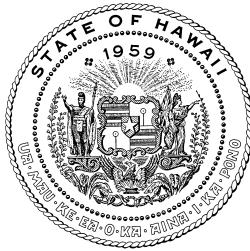


Small Business Regulatory Review Board Meeting

December 11, 2025

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrb.info@hawaii.gov
Website: sbrb.hawaii.gov

Tel: 808 798-0737

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane
Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Jonathan Shick
Chairperson
O'ahu

Sanford Morioka
Vice Chairperson
O'ahu

Mary Albitz
2nd Vice Chairperson
Maui

James (Kimo) Lee
Hawai'i

Leelen Park
Hawai'i

Tessa Gomes
O'ahu

Cynthia Hobson
O'ahu

Nikki Ige
Kaua'i

Dr. Jennifer
Salisbury
Maui

Director, DBEDT
Voting Ex Officio

AGENDA

Thursday, December 11, 2025 ★ 10:00 a.m.

No. 1 Capitol District Building
250 South Hotel Street, Conference Room 436
Honolulu, HI 96813

As authorized under Act 220, Session Laws of Hawaii 2021, and Section 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

A. By attending the in-person meeting at:

No. 1 Capitol District Building – 250 South Hotel Street, Conference Room 436,
Honolulu, HI 96813; or

B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:

<https://us06web.zoom.us/j/88400776199?pwd=4wAvlu4jf7kz65ioBZWDXgpG4KIKJ8.1>

C. To Join via Telephone: Dial 1-669-900-6833 with
Meeting ID 883 5814 0200 Passcode 066739

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering * and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If you call in by phone, you can unmute and mute yourself by pressing * and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to:

DBEDT.sbrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804.

The Board requests that written testimony be received by Wednesday, December 10, 2025, so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#) and in-person at 250 South Hotel Street, Room 506, Honolulu, HI 96813 during regular business hours. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of November 20, 2025 Meeting Minutes

III. New Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to **Special Management Area (SMA) Rules and Regulations**, (Amendment and Replacement of Various Chapters,) promulgated by Planning Department, County of Kauai – *Discussion Leader – Nikki Ige*

IV. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that the Department of Business, Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic Competitiveness and business climate, including the mitigations of regulatory and tax burdens
2. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force's most recent meeting pursuant to Act 133 to identify actions taken challenges encountered, and legislative measures necessary to facilitate, expedite, and coordinate state and intergovernmental permit processes; and appropriates funds
3. Discussion and Action on the adoption of reasonable time limits on oral testimony by members of the public
4. Discussion and Action of the Board's neighbor island meeting tentative for March 19, 2026
5. Becker Communications Inc., regarding the Board's Small Business Outreach
6. Presentations to Industry Associations
7. Staff's Small Business Outreach

V. Next Meeting: Thursday, January 15, 2026 at 10:00 a.m., held via Zoom and at 250 South Hotel Street – No. 1 Capitol District Building, Conference Rm 436, Honolulu, HI 96813

VI. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and jetaime.k.ariola@hawaii.gov as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice is available in alternate/accessible formats.

II. Approval of November 20, 2025 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - DRAFT

November 20, 2025

I. **CALL TO ORDER:** Chair Shick called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Sanford Morioka, Vice Chair
- Mary Albitz, Second Vice Chair
- Nikki Ige
- Dr. Jennifer Salisbury
- James (Kimo) Lee
- Leelen Park
- Cynthia Hobson
- David Sikkink

ABSENT MEMBERS:

- Tessa Gomes

STAFF: DBEDT

Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of OCTOBER 16, 2025 MINUTES**

Second Vice Chair Albitz motioned to approve the October 16, 2025 meeting minutes, as presented. Mr. Park seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 12 Chapter 15, Hawaii Workers' Compensation Medical Fee Schedule (MFS) and Exhibit A Workers' Compensation Supplemental Fee Schedule, promulgated by Department of Agriculture and Biosecurity (DAB)

Discussion leader Ms. Albitz noted that these after public hearing rules do not have a huge impact to small businesses.

Ms. Joann Vidinhar from DLIR provided a summary of the Chapter 15 post-hearing process. The public hearing was publicly noticed and held with three attendees, and no oral or written testimony was received. All statutory requirements were met, and the post-hearing packet is ready for final approval.

Ms. Albitz motioned to send the proposed new rules to the Governor for adoption. Ms. Ige seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 18 Chapter 235, Income Tax Law (Subchapter 3 Individual Income Tax Law), promulgated by Department of Taxation (DoTax)

Discussion leader Mr. Sikkink reminded the board members that these tax rules were brought forth to the Board in August by Mr. Garrison Kurth, DoTax Administrative Rules Specialist, who will discuss the current rule proposal.

Mr. Garrison Kirth stated that the proposed amendments update the State's income tax withholding tables pursuant to Act 46 (2024). The public hearing notice was published, the hearing was conducted on October 30, and no public testimony was submitted. The Attorney General has approved the final rule language. The rule changes reflect updated withholding formulas and will simplify annual updates for employers.

Ms. Albitz motioned to send the proposed new rules to the Governor for adoption. Ms. Jennifer Salisbury seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 15 Chapter 217, Kakaako Mauka Rules, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

HCDA representatives Mr. Ryan Tam and Mr. Craig Nakamoto summarized the rule amendments intended to align HCDA's development standards with Honolulu Ordinance 16-21 regarding real property tax exemptions for qualified Central Kaka'ako industrial businesses. Approximately 77 parcels currently participate in the program.

Mr. Park motioned to send the proposed new rules to the Governor for adoption. Ms. Ige seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Land and Natural Resources (DLNR)

Chair Jonathan Shick announced that multiple testimonies had been received and invited DLNR to present an overview of the proposed rule package before public testimony.

Mr. Keali'i Sagum, Regulatory Compliance Program Specialist for the Division of Aquatic Resources (DAR), presented the rulemaking proposal, accompanied by David Sakoda, DAR Fisheries Program Manager. Mr. Sagum explained that the amendments consolidate aquarium-related rules from Chapters 60.4 and 75 into a new chapter, HAR 13-77.1, which establishes a statewide commercial aquarium permit framework and updates West Hawai'i aquarium management rules. Mr. Sagum reviewed the restructuring of the existing West Hawai'i Regional Fishery Management Area (WHRFMA) rules, changes to gear references, and the creation of a two-component permit system consisting of a State of Hawai'i Aquarium Permit and a Geographical Endorsement. Mr. Sagum discussed the eligibility

criteria—no aquatic resource violations within five years, HEPA compliance, and a valid commercial marine license—and explained the general permit terms including a \$100 annual permit fee, non-transferability, required catch-to-dealer transfers, container labeling, and new reporting requirements such as an at-sea report prior to landing and a final report within one day.

Mr. Sagum further reviewed the proposed West Hawai'i geographical endorsement, explaining that only the West Hawai'i region is addressed in this rule package and that collection in any other region would require future rulemaking. Mr. Sagum outlined carry-over provisions from existing rules (e.g., nighttime restrictions) and the newly proposed annual catch limits for five whitelist species: Lau'ipala (100,000 per year), Potter's Angelfish (1,068), Mā'i'i (800), 'Ula'e (344), and Thompson Surgeonfish (182). He summarized vessel registration requirements, statewide expansion of identification and safety rules, commercial aquarium dealer registration, export reporting requirements, and compliance expectations for both permitted collectors and dealers. Mr. Sagum then compared pre-closure regulations to the proposed framework, highlighting HEPA compliance requirements, expanded reporting, new criminal history restrictions, and significantly reduced species lists and catch limits. Mr. Sagum concluded by summarizing small business impacts, noting that while new administrative and HEPA-related burdens will exist, aquarium fishers engaged in the rule development process have expressed support for the increased structure and annual catch limits.

Following the presentation, public testimony was taken. Former DAR biologist Alton Miyasaka testified first, emphasizing his long tenure with the aquarium fishery program and expressing concerns about the feasibility of daily reporting requirements and the proposed 5% variance limit. He stated that dealer timing, transport conditions, and existing industry practices could create discrepancies beyond the control of fishers. He also expressed concerns about the practical impacts of annual catch limits on West Hawai'i's relatively young reef system and asked the board to consider those operational realities.

Mike Nakauchi, a small business owner, dive instructor, and cultural practitioner testified in person. Mr. Nakauchi strongly opposed reopening aquarium collecting, stating that West Hawai'i reefs have declined significantly over the past 40 years due to bleaching events and cumulative extraction impacts. He argued that the proposal contradicts cultural stewardship values, would burden taxpayers with enforcement costs, and benefits only a small number of collectors while threatening thousands of tourism-reliant businesses. Mr. Nakauchi stated that the West Hawai'i Fisheries Council was not consulted and that the majority of community and scientific testimony submitted to BLNR opposed reopening the fishery.

On the call, Ron Robinson testified briefly in opposition, stating that seven small businesses should not outweigh the interests of the broader community and that sustainable decision-making requires denying aquarium collection.

Rene Umberger, representing For the Fishes, submitted testimony asserting that the Small Business Impact Statement (SBIS) was incomplete and materially misleading. She cited cost estimates from a peer-reviewed analysis indicating that aquarium fishery administration costs \$300,000–\$500,000 annually, excluding enforcement, and argued that DLNR did not provide accurate cost figures. She noted that DOCARE enforcement costs were omitted entirely,

despite the agency's direct involvement in prior aquarium poaching cases. She requested that the Board require DAR to prepare a corrected SBIS before allowing the rule package to advance.

Additional testimony from Kawika Ruddle, a West Hawai'i marine tourism operator, emphasized observed long-term declines in reef fish abundance and size, and argued that the SBIS ignored impacts on ocean tourism businesses and failed to account for significant state enforcement and administrative costs. He stated that reopening the fishery would harm already-fragile reefs and place disproportionate costs on the public while benefiting out-of-state markets.

Further testimony came from Uilani Naipo, who reiterated opposition to the proposed rules and noted the lack of demonstrated local demand for aquarium fish. She stated that the trade primarily serves out-of-state markets and that Hawai'i should not authorize extraction that provides limited public benefit while posing significant ecological risks.

Testimony continued from participants expressing similar concerns, including cumulative impacts to West Hawai'i's reef system, strain on DOCARE enforcement capacity, gaps in the SBIS, and the limited number of businesses benefitting from the proposed rules. Testifiers urged the Board to find the SBIS incomplete and require revisions.

Board members expressed that significant information was missing from the SBIS, including enforcement cost estimates, cross-industry economic analysis, and biological impact clarity. Members stated they did not have sufficient information to determine small business impacts.

Chair Chick motioned to recommend deferring the proposal until additional studies and reports are resubmitted to this Board. These studies and reports include, but are not limited to, the following: 1) Environmental Impact Statement; 2) Biological Impact Report, 3) Cultural Impact Report, 4) Studies on how much fish come out of the farm-raised industry versus wild collection; 5) Economic costs for enforcement; and 6) Five-year study from the Legislature. Additionally, Chair Chick recommended that DLNR conduct further stakeholder consultation to better address the concerns of the small businesses, along with a stakeholder summary of the feedback. Mr. Park seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 3, Chapter 80-86, Rules of the Liquor Commission, and Proposed Adoption of Chapter 80.1-86.1, Rules of the Liquor Commission, promulgated by Liquor Commission, City and County of Honolulu

Ms. Anne Hirai from the Liquor Commission presented a comprehensive overhaul of the rules, including renumbering, technical revisions, updated delivery rules, and modernization aligned with the Commission's online permitting system. Two stakeholder meetings were held with feedback incorporated. Second Vice Chair Albitz noted that based on prior discussions, the proposed rules appear straightforward and do not negatively impact small businesses. Ms. Hirai explained that the Commission's last full restructuring of its rules occurred in 1993, with major amendments in several subsequent years, making this current overhaul significant. The effort aligns with the rollout of the Commission's new online licensing and database

system, known as L2, and is intended to improve clarity, update numbering, reflect statutory changes, and support operational needs. She also shared that she is retiring at the end of the year and that Mr. Chan will handle the process moving forward.

Ms. Anna outlined the scope of the amendments, noting that the package includes 206 action items involving repeals, numbering changes, technical edits, new rules, and substantive revisions. The Commission held two stakeholder meetings, gathering feedback from industry participants. Most suggestions were incorporated, especially where they improved clarity or practical application. She highlighted the revisions to the deliveries rule related to third-party alcohol delivery services, describing it as a major success due to extensive stakeholder collaboration. The revised rule simplifies requirements, clarifies responsibilities, and maintains sufficient regulatory oversight while supporting business flexibility.

Additional amendments address clarifications to rule intent, restoring specific fee amounts instead of open-ended administrative language, and allowing operational accommodations such as satellite locations and temporary licenses. Seven amendments involve tightening application and submission procedures, and the Commission looks forward to further feedback during the public hearing phase. The public hearing is scheduled for January 15, with notice to be published on December 8 and materials made available to all licensees. During Board discussion, members expressed appreciation for the extensive work and reiterated that the proposed changes do not appear to harm small businesses. Questions were raised about the new online licensing system and its integration with Hawaii Compliance Express, to which the Commission confirmed compatibility and ongoing improvements. Additional inquiries regarding warehousing rules were briefly addressed, with the Commission noting that updates have been made and further concerns may surface during the public hearing. Overall, the Board recognized the significant effort invested in the rule overhaul and the benefits it may provide to both the Commission and the business community.

Dr. Salisbury motioned to send the proposed amended rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Introduction and Review of Grassroot Institute of Hawaii

The board received a presentation from Jonathan Helton of the Grassroot Institute of Hawaii, who provided an overview of the organization's mission, policy focus areas, and available research resources. He highlighted their work on housing affordability, tax and budget analysis, transparency, healthcare access, and federal Jones Act reform, and offered ongoing support to the board in any related policy inquiries. The board expressed appreciation and discussed potential future collaboration.

2. Administrative Directive No. 25-04 Policy and Procedure for the Adoption, Amendment, and Repeal of Hawaii Administrative Rules (HAR)

Ms. Ariola reported that updates to Administrative Directive 25-04 are still pending review by the Governor's Office. Concerns were raised that the current language inaccurately characterizes SBRRB's role by suggesting that agencies must rely on SBRRB to determine small business impacts, rather than determining preliminary impact themselves before submitting rules to the Board. Ms. Ariola will follow up with the Governor's Office regarding the status on the AD No. 25-04.

3. Discussion and Action on the Board's Draft 2025 Annual Report Summary for submission to the Hawaii State Legislature under Section 201M-5(f), HRS

Ms. Ariola noted that certain data—such as social media statistics and total rules reviewed—will be finalized after the December meeting. Updates to board member listings were requested, including the addition of new members and updated ex-officio designation.

Ms. Albitz motioned to approve the Draft 2025 Annual Report Summary submission to the Hawaii State Legislature pending any changes from the December 2025 board meeting. Ms. Ige seconded the motion, and the Board members unanimously agreed.

4. Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that the Department of Business, Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigations of regulatory and tax burdens

Deferred until next meeting.

5. Becker Communications Inc., regarding the Board's Small Business Outreach

The next meeting with Becker Communications Inc. is December 10, 2025.

6. Presentation to Industry Associations

Dr. Salisbury provided a detailed update on SPEED Task Force activities. All permitted interaction groups (PIGs) are finalizing recommendations. A working session is scheduled for December 15, with the next public Sunshine Law meeting on January 6. She reported significant developments, including Department of Health internal guidance on bedroom classifications and SHPD's proposed legislative amendments.

Dr. Salisbury encouraged members to submit feedback, particularly on challenges faced by small businesses on Neighbor Islands. She also updated the Board on efforts to secure a Maui meeting in March, pending venue confirmation.

Dr. Salisbury was thanked for her hard work on this taskforce. If any of the Board members are able to provide questions, concerns, or issues regarding SPEED's purview, please let her know.

7. Staff's Small Business Outreach

Ms. Ariola noted multiple upcoming holiday chamber events, though many occur after hours. Ms. Ige discussed opportunities to participate in outreach during the Kaua'i Chamber's annual meeting on December 11th. Additional coordination will take place depending on the December 11th board meeting schedule.

- VI. **NEXT MEETING** – Thursday, December 11, 2025 at 10:00 a.m., via Zoom and in Conference Room 436 at No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, HI 96813.
- VII. **ADJOURNMENT** – Ms. Albitz motioned to adjourn the meeting and Mr. Park seconded the motion; the meeting adjourned at 12:44 p.m.

III. New Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Special Management Area (SMA) Rules and Regulations, (Amendment and Replacement of Various Chapters,) promulgated by Planning Department, County of Kauai - Exhibit 1

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes §201M-2)

Date: 11/18/2025

Department or Agency: Planning Department, County of Kauai

Administrative Rule Title and Chapter: Special Management Area (SMA) Rules and Regulation

Chapter Name: Amendment and Replacement of various chapters of the SMA Rules

Contact Person/Title: Jodi Higuchi Sayegusa

E-mail: jhiguchi@kauai.gov Phone: 808-241-4057

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No
(If "Yes" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

These amended SMA rules could impact small businesses where small businesses are located in Kauai's Special Management Area and are proposing activities, uses, or development that triggers an SMA permit. E.g., snorkel tour businesses or restaurants that conduct business or requires structures or improvements for their businesses in the SMA will be subject SMA Rules.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

The filing fees pertaining to any SMA assessment, minor permit application, use permit application, modification, and emergency permit fees were clarified, and new fee was imposed or fees increased in a few instances. See attached summary.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

See attached summary.

- b. Amount of the proposed fee or fine and the percentage increase.

See attached summary.

- c. Reason for the new or increased fee or fine.

See attached summary.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

See attached summary.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

The new fees seek reimbursement for the estimated amount of time and energy spent on those assessments and permit analyses by our SMA planners. For assessments, we seek a nominal fee after no fee existed before to acknowledge the vast amount of work conducted. SMA planners are funded by the federal CZM program that experienced significant cuts this year with more cuts or even elimination to come.

These fees will partially fund this federally/state mandated work, and while the fees will go to the General Fund, we hope to justify full position funding by the County when the CZM program is no longer funded. Protecting the SMA and coastal areas serve small business interests by protecting the uniqueness of Kauai (tourism, recreation, etc).

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Larger fees were initially proposed based on the estimated amount of time spent on the various permit review functions, volume of requests usually received, and the average rate of pay for our SMA planners. However, amounts were lessened to decrease the hardship or burden to applicants/businesses, and the amounts were varied to create a scheme for the fees according to complexity of review and coordination.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

These SMA Rules implement Hawaii Revised Statutes (HRS) Chapter 205A, which sets the minimum requirements for the SMA. Where there were further needs to define terms or procedures for review, the SMA Rules were tailored to the specific needs of Kauai. In most instances, we created flexibility and fairness while implementing policies designed to protect people, property, public interest, and resources. E.g., instead of defining which shoreline properties experience coastal hazards according to projections, we tailored it to historic data.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Businesses in the SMA area will be directly affected by the procedural changes required when they propose "development" in the SMA. Much of the changes are mandated by HRS; however, these rules are designed to create flexibility and fairness that is appropriate for Kauai's unique conditions. The rules are updated and the procedures for the various types of determinations or permit analyses needed are further refined; thus, businesses who require SMA permits will benefit from the clarity created by the updates.

7. How the agency involved small business in the development of the proposed rules.

We have sought review and input from several private attorneys who represent many private interests and especially small businesses that will have to navigate the SMA Rules.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Recommendations were incorporated, including inputting the Planning Director's discretion to determine exemption from permit requirements when the proposed activities occurs in an area outside of any coastal hazard despite the coastal hazard occurring on the lot of record.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

No provision is more stringent than the those defined by HRS Chapter 205A; however, the SMA Rules plug holes, further clarify terms that are not defined by state law, and clarify the procedures for SMA review. In all instances, the SMA Rules were tailored to the specific needs of Kauai.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
n/a

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
n/a

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
n/a

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
n/a

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.
n/a

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

SMA Rules Fees
Small Business Regulatory Review Board – December 11, 2025

<u>SMA Rule Section</u>	<u>Existing Fee</u>	<u>Proposed Amendment</u>	<u>Last Time Increased</u>	<u>Justification/Comments</u>
Assessment Applications	\$0	\$50	The fee was not imposed nor increased since the SMA Rules were initially adopted in 2011.	<p>A bulk of the workload for the SMA planners are spent assessing whether proposals are “development” that requires an SMA permit or are exempt, and if triggered, whether a minor or SMA Use permit is required. The proposed assessment fee seeks a nominal fee to recoup fees for the time and energy spent on these assessments and encourage applicants to prioritize their requests.</p> <p>\$100 was initially proposed for assessment applications. We estimated the amount of time spent on assessments and the volume of requests typically received and the average rate of pay for our SMA planners to come up with \$100 as an amount that would fairly cover the time our SMA planners devote to these assessments. However, this amount was lessened to decrease any perceived hardship or burden to applicants seeking this assessment.</p>
SMA Minor Application	\$300	\$300	The fee was not increased since the SMA Rules were initially adopted in 2011.	<p>This fee was kept as is to create a scheme or menu of fees according to complexity and time spent on those permits. \$300 was kept for SMA minor permit fees as that amount correlates to the time spent, volume of SMA minor permits reviewed, and average rate of pay for our SMA planners who review those permits.</p>
SMA Use Permit Application	\$300 + cost of publication (\$1,776.46)	\$500 + cost of publication (\$1,776.46)	This fee was increased in 2015 to cover the cost of publication for SMA permits that require a public hearing.	<p>In 2015, the fee amount was amended to cover the cost of publication for SMA permits that require a public hearing.</p> <p>This fee was proposed to increase by \$200, to equal \$500 for SMA use permit fees. \$500 correlates to the time spent, volume of SMA use permits reviewed, and average rate of pay for our SMA planners who review</p>

				<p>those permits. SMA use permits are complicated and require a lot more time to review and analyze, seek comments from state and county agencies (including DPW/Engineering, State DLNR/SHPD, Office of Hawaiian Affairs etc), coordinate with applicants on procedural requirements, craft conditions of approval, prepare a detailed Director's Report, attend and present at agency hearings before the Planning Commission.</p> <p>Publication fees are additionally required but are kept at the cost for publication.</p>
Minor modifications of SMA permits	\$0	\$300	The fee was not increased since the SMA Rules were initially adopted in 2011.	<p>No fee was required for any modifications of SMA permits despite many modifications that require review and issuance, and the time and analysis needed to process these modification applications.</p> <p>This new fee is proposed to seek a fee for minor modifications to reimburse for the time and energy spent on these assessments and encourage applicants to prioritize their requests.</p>
Major modifications of SMA permits	\$0	\$300 + cost of publication (\$1,776.46)	This fee was increased in 2015 to cover the cost of publication for SMA permits that require a public hearing.	<p>No fee was required for any modifications of SMA permits despite many modifications that require review and issuance, and the time and analysis needed to process these modification applications.</p> <p>This new fee is proposed to seek a fee for major modifications to recoup the time and energy spent on these assessments and encourage applicants to prioritize their requests. Although major modifications are similar in complexity and time required for SMA use permits and arguably should be increased to \$500 like SMA use permits, this fee is kept the same as minor modifications. The cost of publication is additionally required when the major modification requires a public hearing before the Planning Commission.</p>

Emergency SMA permits	\$300	\$300	The fee was not increased since the SMA Rules were initially adopted in 2011.	This fee was kept as is to create a scheme or menu of fees according to complexity and time spent on those permits. \$300 was kept for SMA Emergency permit fees because that amount correlates to the time spent, volume of SMA Emergency permits reviewed, and average rate of pay for our SMA planners who review those permits.
SMA Map Amendments	\$500	\$500	The fee was not increased since the SMA Rules were initially adopted in 2011.	This fee was kept as is to create a scheme or menu of fees according to complexity and time spent on those permits. \$500 was kept for SMA map changes because that amount correlates to the time spent, volume of SMA minor permits reviewed, and average rate of pay for our SMA planners who review those permits.

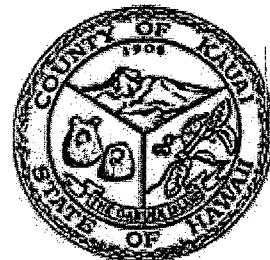
in effect

RECEIVED

By SBRRB at 9:25 am, Dec 01, 2025

SPECIAL MANAGEMENT AREA **RULES AND REGULATIONS**

COUNTY OF KAUAI - STATE OF HAWAII



As Amended October 2011

P-102.11-5

to LG 10/31/2011

TABLE OF CONTENTS

Section	1.0	General Provisions
	1.1	Authority
	1.2	Purpose
	1.3	Title
	1.4	Definitions
Section	2.0	Special Management Area
Section	3.0	Objectives and Policies of the Hawai'i Coastal Zone Management Act
Section	4.0	Special Management Area Guidelines
Section	5.0	Developments Proposed Within the SMA Subject to Review
Section	6.0	Consultation and Initial Determination
Section	7.0	Filing, Assessment, and Determination Procedure
	7.1	Filing
	7.2	Assessment
	7.3	Determination
	7.4	Significant Adverse Effect Criteria
Section	8.0	Application Procedures
Section	9.0	Public Hearings
Section	10.0	Action
Section	11.0	Emergency Permits
Section	12.0	Revocation
Section	13.0	Penalties and Injunctions.
Section	14.0	Hearing Officer
Section	15.0	Appeals
Section	16.0	Severability

Section 17.0 Effective Date

Section 18.0 Amendment of Special Management Area (SMA) Maps

Section 19.0 Land-Based Activities Affecting Coastal Waters

Appendix History of Adoption and Amendments of SMA Rules and Regulations

SPECIAL MANAGEMENT AREA RULES AND REGULATIONS OF THE COUNTY OF KAUAI

SECTION 1.0 GENERAL PROVISIONS

1.1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules and regulations hereinafter contained are hereby established and shall apply to all lands within the Special Management Area of the County of Kauai.

1.2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to publicly-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

1.3 Title

These Rules and Regulations shall be known as the "Special Management Area Rules and Regulations of the County of Kauai."

1.4 Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

(These definitions are intended to clarify, not to replace nor to negate the definitions in Chapter 205A, HRS, as amended.)

- A. "Applicant" includes any individual, organization, partnership, firm, association, trust, estate,

private corporation, or other legal entity, including any utility or any agency, department, commission, or board of government who seeks permission or authorization which the Director or Planning Commission may grant under these Rules and Regulations; provided that the individual or entity must have a controlling interest (75% or more of the equitable and legal title) of the lot, or must have a recorded lease to the land having a stated term of not less than five (5) years, or must have the full authorization of another having the controlling interest or recorded lease for a state term of not less than five (5) years.

- B. "County Engineer" means the head of the Department of Public Works of the County of Kaua'i.
- C. "County" means the County of Kaua'i.
- D. "Crops" means agricultural produce or parts(s) of plants or trees cultivated for commercial or personal use including, but not limited to, the raising of livestock.
- E. "Debris Line" or "Line of Debris" means a line marking the landward limit of debris deposits, resulting from wave uprush.
- F. "Development" means any of the following uses, activities, or operations on land or in or under water within a Special Management Area:
 - (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (2) Grading, removing, dredging, mining, or extraction of any materials;
 - (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (4) Change in the intensity of use of water, ecology related thereto, or access thereto; and
 - (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

- (1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Uses of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Final Subdivision Approval;
- (12) Subdivision of land into lots greater than twenty acres in size;
- (13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any land which is so subdivided shall not thereafter qualify for this

exception with respect to any subsequent subdivision of any of the resulting parcels;

- (14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- (15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- (16) Nonstructural improvements to existing commercial structures; and
- (17) Amendment of the County general plan, development plans, State land use district boundaries, and zoning changes;

provided that whenever the Director or Planning Commission finds that any excluded use, activity, or operation may have cumulative impact or, or a significant environmental or ecological effect on a Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of this part,

- G. "Director" means the Planning Director of the Planning Department, County of Kaua'i, or the Director's authorized designee.
- H. "Environmental Impact Statement" ("EIS") means an informational document prepared in compliance with HRS Chapter 343 and the Environmental Quality Commission's Rules and Regulations, and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.
- I. "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.
- J. "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

- K. "Owner" means the holder or holders of at least seventy-five percent (75%) of the equitable and legal title of a lot, and shall include lessees of real property that hold a recorded lease for a state term of not less than five (5) years and that present certification of approval from the legal owner.
- L. "Person" includes any individual, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity including any utility or any agency, department, commission, or board of government.
- M. "Planning Commission" means the Planning Commission of the County of Kaua'i.
- N. "Planning Department" means the Planning Department of the County of Kaua'i.
- O. "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- P. "Shoreline Armoring Device" means a structure or improvement built to artificially fix the shoreline and poses an immediate and future adverse effect on beach process as a result of the structure or improvement located within the coastal hazard zone.
- Q. "Shoreline Survey" shall mean the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a land surveyor registered in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chair of the Board of Land and Natural Resources.
- R. "Single-Family Residence" means a detached building designed for and/or used as the complete facility for the cooking, sleeping, and living area of a single family only and occupied by no more than one family, including uses normally considered accessory to the single family facilities provided that such uses are in compliance with all requirements of any County or State regulations, statute or ordinance. A single family shall include all

persons living in a dwelling related by blood, marriage or adoption or a group comprised of not more than five persons not related by blood, marriage or adoption. For purposes of these Rules and Regulations, a guest house shall not be considered an accessory use.

S. "Special Management Area" means the land extending inland from the shoreline as delineated on the maps filed with the Planning Commission as of June 8, 1977 or as amended pursuant to HRS Section 205A-23 and Section 18.0 of these Rules and Regulations.

T. "Special Management Area Emergency Permit" means a permit issued by the Director, pursuant to the authority provided to the Director by the Planning Commission and defined in these Rules and Regulations, authorizing development in a case of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

U. "Special Management Area Minor Permit" means a permit issued by the Director, pursuant to the authority provided to the Director by the Planning Commission and defined in these Rules and Regulations, authorizing development the valuation of which is not in excess of \$500,000 and which has no significant adverse environmental or ecological effect, taking into account potential cumulative effects.

V. "Special Management Area Use Permit" means a permit issued by the Planning Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a significant adverse environmental or ecological effect, taking into account potential cumulative effects.

W. "State Plan" means the adopted State Plan of the State of Hawai'i, as reflected by Chapter 226, HRS, and any amendments thereto.

X. "Structure" includes, but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Y. "Use" is:

(1) Any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied.

(2) Any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.

Z. "Valuation" shall be determined by the Director and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined above, the fair market value of the development.

AA. "Vegetation Line" means a line marking the seaward limit of natural terrestrial growth.

BB. "Vegetation Growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same naturally rooted and growing.

SECTION 2.0 SPECIAL MANAGEMENT AREA

Special Management Areas as delineated on the maps filed with the Planning Commission and the office of the County Clerk as of June 8, 1977 or as amended pursuant to Section 205A-23, HRS, and Section 18.0 of the Rules and Regulations shall be the official Special Management Area to be administered and enforced under these Rules and Regulations.

SECTION 3.0 OBJECTIVES AND POLICIES OF THE HAWAII COASTAL ZONE MANAGEMENT ACT

The objectives and policies of the coastal zone management program are those set forth in Section 205A-22, as amended. These objectives and policies shall serve as guidelines in the implementation of the rules in this Chapter.

SECTION 4.0 SPECIAL MANAGEMENT AREA GUIDELINES

The following guidelines shall be used by the Director and the Planning Commission for the review of developments proposed in the Special Management Area:

A. All development in the Special Management Area shall be subject to reasonable terms and conditions set by the Director or the Planning Commission to insure that:

- (1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
- (2) Adequate and properly located public recreation areas and wildlife preserves are reserved;
- (3) Provisions are made for solid and liquid waste treatment, disposition, and management that will minimize adverse effects upon special management area resources; and
- (4) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

B. No development shall be approved unless the Director or the Planning Commission has first found that:

- (1) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;
- (2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and
- (3) The development is consistent with the County general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

C. The Director or the Planning Commission shall seek to minimize, where reasonable:

- (1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
- (2) Any development that would reduce the size of any beach or other area usable for public recreation.
- (3) Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the Special Management Area and the mean high tide line where there is no beach.
- (4) Any development that would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.
- (5) Any development that would adversely affect water quality, existing areas of open water free of visible structure, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

SECTION 5.0

DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW

Any use, activity, or operation proposed within the Special Management Area defined as a "development" pursuant to Section 1.4 H. above shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations. Such review shall be pursuant to the objectives, policies and guidelines set forth in Sections 1.2, 3.0, and 4.0 and the procedures set forth in Sections 7.0 and 8.0.

SECTION 6.0

CONSULTATION

Any person contemplating development within the Special Management Area may contact the Planning Department for procedures and general information that may have a direct influence on his proposed development.

Any person proposing a use, activity, or development in the Special Management Area must first comply with the procedure for initial evaluation and assessment as explained in Section 7.0, and then, if necessary, must follow the application procedures set forth in Section 8.0. If, however, a person determines that the person's proposed development

is in excess of \$500,000 or will have a significant adverse effect on the Special Management Area, the person may apply directly for a permit pursuant to Section 8.0 and waive the Assessment Procedures in Section 7.0. Otherwise, the proposal shall be subject to assessment.

SECTION 7.0 FILING, ASSESSMENT, AND DETERMINATION PROCEDURE

7.1 Filing

If an applicant believes that the proposed use, activity, or development may be exempt from the formal application procedure, may be eligible for a Minor Permit, or may have a valuation of less than \$500,000, that applicant must file the following with the Planning Department:

- A. A tax map key description of the property on which the applicant proposes the project.
- B. A plot plan of the property, drawn to scale with all proposed structures shown thereon, and any other information necessary to a proper determination relative to the specific request.
- C. A written description of the proposed project and a statement of objectives.
- D. A statement of the valuation of the proposed development.
- E. An EIS, if required under Chapter 343, HRS, or when required by the Director, Planning Department, or Planning Commission.
- F. A statement addressing any affected Native Hawaiian customary and traditional rights protected under Article XII, Section 7 of the Hawai'i State Constitution.
- G. A written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's Coastal Zone Management Act (Chapter 205A, HRS) and the guidelines of the Special Management Area as provided herein. This written statement should include the relationship of the proposed action to land use plans of the affected area, an analysis of the probable impact of the proposed action on the environment, a listing of probable adverse environmental effects that cannot be avoided, an evaluation of alternatives to the proposed action, a discussion of mitigating

measures proposed to minimize impacts, and a listing of any irreversible and irretrievable commitment of resources.

- H. A shoreline survey when the parcel abuts the shoreline and when required by the Planning Department.
- I. Any other relevant plans or information required by the Department.

7.2 Assessment

The Director shall assess the proposal upon the person's compliance with Section 7.1, based on the following criteria:

- A. The valuation of the proposal.
- B. The potential effects and the significance of each specific circumstance of the proposed development according to the Significant Adverse Effect Criteria established by Section 7.4.
- C. The nature of the development.

7.3 Determination

The Director within thirty (30) calendar days after the receipt of all filing requirements or within a longer period as agreed to by the applicant, shall consider the proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the person of the Director's determination.

- A. Where the Director finds that the proposal is not a development, as defined in Section 1.4H; the Director shall determine that the proposal is exempt from these Rules and Regulations.
- B. Where the Director finds that the proposal:
 - (1) is a development, as defined in Section 1.4 H; and
 - (2) is not in excess of \$500,000; and
 - (3) is consistent with the County general plan and zoning ordinances; and

(4) will not have a significant adverse effect on the Special Management Area;

the Director shall issue a Special Management Area Minor Permit and may impose any reasonable terms and conditions deemed necessary to meet the objectives and policies enumerated in Section 3.0, and the guidelines provided in Section 4.0.

C. Where the Director finds that the proposal:

- (1) is a development, as defined in Section 1.4 H; and
- (2) is in excess of \$500,000; or
- (3) directly facilitates commercial boating and vessel activities or operations excluding actions under the jurisdiction of the State Department of Land and Natural Resources-Division of Boating and Ocean Recreation, State Department of Transportation, and or Federal Agencies; or
- (4) directly involves the construction of a Shoreline Armoring Device; or
- (5) may have a significant adverse effect on the Special Management Area;

the Director shall inform the person of the following:

- (a) the requirement of an application pursuant to Section 8.0; and
- (b) the public hearing requirements, pursuant to Section 9.0; and
- (c) the Planning Commission's requirements for action, pursuant to Section 10.0; and
- (d) the area of critical concern to delineate the scope of information which the applicant must address.

D. The Director shall maintain records of the Director's determinations in writing to the Planning Commission. The Director shall also post his determination on a Minor permit to a publicized website. The information posted to the website shall include the date of the Director's

determination, permit number, TMK, location, and activity/structure. This information shall be posted within five (5) business days of the Director's determination.

7.4 Significant Adverse Effect Criteria

In considering the significance of potential environmental effects, the Director, Planning Department, and Planning Commission shall consider the sum of those effects that adversely affect the quality of the environment, and shall evaluate the overall and cumulative adverse effects of the proposal.

A "significant adverse effect" may vary with the individual setting and circumstances of particular proposals. Generally, however, any proposal which may have a major adverse effect on the quality of the environment or adversely affect the economic or social welfare of an area, or would possibly be contrary to the objectives, policies and guidelines of these Rules and Regulations, the County's General Plan, Development Plans, zoning and subdivision ordinances, or the State Plan, would likely result in a "significant adverse effect."

In determining whether a proposal may have a significant adverse effect on the environment, the Director, Planning Department, and Planning Commission shall consider every phase of a proposal and expected consequences, either primary or secondary, and the cumulative as well as the short or long-term effect of the proposal. The Director, Planning Department, and Planning Commission should bear in mind that, in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposal:

- A. Involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but limited to, historic sites, Special Treatment Districts as established in the County Comprehensive Zoning Ordinance, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;
- B. Curtails the range of beneficial uses of the environment;
- C. Conflicts with the County's or the State's long-term environmental policies or goals;
- D. Substantially affects the economic or social welfare and activities of the community, County or State;
- E. Involves substantial secondary impacts, such as population changes and effects on public facilities;

- F. In itself has no significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- G. Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- H. Detrimentally affects air or water quality or ambient noise levels; or
- I. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.

SECTION 8.0 APPLICATION PROCEDURE

Any applicant who has received a determination under Section 7.3 that the proposal is neither exempt, nor that it conforms to the requirements for a Minor Permit, or any applicant who has determined that the proposal is in excess of \$500,000 or will have a significant adverse effect, shall apply for a Special Management Area Use Permit.

The applicant shall be responsible for submitting a completed form provided by the Planning Department. Such form shall be accompanied by:

- A. In the case of applicants whose proposals have not been assessed, all informational requirements of Section 7.1.
- B. A filing and processing fee as set annually by the Director to cover the actual costs of publication plus \$100 for processing; provided, however, that if applications for other permits which require public hearings to be conducted by the Planning Commission are filed for the same development, and if public hearings for the permit applications are to be held simultaneously, only one filing and processing fee will be required.

Upon compliance with the foregoing procedures, the Director shall notify the applicant by mail that this application has been accepted. The Director shall also circulate the application to appropriate government agencies for their comments and recommendations.

SECTION 9.0**PUBLIC HEARINGS**

- A. The Planning Commission shall conduct a public hearing within a period of sixty (60) calendar days from the date of acceptance of a properly filed and completed application as determined by the Planning Department, unless the sixty-day period is waived by the applicant. The Planning Commission shall give written notice to the applicant, and notice shall also be published once within the County of Kaua'i and once in a newspaper of general circulation in the State at least twenty (20) calendar days prior to the date of the public hearing in a publication pursuant to HRS Section 1-28.5.
- B. The notice of the public hearing shall state:
 - (1) The location of the property involved;
 - (2) The land area of the proposed development;
 - (3) The nature of the proposed development;
 - (4) The date, time, and place of the hearing; and
 - (5) That persons may petition for intervention pursuant to the Planning Commission's Rules of Practices and Procedures.
- C. In the event a project being considered for a Special Management Area Permit also requires other permits or approvals, the Planning Commission may conduct joint hearings.
- D. At least twenty (20) calendar days prior to the scheduled date of such hearing, the applicant shall either hand-deliver written notices to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kauai or send by certified mail written notices to the addresses shown on such Real Property Assessment Notice List for at least eighty-five percent (85%) of all tax map key parcels within 300 feet from the nearest point of the tax map key parcel involved in the petition. For purpose of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager," followed by the name and address of the condominium involved. The notice shall include the same

information contained in the published written notice and shall be in a form approved by the Planning Director.

- E. At least seven (7) calendar days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit describing the mailing or delivery of such notice, including a list of persons to whom such notices were sent.
- F. If the applicant fails to comply with foregoing notification requirements, the public hearing shall be postponed and the applicant shall pay for the cost of republication and processing, which shall be same amount set forth in Section 8.0 above, and shall follow the same notification requirements of this section to re-notify affected persons. The Planning Commission shall reschedule another hearing within sixty (60) calendar days after the receipt of the fee.

SECTION 10.0 ACTION

The Planning Commission shall act by majority vote of its total membership upon an application within sixty (60) calendar days after the conclusion of the hearing, except in the case of emergency (see Section 11.0 below) and minor permits (which do not require Commission action), or in cases where the Planning Commission requires further information or finds that the issues require further classification, or where an extension has been agreed to by the applicant. The Planning Commission should grant the Permit if it determines that the proposed development meets the criteria of Section 4.0 of this Chapter, and the Planning Commission may impose restrictions and conditions on the permit as appropriate. Such action shall be final, but shall be appealable to the Circuit Court of the State of Hawai'i in accordance with HRS Chapter 91. If the Planning Commission has not acted within sixty (60) calendar days after the conclusion of the hearing, the application will be automatically listed on the agenda for the next meeting of the Planning Commission.

When a Minor or Special Management Area Use Permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect. Permits can be amended or revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

No development shall be allowed within the Special Management Area without first obtaining a permit pursuant to these Rules and Regulations.

No County department or State agency authorized to issue permits pertaining to any development within the Special Management Area shall authorize any development unless approval is first received from the Director or the Planning Commission in accordance with the procedures adopted pursuant to these Rules and Regulations. For the purposes of this Section, County General Plan, State land use district boundary amendments, and zoning changes are not permits for development.

SECTION 11.0 EMERGENCY PERMITS

In cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, the following procedures shall apply.

- (1) Any person seeking a Special Management Area Emergency Permit shall file a request along with documents and information as set forth in Section 7.1.
- (2) The Director, within thirty (30) calendar days after the receipt of the proposal or within a longer period as agreed to by the applicant, shall consider the applicant's proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the applicant of the Director's determination.
 - (a) Where the Director finds that the proposal:
 - (i) is not a development, as defined in Section 1.4 H; the Director shall determine that the proposal is exempt from these Rules and Regulations.
 - (b) Where the Director finds that the proposal:
 - (i) is a development, as defined in Section 1.4 H; and
 - (ii) will not have a significant adverse effect on the special management area; and
 - (iii) that the proposal is to authorize development in cases of emergency requiring immediate action to prevent substantial

physical harm to persons or property; or the proposal is for the reconstruction of structures damaged by natural hazards to their original form; and

- (iv) that prior to the damage of the structure by natural hazard, the structure was in compliance with the requirements of the Federal Flood Insurance Program;

the Director shall issue an Emergency Permit and may impose any reasonable terms, conditions, and requirements, including but not limited to hazard mitigation plans for properties within the high coastal hazard flood zone area, deemed necessary to meet the objectives and policies enumerated in Section 3.0 and the guidelines provided in Section 4.0.

- (c) Where the Director finds that the proposal:

- (i) is a development, as defined in Section 1.4 H; and
- (ii) does not meet the requirements for the issuance of an special management area emergency permit in accordance with the provisions of Section 11(B)(2)(b);

the Director shall process the application in accordance with Section 7.3 B. or 7.3 C.

- (d) Any emergency permit issued shall automatically expire two years from the Director's determination, unless otherwise stated.

SECTION 12.0 REVOCATION

Permits can be revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 13.0 PENALTIES AND INJUNCTIONS

- A. Any person who violates any provision of these Rules and Regulations shall be subject to civil fine not to exceed \$100,000 or the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation. In addition to any other penalties, any person who performs any development in violation of this part shall be subject to civil fine not to exceed \$10,000 a day for each day

in which such violation persists. Such a fine shall not become final until twenty-one days after the Director's decision to provide the person an opportunity to appeal and request a hearing before the Planning Commission. This hearing shall be held in accordance with Chapter 6 and Sections 1-9(2-5) of the Rules of Practice and Procedure of the Planning Commission.

B. Any person violating any provision of these Rules and Regulations may be enjoined by the Circuit Court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of these Rules and Regulations in a suit brought by the Planning Department or the Planning Commission.

SECTION 14.0 HEARING OFFICER

Any proceeding before the Planning Commission may be conducted by a hearing officer pursuant to Chapter 6 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 15.0 APPEALS

Any party to the agency hearing pursuant the Chapter 6 of the Rules of Practice and Procedures of the Planning Commission, shall have the right to judicial review of any decision or action of the Planning Commission, pursuant to Chapter 91 of the Hawai'i Revised Statutes.

SECTION 16.0 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Rules and Regulations are severable.

SECTION 17.0 EFFECTIVE DATE

These Rules and Regulations shall take effect on December 1, 1975. Any amendments to these Rules and Regulations, duly approved, shall take effect upon the date of such approval.

SECTION 18.0 AMENDMENT OF SPECIAL MANAGEMENT AREA (SMA) MAPS

A. All changes for boundary amendments to the SMA maps shall be initiated by the Director.

B. Procedure

A change in the boundary of the SMA maps may be requested by any of the following:

- (1) Any department or agency of the State or County.
- (2) Any owner or lessee of the affected land.
- (3) County Council.

C. Submission

- (1) Sixteen (16) sets of the request shall be submitted on a form prescribed by the Planning Department and shall be accompanied by:
 - (a) A filing and processing fee of \$500.00.
 - (b) A description of the property in sufficient detail to determine its precise location.
 - (c) An explicit statement of the reasons in support of the proposed amendment. Said reasons shall also discuss the relationship of the proposed change with the policies and objectives of the regulations and the County General Plan.
- (2) The Planning Commission shall hold a public hearing no earlier than thirty (30) but no later than ninety (90) calendar days upon receipt of a properly-filed application. The Planning Commission shall give written notice once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty (20) calendar days in advance of the public

hearing. The notice shall state the nature of the petition, its specific location, and the time and place of the hearing.

(3) The Planning Commission shall no earlier than fifteen (15) but within ninety (90) calendar days after the public hearing, deny or approve the request in writing, stating the reasons for such action.

D. Exemption of Previously Approved Developments

Any development which was issued an appropriate zoning, use, project development or building permit, or received preliminary subdivision approval before the adoption and approval by the Mayor of these amendments to the Special Management Area boundaries which result in the inclusion of the development within the Special Management Area, is not subject to Special Management Area Permit requirements. The pertinent permit or approval, however, must be unexpired. For a permit or an approval which was issued without expiration date or duration period, the exemption provided herein shall lapse two years from the date of approval of the boundary amendment by the Mayor unless otherwise extended.

SECTION 19.0 LAND-BASED ACTIVITIES AFFECTING COASTAL WATERS

No person shall be allowed to conduct any use, activity or operation on lands located within the Special Management Area, which may significantly impact coastal waters or related coastal resources, without first obtaining a Special Management Area Permit pursuant to these Rules and Regulations. An application for a Special Management Area Permit filed under this section shall be subject to the review of the Director, Planning Department, and Planning Commission, and shall be evaluated for consistency with the objectives, policies, and guidelines of the Hawai'i Coastal Zone Management Act.

APPENDIX

Approval and Adoption: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted these rules on December 12, 1979. The Mayor of County of Kaua'i approved these rules on December 17, 1979. The rules were filed in the Office of the Clerk of the County of Kaua'i on December 17, 1979.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted an amendment to "Section 10.0 Action" on January 14, 1981. The Mayor of the County of Kaua'i approved the amendment on January 16, 1981. The amendment was filed in the Office of the Clerk of the County of Kaua'i on January 16, 1981.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions", paragraphs T., V., X., Y. and Z.", "Section 6.0 Consultation", "Section 7.1 Filing", paragraph D.", "Section 7.2 Assessment", paragraph A.", "Section 7.3 Determination", paragraph B.(2) and C.(2)" and "Section 8.0 Application Procedure" on August 24, 1983. The Mayor of the County of Kaua'i approved the amendments on August 26, 1983. The amendments were filed in the Office of the Clerk of the County of Kaua'i on August 29, 1983.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority," "Section 1.4 Definitions", paragraph H., S., U., and X.", and "Section 4.0 Special Management Area Guidelines", paragraph B." on December 12, 1984. The Mayor of the County of Kaua'i approved the amendments on December 18, 1984. The amendments were filed in the Office of the Clerk of the County of Kaua'i on December 19, 1984.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions", paragraph H., O., T., and U.", "Section 6.0 Consultation", "Section 7.3 Determination", paragraph B. and C.," and "Section 11.0 Emergency Permits" on May 13, 1993. The Mayor of the County of Kaua'i approved the amendments on May 26, 1993. The amendments were filed in the Office of the Clerk of the County of Kaua'i on June 1, 1993.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to Section 19.0 Land-Based Activities Affecting Coastal Waters on June 9, 1998. The Mayor of the County of Kaua'i approved the amendments on July 21, 1998. The amendments were filed in the Office of the Clerk of the County of Kaua'i on July 28, 1998.

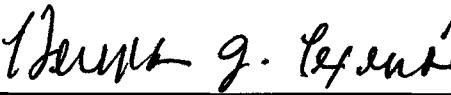
**AMENDMENT TO THE COUNTY OF KAUAI
SPECIAL MANAGEMENT AREA RULES AND REGULATIONS**

Amendments to the County of Kauai Special Management Area Rules and Regulations were adopted by a 5 to 0 vote of the members of the Planning Commission of the County of Kauai, State of Hawaii at its meeting held on the 11th day of October, 2011 as follows:

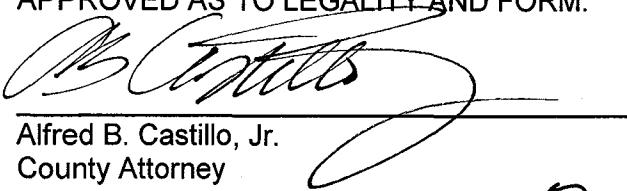
FOR	AGAINST	ABSTAIN/ABSENT
Texeira, Raco, Katayama, Kimura and Matsumoto	None	Blake and Nishida

The amendments shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.

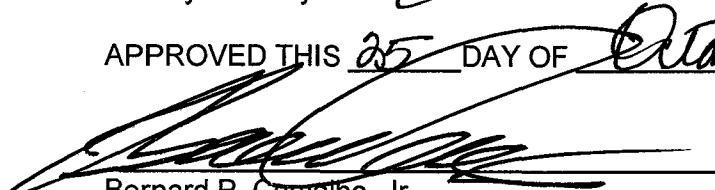
BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAII.


Herman Texeira, Chair

APPROVED AS TO LEGALITY AND FORM:


Alfred B. Castillo, Jr.
County Attorney

APPROVED THIS 25 DAY OF October, 2011.


Bernard P. Carvalho, Jr.
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING AMENDMENTS TO THE COUNTY OF KAUAI SPECIAL MANAGEMENT AREA RULES AND REGULATIONS WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 26th DAY OF October, 2011.


Interim County Clerk
PUBLIC NOTICE: July 29, 2011
PUBLIC HEARING: August 30, 2011

KAUAI PLANNING COMMISSION
AMENDMENT TO SPECIAL MANAGEMENT AREA RULES
FOR THE COUNTY OF KAUAI

([Bracketed] and ~~stricken~~ to be removed; underlined and **bolded** to be added)

Section 8.0 Application Procedure

Should a determination pursuant to Section 7.3 lead to the processing of a Special Management Area Minor Permit under Section 7.3.B, the applicant shall pay a \$150 processing fee.

Any person who has received a determination under Section 7.3 that his proposal is neither exempt, nor that it conforms to the requirements for a Minor permit, or any person who has determined on his own that his proposal is in excess of \$500,000 or will have a significant adverse effect, shall apply for a Special Management Area Use Permit.

The applicant shall be responsible for submitting a completed form provided by the Planning Department. Such form shall be accompanied by:

- A. In the case of applicants whose proposals have not been assessed, all informational requirements of Section 7.1.
- B. A filing and processing fee as set annually by the Director to cost the actual cost of publication plus [\$100] **\$300** for processing; provided, however, that if applications for other permits which require [public] **agency** hearings to be conducted by the Planning Commission are filed for the same development, and if [public] **agency** hearings for the permit applications are to be held simultaneously, only one filing and processing fee will be required **unless otherwise stated pursuant to Chapter 8, Kauai County Code (1987).**

Upon compliance with the foregoing procedure, the Director shall notify the applicant by mail that this application has been accepted.

AMENDMENTS TO THE SPECIAL MANAGEMENT AREA RULES
OF THE COUNTY OF KAUAI

Amendments to the Special Management Area Rules of the County of Kauai related to fees were adopted by a 4 to 0 vote of the members of the Planning Commission of the County of Kaua'i, State of Hawai'i at its meeting held on the 24th day of February, 2015 as follows:

FOR	AGAINST	ABSTAIN/ABSENT
Abrams, Anderson, Kimura, Mahoney	None	Blake, Katayama and Mendonca

The amendments shall be come effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

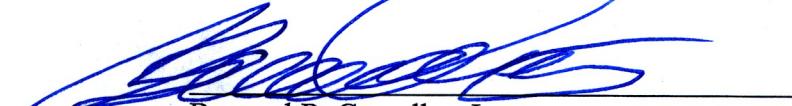
BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAI'I.


Angela Anderson, Chairwoman

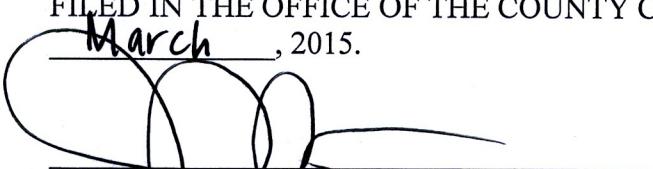
APPROVED AS TO LEGALITY AND FORM:


For Matina Kea Trask
County Attorney

APPROVED THIS 5th DAY OF March, 2015.


Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 17th DAY OF March, 2015.


Ricky Watanabe Jade K. Fountain-Tanigawa
County Clerk Deputy County Attorney

PUBLIC NOTICE: January 25, 2015
PUBLIC HEARING: February 24, 2015

SPECIAL MANAGEMENT AREA
RULES AND REGULATIONS

COUNTY OF KAUA'I STATE OF HAWAI'I

DRAFT

As Amended XXX 2026

SPECIAL MANAGEMENT AREA RULES AND REGULATIONS OF THE COUNTY OF KAUAI

SECTION 1.0 GENERAL PROVISIONS

1-1 Authority.

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules and regulations hereinafter contained are hereby established) and shall apply to all lands within the Special Management Area (SMA) of the County of Kaua'i.

1-2 Purpose.

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to ensure that adequate public access is provided to publicly-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

1-3 Title.

These Rules and Regulations shall be known as the "Special Management Area Rules and Regulations of the County of Kaua'i" or "SMA Rules".

1-4 Special Management Area.

Special Management Areas as delineated on the maps filed with the Planning Commission and the office of the County Clerk as of June 8, 1977 or as amended pursuant to HRS Section 205A-23, and SMA Rules Section 8.0 shall be the official Special Management Area to be administered and enforced under these SMA Rules.

1-5 Objectives and Policies of the Hawai'i Coastal Zone Management Act.

The objectives and policies of the coastal zone management program are those set forth in HRS Section 205A-22, as amended. These objectives and policies shall serve as guidelines in the implementation of these SMA Rules.

1-6 Developments Proposed Within the Special Management Area Subject to Review.

Any use, activity, or operation proposed within the Special Management Area defined as a "development" pursuant to HRS §205A-22 and SMA Rules Section 1-7 shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations.

1-7 Definitions.

These definitions are intended to clarify, not to replace nor to negate the definitions in HRS Chapter 205A, as amended. If any definition is amended by HRS Chapter 205A, the definition prescribed under HRS shall apply. For the purpose of these Rules and Regulations, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used are defined as follows:

- 1-7-A “Applicant” means an owner or any person who has full written authorization of the owner.
- 1-7-B “County Engineer” means the head of the Department of Public Works of the County of Kaua‘i.
- 1-7-C “County” means the County of Kaua‘i.
- 1-7-D “Crops” means agricultural produce or parts(s) of plants or trees cultivated for commercial or personal use including, but not limited to, the raising of livestock.
- 1-7-E “Debris Line” or “Line of Debris” means a line marking the landward limit of debris deposits, resulting from wave uprush.
- 1-7-F “Development”:
 - (1) Means any of the following uses, activities, or operations on land or in or under water within a special management area that are included below:
 - i. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - ii. Grading, removing, dredging, mining, or extraction of any materials;
 - iii. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - iv. Change in the intensity of use of water, ecology related thereto, or access thereto; and
 - v. Construction, reconstruction, or alteration of the size of any structure; and
 - (2) Does not include the following:
 - i. Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area; is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; and is not part of a larger development;

- ii. Repair or maintenance of roads and highways within existing rights-of-way;
- iii. Routine maintenance dredging of existing streams, channels, and drainageways;
- iv. Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- v. Zoning variances, except for height, density, parking, and shoreline setback;
- vi. Repair, maintenance, or interior alterations to existing structures;
- vii. Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- viii. Uses of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes associated with a USDA Natural Resource Conservation Service approved conservation plan, including all traditional fishpond and traditional agricultural practices;
- ix. Transfer of title to land;
- x. Creation or termination of easements, covenants, or other rights in structures or land;
- xi. Subdivision of land into lots greater than twenty acres in size;
- xii. Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- xiii. Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors within an existing utility easement or government rights-of-way;
- xiv. Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- xv. Nonstructural improvements to existing commercial or noncommercial structures;
- xvi. Construction, installation, maintenance, repair, and replacement of emergency management warning or signal devices and sirens;

- xvii. Installation, maintenance, repair, and replacement of public pedestrian and bicycle facilities, including sidewalks, paths, bikeways, crosswalks, stairs, ramps, traffic control barriers, signs, signals, and associated improvements;
- xviii. Trash removal or invasive vegetation removal or control, including incidental ground disturbance, excluding the use of herbicides;
- xix. Installation of fencing, including associated improvements and incidental structures, for invasive species control or preservation of native habitats on conservation land;
- xx. Installation, maintenance, repair, and replacement of lighting, fixtures, and equipment to establish compliance with current standards at existing public facilities;
- xxi. Installation, maintenance, repair, and replacement of security measures, including fencing, to existing public facilities; and
- xxii. Hawaiian traditional and customary practices, including work conducted by traditional means near, in, or related to loko i'a, traditional Hawaiian fishponds;
- xxiii. Amendment of the County general plan, development plans, State land use district boundaries, and zoning changes;
- xxiv. Reconstruction of any lawfully constructed structure that was damaged or destroyed in a disaster proclaimed by the governor to constitute a state of emergency pursuant to chapter 127A, or a disaster declared pursuant to federal law; provided that:
 - (1) The structure is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion;
 - (2) Reconstruction commences and substantial progress is achieved within six years from the date that the proclamation is issued; and
 - (3) The reconstructed structure is similar to its original footprint or overall dimensions that were existing or permitted and in compliance with the requirements of floodplain management standards;
- xxv. Incidental ground disturbance involving archeological work in compliance with State of Hawai'i Historic Preservation Division requirements.

provided that whenever the Director or Planning Commission finds that any excluded use, activity, or operation may have cumulative impact or, or a significant environmental or ecological effect on a Special Management Area as detailed in SMA Rules Section 3-3, that use, activity, or operation shall be defined as "development" for the purpose of this part.

1-7-G “Director” means Department, County of Kaua‘i, or the Director's authorized designee.

1-7-H “Environmental Impact Statement” (“EIS”) means an informational document prepared in compliance with HRS Chapter 343 and State of Hawai‘i, Office of Planning and Sustainable Development, Environmental Review Program's Rules and Regulations, and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of economic activities arising out of the proposed action, measures, proposed to minimize adverse effects and alternatives to the action and their environmental effects.

1-7-I “Estuary” means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

1-7-J “Estuarine sanctuary” means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

1-7-K “Floor area” means the aggregate areas enclosed by a residence's exterior walls. For areas without exterior walls, it refers to the usable space beneath the horizontal projection of a roof or the useable space above the horizontal projection of a deck or floor. This excludes any uncovered (not roofed) on-grade pavement or concrete and uncovered (not roofed) subsurface improvements.

1-7-L “Improvement” means any upgrades or enhancements that increase value, utility, or function beyond its original condition. When applied to structures, “improvement” does not include “substantial improvements.”

1-7-M “Larger development” constitutes the following:

- (1) Three (3) or more residences on a lot of record; or
- (2) Development that involves three or more individual wastewater systems on a lot of record.

1-7-N “Maintenance” means the routine care and upkeep to restore to working condition. When applied to structures, “maintenance” does not include “substantial improvements.”

1-7-O “Owner” means the holders of legal title of land in fee simple.

1-7-P “Person” includes any individual, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity including any utility or any agency, department, commission, or board of government.

1-7-Q “Planning Commission” means the Planning Commission of the County of Kaua’i.

1-7-R “Planning Department” means the Planning Department of the County of Kaua’i.

1-7-S “Reconstruction” means the rebuilding, renewal, or replacement of any part of or up to all of a lawfully existing structure.

1-7-T “Repair” means the restoration or renewal of any part of an existing structure that is damaged or deteriorated to its original working condition and function. When applied to single-family residences and buildings, “repair” does not include “substantial improvements.”

1-7-U “Residence” means a habitable structure with a kitchen. This definition includes but is not limited to additional rental units (“ARU”), guest houses with kitchens (“GH”), and additional dwelling unit (“ADU”). Except for ARU and GH, this definition does not apply to detached, accessory structures.

1-7-V “Shoreline” means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit pf debris left by the wash of the waves.

1-7-W “Shoreline Armoring Device” means a structure or improvement built to artificially fix the shoreline and poses an immediate and future adverse effect on beach process as a result of the structure or improvement located within the coastal hazard zone.

1-7-X “Shoreline Survey” shall mean the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a land surveyor registered in the State of Hawai‘i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chair of the Board of Land and Natural Resources.

1-7-Y “Single-Family Residence” means a detached building designed for or used as the complete facility for the cooking, sleeping, and living area of a single family only and occupied by no more than one family, including uses normally considered accessory to the single family facilities provided that such uses are in compliance with all requirements of any County or State regulations, statute or ordinance. A single family shall include an individual or group of two or more persons living together in a single residential unit. For purposes of these SMA Rules, a guest house shall be considered an accessory use.

1-7-Z “Special Management Area” means the land extending inland from the shoreline as delineated on the maps filed with the Planning Commission as of June 8, 1977 or as amended pursuant to HRS Section 205A-23 and SMA Rules Section 8.0.

1-7-AA “Special Management Area Emergency Permit” means a permit issued by the Director, pursuant to the authority provided to the Director by the Planning Commission and defined in the SMA Rules and Regulations, authorizing development in a case of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the National Flood Insurance Program.

1-7-BB “Special Management Area Minor Permit” means an action by the authority authorizing development that has no substantial adverse environmental or ecological effect, taking into account potential cumulative effect, and the valuation of which is not in excess of:

- (1) \$750,000, with inflation adjustments every five years starting from May 29, 2025 (the effective date of Act 125, SLH 2025) by the lead agency in accordance with the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, if the development is not situated on a shoreline parcel or parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; or
- (2) \$500,000, if the development is situated on a shoreline parcel or parcel that is impacted by waves, storm surges, high tide, or shoreline erosion.

1-7-CC “Special Management Area Use Permit” means an action:

- (1) By the Planning Commission, the valuation of which exceeds \$750,000, with inflation adjustment every five years starting from from May 29, 2025 (the effective date of Act 125, SLH 2025) by the lead agency in accordance with the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; or
- (2) That may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

1-7-DD “State Plan” means the adopted State Plan of the State of Hawai‘i, as reflected by Chapter 226, HRS, and any amendments thereto.

1-7-EE “Structure” includes, but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

1-7-FF “Substantial progress” is means that 100% of the building foundation has been laid, or that 100% of the building foundation of the active phase of a project has been laid where the project is being done in phases.

1-7-GG “Substantial improvements” means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a 10 year period, where the cumulative cost equals or exceeds 50% of the market value of the structure before the start of construction of the first improvement during that 10 year period. The cumulative series of repairs, reconstruction, improvements is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be determined by the County Engineer or his/her authorized representative or the Planning Director. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure's continued designation as a “historic structure.”

1-7-HH “Use” is:

- (1) Any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied.
- (2) Any activity, occupation, business, or operation carried on or intended to be carried on' in any structure or on a tract of land.

1-7-II “Value” or “Valuation” shall be determined by the Director and means the estimated cost to conduct the project or replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined by Hawai‘i Revised Statutes 205A-22 and these rules, the fair market value of the development. Valuation will be assessed based on the cost of an activity, building, or structure including but not limited to labor, equipment, supplies, materials, contractor fees, site preparation, delivery costs, architectural and engineering fees, permit fees, legal and consulting fees, and project management as determined by an architect, engineer, or contractor licensed by the State of Hawai‘i Department of Commerce and Consumer Affairs, the County of Kaua‘i Department of Public Works, or Planning Department. In the event of a conflict among valuations, the higher estimate amount shall be used for the purposes of these rules.

1-7-JJ “Vegetation Line” means a line marking the seaward limit of natural terrestrial growth.

1-7-KK “Vegetation Growth” means any plant, tree, shrub, grass, or groups, clusters or patches of the same naturally rooted and growing.

SECTION 2.0 SPECIAL MANAGEMENT AREA GUIDELINES

2-1 Guidelines.

The following guidelines shall be used by the Planning Director, Planning Department, and the Planning Commission for the review of developments proposed in the Special Management Area (SMA):

2-1-A Pursuant to the definition of “Development” under HRS Section 205A-22 and SMA Rules Section 1-7, the following shall be considered to evaluate whether a parcel is “impacted by waves, storm surge, high tide, or shoreline erosion” at the time the application is submitted:

- (1) A parcel is impacted by waves, storm surge, high tide, or shoreline erosion when any portion or component of the **proposed development** is within the following coastal hazard areas:
 - i. Lands subject to historical coastal erosion pursuant the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012).
 - ii. Lands subject to the Coastal High Hazard Area Zone VE identified by FEMA Flood Insurance Rate Maps.
 - iii. Lands that the Planning Director determines is subject to coastal hazards or may result in cumulative impacts or a significant environmental or ecological effects under SMA Rules Section 3-3.
- (2) Where the **applicant** verifies that no structures including all portions of the proposed development is not situated on any land subject to the coastal hazards listed above, the Planning Director may determine that the parcel is not impacted by waves, storm surge, high tide, or shoreline erosion unless the Director finds that the proposed project may have cumulative impact or a significant environmental or ecological effect on a Special Management Area pursuant to SMA Rules Section 3-3 of these SMA Rules.

2-1-B No development shall be approved unless the Director or the Planning Commission has first found that:

- (1) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;

- (2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in SMA Rules Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and
- (3) The development is consistent with the County general plan and zoning ordinances. Such not preclude concurrent processing where a general plan or zoning amendment may also be required.

2-1-C All development in the SMA shall be subject to reasonable terms and conditions set by the Director or the Planning Commission to ensure that:

- (1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
- (2) Adequate and properly located public recreation areas and wildlife preserves are reserved;
- (3) Provisions are made for solid and liquid waste treatment, disposition, and management that will minimize adverse effects upon special management area resources; and
- (4) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

2-1-D The Director or the Planning Commission shall seek to minimize, where reasonable:

- (1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
- (2) Any development that would reduce the size of any beach or other area usable for public recreation.
- (3) Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the Special Management Area and the mean high tide line where there is no beach.
- (4) Any development that would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.

(5) Any development that would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, Wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

2-1-E Ocean View Plain Corridor. For any parcel that is located immediately between the shoreline and a public thoroughfare, the following ocean view plain requirements shall apply:

- (1) At least twenty percent of the subject property's public thoroughfare boundary shall provide for a view plane area(s) whereby members of the public can view the ocean from the adjacent public thoroughfare;
- (2) No structural improvements, including but not limited to fences, walls, or site features, shall exceed three (3) feet in height in the designated view plain area;
- (3) All vegetation, hedges, bushes, or trees within the designated view plain area shall be maintained in manner not to exceed three (3) feet in height;
- (4) A site plan shall be submitted to the Planning Department depicting the designated view plain area.

SECTION 3.0 ASSESSMENT AND DETERMINATION PROCEDURES

3-1 Assessment and Determination Filing Procedures.

3-1-A Assessment Required.

- (1) No person shall be allowed to conduct any use, activity or operation on lands located within the SMA, which may significantly impact coastal waters or related coastal resources, without first obtaining an SMA Permit pursuant to these Rules and Regulations. An application for a SMA Permit filed under this section shall be subject to the review of the Director, Planning Department, and Planning Commission, and shall be evaluated for consistency with the objectives, policies, and guidelines of the Hawai'i Coastal Zone Management Act.
- (2) Any proposed use, activity, operation, or development in the SMA, or any modification of an existing SMA permit, must first obtain an initial evaluation and assessment made by the Director to determine whether the proposal is development and requires a special management area permit or is exempt from a special management area permit.
- (3) No County department or State agency authorized to issue permits pertaining to any development within the Special Management Area shall authorize any development unless approval is first received from the Director or the Planning Commission pursuant to these SMA Rules.
- (4) For the purposes of this Section, County General Plan, State Land Use District boundary amendments, and zoning changes are not development that require an SMA assessment.

3-1-B Waiver. An applicant may waive these assessment procedures and may apply directly for SMA use permit pursuant to SMA Rules Section 7.2.

3-1-C Assessment Application. The applicant shall submit the following information and documentation with the Planning Department:

- (1) A tax map key description of the property on which the applicant proposes the project.
- (2) A plot plan of the property, drawn to scale with all proposed structures shown thereon, and any other information necessary to a proper determination relative to the specific request.
- (3) A written description of the proposed project and a statement of objectives.

- (4) A written statement of the estimated valuation of the proposed development including the estimated valuation of all components of the proposed development and any component that could be considered exempt.
- (5) Any other relevant plans or information required by the Department.
- (6) If the applicant is not the landowner, written authorization of the landowner.
- (7) An assessment administrative fee of \$50.

3-2 Evaluation of Assessment Application.

Upon submission of a completed assessment application, the Director shall evaluate the application based on the following criteria:

- (1) Whether the nature of the proposed development aligns with the definition of “development” pursuant to Hawai‘i Revised Statutes §205A-22 and these SMA Rules or is exempt from a SMA permit.
- (2) The SMA Guidelines pursuant to SMA Rules Section 2.0.
- (3) The valuation of the proposal.
- (4) Whether the proposal may have a cumulative impact, or significant environmental or ecological effect on the SMA pursuant to the criteria specified under these SMA Rules.

3-3 Significant and Cumulative Environmental and Ecological Effect Criteria

The Planning Director, Planning Department, and Planning Commission shall consider the following to assess whether a proposal may have a significant adverse environmental and ecological effect or cumulative impact:

3-3-A **Cumulative Impact.** A proposal may constitute a cumulative adverse effect on the environment when the sum of the foreseeable effects that are predicted during the proposed action’s lifespan may adversely affect the quality of the environment and ecology. In considering cumulative impacts, foreseeable impacts within a surrounding spatial and geographical area of the use, activity, operation, or development can be considered as well as foreseeable impacts within a temporal timeframe.

3-3-B **Portioning of Project.** Pursuant to the definition of “Development” under HRS Section 205A-22 and SMA Rules Section 1-7, a portion of the project may constitute “development” when that portion of an excluded use, activity, or operation may result in a significant adverse environmental and ecological effect or cumulative impact.

3-3-C **Significant Effect.** A proposal that may constitute a significant adverse effect on the environment when the proposed action has the following effects or impacts:

- (1) Causes an irrevocable commitment to loss or destruction of any natural, cultural, or historic resources, including but limited to, historic sites, Special Treatment Districts as established in Kaua'i County Code Chapter 8, known as the Comprehensive Zoning Ordinance, view planes, scenic vistas, or scenic corridors as identified in the Development Plans, and recreation areas and resources;
- (2) Significantly curtails the range of beneficial uses of the environment;
- (3) Conflicts with the County's or the State's long-term environmental policies or goals;
- (4) Is contrary to the County's General Plan, Development Plans, zoning and subdivision ordinances, the State Plan, and the objectives, policies, and guidelines of these SMA Rules;
- (5) Substantially and adversely affects the economic, social welfare, or cultural practices of the community, County, and State;
- (6) Causes a substantial adverse effect on public health;
- (7) Involves adverse secondary impacts, such as population changes and effects on public facilities;
- (8) Involves a substantial degradation of environmental quality;
- (9) In itself may not have a significant adverse effect but cumulatively has substantial adverse effect upon the environment or involves a commitment for larger actions;
- (10) Substantially and adversely affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (11) Causes substantial adverse effects on air or water quality or ambient noise levels;
- (12) Causes substantial adverse effects or is likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, shoreline, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water;
- (13) Requires substantial energy consumption or emission of substantial greenhouse gases.

3-4 Assessment Determination.

Within thirty (30) calendar days after the receipt of all filing requirements or within a longer period as agreed to by the applicant, the Director shall issue an assessment determination pursuant to the following:

3-4-A **Applicability.** Unless otherwise stated in the assessment determination, once an assessment determination is issued, the determination will remain valid for up to two (2) years, or the assessment determination shall be deemed to have lapsed and be no longer in effect.

3-4-B **Exemption.** Where the Director finds that the proposal is not a development as defined in SMA Rules Section 1-7; the Director shall determine that the proposal is exempt from a SMA permit and these SMA Rules.

3-4-C **SMA Minor Determinations.**

The Director shall require a SMA Minor permit when the Director determines that:

- (1) The proposal is a development, as defined in SMA Rules Section 1-7; and
- (2) The proposed development will constitute a value not more than:
 - i. \$750,000, with inflation adjustments every five years starting from May 29, 2025 (the effective date of Act 125, SLH 2025) by the lead agency in accordance with the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, if the development is not situated on a shoreline parcel or parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; or
 - ii. \$500,000 for development that is situated on a shoreline parcel or parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; or
- (3) The proposed development will not result in a significant adverse environmental and ecological effect or cumulative impact under SMA Rules Section 3-3.

3-4-D **SMA Use Permit Determinations.**

The Director shall require a SMA Use permit when the Director determines that:

- (1) The proposal is a development, as defined in SMA Rules Section 1-7; and
- (2) The proposed development will constitute a value that exceeds:
 - i. \$750,000, with inflation adjustment every five years starting from May 29, 2025 (the effective date of Act 125, SLH 2025) by the lead agency in accordance with the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; or
 - ii. \$500,000 for development that is situated on a shoreline parcel or parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; or

- (3) The proposal directly facilitates commercial boating and vessel activities or operations excluding actions under the jurisdiction of the State Department of Land and Natural Resources-Division of Boating and Ocean Recreation, State Department of Transportation, and Federal Agencies; or
- (4) The proposal directly involves the construction of a Shoreline Armoring Device; or
- (5) The proposed development may result in a substantial adverse environmental and ecological effect taking into account potential cumulative effects under SMA Rules Section 3-3.

3-4-E SMA Use Permit Application Notification. When an SMA Use permit application is required, the Director shall inform the person of the following:

- (1) The requirement of a SMA Use Permit application pursuant to SMA Rules Section 4-2;
- (2) The public hearing requirements under SMA Rules Section 5.0;
- (3) The Planning Commission's requirements for action under SMA Rules Section 4.0; and
- (4) The area of critical concern to delineate the scope of information that the applicant must address.

SECTION 4.0 SMA PERMIT APPLICATIONS PROCEDURES

4-1 SMA Minor Permit Applications.

Where the Director has determined that an SMA Minor Permit is required, the applicant shall be responsible for submitting a completed application form provided by the Planning Department, including the following:

- (1) All the information required for SMA assessment applications under SMA Rules Section 3-1-C.
- (2) A SMA Minor permit fee of \$300.
- (3) If required under HRS Chapter 343, the Planning Director, Planning Department, or Planning Commission, an environmental assessment (EA) or environmental impact statement (EIS), or an agency decision letter where a government agency has determined that the action is exempt, or any final environmental document from an EA or EIS that issued a finding of no significant impact.
- (4) An analysis identifying and addressing any impacts to Native Hawaiian traditional and customary rights that are identified and protected under Article XII, Section 7 of the Hawai‘i State Constitution.
- (5) A written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's Coastal Zone Management Act (Chapter 205A, HRS) and the guidelines of the Special Management Area as provided in these rules. This written statement should include the relationship of the proposed action to land use plans of the affected area, an analysis of the probable impact of the proposed action on the environment, a listing of probable adverse environmental effects that cannot be avoided, an evaluation of alternatives to the proposed action, a discussion of mitigating measures proposed to minimize impacts, and a listing of any irreversible and irretrievable commitment of resources.

4-1-A Agency Comment. Once officially accepted, the Director may circulate the application for a minor application to the appropriate government agencies for their comments and recommendations, if necessary.

4-1-B SMA Minor Permit Action. The Director shall approve, approve with conditions, or deny such SMA Minor permit pursuant to the guidelines under HRS Section 205A-26, as amended and SMA Rules Section 4.0. The Director may impose any reasonable terms and conditions deemed necessary to meet the objectives, policies, and the guidelines of HRS Chapter 205A and the SMA Rules.

4-1-C SMA Minor Permit Notice. The Director shall submit the minor permit determination to publicize on a website and in the next available issue of the periodic bulletin of the State of Hawai‘i Office of Planning and Sustainable Development (OPSD). The information posted to the website shall include the date of the Director’s determination, permit number, TMK, location, and activity/structure and shall be posted at the time of posting in the OPSD periodic bulletin.

4-1-D Effect of Denial. When a SMA Minor Permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

4-1-E Substantial Progress. Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

4-2 SMA Use Permit Applications

Where the Director has determined that an SMA Use Permit is required or an applicant has waived an assessment, the applicant shall be responsible for submitting a completed application form provided by the Planning Department. Such form shall be accompanied by the following:

- (1) In the case of applicants whose proposals have not been assessed, all the information required for SMA assessment applications under SMA Rules Section 3-1-C.
- (2) The applicant shall pay an administrative fee of \$500 for processing plus the cost of publication of \$1,776.46, or as set annually by the Director and outlined by a fee schedule to cover the actual costs of publication.
- (3) If required under HRS Chapter 343, the Planning Director, Planning Department, or Planning Commission, an environmental assessment (EA) or environmental impact statement (EIS), or an agency decision letter where a government agency has determined that the action is exempt, or any final environmental document from an EA or EIS that issued a finding of no significant impact.
- (4) An analysis identifying and addressing any impacts to Native Hawaiian traditional and customary rights that are identified and protected under Article XII, Section 7 of the Hawai‘i State Constitution.

(5) A written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's Coastal Zone Management Act (Chapter 205A, HRS) and the guidelines of the Special Management Area as provided in these rules. This written statement should include the relationship of the proposed action to land use plans of the affected area, an analysis of the probable impact of the proposed action on the environment, a listing of probable adverse environmental effects that cannot be avoided, an evaluation of alternatives to the proposed action, a discussion of mitigating measures proposed to minimize impacts, and a listing of any irreversible and irretrievable commitment of resources.

4-2-A Acceptance and Agency Comment.

Upon compliance with the foregoing procedures, the Director shall notify the applicant by mail that this application has been accepted. Once officially accepted, the Director shall circulate the application to appropriate government agencies for their comments and recommendations and schedule the application for public hearing pursuant to SMA Rules Section 5.0.

4-2-B SMA Use Permit Action.

- (1) Within 60 days after the filing of a completed application, the Planning Director shall prepare a report that analyzes whether the proposed development meets the criteria and guidelines under HRS Section 205A-26, as amended, and SMA Rules Section 2.0, and indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.
- (2) Within (60) calendar days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and the Planning Commission shall approve, approve with conditions, or deny the SMA Use Permit by majority vote of its total membership except when the SMA Use Permit is subject to intervention proceedings or a contested case hearing pursuant to the Planning Commission Rules of Practice and Procedure Chapter 4 and 6.
- (3) The Planning Commission may impose any reasonable terms and conditions deemed necessary to meet the objectives, policies, and the guidelines of HRS Chapter 205A and the SMA Rules.
- (4) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Section, unless the applicant assents to a delay, the application shall be deemed approved.

4-2-C Effect of Denial. When a SMA Use Permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

4-2-D Substantial Progress. Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

4-3 Modifications or Revocations of SMA Permits.

Permits can be modified pursuant to SMA Rules Section 6.0 or revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 5.0 PUBLIC HEARINGS

5-1 Timing.

Where these SMA Rules require a public hearing, the Planning Commission shall conduct at least one public hearing within a period of sixty (60) calendar days after receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant.

5-2 Notice.

5-2-A Publication. The Planning Commission shall give written notice to the applicant, and notice shall also be published once within the County of Kaua'i and once in a newspaper of general circulation in the State at least twenty (20) calendar days prior to the date of the public hearing in a publication pursuant to HRS Section 1-28.5.

The notice of the public hearing shall state:

- (1) The location of the property involved;
- (2) The land area of the proposed development;
- (3) The nature of the proposed development;
- (4) The date, time, and place of the hearing; and
- (5) That persons may petition for intervention pursuant to the Planning Commission's Rules of Practices and Procedures.

5-2-B Notice to Neighbors. At least twenty (20) calendar days prior to the scheduled date of such hearing, the applicant shall either hand-deliver written notices to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kaua'i or send by certified mail written notices to the addresses shown on such Real Property Assessment Notice List for at least eighty-five percent (85%) of all tax map key parcels within 300 feet from the nearest point of The tax map key parcel involved in the petition. For purpose of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent address "To the Residents, Care of the Manager," followed by the name and address of the condominium involved. The notice shall include the same information contained in the published written notice and shall be in a form approved by the Planning Director.

5-2-C Affidavit. At least seven (7) calendar days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit describing the mailing or delivery of such notice, including a list of people to whom such notices were sent.

If the applicant fails to comply with foregoing notification requirements, the public hearing shall be postponed and the applicant shall pay for the cost of republication and processing, which shall be same amount set forth above, and shall follow the same notification requirements of this section to re-notify affected persons. The Planning Commission shall reschedule another hearing within sixty (60) calendar days after receipt of the fee.

5-3 Joint Hearings.

In the event a project being considered for a SMA permit also requires other permits or approvals, the Planning Commission may conduct joint hearings.

DRAFT

SECTION 6.0 MODIFICATION OF SMA PERMITS

6-1 Applicability and Initiation of SMA Permit Modifications

A modification to an SMA Use Permit, SMA Minor Permit, or SMA Emergency Permit may be initiated by an owner or authorized representative of the owner, the Planning Commission, or Planning Department.

Within thirty (30) calendar days after an application to modify an SMA permit is officially accepted, the Planning Director will issue a determination stating whether the requested modification constitutes a minor modification or major modification pursuant to SMA Rules Sections 6-2 and 6-3. The main standard to determine whether a modification is considered major or minor is the potential that the modification will have significant or cumulative impacts to the environment or ecology, or cause impacts on the SMA and surrounding land uses.

6-2 Minor modifications of SMA Permits:

6-2-A Modifications to an SMA Minor permit or SMA Emergency permit may be processed as a minor modification if they qualify with the following:

- (1) The modification does not significantly increase the intensity or scope of the use or activity that was originally permitted and is consistent with the intent of the original respective permit.
- (2) The modification does not significantly increase the environmental or ecological impacts and impacts to coastal resources.
- (3) The modification does not create adverse land use impacts on the SMA and surrounding neighborhood.
- (4) Any requests to modify a SMA Use permit shall not constitute a minor modification.

6-2-B Minor modifications may be approved by the Planning Director pursuant to the minor modification procedures in Section 6-7.

6-2-C New Permit Required. Modifications that do not qualify as a minor modification or are inconsistent with or beyond the scope of the original permit will require the applicant to submit a new SMA assessment and permit.

6-3 Major modifications of SMA Permits.

6-3-A Major modifications are consistent with the following:

- (1) All modifications that do not qualify as a minor modification.

- (2) Changes that are inconsistent with the intent of the original respective permit including significant design alterations, and increased project scale.
- (3) Changes that are beyond the scope of the original permit.
- (4) Changes that increase the potential for adverse environmental effects.
- (5) All requests to modify an SMA Use permit.

6-3-B Major modifications will require Planning Commission approval and may require a public hearing pursuant to the major modification procedures under Section 6-8.

6-3-C New Permit Required. Major modifications that are far beyond the scope of the original permit will require the applicant to submit a new SMA assessment and permit under SMA Rules Section 4.0.

6-4 Time extension requests.

6-4-A Any modifications involving time extension requests must be submitted prior to permit expiration. If a timely request is submitted but not approved prior to permit expiration, the permit shall remain in effect until the renewal is granted or denied, unless the applicant causes substantial delay in the review and approval process.

6-4-B The Director shall analyze whether the requested time extension constitutes a minor modification or major modification pursuant to the criteria in SMA Rules. Once a determination is made, the respective procedures for minor or major modifications shall apply.

6-5 Form and Content of Application to Modify a SMA Permit.

The application to modify an SMA permit shall be filed on a form prescribed by the Director which shall include the following information:

- (1) A description of the requested modification including the specific term or condition of the permit proposed for modification;
- (2) A detailed reasons and justification for the requested modification;
- (3) A narrative regarding whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder's development to have a substantial adverse environmental or ecological effect or adversely affect the capacity or condition of infrastructure;
- (4) An analysis regarding whether the requested modification would result in a cumulative impact or a significant environmental or ecological effect on a Special Management Area;

- (5) A statement regarding how the requested modification is consistent with the objectives, policies, and guidelines as enumerated in HRS Chapter 205A and as referred to in SMA Rules Sections 3.0, 4.0, and 4.0, and the Special Management Area guidelines set forth in these SMA Rules;
- (6) A statement regarding how the requested modification is consistent with the County general plan and zoning ordinances;
- (7) Updated environmental assessments or documentation, if applicable;
- (8) Revised plans, if applicable;
- (9) The written authorization of the landowner;
- (10) An administrative fee of \$300;
- (11) Any request for time extensions must provide the following:
 - i. The length of time requested;
 - ii. A statement regarding what construction or other work has been done; and
- (12) Any other information that the Director requires for an adequate investigation into the matter.

The Director may reject any application that is incomplete, inaccurate, or fails to comply with these SMA Rules.

6-6 Revocation of SMA Permits.

Any request to investigate the basis for revocation of any SMA permit shall subject to and comply with the Chapter 12 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission.

6-7 Procedures for Minor Modification of SMA Minor or SMA Emergency Permits.

Once officially accepted, the Director may circulate the application for a minor modification to the appropriate government agencies for their comments and recommendations, if necessary.

6-7-A Minor Modification Actions. The Director shall approve, approve with conditions, or deny such application for a minor modification pursuant to the guidelines under HRS Section 205A-26, as amended and SMA Rules Section 2.0. The Director may impose any reasonable terms and conditions deemed necessary to meet the objectives, policies, and the guidelines of HRS Chapter 205A and the SMA Rules.

6-7-B Minor Modification of SMA Permit Notice. The Director shall submit the minor modification determination to publicize on a website and in the next available issue of the periodic bulletin of the State of Hawai‘i Office of Planning and Sustainable Development (OPSD). The information posted to the website shall include the date of the Director’s determination, permit number, TMK, location, and activity/structure and shall be posted at the time of posting in the OPSD periodic bulletin.

6-7-C Effect of Minor Modification Denial. When a minor modification application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

6-7-D Substantial Progress Timelines After Minor Modifications.

- (1) Unless otherwise stated in the minor modification approval, the timelines stated in the original permit for substantial progress on the development or activity still applies, or the permit shall be deemed to have lapsed and be no longer in effect.
- (2) If timelines are modified along with the minor modification approval, the applicant must make substantial progress on any modification, as determined by the Director, regarding the development or activity within two (2) years of the minor modification approval date, or the permit shall be deemed to have lapsed and be no longer in effect.

6-8 Procedures for Major Modification of SMA Permits.

6-8-A Once officially accepted, the Director shall circulate the application to the appropriate government agencies for their comments and recommendations.

6-8-B Public Hearing Waiver for Modifications of Certain SMA Use Permits.

- (1) Along with determination that the modification is a major modification, the Director may waive the public hearing and notice requirements for major modifications of SMA Use permits only where the Director determines that the requested modification complies with the following:
 - i. The modification to the SMA Use permit does not significantly increase the intensity or scope of the use or activity that was originally permitted and is consistent with the intent of the original respective permit.
 - ii. The modifications to the SMA Use permit are changes that do not significantly increase the environmental or ecological impacts and impacts on coastal resources.
 - iii. The modification does not create adverse land use impacts on the SMA and surrounding neighborhood.

- iv. The original permit did not involve any petition to intervene filed by any person other than the applicant or any person other than the applicant admitted as an intervenor. If any petition to intervene was filed or intervenor was admitted in the original permit, the major modification shall comply with the public hearing and major modification procedures.

6-8-C Where the Director waives the public hearing for SMA Use permit modifications, the Planning Commission shall approve, approve with conditions, or deny the application for a major modification by majority vote of its total membership within sixty (60) calendar days of the date the application to modify an SMA permit is officially accepted.

6-8-D If the Planning Commission has not acted within sixty (60) calendar days after the date the application to modify an SMA permit is officially accepted, the application will be automatically listed on the agenda for the next meeting of the Planning Commission.

6-8-E The Planning Commission should grant the application for a major modification if it determines that the proposed development meets the criteria and guidelines under HRS Section 205A-26, as amended and SMA Rules Section 2.0. The Planning Commission may impose any reasonable terms and conditions deemed necessary to meet the objectives, policies, and the guidelines of HRS Chapter 205A and the SMA Rules.

6-9 Major Modification Actions Requiring Public Hearing.

- (1) Major modification applications that are not subject to Section 6-8-B require a public hearing pursuant to Section 5.0 of the SMA Rules.
- (2) The applicant shall pay the cost of publication of \$1,776.46, or as set annually by the Director and outlined by a fee schedule to cover the actual costs of publication.
- (3) Once officially accepted, the Director shall circulate the application to appropriate government agencies for their comments and recommendations and schedule the application for public hearing pursuant to SMA Rules Section 5.0.
- (4) The Planning Commission shall approve, approve with conditions, or deny the application for a major modification by majority vote of its total membership within sixty (60) calendar days after the conclusion of the public hearing, except in the case of SMA Emergency permits, where an extension has been agreed to by the applicant, or when the SMA Use Permit is subject to intervention proceedings or a contested case hearing pursuant to the Planning Commission Rules of Practice and Procedure Chapter 4 and 6. If the Planning Commission has not acted within sixty (60) calendar days after the conclusion of the public hearing, the application will be automatically listed on the agenda for the next meeting of the Planning Commission.

(4) The Planning Commission should grant the application for a major modification if it determines that the proposed development meets the criteria and guidelines under HRS Section 205A-26, as amended and SMA Rules Section 2.0. The Planning Commission may impose any reasonable terms and conditions deemed necessary to meet the objectives, policies, and the guidelines of HRS Chapter 205A and the SMA Rules.

6-9-A Denial of Modification. When a major modification application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

6-9-B Substantial Progress Timelines After Major Modifications.

- (1) Unless otherwise stated in the major modification approval, the timelines stated in the original permit for substantial progress on the development or activity still applies, or the permit shall be deemed to have lapsed and be no longer in effect.
- (2) If timelines are modified along with the minor modification approval, the applicant must make substantial progress on any modification, as determined by the Director, regarding the development or activity within two (2) years of the minor modification approval date, or as otherwise defined by the permit, or the permit shall be deemed to have lapsed and be no longer in effect.

SECTION 7.0

EMERGENCY PERMITS

7-1 Definitions.

The following definitions apply to this Section of the SMA Rules:

- (1) “Disaster” means any situation, usually catastrophic in nature, where numbers of persons are plunged into helplessness and suffering and, as a result, may be in need of food, clothing, shelter, medical care, or other necessities of life, and the governor of the State or Mayor has declared a State of disaster or emergency.
- (2) “Disaster Area” means the area in which a disaster occurs.
- (3) “Imminent danger” or “substantial harm” means a catastrophe threatens a habitable structure, any person, or the public health, safety, or welfare.
- (4) “Impending Disaster” means any situation where a catastrophe threatens an inhabited area and the department of emergency management has issued a warning that the inhabitants thereof should evacuate the threatened area.

7-2 Applicability.

- (1) An SMA Emergency Permit may be initiated by an owner or authorized representative of the owner.
- (2) Once an SMA Emergency Permit application is received, the Planning Director will determine whether the request qualifies for an Emergency Permit where:
 - i. The proposal is a development, as defined in SMA Rules Section 1-7; and
 - ii. The proposal will not have a cumulative impact or significant environmental or ecological effect on the special management area under SMA Rules Section 3-3; and
 - iii. The purpose of the proposal is to authorize development in cases of an emergency requiring immediate action to prevent imminent danger or substantial harm; and
 - iv. The proposal involves any structures, the structure was in compliance with the requirements of the National Flood Insurance Program prior to the imminent danger or substantial harm presented; and
 - v. The proposal does not involve proposed repairs or reconstruction of structures that were not lawfully constructed; and
 - vi. The proposal does not involve sandbag facilities of any kind; and

vii. The proposal involves activities or actions that are the minimum necessary to address the emergency, imminent danger, or substantial harm.

- (3) If the proposal is not a development, as defined in SMA Rules Section 1-7, the Director shall determine that the proposal is exempt from these SMA Rules.
- (4) In the event a disaster or an impending disaster has been declared under HRS Chapter 127A, the requirements of these SMA Rules will be waived for proposals within the disaster area.
- (5) If the proposal is development under SMA Rules Section 1-7 and does not qualify for an Emergency Permit under SMA Rules Section 7-2(2) above, the Planning Director shall require the proposal be processed in accordance with the Assessment and Determination Procedures under SMA Rules Section 3.0 and SMA Permit Application Procedures under SMA Rules Section 4.0.

7-3 SMA Emergency Permit Application.

Any person seeking an SMA Emergency Permit shall file an application along with the following information:

- (1) A filing and processing fee of \$300.
- (2) A tax map key description of the property on which the applicant proposes the project.
- (3) A plot plan of the property, drawn to scale with all proposed structures shown thereon, and any other information necessary to a proper determination relative to the specific request.
- (4) A written description of the proposed project and a statement of objectives.
- (5) A written statement of the estimated valuation of the proposed development including the estimated valuation of all components of the proposed development and any component that could be considered exempt.
- (6) Any other relevant plans or information required by the Department.
- (7) If the applicant is not the landowner, written authorization of the landowner.
- (8) A survey of the eroded scarp that was conducted by a certified land surveyor for shoreline abutting parcels.
- (9) A written statement explaining the following:
 - i. The emergency, imminent danger, or substantial harm; and

- ii. Why the proposed development is immediately required to prevent imminent danger or substantial harm; and
- iii. Whether the structure was in compliance with the requirements of the National Flood Insurance Program prior to the emergency, imminent danger, or substantial harm; and
- iv. Whether the proposal involves proposed repairs or reconstruction of structures that were not lawfully constructed.

7-4 SMA Emergency Permit Action.

- (1) Within thirty (30) calendar days after the receipt of the application or within a longer period as agreed to by the applicant, the Director shall consider the applicant's application together with all accompanying data and shall issue a determination subject to conditions.
- (2) The Director shall issue an Emergency Permit and may impose any reasonable terms, conditions, and requirements deemed necessary to meet the objectives, policies, and guidelines of the SMA, and the SMA standards are met including but not limited to hazard mitigation plans for properties within the high coastal hazard flood zone area and time stipulations not to exceed two (2) years from the date of the Emergency Permit is issued.
- (3) If the Director finds that there is no imminent danger or substantial harm, or the requirements of SMA Rules Section 7.2 were not met, the Director shall deny the emergency permit. The Director shall notify the applicant that it can submit an application for an assessment, and a special management area use or minor permit in accordance with these rules and shall inform the applicant of the right to appeal pursuant to SMA Rules Section 12.0.

7-5 Emergency Permit Expiration.

- (1) Unless otherwise stated in the Emergency Permit, any emergency permit issued shall automatically expire two (2) years from the date the permit was issued.
- (2) The proposal permitted under the Emergency Permit may be allowed as a permanent measure only after an SMA assessment is completed and an SMA Minor or Use permit is obtained.
- (3) The Director may approve a time extension when the Director determines the permit holder is making adequate progress toward completing a permanent measure but cannot reasonably do so within the time of the emergency permit, provided that the extension may not exceed one (1) year at a time and the Director provides an updated SMA Emergency Permit Notice under SMA Rules Section 7.6 within one (1) month after the extension is approved.

(4) Where an emergency permit has expired, the proposal permitted under the Emergency Permit will be a violation subject to enforcement under Kaua‘i County Code Chapter 8.

7-6 SMA Emergency Permit Notice. The Director shall post the emergency permit determination to a publicized website and in the next available issue of the periodic bulletin of the State of Hawai‘i Office of Planning and Sustainable Development. The information posted to the website shall include the date of the Director’s determination, permit number, TMK, location, and activity/structure. This information shall be posted at the time of posting in the periodic bulletin.

DRAFT

SECTION 8.0 AMENDMENT OF SPECIAL MANAGEMENT AREA (SMA) MAPS

All changes for boundary amendments to the SMA maps shall be initiated by the Director.

8-1 Procedure.

A change in the boundary of the SMA maps may be requested by any of the following:

- (1) Any department or agency of the State or County; or
- (2) Any owner or lessee of the affected land;
- (3) County Council.

8-2 Submission.

- (1) Sixteen (16) sets of the request shall be submitted on a form prescribed by the Planning Department and shall be accompanied by:
 - (A) A filing and processing fee of \$500.00.
 - (B) A description of the property in sufficient detail to determine its precise location.
 - (C) An explicit statement of the reasons in support of the proposed amendment. Said reasons shall also discuss the relationship of the proposed change with the policies and objectives of the regulations and the County General Plan, and any other relevant law or rule in support of the application.
- (2) The Planning Commission shall hold a public hearing no earlier than thirty (30) calendar days but no later than ninety (90) calendar days upon receipt of a properly-filed application.
- (3) The Planning Commission shall give written notice once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty (20) calendar days in advance of the public hearing. The notice shall state the nature of the petition, its specific location, and the time and place of the hearing.
- (4) The Planning Commission shall no earlier than fifteen (15) but within ninety (90) calendar days after the public hearing, deny or approve the request in writing, stating the reasons for such action.

8-3 Exemption of Previously Approved Developments.

Any development which was issued an appropriate zoning, use, project development or building permit, or received preliminary subdivision approval before the adoption and approval by the Mayor of these amendments to the Special Management Area boundaries which result in the inclusion of the development within the Special Management Area, is not subject to Special Management Area Permit requirements. The pertinent permit or approval, however, must be unexpired. For a permit or approval that was issued without expiration date or duration period, the exemption provided herein shall lapse two years from the date of approval of the boundary amendment by the Mayor unless otherwise extended.

DRAFT

SECTION 9.0 REVOCATION

Permits can be revoked through the procedures outlined in the Rules of Practice and Procedures of the Planning Commission.

SECTION 10.0 PENALTIES AND INJUNCTIONS

- 10-1 Any person who violates any provision of these Rules and Regulations shall be liable as follows:
 - (1) For a civil fine not to exceed \$100,000; or
 - (2) For the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
- 10-2 In addition to any other penalties, any person who performs any development in violation of this part shall be subject to civil fine not to exceed \$10,000 a day for each day in which such violation persists.
- 10-3 Any civil fine or other penalty shall not become final until thirty (30) days after the Director's decision to provide the person an opportunity to appeal and request a hearing before the Planning Commission.
- 10-4 Any person violating any provision of these SMA Rules may be enjoined by the Circuit Court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of these SMA Rules in a suit brought by the Planning Department or the Planning Commission. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court.

SECTION 11.0 HEARING OFFICER

Any proceeding before the Planning Commission may be conducted by a hearing officer pursuant to the Rules of Practice and Procedures of the Planning Commission.

SECTION 12.0 APPEALS

12-1 Appeal of Director's Actions.

An applicant may appeal a final action or decision of the Planning Director in the administration of these SMA Rules pursuant to the Rules of Practice and Procedure of the Planning Commission. Intervention Rules of Practice and Procedure of the Planning Commission shall not be allowed in applicant appeals from the actions of the Director.

12-2 Judicial Review.

Any party to the agency hearing pursuant the Rules of Practice and Procedures of the Planning Commission that is aggrieved by a final order and decision of the Planning Commission shall have the right to judicial review of any decision or action of the Planning Commission, pursuant to HRS Chapter 91.

SECTION 13.0 SEVERABILITY

If any provision of these SMA Rules or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these SMA Rules are severable.

SECTION 14.0 EFFECTIVE DATE

These SMA Rules shall take effect on December 1, 1975. Any amendments to these Rules and Regulations, duly approved, shall take effect upon the date of such approval.

APPENDIX

IV. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that the Department of Business, Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic Competitiveness and business climate, including the mitigations of regulatory and tax burdens – *no attachment*
2. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force's most recent meeting pursuant to Act 133 to identify actions taken challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental permit processes; and appropriates funds – *see attached*
3. Discussion and Action on the adoption of reasonable time limits on oral testimony by members of the public – *no attachment*
4. Discussion and Update of the Board's neighbor island meeting tentative for March 19, 2026 – *no attachment*
5. Becker Communications Inc., regarding the Board's Small Business Outreach – *no attachment*
6. Presentations to Industry Associations – *no attachment*
7. Staff's Small Business Outreach – *no attachment*

December 3, 2025

From: Dr. Jennifer Salisbury
Small Business Regulatory Review Board
SPEED Task Force Member

Subj: UPDATE ON SPEED TASK FORCE PERMITTED INTERACTION GROUP (PIGs)
MEETINGS FOR 6E COMPLIANCE (SHPD), IWS (DOH), AND BUILDING
PERMITS

Attachments: DOH Internal Memo about Non-Bedroom Declarations

Aloha,

As a follow up to my ongoing service on Governor Green's Simplified Permitting for Enhanced Economic Development (SPEED) Task Force, I am submitting an update letter about the ongoing meetings for the three Permitted Interaction Groups (PIGs). *All three of the PIGs are winding down.* I am serving on all three PIGs, which are for 6E Compliance for SHPD, Department of Health's IWS (Individual Wastewater System) and Building Permits.

Building Permit PIG Meetings

The chair is Representative Sue Keohokapu-Lee Koy. This PIG is for vertical construction only does not include consideration for zoning, land use, regulatory entitlement, plan approval, etc. At this meeting all four counties presented their three biggest challenges in building permits and the chair summarized the recommendations and accompanying SWOT analysis; specifically what State laws add to delays in the process and/or need modernization.

This PIG is the largest with the maximum of 17 members. This is also the group that had the most recommendations and corresponding SWOTs, at nearly 80 recommendations. Many deep discussions center around building codes, differences between Counties and the role technology is and will play moving forward. There was great effort to support the summary report due to the SPEED Task Force on Friday, December 5, 2025. The last two meetings have been about consolidating the summary report to the Task Force.

6E SHPD PIG Meetings

This PIG's Chair is Maui's Tyson Miyake. This PIG has 13 members. Many discussions included items that could impact County staff; at the Chair's insistence, more Maui County staff have supported the PIG meetings.

Two proposed legislation changes from SHPD, both of which are still under draft and review; unfortunately, I did not have an attachment for the tentative legislation to include with this update letter. The last PIG meeting before the Task Force summary was December 2, 2025, which was focused on creating the report to the Task Force.

IWS DOH PIG Meetings

The IWS Department of Health PIG Chair is Representative Mike Lee. This PIG also has 13 members. Many recommendation discussions continue, spurring additional recommendations.

DOH internal memo was distributed regarding the DOH option for the property owner or engineer/consultant declaring a non-bedroom regarding the septic design; see this attached.

I also reached out to Suffolk County, New York – which includes Long Island – who is also facing a cesspool conversion battle. If they are in the same battle, why are we not comparing notes? I'll update when I connect with them.

Upcoming PIG and SPEED Task Force deadlines:

- This Friday: December 5, 2025 deadline for PIG reports due to Task Force
- December 15, 2025 zoom review of SPEED Task Force PIG Reports
- January 6, 2025 Second SPEED Task Force Meeting at State Capitol – *the Task Force is paying for my travel Oahu-Maui-Oahu to be at this meeting in person.*
- There will be an additional 6 Permitted Interaction Groups in 2026 for a total of 9 PIGs including:
 - Second set of 3 PIGs potentially to include (tentatively early-mid 2026):
 - Building Codes
 - Water Usage
 - Land Use District Amendments
 - Third set of 3 PIGs potentially to include (tentatively for September to December 2026):
 - SMA/Coastal Zone
 - ADA
 - Conservation Use District

Jen's Service on the SPEED Task Force as of today, by the numbers:

- ❖ 20 Recommendations to the Task Force
- ❖ 3 Service on Permitted Interaction Groups
- ❖ 39.25 hours spent to date in SPEED Task Force Meetings
- ❖ 39 Conversations with Maui Employers, Contractors and Small Businesses about the Task Force
- ❖ 19.75 hours in other Small Business Network Meetings, not directly with the Task Force

I am very grateful the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT) and the Small Business Regulatory Review Board continues supporting me in serving this task force. **We have been successful in scheduling the VERY FIRST Small Business Regulatory Review Board meeting on a neighbor island, set for March 19, 2026 on Maui.** More details as the New Year unfolds, but this is a big win!

I would also like to thank the small businesses and contractors on Maui, AND beyond, who have been reaching out with their “impossible” situations, to allow me to add actual examples of permitting issues, which includes:

- Permits for businesses lost in the Lahaina fires, who are optically battling with residences for permit attention
- Permits for Department Of Health for remote Maui nui location for cesspool conversion within a shoreline

If you know of anyone needing support through these connections on the Task Force, please reach out to me.

Mahalo for your input and support,

A handwritten signature in black ink, appearing to read "Jennifer Salisbury". The signature is fluid and cursive, with "Jennifer" on the top line and "Salisbury" on the bottom line.

Dr. Jennifer Salisbury “Jen”

JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII



KENNETH S. FINK, MD, MGA, MPH
DIRECTOR OF HEALTH
KA LUNA HO'OKELA

STATE OF HAWAI'I
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

October 28, 2025

**Hawai'i Administrative Rules, Section 11-62-03 "Bedroom"
Wastewater Branch Guidance**

Hawai'i Administrative Rules §11-62-03 provides that a room that might reasonably be used as a sleeping room is presumed to be a bedroom if it meets certain physical criteria. This presumption, however, may be rebutted by the property owner or the owner's representative.

Rebuttals should include a credible representation made to the Hawai'i State Department of Health Wastewater Branch that the room is not a bedroom. Examples of credible representations could include, but are not limited to:

- An engineer or architect's design plans; or
- An owner's statement that a room will not be used as a bedroom.

Please contact the Wastewater Branch at (808) 586-4294 or doh.wwb@doh.hawaii.gov if you have any questions.