

Supporting Documents for the Hawaii CZM Program Change Request

Deleted

1. Act 59, Session Laws of Hawaii (SLH) 2003

Hawaii Revised Statutes (HRS) Chapter 6E, Part VI South Kona
Wilderness Area, under HRS Chapter 6E Historic Preservation

ACT 59

H.B. NO. 1509

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Senate Concurrent Resolution No. 140, S.D. 1, adopted by the Twenty-first Legislature, regular session of 2001, directed the department of land and natural resources to work with Hawaiian cultural organizations and other

interested parties to renew the plan to create a state park and nature reserve with minimum improvements, but preserving the significant archaeological sites in the area designated in the resolution within the ahupua'a of Honomalino, Okoe, Kapu'a, Kaulanamauna, and Manuka in the districts of South Kona and Ka'u, county of Hawaii.

The department of land and natural resources submitted a report to the Twenty-first Legislature, regular session of 2002, in December of 2001. The report identified the areas proposed to be included within the park, summarized the status and existing conditions, discussed access and infrastructure, and summarized the issues and recommendations.

The purpose of this Act is to establish a South Kona wilderness area on the island of Hawaii, provide a mechanism for the creation of a plan for management of the wilderness area, and provide a framework for management of the wilderness area.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SOUTH KONA WILDERNESS AREA

§6E-A Establishment. There is established the South Kona wilderness area on the island of Hawaii in the area described in section 6E-B to be administered by the department of land and natural resources for the preservation of the visual, cultural, and historical aspects of the lands covered in this part and for the following other purposes:

- (1) To preserve the extensive archaeological sites in the area, including ancient homesites, a holua slide, a heiau, and burial caves;
- (2) To preserve and protect native Hawaiian plants and animals currently in the area;
- (3) To provide for a wilderness area with minimal man-made structures;
- (4) To permit limited access for recreational purposes, such as fishing, swimming, camping, and exploration; and
- (5) To prevent additional development in the area.

§6E-B Lands included. (a) Except as provided in subsection (b), the following lands shall be included in the South Kona wilderness area:

- (1) Honomalino: All lands from the shoreline to six thousand feet inland;
- (2) Okoe: All lands from the shoreline to six thousand feet inland. The Honomalino and Okoe sections include about one thousand four hundred fifty-eight acres;
- (3) Kapu'a: All lands from the shoreline and going mauka, designated as lots D-2-1 to D-2-4 in the county of Hawaii, planning department, final subdivision approval number 7625, a portion of which is currently included within the conservation district, which lands include about seven thousand seven hundred eighty acres;
- (4) Kaulanamauna: All lands from the shoreline to the forest reserve boundary, which includes about eight hundred seventy acres; and
- (5) Manuka: All lands from the shoreline to the forest reserve boundary, which includes about eleven thousand eight hundred ten acres.

(b) Any parcel of land included in subsection (a) upon which there is a dwelling house as of July 1, 2003, together with any outbuildings forming a part of the residential complex, shall be excluded from the South Kona wilderness area.

§6E-C Management plan. The department, in cooperation with appropriate county, state, and federal agencies, shall develop a comprehensive management plan for:

- (1) The preservation and protection of the historic sites;
- (2) The protection of native species; and
- (3) The recreational uses of the South Kona wilderness area.

The department shall be authorized and encouraged to contract out the development of the plan and the management of the South Kona wilderness area to nonprofit organizations interested in attaining the purposes of this part.

§6E-D Construction prohibited. No new homes or other structures shall be constructed within one thousand feet of the shoreline within the South Kona wilderness area, except as follows:

- (1) Structures built by the department for the purpose of managing the area;
- (2) Repairs to existing structures pursuant to rules adopted by the department; and
- (3) Construction of one dwelling by a private landowner if the existing rules permit the construction;

provided that no land may be subdivided within the area, and provided further that no owner shall be permitted to consolidate and resubdivide lots within the area if this would increase the number of buildable lots.

§6E-E Land acquisition. The department is authorized to acquire any private lands included in the lands described in section 6E-B(a) by a value-for-value exchange of other state lands; provided that, notwithstanding section 171-50, the costs associated with any appraisal, including that of the public land, shall be borne by the owner of the private land in the exchange transaction or by private funds, grants, or contributions.

§6E-F Designation of lands within the conservation district. All lands described in section 6E-B(a) shall be classified as lands within the conservation district as described in section 205-2 without the necessity of any proceedings before the land use commission.”

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2003; provided that:

- (1) This Act shall be repealed on December 31, 2006, if the exchange transactions to acquire the lands described in section 6E-B are not consummated prior to December 31, 2006; and
- (2) In the event that this Act is repealed, any revisions to land classifications that were made pursuant to this Act shall revert to their original classifications.

(Approved May 16, 2003.)

ACT 215

H.B. NO. 2974

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Act 59, Session Laws of Hawaii 2003 established the South Kona wilderness area on the island of Hawaii. Act 59 directed the department of land and natural resources to preserve the visual, cultural, and historical aspects of the land, and to develop a comprehensive management plan for the wilderness area.

The purpose of this Act is to extend the length of time allowed to acquire the lands that are designated to become part of the South Kona wilderness area on the island of Hawaii.

SECTION 2. Act 59, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2003; provided that:

- (1) This Act shall be repealed on December 31, [~~2006~~,] 2007, if the exchange transactions to acquire the lands described in section 6E-B are not consummated prior to December 31, [~~2006~~,] 2007; and
- (2) In the event that this Act is repealed, any revisions to land classifications that were made pursuant to this Act shall revert to their original classifications.”

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 June 21, 2006.)

Added

2. Act 178, SLH 2011

HRS Chapter 6E, Part VI South Kona Wilderness Area

ACT 178

S.B. NO. 1154

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. The legislature finds that the concept of a wilderness area in the culturally and historically rich south Kona area on the island of Hawaii has been discussed for more than forty years. This area has significant archaeological sites that warrant protection and preservation. Act 59, Session Laws of Hawaii 2003, established the south Kona wilderness area and provided for the development of a comprehensive management plan for the area; however, Act 59 was subsequently repealed on December 31, 2007, pursuant to Act 215, Session Laws of Hawaii 2006.

The purpose of this Act is to establish a south Kona wilderness area on the island of Hawaii.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SOUTH KONA WILDERNESS AREA

§6E-A South Kona wilderness area; establishment. There is established the south Kona wilderness area on the island of Hawaii in the area described in section 6E-B to be administered by the department of land and natural resources for the preservation of the visual, cultural, biological, and historical aspects of the lands covered in this part and to:

- (1) Preserve the extensive archaeological sites in the area, including ancient homesites, a holua slide, a heiau, and burial caves;
- (2) Preserve and protect native Hawaiian plants and animals currently in the area;
- (3) Provide for a wilderness area with minimal man-made structures;
- (4) Permit limited non-vehicular access for recreational purposes, such as fishing, swimming, and exploration; and
- (5) Prevent additional development in the area.

§6E-B Lands included. (a) Except as provided in subsection (b), the following lands shall be included in the south Kona wilderness area:

- (1) Honomalino: All lands from the shoreline to six thousand feet inland;
- (2) Okoe: All lands from the shoreline to six thousand feet inland. The Honomalino and Okoe sections include approximately one thousand four hundred fifty-eight acres;
- (3) Kaulanamauna: The Manuka natural area reserve boundary extended to the shoreline; and
- (4) Manuka: The Manuka natural area reserve boundary extended to the shoreline.

(b) Any parcel of land included in subsection (a) upon which there is a dwelling house as of July 1, 2011, together with any outbuildings forming a part of the residential complex, shall be excluded from the south Kona wilderness area.

(c) Land use district boundaries existing as of July 1, 2011, shall continue in full force and effect subject to amendment as provided in chapter 205, Hawaii Revised Statutes.

§6E-C Government-owned land; construction prohibited. No new homes or other structures shall be constructed on government-owned land within one thousand feet of the shoreline within the south Kona wilderness area, except as follows:

- (1) Structures built by the department for the purpose of managing the area; and
- (2) Repairs to existing structures pursuant to rules adopted by the department under chapter 91;

provided that no government-owned land within the south Kona wilderness area shall be subdivided; provided further that the State and the County of Hawaii shall not be permitted to consolidate and resubdivide lots within the area if this consolidation or subdivision would increase the number of buildable lots.”

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 1, 2011.)

CHAPTER 6E HISTORIC PRESERVATION

Part I. Historic Preservation Program

Section

- 6E-1 Declaration of intent
- 6E-2 Definitions
- 6E-3 Historic preservation program
- 6E-3.5 Consultation
- 6E-4 Administration
- 6E-5 State historic preservation officer
- 6E-5.5 The Hawaii historic places review board; creation; powers; appointments; composition
- 6E-6 Depositories for certain specimens and objects
- 6E-7 State title to historic property
- 6E-8 Review of effect of proposed state projects
- 6E-9 Investigation, recording, preservation, and salvage; appropriations
- 6E-10 Privately owned historic property
- 6E-10.5 Enforcement
- 6E-11 Civil and administrative violations
- 6E-11.5 Civil penalties
- 6E-11.6 Administrative penalties
- 6E-12 Reproductions, forgeries, and illegal sales
- 6E-13 Injunctive relief
- 6E-14 Preservation activities by political subdivisions
- 6E-15 Regulations, special conditions or restrictions
- 6E-16 Hawaii historic preservation special fund
- 6E-17 Archaeological data survey database

Part II. Monuments and Memorials

- 6E-31 Monuments; reservation of land; relinquishment of private claims
- 6E-32 Diamond Head State Monument
- 6E-32.5 Mount Olomana state monument
- 6E-33 Repealed
- 6E-34 Capitol site
- 6E-34.5 State capitol; state capitol management committee; established; oversight and management; powers and duties
- 6E-35 Iolani Palace
- 6E-36 Sand Island
- 6E-37 National statuary hall; Father Damien
- 6E-38 National statuary hall; King Kamehameha I
- 6E-38.5 Kohala Historical Sites State Monument
- 6E-39 Jurisdiction over World War II memorial
- 6E-40 Bernice Pauahi Bishop Museum

- 6E-41 Cemeteries; removal or redesignation
- 6E-42 Review of proposed projects
- 6E-42.2 Excluded activities for privately-owned
single-family detached dwelling units and townhouses
- 6E-43 Prehistoric and historic burial sites
- 6E-43.5 Island burial councils; creation; appointment;
composition; duties
- 6E-43.6 Inadvertent discovery of burial sites
- 6E-44 Veterans memorial commission
- 6E-45 Korean and Vietnam memorial
- 6E-46 Hawaii Sports Hall of Fame
- 6E-47 Pearl Harbor historic trail

Part III. Pacific War Memorial System

- 6E-51 Department of land and natural resources; powers
- 6E-52 Transfer of lands

Part IV. Miscellaneous Provisions

- 6E-61 Biological survey; designation

Part V. Criminal Offenses

- 6E-71 Taking, appropriation, excavation, injury,
destruction, or alteration of historic property
or aviation artifact; penalty
- 6E-72 Taking, appropriation, excavation, injury,
destruction, or alteration of a burial site; penalty
- 6E-73 Failure to stop work upon discovery of a burial site;
penalty
- 6E-74 Criminal penalties not in lieu of civil or
administrative penalties
- 6E-75 Part not applicable to family burial plots

Part VI. South Kona Wilderness Area

- 6E-81 South Kona wilderness area; establishment
- 6E-82 Lands included
- 6E-83 Government-owned land; construction prohibited

Note

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2022 or until completion. L 2012, c 218; L 2017, c 48.

Cross References

Allowance of indigenous Hawaiian architecture by county ordinances, see §46-1.55.

Kaho`olawe island reserve, see chapter 6K.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

`Ulu`ulu: The Henry Ku`ualoha Giugni moving image archive of Hawai`i, see §304A-1864.

Law Journals and Reviews

Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

Ke Ala Pono--The Path of Justice: The Moon Court's Native Hawaiian Rights Decisions. 33 UH L. Rev. 447 (2011).

Unwinding Non-Native Control Over Native America's Past: A Statistical Analysis of the Decisions to Return Native American Human Remains and Funerary Objects under the Native American Graves Protection and Repatriation Act, 1992-2013. 38 UH L. Rev. 337 (2016).

Case Notes

As the protections provided by this chapter to human skeletal remains and burial sites do not turn on religious distinctions, plaintiff's interest in protecting family members' unmarked burials and native Hawaiian burials were not extinguished by the burials being "Christian burials"; plaintiff thus had standing on plaintiff's claims under this chapter. 128 H. 455 (App.), 290 P.3d 525 (2012).

Where plaintiff asserted that: (1) plaintiff had family members buried on the church grounds; (2) plaintiff was a native Hawaiian and a recognized cultural descendant of the iwi found on the church grounds; (3) plaintiff had a traditional and customary practice of caring for iwi; (4) plaintiff was concerned that family members may be buried in unmarked burials on the church grounds; and (5) the disturbance of unmarked burials of family members or other cultural ancestors would cause plaintiff injury and harm, plaintiff had standing to raise claims under this chapter. 128 H. 455 (App.), 290 P.3d 525 (2012).

3. Act 224, SLH 2015

HRS § 6E-42.2 Excluded activities for private-owned single-family detached dwelling units and townhouses

ACT 224

H.B. NO. 830

A Bill for an Act Relating to Residential Property.

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

SECTION 1. According to the United States Census Bureau and the department of business, economic development, and tourism, nearly forty per cent of the existing private residences on Oahu were built before 1970. In certain census tracts, this number is as high as eighty-five per cent.

Hawaii law provides that any building, structure, object, district, area, or site over fifty years old is considered historic property. Furthermore, current application of historic preservation law requires review by the state historic preservation division of the department of land and natural resources prior to the granting of permits for proposed projects on historic properties. In certain instances, this requirement has delayed the granting of permits for a period of many months, which has had an adverse effect on the construction industry. Since nearly forty per cent of private residences on Oahu have reached or are approaching fifty years of age, it is prudent for the State to reexamine the current processes and procedures regarding historic properties.

The purpose of this Act is to create an exemption from the review requirements of section 6E-42, Hawaii Revised Statutes, for proposed projects on privately-owned single-family detached dwelling units and townhouses that are not designated on or nominated for the Hawaii or national register of historic places and are not located in a historic district.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§6E- Excluded activities for privately-owned single-family detached dwelling units and townhouses. (a) An application for a proposed project on an existing privately-owned single-family detached dwelling unit or townhouse shall

be subject to the requirements of section 6E-42 only if the single-family detached dwelling unit or townhouse is over fifty years old and:

- (1) Is listed on the Hawaii or national register of historic places, or both;
 - (2) Is nominated for inclusion on the Hawaii or national register of historic places, or both; or
 - (3) Is located in a historic district.
- (b) For the purposes of this section:

“Dwelling unit” means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating, and sanitation.

“Single-family detached dwelling unit” means an individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the dwelling.

“Townhouse” has the same meaning as defined in section 502C-1.”

SECTION 3. Section 6E-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~Before~~ Except as provided in section 6E- ~~before~~ any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places. If:

- (1) The proposed project consists of corridors or large land areas;
- (2) Access to properties is restricted; or
- (3) Circumstances dictate that construction be done in stages,

the department’s review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2015.

(Approved July 9, 2015.)

Note

1. Edited pursuant to HRS §23G-16.5.

4. Hawaii Administrative Rules (HAR) Chapter 13-275

Rules governing procedures for historic preservation review for governmental projects covered under HRS §§ 6E-7 and 6E-8

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-275
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-275, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 275

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION
REVIEW FOR GOVERNMENTAL PROJECTS COVERED UNDER SECTIONS
6E-7 AND 6E-8, HRS

§13-275-1	Purpose, applicability, and participants
§13-275-2	Definitions
§13-275-3	Obtaining a determination letter; generally
§13-275-4	Fees
§13-275-5	Identification and inventory of historic properties
§13-275-6	Evaluation of significance
§13-275-7	Determining effects to significant historic properties
§13-275-8	Mitigation
§13-275-9	Verification of completion of the detailed mitigation plan
§13-275-10	Conclusion of the historic preservation review process
§13-275-11	Reconsideration of findings after the process is closed
§13-275-12	Discovery of previously unknown historic properties during implementation of a project
§13-275-13	Emergency projects
§13-275-14	Penalty

§13-275-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by presenting a historic preservation review process for state and county projects. The review process is designed to

identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.

(b) This chapter applies to all state or county agencies funding or directly undertaking a project, or having a project undertaken on lands under its ownership or control which may affect historic properties, or by a state agency transferring any land under its jurisdiction which may contain historic properties. Any proposed project which may affect a historic property shall not be commenced, or, in the event it has already begun, continued, until DLNR, as represented by SHPD, shall have given its written concurrence. This chapter itemizes the process to obtain concurrence.

(c) Participants in the historic preservation review process.

(1) The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project. The agency has responsibility for complying with the historic preservation review process. The agency may have others prepare the review process items.

(2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties. Provisions in these rules enable interested persons to participate in the process.

[Eff DEC 11 2003] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the identification and documentation of archaeological historic properties and burial sites in a delineated

area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the identification and documentation of architectural historic properties in a delineated area and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the agency.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic documentation plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Determination letter" means the SHPD's written response which either concurs or does not concur with an agency's proposed project.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property, through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the identification and documentation of historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Hawaii historic places review board" means the governor appointed board established by section 6E-5.5, HRS.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsections 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
 [Eff ~~DEC 1 1 2009~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-3 Obtaining a determination letter; generally. (a) For the department to provide a letter of determination, an agency proposing a project which may have an effect upon historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, and any proposed mitigation measures. Upon receipt of adequate information the department will provide a determination letter within ninety days. Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, a determination letter may be issued.

(b) The review steps, to be described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and

- (6) Verification of completion of detailed mitigation plan.
 - (c) Documents for review steps one through four shall be submitted concurrently.
 - (d) A receipt date will be stamped on all review documents received by the SHPD.
 - (e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.
 - (f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no historic properties affected" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice every Friday of receipt of relevant documents and of issuance of SHPD "no historic properties affected" or receipt of information. The notice shall be posted at the SHPD office and on the SHPD's website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them.
 - (g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawaii historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawaii historic places review board to appeal a SHPD determination.
- [Eff ~~Oct 11 2003~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8)

§13-275-4 Fees. (a) The division may require a \$25 filing fee per request for a determination letter.

In addition, filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff DEC 1 1 2003] (Auth: HRS §§6E-3, 6E-16)
(Imp: HRS §§6E-3, 6E-16)

§13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the project area. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating

request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present then the SHPD will make this determination in the form of a "no historic properties affected" letter within thirty days of receipt of the request.
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting any land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days of receipt of the request.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written concurrence to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD will make all "no historic properties affected" determinations available to interested persons by posting notice every Friday of all such determinations either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. Should historic properties be reported to the

SHPD during these thirty days the SHPD may reconsider its concurrence under the provisions of section 13-275-11.

- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to section 13-275-6.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD will indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. An archaeological permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the survey methodology as set forth in subsections 13-276-5(a) and (c), as well as a brief background section discussing the former landuse and types of sites that might have been previously present.
 - (B) An ethnographic survey may be undertaken when the SHPD concludes that historic

properties which may be significant under criterion "e" of paragraph 13-275-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.

- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Information shall be of sufficient quality to either complete a National Register of Historic Places nomination form, or have SHPD agree it provides an adequate basis for making historic preservation decisions. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the division may require an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5 (a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as appropriate, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be used in the archaeological field survey which shall include:

- (A) The names and qualifications of the principal investigator;
 - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
 - (C) The anticipated duration of time for the survey;
 - (D) The extent of survey coverage, as appropriate. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (E) A discussion of any factors which might limit the survey effort, if appropriate;
 - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, with the rationale for these techniques given, if appropriate; and
 - (H) The method to be used to plot site location, if appropriate.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is required, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the information contained in the plan is adequate or inadequate.
- (1) Any interested persons may comment on the plan. Comments must be submitted in writing to the SHPD within thirty days of the SHPD

posting notice of the receipt of the plan. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.

(e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD for review. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report will include a summary of the consultation. The SHPD shall inform the agency within forty five days of receipt of the report or archaeological assessment if the information contained in the report or archaeological assessment is adequate or inadequate.

- (1) Any interested persons may comment on the survey report or archaeological assessment. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the report or assessment. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the survey, report, or assessment is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the report or archaeological assessment adequate, then the agency will be sent a written notice of acceptance. Once the survey report or archaeological assessment is accepted, seven copies of the report or assessment shall be provided by the agency to the following repositories: two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa Hamilton Library Pacific Collection, one copy shall be sent to the Bishop Museum library, one copy shall be sent to the University of Hawaii at Hilo library, one copy shall be sent to the Maui Community College library, and one copy sent to the Kauai Community College library.
- (f) If the SHPD gives the archaeological assessment or report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written concurrence to the project in the form of a "no historic properties affected" determination.
- (g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff DEC 11 2003] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in

writing, to the SHPD. This information shall be submitted in the survey report, if historic properties were found through the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction, represent the work of a master, or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e" to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e" the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property;
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites; and
 - (C) Provide evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.
- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency. Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff ^{DEC 11 2003}] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with proposed mitigation commitments". The project will affect one or more significant historic properties, and the effects will be potentially harmful. However, the agency has proposed mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction.

(c) Effect determinations shall be submitted to SHPD for review and approval. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

- (1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of SHPD receipt of the effect determinations. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.
- (2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require

prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" determination.

- (1) The SHPD shall post notifications of any such "no historic properties affected" determinations every Friday either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day.
- (2) Interested persons have the opportunity to comment on such determinations within thirty days. At the end of thirty days if objections to the minor changes to the properties are submitted, the SHPD may reconsider its findings under the provisions of section 13-275-11.

(e) When the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. If the project will have an "effect, with proposed mitigation commitments", then mitigation commitments and detailed mitigation plans shall be developed by the agency and approved by SHPD, as discussed in the following section.

[Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the agency to the SHPD for review and approval.

- (1) Mitigation can occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure or object prior to its alteration or destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-275-6(b)(5), are involved, the agency shall consult with ethnic organizations or members of the ethnic group for whom the historic properties have significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted.
- (3) The proposed mitigation commitment shall include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
 - (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and

- (C) If properties deemed significant under paragraph 13-275-6(b)(5) are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes or a determination letter not concurring with the project, within forty five days of SHPD receipt of the mitigation commitments. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of SHPD receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

- (1) The review board shall receive testimony from the SHPD on the basis of its determination letter;
 - (2) The appellant will present its basis for appealing the SHPD determination letter;
 - (3) Thereafter, the review board will hear and receive testimony from any other interested persons or agencies;
 - (4) The review board may ask questions of those testifying before it; and
 - (5) Once the review board has reviewed all the written and oral testimony, it will render a decision regarding the appeal within fifteen days of the conclusion of the hearing.
- (g) Should either the agency or any interested person be dissatisfied with the decision of the review board, they may within thirty days of the review board decision apply to the governor to take action as the governor deems best in overruling or sustaining the department.
- (h) After mitigation commitments are accepted by SHPD, the agency shall provide detailed plans for the mitigation work for SHPD review and approval. The approved plans shall serve as scopes of work for mitigation.
- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-278. Qualifications of the principal investigator directing this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work, as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the principal investigator directing the monitoring shall comply with chapter 13-281.
 - (2) Architectural recordation plans shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with chapter 13-281.

- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided by chapter 13-277 and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under paragraph 13-275-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within forty five days of SHPD receipt of the plan. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If the detailed mitigation plan is acceptable, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once a plan is accepted, work can then proceed on the plan.

- (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan.

[Eff ²⁰⁰³ HRS §6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8] (Auth: HRS §6E-3)
(Imp: HRS §6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-9 Verification of completion of the detailed mitigation plan. (a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plans' tasks--usually in the form of a completion report, with one copy submitted. For archaeological data recovery, a data recovery report that meets the minimum standards set forth in chapter 13-278 shall be submitted to SHPD for review and approval.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within forty five days of receipt of the request. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within forty five days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, two step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

- (1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a

letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.

- (2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic property or properties is to occur, the agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-275-9(a) through (c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the agency indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall correct the problems, consulting with the SHPD as needed to resolve

differences, and resubmit the request.

(f) Once a final report is accepted, the agency shall ensure that seven copies are made available to the same repositories as the survey reports as noted in paragraph 13-275-5(e)(3). [Eff ^{DEC 11 2003}]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-10 Conclusion of the historic preservation review process. The historic preservation review process ends when:

- (1) The SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) The SHPD agrees that no historic properties will be affected by the project; or
- (3) The SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff ^{DEC 11 2003}]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-11 Reconsideration of findings after the process is closed. (a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the

interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of the inventory report or during the implementation of a project, then the historic preservation review process is reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process is accelerated, following the procedures of chapter 13-280. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-13 Emergency projects. (a) When an agency proposes an emergency project as an essential and immediate response to an imminent threat to public health, safety, or welfare as a result of natural disaster or state of emergency as provided by law, the agency shall consult with the SHPD to attempt to develop consensus plans to take into account the effect of the project on significant historic properties. This consensus shall be reached within three working days. If consensus is not reached, appeal to the governor for an immediate decision shall occur.

(b) This section does not apply to projects that will not be implemented within thirty days after the disaster or emergency. Such projects shall be reviewed in accordance with the normal historic preservation review process. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-14 Penalty. Any violation of this chapter may result in denial or revocation of the SHPD's written concurrence or agreement, and prosecution under Section 6E-11, Hawaii Revised Statutes. [Eff ^{DEC 11 2003}] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-275, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-275 shall take effect ten days after filing with the Office of the Lieutenant Governor.



Peter T. Young, Chairperson
Board of Land and Natural
Resources

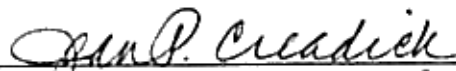
APPROVED:



Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:



Deputy Attorney General

Filed

03 DEC -1 PM 1:13

LEWIS & CLARK

5. HAR Chapter 13-276

Rules governing standards for archaeological inventory surveys and reports under HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-276
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-276, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Archaeological
Inventory Surveys and Reports", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 276

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL INVENTORY
SURVEYS AND REPORTS

§13-276-1	Policy and purpose
§13-276-2	Definitions
§13-276-3	Archaeological inventory survey, generally
§13-276-4	Archaeological field survey
§13-276-5	Archaeological inventory survey report
§13-276-6	Final disposition of collections
§13-276-7	Significance assessments
§13-276-8	Recommendations
§13-276-9	Penalty

§13-276-1 Policy and purpose. This chapter establishes standards for archaeological inventory surveys and reports required by chapters 13-275 and 13-284 for the historic preservation review process.
[Eff. DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-2 Definitions. As used in this chapter unless the context requires otherwise:
"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a

written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

[Eff Dec 11 2003] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-3 Archaeological inventory survey. generally. An archaeological inventory survey shall:

- (1) Determine if archaeological historic properties are present in the project area and, if so, identify all such historic properties.
 - (2) Gather sufficient information to evaluate each historic property's significance in accordance with the significance criteria listed in subsection 13-275-6(b).
- [Eff: ~~HRS §13-275-6~~ 1, 6E-3, 6E-7, 6E-8, 6E-42] (Auth: HRS §6E-3)

§13-276-4 Archaeological field survey. (a) Portions of the project area that have no adequate inventory survey reports prepared for them shall undergo archaeological inventory survey to determine whether archaeological historic properties are present and, if so, to present their description, interpretation, and location. The entire surface of the project area shall be visually inspected, and any proposed deviations from this level of inspection shall be approved by SHPD prior to implementation.

(b) The presence or absence of subsurface sites shall be evaluated for areas which have no visible historic properties. This evaluation shall include findings of test excavations, if deemed necessary by the department, or a conclusion, with supportive documentation, that historic properties are not anticipated to be present.

(c) Test excavations shall be undertaken on historic properties, or features of properties, that have several possible alternative functions based on surface examination to provide additional information that might help to resolve the question of property or feature function. Recordation of such excavations and any necessary laboratory analysis of recovered materials shall be undertaken as part of the archaeological inventory survey. If human skeletal remains are found, they shall not be disturbed, excavations shall be backfilled, and SHPD notified as soon as possible. Archaeological historic properties, or features of properties, that are highly probable to be burials based on surface examination shall not undergo test excavation without authorization from the department.

(d) If 100% of the proposed project's surface area is not inventoried, sampling strategies need prior approval from the department. [Eff DEC 11 2001]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-5 Archaeological inventory survey report.

(a) An archaeological inventory survey report shall be prepared to record and synthesize the data gathered from background research, field survey and consultation process with knowledgeable individuals. The report shall include:

- (1) Identification of the survey area:
 - (A) On a 1:24000 scale United States Geological Survey quadrangle map, or on a portion or an enlargement of a portion of this map; and
 - (B) In the text, stating the island, district and ahupua`a of the area and the tax map key (TMK) and acreage of the parcel.
- (2) Identification of the owner or owners of the parcel; and
- (3) A description of the environment, to include:
 - (A) Topography (including general elevations, distance inland, and general terrain patterns);
 - (B) Vegetation;
 - (C) Geology and soils;
 - (D) Climate, including rainfall; and
 - (E) Hydrology.

(b) The report shall contain a section on background research which shall be used to predict the kinds and distributions of historic properties that might still be present and to provide a context for understanding and evaluating the significance of any historic properties that are found. The background section of the report shall include:

- (1) Historic background information, which shall:
 - (A) Present findings on land use and site patterns for the project area and either ahupua`a or other appropriate areas as determined in consultation with the SHPD for:
 - (i) Prehistoric and early historic times, as revealed by any

- eighteenth or nineteenth century literature on Hawaii;
 - (ii) 1848-1851 times, as indicated by land commission awards; and
 - (iii) Post-1850 times as revealed in later literature or through oral history.
 - (B) Provide a summary of documents and materials reviewed during the research; and
 - (C) Indicate:
 - (i) Whether any land commission awards were granted within the project area and within either the ahupua`a in which the project area is located or other appropriate areas as determined in consultation with SHPD; and
 - (ii) If awards were granted within the ahupua`a or other appropriate areas as determined in consultation with SHPD, specify the number of these awards, their LCA number, the use of each plot or apana awarded, and locate the awards on a map whenever possible.
- (2) Archaeological background information, which shall review any relevant prior archaeological studies in the project area and in either the ahupua`a in which the project is located or other relevant areas as determined in consultation with SHPD. At a minimum, the SHPD library shall be consulted for prior studies. If no studies exist, the archaeological inventory survey report shall so state this fact. If studies exist, the findings shall be summarized. This summary shall include:
 - (A) The areal extent of the prior survey coverage indicated on a map;
 - (B) A synthesis and analysis of information on the project area and its related lands' chronology, function and land use patterns, reconciling, as needed, the historical and archaeological information; and

- (C) Predictions as to types of sites expected to be encountered during field survey.
- (3) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report.
- (c) The report shall contain a section on methods used in the archaeological field survey which shall include:
 - (1) The names and qualifications of the principal investigator;
 - (2) The number of field personnel, the dates when the survey was performed and the duration of time for the survey;
 - (3) The extent of survey coverage. If the coverage was less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which included analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (4) A discussion of any factors which limited the survey effort;
 - (5) The techniques used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (6) The extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques used, with the rationale for these techniques given;
 - (7) The method used to plot site location; and
 - (8) The method used to determine a site and its boundaries.
- (d) The report shall contain a section on its archaeological field survey and laboratory findings. Each archaeological property found shall be individually described as follows:
 - (1) A state inventory number and any previous numbers;
 - (2) A reference to a previous study, if the property has been previously recorded;
 - (3) The property's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., 3

C-shaped enclosures, 1 platform, 4 stone cairns); and

- (4) A description of each property, to include:
 - (A) Size, horizontal extent;
 - (B) Shape, materials, methods of construction, and area of the major feature or features with representative architectural heights and widths, etc., (in metrics);
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (D) The presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of the deposits. If test excavations, augering, etc., occurred, these results must be presented here and shall include stratigraphic information with:
 - (i) Standard U.S.D.A. soil descriptions (with Munsell colors); and
 - (ii) Stratigraphic profile drawings, to scale, that include observed surface and subsurface features. When appropriate, representative line-drawn profiles, to scale, of test excavations not through surface architecture may be used where no subsurface features are visible in the excavation side walls;
 - (E) Representative photographs, illustrations, or both;
 - (F) Drafted plan map to scale, which shall include major features, and location and shape of internal features such as firepits, cupboards, midden deposits, a bar scale, north arrow, and indicate in the text the method used (e.g., tape and compass or type of instrument mapping);
 - (G) The integrity of the site;
 - (H) An assessment of site function or functions, with reasonable and adequate supportive arguments. The character of

- habitation sites shall be clearly interpreted;
- (I) An assessment of site age, with absolute dating results when available; and
- (J) An evaluation of site significance.
- (e) The report shall document, describe, and graphically display any previous land disturbances (e.g., bulldozing, grubbing by machine, or sugarcane cultivation) identified during the survey.
- (f) The report shall contain a summary of the findings, to include, but not be restricted to:
 - (1) Total number of archaeological sites found;
 - (2) A map or maps locating all the archaeological properties found and, if practical, their boundaries, with at least one site location map being a portion of the relevant United States Geological Survey standard 1:24,000 topographic map;
 - (3) A table presenting the sites with their state number, formal type, and possible function listed;
 - (4) If multiple archaeological sites within a major functional type (such as religious, burial, permanent habitation, and temporary habitation site types) are found, summaries of each type shall occur;
 - (5) A re-evaluation of ideas on the history of land use in the ahupua`a and the parcel; and
 - (6) In cases where more than five sites are present within a major functional type, the summary of the functional type shall include:
 - (A) A table which itemizes for each site and its relevant constituent structures the key variables used to determine the function (e.g., form, area); and
 - (B) A map showing the distribution of the sites within that functional type.
- (g) The report shall contain information on the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals.
 - (1) Information shall include:
 - (A) Personnel conducting the consultation process, with names and qualifications;
 - (B) Methods of identifying and contacting knowledgeable persons;

- (C) Names of knowledgeable persons consulted, or, if the person wishes to remain anonymous, a characterization of the person; and
 - (D) A summary as to whether additional archaeological historic properties were identified during the consultation process, and whether additional information on archaeological site function was obtained during the consultation process;
- (2) Should additional information on site function be obtained, that information shall be presented in the site description portion of the report;
 - (3) Consult SHPD guidelines on ethnographic surveys and reports for assistance in preparing findings from the consultation process; and
 - (4) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report. [Eff DEC 11 2003]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) .

§13-276-6 Final disposition of collections.

(a) All collections, excluding human remains and grave goods, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) In the event human skeletal remains are recovered during survey, final treatment of any such remains and associated grave goods shall follow the procedures of section 6E-43, HRS. [Eff DEC 11 2003]
(Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-276-7 Significance assessments. Significance evaluations shall be included in the survey report. They shall be included at the end of each site description and in a separate section of the report,

which shall be labeled "Significance Assessments" and shall include a summary table listing all sites and their significance. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-8 Recommendations. Recommendations such as mitigation commitments shall be included in the survey report. They shall be included in the summary table listing all the sites and their significance. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

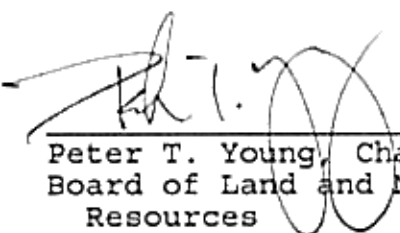
§13-276-9 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with project ground alteration, a denial or revocation of SHPD written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-11)

DEC 1 1 2003

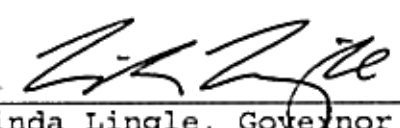
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-276, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-276 shall take effect ten days after filing with the Office of the Lieutenant Governor.

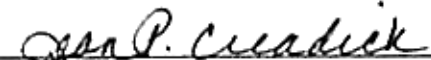

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

03 DEC -1 3:14 PM

RECEIVED
NOV 25 2003

6. HAR Chapter 13-277

Rules governing requirements for archaeological site preservation and development under HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-277
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-277, Hawaii Administrative Rules, entitled "Rules Governing Requirements for Archaeological Site Preservation and Development", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 277

RULES GOVERNING REQUIREMENTS FOR ARCHAEOLOGICAL SITE
PRESERVATION AND DEVELOPMENT

§13-277-1	Policy and purpose
§13-277-2	Definitions
§13-277-3	Preservation plan
§13-277-4	Buffer zones
§13-277-5	Interim protection measures
§13-277-6	Long term preservation measures
§13-277-7	Interpretation requirements
§13-277-8	Penalty

§13-277-1 Policy and purpose. This chapter provides standards for preservation approaches to ensure proper preservation in the public's interest. [Eff ~~11 2003~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-2 Definitions. As used in this chapter unless the context requires otherwise!

"Agency" means any state or county governmental entity.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interpretation" means the presentation of information about an historic property to the public.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff DEC 11 2005] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-3 Preservation plan. A preservation plan prepared pursuant to chapters 13-275 or 13-284, shall:

- (1) Identify for each significant historic property which forms of preservation will be implemented: avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use;

- (2) Specify the buffer zones around each significant historic property and depict them on a map of sufficient scale;
- (3) Specify short-term protection measures for each significant historic property that will be within or near a construction area;
- (4) Discuss the agency or person's consultation process for historic properties deemed significant under paragraphs 13-275-6(b)(5) or 13-284-6(b)(5). The agency or person shall consult with ethnic organizations and individuals for whom the historic properties are of significance. The comments on preservation treatment expressed by these individuals or organizations shall be considered when preparing the preservation plan. The plan shall include a list of individuals and organizations consulted, and shall summarize their input.
- (5) Specify the long term preservation measures to be undertaken at each significant historic property. [Eff ~~DEC 1 1 2003~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-4 Buffer zones. (a) Buffer zones shall ensure that the integrity and context of the historic property is preserved, in many cases including the visual integrity.

(b) The size of a buffer zone shall be proposed by the person or agency on a site-by-site basis. Size will vary with the local terrain, eventual use of the site, surrounding land uses, the type of site, and the criterion for which a site is significant.

(c) The manner in which a buffer zone will be treated with regards to demarcation, landscaping and other activities shall be proposed by the person or agency on a site-by-site basis.

(d) Once approved, buffer zones shall be marked on overall project maps, and physical markers shall be placed in the ground delineating the buffers.

[Eff ~~DEC 1 1 2003~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-5 Interim protection measures. Interim protection measures shall protect the significant

historic property and its buffer zone during construction activities. Interim measures may include:

- (1) Flagging the perimeter of the buffer zone;
- (2) Erecting barriers (such as plastic fencing) along the buffer zone;
- (3) Placing avoidance instructions on construction plans and specifications;
- (4) On-site, pre-construction briefing of the hired construction firm; and
- (5) Having an archaeological monitor on-site during ground alteration activities. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-6 Long term preservation measures. Long term preservation measures shall follow the appropriate Secretary of the Interior's Standards for Historic Preservation Projects. The preservation plan shall address the following long term preservation measures:

- (1) Maintenance measures to be followed;
- (2) Methods for clearing vegetation;
- (3) The manner in which litter is controlled;
- (4) Access to the site and possible use of the site for cultural practices, if appropriate;
- (5) Approaches to interpret and inform the public about the site, if appropriate;
- (6) Permanent marked markers, if appropriate;
- (7) If appropriate, provisions to address potential future impacts and site stability; and
- (8) Provisions for reasonable monitoring of site integrity by the person or agency, and SHPD inspection to assure compliance. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-7 Interpretation requirements. (a) When using interpretive text for signs, brochures, etc., the text shall be reviewed and approved by SHPD.

- (b) Interpretive signs shall be:
 - (1) Of sufficient quality to enhance public understanding of the site;
 - (2) Culturally sensitive, based on consultation with appropriate organizations and individuals; and

(3) Located so as not to adversely affect the site visually.

(c) Any data recovery work to improve the interpretation of the site shall meet the standards set forth in chapter 13-278. [Eff DEC 11 2003]
 (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-8 Penalty. Non-compliance with the provisions and procedures established by this chapter may result in a directive to the person not to proceed with construction in the project area, a denial or revocation of SHPD's written concurrence or agreement, and penalties as provided in section 6E-11, HRS, chapters 13-275, 13-278, 13-281, 13-282, 13-284, HAR, and applicable laws. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-42)

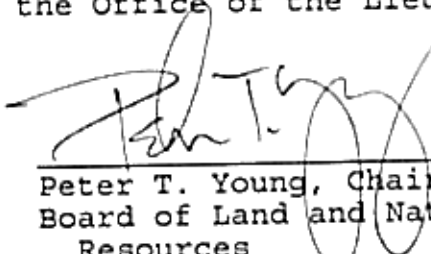
17. 1. 11

20. 1. 11

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-277, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-277 shall take effect ten days after filing with the Office of the Lieutenant Governor.

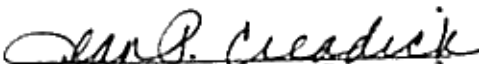

Peter T. Young, Chairperson
Board of Land and Natural
Resources

APPROVED:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Jean P. Creadick
Deputy Attorney General

Filed

7. HAR Chapter 13-278

Rules governing standards for archaeological data recovery studies
and reports under HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-278
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-278, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Archaeological
Data Recovery Studies and Reports", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 278

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL DATA
RECOVERY STUDIES AND REPORTS

§13-278-1	Policy and purpose
§13-278-2	Definitions
§13-278-3	Preparation of a data recovery plan
§13-278-4	Archaeological data recovery report
§13-278-5	Final disposition of collections
§13-278-6	Penalty

§13-278-1 Policy and purpose. This chapter establishes uniform standards for archaeological data recovery studies and reports, to ensure the overall quality of mitigation measures and to better protect the public's interests. [Eff ^{DEC 11 2003}] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-278-2 Definitions. As used in this chapter unless the context requires otherwise:
"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these

properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff DEC 1 1 2003] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-278-3 Preparation of a data recovery plan.

(a) An archaeological data recovery plan (research design) shall be prepared by an archaeologist who meets the minimum requirements under chapter 13-281 prior to the start of archaeological data recovery. This plan shall:

- (1) A management summary that presents concise information, with the lay reader in mind, to include:
 - (A) The sites studied; and
 - (B) General findings relevant to research objectives;
 - (2) An introduction, including the reasons for the project and the location of the study area. This shall include:
 - (A) A portion of the relevant United States Geological Survey standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites studied; and
 - (B) Text, which specifies the island, district, ahupua`a, and the tax map key (TMK) of the parcel.
 - (3) A research objectives section which identifies the research objectives, test implications, and relevant information to address the research objectives;
 - (4) An archaeological field methods section which identifies:
 - (A) Number of personnel, with the names and qualifications of the principal investigator and field director;
 - (B) When the work was done; and
 - (C) Methods planned in the data recovery plan and any deviations, to include sampling strategies and specifics on techniques used.
 - (5) Archaeological fieldwork findings;
 - (6) Laboratory findings;
 - (7) Historical and oral historical findings, if covered in the data recovery plan and if not reported elsewhere;
 - (8) Research conclusions;
 - (9) References; and
 - (10) Location of depository (archive) for collections, photographs, written site records, and maps (may be presented in an appendix).
- (b) In the archaeological fieldwork findings section of the report, each site studied shall be individually described, to include:
- (1) State site number and any previous numbers;
 - (2) Reference to a previous study, if the site has been recorded before;

- (1) Identify historic properties to be studied;
 - (2) Identify research objectives to be addressed. This shall be done through reviewing prior archaeological and historical work in the parcel, ahupua'a, and wider region. The specifics of these research objectives will vary with the extent of prior work;
 - (3) Identify data needed to address the research objectives;
 - (4) Identify field methods to be used to acquire and analyze the data. Any sampling approaches to be used shall be noted here. The plan shall also use the most efficient methods to try to answer the research objectives;
 - (5) Identify any necessary laboratory work. This work may include, but not be limited to, dating, faunal analyses, soil analyses, botanical analyses, and artifact analyses. If osteological analysis of human skeletal remains is to be undertaken it shall conform to chapters 13-300 and 13-283;
 - (6) Identify a procedure for depositing collections after conclusion of the data recovery project; and
 - (7) If burials are to be disinterred, a written data recovery plan is not required for inadvertent discoveries. For burials the procedures of section 6E-43, HRS, and chapter 13-300 shall be followed.
- (b) If properties deemed significant under paragraphs 13-275-6(b)(5) or 13-284-6(b)(5) are involved, the archaeologist shall consult with members of the relevant ethnic group and consider any comments when preparing this plan. The plan shall describe the consultation process, list the consulted individuals and organizations, and summarize their comments.
- [Eff 11-2003] (Auth: HRS §§6E-3, 6E-43, 6E-43.5) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-4 Archaeological data recovery report.

- (a) The archaeological data recovery report shall be prepared by an archaeologist who meets the minimum requirements under chapter 13-281. It shall include the following:

- (3) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., three C-shaped enclosures, one platform, four stone cairns);
- (4) A description of the site, to include any of the following, if not recorded in previous studies:
 - (A) Size, horizontal extent;
 - (B) Shape, area, with representative architectural heights and widths, etc. (in metrics), of the major feature or features;
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains, their density, and distribution;
 - (D) The presence or absence of any subsurface deposits, and if so, an assessment of the general depth and nature of these deposits;
 - (E) Representative photographs, or line drawings, or both;
 - (F) Drafted plan maps, which shall include major features, a bar scale, north arrow, and indicate method used (e.g. tape and compass or instrument mapping.); and
 - (G) The integrity of the site.
- (5) If excavations, augering, shovel tests, etc. occurred, findings must be presented under each site's description, to include:
 - (A) Location of the excavations, augering, etc. on a plan map of the site;
 - (B) Description of stratigraphic layers, with United States Department of Agriculture standard soil descriptions (using Munsell colors);
 - (C) Line-drawings depicting the entire length of the profiles, to scale, of all test excavations through surface architecture or of all test excavations with cultural layers;
 - (D) Representative stratigraphic profiles, to scale, of test excavations not through surface architecture or where no

- cultural layers are visible in the excavation side walls;
- (E) Descriptions of features, including provenience within layers;
- (F) Listing of artifacts, including provenience within layers;
- (G) Listing of faunal remains, by layer;
- (H) Listing of debris and other remains, by layer; and
- (I) Listing of carbon samples, by provenience;
- (6) An assessment of site function, with reasonable and adequate supportive arguments; and
- (7) An assessment of site age.
- (c) The results and analysis section of the report shall include:
 - (1) An overall presentation of artifacts, to include:
 - (A) A master list with provenience, material and type;
 - (B) Measurements of each artifact, as appropriate, which can be in table form and can be presented under the next item;
 - (C) Analysis of artifact assemblage by artifact types, materials, and provenience, as appropriate; and
 - (D) Illustrations (line drawings or photographs, or both) of a representative sample of artifacts.
 - (2) An overall presentation of faunal and botanical remains, to include:
 - (A) A master list, presenting the species within each layer of each site and their counts and weight in grams;
 - (B) Analysis by taxa, as possible; and
 - (C) Methods of sample selection.
 - (3) An overall presentation of chronology to include absolute and relative dating, to include:
 - (A) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (B) Methods of collection and lab treatment;
 - (C) For radiocarbon dates, C12/C13 ratios shall be obtained; and
 - (D) Methods of sample selection.

- (4) An overall presentation of lithic sourcing, if appropriate, to include:
- (A) A master list, by site and by provenience within site;
 - (B) Methods of sample selection; and
 - (C) Methods and techniques of source analysis.
- (5) Osteological analyses, if human skeletal remains are to be analyzed, the analysis shall conform to chapters 13-283 and 13-300.
- [Eff ^{DEC 1 1 2003}] (Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-5 Final disposition of collections. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) Final disposition of human skeletal remains shall be in accordance with chapter 13-300.

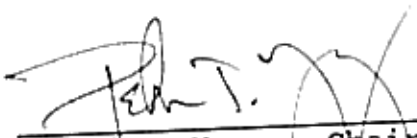
[Eff ^{DEC 1 1 2003}] (Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-6 Penalty. Non-compliance with the provisions and procedures established by this chapter may result in a directive to the person not to proceed with construction in the project area, a denial or revocation of SHPD's written concurrence or agreement, and penalties as provided in section 6E-11, HRS, and applicable laws. [Eff ^{DEC 1 1 2003}] (Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

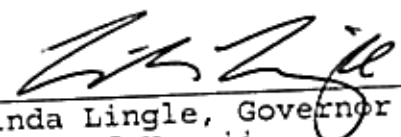
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-278, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-278 shall take effect ten days after filing with the Office of the Lieutenant Governor.

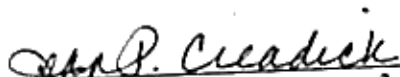

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2002

APPROVED AS TO FORM:


Deputy Attorney General

Filed

8. HAR Chapter 13-279

Rules governing standards for archaeological monitoring studies and reports under HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-279
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-279, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Archaeological
Monitoring Studies and Reports", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 279

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL MONITORING
STUDIES AND REPORTS

§13-279-1	Policy and purpose
§13-279-2	Definitions
§13-279-3	Archaeological monitoring, generally
§13-279-4	Archaeological monitoring plan
§13-279-5	Monitoring report
§13-279-6	Final disposition of collections and human skeletal remains.
§13-279-7	Penalty

§13-279-1 Policy and purpose. This chapter establishes standards for archaeological monitoring studies and reports, to improve the overall quality of this activity and to better protect the public's interests. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to

evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will

take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

[Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-279-3 Archaeological monitoring, generally.
Archaeological monitoring may be an identification, mitigation, or post-mitigation contingency measure. Monitoring shall entail the archaeological observation of, and possible intervention with, on-going activities which may adversely affect historic properties.

[Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-4 Archaeological monitoring plan. (a)
Archaeological monitoring undertaken in response to SHPD requirements or recommendations shall be based on a written plan, which specifies:

- (1) What kinds of archaeological remains or historic properties are anticipated or require protection;
- (2) Where in the project area these properties are known to be or anticipated to be located;
- (3) Needed fieldwork to protect or document known or anticipated historic properties, which may include, but not be limited to, profile documentation of stratigraphy, drawings, photographs, lithic sourcing, and excavation of exposed features;
- (4) A provision that the archaeologist conducting the monitoring has been given the authority to halt ground disturbing activities in the immediate area of a find, in order to carry-out the plan. Project activities can shift to other areas in such a case;
- (5) A coordination meeting with any construction team and the archaeologist, so the construction team is aware of the plan;
- (6) Any laboratory work expected to be done;

- (7) Report preparation; and
 - (8) Archiving of any collections.
 - (b) This plan shall be reviewed and approved by the SHPD prior to the monitoring project, unless otherwise agreed to by SHPD.
 - (c) If monitoring is proposed in response to the inadvertent discovery of human skeletal remains, a written monitoring plan may not be required.
- [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §6E-3, 6E-7, 6E-8, 6E-42)

§13-279-5 Monitoring report. A monitoring report, prepared by an archaeologist who meets the minimum requirements under chapter 13-281, shall be submitted for monitoring undertaken in response to SHPD requirements or recommendations. It shall include the following:

- (1) Management Summary, including:
 - (A) Presence or absence of sites; and
 - (B) General findings.
- (2) Location of the study area:
 - (A) On a 1:24000 scale United States Geological Survey quadrangle map, or on a portion or an enlargement of a portion of this map; and
 - (B) In the text, stating the island, district and ahupua'a of the area and the tax map key (TMK) and acreage of the parcel.
- (3) Purpose of the monitoring;
- (4) Archaeological field methods, including:
 - (A) Number of personnel, with the names and qualifications of the principal investigator and field director;
 - (B) When the work was done; and
 - (C) Methods and specific techniques planned in the monitoring plan and any deviations, with explanations why;
- (5) Archaeological fieldwork. Each site studied shall be individually described, including:
 - (A) State site number and any previous numbers;
 - (B) Reference to a previous study, if the site has been recorded before;
 - (C) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major

- features, then each of these should be noted (e.g., three C-shaped enclosures, one platform, four stone cairns);
- (D) Description of the site, including any of the following not recorded in previous studies:
- (i) Size, horizontal extent;
 - (ii) The major feature or features' shape, area, with representative architectural heights and widths, etc., (in metrics);
 - (iii) Presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (iv) Presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of these deposits;
 - (v) Photographs, line drawings, or both; and
 - (vi) Drafted plan maps, which shall include a bar scale, north arrow, and indicate method used (e.g., tape and compass; instrument mapping).
- (E) If subsurface analysis occurred, findings must be presented under each site's description, including:
- (i) Placing analysis locations on a plan map of the site;
 - (ii) Description of stratigraphic layers, with United States Department of Agriculture standard soil descriptions (using Munsell colors);
 - (iii) Line-drawings depicting the entire length of the profiles, to scale, of all excavations through surface architecture or of all excavations with subsurface features visible in the excavation side walls;
 - (iv) Representative stratigraphic profiles, to scale, of excavations not through surface architecture or where no subsurface features are

- visible in the excavation side walls;
- (v) Descriptions of features, including provenience within layers;
- (vi) Listing of artifacts, including provenience within layers;
- (vii) Listing of faunal and botanical remains, by layer;
- (viii) Listing of debris and other remains, by layer; and
- (ix) Listing of any processed radiocarbon, by provenience.
- (F) An assessment of site function, with supportive arguments;
- (G) An assessment of site age;
- (H) An assessment of site significance in accordance with 13-275-6(b); and
- (I) Recommendations.
- (6) Laboratory analyses, including:
 - (A) An overall presentation of artifacts, including:
 - (i) A master list;
 - (ii) Measurements of artifacts, which can be in table form and can be presented under the next item;
 - (iii) Analysis by artifact types; and
 - (iv) Illustrations (line drawings, photographs or both) of a representative sample of artifacts.
 - (B) An overall presentation of faunal and botanical remains, including:
 - (i) A master list, presenting the species within each layer of each site and their weights in grams; and
 - (ii) Analysis by species, as possible.
 - (C) An overall presentation of absolute dating, including:
 - (i) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (ii) Methods of collection and lab treatment; and
 - (iii) For radiocarbon dates, C12/C13 ratios shall be obtained.
 - (D) An overall presentation of lithic sourcing, if appropriate, to include:

- (i) A master list, by site and by provenience within site;
 - (ii) Methods of sample selection; and
 - (iii) Methods and techniques of source analysis.
- (E) Osteological analyses, if human skeletal remains are found and analyzed, shall conform to chapters 13-283 and 13-300.
- (7) If properties deemed significant under criteria 13-275-6(b)(5) or 13-284-6(b)(5) are discovered, the archaeologist shall consult with members of the relevant ethnic group, when appropriate, and consider any comments when determining appropriate treatment. The report shall describe any consultation process, list the consulted individuals and organizations, and summarize their comments.
- (8) Conclusions including additional findings on any studies previously conducted in the project area.
- (9) References.
- (10) Location of depository (archive) for collections, photographs, written site records, and maps (may be presented in an appendix). [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-6 Final disposition of collections and human skeletal remains. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

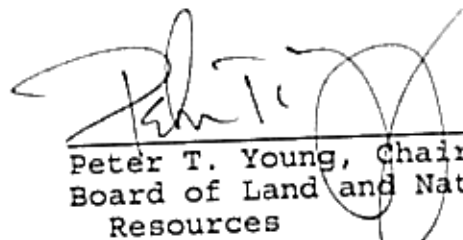
(b) If human skeletal remains are recovered during monitoring, they shall be treated as an inadvertent discovery. Any relocation of the human remains and any associated grave goods shall follow the procedures of chapter 13-300. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-7 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff ~~DEC 1 1 2003~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-279, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-279 shall take effect ten days after filing with the Office of the Lieutenant Governor.

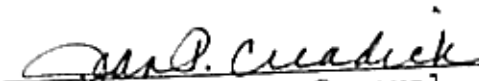

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

RECEIVED
NOV 25 2003
1-350 00

9. HAR Chapter 13-282

Rules governing permits for archaeological work under
HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-282
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-282, Hawaii Administrative Rules,
entitled "Rules Governing Permits for Archaeological
Work", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 282

RULES GOVERNING PERMITS FOR ARCHAEOLOGICAL WORK

§13-282-1	Policy and purpose
§13-282-2	Definitions
§13-282-3	Archaeological permits
§13-282-4	Fees
§13-282-5	Penalty

§13-282-1 Policy and purpose. Chapter 6E, HRS, authorizes the department of land and natural resources to regulate archaeological activities throughout the state. This rule establishes a permit system for all archaeological field work undertaken anywhere in this state, other than on federal lands, to ensure the quality of archaeological work, to obtain reports on all work for the Hawaii inventory of historic places, and thereby to better protect historic properties in the public's interest. [Eff] (Auth: HRS §6E-3) (Imp: HRS §6E-3) DEC 11 2003

§13-282-2 Definitions. As used in this chapter unless the context requires otherwise;

"Agency" means any state or county governmental entity.

"Applicant" means archaeological consulting firms, museums, universities, non-profit institutions, or scholars who desire to undertake archaeological field work in Hawaii and whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff ~~§13-282-2~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-282-3 Archaeological permits. (a) No archaeological firms, independent individuals, agencies or organizations shall perform any alteration to historic properties in the state of Hawaii until an annual permit is first obtained from the department. Permits shall only be issued to archaeological consulting firms, museums, universities, agencies, non-profit institutions, or scholars who have on staff at least one principal investigator who meets the minimal professional standards for archaeologists as provided in chapter 13-281.

(b) Each permit shall be valid only for the calendar year for which it is issued, regardless of when it is issued in the calendar year.

(c) The archaeological permit application shall include:

- (1) The name, address, and phone number of the applicant; and
- (2) The name and professional resume of each principal investigator to be covered by the permit.

(d) A permit shall be issued to an applicant within ten working days of receipt of a complete application. If an application is not complete, the SHPD shall notify the applicant by letter within ten working days of receipt of the application specifying what information is missing.

(e) In the event a principal investigator leaves a firm, museum, university, or non-profit institution, or a new principal investigator is employed or gains qualifications, the SHPD shall be notified in writing, with any necessary resumes attached.

(f) Each permit shall contain the following conditions:

- (1) The permittee shall submit, within one month of the conclusion of any field work, a brief report on findings to consist of:

- (A) A map locating all sites studied, to be on a portion of the relevant United States Geological Survey standard 1:24,000 topographic map; and
 - (B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation).
- (2) The permittee shall submit a minimum of two copies of a report or paper on any archaeological work to the SHPD.
 - (3) The permittee shall ensure all personnel are capable of adequately conducting the necessary work to accomplish any scopes of work.
 - (4) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and
 - (5) The permittee shall 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 permittee and its employees, contractors and agents under the permit. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-4 Fees. An archaeological permit application shall be accompanied by a filing fee of \$50. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-5 Penalty. Should a party alter an archaeological property without a permit or should not fulfill a permit's conditions:

- (1) The principal investigator of the archaeological work or the firm, or both shall be subject to penalties as covered under section 6E-11, HRS;
- (2) The principal investigator of the archaeological work or the firm, or both,

- shall forfeit all items collected and all recorded information to the SHPD; and
- (3) A permit may be revoked. [Eff: 11 2003]
(Auth: HRS §6E-3) (Imp: HRS §§6E-3; 6E-11)


11 11 11

11 11 11

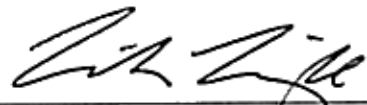
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-282, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-282 shall take effect ten days after filing with the Office of the Lieutenant Governor.

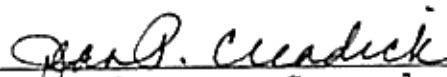

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

10. HAR Chapter 13-283

Rules governing standards for osteological analysis of human skeletal remains under HRS Chapter 6E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-283
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-283, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Osteological
Analysis of Human Skeletal Remains", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 283

RULES GOVERNING STANDARDS FOR OSTEOLOGICAL ANALYSIS OF
HUMAN SKELETAL REMAINS

\$13-283-1	Policy and purpose
\$13-283-2	Definitions
\$13-283-3	Osteological analysis and recording
\$13-283-4	Report of osteological analysis
\$13-283-5	Treatment of human skeletal remains
\$13-283-6	Penalty

\$13-283-1 Policy and purpose. (a) Burial sites with human skeletal remains have cultural significance and are sensitive historic properties, significant to the descendants and to the relevant cultural group. Burials are quite different from other historic properties. Human remains, under American common law, cannot be owned; rather the burials are held in trust for their descendants. Treatment of burials must meet this trust with the utmost sensitivity. It is the Department of Land and Natural Resource's policy to preserve burials in place when at all possible. However, when removal must occur, and if osteological analysis must take place, it is the Department of Land and Natural Resource's policy that this be done with the utmost sensitivity and with high standards of analysis.

(b) This rule establishes standards for osteological analysis of human skeletal remains, when analysis is done to determine ethnicity of skeletal remains, to ensure the quality of burial analysis and thereby to better protect the public's interests.

[Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Ethnicity" means the ethnic group to which the deceased belonged by birth, such as Hawaiian, Japanese, and Chinese.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

[Eff DEC 1 1 2000] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-283-3 Osteological analysis and recording.

The procedures for osteological analysis are set forth in chapter 13-300. Recording shall involve completion of forms available at the SHPD. Only those forms which are relevant to the recovered remains are to be completed. The forms are:

- (1) Individual summary record.
- (2) Burial register form.
- (3) Skull register form.
- (4) Child burial register form.
- (5) Cranial measurements form.
- (6) Non-metric cranial traits form.
- (7) Dental observations form.
- (8) Infracranial measurements form.
- (9) Infracranial morphology form.

- (10) Vertebral non-metric traits form.
- (11) Mandible measurements form.
- (12) Dental measurements form.

Forms will be relevant, depending on the age and extent of the remains. [Eff ~~§13-283-4~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-4 Report of osteological analysis. (a)

A report on the osteological analysis shall be prepared by a physical anthropologist meeting the qualifications set forth in chapter 13-281. The report shall include the following:

- (1) Abstract, including the number of individuals studied, their ethnic affiliation and the name of the historic sites with which they are associated.
- (2) Introduction.
 - (A) Reasons for the project; and
 - (B) Location of the study area which shall include a portion of the relevant United States Geological Survey standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites from which the remains came and text, which states the island, district, ahupua`a, and the tax map key (TMK) of the parcel
- (3) Laboratory methods, which shall include:
 - (A) The number of personnel, with the name and degree of the principal investigator;
 - (B) When the work was done; and
 - (C) Methods planned in the analysis and any deviations, with explanations why.
- (4) Osteological analysis: Descriptions of individuals, to include:
 - (A) The provenience--site, layer, and age of layer;
 - (B) The information recorded, as required by section 13-283-4 and this section; and
 - (C) A summary for each individual, to include:
 - (i) Probable ethnic group affiliation;
 - (ii) Sex;
 - (iii) Stature;
 - (iv) Completeness and condition of remains;

- (v) Salient morphological features of the skull, teeth, and infracranial skeleton; and
- (vi) Time since death.
- (5) Findings; and
- (6) References.
- (b) The osteological report shall be submitted separately to the SHPD from the archaeological report required under chapters 13-275, 13-276, 13-278 and 13-284. [Eff ~~§13-283-4~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

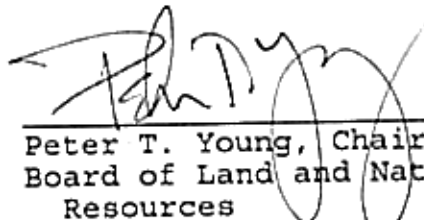
§13-283-5 Treatment of human skeletal remains. Because human remains are highly sensitive to many individuals and ethnic groups, all archaeological excavations and osteological laboratory analysis shall treat the remains with dignity and respect. [Eff ~~§13-283-4~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-6 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a denial or revocation of SHPD's written historic preservation review concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff ~~§13-283-4~~] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-11, 6E-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-283, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-283 shall take effect ten days after filing with the Office of the Lieutenant Governor.

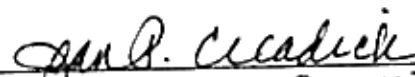

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

NOV 25 2003

RECEIVED
NOV 25 2003

11. HAR Chapter 13-284

Rules governing procedures for historic preservation review to
comment on Section 6E-42, HRS, projects

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-284
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-284, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review to Comment on Section 6E-42, HRS, Projects", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 284

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION
REVIEW TO COMMENT ON SECTION 6E-42, HRS, PROJECTS

§13-284-1	Purpose, applicability, and participants
§13-284-2	Definitions
§13-284-3	Conducting a historic preservation review; generally
§13-284-4	Fees
§13-284-5	Identification and inventory of historic properties
§13-284-6	Evaluation of significance
§13-284-7	Determining effects to significant historic properties
§13-284-8	Mitigation
§13-284-9	Verification of completion of the detailed mitigation plan
§13-284-10	Conclusion of the historic preservation review process
§13-284-11	Review of Findings Based on Agency Requests
§13-284-12	Discovery of previously unknown historic properties during implementation of a project
§13-284-13	Penalty

§13-284-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of Hawaii by articulating a historic preservation review process for projects requiring the approval of a state or county agency for a permit, license, certificate, land use change, subdivision, or other entitlement to use. Section 6E-42, Hawaii Revised Statutes, requires state and county agencies to

afford the department an opportunity to comment on any such permit or approval. The following procedures in part define how agencies meet this statutory requirement. The goal of the review process is to identify significant historic properties in project areas, assess any effects, and then to develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore and maintain historic properties for future generations.

(b) This chapter itemizes the review process that the SHPD shall follow to make comments to state and county agencies on permits, licenses, certificates, land use changes, subdivisions, or other entitlements for use which may affect historic properties, thereby meeting the opportunity to comment under section 6E-42, HRS.

(c) Participants in the historic preservation review process.

- (1) The primary participants in the process are DLNR, represented by the SHPD, the agency with jurisdiction over the project, and the person proposing the project. The agency has responsibility for initiating the historic preservation review process. The agency may have others prepare the review process items.
- (2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties.
[Eff ^{DEC 1, 1, 2000}] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-2 Definitions. As used in this chapter unless the context requires otherwise:

"Adverse effects" means any alteration to the characteristics of a historic property.

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in

a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area, and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Comment" means the findings and recommendations of the department provided in writing to the agency.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the person.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form or forms of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the proposed project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
 [Eff ^{DEC 1, 1993}] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-3 Conducting a historic preservation review; generally. (a) A historic preservation review may involve up to six procedural steps, in order to determine if significant historic properties are present and, if so, to develop and execute a detailed mitigation plan and thereby satisfactorily take into account the impact of the project on such historic properties. Any agency involved in this review shall consult with the SHPD and shall obtain the written comments of the SHPD at each step of the review. In cases where any interim protection plans are adequately in place and any data recovery fieldwork has been adequately completed, the project may commence from a historic preservation perspective.

(b) The review steps, described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments which commit to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date shall be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this rule, or by a mutually agreed upon date. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to

concur with the agency's submittal.

[Eff DEC 1 1 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-4 Fees. (a) Filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural, or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff DEC 1 1 2003] (Auth: HRS §§6E-3, 6E-16)
(Imp: HRS §§6E-3, 6E-16)

§13-284-5 Identification and inventory of historic properties. (a) The agency shall ensure whether historic properties are present in the project area and, if so, it shall ensure that these properties are properly identified and inventoried.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to

undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the actual project. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances then the SHPD shall make this determination in the form of a "no historic properties affected" letter within thirty days; or
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days.
 - (A) If the SHPD finds that no significant historic properties are present, then the SHPD shall issue a written response to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
 - (B) If the SHPD finds historic properties may be present, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey.
- (3) The SHPD shall make all "no historic properties affected" comments available to interested persons by posting notice of all such "no historic properties affected" comments at the SHPD office and on the SHPD's website every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following

working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. During these thirty days, should historic properties be reported to the SHPD, the SHPD shall reconsider its response under the provisions of section 13-284-12.

- (4) If the SHPD indicates that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to the following section of this rule.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD shall indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in chapter 13-276. A permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the

survey methodology as set forth in subsections 13-276-5(a) and (c).

- (B) An ethnographic survey may be undertaken when the SHPD concludes that historic properties which may be significant under criterion "e" of paragraph 13-284-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.

- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect, or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the SHPD may request an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5(a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as applicable, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be

- used in the archaeological field survey which shall include:
- (A) The name and qualifications of the principal investigator and investigators;
 - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
 - (C) The anticipated duration of time for the survey;
 - (D) The extent of survey coverage, if applicable. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (E) A discussion of any factors which might limit the survey effort, if applicable;
 - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, if applicable, with the rationale for these techniques given; and to plot site location, if applicable; and
 - (H) The method to be used to plot site location, if applicable.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is requested, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the

information contained in the plan is adequate or inadequate.

- (1) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (2) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.

(e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report shall include a summary of the consultation process. The SHPD shall inform the agency within forty five days of SHPD receipt of the report, if the information contained in the report or archaeological assessment is adequate or inadequate.

- (1) If the SHPD determines that the survey, assessment or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey or archaeological assessment is inadequate. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the results.
- (2) If the SHPD finds the report or archaeological assessment adequate, then the agency shall be sent a written notice of acceptance;
- (3) Once the survey report or archaeological assessment is considered adequate, seven copies of the report or archaeological assessment shall be made available by the

agency to the public. Two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office libraries, one copy shall be sent to the University of Hawaii at Manoa's Hamilton Library's Pacific Collection, one copy shall be sent to the Bishop Museum's library, one copy shall be sent to the University of Hawaii at Hilo's library, one copy shall be sent to Maui Community College's library and one copy to Kauai Community College's library.

(f) If the SHPD finds the report or archaeological assessment adequate and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written "no historic properties affected" determination.

(g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this initial assessment or delegate this assessment, in writing, to the SHPD. This information shall be submitted concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criteria:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or

- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e", to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

(1) The assessment shall:

- (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
- (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited; and
- (C) Evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.

(2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the

significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.

- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency.
- (4) Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then the historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will potentially be harmful. However, the person has agreed to mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental

visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review. These shall be submitted with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

(1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of receipt of the effect determinations. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the effect determinations.

(2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" letter.

(e) When the SHPD comments that the action shall not affect any significant historic properties, the historic preservation review ends. When the comment of the SHPD is that the project will have an "effect, with agreed upon mitigation commitments", then detailed mitigation plans shall be developed by the agency as discussed in the following section.

[Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the

agency to the SHPD for review and approval. This proposed commitment shall be submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation may occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure, or object prior to its alteration or destruction.
 - (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-284-6(b)(5) are involved, the agency shall initiate a consultation process with ethnic organizations or members of the ethnic group for whom the historic properties have

significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties which may be significant under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

- (3) This proposed mitigation commitment must include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation are proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
 - (B) Brief text justifying these proposed treatments; similar sites can be discussed together in this justification; and
 - (C) If properties which may have significance under criterion "e" are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the mitigation commitments. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for this type of historic property in the case of native Hawaiian burials, following chapter 6E-43, HRS, and section 13-300-33.

(e) After mitigation commitments are accepted the agency shall provide detailed plans for the mitigation work to the SHPD for review and approval. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-277. Qualifications of the archaeologist who is the principal investigator for this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the archaeologist who is the principal investigator for the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans' photographic components shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications.
- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided in chapter 13-277 for archaeological properties and properties deemed significant under paragraph 13-284-6(b)(5) and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under criterion "e" as provided in paragraph 13-284-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-284-6(b)(5), the Office of Hawaiian Affairs shall be consulted. The plans shall describe the

- consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
 - (7) If a detailed mitigation plan is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the plan. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the plan.
 - (8) If a detailed mitigation plan is adequate, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once the plan is considered adequate, work can then proceed on the plan.
 - (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan.
- [Eff DEC 11 2003] (Auth: HRS §6E-3)
 (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-9 Verification of completion of the detailed mitigation plan. (a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plan's tasks--usually in the form of a completion report, with one copy submitted.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the agency shall

consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, 2-step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

(1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the documentation.

(2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is adequate and that the historic preservation process is concluded. If the completion report is not adequate, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic properties is to occur, the

agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days to the agency stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-284-9(a-c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the person indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is adequate, the agency shall ensure that seven copies are made available to the same repositories as the survey report noted in paragraph 13-284-5(c)(3). [Eff ^{DEC 1, 1 2003}]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-10 Conclusion of the historic preservation review process. (a) The historic preservation review process ends when:

- (1) SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) SHPD agrees that the project shall have "no historic properties affected"; or
- (3) SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been ^{DEC 1, 1 2003} successfully executed. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)]

§13-284-11 Review of Findings Based on Agency Requests. (a) Upon the request of an agency the SHPD shall reconsider the findings under sections 13-284-5 (

adequate identification and inventory procedures), 13-284-6 (significance evaluations), 13-284-7 (determination of effects), and 13-284-8 (mitigation), should an agency believe new information has come forth regarding historic properties. To be considered, the inquiry must address specific problems in the findings with supportive new evidence presented. The person conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD shall not suspend action on a project, but the person and agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within 10 working days of receipt of the request at the SHPD office, the SHPD shall advise the person undertaking the project, and the agency involved, in writing of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD, the person undertaking the project, and the agency responsible for the permit or action shall attempt to reach agreement on how to correct the problem. [Eff DEC 11 2003]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)


§13-284-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of an inventory report or during the implementation of a project, then the historic preservation review process shall be reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process shall be accelerated, following the procedures of 13-280. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-13 Penalty. Failure to obtain the written comments of the SHPD in accordance with this chapter shall result in a SHPD comment to the agency not to proceed with the project. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-10, 6E-11, 6E-42)

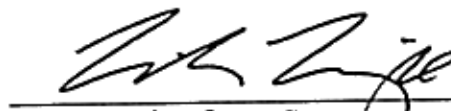
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-284, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-284 shall take effect ten days after filing with the Office of the Lieutenant Governor.


Peter T. Young, Chairperson
Board of Land and Natural
Resources

APPROVED:


Linda Lingle, Governor
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

03 DEC -1 10:54

LEUTENANT GOVERNOR
OFFICE

Figure 1

12. HAR Chapter 13-76

Non-indigenous aquatic species

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-76
Hawaii Administrative Rules

August 10, 2007

SUMMARY

Chapter 13-76, Hawaii Administrative Rules,
entitled "Non-Indigenous Aquatic Species", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 76

NON-INDIGENOUS AQUATIC SPECIES

Subchapter 1 General Provisions

§13-76-1	Purpose
§13-76-2	Definitions
§13-76-3	General permit conditions
§13-76-4	Penalties
§13-76-5	Severability
§§13-76-6 to 13-76-10	(Reserved)

Subchapter 2 Ballast Water Management

§13-76-11	Purpose
§13-76-12	Definitions
§13-76-13	Prohibited activities
§13-76-14	Applicability
§13-76-15	Permits
§13-76-16	Ballast water management plan requirements
§13-76-17	Ballast water exchange requirements
§13-76-18	Ballast water discharge requirements
§13-76-19	Ballast water reporting requirements
§13-76-20	Evaluation and compliance

SUBCHAPTER 1

GENERAL PROVISIONS

§13-76-1 Purpose. This chapter governs rules aimed at preventing, to the extent practical, the introduction and spread of non-indigenous aquatic species into State waters. Such non-indigenous aquatic species are potentially harmful to the environment and economy of Hawaii because they may replace or destroy native species and alter their habitats. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-2 Definitions. As used in this chapter unless otherwise provided:

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

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

"Master" means the person authorized by the vessel operator to be the captain of the vessel.

"Non-indigenous aquatic species" means any marine, brackish water, or freshwater species or other viable biological material, including, but not limited to, eggs, spores, or seeds, that enters or exists in an ecosystem where it was not known to have existed before, is outside its natural or historic range, or may have come to Hawaii by human introduction.

"Person" means any individual, corporation, partnership, trust, association, or other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government.

"State" means the State of Hawaii.

"State marine waters" means all waters of the State, including the water column and the water surface, extending from the upper reaches of the wash of the waves on shore 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.

"USCG" means the United States Coast Guard.

"Vessel operator" means a company that owns, operates or has chartered a vessel. [Eff OCT 12 2007]
(Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-3 General permit conditions. (a) The general permit provisions of this section shall be in addition to the more specific provisions of section 13-76-15, and as otherwise provided in this chapter.

(b) The department may require persons to submit an application for a permit issued pursuant to this chapter.

(c) The submission of an application to the department shall not obligate the department to issue a permit or constitute a right or interest on the part of the applicant to have a permit issued.

(d) A permit shall have a limited duration subject to the provisions of this chapter, but such duration shall not exceed one year from the date of issuance. The issuance of a permit shall not constitute a vested right or property interest to receive future or additional permits.

(e) Permits are non-transferable, so that whenever a permittee parts with possession or transfers, in whole or in part, the title to or interest in the vessel identified in the permit to another person by any arrangement, the permit shall immediately expire. The permittee must notify the department prior to and immediately after such transfer has occurred.

(f) The department may impose terms and conditions it deems necessary to carry out the purposes of this chapter, including requiring a report or reports of any activity conducted that may potentially introduce a non-indigenous species to state marine waters by the applicant or permit holder within the state.

(g) It is unlawful for any person to violate any provision of any permit issued pursuant to this chapter. Failure to comply with any provision of this chapter, or any provision of any permit issued hereunder, shall be cause for termination of said permit.

(h) If the department determines that the protection and conservation of aquatic life in the area requires the cessation of all or certain activities allowed under the permits, upon notification to the permit holders of this determination by any reasonable means, the permits shall automatically expire on a date provided in the notification.

(i) There is no right to a renewal or re-issuance of a permit. When reviewing an application for a permit, the department shall consider whether the applicant has previously violated or not complied with any term or condition of a permit and may deny the application on this basis.

(j) The permittee shall have the permit on board the vessel and be able to show the permit upon the demand of any employee, agent, or officer authorized to enforce this chapter. Failure or refusal to show the permit shall be a violation of this chapter and sufficient cause to immediately but temporarily suspend the permit until such time that the board may take action to revoke the permit.

(k) The board may revoke any permit for any violation of the terms and conditions of the permit and a person whose permit was revoked shall not be eligible to apply for another permit until one year from the date of revocation. [Eff OCT 12 2007]
(Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-4 Penalties. A person violating the provisions of this chapter shall be guilty of a petty misdemeanour, as provided under section 187A-13, HRS, subject to administrative penalties as provided under

section 187A-12.5, HRS, and punished as provided by law. [Eff OCT 12 2007] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-76-5 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 or application of the remainder of these rules to other persons or property shall not be affected. [Eff OCT 12 2007] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

SUBCHAPTER 2

BALLAST WATER MANAGEMENT

§13-76-11 Purpose. (a) This subchapter addresses the management and disposition of vessel ballast water as a medium or means for the introduction of aquatic invasive species into state marine waters, such as but not limited to any ocean, estuary, bay, harbor, beach, or coastal area. These rules are intended to act in coordination with federal regulations on ballast water management by 1) establishing state laws that will correspond to and complement federal regulations on ballast water to ensure consistency, 2) providing best practices guidelines to improve vessel ballast water management prior to entering state marine waters, 3) adopting a ballast water management program, including a ballast water exchange reporting system, and 4) monitoring compliance with program requirements.

(b) This subchapter identifies: 1) prohibited activities; 2) vessels exempted from ballast water management plan requirements, ballast water reporting requirements, ballast water exchange requirements, and ballast water discharge requirements; 3) which permits are available to qualifying vessels; 4) requirements

that incoming vessels are subject to regarding ballast water; and 5) State verification of compliance with this subchapter. [Eff **OCT 12 2007**] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-12 Definitions. As used in this subchapter, unless otherwise provided:

"Aquatic invasive species" means a non-indigenous aquatic species, which, if introduced into an ecosystem, may cause harm to Hawaii's economy, environment, human health, or public safety and welfare.

"Ballast operations" means the transfer, uptake, and/or discharge of ballast water.

"Ballast tank" means any tank, hold, or part of a vessel used to carry ballast water, whether or not the tank or hold was designed for that purpose.

"Ballast water" means any water, associated sediments, and suspended matter taken on board a vessel to manipulate, control, or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

"BWM" means ballast water management as required by federal law 33 CFR Part 151 Subpart D, Mandatory Ballast Water Management Program for U.S. Waters, dated July 28, 2004.

"Coastwise trade" includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.

"Discharge" means to drain or remove part or all of the ballast water off the vessel.

"EEZ" means the United States exclusive economic zone established by Presidential Proclamation No. 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, substantially as defined in federal law 33 CFR 151.2025, dated July 1, 2005.

"Empty/refill exchange" means to pump the ballast tank or tanks out, until empty or as close to empty as the master determines is safe to do so, then refilling

the tank with mid-ocean waters.

"Exchange" means to replace water in ballast tanks by using flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States Coast Guard.

"Flow through exchange" means to flush out ballast tanks by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of the ballast water tank capacity have been changed.

"MHI EEZ" means the main Hawaiian islands exclusive economic zone identified as those waters of the EEZ surrounding the main Hawaiian islands east of 161° West longitude.

"Mid-ocean waters" means waters at least 200 nautical miles from any coast.

"Permanent ballast" means a weight or heavy material added to a vessel to enhance the vessel's stability that is always left on the vessel and not normally removed either between or during voyages.

"Transfer" means the on-board movement of ballast water from one part of the vessel to another.

"Qualifying vessels" means all vessels, United States or foreign flagged, carrying ballast water into state marine waters after operating outside the EEZ.

"Sediments" means any material that settles out of ballast water within a vessel.

"Uptake" means to fill part or all of the vessel's ballast tanks with water from outside the vessel.

"Vessel in innocent passage" means a ship engaged in continuous and expeditious surface passage through the territorial sea and archipelagic waters of foreign coastal states in a manner not prejudicial to its peace, good order, or security. Passage includes stopping and anchoring, but only if incidental to ordinary navigation or necessary by rough weather or distress, or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress.

"Voyage" means any transit by a vessel that originates from a port or place outside of the EEZ

surrounding the State of Hawaii and destined for a port or place in Hawaii. [Eff **OCT 12 2007**] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-13 Prohibited activities. (a) Unless exempted under the provisions of section 13-76-14, by permit issued pursuant to section 13-76-15, or as may be otherwise provided by law, it is unlawful for the master of a qualifying vessel:

- (1) To fail to have or fail to follow a ballast water management plan, as required under section 13-76-16;
- (2) To exchange ballast water contrary to the provisions of section 13-76-17;
- (3) To discharge, or allow the discharge of, ballast water in state marine waters in violation of section 13-76-18;
- (4) To fail to submit a ballast water report form, as required in section 13-76-19; and
- (5) To violate any provision in this subchapter.

(b) It is unlawful for the master to prevent, hinder, or otherwise interfere with the department's or USCG's evaluation of the vessel's compliance with the provisions of this subchapter. The evaluation may be conducted in accordance with section 13-76-20 and as may be otherwise provided in this subchapter. [Eff **OCT 12 2007**] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-14 Applicability. (a) The ballast water management plan requirements of section 13-76-16 shall apply to qualifying vessels.

(b) The ballast water reporting requirements of section 13-76-19 shall apply to qualifying vessels, except for the following:

- (1) Crude oil tankers engaged in coastwise trade. This exemption applies only to vessels carrying unrefined crude oil product from one U.S. place to another, including

Hawaii;

- (2) Any vessel of the United States Department of Defense or USCG, subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to Section 1322(n) of Title 33 of the United States Code;
 - (3) Any vessel that operates exclusively within the MHI EEZ;
 - (4) Any vessel that operates outside of the EEZ, but conducts all ballast operations exclusively in the MHI EEZ, regardless of the number of voyages the vessel makes; and
 - (5) Any vessel in innocent passage or having entered state marine waters due to circumstances beyond its control; provided that the vessel does not discharge ballast water into state marine waters, or into waters that may impact state marine waters, unless the vessel meets the requirements of section 13-76-18;
- (c) The ballast water exchange requirements of section 13-76-17 shall apply to qualifying vessels that conduct ballast water exchanges; except for vessels exempted under subsection 13-76-14(b) (1), (2), (3), (5) and the following:
- (1) Any vessel equipped with a functioning treatment system designed to kill all living aquatic organisms in the ballast water; provided that USCG or other approving authority has determined that the system is designed to be at least as effective as ballast water exchange at reducing the risk of transfer of aquatic invasive species in ballast water and the treatment system is properly functioning as designed; and

(2) Any vessel, to the extent that it is equipped with permanent, freshwater, or treated ballast, as specified in section 13-76-14 (c) (1) above or will not discharge ballast water in state marine waters.

(d) The ballast water discharge requirements of section 13-76-18 shall apply to qualifying vessels that either will discharge or have discharged ballast water into state marine waters; except for vessels exempted under subsections 13-76-14(b) (2) and (3), and 13-76-14(c) (1) and (2).

(e) The master, or vessel operator when there is no master, shall be responsible for complying with the provisions of this subchapter, unless otherwise provided. Nothing in this subchapter shall relieve the master of the responsibility to ensure the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff

OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-15 Permits. (a) The department may issue permits to vessel operators, exempting qualifying vessels from the provisions of this subchapter, subject to the provisions of section 13-76-3 and the following conditions:

- (1) Receipt of a completed application, on a form provided by the department, and any other information the department may require; and
- (2) Approval by the department, after an assessment of the appropriateness of the application based on:
 - (A) Safety of the crew or its passengers, USCG approved ballast water treatment system, protection of property, vessel integrity or other factors the department considers relevant to the intent and purpose of this subchapter; and

(B) All applicable state and federal law.

(b) The permit exemptions are limited to the provisions of this subchapter and do not exempt the master from other state laws or any federal laws.

[Eff **OCT 12 2007**] (Auth: HRS §§187A-5, 187A-32)
(Imp: HRS §§187A-5, 187A-32)

§13-76-16 Ballast water management plan requirements. Vessels in compliance with BWM requirements for a ballast water management plan, shall be deemed to also be in compliance with this section. It is unlawful for any master to violate BWM requirements for a ballast water management plan.
[Eff **OCT 12 2007**] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-17 Ballast water exchange requirements.
(a) Qualifying vessels that require ballast water exchanges shall conduct such exchanges in mid-ocean waters. Unless exempted by section 13-76-14(c), or as may be otherwise provided by law, it is unlawful for a master to conduct a ballast water exchange within state marine waters while holding ballast water obtained from an area less than 200 nautical miles from any coast.

(b) All such exchanges shall be by flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the USCG or other approving authority.

(c) The master is responsible for the safety of the vessel, its crew, and its passengers and is not required to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. Should the master make such a determination, the master shall

take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel, its crew, and its passengers, to minimize the discharge of ballast water containing non-indigenous aquatic species into state marine waters or waters that may impact state marine waters. Such discharge shall be subject to the provisions of section 13-76-18.

(d) Nothing in this subchapter relieves the master of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff
OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-18 Ballast water discharge requirements.

(a) To the extent practical, the master of any qualifying vessel that has not conducted a mid-ocean waters ballast water exchange, and is subject to the provisions of subsection 13-76-14(d), shall not discharge ballast water into state marine waters.

(b) The master shall report to the department, pursuant to section 13-76-19, when a mid-ocean waters ballast water exchange was not done and a ballast water discharge into state marine waters is necessary.

(c) Unless exempted by subsections 13-76-14(c) or 13-76-14(e) of this section, prior to any ballast water discharge into the EEZ or state marine waters, the master shall obtain approval from the department to discharge ballast water. Upon approval, the master shall then implement all feasible measures to minimize the discharge of ballast water.

(d) This subchapter does not authorize the discharge of oil, noxious liquid substances, or any other pollutant in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(e) The master shall be exempted from the provisions of subsections 13-76-18(a) and 13-76-18(c), if the master determines that such ballast water discharge is necessary to ensure the safety and stability of the vessel or the safety of the crew and passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. [Eff **OCT 12 2007**]
(Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-19 Ballast water reporting requirements.

(a) Unless exempted in subsection 13-76-14(b), for all qualifying vessels, the master shall:

- (1) Fully and accurately fill out the USCG ballast water report form;
- (2) Submit the form by fax, electronic mail, or as otherwise provided to the department no later than twenty-four (24) hours prior to vessel arrival into state marine waters;
- (3) Submit an amended form to the department before the vessel departs state marine waters, should there be a change in any of the information submitted in accordance with this section; and
- (4) Maintain on board the vessel records that include all of the information provided on the form for at least two years.

(b) Submission of this form or an amended form to the department does not relieve the master of the responsibility to report to the USCG, if the USCG requires such report or amended form. [Eff **OCT 12 2007**] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

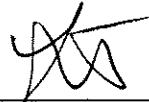
§13-76-20 Evaluation and compliance. (a) In order to evaluate the compliance rate of qualifying vessels with the provisions of this subchapter, the department, in coordination with the USCG, may:

- (1) Take samples of ballast water and sediment, examine documents, and make other appropriate inquiries;
 - (2) Compile the information obtained from submitted reports and use the information in conjunction with existing information relating to the number of vessel arrivals; and
 - (3) Take other actions necessary for the purposes of this subchapter.
- (b) The master shall make available to the department, upon the department's request, the records required by section 13-76-19 and other relevant information. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-76, Hawaii Administrative Rules, on the Summary Page dated August 10, 2007, was adopted on August 10, 2007, following a public hearing held on June 28, 2007, after public notice was given in the Honolulu Star-Bulletin on May 20, 2007.

The adoption of chapter 13-76 shall take effect ten days after filing with the Office of the Lieutenant Governor.



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

APPROVED:



Linda Lingle
Governor
State of Hawaii

Dated: OCT -1 2007

APPROVED AS TO FORM:



Deputy Attorney General

Filed

13. HAR Chapter 13-168

Rules relating to water use, wells, and stream diversion works

UNOFFICIAL COMPILATION

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER RESOURCES

CHAPTER 168

WATER USE, WELLS, AND STREAM DIVERSION WORKS

Subchapter 1. General Provisions

Section 13-168-1	Purpose
Section 13-168-2	Definitions
Section 13-168-3	Penalties

Subchapter 2. Water Use

Section 13-168-5	Declaration of water use
Section 13-168-6	Certification of water use
Section 13-168-7	Report of water use

Subchapter 3. Wells

Section 13-168-11	Registration of existing wells
Section 13-168-12	Well construction and pump installation permits
Section 13-168-13	Well completion report
Section 13-168-14	Well construction and pump installation standards
Section 13-168-15	Well inspection
Section 13-168-16	Abandoned wells

Subchapter 4. Stream Diversion Works

Section 13-168-31	Registration of existing stream diversion works
Section 13-168-32	Stream diversion permits
Section 13-168-33	Stream diversion completion report
Section 13-168-34	Stream diversion works inspection
Section 13-168-35	Abandoned stream diversion works

UNOFFICIAL COMPILATION

Subchapter 1

General Provisions

§13-168-1 Purpose. The primary purpose of this chapter is to carry out the intent of the State Water Code to assure maximum beneficial use of ground and surface waters of the state by establishing rules for reporting and gathering meaningful data on all water uses and sources. The rules in this chapter provide for the declaration and certification of all existing uses of surface and ground water; the registration of all existing wells and existing stream diversion works; the reporting of current uses of surface and ground water; the permitting of wells; the permitting of pump installations and repairs; and the permitting of stream diversion works. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §91-2)

§13-168-2 Definitions. As used in this chapter:

"Abandoned well" means any well that has been permanently discontinued. Any well shall be deemed abandoned which has been allowed to become unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical or unsafe.

"Chairperson" means the chairperson of the commission on water resource management.

"Commission" means the commission on water resource management.

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

"Deputy" means the deputy to the chairperson of the commission on water resource management.

"Diversion Works" (see "stream diversion works")

"Ground water" means any water found beneath the surface of the earth, whether or not in perched, dike-confined, or basal supply; in underground channels or streams; in standing, percolating, or flowing condition; or under artesian pressure.

"Installation of pumps and pumping equipment" means the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well, and establishing seals and repairs to existing installations.

"Instream flow standard" means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified

UNOFFICIAL COMPILATION

times of the year to protect aquatic life, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.

"Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

"Interim instream flow standard" means a temporary instream flow standard of immediate applicability, adopted by the commission without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard.

"Noninstream use" means the use of stream water that is diverted or removed from its stream channel and includes the use of stream water outside of the channel for domestic, agricultural, and industrial purposes.

"Person" means any individual, firm, association, organization, partnership, estate, trust, corporation, or any governmental unit.

"Pump installation" means the installation, replacement, or repairs of any equipment and appurtenances utilized or intended for use in withdrawing or obtaining water from a water source.

"Pump installation contractor" means any person licensed in the State of Hawaii to install, replace, or repair pumps and pumping equipment.

"Pumps and pumping equipment" means all equipment and appurtenances utilized or intended for use in withdrawing or obtaining ground water. It includes seals, tanks, fittings, measuring devices, and controls.

"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.

UNOFFICIAL COMPILATION

"Repairs" means any replacement, change, or modification of any well, pump or pumping equipment, or stream diversion works. Routine maintenance is not included in this definition.

"Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the watercourse from being a stream.

"Stream channel" means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past.

"Stream diversion" means the act of diverting, pumping or otherwise removing water from a stream into a channel, ditch, pipeline, or other conduit.

"Stream diversion works" means any artificial structure, excavation, pipeline, or other conduit constructed singly or in combination, for the purpose of diverting or otherwise removing water from a stream into a channel, ditch, tunnel, pipeline, etc.

"Stream reach" means a segment of a stream channel having a defined upstream and downstream point.

"Stream system" means the aggregates of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs and diffused surface water (that is, water occurring upon the surface of the ground other than in contained waterbodies). Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Water" or "waters of the state" means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

"Water management area" means a geographic area which has been designated pursuant to chapter 13-171 as requiring management of the ground or surface water resource, or both.

"Water source" means a place within or from which water is or may be developed, including but not limited to: (1)

UNOFFICIAL COMPILATION

generally, an area such as a watershed defined by topographic boundaries, or a definitive ground water body; and (2) specifically, a particular stream, other surface water body, spring, tunnel, or well or related combination thereof.

"Well" means any excavation or opening into the ground, or an artificial enlargement of a natural opening drilled, tunneled, dug, or otherwise constructed for the location, exploration, development, injection, or recharge of ground water and by which ground water is drawn or is capable of being withdrawn or made to flow.

"Well construction" means the drilling, tunneling, digging or otherwise constructing of a well for whatever purpose, including any alteration or repairs of an existing well, but excluding the installation of pumps and pumping equipment.

"Well driller" means any person licensed in the State of Hawaii to construct, alter, or repair wells.

"Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the other terminal. [Eff. MAY 27 1988] (Auth: HRS §§91-2, 174C-8) (Imp: HRS §§91-2, 174C-3, 174C-81, 174C-91)

§13-168-3 Penalties. (a) Any person who violates any provision of this chapter or any permit condition or who fails to comply with any order of the commission may be subject to a fine imposed by the commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day's continuance is a separate violation.

(b) No provision of this chapter shall bar the right of any injured person to seek other legal or equitable relief against a violator of this chapter. [Eff. MAY 27 1988; am AUG 09 2018] (Auth: HRS §174C-8) (Imp: HRS §174C-15)

Subchapter 2

Water Use

§13-168-5 Declaration of water use. (a) Any person making a use of water from a well or stream diversion works in existence on the effective date of these rules in any area of the state shall file a declaration of the person's use with

UNOFFICIAL COMPILATION

the commission within one year from the effective date of these rules.

(b) The commission shall cause notice of the rules to be published on three separate days in a newspaper of general circulation statewide and in a newspaper of areawide or countywide circulation. The commission shall also cause notice of the rules to be given by mail to any person required to file of whom the commission has or could readily obtain knowledge or who has requested mailed notice to be given when the commission adopts rules requiring the filing of declarations.

(c) Declarations by the user shall be made on forms provided by the commission and shall contain information including, but not limited to, the location of the water sources and all usage-related facts, or information within his knowledge or possession. The user shall include a declaration of the manner, purposes, and time in which the water source is being used and operated, the rate and volume of water being withdrawn or diverted therefrom, and the method or means of measuring and controlling the water taken or used. Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief.

(d) If no declaration is filed, the commission, in its discretion, may conclusively determine the extent of the uses required of declaration.

(e) The commission shall act upon a declaration within six months after its filing. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-26, 174C-50)

§13-168-6 Certificate of water use. (a) When a declaration has been filed in accordance with this chapter and the commission has determined that the use declared is a reasonable and beneficial use, the commission shall issue or cause to be issued a certificate describing the use. The certificate shall be deemed to constitute a description of the use declared, but shall not constitute a property right or interest nor a determination that the use declared therein is a legal one. The certificate shall give rise to a rebuttable presumption in favor of the certificate holder that the use declared therein is reasonable and beneficial. Each certificate shall show the amount of water use declared, but such declared use shall be subject to verification and updating before being recognized by the commission in resolving claims relating to existing water rights and uses,

UNOFFICIAL COMPILATION

including appurtenant rights, riparian and correlative use.

(b) The commission shall hold a hearing upon an appropriate request by any person adversely affected by the certification or the refusal to certify the amount of water being used.

(c) Whenever a certified use of water is terminated, the person with the certificate shall file a report with the commission, providing all information required on forms provided by the commission. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-27, 174C-60)

§13-168-7 Report of water use. (a) The owner or operator of any well or stream diversion works from which water is being used shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis. If a well or stream diversion works is one of a battery of interconnected water sources, a centralized measuring device or facility may be approved by the commission.

(b) The owner or operator of any well or stream diversion works or battery of such water sources shall file a report of total water usage on a regular monthly (calendar or work schedule) basis to the commission on forms provided by the commission on or before the end of the month following the month for which water usage is to be reported. The reports may include other use-related information such as type of use, salinity, and water level, as may be deemed appropriate and reasonable by the commission.

(c) At the discretion of the commission, requirements for measuring and reporting monthly water usage may be lessened, modified, or exempted for owners or operators of small, individual wells or stream diversion works. The lessening, modification, or exemption of such requirements shall be approved, disapproved, or otherwise decided by the commission on a case-by-case basis. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-50, 174C-82)

Subchapter 3

Wells

§13-168-11 Registration of existing wells. (a) Within one year from the effective date of these rules, the owner or

UNOFFICIAL COMPILATION

operator of any well in existence on the effective date of these rules shall register the well with the commission on forms provided by the commission. The owner or operator shall disclose the location of such well and all other facts or information related to its geology, hydrology, and construction. Registration shall include, but not limited to, such information as water use permit number, if any; location and dimensions of the well; state-assigned well number; depths and diameters of drilled hole and casing; range of water level and salinity; pumping test results, if any; installed pump description and operating capacity; method of measuring water usage; method of construction; and well driller, if known.

(b) The commission may deny the issuance of a water use permit as provided for under chapter 13-171 until such time as the applicant registers all wells which the applicant owns or operates. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-26, 174C-48, 174C53, 174C-83)

§13-168-12 Well construction and pump installation permits. (a) No well shall be constructed, altered, or repaired and no pump or pumping equipment shall be installed, replaced, or repaired without an appropriate permit from the commission. Each application for a well construction or pump installation permit shall be accompanied by a non-refundable filing fee of \$300.00, excepting government agencies, and shall be required for all areas of the state, including water management areas. The owner of a well shall make application or cause an application to be made by the well driller who will construct the well or by the pump installation contractor who will install the pump and pumping equipment, as the case may be.

(b) Applications for a well construction or pump installation permit shall be made on forms provided by the commission. The commission shall approve or disapprove an acceptably completed application within ninety calendar days of receipt by the commission. Each application shall contain the name of owner or operator; location; contractor's license number; purpose of well construction or pump installation; proposed withdrawal and use of water; water use permit information if applicable; type, size, and expected capacity of the well or pump; and such other information as the commission may require.

(c) The commission may issue or cause to be issued a permit only if the proposed construction complies with all applicable laws, rules, and standards. Before an application for a well construction permit is approved, the commission shall cause such application to be reviewed by the department

UNOFFICIAL COMPILATION

of health for compliance with their rules and standards concerning, among other things, the appropriateness of the well location.

(d) Every well construction or pump installation permit for a new well or well without a previous pumping test shall require a pumping test to be performed. Measurements of time, pumping rate, drawdown, and chloride content, as appropriate and approved, shall be recorded and reported as required in §13-168-13.

(e) Every well construction and pump installation permit shall direct the well driller or pump installation contractor to file a well completion report, as provided in §13-168-13. The permit shall be prominently displayed at the site of the well at all times until the well construction or the pump installation is completed.

(f) The holder of a well construction permit, with the approval of the commission, may change the location of the well before construction is completed. An application to change the location shall state the location, proposed depth, method of construction, size, and expected capacity of the new well. The application to change the location shall also state the manner of sealing or plugging the abandoned well. The commission shall cause all such applications to be reviewed by the department of health for compliance with their rules and standards concerning, among other things, the appropriateness of the location of the well.

(g) An amended well construction permit may be issued by the commission if it determines that the proposed new well location will serve the same use as the original well, draw upon the same supply of water, and will not be contrary to any applicable law, rule, order, or regulation; and that the incomplete and abandoned well will be sealed or plugged in an approved manner.

(h) An applicant for a well construction or pump installation permit whose application or amended application is rejected may obtain a hearing before the commission by filing within thirty days of the mailing of the notice of rejection a written petition requesting such a hearing. The hearing shall be conducted pursuant to chapter 13-167.

(i) The commission may modify, suspend, or revoke a permit, after notice and hearing, on any of the following grounds:

- (1) Material misstatement or misrepresentation in the application for a permit;
- (2) Failure to comply with the provisions set forth in the permit;
- (3) Willful disregard or violation of any provision of this part or any rule adopted pursuant thereto; or

UNOFFICIAL COMPILATION

- (4) Material change of circumstances or conditions existing at the time the permit was issued.
- (j) Every Well construction and pump installation permit issued or caused to be issued by the commission shall be for a specified period not to exceed two years, unless otherwise specified in the permit and shall contain the commencement and completion dates for the permitted activity. In determining the commencement and completion dates of the activity, the commission shall take into consideration the:
 - (1) Cost and magnitude of the project;
 - (2) Engineering and physical features involved;
 - (3) Existing conditions; and
 - (4) Public interest affected.
- (k) The commission may extend the completion dates of the activity prescribed in any permit upon a showing of good cause and good-faith performance. If the commencement or completion date is not complied with, the commission shall cause the permittee to be notified by certified mail that the permit shall be revoked within sixty days unless the permittee can show good cause that it should not be revoked. [Eff. MAY 27 1988; am AUG 09 2018] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-48, 174C-53, 174C-84)

§13-168-13 Well completion report. Within thirty days after the completion of any well, the well driller or pump installation contractor, as the case may be, shall file with the commission on forms provided by the commission a well completion report containing as appropriate:

- (1) State well number;
- (2) Date of completion;
- (3) Tax map key;
- (4) Well head, top of casing, and ground elevations;
- (5) Method of construction;
- (6) Depths, diameters, and other dimensions of drilled hole;
- (7) Depths, diameters, dimensions, and types of casing and grouting;
- (8) Driller's log of water levels, depths, thickness, and drilling characteristics of sub-surface formations;
- (9) Pumping test record, including times, rates of pumping, drawdown of the water level, and chloride content of the pumped water;
- (10) Elevation of static water level or artesian head;
- (11) Water temperature;
- (12) Chemical analyses of a water sample drawn from the well; and

UNOFFICIAL COMPILATION

(13) Other information as may be required by the commission.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§91-2, 174C-85)

§13-168-14 Well construction and pump installation standards. (a) The minimum standards referenced in this section, shall be such as to ensure the safe and sanitary maintenance and operation of wells, the prevention of waste, and the prevention of contamination of ground water aquifers. The standards for well construction specified in The Hawaii Well Construction and Pump Installation Standards, adopted by the Commission on Water Resource Management, and as may be amended, is hereby incorporated by reference.

(b) The minimum standards for the installation of pumps and pumping equipment shall also provide for the installation of devices to measure the amount of ground water being withdrawn from the wells. The Hawaii Well Construction and Pump Installation Standards, as may be amended, is hereby incorporated by reference.

(c) The well construction and pump installation standards referenced in this section shall serve as minimum guidelines and shall be subject to review and modification by the commission.

(d) If any well construction or pump installation standard is violated and as a consequence ground water is wasted or any well is contaminated, the commission, after giving notice of the defect to the owner of the land on which the well is located, and giving such owner a reasonable time to correct the defect, may itself correct the defect and charge the land owner for the cost of such correction. Such cost constitutes a lien on the land until paid. The lien may be foreclosed in any court of competent jurisdiction, and in such foreclosure suit, the court shall allow the commission reasonable attorney's fees. [Eff. MAY 27 1988; am MAR 21 1997] (Auth: HRS §174C-8) (Imp: HRS §§174C-82, 174C-86)

§13-168-15 Well inspection. Any authorized representative or employee of the department shall have free access to all wells and their appurtenances at any reasonable time to inspect, test, obtain data, or investigate any matter connected with the intent and purposes of these rules. However, the department shall first make a reasonable effort to notify the owner or operator of the well and obtain his consent and assistance. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §174C-82)

UNOFFICIAL COMPILATION

§13-168-16 Abandoned wells. (a) The owner or operator of any well which has been determined by the commission or voluntarily declared by the owner or operator to be abandoned as defined in §13-168-2, after written notification, shall be required, at owner's or operator's expense, to re-case, cement, plug back, cap, or otherwise repair the well or fill and seal the well with cement in a manner approved by the commission.

(b) The owner or operator of such abandoned well shall not commence the required remedial work until an application has been made and a well construction permit has been obtained.

(c) Within thirty days after completion of the required work, the owner shall file with the commission a well abandonment report containing the owner's name and address; the water use permit number, if any; the name and address of the well driller who performed the work; the reason for abandonment; a complete description of the work performed; and such other information as the commission may require. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-82, 174C-87)

Subchapter 4

Stream Diversion Works

§13-168-31 Registration of existing stream diversion works. Within one year from the effective date of these rules, the owner or operator of any stream diversion works in any area of the state shall register such facility with the commission. Registration shall be on the forms provided by the commission and shall include information such as location, dimensions, elevations, divertible capacity, construction plans, method of measuring flows, and all other facts or information reasonably required. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §174C-92)

§13-168-32 Stream diversion permits. (a) No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a stream diversion permit from the commission. The commission may impose such reasonable conditions as are necessary to

UNOFFICIAL COMPILATION

assure that the construction or alteration of such stream diversion works will not be inconsistent with the general plan and land use policies of the state and the affected county. An application for a stream diversion permit shall be accompanied by a non-refundable filing fee of \$25.00, excepting government agencies, and shall be required for all areas of the state including water management areas. The owner of the stream diversion works shall make application or cause an application to be made.

(b) Each application for a stream diversion permit shall be made on forms provided by the commission and shall contain the following:

- (1) Name and address of the applicant;
- (2) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
- (3) Location of the works;
- (4) Engineering drawings showing the detailed plans of construction;
- (5) Detailed specifications of construction;
- (6) Name and address of the person who prepared the plans and specifications for construction;
- (7) Name and address of the person who will construct the proposed work;
- (8) General purpose of the proposed works; and
- (9) Such other information as the commission may require.

(c) The commission may issue or cause to be issued a stream diversion permit if the proposed construction complies with all applicable laws, rules, and standards. The commission shall approve or disapprove an acceptably completed application within ninety calendar days of receipt by the commission. The commission may approve in whole, approve in part, approve with modifications, or disapprove an application for a stream diversion permit.

(d) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the stream diversion works and be guided by the following general considerations:

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.
- (2) Where instream flow standards or interim instream flow standards have been established pursuant to chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

UNOFFICIAL COMPILATION

- (3) The proposed diversion works shall not interfere substantially and materially with existing instream or noninstream uses or with diversion works previously permitted.
 - (e) Notwithstanding subparagraph (d) above, the commission may approve a permit pursuant to subparagraph (c) above, in those situations where it is clear that the best interest of the public will be served, as determined by the commission.
 - (f) Every permit approved and issued by the commission shall be for a specified period, not to exceed two years, unless otherwise specified in the permit.
 - (g) Every permit approved and issued by the commission shall contain the commencement and completion dates for the permitted activity. In determining the commencement and completion dates of the activity, the commission shall take into consideration the:
 - (1) Cost and magnitude of the project;
 - (2) Engineering and physical features involved;
 - (3) Existing conditions; and
 - (4) Public interests affected.
 - (h) The commission may extend the completion dates of the activity prescribed in any permit upon a showing of good cause and good-faith performance.
 - (i) If the commencement or completion date is not complied with, the commission shall notify the permittee by certified mail that the permit shall be revoked within sixty days unless the permittee can show good cause that it should not be revoked.
 - (j) A permit may be revoked in whole or in part for any:
 - (1) Material false statement in the application or in any report or statement of fact required pursuant to this chapter;
 - (2) Violation of this chapter relative to the permit; or
 - (3) Violation of the conditions of the permit.
 - (k) In any proceeding to revoke a permit in whole or in part, the commission shall give written notice to the permit holder the facts or conditions which warranted the action and provide the permit holder the opportunity for a hearing.
- [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-71, 174C-93)

§13-168-33 Stream diversion completion report. Within thirty days after the completion of construction or alteration of any stream diversion work, the permittee shall file a

UNOFFICIAL COMPILATION

written statement of completion with the commission. The report shall describe the nature and extent of the work performed, including relevant maps and diagrams showing the location and details of the stream diversion work. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-71, 174C-94)

§13-168-34 Stream diversion works inspection. Any authorized representative or employee of the department shall have free access to all stream diversion works and appurtenances at any reasonable time to inspect, obtain data, or investigate any matter connected with the intent and purposes of these rules. However, the department shall first make a reasonable effort to notify the owner or operator of the stream diversion works and obtain his consent and assistance. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-93, 174C-95)

§13-168-35 Abandoned stream diversion works. (a) The owner of any stream diversion works wishing to abandon or remove such works shall first obtain a stream diversion permit issued or caused to be issued by the commission. No abandonment work shall be undertaken by the applicant until such a permit is issued by the commission.

(b) Each application for a stream diversion permit to perform abandonment work shall be made on forms furnished by the commission, shall not require a fee, and shall include:

- (1) The name and address of the applicant;
- (2) The location and description of the proposed stream diversion work abandonment;
- (3) An assessment of the impact the abandonment will have on the stream environment;
- (4) Relevant maps, plans, and drawings; and
- (5) Other information as may be necessary for the commission to determine the merits of the proposed stream channel alteration, including any hazards to public health, safety, or welfare, and the desirability of issuing a permit.

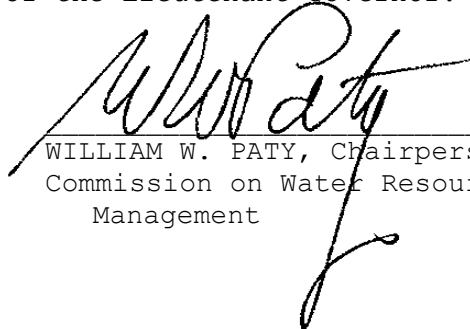
[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-71, 174C-95)

UNOFFICIAL COMPILATION

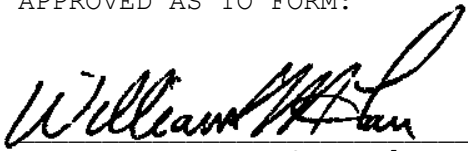
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-168, Hawaii Administrative Rules, on the Summary page dated April 20, 1988 was adopted on April 20, 1988; following public hearings held on Oahu on March 22, 1988; on Maui on March 17, 1988; on Molokai on March 21, 1988; on Kauai on March 23, 1988; and on Hawaii on March 15, 16, 1988; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, Maui News and the Garden Island on February 24, 1988 and March 8, 1988.

The adoption of chapter 13-168 shall take effect ten days after filing with the Office of the Lieutenant Governor.

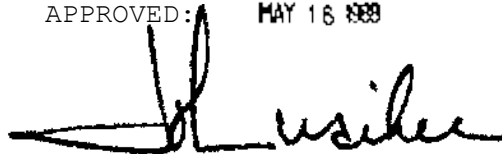

WILLIAM W. PATY, Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 5/3/88

APPROVED: MAY 16 1988


JOHN WAIHEE, Governor
State of Hawaii

Date Filed

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-168
Hawaii Administrative Rules

January 23, 1997

SUMMARY

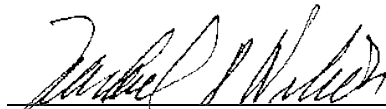
1. §13-168-14 is amended.

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

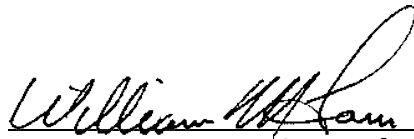
The amendments to chapter 13-168, Hawaii Administrative Rules, on the Summary page dated January 23, 1997, were adopted on January 23, 1997, following public hearings held on the islands of Oahu on July 17, 1996, Maui on July 22, 1996, Hawaii (Kona) on July 22, 1996, Kauai on July 23, 1996, Hawaii (Hilo) on July 29, 1996 and Molokai on August 5, 1996. Public notices were given in the Honolulu Advertiser on June 17, 1996, Molokai Advertiser-News on June 19, 1996, West Hawaii Today on June 17, 1996, Hawaii Tribune Herald on June 17, 1996, The Garden Island on June 17, 1996, and Maui News on June 17, 1996.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



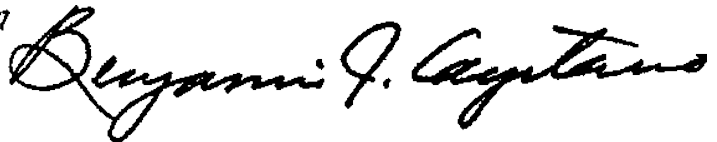
MICHAEL D. WILSON, Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:



Deputy Attorney General

2/7/97



BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: 3/10/97

MAR 11 1997

Filed

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapters 13-167, 13-168, and 13-169,
Hawaii Administrative Rules

April 17, 2018

SUMMARY

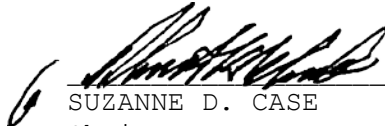
1. §13-167-10 is amended.
2. §13-168-3 is amended.
3. §13-169-3 is amended.

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

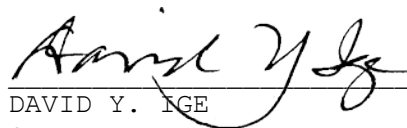
Amendments to chapters 13-167, 13-168, and 13-169, Hawaii Administrative Rules, on the Summary page dated April 17, 2018, were adopted on April 17, 2018, following public hearings held on October 30, 2017, November 6, 2017, November 8, 2017, November 9, 2017, and November 17, 2017, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, West Hawaii Today, Hawaii Tribune-Herald, and The Maui News, on September 15, 2017.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.


SUZANNE D. CASE
Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:


Deputy Attorney General


DAVID Y. IGE
Governor
State of Hawaii

18 JUL 30 10 58

Date: 07-30-2018

OFFICE
LIEUTENANT GOVERNOR S

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to Chapter 13-168
Hawaii Administrative Rules

April 17, 2018

SUMMARY

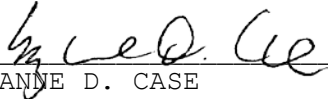
1. §13-168-12 is amended.

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

An amendment to chapter 13-168, Hawaii Administrative Rules, on the Summary page dated April 17, 2018, was adopted on April 17, 2018, following public hearings held on October 30, 2017, November 6, 2017, November 8, 2017, November 9, 2017, and November 17, 2017, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, West Hawaii Today, Hawaii Tribune-Herald, and The Maui News, on September 15, 2017

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.


SUZANNE D. CASE
Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:


Deputy Attorney General


DAVID Y. IGE
Governor
State of Hawaii

18 JUL 30 PM 3:58

Date: 07-30-2018

OFFICE
LIEUTENANT GOVERNOR S

14. HAR Chapter 13-171

Designation and regulation of water management

UNOFFICIAL COMPILATION

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER RESOURCES

CHAPTER 171

DESIGNATION AND REGULATION OF WATER MANAGEMENT AREAS

Subchapter 1. General Provisions

Section 13-171-1	Purpose
Section 13-171-2	Definitions

Subchapter 2. Designation of Water Management Areas

Section 13-171-3	Initiation by chairperson
Section 13-171-4	Initiation by petition
Section 13-171-5	Notice; public hearing required
Section 13-171-6	Investigations required
Section 13-171-7	Ground water criteria for designation
Section 13-171-8	Surface water criteria for designation
Section 13-171-9	Findings of fact; decision of commission
Section 13-171-10	Modifying and rescinding designated areas

Subchapter 3. Water Use Permits

Section 13-171-11	Permits required
Section 13-171-12	Application for new and existing water use permits
Section 13-171-13	Conditions for a water use permit
Section 13-171-14	Existing uses
Section 13-171-15	Late filing for existing uses
Section 13-171-16	Competing new water use permit applications
Section 13-171-17	Public notice
Section 13-171-18	Objection to proposed water use permit
Section 13-171-19	Evaluation period
Section 13-171-20	Water use permit issuance
Section 13-171-21	Duration of water use permit
Section 13-171-22	Review of water use permit

UNOFFICIAL COMPILATION

Section 13-171-23	Modification of water use permit
Section 13-171-24	Revocation of water use permit
Section 13-171-25	Transfer of water use permit
Section 13-171-26	Contested cases
Section 13-171-27	Appurtenant rights

Subchapter 4. Declaration of Water Shortage

Section 13-171-40	Principles of water shortage declaration
Section 13-171-41	Criteria for water shortage declaration
Section 13-171-42	Permit classification
Section 13-171-43	Notice
Section 13-171-44	Duration of water shortage declaration

Subchapter 5. Declaration of Water Emergency

Section 13-171-50	Decision by commission
Section 13-171-51	Notice
Section 13-171-52	Disposition of challenge to declaration
Section 13-171-53	Duration of water emergency

Subchapter 1

General Provisions

§13-171-1 Purpose. The purpose of this chapter is to provide for the designation and regulation of hydrologic areas where water resources are being threatened by existing or proposed withdrawals or diversions of water, water quality problems, or serious disputes. It shall be the duty of the commission to designate areas for the purpose of establishing administrative control over the withdrawals and diversions of ground and surface water in threatened areas to ensure the most beneficial use, development, or management of the water resources in the interest of the people of the state. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Authorized planned use" means the use or projected use of water by a development that has received the proper state

UNOFFICIAL COMPILATION

land use designation and county development plan/community plan approvals.

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

"Chairperson" means the chairperson of the commission on water resource management.

"Change in use" means any modification or change in water use from or to domestic, municipal, military, agriculture (including agricultural processing), or industrial use.

"Commission" means the commission on water resource management.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

"Continuous flowing water" means a sufficient flow of water that could provide for migration and movement of aquatic life and includes those reaches of streams which, in their natural state, normally go dry seasonally at the location of the proposed alteration.

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

"Deputy" means the deputy to the chairperson of the commission on water resource management.

"Domestic use" means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation.

"Emergency" means the absence of a sufficient quantity and quality of water in any area whether designated or not which threatens the public health, safety, and welfare as determined by the commission.

"Ground water" means any water found beneath the surface of the earth, whether or not in perched, dike-confined, or basal supply; in underground channels or streams; in standing, percolating, or flowing condition; or under artesian pressure.

"Hydrologic unit" means a surface drainage area or a ground water basin or a combination of the two.

"Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

"Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;

UNOFFICIAL COMPILATION

- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

"Person" means any individual, firm, association, organization, partnership, estate, trust, corporation, company, or any governmental unit.

"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.

"Stream diversion" means the act of removing water from a stream into a channel, pipeline, or other conduit.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourse, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained waterbodies). Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the commission.

"Water" or "waters of the state" means any and all water on or beneath surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

"Water management area" means a geographic area which has been designated pursuant to chapter 13-171 as requiring management of the ground or surface water resource, or both.

"Water source" means a place within or from which water is or may be developed, including but not limited to: (1) generally, an area such as a watershed defined by topographic boundaries, or a definitive ground water body; and (2) specifically, a particular stream, other surface water body, spring, tunnel, or well or related combination thereof.

"Well" means any excavation or opening into the ground, or an artificial enlargement of a natural opening drilled, tunneled, dug, or otherwise constructed for the location,

UNOFFICIAL COMPILATION

exploration, development, injection, or recharge of ground water and by which ground water is drawn or is capable of being withdrawn or made to flow. [Eff. MAY 27 1988] (Auth: HRS §§91-2, 174C-8) (Imp: HRS §§91-2, 174C-3)

Subchapter 2

Designation of Water Management Areas

§13-171-3 Initiation by chairperson. The designation of a water management area by the commission may be initiated upon recommendation by the chairperson. In addition to this prerogative, it shall be the duty of the chairperson to make the recommendations from time to time when it is desirable or necessary to designate a water management area for the purposes stated in this chapter and there is data for a decision by the commission. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-4 Initiation by petition. (a) The designation of a water management area by the commission may also be initiated by any interested person by written petition to the chairperson proposing the designation of a specified area and presenting the reasons for such designation. The petition for designation of a water management area shall be made on forms provided by the commission. It shall be the duty of the chairperson, after consultation with the appropriate county mayor and county water board, to act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or additional time as may be reasonably necessary to determine whether there is factual data to warrant the proposed designation.

(b) Designated ground water areas established under chapter 177, HRS, the Ground Water Use Act, and remaining in effect at the effective date of this chapter shall continue as water management areas. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-5 Notice; public hearing required. (a) When a recommendation for designation of a water management area has been accepted, the commission shall hold a public hearing at a

UNOFFICIAL COMPILATION

location in the vicinity of the area proposed for designation and publish a notice of the hearing setting forth:

- (1) A description of the land area proposed to be designated in terms of appropriate legal subdivisions and tax map keys;
- (2) The purpose of the public hearing; and
- (3) The time, date, and place of the public hearing where written or oral testimony may be submitted and heard.

(b) The notice shall be published once each week for three successive weeks in a newspaper of statewide circulation and the last publication shall be not less than ten days nor more than thirty days before the date set for the hearing. Publication of the notice of public hearing shall be considered as sufficient notice to all landowners and water users who might be affected by the proposed designation.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-42)

§13-171-6 Investigations required. (a) Before any proposed water management area is designated by the commission, the chairperson may conduct, cooperate with the appropriate federal or county water agencies to conduct or administer contracts to conduct, any scientific investigation or study deemed necessary for the commission to make a decision whether to designate a water management area.

(b) The chairperson from time to time may also require reports from water users detailing the amount of water being withdrawn and the manner and extent of the beneficial use. The reports shall be made on forms furnished by the commission. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-43)

§13-171-7 Ground water criteria for designation. In designating an area for ground water use regulation, the commission shall consider the following:

- (1) Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety percent of the sustainable yield of the proposed water management area;
- (2) That the rates, times, spatial patterns, or depths of existing withdrawals of ground water are endangering the stability or optimum development of the ground water body due to upconing or encroachment of salt water;

UNOFFICIAL COMPILATION

- (3) That the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;
- (4) Whether excessive preventable waste of water is occurring;
- (5) There is an actual or threatened water quality degradation as determined by the department of health;
- (6) Serious disputes respecting the use of ground water resources are occurring;
- (7) Whether regulation is necessary to preserve the diminishing ground water supply for future needs, as evidenced by excessively declining ground water levels; or
- (8) Whether water development projects that have received any federal, state, or county approval may result, in the opinion of the commission, in one of the above conditions.

Notwithstanding an imminent designation of a water management area conditioned on a rise in the rate of ground water withdrawal to a level of ninety percent of the area's sustainable yield, the commission, when such level reaches the eighty percent level of the sustainable yield, may invite the participation of water users in the affected area to an informational hearing for the purposes of assessing the ground water situation and devising mitigative measures. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-44)

§13-171-8 Surface water criteria for designation. In designating an area for surface water use regulation, the commission shall consider the following:

- (1) Whether regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, not related to rainfall variations, or increasing or proposed diversions of surface waters to levels which may detrimentally affect existing instream uses or prior existing off stream uses;
- (2) Whether additions to or the diversions of stream waters are reducing the capacity of the stream to assimilate pollutants to an extent which adversely affects public health or existing instream uses; or
- (3) Whether serious disputes respecting the use of surface water resources are occurring.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-45)

UNOFFICIAL COMPILATION

§13-171-9 Findings of fact; decision of commission.

After public hearing and any investigations deemed necessary have been completed, the chairperson, after consultation with the appropriate county council and county water board, shall make a recommendation to the commission for decision. If the commission decides to designate a water management area, it shall cause a notice of its decision to be published in a newspaper of general circulation in the appropriate county and when so published its decision shall be final unless judicially appealed in the appropriate court. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-12, 174C- 46)

§13-171-10 Modifying and rescinding designated areas.

The modification of the boundaries or the rescinding of existing water management areas by the commission may be initiated by the chairperson or by a petition to the commission by any person with proper standing. The procedure for modifying the boundaries of an existing water management area or for rescinding an existing water management area shall be as provided in subchapter 2 for the designation of a water management area. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-47)

Subchapter 3

Water Use Permits

§13-171-11 Permits required. (a) No person shall make any withdrawal, diversion, impoundment, or consumptive use of water in any designated water management area without first obtaining a permit from the commission. However, no permit shall be required for domestic consumption of water by individual users, and no permit shall be required for the use of a catchment system to gather water.

(b) In its regulation of water resources in designated water management areas, the commission shall delegate to the county boards of water supply the authority to allocate the use of water for municipal purposes, subject to the limits of water supply allocated to the county boards of water supply in their role as water purveyors. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-48)

UNOFFICIAL COMPILATION

§13-171-12 Application for new and existing water use permits. (a) A person shall file an application with the commission to use water within a designated water management area. No withdrawal, diversion, impoundment, or consumptive use of water shall be made by the applicant until receipt of a permit issued by the commission, provided that, an existing use in a newly designated water management area may be continued until such time as the commission has acted upon the existing water use permit application.

(b) Each permit application shall be made on forms furnished by the commission and shall contain the following:

- (1) The name and address of the applicant and landowner; provided that:
 - (A) In the event the applicant is an association, organization, partnership, trust, corporation, or any other legal entity doing business in Hawaii, the address of its principal place of business shall be stated in the application; and
 - (B) In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit;
- (2) The date of application;
- (3) The water source of the water supply;
- (4) The quantity and quality of water requested;
- (5) The use of the water and any limitations thereon;
- (6) The location of the use of water;
- (7) The location of the well or point of diversion; and
- (8) Such other relevant information that the commission may request from time to time.

(c) Each application for a permit to use water shall be accompanied by a non-refundable filing fee of \$25.00 provided that governmental agencies shall not be subject to the payment of any fees.

(d) The commission in its discretion may allow a person to apply for several related withdrawals in the same application for a water use permit. [Eff. MAY 27 1988]
(Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-51)

UNOFFICIAL COMPILATION

§13-171-13 Conditions for a water use permit. (a) To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:

- (1) Can be accommodated with the available water source;
- (2) Is a reasonable-beneficial use as defined in section 13-171-2;
- (3) Will not interfere with any existing legal use of water;
- (4) Is consistent with the public interest;
- (5) Is consistent with state and county general plans and land use designations; and
- (6) Is consistent with county land use plans and policies.

(b) Within sixty days after receipt of a notice of a permit application, the county shall inform the commission if the proposed use is inconsistent with the county land use plans and policies.

(c) The common law of the state to the contrary notwithstanding, the commission shall allow the holder of a use permit to transport and use surface or ground water beyond overlying land or outside the watershed from which it is taken if the commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the state and counties.

(d) The commission, by rule, may reserve water in such locations and quantities and for such seasons of the year as in its judgment may be necessary. Such reservations shall be subject to periodic review and revision in the light of changed conditions; provided that all presently existing legal uses of water shall be protected. [Eff. MAY 27 1988]
(Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-49)

§13-171-14 Existing uses. (a) All existing uses of water in a designated water management area, except those exempted from regulation by this chapter, may be continued after July 1, 1987, only with a permit issued in accordance with sections 13-171-12, 13-171-13, 13-171-15, and 13-171-17 through 13-171-21.

(b) Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that even if the commission finds that the existing use is not allowable under the common law of the state, such finding of itself shall not constitute a bar to the granting of the permit. The commission may make such a determination without a hearing, if the quantity of water applied for does not exceed

UNOFFICIAL COMPILATION

25,000 gallons per month or if the quantity of water applied for exceeds said amount per month, but no objection to the application is filed by any person having standing to file an objection. In determining whether an application does not exceed the amount per month set forth in this section, the commission shall consider an average of water use over the three-month period immediately preceding the filing of the application.

(c) Two or more existing uses of water are deemed to be competing when they draw water from the same hydrologically controllable area and the aggregate quantity of water consumed by the users exceeds the appropriate sustainable yield or instream flow standards established pursuant to law for the area. If applications are made to continue existing uses which are competing and the uses otherwise meet the requirements of subchapter 3, the commission shall hold a hearing to determine the quantity of water that may be consumed and the conditions to be imposed on each existing use. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-71)

§13-171-15 Late filing for existing uses. An application for a permit to continue an existing use must be made within a period of one year from the date of designation. Except for appurtenant rights, failure to apply within this period creates a presumption of abandonment of the use, and the user, if the user desires to revive the use, must apply for a permit under section 13-171-12. If the commission determines that there is just cause for the failure to file, it may allow a late filing. However, the commission may not allow a late filing more than five years after the effective date of these rules. The commission shall send two notices, one of which shall be by registered mail, to existing users to file for an application for a permit to continue an existing use. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-51)

§13-171-16 Competing new water use permit applications. If two or more applications which otherwise comply with section 13-171-13 are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible; second, if mutual sharing is not possible, then the commission shall approve that application which best serves

UNOFFICIAL COMPILATION

the public interest. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-54)

§13-171-17 Public notice. (a) Upon receipt of the application, the commission shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. The notice shall be published at least once a week for two consecutive weeks. In addition, the commission shall cause a copy of such notice to be sent to any person who has filed a written request for notification of any pending applications affecting a particular designated area and to the mayor and the water board of the affected county. This notification shall be sent by regular mail before the date of last publication. The commission shall also make available to the public, upon request, a monthly bulletin of all pending applications.

(b) The notice and the monthly bulletin shall contain the name and address of the applicant; the date of filing; the date set for a hearing, if any; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitations thereon; the place of the use; and the location of the well point or diversion.

(c) The notice shall state that written objections to the proposed permit may be filed with the commission by a specified date. The time limits within which objections must be filed are set forth in section 13-171-18. The commission, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses. Each applicant shall be notified by the commission of the objections filed to an application. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-52)

§13-171-18 Objection to proposed water use permit. (a) Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections to the proposed permit and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant.

(b) The written objection shall:

- (1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and
- (2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

UNOFFICIAL COMPILATION

(c) Within ten working days after the filing of an objection with the commission, any other party may file with the commission a brief in support of the proposed permit. Such party shall serve copies of the brief in support upon the objecting party.

(d) The support brief shall:

- (1) Answer specifically the points of procedure, fact, law or policy to which objections were taken; and
- (2) State the facts and reasons why the permit should be approved.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-52)

§13-171-19 Evaluation period. (a) In the event no statement of objections is filed, the commission may proceed to approve or reject the permit application.

(b) Upon the filing of any objections and briefs together with the briefs in support, the commission may render its decision or request further information from either the applicant or the objector before rendering its decision.

(c) An application shall be acted upon by the commission within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this subsection shall not be deemed to run for any period in which an application is not complete in all material respects in the judgment of the commission.

(d) A permit user of water in an existing water management area, with a continuous reduced water usage, shall be given priority to reobtain its permitted level of water usage over any other application; provided that the use remains the same and is reasonable and beneficial and water is available.

(e) In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application. The commission shall adopt rules governing the filing of objections and the persons having standing to file objections. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-52, 174C-53)

§13-171-20 Water use permit issuance. (a) After a notice of permit application for an existing use has been published as provided in section 13-171-17, the commission

UNOFFICIAL COMPILATION

shall issue an interim permit for the continuation of an existing use in effect on July 1, 1987, if the criteria set forth in section 13-171-14 are met and the existing use is reasonable and beneficial.

(b) The commission shall also issue an interim permit for an estimated, initial allocation of water if the quantity of water consumed under the existing use is not immediately verifiable, but the existing use otherwise meets the conditions of this chapter for an interim permit or permanent permit. An interim permit is valid for such time period specified therein. The commission may issue successive interim permits of limited duration. Interim permits are subject to revocation under section 13-171-24. Whenever interim permits are to be issued, the time periods specified in section 13-171-19 apply to the issuance or nonissuance of interim permits.

(c) A permanent permit to continue an existing use shall be issued by the commission for a quantity of water not exceeding that quantity being consumed under the existing use interim permit. The quantity being consumed shall be determined and verified by the best available means not unduly burdensome on the applicant, as determined by the commission.

(d) The commission may prescribe the installation of metering or gauging devices, and, if so prescribed, such metering or gauging devices shall be in place and operational for at least one year before a determination is made as to the quantity of water being consumed in an existing use and whether a permanent permit is issued.

(e) The commission shall condition permits under this chapter in such a manner as to protect instream flows and maintain sustainable yields of ground water established under the Hawaii Water Plan. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-53, 174C-71)

§13-171-21 Duration of water use permit. (a) An interim permit is valid for such time period as prescribed by the commission and as specified on the permit therein. If an interim permit is issued pending verification of the actual quantity of water being consumed under the existing use, a final determination of that quantity shall be made within five years of the filing of the application to continue the existing use. In the final determination, the commission may increase or reduce the amount initially granted the permittee.

(b) Each permanent permit for water use in a designated water management area shall be valid until the designation of the water management area is rescinded, unless revoked as provided in section 13-171-24, or modified as provided in

UNOFFICIAL COMPILATION

section 13-171-23. [Eff. MAY 27 1988] (Auth: HRS §174C-8)
(Imp: HRS §§174C-5, 174C-50, 174C-55)

§13-171-22 Review of water use permit. (a) The commission shall retain and continue to have jurisdiction for the purpose of reviewing and modifying every permit as may be necessary in fulfillment of its duties and obligations under this code.

(b) At least once every twenty years, the commission shall conduct a comprehensive study of all permits issued under this chapter to determine whether the conditions on such permits are being complied with. The commission shall prepare a formal report to the legislature which shall be available to the public. [Eff. MAY 27 1988] (Auth: HRS §174C-8)
(Imp: HRS §§174C-5, 174C-56)

§13-171-23 Modification of water use permit. (a) A permittee may seek modification of any term of a permit. A permittee who seeks to change the use of water subject to the permit, whether or not such change in use is of a material nature, or to change the place of use of the water or to use a greater quantity of water than allowed under the permit or to make any change in respect to the water which may have a material effect upon any person or upon the water resources, shall make application for such modification pursuant to section 13-171-12. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of the permit.

(b) All permit modification applications shall be treated as initial permit applications and be subject to sections 13-171-12 to 13-171-22; except that if the proposed modification involves an increase in the quantity of water not exceeding an average amount per month as set forth in section 13-171-14, the commission, at its discretion, may approve the proposed modification without a hearing provided that the permittee establishes that:

- (1) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's needs; or
- (2) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

(c) County agencies are exempt from the requirements of this section except where the modification involves a change in the quantity of water to be used or where the new use would adversely affect the quality of the water or quantity of use

UNOFFICIAL COMPILATION

of another permittee. [Eff. MAY 27 1988] (Auth: HRS
§174C-8) (Imp: HRS §§174C-5, 174C-57)

§13-171-24 Revocation of water use permit. After a hearing, the commission may suspend or revoke a permit for:

- (1) Any materially false statement in the application for the water use permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part.
- (2) Any willful violation of any condition of the permit.
- (3) Any violation of any provision of this chapter.
- (4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. The commission and the permittee may enter into a written agreement that, for reasons satisfactory to the commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 13-171-44 shall not apply towards the four-year period of forfeiture. The commission may cancel a permit, permanently and in whole, with the written consent of the permittee.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS
§§174C-5, 174C-58)

§13-171-25 Transfer of water use permit. A permit may be transferred in whole or in part from the permittee to another if:

- (1) The conditions of use of the permit including, but not limited to place, quantity, and purpose of the use remain the same; and
- (2) The commission is informed of the transfer within ninety days.

Failure to inform the of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in section 13-171-22, is also invalid; and constitutes a ground for

UNOFFICIAL COMPILATION

revocation. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-59)

§13-171-26 Contested cases. Chapter 91, HRS shall apply except where it conflicts with this chapter. In such a case, this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, HRS, any contested case hearing under this section shall be appealed upon the record directly to the supreme court for final decision. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-12, 174C-60)

§13-171-27 Appurtenant rights. Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application. Such permit shall be subject to sections 13-168-5, 13-168-6, 13-171-12, 13-171-24, 13-171-25, 13-171-26, and subchapters 4 and 5 of this chapter. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-63)

Subchapter 4

Declaration of Water Shortage

§13-171-40 Principles of water shortage declaration.
(a) The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) The commission may declare that a water shortage exists within all or part of an area when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require a temporary reduction in total water use within the area to protect water resources from serious harm. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

UNOFFICIAL COMPILATION

§13-171-41 Criteria for water shortage declaration. A water shortage declaration shall be made by the commission within all or part of a water management area which the commission has found and publicly declared that it is necessary to regulate the uses of water because in its opinion that usage has caused or may cause within the foreseeable future:

- (1) Withdrawals that exceed the recharge;
- (2) Declining water levels or heads;
- (3) Deterioration in the quality of water due to increasing chloride content;
- (4) Excessive waste of water which can be prevented; or
- (5) A situation in which any further water development would endanger the ground water aquifer or the existing sources of supply.

[Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-42 Permit classification. (a) The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) In accordance with this chapter, the commission may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(c) All permittees, unless exempted by the commission, shall submit a water shortage plan outlining how it will reduce its own water use in case of a shortage. Every water shortage plan shall be subject to approval or modification by the commission. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-43 Notice. (a) When a water shortage is declared, the commission shall cause a notice thereof to be published in a prominent place in a newspaper of general circulation throughout the area. The notice shall be published each day for the first week of the shortage and once a week thereafter until the declaration is rescinded. Publication of such notice shall serve as notice to all water users in the area of the condition of water shortage.

(b) The commission shall cause each permittee in the area to be notified by regular mail of any change in the conditions

UNOFFICIAL COMPILATION

of the permittee's permit, any suspension thereof, or of any other restriction on the use of water for the duration of the water shortage. [Eff. MAY 17, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-44 Duration of water shortage declaration. A declaration of water shortage and any measure adopted pursuant thereto may be rescinded by the commission when conditions no longer require a temporary reduction in total water use within a designated water management area. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

Subchapter 5

Declaration of Water Emergency

§13-171-50 Decision by commission. If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under section 13-171-42 are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-51 Notice. (a) When a water emergency is declared, the commission shall publish notice thereof in a newspaper of general circulation throughout the area. The notice shall be published each day for the first week of the emergency and once a week thereafter until the emergency is rescinded.

(b) The commission shall cause each registered user of water and permittee in the area to be notified by regular mail of any change to a registered water use or condition of a permittee's permit. The notice shall describe such actions as the commission deems necessary to meet the emergency,

UNOFFICIAL COMPILATION

including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resource in the area. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-52 Disposition of challenge to declaration. Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-53 Duration of water emergency. A declaration of water emergency and any measure ordered pursuant thereto may be rescinded by the commission when conditions no longer require a temporary reduction in total water use within the emergency area. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

Subchapter 6

Reservation of Water

§13-171-60 Reservations of water. (a) As provided in HRS §174C-49(d), the commission, by rule, may reserve water in such locations and quantities and for such seasons of the year as in its judgment may be necessary.

(b) The commission shall adopt within this subchapter specific reservations of water in water management areas in such quantities as are deemed necessary for purposes which are consistent with the public interest, including the provision of water for current and foreseeable development and use of Hawaiian home lands pursuant to section 221 of the Hawaiian Homes Commission Act and HRS §174C-101(a).

(c) Proceedings for the establishment of a reservation of water resources within a designated water management area by the commission may be initiated:

- (1) Upon recommendation by the chairperson; or
- (2) Upon written petition to the commission by any interested person with proper standing.

(d) Reserved water shall not be allocated from water management areas by the commission except upon application for

UNOFFICIAL COMPILATION

a water use permit by the party, or parties, for whom the water was reserved.

(e) All reservations shall be subject to periodic review and revision in light of changed conditions. [Eff. Feb. 18, 1994] (Auth: HRS §§174C-49(d), 174C-101(a)) (Imp: HRS §§174C-49(d), 174C-101(a))

§13-171-61 Department of Hawaiian home lands reservation for Honolulu and Leeward Oahu. The commission hereby reserves 1.724 million gallons per day of ground water from state lands in the Waipahu-Waiawa aquifer system for use in the Papakolea, Nanakuli, and Waianae-Lualualei Hawaiian homestead areas. This amount shall be in excess of the existing uses of water on Hawaiian home lands as of the effective date of this rule. [Eff. FEB 18 1994] (Auth: HRS §§174C-49(d), 174C-101(a)) (Imp: HRS §§174C-49(d), 174C-101(a), HHCA §221)

§13-171-62 Department of Hawaiian home lands reservation for Windward Oahu. The commission hereby reserves 0.124 million gallons per day of ground water from state lands in the Waimanalo aquifer system for use in the Waimanalo Hawaiian homestead area. This amount shall be in excess of the existing uses of water on Hawaiian home lands as of the effective date of this rule. [Eff. FEB 18 1994] (Auth: HRS §§174C-49(d), 174C-101(a)) (Imp: HRS §§174C-49(d), 174C-101(a), HHCA §221)


§13-171-63 Department of Hawaiian home lands reservation for Kualapuu, Molokai. The commission hereby reserves 2.905 million gallons per day of ground water from state lands in the Kualapuu aquifer system for use on Hawaiian home lands on Molokai. This amount shall be in excess of the existing uses of water on Hawaiian home lands as of the effective date of this rule. [Eff. JUN 10 1995] (Auth: HRS §§174C-49(d), 174C-101(a)) (Imp: HRS §§174C-49(d), 174C-101(a), HHCA §221)

UNOFFICIAL COMPILATION

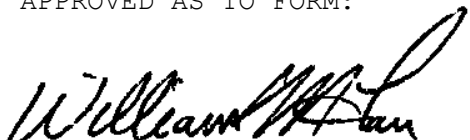
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-171, Hawaii Administrative Rules, on the Summary page dated April 20, 1988 was adopted on April 20, 1988; following public hearings held on Oahu on March 22, 1988; on Maui on March 17, 1988; on Molokai on March 21, 1988; on Kauai on March 23, 1988; and on Hawaii on March 15, 16, 1988; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, Maui News and the Garden Island on February 24, 1988 and March 8, 1988.

The adoption of chapter 13-171 shall take effect ten days after filing with the Office of the Lieutenant Governor.

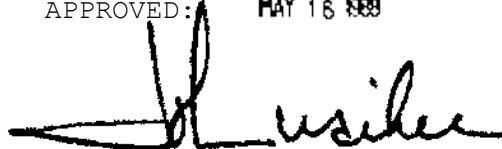

WILLIAM W. PATY, Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 5/3/88

APPROVED: MAY 16 1988


JOHN WAIHEE, Governor
State of Hawaii

Date Filed

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to chapter 13-171
Hawaii Administrative Rules

October 13, 1993

SUMMARY

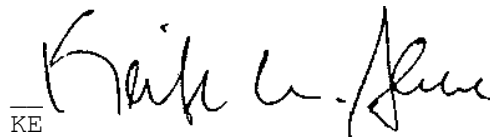
1. Chapter 13-171, Subchapter 6, §§13-171-60 to 13-171-62 are added.

UNOFFICIAL COMPILATION

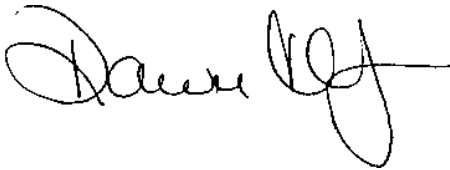
DEPARTMENT OF LAND AND NATURAL RESOURCES


The amendment to chapter 13-171, Hawaii Administrative Rules, on the Summary page dated October 13, 1993, was adopted on October 13, 1993, following a public hearing held on Oahu on September 8, 1993, after public notice was given in the Honolulu Star Bulletin, the Honolulu Advertiser, and the Sun Press on August 5, 1993.

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.


KE
Commission on Water Resource
Management

APPROVED AS TO FORM:




JOHN WAIHEE
Governor
State of Hawaii

Date: FEB 08 1994

FEB 08 1994

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to Chapter 13-171
Hawaii Administrative Rules

March 14, 1995

SUMMARY

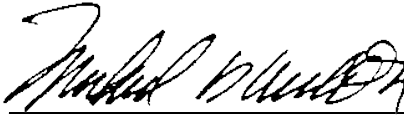
1. §13-171-63 is amended.

UNOFFICIAL COMPILATION

DEPARTMENT OF LAND AND NATURAL RESOURCES

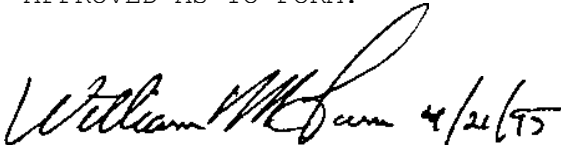
The amendment to chapter 13-171, Hawaii Administrative Rules, on the Summary page dated March 14, 1995, was adopted on March 14, 1995, following a public hearing held on Molokai on September 15, 1994, after public notice was given in the Honolulu Star Bulletin on August 15, 1994, and The Molokai Advertiser News on August 17, 1994.

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.



MICHAEL D. WILSON, Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:



4/26/95
Deputy Attorney General



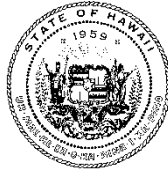
BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: May 31, 1995

Filed

15. Hawaii State Building Code

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE BUILDING CODE COUNCIL

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

November 13, 2018

SUBJECT: State Building Code Adoption
Adopting the 2012 International Building Code with Amendments

The attached document is the Hawaii State Building Code as adopted on November 13, 2018 by the State Building Code Council in accordance with HRS 107-24.

No later than November 13, 2019, the design of all State building construction must comply with the attached code in accordance with HRS 107-27.

No later than November 13, 2020, each county in the State of Hawaii must amend and adopt the attached code in accordance with HRS 107-28(a).

If by November 13, 2020, a county does not amend the attached code, it shall become applicable as an interim county building code in accordance with HRS 107-28(b).

State Building Code Council

Attached: Hawaii State Building Code

State Building Code Council**HAWAII STATE BUILDING CODE****Effective Date: November 13, 2018**

Scope.....	4
Definitions.....	4
Adoption of the <i>International Building Code</i>	4
Permit authorization.....	4
AMENDMENTS TO THE 2012 ICC <i>INTERNATIONAL BUILDING CODE</i>	5
(1) Title and purpose.	5
(2) Scope.	5
(3) Appendices.	5
(4) Referenced codes.	5
(5) Existing structures.	6
(6) Department of building safety.	6
(7) Permits.	6
(8) Live loads posted.	6
(9) Submittal documents.	6
(10) Temporary structures and uses.	6
(11) Fees.	6
(12) Area of rescue assistance.	7
(13) Structural observation defined.	7
(14) Occupant evacuation elevators.	7
(15) Group R.	7
(16) Portable fire extinguishers.	7
(17) Fire command center.	7
(18) Fire pumps.	8
(19) Emergency Power for illumination.	8
(20) Gates.	8
(21) Use in a means of egress.	8
(22) Minimum Size of Glass jalousie windows.	8
(23) Chapter 11 Accessibility	9
(24) Unvented attic spaces.	9
(25) Roof slope.	9
(26) Roof drains.	9

(27)	Requirements for roof coverings.	10
(28)	Seismic design - short period.	10
(29)	Seismic design - 1-second period.	10
(30)	Structural integrity.	10
(31)	Tsunami Loads and Effects.	11
(32)	Special Inspections.	11
(33)	Special inspector qualifications.	12
(34)	Statement of special inspections.	12
(35)	Report requirement.	12
(36)	Statement of special inspections.	13
(37)	Structural observations.	13
(38)	Special inspections for wind requirements.	13
(39)	Concrete Construction.	14
(40)	Concrete Construction.	15
(41)	Splices.	16
(42)	Anchoring to Concrete.	16
(43)	Modifications to ACI 318.	16
(44)	Anchorage to Concrete-Strength Design.	20
(45)	Concrete Masonry Unit Strength.	21
(46)	Masonry Cleanouts.	21
(47)	Cold-Formed Steel Prescriptive Framing	21
(48)	Wood Design Requirements	22
(49)	Preservative-treated wood.	22
(50)	Protection against decay and termites.	23
(51)	Conventional Light-Frame Construction.	25
(52)	Elevators and Conveying Systems.	25
(53)	Public swimming pools.	26
(54)	Existing Concrete Structures.	26
(55)	Glass Replacement.	26
(56)	Compliance with other codes.	26
(57)	Appendix U - Hawaii hurricane sheltering provisions for new construction.	27
	Section U101 Community storm shelters.	27
	Section U102 Hawaii residential safe room.	27
	Section U103 State- and County-owned public high occupancy buildings - design criteria for enhanced hurricane protection areas.	30

(58) Appendix W - Hawaii wind design provisions for new construction.	35
W101 Revisions to chapter 2 and chapter 16.	35
W101.1 Windborne Debris Region defined.	35
W101.2 Revisions to section 1603.1.	35
W101.3 Revisions to section 1603.1.4.	35
W101.4 Revisions to section 1609.1.1.	36
W101.5 Revisions to section 1609.1.2.	37
W101.6 Revisions to Section 1609.3.	39
W101.7 Addition of Section 1609.3.1.	39
W101.8 Addition of effective ultimate design wind speed, $V_{\text{eff-ult}}$, contour maps to section 1609.3.2.	39
W101.9 Addition of section 1609.3.3.	58
W101.10 Directionality factor.	65
W101.11 Addition of exposure category maps.	71
W101.12 Addition of Section 1609.5.4 Roof-mounted panels for buildings.	77
W101.13 Revisions to Section 1609.6.2.	83
W101.14 Revisions to Section 1609.6.3.	84
W101.15 Revisions to Section 1609.6.4.2.	84
W102 Revisions to Chapter 23.	84
W102.1 Revisions to Section 2304.6.1.	84
W102.2 Revisions to Table 2304.6.1.	85
W102.3 Revisions to Section 2308.2.1.	85
W102.4 Addition of Section 2308.9.4.3.	85
W102.5 Revisions to Table 2308.10.1.	86
(59) Appendix X - Hawaii provisions for indigenous Hawaiian architecture structures.	87
Section X101 General.	87
Section X201 Material requirements.	87
Section X202 Size and location.	88
Section X203 Allowable and prohibited uses.	88
Section X301 Fire protection.	90
Section X401 Design standards.	92
Section X402 Allowable designs.	92

State Building Code Council

HAWAII STATE BUILDING CODE

Effective Date: November 13, 2018

Scope.

This code 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.

Definitions.

In this code, unless the context otherwise requires:
"IBC" means the ICC, *International Building Code*, 2012 edition, as copyrighted by the International Code Council.

"ICC" means the International Code Council.

"Section" means a section of a chapter of the *International Building Code*.

Adoption of the *International Building Code*.

The "*International Building Code, 2012 Edition*" as copyrighted and published in 2012 by International Code Council, Incorporated, 500 New Jersey Avenue, 6th Floor, Washington, DC 20001, is adopted by reference and made a part of this code. This incorporation by reference includes all parts of the International Building Code subject to the amendments in this code. The appendices of the ICC, IBC are not adopted except as provided in this code.

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 code.

AMENDMENTS TO THE 2012 ICC INTERNATIONAL BUILDING CODE**(1) Title and purpose.**

Section 101.1 is amended to read as follows:

"101.1 Title. These regulations shall be known as the Building Code of the State of Hawaii, hereinafter referred to as "this code"."

(2) 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.

Exception: 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. Prescriptive framing shall not be applicable for structures designed using exception 4 in Section 1609.1.2 Protection of Openings of this code."

(3) 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:

1. Appendix U, Hawaii Hurricane Sheltering Provisions for New Construction, shall be adopted.
2. Appendix W, Hawaii Wind Design Provisions for New Construction, shall be adopted.
3. Appendix X, Hawaii Provisions for Indigenous Hawaiian Architecture Structures, shall be adopted."

(4) 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 a part 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 referenced code.

101.4.2 Plumbing Code. Wherever the term *International Plumbing Code* is used in this code, it shall mean the adopted State Plumbing Code.

101.4.3 Fire Code. Wherever the term *International Fire Code* is used in this code, it shall mean the adopted State Fire Code.

101.4.4 Energy Code. Wherever the term *International Energy Conservation Code* is used in this code, it shall mean the adopted State Energy Conservation Code.

101.4.5 Residential Code. Wherever the term *International Residential Code* is used in this code, it shall mean the adopted State Residential Code."

(5) Existing structures.

Section 102.6 is amended to read as follows:

"102.6 Existing structures. Existing structures that were constructed in accordance with prior building code requirements may continue to be used and occupied provided that the continued use does not constitute a hazard to the general safety and welfare of the occupants and the public."

(6) Department of building safety.

Section 103 is deleted in its entirety.

(7) Permits.

Section 105 is deleted in its entirety.

(8) Live loads posted.

Section 106.1 is amended to read as follows:

"106.1 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."

(9) Submittal documents.

Section 107 is deleted in its entirety.

(10) Temporary structures and uses.

Section 108 is deleted in its entirety.

(11) Fees.

Section 109 is deleted in its entirety.

(12) Area of rescue assistance.

The definition of area of refuge" in Section 202 is amended to read as follows:

"AREA OF REFUGE. An area where persons unable to use stairways can remain temporarily to await instructions or assistance during emergency evacuation. Area of rescue assistance."

(13) Structural observation defined.

The definition of "structural observation" in Section 202 is amended to read as follows:

"STRUCTURAL OBSERVATION. Structural observation is equivalent to "observation of construction" of the structural system, as defined in Hawaii Administrative Rules chapter 16-115, implementing Hawaii Revised Statutes chapter 464. Structural observation does not include or waive the responsibility for the inspection required by Section 110, 1705 or other sections of this code."

(14) Occupant evacuation elevators.

Section 403.6.2 is deleted in its entirety.

(15) Group R.

Section 903.2.8 is revised by adding the following exception:

"Exception: In accordance with HRS 46-19.8 Fire sprinklers; residences, until June 30, 2027 no county shall require the installation or retrofitting of automatic fire sprinklers or an automatic fire sprinkler system in:

- (1) Any new or existing detached one- or two-family dwelling unit in a structure used only for residential purposes; and
- (2) Nonresidential agricultural and aquacultural buildings and structures located outside an urban area;

provided that this section shall not apply to new homes that require a variance from access road or firefighting water supply requirements."

(16) Portable fire extinguishers.

Section 906 is deleted in its entirety and replaced to read as follows:

"SECTION 906 PORTABLE FIRE EXTINGUISHERS
906.1 General. Portable fire extinguishers shall be provided as required by the State Fire Code."

(17) Fire command center.

Section 911 is deleted in its entirety and replaced to read as follows:

"SECTION 911 - FIRE COMMAND CENTER

911.1 General. Where required by other sections of this code, a fire command center for fire department operations shall be provided and shall comply with the State Fire Code."

(18) Fire pumps.

Section 913 is deleted in its entirety and replaced to read as follows:

"SECTION 913 FIRE PUMPS

913.1 Fire Pumps. Where provided, fire pumps shall be installed in accordance with the State Fire Code."

(19) Emergency Power for illumination.

Section 1006.3 is amended by adding a new item 6 as follows:

"6. Enclosed stairways of buildings more than two stories in height."

(20) 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."

(21) Use in a means of egress.

Section 1026.2 is deleted in its entirety.

(22) Minimum Size of Glass jalousie windows.

Section 1029.2 is amended by adding a new paragraph 1029.2.2 as follows:

"1029.2.2 Glass jalousie windows. Glass jalousie windows complying with Section 2403.5 may be used for emergency escape or rescue windows."

(23) Chapter 11 Accessibility

Accessibility. Chapter 11 is deleted in its entirety and replaced to read as follows:

"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. Department of Justice's Americans with Disabilities Act Standards for Accessible Design.
3. Housing and Urban Development recognized 'Safe Harbors' for compliance with the Fair Housing Acts design and construction requirements.
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 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."

(24) 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 at 60 per cent or lower to:

1. Avoid corrosion to steel components,
2. Avoid moisture condensation in the attic space, or
3. Minimize energy consumption for air conditioning or ventilation by maintaining satisfactory space conditions in both the attic and occupied space below."

(25) Roof slope.

Section 1503.4 is amended by adding a new Section 1503.4.4 to read as follows:

"1503.4.4 Slope. Roofs shall be sloped a minimum of 1 unit vertical in 48 units horizontal (2 per cent slope) for drainage unless designed for water accumulation in accordance with Section 1611. Leaders, conductors and storm drains shall be sized on the basis of Figure 1611.1 and the Plumbing Code."

(26) Roof drains.

Section 1503.4 is amended by adding a new Section 1503.4.5 to read as follows:

"1503.4.5 Roof drains. Unless roofs are sloped to drain over the roof edges, roof drains shall be installed at each low point of the roof."

(27) Requirements for roof coverings.

Section 1507.1 is amended to read as follows:

"1507.1 Scope. Roof coverings shall be applied in accordance with the applicable provisions of this section and the manufacturer's installation instructions. For the purposes of Section 1507 high wind requirements for roof coverings, wherever the term V_{asd} is used, it shall be $V_{eff-asd}$, which is the effective ultimate design wind speed, $V_{eff-ult}$ multiplied by $\sqrt{0.625}$. The effective ultimate design wind speeds are given in Figure 1609.3.2 (a-f) for Risk Category II and Figure 1609.3.3 (a-f) for Risk Category III and IV.

(28) Seismic design - short period.

Table 1613.3.5(1) is amended to read as follows:

**"Table 1613.3.5(1)
Seismic Design Category Based On Short-Period (0.2 second) Response Acceleration**

Value of S_{DS}	Risk Category		
	I or II	III	IV
$S_{DS} < 0.167g$	A	A	A
$0.167g \leq S_{DS} < 0.33g$	B	B	C
$0.33g \leq S_{DS} < 0.50g$	C	C	D
$0.50 \leq S_{DS} < 0.60g$	C	D	D
$0.60g \leq S_{DS}$	D	D	D

"

(29) Seismic design - 1-second period.

Table 1613.3.5(2) is amended to read as follows:

**"Table 1613.3.5(2)
Seismic Design Category Based On 1-Second Period Response Acceleration**

Value of S_{DI}	Risk Category		
	I or II	III	IV
$S_{DI} < 0.067g$	A	A	A
$0.067g \leq S_{DI} < 0.133g$	B	B	C
$0.133g \leq S_{DI} < 0.20g$	C	C	D
$0.20g \leq S_{DI} < 0.25g$	C	D	D
$0.25g \leq S_{DI}$	D	D	D

"

(30) Structural integrity.

Section 1615 Structural Integrity is amended by renumbering the section to section 1616 as follows:

"1616 STRUCTURAL INTEGRITY"

Any references to section 1615 in other parts of this code pertaining to structural integrity shall refer to section 1616 structural integrity.

(31) Tsunami Loads and Effects.

A new Section 1615 Tsunami Loads and Effects is added to read as follows:

"SECTION 1615 TSUNAMI LOADS

1615.1 General. The design and construction of Risk Category III and IV buildings and structures and Risk Category II buildings taller than 75 feet, where located in the Tsunami Design Zones defined in the ASCE 7 Tsunami Design Geodatabase (version 2016-1.0), shall be in accordance with Chapter 6 of ASCE 7-16.

1615.2 DEFINITIONS.

TSUNAMI DESIGN GEODATABASE. The ASCE database (version 2016-1.0) of Tsunami Design Zone maps and associated design data for the states of Alaska, California, Hawaii, Oregon, and Washington.

TSUNAMI DESIGN ZONE. An area identified on the Tsunami Design Zone map between the shoreline and the inundation limit, within which certain structures designated in Chapter 16 are designed for or protected from inundation."

(32) Special Inspections.

Section 1704.2 is amended to read as follows:

"1704.2 Special Inspections. 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 independent of the contractors performing the work, to provide inspections during construction on the types of work listed under Sections 1705. These inspections are in addition to the inspections specified in Section 110.

Exceptions:

1. Special inspections are not required for construction of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official.
2. The employment of a special inspector shall not be required for construction work for any government agency that provides for its own inspections.
3. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by Hawaii Revised Statutes chapter 464.
4. Unless otherwise required by the building official, special inspections are not required for Group U occupancies that are accessory to a residential occupancy including, but not limited to those listed in Section 312.1.

5. Special inspections are not required for portions of structures designed and constructed in accordance with the cold-formed steel light-frame construction provisions of Section 2211.7 or the conventional light-frame construction provisions of Section 2308. For these structures, Section 1705.10 shall nevertheless apply."

(33) Special inspector qualifications.

Section 1704.2.1 is amended to read as follows:

"1704.2.1. Special inspector qualifications. Each special inspector shall provide written documentation to the building official demonstrating his or her competence and relevant experience or training in each type of inspection they will perform. Experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of special inspection activities for projects of similar complexity and material qualities. These qualifications are in addition to qualifications specified in other sections of this code.

The registered design professional in responsible charge and engineers of record involved in the design of the project are permitted to act as the approved agency and their personnel are permitted to act as the special inspectors for the work designed by them, with the exception of welding and high strength bolting."

(34) Statement of special inspections.

Section 1704.2.3 is amended to read as follows:

"1704.2.3 Statement of special inspections. The applicant shall submit a statement of special inspections in accordance with Section 107.1 as a condition for permit issuance. This statement shall be deemed to be satisfied by Section 1704.3."

(35) Report requirement.

Section 1704.2.4 is amended to read as follows:

"1704.2.4 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 whether the 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."

(36) Statement of special inspections.

Section 1704.3 deleted in its entirety and replaced to read as follows:

"1704.3 Statement of special inspections. Where special inspection or testing is required by Section 1705, the construction drawings shall include a complete list of special inspections required by this section."

(37) Structural observations.

Section 1704.5 is deleted in its entirety and replaced to read as follows:

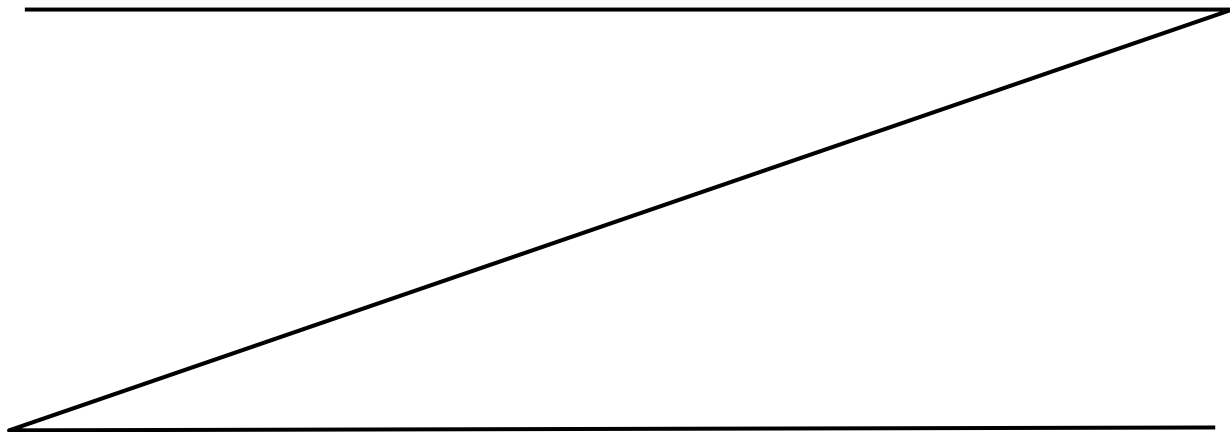
"1704.5 Structural observations. The owner shall employ a registered design professional to perform structural observations. Structural observations shall be performed in accordance with Section 464-5, Hawaii Revised Statutes, administered and enforced by the Department of Commerce and Consumer Affairs.

Prior to the final inspection required under Section 110.3.10, the licensed engineer or architect of record shall submit a written statement verifying receipt of the final special inspection reports and documenting that to the best of his/her knowledge, information and belief, there are no known unresolved code requirements that create significant public safety deficiencies."

(38) Special inspections for wind requirements.

Section 1705.10 is amended to read as follows:

"1705.10 Special inspections for wind requirements. Special inspections itemized in Sections 1705.10.1 through 1705.10.3, unless exempted by the exceptions to Section 1704.2, are required for buildings and structures constructed where the 3-second-gust effective ultimate design wind speed is 120 mph (53 m/sec) or greater."



(39) Concrete Construction.

Section 1705.3 is amended to read as follows:

"1705.3 Concrete Construction. The special inspections and verifications for concrete construction shall be as required by this section and Table 1705.3.

Exceptions: Special Inspections shall not be required for:

1. Foundation concrete for structures permitted to be designed under the International Residential Code.
2. Concrete footings supporting buildings three stories or less in height that are fully supported on earth or rock where the structural design is adequate based on a compressive strength f'_c no greater than 2,500 pounds per square inch (psi) (17.2 Mpa), regardless of the compressive strength specified in the construction documents or used in the footing construction. Periodic inspection of the reinforcing of all concrete footings shall be required.
3. Nonstructural concrete slabs supported directly on the ground.
4. Concrete patios, driveways and sidewalks, on grade.
5. Field sampling for air content of non-air-entrained concrete mixes where not required by the registered design professional."

(40) Concrete Construction.

Table 1705.3 is amended to read as follows:

TABLE 1705.3 REQUIRED VERIFICATION AND INSPECTION OF CONCRETE CONSTRUCTION

VERIFICATION AND INSPECTION	CONTINUOUS	PERIODIC	REFERENCED STANDARD ^a	IBC REFERENCE
1. Inspection of reinforcing steel, including prestressing tendons, and placement.	—	X	ACI 318: 3.5, 7.1-7.7	1910.4
2. Inspection of reinforcing steel welding in accordance with Table 1705.2.2, Item 2b.	—	—	AWS D1.4 ACI 318: 3.5.2	—
3. Inspection of anchors cast in concrete where allowable loads have been increased or where strength design is used.	—	X	ACI 318: D.9.2	1908.5, 1909.1
4. Inspection of anchors post-installed in hardened concrete members ^b :				
a. Adhesive anchors installed in horizontally or upwardly inclined orientations to resist sustained tension loads	X	—	ACI 318: D.9.2.4	—
b. Mechanical anchors and adhesive anchors not defined in 4.a.	—	X	ACI 318: D.9.2	—
5. Verifying use of required design mix.	—	X	ACI 318: Ch. 4, 5.2-5.4	1904.2, 1910.2, 1910.3
6. At the time fresh concrete is sampled to fabricate specimens for strength tests, perform slump and air content tests, and determine the temperature of the concrete.	X	—	ASTM C 172 ASTM C 31 ACI 318: 5.6, 5.8	1910.10
7. Inspection of concrete and shotcrete placement for proper application techniques.	X	—	ACI 318: 5.9, 5.10	1910.6, 1910.7, 1910.8
8. Inspection for maintenance of specified curing temperature and techniques.	—	X	ACI 318: 5.11-5.13	1910.9
9. Inspection of prestressed concrete:				
a. Application of prestressing forces.	X	—	ACI 318: 18.20	—
b. Grouting of bonded prestressing tendons in the seismic force-resisting system.	X	—	ACI 318: 18.18.4	—
10. Erection of precast concrete members.	—	X	ACI 318: Ch. 16	—
11. Verification of in-situ concrete strength, prior to stressing of tendons in post-tensioned concrete and prior to removal of shores and forms from beams and structural slabs.	—	X	ACI 318: 6.2	—
12. Inspect formwork for shape, location and dimensions of the concrete member being formed.	—	X	ACI 318: 6.1.1	—

For SI: 1 inch = 25.4 mm.

a. Where applicable, see also Section 1705.11, Special inspections for seismic resistance.

b. Specific requirements for special inspection shall be included in the research report for the anchor issued by an approved source in accordance with D.9.2 in ACI 318 or other qualification procedures. Where specific requirements are not provided, special inspection requirements shall be specified by the registered design professional and shall be approved by the building official prior to the commencement of the work.”

(41) Splices.

Section 1810.3.6 is amended to read as follows:

"1810.3.6 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 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 1810.2.2 to other piers or piles that do not have splices in the upper 10 feet (3048 mm) of embedment."

(42) Anchoring to Concrete.

Section 1901.4 is added to read as follows:

"1901.4 Anchoring to concrete. Anchoring to concrete shall be in accordance with ACI 318 as amended in Section 1905, and applies to cast-in (headed bolts, headed studs, and hooked J- or L-bolts) anchors and post-installed expansion (torque-controlled and displacement-controlled), undercut, and adhesive anchors."

(43) Modifications to ACI 318.

Section 1905 is modified to read as follows:

"SECTION 1905 MODIFICATIONS TO ACI 318.

1905.1 General. The text of ACI 318 shall be modified as indicated in Sections 1905.1.1 through 1905.1.9.

1905.1.1 ACI 318, Section 2.2. Modify existing definitions and add the following definitions to ACI 318, Section 2.2.

DESIGN DISPLACEMENT. Total lateral displacement expected for the design-basis earthquake, as specified by Section 12.8.6 of ASCE 7.

DETAILED PLAIN CONCRETE STRUCTURAL WALL. A wall complying with the requirements of Chapter 22, including 22.6.7.

ORDINARY PRECAST STRUCTURAL WALL. A precast wall complying with the requirements of Chapters 1 through 18.

ORDINARY REINFORCED CONCRETE STRUCTURAL WALL. A cast-in-place wall complying with the requirements of Chapters 1 through 18.

ORDINARY STRUCTURAL PLAIN CONCRETE WALL. A wall complying with the requirements of Chapter 22, excluding 22.6.7.

SPECIAL STRUCTURAL WALL. A cast-in-place or precast wall complying with the requirements of 21.1.3 through 21.1.7, 21.9 and 21.10, as applicable, in addition to the requirements for ordinary reinforced concrete structural walls or ordinary precast structural walls, as applicable. Where ASCE 7 refers to a "special reinforced concrete structural wall", it shall be deemed to mean a "special structural wall."

1905.1.2 ACI 318, Section 21.1.1. Modify ACI 318 Sections 21.1.1.3 and 21.1.1.7 to read as follows:

21.1.1.3. Structures assigned to Seismic Design Category A shall satisfy requirements of Chapters 1 to 19 and 22; Chapter 21 does not apply. Structures assigned to Seismic Design Category B, C, D, E or F also shall satisfy 21.1.1.4 through 21.1.1.8, as applicable. Except for structural elements of plain concrete complying with Section 1905.1.8 of the International Building Code, structural elements of plain concrete are prohibited in structures assigned to Seismic Design Category C, D, E or F.

21.1.1.7. Structural systems designated as part of the seismic force-resisting system shall be restricted to those permitted by ASCE 7. Except for Seismic Design Category A, for which Chapter 21 does not apply, the following provisions shall be satisfied for each structural system designated as part of the seismic force-resisting system, regardless of the Seismic Design Category:

- (a) Ordinary moment frames shall satisfy 21.2.
- (b) Ordinary reinforced concrete structural walls *and ordinary precast structural walls* need not satisfy any provisions in Chapter 21.
- (c) Intermediate moment frames shall satisfy 21.3.
- (d) Intermediate precast *structural* walls shall satisfy 21.4.
- (e) Special moment frames shall satisfy 21.5 through 21.8.
- (f) Special structural walls shall satisfy 21.9.
- (g) Special structural walls constructed using precast concrete shall satisfy 21.10.

All special moment frames and special structural walls shall also satisfy 21.1.3 through 21.1.7.

1905.1.3 ACI 318, Section 21.4. Modify ACI 318, Section 21.4, by adding new Section 21.4.3 and renumbering existing Section 21.4.3 to become 21.4.4. :

21.4.3. Connections that are designed to yield shall be capable of maintaining 80 per cent of their design strength at the deformation induced by the design displacement or shall use Type 2 mechanical splices.

21.4.4. Elements of the connection that are not designed to yield shall develop at least 1.5 Sy.

1905.1.5 ACI 318, Section 21.10. Modify ACI 318, Section 21.10.2, to read as follows:

21.10.2. Special structural walls constructed using precast concrete shall satisfy all the requirements of 21.9 for cast-in-place special structural walls in addition to Sections 21.4.2 through 21.4.4.

1905.1.6 ACI 318, Section 21.12.1.1. Modify ACI 318, Section 21.12. 1.1, to read as follows:

21.12.1.1. Foundations resisting earthquake-induced forces or transferring earthquake-induced forces between a structure and ground shall comply with the requirements of Section 21.12 and other applicable provisions of ACI 318 unless modified by Chapter 18 of the International Building Code.

1905.1.7 ACI 318, Section 22.6. Modify ACI 318, Section 22.6, by adding new Section 22.6.7 to read as follows:

22.6.7 Detailed plain concrete structural walls.

22.6.7.1. Detailed plain concrete structural walls are walls conforming to the requirements of ordinary structural plain concrete walls and 22.6.7.2.

22.6.7.2. Reinforcement shall be provided as follows:

- (a) Vertical reinforcement of at least 0.20 square inch (129 mm²) in cross-sectional area shall be provided continuously from support to support at each corner, at each side of each opening and at the ends of walls. The continuous vertical bar required beside an opening is permitted to substitute for one of the two No. 5 bars required by 22.6.6.5.
- (b) Horizontal reinforcement at least 0.20 square inch (129 mm²) in cross-sectional area shall be provided:
 - 1. Continuously at structurally connected roof and floor levels and at the top of walls;
 - 2. At the bottom of load-bearing walls or in the top of foundations where doweled to the wall; and
 - 3. At a maximum spacing of 120 inches (3048 mm).

Reinforcement at the top and bottom of openings, where used in determining the maximum spacing specified in Item 3 above, shall be continuous in the wall.

1905.1.8 ACI 318, Section 22.10. Delete ACI 318, Section 22.10, and replace with the following:

22.10. Plain concrete in structures assigned to Seismic Design Category C, D, E or F.

22.10.1. Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

- (a) Structural plain concrete basement, foundation or other walls below the base are permitted in detached one- and two-family dwellings three stories or less in height constructed with stud-bearing walls. In dwellings assigned to Seismic Design Category D or E, the height of the wall shall not exceed 8 feet (2438 mm), the thickness shall not be less than 7 ½ inches (190 mm), and the wall shall retain no more than 4 feet (1219 mm) of unbalanced fill. Walls shall have reinforcement in accordance with 22.6.6.5.
- (b) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one- and two-family dwellings three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

- (c) Plain concrete footings supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. For footings that exceed 8 inches (203 mm) in thickness, a minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

Exceptions:

1. In Seismic Design Categories A, B and C, detached one- and two-family dwellings three stories or less in height constructed with stud-bearing walls, are permitted to have plain concrete footings without longitudinal reinforcement.
2. For foundation systems consisting of a plain concrete footing and a plain concrete stem wall, a minimum of one bar shall be provided at the top of the stem wall and at the bottom of the footing.
3. Where a slab on ground is cast monolithically with the footing, one No. 5 bar is permitted to be located at either the top of the slab or bottom of the footing.

1905.1.9 ACI 318, Section D.3.3. Modify ACI 318 Sections D.3.3.4.2, D.3.3.4.3(d) and D.3.3.5.2 to read as follows:

D.3.3.4.2. Where the tensile component of the strength-level earthquake force applied to anchors exceeds 20 per cent of the total factored anchor tensile force associated with the same load combination, anchors and their attachments shall be designed in accordance with D.3.3.4.3. The anchor design tensile strength shall be determined in accordance with D.3.3.4.4.

Exception: Anchors designed to resist wall out-of-plane forces with design strengths equal to or greater than the force determined in accordance with ASCE 7 Equation 12.11-1 or 12.14-10 shall be deemed to satisfy Section D.3.3.4.3(d).

D.3.3.4.3(d) - The anchor or group of anchors shall be designed for the maximum tension obtained from design load combinations that include E, with E increased by Ω_0 . The anchor design tensile strength shall be calculated from D.3.3.4.4.

D.3.3.5.2. Where the shear component of the strength-level earthquake force applied to anchors exceeds 20 per cent of the total factored anchor shear force associated with the same load combination, anchors and their attachments shall be designed in accordance with D.3.3.5.3. The anchor design shear strength for resisting earthquake forces shall be determined in accordance with D.6.

Exceptions:

1. For the calculation of the in-plane shear strength of anchor bolts attaching wood sill plates of bearing or nonbearing walls of light-frame wood structures to foundations or foundation stem walls, the in-plane design shear strength in accordance with D.6.2 and D.6.3 need not be computed and D.3.3.5.3 shall be deemed to be satisfied provided all of the following are met:
 - 1.1. The allowable in-plane shear strength of the anchor is determined in accordance with AF&PA NDS Table 11E for lateral design values parallel to grain.
 - 1.2. The maximum anchor nominal diameter is 5/8 inches (16 mm).
 - 1.3. Anchor bolts are embedded into concrete a minimum of 7 inches (178 mm).

- 1.4. Anchor bolts are located a minimum of $1\frac{3}{4}$ inches (45 mm) from the edge of the concrete parallel to the length of the wood sill plate.
- 1.5. Anchor bolts are located a minimum of 15 anchor diameters from the edge of the concrete perpendicular to the length of the wood sill plate.
- 1.6. The sill plate is of 2-inch or 3-inch nominal thickness.
2. For the calculation of the in-plane shear strength of anchor bolts attaching cold-formed steel track of bearing or nonbearing walls of light-frame construction to foundations or foundation stem walls, the in-plane design shear strength in accordance with D.6.2 and D.6.3 need not be computed and D.3.3.5.3 shall be deemed to be satisfied provided all of the following are met:
 - 2.1. The maximum anchor nominal diameter is $\frac{5}{8}$ inches (16 mm).
 - 2.2. Anchors are embedded into concrete a minimum of 7 inches (178 mm).
 - 2.3. Anchors are located a minimum of $1\frac{3}{4}$ inches (45 mm) from the edge of the concrete parallel to the length of the track.
 - 2.4. Anchors are located a minimum of 15 anchor diameters from the edge of the concrete perpendicular to the length of the track.
 - 2.5. The track is 33 to 68 mil designation thickness. Allowable in-plane shear strength of exempt anchors, parallel to the edge of concrete shall be permitted to be determined in accordance with AISI S100 Section E3.3.1.
3. In light-frame construction, bearing or non-bearing walls, shear strength of concrete anchors less than or equal to 1 inch (25 mm) in diameter of sill plate or track to foundation or foundation stem wall need not satisfy D.3.3.5.3(a) through (c) when the design strength of the anchors is determined in accordance with D.6.2.1(c)."

(44) Anchorage to Concrete-Strength Design.

Section 1909 is deleted in its entirety.

(45) Concrete Masonry Unit Strength.

Table 2105.2.2.1.2 Compressive Strength of Concrete Masonry is amended to read as follows:

**"TABLE 2105.2.2.1.2
COMPRESSIVE STRENGTH OF CONCRETE MASONRY**

NET AREA COMPRESSIVE STRENGTH OF CONCRETE MASONRY UNITS (psi)		NET AREA COMPRESSIVE STRENGTH OF MASONRY (psi) ^a
Type M or S Mortar	Type N mortar	
---	1,900	1,700
1,900	2,350	1,900
2,000	2,650	2,000
2,600	3,400	2,250
3,250	4,350	2,500
3,900	---	2,750
4,500	---	3,000

For SI: 1 inch = 25.4 mm, 1 pound per square inch = 0.00689 MPa.

a. For units less than 4 inches in height, 85 percent of the values listed."

(46) Masonry Cleanouts.

Section 2104.1.7 is added to read as follows:

"2104.1.7 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/ASCE 6/TMS 602 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.
2. The specified compressive strength of masonry, f'_m , is less than or equal to 1,900 psi as determined per Table 2105.2.2.1.2;
3. Fine grout is used complying with ASTM C-476 minimum compressive strength of 3,000 psi; and
4. Special Inspection is provided."

(47) Cold-Formed Steel Prescriptive Framing

Section 2211.7 shall be amended to read as follows:

"2211.7 Prescriptive Framing. Detached one- and two-family dwellings and townhouses, less than or equal to three stories above grade plane, shall be permitted to be constructed in accordance with AISI S230 subject to the limitations therein. Prescriptive framing shall not be applicable for structures designed using exception 4 in section 1609.1.2 Protection of Openings."

(48) Wood Design Requirements

Section 2301.2 is amended to read as follows:

"2301.2 General design requirements. The design of structural elements or systems, constructed partially or wholly of wood or wood-based products, shall be in accordance with one of the following methods:

1. Allowable stress design in accordance with Sections 2304, 2305 and 2306.
2. Load and resistance factor design in accordance with Sections 2304, 2305 and 2307
3. Conventional light-frame construction in accordance with Sections 2304 and 2308.

Exception: Buildings designed in accordance with the provisions of the AWC WFCM shall be deemed to meet the requirements of Section 2308. **Prescriptive framing** of detached one- and two-family dwellings and townhouses, using Section 2308 or the AWC WFCM shall be limited to heights of less than or equal to three stories above grade plane. Prescriptive framing shall not be applicable for structures designed using exception 4 in Section 1609.1.2 Protection of Openings."

(49) Preservative-treated wood.

Section 2303.1.8 is deleted in its entirety and replaced 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.
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 glued-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;
5. Retention minimum requirements; and
6. Year of treatment.

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."

(50) Protection against decay and termites.

Section 2304.11 is deleted in its entirety and replaced 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.

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 protection 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, with chemical barriers applied at the maximum label rates.

2304.11.3 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 AWWA Standard U1.

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

2304.11.4 Retaining walls. Wood in retaining or crib wall shall be treated to AWWA 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 AWWA 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, BTB, or other approved physical barrier."

(51) Conventional Light-Frame Construction.

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 nonload-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. Detached one- and two-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.

2308.1.1 Portions exceeding limitations of conventional construction. When portions of a building of otherwise conventional construction exceed the limits of Section 208.2, these portions and the supporting load path shall be designed in accordance with accepted engineering practices and the provisions of this code. For the purposes of this section, the term "portions" shall mean parts of buildings containing volume and area such as a room or series of rooms."

(52) Elevators and Conveying Systems.

Section 3001.2 Referenced standards is amended to add a new section 3001.2.1 to read as follows:

"3001.2.1 The Administrative Rules of the Department of Labor and Industrial Relations, Division of Occupational Safety and Health, Title 12, Subtitle 8, Part 11 Elevator and related systems."

(53) 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 on the premises of a hotel are not required to be enclosed."

(54) Existing Concrete Structures.

Section 3401.6 Alternative compliance is amended to read as follows:

"3401.6 Alternative compliance.

- 1) Work performed in accordance with the International Existing Building Code shall be deemed to comply with the provisions of this chapter.
- 2) Work performed in accordance with the 2016 version of the American Concrete Institute Committee 562, "Code Requirements for Assessment, Repair, and Rehabilitation of Existing Concrete Structures" shall be deemed to comply with this chapter when used as a supplement to the requirements of this chapter or the International Existing Building Code. Wherever the term International Existing Building Code (IEBC) is used in ACI 562-16, it shall mean International Existing Building Code or Chapter 34 of the International Building Code."

(55) Glass Replacement.

Section 3407.1 is amended to read as follows:

"3407.1 Conformance. The installation or replacement of glass shall be as required by Chapter 24 for new installations."

(56) Compliance with other codes.

Section 3412.3.2 is amended to read as follows:

"3412.3.2 Compliance with other codes. Buildings that are evaluated in accordance with this section shall comply with the State Fire Code."

(57) **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.

Section 423 is deleted and replaced to read as follows:

SECTION 423 COMMUNITY STORM SHELTERS

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

1. Designated earthquake, hurricane or other emergency shelters.
2. Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response.

423.1.1 Scope. This section 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.

423.2 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/NSSA 500 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 425 to read as follows:

SECTION 425 HAWAII RESIDENTIAL SAFE ROOM

425.1 Performance-based design criteria. The residential safe room shall meet the minimum performance specifications of Sections 425.1.1 through 425.10.

425.1.1 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.

425.1.2 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.

425.2 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.

425.3 Size of safe room. The safe room shall be designed to provide a minimum of 15 square feet per person in a room which does not need to exceed 120 square feet (11 m²) of floor area.

425.4 Provisions for exiting. The safe room shall be equipped with an inward-swinging interior door and an impact-protected operable window or exterior door suitable for a means of alternative exiting in an emergency.

425.5 Design for dead, live, wind, rain, and impact loads.

425.5.1 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 145 mph 3-second peak gust ultimate design wind speed, determined in accordance with ASCE - 7, Minimum Design Loads for Buildings and Other Structures. The site exposure factor shall be based on exposure C or the exposure shown in Figure 1609.4, whichever is the greater. The values for 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.

425.5.2 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), or be an approved assembly listed in Section 425.5.4. 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.

425.5.3 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 425.5-1.

Table 425.5-1
Windborne Debris Protection and Cyclic Pressure Criteria for Residential Safe Rooms

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

425.5.4 Approved Debris Impact Resistant Wall Assemblies. The following methods of wall assembly construction shall be deemed to comply with Section 425.5.2:

1. $\frac{3}{4}$ -inch plywood on wood studs spaced at 16 inches on-center with #8 X 3 inch wood screws at 6 inches on-center.
2. $\frac{3}{4}$ -inch plywood attached to double studs spaced at 16 inches on-center with #8 X 3 inch wood screws at 6 inches on-center.
3. 8-1/4 inch cementitious lap siding over 22 gage sheet metal attached to 350S-162-33 studs spaced at 24 inches on-center.
4. 8-1/4 inch cementitious lap siding attached to 350S-162-33 studs spaced at 24 inches on-center studs with interior $\frac{3}{4}$ -inch interior plywood sheathing.
5. 8-1/4 inch cementitious lap siding attached to 350S-162-33 studs spaced at 24 inches on-center with $\frac{1}{2}$ -inch interior 22 gage sheet metal composite gypsum wallboard.
6. 8-1/4 inch cementitious lap siding attached to 2 inch X 4 inch wood studs spaced at 16 inches on-center with $\frac{1}{2}$ -inch interior 22 gage sheet metal composite gypsum wallboard.
7. 8-1/4 inch cementitious lap siding attached to 2 inch X 4 inch wood studs spaced at 16 inches on-center with 22 gage sheet metal and $\frac{1}{2}$ -inch interior gypsum wallboard.
8. Cementitious lap siding attached to 5/8-inch structural plywood on 2 inch X 4 inch wood studs spaced at 16 inches on-center.
9. Cementitious-panel siding attached to 5/8-inch structural plywood on 2 inch X 4 inch or 362S-137-43 steel studs spaced at 16 inches on-center.
10. EFS with $\frac{1}{2}$ -inch dens-glass gold exterior sheathing on 362S-137-43 steel studs spaced at 16 inches on-center and $\frac{1}{2}$ -inch interior gypsum wallboard.
11. 24 gage steel sheet (50 ksi) on girts.
12. Concrete with a thickness of 4 inches with reinforcing.
13. Concrete masonry units with a thickness of 6 inches with partial grouting and reinforcing spaced at 24 inches on-center.
14. Concrete masonry units with a thickness of 8 inches with partial grouting and reinforcing spaced at 24 inches on-center.

15. Interior or exterior wall with laterally braced 2 inch x 4 inch wood studs with sheathing on either side of 22 gage sheet metal.

Sheathing shall be attached to studs with fasteners at 6 inches (152 mm) on center for edge and field fastening.

425.6 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 cowling or other device that shall be impact tested to comply with ASTM E 1996-14 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.

425.7 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.

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

425.9 Special inspection. The construction or installation of the residential safe room shall be verified for conformance to the drawings in accordance with the appropriate requirements of Chapter 17.

425.10 Notification. The owner of the 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 U103 State- and County-owned public high occupancy buildings - design criteria for enhanced hurricane protection areas.

Chapter 4 is amended by adding Section 426 to read as follows:

SECTION 426 STATE- AND COUNTY-OWNED PUBLIC HIGH OCCUPANCY BUILDINGS - DESIGN CRITERIA FOR ENHANCED HURRICANE PROTECTION AREAS

426.1 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.

426.2 Scope. This section shall apply to state- and county-owned buildings which are of Risk 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.

426.3 Site criteria.

426.3.1 Flood zones. Comply with ASCE 24-14, Flood Resistant Design and Construction, based on provisions for Risk 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 a 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, nor less than the flood elevation associated with a 500-year mean recurrence interval.
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, nor less than the flood elevation associated with a 500-year mean recurrence interval.

426.3.2 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.

426.3.3 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.

426.3.4 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, unless the windborne debris hazard of the portable structure uplift is mitigated.

426.4 Enhanced hurricane protection area program requirements.

426.4.1 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.

426.4.2 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.

426.4.3 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.

426.4.4 Toilets and hand washing facilities. Toilet and hand washing facilities shall be located and accessible from within the perimeter of the enhanced hurricane protection area.

426.4.5 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 426.4.3.

426.5 Design wind, rain, and impact loads.

426.5.1 Structural design criteria. The building main wind force resisting system and structural components shall be designed per ASCE 7 for a 145 mph minimum peak 3-second gust ultimate design wind speed. Topographic and directionality factors shall be the site-specific values determined per Appendix W. Design for interior pressure shall be based on the largest opening in any exterior facade or roof surface.

426.5.2 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 E1996-14 Level D, i.e., 9 lb. 2 X 4 @ 50 fps (34 mph).

426.5.3 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 E1996-14.

426.5.4 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.

426.5.5 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.

426.5.6 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.

426.5.7 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 E1996-14 Level D.

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

426.5.9 Roofs

426.5.9.1 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 426.5.2 and 426.5.3.

426.5.9.2 High wind roof coverings. Roof coverings shall be specified and designed according to the latest ASTM Standards for high wind uplift forces and Section 1507, whichever is the greater.

426.5.9.3 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.

426.6 Ventilation

426.6.1 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 426.5.2 and 426.5.3.

426.6.2 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.

426.7 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
4. Minimum mechanical ventilation for health/safety purposes.

426.7.1 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.

426.8 Quality assurance

426.8.1 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.

426.8.2 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.

426.8.3 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.

426.8.4 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.

426.9 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.

426.10 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."

(58) 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 2 and chapter 16.**

Wind design shall be in accordance with Chapter 2 and Chapter 16 as amended by Sections W101.1 through W101.14.

W101.1 Windborne Debris Region defined.

The definition of "Windborne Debris Region" in Section 202 is amended to read as follows:

"WIND-BORNE DEBRIS REGION. Areas in Hawaii where the effective ultimate design wind speed is 130 mph (63 m/s) or greater.

For Risk Category II buildings and structures and Risk Category III buildings and structures, except health care facilities, the windborne debris region shall be based on Fig. 1609.3.2.2(a-f). For Risk Category IV buildings and structures and Risk Category III health care facilities, the windborne debris region shall be based on Fig. 1609.3.2.3(a-f)."

W101.2 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 1603.1.9 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. Risk Category.
4. Wind exposure.
5. Ultimate design wind speed (3-second gust) V_{ult} , and effective design wind speed $V_{eff-asd}$ (3-second gust), miles per hour (mph) (km/hr).
6. Design spectral response acceleration parameters, S_{DS} and S_{D1} .
7. Seismic design category and site class.
8. The design load-bearing values of soils.
9. Flood design data, if located in flood hazard areas established in Section 1612.3.

W101.3 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. Ultimate design wind speed (3-second gust) V_{ult} , and effective design wind speed $V_{eff-asd}$ (3-second gust), miles per hour (mph) (km/hr) .
2. Building Risk 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.

W101.4 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 Chapters 26 to 30 of ASCE 7. Minimum values for Directionality Factor, K_d , Velocity Pressure Exposure Coefficient, K_z , and Topographic Factor, K_{zt} , shall be determined in accordance with Section 1609. The type of opening protection required, the ultimate design wind speed, V_{ult} , 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 ICC 600 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 AWC WFCM.
3. Subject to the limitations of Section 1609.1.1.1, residential structures using the provisions of AISI S230.
4. Designs using NAAMM FP 1001.
5. Designs using TIA-222 for antenna-supporting structures and antennas, provided the effect of topography is included in accordance with Section 1609.3.3 Topographic effects.
6. Wind tunnel tests in accordance with Chapter 31 of ASCE 7, subject to the limitations in Section 1609.1.1.2.

The wind speeds in Figures 1609A, 1609B and 1609C are ultimate design wind speeds, V_{ult} . Values of effective nominal design wind speeds, $V_{eff-asd}$, determined in accordance with Sections 1609.3.1 and 1609.3.2, shall be used when the standards referenced in Exceptions 1 through 4 are used.

1609.1.1.1 Applicability. The provisions of ICC 600 are applicable only to buildings located within Exposure B or C as defined in Section 1609.4. The prescriptive provisions of ICC 600, AWC WFCM, or AISI S230 shall not be permitted for either of the following cases:

1. Structures which are more than three stories above grade plane in height.

2. Structures designed using exception 4 in Section 1609.1.2 Protection of Openings.

W101.5 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 buildings shall be impact-resistant or protected with an impact-resistant covering meeting the requirements of an approved impact-resistant standard or ASTM E 1996 and ASTM E 1886 referenced herein 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 1996-14.
2. Glazed openings located more than 30 feet (9144 mm) above grade shall meet the provisions of the Small Missile Test of ASTM E 1996-14.
3. Glazing in Risk 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.

Exceptions:

1. Wood structural panels with a minimum thickness of 7/16 inch (11 mm) and a maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings classified as Group R-3 or R-4 occupancy. 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 predrilled as required for the anchorage method and 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, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 33 feet (10 058 mm) or less where effective ultimate design wind speeds, $V_{eff-ult}$ do not exceed 175 mph (78 m/s).
2. Glazing in Risk 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 Risk 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. Risk Category II buildings shall be permitted to be designed with unprotected openings subject to the following requirements:
- For each direction of wind, determination of enclosure classification shall be based on the assumption that all unprotected glazing on windward walls are openings while glazing on the remaining walls and roof are intact and are not assumed to be openings.
 - Partially enclosed and open occupancy R-3 buildings without wind-borne debris protection shall also include a residential safe room in accordance with Section 425, Hawaii residential safe room, or alternatively provide an equivalently sized room structurally protected by construction complying with Section 425.5.

1609.1.2.1 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 1996-14.

1609.1.2.2 Garage doors. Garage door glazed opening protection for wind-borne debris shall meet the requirements of an approved impact-resisting standard or ANSI/DASMA 115.

Table 1609.1.2
Wind-Borne Debris Protection Fastening Schedule
For Wood Structural Panels^{a,b,c,d}

Fastener Type	Fastener Spacing		
	Panel span ≤ 4 feet	Panel span > 4 feet and ≤ 6 feet	Panel span > 6 feet and ≤ 8 feet
No. 8 Wood screw based anchor with 2 inch embedment length	16"	10"	8"
No. 10 Wood screw based anchor with 2- inch embedment length	16"	12"	9"
¼-inch lag screw based anchor with 2- inch embedment length	16"	16"	16"

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.

- This table is based on a 175 mph effective ultimate design wind speed and a mean roof height of 45 feet.
- 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.
- Anchors shall penetrate through the exterior wall covering with an embedment length of 2 inches minimum into the building frame. Fasteners shall be located a minimum of 2-1/2 inches from the edge of concrete block or concrete.
- Where panels are attached to masonry or masonry/stucco, they shall be attached utilizing vibration-resistant anchors having a minimum withdrawal capacity of 1,500 pounds.

W101.6 Revisions to Section 1609.3.

Section 1609.3 is amended to read as follows:

1609.3 Ultimate design wind speed and topographic and directionality factors. The ultimate design wind speed, V_{ult} in mph, for the determination of the wind loads shall be determined by Figure 1609A, 1609B and 1609C. The ultimate design wind speed V_{ult} , for use in the design of Risk Category II buildings and structures shall be obtained from Figure 1609A. The ultimate design wind speed, V_{ult} , for use in the design of Risk Category III and IV buildings and structures shall be obtained from Figure 1609B. The ultimate design wind speed, V_{ult} , for use in the design of Risk Category I buildings and structures shall be obtained from Figure 1609C.

The effective ultimate design wind speed, $V_{eff-ult}$, for the special wind regions indicated near mountainous terrain and near gorges shall be in accordance with Section 1609.3.2.

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 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 ultimate design wind speeds resulting from the study shall not be less than the resulting 700-year return period wind speed for Risk Category II and 1700-year return period wind speed for Risk Category III and IV , and 300-year return period design wind speed for Risk Category I.

W101.7 Addition of Section 1609.3.1.

Section 1609.3.1 is added to read as follows:

1609.3.1 Effective wind speed conversion. For Section 2308.10.1 and the exceptions permitted under Section 1609.1.1, and when otherwise required, the nominal design wind speed value used for determination of the wind loads, shall be the effective design wind speed, $V_{eff-asd}$, determined by multiplying the effective ultimate design wind speed values, $V_{eff-ult}$ given in Section 1609.3.2 by $\sqrt{0.625}$, in accordance with Equation 16-33.

$$V_{eff-asd} = V_{eff-ult} \sqrt{0.625} \quad (\text{Equation 16-33})$$

W101.8 Addition of effective ultimate design wind speed, $V_{eff-ult}$, contour maps to section 1609.3.2.

Figures 1609.3.2.1(a) through 1609.3.2.1(f), Figures 1609.3.2.2(a) through 1609.3.2.2(f), and Figures 1609.3.2.3(a) through 1609.3.2.3(f) are added as follows:

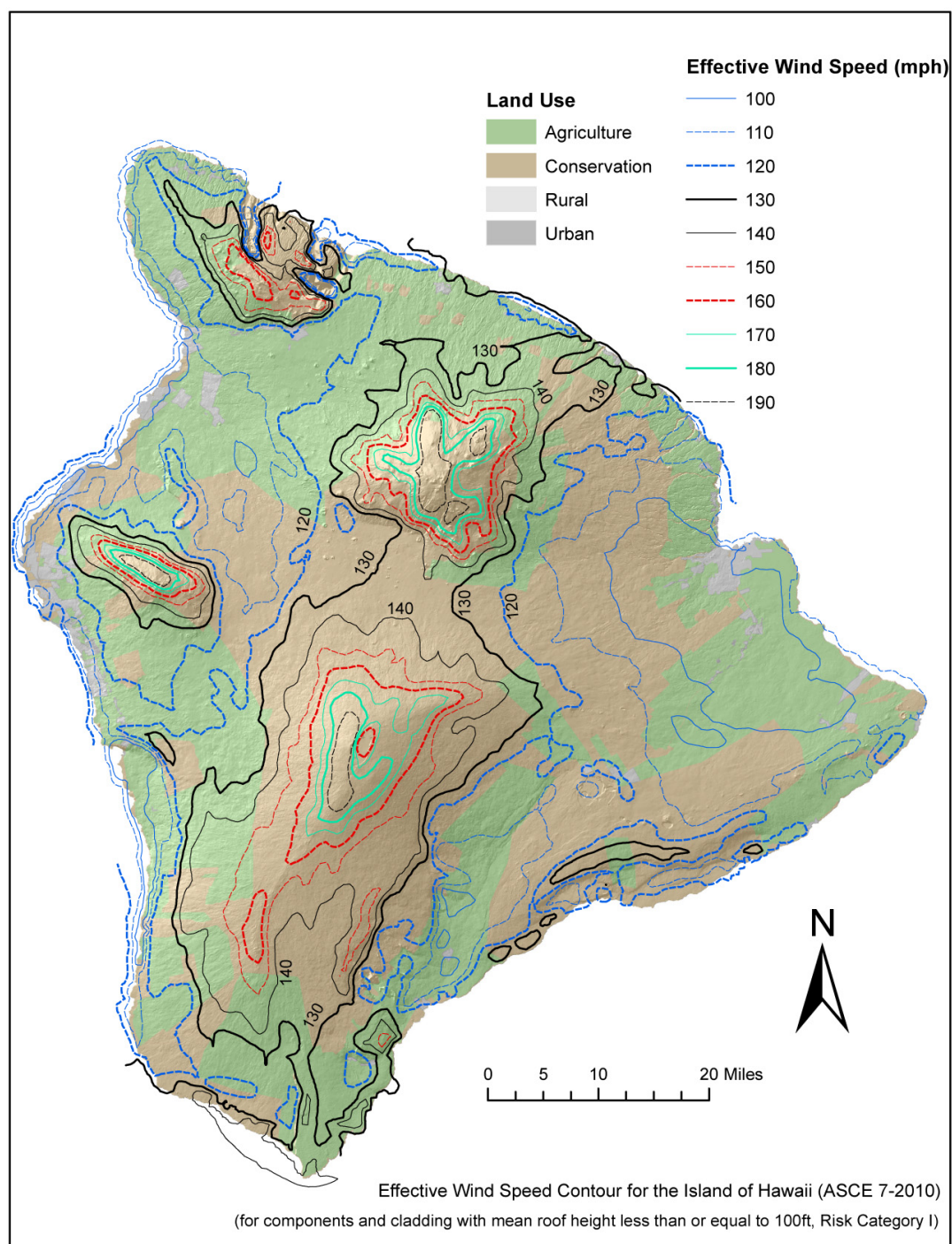


Figure 1609.3.2.1(a)
County of Hawaii Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 100 feet Tall

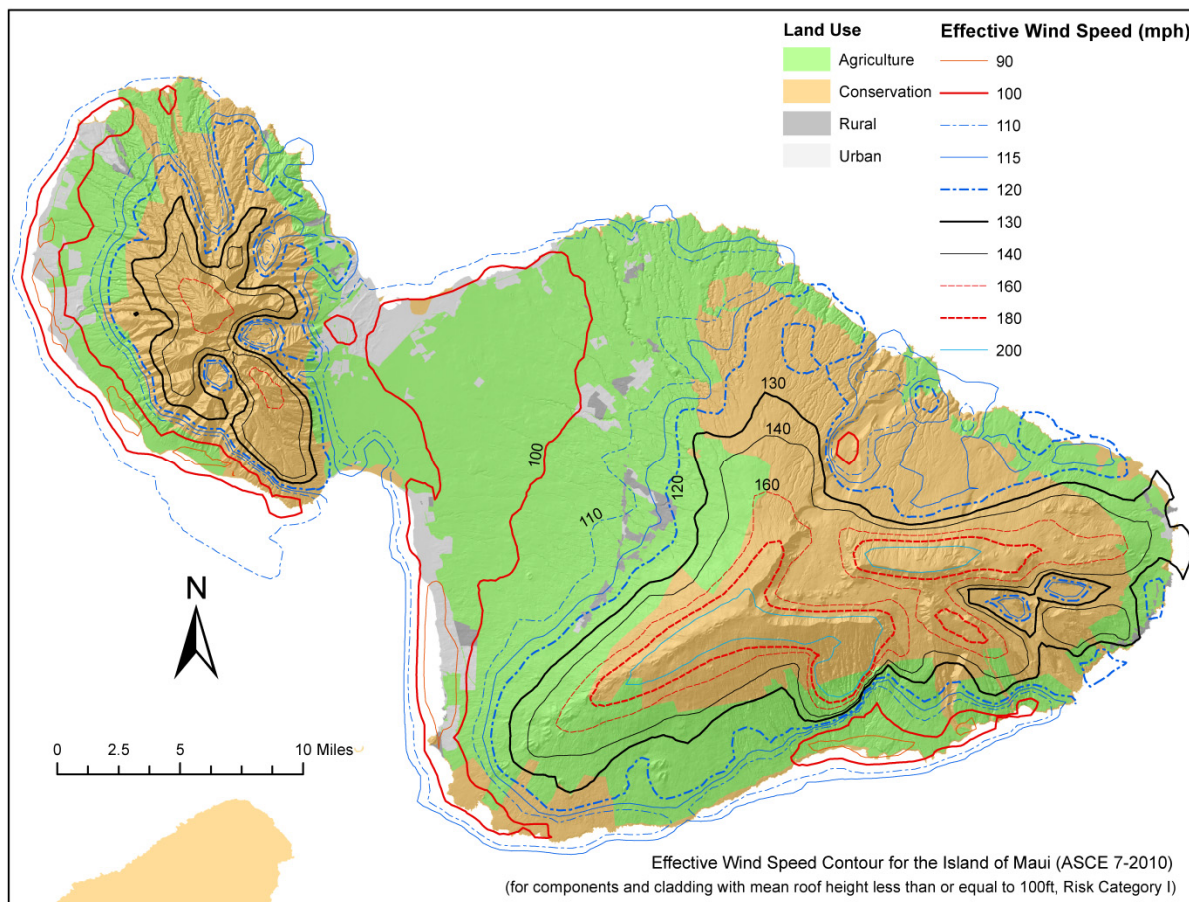


Figure 1609.3.2.1(b)
County of Maui, Island of Maui Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 100 feet Tall

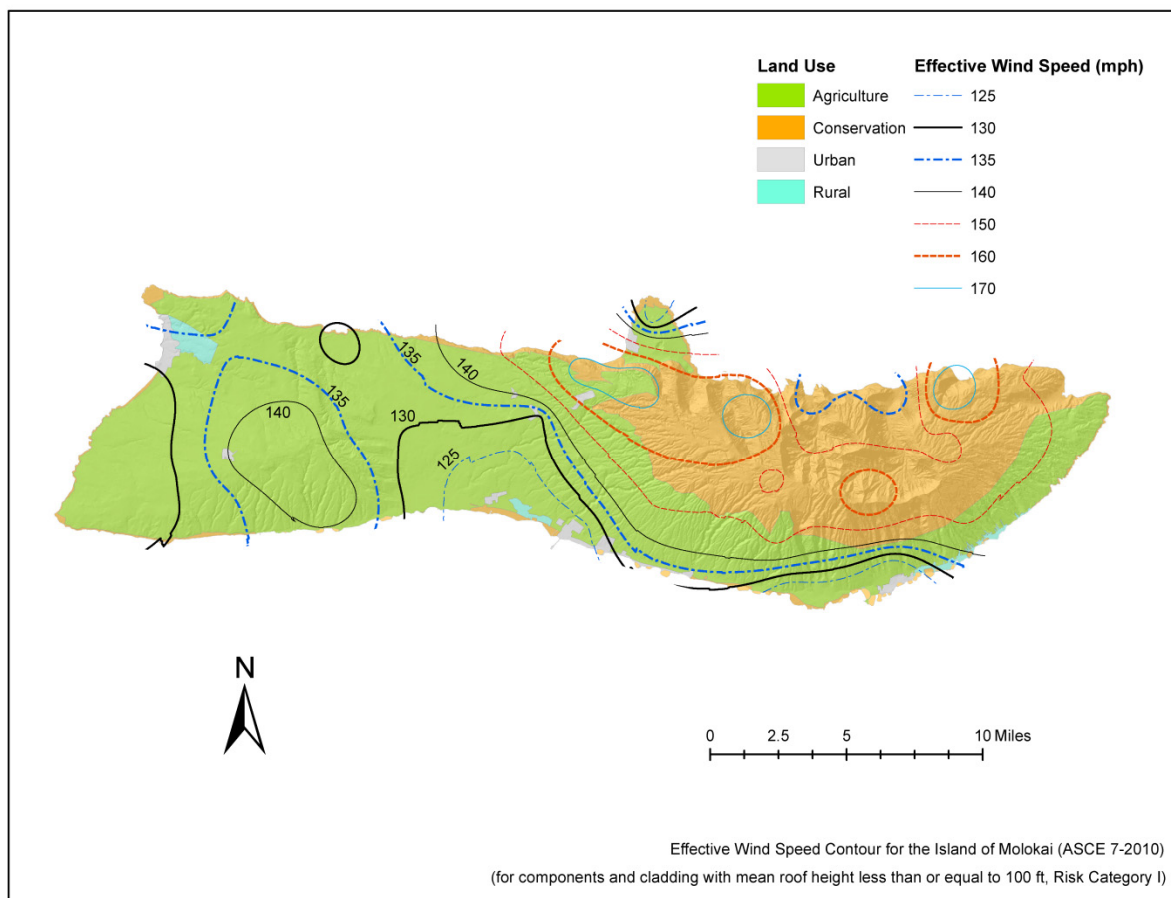
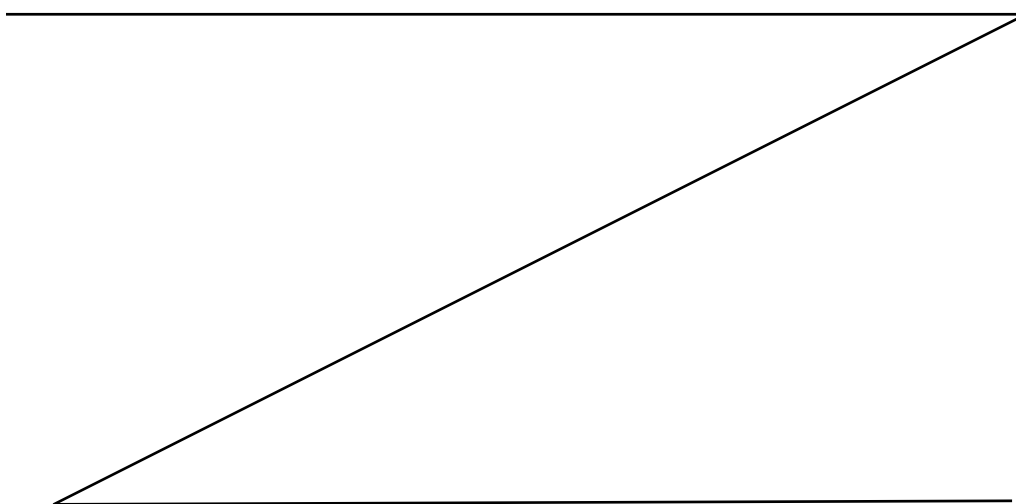


Figure 1609.3.2.1(c)
County of Maui, Island of Molokai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 100 feet Tall



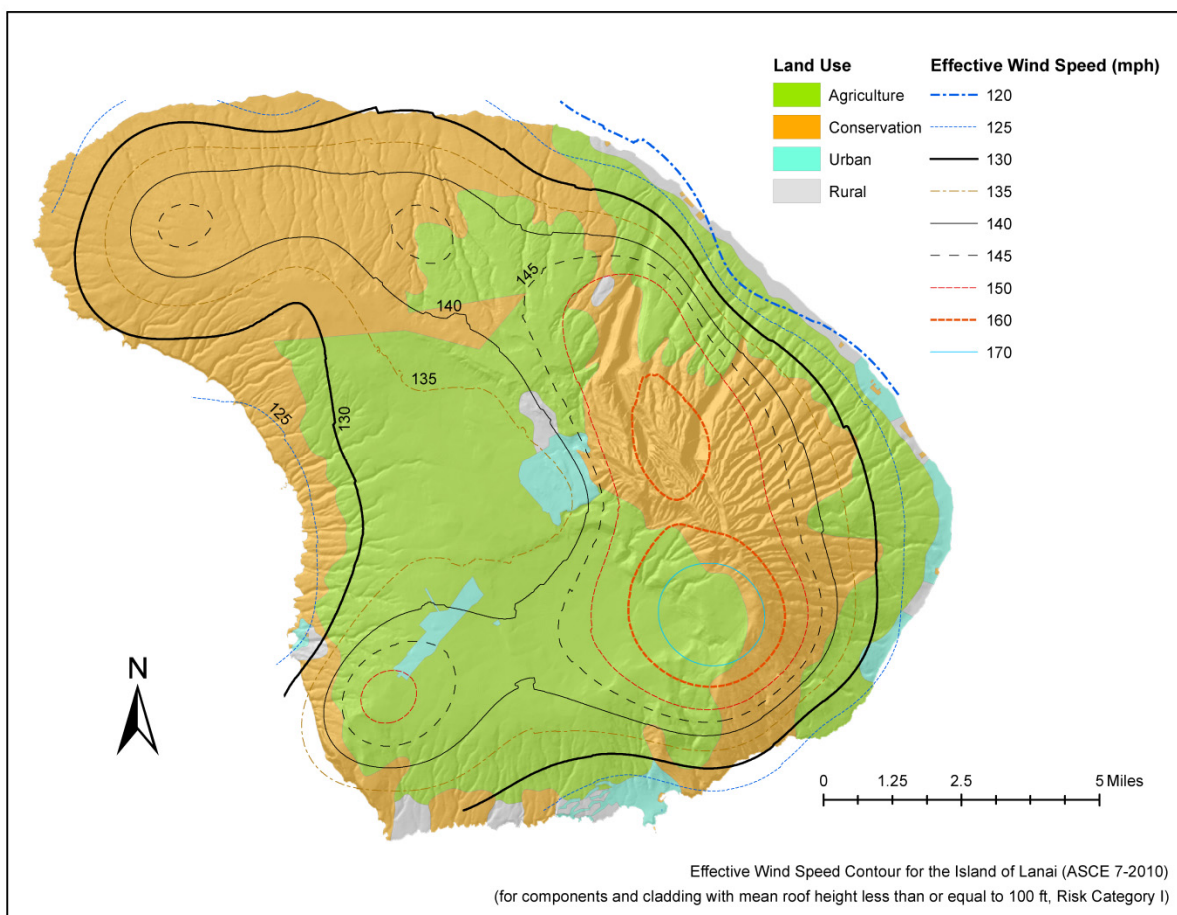


Figure 1609.3.2.1(d)
County of Maui, Island of Lanai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 100 feet Tall

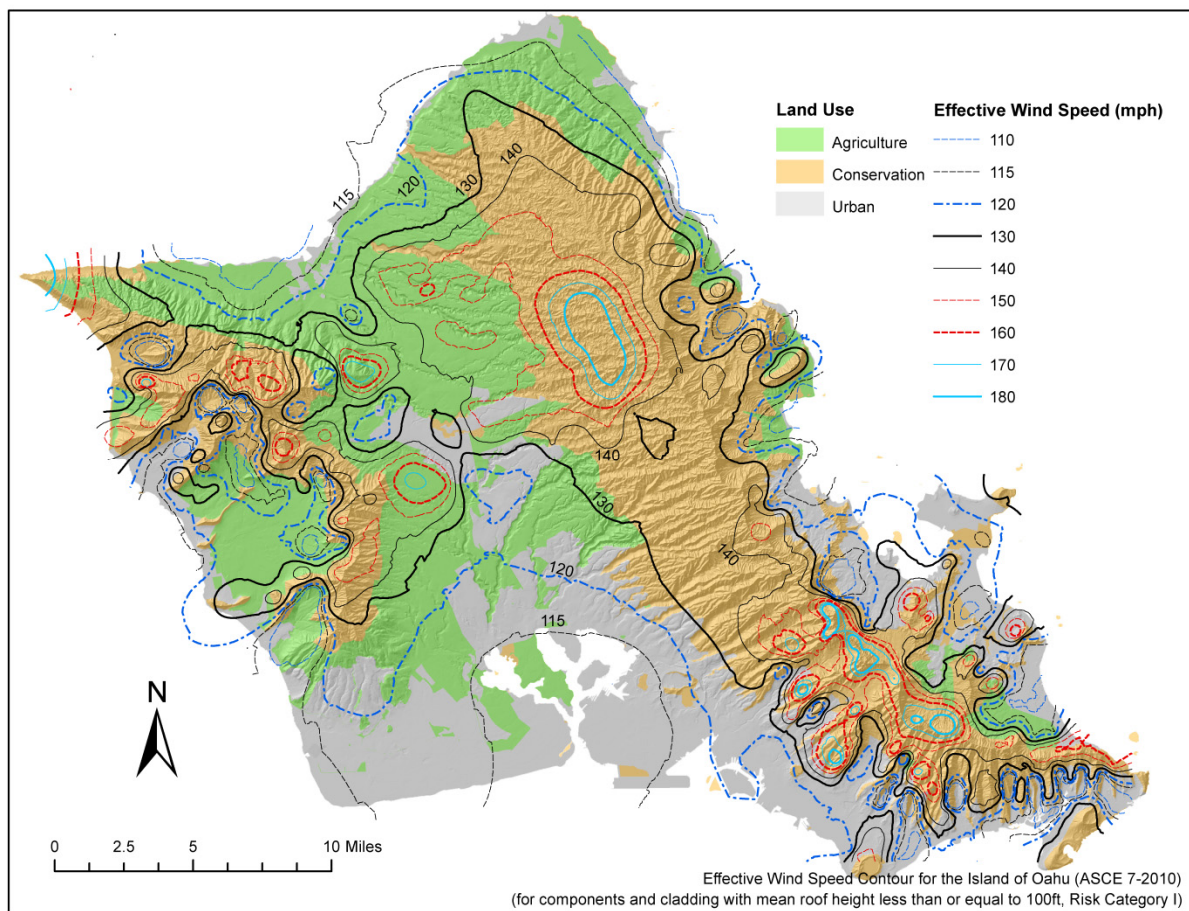


Figure 1609.3.2.1(e)
City and County of Honolulu Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 60 feet Tall

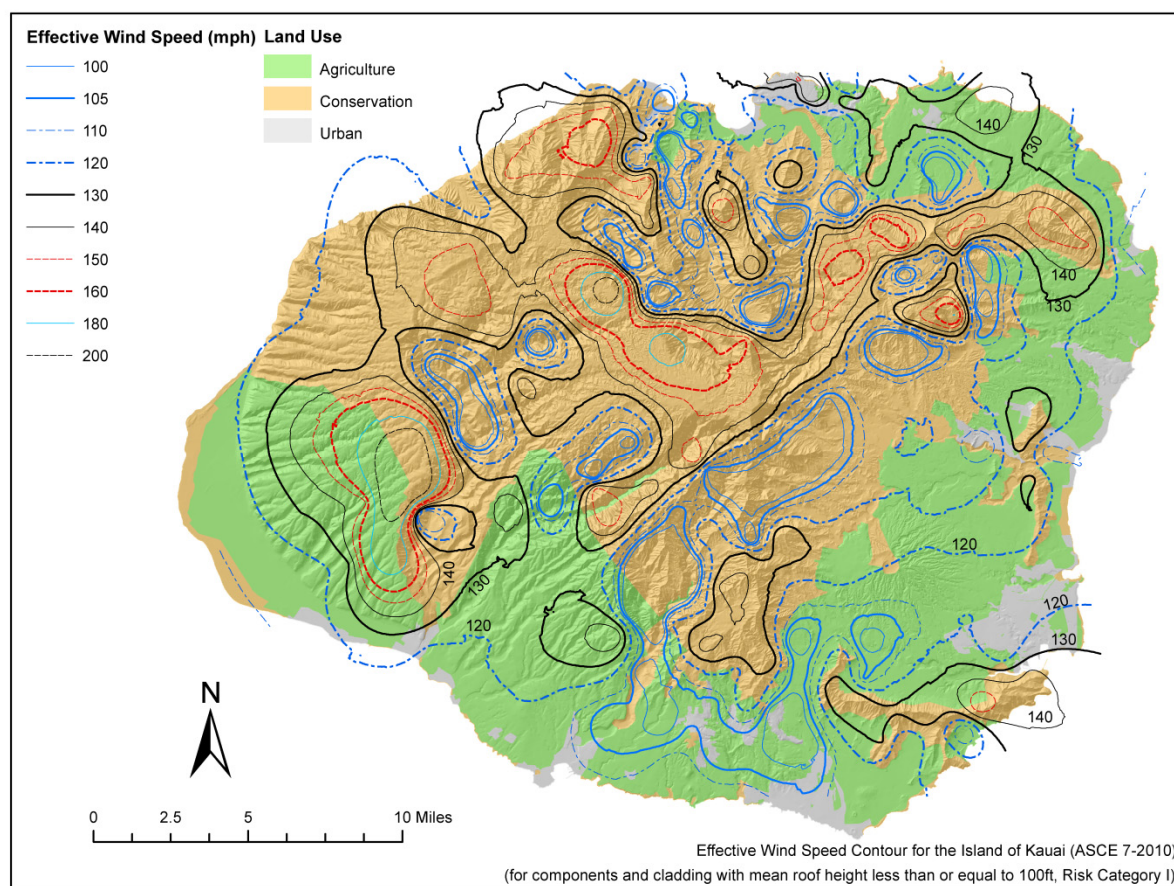


Figure 1609.3.2.1(f)
County of Kauai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category I Buildings less than 100 feet Tall

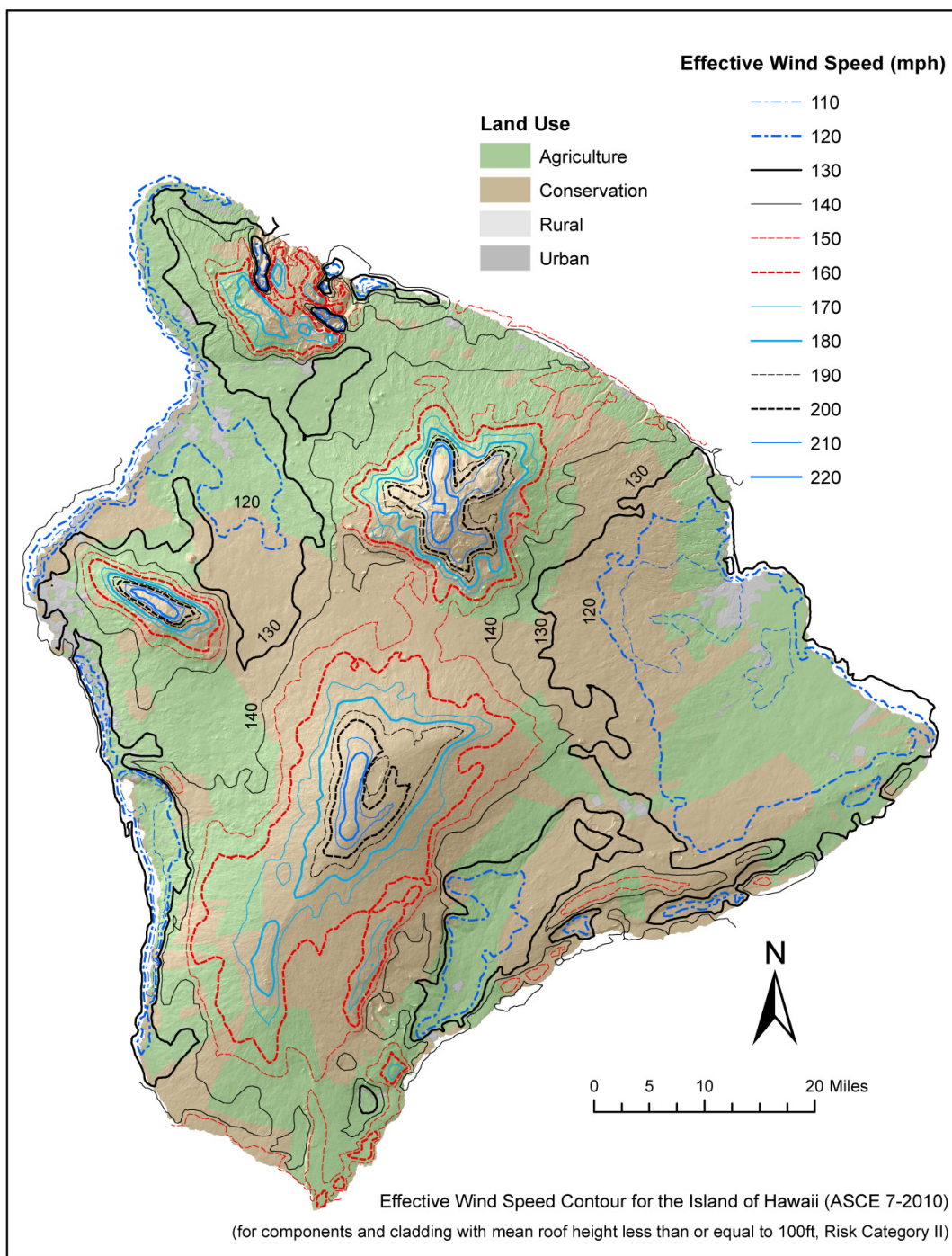


Figure 1609.3.2.2(a)
County of Hawaii Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 100 feet Tall

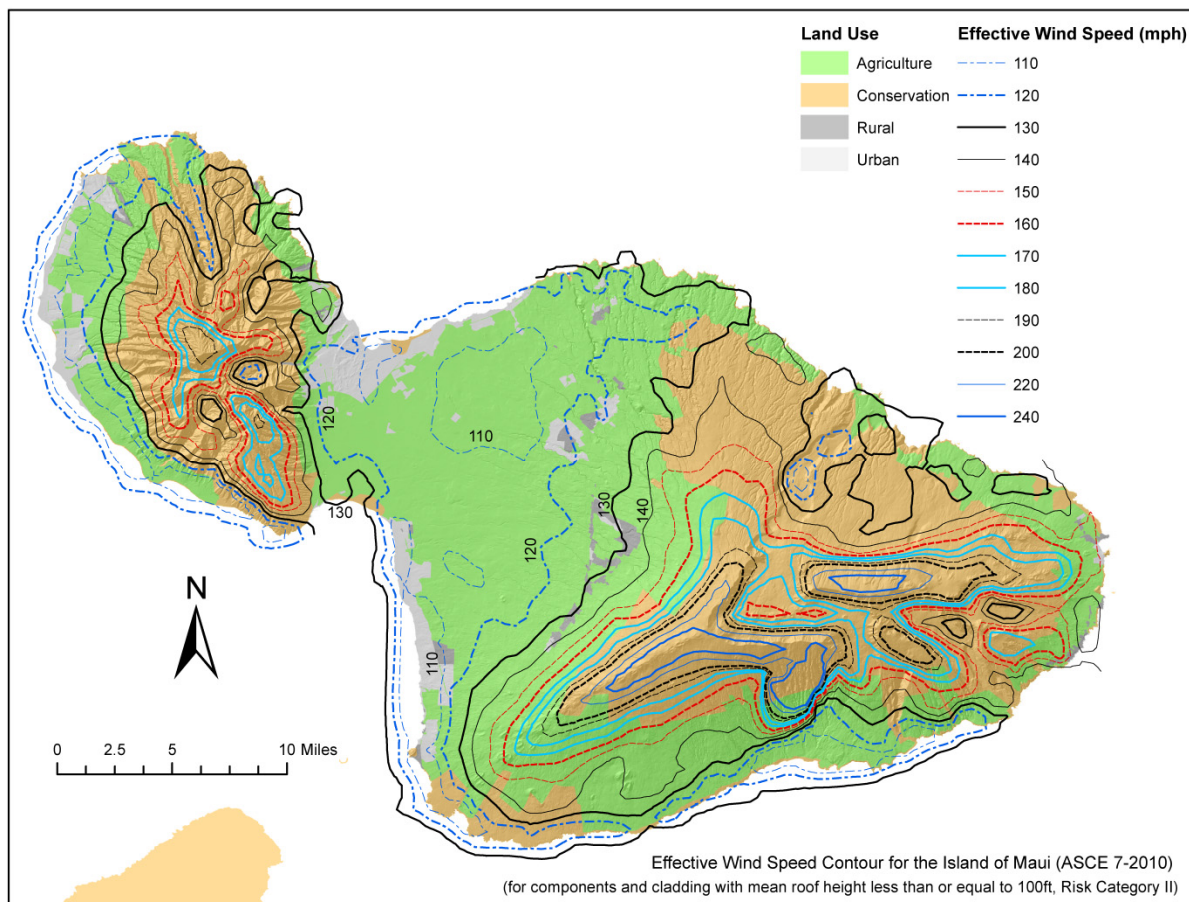


Figure 1609.3.2.1(b)
County of Maui, Island of Maui Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 100 feet Tall

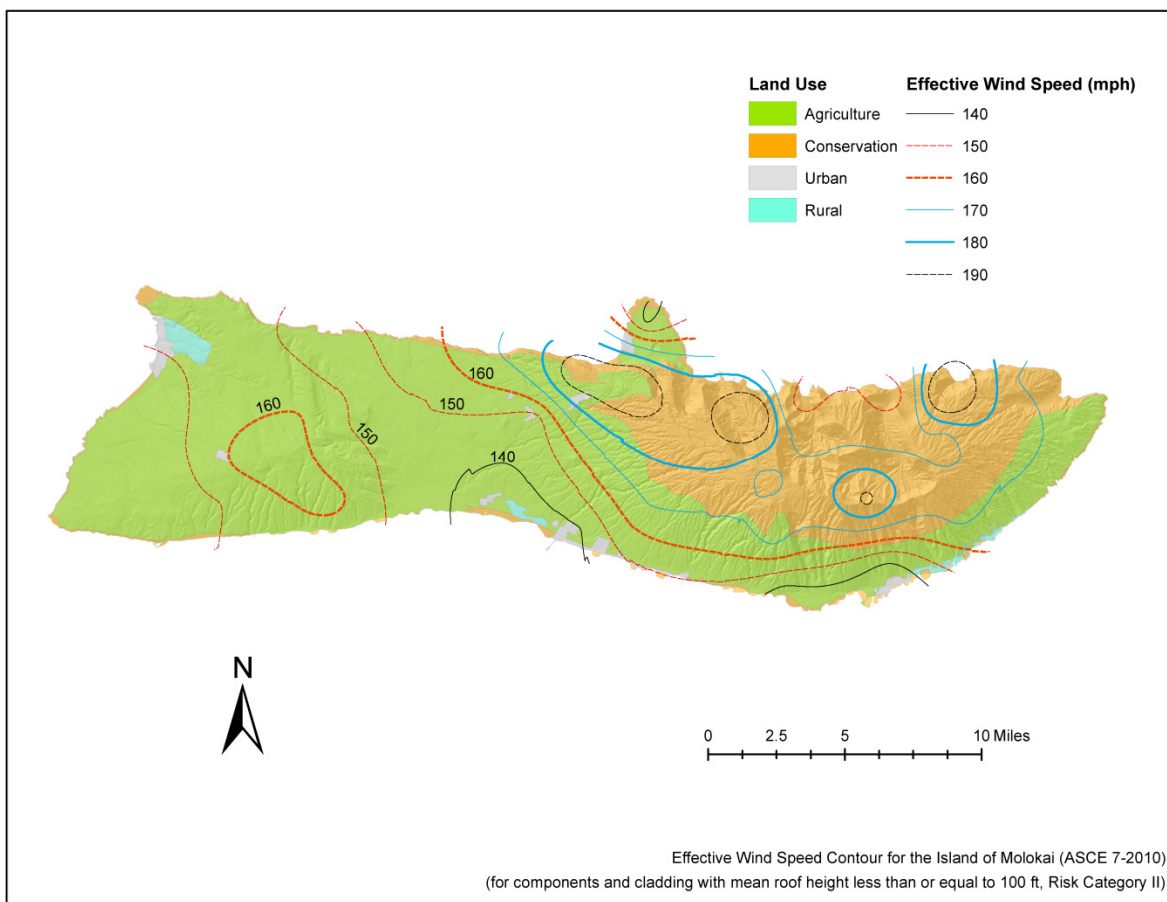


Figure 1609.3.2.2(c)
County of Maui, Island of Molokai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 100 feet Tall

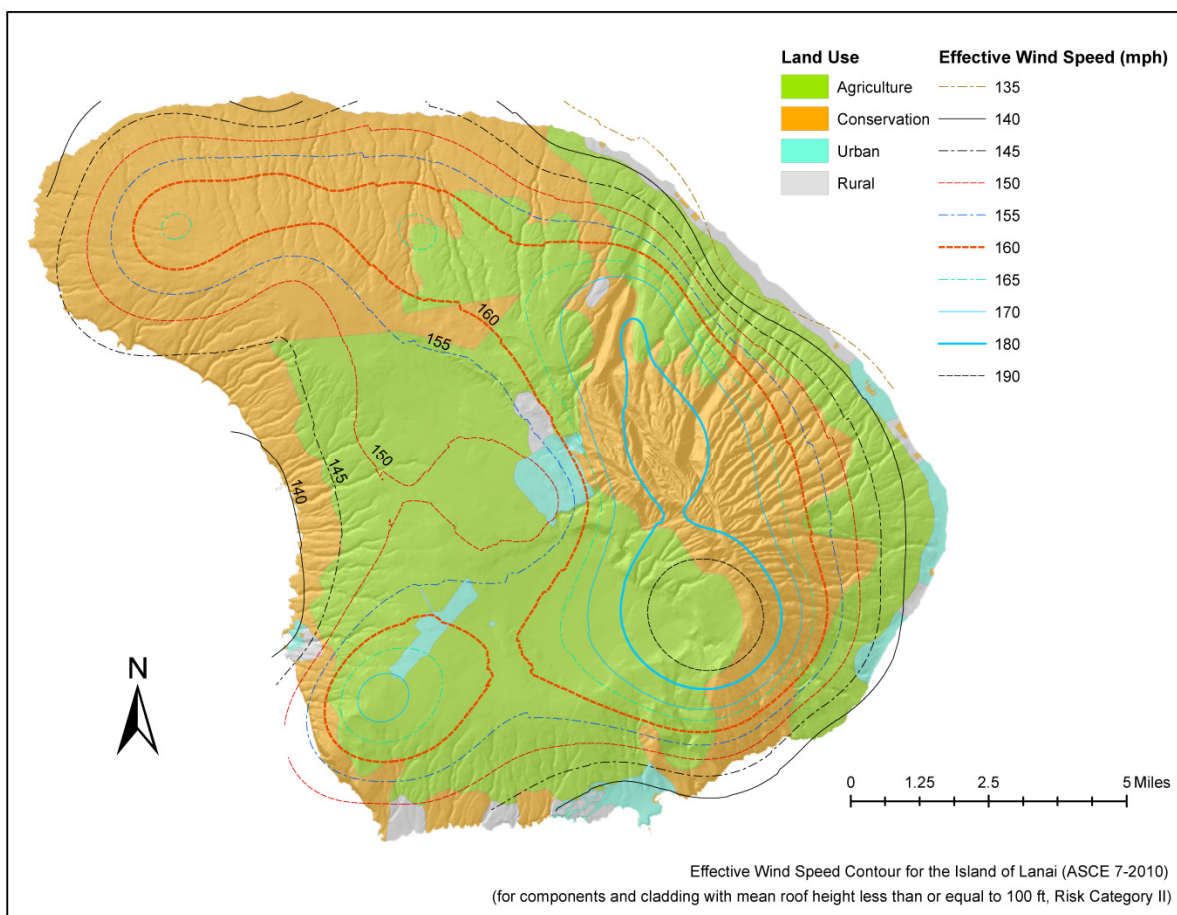


Figure 1609.3.2.2(d)
County of Maui, Island of Lanai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 100 feet Tall

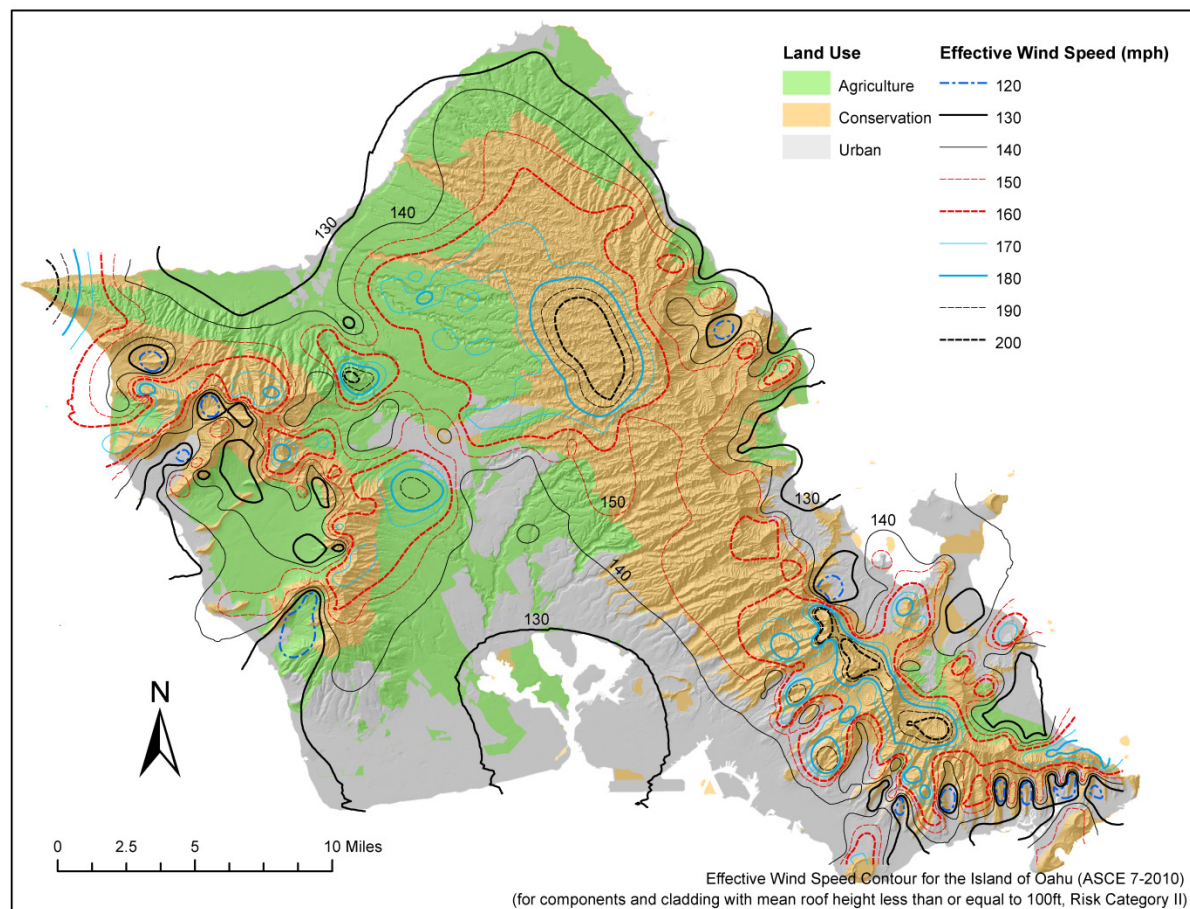


Figure 1609.3.2.2(e)
City and County of Honolulu Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 60 feet Tall

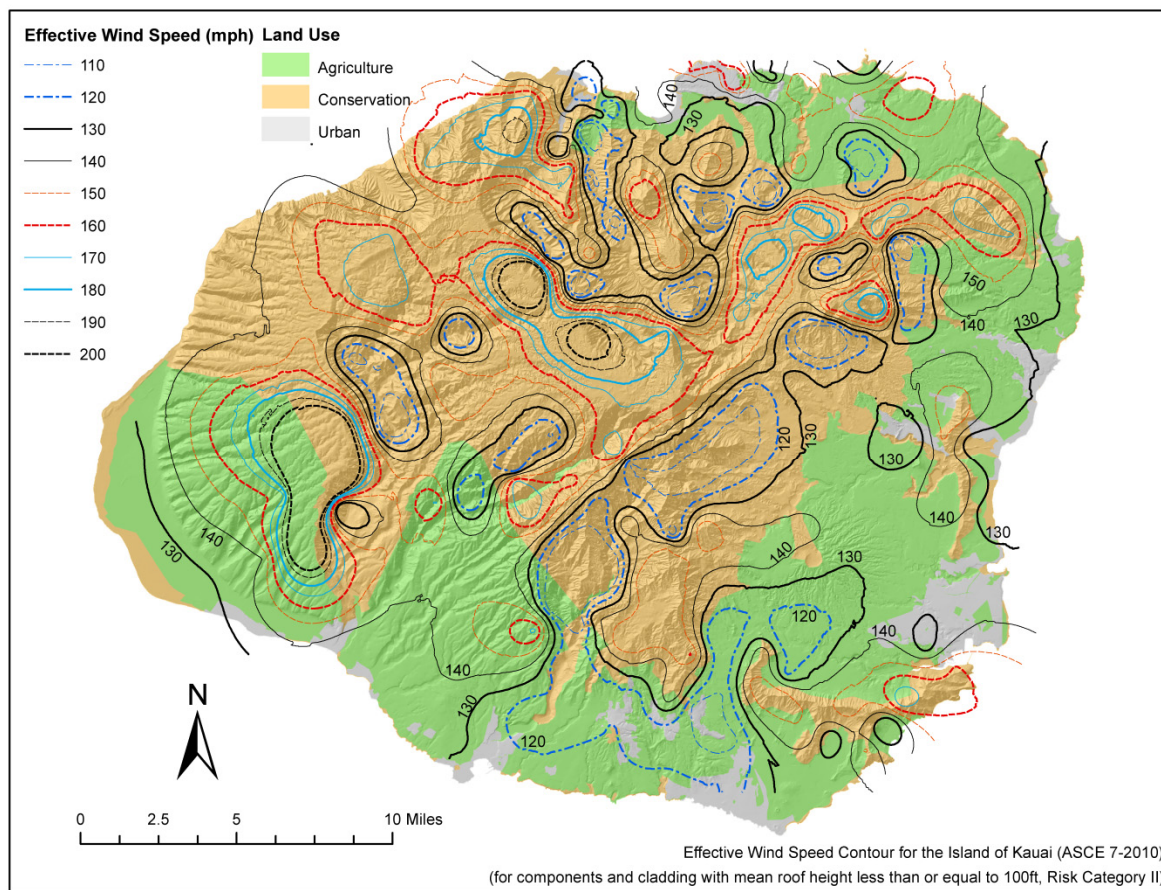
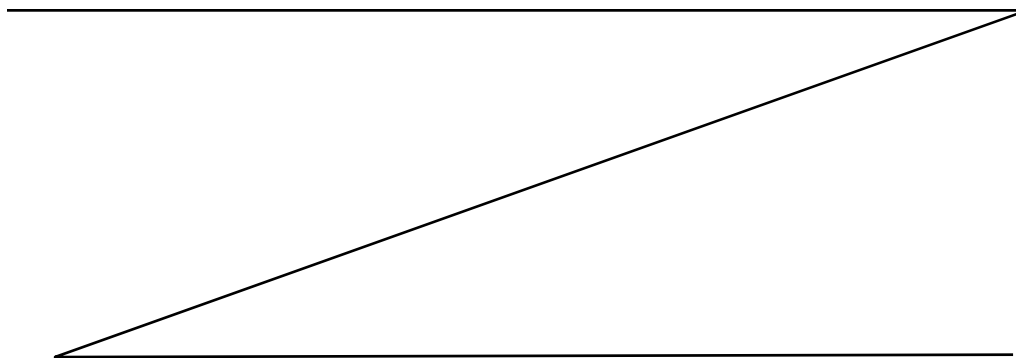


Figure 1609.3.2.2(f)
County of Kauai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category II Buildings less than 100 feet Tall



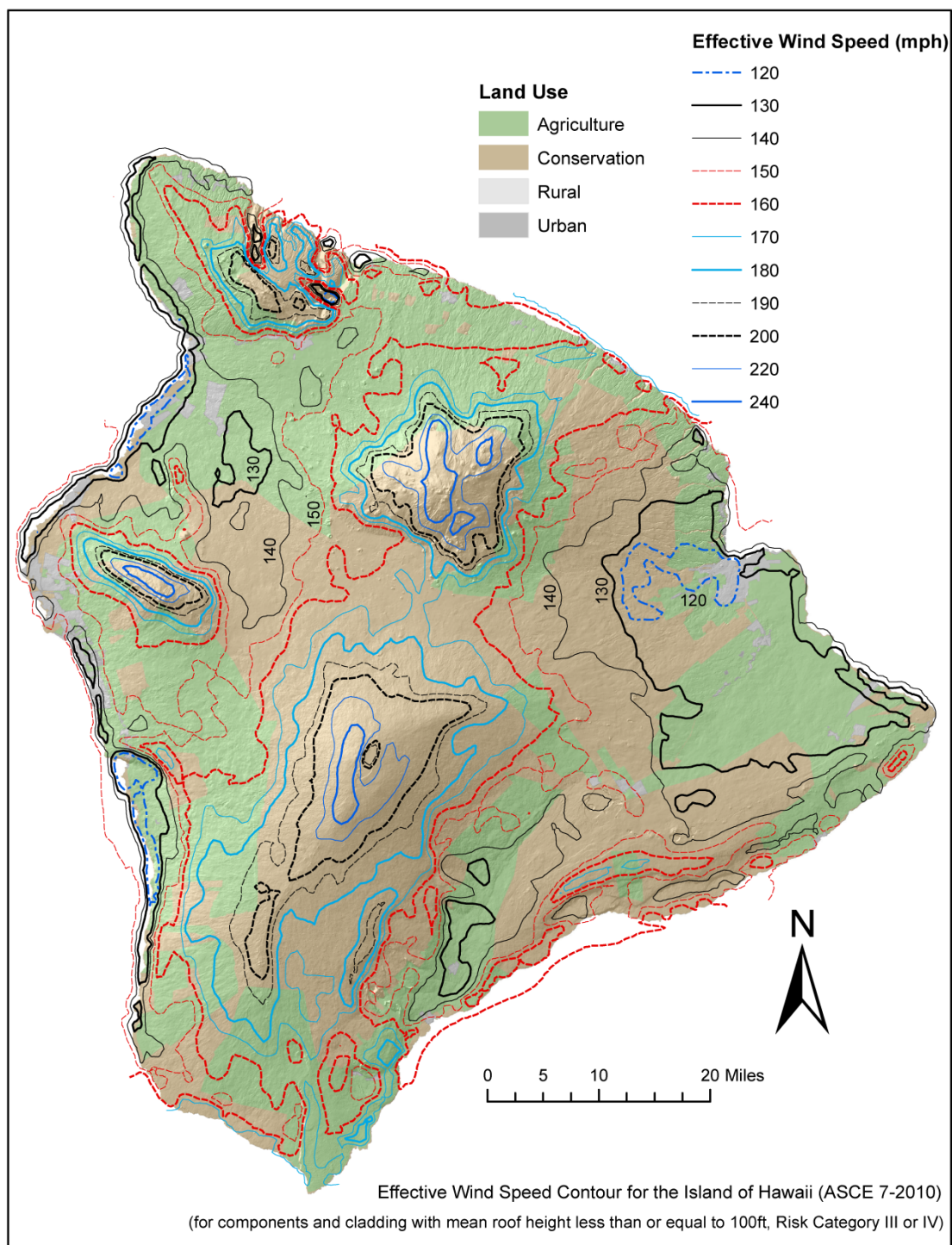


Figure 1609.3.2.3(a)
County of Hawaii Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 100 feet Tall

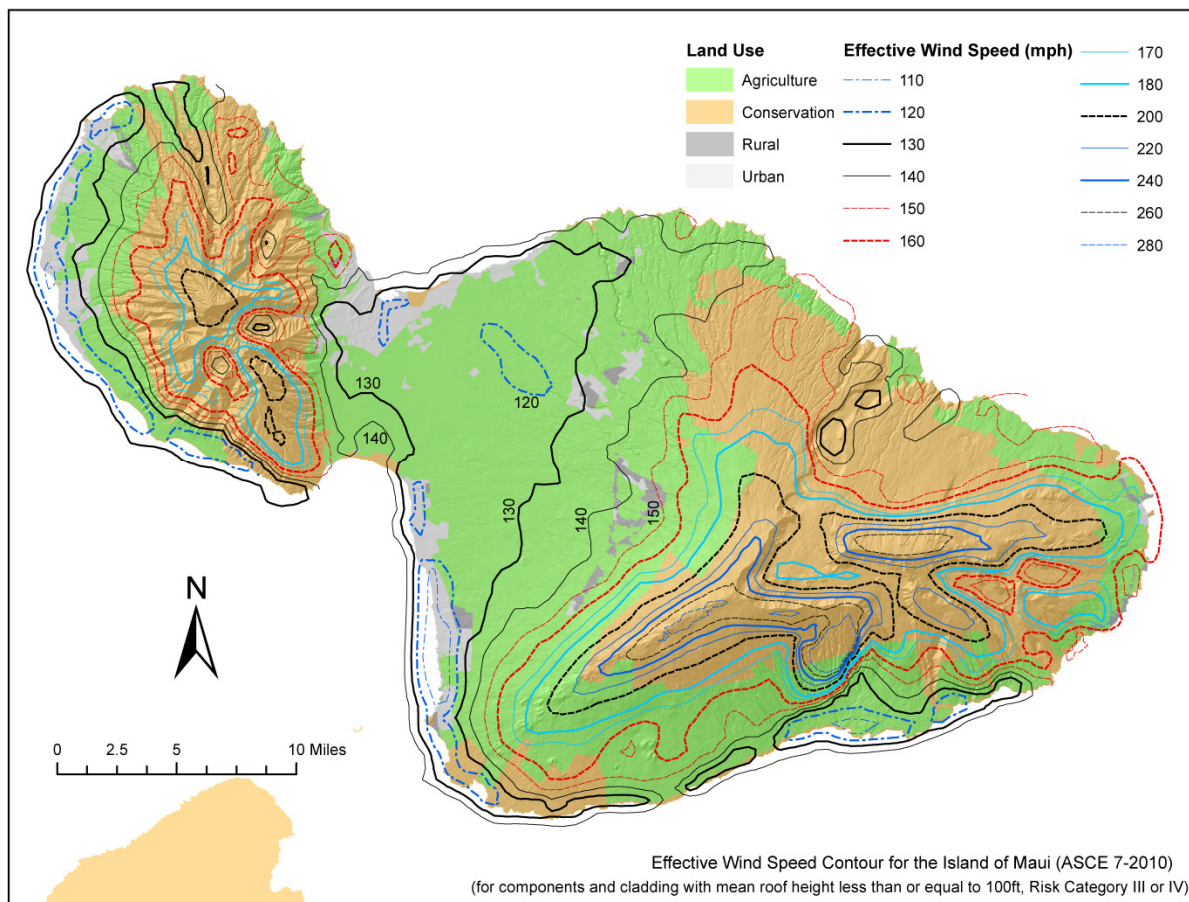


Figure 1609.3.2.3(b)
County of Maui, Island of Maui Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 100 feet Tall

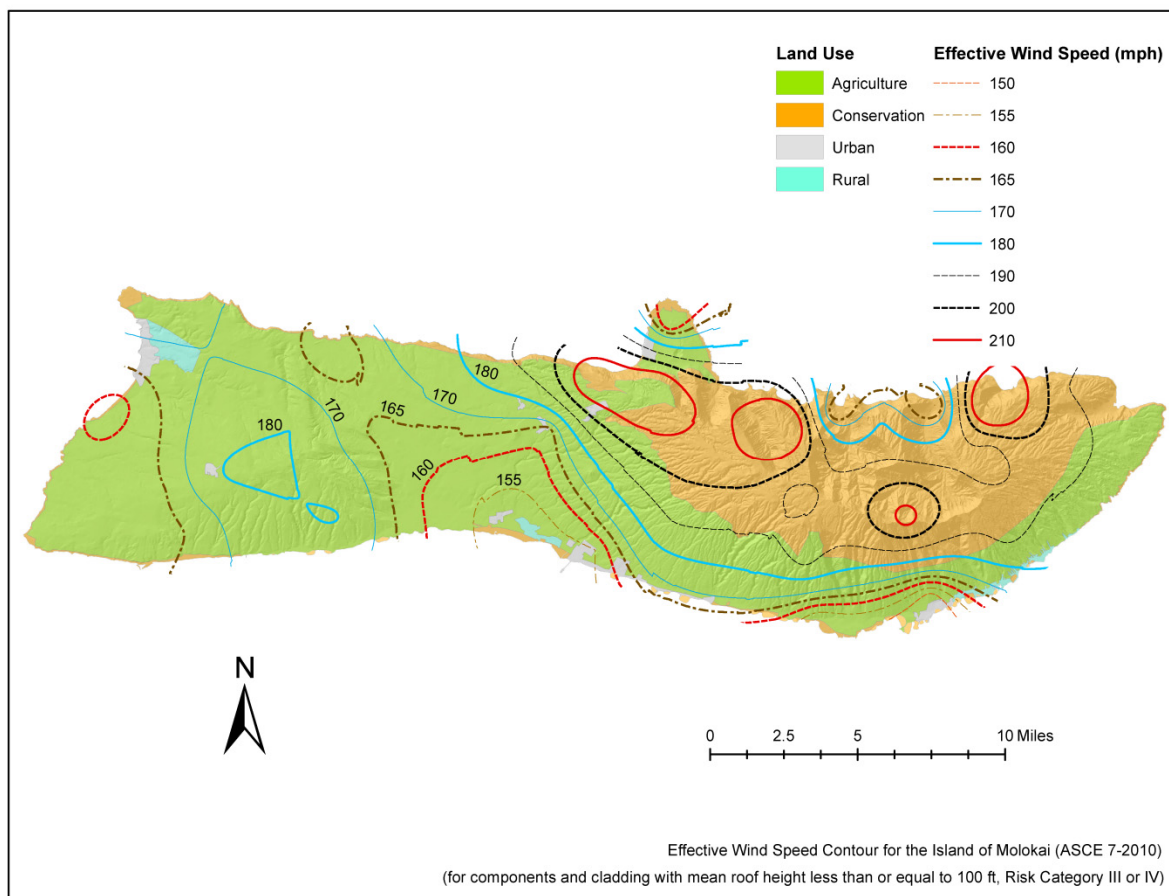


Figure 1609.3.2.3(c)
County of Maui, Island of Molokai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 100 feet Tall

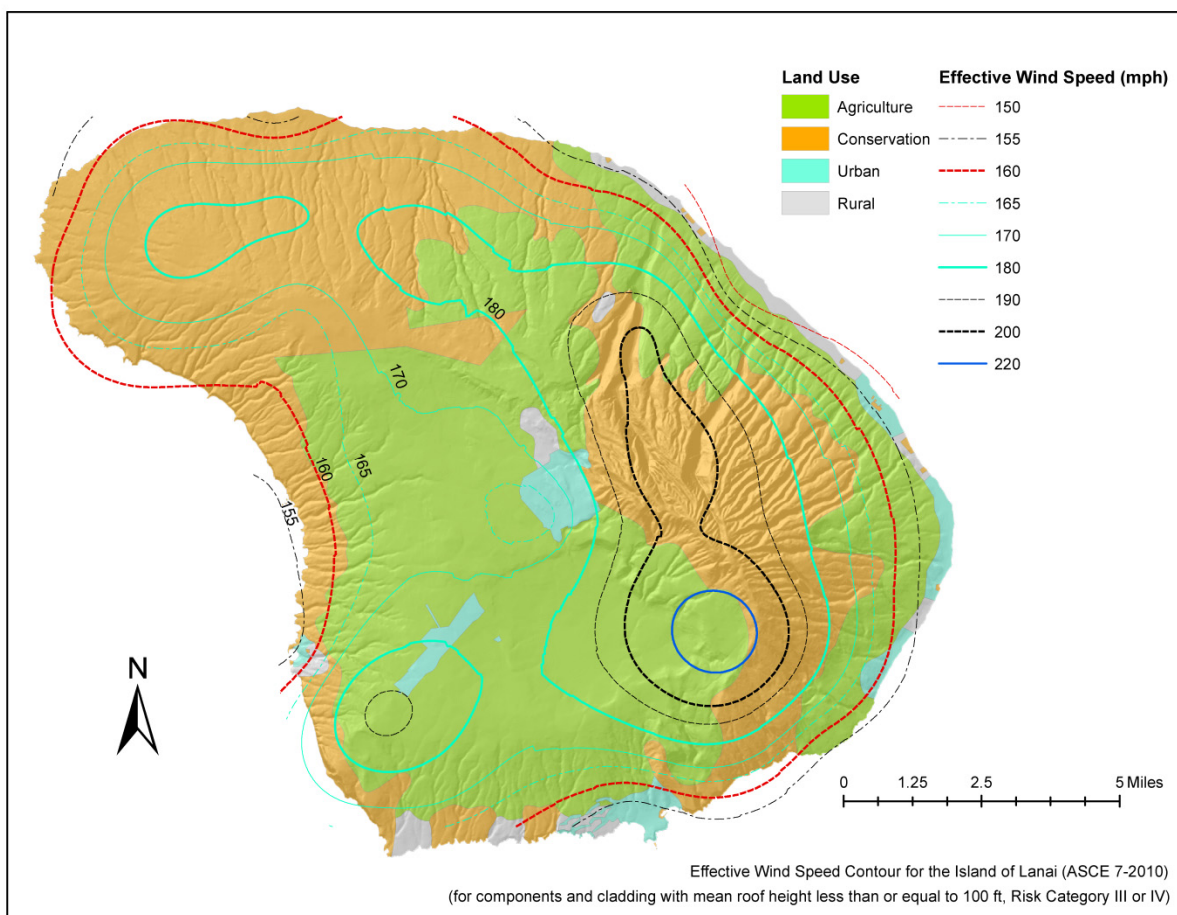


Figure 1609.3.2.3(d)
County of Maui, Island of Lanai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 100 feet Tall

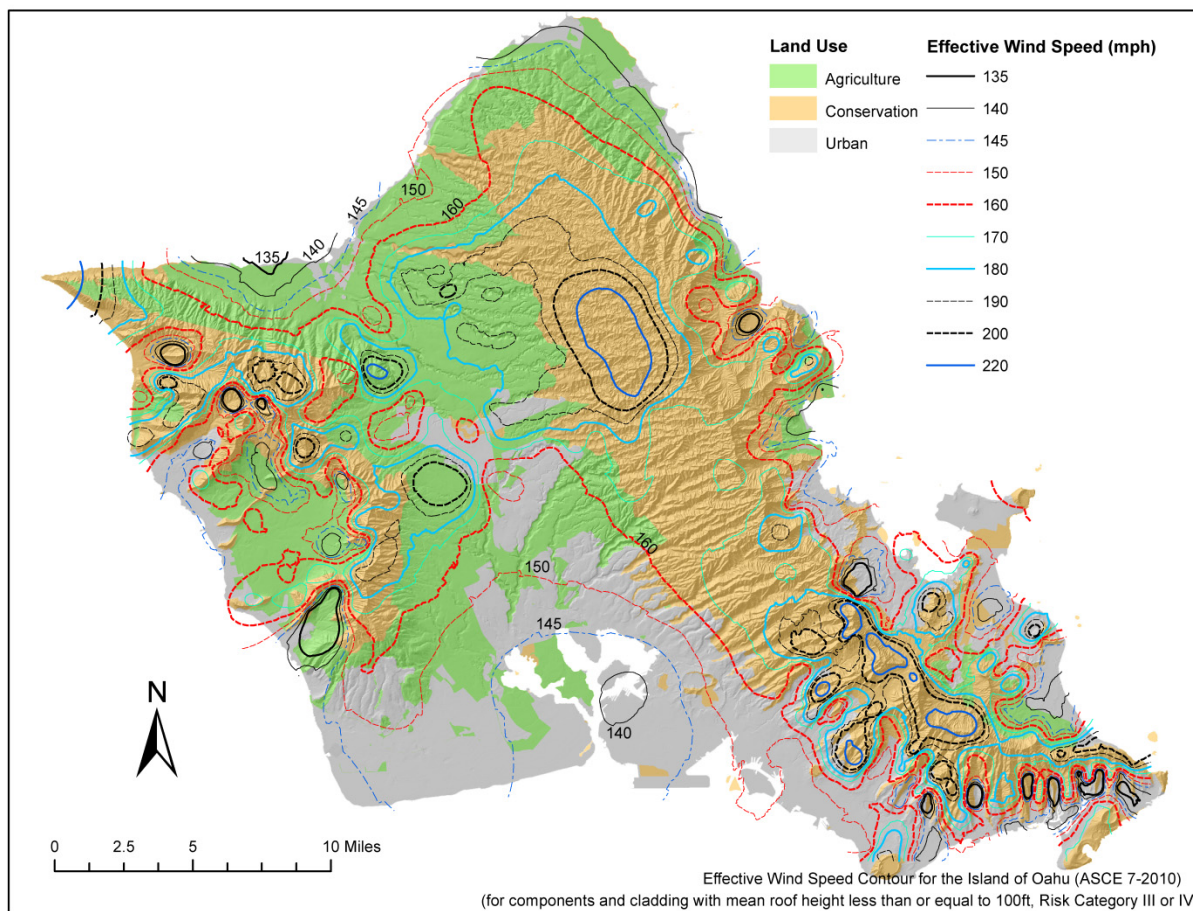


Figure 1609.3.2.3(e)
City and County of Honolulu Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 60 feet Tall

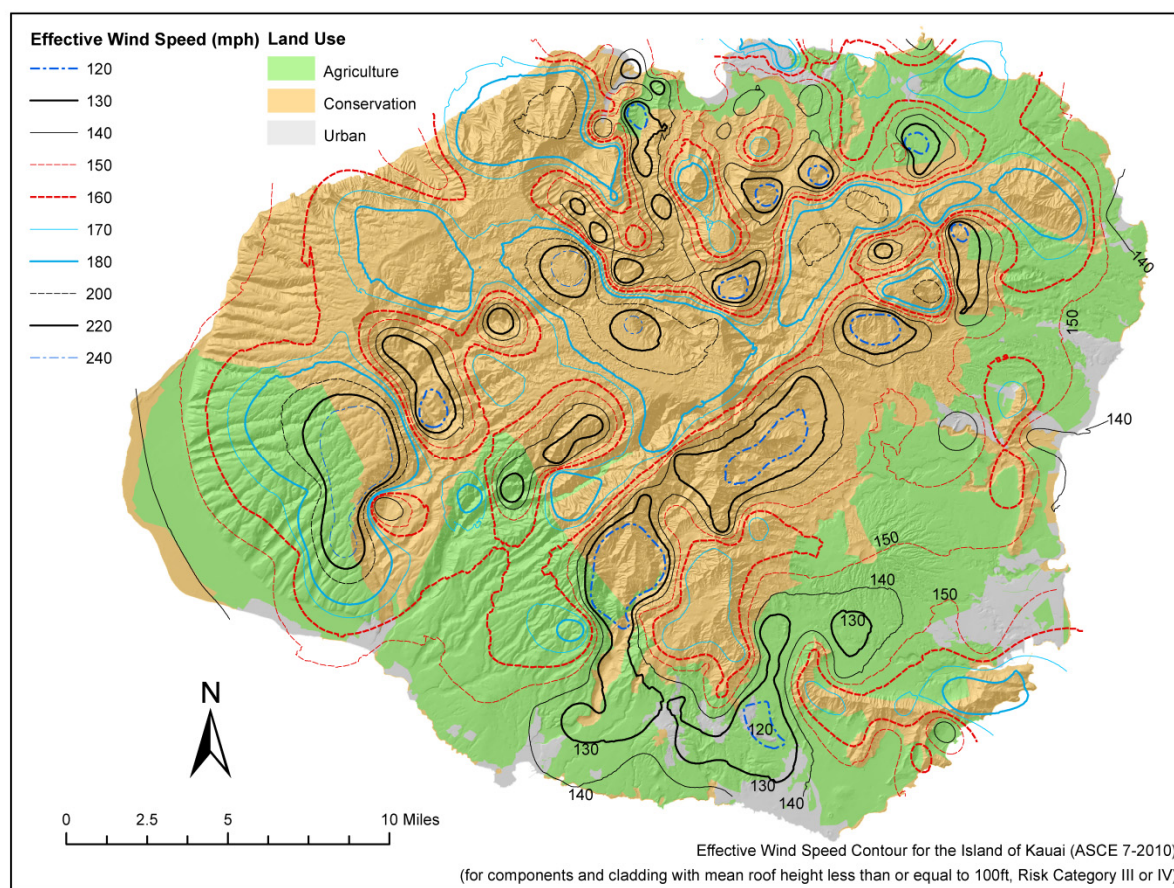


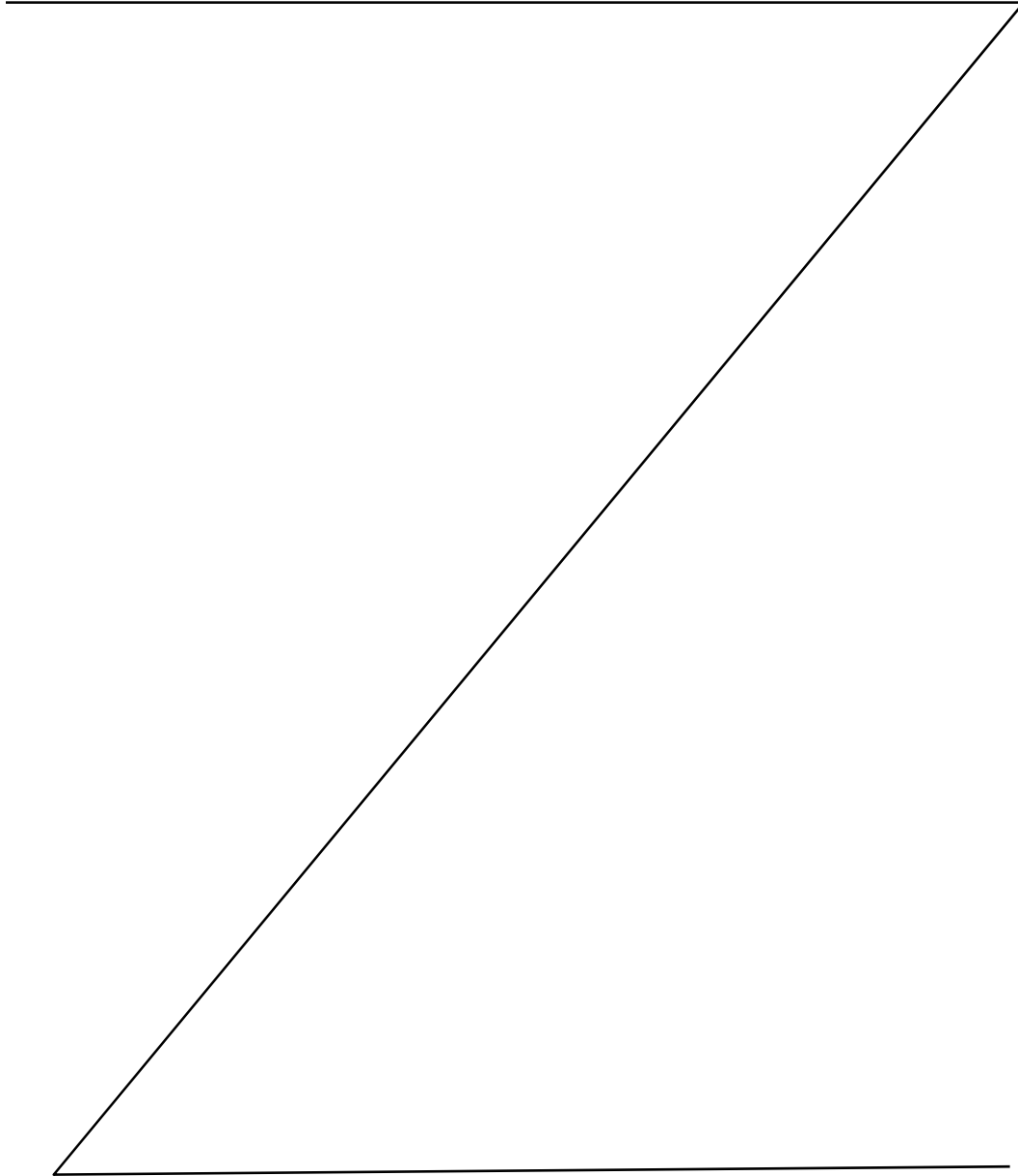
Figure 1609.3.2.3(f)
County of Kauai Effective Ultimate Wind Speed, $V_{eff-ult}$, for Components and Cladding for Risk Category III and IV Buildings less than 100 feet Tall

W101.9 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_{zt} , where K_{zt} is given in Figures 1609.3.3(a) through 1609.3.3(f).

Exception: 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.



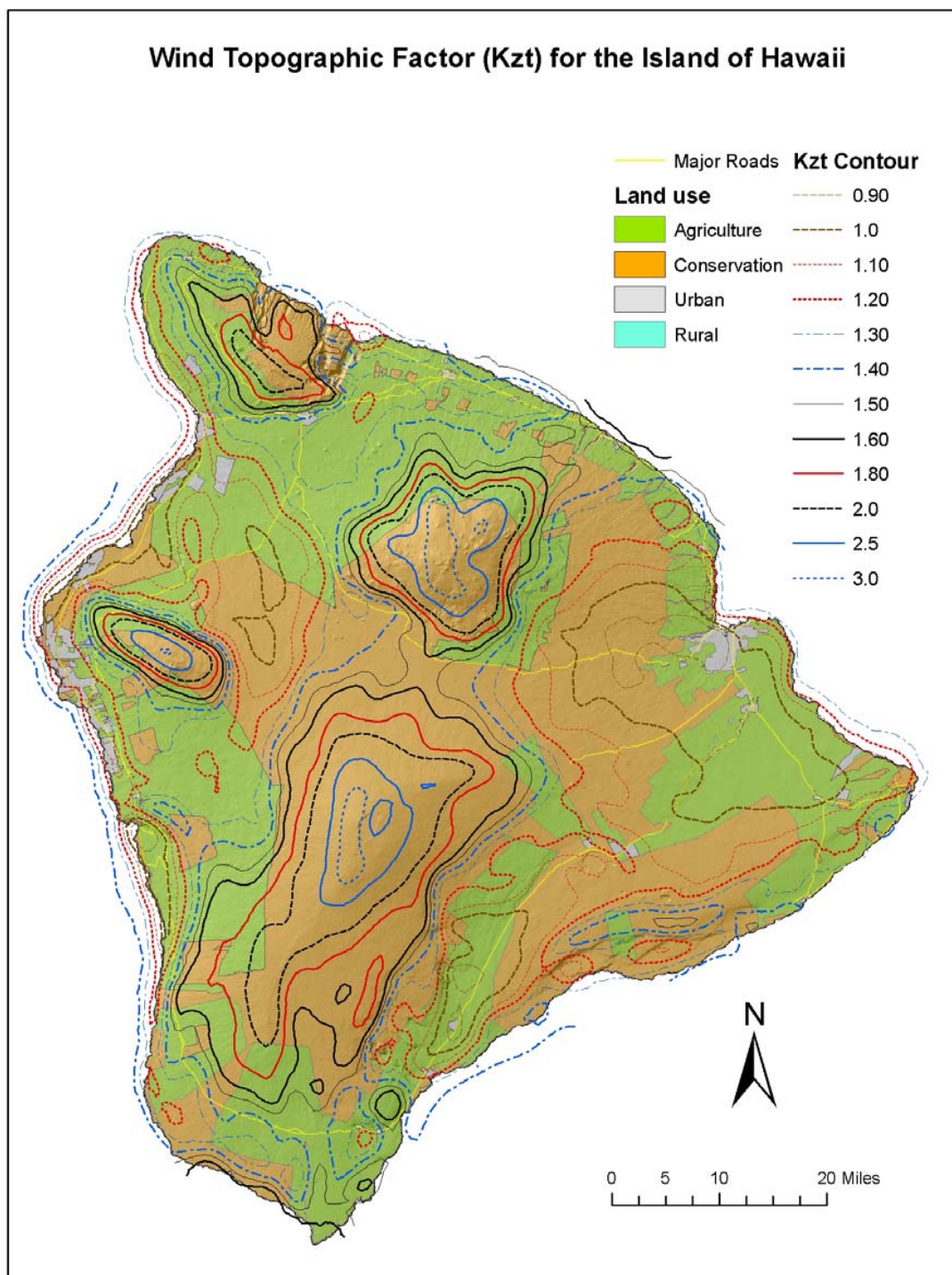


Figure 1609.3.3(a)
County of Hawaii Peak Gust Topographic Factor K_{zt}

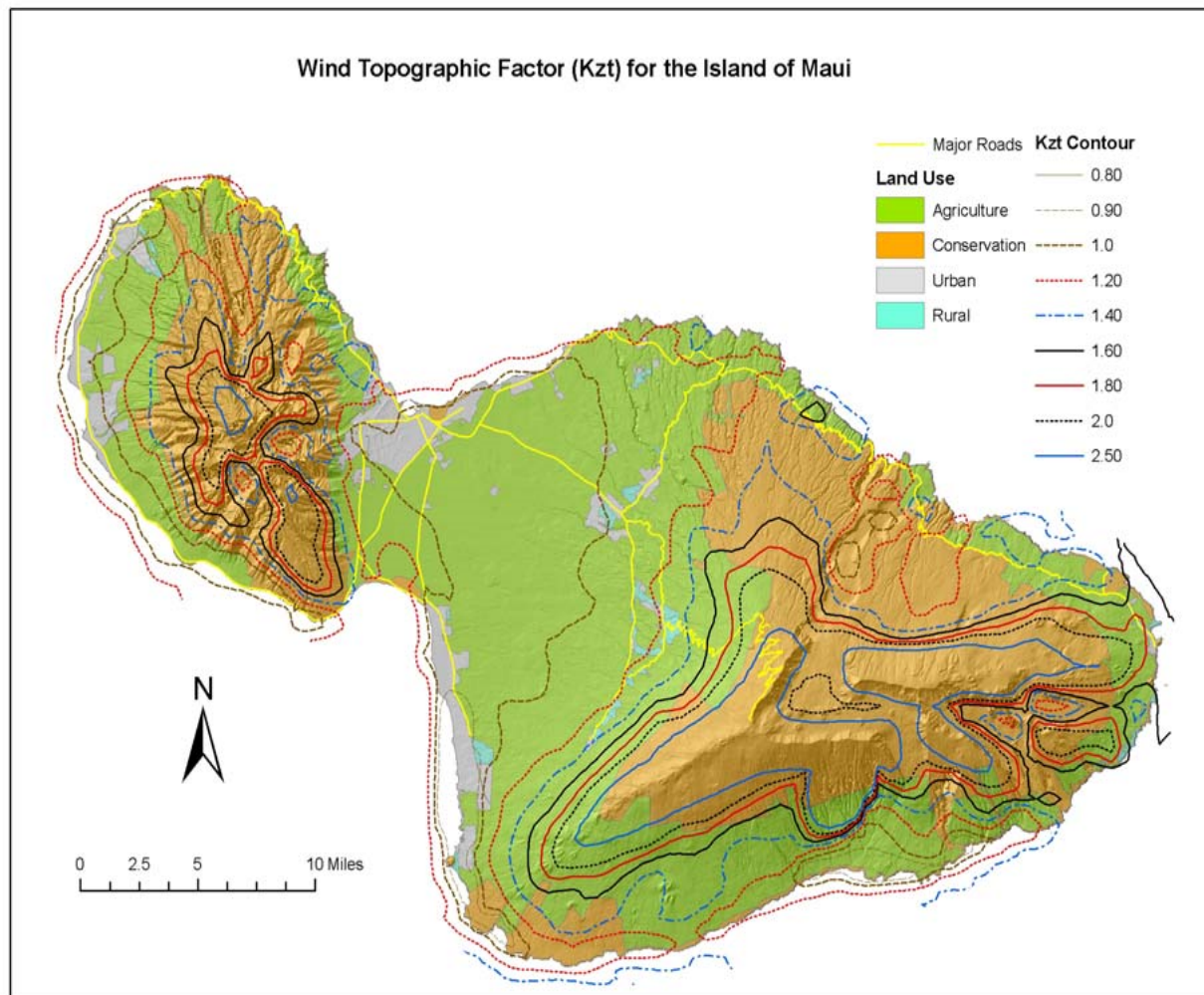
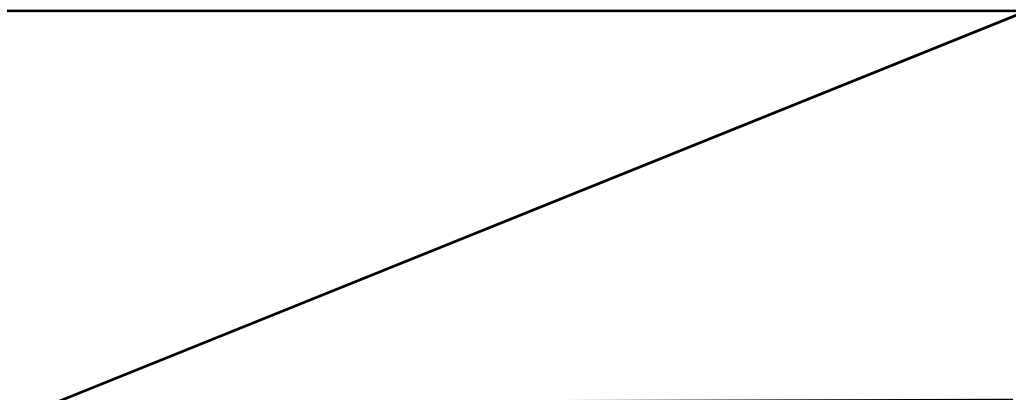


Figure 1609.3.3(b)
County of Maui, Island of Maui Peak Gust Topographic Factor K_{zt}



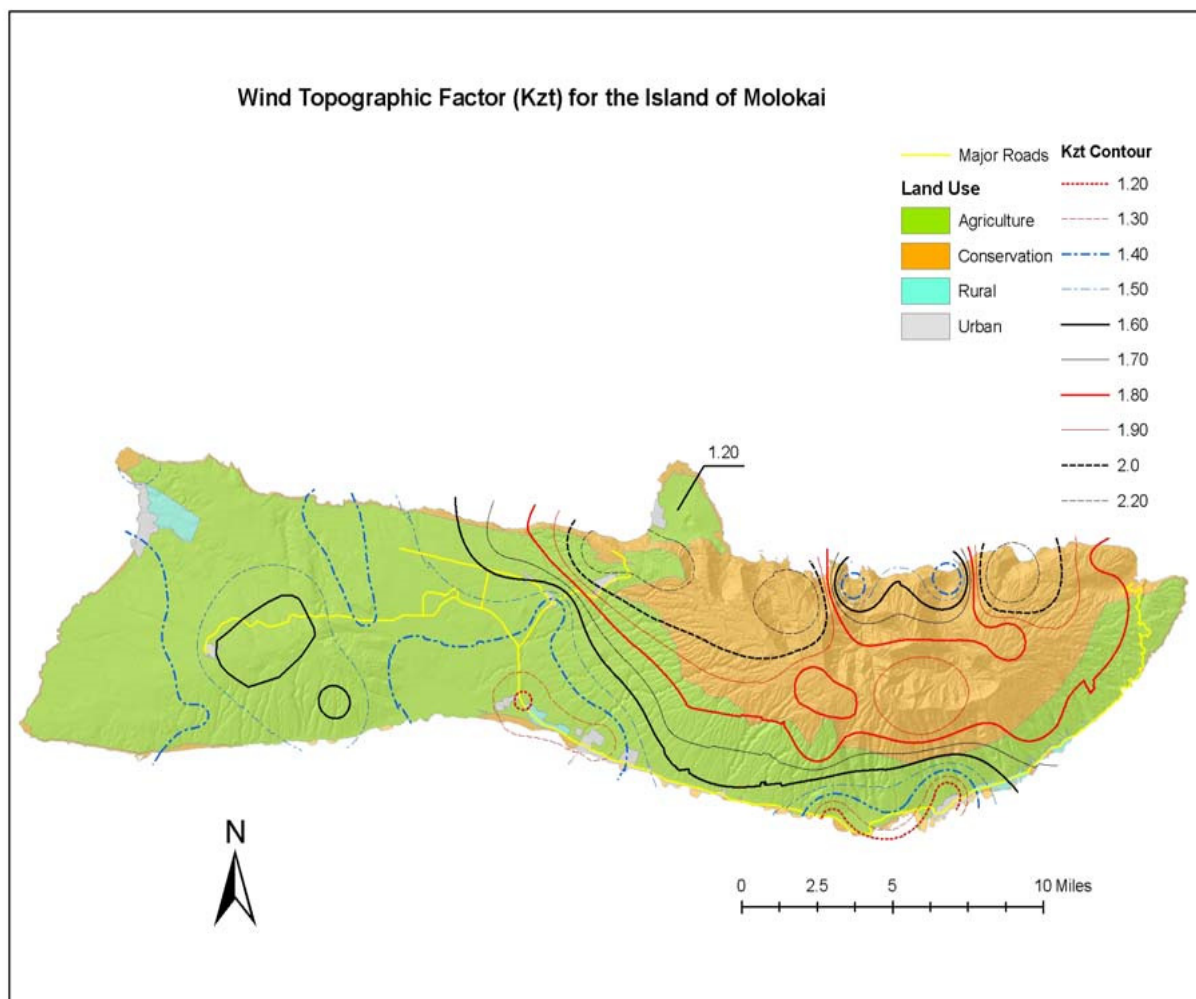


Figure 1609.3.3(c)
County of Maui, Island of Molokai Peak Gust Topographic Factor K_{zt}

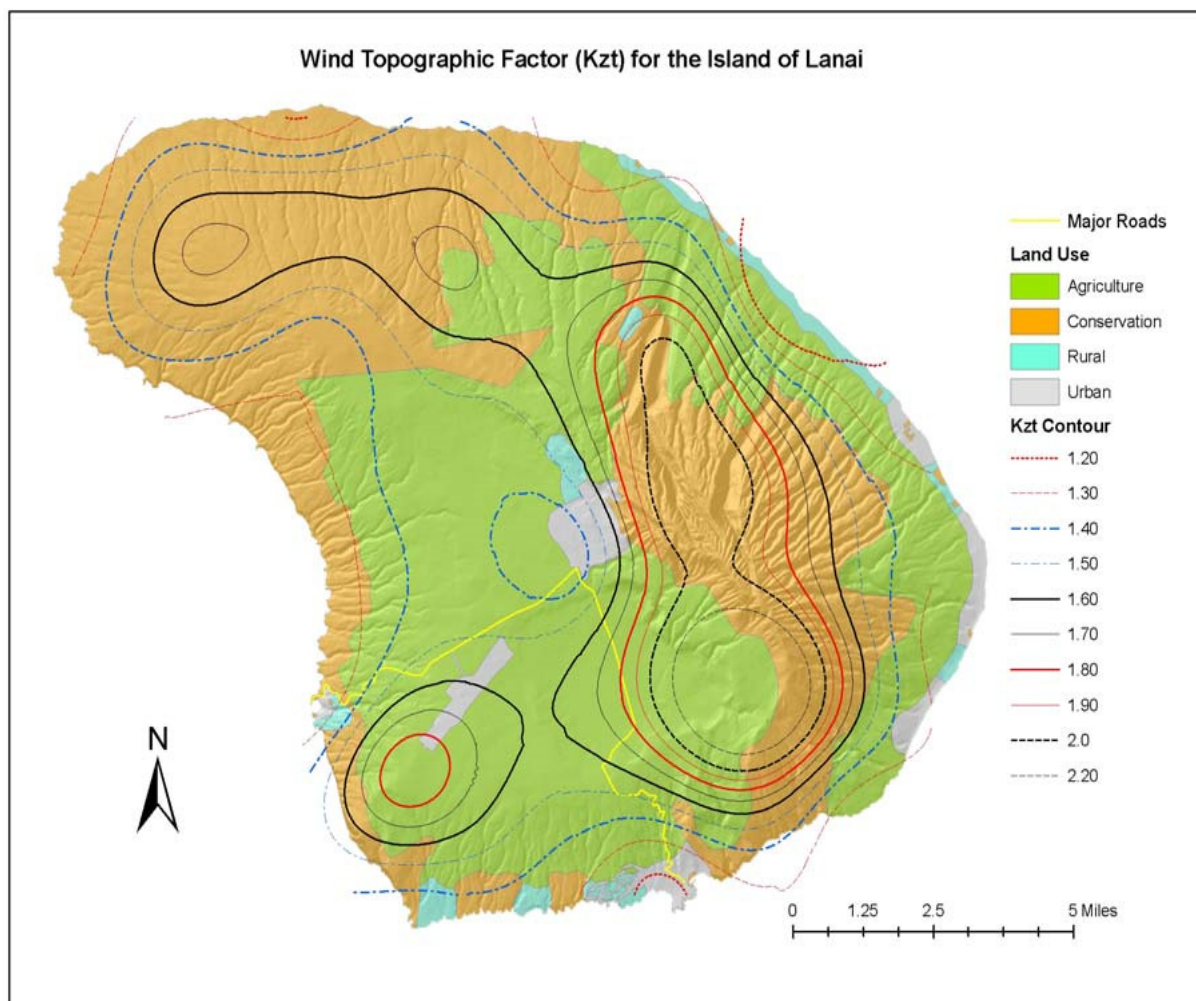
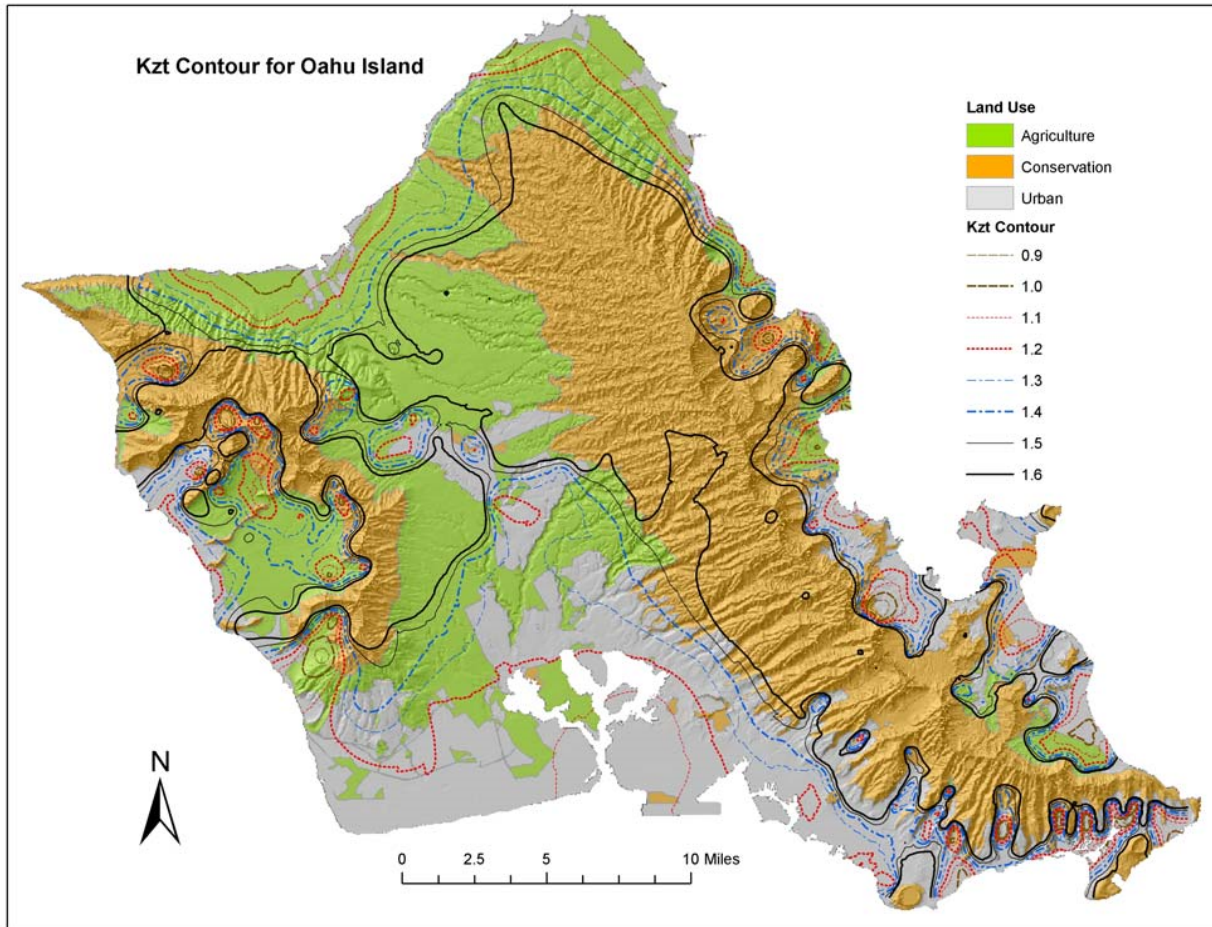


Figure 1609.3.3(d)
County of Maui, Island of Lanai Peak Gust Topographic Factor K_{zt}

**Figure 1609.3.3(e)**

City and County of Honolulu Peak Topographic Factor K_{zt} for Building Heights up to 100 feet^{a,b}

- 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.
- 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

Building roof height above ground (ft)	≤ 100	120	140	160	180	200	220	≥ 240
Adjustment factor to $K_{zt} \geq 1.2$	100%	98%	96%	94%	92%	90%	92%	94%

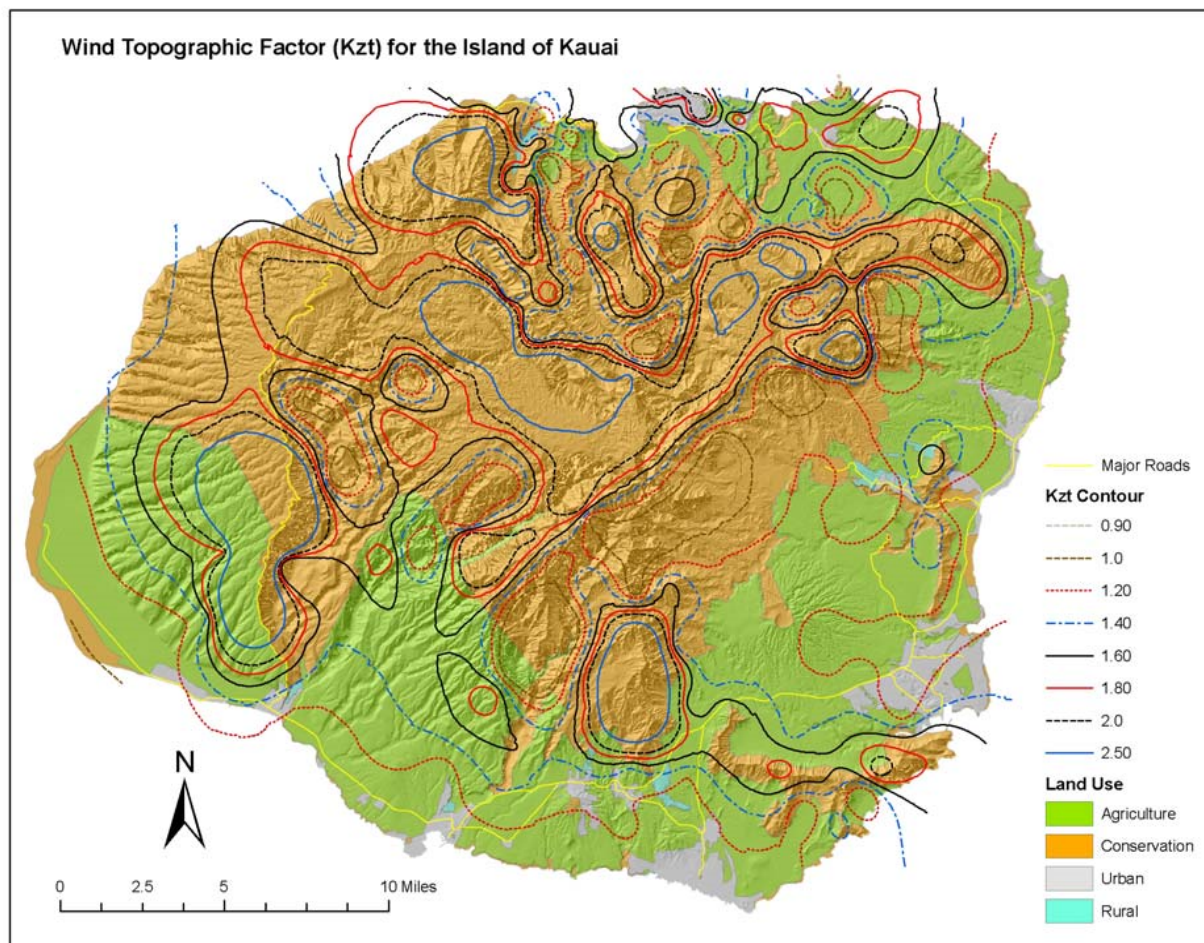
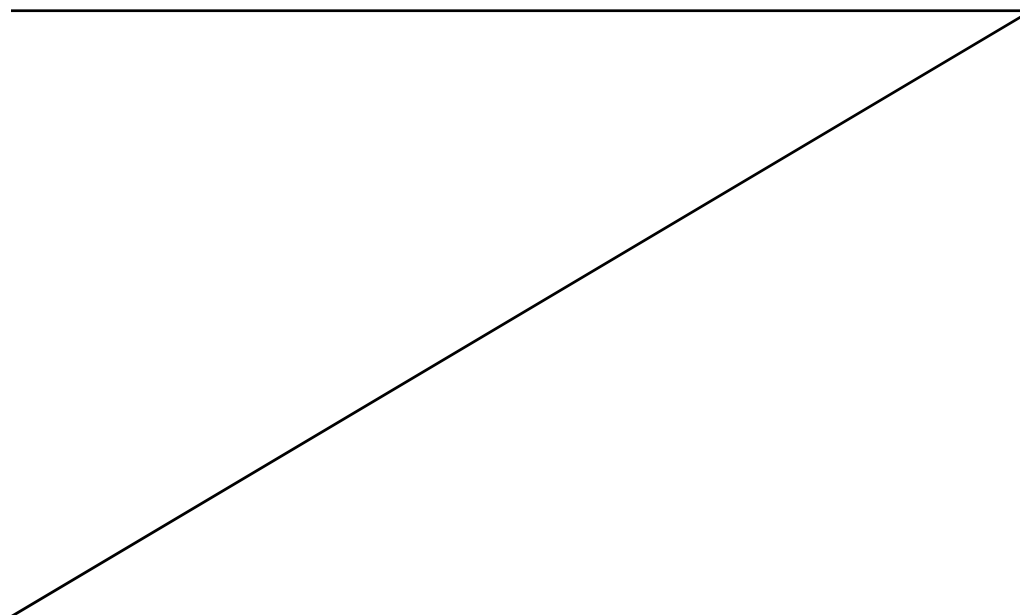


Figure 1609.3.3(f)
County of Kauai Peak Gust Topographic Factor K_{zt}



W101.10 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 1609.3.4(b) (4).

Table 1609.3.4(a)(1)
 K_d Values for Main Wind Force Resisting Systems Sited in Hawaii County ^{a,b}

Topographic Location on the Island of Hawaii	Main Wind Force Resisting Systems		Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction		Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	
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	0.70	0.75	0.85
All other sites	0.70	0.80	0.75	0.80	0.95

- The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 shall be permitted.
- 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)
 K_d Values for Main Wind Force Resisting Systems Sited in Maui County ^{a,b}

Topographic Location in the County of Maui	Main Wind Force Resisting Systems		Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction		Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	
Sites on the Island of Maui at an elevation not greater than 1000 ft.	0.60	0.65	0.70	0.75	0.85
Sites on the Island of Maui at an elevation greater than 1000 ft.	0.65	.70	0.75	0.80	0.90
All other sites on the Islands of Molokai and Lanai	0.80	0.85	0.80	0.85	0.95

- The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 shall be permitted.
- 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^{a,b}

Topographic Location on Oahu, Hawaii	Main Wind Force Resisting Systems		Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction		Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	
Sites within valleys at an elevation of at least 50 ft. but not greater than 500 ft.	0.65	0.70	0.70	0.75	0.85
Central Oahu above an elevation of 500 ft, the Ewa and Kapolei plains, and coastal areas with K_{zt} (10m) not greater than 1.2	0.75	0.80	0.75	0.80	0.95
All other areas, including Hills, Hillside, Ridges, Bluffs, and Escarpments at any elevation or height; coastal and inland areas with K_{zt} (10m) greater than 1.2	0.70	0.75	0.75	0.80	0.90

- a. The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 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.

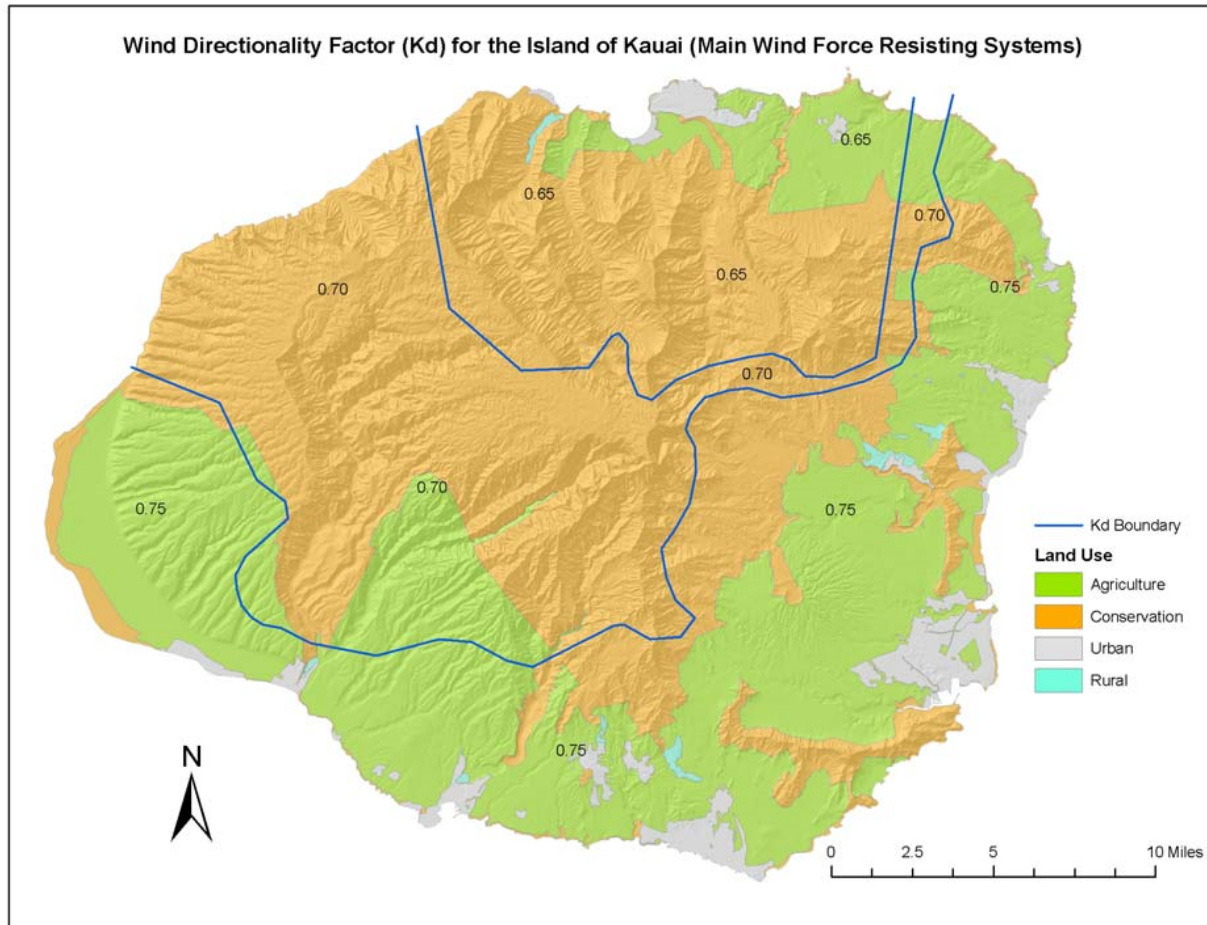


Figure 1609.3.4(a)(4)

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

- a. The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 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)
 K_d Values for Components and Cladding of Buildings Sited in Hawaii County^{a,b}

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.	Risk 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

- The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 shall be permitted.
- 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)
 K_d Values for Components and Cladding of Buildings Sited in Maui County^{a,b}

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.	Risk 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

- The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 shall be permitted.
- 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)
 K_d Values for Components and Cladding of Buildings Sited on Oahu, Hawaii ^{a,b}

Topographic Location on Oahu	Components and Cladding		
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Risk Category IV Buildings and Structures
Sites within valleys at an elevation of at least 50 ft. but not greater than 500 ft.	0.65	0.70	0.75
Central Oahu above an elevation of 500 ft, the Ewa and Kapolei plains, and coastal areas with K_{zt} (10m) not greater than 1.2	0.75	0.80	0.85
All other areas, including Hills, Hillsides, Ridges, Bluffs, and Escarpments at any elevation or height; coastal and inland areas with K_{zt} (10m) greater than 1.2	0.70	0.75	0.80

- a. The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 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.

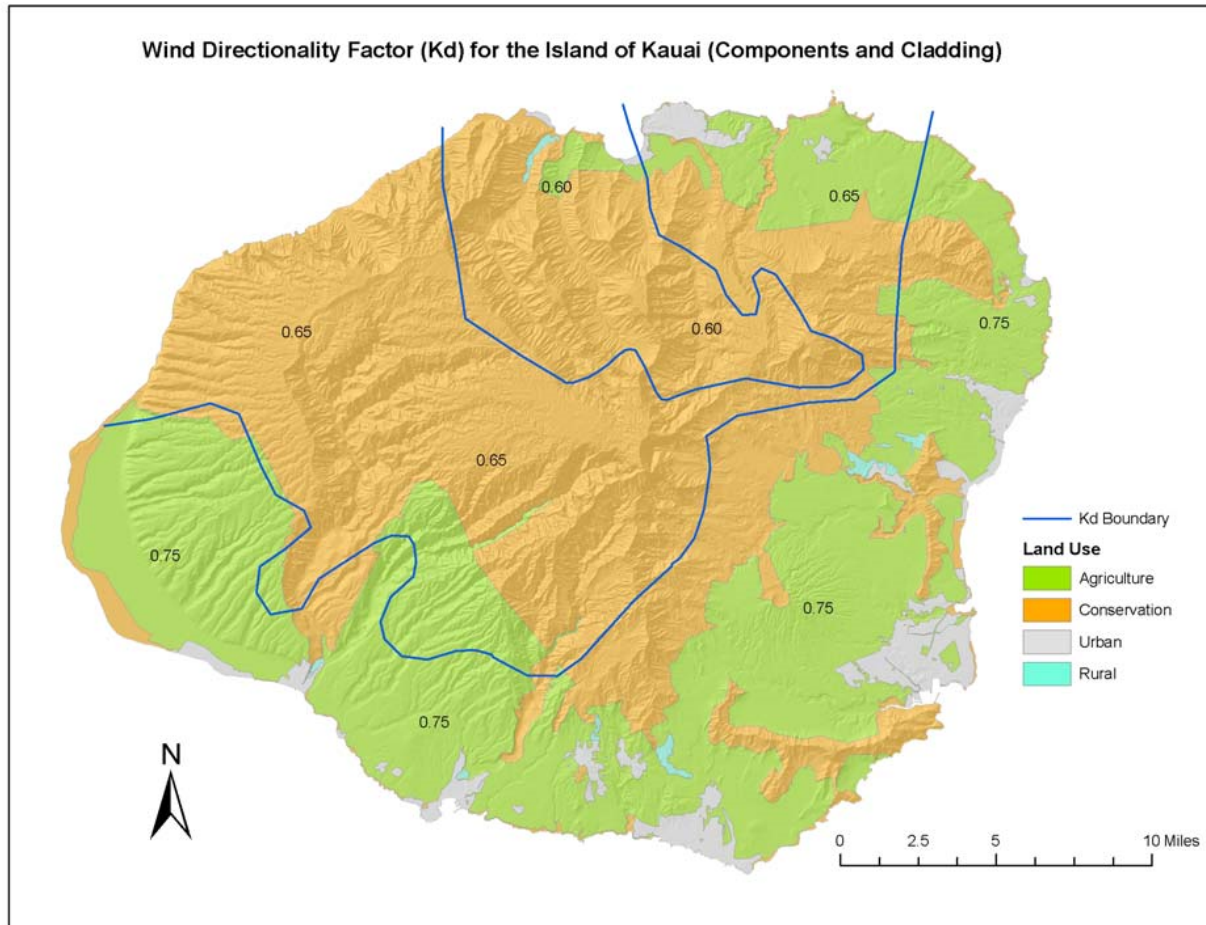


Figure 1609.3.4(b)(4)

K_d Values for Components and Cladding of Buildings Sited on Kauai County, Hawaii ^{a,b}

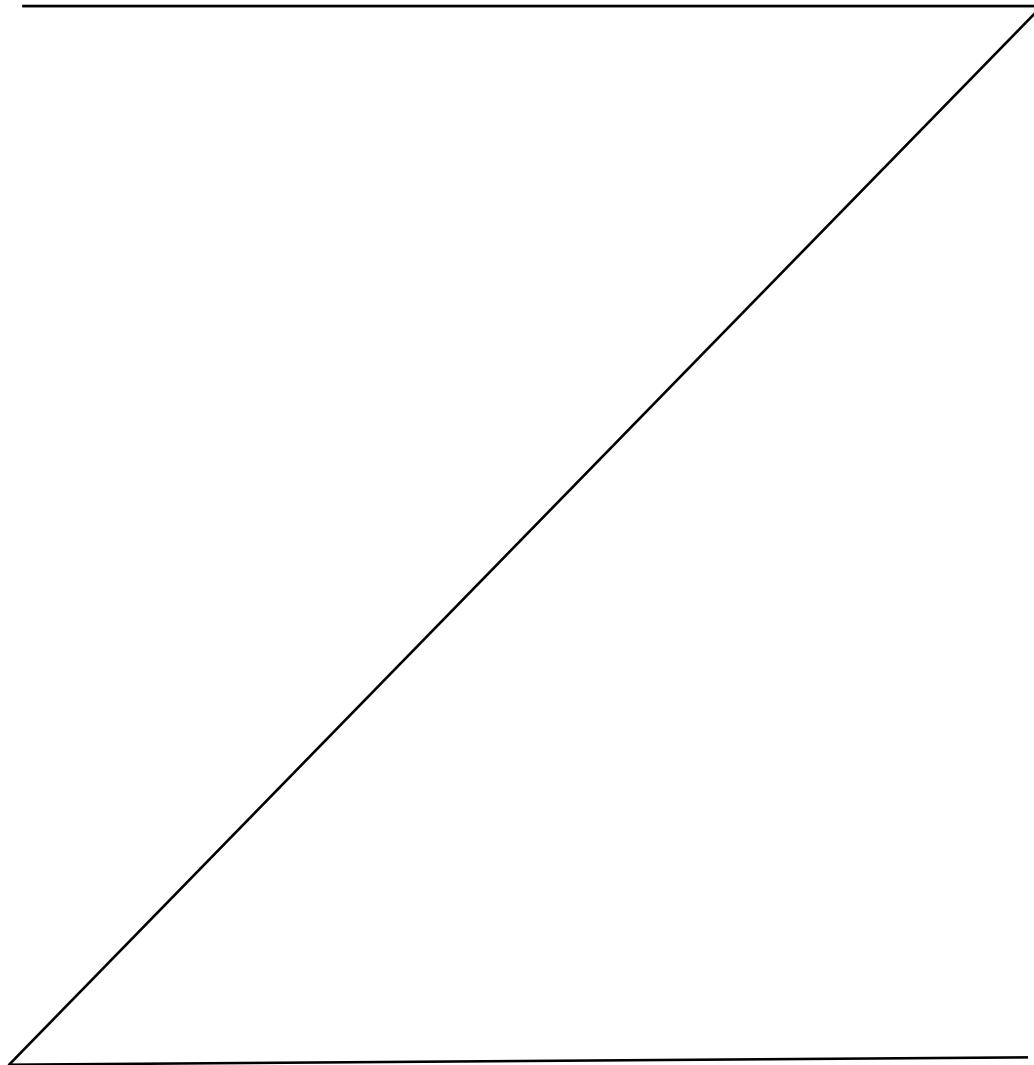
- a. The values of K_d for other non-building structures indicated in ASCE-7 Table 26-4 shall be permitted.
- b. Site-specific probabilistic analysis of K_d based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the Building Official, but K_d shall have a value not less than 0.65.

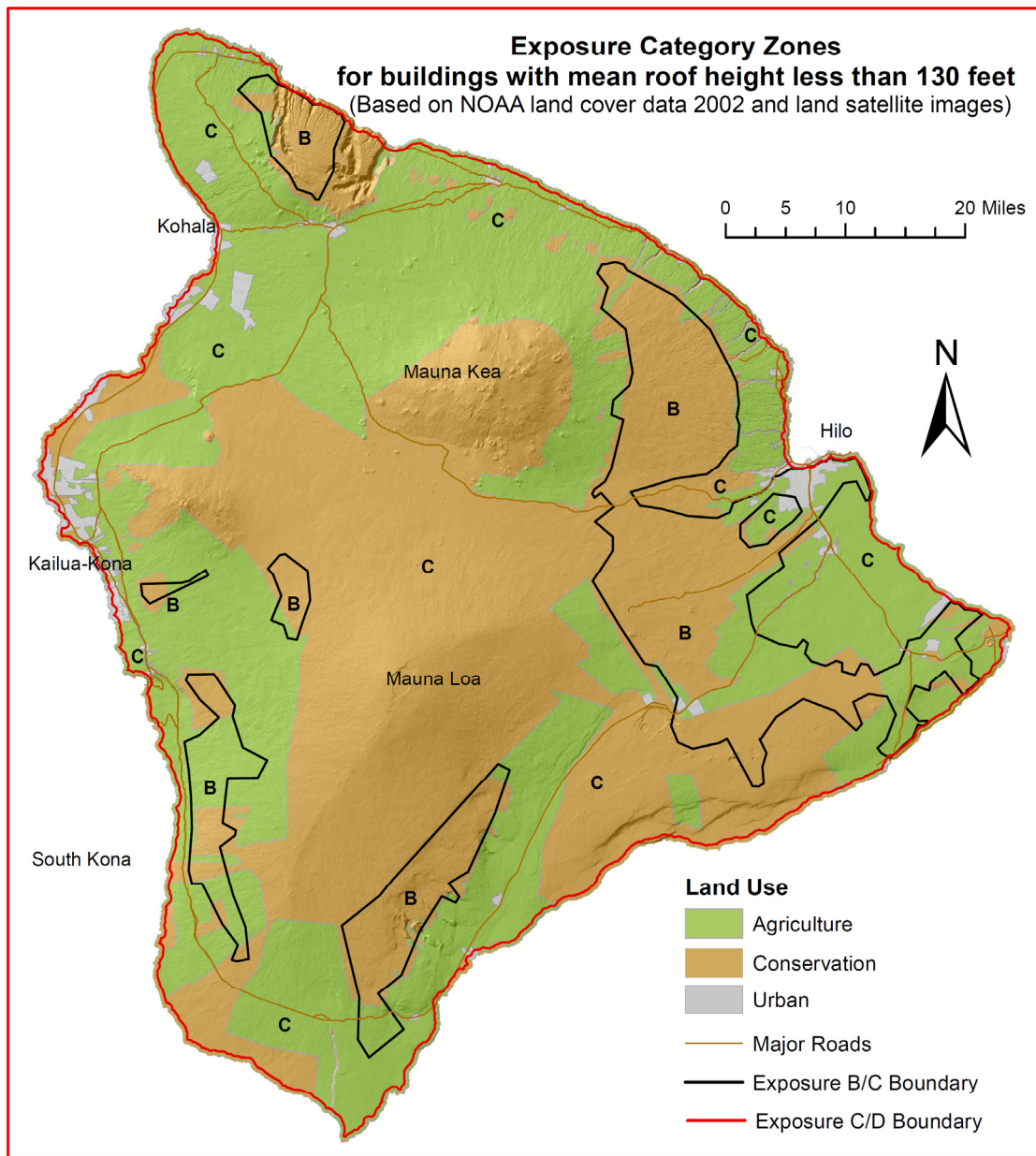
W101.11 Addition of exposure category maps.

Section 1609.4.1 is amended to read as follows:

1609.4.1 Wind directions and sectors. For each selected wind direction considered, at which the wind loads are to be evaluated, the an exposure of the building or structure shall be determined for the two upwind sectors extending 45 degrees (0.79 rad) either side of the selected wind direction. The exposures in these two sectors shall be determined in accordance with Sections 1609.4.2 and 1609.4.3 and the exposure resulting in the highest wind loads shall be used to represent winds from that direction.

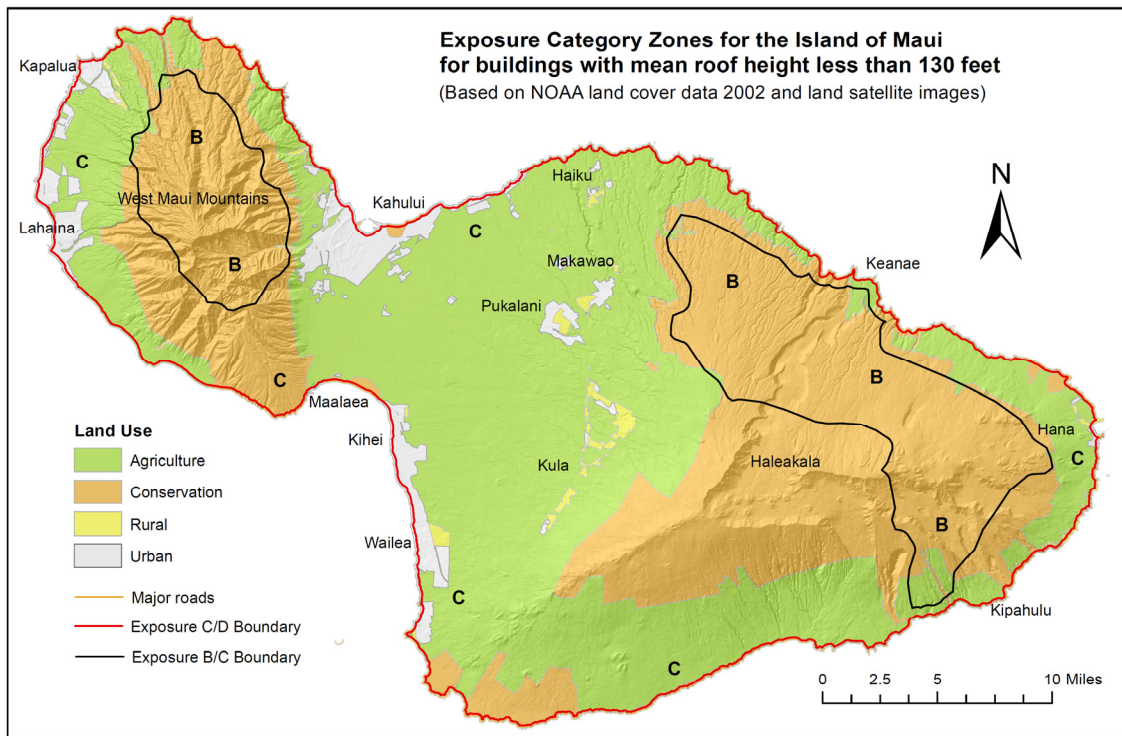
Exception: Exposure categories shall be permitted to be determined using Figures 1609.4(a) through 1609.4(e).



**Notes:**

1. Intermediate exposures, between categories B and C and between C and D, are permitted when substantiated per ASCE 7 recognized methodology.
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. Sites located within 600 feet from the coastline shall be exposure category D for onshore wind directions.
4. For buildings whose height is equal to or greater than 130 ft, exposure category shall be determined per Section 1609.4.1.
5. 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.

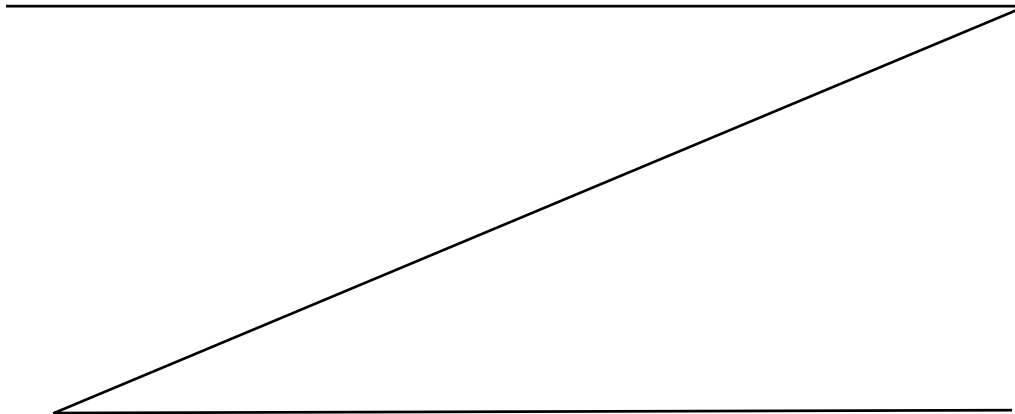
Figure 1609.4 (a)
Exposure Category Zones for Hawaii County



Notes:

1. Intermediate exposures, between categories B and C and between C and D, are permitted when substantiated per ASCE 7 recognized methodology.
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. Sites located within 600 feet from the coastline shall be exposure category D for onshore wind directions.
4. For buildings whose height is equal to or greater than 130 ft, exposure category shall be determined per Section 1609.4.1.
5. 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.

Figure 1609.4. (b)
Exposure Category Zones for Island of Maui, Maui County



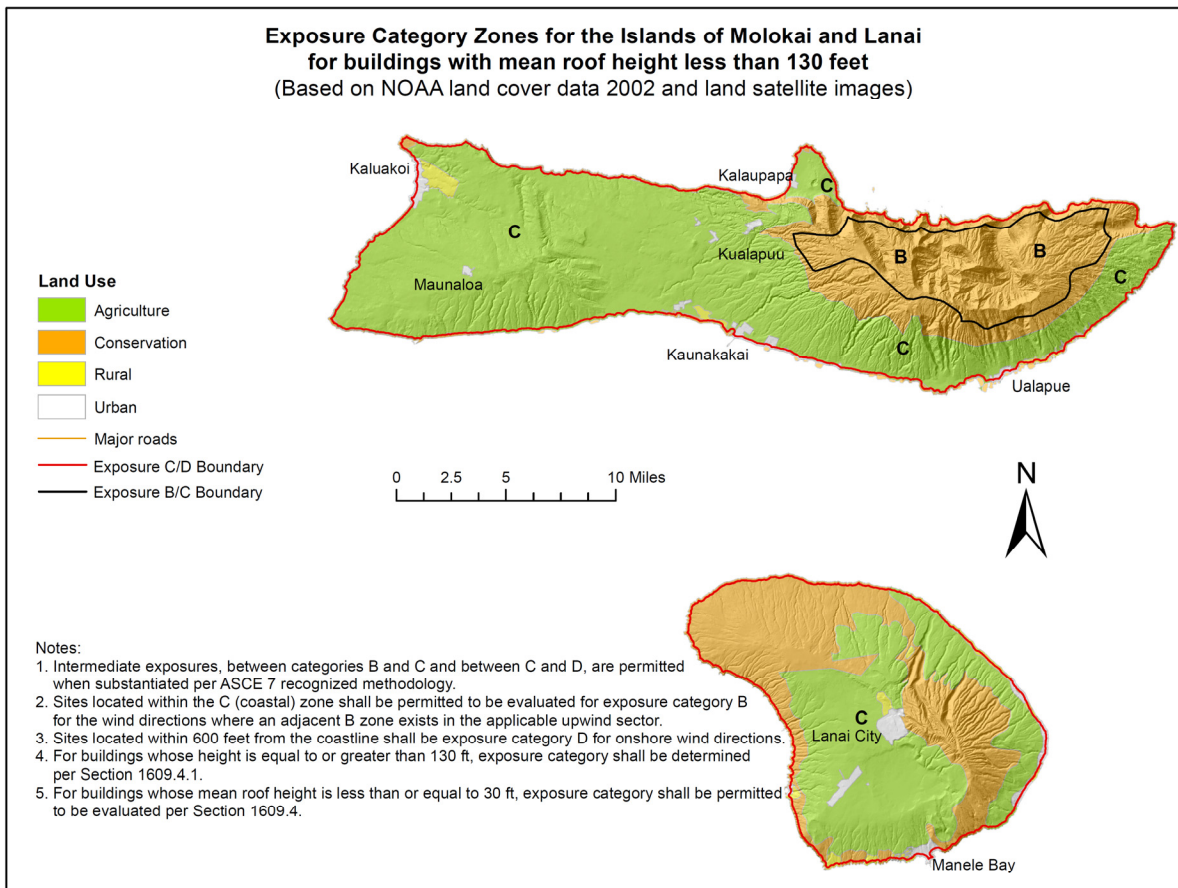


Figure 1609.4 (c)
Exposure Category Zones for Islands of Molokai and Lanai, Maui County

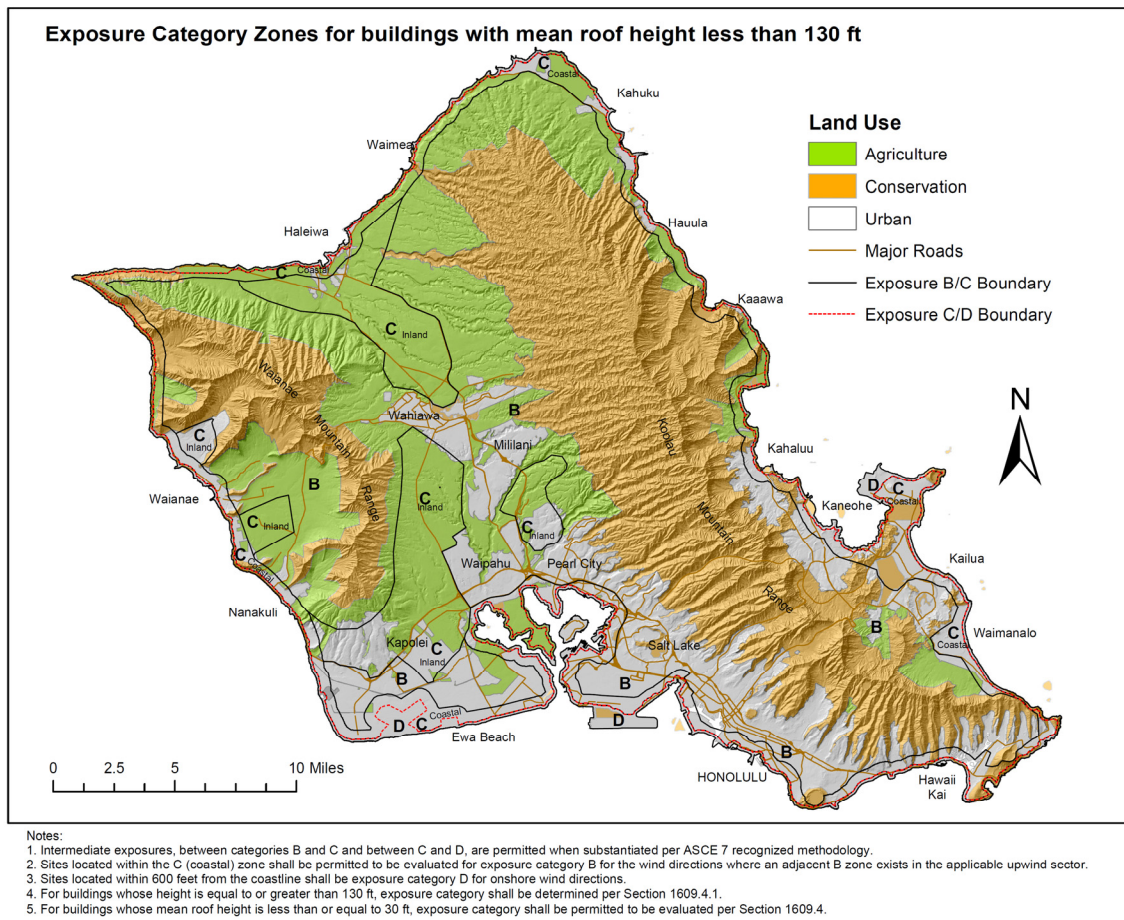


Figure 1609.4 (d)
Exposure Category Zones for the City and County of Honolulu

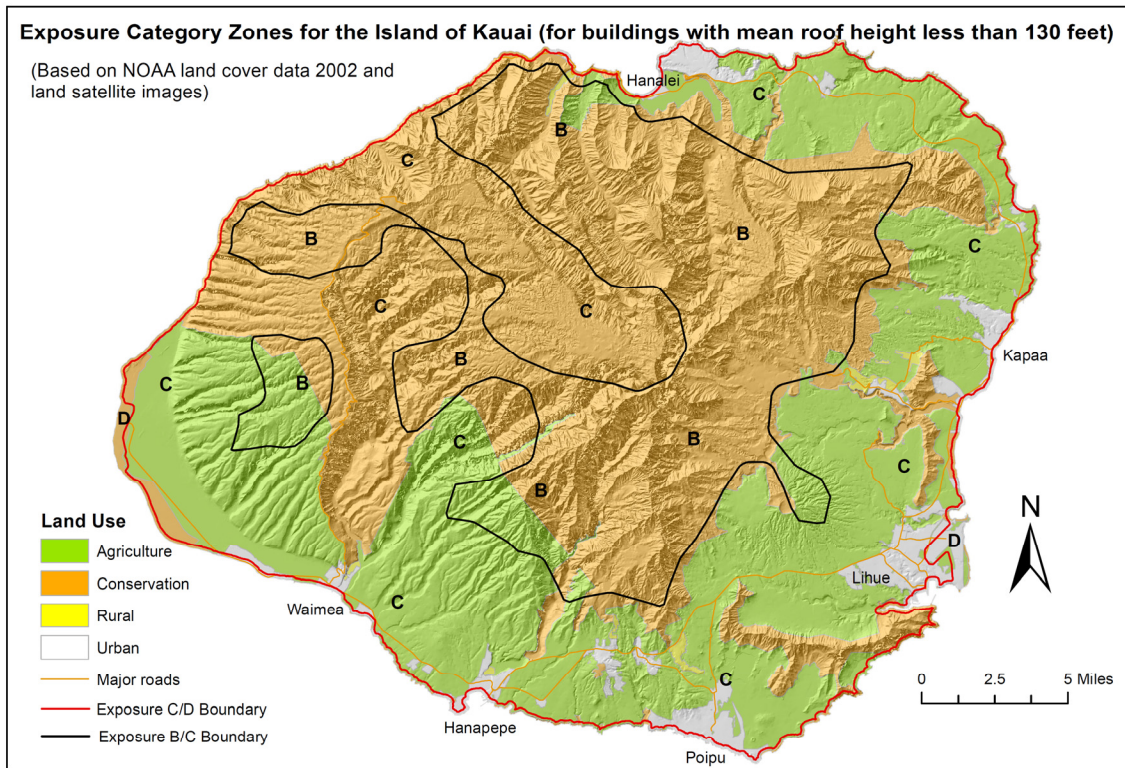
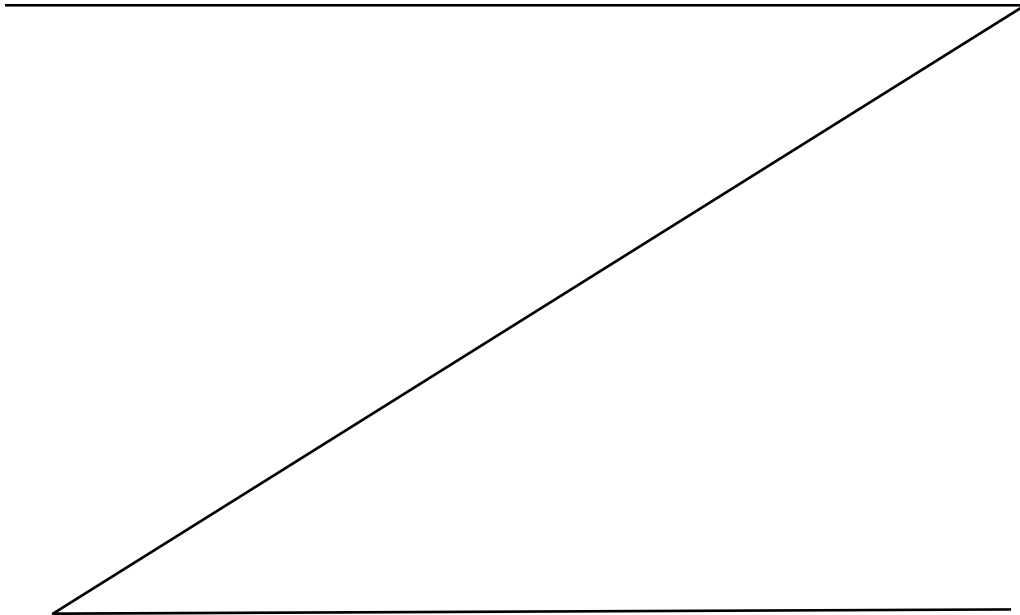


Figure 1609.4 (e)
Exposure Category Zones for Kauai County



W101.12 Addition of Section 1609.5.4 Roof-mounted panels for buildings.

Section 1609.5.4 is added to read as follows:

1609.5.4 Roof-mounted solar collectors for buildings.

The design wind force for roof-mounted solar collector panels located on buildings shall be determined based on the location and height of the panel system and the configuration of the roof, in accordance with Sections 1609.5.4.1 through 1609.5.4.6.

In addition to all the other applicable provisions of this Code, the roof itself shall be designed for both of the following:

1. The case where solar collectors are present. Wind loads acting on solar collectors in accordance with this section shall be applied simultaneously with roof wind loads specified in other sections acting on areas of the roof not covered by the plan projection of solar collectors. For this case, unless otherwise noted, roof wind loads specified in other sections need not be applied on areas of the roof covered by the plan projection of solar collectors.

2. Cases where the solar arrays have been removed or are absent.

The following variables are defined for use in determining the design wind force applied to rooftop solar collectors/panels:

A = the area of the solar panel element.

d_1 = horizontal distance measured from the edge of one panel to the building edge or to an adjacent array. The distance is perpendicular to the panel edge ignoring any rooftop equipment. See Figures 1609.5-1 or 1609.5-3, in ft.

d_2 = horizontal distance measured from the edge of one panel to the nearest edge in the next row of panels. See Figure 1609.5-1 or 1609.5-3, in ft.

F = the design wind force normal to each panel determined in accordance with Section 1609.5.4

h_1 = height of a solar panel above the roof at the lower edge of the panel *measured perpendicular to the surface of the roof*, See Figures 1609.5-1 or 1609.5-3, in ft.

h_2 = height of a solar panel above the roof at the upper edge of the panel *measured perpendicular to the surface of the roof*, See Figures 1609.5-1 or 1609.5-3, in ft.

L_p = panel chord dimension, in ft, for use with rooftop solar collectors as shown in Figures 1609.5-1 or 1609.5-3.

θ = Angle of the roof surface, in degrees. See Figures 1609.5-1 or 1609.5-3.

ω = Angle that the solar panel makes with the roof surface, in degrees. See Figures 1609.5-1 or 1609.5-3.

1609.5.4.1 Roof-mounted panels mounted flush or within 10 inches (254 mm) of the roof surface and not located on a roof overhang. The design wind force determined in accordance with this section shall apply to rooftop solar collectors meeting the following conditions:

1. Rooftop solar collectors are located on enclosed or partially enclosed buildings of any height.

2. Panels are parallel to the roof surface, within a tolerance of 2° .
3. The maximum height above the roof surface, h_2 , shall not exceed 10 inches (254 mm).
4. A minimum gap of 0.25 inches (6.4 mm) shall be provided between all panels.
5. The spacing of gaps between panels shall not exceed 6.7 ft (2.04 m).
6. The array shall be located at least $2h_2$ from the nearest roof edge, gable ridge, or hip ridge.

The design wind force for rooftop solar collectors shall be determined by Equation 1609-1:

$$F = q_h G C_p \gamma_E \gamma_a A \quad (1b) \quad (N) \quad \textbf{(Equation 1609-1)}$$

Where:

q_h = velocity pressure at the mean roof height.

$G C_p$ = external pressure coefficient for Components and Cladding of roofs with respective roof zoning for the corresponding location on the roof, with the effective wind area, A , equal to that of the solar panel

γ_E = solar array edge factor for use with rooftop solar collectors.

γ_E = 1.5 for panels that are exposed and those within a distance $1.5(L_p)$ from the end of a row at an exposed edge of the array; γ_E = 1.0 elsewhere, as illustrated by the example array configuration shown in Figure 1609.5-3.

A panel is defined as exposed if d_1 to the roof edge $> 0.5h$ and one of the following applies:

1. d_1 to the adjacent array > 4 ft (1.22m)
2. d_2 to the next adjacent panel > 4 ft (1.22m)

γ_a = solar collector pressure equalization factor, from Figure 1609.5-2.

Alternatively, it shall be permitted to determine the normal design wind force in accordance with Equation 1609-2:

$$F = 40 A (V_{\text{eff-ult}}/105)^2 \quad (\text{lbs}) \quad \textbf{(Equation 1609-2)}$$

Where:

$V_{\text{eff-ult}}$ = the Effective Ultimate Design Wind Speed as determined from Figures 1609.3.2.1(a) through 1609.3.2.1(f), Figures 1609.3.2.2(a) through 1609.3.2.2(f), or Figures 1609.3.2.3(a) through 1609.3.2.3(f).

The force F shall be permitted to be applied to the centroid of the calculated pressure.

1609.5.4.2 Rooftop solar collectors for buildings of all heights with flat roofs or gable or hip roofs with slopes less than 7° The design wind force determined in accordance with this section shall apply to rooftop solar collectors meeting the following conditions:

1. Rooftop solar collectors are located on enclosed or partially enclosed buildings of any height.
2. Flat, gable, or hip roofs with slopes, $\theta \leq 7^\circ$.
3. Panels installation shall conform to the following limitations:

$$L_p \leq 6.7 \text{ ft (2.04 m)}$$

$$\omega \leq 35^\circ$$

$$h_1 \leq 2 \text{ ft (0.61 m)}$$

$$h_2 \leq 4 \text{ ft (1.22 m)}$$

4. A minimum gap of 0.25 inches (6.4 mm) shall be provided between all panels.
5. The spacing of gaps between panels shall not exceed 6.7 ft (2.04 m).
6. The minimum horizontal clear distance between the panels and the edge of the roof shall be the larger of $2(h_2 - h_{pt})$ and 4 ft. The design wind force for rooftop solar collectors shall be

determined by Eq. 1609-3:

$$F = q_h G C_{rn} A \text{ (lb/ft}^2\text{) (N/m}^2\text{)} \quad \textbf{(Equation 1609-3)}$$

where

$$G C_{rn} = \gamma_p \gamma_c \gamma_E (G C_{rn})_{nom} \quad \textbf{(Equation 1609-4)}$$

Where:

$(G C_{rn})_{nom}$ = nominal net pressure coefficient from Figure 1609.5-3.

$\gamma_p = \min \left(1.2, 0.9 + \frac{h_{pt}}{h} \right)$ = parapet height factor.

h_{pt} = mean parapet height above the adjacent roof surface (ft).

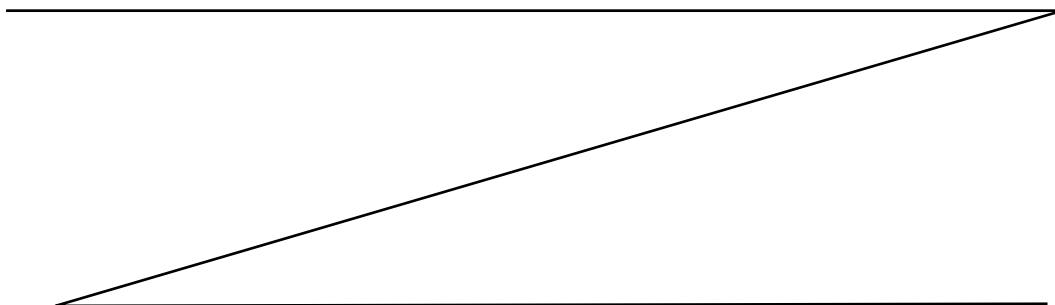
$\gamma_c = \max (0.6 + 0.06 L_p, 0.8)$

$\gamma_E = 1.5$ for panels that are exposed and those within a distance $1.5(L_p)$ from the end of a row at an exposed edge of the array; $\gamma_E = 1.0$ elsewhere, as illustrated by the example array configuration shown in Figure 1609.5-3.

A panel is defined as exposed if d_1 to the roof edge $> 0.5h$ and one of the following applies:

1. d_1 to the adjacent array $> \max (4h_2, 4 \text{ ft (1.22m)})$
2. d_2 to the next adjacent panel $> \max (4h_2, 4 \text{ ft (1.22m)})$

The force F shall be permitted to be applied to the centroid of the calculated pressure.



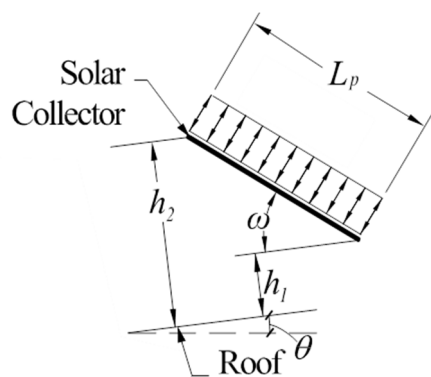


Figure 1609.5-1 Solar Collector Dimensions.

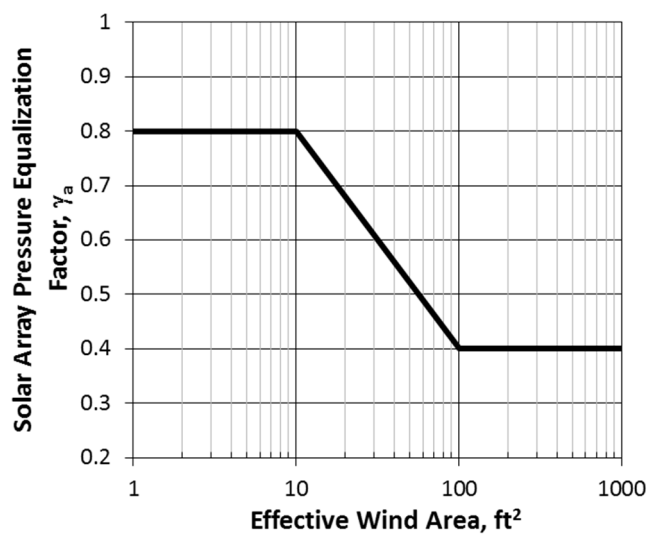
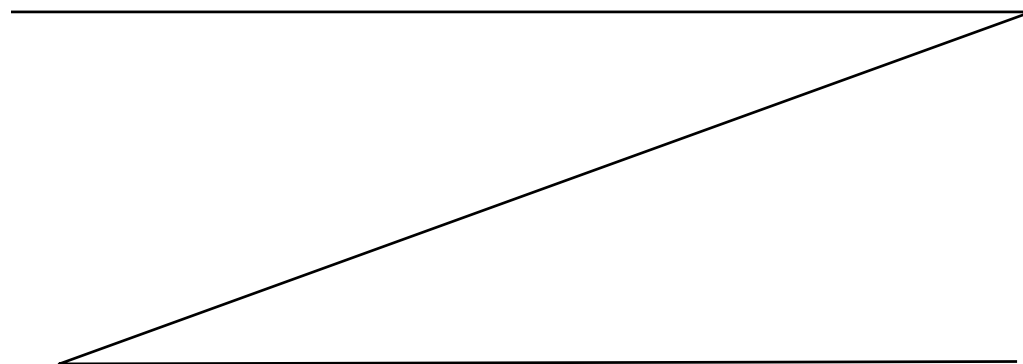


Figure 1609.5-2 Solar Collector Pressure Equalization Factor, γ_a , for enclosed and partially enclosed buildings of all heights.



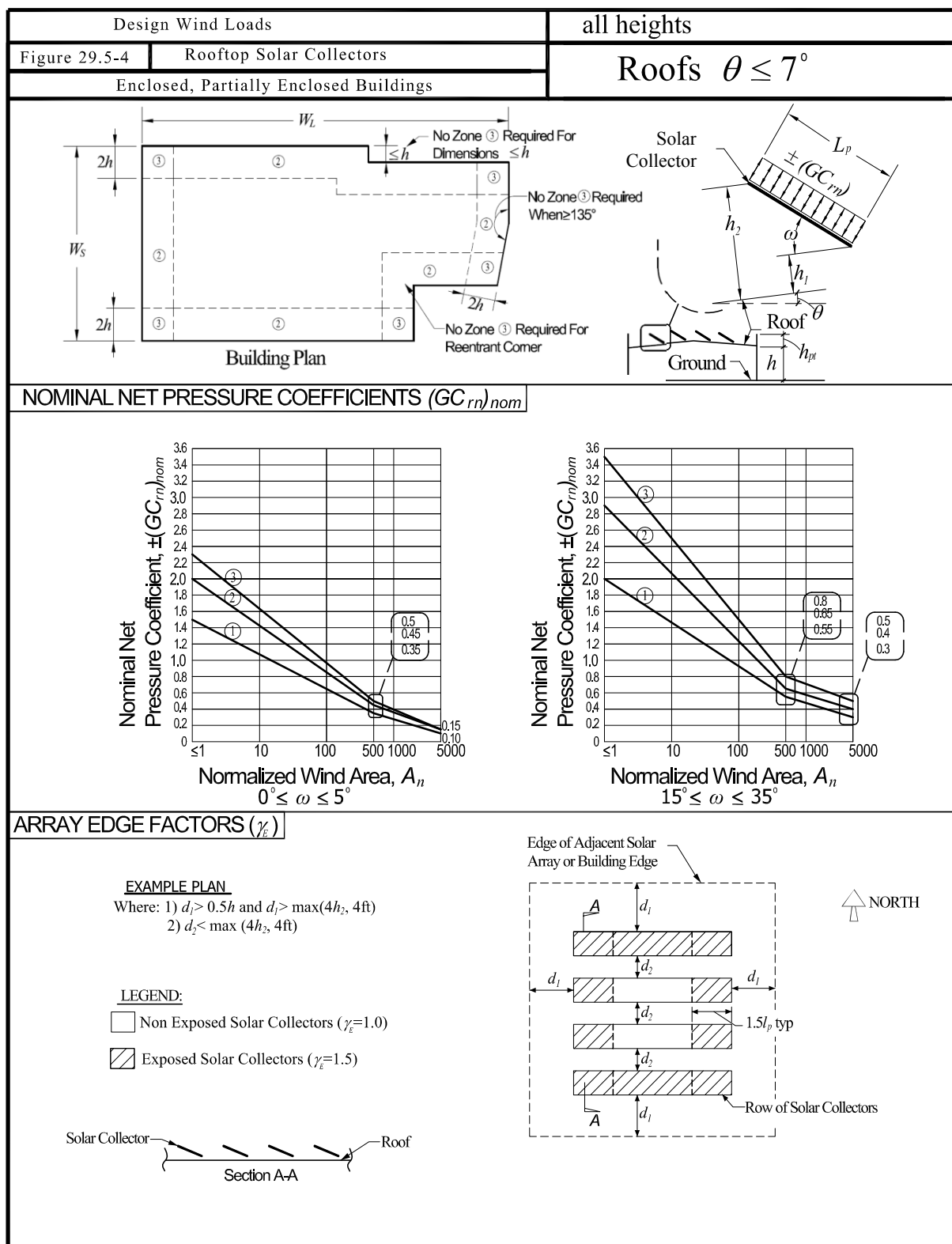


Figure 1609.5-3 ROOFTOP SOLAR COLLECTORS FOR BUILDINGS OF ALL HEIGHTS WITH FLATROOFS OR GABLE OR HIP ROOFS WITH SLOPES LESS THAN 7° (SEE NOTES 1-3 BELOW)

Notes for Figure 1609.5-3:

1. (GC_{rn}) acts towards (+) and away (-) from the top surface of the panels.
2. Linear interpolation shall be permitted for ω between 5° and 15°.
3. Notation:

$$A_n = \left(\frac{1000}{[\max(L_b, 15)]^2} \right) A.$$

A_n = normalized wind area for rooftop solar collectors

L_b = $\min(0.4 (h W_L)^{0.5}, h, W_s)$, in ft.

W_L = width of a building on its longest side in Figure 1609.5-3, in ft.

W_s = width of a building on its shortest side in Figure 1609.5-2, in ft.

1609.5.4.3 Roof-mounted panels for all other conditions. The normal force on roof-mounted panels not regulated by Section 1609.5.4.1 or 1609.5.4.2 shall be determined by Equation 1609-5:

$$F = q_h (GC_p) C_N A \quad (1b) \quad (N) \quad \textbf{(Equation 1609-5)}$$

Where:

C_N = pressure coefficients for monoslope free roofs from ASCE 7-10 Table 30.8-1 considering each elevated panel as a free roof surface in clear wind flow. The angle θ used for the determination of C_N shall be measured as the angle of the panel with respect to the plane of the roof (ω in Figure 1609.5-1). Values of C_N for forces on the panel may be taken as the Zone 1 coefficients.

Exception: Zone 2 coefficients for C_N shall be used where the panel angle, ω , is greater than 7.5 degrees; panels are located a distance less than or equal to twice the roof height measured from a roof corner; and the parapet is greater than 24 inches (610 mm) in height above the roof.

GC_p = the component and cladding external pressure coefficient for roofs for the roof zone corresponding to the location of the solar panel, and the effective wind area shall be that of the solar panel. The minimum magnitude of negative pressure values of GC_p in Zone 1 shall be taken as -1.0.

A = the total area of the solar panel element.

Alternatively, it shall be permitted to determine the normal force in accordance with Equation 1609-6:

$$F = 100 A (V_{eff-ult}/105)^2 \quad (lbs) \quad \textbf{(Equation 1609-6)}$$

Where:

$V_{eff-ult}$ = the Effective Ultimate Design Wind Speed as determined from Figures 1609.3.2.1(a) through 1609.3.2.1(f), Figures 1609.3.2.2(a) through 1609.3.2.2(f), and Figures 1609.3.2.3(a) through 1609.3.2.3(f).

When located in roof zone 2 or 3 as defined in ASCE 7, the force F shall be applied with an eccentricity equal to a third of the solar panel width.

1609.5.4.3.1 Additive panel wind loads. The load on the panel shall be applied as point load anchorage reactions additive to the resultant of the pressure determined acting on the portion of the roof underlying the panel.

1609.5.4.4 Ballasted panels. Panels that are ballasted for uplift resistance and tilted at an angle α of 10 degrees or more from a horizontal plane shall be designed to resist the force determined by Equation 1609-7:

$$F_{ballast} \geq F \left(\frac{\mu \cos \beta + \sin \beta}{\mu \cos \alpha - \sin \alpha} \right) \quad (1b) \quad (N) \quad (\text{Equation 1609-7})$$

Where:

F = the normal force on each panel determined in accordance with Section 1609.5.4

α = the angle of the roof plane with respect to horizontal.

β = the angle of tilt of the panel with respect to the roof plane.

μ = the static friction coefficient between the panel base and its bearing surface.

Alternatively, to resist uplift and sliding, ballasted panels that are tilted at an angle of less than 10 degrees from a horizontal plane shall each be ballasted to resist a force equal to 2 times the normal force on each panel determined in Sections 1609.5.4.1 or 1609.5.4.2. Ballasted panels that are tilted at an angle between 10 degrees to 25 degrees from a horizontal plane shall each be ballasted to resist a force equal to 8 times the normal force on each panel determined in Sections 1609.5.4.1 or 1609.5.4.2.

1609.5.4.5 Permeability. A reduction of load on the panels for permeability of the panel system shall not be permitted unless demonstrated by approved wind-tunnel testing or recognized documentation for the type of panel system being considered. Testing or documentation shall replicate the panel separation spacing and height above the roof.

1609.5.4.6 Shielding. A reduction of load on the panels for shielding provided by the roof or other obstruction shall not be permitted unless demonstrated by approved wind-tunnel testing or recognized documentation for the type of panel system being considered. Testing or documentation shall replicate the panel separation spacing and height above the roof.

W101.13 Revisions to Section 1609.6.2.

Section 1609.6.2 is amended to read as follows:

1609.6.2 Symbols and notations. Coefficients and variables used in the alternative all-heights method equations are as follows:

C_{net} = Net-pressure coefficient based on $K_d[(G)(C_p) - (GC_{pi})]$, in accordance with Table 1609.6.2; determined using G = Gust effect factor for rigid structures in accordance with ASCE 7 Section 26.9 and K_d = Wind directionality factor in accordance with ASCE 7 Table 26-6.

P_{net} = Design wind pressure to be used in determination of wind loads on buildings or other structures or their components and cladding, in psf (kN/m²).

W101.14 Revisions to Section 1609.6.3.

Section 1609.6.3 is amended to read as follows:

1609.6.3 Design equations. When using the alternative all-heights method, the MWFRS, and components and cladding of every structure shall be designed to resist the effects of wind pressures on the building envelope in accordance with Equation 16-35.

$$P_{net} = 0.00256V_{ult}^2 K_z C_{net} K_{zt} (K_d / 0.85) \quad \text{(Equation 16-35)}$$

Design wind forces for the MWFRS shall not be less than 16 psf (0.77 kN/m²) multiplied by the area of the structure projected on a plane normal to the assumed wind direction (see ASCE 7 Section 27.4.7 for criteria). Design net wind pressure for components and cladding shall not be less than 16 psf (0.77 kN/m²) acting in either direction normal to the surface.

W101.15 Revisions to Section 1609.6.4.2.

Section 1609.6.4.2 is amended to read as follows:

1609.6.4.2 Determination of K_z , K_{zt} and K_d . Velocity pressure exposure coefficient, K_z , shall be determined in accordance with ASCE 7 Section 27.3.1. The topographic factor, K_{zt} , shall be determined in accordance with Section 1609.3.3. The wind directionality factor, K_d , shall be determined in accordance with Section 1609.3.4.

1. For the windward side of a structure, K_{zt} and K_z shall be based on height z .
2. For leeward and sidewalls, and for windward and leeward roofs, K_z shall be based on mean roof height h , and K_{zt} shall be based on height z .

W102 Revisions to Chapter 23.

Wood construction shall be in accordance with Chapter 23 as amended by Sections W102.1 through W102.5.

W102.1 Revisions to Section 2304.6.1.

Section 2304.6.1 is amended to read as follows:

2304.6.1 Wood structural panel sheathing. Where wood structural panel sheathing is used as the exposed finish on the exterior of outside walls, it shall have an exterior exposure durability classification. Where wood structural panel sheathing is used elsewhere, but not as the exposed finish, it shall be of a type manufactured with exterior glue (Exposure 1 or Exterior). Wood structural panel wall sheathing or siding used as structural sheathing shall be capable of resisting wind pressures in accordance with Section 1609. Maximum effective wind speeds for wood structural panel sheathing used to resist wind pressures shall be in accordance with Table 2304.6.1 for enclosed buildings with a mean roof height not greater than 30 feet (9144 mm).

W102.2 Revisions to Table 2304.6.1.

Table 2304.6.1 is amended to read as follows:

**TABLE 2304.6.1
MAXIMUM EFFECTIVE WIND SPEED (mph) (3-SECOND GUST) PERMITTED FOR WOOD
STRUCTURAL PANEL WALL SHEATHING USED TO RESIST WIND PRESSURES^{a,b,c}**

MINIMUM NAIL		MINIMUM WOOD STRUCTURAL PANEL SPAN RATING	MINIMUM NOMINAL PANEL THICKNESS (inches)	MAXIMUM WALL STUD SPACING (inches)	PANEL NAIL SPACING		V _{eff-asd} MAXIMUM EFFECTIVE WIND SPEED (MPH)		
Size	Penetration (inches)				Edges (inches o.c.)	Field (inches o.c.)	Wind exposure category		
							B	C	D
6d common (2.0" x 0.113")	1.5	24/0	3/8	16	6	12	110	90	85
		24/16	7/16	16	6	12	110	100	90
						6	150	125	110
8d common (2.5" x 0.131")	1.75	24/16	7/16	16	6	12	130	110	105
				24	6	6	150	125	110
						12	110	90	85
						6	110	90	85

For SI: 1 inch = 25.4 mm, 1 mile per hour = 0.447 m/s.

a. Panel strength axis shall be parallel or perpendicular to supports. Three-ply plywood sheathing with studs spaced more than 16 inches on center shall be applied with panel strength axis perpendicular to supports.

b. The table is based on wind pressures acting toward and away from building surfaces in accordance with Chapter 27 of ASCE 7. Lateral requirements shall be in accordance with Section 2305 or 2308.

c. Wood structural panels with span ratings of wall-16 or wall-24 shall be permitted as an alternative to panels with a 24/0 span rating. Plywood siding rated 16 o.c. or 24 o.c. shall be permitted as an alternative to panels with a 24/16 span rating. Wall-16 and plywood siding 16 o.c. shall be used with studs spaced a maximum of 16 inches o.c.

W102.3 Revisions to Section 2308.2.1.

Section 2308.2.1 is amended to read as follows:

2308.2.1 Effective nominal design wind speed greater than 100 mph. Where the Effective Nominal Design Wind Speed $V_{eff-asd}$ exceeds 100 mph, the provisions of the AF&PA WFCM, AISI S230 or ICC 600 are permitted to be used.

W102.4 Addition of Section 2308.9.4.3.

Section 2308.9.4.3 is added to read as follows:

2308.9.4.3 Pre-engineered bracing of post and pier foundations. For conventional light-framed single family residences two stories or less above grade, bracing of elevated wood post and pier foundation systems shall be permitted to be pre-engineered designs for braces or shear walls constructed in accordance with FEMA Hazard Mitigation Grant Program DR-1664-HI drawings, *Structural Seismic Retrofits for Hawaii Single Family Residences with Post and Pier Foundations*, May 2009.

W102.5 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)^{a,b,c,d,e,f,g,h,i}

Effective Nominal Design Wind Speed, V_{eff-asd}, 3- sec gust	Roof Span (feet)							Overhangs (pounds/ft) ^d
	12	20	24	28	32	36	40	
85	-72	-120	-144	-168	-192	-216	-240	-38.55
90	-91	-152	-182	-213	-243	-274	-304	-43.22
100	-131	-218	-262	-305	-349	-392	-436	-53.36
110	-175	-292	-350	-409	-467	-526	-584	-64.56
120	-240	-400	-480	-560	-640	-720	-800	-76.83
130	-304	-506	-607	-708	-810	-911	-1012	-90.17

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.

Exposure	Mean Roof Height (feet)									
	15	20	25	30	35	40	45	50	55	60
B	1.00	1.00	1.00	1.00	1.05	1.09	1.12	1.16	1.19	1.22
C	1.21	1.29	1.35	1.40	1.45	1.49	1.53	1.56	1.59	1.62
D	1.47	1.55	1.61	1.66	1.70	1.74	1.78	1.81	1.84	1.87

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 Chapter 30, Figure 30.5-1, 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.
- i. $V_{eff-asd}$ is determined from Figure 1609.3.2.1 and Sections 1609.3.1 and 1609.3.2"

(59) **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. See Chapter 2 for general definitions. As used in this appendix:

CERTIFIED HALE BUILDER. 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.

HALE or INDIGENOUS HAWAIIAN ARCHITECTURE STRUCTURE. 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 equisitaefolia (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, pueo, kawelu, 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
Maximum Size of Hale (feet)

Hale halawai	Hale ku'ai	Hale noa	Hale wa'a
30 X 60	14 X 20	14 X 24	30 X 60

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.

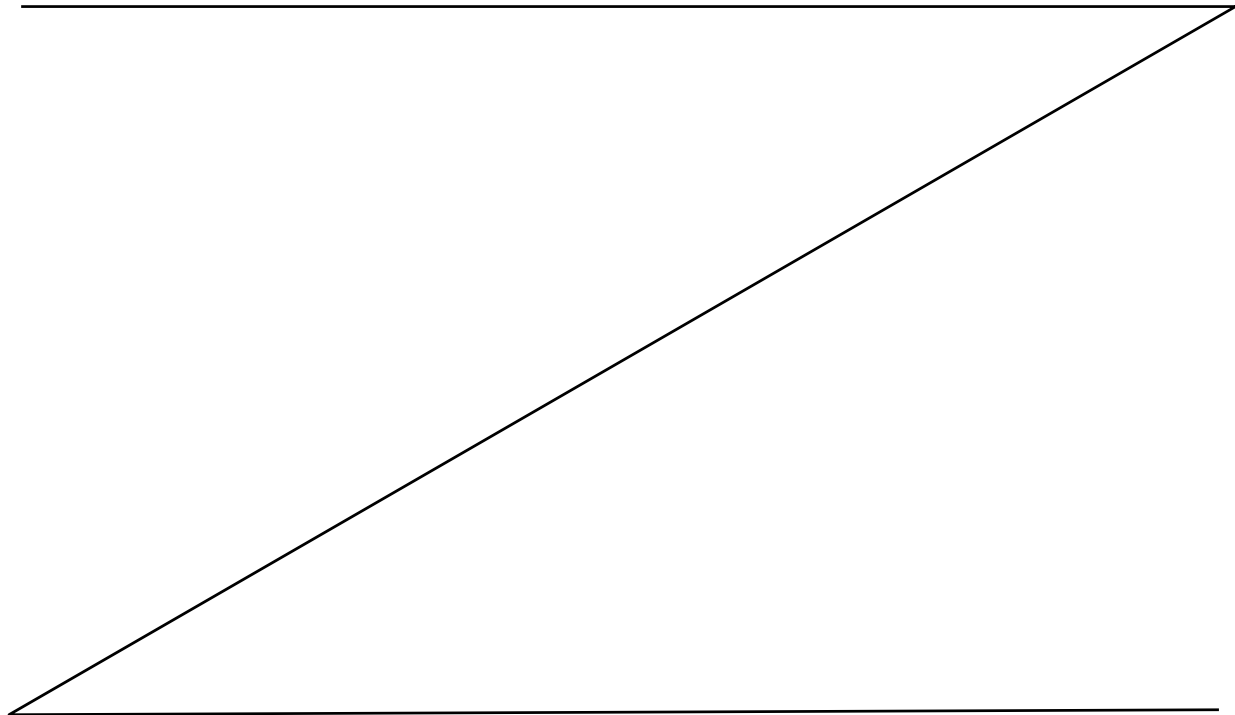
Table X203.1
Allowable Use for Each Hale Type

Use	Hale halawai	Hale ku'ai	Hale noa	Hale wa'a
Eating (ai)	Allowed	Allowed	Not permitted	Allowed
Assembling (halawai)	Allowed	Allowed	Not permitted	Allowed
Sleeping (moe)	Not permitted	Not permitted	Allowed	Not permitted
Retailing (e.g., fruits) (ku'ai)	Allowed	Allowed	Not permitted	Allowed
Storage (papa'a)	Not permitted	Allowed	Not permitted	Allowed

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 X301.1
Fire Protection Requirements Based on Setback**

Class	Setback Requirements	Fire Protection Requirements
A	<p>The structure (or a group of structures) is:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. 	No fire protection is required for the structure.
B	The structure (or a group of structures) that conforms to applicable zoning setback requirements but does not satisfy Class A setback requirements.	<p>Automatic fire sprinkler system shall be installed in accordance with design standards in Section X301.2.</p> <p>An electrical permit is required for fire sprinklers systems.</p>

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 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 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 X301.2(a)
Total Number of Fire Sprinklers Based on Pipe Size

Piping Size	Number of Sprinklers
1 inch diameter	2 sprinklers
1¼ inch diameter	3 sprinklers
1½ inch diameter	5 sprinklers
2 inch diameter	10 sprinklers
2½ inch diameter	30 sprinklers
3 inch diameter	60 sprinklers

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 X301.2(b)
Total Number of Fire Sprinklers Based on Water Meter Size

Size of Water Meter	Number of Sprinklers
5/8 inch water meter	1 sprinkler
¾ inch water meter	2 sprinklers
1 inch water meter	3 sprinklers
1½ inch water meter	7 sprinklers
2 inch water meter	11 sprinklers
3 inch water meter	27 sprinklers

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 Section 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 the hale.

Section X401 Design standards.

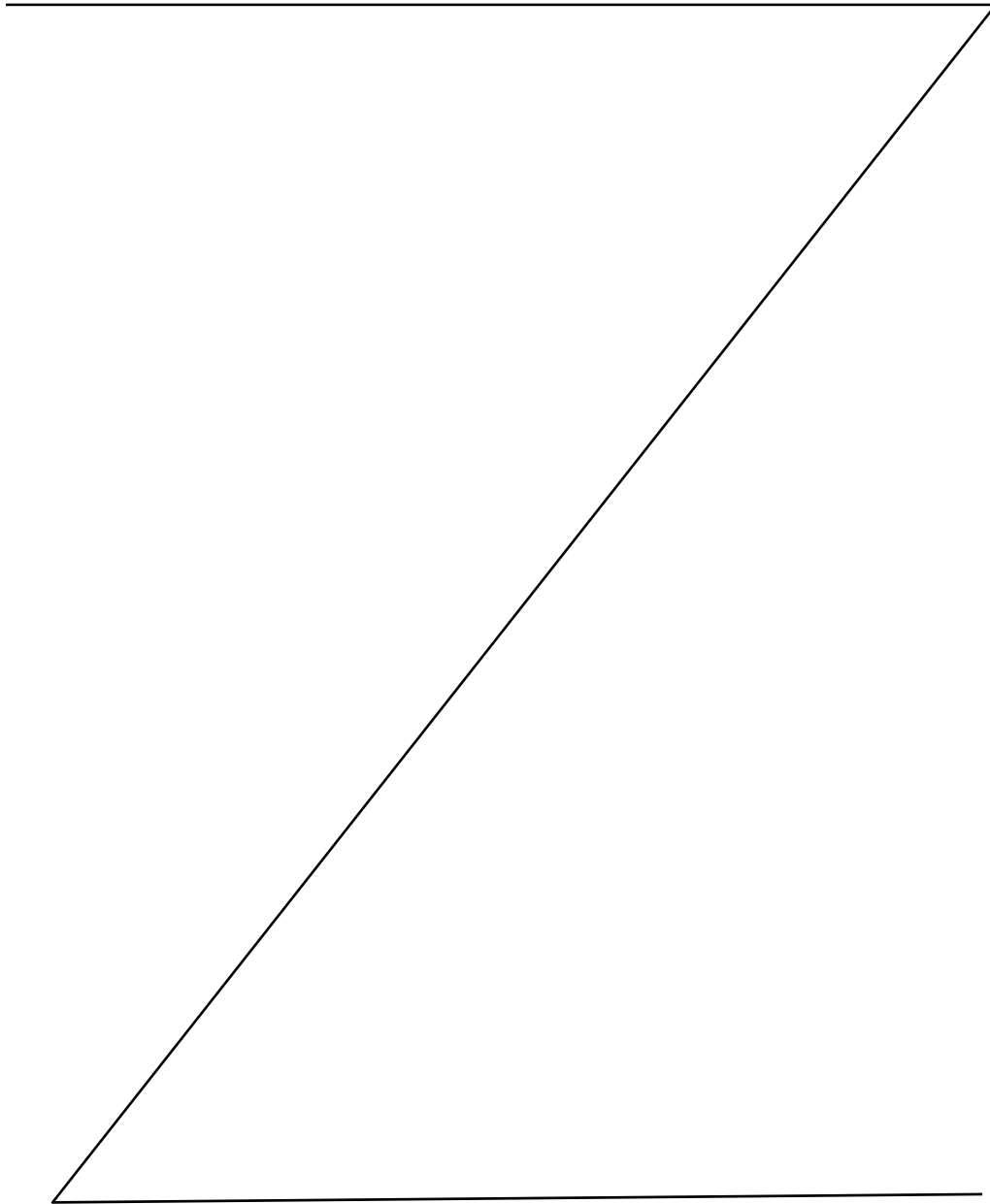
X401.1 General design standards. All types of hale shall be designed and constructed in accordance with the standards set out in this section.

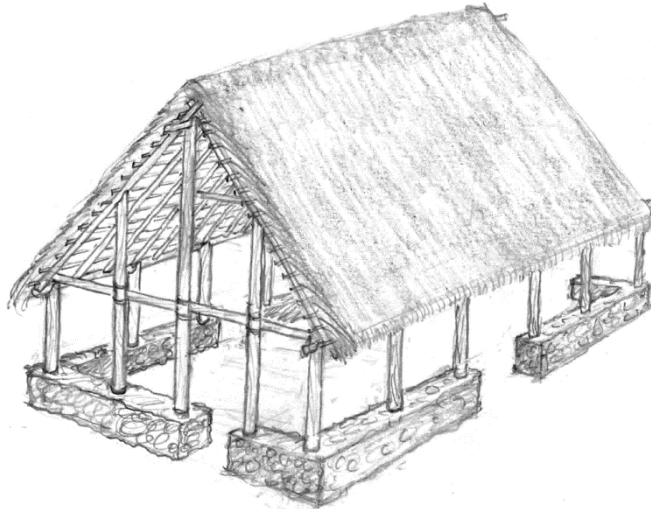
1. The minimum diameter size of all structural members shall be measured at the member's midpoint, except that the minimum diameter size of posts shall be measured at the smaller end. For structure sizes not specifically shown in the tables, the requirements in the next larger width size shall be applicable.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

Section X402 Allowable designs.

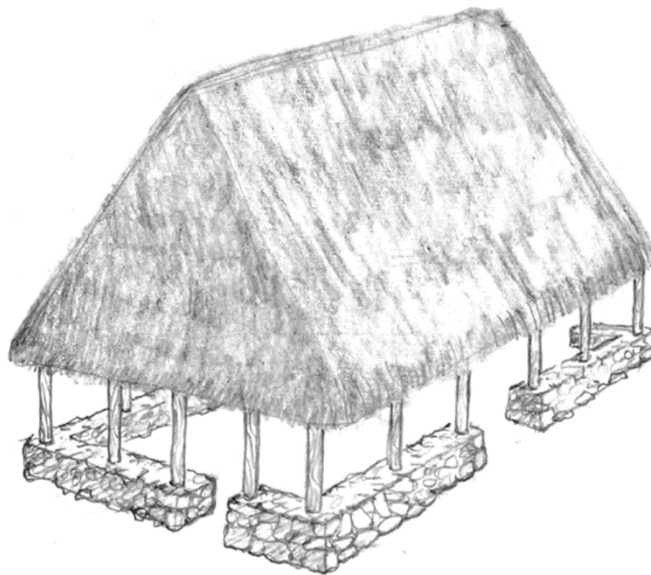
Hale shall be designed and constructed in accordance with the requirements in Sections 402.1 through 402.4.

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

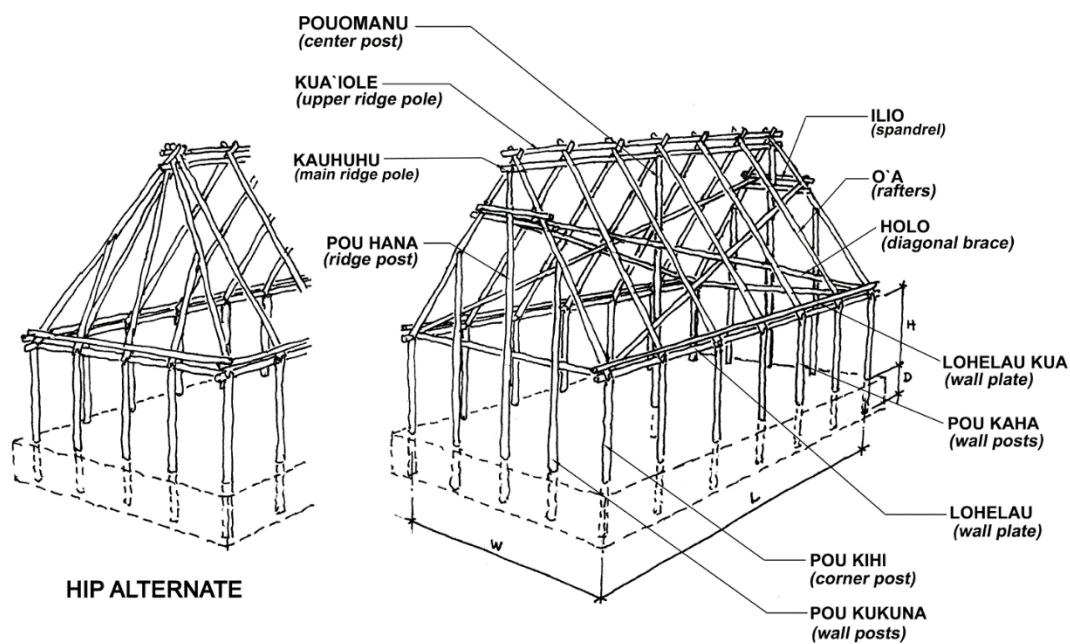
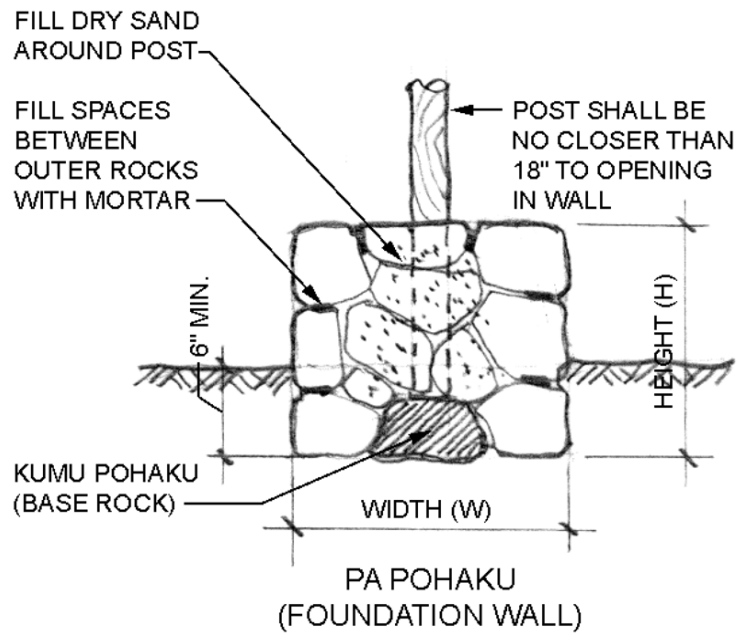
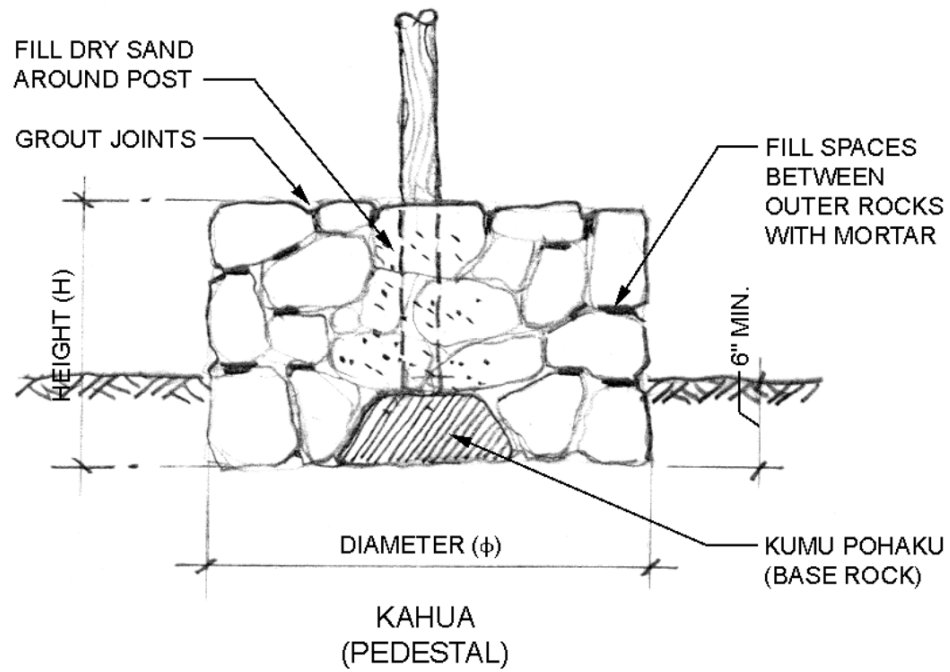
FRAMING SCHEMATIC

Table X402.1(a)
Size and Spacing Requirements for Structural Components used in Hale Halawai

Size W x L x H	<i>pou kihi</i>	<i>pou kukuna & pou kaha</i>	<i>pou hana & pouomanu</i>	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum post spacing (feet)	Maximum rafter spacing (feet)
	Minimum Diameter (inches)								
12' x 20' x 7'	4	3½	4	3½	2½	3	3	5	3
14' x 24' x 7'	4	4	4½	3½	2½	3	3½	5	3
24' x 30' x 7'	5	4½	4½	4	2½	3	3½	5	3
25' x 50' x 7'	5½	5	5½	4	2½	3	3½	5	3
30' x 60' x 7'	6	5½	6	4½	2½	3	4	5	3



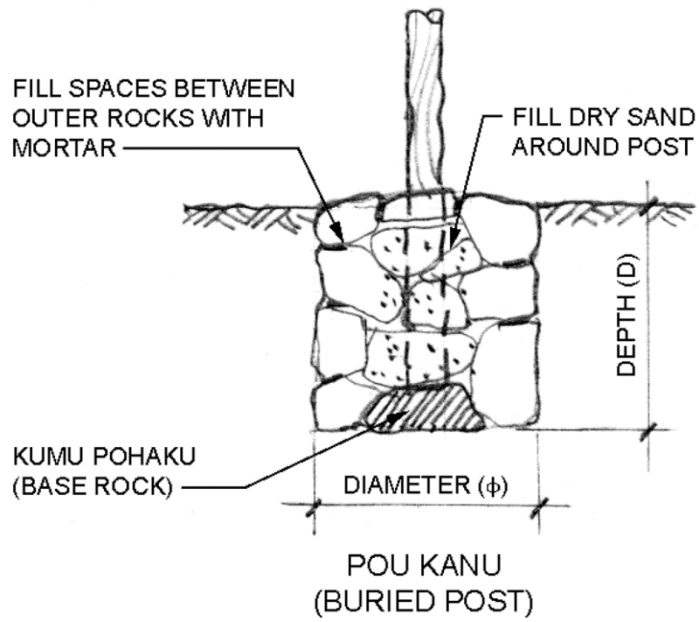
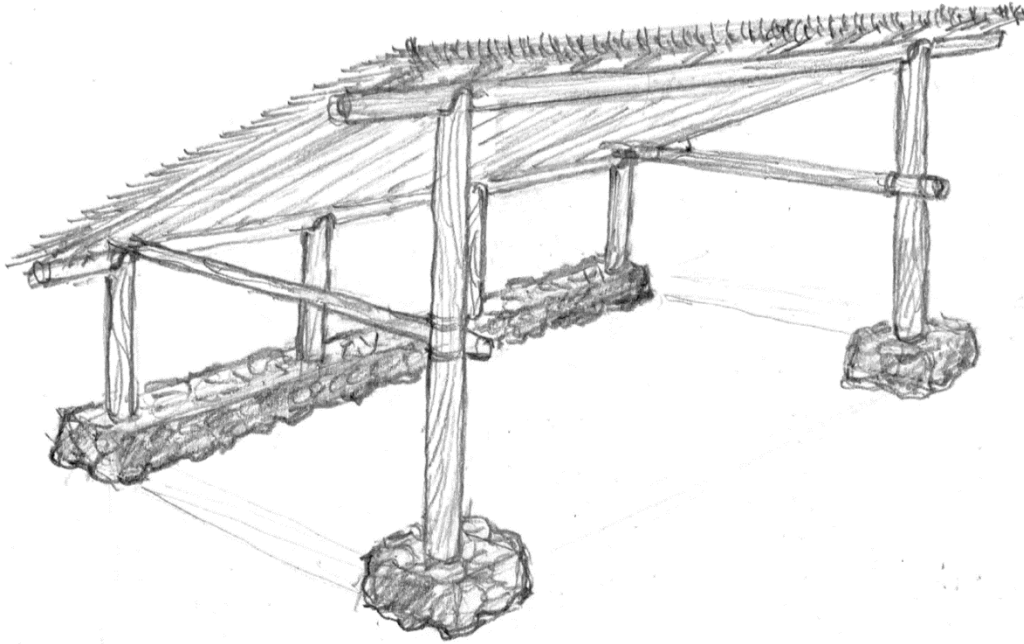


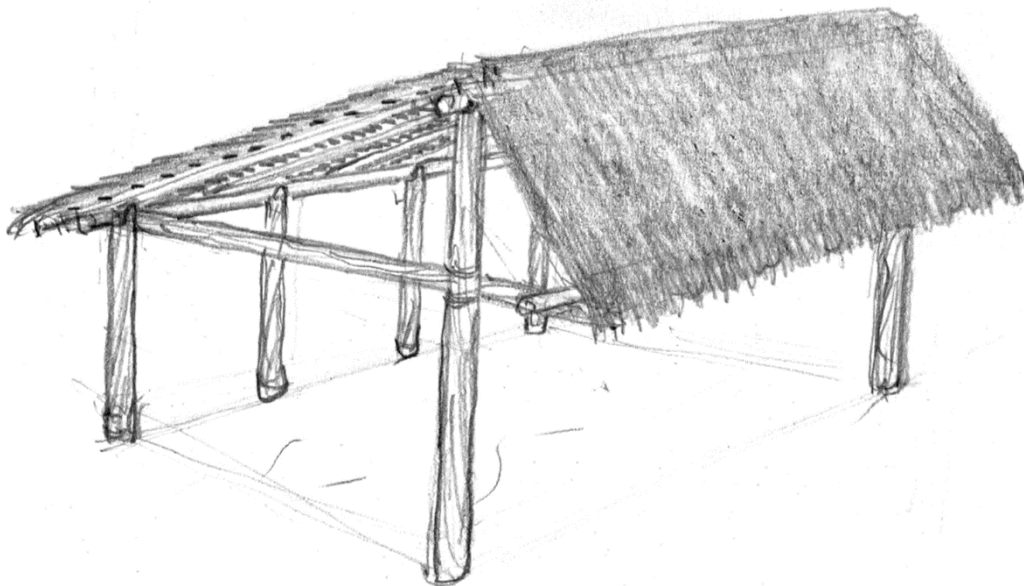
Table X402.1(b)
Foundation Design for Hale Halawai

Size (W x L x H)	Foundation Type		
	kahua Diameter x Height	pa pohaku Width x Height x Length	pou kanu Diameter x Depth
12' x 20' x 7'	3'6"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'8"D
14' x 24' x 7'	3'8"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'9"D
24' x 30' x 7'	4'0"φ x 30"H	3'0"W x 3'0"H x 4'0"L	36"φ x 3'0"D
25' x 50' x 7'	4'0"φ x 30"H	3'0"W x 3'0"H x 4'0"L	36"φ x 3'0"D
30' x 60' x 7'	4'0"φ x 30"H	3'0"W x 3'3"H x 4'0"L	36"φ x 3'3"D

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).

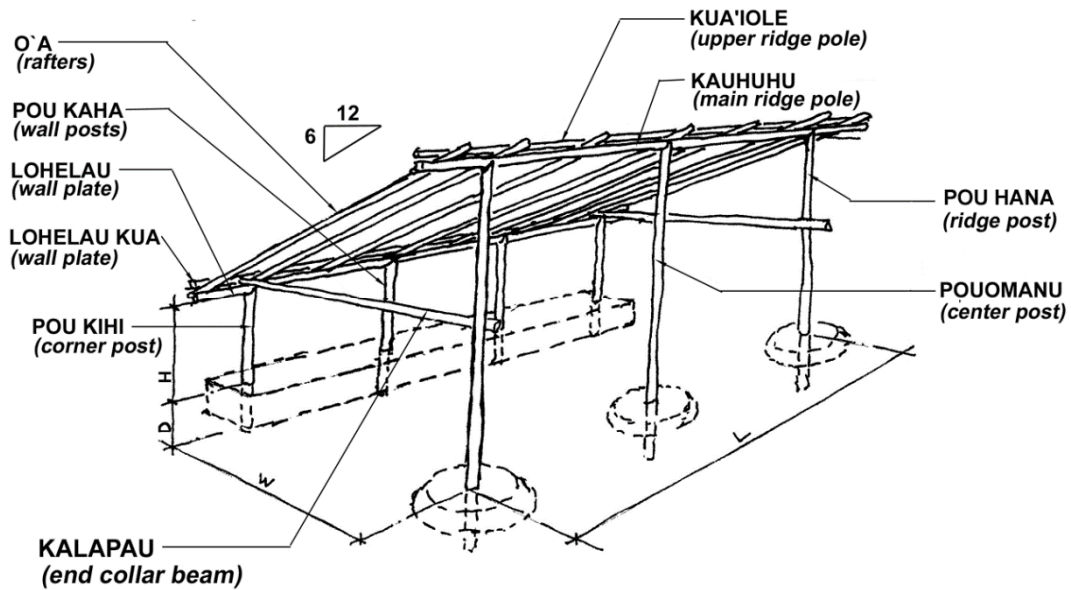


HALE KU`AI
SHED STYLE



HALE KU`AI
GABLE STYLE

FRAMING SCHEMATIC 1



FRAMING SCHEMATIC 2

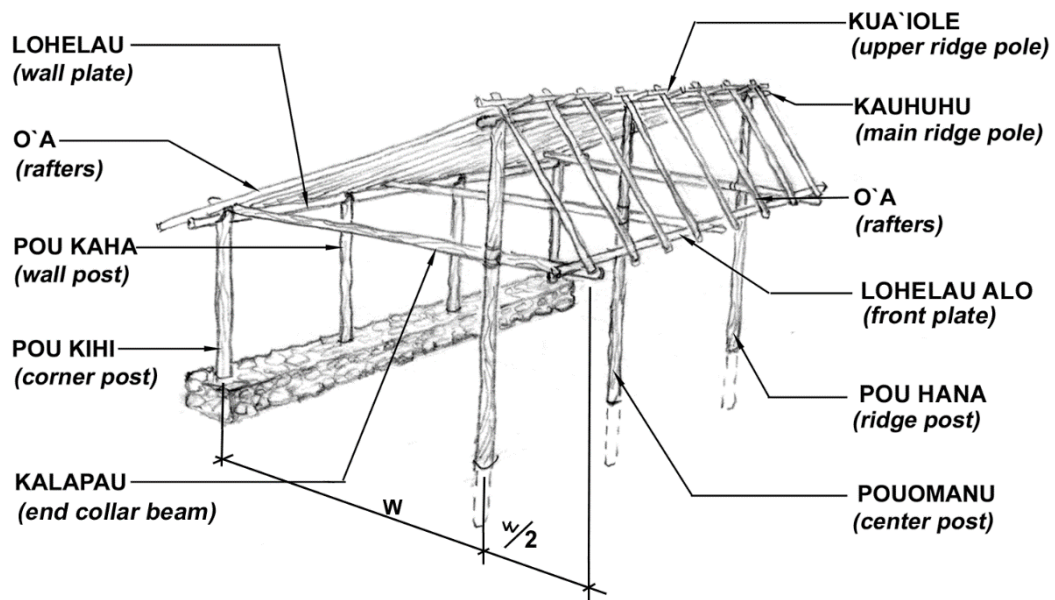
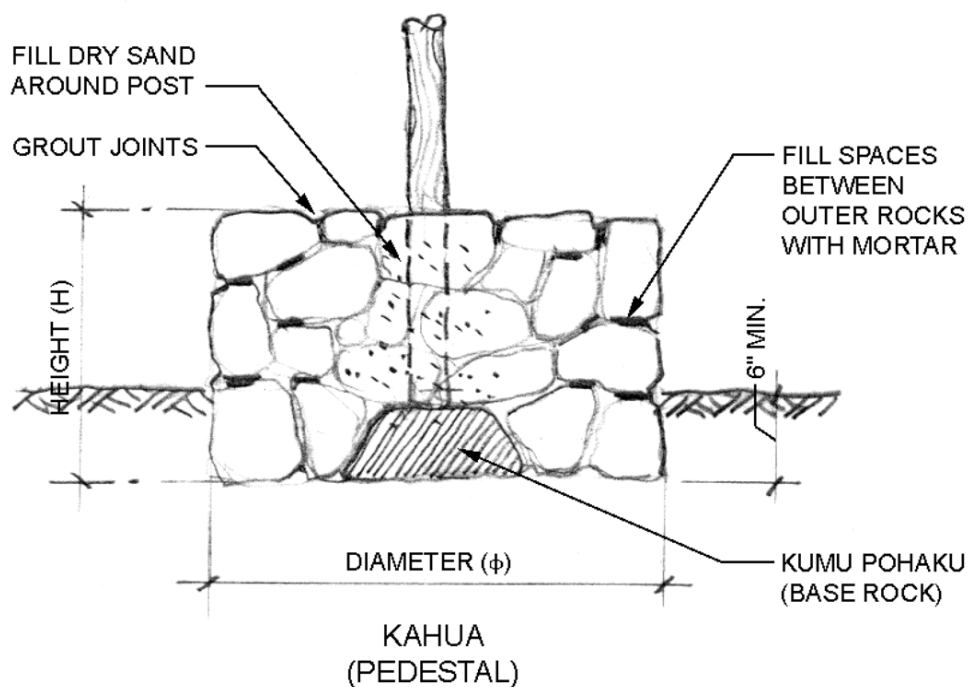


Table X402.2(a)
Size and Spacing Requirements for Structural Components used in Hale Ku`ai

Size (W x L x H)	<i>pou kihi^a</i>	<i>pou kaha^a</i>	<i>pou hana^b</i>	<i>pouo manu^b</i>	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum rafter spacing (feet)
	Minimum Diameter (inches)								
5' x 10' x 5'	4	3	3	4	3	2	3	2	4
9' x 12' x 5'	4	3	3	4	3	2	3½	2	4
12' x 16' x 5'	4½	3½	4	4	3½	2	4	2½	4
14' x 20' x 5'	4½	3½	4	4	3½	2½	4½	2½	4

^a The maximum post spacing for pou kihi and pou kaha is five feet.

^b The maximum post spacing for pou hana and pouomanu is twelve feet.



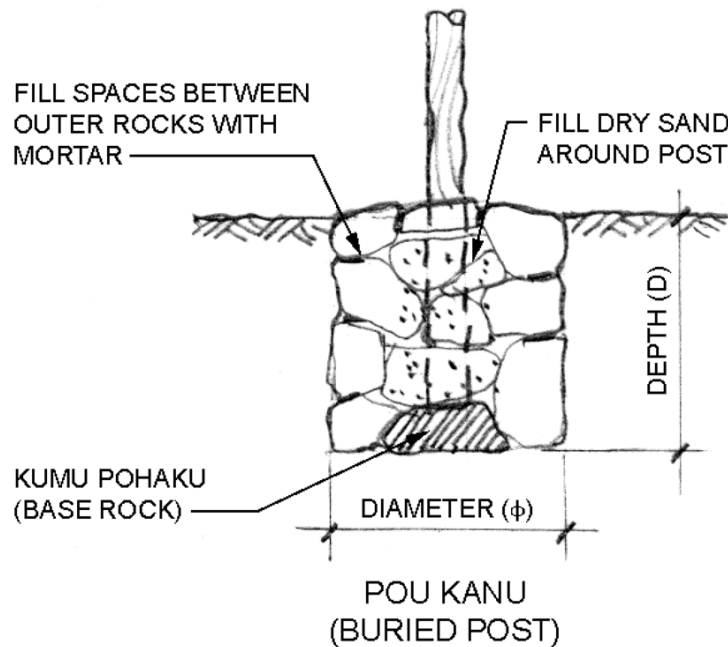
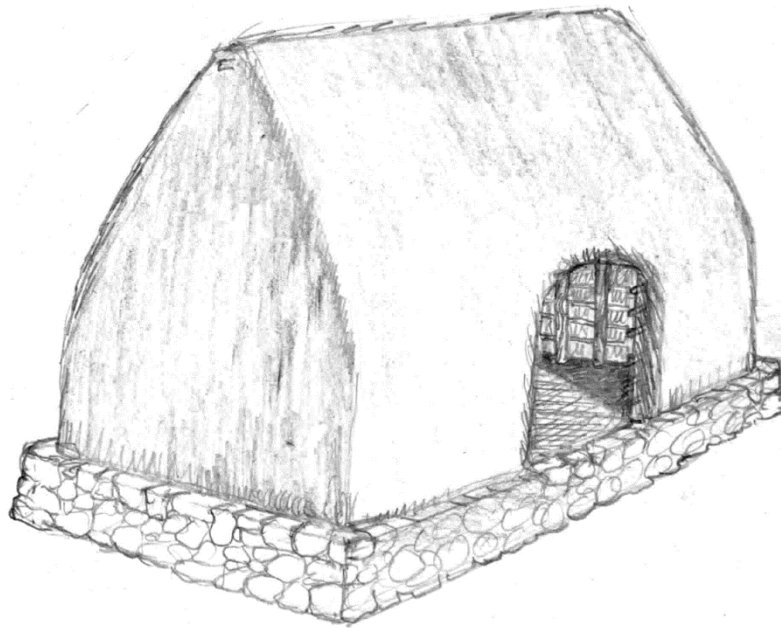


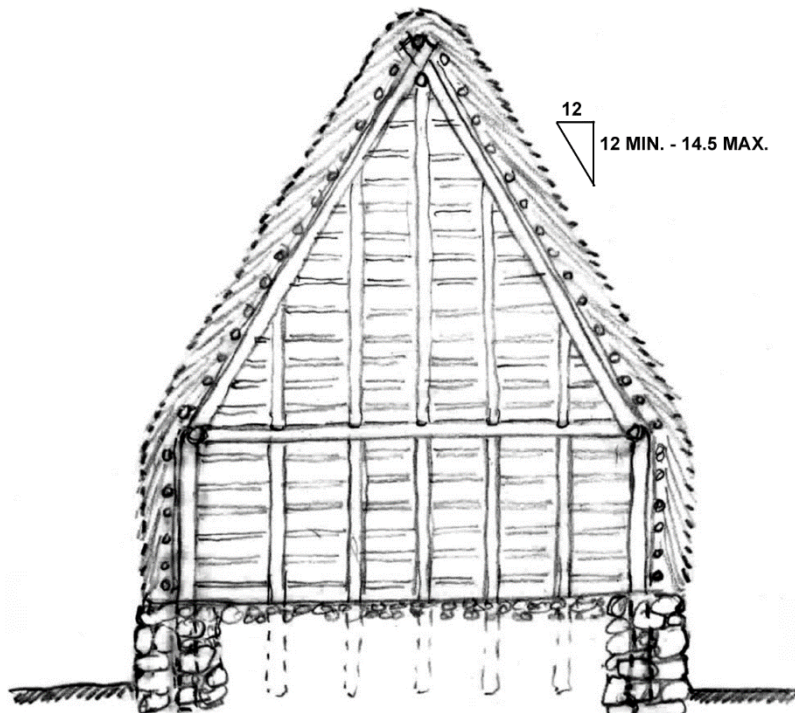
Table X402.2(b)
Foundation Design for Hale Ku`ai

Size (W x L x H)	Foundation Type		
	kahua Diameter x Height	pa pohaku Width x Height x Length	pou kanu Diameter x Depth
5' x 10' x 5'	3'0"φ x 24"H	2'6"W x 2'0"H x 4'0"L	30"φ x 2'6"D
9' x 12' x 5'	3'4"φ x 24"H	2'6"W x 2'0"H x 4'0"L	30"φ x 2'6"D
12' x 16' x 5'	3'6"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'8"D
14' x 20' x 5'	3'8"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'9"D

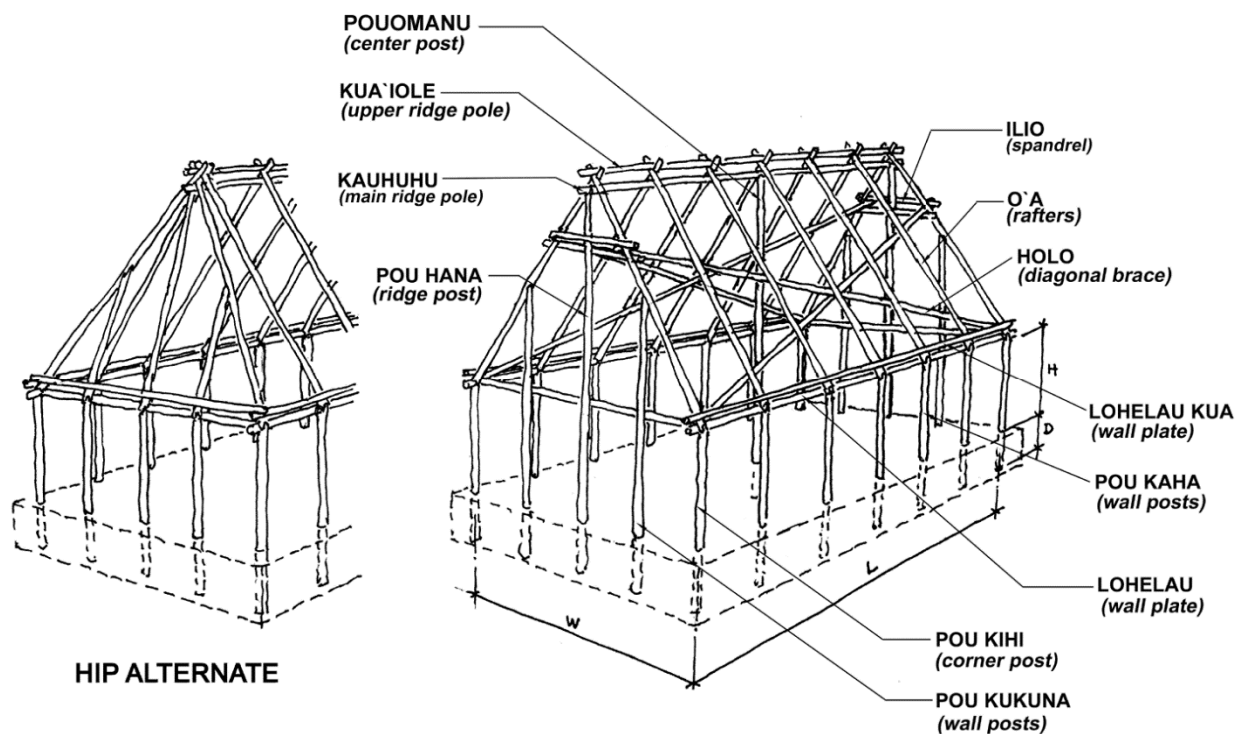
402.3 Hale Noa. Hale Noa shall have at least two openings. One opening shall be at least 3 feet wide and 5 feet high, and the other opening shall be at least 2 feet wide and 3 feet high. Hale Noa shall be designed in accordance with the following schematics and illustrations. Structural components for 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).



HALE NOA



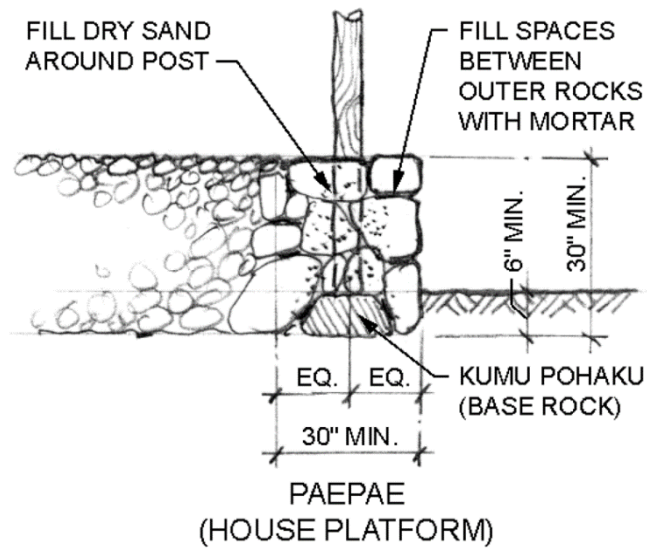
SECTION VIEW



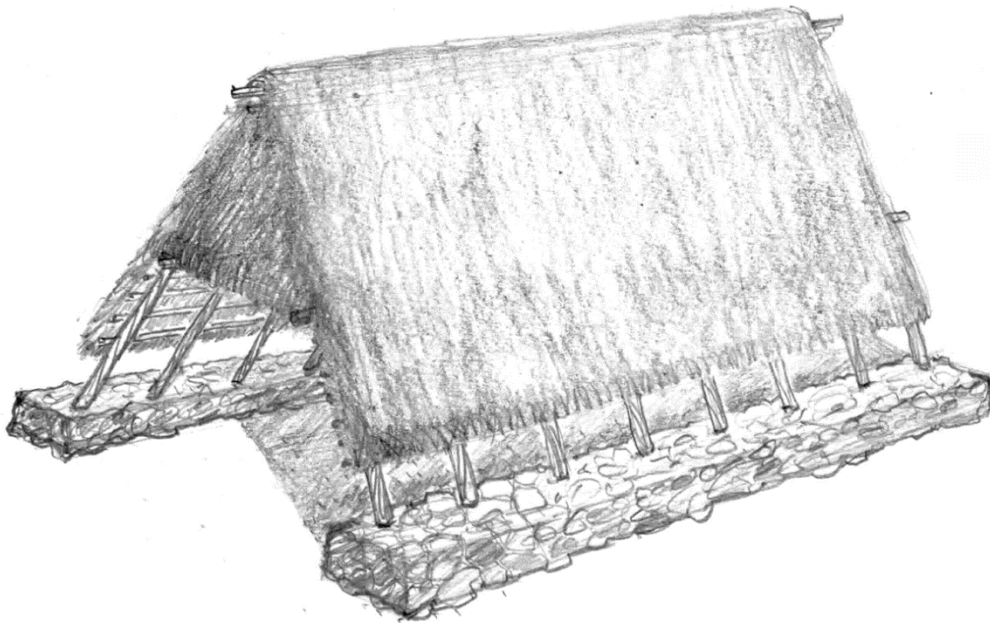
FRAMING SCHEMATIC

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

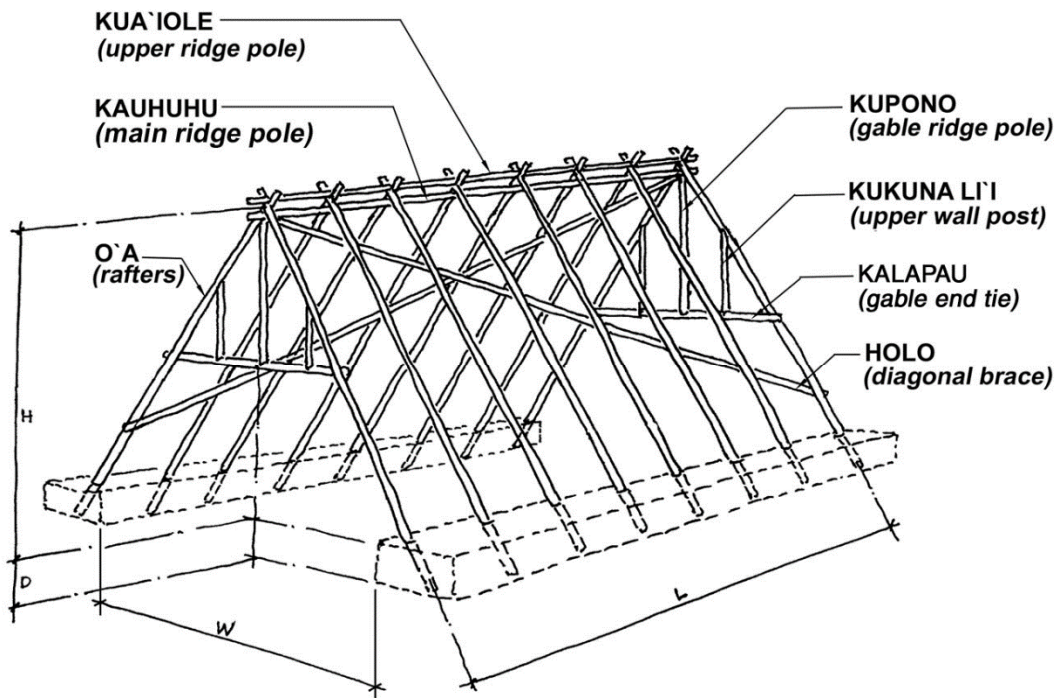
Size W x L x H	<i>pou kihi</i>	<i>pou kukuna & pou kaha</i>	<i>pou hana</i>	<i>pouomanu</i>	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum post spacing (feet)	Maximum rafter spacing (feet)
Minimum Diameter (inches)										
9' x 12' x 7'	3½	3	4	3	3	2½	3½	2½	6	4
12' x 20' x 7'	4	4½	4	3	3½	2½	3½	2½	6	4
4' x 24' x 7'	5½	4½	4	3	3½	2½	3½	3	6	4



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.



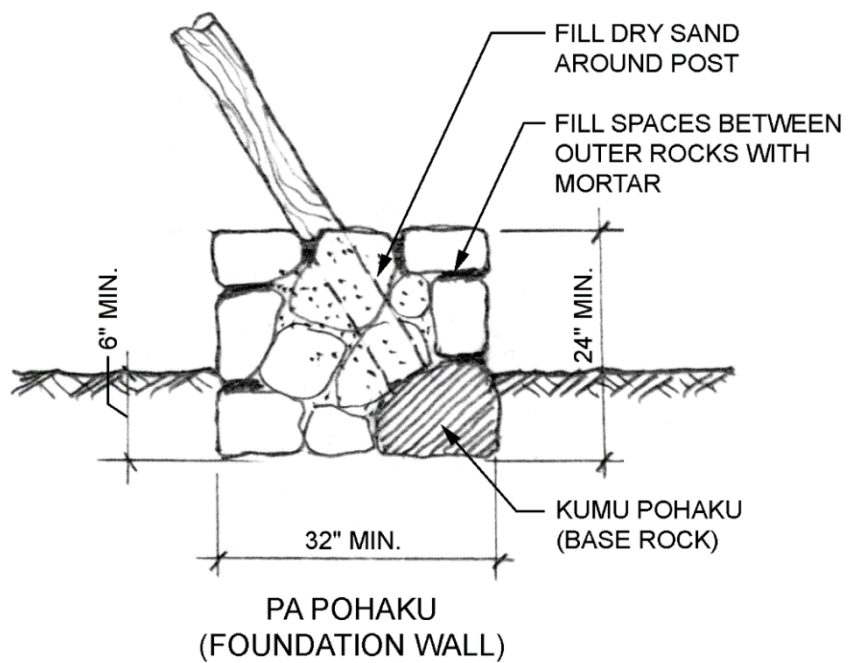
HALE WA`A



FRAMING SCHEMATIC

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

Size (W x L)	<i>o'a</i>	<i>kuaiole</i> & <i>holo</i>	<i>kauhuhu</i>	Spacing between Rafters	Minimum Ridge Height (H)
20' x 60'	4"	3"	4"	4' to 5'	22½'
25' x 60'	5"	3"	4"	4' to 5'	27½'
30' x 60'	5½"	3"	4"	4' to 5'	27½'



”

Revised

16.17.18. Act 97, SLH 2012

HRS § 182-1 Definitions

HRS § 183C-4 Zoning

HRS § 205-2 Distributing and classification of lands

§ 205-4.5 Permissible uses within the agricultural districts, and

§ 205-5 Zoning

ACT 97

S.B. NO. 3003

A Bill for an Act Relating to Geothermal Resources.

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

PART I

SECTION 1. The purpose of this Act is to address geothermal resources.

More specifically:

- (1) Part II amends chapter 182, Hawaii Revised Statutes, relating to mining leases, by differentiating between “geothermal resources exploration” and “geothermal resources development”;
- (2) Part III amends chapter 183C, Hawaii Revised Statutes, relating to the conservation district, by designating “geothermal resources exploration” and “geothermal resources development” as permissible uses in all zones of the conservation district; and
- (3) Part IV amends chapter 205, Hawaii Revised Statutes, relating to state land use districts, by repealing the geothermal resource sub-zone provisions and designating “geothermal resources exploration” and “geothermal resources development” as permissible uses in all districts.

PART II

SECTION 2. Section 182-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

“Geothermal resources development” means the development or production of electrical energy from geothermal resources and direct use application of geothermal resources. The term does not include “geothermal resources exploration”.

“Geothermal resources exploration” means either of the following:

- (1) Conducting non-invasive geophysical operations, including geochemical operations, remote sensing, and other similar techniques;
- or
- (2) Drilling exploration wells for the extraction and removal of minerals of types and quantities;

that are reasonably required for testing and analysis to provide ground truth or determine the economic viability of geothermal resources. The term does not include “geothermal resources development”.”

2. By amending the definitions of “mining lease” and “mining operations” to read:

“Mining lease” means a lease of the right to conduct mining operations, including geothermal resource exploration or development, on state lands and on lands sold or leased by the State or its predecessors in interest with a reservation of mineral rights to the State.

“Mining operations” means the process of excavation, extraction, and removal of minerals, and the exploration or development of any and all geothermal resources, from the ground, design engineering, other engineering, erection of transportation facilities and port facilities, erection of necessary plants, other necessary operations or development approved by the board preceding or connected with the actual extraction of minerals and the exploration or development of geothermal resources.”

SECTION 3. Section 182-5, Hawaii Revised Statutes, is amended to read as follows:

“§182-5 Mining leases on reserved lands. If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of the person’s desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and such information and

maps as the board may by regulation prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its members to which the board is entitled, without public auction, grant a mining lease on reserved lands to the occupier thereof. Such a mining lease may be granted to a person other than the occupier if the occupier has assigned the occupier's rights to apply for a mining lease to another person, in which case only such an assignee may be granted a mining lease. Any provisions to the contrary notwithstanding, if the board decides that it is appropriate to grant a geothermal mining lease on the reserved lands, the surface owner or the owner's assignee shall have the first right of refusal for a mining lease[; however, the granting of a geothermal mining lease does not create the presumption that a geothermal resource subzone will be designated, nor shall geothermal development activities occur on land within the geothermal mining lease until the area is designated a geothermal resource subzone]. If the occupier or the occupier's assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State."

SECTION 4. Section 182-6, Hawaii Revised Statutes, is amended to read as follows:

"§182-6 Exploration. Any person wishing to conduct exploration on [such] state lands shall apply to the board of land and natural resources who shall issue exploration permits upon [such] terms and conditions as it shall by regulation prescribe. During and as a result of the exploration, no minerals of such types and quantity beyond that reasonably required for testing and analysis shall be extracted and removed from such state lands. Upon termination of the exploration permit, the drill logs and the results of the assays resulting from the exploration shall be turned over to the board and kept confidential by the board. If the person shall not make application for a mining lease of the lands within a period of six months from the date the information is turned over to the board, the board in its discretion need not keep the information confidential.

This section shall be construed as authorizing the board to issue an exploration permit for geothermal resources as well as minerals."

PART III

SECTION 5. Section 183C-4, Hawaii Revised Statutes, is amended to read as follows:

"§183C-4 Zoning; amendments. (a) The department, after notice and hearing as provided in this section, shall review and redefine the boundaries of the zones within the conservation district.

(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

(c) The department may allow a temporary variance from zoned use where good cause is shown and where the proposed temporary variance is for a use determined by the department to be in accordance with good conservation practices.

(d) The department shall establish zones within the conservation district, which shall be restricted to certain uses. The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The rules may control the extent, manner, and times of the uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

(e) Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources development, as defined under section 182-1, shall be permissible uses in all zones of the conservation district. The rules required under subsection (b) governing the use of land within the boundaries of the conservation district shall be deemed to include the provisions of this section without necessity of formal adoption by the department.

[(e)] (f) Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or land uses of any zone, or to establish a zone with certain land uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed rule by the applicant and the department shall then give public notice thereof during three successive weeks statewide and in the county in which the property is located. The notice shall be given not less than thirty days prior to the date set for the hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed rules and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the board may summon witnesses, administer oaths, and require the giving of testimony.”

PART IV

SECTION 6. Section 205-2, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

“(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where “city-like” concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than [18,500] eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot^[-]; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for

variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

- (d) Agricultural districts shall include:
 - (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
 - (2) Farming activities or uses related to animal husbandry and game and fish propagation;
 - (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
 - (4) Wind generated energy production for public, private, and commercial use;
 - (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
 - (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
 - (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
 - (8) Wind machines and wind farms;
 - (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
 - (10) Agricultural parks;
 - (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; [and]
 - (12) Open area recreational facilities[-]; and
 - (13) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1."

SECTION 7. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that

are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that ~~[biofuels]~~ biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of ~~[biofuels]~~ biofuel processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less

than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;
- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; [øø]
- (19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A[-]; or
- (20) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.”

SECTION 8. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses;
- (3) Golf courses, golf driving ranges, and golf-related facilities; [and]

- (4) Public, quasi-public, and public utility facilities[-]; and
- (5) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.”

SECTION 9. Section 205-5.1, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 205-5.2, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 205-5.3, Hawaii Revised Statutes, is repealed.

PART V

SECTION 12. The provisions of this Act that repeal the laws that previously authorized geothermal resources subzones under chapter 205, Hawaii Revised Statutes, shall not affect any geothermal resources producer who operates within the area of the subzone as of the effective date of this Act. The geothermal resources producer shall continue to operate in accordance with the producer’s lease with the board of land and natural resources.

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved April 30, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

19. Act 97, SLH 1996

HRS § 6E-2 Definitions

§ 6E-3 Historic preservation program

§ 6E-6 Depositories for certain specimens and objects

§ 6E-7 State title to historic property

§ 6E-8 Review of effect of proposed state projects

§ 6E-12 Reproductions, forgeries and illegal sales

§ 6E-42 Review of proposed projects

ACT 97

H.B. NO. 1741

A Bill for an Act Relating to Aviation Artifacts.

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

SECTION 1. The legislature finds that Hawaii has the third highest number of aviation crash sites in the United States. The high number of crash sites is indicative of the intensity of aviation training that took place in the islands during World War II. These sites often include invaluable aviation artifacts such as actual aircraft, aircraft parts, military equipment, books, documents, and other artifacts.

The purpose of this Act is to protect the integrity and historical value of aviation artifacts in Hawaii.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§6E- Consultation. The department shall consult with appropriate organizations on all matters relating to aviation artifacts.”

SECTION 3. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Aviation artifact” means airplanes, fallen aircraft, crash sites, or any objects or materials associated with the history of aerospace in Hawaii which are

over fifty years old, or determined to be of exceptional historic significance by the department. This term includes but is not limited to actual aircraft, aircraft parts, military equipment, books, documents, and other related items.”

SECTION 4. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

“§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include, but not be limited to, the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State’s historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year and recommendations for changes in the state plan or future programs relating to historic preservation;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77;
- (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (16) Development and adoption, in consultation with the Office of Hawaiian Affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.”

SECTION 5. Section 6E-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§6E-6]] Depositories for certain specimens and objects. The department shall serve as or shall determine the depository for all field notes, photographs, negatives, maps, artifacts, or other materials generated or recovered through historic preservation projects supported in whole or in part by the State or taking place on state lands.

Any aviation artifact or any specimen and object of natural and of botanical, ethnological, architectural, historical, or archaeological value or interest, and any book, treatise, or pamphlet relating thereto in the possession of the University of Hawaii, or any other state agency or its political subdivisions, if and when the same is no longer needed for scientific investigation, for study, or for any other purpose, [may] at the request of the Bishop Museum or other qualified museums in this State, shall be transferred and delivered by and with the consent of such department, bureau, or board having possession thereof, to the Bishop Museum or other qualified museum, or exchanged with such museum, and whereupon, the title shall become vested in such museum and shall be held by them; provided that the aviation artifacts or any specimens and objects so transferred are made available at all reasonable times by the museum for study and examination by the officials of the university of such department, bureau, or board and to qualified scholars.”

SECTION 6. Section 6E-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The State shall not transfer any historic property or aviation artifact under its jurisdiction without the concurrence of the department, and shall not transfer any burial site under its jurisdiction without consulting the appropriate island burial council.”

SECTION 7. Section 6E-8, Hawaii Revised Statutes, is amended to read as follows:

“§6E-8 Review of effect of proposed state projects. (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or in the event it has already begun, continued, until the department shall have given its written concurrence.

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department’s concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department.”

SECTION 8. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner’s written permission being first obtained. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.”

SECTION 9. Section 6E-12, Hawaii Revised Statutes, is amended to read as follows:

“§6E-12 Reproductions, forgeries, and illegal sales. (a) It shall be unlawful to reproduce, retouch, rework, or forge any historic object and to represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to offer for sale or exchange any historic object with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter.

(b) It shall be unlawful for any person to:

- (1) Offer for sale or exchange any exhumed prehistoric or historic human skeletal remains or associated burial goods; or
- (2) Remove those goods or remains, except those remains fabricated into artifacts prehistorically, from the jurisdiction of the State without obtaining a permit from the department.

(c) It shall be unlawful for any person to remove aviation artifacts derived from state lands or agencies from the jurisdiction of the State without obtaining a permit from the department.

[(c)] (d) Any person violating this section shall be fined no more than \$10,000. Each object or part of a prehistoric or historic human skeleton or associated burial good offered for sale or trade or removed from the jurisdiction in violation of this section shall constitute a distinct and separate offense for which the offender may be punished.”

SECTION 10. Section 6E-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

20. Act 85, SLH 2013

HRS § 6E-2 Definitions

§ 6E-8 Review of effect of proposed state projects

§ 6E-42 Review of proposed projects

ACT 85

S.B. NO. 1171

A Bill for an Act Relating to the Review of Historic Preservation Projects.

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

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Programmatic agreement” means a document that sets forth the terms of a formal, legally binding agreement and establishes a process for consultation, review, and compliance with federal laws.”

SECTION 2. Section 6E-8, Hawaii Revised Statutes, is amended to read as follows:

“§6E-8 Review of effect of proposed state projects. (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or ~~[in the event]~~ if it has already begun, continued, until the department ~~[shall have]~~ has given its written concurrence. If:

- (1) The proposed project consists of corridors or large land areas;
- (2) Access to properties is restricted; or
- (3) Circumstances dictate that construction be done in stages.

the department may give its written concurrence based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

The department ~~[is to]~~ shall provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor, ~~[who may request the Hawaii advisory council on historic preservation to report or]~~ who may take action as the governor deems best in overruling or sustaining the department.

(b) The department of Hawaiian home lands, prior to any proposed project relating to lands under its jurisdiction, shall consult with the department regarding the effect of the project upon historic property or a burial site.

(c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of the property.

(d) The department shall adopt rules in accordance with chapter 91 to implement this section.”

SECTION 3. Section 6E-42, Hawaii Revised Statutes, is amended to read as follows:

“§6E-42 Review of proposed projects. (a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places. If:

- (1) The proposed project consists of corridors or large land areas;
- (2) Access to properties is restricted; or
- (3) Circumstances dictate that construction be done in stages.

the department's review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the de-

ACT 85

partment and the project applicant that identifies each phase and the estimated timelines for each phase.

(b) The department shall inform the public of any project proposals submitted to it under this section ~~[which]~~ that are not otherwise subject to the requirement of a public hearing or other public notification.

(c) The department shall adopt rules in accordance with chapter 91 to implement this section."

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 21, 2013.)

21. Act 56, SLH 2012

HRS § 171-2 Definition of public lands

A Bill for an Act Relating to Accreted Lands.

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

SECTION 1. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 Definition of public lands. “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including [~~accreted~~] lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters [~~which~~] that are suitable for reclamation, together with reclaimed lands [~~which~~] that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands [~~which~~] that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands [~~which~~] that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title.”

SECTION 2. Section 501-33, Hawaii Revised Statutes, is amended to read as follows:

“§501-33 Accretion to land. An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent[~~;~~] and that the land accreted before or on May 20, 2003; provided that ~~[no applicant other than the]~~:

- (1) ~~The State [shall]~~ may register land accreted along the ocean[~~, except that a]~~ after May 20, 2003; and
- (2) A private property owner whose eroded land has been restored by accretion after May 20, 2003, may file an accretion claim to regain title to the restored portion.

The applicant shall supply the office of environmental quality control with notice of the application, for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The application shall not be approved unless the office of environmental quality control has published notice in the office's periodic bulletin.

As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of the land ~~[shall be state land except as otherwise provided in this section and]~~ shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45.”

SECTION 3. Section 669-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Action may be brought by any person to quiet title to land by accretion; provided that no action shall be brought by any person other than the State to quiet title to land accreted along the ocean[~~;~~] after May 20, 2003, except that a private property owner whose eroded land has been restored by accretion may also bring such an action for the restored portion. The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent[~~;~~] and that the land accreted before or on May 20, 2003. The person bringing the action shall supply the office of environmental quality control with notice of the action for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The quiet title action shall not be decided by the court unless the office of environmental quality control has properly published notice of the action in the office's periodic bulletin.

As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of land ~~[shall be state land except as otherwise provided in this section and]~~ shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45.”

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 April 23, 2012.)

22. Act 203, SLH 2002

HRS § 190D-2 Findings and purpose

§ 190D-3 Definitions

§ 190D-11 Conservation District Use Application

§ 190D-22 Leasing Procedures

§ 190D-23 Leasing Provisions

§ 190D-33 Revenues, and

§ 190D-34 Penalties

ACT 203

H.B. NO. 2710

A Bill for an Act Relating to Ocean Leasing.

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

SECTION 1. Section 11, Act 176, Session Laws of Hawaii 1999, is repealed.
[~~“SECTION 11. The amendments made to chapter 190D, Hawaii Revised Statutes, by this Act shall be repealed five years after the effective date of this Act; provided that sections 190D-2, 190D-3, 190D-11, 190D-21, 190D-22, 190D-23, 190D-32, 190D-33, and 190D-34 shall be reenacted in the form in which they read on the day before the approval of this Act. The leases granted during the period in which this Act is effective, in addition to any terms agreed to therein, shall remain in force throughout the term of the lease and shall not be affected by the repeal of this Act upon the tolling of the five-year drop dead period.”~~]

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

CHAPTER 190D
OCEAN AND SUBMERGED LANDS LEASING

Part I. Short Title; Purpose; Definitions

Section

- 190D-1 Short title
- 190D-2 Findings and purpose
- 190D-3 Definitions

Part II. Conservation Districts

- 190D-11 Conservation district use application

Part III. Ocean Leasing Generally; Procedures;
Provisions

- 190D-21 Leasing of state marine waters and submerged lands
for
 - private uses
- 190D-22 Leasing procedure
- 190D-23 Lease provisions
- 190D-24 Konohiki fishing rights

Part IV. Administration and Enforcement

- 190D-31 Enforcement
- 190D-32 Rules
- 190D-33 Revenues
- 190D-34 Penalties
- 190D-35 Civil liability
- 190D-36 Criminal liability

Note

L 2014, c 218, §8 purports to amend this chapter.

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Law Journals and Reviews

State-Federal Conflict Over Naval Defensive Sea Areas in Hawai'i. 14 UH L. Rev. 595.

23. Act 16, SLH 2020

HRS § 205A-1 Definitions

§ 205A-2 Objectives and policies

§ 205A-22 Definitions

§ 205A- 26 Special management area guidelines

§ 205A-43 Establishment of shoreline setbacks

§ 205A-44 Prohibitions

§ 205A-46 Variances



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

September 15, 2020

GOV. MSG. NO. 1121

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on September 15, 2020, the following bill was signed into law:

SB2060 SD2 HD2

RELATING TO COASTAL ZONE MANAGEMENT.
Act 016 (20)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on SEP 15 2020

THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

ACT 016

S.B. NO. 2060
S.D. 2
H.D. 2

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The legislature finds that the coastal zone
2 management program was established pursuant to Act 188, Session
3 Laws of Hawaii 1977. The Act declared that it is state policy
4 to:
- 5 (1) Protect, preserve, and where desirable, restore or
6 improve the quality of coastal scenic and open space
7 resources;
- 8 (2) Protect valuable coastal ecosystems from disruption
9 and minimize adverse impacts on all coastal
10 ecosystems;
- 11 (3) Reduce hazards to life and property from tsunami,
12 storm waves, stream flooding, erosion, and subsidence;
13 and
- 14 (4) Improve the development review process, communication,
15 and public participation in the management of coastal
16 resources and hazards.



1 The legislature also finds that a 2012 collaborative study
2 by the United States Geological Survey and the University of
3 Hawaii indicates that seventy per cent of beaches in Hawaii are
4 undergoing a trend of chronic sand loss and shoreline retreat.
5 Further, more than thirteen miles of beach in the State have
6 been completely lost to erosion fronting seawalls and
7 revetments. The Hawaii sea level rise vulnerability and
8 adaptation report, accepted in 2017 by the Hawaii climate change
9 mitigation and adaptation commission, finds that with just 1.1
10 feet of sea level rise, many more miles of beach could be lost
11 to erosion if widespread shoreline armoring is allowed. This
12 could mean a loss of five miles of beach on Kauai, seven miles
13 of beach on Oahu, and eight miles of beach on Maui. Based on
14 its findings, the report recommends enabling beaches to persist
15 with sea level rise and suggests integrating sea level rise
16 considerations into Hawaii's laws regarding coastal zone
17 management.

18 The legislature further finds that the convergence of dense
19 development along shorelines, increasing landward migration of
20 shoreline due to sea level rise and other human and natural
21 impacts, and extensive beach loss fronting shoreline armoring



1 necessitates revision of existing policies and regulations.
2 Revision of these existing policies and regulations would both
3 protect beaches and other coastal environments from further
4 degradation and reduce the exposure of shorefront communities to
5 increasing erosion and flooding hazards caused by sea level
6 rise.

7 The legislature also finds that a recent study by the
8 University of Hawaii coastal geology group identified several
9 primary causes for the State's failure to meet coastal zone
10 management policy objectives. Specifically, the study found
11 that current policies, ordinances, and practices allow for:

12 (1) The hardening of shorelines through a hardship
13 variance that is granted based upon demonstrated
14 hardship brought on by coastal erosion. When granted,
15 these hardship variances set into motion a cycle of
16 shoreline armoring that causes "flanking", or
17 amplified erosion, on properties adjacent to armored
18 shorelines. This continuous cycle of hardening and
19 flanking can extend along an entire beach and, in a
20 section of northeast Oahu, approximately forty-five
21 per cent of observed shoreline hardening was



1 implemented in response to adjacent hardening. This
2 cycle, caused by a combination of beach erosion and
3 coastal policy, has resulted in the narrowing and even
4 elimination of beaches to the extent that they can no
5 longer be used for public recreation or cultural
6 practice; and

- 7 (2) Renovation and expansion of single-family homes in
8 erosion and flood-prone coastal areas, thereby
9 extending building lifetimes indefinitely and allowing
10 for virtually complete coverage of coastal parcels by
11 these structures. The average building surface area
12 increased by twenty per cent following the
13 establishment of the State's coastal zone management
14 program and, combined with sea level rise, this
15 development increases the likelihood of mass
16 structural failure and deposit of debris on public
17 beaches.

18 The purpose of this Act is to strengthen coastal zone
19 management policy by amending chapter 205A, Hawaii Revised
20 Statutes, to protect state beaches and to reduce residential
21 exposure to coastal hazards.



1 SECTION 2. Section 205A-1, Hawaii Revised Statutes, is
2 amended by adding three new definitions to be appropriately
3 inserted and to read as follows:

4 "Authority" means the county planning commission, except
5 in counties where the county planning commission is advisory
6 only, in which case "authority" means the county council or such
7 body as the council may by ordinance designate. The authority
8 may, as appropriate, delegate the responsibility for
9 administering this chapter.

10 "Beach" means a coastal landform primarily composed of sand
11 from eroded rock, coral, or shell material, or any combination
12 thereof, that is established and shaped by wave action and tidal
13 processes. "Beach" includes sand deposits in nearshore
14 submerged areas, or sand dunes or upland beach deposits landward
15 of the shoreline, that provide benefits for public use and
16 recreation, for coastal ecosystems, and as a natural buffer
17 against coastal hazards.

18 "Coastal hazards" means any tsunami, hurricane, wind, wave,
19 storm surges, high tide, flooding, erosion, sea level rise,
20 subsidence, or point and nonpoint source pollution."



1 SECTION 3. Section 205A-2, Hawaii Revised Statutes, is
2 amended by amending subsections (b) and (c) to read as follows:

3 "(b) Objectives.

4 (1) Recreational resources;

5 (A) Provide coastal recreational opportunities
6 accessible to the public.

7 (2) Historic resources;

8 (A) Protect, preserve, and, where desirable, restore
9 those natural and manmade historic and
10 prehistoric resources in the coastal zone
11 management area that are significant in Hawaiian
12 and American history and culture.

13 (3) Scenic and open space resources;

14 (A) Protect, preserve, and, where desirable, restore
15 or improve the quality of coastal scenic and open
16 space resources.

17 (4) Coastal ecosystems;

18 (A) Protect valuable coastal ecosystems, including
19 reefs, beaches, and coastal dunes, from
20 disruption and minimize adverse impacts on all
21 coastal ecosystems.



- 1 (5) Economic uses;
- 2 (A) Provide public or private facilities and
- 3 improvements important to the State's economy in
- 4 suitable locations.
- 5 (6) Coastal hazards;
- 6 (A) Reduce hazard to life and property from [~~tsunami,~~
- 7 ~~storm waves, stream flooding, erosion,~~
- 8 ~~subsidence, and pollution.~~] coastal hazards.
- 9 (7) Managing development;
- 10 (A) Improve the development review process,
- 11 communication, and public participation in the
- 12 management of coastal resources and hazards.
- 13 (8) Public participation;
- 14 (A) Stimulate public awareness, education, and
- 15 participation in coastal management.
- 16 (9) Beach and coastal dune protection;
- 17 (A) Protect beaches and coastal dunes for [~~public~~]:
- 18 (i) Public use and recreation[~~-~~];
- 19 (ii) The benefit of coastal ecosystems; and
- 20 (iii) Use as natural buffers against coastal
- 21 hazards; and



- 1 (B) Coordinate and fund beach management and
2 protection.
- 3 (10) Marine and coastal resources;
- 4 (A) Promote the protection, use, and development of
5 marine and coastal resources to assure their
6 sustainability.
- 7 (c) Policies.
- 8 (1) Recreational resources;
- 9 (A) Improve coordination and funding of coastal
10 recreational planning and management; and
- 11 (B) Provide adequate, accessible, and diverse
12 recreational opportunities in the coastal zone
13 management area by:
- 14 (i) Protecting coastal resources uniquely suited
15 for recreational activities that cannot be
16 provided in other areas;
- 17 (ii) Requiring [~~replacement~~] restoration of
18 coastal resources [~~having~~] that have
19 significant recreational and ecosystem
20 value, including[~~r~~] but not limited to coral
21 reefs, surfing sites, fishponds, [~~and~~] sand



1 beaches, and coastal dunes, when [~~such~~]
2 these resources will be unavoidably damaged
3 by development; or requiring [~~reasonable~~]
4 monetary compensation to the State for
5 recreation when [~~replacement~~] restoration is
6 not feasible or desirable;

7 (iii) Providing and managing adequate public
8 access, consistent with conservation of
9 natural resources, to and along shorelines
10 with recreational value;

11 (iv) Providing an adequate supply of shoreline
12 parks and other recreational facilities
13 suitable for public recreation;

14 (v) Ensuring public recreational uses of county,
15 state, and federally owned or controlled
16 shoreline lands and waters having
17 recreational value consistent with public
18 safety standards and conservation of natural
19 resources;

20 (vi) Adopting water quality standards and
21 regulating point and nonpoint sources of



1 pollution to protect, and where feasible,
2 restore the recreational value of coastal
3 waters;
4 (vii) Developing new shoreline recreational
5 opportunities, where appropriate, such as
6 artificial lagoons, artificial beaches, and
7 artificial reefs for surfing and fishing;
8 and
9 (viii) Encouraging reasonable dedication of
10 shoreline areas with recreational value for
11 public use as part of discretionary
12 approvals or permits by the land use
13 commission, board of land and natural
14 resources, and county authorities; and
15 crediting ~~[such]~~ that dedication against the
16 requirements of section 46-6;
17 (2) Historic resources;
18 (A) Identify and analyze significant archaeological
19 resources;



- 1 (B) Maximize information retention through
2 preservation of remains and artifacts or salvage
3 operations; and
- 4 (C) Support state goals for protection, restoration,
5 interpretation, and display of historic
6 resources;
- 7 (3) Scenic and open space resources;
- 8 (A) Identify valued scenic resources in the coastal
9 zone management area;
- 10 (B) Ensure that new developments are compatible with
11 their visual environment by designing and
12 locating [~~such~~] those developments to minimize
13 the alteration of natural landforms and existing
14 public views to and along the shoreline;
- 15 (C) Preserve, maintain, and, where desirable, improve
16 and restore shoreline open space and scenic
17 resources; and
- 18 (D) Encourage those developments that are not coastal
19 dependent to locate in inland areas;
- 20 (4) Coastal ecosystems;



- 1 (A) Exercise an overall conservation ethic, and
2 practice stewardship in the protection, use, and
3 development of marine and coastal resources;
- 4 (B) Improve the technical basis for natural resource
5 management;
- 6 (C) Preserve valuable coastal ecosystems [~~including~~
7 ~~reefs,~~] of significant biological or economic
8 importance [~~+~~], including reefs, beaches, and
9 dunes;
- 10 (D) Minimize disruption or degradation of coastal
11 water ecosystems by effective regulation of
12 stream diversions, channelization, and similar
13 land and water uses, recognizing competing water
14 needs; and
- 15 (E) Promote water quantity and quality planning and
16 management practices that reflect the tolerance
17 of fresh water and marine ecosystems and maintain
18 and enhance water quality through the development
19 and implementation of point and nonpoint source
20 water pollution control measures;
- 21 (5) Economic uses;



- 1 (A) Concentrate coastal dependent development in
2 appropriate areas;
- 3 (B) Ensure that coastal dependent development [~~such~~
4 ~~as harbors and ports,~~] and coastal related
5 development [~~such as visitor industry facilities~~
6 ~~and energy generating facilities,~~] are located,
7 designed, and constructed to minimize exposure to
8 coastal hazards and adverse social, visual, and
9 environmental impacts in the coastal zone
10 management area; and
- 11 (C) Direct the location and expansion of coastal
12 [~~dependent developments~~] development to areas
13 [~~presently~~] designated and used for [~~such~~
14 ~~developments~~] that development and permit
15 reasonable long-term growth at [~~such~~] those
16 areas, and permit coastal [~~dependent~~] development
17 outside of [~~presently~~] designated areas when:
- 18 (i) Use of [~~presently~~] designated locations is
19 not feasible;
- 20 (ii) Adverse environmental effects and risks from
21 coastal hazards are minimized; and



- 1 (iii) The development is important to the State's
2 economy;
- 3 (6) Coastal hazards;
- 4 (A) Develop and communicate adequate information
5 about [~~storm wave, tsunami, flood, erosion,~~
6 ~~subsidence, and point and nonpoint source~~
7 ~~pollution~~] the risks of coastal hazards;
- 8 (B) Control development, including planning and
9 zoning control, in areas subject to [~~storm wave,~~
10 ~~tsunami, flood, erosion, hurricane, wind,~~
11 ~~subsidence, and point and nonpoint source~~
12 ~~pollution~~] coastal hazards;
- 13 (C) Ensure that developments comply with requirements
14 of the [~~Federal~~] National Flood Insurance
15 Program; and
- 16 (D) Prevent coastal flooding from inland projects;
- 17 (7) Managing development;
- 18 (A) Use, implement, and enforce existing law
19 effectively to the maximum extent possible in
20 managing present and future coastal zone
21 development;



- 1 (B) Facilitate timely processing of applications for
2 development permits and resolve overlapping or
3 conflicting permit requirements; and
- 4 (C) Communicate the potential short and long-term
5 impacts of proposed significant coastal
6 developments early in their life cycle and in
7 terms understandable to the public to facilitate
8 public participation in the planning and review
9 process;
- 10 (8) Public participation;
- 11 (A) Promote public involvement in coastal zone
12 management processes;
- 13 (B) Disseminate information on coastal management
14 issues by means of educational materials,
15 published reports, staff contact, and public
16 workshops for persons and organizations concerned
17 with coastal issues, developments, and government
18 activities; and
- 19 (C) Organize workshops, policy dialogues, and site-
20 specific mediations to respond to coastal issues
21 and conflicts;



1 (9) Beach protection;

2 (A) Locate new structures inland from the shoreline
3 setback to conserve open space, minimize
4 interference with natural shoreline processes,
5 and minimize loss of improvements due to erosion;

6 (B) Prohibit construction of private [~~erosion-~~
7 ~~protection~~] shoreline hardening structures
8 [~~seaward of the shoreline, except when they~~
9 ~~result in improved aesthetic and engineering~~
10 ~~solutions to erosion at the sites and do not~~],
11 including seawalls and revetments, at sites
12 having sand beaches and at sites where shoreline
13 hardening structures interfere with existing
14 recreational and waterline activities;

15 (C) Minimize the construction of public [~~erosion-~~
16 ~~protection~~] shoreline hardening structures
17 [~~seaward of the shoreline~~], including seawalls
18 and revetments, at sites having sand beaches and
19 at sites where shoreline hardening structures
20 interfere with existing recreational and
21 waterline activities;



- 1 (D) Minimize grading of and damage to coastal dunes;
- 2 [~~(D)~~] (E) Prohibit private property owners from
- 3 creating a public nuisance by inducing or
- 4 cultivating the private property owner's
- 5 vegetation in a beach transit corridor; and
- 6 [~~(E)~~] (F) Prohibit private property owners from
- 7 creating a public nuisance by allowing the
- 8 private property owner's unmaintained vegetation
- 9 to interfere or encroach upon a beach transit
- 10 corridor; and
- 11 (10) Marine and coastal resources;
- 12 (A) Ensure that the use and development of marine and
- 13 coastal resources are ecologically and
- 14 environmentally sound and economically
- 15 beneficial;
- 16 (B) Coordinate the management of marine and coastal
- 17 resources and activities to improve effectiveness
- 18 and efficiency;
- 19 (C) Assert and articulate the interests of the State
- 20 as a partner with federal agencies in the sound



1 management of ocean resources within the United
2 States exclusive economic zone;

3 (D) Promote research, study, and understanding of
4 ocean and coastal processes, impacts of climate
5 change and sea level rise, marine life, and other
6 ocean resources to acquire and inventory
7 information necessary to understand how [~~ocean~~]
8 coastal development activities relate to and
9 impact [~~upon~~] ocean and coastal resources; and

10 (E) Encourage research and development of new,
11 innovative technologies for exploring, using, or
12 protecting marine and coastal resources."

13 SECTION 4. Section 205A-22, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending the definition of "department" to read:

16 "'Department" means the planning department [~~in~~] of the
17 counties of Kauai, Maui, and Hawaii and the department of
18 planning and permitting [~~in~~] of the city and county of Honolulu,
19 or other appropriate agency as designated by the county
20 councils."

21 2. By amending the definition of "development" to read:



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

- 4 (1) Placement or erection of any solid material or any
5 gaseous, liquid, solid, or thermal waste;
- 6 (2) Grading, removing, dredging, mining, or extraction of
7 any materials;
- 8 (3) Change in the density or intensity of use of land,
9 including but not limited to the division or
10 subdivision of land;
- 11 (4) Change in the intensity of use of water, ecology
12 related thereto, or of access thereto; and
- 13 (5) Construction, reconstruction, [~~demolition~~] or
14 alteration of the size of any structure.

15 "Development" does not include the following:

- 16 (1) Construction or reconstruction of a single-family
17 residence that is less than seven thousand five
18 hundred square feet of floor area, is not situated on
19 a shoreline parcel or a parcel that is impacted by
20 waves, storm surges, high tide, or shoreline erosion,
21 and is not part of a larger development;



- 1 (2) Repair or maintenance of roads and highways within
- 2 existing rights-of-way;
- 3 (3) Routine maintenance dredging of existing streams,
- 4 channels, and drainage ways;
- 5 (4) Repair and maintenance of underground utility lines,
- 6 including but not limited to water, sewer, power, and
- 7 telephone and minor appurtenant structures such as pad
- 8 mounted transformers and sewer pump stations;
- 9 (5) Zoning variances, except for height, density, parking,
- 10 and shoreline setback;
- 11 (6) Repair, maintenance, or interior alterations to
- 12 existing structures;
- 13 (7) Demolition or removal of structures, except those
- 14 structures located on any historic site as designated
- 15 in national or state registers;
- 16 (8) Use of any land for the purpose of cultivating,
- 17 planting, growing, and harvesting plants, crops,
- 18 trees, and other agricultural, horticultural, or
- 19 forestry products or animal husbandry, or aquaculture
- 20 or mariculture of plants or animals, or other
- 21 agricultural purposes;



- 1 (9) Transfer of title to land;
- 2 (10) Creation or termination of easements, covenants, or
- 3 other rights in structures or land;
- 4 ~~[(11) Final subdivision approval; provided that in counties~~
- 5 ~~that may automatically approve tentative subdivision~~
- 6 ~~applications as a ministerial act within a fixed time~~
- 7 ~~of the submission of a preliminary plat map, unless~~
- 8 ~~the director takes specific action, a special~~
- 9 ~~management area use permit if required, shall be~~
- 10 ~~processed concurrently with an application for~~
- 11 ~~tentative subdivision approval or after tentative~~
- 12 ~~subdivision approval and before final subdivision~~
- 13 ~~approval;~~
- 14 ~~+(12)+~~ (11) Subdivision of land into lots greater than
- 15 twenty acres in size;
- 16 ~~+(13)+~~ (12) Subdivision of a parcel of land into four or
- 17 fewer parcels when no associated construction
- 18 activities are proposed; provided that any land that
- 19 is so subdivided shall not thereafter qualify for this
- 20 exception with respect to any subsequent subdivision
- 21 of any of the resulting parcels;



1 ~~[(14)]~~ (13) Installation of underground utility lines and
2 appurtenant aboveground fixtures less than four feet
3 in height along existing corridors;

4 ~~[(15)]~~ (14) Structural and nonstructural improvements to
5 existing single-family residences, where otherwise
6 permissible;

7 ~~[(16)]~~ (15) Nonstructural improvements to existing
8 commercial or noncommercial structures; and

9 ~~[(17)]~~ (16) Construction, installation, maintenance, repair,
10 and replacement of emergency management warning or
11 signal devices and sirens;

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

17 3. By amending the definition of "special management area
18 emergency permit" to read:

19 ""Special management area emergency permit" means an action
20 by the authority authorizing development in cases of emergency
21 requiring immediate action to prevent substantial physical harm



1 to persons or property or to allow the reconstruction of
2 structures damaged by natural hazards to their original form;
3 provided that [~~such~~] those structures were previously found to
4 be in compliance with requirements of the [~~Federal~~] National
5 Flood Insurance Program."

6 4. By repealing the definition of "authority".

7 [~~"Authority" means the county planning commission, except~~
8 ~~in counties where the county planning commission is advisory~~
9 ~~only, in which case "authority" means the county council or such~~
10 ~~body as the council may by ordinance designate. The authority~~
11 ~~may, as appropriate, delegate the responsibility for~~
12 ~~administering this part."~~]

13 SECTION 5. Section 205A-26, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§205A-26 Special management area guidelines.** In
16 implementing this part, the authority shall adopt the following
17 guidelines for the review of developments proposed in the
18 special management area:

19 (1) All development in the special management area shall
20 be subject to reasonable terms and conditions set by
21 the authority in order to ensure:



(A) 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;

(B) Adequate and properly located public recreation areas and wildlife preserves are reserved;

(C) Provisions are made for solid and liquid waste treatment, disposition, and management ~~[which]~~ that will minimize adverse effects upon special management area resources; and

(D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources, beaches, coastal dunes, and scenic and recreational amenities and ~~[minimum danger of]~~ minimize impacts from floods, wind damage, storm surge, landslides, erosion, sea level rise, siltation, or failure in the event of earthquake.

(2) No development shall be approved unless the authority has first found:



- 1 (A) That the development will not have any
2 [substantial] significant adverse environmental
3 or ecological effect, except as [~~such~~] any
4 adverse effect is minimized to the extent
5 practicable and clearly outweighed by public
6 health, safety, or compelling public interests.
7 [~~Such~~] Those adverse effects shall include[~~r~~] but
8 not be limited to[~~r~~] the potential cumulative
9 impact of individual developments, each [~~one~~] of
10 which taken [~~in~~] by itself might not have a
11 [substantial] significant adverse effect, and the
12 elimination of planning options;
- 13 (B) That the development is consistent with the
14 objectives, policies, and special management area
15 guidelines of this chapter and any guidelines
16 enacted by the legislature; and
- 17 (C) That the development is consistent with the
18 county general plan, community plan, and zoning[~~r~~]
19 ~~Such~~]; provided that a finding of consistency
20 [~~does~~] shall not preclude concurrent processing



1 where a general plan, community plan, or zoning
2 amendment may also be required.

3 (3) The authority shall seek to minimize, where
4 reasonable:

5 (A) Dredging, filling or otherwise altering any bay,
6 estuary, salt marsh, river mouth, slough or
7 lagoon;

8 (B) Any development [~~which~~] that would reduce the
9 size of any beach or other area usable for public
10 recreation;

11 (C) Any development [~~which~~] that would reduce or
12 impose restrictions upon public access to tidal
13 and submerged lands, beaches, portions of rivers
14 and streams within the special management areas
15 and the mean high tide line where there is no
16 beach;

17 (D) Any development [~~which~~] that would substantially
18 interfere with or detract from the line of sight
19 toward the sea from the state highway nearest the
20 coast; and



1 (E) Any development [~~which~~] that would adversely
2 affect water quality, existing areas of open
3 water free of visible structures, existing and
4 potential fisheries and fishing grounds, wildlife
5 habitats, or potential or existing agricultural
6 uses of land."

7 SECTION 6. Section 205A-29, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The authority in each county, upon consultation with
10 the central coordinating agency, shall adopt rules under
11 chapter 91 setting the special management area use permit
12 application procedures, conditions under which hearings must be
13 held, and the time periods within which the hearing and action
14 for special management area use permits shall occur. The
15 authority shall provide for adequate notice to individuals whose
16 property rights may be adversely affected and to persons who
17 have requested in writing to be notified of special management
18 area use permit hearings or applications. The authority shall
19 also provide public notice [~~statewide~~] that is, at a minimum,
20 circulated throughout the county at least twenty days in advance



1 of the hearing. The authority may require a reasonable filing
2 fee which shall be used for the purposes set forth herein.

3 Any rule adopted by the authority shall be consistent with
4 the objectives, policies, and special management area guidelines
5 provided in this chapter. Action on the special management
6 permit shall be final unless otherwise mandated by court order."

7 SECTION 7. Section 205A-41, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Department" means the planning department of the counties
11 of Kauai, Maui, and Hawaii and the department of planning and
12 permitting of the city and county of Honolulu, or other
13 appropriate agency as designated by the county councils."

14 SECTION 8. Section 205A-43, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Setbacks along shorelines are established of not less
17 than [~~twenty feet and not more than~~] forty feet inland from the
18 shoreline. The department shall adopt rules pursuant to chapter
19 91, and shall enforce the shoreline setbacks and rules
20 pertaining thereto."



SECTION 9. Section 205A-43.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived prior to action on a variance 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+]~~ or public facility, including any facility owned by a public utility that is regulated pursuant to chapter 269, that does not fix the shoreline, under an emergency authorization issued by the authority; provided that the structure or public facility is at risk of immediate damage from shoreline erosion[+] and the authorization does not exceed three years;



1 (3) Other structures or activities; provided that no
2 person or agency has requested a public hearing within
3 twenty-five calendar days after public notice of the
4 application; or

5 (4) Maintenance, repair, reconstruction, and minor
6 additions or alterations of legal boating, maritime,
7 or watersports recreational facilities, [~~which~~] that
8 result in little or no interference with natural
9 shoreline processes."

10 SECTION 10. Section 205A-44, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Except as provided in this section, structures are
13 prohibited in the shoreline area without a variance pursuant to
14 this part. Structures in the shoreline area shall not need a
15 variance if:

- 16 (1) They were completed prior to June 22, 1970;
17 (2) They received either a building permit, board
18 approval, or shoreline setback variance prior to June
19 16, 1989;
20 (3) They are outside the shoreline area when they receive
21 either a building permit or board approval;



1 (4) They are necessary for or ancillary to continuation of
2 existing agriculture or aquaculture in the shoreline
3 area on June 16, 1989;

4 (5) They are minor structures permitted under rules
5 adopted by the department which do not affect beach
6 processes or artificially fix the shoreline and do not
7 interfere with public access or public views to and
8 along the shoreline; or

9 (6) Work being done consists of maintenance, repair,
10 [~~reconstruction,~~] and minor additions or alterations
11 of legal boating, maritime, or watersports
12 recreational facilities, which are publicly owned, and
13 which result in little or no interference with natural
14 shoreline processes;

15 provided that permitted structures may be repaired, but shall
16 not be enlarged, rebuilt, or replaced within the shoreline area
17 without a variance."

18 SECTION 11. Section 205A-46, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:



1 "(a) A variance may be granted for a structure or activity
2 otherwise prohibited in this part if the authority finds in
3 writing, based on the record presented, that the proposed
4 structure or activity is necessary for or ancillary to:

5 (1) Cultivation of crops;

6 (2) Aquaculture;

7 (3) Landscaping; provided that the authority finds that
8 the proposed structure or activity will not adversely
9 affect beach processes and will not artificially fix
10 the shoreline;

11 (4) Drainage;

12 (5) Boating, maritime, or watersports recreational
13 facilities;

14 (6) Facilities or improvements by public agencies or
15 public utilities regulated under chapter 269;

16 (7) Private facilities or improvements that are clearly in
17 the public interest;

18 (8) Private facilities or improvements [~~which~~] that will
19 [~~neither~~] not adversely affect beach processes [~~nor~~],
20 result in flanking shoreline erosion, or artificially
21 fix the shoreline; provided that the authority [~~also~~



1 ~~finds that]~~ may consider any hardship that will result
2 to the applicant if the facilities or improvements are
3 not allowed within the shoreline area;

4 (9) Private facilities or improvements that may
5 artificially fix the shoreline; provided that the
6 authority ~~[also finds that shoreline erosion is likely~~
7 ~~to cause]~~ may consider hardship to the applicant if
8 the facilities or improvements are not allowed within
9 the shoreline area~~[, and the authority imposes~~
10 ~~conditions to prohibit any structure seaward of the~~
11 ~~existing shoreline unless it is clearly in the public~~
12 ~~interest; or]~~ provided further that a variance to
13 artificially fix the shoreline shall not be granted in
14 areas with sand beaches or where artificially fixing
15 the shoreline may interfere with existing recreational
16 and waterline activities unless the granting of the
17 variance is clearly demonstrated to be in the interest
18 of the general public; or

19 (10) Moving of sand from one location seaward of the
20 shoreline to another location seaward of the
21 shoreline; provided that the authority also finds that



1 moving of sand will not adversely affect beach
2 processes, will not diminish the size of a public
3 beach, and will be necessary to stabilize an eroding
4 shoreline."

5 2. By amending subsection (c) to read:

6 "(c) No variance shall be granted unless appropriate
7 conditions are imposed:

- 8 (1) To maintain safe lateral access to and along the
9 shoreline or adequately compensate for its loss;
10 (2) To minimize risk of adverse impacts on beach
11 processes;
12 (3) To minimize risk of structures failing and becoming
13 loose rocks, sharp or otherwise dangerous debris, or
14 rubble on public property; and
15 (4) To minimize adverse impacts on public views to, from,
16 and along the shoreline."

17 SECTION 12. Section 205A-62, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§205A-62 Duties and responsibilities of the lead agency.**

20 The lead agency shall have the following duties and
21 responsibilities:



- 1 (1) Coordinate overall implementation of the plan, giving
2 special consideration to the plan's priority
3 recommendations;
- 4 (2) Review and periodically update the plan;
- 5 (3) Coordinate the development of state agency work plans
6 to implement the ocean resources management plan. The
7 work plans shall be revised on a biennial basis and
8 coordinated with the budget process. State agencies
9 with responsibilities relating to marine and coastal
10 zone management include but are not limited to:
- 11 (A) The department of agriculture;
- 12 (B) The department of business, economic development,
13 and tourism;
- 14 (C) The department of defense;
- 15 (D) The department of education;
- 16 [~~(D)~~] (E) The department of health;
- 17 [~~(E)~~] (F) The department of land and natural
18 resources;
- 19 [~~(F)~~] (G) The department of public safety;
- 20 [~~(G)~~] (H) The department of transportation; and
- 21 [~~(H)~~] (I) The University of Hawaii;



- 1 (4) Ensure that state agency work plans are closely
2 coordinated with the work plans of relevant federal
3 and county agencies;
- 4 (5) Analyze, resolve conflicts between, and prioritize, in
5 cooperation with relevant agencies and as part of the
6 work plan development process, the sector-specific
7 recommendations included in the plan;
- 8 (6) Coordinate exclusive economic zone and other marine-
9 related issues with state and county agencies;
- 10 (7) Provide technical assistance to the agencies on policy
11 and issue-related matters regarding marine and coastal
12 resources management;
- 13 (8) Coordinate marine and coastal education activities;
14 and
- 15 (9) Adopt rules pursuant to chapter 91 to carry out the
16 purposes of this part."

17 SECTION 13. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 14. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 15. This Act shall take effect upon its approval.

APPROVED this 15 day of SEP, 2020

A handwritten signature in black ink, appearing to read "David Y. Ige", is written in a cursive style.


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: July 10, 2020
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2020.



President of the Senate


Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: July 6, 2020
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives