Commission.

When a Minor or Special Management Area Use Permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect. Permits can be amended or revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.
No development shall be allowed within the Special Management Area without first obtaining a permit pursuant to these Rules and Regulations.

No County department or State agency authorized to issue permits pertaining to any development within the Special Management Area shall authorize any development unless approval is first received from the Director or the Planning Commission in accordance with the procedures adopted pursuant to these Rules and Regulations. For the purposes of this Section, County General Plan, State land use district boundary amendments, and zoning changes are not permits for development.

SECTION 11.0   EMERGENCY PERMITS

In cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, the following procedures shall apply.

(1) Any person seeking a Special Management Area Emergency Permit shall file a request along with documents and information as set forth in Section 7.1.

(2) The Director, within thirty (30) calendar days after the receipt of the proposal or within a longer period as agreed to by the applicant, shall consider the applicant's proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the applicant of the Director's determination.

(a) Where the Director finds that the proposal:

(i) is not a development, as defined in Section 1.4 H;

the Director shall determine that the proposal is exempt from these Rules and Regulations.

(b) Where the Director finds that the proposal:

(i) is a development, as defined in Section 1.4 H; and

(ii) will not have a significant adverse effect on the special management area; and

(iii) that the proposal is to authorize development in cases of emergency requiring immediate action to prevent substantial
physical harm to persons or property; or the proposal is for
the reconstruction of structures damaged by natural hazards
to their original form; and

(iv) that prior to the damage of the structure by natural hazard,
the structure was in compliance with the requirements of the
Federal Flood Insurance Program;

the Director shall issue an Emergency Permit and may impose any
reasonable terms, conditions, and requirements, including but not limited
to hazard mitigation plans for properties within the high coastal hazard
flood zone area, deemed necessary to meet the objectives and policies
enumerated in Section 3.0 and the guidelines provided in Section 4.0.

(c) Where the Director finds that the proposal:

(i) is a development, as defined in Section 1.4 H; and

(ii) does not meet the requirements for the issuance of an
special management area emergency permit in accordance
with the provisions of Section 11(B)(2)(b);

the Director shall process the application in accordance with Section 7.3
B. or 7.3 C.

(d) Any emergency permit issued shall automatically expire two years
from the Director's determination, unless otherwise stated.

SECTION 12.0  REVOCATION

Permits can be revoked through the procedure outlined in Chapter 12 of the Rules of
Practice and Procedures of the Planning Commission.

SECTION 13.0  PENALTIES AND INJUNCTIONS

A. Any person who violates any provision of these Rules and Regulations
shall be subject to civil fine not to exceed $100,000 or the cost of returning
the affected environment or ecology within the Special Management Area
to the condition existing before the violation. In addition to any other
penalties, any person who performs any development in violation of this
part shall be subject to civil fine not to exceed $10,000 a day for each day
in which such violation persists. Such a fine shall not become final until twenty-one days after the Director's decision to provide the person an opportunity to appeal and request a hearing before the Planning Commission. This hearing shall be held in accordance with Chapter 6 and Sections 1-9(2-5) of the Rules of Practice and Procedure of the Planning Commission.

B. Any person violating any provision of these Rules and Regulations may be enjoined by the Circuit Court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of these Rules and Regulations in a suit brought by the Planning Department or the Planning Commission.

SECTION 14.0 HEARING OFFICER

Any proceeding before the Planning Commission may be conducted by a hearing officer pursuant to Chapter 6 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 15.0 APPEALS

Any party to the agency hearing pursuant the Chapter 6 of the Rules of Practice and Procedures of the Planning Commission, shall have the right to judicial review of any decision or action of the Planning Commission, pursuant to Chapter 91 of the Hawai‘i Revised Statutes.

SECTION 16.0 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Rules and Regulations are severable.

SECTION 17.0 EFFECTIVE DATE

These Rules and Regulations shall take effect on December 1, 1975. Any amendments to these Rules and Regulations, duly approved, shall take effect upon the date of such approval.
SECTION 18.0 AMENDMENT OF SPECIAL MANAGEMENT AREA (SMA) MAPS

A. All changes for boundary amendments to the SMA maps shall be initialed by the Director.

B. Procedure

A change in the boundary of the SMA maps may be requested by any of the following:

(1) Any department or agency of the State or County.

(2) Any owner or lessee of the affected land.

(3) County Council.

C. Submission

(1) Sixteen (16) sets of the request shall be submitted on a form prescribed by the Planning Department and shall be accompanied by:

(a) A filing and processing fee of $500.00.

(b) A description of the property in sufficient detail to determine its precise location.

(c) An explicit statement of the reasons in support of the proposed amendment. Said reasons shall also discuss the relationship of the proposed change with the policies and objectives of the regulations and the County General Plan.

(2) The Planning Commission shall hold a public hearing no earlier than thirty (30) but no later than ninety (90) calendar days upon receipt of a properly-filed application. The Planning Commission shall give written notice once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty (20) calendar days in advance of the public hearing.
hearing. The notice shall state the nature of the petition, its specific location, and the time and place of the hearing.

(3) The Planning Commission shall no earlier than fifteen (15) but within ninety (90) calendar days after the public hearing, deny or approve the request in writing, stating the reasons for such action.

D. Exemption of Previously Approved Developments

Any development which was issued an appropriate zoning, use, project development or building permit, or received preliminary subdivision approval before the adoption and approval by the Mayor of these amendments to the Special Management Area boundaries which result in the inclusion of the development within the Special Management Area, is not subject to Special Management Area Permit requirements. The pertinent permit or approval, however, must be unexpired. For a permit or an approval which was issued without expiration date or duration period, the exemption provided herein shall lapse two years from the date of approval of the boundary amendment by the Mayor unless otherwise extended.

SECTION 19.0 LAND-BASED ACTIVITIES AFFECTING COASTAL WATERS

No person shall be allowed to conduct any use, activity or operation on lands located within the Special Management Area, which may significantly impact coastal waters or related coastal resources, without first obtaining a Special Management Area Permit pursuant to these Rules and Regulations. An application for a Special Management Area Permit filed under this section shall be subject to the review of the Director, Planning Department, and Planning Commission, and shall be evaluated for consistency with the objectives, policies, and guidelines of the Hawai‘i Coastal Zone Management Act.
APPENDIX

Approval and Adoption: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted these rules on December 12, 1979. The Mayor of County of Kaua'i approved these rules on December 17, 1979. The rules were filed in the Office of the Clerk of the County of Kaua'i on December 17, 1979.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted an amendment to "Section 10.0 Action" on January 14, 1981. The Mayor of the County of Kaua'i approved the amendment on January 16, 1981. The amendment was filed in the Office of the Clerk of the County of Kaua'i on January 16, 1981.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraphs T., V., X., Y. and Z.", "Section 6.0 Consultation", "Section 7.1 Filing, paragraph D.", "Section 7.2 Assessment, paragraph A.", "Section 7.3 Determination, paragraph B.(2) and C.(2)" and "Section 8.0 Application Procedure" on August 24, 1983. The Mayor of the County of Kaua'i approved the amendments on August 26, 1983. The amendments were filed in the Office of the Clerk of the County of Kaua'i on August 29, 1983.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority," "Section 1.4 Definitions, paragraph H., S., U., and X.", and "Section 4.0 Special Management Area Guidelines, paragraph B." on December 12, 1984. The Mayor of the County of Kaua'i approved the amendments on December 18, 1984. The amendments were filed in the Office of the Clerk of the County of Kaua'i on December 19, 1984.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraph H., O., T., and U.", "Section 6.0 Consultation", "Section 7.3 Determination, paragraph B. and C.," and "Section 11.0 Emergency Permits" on May 13, 1993. The Mayor of the County of Kaua'i approved the amendments on May 26, 1993. The amendments were filed in the Office of the Clerk of the County of Kaua'i on June 1, 1993.
AMENDMENT TO THE COUNTY OF KAUA'I
SPECIAL MANAGEMENT AREA RULES AND REGULATIONS

Amendments to the County of Kaua'i Special Management Area Rules and Regulations were adopted by a 5 to 0 vote of the members of the Planning Commission of the County of Kaua'i, State of Hawai'i at its meeting held on the 11th day of October, 2011 as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AGAINST</th>
<th>ABSTAIN/ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texeira, Raco, Katayama, Kimura and Matsumoto</td>
<td>None</td>
<td>Blake and Nishida</td>
</tr>
</tbody>
</table>

The amendments shall be come effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I.

Herman Texeira, Chair

APPROVED AS TO LEGALITY AND FORM:

Alfred B. Castillo, Jr.
County Attorney

APPROVED THIS ________ DAY OF October, 2011.

Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING AMENDMENTS TO THE COUNTY OF KAUA'I SPECIAL MANAGEMENT AREA RULES AND REGULATIONS WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 26th DAY OF October, 2011.

Interim County Clerk

PUBLIC NOTICE: July 29, 2011
PUBLIC HEARING: August 30, 2011
FEDERAL CONSISTENCY

The Hawaii CZM Program is submitting four routine program changes involving federal consistency procedures. The proposed routine program changes are being submitted under OCRM Program Approval Area Number 5 - Coordination, Public Involvement and National Interest (15 CFR Part 923, Subpart F), in accordance with the OCRM “Program Change Guidance” (July 1996).

Federal Consistency Routine Program Change No. 1

The Hawaii CZM Program proposes to modify the listing for the Highway Planning and Construction (20.205) grant program, Federal Highway Administration, by identifying additional activities that are not subject to federal consistency review. The proposed modification is intended to improve federal consistency procedures and to avoid unnecessary reviews for activities that do not have reasonably foreseeable coastal effects.

Hawaii List of Federal Assistance Programs Subject to Federal Consistency Review

20.205 Highway Planning and Construction, DOT

Current Hawaii CZM Program listing:

20.205 Highway Planning and Construction, DOT
Activities not subject to federal consistency review by CZM Hawaii:
- Non-construction activities related to highway planning and construction
- Acquisition of real property and rights-of-way
- Feasibility, alternative analysis, technical studies and data collection

Proposed modification:

New material is underscored and deleted material is bracketed with strike through.

20.205 Highway Planning and Construction, [DOT]
U.S. Department of Transportation, Federal Highway Administration (FHWA)

The following types of activities funded under this program are not subject to federal consistency review:
[Activities not subject to federal consistency review by CZM Hawaii]

- Non-construction activities related to highway planning and construction
- Acquisition of real property and rights-of-way
- Feasibility, alternative analysis, technical studies and data collection
- Road maintenance and repairs including removal of existing pavement, resurfacing, pavement preventive maintenance, striping and markings, replacing signage, and repairs to sidewalks and curbs.
• Reconstruction, rehabilitation and widening of roadways within established rights-of-way.
• Installation of sidewalks within established rights-of-way, e.g., Safe Routes to School.
• Installation of ADA curbs and ramps.
• Roadway improvements including installation of lighting, traffic signals, signage, pedestrian signals and crosswalks, and traffic management devices.
• Installation of drainage improvements for existing roadways within established rights-of-way.
• Repairs and improvements to existing bridges, including seismic retrofitting of bridges. Note: Construction of new bridges and widening of existing bridges requires federal consistency review.

Justification for modification:

1. The Hawaii CZM Program has determined that the excluded activities do not have reasonably foreseeable coastal effects. This determination is based on our experience in reviewing FHWA 20.205 grants. From January 2000 through June 2012, reviews of 103 FHWA 20.205 funded projects were conducted and all of our decisions were either consistency concurrences or that consistency review was not required. Most of these reviews were unnecessary because it was determined that the FHWA funded activities did not have reasonably foreseeable coastal effects.

2. Federal consistency reviews will continue to be required for all non-excluded 20.205 funded activities, which have reasonably foreseeable coastal effects.

3. Federal consistency procedures and requirements will continue to be in effect whenever a listed federal license or permit is required, such as the Department of Army Permit administered by the U.S. Army Corps of Engineers.

4. This routine program change meets the objectives of OCRM Program Approvability Area Number 5 - Coordination, Public Involvement and National Interest (15 CFR Part 923, Subpart F) for federal consistency procedures.

Federal Consistency Routine Program Change No. 2

Procedures for submitting applications for federal assistance by State and local government agencies and the time frame for federal consistency reviews needs to be specified in the Hawaii CZM Program due to the State’s discontinuance of participation in the intergovernmental review process established by Presidential Executive Order (E.O.) 12372 (see federal consistency RPC no. 3 below). This routine program change is being submitted for inclusion in the Hawaii CZM Program as a change in federal consistency procedures.
**Submittal of Federal Assistance Applications and Review Time Frame**

The State of Hawaii does not participate in the intergovernmental review process authorized by Presidential Executive Order 12372. Therefore, applicant agencies shall submit applications for federal assistance from programs identified on the Hawaii list of federal assistance programs to the Hawaii CZM Program for federal consistency review pursuant to 15 CFR §930.94(b). In addition to the federal assistance application, an evaluation of the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the Hawaii CZM Program shall be provided pursuant to 15 CFR §930.94(c). The Hawaii CZM Program will issue its concurrence with or objection to the application for federal assistance within 60 days from receipt of the applicant agency’s federal assistance application and consistency evaluation; unless an extension period of 15 days or less is added to the review time by notification to the applicant agency. The review time may be extended for longer periods by agreement between the applicant agency and the Hawaii CZM Program.

Justification for modification:

1. The State of Hawaii discontinued participation in the intergovernmental review process, authorized by E.O. 12372, on July 1, 1993 by letter from the Governor to the Director of the Office of Management and Budget, Executive Office of the President. A copy of the letter is attached. In lieu of the intergovernmental review process, applicant agencies currently submit applications for federal assistance directly to the Hawaii CZM Program for federal consistency review. The routine program change establishes this procedure in the Hawaii CZM Program.

2. The proposed time frame is similar to the review period established in 15 CFR Part 930, Subpart C, for federal agency activities.

3. The time frame allows sufficient time to publish public notice and provide an adequate public review and comment period.

4. This routine program change meets the objectives of OCRM Program Approvability Area Number 5 - Coordination, Public Involvement and National Interest (15 CFR Part 923, Subpart F) for federal consistency procedures.

Federal Consistency Routine Program Change No. 3

**Discontinuance of Intergovernmental Review Process under Presidential Executive Order 12372**

The State of Hawaii discontinued participation in the intergovernmental review process, authorized by Presidential Executive Order 12372 on July 1, 1993 by letter from the Governor to the Director of the Office of Management and Budget, Executive Office of the President. A
copy of the letter is attached. This measure is being submitted as a routine program change under OCRM Program Approvability Area Number 5 - Coordination, Public Involvement and National Interest (15 CFR 923, Subpart F) for federal consistency procedures.

Federal Consistency Routine Program Change No. 4

For consistency reviews of activities requiring a federal license or permit, the Hawaii CZM Program is clarifying that required necessary data and information includes completed State or local government permit applications which are required for the proposed activity, pursuant to 15 CFR §930.58(a)(2). This routine program change is being submitted for inclusion in the Hawaii CZM Program as a clarification in federal consistency procedures.

**Required Necessary Data and Information for Consistency Reviews of Activities Requiring a Federal License or Permit**

Necessary data and information includes completed State or local government permit applications which are required for the proposed activity.

Justification for inclusion in management program:

1. According to 15 CFR §930.58(a)(2), state management programs “may describe data and information necessary to assess the consistency of federal license and permit activities.” The subsection further iterates that, “[n]ecessary data and information may include completed State or local government permit applications which are required for the proposed activity.” Completed State and county permit applications that are required for activities requiring a federal license or permit are essential in our evaluation of whether an activity is consistent with Hawaii CZM Program enforceable policies. The applications for required State and county permits provide the necessary information and assurance that there will be compliance with Hawaii CZM Program enforceable policies.

2. This routine program change meets the objectives of OCRM Program Approvability Area Number 5 - Coordination, Public Involvement and National Interest (15 CFR Part 923, Subpart F) for federal consistency procedures.
Copy of Letter from the Governor to the Director of the Office of Management and Budget, Executive Office of the President
Mr. Leon E. Panetta, Director
Office of Management and Budget
Executive Office of the President
Old Executive Building
17th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Mr. Panetta:

Subject: Presidential Executive Order 12372 (E.O. 12372) - Intergovernmental Review of Federal Programs

Under E.O. 12372, states may develop their own processes for the Intergovernmental Review of Federal Programs. Please be informed that, effective July 1, 1993, the use of Single Point of Contact and the E.O 12372 for the State of Hawaii will be discontinued. Hawaii will continue to participate in the review and coordination of projects applying for federal financial assistance and direct federal development projects. However, rather than directing these proposals through a single point of contact, when the proposal or direct development project falls within a local government’s jurisdiction, we request that you instruct the funding agency to direct the applicant or federal agency to directly inform the local government planning agencies of these proposals and projects.

For projects affecting Oahu only and which will involve construction or major land use changes, applicants or federal agencies proposing direct federal developments, including disposal and/or acquisition of federal property, or applicants applying for federal assistance, will contact the Areawide agency and direct their project information to the:

Chief Planning Officer
Planning Department
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813
For projects affecting the Counties of Hawaii, Maui, and Kauai, which will involve construction or major land use changes, federal agencies proposing direct federal developments including disposal and/or acquisition of federal property, or applicants applying for federal assistance, will contact the Planning Director of the local planning agency in the County affected by the proposal. The planning agencies are as follows:

**County of Hawaii:**

- Planning Department
  - 25 Aupuni Street
  - Hilo, Hawaii 96720

**County of Maui:**

- Department of Planning
  - 250 South High Street
  - Wailuku, Hawaii 96793

**County of Kauai:**

- Department of Planning
  - 4280 Rice Street
  - Lihue, Hawaii 96766

These new procedures do not modify the need to comply with the requirements of 15 CFR Part 930, Coastal Zone Management Federal Consistency regulations. Project proposals requiring a determination of Federal Consistency with Hawaii's Coastal Zone Management Program shall contact:

- Hawaii Coastal Zone Management Program
  - Office of State Planning
  - Post Office Box 3540
  - Honolulu, Hawaii 96811-3540

Further, the State of Hawaii will abide by the conditions within the Memorandum of Understanding between the U.S. Department of Defense and the State Clearinghouse (amended March 20, 1984).
Finally, we request that you disseminate the above information to the appropriate federal agencies and notify them of these changes in the Intergovernmental Review procedures for Hawaii. If you have any questions, please contact Ms. Mary Lou Kobayashi at (808) 587-2802.

With kindest regards,

Sincerely,

JOHN WAIHEE

bc: Areawide Clearinghouse, City and County of Honolulu
    Maui Planning Department
    Kauai Planning Department
    Hawaii Planning Department
    U.S. Air Force
    U.S. Navy
    U.S. Marine Corps
    U.S. Army
    Air Force Regional Civil Engineer-Western Region
    Hawaii State Department of Defense
    Department of Transportation-Airports
    Department of Transportation-Highways
    Department of Transportation-Harbors
    Department of Transportation-Planning Office
    Department of Business, Economic Development and Tourism
    Department of Health-Environmental Planning Office
    Mr. Harold Masumoto
Department of Health amends the rules regarding Water Pollution Control

HAR §§11-55-04(f), 11-55-34.08(n) and 11-55-38
DEPARTMENT OF HEALTH
Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative
Rules, titled "Water Pollution Control," is amended and
compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01 Definitions
§11-55-02 General policy of water pollution control
§11-55-03 General prohibition
§11-55-04 Application for NPDES permit, notice of
  intent, or conditional "no exposure"
  exclusion
§11-55-05 Receipt of federal information
§11-55-06 Transmission of information to Regional
  Administrator
§11-55-07 Identity of signatories to NPDES forms
§11-55-08 Formulation of tentative determinations
  and draft permit
§11-55-09 Public notice of applications
§11-55-10 Fact sheet
§11-55-11 Notice to other government agencies
§11-55-12 Public access to information
§11-55-13 Public hearings
§11-55-14 Public notice of public hearings
§11-55-15 Issuance of NPDES permits
§11-55-16 Modification or revocation and reissuance
  of NPDES permits

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§11-55-17 Termination of permits and denial of renewal
§11-55-18 Reporting discontinuance or dismantlement
§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20 Effluent limitations in issued NPDES permits
§11-55-21 Schedule of compliance in issued NPDES permits
§11-55-22 Compliance schedule reports
§11-55-23 Other terms and conditions of issued NPDES permits
§11-55-24 National pretreatment standards and users of publicly owned treatment works
§11-55-25 Transmission to Regional Administrator of proposed NPDES permits
§11-55-26 Transmission to Regional Administrator of issued NPDES permits
§11-55-27 Renewal of NPDES permits
§11-55-28 Monitoring
§11-55-29 Recording of monitoring activities and results
§11-55-30 Reporting of monitoring results
§11-55-31 Sampling and testing methods
§11-55-32 Malfunction, maintenance, and repair of equipment
§11-55-33 Agency board membership
§11-55-34 General permit definitions
§11-55-34.01 General permit policy
§11-55-34.02 General permit authority and adoption
§11-55-34.03 General permit terms
§11-55-34.04 General permit conditions
§11-55-34.05 Requiring an individual permit
§11-55-34.06 Relationship of general and individual permits
§11-55-34.07 Degree of waste treatment
§11-55-34.08 Notice of intent
§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage
§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions

§11-55-34.11 Notice of general permit coverage modification, revocation and reissuance, and termination

§11-55-34.12 General permit compliance

§11-55-35 Penalties and remedies

§11-55-36 Hearings and appeals

§11-55-37 Severability clause

§11-55-38 [Historic and burial sites review]
Repealed.

§11-55-39 Public interest

§11-55-40 Field Citations

Appendix A Department of Health Standard General Permit Conditions

Appendix B NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities

Appendix C NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity

Appendix D NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities

Appendix E NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day

Appendix F NPDES General Permit Authorizing Discharges of Hydrotesting Waters

Appendix G NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering

Appendix H NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals

Appendix I NPDES General Permit Authorizing Discharges of Treated Process
(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

1. Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);

2. Submits a properly completed and signed "no exposure" certification on a form provided by the director;

3. Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and

4. Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) The applicant shall send a copy of the NPDES permit application to the state historic preservation division of the department of land and natural resources when review is required under section 11-55-38.] (Reserved).

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to state waters are not required to obtain an individual permit or general permit coverage.

(h) The application of pesticides consistent with all relevant requirements under FIFRA [i.e., those
state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) [The applicant shall send a copy of the notice of intent to the state historic preservation division of the department of land and natural resources when review is required under section 11-55-38.] (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-
§11-55-38  [Historic and burial sites review.  (a) For a new project, activity, or site, a person submitting to the department an NPDES permit application for individual permit, a notice of intent for general permit coverage under Appendix C, or a notice of intent specified by the department, shall demonstrate to the satisfaction of the department that:

(1) The project, activity, or site covered by the application or notice of intent has been or is being reviewed by the state historic preservation division of the department of land and natural resources; or

(2) A copy of the application or notice of intent has been submitted to the state historic preservation division of the department of land and natural resources for review.

Failure to comply is a ground for the department to find the NPDES permit application or notice of intent incomplete and suspend processing or return the application or notice of intent.

(b) Based on case-by-case review or experience, the department may excuse an application or notice of intent or class of applications or notices of intent from subsection (a).] Repealed.  [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R ] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§11-55-39  Public interest.  (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:
1. Title is amended.
2. §11-55-01 is compiled.
3. §11-55-02 is compiled.
4. §11-55-03 is compiled.
5. §11-55-04 is amended and compiled.
6. §11-55-05 is compiled.
7. §11-55-06 is compiled.
8. §11-55-07 is compiled.
9. §11-55-08 is compiled.
10. §11-55-09 is compiled.
11. §11-55-10 is compiled.
12. §11-55-11 is compiled.
13. §11-55-12 is compiled.
14. §11-55-13 is compiled.
15. §11-55-14 is compiled.
16. §11-55-15 is compiled.
17. §11-55-16 is compiled.
18. §11-55-17 is compiled.
19. §11-55-18 is compiled.
20. §11-55-19 is compiled.
21. §11-55-20 is compiled.
22. §11-55-21 is compiled.
23. §11-55-22 is compiled.
24. §11-55-23 is compiled.
25. §11-55-24 is compiled.
26. §11-55-25 is compiled.
27. §11-55-26 is compiled.
28. §11-55-27 is compiled.
29. §11-55-28 is compiled.
30. §11-55-29 is compiled.
31. §11-55-30 is compiled.
32. §11-55-31 is compiled.
33. §11-55-32 is compiled.
34. §11-55-33 is compiled.
35. §11-55-34 is compiled.
36. §11-55-34.01 is compiled.
37. §11-55-34.02 is compiled.
38. §11-55-34.03 is compiled.
39. §11-55-34.04 is compiled.
40. §11-55-34.05 is compiled.
41. §11-55-34.06 is compiled.
42. §11-55-34.07 is compiled.
43. §11-55-34.08 is amended and compiled.
44. §11-55-34.09 is compiled.
45. §11-55-34.10 is compiled.
46. §11-55-34.11 is compiled.
47. §11-55-34.12 is compiled.
48. §11-55-35 is compiled.
49. §11-55-36 is compiled.
50. §11-55-37 is compiled.
51. §11-55-38 is repealed.
52. §11-55-39 is compiled.
53. §11-55-40 is compiled.
54. Appendix A is compiled.
55. Appendix B is compiled.
56. Appendix C is compiled.
57. Appendix D is compiled.
58. Appendix E is compiled.
59. Appendix F is compiled.
60. Appendix G is compiled.
61. Appendix H is compiled.
62. Appendix I is compiled.
63. Appendix J is compiled.
64. Appendix K is compiled.
65. Appendix L is compiled.
HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

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$11-55-02 General policy of water pollution control
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§11-55-23 Other terms and conditions of issued NPDES permits
§11-55-24 National pretreatment standards and users of publicly owned treatment works
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§11-55-26 Transmission to Regional Administrator of issued NPDES permits
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§11-55-34.11 Notice of general permit coverage modification, revocation and reissuance, and termination
§11-55-34.12 General permit compliance
§11-55-35 Penalties and remedies
§11-55-36 Hearings and appeals
§11-55-37 Severability clause
§11-55-38 Repealed.
§11-55-39 Public interest
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§11-55-40 Field Citations

Appendix A Department of Health Standard General Permit Conditions

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Appendix H NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals

Appendix I NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities

Appendix J NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems

Appendix K NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems

Appendix L NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
§11-55-01

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2006 unless otherwise specified.


"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject
§11-55-01

under the Act; chapter 342D, HRS; rules of the department; and which have been:

(1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or

(2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as a AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations.
§11-55-01

on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into state waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.
"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into state waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the Regional Administrator in conjunction with the director.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and
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(b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not begin the discharge of pollutants at a particular site before August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

1. After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
2. After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the Administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste.
products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge
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it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e)(2).

"Pest" means

(1) Any insect, rodent, nematode, fungus, weed, or

(2) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).

"Pesticide" means

(1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(3) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. §321(v), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. §321(w) bearing or containing a new animal drug.
The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.3).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the Regional Administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.
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"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

1. Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;

2. Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and

3. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects

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the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 342D-1, HRS.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDWS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute state waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

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The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant."

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp JUN 1 5 2009] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

(1) To conserve state waters;

(2) To protect, maintain, and improve the quality of state waters:

(A) For drinking water supply, and food processing;

(B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;

(C) For oceanographic research;

(D) For the conservation of coral reefs and wilderness areas; and

(E) For domestic, agricultural, industrial, and other legitimate uses;

(3) To provide that no waste be discharged into any state waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;

(4) To provide for the prevention, abatement, and control of new and existing water pollution; and

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(5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a).

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 08/01/05; comp 10/22/07; comp 08/01/05; comp 10/22/07; comp (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))]

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 08/01/05; comp 10/22/07; comp 08/01/05; comp 10/22/07; comp (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)]

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land, or substantially altering the quality of any discharges, or substantially increasing the quantity of

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any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

(1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;

(2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

(3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;

(4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit
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application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

(5) (Reserved);
(6) (Reserved); or
(7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction
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activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled.

When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of $1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

(1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works
or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a $1,000 filing fee which shall be submitted with the NPDES permit application;

(2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a $500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);

(3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the $1,000 filing fee which shall be submitted with the NPDES permit application;

(4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

(1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);

(2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
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(3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and

(4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to state waters are not required to obtain an individual permit or general permit coverage.

(h) The application of pesticides consistent with all relevant requirements under FIFRA (i.e., those relevant to protecting water quality) in the following two circumstances do not require an NPDES permit:

(1) The application of pesticides directly to state waters in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in state waters; or

(2) The application of pesticides to control pests that are present over state waters, including near such waters, where a portion of the pesticides will unavoidably be deposited to state waters in order to target the pests effectively; for example, when insecticides are aerially applied to a forest canopy where state waters may be
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present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

The department reserves its authority to require NPDES permits for other pesticide applications. [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the Regional Administrator prior to participation in the NPDES in a manner as the director and the Regional Administrator shall agree. Any agreement between the director and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the director from the Regional Administrator of copies of any NPDES permit applications, or other relevant information collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and

(2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the Regional Administrator. [Eff 11/27/81; am 55-23]
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and comp 09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; am and comp
10/22/07; comp JUN 15 2009 ) (Auth: HRS
§§342D-4, 342D-5; 33 U.S.C. §§1251, 1342,
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33
U.S.C. §§1251, 1342, 1370, 1251-1387;
40 CFR Parts 122; 123; 124, Subparts A and D;
125; §123.42)

§11-55-06 Transmission of information to Regional Administrator. The director shall transmit to the Regional Administrator copies of NPDES forms received by the State in a manner as the director and Regional Administrator shall agree. Any agreement between the State and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the Regional Administrator of a complete copy of any NPDES form received by the State;

(2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;

(3) Procedures for acting on the Regional Administrator's written waiver, if any, of the Regional Administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular state waters or parts thereof subject to the limits in 40 CFR §123.24(d);

(4) An opportunity for the Regional Administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the Regional Administrator and to have the deficiency corrected. If the Regional Administrator's objection relates to an NPDES permit application, the director shall send the Regional Administrator any
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information necessary to correct the
deficiency and shall, if the Regional
Administrator so requests, not issue the
individual permit until the department
receives notice from the Regional
Administrator that the deficiency has been
corrected;

(5) Procedures for the transmittal, if requested
by the Regional Administrator, of copies of
any notice received by the director from
publicly owned treatment works under section
11-55-23(7) and 11-55-23(8); and

(6) Variance applications shall be processed in
accordance with the procedures set forth in
section 342D-7, HRS, and 40 CFR §§122.21(m)
through (o), 124.62, and 403.13. [Eff
11/27/81; am and comp 10/29/92; am and comp
09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; am and comp
10/22/07; comp JUN 15 2009 ] (Auth: HRS
§§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2,
342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts
122; 123; 124, Subparts A and D; 125;
§§122.21(m), 122.21(n), 122.21(o), 123.25(a),
123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in
40 CFR §122.22(d), submitted to the director shall be
signed as follows:

(1) For a corporation. By a responsible
corporate officer. For the purpose of this
section, a responsible corporate officer
means:

(A) A president, secretary, treasurer, or
vice-president of the corporation in
charge of a principal business function,
or any other person who performs similar

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policy- or decision-making functions for the corporation, or

(B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(A) The chief executive officer of the agency, or

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);

(4) For a trust. By a trustee; or

(5) For a limited liability company (LLC). By a manager or a member authorized to make
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management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);

(2) The authorization is made in writing by a person designated under subsection (a); and

(3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp ]

(2857)
§11-55-08  Formulation of tentative determinations and draft permit.  (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

(1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and

(2) If the determination is to issue the individual permit, the following additional tentative determinations:

(A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;

(B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;

(C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and

(D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

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(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 15 JUN 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications.  (a) The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
  (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
  (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
  (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

(2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and

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(3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

(1) Name and address of the agency issuing the public notice;
(2) Name and address of each owner or operator or both and the name and address of the facility or activity;
(3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
(4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
(5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
(6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment,
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requesting a public hearing, and any other means of public participation offered;

(7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
   (A) Obtain further information;
   (B) Request a copy of the draft permit prepared under section 11-55-08(b);
   (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
   (D) Inspect and copy NPDES forms and related documents; and

(8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/29/09] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major
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facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;

(2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
   (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
   (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
   (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;

(3) The tentative determinations required under section 11-55-08;

(4) A brief citation, including a brief identification of the uses for which the
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receiving state waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;

(5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:

(A) The thirty-day comment period required by section 11-55-09(b);

(B) Procedures for requesting a public hearing and the nature thereof; and

(C) Any other procedures by which the public may participate in the formulation of the final determinations;

(6) The name and telephone number of a person to contact for additional information; and

(7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.
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(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into state waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

(1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular state waters or parts thereof; and

(2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the Regional Administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

(1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

(2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized
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representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours.

The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes

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information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the Regional Administrator for the Regional Administrator's concurrence in any determination of confidentiality. If the Regional Administrator advises the director that the Regional Administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the Regional Administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

(1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or

(2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)
§11-55-13 Public hearings. (a) The owner or operator, Regional Administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp ]

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§11-55-14  Public notice of public hearings.  (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit.  Public notice for hearings held under section 11-55-13 shall be:

(1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;

(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;

(3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and

(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

(1) Name and address of the agency holding the public hearing;

(2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;

(3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;

(4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;

(5) Information regarding the date, time, and location of the hearing;

(6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable:
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(7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
(A) Obtain further information;
(B) Request a copy of each draft permit prepared under section 11-55-08(b);
(C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
(D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years.

(b) The director shall issue or renew an NPDES permit on the following basis:

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(1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:

(A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and

(B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;

(2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;

(3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;

(4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;

(5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and

(6) The facility shall comply with sections 11-55-27 through 11-55-32.

(c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:

(1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;

(2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge.
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into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;

(3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and

(4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

(1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;

(2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;

(3) Discharge to which the Regional Administrator has objected in writing under any right to
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object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
(4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
(5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 1-27-81; am and comp 10-29-92; am and comp 9-22-97; comp 01-06-01; am and comp 11-07-02; comp 08-01-05; am and comp 10-22-07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.
(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.
(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.
(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.
(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if

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granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and
comp 09/22/97; comp 01/06/01; am and comp 11/07/02;
comp 08/01/05; comp 10/22/07; comp JUN 15 2009]
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251,
1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124,
Subparts A and D; 125; §§122.5, 122.62, 122.63,
123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the
NPDES permit, the NPDES permit shall automatically
terminate and the permittee shall be divested of all
rights therein.

(b) Each NPDES permit renewal application shall
be subject to denial and each issued NPDES permit shall
be subject to termination by the director after notice
and opportunity for a contested case hearing.

(c) The following are causes for terminating a
permit during its term or for denying a permit renewal
application:

(1) Noncompliance by the permittee with any
condition of the permit;

(2) The permittee's failure in the application or
during the permit issuance process to
disclose fully all relevant facts, or the
permittee's misrepresentation of any relevant
facts at any time;

(3) A determination that the permitted activity
endangers human health or the environment and
can only be regulated to acceptable levels by
permit modification or termination; or

(4) A change in any condition that requires
either a temporary or permanent reduction or
elimination of any discharge or sludge use or
disposal practice controlled by the permit
(for example, plant closure or termination of
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Discharge by connection to a publicly owned treatment works.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp
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Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

(1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
(2) Standards of performance for new sources;
(3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
(4) More stringent limitation, including those:
   (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
   (B) Necessary to meet any other federal law or regulations including, but not limited to:
      (i) Toxic pollutant effluent standards in 40 CFR Part 129;
      (ii) Secondary treatment regulation in 40 CFR Part 133;
      (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
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(v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and

(vi) Technical standards for concentrated animal feeding operations in 40 CFR §123.36 and 40 CFR Part 412; or

(C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;

(5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

(6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and

(7) If the NPDES permit is for the discharge of pollutants into the state waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(8) Other requirements developed under the continuing planning process under Section 55-46
303(e) of the Act and any regulations and guidelines issued under it.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp]


§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director’s discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff
§11-55-21  Schedule of compliance in issued NPDES permits.  (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:
(A) Applicable effluent standards and limitations;
(B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
(C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided.
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into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ]


§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the Regional Administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name, address, and permit number of each noncomplying permittee;

(2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit
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preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);

(3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)
§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;

(2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);

(3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);

(4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:

(A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;

(B) Have access to and copy any records kept under terms and conditions of the NPDES permit;

(C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations
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regulated or required under the NPDES permit; or

(D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;

(6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;

(7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:

(A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;

(B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;

(C) The quality and quantity of effluent to be introduced into a treatment works; and

(D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
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(8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

(9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and

(10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or
prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

(11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp


§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.4(a) or 403.4(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:
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(1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;

(2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and

(3) Sample any discharge of pollutants or effluent.

(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

1. Establish and maintain records;

2. Make reports;

3. Install, use, and maintain monitoring equipment or methods;

4. Sample effluent and state waters;

5. Provide access to and copying of any records which are maintained; and

6. Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to Regional Administrator of proposed NPDES permits. The director shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by the agency in a manner as the
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director and Regional Administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and Regional Administrator shall provide for at least the following:

(1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;

(2) A period of time (up to ninety days) in which the Regional Administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;

(3) Procedures for state acceptance or rejection of a written objection by the Regional Administrator; and

(4) Any written waiver by the Regional Administrator of the Regional Administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 1 5 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to Regional Administrator of issued NPDES permits. The director shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along

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with any and all terms, conditions, requirements, or
documents which are a part of the NPDES permit or which
affect the authorization by the NPDES permit of the
discharge of pollutants. [Eff 11/27/81; comp 10/29/92;
am and comp 09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; comp 10/22/07; comp
33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2,
342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370,
1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and
D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The
director shall review applications for reissuance of
NPDES permits. Any permittee who wishes to continue to
discharge after the expiration date of the permittee's
NPDES permit shall submit for renewal of the permit at
least one hundred eighty days prior to its expiration.
(b) The scope and manner of any review of an
application for renewal of an NPDES permit shall be
within the discretion of the director and shall be
sufficiently detailed as to ensure the following:

(1) The permittee is in compliance with or has
substantially complied with all the terms,
conditions, requirements, and schedules of
compliance of the current or expired NPDES
permit;

(2) That the director has current information on
the permittee's production levels;
permittee's waste treatment practices;
nature, contents, and frequency of
permittee's discharge through the submission
of new forms and applications or from
monitoring records and reports submitted to
the director by the permittee; and

(3) That the discharge is consistent with
applicable effluent standards and
limitations, water quality standards, and
other legally applicable requirements,
including any additions to, revisions, or

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modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period:

(1) A ten-year period beginning on the date of completion of the construction;

(2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or

(3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required
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by the director, including the installation, use, and
maintenance of monitoring equipment or methods
(including, where appropriate, biological monitoring
methods).

(b) Any discharge authorized by an NPDES permit
which:

(1) Is not a minor discharge;
(2) The Regional Administrator requests, in
writing, be monitored; or
(3) Contains toxic pollutants for which an
effluent standard has been established by the
Administrator under Section 307(a) of the
Act, 33 U.S.C. §1317, shall be monitored by
the permittee for at least the items listed
in subsection (c).

(c) Monitored items:
(1) Flow (in gallons per day or cubic feet per
second); and
(2) All of the following pollutants:
   (A) Pollutants (either directly or
indirectly through the use of accepted
correlation coefficient or equivalent
measurements) which are subject to
reduction or elimination under the terms
and conditions of the NPDES permit;
   (B) Pollutants which the director finds, on
the basis of available information,
could have a significant impact on the
quality of state waters;
   (C) Pollutants specified by the
Administrator in regulations issued
under the Act, as subject to monitoring;
and
   (D) Any pollutants in addition to the above
which the Regional Administrator
requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to
be monitored under subsection (c) shall be monitored at
intervals sufficiently frequent to yield data which
reasonably characterizes the nature of the discharge of
the monitored effluent flow or pollutant. Variable

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Effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/2009] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

(1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;

(2) Any records of monitoring activities and results shall include for all samples:
   (A) The date, exact place, and time of sampling or measurements;
   (B) The individual(s) who performed the sampling or measurements;
   (C) The date(s) the analyses were performed;
   (D) The individual(s) who performed the analyses;
   (E) The analytical techniques or methods used; and
   (F) The results of the analyses; and

(3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee.
§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. {Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009} (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(1)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction
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of persons knowledgeable in the field of water 
pollution control.  
(b) The director may conduct tests of waste 
discharges from any source. Upon request of the 
director, the person responsible for the source to be 
tested shall provide necessary sampling stations and 
other safe and proper sampling and testing facilities, 
exclusive of instruments and sensing devices, as may be 
necessary for proper determination of the waste 
discharge. [Eff 11/27/81; comp 10/29/92; am and comp 
09/22/97; comp 01/06/01; am and comp 11/07/02; comp 
08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: 
HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) 
§§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 
123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)  

§11-55-32  Malfunction, maintenance, and repair of 
equipment.  (a) There shall be no shut-down of water 
pollution treatment facilities for purposes of 
maintenance unless a schedule or plan for the 
maintenance has been submitted to and approved by the 
director prior to the shut-down.  
(b) In the case of a shut-down of water pollution 
control equipment for necessary maintenance, the intent 
to shut down the equipment shall be reported to and 
approved by the director at least twenty-four hours 
prior to the planned shut-down. The prior notice shall 
include, but is not limited to, the following: 
(1) Identification of the specific facility to be 
taken out of service, as well as its location 
and NPDES permit number;  
(2) The expected length of time that the water 
pollution control equipment will be out of 
service;  
(3) The nature and quantity of discharge of water 
pollutants likely to be emitted during the 
shut-down period;
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(4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;

(5) Identification of any adverse impacts to the receiving state waters which could be caused by the wastes which are to be bypassed; and

(6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[ Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; ccomp JUN 1 5 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

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(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009]


§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

(1) Storm water point sources; or

(2) A group of point sources other than storm water point sources if all sources in the group:

(A) Involve the same or substantially similar types of operations;
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(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and

(E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit. "Geographical area" means existing geographical or political boundaries such as:

(1) Designated planning areas under Sections 208 and 303 of the Act;

(2) Sewer districts or sewer authorities;

(3) City, county, or state political boundaries;

(4) State highway systems;

(5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or

(7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp
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10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp


§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

(1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities," dated October 2007, for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);

(2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity," dated October 2007, for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area;

(3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities," dated October 2007, for the discharge of treated effluent from the leaking underground storage tank remedial activities;

(4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through
Cooling Water Less Than One (1) Million Gallons Per Day," dated October 2007, for the discharge of once-through, non-contact cooling water for one million gallons per day or less;

(5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters," dated October 2007, for the discharge of non-polluted hydrotesting water;

(6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering," dated October 2007, for the discharge of dewatering effluent from a construction activity;

(7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007, for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;

(8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007, for the discharge of treated process wastewater effluent associated with well drilling activities;

(9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007, for the discharge of treated process wastewater effluent from recycled water distribution systems;

(10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems," dated October 2007, for the discharge of storm water and certain non-storm water discharges from a small municipal separate...
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storm sewer system as defined in 40 CFR §122.26(b)(16); and

(11) Appendix J, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks," dated October 2007, for the discharge of circulation water from decorative ponds or tanks. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions. (a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions," dated October 2007 and located at the end of this chapter is adopted,

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incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through L, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009 ]


§11-55-34.05 Requiring an individual permit. Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

(1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan containing requirements applicable to the point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or

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elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or

(7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
   (A) The location of the discharge with respect to state waters;
   (B) The size of the discharge;
   (C) The quantity and nature of the pollutants discharged to the state waters; and
   (D) Other relevant factors. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ]


§11-55-34.06 Relationship of general and individual permits. (a) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(b) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.
$11-55-34.07

(c) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3)(iii-v), 123.25(a)(11))

$11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

(1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;

(2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;

(3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
(A) To meet any existing federal laws or regulations; or
(B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and

(4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 55-71]
§11-55-34.07

08/01/05; comp 10/22/07; comp

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent.

(b) A notice of intent shall:

(1) Be submitted on forms provided by the director;

(2) Comply with the notice of intent requirements of the respective general permit; and

(3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which

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occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of $500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of $500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of $500;

(3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

(1) The beginning of any discharge, which is not covered under Appendix C;

(2) The beginning of any construction activity which is covered under Appendix C;
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(3) The expiration date of the existing general permit; or
(4) The expiration date of the existing notice of general permit coverage.
(k) (Reserved).
(l) (Reserved).
(m) A notice of intent shall be submitted to the director for:
   (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
   (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

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(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp JUN 15 2009] (Am: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a)
After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under
subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may administratively extend a notice of general permit coverage upon receipt of a notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or the term of the notice of general permit coverage, whichever occurs first. The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

(1) Notification by the director of general permit coverage under subsection (b); or

(2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:
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(1) The notice of intent may later be found to be incomplete by the director or by a court;

(2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;

(3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and

(4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e)(2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and

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§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage modification, revocation and reissuance, and termination. (a) A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be modified or revoked and reissued under the criteria and procedures of section 11-55-16.

(b) A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be terminated under the criteria of sections 11-55-17 and 11-55-34.05 and the procedures of section 11-55-17(d). [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-
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§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and E; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81;
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am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp JUN 15 2009 ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R JUN 15 2009 ] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

(1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;

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(2) Any adverse environmental effects which cannot be avoided should the action be implemented;

(3) The alternatives to the proposed action;

(4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;

(5) Any irreversible and irretreivably commitment of resources which would be involved in the proposed action should it be implemented; and

(6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp


(Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter.

(1) Offer to settle; penalties.
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(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

(i) Any person who causes or allows a discharge of pollutants into state waters or municipal separate storm sewer systems without coverage under an individual permit or notice of general permit coverage or conditional "no exposure" exclusion;

(ii) Any person who begins any construction activity which involves the disturbance of one acre or more of total land area or any construction activity that involves the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area and who has not obtained coverage under an individual permit or notice of general permit coverage;

(iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
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(iv) Any person who fails to retain a copy of the NPDES permit application or notice of intent or "no exposure" certification; storm water pollution control plan or best management practices plan or other plan, and all subsequent revisions; individual permit or notice of general permit coverage or conditional "no exposure" exclusion on-site or at a nearby office or field office.

(B) A field citation shall assess the following penalties for violations:

(i) Any person who violates paragraph (1)(A)(i) shall be fined $500 for first violation, and $1,000 for a subsequent violation;

(ii) Any person who violates paragraph (1)(A)(ii) shall be fined $500 for the first violation, and $1,000 for a subsequent violation;

(iii) Any person who violates paragraph (1)(A)(iii) shall be fined $500 for first violation, and $1,000 for a subsequent violation;

(iv) Any person who violates paragraph (1)(A)(iv) shall be fined $100 for first violation, and $200 for a subsequent violation.

(2) Resolution of field citation.

(A) A person issued a field citation may accept the citation by:

(i) Signing the field citation;

(ii) Paying the full amount assessed by the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's
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check, money order, or as otherwise specified by the director;

(iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and

(iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;

(B) By signing the field citation, the person to whom it was issued agrees to:

(i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;

(ii) Pay the penalty assessed; and

(iii) Correct the violation;

(C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

Amendments to and compilation of chapter 11-55 Hawaii Administrative Rules, titled Water Pollution Control, on the summary page dated MAY 27 2009, were adopted on MAY 27 2009, following a public hearing held on April 27, 2009, after public notice was given in the Honolulu Star-Bulletin, West Hawaii Today, The Garden Isle and The Maui News and Hawaii Tribune-Herald on March 9, 2009.

The amendments and compilation shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHIYOME LINNAYA FUKINO, M.D.  
Director of Health  

Dated: MAY 27 2009

APPROVED:

LINDA LINGLE  
Governor  
State of Hawaii  

Dated: JUN - 4 2009

Filed:

Effective Date: JUN 1 5 2009

APPROVED AS TO FORM:

Edward G. Bohlen  
Deputy Attorney General  

55-85
Rules Regulating Wildlife Sanctuaries

HAR Chapter 13-125
§§13-125-1 to 13-125-7  Repealed.  [R  1/22/2010  ]
DEPARTMENT OF LAND AND NATURAL RESOURCES

The repeal of chapter 13-125, and adoption of chapter 13-126, Hawaii Administrative Rules, on the Summary Page dated December 11, 2009, was adopted on December 11, 2009, following a series of statewide public hearings held between November 3 through 9, 2009 after public notice was given in the Star Bulletin, Garden Island, Maui News, Hawaii Tribune-Herald, and West Hawaii Today on October 4, 2009.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

[Signature]
LAURA H. THIELEN
Chairperson
Board of Land and Natural Resources

APPROVED:

[Signature]
LINDA LINGLE
Governor
State of Hawaii

Dated: 1/8/10

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

JAN 1 2 2010
Filed

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