

**Program Changes
to
State of Hawaii Coastal Zone Management Program**

**Request for Concurrence
December 2020**

Submitted to: Office for Coastal Management
National Oceanic and Atmospheric Administration

Submitted by: State of Hawaii Office of Planning
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Summary of Changes in the Hawaii Coastal Zone Management Program for Change Request

In 1977, the Hawaii State Legislature enacted Hawaii Revised Statutes (HRS) Chapter 205A as the legal foundation for the Hawaii Coastal Zone Management (CZM) Program. The Legislature designed the Hawaii CZM Program to build upon the existing functions of agencies that comprise the network of the Hawaii CZM Program. The Hawaii CZM Program is implemented through the licensing, permitting and other administrative mechanisms created by the Hawaii CZM Law and the network authorities.

Since its approval in 1978 by National Oceanic and Atmospheric Administration (NOAA), the Hawaii CZM Program has incorporated a wide array of state and local authorities and enforceable policies into its management framework. It has been recognized that statutory and regulatory changes from the Hawaii CZM network agencies are necessary to address challenges, strengthen the management regime, clarify provisions, or otherwise modify management of activities affecting coastal resources. In order for these statutory and regulatory changes to be incorporated into the federally approved Hawaii CZM Program, they must be submitted for federal review and concurrence in accordance with 15 Code of Federal Regulations (CFR) Part 923. The State of Hawaii Office of Planning (OP), the lead agency of the Hawaii CZM Program, is submitting this request for NOAA Office for Coastal Management (OCM) concurrence of these statutory and regulatory changes to the Hawaii CZM Program.

The following pages provide the description of statutory and regulatory changes that are being submitted for NOAA OCM's concurrence.

Deleted Statutory Policies

1. Hawaii Revised Statutes (HRS) Chapter 6E, Part VI. South Kona Wilderness Area

Act 59, Session Laws of Hawaii (SLH) 2003 amended HRS Chapter 6E by adding Part VI South Kona Wilderness Area on the Island of Hawaii, which was approved by NOAA as program changes on May 19, 2004. However, Act 59, SLH 2003 was subsequently repealed on December 31, 2007, pursuant to Act 215, SLH 2006.

Added Statutory and Regulatory Policies

2. HRS Chapter 6E, Part VI. South Kona Wilderness Area

Establish a South Kona Wilderness Area on the Island of Hawaii by the Department of Land and Natural Resources for the preservation of 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 holuas slide, a heiau and burial caves; 2) Preserve and protect native Hawaiian plants and animals currently in the area; provide for a wildness

area with minima man-made structures; 3) Permit limited non-vehicular access for recreational purposes; and 4) Prevent additional development in the area by establishing the South Kona Wilderness Area on the Island of Hawaii.

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

Creates an exemption from the review requirements of HRS 6E-42, which was previously approved as enforceable policies via Act 306, SLH 1990 by NOAA on June 7, 1993, for proposed projects on privately-owned single-family detached dwelling units and townhouses that are not designated on or nominated for Hawaii or national register of historic places and are not located in a historic district.

**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**

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 the Department of Land and Natural Resources (DLNR), as represented by State Historic Preservation Division (SHPD), shall have given its written concurrence. This chapter itemizes the process to obtain concurrence. If a project will have an effect 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.

**5. HAR Chapter 13-276
Rules governing standards for archaeological inventory surveys and reports under HRS Chapter 6E**

This chapter establishes standards for archaeological inventory surveys and reports required by HAR Chapters 13-275 and 13-284 for the historic preservation review process, including archaeological inventory survey, and archaeological field survey. 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 the SHPD prior to implementation. The presence or absence of subsurface sites shall be evaluated for areas that have no visible historic properties. This evaluation shall include findings of test excavations if deemed necessary by the DLNR.

**6. HAR Chapter 13-277
Rules governing requirements for archaeological site preservation and development under HRS Chapter 6E**

This chapter provides standards for preservation approaches to ensure proper preservation, including preservation plans, buffer zones, interim protection measures, and long-term preservation measures, in the public's interest. As required, a preservation plan prepared pursuant to HAR Chapters 13-275 and 13-284, shall identify for each significant historic property which forms of preservation will be implemented; specify the buffer zones for each significant historic property and depict them on a map of sufficient scale; specify short-term protection measures for each significant historic property; discuss the agency or person's consultation process for significant historic properties; and specify the long-term preservation measures to be undertaken at each significant historic property.

7. HAR Chapter 13-278

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

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 interest. All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD.

8. HAR Chapter 13-279

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

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. Archaeological monitoring undertaken in response to SHPD requirements or recommendations shall be based on written plan as required. Each site studied shall be individually described, including state site number and previous numbers; reference to a previous study, site's formal type, and description of the site.

9. HAR Chapter 13-282

Rules governing permits for archaeological work under HRS Chapter 6E

This rule establishes a permit system for all archaeological field work undertaken anywhere in the State of Hawaii, 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 interests. 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 DLNR.

10. HAR Chapter 13-283

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

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. The osteological report shall be

submitted separately to the SHPD from the archaeological report required under HAR Chapters 13-275, 13-276, 13-278 and 13-284.

11. HAR Chapter 13-284
Rules governing procedures for historic preservation review to comment on Section 6E-42, HRS, projects

This rule 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 HRS § 6E-42. 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.

12. HAR Chapter 13-76
Rules relating to non-indigenous aquatic species

Establishing rules to prevent, to the extent practical, the introduction and spread of non-indigenous aquatic species into state waters. Such non-indigenous aquatic species replace or destroy native species and alter their habitats, and are harmful to the environment and economy of Hawaii. It is unlawful for any person to violate any provision of any permit issued pursuant to this chapter. In particular, the subchapter addresses the management and disposition of vessel ballast water as a medium or means for the introduction of aquatic invasive species to any ocean, estuary, bay, harbor, beach, or coastal area.

13. HAR Chapter 13-168
Rules relating to water use, wells, and stream diversion works

Establishing rules to report and gather meaningful data on all water uses and sources, and carry out the intent of the State Water Code to assure maximum beneficial use of ground and surface waters of the state; providing for the declaration and certification of all existing uses of ground and surface waters; permitting of wells, pump installations and repairs, and permitting of stream diversion works. 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 permitting of wells, the permitting of pump installations and repairs; and the permitting of stream diversion works.

14. HAR Chapter 13-171
Rules relating to designation and regulation of water management areas

Establishing administrative control with ground and surface water criteria for designation over the withdrawals and diversions of ground and surface waters in threatened areas to ensure the most beneficial use, development, or management of the water resources in the interest of the public. Water use permits are required, and 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 on water resource management.

15. Hawaii State Building Code, based on International Building Code (IBC) 2012 Edition

HAR Chapter 3-180 State Building Code, based on IBC 2006 edition, was adopted in 2009 by the State, and took effect on April 16, 2010. NOAA approved HAR Chapter 3-180 as enforceable policies on January 18, 2013.

The State of Hawaii Building Code Council (SBCC) no longer amends HAR Chapter 3-180.

In accordance with HRS § 107-25, the state building code shall include the latest edition of the International Building Code, as published by the International Code Council. The SBCC adopted the Hawaii State Building Code based on IBC, 2012 edition, on November 13, 2018. No later than November 13, 2019, the design of all State Building construction must comply with this State Building Code.

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.

If by November 13, 2020, a county does not amend the code, it shall become applicable as an interim county building code.

16. HRS § 182-1 Definitions under HRS Chapter 182 Reservation and Disposition of Government Mineral Rights

Adding the definitions of “Geothermal resources development” and “Geothermal resources exploration”.

Revised Statutory Policies

17. HRS § 183C-4 Zoning under HRS Chapter 183C Conservation District

“Geothermal resources development” and “Geothermal resources exploration” shall be permissible uses in all zones of the conservation district.

18. HRS § 205-2 Distributing and classification of lands
§ 205-4.5 Permissible uses within the agricultural districts
§ 205-5 Zoning

Urban, rural, and conservation districts shall include geothermal resources exploration and geothermal resources development, as defined in HRS § 182-1. Adding “geothermal resources exploration” and “geothermal resources development”, as defined in HRS § 182-1,

as permitted uses to all lands within the agricultural district with soil classified by the land study bureau's detailed land classification as overall productivity rating class A or B.

19. 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

Adding "Aviation artifact" such 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 of Land and Natural Resources, to the existing enforceable policies under HRS Chapter 6E via Act 306, SLH 1990 approved by NOAA on June 7, 1993.

20. HRS § 6E-2 Definitions

§ 6E-8 Review of effect of proposed state projects

§ 6E-42 Review of proposed projects

Authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law by amending the existing enforceable policies under HRS Chapter 6E via Act 306, SLH 1990 approved by NOAA on June 7, 1993.

21. HRS § 171-2 Definition of public lands

Clarify that all land accreted, which means lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces, after May 20, 2003, shall be public land, except as otherwise provided by law. HRS §171-2 was approved as an enforceable policy on May 19, 2004 via Act 73, SLH 2003.

22. 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

The Section 11 of Act 176, SLH 1999, the five-year drop dead time period for the amendments made to HRS Chapter 190D, which were approved as enforceable policies by NOAA on September 18, 2001, is repealed.

23. 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 under HRS Chapter 205A Coastal Zone Management

Adding definitions of “Beach” and “Coastal hazards”; Enhancing beach and dune protection, and protecting beaches by restricting or prohibiting shoreline hardening; Requiring construction of single-family residence that is located on a shoreline parcel or a parcel that is impacted by waves, surges, high tide or shoreline erosion to obtain a special management area permit; Increasing the minimum shoreline from 20 feet to 40 feet inland from the shoreline; and Prohibiting shoreline hardening structures on a site that has beaches.

Conclusion

Pursuant to 15 CFR § 923.82, the Hawaii CZM Program finds that the statutory and regulatory changes submitted to NOAA’s OCM for approval are changes to enforceable policies previously approved by NOAA, including modifications, additions, and deletions. These changes proposed to the Hawaii CZM Program for approval include the following:

- Reestablishment of the South Kona Wilderness Area on the Island of Hawaii to preserve the extensive archaeological sites in the area;
- Adoption of administrative rules governing standards and requirements for archaeological inventory surveys, data and monitoring studies, site preservation, and permitting under HRS Chapter 6E;
- Adoption of administrative rules preventing the introduction and spread of non-indigenous species into state waters;
- Adoption of administrative rules relating to water use, wells, and stream diversion works, and water management areas;
- Adoption of the Hawaii Building Code, based on International Building Code, 2012 edition;
- Allowing geothermal resources exploration and geothermal resources development in urban, rural, agricultural and conservation districts; and
- Amendments to HRS Chapter 205A by increasing shoreline setbacks, and restricting and/or prohibiting shoreline hardening structures in the beach areas, and requiring a special management area permit for new residential development along the shoreline.

All the changes submitted at this time for approval will not result in substantive changes to the five program approval areas, including 1) Uses Subject to Management; 2) Special Management Areas; 3) Boundaries; 4) Authorities and Organization; and 5) Coordination, Public Involvement and National Interest. No changes or additions are submitted this time to the Hawaii Federal consistency list of geographic location descriptions.