

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

February 26, 2016

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

**SUBJECT:   REQUEST TO CONDUCT A PUBLIC HEARING REGARDING  
          AMENDMENTS TO TITLE 13, CHAPTER 209, HAWAII  
          ADMINISTRATIVE RULES: RULES REGULATING ACTIVITIES  
          WITHIN NATURAL AREA RESERVES**

Rule revisions are proposed for Ch. 13-209, Hawaii Administrative Rules, Rules Regulating Activities in the Natural Area Reserves System (NARS) for the following purposes:

- Ch. 13-209-4:        Make NARS rules consistent with other Department land designations regarding alcohol and drug use.
- Ch. 13-209-5:        Provide greater flexibility for issuing long-term permits.
- Ch. 13-209-5:        Removes the permit application fee to further streamline permitting.
- Ch. 13-209-5.6:     Establish parking fees in the Ahihi-Kinau Natural Area Reserve in the Kanahena parking lot. Residents with a valid state of Hawaii identification card or Hawaii drivers license will not be charged a fee. Parking fees are proposed in the 2012 Ahihi-Kinau Natural Area Reserve Management plan to provide a self-sustaining funding source that supports the protection of the Reserves. The management plan was approved by the Board in its October 12, 2012 meeting.
- Ch. 13-209-5.7:     Establish closure hours for public parking.
- Ch. 13-209-5.8:     Require parking only in designated areas and prohibit parking at the Kanahena lot of Ahihi Kinau during closed hours, without payment.
- Ch. 13-209-5.9:     Authorize the Department to remove vehicles after nonpayment of parking charges, if parking time exceeds the time limits, or if parked car is hazardous or creating a nuisance.

Because Ahihi-Kinau NAR will be the most impacted by this rule change, the public hearing is proposed to be held in Maui.

These proposed amendments were approved by the Natural Area Reserves System Commission at its April 27, 2015 meeting.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This action before the Board represents approval to conduct public hearings and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS relating to environmental impact statements.

RECOMMENDATION: That the Board:

- 1) Grant permission to conduct a public hearing on Maui regarding amendments to Title 13, Chapter 209, Hawaii Administrative Rules: Rules Regulating Activities Within Natural Area Reserves;
- 2) Authorize the Chairperson to set the dates and times for the public hearing and;
- 3) Authorize the Chairperson to appoint a hearing master for the public hearing.

Respectfully Submitted,



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SHERI S. MANN, Acting Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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SUZANNE D. CASE, Chairperson

Attachment

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE

Amendments to Chapter 13-209  
Hawaii Administrative Rules

DATE

1. Section 13-209-4, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-4 Prohibited activities. The following activities are prohibited within a natural area reserve:

(1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;

(2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;

(3) To remove, damage, or disturb any geological or paleontological features or substances;

(4) To remove, damage, or disturb any historic or prehistoric remains;

(5) To remove, damage, or disturb any notice, marker, or structure;

(6) To engage in any construction or improvement;

(7) To engage in any camping activity or to establish a temporary or permanent residence;

(8) To start or maintain a fire;

(9) To litter, or to deposit refuse or any other substance;

(10) To operate any motorized or unmotorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use;

(11) To operate any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, or marine waters, except as otherwise provided in the boating rules of the department;

(12) To enter into, place any vessel or material in or on, or otherwise disturb a lake or pond;

(13) To engage in commercial activities of any kind in a natural area reserve without a written special-use permit from the board or its authorized representative;

(14) To have or possess the following tools, equipment, or implements: fishing gear or devices within Ahihi-Kinau natural area reserve, including but not limited to any hook-and-line, rod, reel, spear, trap, net, crowbar, or other device that may be used for the taking, injuring, or killing of marine life; cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life; and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department;

(15) To hike, conduct nature study, or conduct any activity with a group larger than ten in size;

(16) To be present in an area closed pursuant to section 13-209-4.5 or after visiting hours established pursuant to section 13-209-4.6;

(17) To anchor any motorized or nonmotorized water vehicle of any shape or form in the marine waters of Ahihi-Kinau natural area reserve;

(18) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;

(19) To conduct any other activity inconsistent with the purpose and intent of the natural area reserves system.

(20) To use or possess narcotics or drugs, provided that a person may use or possess drugs legally prescribed by a physician. No person shall enter or remain within the premises when under the influence of alcohol or illegal narcotics or drugs.

(21) To use or possess alcohol, except with the written permission of the board or its authorized representative. [Eff 6/29/81; am 12/9/02; am 7/3/03; am 1/26/07; am

] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

2. Section 13-209-5, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-5 Special-use permits. (a) The board or its authorized representative, with the approval of the commission or its authorized representative, may issue permits to conduct activities otherwise prohibited by section 13-209-4 for research, education, management, or for any other purpose consistent with chapter 195, Hawaii Revised Statutes.

(b) No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits [~~issued to other governmental agencies~~] where the board determines such a waiver to be in the best interest of the State.

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

- (1) The permittee shall adhere to specifications given in the permit application;
- (2) Disturbance of vegetation and wildlife shall be avoided as much as possible;
- (3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants' clothes, equipment, and vehicles are free of seeds or dirt to lessen the chance of introducing any non-native plants or soil animals. Should an infestation develop attributable to permittee, the permittee is responsible for eradication by methods specified by the department;
- (4) This permit is not transferable;
- (5) This permit does not exempt the permittee from complying with any other applicable rule or statute;
- (6) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.

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

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

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

(g) The board or its authorized representative may revoke or cancel a permit without prior notice when an emergency is declared by the department or other proper authority or when the special-use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the reserve.

(h) The board or its authorized representative may revoke or cancel any permit with thirty days written notice:

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

(2) Upon a finding that the special-use threatens to damage the integrity or condition of the natural, geological, or cultural resources in the reserve;

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

(4) Upon closure of a reserve pursuant to section 13-209-4.5.

(i) The provisions of this section shall not exempt the applicant from complying with any other applicable rule or statute. [Eff 6/29/81; am 1/26/07; am ] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

3. Section 13-209-4, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-5.5 Applications for special-use permits. (a) All applications for special-use permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

- (1) Name of applicant, and if relevant, affiliation and title;
- (2) Contact information, including name of primary contact, mailing address, phone number, and if available, email address;
- (3) The period of time for which the permit is requested, not to exceed one year unless seeking a waiver pursuant to section 13-209-5(b);
- (4) The reserve(s) involved;
- (5) A map illustrating the reserve and the location within the reserve of the proposed special-use;
- (6) A description of the proposed special-use;
- (7) A discussion of how the proposed special-use satisfies subsections (b)(1) through (b)(6);
- (8) An assessment of the potential environmental impact the special-use may have on the reserve or the surrounding area;
- (9) Signature of the applicant;
- ~~[(10) An application fee of \$50, however, the board or its authorized representative may waive the application fee if, in their opinion, the waiver is in the public interest or benefits the State; and~~
- ~~-(11)]~~ (10) Any other information as determined by the department.

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

- (1) The proposed special-use cannot be conducted elsewhere;
- (2) The proposed special-use is consistent with the purpose and objectives of the natural area reserve system;
- (3) The proposed special-use is consistent with the management plan developed for the reserve;
- (4) The proposed special-use provides a benefit (direct or indirect) to the natural area reserve system or to the individual reserve(s) or both;

- (5) The proposed special-use will not damage or threaten to damage the integrity or condition of the natural, geological, or cultural resources in the natural area reserve and adjacent area or region;
- (6) The proposed special-use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled "Coastal Zone Management", where applicable; and
- (7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.

(c) The applicant shall have the burden of demonstrating that the proposed special-use is consistent with the criteria in subsection (b).

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

(e) If within two hundred seventy days after the department's acceptance of a completed application, the board or its authorized representative shall fail to render a decision thereon, the application for a special-use permit shall be automatically approved with the standard conditions outlined in section 13-209-5(c), provided that the board may revoke this approval pursuant to section 13-209-5(g) and (h). The two-hundred-seventy-day time period provided shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance. The two-hundred-seventy-day time period for decision may be extended for another one hundred eighty days at the request of the applicant to give the board additional time to review and make a decision on the application. [Eff 1/26/07; am ] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

4. Chapter 13-209, Hawaii Administrative Rules, is amended by adding new sections to read as follows:

§ 13-209-5.6 Parking fees.



(a) The fee for parking a vehicle in the Ahihi-Kinau natural area reserve at the Kanahena lot, shown in Exhibit "1", in a space designated for such use shall be:

Nonresidents: \$5.00 per vehicle  
Residents: No charge

(c) For purposes of this section, the term "resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license.

13-209-5.7 Public parking closure hours. Ahihi-Kinau natural area reserve parking areas will be closed daily between 8:00 p.m. and 5:00 a.m., including holidays.

13-209-5.8 Public parking. As may be prescribed from time to time by the department, no person shall use the Kanahena lot, shown in Exhibit "1", without payment of parking fees and charges and may only park in areas designated by the department. No person shall use a parking area within the Ahihi-Kinau natural area reserve when the parking area is closed, except as expressly permitted in writing by the department.

§ 13-209-5.9 Removal of vehicles. The department may detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

(1) For nonpayment of parking charges when a vehicle is parked in a vehicular parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve; or

(2) Which has been parked continuously anywhere in a parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve for a period exceeding the posted time limits, except where prior arrangements have been made therefor.

(b) The department shall have the authority to detain, tow, move, or cause to be moved any vehicle when the position or location of the vehicle in a parking lot creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department or authorized representative, of any vehicle legally parked, shall not be at the owner's risk and expense.

[Eff ] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

5. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

6. Additions to update source notes to reflect this amendment is not underscored.

7. The amendments to chapter 13-209, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

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Chairperson

Board of Land and Natural Resources






APPROVED FOR PUBLIC HEARING:

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Deputy Attorney General

# Maui: Kanahena Parking Area within the Ahihi-Kinau Natural Area Reserve (NAR)

Chapter 209, Exhibit 1

-  Kanahena Parking Lot
-  Ahihi-Kinau NAR
-  Makena-Keonioio Road
-  N
-  Coastline

