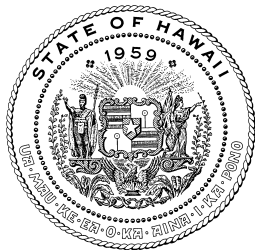


Small Business Regulatory Review Board Meeting

December 7, 2023

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

AGENDA

Thursday, December 7, 2023 ★ 10:00 a.m.

**Leiopapa A Kamehameha Building – State Office Tower
235 S. Beretania Street, Conference Room 405
Honolulu, HI 96813**

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James K. Tokioka
DBEDT Director

Dane K. Wicker
*DBEDT Deputy
Director*

Members

Mary Albitz
*Chairperson
Maui*

Robert Cundiff
*Vice Chairperson
O'ahu*

Jonathan Shick
*2nd Vice Chairperson
O'ahu*

Dr. Nancy
Atmospera-Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

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

A. By attending the in-person meeting at:

**Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Street,
Conference Room 405, 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/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQ09>

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 calling 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 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, December 6, 2023 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 \(hawaii.gov\)](#). 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 16, 2023 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 95, **Rules Regulating the Taking and Selling of Certain Marine Resources**, promulgated by Department of Land and Natural Resources – *Discussion Leader – Jonathan Shick*
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 23, **Makai Area Rules**, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT) – *Discussion Leader – Robert Cundiff*

IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 215, **Kalaeloa Community Development District Rules**, promulgated by HCDA / DBEDT – *Discussion Leader – Robert Cundiff*
- B. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 89, **Nurses**, promulgated by Department of Commerce and Consumer Affairs – *Discussion Leader – Mary Albitz*

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. Follow-up on Discussion with Becker Communications, Inc., regarding the Board's Outreach Efforts
 - 2. Review of the Board's current membership and expiration of terms
 - 3. Presentations to Industry Associations
 - 4. Staff's Small Business Outreach

VI. Next Meeting: Thursday, January 18, 2024 at 10:00 a.m., held via Zoom and at Leiopapa A Kamehameha Building – State Office Tower, Conference Room 405, Honolulu, HI 96813

VII. 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/accessable formats.

II. Approval of November 16, 2023 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT**

November 16, 2023

November 16, 2023 ZOOM RECORDING

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

MEMBERS PRESENT:

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- Sanford Morioka
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- William Lydgate
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Elise Amemiya

II. **APPROVAL OF October 19, 2023 MINUTES**

Mr. Ritchie motioned to accept the October 17, 2023 meeting minutes, as presented. Second Vice Chair Shick 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 Amendments to HAR Title 19 Chapter 25, Rules and Regulations Governing Shore Water Events, promulgated by Department of Parks and Recreation – City and County of Honolulu

Ms. Laura Thielen, Director of the City and County of Honolulu's Department of Parks and Recreation introduced her staff attending the meeting both in-person and remotely. She noted that there were conversations with some of the testifiers that attended this Board's meeting prior to the public hearing, as well as some of the stakeholder businesses, that led to some modifications in the rules.

At the prior board meeting, it was questioned whether the rules conveyed additional restrictions on the number of events at the south shore. Ms. Thielen stated that the restrictions being put into the rules would not be greater than the number of south shore

surfing events that are currently permitted. The restrictions will make sure the surfing events will be spread out over a period of time, so they are not back-to-back and dominating the surf break for a significant period. Instead, the events will be sequenced over time, which will give recreational surfers access to those breaks in an interim period.

At the public hearing, there was a concern about Kakaako as this is where there is a body surf break. Under the DLNR rules (the agency that provides water permits), the issue about safe body surfing is permitted only with restrictions on the water. While Parks and Recreation is not limiting the ocean surf to bodyboarding, it is working with DLNR to change the types of events to be held at Kakaako.

Overall, Ms. Thielen noted that the public hearing went well and any outstanding issues, i.e., social concerns and ordinances, that were brought up at this Board's last meeting, are being attempted to be worked out by Parks and Recreation. Mr. Ritchie complemented Ms. Thielen and her staff for reaching out to those testifiers that had voiced concerns when this Board reviewed the proposal prior to the public hearing.

In response to Mr. Yamanaka's concern about whether each island/district would be able to choose what the best way to promote and hold these types of events and if it was decided that only one set of rules was the best way to proceed, Ms. Thielen stated that these rules specifically affect shoreline events around the island. They are "general" rules as shoreline events run the gamut of canoe races, rough water swim, etc.

However, there were special rules developed some years ago for north shore surf meets, which had a tremendous amount of community input from small businesses, residences, promoters, and others. Thus, north shore surf events were subsequently carved out in the rules that allow a robust surf calendar and provide some assurance of breaks in between events. This will allow recreational surfers and others to utilize these surf breaks and to give the community a break from the traffic.

Ms. Thielen further stated that the proposed rules do not break the balance that was created at the north shore due to the extensive community input. However, a new shore water advisory group was created to review the necessity of creating any further surf breaks, and it was decided that aside from the south shore, the number of events in specific areas do not require specific rules; this is the reason for creating a different set of rules for the south shore.

Mr. Ritchie motioned to move the proposed amendments to the City and County of Honolulu Mayor for adoption. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on the Proposed Amendments to HAR Title 12 Subtitle 8, Part 10, Boiler and Pressure Vessel, promulgated by Department of Labor and Industrial Relations (DLIR), as follows:

1. Chapter 220 General, Administrative and Legal Provisions;
2. Chapter 222.1 Power Boilers;

3. Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heaters; and
4. Chapter 224.1 Pressure Vessels

Mr. William Kunstman, Deputy Director at DLIR, explained the background and history of these rules and noted that the proposed changes are mostly minor revisions. This is largely because a major overhaul of the rules was conducted in 2019 with some modifications made in 1996, 2000, and 2012. The current revisions explicitly incorporate national consensus standards in the rules both in adoption by reference as well as by various references in the text.

Mr. Julius Dacanay, DLIR's Boiler & Elevator Branch Manager, further explained that there are approximately 10,000 pressure retaining items (boilers, pressure vessels, and pressure systems) in Hawaii. These items are owned and operated throughout most of the state's industrial sectors such as utility power plants, refineries, industrial processing facilities, and accommodations. Many pressure retaining items are owned and operated by small businesses, including "mom & pop shops" such as laundry facilities, restaurants, and auto service establishments, among others. It was noted that at least 4 of these mom & pop shops are considered small businesses.

The rules and adopted codes apply to any entity, including small businesses, which own or are responsible for pressure retaining items. The current fees range from \$30 to \$2,000 and the proposed fees are from \$35 to \$2,200. Overall, the average increase is 16.5%. When fees that are paid for by large entities are subtracted, the average increase is 10%.

Mr. Dacanay further noted that the collective bargaining and fringe rate costs have increased substantially (by 40.5%) since Act 103 created the special fund for the Branch and revolving funds which are required to pay the fringe costs of salaries. The fringe rate was 41.54% in fiscal year 2012-13 and for fiscal year 2023-24 the rate is 64.25%, a 55% increase. In addition, collective bargaining costs have increased by 40.5% and the CPI increased 33% in the same period.

On August 29, 2023, DLIR held a meeting with the stakeholders from the pressure equipment industry, notably attended by small business owners, mechanical engineering design and construction firms, and representatives from Hawaiian Electric Company and Par Hawaii Refinery. The meeting included 16 individuals and resulted in no new recommendations or changes to incorporate into the proposed rules.

Chair Albitz mentioned that the boiler and pressure vessel rules from 2019 had a large impact on Maui Wine becoming compliant with the regulations. Mr. Dacanay responded that a few weeks ago, he connected with Maui Wine, and he was pleased to report that he was able to properly guide the owner through the compliance process. It was confirmed that the proposed rules are structured to assist stakeholders with permitting.

In response to an inquiry by Vice Chair Cundiff, Mr. Dacanay explained that the rules were specially crafted to help small businesses create an owner/user inspection program that follows the respective rules and the laws. Also, the rules will allow qualified boiler inspectors to conduct safety inspections of their own pressure-related vessels. There is also a

certification and accreditation of engineering and other related shops to design and manufacture boilers and pressure vessels to be sold and used.

Mr. Ritchie motioned to move the proposed amendments to public hearing. Second Vice Chair Shick 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. Discussion with Becker Communications' Representative about creating a YouTube Video for the Board's Outreach Purposes

Ms. Laci Goshi, DBEDT staff member and media contact, introduced Ms. Jocelyn Collado and Ms. Aubrey Stewart from Becker Communications to discuss a short presentation with regards to this Board's recommendation to create a YouTube video for outreach purposes. They began by sharing the benefits of video content, as follows:

- 1) Most shared form of media on social platforms;
- 2) More engaging, memorable, and personalized;
- 3) Creates a deeper connection with audiences;
- 4) Shows the people and stories behind initiatives, and
- 5) Fosters a sense of community engagement

Outreach objectives would entail explaining who the Board is, what it does by raising awareness about the Board's initiatives, increase the number of engagements with the Board's followers and business community, and communicate initiatives with easily understandable messaging. Ms. Collado explained that, in addition to using YouTube, utilizing other platforms such as Facebook, LinkedIn, and Instagram might be better platforms and more beneficial for the Board's objectives.

Further, instead of doing a 5-minute YouTube video where people might lose interest after a few minutes, it was recommended reducing the video to smaller bites such as one to two minutes, at the most, to explain who the Board is, what it does, and what issues and problems this Board helps solve for small businesses.

Specific content might include the following:

- Who is the SBRRB?
- Testimonies / success stories
- Board roles + responsibilities
- How to get involved
- SBRRB in action
- How to get business support from the business community

Publicizing the Board's zoom meeting minutes rather than just keeping them on the website was suggested. Also suggested was revising the monthly e-newsletter that would be more

educational by including the link to the prior months' meetings, highlighting a success story, and pitching stories out to the media as to what this Board does.

Given that this Board has had problems in the past in recruiting new members, Mr. Yamanaka recommended that the members think about highlighting themselves to the public to attract more people to be on the Board. An upcoming meeting with Becker Communications and Ms. Goshi has been scheduled to go over more specific information such as providing testimonies and highlighting success stories.

In response to Ms. Palcovich's inquiry as to whether board members may be included in the meetings with Becker Communications, Deputy Attorney General Elise Amemiya explained that no more than two (2) can participate.

For a permitted interaction group (or PIG) whereby less than six (6) people, (the Board's quorum), would be needed, there would be more specific and stricter participating rules that would need to be followed. Mr. Yamanaka offered to participate in the meeting(s) with Becker Communications if he would be needed, and Chair Albitz offered to participate after the first of the upcoming new year.

2. Discussion and Action on the Board's Draft 2023 Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS

Vice Chair Cundiff motioned to approve the proposed draft 2023 Annual Report Summary for submission to the Hawaii State Legislature. Mr. Ritchie seconded the motion and the board members unanimously approved.

3. Presentations to Industry Associations

Office Assistant, Ms. Ariola, brought several of the Board's brochures to the Department of Commerce and Consumer Affairs' Business Action Center. Second Vice Chair Shick suggested that the SBA (Small Business Administration) Office be approached and provided the Board's brochures. He will plan to distribute brochures to the Hawaii Chamber of Commerce's upcoming business events. Chair Albitz requested that we mail her a box of brochures in Maui.

4. Staff's Small Business Outreach

Each week Ms. Ariola regularly mails out several brochures from the list of businesses in the weekly *Pacific Business News*; she also recently performed outreach to small businesses in conjunction with her performing notarizations for DBEDT in the Kapolei area.

Ms. Palcovich mentioned that Ms. Jennifer Salisbury is now being submitted to the Governor for the 2024 legislative session as a member to this Board.

VI. NEXT MEETING - Thursday, December 7, 2023 at 10:00 a.m., in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

VII. ADJOURNMENT – Chair Albitz motioned to adjourn the meeting and Second Vice Chair Shick seconded the motion; the meeting adjourned at 11:21 a.m.

DRAFT

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 95, **Rules Regulating the Taking and Selling of Certain Marine Resources**, promulgated by Department of Land and Natural Resources

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: DLNR - Division of Aquatic Resources

Administrative Rule Title and Chapter: Chapter 13-95, Hawaii Administrative Rules

Chapter Name: Rules Regulating the Taking and Selling of Certain Marine Resources

Contact Person/Title: Bryan Ishida (Aquatic Biologist)

Phone Number: 808-342-4508

E-mail Address: bryan.r.ishida@hawaii.gov **Date:** 11/28/23

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," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

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.)

*

*

*

V. Please explain how the agency involved small business in the development of the proposed rules.

Commercial fishers and dealers were notified directly regarding the statewide public hearing. Top uhu and kala fishers and dealers were also invited to provide input and meet with DAR in person.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. Examples include removal of minimum catch requirements for permit renewal, removal of commercial daily bag limits and commercial uhu slot limits, and increased annual catch limits for kala.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Top commercial fishers and dealers for the species included in the proposed rules were identified via DAR commercial fishing and dealer reports. These individuals were outreached directly and invited to relevant meetings and public hearings.

2. A summary of the public's and small businesses' comments.

Concerns were voiced by commercial fishers and dealers primarily in regard to the proposed amendments negative impacts on commercial uhu and kala fisheries.

3. A summary of the agency's response to those comments.

DAR understands the concerns of commercial fishers and dealers, especially those who have relied on these fisheries for generations. It is DAR's intention to not regulate these fisheries out of existence, but to place safeguards against rampant over-harvest and unchecked commercial fishery expansion.

4. The number of persons who:

(i) Attended the public hearing: 113 (online), 59 (in person)

(ii) Testified at the hearing: 59

(iii) Submitted written comments: 53

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ **Yes** ☐ **No**

(i) If "Yes," was the change adopted? ☒ **Yes** ☐ **No**

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Note* Opposition to commercial fishing allowance was also heard. A commercial ban was not adopted.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

Request for Final Approval to Amend and Compile Chapter 13-95, Hawaii Administrative Rules, "Rules Regulating the Taking and Selling of Certain Marine Resources"

The proposed amendments would:

- 1) Increase the minimum length for manini (Convict Tang) from five to six inches;
- 2) Establish a new minimum length of five inches for kole (Goldring Surgeonfish);
- 3) Establish a new noncommercial bag limit of four kala (Bluespine Unicornfish) per person per day;
- 4) Establish new restrictions on the commercial harvest and sale of kala, including:
 - a. Requiring commercial kala fishers to first obtain a \$100 annual commercial kala fishing permit;
 - b. Setting a commercial annual catch limit (ACL) for kala of 15,000 lbs.; and
 - c. Requiring commercial marine dealers who sell kala to register with the Department as commercial kala dealers;
- 5) Increase the minimum length for large-bodied uhu (Parrotfish) species from twelve to fourteen inches;
- 6) Establish a minimum length of ten inches for all other uhu species;
- 7) Establish a new noncommercial bag limit of two uhu per person per day;
- 8) Establish restrictions on the commercial harvest and sale of uhu, including:
 - a. Requiring commercial uhu fishers to first obtain a \$100 annual commercial uhu fishing permit;
 - b. Prohibiting the commercial harvest of any uhu species other than *Scarus rubroviolaceus* (uhu pālupaluka and uhu 'ele'ele);
 - c. Setting a commercial ACL for uhu of 30,000 lbs.; and
 - d. Requiring commercial marine dealers who sell uhu to register with the Department as commercial uhu dealers;
- 9) Extend the current closed season (May-August) for pāpa'i kualoa (Kona Crab) to May-September;
- 10) Allow the take of female pāpa'i kualoa; and
- 11) Make other minor housekeeping amendments for clarity and consistency with other chapters including adding new definitions, amending old definitions, and other stylistic and grammatical corrections throughout the chapter.

The proposed rule amendments can be reviewed in person, by appointment only, at the Division of Aquatic Resources (DAR) office on Oahu at 1151 Punchbowl St. Room 330, Honolulu, Hawaii 96813 from 8:00 am to 3:30 pm, Monday through Friday, except Holidays. To schedule an appointment to review the proposed rules in person, email dlmr.aquatics@hawaii.gov.

The proposed rules, including a statement on the topic of the proposed rules, can be reviewed online at: <https://itgov.hawaii.gov/the-office/administrative-rules/proposed-changes/>.

The proposed rules can also be viewed online at: <http://dlmr.hawaii.gov/dar/rules-and-public-notices/>.

Small Business Regulatory Review Board

MEETING MINUTES

May 30, 2023

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- William Lydgate
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:

- Mary Albitz, Vice Chair
- Dr. Nancy Atmospera-Walsh
- Taryn Rodighiero

STAFF: DBEDT

James Tokioka
Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Elise Amemiya

II. **APPROVAL OF April 20, 2023 MINUTES**

Mr. Lee motioned to accept the April 20, 2023 meeting minutes, as presented. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on the Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules, as follows, promulgated by Department of Agriculture (DoAG)
- a. Placement of the Beetle *Syphraea uberabensis* onto the List of Restricted Animals (Part A)
 - b. Placement of the Southern House Mosquito *Culex quinquefasciatus* onto the List of Restricted Animals (Part A)
 - c. Placement of the Butterfly *Euselasia chrysippe* onto the List of Restricted Animals (Part A)

Chair Cundiff stated that there was some hesitancy to bring these amendments to this Board due to an apparent lack of substantive small business impact; however, he requested that Mr. Christopher Kishimoto, Acting Manager at DoAg's Plant Quarantine Branch, to provide the Board with the background on the rules.

May 2023 Meeting Minutes

D. Discussion and Action on the Proposed Amendments to HAR Title 13 Chapter 95, Rules Regulating the Taking and Selling of Certain Marine Resources, promulgated by Department of Land and Natural Resources (DLNR)

Mr. David Sakoda, Fisheries Program Manager with DLNR's Division of Aquatic Resources (DAR), explained that the purpose of the rule changes is to ensure there is enough fish to eat and to keep coral reefs healthy for this generation and the next. Extensive statewide scoping began in November 2020 where 10 scoping sessions were held.

In March 2021, 6 secondary scoping sessions revised the proposal based on feedback from the initial scoping, and in December 2021 follow-up scoping sessions and feedback collected via online were held. In May 2022, scoping meetings with commercial marine license holders and commercial marine dealers were held. In December 2022, the request for rule amendments was taken to the Board of Land and Natural Resources (BLNR). At that meeting, BLNR requested that DAR discuss with the commercial fishers an increase in the bag limit, which was held in February 2023. In early May 2023, BLNR approved the rules to proceed to public hearing with the revised changes.

Specific changes are as follows: the current regulation allows for a minimum Carapace length of 4 inches, no taking of females with or without eggs, and closes the season from May to August. The proposal allows for the same minimum Carapace length of 4 inches but allows taking of females without eggs, and extends the season from May to September. Other changes include increasing the minimum length of Manini by 1 inch to 6 inches, and limiting the minimum length of Kole to 5 inches.

Changes will also establish non-commercial bag limits for Kala from no daily bag limit to 2 per person per day, which is where much concern from the small business commercial fishers came in. The backbone of this proposal is a permit because in order to catch Kala for commercial purposes the fisher is required to possess a valid commercial marine license, must pay \$100 permit fee, and must have caught and sold at least 100 lbs. of Kala within the past year if a commercial Kala permit was held. The reason for this requirement is to make it more enforceable and to prevent non-commercial fishers from getting a commercial marine license to be exempt from the non-commercial bag limits.

Additional changes entail a commercial daily bag limit of 50 Kala per person, no commercial harvest or sale from April to July, no commercial harvest or sale after the annual catch limit (ACL) of 10,000 lbs., and dealers must register as commercial Kala dealers. Similar minimum length limits, bag limits, permit fees and closed periods of time for spawning season apply to Uhu including small-bodied Uhu, and all other Uhu species, and spear harvesting.

Overall, while there is some small business impact, DAR has tried to mitigate the impact by setting the ACL's and bag limits, specifically for Uhu and Kala in an effort to reduce the overall take.

Chair Cundiff recognized that quite a bit of outreach was made to stakeholders. A level of success through this process is when an agency makes the effort to reach out to the small business stakeholders. Mr. Sakoda noted that there had been some opposition to the rule proposals until DAR subsequently carved out more acceptable bag limits.

Mr. Yamanaka stated that this is a situation where many others rely on fish for sustainability; not just the fishers. He inquired as to what outreach was performed with these other businesses and how the daily catch is being monitored. In response, Mr. Sakoda stated that in terms of monitoring, DAR does both – mandatory monthly reporting for commercial catch from fishers and mandatory weekly reporting on dealers as to what is purchased from the fishers. It is recognized that there are sales that are unreported such as cash sales “under the table” but the larger catches and sales to the dealers are generally reconciled each month.

There is “in-water monitoring” where diver/biologists go into the ocean and survey near-shore areas to count fish. DAR also has partners that do similar monitoring in order to capture data to have a better idea of the health of the stock. Mr. Sakoda added that there has been a stock assessment for a number of species including Uhu and Kala, however, DAR is looking to partner with the federal government because it has limited resources.

In terms of outreach to other types of businesses, the first three rounds of scoping were broadly publicized where a variety of businesses and individuals provided comments and feedback including the Hawaiian community, recreational fishers, and environmental organizations. While DAR has a good handle on the commercial catch each day, it is unknown what the non-commercial catch is each day as the data is somewhat insufficient. However, he noted that without the permit, it will be illegal for fishers to catch Ulu and Kala.

Second Vice Chair Shick inquired as to whether there are any restrictive areas where commercial fishers would be able to fish if they were fishing with a commercial permit and if there is a limitation on the number of commercial permits to be issued. Mr. Sakoda responded that while this rule proposes no restrictions as to where commercial fishers can fish, DAR will likely try again next year to limit permits. However, there are other marine management areas to establish a prohibition on commercial harvest for stricter bag limits.

Aquatic Biologist Mr. Bryan Ishida stated that now that DAR will be allowing for the female crab to be removed from the ocean, surveys have shown that throughout the year there can be differences in the catch of the crab which varies between locations. While it is about a 50/50 ratio between male and female crabs, allowing the take of the female crab has been determined to be appropriate and will not adversely affect the population. Stock assessments are done in five-year intervals with updates done in-between the five years. Mr. Ishida added that “adaptive management” rule-making was approved for DAR to approach BLNR for providing potential changes to the rules such as managing fisheries through bag limits.

In response to Mr. Lydgate’s inquiry about the take of these species related to a population size of a particular island, Mr. Sakoda explained that for the commercial take, it is centered on Oahu. Although the rules do not restrict where the fish can be taken, DAR is currently looking to include island-based management.

Mr. Shick motioned to move the proposed rules to public hearing. Mr. Lee seconded the motion, and the Board members unanimously agreed.

Amendment and Compilation of Chapter 13-95
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-95, Hawaii Administrative Rules,
entitled "Rules Regulating the Taking and Selling of
Certain Marine Resources", is amended and compiled to
read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95

RULES REGULATING THE TAKING AND SELLING
OF CERTAIN MARINE RESOURCES

§13-95-1	Definitions
§13-95-1.1	Licenses, permits, and other exemptions
§13-95-2	Penalty
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§13-95-4	Āholehole
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§13-95-9	Awa
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§13-95-18	`Ōpelu
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§13-95-21	Nehu
§13-95-22	Ulua
§13-95-23	Moi
§13-95-24	Weke `ā
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§§13-95-26 to 49	(Reserved)
§13-95-50	Pāpa`i kūhonu (white crab)
§13-95-51	Pāpa`i kualoa (Kona crab)
§13-95-52	Samoan crab
§13-95-53	Ula (spiny lobster)
§13-95-54	Ula pāpapa (slipper lobster)
§13-95-55	He`e (tako)
§§13-95-56 to 69	(Reserved)
§13-95-70	Stony corals
§13-95-71	Live rocks

§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"`Ahi" means any fish known as *Thunnus albacares* or *Thunnus obesus* or any recognized synonym. `Ahi refers to both yellowfin tuna (*T. albacares*) and bigeye tuna (*T. obesus*).

~~["Aholehole"]~~ "Āholehole" means any fish known as *Kuhlia xenura* or *Kuhlia sandvicensis* or any recognized synonym. Āholehole are also known as āhole, Hawaiian

flagtail, reticulated flagtail, or zebra-head flagtail.

"Akule" means any fish identified as *Selar crumenophthalmus* or ~~[other]~~ any recognized synonym. ~~[This fish is]~~ Akule are also known as [pa'a'a, halalu, hahalalu, and] pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"'Ama'ama" means any fish known as *Mugil cephalus* or any recognized synonym between eight and twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'anae. All life stages of this species are generally known as striped mullet.

"'Ane" means any fish known as *Mugil cephalus* or any recognized synonym greater than twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'ama'ama. All life stages of this species are generally known as striped mullet.

"Annual catch limit" or "ACL" is the maximum commercial harvest in a given fishing year established for any marine fishery subject to closure. The catch is measured in whole wet weight through cumulative reported landings by commercial marine licensees.

"Aquarium fish permit" means a permit issued by the board pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, freshwater nongame fish, or other aquatic life for aquarium purposes.

"Awa" means any fish known as *Chanos chanos* or any recognized synonym. Awa are also known as milkfish.

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

"Break" means to hit with, or to apply sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.

"Carapace length" means the straight line measurement from the tip of the rostrum to the middle of the trailing edge of the body or carapace, not including the abdomen or tail.

"Commercial kala fishing trip" means a fishing trip where any kala are taken for a commercial purpose, as evidenced by the possession of more than four kala per person. For a trip to be considered a commercial kala fishing trip, each participant must have both a valid commercial marine license and a valid commercial kala fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 13-74-20 and section 189-2, HRS.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Commercial uhu fishing trip" means a fishing trip where any uhu are taken for a commercial purpose, as evidenced by the possession of more than two uhu per person. For a trip to be considered a commercial uhu fishing trip, each participant must have both a valid commercial marine license and a valid commercial uhu fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Damage" means to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.

"Day" means a twenty-four hour period.

[~~"He'e"~~] "He'e" means any mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym. He'e are also known as octopus or tako.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"'Iao" means any fish known as *Atherinomorus insularum* or any recognized synonym. 'Iao are also known as Hawaiian silverside or Hawaiian Islands silverside.

"Initial-phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.

"Kahaha" means any fish known as *Mugil cephalus* or any recognized synonym between four and eight inches in length. Kahaha are also known as pahaha. Individuals of this species at other life stages are known as pua, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kala 'ōpelu" means any fish known as *Naso hexacanthus* or any recognized synonym. Kala 'ōpelu are also known as 'ōpelu kala or sleek unicornfish.

~~["Kona crab" means any crab known as *Ranina ranina* or any recognized synonym.]~~

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

~~["Kumu"]~~ "Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Manini" means any fish known as *Acanthurus triostegus sandvicensis* or any recognized synonym. Manini are also known as convict tang or convict surgeonfish.

"Mitigation" means activities carried out in accordance with this chapter in order to avoid, minimize, restore, or compensate for losses of certain marine resources due to authorized activities.

"Moano" means any fish known as *Parupeneus multifaciatus* or any recognized synonym. Moano are

also known as banded goatfish, five-barred goatfish, manybar goatfish, or multibarred goatfish.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

~~["Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.]~~

"Nehu" means any fish known as *Encrasicholina purpurea* or any recognized synonym. Nehu are also known as Hawaiian anchovy.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

~~["~~Ōio~~"]~~ "~~Ōio~~" means any fish known as *Albula glossodonta* or *Albula virgata* or any recognized synonym. ~~Ōio~~ are also known as roundjaw bonefish, shortjaw bonefish, Indo-Pacific bonefish, sharpjaw bonefish, or smallmouth bonefish.

~~["Opelu kala" means any fish known as *Naso hexacanthus* or any recognized synonym.]~~

"~~Ōpakapaka~~" means any fish known as *Pristipomoides filamentosus* or any recognized synonym. ~~Ōpakapaka~~ are also known as Hawaiian pink snapper, pink snapper, kinme himedai, or ohimedai.

"~~Ōpelu~~" means any fish of the genus *Decapterus*. ~~Ōpelu~~ are also known as mackerel scad.

"Pāpa'i kualoa" means any crab known as *Ranina ranina* or any recognized synonym. Pāpa'i kualoa are also known as pāpa'i kua loa, Kona crab, frog crab, or spanner crab.

"Pāpa'i kūhonu" means any crab known as *Portunus sanguinolentus* or *Portunus hawaiiensis* or any recognized synonym. Pāpa'i kūhonu are also known as pāpa'i kuahonu, kūhonu, kuahonu, blood-spotted swimming crab, or white crab.

"Pua" means any fish known as *Mugil cephalus* or any recognized synonym between zero and four inches in length. Pua are also known as pua 'ama, pua 'ama'ama, pua po'olā, or pua 'o'olā. Individuals of this species at other life stages are known as kahaha,

'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Renewable energy projects" means projects developed by renewable energy producers, as the term is defined in section 171-95, Hawaii Revised Statutes, that reduce the consumption of non-renewable energy resources or produce renewable energy.

"Samoa crab" means any crab known as *Scylla serrata* or any recognized synonym. The Samoa crab is a type of swimming crab and is also known as mud crab or mangrove crab.

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

"Spear" means any device or implement that is designed or used for impaling aquatic life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears.

"Speared" means [to capture aquatic life by stabbing with a spear or other such pointed device. The presence of any puncture wound on the external surfaces of the aquatic life, which are fresh and does not show signs of healing, shall be evidence that the aquatic life was speared.] pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

~~["Slipper lobster" means any crustacean of the species *Scyllarides squammosus* or *S. haanii*, or recognized synonyms. These animals are also known as rock lobster, mole lobster, shovel-nosed lobster, or ula papapa.~~

~~"Spiny lobster" means any crustacean of the genus *Panulirus*. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.]~~

"Stony coral" means any invertebrate species belonging to the Order Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian Islands.

"Striped mullet" means any fish known as *Mugil cephalus* or any recognized synonym. The various life stages of striped mullet are known as pua, kahaha, 'ama'ama, or 'anae.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Terminal-phase uhu" means any uhu characterized by the presence of bright green or blue markings or a predominantly green or blue body coloration, often with bright pink, orange, or yellow patches.

"Uhu" means any fish [~~known as *Scarus dubius*, *Scarus psittacus*, *Scarus rubroviolaceus*, *Chlorurus sordidus*, *Chlorurus perspicillatus*, or any recognized synonym.~~] belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has not reached its terminal phase. Uhu 'ahu'ula have a grayish brown body with reddish fins and a broad white band at the base of the tail. The terminal phase of these fish are known as uhu uliuli. Both uhu 'ahu'ula and uhu uliuli are known as spectacled parrotfish or fantail uhu.

"Uhu 'ele'ele" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a predominantly brownish-red or yellowish-gray body with reddish fins, to a predominantly green or blue-green body color with a green beak. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish or whiptail uhu.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has not reached its terminal phase. Uhu pālukaluka have a predominantly brownish-red or yellowish gray body with reddish fins. The terminal phase of these fish are known as uhu 'ele'ele. Both uhu pālukaluka and uhu 'ele'ele are known as redlip or ember parrotfish or whiptail uhu.

"Uhu uliuli" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a grayish brown body with reddish fins and a broad white band at the base of the tail, to a blue-green body with a dark band across the top of the snout and the lack of a white tail band. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish or fantail uhu.

"Uku" means any fish known as *Aprion virescens* or any recognized synonym. Uku are also known as uku palu, green jobfish, gray jobfish, blue-green snapper, Hawaiian blue-green snapper, gray snapper, slender snapper, or aochibiki.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpāpapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster.

"'Ula'ula koa'e" means any fish known as *Etelis coruscans* or any recognized synonym. 'Ula'ula koa'e are also known as koa'e, onaga, long-tail red snapper, ruby snapper, scarlet snapper, or hamadai.

"Ulua" means any fish known as *Caranx ignobilis*, *Caranx lugubris*, *Caranx melampygus*, *Caranx sexfasciatus*, *Carangoides equula*, *Carangoides ferdau*, *Carangoides orthogrammus*, or any recognized synonym. The young of these species are also known as [~~pāpio~~] pāpio.

~~["Weke"]~~ "Weke 'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. ~~[These fish]~~ Weke 'ā are also known as ~~[goatfish, yellowstripe goatfish, weke a, and the]~~ goatfish or yellowstripe goatfish. The young of this fish ~~[is]~~ are known as ~~[oama.]~~ 'oama. [Eff 12/03/98; am 1/11/02; am 12/09/02; am 12/19/02; am 5/01/14; am 10/19/18; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-3.5, 187A-5, 190-3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

§13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to sections 187A-3.5, 188-44, 188-57, or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-23, 188-37, 188-68, or 190-4, HRS; or
- (3) As may be otherwise provided by law. [Eff 12/19/02; am 5/01/14; comp 1/31/21; comp] (Auth: HRS §§187A-3.5, 187A-6, 188-44, 188-45, 188-57, 188-68, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

§13-95-2 Penalty. (a) A person violating any section of this chapter may be subject to any applicable criminal or administrative penalties or both. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

(b) For the purpose of calculating the administrative penalties for violations of this

chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
 - (A) Each damaged head or colony less than one square meter in surface area; or
 - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area. [Eff 12/03/98; am 5/01/14; comp 1/31/21; comp
] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§183C-7, 187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4, 190-5)

§13-95-3 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/3/98; comp 1/31/21; comp
] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 1-23)

§13-95-4 [~~Aholehole.~~] **Āholehole.** It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~aholehole~~] āholehole less than five inches in

length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am
and comp] (Auth: HRS §187A-5) (Imp:
HRS §187A-5)

§13-95-5 Manini. It ~~[shall be]~~ is unlawful for
any person to take, possess, or sell any manini less
than ~~[five]~~ six inches in length. [Eff 12/03/98; am
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-6 Moano. It ~~[shall be]~~ is unlawful for
any person to take, possess, or sell any moano less
than seven inches in length. [Eff 12/03/98; am
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-7 ~~[Kumu.]~~ Kūmū. It ~~[shall be]~~ is
unlawful for any person to take, possess, or sell any
~~[kumu]~~ kūmū less than ten inches in length. [Eff
12/03/98; am 12/19/02; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-8 ~~[Mullet.]~~ 'Ama'ama (striped mullet).
(a) It ~~[shall be]~~ is unlawful for any person to take,
possess, or sell any ~~[mullet]~~ pua, kahaha, or 'ama'ama
less than eleven inches in ~~[length.]~~ length except as
provided in subsection (b) of this section.

(b) It is unlawful for any person to wilfully
fish for, or attempt to take by any means whatsoever,
from any of the waters within the jurisdiction of the
State, or to sell, or have in possession any ~~[mullet]~~
pua, kahaha, 'ama'ama, or 'anae during the months of
December, January, February, and March; provided that

any owner or operator of a fish pond may lawfully catch [~~the young mullet known as~~] pua during the closed season, for the purpose of stocking the owner's or operator's pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell [~~pond-raised mullet~~] pond-raised pua, kahaha, 'ama'ama, or 'anae during the closed season after first procuring a license to do so pursuant to sections 13-74-40 or 13-74-43. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-9 Awa. It [~~shall be~~] is unlawful for any person to take, possess, or sell any awa less than nine inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-10 [~~Oie~~] 'Ō'io. It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~oie~~] 'ō'io less than fourteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-11 Kala. (a) It [~~shall be~~] is unlawful for any person to take, possess, or sell any kala less than fourteen inches in length.

(b) Subject to subsections (e) and (g), it is unlawful for any person to take more than four kala per day or possess more than four kala at any one time.

(c) It is unlawful for any person to take kala for a commercial purpose without a valid commercial kala fishing permit.

(d) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial kala fishing permit to any individual who possesses a valid commercial marine license. The fee for the issuance or renewal of a commercial kala fishing permit shall be \$100. A commercial kala fishing permit shall be valid from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

(e) A commercial kala fishing permittee participating in a commercial kala fishing trip may take more than four kala per day, and possess more than four kala at any one time, provided that:

(1) Commercial harvest or sale of kala shall be prohibited when the commercial kala fishing season is closed pursuant to subsection (h); and

(2) The department may establish additional restrictions on the commercial take or possession of kala pursuant to adaptive management authority under §187A-5(b), HRS.

(f) It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell kala unless the commercial marine dealer has registered with the department as a commercial kala dealer.

(g) A registered commercial kala dealer may purchase, obtain, exchange, transfer, possess and sell more than four kala if in compliance with section 189-11, HRS, provided that no kala may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial kala fishing season is closed pursuant to subsection (h), provided further that kala legally obtained prior to the date of closure may be possessed and sold after the date of closure.

(h) There is established an annual catch limit (ACL) of 15,000 pounds for the commercial kala fishery. Commercial kala catch shall be tallied beginning in August of each year. When the ACL is reached, the department shall notify commercial kala fishing permittees and registered commercial kala dealers that the commercial kala fishing season will

close. Notice shall be made in writing by mail or email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 188-53, 190-4)

§13-95-12 [~~Opelu kala.~~] **Kala 'ōpelu.** It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~opelu kala~~] kala 'ōpelu less than sixteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-13 [~~Opakapaka.~~] **'Ōpakapaka.** (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~opakapaka~~] 'ōpakapaka less than one pound in weight. (b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~opakapaka~~] 'ōpakapaka less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-14 [~~Onaga.~~] **'Ula 'ula koa'e (onaga).** (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~onaga~~] 'ula'ula koa'e less than one pound in weight. (b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~onaga~~] 'ula'ula koa'e less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-15 Uku. (a) It ~~[shall be]~~ is unlawful for any person to possess with the intent to sell, or offer for sale, any uku less than one pound in weight.

(b) It ~~[shall be]~~ is unlawful for any person to take with spear or possess any speared uku less than one pound in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-16 Uhu[~~-~~] (parrotfish). (a) It ~~[shall be]~~ is unlawful for any person to take, possess, or sell any uhu 'ele'ele, uhu uliuli, uhu pālukaluka, or uhu 'ahu'ula less than ~~[twelve]~~ fourteen inches in length.

(b) Any other department size restriction notwithstanding, subject to subsection (a), it is unlawful for any person to take, possess, or sell any other uhu less than ten inches in length.

(c) Subject to subsections (f) and (h), it is unlawful for any person to take more than two uhu of any variety per day or possess more than two uhu of any variety at any one time.

(d) It is unlawful for any person to take uhu for commercial purposes without a valid commercial uhu fishing permit.

(e) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial uhu fishing permit to any individual who possesses a valid commercial marine license. The fee for the issuance or renewal of a commercial uhu fishing permit shall be \$100. A commercial uhu fishing permit shall be valid from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

(f) A commercial uhu fishing permittee participating in a commercial uhu fishing trip may take more than two uhu per day, and possess more than two uhu at any one time, provided that:

- (1) No species of uhu other than uhu pālupaluka and uhu 'ele'ele may be taken or possessed on a commercial uhu fishing trip;
 - (2) Commercial harvest or sale of uhu shall be prohibited when the commercial uhu fishing season is closed pursuant to subsection (i); and
 - (3) The department may establish additional restrictions on the commercial take or possession of uhu pursuant to adaptive management authority under §187A-5(b), HRS.
- (g) It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell uhu unless the commercial marine dealer has registered with the department as a commercial uhu dealer.
- (h) A registered commercial uhu dealer may purchase, obtain, exchange, transfer, possess, and sell more than two uhu if in compliance with section 189-11, HRS, provided that:
- (1) No species of uhu other than uhu pālupaluka and uhu 'ele'ele may be purchased, obtained, exchanged, transferred, possessed, or sold; and
 - (2) No uhu may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial uhu fishing season is closed pursuant to subsection (i), provided further that uhu legally obtained prior to the date of closure may be possessed and sold after the date of closure.
- (i) There is established an annual catch limit (ACL) of 30,000 pounds for the commercial uhu fishery. Commercial uhu catch shall be tallied beginning in June of each year. When the ACL is reached, the department shall notify commercial uhu fishing permittees and registered commercial uhu dealers that the commercial uhu fishing season will close. Notice shall be made in writing by mail or email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp

] (Auth: HRS §§187A-5, 190-3) (Imp:
HRS §§187A-5, 188-53, 190-4)

§13-95-17 [~~Ahi.~~] 'Ahi. (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~ahi~~] 'ahi less than three pounds in weight.

(b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~ahi~~] 'ahi less than three pounds in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-18 [~~Opelu.~~] 'Ōpelu. It [~~shall be~~] is unlawful for any person at any time, to fish for or take, or be engaged in fishing or taking [~~opelu~~] 'ōpelu with fish or animal bait, also known as "chop-chop", within the waters off the coast of South Kona, [~~island of Hawaii,~~] Hawai'i Island, between the [~~Kiilae-Keokea~~] Ki'ilae-Keokea boundary and the [~~Kapua-Kaulanamauna~~] Kapu'a-Kaulanamauna boundary, except with [~~hook and line.~~] hook-and-line. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-19 Akule. (a) It [~~shall be~~] is unlawful for any person to take any akule measuring less than eight and one-half inches in length, with a net during the months of July, August, September, and October.

(b) It is unlawful for any person, other than marine seafood dealers, to possess or sell more than two hundred pounds of akule measuring less than eight and one-half inches in length per day during July, August, September, and October; except as may be otherwise provided by law. [Eff 12/03/98; am 1/11/02;

comp 1/31/21; am and comp] (Auth: HRS
§187A-5) (Imp: HRS §187A-5)

§13-95-20 [~~iao.~~] 'iao. (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured [~~iao~~] 'iao taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any [~~iao;~~] 'iao; provided that the department may issue licenses pursuant to section 13-74-22, to take [~~iao~~] 'iao for use as bait only. [Eff: 12/3/98; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-21 Nehu. (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured nehu taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu; provided that the department may issue licenses pursuant to section 13-74-22, to take nehu for use as bait only and as [~~maybe~~] may be otherwise allowed under chapter 13-90. [Eff 12/3/98; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-22 Ulua. (a) It is unlawful for any person to take or possess any ulua less than ten inches in length.

(b) It is unlawful for any person to sell any ulua less than sixteen inches in length.

(c) It is unlawful for any person to take or possess more than twenty ulua measuring more than ten inches in length per day; provided that a commercial marine licensee may take, possess, and sell more than twenty such ulua; and further provided that a commercial marine dealer may possess and sell more than twenty such ulua with receipts issued for the purchase pursuant to section 189-11, [~~Hawaii Revised Statutes.~~] HRS. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-22 is based substantially upon Chapter 87 of Title 13. [Eff 5/26/81; am 1/25/82; R 12/19/02] Chapter 87 of Title 13 was based substantially upon Regulation 19 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-23 Moi. (a) It is unlawful for any person to take, possess, or sell any moi less than eleven inches in length.

(b) It is unlawful for any person to take, possess, or sell more than fifteen moi per day during September through May; provided that a commercial marine dealer may possess and sell more than fifteen moi with receipts issued for the purchase pursuant to section 189-11, [~~Hawaii Revised Statutes.~~] HRS.

(c) It is unlawful for any person to take, possess, or sell any moi during June, July, and August. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-23 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R

5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-24 ~~[Weke.]~~ **Weke 'ā.** (a) It is unlawful for any person to take or possess more than fifty ~~[weke]~~ weke 'ā less than seven inches in length per day.

(b) It is unlawful for any person to sell any ~~[weke]~~ weke 'ā less than seven inches in length. [Eff 12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-24 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-25 **Kole.** It is unlawful to take, possess, or sell any kole less than five inches in length. [Eff and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§§13-95-26 to 13-95-49 (Reserved)

§13-95-50 ~~[Kuhonu crab.]~~ **Pāpa'i kūhonu (white crab).** (a) It ~~[shall be]~~ is unlawful for any person

to possess with the intent to sell, or offer for sale, any [~~kuhonu crab~~] pāpa'i kūhonu less than four inches in length or in width across or along its back.

(b) It is unlawful for any person to [~~catch or take from any bays, harbors, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,~~] take, possess, or sell any [~~kuhonu crab~~] pāpa'i kūhonu [~~while~~] with eggs. Any [~~kuhonu crab~~] pāpa'i kūhonu with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any [~~kuhonu crab,~~] pāpa'i kūhonu, showing indications of [~~the~~] its eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(c) [~~No person shall~~] It is unlawful for any person to pursue, take, or kill any [~~kuhonu crab~~] pāpa'i kūhonu in the State with a spear.

(d) [~~No person shall~~] It is unlawful for any person to offer for sale any speared [~~kuhonu crab.~~] pāpa'i kūhonu. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-51 [~~Kona crab.~~] Pāpa'i kualoa (Kona crab). (a) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa'i kualoa less than four inches in carapace length.

(b) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa'i kualoa taken from the waters within the jurisdiction of the State [~~during the months of~~] from May[, June, July, and August.] through September.

(c) The possession of any [~~Kona crab~~] pāpa'i kualoa from May through September by any person [~~during the months of May, June, July, and August shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve

~~[Kona-crab]~~ pāpa'i kualoa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, possess, or sell any ~~[Kona-crab]~~ pāpa'i kualoa with eggs. Any ~~[Kona-crab]~~ pāpa'i kualoa with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any ~~[Kona-crab]~~ pāpa'i kualoa showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any ~~[Kona-crab]~~ pāpa'i kualoa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared ~~[Kona-crab]~~ pāpa'i kualoa.

~~[(g) It is unlawful for any person to take or kill any female Kona-crab.]~~ [Eff 12/03/98; am 12/19/02; am and comp 1/31/21; am and comp

] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-57)

§13-95-52 Samoan crab. (a) It is unlawful for any person to take, possess, or sell any Samoan crab less than six inches in width measured across the carapace or back.

(b) It is unlawful for any person to take, kill, possess, or sell any Samoan crab with eggs. Any Samoan crab with eggs caught must immediately be returned to the waters from which the Samoan crab was taken. The possession of any Samoan crab, showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(c) It is unlawful for any person to pursue, take, or kill any Samoan crab in the State with a spear.

(d) It is unlawful for any person to possess or sell any speared Samoan crab.

(e) It is unlawful for any person to take or kill any female Samoan crab. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical note: Subsection 13-95-52(a) is based substantially upon chapter 84 of title 13. [Eff 5/26/81; am 1/25/82; R 1/31/21] Chapter 84 of Title 13 was based substantially upon Regulation 14 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 11/25/41 (Governor's approval date); am 7/28/47; am and ren 3/28/58; R 5/26/81]

§13-95-53 [~~Spiny lobster~~] Ula (spiny lobster).

(a) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula less than three and one-fourth inches in carapace length, measured in a straight line along the carapace or head, from the ridge between the two largest spines above the eyes to the rear edge of the carapace.

(b) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any [~~spiny lobster~~] ula by any person during the months of May, June, July, and August [~~shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve [~~spiny lobster~~] ula lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula with eggs. Any [~~spiny lobster~~] ula with eggs caught must immediately be returned to the waters from which the [~~spiny lobster~~] ula was taken. The possession of any [~~spiny lobster~~,] ula showing indications of [~~the~~] its

eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any [~~spiny lobster~~] ula in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared [~~spiny lobster.~~] ula.

(g) It is unlawful for any person to possess or sell any [~~spiny lobster~~] ula in a condition where the body is mutilated, or the carapace and tail are separated.

(h) It is unlawful for any person to take or kill any female [~~spiny lobster.~~] ula. [Eff 12/3/98; am and comp 1/31/21; am and comp]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-53(a) and (g) are based substantially upon Chapter 89 of Title 13. [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21] Chapter 89 of Title 13 was based substantially upon Regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-54 [~~Slipper lobster.~~] Ula pāpapa (slipper lobster). (a) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa less than two and three-fourths inches in tail width, measured in a straight line across the widest spot of the tail between the first and second abdominal segments.

(b) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa taken from the waters within the jurisdiction of the

State during the months of May, June, July, and August.

(c) The possession of any [~~slipper lobster~~] ula pāpapa by any person during the months of May, June, July, and August [~~shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve [~~slipper lobster~~] ula pāpapa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa with eggs. Any [~~slipper lobster~~] ula pāpapa with eggs caught must immediately be returned to the waters from which the [~~slipper lobster~~] ula pāpapa was taken. The possession of any [~~slipper lobster,~~] ula pāpapa showing indications of [~~the~~] eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any [~~slipper lobster~~] ula pāpapa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared [~~slipper lobster.~~] ula pāpapa.

(g) It is unlawful for any person to possess or sell any [~~slipper lobster~~] ula pāpapa in a condition where the body is mutilated, or the carapace and tail are separated. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-54(a) and (g) are based substantially upon chapter 89 of title 13 [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21] Chapter 89 of title 13 was based substantially upon regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am

7/18/59 (Governor's approval date); am 9/17/60
(Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-55 [~~He'e.~~] **He'e (tako).** It [~~shall be~~] is
unlawful for any person to take, possess, or sell any
[~~he'e~~] he'e less than one pound in weight. [Eff
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-55 is based
substantially upon Chapter 86 of Title 13. [Eff
5/26/81; R 12/19/02] Chapter 86 of Title 13 was based
substantially upon Regulation 18 of the Division of
Fish and Game, Department of Land and Natural
Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58;
R 5/26/81]

§13-95-70 Stony corals. (a) Except as
otherwise provided in this section or authorized by
law:

- (1) Subject to subsections (b) and (c), it is
unlawful for any person to take, break, or
damage any stony coral, except as provided
in sections 171-58.5 and 205A-44, HRS;
- (2) It is unlawful for any person to damage any
stony coral by any intentional or negligent
activity causing the introduction of
sediment, biological contaminants, or
pollution into state waters;
- (3) It is unlawful for any person to sell any
stony coral; except that stony coral rubble
pieces or fragments imported for the
manufacture and sale of coral jewelry, or
dead stony coral obtained through legal
dredging operations in Hawaii for
agricultural or other industrial uses, may
be sold.

(b) No liability shall be imposed under subsection (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) The [~~Department~~] department may authorize damage to stony corals for the development or operation of renewable energy projects and shall require mitigation to offset any stony coral losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS.

[Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

§13-95-71 Live rocks. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any live rock;
- (2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and
- (3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1) or (a)(2) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) The [~~Department~~] department may authorize damage to live rock for the development or operation of renewable energy projects and shall require mitigation to offset any live rock losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

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

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-95, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

DAWN N.S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

III. OLD BUSINESS

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 23, **Makai Area Rules**, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

**SMALL BUSINESS STATEMENT
“AFTER” PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Hawaii Community Development Authority

Administrative Rule Title and Chapter: Title 15, Chapter 23

Chapter Name: Kaka‘ako Makai Area Rules

Contact Person/Title: Ryan Tam / HCDA Director of Planning and Development

Phone Number: 808-594-0338

E-mail Address: ryan.am.tam@hawaii.gov **Date:** 11/30/2023

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,” please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

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.)

*

*

*

V. Please explain how the agency involved small business in the development of the proposed rules.

Kaka'ako Improvement Association (representing businesses in Kaka'ako) and other stakeholders were consulted in the Mauka rule updates, and concepts were carried into the Makai rule updates.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

No

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

The Kaka'ako community and other groups were notified about the proposed rule amendments.

2. A summary of the public's and small businesses' comments.

The public comments were overwhelming supportive of enacting a ban on residential development in the Kaka'ako makai district due to sea level rise, underlying contaminated soil, and other impacts.

3. A summary of the agency's response to those comments.

No response; the public comments are consistent with the proposed changes.

4. The number of persons who:

(i) Attended the public hearing: 3

(ii) Testified at the hearing: 2

(iii) Submitted written comments: 38

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

(i) If "Yes," was the change adopted? ☐ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

September 2023 Meeting Minutes

Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Chapter 15 Chapter 23, Makai Area Rules, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Craig Nakamoto, Executive Director of DBEDT's Hawaii Community Development Authority (HCDA) presented the members with an overview of the rule amendments. The presentation explained HCDA's history, which began in 1976, and its original purpose which was to redevelop Kakaako Community Development Center; since that time, other districts have been added.

The objectives of the proposed rules are to: 1) reflect the 2006 Act 317 ban on residential development; 2) incorporate the community-lead Kakaako Makai Conceptual Master Plan from 2011, and 3) streamline permitting and increase consistency with the latest processes in Kakaako Mauka, which was last updated in 1995.

Overall, the rule amendments are intended to bring consistency with definitions and remove obsolete language, update window requirements, simplify land use categories, remove outdated references, and bring processes in line with current laws and rules that are more user-friendly.

Stakeholders at the public hearing would likely include both private and public landowners, particularly those from the Makai area, Office of Hawaiian Affairs, Bishop Estates as well as the general community having an interest in keeping the Makai area more open. Second Vice Chair Shick noted that there does not appear to be a negative impact on small businesses; the biggest impact is the flat fee of \$200, which will offset staff time.

Mr. Ritchie motioned to move the proposed rules onto the public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Review of final proposed Administrative Bill, "Relating to the Small Business Regulatory Review Board"

The proposed bill clarifies that this Board has the authority to review legislation affecting small businesses in response to a request from small business owners.

Ms. Palcovich noted that the Governor's legislative team reviewed the proposal and had no concerns or questions. As such, the bill will be included in the Governor's 2024 Administrative Package.



Kaka'ako Community Development District

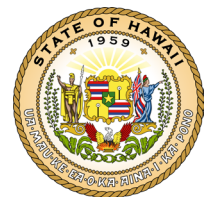
Makai Area Rules

Proposed Amendments to
Hawai'i Administrative Rules Title 15, Chapter 23

Final Draft (Ramseyer Version)
November 2023



**Hawaii Community
Development Authority**



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Amendments and Compilation of Chapter 15-23
Hawaii Administrative Rules

SUMMARY

1. §15-23-1 is repealed.
2. §15-23-1.1 is added.
3. §§15-23-2 to §15-23-3 are amended.
4. §15-23-4 is repealed.
5. §15-23-5 is amended.
6. §15-23-6 is repealed.
7. §15-23-6.1 is added.
8. §15-23-7 is repealed.
9. §15-23-7.5 is added.
10. §15-23-8 is amended.
11. §15-23-10 is repealed.
12. §15-23-10.1 is added.
13. §15-23-11 is repealed.
14. §15-23-13 is amended.
15. §15-23-14 is repealed.
16. §15-23-14.1 is added.

17. §§15-23-15 to §15-23-17 are amended.
18. §15-23-20 is amended.
19. §15-23-21 is repealed.
20. §15-23-22 is amended.
21. §§15-23-23 to §15-23-27 are added.
22. §§15-23-30 to §15-23-31 are amended.
23. §15-23-32 is repealed.
24. §15-23-33 is amended.
25. §§15-23-34 is repealed.
26. §§15-23-37 to §15-23-39 are repealed.
27. §§15-23-40 to §15-23-41 are amended.
28. §§15-23-62 to §15-23-65 are amended.
29. §§15-23-67 to §15-23-70 are amended.
30. §15-23-71.1 is added.
31. §15-23-72 is repealed.
32. §§15-23-73 to §15-23-81 are amended.
33. §15-23-82.1 is added.
34. §§15-23-83 to §15-23-84 are amended.
35. §15-23-85 is repealed.
36. §15-23-86 is amended.
37. §15-23-87 is repealed.

38. §§15-23-88 to §15-23-89 is amended.
39. §15-23-90 is added.
40. §§15-23-139 to §15-23-143 are amended.
41. §§15-23-158 to §15-23-159 are amended.
42. §§15-23-160 to §15-23-161 are repealed.
43. §15-23-161.1 is added.
44. §15-23-163 is amended.
45. §15-23-164 is repealed.
46. §15-23-178 is repealed.
47. §15-23-178.1 is added.

Amendment and Compilation of Chapter 15-23
Hawaii Administrative Rules



1. Chapter 15-23, Hawaii Administrative Rules,
entitled "Makai Area Rules", is amended and compiled
to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 23

[~~THE KAKA'AKO~~] KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT

[~~RULES FOR THE~~] MAKAI AREA RULES

Subchapter 1 General Provisions

\$15-23-1	[General purposes] <u>Repealed</u>
<u>\$15-23-1.1</u>	<u>Purpose</u>
\$15-23-2	Development guidance policies
\$15-23-3	Title
\$15-23-4	[Plan and design guidelines incorporated by reference] <u>Repealed</u>
\$15-23-5	Definitions
\$15-23-6	[Rules for construction of language] <u>Repealed</u>
<u>\$15-23-6.1</u>	<u>Rules of interpretation</u>

§15-23-7	[Establishment of the Kakaake community development district] <u>Repealed</u>
<u>§15-23-7.5</u>	<u>Compliance with other regulations</u>
<u>§15-23-8</u>	<u>Establishment and scope of controls</u>
<u>§15-23-9</u>	<u>Repealed</u>
<u>§15-23-10</u>	[Project eligibility] <u>Repealed</u>
<u>§15-23-10.1</u>	<u>Completeness review</u>
<u>§15-23-11</u>	[Development permits] <u>Repealed</u>
<u>§15-23-12</u>	<u>Administration</u>
<u>§15-23-13</u>	<u>Appeals</u>
<u>§15-23-14</u>	[Variances] <u>Repealed</u>
<u>§15-23-14.1</u>	<u>Variances</u>
<u>§15-23-15</u>	<u>Nonconformities</u>
<u>§15-23-16</u>	<u>Application fees</u>
<u>§15-23-17</u>	<u>Violations</u>
<u>§15-23-18</u>	<u>Amendments</u>
<u>§15-23-19</u>	<u>Severability</u>
<u>§15-23-20</u>	<u>Interpretation by the executive director</u>
<u>§15-23-21</u>	[Zoning adjustments and waivers] <u>Repealed</u>
<u>§15-23-22</u>	<u>Automatic approvals</u>
<u>§15-23-23</u>	<u>Approval validity period</u>
<u>§15-23-24</u>	<u>Zoning clearance</u>
<u>§15-23-25</u>	<u>Rules clearance</u>
<u>§15-23-26</u>	<u>Renovation permit</u>
<u>§15-23-27</u>	<u>Improvement and development permits</u>
<u>§§15-23-28 to 15-23-29</u>	<u>Reserved</u>

Subchapter 2 Land Use Zone Rules

§15-23-30	Establishment of land use zones
§15-23-31	MUZ zone: purpose and intent
§15-23-32	[MUZ zone: use rules] <u>Repealed</u>
§15-23-33	WC zone: purpose and intent
§15-23-34	[WC zone: use rules] <u>Repealed</u>
§§15-23-35 to §15-23-36	<u>Repealed</u>
§15-23-37	[MUZ-I zone: purpose and intent] <u>Repealed</u>

§15-23-38	[MUZ-I zone: use rules] <u>Repealed</u>
§15-23-39	[MUZ-I zone: development standards] <u>Repealed</u>
§15-23-40	Park areas
§15-23-41	Public areas
§15-23-42	Minimum lot area, width, and depth
§15-23-43	Subdivision and consolidation
§§15-23-44 to 15-23-59	Reserved
§15-23-60	Additional development requirements

Subchapter 3 General Development Requirements

§15-23-61	Purpose and intent
§15-23-62	Density
§15-23-63	Heights
§15-23-64	Yards
§15-23-65	Open space
§15-23-66	Repealed
§15-23-67	Building envelopes
§15-23-68	Off-street parking
§15-23-69	Off-street loading
§15-23-70	Signs
§15-23-71	Repealed
<u>§15-23-71.1</u>	<u>Architectural design</u>
§15-23-72	Circulation
§15-23-73	Public facilities <u>dedication</u> fee
§15-23-74	Prohibition of structures within a mapped street
§15-23-75	Development of properties within the Aloha tower special district
§15-23-76	Utilities required to be underground
§15-23-77	Environmental standards
§15-23-78	Temporary [uses] <u>use</u> permit
§15-23-79	Conditional use of vacant land
§15-23-80	Joint development of two or more adjacent zoning lots
§15-23-81	Flood hazard district
§15-23-82	Repealed
<u>§15-23-82.1</u>	<u>Conditional use permit</u>
§15-23-83	Applications

§15-23-84	Determination by authority or executive director
§15-23-85	[Lapse of development permit] <u>Repealed</u>
§15-23-86	Conditions
§15-23-87	[Requirement of providing reserved housing units] <u>Repealed</u>
§15-23-88	Modification of specific provisions
§15-23-89	Conditions for modification
§15-23-90	<u>Minor changes</u>
§§15-23-91 to 15-23-107	Reserved
§§15-23-108 to 15-23-137	Repealed

Subchapter 4 Special Urban Design Rules

§15-23-138	Statement of purposes
§15-23-139	Applicability
§15-23-140	Streetscapes
§15-23-141	Tower spacing and circulation
§15-23-142	Landscaping
§15-23-143	Modification of urban design requirements
§§15-23-144 to 15-23-157	Reserved

Subchapter 5 Historic and Cultural Sites

§15-23-158	Statement of purposes
§15-23-159	Historic or culturally significant property defined
§15-23-160	[Designation] <u>Repealed</u>
§15-23-161	[Procedure for designation] <u>Repealed</u>
§15-23-161.1	<u>Preservation and consultation</u>
§15-23-162	Uses
§15-23-163	Protective maintenance
§15-23-164	[Certificate of appropriateness] <u>Repealed</u>
§§15-23-165 to 15-23-177	Reserved

Subchapter 6 Master Plan Rules

§15-23-178 [~~Purpose and intent~~] Repealed
§15-23-178.1 Master plans

§§15-23-179 to 15-23-191 Reserved

Subchapter 7 Rules Review and Amendment

§15-23-192 Rules review and amendment

SUBCHAPTER 1

GENERAL PROVISIONS

§15-23-1 ~~[General purposes. (a) The legislature of the State of Hawaii, by chapter 206E, HRS, established the Kakaako community development district (hereinafter "Kakaako district"). In so doing, the legislature determined that there was a need for replanning, renewal, or redevelopment of that area. The legislature found the following with respect to the Kakaako district:~~

- ~~(1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center, commercial and market facilities, major existing and contemplated transportation routes and recreational and service areas;~~
- ~~(2) The Kakaako district, because of its present function as a service and light industrial area, is relatively underdeveloped and has, especially in view of its proximity to the urban core where the pressure for all land uses is strong, the potential for increased growth and development that can alleviate community needs such as low- or moderate-income housing, parks and open space, and commercial and industrial facilities;~~
- ~~(3) The Kakaako district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Because of its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential; and~~
- ~~(4) Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.~~

~~(b) The legislature declared further that there exists within the State vast, unmet community development needs, such as:~~

- ~~(1) Suitable housing for persons of low or moderate income;~~
- ~~(2) Sufficient commercial and industrial facilities for rent;~~
- ~~(3) Residential areas which have facilities necessary for basic livability, such as parks and open space; and~~
- ~~(4) Areas which are planned for mixed uses. The legislature declared that existing laws and private and public mechanisms have either proven incapable or inadequate to meet these needs. The legislature called upon the Hawaii community development authority to provide a new, innovative form of development and regulation to meet these needs.~~

~~(c) The legislature authorized and empowered the Hawaii community development authority to develop a community development plan for the district. It noted that the plan should include a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly in a vertical as well as horizontal mixture within a single development lot. The legislature further directed that in planning for such mixed uses, the authority shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activities.~~

~~(d) The legislature further authorized and empowered the authority to establish and adopt community development rules under chapter 91, HRS, on health, safety, building, planning, zoning, and land use which shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon.~~

~~(e) In accordance with the declarations of the legislature, the authority has developed community~~

~~development plans for the Kakaako district. As an integral part of implementing these plans, and in compliance with the mandate of the legislature, the authority has developed these innovative community development rules for the Kakaako district.~~

~~(f) It is the intent of the authority that these rules shall be established and adopted to implement the purposes and intent of the legislature as set forth in chapter 206E, HRS. It is the further intent of the authority that these rules shall implement the policies and programs relating to the Kakaako district as set forth in the provisions of the community development plan.~~

~~(g) So that Kakaako can be developed as an attractive and desirable urban community, the authority shall interpret these rules to encourage flexibility of design. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)] REPEALED.~~

~~[R REDACTED]~~

§15-23-1.1 Purpose. (a) The makai area plan establishes long-term land use policy, consistent with chapter 206E, HRS, that directs the implementation of smart growth principles within a portion of the Kakaʻako community development district.

(b) These rules carry out, through complete, integrated, effective, and concise land development regulations, the aforementioned makai area plan directives by classifying and regulating the types and intensities of development and land uses within the makai area consistent with, and in furtherance of, the policies and objectives of the makai area plan and chapter 206E, HRS.

(c) The rules are adopted to protect and promote the public health, safety, and general welfare of the community and to protect and preserve places and areas of historical, cultural, architectural, or environmental importance and significance, as set forth in the makai area plan and chapter 206E, HRS.

(d) So that Kaka'ako can be developed as an attractive and desirable urban community, the authority shall interpret these rules to encourage flexibility of design. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-23-2 Development guidance policies. The development guidance policies governing the authority's actions in the ~~[Kaka'ako]~~ Kaka'ako district have been set forth by the legislature in section 206E-33, HRS. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §206E-33) (Imp: HRS §206E-33)

§15-23-3 Title. ~~[These rules shall be known and may be cited as the Kaka'ako community development district rules for the makai area.]~~ (a) This chapter of the Hawaii administrative rules shall be known, and may be cited, as the "makai area rules."

(b) References to "rules" within this chapter are references to the makai area rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority, where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated [REDACTED], attached at the end of this chapter, the makai area plan, dated [REDACTED], and the the Kaka'ako makai conceptual master plan, dated April 2011, are hereby incorporated by reference and made a part of this chapter. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-23-4 [Plan and design guidelines incorporated by reference.] ~~The makai area plan and makai area design guidelines, are hereby incorporated by reference and made a part of this chapter. [Eff 2/24/90; comp 10/10/98; am and comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §206E-5) (Imp: HRS §206E-5).]~~ REPEALED. [R [REDACTED]]

§15-23-5 Definitions. ~~[Except as otherwise stated in this chapter, all of the definitions contained in the land use ordinance of the city and county of Honolulu are by reference incorporated herein and made a part hereof[as of what date? Would the definitions change if the LUO definitions are amended?]. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:]~~ This section provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall determine the correct definition through the interpretation provisions of section 15-23-6.1 (rules of interpretation) or section 15-23-20 (interpretation by the executive director):

"Aloha Tower special district" means that parcel of land identified by tax map key 2-1-14: 06, situated mauka of Piers 6 and 7 and makai of Nimitz Highway, being the site for the existing Hawaiian Electric power plant and related facilities.

"Arcade" means a protected walkway that provides public pedestrian access contiguous to a building. It is open on at least one long dimension, except for structural columns, and has an average unobstructed ceiling height of at least twelve feet. It shall have a clear walkway width of at least twelve feet and not less than five hundred square feet of covered area, including the area occupied by the structural columns.

An arcade is not more than eighteen inches above adjoining grade[+].

"Authority" means the Hawaii community development authority established by section 206E-3, HRS[+].

"Awning" means a temporary shelter supported entirely from the exterior wall of a building[+].

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any man-made change over, upon, under, or across improved or unimproved real property within the makai area.

"Developer's proposal to develop lands under the authority's control" as used in section 206E-5.6, HRS, shall mean and include: (1) Any permit application filed by any private person or entity seeking the authority's approval for a development project; or (2) An improvement or development project on lands owned by the authority.

"Development" means the construction of a new building or other structure on a development lot, the relocation of an existing building on another development lot, or the use of a tract of land for a new use[+].

"Development project" means and includes construction and site improvements, including new floor area, that totals 20,001 square feet or more.

"Development lot" means any lot or a combination of lots developed in accordance with the provisions of these rules[+].

"Eleemosynary organization" means a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes[+].

"Executive director" means the executive director of the authority[+].

"FEMA flood maps" means maps that set flood insurance rates, regulate floodplain development, and delineate "100-year" floodplain boundaries that are prepared under the Federal Emergency Management Agency ("FEMA") National Flood Insurance Program. FEMA flood maps contain flood zones that describe different levels of flood risk and elevation.

"Floor area" means the [area of the several floors of a building excluding unroofed areas measured from the exterior faces of the exterior walls or from the center line of party walls separating portions of a building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above, including but not limited to elevator shafts, corridors, and stairways. Excluded from the floor area are parking facilities and loading spaces, including their driveways and accessways, attic areas with headroom less than seven feet, passageways, arcades, covered rooftop areas, and rooftop machinery equipment rooms and elevator housings on the top of buildings;] sum of the gross horizontal areas of all floors of a building, including interior balconies, mezzanines, and storage areas measured from the exterior face of exterior walls or from the centerline of a wall separating two structures.

- (1) Floor area shall include the area of roofed structures, building overhangs, canopies less than fifty per cent open to sky, porches, lanais having more than two walls, accessory structures on the same lot, mechanical and machine rooms, and elevator shafts. The area of roofed structures that are not enclosed by walls shall be measured from the exterior face of its supporting structure, columns, posts, or the determined useable area it covers;
- (2) Floor area shall exclude parking facilities and loading spaces, including their driveways, stairwells open on at least two sides with only handrailing or fall

protection, elevator shafts, basements, below ground structures, screening for rooftop machinery equipment, elevator housings on the rooftop, covered drop-offs located at or leading to the street curb, and lanais less than fifteen per cent interior floor area; and

- (3) Parking areas dedicated to electric vehicles and electric vehicle charging, long-term bike parking and storage, car sharing, nonpetroleum based motor vehicles, robotic parking systems and its machinery, and other high efficiency parking systems approved by the executive director, may be excluded from floor area calculations.

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a per cent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot[+].

"Ground elevation" means the existing grade of a sidewalk adjacent to any front yard property line or the adjacent street right-of-way line if no sidewalk exists[+].

"Ground floor windows" means windows extending over at least fifty per cent of the length and twenty-five per cent of the area of ground elevation walls. Ground elevation walls include all exterior wall areas up to nine feet above the ground floor that abut front yards. Ground floor windows must be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows.

"Hawaii capital district" means a special district established by Article 7 of the land use ordinance[+].

"Improvement project" means and includes:

- (1) Construction and site improvements, including new floor area, that total 20,000 square feet or less;
- (2) Exterior alterations, excluding ordinary repairs and maintenance covered by a rules clearance or a renovation permit; and

(3) Demolition of an existing structure.

~~["Kakaako community development district plan", "Kakaako community development plan", or "Kakaako plan", means the development plans referred to as the "mauka area plan" and the "makai area plan";]~~

~~["Kakaako]~~ "Kaka'ako special design district ordinance" means Ordinance No. 80-58 of the city and county of Honolulu, as amended~~[+]~~.

"Land use ordinance" or "LUO" means ~~[Ordinance No. 86-96]~~ the land use ordinance of the city and county of Honolulu~~[+]~~, as amended.

"Land use zone" means any zone delineated on the land use plan map of the makai area plan~~[+]~~.

"Lot" means a duly recorded parcel of land which can be used, developed, or built upon as a unit~~[+]~~.

"Makai area" means that portion of the ~~[Kakaako]~~ Kaka'ako district, established by section 206E-32, HRS, which is bounded by Ala Moana Boulevard, inclusive from ~~[Punchbowl Street to Piikoi Street, from Piikoi Street]~~ South Street to its intersection with the Ewa boundary of Ala Moana Park, also identified as the Ewa boundary of tax map key 2-3-37: 01; the Ewa boundary of tax map key 2-3-37: 01 from its intersection with Ala Moana Boulevard to the shoreline; the shoreline from its intersection with the property line representing the Ewa boundary of property identified by tax map key 2-3-37: 01 to its intersection with the property line ~~[between Pier 2 and Pier 4 from its intersection with the shoreline to Ala Moana Boulevard;]~~ along the Diamond Head side of Pier 1 and Forest Avenue, also identified as the Diamond Head boundary of tax map key 2-1-15: 09; and ~~[Ala Moana Boulevard from its intersection with the property line between lands identified by Pier 2 and Pier 4 to Punchbowl Street.]~~ along the Diamond Head side of Pier 1 and Forest Avenue, also identified as the tax map key 2-1-15: 09 from the shoreline to the intersection of Ala Moana Boulevard and South Street. The makai area also includes that parcel of land identified by tax map key ~~[2-1-14: 16,]~~ 2-1-14: 06, situated mauka of Piers 6 and 7 and makai of Nimitz

Highway, being the site for the existing Hawaiian Electric power plant and related facilities;].

~~["Makai area design guidelines" means the design guidelines for the makai area adopted on February 2, 2002;]~~

"Makai area plan" means the development plan for the makai area of the ~~[Kaka'ako]~~ Kaka'ako community development district adopted on September 29, 1998, as amended on December 9, 2002; ~~[and]~~ November 3, 2005; and [REDACTED].

"Mauka area" means that portion of the ~~[Kaka'ako]~~ Kaka'ako community development district, established by section 206E-32, HRS, which is bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, exclusive, from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street~~[+]~~.

"Mauka area plan" means the development plan for the mauka area of the ~~[Kaka'ako]~~ Kaka'ako community development district originally adopted on February 16, 1982, as amended on January 10, 1983~~[+]~~; May 18, 1984~~[+]~~; September 6, 1984~~[+]~~; April 26, 1985~~[+]~~; August 17, 1985~~[+]~~; July 15, 1988~~[+]~~; June 28, 1989~~[+]~~; January 18, 1990~~[+]~~; July 16, 1990~~[+]~~; September 5, 1997~~[+]~~; August 3, 1999~~[+and]~~; January 9, 2002; and October 31, 2011.

"Mixed use" means the combination of more than one land use within a development ~~[project or area;]~~ or development lot.

"MUZ" means a ~~[mixed-use]~~ makai urban zone where commercial~~[+residential+]~~ and community ~~[service]~~ uses are permitted~~[+]~~.

~~["MUZ-I" means a mixed-use zone where waterfront industrial and commercial uses are permitted;]~~

"Nonconforming use" means an activity using land, buildings, signs, or structures for purposes which were legally established within the makai area prior to [REDACTED] but would not be permitted as a new use in any of the land use zones established by this chapter~~[+]~~.

"Open space" means ~~[noncontiguous, unbuilt and unobstructed spaces at ground elevation between and adjacent to public and private structures;]~~ space that is one hundred per cent open to the sky and that is between or adjacent to a structure and located either (a) at-grade, or (b) on a publicly-accessible and usable podium, roof garden, or roof-top recreation area.

"Open space systems" mean continuous networks of open space that result from public rights-of-way, view corridors, building setback areas, parks, and private open spaces~~[+]~~.

"Passageway" means a ground floor, cross-block pedestrianway that facilitates pedestrian movement, is open to the public, and has a minimum clear width of thirty feet and minimum clear height of twelve feet. To qualify, a passageway shall also be open to the sky for at least twenty-five per cent of its area, and all openings to the sky must not be less than twelve feet in any dimension. Passageways must link active use areas, such as lobbies, courtyards, retail shops, and drop-offs. Passageways are exempt from parking, loading, and public facilities fee requirements.

"Platforms" mean a building form providing a base for tower structures. The platforms may contain extensive parking areas as well as other permitted uses~~[+]~~.

"Preservation" means keeping a particular property in its present condition. The property may already be in a restored or rehabilitated condition~~[+]~~.

"Protection" means undertaking actions or applying measures ~~[which]~~ that will prevent the property from deterioration or loss or ~~[which]~~ that will keep it from being destroyed or abused~~[+]~~.

"Public improvement" means any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide public needs as: vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution

facilities, sanitary sewage disposal and treatment, public utility, and energy services[+].

"Public project" means any project or activity of any county or agency of the State conducted to fulfill a governmental function for public benefit and in accordance with public policy[+].

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems.

"Reconstruction" means the reproduction by new construction of a building, structure, object, or parts thereof as it originally appeared[+].

"Reflective surface" means any glass or other surface, such as polished metal, specified in the manufacturer's literature having reflectance (designated by such terminology as average daylight reflectance, visible light reflectance, visible outdoor reflectance, and comparable terms) of over thirty per cent[+].

"Rehabilitation" means returning a property to a useful state, thus allowing it to be used while preserving those portions or features considered historically, architecturally, or culturally significant[+].

"Renovation project" means and includes:

- (1) Interior alterations and modifications of an existing structure that increases floor area, not to exceed twenty-five per cent of the building floor area as originally constructed, and where the total building floor area is less than twenty thousand square feet; and
- (2) Minor modifications to the exterior of the existing structure.

"Restoration" means recovering accurately the authentic form and details of a property, or a structure and its setting, usually by renovating a later work, or replacing missing earlier work[+].

"Revised ordinances of Honolulu" or "ROH" means the revised ordinances of the city and county of Honolulu, as amended.

"Rules clearance" means and includes a permit approved and issued by the executive director when the uses, structures, and activities:

- (1) Complies with setback requirements, height limits, and all other applicable standards and existing nonconformities; and
- (2) Does not require the issuance of a renovation permit, improvement permit, or development permit.

"Tower" means a single building form which may be situated above or abutting a platform~~[+ and]~~.

"Tower footprint" means the largest area of a single floor of a building above sixty-five feet in height as measured from its exterior faces or edges. [Eff 2/24/90; am 1/7/91; am 2/22/93; am and comp 10/10/98; am 1/13/00; am and comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

~~[§15-23-6 Rules for construction of language.~~

~~The following rules of construction apply to the text of this chapter.~~

- ~~(1) The particular shall control the general;~~
- ~~(2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, map, summary table, or illustrative table, the text shall control;~~
- ~~(3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive;~~
- ~~(4) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary;~~

- ~~(5) A "building" or "structure" includes any part thereof;~~
- ~~(6) The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for";~~
- ~~(7) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity;~~
- ~~(8) Unless the context clearly indicates the contrary, where a rule involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or", or "either...or", the conjunction shall be interpreted as follows:

 - ~~(A) "And" indicates that all the connected items, conditions, provisions, or events shall apply.~~
 - ~~(B) "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.~~
 - ~~(C) "Either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination;~~~~
- ~~(9) The word "includes" shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of kind or character. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-7) (Imp: HRS §§206E-4, 206E-7)] REPEALED. [R REDACTED]~~

§15-23-6.1 Rules of interpretation. (a)

Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.

(b) In addition to the text-only contents of the rules, section 15-23-6.1 shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-23-5 shall be accorded their commonly accepted meanings. In the event of conflicts between the definitions in section 15-23-5 and those found elsewhere within the authority's administrative rules, the definitions in section 15-23-5 shall take precedence.

(d) Figures 1 to 6, dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, are an integral part of the rules. Figure 7, dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, contains illustrative guidelines.

(e) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, map, summary table, or illustrative table, the text shall control.

(f) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(g) Words used in the singular include the plural; words used in the plural include the singular.

(h) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(i) Within the rules, sections are occasionally prefaced with purpose or intent statements that are intended to guide the implementation of the rules but are not binding standards.

(j) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of the authority's rules of practice and procedure, chapter 219, Hawaii administrative rules, are higher or more restrictive, the latter shall control.

(k) If there is uncertainty about the location of any zone boundary shown on the regulating plan, the location of the boundary shall be determined by the executive director as follows:

- (1) Where a zone boundary approximately follows a lot line, alley, or street, the lot line, alley centerline, or street centerline shall

- be construed as the zone boundary, as applicable;
- (2) If a zone boundary divides a parcel and the boundary line location is not specified by distances printed on the regulating plan, the location of the boundary will be determined by using the scale appearing on the regulating plan; and
 - (3) Where a public thoroughfare or alley is officially vacated or abandoned, the property that was formerly in the street or alley will be included within the zone of the adjoining property on either side of the vacated or abandoned thoroughfare or alley. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-7 [~~Establishment of the Kakaako community development district.~~ The Kakaako district was established by the legislature in 1976. As originally established, the district included that area bounded: by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street. The legislature, during its 1982, 1987, and 1990 sessions, revised the district's boundary to include an area of approximately 221 acres makai of Ala Moana Boulevard. The district's present boundary is defined in section 206E-32, HRS, and is delineated on Figure 1, entitled "Makai Area Context [Plan]", dated [September 2005,] , and attached at the end of this chapter. [Eff 2/24/90; am 1/7/91; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05] (Auth: HRS §206E-32) (Imp: HRS §206E-32)] REPEALED. [R]

§15-23-7.5 Compliance with other regulations.

(a) Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:

- (1) Makai area rules. If a conflict occurs between requirements within the rules, the most restrictive requirement shall apply;
- (2) Makai area plan. When the provisions of the rules are in conflict with the makai area plan, the rules shall take precedence;
- (3) Master plan. If conflicts occur between the requirements of the makai area rules and standards adopted as part of any master plan, the requirements of the master plan shall apply; and
- (4) Private agreements. If conflicts occur between the requirements of the rules and private agreements or restrictions, the rules shall apply and take precedence. The rules apply to all real property located within the makai area regardless of whether the rules impose a greater or lesser restriction on the development or use of structures or land than a private agreement or restriction, such as conditions, covenants and restrictions.

(b) The provisions of chapter 15-219, the authority's rules of practice and procedure, apply within the makai area and may be referenced herein.
[Eff:] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-8 Establishment and scope of controls.

(a) In harmony with the purpose and intent of chapter 206E, HRS, these rules are established by the Hawaii community development authority for the makai area of the ~~[Kaka'ako]~~ Kaka'ako district ~~[controlling, regulating, and determining;]~~ to regulate the area of lots; height of buildings; minimum yards and setbacks; required open spaces; the density of buildings; the location and amount of ~~[residential uses, commercial~~

~~uses, recreational uses, waterfront industrial uses, public uses, and other appropriate~~ authorized uses; the location of buildings and other structures; off-street loading requirements; ~~[payment of]~~ public facilities fee requirements; architectural design; urban design; historic and cultural sites; circulation criteria; environmental standards; and other appropriate ~~[regulations]~~ matters relating to land use, zoning, climate change, sea level rise, climate-resilient development, and planning for buildings and structures for all properties within the makai area of the ~~[Kakaako]~~ Kaka'ako district.

(b) This chapter, together with the makai area plan ~~[of the Kakaako District]~~, shall govern all developments and use of properties within the makai area. ~~[In case of any discrepancy between the provisions of this chapter and the makai area plan, this chapter shall control.]~~

(c) No building permit shall be issued for any ~~[development]~~ project within the makai area unless ~~[the development]~~ it conforms to the provisions of the makai area plan and this chapter.

(d) All ~~[developments, proposed developments,]~~ projects, proposed projects, and properties within the makai area shall be subject to all of the provisions of this chapter and the makai area plan. This requirement shall apply notwithstanding the fact that at the effective date of this chapter, a city and county of Honolulu building permit has been applied for or has been issued for the developments, proposed developments, or properties; provided that such requirement shall not apply if a city and county of Honolulu building permit has been issued, substantial expenditures have been incurred, and substantial changes in the land have already occurred. Substantial changes in the land shall be evidenced by substantial excavations for foundations.

~~[(e) No public improvement or project within the makai area shall be initiated or adopted unless it conforms to and implements the makai area plan and this chapter.]~~

~~(f)~~ (e) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's development plan (Ordinance No. 81-79, as amended), the provisions of the ~~[Kakaako]~~ Kaka'ako special design district ordinance (Ordinance No. 80-58, as amended), the provisions of the Hawaii Capitol District Ordinance (Article 7, land use ordinance), and the provisions of the land use ordinance (Ordinance No. 86-96, as amended) as they all shall relate to properties within the ~~[Kakaako]~~ Kaka'ako district. The foregoing ordinances are hereby declared to be inconsistent with this chapter, and shall therefore be inapplicable to developments within the district unless otherwise specifically stated.

~~(g)~~ (f) Except as otherwise specifically stated in this chapter, all other rules, laws, and ordinances shall continue to remain applicable to the developments and properties within the ~~[Kakaako]~~ Kaka'ako district.

~~(h) All agencies of the city and state governments shall perform their duties, functions, and powers which affect the Kakaako district in accordance with the provisions of the Kakaako plans and this chapter.~~

~~(i) Project plans that have been approved as to project eligibility shall not be required to comply with the provisions of this chapter or the makai area plan that have been amended subsequent to said approval and prior to construction. However, construction not in compliance with said amended provisions shall be regarded as nonconforming for the purposes of this chapter.]~~

(g) Developments shall not be approved unless adequate infrastructure facilities are or will be made available to service the proposed development prior to occupancy. The executive director may consult with applicable governmental agencies regarding the adequacy of infrastructure requirements. Any development approval may be conditioned with the requirement that the concerns and requirements of

appropriate governmental agencies relative to the adequacy of infrastructure facilities for the proposed development are satisfied. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-33) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-33)

§15-23-9 REPEALED. [R 10/10/98]

§15-23-10 [~~Project eligibility review.~~ (a) ~~The executive director may require, prior to receipt of any application for a development permit, a project eligibility review of the development project to consider the project's relationship to the makai area plan, its impact on infrastructure facilities such as streets, pedestrian and bicycle circulation, sanitary sewers, drainage and water, and to improve efficiency and avoid unnecessary delays and expense in processing the formal development application. No development application for which a project eligibility review has been required shall be considered until the project eligibility review has been completed.~~

~~(b) To conduct project eligibility review, the applicant shall provide sufficient information that the executive director may reasonably request, such as the proposed site plan, basic massing, floor area allocation and location of proposed uses, off-street parking and loading, pedestrian and vehicular circulation, topography (existing and proposed), and location of existing and proposed improvements and utilities.~~

~~(c) To the extent possible, project eligibility review shall be completed within thirty days of the executive director's determination to require the review.~~

~~(d) Developments shall not be approved unless adequate infrastructure facilities are or will be made available to service the proposed development prior to~~

~~occupancy. The executive director may consult with applicable governmental agencies regarding the adequacy of infrastructure requirements. Any development approval may be conditioned with the requirement that the concerns and requirements of appropriate governmental agencies relative to the adequacy of infrastructure facilities for the proposed development are satisfied.~~

~~(e) Notwithstanding the requirement for a project eligibility review, potential applicants may seek preliminary review of their proposed developments with the executive director prior to submitting an application for a development permit.] REPEALED.~~
[R _____]

§15-23-10.1 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules, except rules clearance, zoning clearance, and temporary use permit applications.

(c) Application materials. No application shall be deemed complete unless all of the information required by forms published by the authority and required for proper assessment of the request are included and all filing fees have been paid. The executive director shall ensure that application materials are available to the public electronically via the internet and in hardcopy format at the authority's office upon request.

(d) Jurisdiction. All applications shall be reviewed by the executive director or designee for completeness. At the time of proposed filing and fee payment, the executive director may reject any application that omits information required by forms published by the authority. Once accepted for filing, the executive director's final determination on

completeness of an application is appealable to the authority pursuant to section 15-23-13.

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Multiple permit approvals. When a proposed project requires more than one permit approval, the applicant shall apply for all such permit approvals concurrently.

(g) Completeness review process:

(1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is determined to be incomplete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which those parts of the application can be made complete, including a list and thorough description of the specific information needed to complete the application;

(2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from the agency or entity prior to deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;

(3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;

- (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-23-13. If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. Automatic approvals do not apply if an applicant submits an application for an incorrect permit type. In computing time periods of this section, the day upon which the application was submitted is not to be included. The last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(i) Information requests. After the executive director issues a certificate of completeness or is deemed complete as per section 15-23-10.1(c), the executive director or authority may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits.

(j) Pre-application meeting. Applicants may request a meeting with the executive director or designee to review the application materials prior to or after filing and submission. [Eff _____]

(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-11 [Development permits.] ~~(a) A development permit certifying that the development complies with this chapter and the makai area plan shall be obtained from the authority prior to the issuance of a building permit.~~

~~(b) An application to the authority for a development permit shall include complete, detailed information showing that the development complies with all of the provisions of this chapter and the makai area plan. The authority may determine the nature and extent of the information required in the application.~~

~~(c) Development permits approved by the authority or executive director may be amended by the same provided the applicant demonstrates how the amendment would advance the purposes of redevelopment and be consistent with the intent of this chapter and the makai area plan. When considering a request for amendment to a development permit, the following shall be adhered to:~~

- ~~(1) A public hearing shall be held if the amendment concerns an issue that would have required a public hearing prior to issuance of a development permit and the amendment does not qualify for administrative amendment; and~~
- ~~(2) The authority or executive director, as the case may be, may attach conditions or require compliance with any other provisions of this chapter or the makai area plan.~~
~~{Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05} (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)} REPEALED.~~
~~[R]~~

§15-23-12 Administration. The authority, through its executive director, shall administer the provisions of this chapter. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05]

(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-13 Appeals. ~~[(a) The authority shall hear and determine appeals from the actions of the executive director in the administration of this chapter.]~~ (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 2 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if the authority finds[that the]:

- (1) The executive director's action was based on an erroneous finding of a material fact[~~r~~]; or [that the]
- (2) The executive director had acted in an arbitrary or capricious manner or had manifestly abused his or her discretion.

~~[(b)]~~ (c) All appeals and appeal procedures shall [comply with the provisions of subchapter 7 of chapter 15-16.] be filed and processed in accordance with the authority's rules of practice and procedure, title 15, chapter 219, Hawaii Administrative Rules.
[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7).

§15-23-14 [Variances.] ~~(a) The authority shall hear and determine petitions for varying the application of this chapter with respect to a specific parcel of land and building, and may grant a variance based on unnecessary hardship if the record shows that:~~

- ~~(1) The applicant would be deprived of the reasonable use of land or building if it~~

~~were used only for the purpose allowed in that zone;~~

~~(2) The request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question; and~~

~~(3) The use sought to be authorized by the variance will not alter the essential character of the locality nor be contrary to the intent and purpose of this chapter or the Kakaako plan.~~

~~(b) The authority shall specify the particular evidence which supports the granting of a variance. The authority may impose reasonable conditions in granting a variance.~~

~~(c) Prior to making a determination on a variance application, the authority shall hold a public hearing. The public hearing shall afford interested persons a reasonable opportunity to be heard.~~

~~(d) Any variance granted under the provisions of this section shall automatically terminate if a development permit for a development requiring said variance has not been issued within two years from the date of granting the variance. This time limit may be extended for a period not to exceed two years, on the authority's approval of the applicant's request and justification in writing for an extension, provided the request and justification are received by the authority at least one hundred days in advance of the automatic termination date of the variance and there are no material changes in circumstances which may be cause for denial of the extension. Prior to making a determination on a request for extension, the authority shall hold a public hearing.~~

~~(e) All requests for variances and the applicable requirements and procedures thereto shall comply with subchapter 5 of chapter 15-16. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS~~

~~§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]. REPEALED. [R REDACTED]~~

§15-23-14.1 Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by section 15-23-14.1(f).

(c) Types. Variances are subject to authority review and action.

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Deprivation of the reasonable use of the property. The applicant would be deprived of the reasonable use of land or building in complying strictly with the standards of the rules. Reasonable use is not highest and best use;
- (2) Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (3) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the owner or by a predecessor in title;
- (4) Minimal deviation. That the variance, if granted, is the minimum deviation necessary

to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;

- (5) Neighborhood character. That the variance, if granted, will not alter the existing or planned character of the neighborhood or neighborhood zone in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and
- (6) No adverse impact. The variance would result in development that is not detrimental to or that would adversely impact adjacent properties.

(e) Variances for buildings for civic uses. In addition to the findings required by section 15-23-14.1(d) above, a community identity finding shall also be required to grant approval for a variance involving a new building or substantial modification to an existing building providing for a civic land use classification of Figure 5 (land use), dated _____, made a part of this chapter, and attached at the end of this chapter. The community identity finding establishes that the building and use provides a public service dedicated to arts, culture, education, recreation, government, transit or public parking and is uniquely designed to feature as a prominent, architecturally significant contribution to the built environment such that deviation from the provisions of the rules is warranted.

(f) Limitations. The following shall not be eligible for variance approval:

- (1) Change of zone;
- (2) Land use classifications as described in Figure 5 (land use), dated _____, made a part of this chapter, and attached at the end of this chapter; and
- (3) Any maximum floor area ratio standard.

(g) Submittal requirements. Each variance application shall include, at a minimum, the following:

- (1) A statement of the standard or standards that are the subject of the proposed variance;
- (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
- (3) A justification for the proposed variance in light of all requirements set forth above;
- (4) Plans drawn to scale, showing the nature, location, dimensions, and elevation of the structure, area or part thereof that is the subject of the proposed variance; including the development projects relationship to the surrounding context; and
- (5) Other information as may be required by the decision-maker. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-15 Nonconformities. (a) Except as otherwise provided, nonconforming uses of land and structures, and nonconforming lots, structures, parking, and loading within the makai area may be continued subject to the provisions of this section.

(b) Any provision to the contrary notwithstanding, existing industrial and commercial uses which meet reasonable performance standards as contained in this chapter shall be permitted to continue in appropriate locations within the district~~[-]~~ as determined by the authority in its sole discretion.

(c) Nonconforming uses may be permitted anywhere within the existing makai area.

(d) Nonconforming use of land shall not:

- (1) Be enlarged, increased, or extended to occupy a greater area of land than was occupied on ~~[October 10, 1998,]~~ [REDACTED] ;
- (2) Continue if it ceases for any reason (except where government action impedes access to the premises) for a period of more than six

consecutive months or for twelve months during any three-year period; or

- (3) Be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use on [~~October 10, 1998.~~] [REDACTED].

(e) The following requirements apply to nonconforming uses of structure:

- (1) Nonconforming use of structure shall not extend to any part of the structure which was not manifestly arranged or designed for the use on [~~October 10, 1998.~~] [REDACTED]; and a nonconforming use shall not be extended to occupy any land outside the structure. The structure shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered;
- (2) Nonconforming use of structure shall not continue if it is discontinued for twelve consecutive months or for eighteen months during any three-year period;
- (3) If structural alterations are not made, any nonconforming use of a structure, or structure and premises in combination, may be changed to another nonconforming use of the same nature, or to a more restricted use, or to a conforming use; provided that change to a more restricted use or to another nonconforming use may be made only if the relation of the structure to the surrounding property is such that adverse effects on occupants and neighboring property will not be greater than if the original nonconforming use continued;
- (4) On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, roofs, fixtures, wiring, or plumbing, to an extent not exceeding ten per cent of the current

replacement value of the building; provided that the cubic content of the building as it existed on [~~October 10, 1998,~~] , shall not be increased; and

- (5) Nothing contained in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of that official.

(f) The following requirements apply to nonconforming structures:

- (1) A nonconforming structure may be continued as long as it remains otherwise lawful;
- (2) A nonconforming structure may be altered in any way which does not increase its nonconformity. However, a nonconforming structure may be enlarged without satisfying the public facilities fee and open space requirements of this chapter~~[7]~~; provided that:

- (A) The floor area of the proposed construction does not exceed twenty-five per cent of the floor area of the structure as it legally existed on [~~October 10, 1998,~~] , or floor area of the structure at the time of application for [~~a~~] an improvement or development permit excluding proposed demolitions, whichever is less;

- (B) The proposed construction does not encroach into a required yard, except that roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, planters, or awnings are allowed if they do not extend more than four feet from the existing structure. However, in no event shall roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses,

- or planters be closer than five feet from the property line; and awnings may extend over the property line above public property pursuant to the provisions of paragraph (6);
- (C) The total floor area of the existing structure and the expansion do not exceed 1.5 FAR;
- (D) The proposed construction does not exceed forty-five feet in height;
- (E) The proposed construction does not adversely affect neighboring properties;
- (F) The parking requirements of this chapter are satisfied for the area proposed to be constructed; and
- (G) The area created by the proposed construction will be utilized for a permitted use;
- (3) Any provision of these rules to the contrary notwithstanding, if a nonconforming structure is proposed to be partially acquired as part of an improvement district or other public project, the remainder of the structure may be demolished and the equivalent floor area reconstructed on the lot without satisfying the public facilities fee and open space requirements of this chapter~~[7]~~; provided that the executive director shall find that the proposed reconstruction will be utilized for a permitted use, is practically and aesthetically superior to that which would otherwise result if the partially acquired structure was refaced at the new property line, and does not substantially increase nonconformity. Any additional floor area created by the proposed reconstruction shall be subject to the applicable requirements of this chapter;
- (4) If a nonconforming structure is destroyed by any means to an extent of more than fifty

per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of these rules.

Except as otherwise provided herein, no nonconforming structure that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the provisions of this chapter;

- (5) If a nonconforming structure is moved for any reason, it shall thereafter conform to the applicable rules of this chapter after it is moved;
- (6) Any awning may extend from a nonconforming structure over public property, provided approvals from the appropriate governmental agencies are secured and the awning does not extend more than four feet from the face of the building to which it is attached; and

~~[(7) Upon satisfaction of the zoning adjustment provision set forth in section 15-23-21, walls and fences may project into or enclose any part of any front yard; provided that the wall or fence does not exceed a height of six feet and front yard nonconformities already exist on the development lot.]~~

(g) The following requirements apply to nonconforming lot:

- (1) A nonconforming lot shall not be reduced in area, width, or depth, except because of a government project that is intended to further the public health, safety, or welfare or the intent of the makai area plan;
- (2) Any conforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot as long as all other requirements of this chapter are complied with.

(h) Nonconforming parking and loading may be continued, subject to the following provisions:

- (1) If there is a change in use which has a greater parking or loading requirement than the former use, additional parking and loading shall be required and shall not be less than the difference between the requirements for the former use and the proposed use; and
- (2) Off-street parking and loading requirements of this chapter shall be satisfied for additional floor area constructed. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§15-23-16 Application fees. [~~(a) Applications for which a public hearing is required shall be accompanied by an application fee. The application fee shall consist of the following:~~

- ~~(1) A nonrefundable processing fee of \$200 to defray expenses associated with staff review, preparation of a report to the authority, and to conduct the public hearing; and~~
- ~~(2) A fee for the publication and transmittal of the hearing notice. The cost of the hearing notice shall be refunded only if the public hearing notice has not been submitted to the publishing agency. If a joint hearing is held for more than one permit requiring a public hearing for a single development project, only one public hearing fee shall be charged.]~~ (a) The following fee schedule shall be applicable to all permits, rule clearance, and public hearings.

Permit Fee Schedule

<u>Rule</u>	<u>Permit</u>	<u>Fee Amount</u>
<u>§15-23-14.1</u>	<u>Variance</u>	<u>\$500 plus the cost of public hearing</u>
<u>§15-23-24</u>	<u>Zoning Clearance</u>	<u>\$50</u>
<u>§15-23-25</u>	<u>Rules Clearance</u>	<u>\$50</u>
<u>§15-23-26</u>	<u>Renovation Permit</u>	<u>\$50</u>
<u>§15-23-27</u>	<u>Improvement Permit</u>	<u>Project size up to 1,000 square feet (sf): \$50</u>
		<u>Project size of 1,001 sf to 10,000 sf: \$100</u>
		<u>Project size of 10,001 sf to 20,000 sf: \$500</u>
<u>§15-23-27</u>	<u>Development Permit</u>	<u>\$6,400 plus the cost of public hearing</u>
<u>§15-23-78</u>	<u>Temporary Use Permit</u>	<u>\$50</u>
<u>§15-23-79</u>	<u>Conditional Use of Vacant Land</u>	<u>\$50</u>
<u>§15-23-82.1</u>	<u>Conditional Use Permit</u>	<u>\$500 plus the cost of public hearing</u>
<u>§15-23-178</u>	<u>Master Plan Permit</u>	<u>\$10,000 plus the cost of public hearing</u>

(b) Government agencies shall be exempt from all fees required by this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5) (Imp: HRS §§206E-4, 206E-5)

§15-23-17 Violations. (a) The authority may maintain an action for an injunction to restrain any violation of this chapter or the makai area plan, and may take lawful action to prevent or remedy any violation.

(b) When the executive director finds that a violation ~~[is found to have occurred]~~ has occurred, the executive director shall require that corrective action be taken and may impose administrative penalties pursuant to subchapter 8 of chapter 15-16. [Eff 2/24/90; am 10/3/94; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-23-18 Amendments. This chapter may be amended pursuant to chapter 91, HRS, as may be necessary. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-19 Severability. (a) If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of these rules shall continue to be separately and fully effective

(b) If a court of competent jurisdiction finds the application of any provision or provisions of this chapter to any zoning lot, building or other structure, or tract of land to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to the person, property, or situation immediately involved in the controversy, and the application of any such provision to other persons, property, or situations shall not be affected. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS

§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-20 Interpretation by the executive director. (a) In administering this chapter, the executive director may, when deemed necessary, render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity and applicability to a particular situation. The executive director may also provide a preliminary interpretation of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting.

~~(b) [A written interpretation shall be signed by the executive director and include the following:~~

- ~~(1) Identification of the section of this chapter in question;~~
- ~~(2) A statement of the problem;~~
- ~~(3) A statement of interpretation; and~~
- ~~(4) A justification statement.~~

~~(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to these rules shall be public record, and shall be effective on the date signed by the executive director.]~~ The issuance of an interpretation shall include findings stating the basis for the interpretation. The basis for an interpretation may include but is not limited to technological changes or new industry standards. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the makai area plan.

(c) All interpretations shall be:

- (1) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and

(2) Distributed to the authority, executive director, and authority staff.

(d) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-23-13; and

(e) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical pursuant to subchapter 4, chapter 15-219, Hawaii Administrative Rules. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section, or subsection that is the subject of the interpretation. [Eff 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-21 ~~[Zoning adjustments and waivers. (a) When a development standard contained in this chapter identifies specific circumstances under which a revision is appropriate, an applicant may request an adjustment to the standard. An adjustment request is to be filed with supporting material specifying the requested adjustment and the manner in which the proposed project qualifies for the adjustment. A request for adjustment shall be approved by the executive director upon finding that criteria for the adjustment specified in the standard are satisfied.~~

~~(b) The strict application of the development or design standards of this chapter may be waived by the executive director for public uses and utility installations. The granting of the waiver shall not, under the circumstances and conditions applied in the particular case, adversely affect the health and safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements. The burden of proof in showing the reasonableness of the proposed waiver shall be on the applicant seeking the waiver.~~

~~{Eff 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05} (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)}~~ REPEALED.

[R REDACTED]

§15-23-22 Automatic approvals. (a) The following ~~[development-related]~~ permits ~~[and approvals]~~ shall be deemed approved if ~~[no decisions are made granting or denying them]~~ a certificate of completeness has been issued as appropriate, any applicable hearings have been held, but no decision has been rendered within the [following] review periods[+] in the table below:

- ~~{(1) Master plan permits: 200 days;~~
- ~~(2) Development permits: 160 days;~~
- ~~(3) Certificates of appropriateness: 160 days;~~
- ~~(4) Conditional use permits for off-site parking or joint use of parking: 160 days;}~~
- ~~(5) Variances: 100 days;~~
- ~~(6) Modifications: 100 days;~~
- ~~(7) Certificates of project eligibility: 60 days;~~
- ~~(8) Conditional use permits for vacant land: 30 days;~~
- ~~(9) Zoning adjustments and waivers: 30 days; and~~
- ~~(10) Temporary use permits: 10 days.]~~

Automatic Approvals Duration

<u>Rule</u>	<u>Permit</u>	<u>Duration</u>
<u>§15-23-14.1</u>	<u>Variance</u>	<u>100 calendar days</u>
<u>§15-23-24</u>	<u>Zoning clearance</u>	<u>30 calendar days</u>
<u>§15-23-25</u>	<u>Rules clearance</u>	<u>60 calendar days</u>
<u>§15-23-26</u>	<u>Renovation permit</u>	<u>90 calendar days</u>
<u>§15-23-27</u>	<u>Development permit</u>	<u>160 calendar days</u>
<u>§15-23-27</u>	<u>Improvement permit</u>	<u>120 calendar days</u>
<u>§15-23-78</u>	<u>Temporary use permit</u>	<u>14 calendar days</u>
<u>§15-23-79</u>	<u>Conditional use of vacant land</u>	<u>90 calendar days</u>
<u>§15-23-82.1</u>	<u>Conditional use permit</u>	<u>90 calendar days</u>
<u>§15-23-178</u>	<u>Master Plan permit</u>	<u>200 calendar days</u>

(b) The review period shall commence upon ~~[submission of a complete application. In the event that no decision is rendered on the application within ten days of the submission of a complete application, the applicant shall be notified of the date for automatic approval;]~~ issuance of a certificate of completeness, as pursuant to section 15-23-10.1.

(c) When a proposed project requires more than one permit ~~[or approval or both listed in subsection (a), the applicant may apply for some or all such approvals concurrently. The review period for concurrent applications shall be based on the permit or approval with the longest review period.],~~ the longest review period of the durations shown in the table following section 15-23-22(a) shall apply for determining the deemed approved date. If one approval

is required before proceeding with another approval, then the review periods will be added to one another.

(d) Application filing procedures and preparation guidelines may be provided to assist applicants. [Eff 1/13/00; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp]
(Auth: HRS §§91-13.5, 206E-4, 206E-5, 206E-7) (Imp: HRS §§91-13.5, 206E-4, 206E-5, 206E-7)

§15-23-23 Approval validity period. (a) Rules clearance, renovation permits, and zoning clearance approvals shall have an effective approval period of one year.

(b) Improvement permits, development permits, conditional use permits, and variance approvals shall have an effective approval period of two years, unless extended under these rules.

(c) Master plan permits shall have an effective approval of ten years, unless extended pursuant to section 15-23-178.1(g).

(d) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, an improvement permit may be extended by the executive director for a period of up to one year. The executive director may issue up to two extensions. Development permits may be extended by the authority for a period of up to one year. The authority may issue up to two extensions for development permits.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a business day, in which event the period runs until the next business day.

(f) If construction has not commenced within the approval validity period, a new permit will be required. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-24 Zoning clearance. (a) Applicability. Any identified uses and activities that are in

compliance with the applicable land use standards may be issued a zoning clearance to satisfy the requirements of other government agencies.

(b) Initiation. An applicant may apply for a zoning clearance by filing an application with the executive director.

(c) Action. In accordance with Figure 2 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director may approve all zoning clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-25 Rules clearance. (a) Applicability. Any uses, structures, and activities identified by section 15-23-25(b) that are in compliance with the setback requirements, height limits, and all other applicable standards and, where applicable, those relating to section 15-23-15 (nonconformities), shall require a rules clearance permit.

(b) Qualifying land uses, structures, and activities. The following are eligible for issuance of a rules clearance when in compliance with section 15-23-25(a):

- (1) Decks, paths, and driveways. Decks, platforms, on-site paths, and driveways that are not required to have a building permit or grading permit;
- (2) Fences and walls in compliance with height and location requirements;
- (3) Interior alterations or change in use that do not increase the gross floor area of the structure;
- (4) Repairs and maintenance. Ordinary non-structural repairs to, and maintenance of existing structures, if:
 - (A) The work does not change the approved land use of the site or structure, or

- add to, enlarge, or expand the land use and/or structure; and
- (B) Any exterior repairs employing the same materials and design as the original construction;
- (4) Small, portable accessory structures. A single portable structure of one hundred twenty square feet or less per lot or unit, including pre-manufactured storage sheds and other small structures that are exempt from having to obtain a building permit from the city and county of Honolulu and in compliance with the applicable building code. Additional structures that are consistent with this subsection may be approved by the executive director;
- (5) Open space and parks. Any improvement project over, upon, under, or across any open space or park pursuant to Figure 3 (land use zones), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (6) Private utility improvements or repairs for existing structures; and
- (7) Any public utility project.
- (c) Action. In accordance with Figure 2 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee.
- (d) Exceptions. Building permits can be approved without an associated rules clearance permit in the following cases:
- (1) Standalone interior electrical or plumbing work that would otherwise comply with section 15-23-25(a);
- (2) Changes in use that are still permitted under subchapter 2. [Eff [REDACTED]]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-26 Renovation permit.

(a) Applicability. Any renovation project for an existing building, including uses, structures, and activities identified by section 15-23-26(b) that are in compliance with the setback requirements, height limits, and all other applicable standards and, where applicable, those relating to section 15-23-15 (nonconformities), shall require a renovation permit.

(b) Qualifying land uses, structures, and activities. The following are eligible for issuance of a renovation permit when in compliance with section 15-23-26(a):

- (1) Interior alterations, improvements, and modifications of an existing structure that increases floor area, not to exceed twenty-five per cent of the building floor area as originally constructed, and where the total building floor area is less than twenty thousand square feet; and
- (2) Minor modifications to the exterior of the existing structure.

(c) Exceptions. Renovation permits are not required if:

- (1) Approved as a rules clearance under section 15-23-25, an improvement or development permit under section 15-23-27, a temporary use permit under section 15-23-78, a conditional use of vacant land permit under section 15-23-79, or a conditional use permit under section 15-23-82.1; or
- (2) Waived as a minor change in accordance with section 15-23-90.

(d) Initiation. A developer may apply for a renovation permit by filing an application with the executive director.

(e) Action. In accordance with Figure 2 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all renovation permit applications consistent with this

section after receipt of a complete application and payment of the requisite fee. [Eff _____]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-27 Improvement and development permits.

(a) All new improvement projects and development projects shall require a permit.

(b) Types and eligibility. There shall be two types of permits: improvement permits and development permits. Each type shall be subject to the decision-maker review and action pursuant to Figure 2 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(1) Improvement permits shall apply to improvement projects as defined in section 15-23-5 and are subject to executive director review and action, except for developer proposals to develop lands under the authority's control; and

(2) Development permits shall apply to development projects as defined in section 15-23-5 and are subject to authority review and action.

(c) Exceptions. Improvement and development permits are not required when:

(1) Approved as a rules clearance under section 15-23-25, a renovation permit under section 15-23-26, a temporary use permit under section 15-23-78, a conditional use of vacant land permit under section 15-23-79, or a conditional use permit under section 15-23-82.1; or

(2) Waived as a minor change in accordance with section 15-23-90.

(d) Initiation. A developer may apply for an improvement permit or development permit by filing an application with the executive director.

(e) Required findings. Approval of an improvement permit or a development permit shall require all the following findings of fact:

- (1) Makai area plan consistency. The proposal complies with, and advances, the goals, policies, and objectives of the makai area plan;
- (2) Makai area rules consistency. The proposal protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the makai area rules;
- (3) Compatibility. The proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area; and
- (4) Climate Adaptation. The proposal has considered climate change, sea level rise, and climate-resilient development in the design and siting of buildings.

(f) Conditions. In approving a development permit or an improvement permit, the decision-maker may impose reasonable conditions to ensure that the approval complies with the findings required in subsection (e). Any conditions attached to a development permit or an improvement permit issued by the executive director or authority, as the case may be, under any previously enacted zoning regulations, subdivision, or other administrative rules shall continue to apply to the proposed use and shall be enforceable as provided in section 15-23-17 (violations). Such conditions may be waived if a development permit or an improvement permit application is approved by the decision-maker that originally imposed such condition(s) and where the applicant agrees to waive and abandon all rights secured under the regulations formerly in effect.

(g) Design advisory board ("DAB"). The executive director may convene a DAB prior to acting on an improvement or development permit application. Where an application has been referred to the

authority for review and action under section 15-23-27(h) or when reviewing a development permit application, the authority may convene a DAB whether or not the executive director has done so previously:

- (1) Composition. The DAB shall comprise the authority's director of planning and development or the director's designee, one member of the authority, one cultural consultant with specialized expertise on native Hawaiian culture, and one or more technical consultants (e.g., architect, landscape architect, or engineer) chosen by the executive director. The cultural consultant must be validated or be recommended by a native Hawaiian serving organization;
- (2) Fee. The applicant shall compensate the authority for all costs relating to the participation of cultural and technical consultants in the DAB. Prior to retaining cultural and technical consultants, the executive director shall consult with the applicant on the fees and work scope of the cultural and technical consultants; provided that the executive director may accept or reject the applicant's recommendations or comments, or both, on the cultural and technical consultant to be retained at the executive director's sole discretion; and
- (3) Purpose. The DAB shall provide only non-binding recommendations to the executive director or, in the case of referral under section 15-23-11(g), to the authority.

(h) Authority referral. The executive director may refer an improvement permit application to the authority for review and action. Where a DAB has been or will be convened, the DAB shall review the application and provide its non-binding recommendations to the authority. [Eff REDACTED]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§§15-23-23~~ §§15-23-28 to 15-23-29 (Reserved)

SUBCHAPTER 2

LAND USE ZONE RULES

§15-23-30 Establishment of land use zones.

(a) Within the makai area, there are hereby established the following land use zones:

- (1) ~~[Mixed-use]~~ Makai urban zone (MUZ);
- (2) Waterfront ~~[commercial]~~ community (WC);
- ~~[-(3) Mixed-use zone industrial (MUZ-I);~~
- ~~-(4)]~~ (3) Park (P); and
- ~~[-(5)]~~ (4) Public use areas (PU).

(b) The boundaries for each zone are set forth in ~~[Exhibit 2]~~ Figure 3 entitled "Land Use Zones", dated ~~[September 2005,]~~ , and attached at the end of this chapter.

(c) Buildings and lots in each zone shall conform to the land uses specified in Figure 5 (land use), dated , made a part of this chapter, and attached at the end of this chapter.

(d) Any one or more allowed land uses may be established on any lot, subject to Figure 5 (land use), dated , made a part of this chapter, and attached at the end of this chapter.

(e) Where a single lot is proposed for development with two or more land uses listed in Figure 5 (land use), dated , made a part of this chapter, and attached at the end of this chapter, the project shall be subject to the permit with the highest level of discretionary review.

(f) In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§15-23-31 MUZ zone: purpose and intent. The ~~[mixed-use]~~ makai urban zone (MUZ) established by this chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

- (1) To provide a subdistrict whereby a variety of ~~[residential and commercial]~~ urban uses may coexist compatibly within the same area. The emphasis within this zone shall be to develop a mixed-use multi-storied area which will provide ~~[housing,]~~ jobs~~[,]~~ and other employment opportunities. In addition, the area will support a variety of appropriate community facilities ~~[for residents and workers];~~
- (2) To create a truly vibrant ~~[living and working]~~ environment by regulating the density and bulk of buildings in relation to the land around them and to one another, by requiring the provision of open space and encouraging the development of job opportunities;
- (3) To provide freedom of architectural design, in order to encourage the development of more attractive and economic building forms; and
- (4) To promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote community stability ~~[of residential and commercial development]~~, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

~~§15-23-32 [MUZ zone: use rules. Within the mixed-use zone (MUZ), the following uses and structures shall be permitted:~~

- ~~(1) Commercial uses:~~
 - ~~(A) Shopping center complexes;~~
 - ~~(B) Food markets, stores, delicatessens, bakeries;~~
 - ~~(C) Drug stores;~~
 - ~~(D) Liquor stores;~~
 - ~~(E) General merchandise;~~
 - ~~(F) Apparel and accessories;~~
 - ~~(G) Eating or drinking establishments;~~
 - ~~(H) Hardware stores;~~
 - ~~(I) Furniture, home furnishing, and equipment;~~
 - ~~(J) Stationery stores;~~
 - ~~(K) Variety stores;~~
 - ~~(L) Personal service establishments, including: barber shops, beauty shops, shoe repair shops, dry cleaning, dyeing, laundry, pressing, dressmaking, tailoring, and garment repair shops;~~
 - ~~(M) Business, vocational, and language schools;~~
 - ~~(N) Banks and financial institutions, insurance, and real estate offices;~~
 - ~~(O) Greenhouses and plant nurseries;~~
 - ~~(P) Private clubs, lodges, social centers, eleemosynary establishments, and athletic clubs;~~
 - ~~(Q) Theaters, museums, art galleries, libraries, historical sites;~~
 - ~~(R) Repair services for radio, television, bicycles, business machines and household appliances, other than those with internal combustion engines;~~
 - ~~(S) Commercial condominiums;~~
 - ~~(T) Commercial entertainment and recreation facilities (indoor and outdoor);~~

- ~~(U) Radio and television studios and other communication uses, excluding towers;~~
- ~~(V) Medical and health services;~~
- ~~(W) Legal, engineering, accounting, and other professional services;~~
- ~~(X) Offices, professional clinics, studios, medical and research laboratories;~~
- ~~(Y) Retail establishments, including incidental manufacturing of goods for sale only at retail on the premises;~~
- ~~(Z) Motor vehicle and vehicle accessory establishments (sales, rentals, and service);~~
- ~~(AA) Miscellaneous retail trade store;~~
- ~~(BB) Miscellaneous business services, including: watch, clock, and jewelry repair; typewriter repair; armature rewinding; general fix-it shop; advertising firm; employment agency; services to dwellings (window cleaning, insect exterminating); and management areas;~~
- ~~(CC) Governmental services administrative;~~
- ~~(DD) Military recruiting stations;~~
- ~~(EE) Outdoor private land recreation (operated for profit);~~
- ~~(FF) Travel agencies;~~
- ~~(GG) Parking garages (enclosed);~~
- ~~(HH) Laundry, laundry and cleaning service, (includes self-service laundry);~~
- ~~(II) Radio/TV broadcasting, excluding towers;~~
- ~~(JJ) Motion picture recording and sound studios;~~
- ~~(KK) Miscellaneous business services, including duplicating, blueprinting, linen supply, services to dwellings, typewriter repair, armature rewinding, and general fix-it shop; and~~
- ~~(LL) Personal services establishments, including: shoe repair shops, dry cleaning, dyeing, pressing,~~

~~dressmaking, tailoring, and garment repair shops.~~

~~(2) Residential uses: Multi-family dwellings, including apartments, assisted living facilities, public housing, condominiums, dormitories, rooming houses, townhouses, townhouse condominium and model units.~~

~~(3) Community service uses:~~

~~(A) Nursing clinics and convalescent homes, and nursing facilities, assisted living administration, or ancillary assisted living amenities for the elderly and people with disabilities;~~

~~(B) Child care, day care, and senior citizen centers;~~

~~(C) Nursery schools and kindergartens;~~

~~(D) Churches;~~

~~(E) Charitable institutions and nonprofit organizations;~~

~~(F) Public uses, including: public safety facilities; post offices; hospitals; miscellaneous health and medical facilities; educational institutions; cultural centers/ libraries; religious institutions; public school/park complexes; outdoor public land recreation; indoor public recreation; personal development centers; and utility substations, provided that utility substations other than individual transformers shall be surrounded by a wall, solid except for entrances and exits, or by a fence with a screening hedge six feet in height; provided also that transformer vaults for underground utilities and like uses shall require only a landscape screening hedge, solid except for access opening; and~~

~~(G) Consulates. (4) Uses and structures which are customarily accessory and clearly incidental and subordinate to the principal uses and structures.~~

~~[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~ REPEALED. [R REDACTED]

§15-23-33 WC zone: purpose and intent. The waterfront ~~[commercial]~~ community zone (WC) established by this chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

- (1) To promote an environment where ~~[residential and retail commercial]~~ urban and community uses will coexist compatibly alongside maritime uses; and
- (2) To promote the most desirable use of land and adjacent water uses in accordance with a well-considered plan, to promote stability of surrounding land uses, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings.
[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §206E-4, 206E-5, 206E-7)

~~§15-23-34 [WC zone: use rules.~~ ~~Within the waterfront commercial zone (WC), the following uses and structures shall be permitted:~~

- ~~(1) Commercial uses:~~
 - ~~(A) Food markets, stores, delicatessens, bakeries;~~
 - ~~(B) Drug stores;~~
 - ~~(C) Liquor stores;~~
 - ~~(D) General merchandise;~~
 - ~~(E) Apparel and accessories;~~
 - ~~(F) Eating and drinking establishments;~~

- ~~(G) Furniture, home furnishing, and equipment;~~
- ~~(H) Variety stores;~~
- ~~(I) Passenger transportation terminals;~~
- ~~(J) Theaters, museums, art galleries, libraries, and historical sites;~~
- ~~(K) Commercial recreation and entertainment facilities; and~~
- ~~(L) Offices, professional offices, travel agencies, and other office uses.~~
- ~~(2) Residential uses: Multi-family dwellings, including apartments, assisted living facilities, public housing, condominiums, dormitories, rooming houses, townhouses, townhouse condominium and model units.~~
- ~~(3) Maritime uses:~~
 - ~~(A) Fish and seafood wholesaling and retailing;~~
 - ~~(B) Aquariums and museums;~~
 - ~~(C) Piers, wharves, and docks;~~
 - ~~(D) Terminals for passengers arriving or departing by ship ferry or watertaxi; and~~
 - ~~(E) Sales offices for commercial maritime operations.~~
- ~~(4) Uses and structures which are customarily accessory and clearly incidental and subordinate to the principal uses and structures. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)] REPEALED. [R REDACTED]~~

§15-23-35 REPEALED. [R 10/10/98]

§15-23-36 REPEALED. [R 10/10/98]

§15-23-37 ~~[MUZ-I zone: purpose and intent. The purpose of the mixed-use zone industrial (MUZ-I) established by this chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:~~

- ~~(1) To provide a subdistrict whereby a variety of waterfront industrial and commercial uses may coexist compatibly within the same area. The emphasis within this zone shall be to develop a predominantly waterfront industrial area which will provide jobs and other employment opportunities. In addition, the area will support a variety of appropriate commercial and community facilities for workers;~~
- ~~(2) To ensure that harbor-related industrial activities that are vital to the performance of the port functions at Piers 1 and 2 are continued and facilitated; and~~
- ~~(3) To promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote stability of industrial and commercial development, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)] REPEALED.~~

[R REDACTED]

§15-23-38 ~~[MUZ-I zone: use rules. Within the mixed-use zone industrial (MUZ-I), the following uses and structures shall be permitted:~~

- ~~(1) Waterfront industrial uses:~~
- ~~(A) Piers, wharves and docks;~~

~~(B) Terminals for passengers arriving or departing by ship ferry or watertaxi;~~
~~(C) Sales offices for commercial maritime operations;~~
~~(D) Boating and fishing services and supplies;~~
~~(E) Fish and seafood wholesaling;~~
~~(F) Utilities installations; and~~
~~(G) Maritime fuel operations.~~
~~(2) Commercial uses:~~
~~(A) Food markets, stores, delicatessens, bakeries;~~
~~(B) Drug stores;~~
~~(C) Liquor stores;~~
~~(D) General merchandise;~~
~~(E) Apparel and accessories;~~
~~(F) Eating and drinking establishments;~~
~~(G) Furniture, home furnishing, and equipment;~~
~~(H) Variety stores;~~
~~(I) Passenger transportation terminals;~~
~~(J) Theaters, museums, art galleries, libraries, and historical sites;~~
~~(K) Commercial recreation and entertainment facilities; and~~
~~(L) Offices; professional offices, travel agencies, and other office uses.~~
~~(3) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)] REPEALED.~~
[R REDACTED]

§15-23-39 ~~[MUZ-I zone: development standards.~~
~~The following shall apply to waterfront industrial uses within the MUZ-I zone:~~
~~(1) On-site open space shall not be required;~~
~~(2) One off-street parking space for every two employees or one space per one thousand~~

~~square feet of floor area, whichever is greater, shall be required; and~~
(3) ~~Public facilities fees shall not be required. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~ REPEALED. [R REDACTED]

§15-23-40 Park areas. (a) Within areas designated "Park" (P), the following uses shall be permitted:

- (1) Amphitheaters;
- (2) Performing arts centers;
- (3) Museums, art galleries, and workshops;
- (4) Aquariums and marine research facilities;
- (5) Active and passive recreation;
- (6) Gardens~~[7]~~ and greenhouses;
- (7) Parking;
- (8) Exploratoriums; and
- (9) Uses and structures ~~[which]~~ that are customarily accessory and clearly incidental and subordinate to principal uses and structures.

(b) The authority may allow other uses~~[7]~~; provided that such other uses shall further the purpose and intent of this chapter and the makai area plan.

(c) In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-41 Public areas. (a) Within areas designated "Public" (PU), the provisions applicable to the adjacent land use zone shall apply. In addition, the following uses shall be permitted:

- (1) Utility substations;

- (2) Museums; and
- (3) Uses and structures [~~which~~] that are customarily accessory and clearly incidental and subordinate to principal uses and structures.

(b) In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp XXXXXXXXXX] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

§15-23-42 Minimum lot area, width, and depth.

Subdivision of any parcel within any land use zone shall result in a lot area of no less than ten thousand square feet and a lot width and depth of no less than sixty feet, provided no minimum subdivided lot area, width and depth shall apply to permanent off-site parking facilities, street and utility improvement projects, and public utility lots or easements used solely for utility facilities such as transformers, switch vault substations, and pumping stations. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-43 Subdivision and consolidation.

The subdivision or consolidation of land within any land use zone shall be processed and approved by the city and county of Honolulu. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-44 to 15-23-59 (Reserved)

§15-23-60 Additional development requirements.

In addition to the requirements of the respective land use zones specified in this subchapter, the development requirements of subchapter 3 relating to any development, irrespective of the land use zone in which it is located, shall be applicable unless specifically provided otherwise. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

SUBCHAPTER 3

GENERAL DEVELOPMENT REQUIREMENTS

§15-23-61 Purpose and intent. The purpose of this subchapter is to set forth standards relating to development which are generally applicable to any use or site, irrespective of the land use zone in which it is located. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-62 Density. The maximum floor area ratio (FAR) for any development lot within any land use zone shall be as set forth in [~~Exhibit 3,~~ Figure 4, entitled "Maximum Height and Density Plan", dated [~~September 2005,~~], and attached at the end of this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-63 Heights. (a) No portion of any building or other structure located within any land use zone shall exceed the height set forth in [~~Exhibit 3,~~

Figure 4, entitled "Maximum Height and Density Plan", dated ~~[September 2005,]~~ [REDACTED], and attached at the end of this chapter.

(b) The height of any structure shall be measured from ground elevation, except where finish grade is higher than ground elevation in order to meet city construction standards for driveways, roadways, drainage, sewerage, and other infrastructure requirements.

(c) The following building elements or features and associated screening shall be exempt from height limits subject to the following restrictions:

- (1) Necessary utilitarian features including: stairwell enclosures, safety railings, ventilators, and skylights; decorative or recreational features, including rooftop gardens, planter boxes, flag poles, spires, parapet walls or ornamental cornices; roof-mounted mast, whip and dish antennae; and energy-saving devices, including heat pumps and solar collectors, may exceed the height limit by not more than twelve feet; and
- (2) Vent pipes, fans, roof access stairwells, and structures housing rooftop machinery, such as elevators and air-conditioning, and chimneys, may exceed the height limit by not more than eighteen feet.

~~[(d) Miscellaneous building elements may exceed the height limit subject to the zoning adjustment process specified in section 15-23-21.~~

~~(e)]~~ (d) Auditoriums, amphitheaters, cultural facilities, and performing arts centers may exceed the height limit as approved by the ~~[executive director.]~~ authority.

~~[(f) Rooftop features which principally house elevator machinery and air-conditioning equipment may extend above the governing height limit for structures subject to the zoning adjustment provision set forth in section 15-23-21 and the following conditions:~~

- ~~(1) If the elevator cab opens on the roof, machinery may not be placed above the elevator housing;~~

- ~~(2) The highest point of the roofing treatment shall not exceed five feet above the highest point of equipment structures; and~~
- ~~(3) Areas proposed to be covered by the rooftop feature will not be counted as floor area, provided they are used only for the housing of rooftop machinery.] [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)~~

§15-23-64 Yards. (a) Every yard bounded by a street shall be a front yard. A minimum front yard of fifteen feet in depth shall be required for each development lot. The minimum front yard may be waived if commercial use is provided at grade that enhances the pedestrian environment. Notwithstanding the foregoing, the block bounded by Ala Moana Boulevard, Cooke, Ilalo, and Coral ~~[Streets]~~ streets shall have a minimum front yard of thirty feet in depth on its Cooke Street boundary and no front yard shall be required on its Coral Street boundary.

(b) The minimum side and rear yard requirements shall be as follows:

- (1) For structures without windows or openings facing side or rear property lines, no side or rear yard shall be required;
- (2) For structures containing windows or openings facing side or rear property lines, the minimum side yard shall be ten feet, and the minimum rear yard shall be ten feet; and
- (3) Parking spaces may extend to side and rear property lines through the ~~[zoning adjustment]~~ improvement or development permit process specified in section ~~[15-23-21,]~~ §15-23-27, subject to the following conditions:
 - (A) An area or areas of required yards equivalent to the area to be used for

parking or accessory use structures is provided elsewhere on the zoning lot. This equivalent area shall be maintained in landscaping, except for drives or walkways necessary for access to adjacent streets. Parking may overhang yard areas up to three feet if wheel stops are installed. A minimum of fifty per cent of the equivalent area shall be contiguous to the street frontage abutting the zoning lot.

(B) Any parking floor situated within ten feet of the property line shall not be more than four feet above existing grade.

(c) Yard widths shall be measured perpendicular to lot lines, except that front yards shall be measured perpendicular to the street right-of-way or the established street setback line, whichever is the greater distance from the street center line.

(d) All required yards shall be landscaped pursuant to section 15-23-142.

(e) No business or structure shall be carried on or located within any required yard except as follows:

- (1) Up to fifty per cent of the lot frontage may be used for outdoor dining areas~~[7]~~; provided they are covered with umbrellas, awnings, or trellises, and remain open on the sides during business hours;
- (2) Dispensers for newspaper sales and distribution are permitted;
- (3) Porte cocheres and pergolas may be allowed with approval of the executive director; and
- (4) Bicycle parking, including a fixed bicycle rack for parking and locking bicycles.

(f) Roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, planters, awnings, and other architectural embellishments or appendages, and minor mechanical apparatus with less than a thirty-inch vertical thickness may project into the required yards no more than five feet.

(g) Retaining walls within required yards shall not exceed a height of three feet. A safety railing, not capable of retaining earth or exceeding forty-two inches may be erected on top of the retaining wall. ~~[The executive director may allow modification of the maximum height based on safety or topography.]~~ Walls and fences may project into or enclose any part of any yard, except required front yards~~[7]~~; provided that the fence or wall shall not exceed a height of six feet. Walls and fences for public utility projects may be constructed up to eight feet in height and topped with security wire to a height of ten feet.

(h) Parking and loading including related maneuvering area or aisle shall not be allowed in any required yard or street setback area, except that parking spaces may overlap required front yards by three feet if wheel stops are installed. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-65 Open space. (a) Open space is that portion of a development lot, exclusive of required yards, setback areas, or parking areas, which is:

- (1) Open and unobstructed overhead;
- (2) Landscaped or maintained as a recreational or social facility;
- (3) Not to be used for driveways, loading purposes, or storage, or for the parking of vehicles; and
- (4) Visible and open to the public during normal business hours.

(b) Berms, landforms, or underground structures covered with landscape treatment, including artificial turf, shall be considered as part of the required open space~~[7]~~; provided that open space shall not exceed four feet from the sidewalk elevation. Open space can also be provided on a podium, roof garden, or roof top recreation area if it is publicly accessible and useable.

(c) For any development lot within any land use zone~~[, except lands entirely devoted to waterfront industrial uses in the MUZ-I zone]~~:

- (1) The minimum amount of open space shall be the lower of:
 - (A) Twenty per cent of the development lot area; or
 - (B) Thirty per cent of the development lot area less required yard areas;
- (2) The minimum required open space may include both of the following:
 - (A) Up to twenty-five per cent of an adjacent front yard; provided that:
 - (i) At least one-half of the open space is entirely in one location and proportioned to a maximum length-to-width of 2:1; and
 - (ii) One linear foot of seating is provided for each thirty square feet of open space;
 - (B) Up to twenty-five per cent of any passageways or arcades.

(d) Open space requirements for developments on lots of 40,000 square feet or less shall be according to the following table. For lot areas between 10,000 and 40,000 square feet, the minimum open space is proportional to the parameters of the lots enumerated in the following table:

Open Space Requirements for
Lots Less than 40,000 Square Feet

<u>Lot Area (square feet)</u>	<u>Minimum Open Space (Per cent of lot area)</u>
40,000	20
20,000	10
10,000 or less	0

[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02;
comp 12/9/02; am and comp 11/3/05; am and

comp [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-66 REPEALED. [R 10/10/98]

§15-23-67 Building envelopes. Building envelopes for developments shall conform with requirements set forth in [~~Exhibit 4,~~] Figure 6, entitled "Maximum Building Envelope", dated [~~September 2005,~~] [REDACTED], attached at the end of this chapter. Towers shall generally be oriented with the long axis in the mauka-makai direction. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-68 Off-street parking. [~~(a) Except as otherwise provided in this chapter, the minimum number of required off-street parking spaces for development lots within any land use zone shall be as specified in the following table:~~

~~OFF-STREET PARKING REQUIREMENTS~~

<u>Use</u>	<u>Requirement</u>
Auditoriums	One per three hundred square feet of assembly area or one per ten fixed seats, whichever is greater.

Churches and theaters	One per every five fixed seats or fifty square feet of general assembly area, whichever is greater.
Commercial and all other uses	One per four hundred square feet of floor area.
Daycare facilities	One per ten enrollment capacity.
Eating and drinking establishments	One per three hundred square feet of eating and drinking area, plus one per four hundred square feet of kitchen or other area.
Multi-family dwellings (including reserved housing units):	
600 sq. ft. or less	0.9 per unit
More than 600 but less than 800 sq.ft.	1.13 per unit
800 sq.ft. and over	1.35 per unit

Nursing clinics and convalescent homes, and special-care homes for the elderly and people with disabilities	0.9 per four patient beds, dwelling units, or lodging units.
Schools: language, vocational, business, technical and trade, colleges or universities	One for each ten students of design capacity, plus one per four hundred square feet of office floor area.
Waterfront industrial uses	One per one thousand square feet of floor area or one on-site space per every two employees, whichever is greater. On-site parking areas within this zone are not required to be enclosed.

~~(b) The following are to be used in determining the required number of off-street parking spaces:~~

- ~~(1) Where a proposed use is applicable to more than one use listed in the table in subsection (a), or where there may otherwise be uncertainty as to the off-street parking requirement for a proposed use, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirement;~~
- ~~(2) When computation of required parking spaces results in a fractional number, the number of spaces required shall be the nearest whole number;~~

- ~~(3) In churches and other places of assembly in which patrons or spectators occupy benches, pews, or other similar seating facilities each twenty-four inches of width shall be counted as a seat for the purpose of determining requirements for off-street parking;~~
- ~~(4) All required parking spaces shall be standard-sized parking spaces; and~~
- ~~(5) When a building or premise includes uses incidental or accessory to a principal use, the total number of spaces required shall be determined on the basis of the parking requirements of the principal use or uses, except that if the accessory use creates a larger parking demand than the principal use, the number of required parking spaces shall be determined on the basis of the parking requirement for each respective use.]~~

(a) There are no minimum number of required off-street parking spaces for development lots within any land use zone.

~~[(c)]~~ (b) The following are general standards for parking lots or areas:

- (1) All parking and drive areas shall be provided and maintained with an all-weather surface, except as otherwise provided in this chapter;
- (2) Parking areas, if illuminated, shall be illuminated in such a manner that all ~~[light.sources]~~ light sources are shielded from the direct view of adjacent lots;
- (3) Ingress and egress aisles shall be provided to a street and between parking bays, and no driveway leading into a parking area shall be less than twelve feet in width. In addition, minimum aisle widths for parking bays, except mechanical parking areas, shall be provided in accordance with the following table:

<u>Parking Angle</u> <u>(in degrees)</u>	<u>Aisle Width</u> <u>(in feet)</u>
0-44	12
45-59	13.5
60-69	18.5
70-79	19.5
80-89	21
90	22

Notwithstanding the foregoing, with a parking angle of ninety degrees, the minimum aisle width may be reduced by one foot for every six inches of additional parking space width above the minimum width of eight feet three inches, to a minimum aisle width of nineteen feet;

- (4) Where four or more parking spaces are ~~[required,]~~ provided, all parking areas shall be designed or arranged in a manner that no maneuvering into any street, alley, or walkway is necessary in order for a vehicle to enter or leave the parking space, and which allows all vehicles to enter the street in a forward manner;
- (5) Developments may have open or uncovered parking at grade. Developments ~~[which]~~ that provide parking in a structure shall contain a roof or trellis within the allowable height limit and walls on at least three sides. The walls shall be at least forty-two inches high and shall screen parked vehicles. ~~[Parking located on a roof shall be allowed subject to the zoning adjustment provision set forth in section 15-23-21, subject to the following conditions:~~
 - ~~(A) Negative impacts or incompatibilities with adjacent properties shall be mitigated; and~~

~~(B) Appropriate screening with architectural or landscaping elements shall be provided;]~~

- (6) Grade level open or uncovered parking areas with more than ten spaces shall provide at least eight per cent of the gross parking and driveway area as interior parking area landscaping. Interior parking area landscaping is defined as landscaped areas not counted as open space or required yard setbacks situated between parking stalls. The interior parking area landscaping shall consist of planter areas, each containing one tree of at least two-inch caliper with ground cover or shrubs at the base dispersed within the parking area. Trees within the planter area shall be limited to shade or flowering trees such as monkeypod, rainbow shower, poinciana, wiliwili, or autographs;
- (7) For new developments or enlargement of nonconforming structures, parking may be open or uncovered at grade but shall be buffered or screened from any right-of-way by a hedge of at least forty-two inches in height, provided the hedge shall not be required for vehicular sales or rental establishments. The hedge may be located in required yards or open space. Cars shall not be parked so as to protrude into required yards or open space, except as provided by section 15-23-64(b) (3) ~~[-]~~;
- (8) Above-ground parking lots and structures shall not front open space or thoroughfare without a liner building, active retail or commercial uses; and
- (9) To the maximum extent possible, above-ground multi-level parking structures shall be designed with flat floors and systems that can accommodate future conversion to inhabitable, non-parking uses.

~~[-d)]~~ (c) The following are general standards for parking spaces:

- (1) All spaces shall be individually marked if more than four spaces are required;
- (2) All spaces shall be unobstructed~~[7]~~; provided a building column may extend a maximum total of six inches into the sides of the parking space. A wall is not considered a building column;
- (3) Standard-sized parking spaces shall be at least eighteen feet in length and eight feet three inches in width with parallel spaces at least twenty-two feet in length; and
- (4) All spaces shall be so arranged that any automobile may be moved without moving another, except that tandem parking shall be permissible in instances where the parking spaces are used for employee parking, where all parking is performed by an attendant at all times, or for public assembly facilities and temporary events, including church services and activities where user arrivals and departures are simultaneous and parking is attendant directed. Tandem parking for employee parking shall be limited to a configuration of two stacked parking stalls and at no time shall the number of parking spaces allocated for employees exceed twenty-five per cent of the total number of required spaces.

~~[(e)]~~ (d) Mechanical means of providing parking spaces or access thereto~~[7]~~ is permitted; provided the following conditions are met:

- (1) Adequate waiting and maneuvering spaces are provided on the lot in order to minimize on-street traffic congestion, subject to the approval of the executive director; and
- (2) All mechanical equipment shall be visually screened by architectural or landscape treatments.

~~[(f)]~~ (e) Parking for the physically disabled shall comply with applicable federal, state, and county standards, rules, and regulations for the

physically disabled. Public projects shall comply with section 103-50, HRS.

~~[(g) A conditional use permit for joint use or off-site parking facilities described in subsection (h) may be granted by the executive director. Either an owner or a developer, or a lessee holding a recorded lease for the property, the unexpired term of which is more than five years from the date of filing of the application, may qualify for a conditional use permit. Applications shall be accompanied by:~~

- ~~(1) A plan drawn to scale, showing the actual dimensions and shape of the lot, the sizes and locations on the lot of existing and proposed structures, if any, and the existing and proposed uses of structures, parking and open spaces;~~
- ~~(2) A plan describing the method and manner in which the proposed use or tenant will fulfill the requirements of subsection (h); and~~
- ~~(3) Any additional information requested by the executive director relating to topography, access, surrounding land uses, written agreements and other matters as may reasonably be required in the circumstances of the case.~~

~~(h) In the event a conditional use is granted for the number of off-street parking spaces required by this chapter, said required parking spaces shall be provided on-site as joint use of parking facilities or in off-site parking facilities.~~

- ~~(1) Joint use of parking facilities: Joint use of off-street parking facilities may be allowed, provided that:~~
 - ~~(A) The distance from the entrance of the parking facility to the nearest principal entrance of the establishment or establishments involved in such joint use shall not exceed 1,200 feet by normal pedestrian routes;~~
 - ~~(B) Parking spaces involved in joint use shall not be set aside exclusively for~~

- ~~compact cars, valet parking, or particular user groups or individuals;~~
- ~~(C) The amount of off-street parking which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably anticipated to be available during differing periods of peak demand;~~
- ~~(D) A written agreement assuring continued availability of the number of spaces for the uses involved at the periods indicated shall be drawn and executed by the parties involved, and a certified copy shall be filed with the authority. No change in use or new construction shall be permitted which increases the requirements for off-street parking space unless such additional space is provided; and~~
- ~~(E) The joint use arrangement is logical and practical and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably anticipated if standard off-street parking provisions were applied.~~
- ~~(2) Off-site parking facilities: Off-site parking facilities may be allowed, provided that:~~
 - ~~(A) The distance from the entrance to the parking facility to the nearest principal entrance of the establishment or establishments involved shall not exceed 1,200 feet by normal pedestrian routes;~~
 - ~~(B) A written agreement assuring continued availability of the number of spaces indicated shall be drawn and executed, and a certified copy shall be filed with the authority. The agreement shall generally provide that if the~~

~~amount of parking spaces is not maintained, or space acceptable to the executive director substituted, the use, or such portion of the use as is deficient in number of parking spaces, shall be discontinued. No change in use or new construction shall be permitted which increases the requirements for off-street parking unless such additional space is provided; and~~

~~(C) The off-site parking arrangement is logical and practical and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably anticipated if standard off-street parking provisions were applied.~~

~~(i) Changes in use that would otherwise require the addition of no more than three parking spaces may set forth in section 15-23-21 and the following conditions:~~

- ~~(1) There are no reasonable means of providing the additional parking spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities; and~~
- ~~(2) There was no previous grant of an adjustment from parking requirements on the lot pursuant to this subdivision.~~

~~(j) An alternative parking requirement may be considered subject to the zoning adjustment process specified in section 15-23-21 and the following conditions:~~

- ~~(1) A parking demand study shall be provided specifying the alternative parking requirement along with any documentation that supports the proposed adjustment; and~~
- ~~(2) The parking adjustment is reasonable and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably~~

~~anticipated if standard off-street parking provisions were applied.]~~

(f) Parking for electric vehicle charging shall comply with applicable federal, state, and county standards, rules, and regulations. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-69 Off-street loading. (a) Except as otherwise provided in this chapter, the off-street loading requirements herein specified shall apply to all development lots exceeding five thousand square feet based on the class or kind of uses to which the lot is to be placed. In addition, in connection with development permits involving such classes or kinds of uses, special requirements may be imposed.

(b) Any building existing within the makai area on ~~[October 10, 1998]~~ [REDACTED], and which is subsequently altered to increase floor area shall provide off-street loading spaces for the area proposed to be constructed as indicated in the following table:

~~[OFF-STREET LOADING REQUIREMENTS]~~ Off-Street Loading Requirements

Use or Use Category	Floor Area (in square feet)	Loading Space Requirements
Hospitals or similar institutions or places of public assembly[✓]	5,000 - 10,000	one
	10,001 - 50,000	two
	50,001 - 100,000	three
	Each additional 100,000 over 100,000	one

Use or Use Category	Floor Area (in square feet)	Loading Space Requirements
[Multi-family dwellings.	20,000-150,000 150,001-300,000 Each additional 200,000 over 300,000	one two one]
Offices or office buildings, waterfront industrial uses[-]	20,000 - 50,000 50,001 - 100,000 Each additional 100,000 over 100,000	one two one
Retail stores, eating and drinking establishments, wholesale operations, business services, personal services, repair, general service[-]	2,000 - 10,000 10,001 - 20,000 20,001 - 40,000 40,001 - 60,000 Each additional 50,000 over 60,000	one two three four one
<u>Civil support, educational, and civic</u>	<u>5,000 - 10,000</u> <u>10,001 - 50,000</u> <u>50,001 - 100,000</u> <u>Each additional 100,000 over 100,000</u>	<u>one</u> <u>two</u> <u>three</u> <u>one</u>

(c) In the event a building is used for more than one use, and the floor area for each use is below the minimum requiring a loading space, as set forth in the table below, the required loading space or spaces shall be determined by taking the aggregate floor area of the several uses and applying the requirements of the use category requiring the greatest number of loading spaces.

(d) Loading space required under this section shall not be in any street or alley, but shall be provided within the building or on the lot. The following standards shall also apply to loading spaces:

- (1) When only one loading space is required and total floor area is less than 5,000 square feet, the minimum horizontal dimensions of the space shall be eighteen feet by eight feet three inches, and the space shall have a vertical clearance of at least ten feet;
- (2) When more than one loading space is required, the minimum horizontal dimensions of at least half of the required spaces shall be twelve feet by thirty-five feet and have a vertical clearance of at least fourteen feet. The balance of the required spaces shall have horizontal dimensions of at least eighteen feet by eight feet three inches and vertical clearance of at least ten feet;
- (3) Each loading space shall be unobstructed and shall be arranged so that any vehicle may be moved without moving the other;
- (4) Adequate maneuvering areas and access to a street shall be provided and shall have a vertical clearance not less than the applicable height for the loading space;
- (5) All loading spaces and maneuvering areas shall be paved with an all-weather surface;
- (6) Where loading areas are illuminated, all sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises;
- (7) Loading spaces for three or more vehicles shall be arranged so that no maneuvering to enter or leave a loading space shall be on any public street, alley, or walkway;
- (8) Each required loading space shall be identified as such and shall be reserved for loading purposes;

- (9) No loading space shall occupy required off-street parking spaces or restrict access; and
- (10) No loading space or maneuvering area shall be located within a required yard.
- (e) An adjustment of up to fifty per cent of the required number of loading spaces may be allowed when the loading spaces are assigned to serve two or more uses of a single development project jointly[~~7~~]; provided that:
 - (1) Each use has access to the loading zone without crossing any street or public sidewalk; and
 - (2) The amount of loading spaces which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably expected to be available during differing periods of peak demand. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-70 Signs. (a) Sign permits shall be processed by the city and county of Honolulu. Except as otherwise provided, signs shall conform to the "B-2 Community Business District" sign regulations of the city and county of Honolulu land use ordinance. The city and county of Honolulu shall be responsible for enforcement of the ordinance's provisions, and shall also administer appeals and variances relating to signs.

(b) Where possible, signage shall be in the two official languages of Hawai'i: 'Ōlelo Hawai'i and English. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-71 REPEALED. [R 10/10/98]

§15-23-71.1 Architectural design. (a) Windows:

- (1) Highly-reflective, and mirrored glazing are prohibited;
 - (2) Window glazing shall be transparent with clear or limited UV tint so as to provide views out of and into the building;
 - (3) Windows shall have the highest reasonably possible visual light transmission level, while still complying with the state energy code or other government requirements, including those for solar heat gain coefficients; and
 - (4) Applicants shall submit, for the executive director's review and acceptance, all window specifications for buildings that propose reducing the window visual light transmission level below seventy per cent at ground level and fifty per cent for all other floors.
- (b) Storefronts and windows for retail:
- (1) Applicability. This subsection applies to existing or newly proposed principal buildings used or intended to accommodate retail land uses;
 - (2) Stores that occupy greater than sixty feet of frontage shall incorporate multiple entrances along the street;
 - (3) Street front elements shall have a depth of at least twenty feet of usable commercial or active public use space;
 - (4) At least seventy per cent of a retail front element along a thoroughfare shall be transparent glazing:
 - (A) At least seventy per cent of the glazing shall allow views into the store rather than being shallow window box displays;
 - (B) No more than thirty per cent of the window area at facades may be

- obstructed by signage or interior displays; and
- (C) Display windows may be used on the ground floor and on upper floors of retail spaces;
- (6) All principal entrances shall be located along the thoroughfare or a thoroughfare-facing courtyard, rather than from a parking area, alley, or another point within the interior of a block; and
- (7) Buildings facades and side elevations shall accommodate signage for ground floor retail tenants. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-72 [Circulation.] ~~(a) The approval of the executive director or authority shall be required on any addition, deletion, modification or alteration of existing streets shown on the district plan. The executive director or authority may consult with other appropriate governmental agencies prior to said approval.~~

~~(b) Public or private mid-block pedestrian or bicycle circulation paths may be required where appropriate in conjunction with development projects. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~
 REPEALED. [R _____]

§15-23-73 Public facilities dedication fee.

(a) This section shall apply to any development or improvement project within the makai area that increases an existing development's floor area by more than twenty-five per cent as compared to the development's floor area existing within the makai area on ~~[October 10, 1998,]~~ _____, or at the time of application for a development permit or an improvement permit, excluding proposed demolitions,

whichever is less~~[- All new floor area of a development subject to this section shall pay a public facilities fee.];~~ provided that this section shall not apply to any development or improvement project undertaken by an eleemosynary organization, development or improvement project for public uses, public project, or new buildings or structures with a floor area of less than 200 square feet.

(b) As a condition precedent to the issuance of a development permit, the developer shall ~~[agree to payment of a fee]~~ dedicate land for public ~~[facilities for the joint use by the occupants and employees of the development as well as by the public.]~~ facilities. The public facilities dedication fee [is the intent to only allow land dedication? Or is payment of a fee an option? As drafted only land is mentioned in the sentence above, which makes the remaining subsections confusing.] shall be established at a sum equal to the fair market value of land for the following respective land uses:

- (1) Three per cent of the total commercial and community service floor area of the development to be constructed ~~[exclusive of nursing facilities, assisted living administration, and ancillary assisted living amenities; and~~
- ~~(2) Four per cent of the total residential floor area of the development to be constructed exclusive of floor area devoted to reserved housing units and their associated common areas in proportion with the floor area of other uses].~~

(c) Valuation of land shall be determined as follows:

- (1) Valuation shall be based upon the fair market value of the land prior to its development; and
- (2) In the event that a fair market value cannot be agreed on, the value shall be fixed and established by majority vote of three land appraisers; one shall be appointed by the developer, one appointed by the executive

director in the case of base zone development or the authority in the case of planned development, and the third appointed by the first two appraisers. All appraisers shall have had a minimum of five years of training and experience in real estate appraisal work. The developer shall be responsible for one-half of the appraisal fees and costs.

(d) This section shall not apply to any development or to that portion of a development undertaken by an eleemosynary organization for its own use, or to any development for public uses and structures or for a public improvement or any public project.

(e) The fee shall be payable prior to the issuance of the initial certificate of occupancy and secured by the applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other acceptable means prior to the issuance of the initial building permit. Calculation of the fee shall be fixed in the development permit and may only be adjusted for revisions in floor area that is approved through an amendment of the development permit.

(f) Payment of fees shall be made to the authority for deposit in a revolving fund to be created and established by the authority. The authority may expend the moneys in the fund for the purchase, creation, expansion, or improvement of public facilities within the district. The authority may transfer any portion of those funds to the city and county of Honolulu for public facilities purposes within the ~~[Kakaako]~~ Kaka'ako district.

(g) Nothing contained in this subchapter shall preclude the creation of any improvement district for public facilities, or the imposition of assessments against properties specially benefited within the district. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and

comp [REDACTED] (Auth: HRS §§206E-7, 206E-12)
(Imp: HRS §§206E-7, 206E-12)

§15-23-74 Prohibition of structures within a mapped street. (a) As used in this section, "mapped street" means a highway, road, or street designated in the makai area plan as an existing or future road, street, or highway right-of-way.

(b) No building or structure shall be erected within the area of any mapped street or its required setback area, except upper-level pedestrianways approved by the authority and awnings which may be allowed to project from nonconforming structures over public property pursuant to section 15-23-15.

(c) Except as provided in subsection (b) ~~[above]~~, if the ~~[executive director]~~ authority finds that a building or structure proposed to be erected will be within the boundaries of any mapped street, the development permit shall be denied and the owner or applicant for the permit shall be notified of the reason for the denial. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-75 Development of properties within the Aloha tower special district. (a) Properties within the Aloha tower special district as set forth in Exhibit 1, entitled "Makai Area Context ~~[Plan]~~", dated ~~[September 2005]~~, [REDACTED], and attached at the end of this chapter, shall be developed so that the resulting development is capable of integration into any overall development plan ~~[which]~~ that may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation, as identified in ~~[section 15-26-38.]~~ chapter 19-170.

(b) Permitted uses within the Aloha tower special district shall be any of the uses which the

authority finds compatible with the makai area plan, and capable of integration into any overall development plan which may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation.

(c) In approving development permits for projects within the Aloha tower special district, the authority may impose on the applicant conditions and requirements that are reasonable and necessary to carry out the intent of any overall development plan which may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation.

(d) Any provision to the contrary notwithstanding, the authority may waive requirements of these rules or the makai area plan for developments within the Aloha tower special district provided the authority is assured that the waiver will result in an increase of public benefits to the Aloha tower development project. [Eff 2/24/90; am 1/7/91; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-76 Utilities required to be underground.

(a) Public utility companies shall place utility lines underground within the district. The location of all utility structures placed on pads shall be subject to the executive director's approval.

(b) The requirement in subsection (a) shall not apply to the following types of utility lines and related facilities if the executive director determines that ~~said~~ the requirement would create undue hardship:

- (1) Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location on the same building or to an adjacent

building without crossing any street or alley; and

- (2) Electric distribution or transmission system in excess of fifteen kilovolts supported on metal or concrete poles without crossarms. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-77 Environmental standards. ~~[(a) No building wall shall contain a reflective surface for more than thirty per cent of that wall's surface area.]~~ (a) All exterior lighting shall have full cut-off lighting fixtures.

(b) Every use shall be so operated that it does not emit an obnoxious or dangerous degree of odor or fumes.

(c) Any provision in this chapter to the contrary notwithstanding, the rules of the state department of health and other government agencies shall continue to apply to all activities and properties within the makai area. These rules shall include, but not be limited to, ~~[department of health, chapter 11-43 relating to community noise control for Oahu, chapter 11-11]~~ rules relating to sanitation, ~~[chapter 11-12 relating to housing, chapter 11-34 relating to poisons, chapter 11-39 relating to]~~ air-conditioning and ventilation, ~~[chapter 11-42 relating to vehicular]~~ noise control, ~~[chapter 11-55 relating to]~~ water pollution, ~~[chapter 11-57 relating to sewage treatment private wastewater treatment works, chapter 11-58 relating to]~~ solid waste management control, ~~[chapter 11-59 relating to]~~ ambient air quality standards, ~~[and chapter 11-60 relating to air pollution.]~~ or other rules, as applicable. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-78 Temporary [~~uses-~~] use permit. (a)

Temporary structures, such as tents and booths, may be permitted in any zone for periods not exceeding fourteen days[7] within a ninety-day period; provided that for good reasons, the executive director may grant extensions for an additional fourteen days.

(b) Initiation. An applicant may apply for a temporary use permit by filing an application with the executive director.

(c) Action. In accordance with Figure 2 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all temporary use permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. In approving a temporary use permit, the executive director may impose reasonable standards, conditions, or requirements as a condition to the approval. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-79 Conditional use of vacant land. The executive director may allow a conditional use of vacant land[7]; provided:

- (1) The proposed use is any use permitted within the land use zone except:
 - (A) That open or uncovered temporary parking at grade may be permitted in all land use zones[7] whether paved or unpaved; and
 - (B) Construction sites, special trade construction and storage yards, and nonextensive yard uses may be permitted in all land use zones where a six-foot screening wall, hedge, or fence is

- erected along all ~~[public]~~ street rights-of-way;
- (2) The duration of the use is for a two-year period~~[,]~~; provided that the executive director may issue extensions of up to two additional years if the development status of the area has not changed appreciably since the use was initially allowed;
 - (3) The floor area ratio of any proposed temporary structure does not exceed 0.5 ~~[floor area ratio,]~~
 - ~~(4) The development conforms to the setback and landscape requirements of this chapter, except for development lots where a screening wall or fence not exceeding six feet in height is erected along all public rights-of-way;~~
 - ~~(5) The development conforms to the performance standards of this chapter,], and the project shall conform to the built form and landscaping standards of the rules;~~
 - ~~[(6)]~~ (4) In addition to the design controls listed in this section, the executive director may include additional conditions in the permit to ensure that the development does not adversely affect adjacent property and the appearance of the district. Conditional use of vacant land permits already issued under this section may be modified by the executive director at any time in response to valid public concern/complaint, to contain additional conditions for mitigation; and
 - ~~[(7)]~~ (5) The proposed uses in no way prevents or delays the future development of the property. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-80 Joint development of two or more adjacent zoning lots. (a) Whenever two or more lots are developed in accordance with the provisions of this section, they shall be considered and treated as one "development lot" for purposes of this chapter. The maximum building height and density shall be calculated on the basis of the combined land area of all lots being included in the joint development project. Should joint development involve both mauka area and makai area lots, floor area and uses permissible in the mauka area shall not be transferred to the makai area.

(b) Owners, duly authorized agents of the owners, or duly authorized lessees, holding leases with a minimum of thirty years remaining in their terms, of adjacent lots, or lots directly facing each other but separated by a street, may apply for permission to undertake such a joint development to the ~~[authority or to the executive director, as the case may be.]~~ authority.

(c) In applying for such permission, the landowners, duly authorized agents of the owners, or lessees shall submit an agreement ~~[which]~~ that binds themselves and their successors in title, or lease individually and collectively, to maintain the pattern of development proposed in such a way that there will be conformity with applicable zoning rules. The right to enforce the agreement shall also be granted to the authority or executive director, as the case may be. The agreement shall be subject to the approval of the authority ~~[or executive director, as the case may be].~~

(d) If it is found that the area involved is compact, regular, or logical, and that the proposed agreement assures future protection of the public interest and is consistent with the intent of the makai area plan, the request may be approved. Upon approval, the agreement, which shall be part of the conditions of development, shall be filed as a covenant running with the land with the bureau of conveyances or the assistant registrar of the land court. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and

comp [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-81 Flood hazard district. (a) These standards provide building and urban design strategies that supplement the regulations presented in the city and county of Honolulu flood hazard areas ordinance (chapter 21A, revised ordinances of Honolulu), which do and shall apply in the makai area. These standards help assure that flood measures implemented are seamless with existing fabric in terms of scale, frontage, and fenestration. The standards help ensure that measures implemented do not impede pedestrian access from abutting thoroughfares.

(b) Applicability. The following standards apply to all new buildings within an identified Honolulu or FEMA flood zone that are required by code to have raised ground floors.

(1) Design and location standards for ADA-compliant wheelchair access ramps within flood zones:

- (A) A wheelchair ramp may occupy only up to fifteen per cent of building face;
- (B) Wheelchair ramps and ramp handrails on all ramps greater than twenty feet in length must be placed behind street walls or landscaping features such as hedges;
- (C) All buildings occupying less than one hundred twenty feet of frontage shall use internal wheelchair ramps (see Figure 7.1 (flood zone design, internal wheelchair ramp), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter);
- (D) All buildings occupying more than or equal to one hundred twenty feet of frontage may use external wheelchair ramps (see Figures 7.2 and 7.3 (flood zone design), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter); and

(E) For all buildings, no wheelchair ramps are allowed in the public right-of-way or front setback, except in the following circumstances:

- (i) When the ramp fronts the side of a building near a corner;
- (ii) When the ramp is shielded from the thoroughfare or covered under an element such as an arcade (see Figure 7.4, dated [REDACTED], made a part of this chapter, and attached at the end of this chapter); or
- (iii) If the length of the ramp within the public right-of-way or front setback is less than or equal to twenty-five per cent of the width of the sidewalk. In this case, handrails are not permitted in the public right-of-way or front setback; and

(2) Other design standards for flood zones:

- (A) Measures undertaken to avoid floods shall not result in large blank walls along the building frontage. At least seventy-five per cent of a building's frontage shall be activated with shop front windows, seating areas, steps, landscaping, or street furniture; and
- (B) There shall be breaks in any flood control intervention such as raised sidewalks every thirty feet, stairways, entrances, planting features, and other elements approved by the executive director.

(c) The applicable provisions of [Article 7 of] the city and county of Honolulu flood hazard areas ordinance relating to flood hazard districts shall apply to all affected activities and properties within the [Kaka'ako] Kaka'ako district. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am

and comp [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-82 REPEALED. [R 10/10/98]

§15-23-82.1 Conditional use permit. (a) Purpose. This section provides for certain uses that, because of unique characteristics or potential impacts on adjacent land uses, may be authorized only under appropriate standards and factors set forth in the rules. No inherent right exists to receive a conditional use permit. Such authorization must be approved under a specific set of circumstances and conditions. Each application and situation is unique. Every conditional use permit application or amendment shall at a minimum be required to comply with every requirement contained in each subchapter of the rules. Mere compliance with the generally applicable requirements may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. All uses identified as requiring a conditional use permit in Figure 5 (land use), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, shall require conditional use permit approval.

(c) Decision-maker. Conditional use permits and amendments to conditional use permits shall be subject to authority review and action.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the makai area plan;
- (3) The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future uses in the vicinity;

- (4) The site is physically suitable for the type, and density and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, in addition to or that supersede any standard specified in the rules, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of section 15-23-82.1(d). Such additional standards, conditions, or requirements may include, but is not limited to:

- (1) Financing and availability of adequate public facilities or services;
- (2) Dedication of land;
- (3) Reservation of land;
- (4) Payment of impact fees;
- (5) Creation of special assessment districts;
- (6) Creation of restrictive covenants or easements;
- (7) Special setbacks;
- (8) Yard requirements;
- (9) Increased screening or landscaping requirements;
- (10) Area requirements;
- (11) Development phasing;
- (12) Standards pertaining to traffic, circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics;
- (13) Provision of sustainable features, solar or other renewable energy source, rain water capture, storage and treatment, or other feature; or

(14) Require that a performance guarantee - acceptable in form, content, and amount to the authority be posted by the applicant to ensure continued compliance with all conditions and requirements as may be specified.

(f) Initiation. A developer may apply for a conditional use permit by filing an application with the executive director.

(g) Action. The executive director shall process all conditional permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff]

(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-83 Applications. (a) ~~[Prior to]~~ When submitting an application for a ~~[development]~~ permit, ~~[potential]~~ applicants ~~[may be required to]~~ shall have their projects reviewed by the executive director pursuant to section ~~[15-23-10.]~~ 15-23-10.1. ~~[The review shall be completed prior to applying for a development permit.]~~

~~(b) A developer shall submit to the authority four copies of a project plan as a part of the application for the development permit. The project plan shall satisfy the stated purposes of the permit applied for.~~

~~(c) The project plan shall clearly indicate how the proposed development would satisfy the standards and purposes of this subchapter and the makai area plan. In addition to any other information which the applicant may deem necessary to support the application, the project plan shall include the following:~~

- ~~(1) Location map showing the project in relation to the surrounding area;~~
- ~~(2) Site plan showing:~~
 - ~~(A) Property lines and easements with dimensions and area;~~

- ~~(B) The proposed building location, elevations, dimensions, sections, and floor plan and site sections to clearly define the character of the project;~~
- ~~(C) Location, elevations, and dimensions of existing buildings;~~
- ~~(D) Topographic information showing existing features and conditions and proposed grading; and~~
- ~~(E) Location and dimensions of existing and proposed easements, conduits, and rights-of-way;~~
- ~~(3) A land use plan showing:~~
 - ~~(A) The locations and uses of all buildings and structures, the general bulk and height of all buildings and their relationship to each other and to adjacent areas, the gross floor areas of buildings by type of uses, the ground coverage of all buildings, and the FAR of the project;~~
 - ~~(B) The locations and size of vehicular and pedestrian circulation systems (both exterior and interior), identification of public and private areas and their dimensions, the location and dimensions of off-street loading areas and the location of points of access to the site and to public transportation facilities;~~
 - ~~(C) The locations and dimensions of parking areas, with calculations of the number of parking spaces;~~
 - ~~(D) The location of land which is intended for common quasi-public, or amenity use but not proposed to be in public ownership, and proposed restrictions, agreements or other documents indicating the manner in which it will be held, owned, and maintained in perpetuity for the indicated purposes;~~
 - ~~(E) Landscaping plan; and~~

- ~~(F) Location and amount of all open space areas;~~
 - ~~(4) A detailed statement describing the manner in which the development would conform to the makai area plan and the purposes and standards of this chapter;~~
 - ~~(5) A development program stating the sequence in which all structures, open and amenity spaces, and vehicular and pedestrian circulation systems are to be developed;~~
 - ~~(6) The relationship, if any, of the development program to the authority's and city and county of Honolulu's capital improvements program;~~
 - ~~(7) Traffic analysis;~~
 - ~~(8) If the project area is currently occupied by business uses, a relocation analysis shall be submitted including the following:~~
 - ~~(A) A list of current [residents and] businesses[,] or tenants, compiled by addresses or other locational description;~~
 - ~~(B) Identification of property managers;~~
 - ~~(C) The terms of the leases, including lease periods, lease rents, and expiration dates of leases; and~~
 - ~~(D) The net floor area of each business, descriptions of the business activity, and special relocation needs, if any;~~
 - ~~(9) The applicant will certify that all tenants will be notified via certified mail of the effective date of lease termination at least sixty days before eviction; and~~
 - ~~(10) Any additional information which the executive director may request.~~
- ~~_____ (d)] (b) The completed application shall be filed with the authority. Decisions for applications shall be made as follows:~~
- ~~(1) For a development not requiring a variance or modification, the authority, in the case of a development with an FAR in excess of 1.5, or the executive director in the case~~

~~of a development with an FAR up to 1.5, shall within one hundred days of receipt of the completed application:~~

- ~~(A) Approve the application as submitted;~~
- ~~(B) Approve the application with adjustments or conditions; or~~
- ~~(C) Deny the application with reasons for denial.~~

- ~~(2) For a development requiring a variance or modification, the authority shall within sixty days of the order approving or disapproving the variance or modification:~~
 - ~~(A) Approve the application as submitted;~~
 - ~~(B) Approve the application with adjustments or conditions; or~~
 - ~~(C) Deny application with reasons for denial.~~

~~The decision shall be made in writing and sent to the applicant.]~~ [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

§15-23-84 Determination by authority or executive director. In reaching its determination on an application for a development or improvement permit, the authority or executive director, as ~~[the ease may be,]~~ applicable, shall consider the following:

- (1) The nature of the proposed site and development, including its size and shape, and the proposed size, shape, ~~[and]~~ height, arrangement, and design of structures;
- (2) Whether the open spaces~~[+]~~:
 - (A) Are of such size and location as to serve as convenient areas for recreation, relaxation, and social activities for the patrons of the development; and
 - (B) Are so planned, designed, and situated as to function as necessary physical

- and aesthetic open areas among and between individual structures and groups of structures;
- (3) Whether the setbacks, yards, pedestrianways, bikeways, and related walkways are so located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation, and necessary vehicular access;
 - (4) Whether the vehicular circulation system, including access and off-street parking and loading, is so designed as to provide an efficient, safe, and convenient transportation system;
 - (5) Whether the pedestrian circulation system:
 - (A) Is so located, designed, and of sufficient size as to conveniently handle pedestrian traffic efficiently and without congestion;
 - (B) Is separated, if necessary, from vehicular roadways so as to be safe, pleasing, and efficient for movement of pedestrians; and
 - (C) Provides efficient, convenient, and adequate linkages among open spaces, commercial and employment areas, and public facilities;
 - (6) The adequacy of landscaping, screening, parking, ~~and~~ loading areas, service areas, lighting, and signs, with relation to the type of use and neighborhood;
 - (7) The appropriateness of the proposed mixtures of uses;
 - (8) The staging program and schedule of development;
 - (9) Relationship between structures and operations within structures;
 - (10) Whether views will be preserved or blocked;
 - (11) Surface treatment;
 - (12) Overall appearance of a development from the street and adjacent developments;
 - (13) Whether structures have an appropriate orientation to take advantage of winds,

- reduce direct sun exposure, and minimize shadow effect on adjacent buildings;
- (14) Preservation of adjacent view corridors;
- (15) Whether the facades of building are properly terraced, landscaped, and designed;
- (16) Relationship between and among uses along the adjacent street;
- (17) Development contribution to the attractiveness of the street-scape; ~~[and]~~
- (18) Considerations of climate change, sea level rise, and climate resilient development in the design and siting of buildings; and
- ~~[(18)]~~ (19) Any other matter relating to the development or its impact on affected properties or public facilities. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp XXXXXXXXXX] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E -4, 206E-5, 206E-7, 206E-33)

§15-23-85 ~~[Lapse of development permit.]~~ (a) ~~Any development permit granted under the provisions of this chapter shall automatically lapse if the initial building permit authorizing the construction of the foundation or superstructure of the project has not been issued within two years from the date of granting the permit, or, if judicial proceedings to review the decision to make the grant is instituted, from the date of entry of the final order in such proceedings including all appeals.~~

~~(b) Should a development permit provide for phased construction, the phases shall be constructed in accordance with the time periods set forth therein; however, if no time is specified, the development permit shall lapse if the building permit for the subsequent phase shall not have been issued within one year of the issuance of the occupancy permit for the previous phase.~~

~~(c) The authority or executive director, as the case may be, may grant an extension to the effective~~

~~period of a development permit approved by the same, not to exceed two years, upon the applicant's request and justification in writing for an extension, provided the request and justification are received by the authority or executive director at least one hundred days in advance of the automatic termination date of the development permit and there are no material changes in circumstances which may be cause for denial of the extension. A public hearing shall be held on an extension request if a public hearing was held on the development permit or any variance or modification granted as part of the development permit process. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)] REPEALED. [R REDACTED]~~

§15-23-86 Conditions. The authority or executive director, as ~~[the case may be,]~~ applicable, may attach to a development or improvement permit, conditions which may concern any matter subject to regulation under this chapter, including, but not limited to, the following:

- (1) Minimizing any adverse impact of the development on other land, including the hours of use and operation and the type and intensity of activities ~~[which]~~ that may be conducted;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
- (3) Controlling the duration of use of development and the time within which any structures must be removed;
- (4) Assuring that development, including all street furniture located in yards and bus stop shelters, is maintained properly in the future;
- (5) Designating the exact location and nature of development;

- (6) Establishing more detailed records by submission of drawings, maps, plats, or specifications;
- (7) Requiring provision by the developer of streets, other rights-of-way, pedestrianways, bikeways, utilities, parks, and other open space, all of a quality and quantity reasonably necessary and proportionate for the proposed development;
- (8) Requiring the connection of such development to existing public service systems;
- (9) Requiring the applicant to demonstrate financial, organizational, and legal capacity to undertake the development that is proposed, and to offer written assurance of compliance with any representations made by it as part of the application for the development permit and any conditions attached to the permit;
- (10) Requiring the applicant to submit periodic reports showing what progress has been made in complying with any of the conditions imposed;
- (11) Requiring the applicant to indicate the method of relocation of tenants and businesses; and
- (12) Requiring the applicant to indicate the method of handling safety and security concerns, including the lighting of building interiors, grounds, landscaping, parking areas, and exterior common areas.
[Eff 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-87 ~~[Requirement of providing reserved housing units. (a) Every applicant for a development containing multi-family dwelling units on a development lot of at least 20,000 square feet shall provide at least twenty per cent of the total number~~

~~of dwelling units in the development for sale or rental to qualified persons as determined by the authority.~~

~~(b) The units, hereinafter referred to as "reserved housing units", shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 7 of chapter 15-22. The applicant shall execute agreements as are appropriate to complement this requirement, and the agreements shall be binding upon the applicant and the applicant's successors in interest, and shall run with the land. The agreement shall provide that the applicant must provide certification to the authority as to the compliance of the requirements herein.~~

~~(c) The reserved housing requirements shall be satisfied in accordance with section 15-22-115.~~

~~(d) No building permit shall be issued for any development until the authority has certified that the development complies with the requirements of this section. The authority may require guarantees, may enter into recorded agreements with developers and with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to assure that these housing units are provided and that they are continuously occupied by qualified persons. When this has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the application approved as to the housing requirements of this section. [Eff and comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)] REPEALED. [R REDACTED]~~

§15-23-88 Modification of specific provisions.

As a part of the development permit review process, the authority may modify plan and rule requirements; provided a public hearing is held. Except as otherwise specifically provided, modifications may be granted only to the following:

- (1) Building envelope requirements;

- (2) Yards;
- (3) Loading space;
- ~~[(4) Parking;~~
- ~~(5) Number of reserved housing units and the cash-in-lieu of providing reserved housing units;~~ and
- ~~[(6)]~~ (4) Open space, as follows:
 - (A) Obstructions overhead that enhance utilization and activity within open spaces or do not adversely affect the perception of open space; and
 - (B) Height from sidewalk elevation of four feet may be exceeded at a maximum height-to-length of 1:12 if superior visual relief from building mass results. [Eff 10/10/98; comp 2/2/02; comp 12/9/02; §15-23-87; am, ren, and comp 11/3/05; am and comp XXXXXXXXXX] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-89 Conditions for modification. (a) In order for the authority to consider modification of the zoning requirements listed in section 15-23-88, the applicant must demonstrate that:

- (1) The modification would provide flexibility and result in a development that is practically and aesthetically superior to that which could be accomplished with the rigid enforcement of this chapter;
 - (2) The modification would not adversely affect adjacent developments or uses; and
 - (3) The resulting development will be consistent with the intent of the makai area plan.
- (b) The authority shall specify the particular evidence ~~[which]~~ that supports the granting of a modification and may impose reasonable conditions in granting a modification. [Eff 10/10/98; comp 2/2/02; comp 12/9/02; §15-23-88; am, ren, and comp 11/3/05; am and comp XXXXXXXXXX] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-90 Minor changes. (a) After final approval of a permit, the executive director may allow minor amendments to the application without submittal of a new or amended application in order to address project design refinements or administrative corrections.

(b) In order to qualify as a minor change, the requested amendment(s) may not:

- (1) Materially increase the floor area, height, or disturb any additional additional land area;
- (2) Introduce different land uses;
- (3) Request larger land area;
- (4) Request greater variance;
- (5) Allow any diminution in buffer or transition areas, reduction in landscaping, reduction of required yards, or any change in the design characteristics or materials used in construction of the structures; or
- (6) Reduce or eliminate conditions attached to the subject development approval.

(c) Examples of allowable administrative corrections include the correction of typographical errors, name or mailing address changes, or the smiliar.

(d) For improvement or development permits, the executive director or the authority may consider amendments that are consistent with section 15-23-27(c) and provided that:

- (1) The applicant demonstrates how the amendment would advance the purposes of redevelopment and be consistent with the intent of this chapter and the makai area plan;
- (2) A new public hearing shall be held if the amendment concerns an issue that would have required a public hearing prior to issuance of the original permit and it does not qualify for an administrative amendment in section 15-23-90(a) or 15-23-90(b); and
- (3) The authority or executive director, as applicable, may attach additional conditions

or require compliance with any other provisions of this chapter or the makai area plan.

(e) Any other change requests that do not qualify under section 15-23-90(a) or section 15-23-90(b) shall require the filing of a new application to be processed in accordance with this subchapter.
[Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§§15-23-90~~ §§15-23-91 to 15-23-107 (Reserved)

~~§§15-23-108 to 15-23-137~~ REPEALED. [R 10/10/98]

SUBCHAPTER 4

SPECIAL URBAN DESIGN RULES

§15-23-138 Statement of purposes. The purpose of this subchapter is to provide for a high quality of urban design in the makai area with an emphasis on the pedestrian environment, and to promote a strong relationship between individual developments and the overall context. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-139 Applicability. This subchapter shall apply to any development located on any development lot within the makai area and constructed after ~~[October 10, 1998,]~~ [REDACTED]; except alterations to nonconforming structures, public improvements, and conditional use of vacant land. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-

4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-140 Streetscapes. (a) A high priority is placed on the streetscape design in the makai area in order to promote an outstanding pedestrian environment with access to the waterfront, parks, and commercial developments.

(b) The placement and location of curb cuts for driveways and drop-off areas shall be regulated as follows ~~[in order]~~ to promote continuous sidewalks without breaks or interruptions~~[-]~~:

- (1) No curb cuts or drop-off areas, except as needed to allow access for persons with disabilities, shall be permitted along Ala Moana Boulevard, and Ilalo Street between Ahui and Punchbowl Streets; and
- (2) Curb cuts and drop-off areas may be permitted in other areas if the executive director finds that the curb cut or drop-off area will not result in unreasonable conflict between pedestrian and vehicular circulation and will result in a good site plan.

(c) All new developments shall provide facilities for central trash storage within the development lot. Where trash storage facilities are provided outside of a building, the facilities shall be screened by an enclosure constructed of materials compatible with the materials of the front building wall of the development. In all cases, there shall be provided an area for central trash collection. Such area shall be ventilated.

(d) Street furniture shall be provided as follows:

- (1) Benches shall be provided for resting places along pedestrianways at appropriate locations. One eight-foot bench shall be located in an area receiving shade adjacent to or near a public sidewalk for every development project. Benches shall be

positioned to serve general pedestrian traffic. Along Ilalo Street the number, type, and location of benches shall be provided in accordance with specifications approved by the authority; and

- (2) Bus stop shelters shall be provided for bus commuters where bus stops are located and the design and specifications shall be subject to the review and approval of the executive director. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-141 Tower spacing and circulation. (a)

Spacing between building towers shall be based upon the tower location on the development lot and distances between neighboring towers. To the extent practicable, tower spacing shall be as follows:

- (1) At least two hundred feet between the long parallel sides of neighboring towers; and
- (2) At least one hundred fifty feet between the short side of towers.

(b) Building design and siting shall be such that shadow effects on neighboring buildings shall be minimized.

(c) Public or private mid-block pedestrian or bicycle circulation paths, or both, may be required to be created and maintained in conjunction with developments. The developer of a development may be required to dedicate to the authority a perpetual public easement for pedestrian-ways, the appropriate width and location to be as determined by the authority.

~~[(d) The authority may approve the construction of upper-level pedestrian ways, provided that:~~

- ~~(1) Required approvals from appropriate governmental agencies are obtained;~~
- ~~(2) The design of the pedestrianway provides a safe and efficient linkage to major~~

~~destination areas, complements the design of adjoining structures and open spaces, incorporates directional aids, and minimizes adverse impacts on designated view corridors, the streetscape, and required yards and open space;~~

- ~~(3) Assurances are provided for adequate maintenance, security and insurance, unless the pedestrianway is dedicated to and accepted by the city and county of Honolulu;~~
- ~~(4) The pedestrianway shall function solely as a corridor for pedestrian movement and shall not be used to conduct business activity of any kind;~~
- ~~(5) Adequate access is provided to and from the street level. In approving an upper-level pedestrianway, the authority may impose terms and conditions as it finds are reasonable and necessary to carry out the purpose and requirements of this chapter and the makai area plan; and~~
- ~~(6) It can be demonstrated that the upper-level pedestrianway does not result in the reduction of ground-level commercial activity that would otherwise take place.]~~

[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-142 Landscaping. (a) The authority recognizes the aesthetic, ecological, and economic value of landscaping and requires its use to establish an outstanding visual environment, ~~[to]~~ promote compatibility between land uses by reducing impacts of specific developments, and ~~[to]~~ enhance and define public and private spaces.

(b) All required yards shall be landscaped, except that front yards may be paved in accordance with specifications that are subject to review and

approval by the executive director if ground floor windows are provided.

(c) Street trees with shade canopies shall be provided in accordance with specifications that are subject to review and approval by the executive director. Unless otherwise approved by the executive director, street trees shall be planted adjacent to the curb, forty feet on center or closer, and be a minimum of 4.5 inch caliper~~[, except coconut palms, which shall be a minimum of fifteen feet tall].~~ Suggested street trees for the makai area are, as follows, but alternative canopy trees may be proposed:

<u>Street</u>	<u>Botanical Name</u>	<u>Common Name</u>
[Ala Moana Boulevard	Cocos Nuciferas	Coconut Palm]
Cooke	Cordia Subcordata	True Kou
Coral	Cordia Subcordata	True Kou
	Samanea Saman	Monkey Pod
Ilalo		
Keawe	Cordia Subcordata	True Kou
Koula	Cordia Subcordata	True Kou
Ohe	Cordia Subcordata	True Kou
Olomehani	Cordia Subcordata	True Kou
Punchbowl	Cordia Subcordata	True Kou
South	Cordia Subcordata	True Kou

(d) The planting, removal, and maintenance of street trees within the public right-of-way fronting any development lot shall be subject to the approval of the department of planning and permitting and the

department of parks and recreation, division of urban forestry, city and county of Honolulu.

(e) The planting, removal, and maintenance of trees within the front yard setback area of any development lot or nonconforming property shall be subject to the approval of the executive director. Any tree six inches or greater in trunk diameter shall not be removed except under the following conditions:

- (1) There are no alternatives to removal to achieve appropriate development on the site;
- (2) The tree is a hazard to public safety or welfare;
- (3) The tree is dead, diseased, or otherwise irretrievably damaged; or
- (4) The applicant can demonstrate that the tree is unnecessary due to overcrowding of vegetation.

Where possible, trees proposed for removal shall be relocated to another area of the project site. No person shall injure or destroy any tree in any manner or by any means. Property owners shall be responsible for ensuring that all trees within the front yard setback area are properly maintained and do not cause any hazard to public safety or welfare.

(f) Street tree species and location shall be subject to the approval of the executive director in consultation with the department of planning and permitting and the department director of parks and recreation, city and county of Honolulu.

(g) Planting strips, if provided between the curb and sidewalk, shall be landscaped and provided with an irrigation system. Planting in these areas, except trees, shall not exceed thirty inches in height and shall be grass only where adjacent curbside parking is permitted.

~~[(h) Sidewalk materials shall conform to the city and county of Honolulu standards for a minimum of seventy-five per cent of the required sidewalk area. The total sidewalk pattern and the material of the twenty-five per cent area shall be subject to the approval of the executive director. The executive director, in consultation with the chief engineer of~~

~~the department of public works, city and county of Honolulu, may allow exceptions to the city and county standard paving.~~

~~(i)]~~ (h) Street planters used for the purpose of holding plant materials, whether portable or permanently fixed, shall be provided by property owners within their property lines. Planters shall be located along major streets where sidewalks are greater than eight feet wide.

~~[(j)]~~ (i) Within private open space areas visible from street frontages, trees, shrubs, ground cover plant material are required.

~~[(k)]~~ (j) If there is any change in elevation from the sidewalk to the grade level private open space area, such change shall be no greater than four feet.

~~[(l)]~~ (k) Parking areas, open storage areas, and work areas provided at ground level facing the street shall be screened with plant material or other architectural treatment.

~~[(m)]~~ (m) All rooftop mechanical appurtenances, stairwells and elevator enclosures, ventilators, and air-conditioning equipment shall be screened from view by architectural or landscape treatments. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-143 Modification of urban design requirements. The authority ~~[or executive director, as the case may be,]~~ may allow modifications to the requirements of this subchapter. Modifications will be allowed if a finding is made that the modifications will enhance the design and quality of the development, or will not adversely affect the overall intent of this chapter and the makai area plan. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]]

(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-144 to 15-23-157 (Reserved)

SUBCHAPTER 5

HISTORIC AND CULTURAL SITES

§15-23-158 Statement of purposes. (a) The purpose of this subchapter is to preserve, protect, reconstruct, rehabilitate, and restore properties situated in the district that are determined by the authority to be historic and culturally significant.

(b) Applicability. This subchapter applies to all historical or culturally significant properties within the makai area, whether physical remains of the property are present or not. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-159 Historic or culturally significant property defined. ~~The term, ["property", as used in this subchapter, includes a site, location, facility, building, structure, setting, or object. "Historic]~~ "historic or culturally significant property" means any [property] building, structure, object, district, area, or site, including heiau and underwater site, that is:

- (1) Listed on the Hawaii or national register of historic places; ~~[or]~~
- (2) Designated by the state historic preservation division or in the makai area plan as being: significant in the history or prehistory, architecture, culture, or development of ~~[Kaka'ako]~~ Kaka'ako; a tangible, historic or cultural linkage

between [~~Kaka'ako~~] Kaka'ako of the past and
~~[Kaka'ako]~~ Kaka'ako of the present; and
 capable of productive use to the extent that
 its owner is able to earn a reasonable
 return~~[-]~~; or

- (3) Over fifty years old, as defined in chapter
6E, HRS. [Eff 2/24/90; comp 10/10/98;
 comp 2/2/02; comp 12/9/02; comp 11/3/05; am
 and comp [REDACTED]] (Auth: HRS §§206E-7,
 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-160 [~~**Designation.**~~ ~~Properties deemed~~
~~historic or culturally significant by the authority~~
~~are so designated in the makai area plan. In addition~~
~~to the properties determined to be significant and~~
~~listed on the makai area plan, other properties may be~~
~~considered for designation by the authority.~~ [Eff
 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02;
 comp 11/3/05] (Auth: HRS §§206E-7, 206E-33) (Imp:
 HRS §§206E-7, 206E-33)] REPEALED. [R]

§15-23-161 [~~**Procedure for designation.**~~ (a) ~~Any~~
~~person, including a governmental agency, or the~~
~~authority on its own initiative, may nominate any~~
~~property for designation on the makai area plan as an~~
~~historic or culturally significant property by the~~
~~rule-making procedures set forth in the authority's~~
~~rules of practice and procedure.~~

~~(b) In addition to the general rule-making~~
~~petition requirements, each nomination shall contain~~
~~the following information:~~

- ~~(1) The name of the property nominated for~~
~~designation;~~
- ~~(2) The tax map key identification of the~~
~~property and name or names of the owner or~~
~~owners of the property;~~
- ~~(3) A description of the property and how it~~
~~qualifies for designation under section~~
~~15-23-160; and~~

~~(4) A statement of the property's historic or cultural significance.] REPEALED.~~
[R REDACTED]

§15-23-161.1 Preservation and consultation. (a)

In accordance with section 6E-42, HRS, developers of new projects or projects proposing alterations to historic or culturally significant properties shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites.

(b) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E-10, HRS, shall be included with the permit application to the authority.

(c) All SHPD requirements shall be completed by the developer prior to submittal of a permit application to the authority, unless otherwise permitted by SHPD and approved by the executive director. [Eff REDACTED] (Auth: HRS §§6E-8, 6E-42 206E-7, 206E-33, 916) (Imp: HRS §§206E-7, 206E-33, 916)

§15-23-162 Uses. A property designated historic or culturally significant may be put to any use permitted in the land use zone in which the property is situated, subject to the requirements of section 15-23-164. Setback requirements shall not be enforced as to any lot on which an historic or culturally significant property is situated where the enforcement would result in damage to or destruction of the historic or culturally significant features of the property. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-163 Protective maintenance. All historic or culturally significant properties ~~[designated by the authority on the makai area plan]~~ shall be properly maintained and kept in good repair. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05; am and comp [REDACTED]] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-164 ~~[Certificate of appropriateness.]~~ (a) ~~No permit shall be issued by the city and county of Honolulu for demolition, construction, alteration, repair, or improvement which will affect any historic or culturally significant property, except after the issuance by the authority of a certificate of appropriateness.~~

~~(b) A developer, owner, or lessee of a historic or culturally significant property shall file with the executive director an application for a certificate of appropriateness for any proposed demolition, construction, alteration, repair, or improvement which will affect such historic or culturally significant property. The application shall be accompanied by supporting data and documents, including, as appropriate, the following:~~

- ~~(1) A description of the historic or culturally significant property affected by the proposed project;~~
- ~~(2) An area site plan indicating the location and nature of the project site improvements and site relationship to surrounding improvements;~~
- ~~(3) Data on size, appearance, and form with sketches and perspectives of the building or structure proposed to be constructed, repaired, or improved; and~~
- ~~(4) Plans, elevations, and sections that fix and describe the project as to architectural character, and an outline specification setting forth exterior finishes and colors.~~

~~(c) The executive director shall evaluate the project and, within thirty days after submittal of the~~

~~completed application for a certificate of appropriateness, determine whether the project is significant or nonsignificant, as defined below.~~

~~(d) If the executive director finds the project to be nonsignificant, a certificate of appropriateness shall be issued. A project is deemed to be nonsignificant where it consists of alterations, repairs, or improvements which do not involve a change in design, material, character, or outer appearance of the affected property or a change in those characteristics which qualified the property for designation as an historic or culturally significant property.~~

~~(e) If the executive director finds the project to be significant, the executive director shall, within thirty days of such determination, prepare a summary report on the project, including an analysis of the data and documents supplied with the application for the certificate of appropriateness, and submit the report to the authority, together with a recommendation.~~

~~(f) Within one hundred days after receipt of the executive director's report, the authority shall either approve the proposed action in whole or in part, with or without modification or conditions, and issue a certificate of appropriateness or disapprove the proposed action. Before acting on the application, the authority shall hold a public hearing thereon. At the public hearing the applicant and other interested persons shall be given a reasonable opportunity to be heard. If the affected property is on the Hawaii or national register of historic places, the authority shall notify the state department of land and natural resources of its decision.~~

~~(g) The authority shall grant the application for a certificate of appropriateness if:~~

- ~~(1) The proposed action will not unduly hinder the protection, enhancement, presentation, perpetuation and use of the property in its historic or culturally significant state; or~~
- ~~(2) The property as it exists is no longer suitable to past or present purposes or is~~

~~totally inadequate for the owner's or lessee's legitimate needs; or~~

~~(3) The owner or lessee is unable to earn a reasonable return unless the proposed project is undertaken.~~

~~(h) Whenever an applicant for a certificate of appropriateness makes a showing that the property as it exists is totally inadequate for the owner's or lessee's legitimate needs or that the owner or lessee is unable to earn a reasonable return unless the project is undertaken, the authority may develop and propose alternatives to the proposed project that will enable the owner or lessee to put his property to reasonable use or to earn a reasonable return. Such alternatives may include a sale of the property to a buyer or lessee who will utilize the property without the action proposed by the applicant; it may also include partial or complete tax exemption, governmental grants-in-aid, and other financial and technical assistance. The owner or lessee may accept or reject any alternative proposed by the authority.~~

~~(i) If the owner or lessee rejects all alternatives proposed by the authority, the authority may elect to acquire the property by eminent domain, in which case, action to condemn the property shall be commenced within ninety days of said rejection. If on the other hand the owner or lessee rejects the alternatives proposed by the authority, and the authority determines not to acquire the property by eminent domain, the authority shall issue a certificate of appropriateness to the applicant. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)] REPEALED~~
[R REDACTED]

§§15-23-165 to 15-23-177 (Reserved)

SUBCHAPTER 6

MASTER PLAN RULES

§15-23-178 ~~[Purpose and intent. Rules relating to master plans contained within the mauka area rules are incorporated herein by reference with the exception that hotel uses will not be permitted and that floor area and uses permissible in the mauka area will not be transferred to the makai area. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-7, 206E-33)]. REPEALED~~
[R]

§15-23-178.1 Master plans. (a) Purpose. The provisions of this section are intended to provide for a flexible approach to development, encourage investment in new development and commitment to the master planning of large land holdings. A further purpose of this section is to derive public benefits, such as public parking, off-site infrastructure and other public facilities from master plan developers, in exchange for greater development flexibility for a specified period.

- (b) Applicability. Developers of project sites over five acres are eligible to apply for a master plan permit.
- (c) Contents. A master plan permit may authorize only the following:
 - (1) A development approval period up to ten years;
 - (2) Public facilities, beyond that required by the makai area plan or the makai area rules, including, but not limited to, parks and open space, public infrastructure, and public art.
- (d) Findings. The authority shall make the following findings of fact in order to approve a master plan permit:

- (1) That the master plan implements and is consistent with the makai area plan and makai area rules; and
 - (2) That the master plan will either enhance or provide necessary public facilities, as provided for in section 15-23-178.1(f).
- (e) Submittal requirements. Each master plan permit application shall include, at a minimum, the following:
 - (1) Plans and supporting information sufficient to clearly indicate the pattern and implications of development within the master plan area and the relationship to surrounding uses;
 - (2) Proposed development approval timeframe;
 - (3) Proposed public facility improvements;
 - (4) Environmental, social, and cultural impacts;
 - (5) Review of public engagement efforts and feedback received; and
 - (6) Such other information as may be required by the executive director or authority.
- (f) Public facilities. All public facilities above those required by these rules and other administrative rules of the Hawaii community development authority may be voluntarily offered by the master plan applicant.
- (g) Time extension. The authority may authorize a master plan approval time extension for up to a five-year time period. A maximum of two time extensions may be authorized, for a total maximum duration of twenty years.
- (h) Expiration. At least 120 days prior to the expiration of a master plan permit, the applicant shall submit a reconciliation of all master plan obligations to the executive director. The authority may approve a closing development agreement that survives

the expiration of the master plan until any
remaining unsatisfied obligations are
completed. [Eff [REDACTED] (Auth: HRS
§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-
7, 206E-33)

§§15-23-179 to 15-23-191 (Reserved)

SUBCHAPTER 7

RULES REVIEW AND AMENDMENT

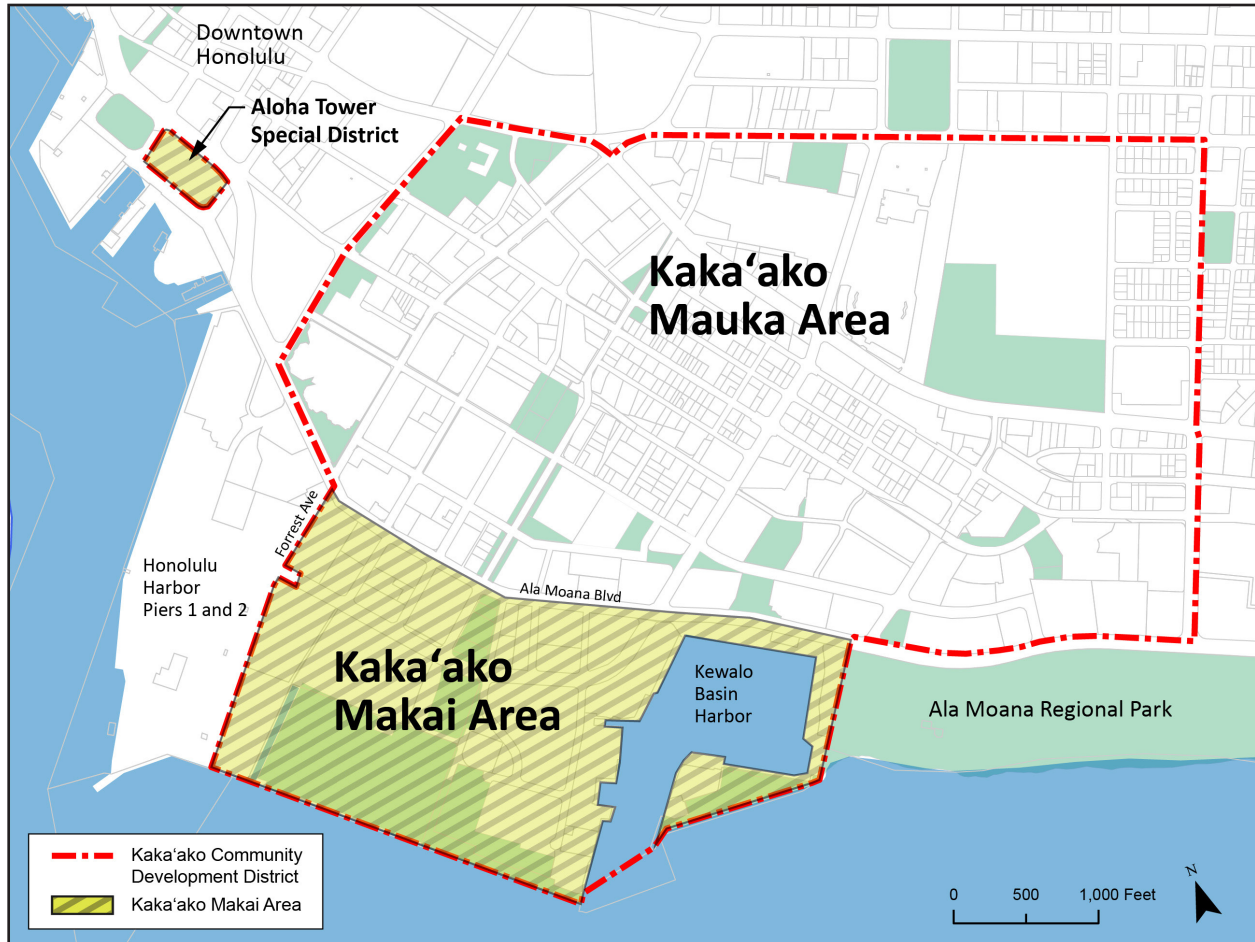
§15-23-192 Rules review and amendment. The makai area rules may be reviewed and amended in accordance with the authority's rules of practice and procedure. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §206E-5) (Imp: HRS §206E-5)

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FIGURE 1: MAKAI AREA CONTEXT



November 2023

FIGURE 2: APPROVAL REQUIREMENTS MATRIX

Rule	Development Approvals	Role	
		Executive Director	Authority
§15-23-14.1	Variance	Recommends Action	Decision
§15-23-24	Zoning clearance	Decision	Considers Appeal
§15-23-25	Rules clearance	Decision	Considers Appeal
§15-23-26	Renovation permit	Decision	Considers Appeal
§15-23-27	Improvement Permit	Decision*	Considers Appeal
§15-23-27	Development Permit	Recommends Action	Decision
§15-23-78	Temporary use permit	Decision	Considers Appeal
§15-23-79	Conditional Use of Vacant Land	Decision	Considers Appeal
§15-23-82.1	Conditional Use Permit	Recommends Action	Decision
§15-23-178.1	Master Plan	Recommends Action	Decision

November 2023

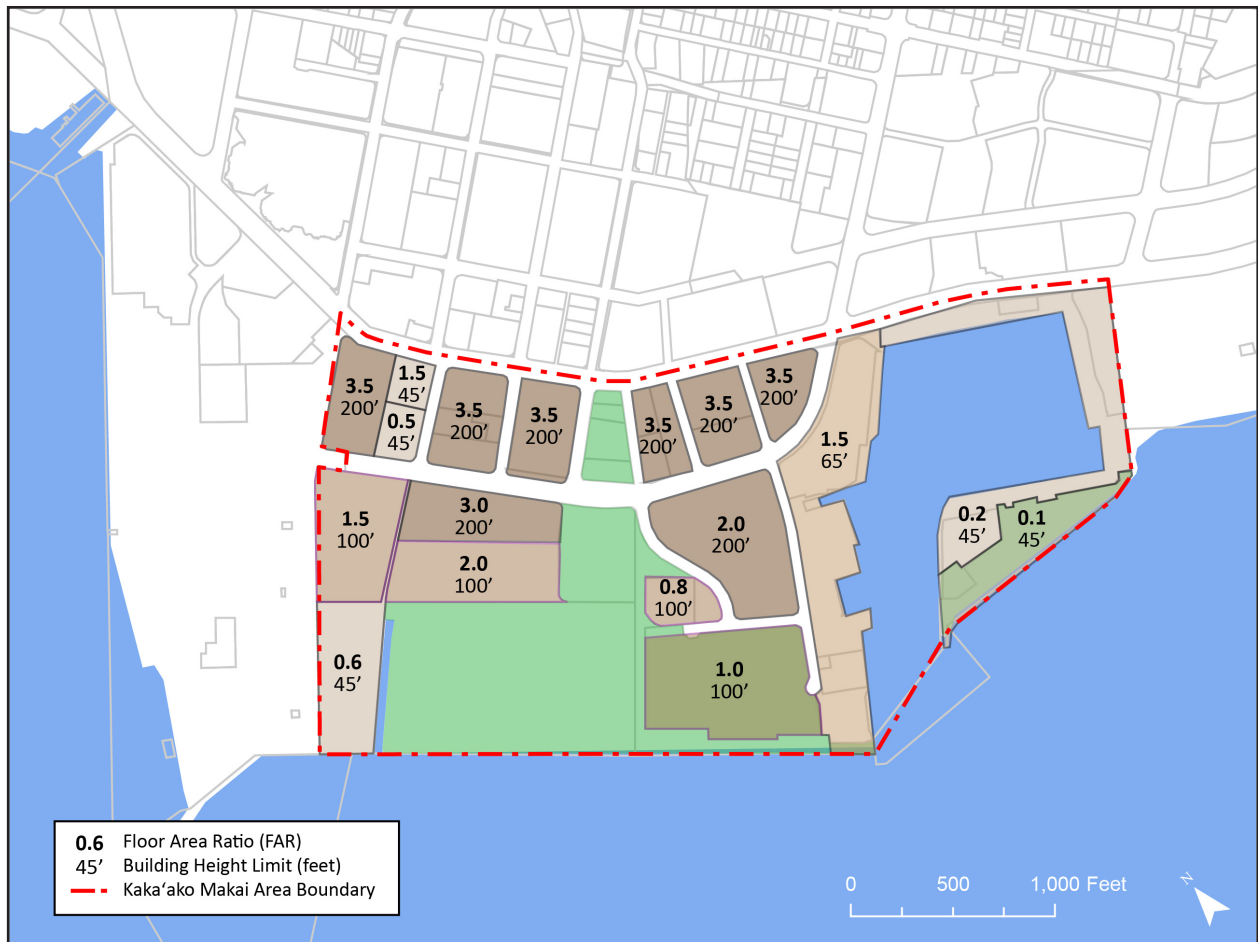
*Except on lands owned by the authority

FIGURE 3: LAND USE ZONES



November 2023

FIGURE 4: MAXIMUM HEIGHT AND DENSITY PLAN



November 2023

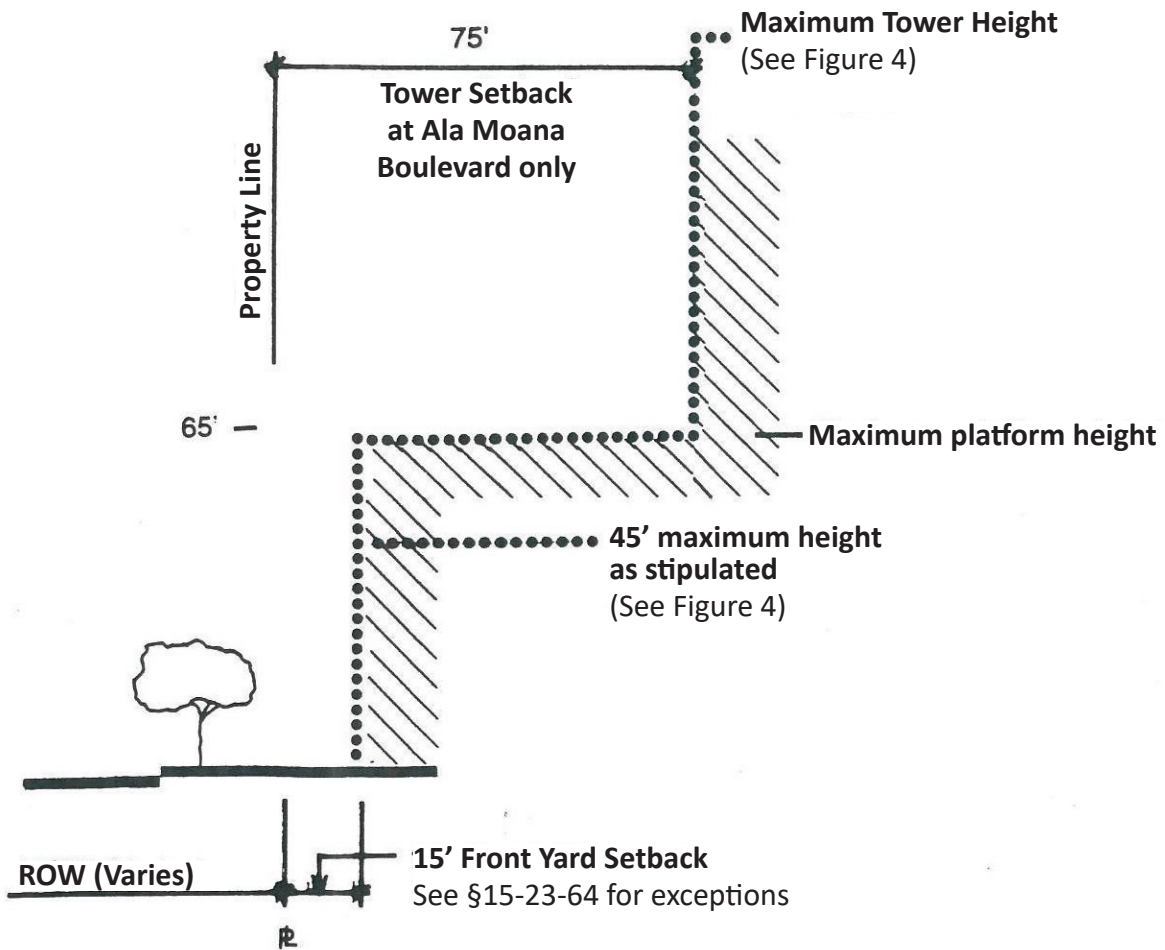
FIGURE 5: LAND USE

	Makai Urban Zone (MUZ)	Waterfront Community (WC)	Park (P)
Commercial			
Artisan or Craft Production	●	●	-
Convenience Retail or Grocery Store	●	●	-
Dance-Nightclub	●	●	-
Marine Services	●	●	-
Medical Services	●	-	-
Office and Professional Services	●	●	-
Personal Services	●	●	-
Restaurants and Bars	●	●	○
Retail Sales	●	●	-
Supermarket / Large Format Retail	●	-	-
Workshop/Studio	●	○	-
Civic			
Cultural Facility, Gallery, or Museum	●	●	●
Group Assembly	●	○	-
Indoor Recreation	●	●	○
Outdoor Recreation	●	●	●
Performance Space or Theater	●	●	○
Educational			
Conference Center	●	●	-
Day Care Center	●	○	○
Marine or Other Research Facility	●	●	-
School or Training Facility	●	●	○
Transportation/Utility			
Mobility Hub or Terminal/Port	●	●	-
Parking Structure	●	○	○
Utility Infrastructure	●	●	●
Vehicle Charging/Fueling or Service	○	○	-

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Legend	
●	Permitted
○	Requires conditional use permit
-	Not Permitted

FIGURE 6: MAXIMUM BUILDING ENVELOPE



November 2023

FIGURE 7: FLOOD ZONE DESIGN

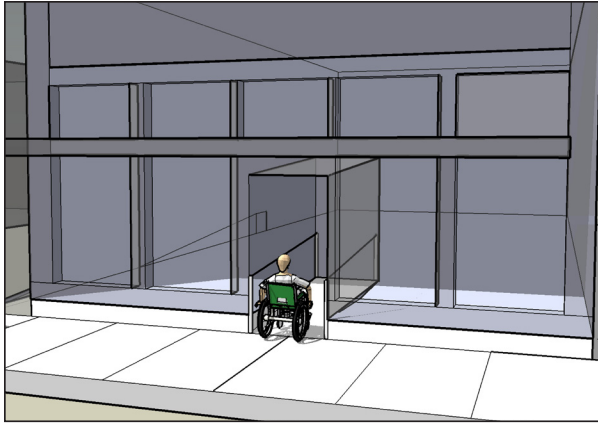
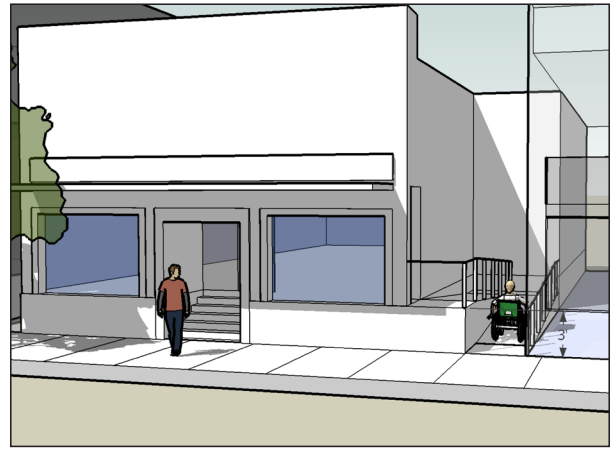
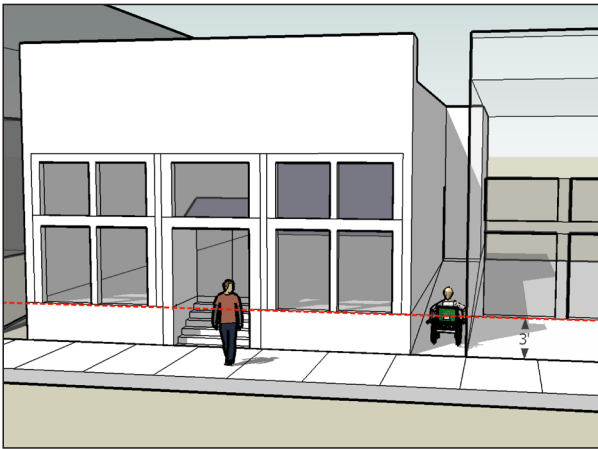
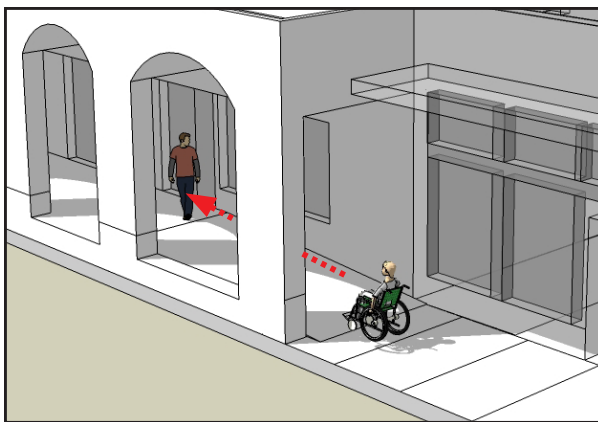


Figure 7.1: Internal Wheelchair Ramp (illustrative image).



Figures 7.2 and 7.3: External wheelchair ramps accessed directly from sidewalk to ensure easy access. Ramps are located on the side of building (illustrative images).



Figures 7.4 and 7.5: External wheelchair ramps accommodated under an arcade (illustrative images).

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Amendments to and compilation of chapter 15-23, Hawaii Administrative Rules, on the Summary Page dated [REDACTED], were adopted on [REDACTED], following public hearings held on [REDACTED], and [REDACTED], after public hearing notices were given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island, on [REDACTED], and [REDACTED], respectively.

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

CHASON ISHII
Chairperson
Hawaii Community Development
Authority

JAMES TOKIOKA
Director
Department of Business,
Economic Development and
Tourism

APPROVED AS TO FORM:

Deputy Attorney General

JOSH GREEN, M.D.
Governor
State of Hawaii

Date:

Filed

IV. NEW BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 215, **Kalaeloa Community Development District Rules**, promulgated by HCDA / DBEDT

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

RECEIVED
By SBRRB at 8:49 am, Dec 04, 2023

Date: 11/30/2023

Department or Agency: Hawaii Community Development Authority

Administrative Rule Title and Chapter: 15-215

Chapter Name: Kalaeloa Rules

Contact Person/Title: Ryan Tam / Director of Planning and Development

E-mail: ryan.am.tam@hawaii.gov Phone: 808-594-0338

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: <https://dbedt.hawaii.gov/hcda/kalaeloa-plan-and-rules/>

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.
Any small business involved in land development (such as construction of a new building, renovation of an existing facility, or establishing a use) in the Kalaeloa Community Development District is required to comply with the proposed amended 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.
For the types of minor renovation projects that are typically undertaken by small businesses, permit application requirements and fees will be reduced.

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.
Fee schedule was last updated in 2011.
 - b. Amount of the proposed fee or fine and the percentage increase.
Minor permits are increasing to \$50 (up from \$20 or a 250% increase).
 - c. Reason for the new or increased fee or fine.
Fees are being increased to partially reflect staff time required for project reviews as well as inflation.
 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
Consumer price index inflation calculator was used to calculate fee increases for larger permits.
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.
Additional revenue is expected to be minimal; revenue will be used to support agency planning and operations in the Kalaeloa Community Development District.

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.

A new renovation permit, expanded rules clearance, and elimination of some permits will enable faster, streamlined approvals and should reduce impacts on small businesses.

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

Not applicable.

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.

The proposed rules are intended to reduce the burden of permitting for small businesses while maintaining land use controls on larger projects and developers in order to achieve the legislature's vision for Kalaheo.

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

Community meetings were held in 2021, 2022, and 2023 in order to solicit feedback. Staff also presented to the Kalaheo Rotary Club in 2022. Regular updates have also been provided to the Kalaheo Stakeholder meetings and the HCDA Board over the last several years.

- 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.

Not applicable, but the proposed rules are generally intended to simplify permit processes and promote development in Kalaheo.

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.

Not applicable.

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.
Not applicable.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
Not applicable.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
Not applicable.
- 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.
Not applicable.
- 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.
Not applicable.

* * *

Small Business Regulatory Review Board / DBEDT

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

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

Kalaeloa Community Development District

Plan and Rules Update

Chapter 15-215, Hawai'i Administrative Rules

The Hawai'i Community Development Authority (HCDA) adopted the latest Kalaeloa Community Development District Rules, Chapter 15-215, HAR, in October 2012. Since 2019, HCDA staff have been working with the consulting firm Torti Gallas+Partners, to analyze and update the plan and rules.

The amended rules aim to simplify permitting processes and increase regulatory predictability and consistency. The proposed permits will match the level of review with the scope of the proposed improvements, so that smaller projects can be done with minimal difficulty.

A virtual community meeting was held on June 13, 2023, to obtain additional public feedback. HCDA staff have been incorporating community and Board comments into the second draft of the Rules, including:

- New special district for Department of Hawaiian Home Lands;
- New Ewa Battlefield Special Historic Design District overlay;
- Clarification of existing rules and definitions;



The Kalaeloa Community Development District includes about 3,700 acres at the former Barbers Point Naval Air Station (yellow dashed lines).

- Simplified permits and new permit exemptions, including new temporary use permit;
- Simpler land use categories;
- Use of Floor Area Ratio ("FAR") to guide building form requirements;
- New Saratoga Frontage Zone to guide the design of Kalaeloa's new main street; and
- Removal of minimum parking requirements.

Altogether, the proposed new rules should facilitate appropriate development that enhances the character of Kalaeloa.



**Hawaii Community
Development Authority**



Summary of Proposed Key Changes to the Kalaeloa Rules
May 2023 Administrative Draft

Proposed Change	Citation	Notes
Rules Clarifications		
1. Clarifying the role of nationally-recognized building codes	§ 15-215-6(a)(4)	Recognizes that national building or safety code requirements, such as the International Building Code (IBC) or National Fire Code (NFC), takes precedence over the Kalaeloa rules.
2. Adding/removing various definitions	§ 15-215-8 and Figure 1.7	Clarifies the application of the rules. Obsolete definitions for terms that no longer appear in the Rules are removed.
3. Removal of the T1 Natural transect zone	§ 15-215-23(b)	Kalaeloa does not have any untouched, natural wilderness areas or that are unsuitable for human settlement.
4. Deferring to the City and County for green building standards	§ 15-215-48(c)	The proposed language replaces Leadership in Energy and Environmental Design (LEED) rating requirements with the City and County of Honolulu building energy conservation code (Chapter 16B, Revised Ordinances of Honolulu).
5. Adding clarification about mandatory State Historic Preservation Division (SHPD) review	§ 15-215-63(b)	Language was added to emphasize that SHPD concurrence is required prior to HCDA acceptance of permit applications for processing. This applies to proposals that have any ground disturbance or involves structures over 50 years old.
6. Clarifying that leased and sub-leased land within a parcel is not considered a separate legal parcel	§ 15-215-66	Language was added to clarify that the HCDA will only recognize legal parcel sizes when applying the permit thresholds as shown in Figure 1.1-B (Permit Type Thresholds Matrix), not leased or sub-leased areas within the legal parcel.

Proposed Change	Citation	Notes
7. Adding language to formally defer to the City and County for subdivisions of land	§ 15-215-67	The City and County of Honolulu has always retained the authority to legally subdivide land, and the HCDA does not have this authority. This language makes this assignment of jurisdiction explicit.
Permit Simplification		
8. Added residential and mixed-use transect zones	§ 15-215-23(b)	The addition of the T3-R neighborhood residential and T3-M mixed use transect zones is to refine typologies within the T3 zone, as the land uses emphasized in each differs, and to more-explicitly allow these types of land uses in Kalaheo. This also more closely aligns with national standards for applying form-based transect zone typologies.
9. Removal of the Thoroughfare Plan	§ 15-215-24 [and, formerly, Figure 1.4]	The roadway thoroughfare plan and illustrative cross-sections are eliminated from the Kalaheo rules. Instead, thoroughfares will be required to comply with the City and County of Honolulu's complete streets design manual.
10. Elimination of required plant species for general landscaping	§ 15-215-44(2)	Increased flexibility for plantings and trees will enable landscape designers to better meet the unique characteristics and climate conditions of each site, as well as address supply chain variability. Requirements for street-specific tree sizes and species are being maintained.
11. Elimination of dedicated recreation space in non-residential developments	§ 15-215-45	Recreational space standards are eliminated for industrial, commercial, office, and goods and services uses, since they may hinder development on smaller parcels or conflict with security requirements.

Proposed Change	Citation	Notes
12. Expanding which proposals can qualify for a Rules Clearance permit	§ 15-215-77	Rules clearance permits will now apply to parcels of any size and will be expanded to include more types of projects, such as limited grading, de minimis exterior alterations, repairs using similar materials, and small-scale solar panel installations. This will greatly simplify permit reviews for these types of projects.
13. Adding exemptions for Rules Clearance permits	§ 15-215-77(c)	Interior electrical or plumbing work is now being exempted from HCDA permit requirements. Changes in permitted land uses are also now being exempted from the requirements.
14. Determining the required permit type (and variance) by both transect zone and parcel size	§§ 15-215-8 and 15-215-78(c); and Figure 1.1-B	Currently, development permits are required for all work on lots that are greater than 40,000 square feet (0.92 acres) in size. The proposed thresholds in Figure 1.1-B are intended to tailor the intensity of permit reviews for projects with the most potential for adverse impacts in the most dense or sensitive locations.
15. Requiring Design Advisory Board (DAB) review process at the discretion of the Executive Director	§ 15-215-78(f)	The proposal removes the mandatory requirement for DAB review. This review process will be reserved for projects that the Executive Director deems to have the potential for adverse impacts or includes other elements that could benefit from DAB review.
16. Removing the Conditional Use of Vacant Land (CUVL) Permit and adding the Temporary Use Permit	§ 15-215-80	The Temporary Use Permit will be more flexible than the CUVL and cover shorter-term projects than the CUVL was intended for.
17. Adding archaeological resources as a qualifying reason for a variance	§ 15-215-81(d)(1)	Similar to any other attribute inherent to the parcel that restricts the building envelope and limits where development can occur, <i>in situ</i> remains should qualify as a reason for the approval of a variance.

Proposed Change	Citation	Notes
18. Updated Fee Schedule	§ 15-215-91	Permit fees are updated to better-reflect current costs and the staff time spent on a given permit process.
19. Incorporation of Floor Area Ratio (FAR) into Site Development Standards	Figure 1.3-B	FAR provides better control over building size and bulk than existing density requirements.
20. Simplified land use classifications	Figure 1.7	The number of enumerated land use categories is consolidated from 50 down to 24.
Improved Planning		
21. Adding limited lodging to T2 rural zone	§ 15-215-23(b)(2)	To meet the demand for lodging in the Kalaeloa CDD.
22. Adding a new “Saratoga Overlay Zone” and design standards	§ 15-215-23(b)(7) and § 15-215-49	New architectural standards are designed to reflect a vision of Saratoga Avenue as a pedestrian-scaled urban main street. This vision was established in the Master Plan. These standards will also allow some proposals to bypass review by the Design Advisory Board.
23. Adjustments to fence heights and allowed materials	§ 15-215-43(c)	Allows more functional fences in residential and urban transect zones, while prohibiting some fence materials, to promote stronger neighborhood character and associated development.
24. Requiring submittal of window specifications for approval	§ 15-215-43(h)(2)	Balancing the benefits of transparent ground floor windows with the opacity required by the State Energy Code.
25. Hawaiian sense of place	§ 15-215-43(i)	Promoting and maintaining the presence of native landscaping and Hawaiian motifs, architecture and themes throughout the district.

Proposed Change	Citation	Notes
26. Removing the requirement for off-street parking	§ 15-215-47(a)	This will be consistent with City and County of Honolulu Ordinance 20-41, which eliminated parking minimums in the Primary Urban Center, Kapolei, and Ewa in order to allow developers to right-size parking, lower construction costs, and support multimodal transportation options. When developers still want to provide off-street parking, design guidelines and standards are still provided.
27. Exceptions to the Large Lot Development standards for certain land uses in certain zones	§ 15-215-62	Utilities, large solar arrays, and some other uses would be waived from certain parking and building type requirements that apply to parcels larger than 140,000 square feet (3.2 acres). Large Lot Development Standards would still apply to residential developments.
28. Adding changes to the Regulating Plan	Figure 1.2	Transect zone changes have been made to achieve the vision laid out in the Master Plan, protect historic assets and direct development to the most logical areas of the Kalaheo CDD.
29. Adding changes to the Building Development Standards	Figure 1.3-A	Some changes have been made to direct certain types of development to areas where it can be best supported and best fits within the Kalaheo CDD.
30. Adding a new Building Type: Tropical Urban Court	Figure BT.10	This typology is intended to promote more sustainable, energy-efficient buildings.



Kalaeloa Community Development District Rules

Proposed Amendments to
Hawai'i Administrative Rules, Title 15, Chapter 215

Revised Administrative Draft (Ramseyer Version)
November 2023



**Hawaii Community
Development Authority**



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Amendments and Compilation of Chapter 15-215
Hawaii Administrative Rules

SUMMARY

1. §§15-215-1 to 15-215-3 are amended
2. §§15-215-5 to 15-215-6 are amended
3. §15-215-8 is amended
4. §§15-215-22 to 15-215-24 are amended
5. §§15-215-38 to 15-215-48 are amended
6. §15-215-49 is added
7. §§15-215-62 to 15-215-65 are amended
8. §§15-215-66 to 15-215-67 are added
9. §§15-215-77 to 15-215-85 are amended
10. §§15-215-87 to 15-215-89 are amended
11. §§15-215-91 is amended
12. Chapter 215 is compiled

Amendment and Compilation of Chapter 15-215
Hawaii Administrative Rules



1. Chapter 15-215, Hawaii Administrative Rules,
entitled "Kalaeloa Community Development District
Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 215

KALAELOA COMMUNITY DEVELOPMENT DISTRICT RULES

Subchapter 1 Purpose and Process

§15-215-1	Title
§15-215-2	Purpose
§15-215-3	Applicability
§15-215-4	Minimum requirements
§15-215-5	Rules of interpretation
§15-215-6	Compliance with other regulations
§15-215-7	Severability
§15-215-8	Definition of terms
§§15-215-9 to 15-215-20	(Reserved)

Subchapter 2 Regulating Plan, Transect Zones and Thoroughfare Plan

§15-215-21	Purpose
§15-215-22	Regulating plan
§15-215-23	Transect zones
§15-215-24	Thoroughfare plan
§§15-215-25 to 15-215-36	(Reserved)

Subchapter 3 General Development Standards

§15-215-37	Purpose
§15-215-38	Building type
§15-215-39	Frontage type
§15-215-40	Land use
§15-215-41	Building placement
§15-215-42	Building form
§15-215-43	Architectural standards
§15-215-44	Landscape
§15-215-45	Recreation space
§15-215-46	Open space
§15-215-47	Parking and loading
§15-215-48	Green building
§15-215-49	<u>Saratoga Overlay Development Standards</u>
§§15-215-49	<u>§§15-215-50 to 15-215-60</u> (Reserved)

Subchapter 4 District-Wide Standards

§15-215-61	Purpose
§15-215-62	Large lot development
§15-215-63	Historical and cultural sites
§15-215-64	Dedication of public facilities
§15-215-65	Joint zone development
§15-215-66	<u>Leased and sub-leased development</u>
§15-215-67	<u>Subdivision</u>
§§15-215-68 to 15-215-76	(Reserved)

Subchapter 5 Procedures

§15-215-77	Rules clearance
§15-215-78	Improvement and development permits
§15-215-79	Conditional use permit

§15-215-80	[Conditional use of vacant land] <u>Temporary use permit</u>
§15-215-81	Variances
§15-215-82	Master plan
§15-215-83	Completeness review
§15-215-84	Automatic approvals
§15-215-85	Effective period
§15-215-86	Appeals
§15-215-87	Subsequent applications
§15-215-88	Minor changes
§15-215-89	Nonconformities
§15-215-90	Violations and enforcement
§15-215-91	Fee schedule
§§15-215-92 to 15-215-110	(Reserved)


Historical note: Chapter 15-215 is based upon chapter 15-200 [Eff 5/18/00, R 10/27/12].

SUBCHAPTER 1

PURPOSE AND PROCESS

§15-215-1 Title. (a) This chapter 215 of the Hawaii administrative rules shall be known, and may be cited as the "Kalaeloa community development district ("CDD") [rules.] rules" or the "Kalaeloa rules."

(b) References to "rules" within this chapter are references to the Kalaeloa CDD rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii Community Development Authority ("HCDA"), where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure or use from other regulations.

(c) The figures, dated [~~September 2012,~~ ], attached at the end of this chapter, are hereby incorporated by reference and made a part of this chapter. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-5, 206E-7, 206E-194) (Imp: HRS §§206E-5, 206E-7, 206E-194)

§15-215-2 Purpose. (a) The rules carry out, through complete, integrated, effective and concise land development regulations, the vision and concepts of the Kalaeloa Master Plan ("KMP"), as may be amended from time to time, by classifying and regulating the types and intensities of development and land uses within the Kalaeloa CDD consistent with, and in furtherance of, the policies and objectives of the KMP and chapter 206E, Hawaii Revised Statutes ("HRS").

(b) The rules are adopted to protect and promote the public health, safety, and general welfare of the community and to protect and preserve places and areas of historical, cultural, architectural, or environmental importance and significance, as set forth in the KMP and chapter 206E, HRS. [Eff 10/27/12; comp] (Auth: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-191, 206E-194)

(Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-191, 206E-194)

§15-215-3 Applicability. (a) This chapter, together with the KMP, shall govern all real property within the Kalaeloa CDD~~[7]~~, unless preempted by federal regulation.

(b) No building permit shall be approved by the authority for any project within the Kalaeloa CDD unless the project conforms to the provisions of the KMP and this chapter.

(c) If any provision of the (1) city and county of Honolulu land use ordinance, (2) Ewa development plan (ordinance no. 97-49, as amended by ordinance ~~[no.]~~ nos. 00-16~~[7]~~ and 20-46), or (3) naval air station Barber's Point community redevelopment plan are inconsistent with these rules, then such provisions are hereby declared to be inapplicable to lots within the Kalaeloa CDD and these rules shall govern.

(d) Except as otherwise provided herein, all other rules, laws, and ordinances shall continue to remain applicable to the lots within the Kalaeloa CDD.

~~[(e) The Kalaeloa sustainability guidelines should be utilized to promote sustainability and energy efficiency.]~~ (e) Federal ownership or lands subject to the Hawaiian Homes Commission Act of 1920. If a property under federal ownership or under the authority of the Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, ch. 42, 42 Stat. 108, and all other lands later designated as such by statute, converts to private ownership the requirements of the rules shall apply. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-191, 206E-194) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-191, 206E-194)

§15-215-4 Minimum requirements. The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare. Satisfaction of the minimum requirements does not mean that a decision-maker cannot impose additional requirements where authorized and

appropriate and does not guarantee compliance with other rules, ordinance, or laws imposed by other governmental entities. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-5 Rules of interpretation.

- (a) Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.
- (b) In addition to text-only contents of the rules, section 15-215-5 (rules of interpretation) shall also control related captions, titles, and figures.
- (c) Terms not defined in section 15-215-8 (definition of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the authority's administrative rules, these rules shall take precedence.
- (d) Where in conflict, numerical metrics shall take precedence over graphic metrics.
- (e) Words used in the singular include the plural; words used in the plural include the singular.
- (f) Words used in the present tense include the future tense; words used in the future tense include the present tense.
- (g) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.
- (h) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of the authority's rules of practice and procedure and chapter 216 (Kalaeloa reserved housing rules), are [~~higher or~~] more restrictive, the [~~latter~~] stricter shall control.

(i) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting:

- (1) The issuance of an interpretation shall include findings stating the basis for the interpretation. The basis for an interpretation may include but is not limited to technological changes or new industry standards. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the KMP;
 - (2) All interpretations shall be:
 - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
 - (B) Distributed to the authority, executive director, and HCDA staff;
 - (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-215-86 (appeals); and
 - (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.
- (j) If there is uncertainty about the location of any transect zone boundary shown on the regulating plan, the location of the boundary shall be determined by the executive director as follows:

- (1) Where a transect zone boundary approximately follows a lot line, alley, or street line, the lot line, or street or alley centerline shall be construed as the transect zone boundary, as applicable;
- (2) If a transect zone boundary divides a lot and the boundary line location is not specified by distances printed on the regulating plan, the location of the boundary will be determined by using the scale appearing on the regulating plan; and
- (3) Where a public thoroughfare or alley is officially vacated or abandoned, the lot that was formerly in the street or alley will be included within the transect zone of the adjoining lot on either side of the vacated or abandoned thoroughfare or alley.
[Eff 10/27/12; am and comp _____]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-6 Compliance with other regulations.

- (a) Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:
 - (1) Kalaeloa CDD rules. If a conflict occurs between requirements within the rules, the most restrictive shall apply;
 - (2) KMP. The provisions of the rules, when in conflict with the KMP shall take precedence;
 - (3) Master plan. If conflicts occur between the requirements of the rules and standards adopted as part of any master plan, the requirements of the rules shall apply;
 - (4) Federal regulations. If a conflict occurs between these rules and federal regulations~~[7]~~ or nationally-recognized code, the federal regulations or code shall take precedence; and
 - (5) Private agreements. The rules apply to all lots located within the Kalaeloa CDD regardless of whether it imposes a greater or lesser restriction on the development or use of structures or land than a private

agreement or restriction (e.g., conditions, covenants and restrictions).

(b) The following provisions of subtitle 4, title 15, apply within the Kalaeloa CDD and may be referenced herein:

- (1) The authority's rules of practice and procedure; and
- (2) Chapter 216 (Kalaeloa reserved housing rules). [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-7 Severability. These rules shall be liberally construed to protect and promote the health, safety and general welfare within the Kalaeloa CDD. Should any provision of these rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff 10/27/12; comp] (Auth: HRS §206E-5) (Imp: HRS §206E-5)

§15-215-8 Definition of terms. This subchapter provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this article, then the correct definition shall be determined in accordance with section 15-215-5 (rules of interpretation). The inclusion of specific examples in definitions does not imply, nor does it establish, the inherent right to implement those uses in any district where they are not listed in Figure 1.7 (land use summary), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter.

"Accessory building" means a building that is located on the same lot[~~7~~] as, but physically separated from, the principal building and is subordinate in size to the principal building[~~, which may include swimming pool house, recreational facilities, and gazebos~~];

"Accessory dwelling" means a self-contained residential unit located on the same lot as a front

yard house, side yard house, or duplex-triplex-quadplex, which is either attached to the principal building or in a separate structure;

"Accessory use" means a designation of land with approved uses that can legally operate on the lot, which may include both principal and accessory uses, providing that the accessory use is clearly incidental and subordinate to, and in support of, the principal use; as evidenced by the physical area occupied by each use, or by comparative intensity of practice.

~~["Administrative" is a use classification which primarily involves uses pertaining to the affairs of a business, profession, service, industry, government, or like activity, which may include ancillary services for office workers, such as a restaurant, coffee shop, or newspaper or candy stand;]~~

~~["Agriculture" means agricultural activities, including agronomy, aquaculture, biotechnical agriculture, forestry, honey production, and similar uses, but not including a grocery store or the retail or wholesale of products;]~~

"Airport[" and aircraft transportation" means [an area where fixed wing aircraft, helicopters, and similar craft can take off and land, equipped with hard surfaced landing strips, hangars, facilities for refueling and repair, a control tower, accommodations for cargo and passengers, terminals, charter services, hangars, heliports, and helipads] any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities located thereon;

"All-weather surface" means a four-inch base course with a two-inch asphalted concrete surface or a four-inch reinforced concrete pavement or any other similar materials as determined to be acceptable by the authority. These materials should combine the load-bearing characteristics, durability and level surface of asphalt and concrete. Grass block and grasscrete may be considered all-weather surfaces;

"Alley" means a service lane located to the rear of lots providing access to service areas, parking, and accessory buildings and containing utility easements;

"Arena" is a use classification which primarily consists of a large-scale indoor or outdoor facility accommodating spectator-oriented sports, concerts, [and] or other entertainment activities;

~~["Artisan or craft production" is a use classification which primarily involves the manufacturing and assembling of small products by hand, including but not limited to clothing, furniture, jewelry, pottery and other ceramics, small glass and metal art, taxidermists and craft products,]~~

"Attic" means a portion of a building wholly or partly in the roof, so designated, arranged or built to be used for business, storage, recreation or habitation. Attic areas with a head room of less than seven feet shall not be included as floor area;

"Authority" means the Hawaii community development authority as established by section 206E-3, HRS;

~~["Automobile rental or sales" is a use classification primarily engaged in the rental, leasing or sales of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies, including storage of said vehicles,]~~

"Automobile refueling station" is a use classification which primarily involves the retail sale of motor vehicle fuel, electric vehicle charging, and lubricants to the public by direct delivery into the user's vehicle and may include incidental motor vehicular services such as tire repair, battery charging, brake adjustment, motor tune-up or washing. The sale of food, beverages and related items is permitted in conjunction with an automobile refueling station;

"Avenue" means a pedestrian friendly~~[, low to medium (thirty to thirty-five mph)]~~ urban thoroughfare, generally shorter in length than boulevards, serving access to abutting land. Avenues serve as primary pedestrian and bicycle routes and may serve local transit routes. Avenues usually provide curb parking;

"Awning" means a canopy that is supported entirely from the exterior wall of a building;

"Bed and breakfast" is a use classification in which overnight accommodations are provided to guests for monetary compensation, for periods of less than

thirty consecutive days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling;

"Bicycle lane" means a dedicated lane for cycling within a ~~[moderate-speed]~~ vehicular thoroughfare, demarcated by striping;

"Block" means the aggregate of lots, passageways, public spaces, and alleys bounded on all sides by thoroughfares;

"Boulevard" means a pedestrian friendly, ~~[low-speed (thirty-five mph or less)]~~ divided thoroughfare designed to carry both through and local traffic, pedestrians and bicycles. Boulevards may be high ridership transit corridors. Curb parking may be allowed on boulevards;

"Build to line" means a location from which the ~~[principle]~~ principal vertical plane of the front elevation must be erected, and is parallel to, the frontage line. The build to line dimension is the distance from the lot line to the build to line;

"Building" means any ~~[permanently anchored structure used or intended for supporting or sheltering any use or occupancy;]~~ enclosed structure with a roof and walls;

"Building face" means the building elevation closest to and facing the abutting thoroughfare;

"Building type" means a form-based classification that describes a particular type of building in terms of scale and design. See Figures BT.1 to ~~[BT.9,]~~ BT.10, dated ~~[September 2012,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter;

"Camping" is a use classification which means the use of tents, travel trailers, recreational vehicles or other mobile camping equipment for recreational purposes, without permanent facilities, incidental to some other principal use of the site, including seasonal recreational camping;

"Civic" is a use classification which primarily involves uses that foster community interaction and citizen participation in civic activities such as: meeting halls ~~[or clubhouse],~~ conference centers, cultural facilities, public or government facilities~~[7]~~ such as police or fire stations,

libraries~~[,]~~ educational facilities, ~~[and]~~ or religious facilities~~[, and theaters]~~;

"Commercial" means the term collectively defining workplace, office, and retail functions;

"Complete street" means a street that adheres to the legal framework established by the provisions of Section 264-20.5, Hawaii Revised Statutes (Act 54 Session Laws of Hawaii 2009) and Ordinance 12-15, city and county of Honolulu, and the Honolulu Complete Streets Design Manual, as amended from time to time.

"Conference center" is a use classification for facilities primarily used or intended to be used to host conferences, exhibitions, large meetings, seminars ~~[and]~~ or training sessions~~[,]~~, excluding facilities used primarily for private parties or social events with no training or educational purpose;

~~["Consulate" is a use classification for facilities primarily used or intended to be used by staff and consul, an official appointed by a foreign government representing the interests of citizens of the appointing country,]~~

"Controlled access" is a use classification for establishments that operate on a paid entry basis for admission, such as theme parks, water parks, sports arenas, or entertainment centers, within a closed perimeter.

"Cultural facilities" is a use classification for establishments such as museums, art galleries, botanical ~~[and zoological]~~ gardens, ~~[and]~~ or other facilities of a historic, ~~[an]~~ educational or cultural interest;

"Curb" means the edge of the vehicular pavement that may be raised or flush to a swale and is usually incorporated into a drainage system;

~~["Dance-nightclub" is a use classification pertaining establishments primarily engaged in the preparation and sale of alcoholic beverages for consumption on the premises in conjunction with a dance floor accompanied by prerecorded or live music,]~~

"Day-care center" is a use classification which primarily involves non-medical care for fifteen or more children or adults in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four-hour

basis. May include pre-schools, infant centers, ~~[and extended day-care]~~ senior day-care, or extended-day care facilities;

"Decision-maker" means the person or entity charged with reviewing a particular permit or development approvals;

~~["Detention center" is a use classification for a facility primarily used or intended to be used for pretrial detainees, persons arrested who cannot make bail, persons being held without bail until their trials, and felons and misdemeanants who have been sentenced to less than one year of incarceration or jail;]~~

"Developable area" means the area within the lot lines of a lot or series of lots, excluding setback areas;

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any ~~[man-made]~~ human-made change over, upon, under, or across improved or unimproved real property within the Kalaeloa CDD;

"Developer's proposal to develop lands under the authority's control" as used in section 206E-5.6, HRS, shall mean and include:

- (1) Any permit application filed by any private person or entity seeking the authority's approval for a development; or
- (2) An improvement project on lands owned by the authority;

"Development" means and includes any human-made change over, upon, under, or across improved or unimproved real property, performed on a lot ~~[greater than 40,000 square feet]~~ within the Kalaeloa CDD~~[-]~~ that meets transect-specific area thresholds. See Figure 1.1-B (permit type thresholds matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter. Development shall not include a project consisting of a change in use or interior renovations only[+], provided that the change of use is a permitted use, either by right or as a conditional use, in that transect zone. Development shall also not include a project allowed under a Rules Clearance per section 15-215-77(b);

"Development permit" means and includes a permit approved and issued by the authority authorizing any

development; "Disposition" means the placement of a building on its lot;

"Dog park" is a use classification for a park that is identified by signage as available for off-leash dog activity. The space may be enclosed by perimeter fencing, defined by park elements such as topography, landscaping or pathways or a combination of elements to separate the off-leash area from nearby roadways.

"Driveway" means a vehicular lane within a lot, often leading to ~~[a garage;]~~ vehicular storage;

"Dwelling" means one or more rooms providing complete living facilities for one family, including kitchen facilities or equipment for cooking, and including a room or multiple rooms for living, sleeping, toileting, bathing, and eating;

~~["E-cycling" is a use classification for facilities primarily used or intended to be used for the dismantling, processing and reassembly of electronic materials into new products (such as computer parts); separate from recycling collection facilities. Stockpiling of chemical and hazardous materials exceeding reasonable dismantling and processing time shall not be allowed;~~

~~"Educational facilities" is a use classification which primarily involves public or private instruction or education, such as kindergarten;, elementary, middle, or junior high school; high school; college; or universities;]~~

"Eating and drinking establishments" is a use classification for businesses, such as restaurants and bars, that prepare and serve food and beverages, including alcoholic beverages, for on-premises and off-premises consumption;

"EV charging station" means a parking space with Electric Vehicle Supply Equipment (EVSE) that supplies electric energy for the recharging of electric or plug-in hybrid vehicles;

"Eleemosynary organization" means a society, association, or corporation primarily engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation shall be

distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes;

"Elevation" means an exterior wall of a building not along a frontage line;

"Encroachment" means any structural or architectural element that breaks the plane of a vertical or horizontal regulatory limit, extending into a setback, into the pedestrian zone, or above a height limit;

"Exceptional tree" means a tree that by reason of age, rarity, location, size, aesthetic quality, endemic status or historical and cultural significance is designated by the county arborist committee as worthy of preservation, pursuant to the city and county of Honolulu exceptional tree ordinance. See the revised ordinances of Honolulu, chapter 41, article 13 - protective regulations for exceptional trees including the register of exceptional trees;

"Executive director" means the executive director of the Hawaii community development authority;

"Facade" means the exterior wall of a building that is set along a frontage line;

"Farmer's market" is a use classification for facilities primarily used or intended to be used for an occasional or recurring market held in an open area or in a structure where sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages dispensed from booths located on-site;

"Floor area" means the sum of the gross horizontal areas of all floors of a building~~[7]~~ or buildings on the same lot, including interior balconies and mezzanines, measured from the exterior face of exterior walls or from the centerline of a wall separating two ~~[structures.]~~ buildings.

- (1) Floor area shall include the area of roofed porches or ~~[lanai]~~ lanais having more than one wall and of accessory ~~[structures]~~ buildings on the same lot.
- (2) Buildings with one or fewer exterior walls shall be excluded, except buildings with a curvilinear footprint and a single, continuous wall.

- (3) Stairwells, elevator [~~shafts~~] shafts, parking facilities and loading spaces, including their driveways, shall be excluded[+] as well as roofed areas with coverings less than 50 per cent open or permeable to the sky.
- (4) Rooftop mechanical equipment is excluded.
- (5) Accessory buildings dedicated entirely to machinery or utility equipment, that are also accessory to a primary use, therein being clearly subordinate to and in support of the primary use, shall also be excluded;

~~["Freight or base yard" is a use classification for a lot primarily used or intended to be used for the distribution of goods, storage or maintenance of equipment. Freight containers shall be stacked no more than four containers high;]~~

"Frontage" means the area between a building elevation and ~~[the vehicular lanes,]~~ a thoroughfare, inclusive of its built and planted components. Frontage is divided into two components: private frontage and public frontage;

"Frontage line" means a lot line bordering a public frontage;

"Frontage occupancy" means the minimum length of the principal frontage that must contain a building street front element. See Figure 1.8 (building placement and ~~[encroachments,]~~ encroachment), dated ~~[September 2012,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Frontage type" means a form-based classification that describes a particular type of building face in terms of scale and architectural features. Frontage types facilitate pedestrian access to the principal entrance of a building;

"Furnishing area" means the transition between the pedestrian thoroughway and the edge of the vehicular pavement. The furnishing area provides space for roadside appurtenances such as street trees, planting strips, street furniture, public art, sidewalk cafes, sign poles, signal and electrical cabinets, fire hydrants, bicycle racks ~~[and]~~ or bus shelters;

~~["Gas station" is a use classification which primarily involves the retail sale of motor vehicle~~

~~fuel and lubricants to the public by direct delivery into the user's vehicle and may include incidental motor vehicular services such as tire repair, battery charging, brake adjustment, motor tune-up and washing. Sale of food, beverages and related items is permitted in conjunction with a gas station;]~~

"Grade" means the slope of a road, street, or other public way specified in percentage terms;

"Green screen" is a landscaping device meant to conceal or buffer one use from another using living plant material. Green screens are usually deployed along the boundaries of parking garages and lots to conceal them from public view;

"Green infrastructure" means methods of stormwater management that allow stormwater to infiltrate, to be treated by vegetation or by soils, or to be stored for reuse. Green infrastructure includes, but is not limited to, pervious paving, bioretention basins, vegetated swales, and cisterns;

"Ground elevation" means the highest finished grade along the perimeter of the building;

"Group home" is a use classification which primarily involves the use of any single-family residence or dwelling unit for a group residence where residents pay a fee or other consideration to the group home operator in return for residential accommodations. A group home includes a boarding home, a rooming house, as well as a group residence for the elderly, or mentally or physically disabled or handicapped persons, or other persons in need of care and supervision;

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes;

"Heavy industrial" is a use classification for industrial plants primarily engaged in manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of materials and products, primarily from extracted or raw or recycled materials. Uses in this classification generally are characterized by, among other things, truck traffic or outdoor storage of products, materials, equipment or fuel. Typical uses include battery manufacturing, welding, water softening plants, plating, ready-mix concrete plants, trucking terminals, ~~[and]~~ or distribution facilities for commercial package

services. Heavy industrial use is not permitted in the Kalaeloa CDD;

"Height" means the vertical dimension of a building, interior space or other structure measured from the base at finish grade to the top or highest point;

"Historically or culturally significant sites" means any lot that is:

- (1) Listed on the Hawaii or national register of historic places, pursuant to HRS; or
- (2) Designated in the KMP as being significant in the history or prehistory, architecture, culture, or development of the Kalaeloa CDD or a tangible, historic or cultural linkage between Kalaeloa of the past and of the present;

~~["Home occupation" is a use classification which primarily involves work-related activities carried out in a dwelling unit for monetary gain by a resident. Home occupation is considered an accessory use in the resident's dwelling unit;~~

~~"Hospital" is a use classification which primarily consists of institutions providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices;]~~

"Hotel" is a use classification for a building or group of buildings containing rooms ~~[connected together, constituting]~~ that constitute an independent living unit. A hotel generally includes a lobby, clerk's desk or counter with twenty-four-hour clerk service and facilities for registration ~~[and]~~ or keeping of records relating to hotel guests;

"Improvement permit" means and includes a permit approved and issued by the executive director authorizing any improvement project;

"Improvement project" means and includes any human-made change over, upon, under, or across improved or unimproved real property performed on a lot ~~[of 40,000 square feet or less]~~ that meets transect-specific area thresholds. See Figure 1.1-B (permit type thresholds

matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter;

~~["Indoor recreation" is a use classification which primarily involves participant sports conducted within an enclosed building. Typical uses include bowling alleys, billiard parlors, pool halls, indoor ice or roller skating rinks, indoor racquetball courts, indoor batting cages, and health or fitness clubs;]~~

"Interior balcony" means a balcony that does not project from the face of the building on which it is located;

"Kalaeloa community development district" or "Kalaeloa CDD" means the community development district established by section 206E-193, HRS;

"Kalaeloa master plan" or "KMP" means the long-range plan for the Kalaeloa CDD approved by the Governor on ~~[August 23, 2006;]~~ [REDACTED];

~~["Kalaeloa sustainability guidelines" or "KSG" means the development provisions established to promote an environmentally sensitive and energy efficiency district. Provisions in the KSG are recommended, but not compulsory;]~~

"Kennel and veterinary care" is a use classification for services, including office and indoor medical treatment facilities, for the routine examination, medical or surgical treatment and care of domestic household pets generally with overnight boarding facilities for pets in care. Includes kenneling of animals, allowing for the grooming, keeping, boarding or maintaining of four or more dogs (four months of age or older), or four dogs or cats for sale in pet shops, or patients in animal hospitals;

"Lanai" means an accessory area to a dwelling or lodging unit, with one or more sides permanently open to the exterior except for a railing or parapet not exceeding four feet in height, with such open side or sides constituting at least twenty-five per cent of the perimeter thereof. Lanais are accessible solely from the dwelling or lodging unit to which it is appurtenant and may either be recessed ~~[elements]~~ with a roof ~~[continuous]~~ contiguous with the building roof, or they may be protruding elements added on to the face of a building;

"Land use" means a designation of land with approved uses that can legally operate on the lot;

"Land use ordinance" or "LUO" means the land use ordinance adopted by Ordinance No. ~~[86-96]~~ 99-12 of the city and county of Honolulu~~[+]~~, also referred to as Chapter 21 of the revised ordinances of Honolulu;

"Landscaping" means site areas containing plants and vegetative growth (such as trees, shrubs, groundcover, and similar) along with non-plant ~~[decorative]~~ elements (such as stone, pavers, water features, ornate tiles, art, and similar);

"Large lot" means a lot or collection of contiguous lots equal to or greater than 140,000 square feet;

"Large utility installation" means the building plant, works, utility line, tower, transmitter, relay, receiver, pedestal or other equipment used to make or deliver a utility product, commodity or service, including renewable energy generation systems;

~~["Leadership in energy and environmental design" or "LEED" means is an ecology-oriented building certification program that concentrates its efforts on improving performance across five key areas of environmental and human health: energy efficiency, indoor environmental quality, materials selection, sustainable site development, and water savings;]~~

"Light industrial" is a use classification which involves repair and manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products and incidental storage and distribution of such products or parts, but excluding basic industrial processing as classified under heavy industrial. Typical uses include apparel and furniture manufacturing, machine shops, and motor vehicle repair and servicing;

~~["Limousine or taxi facility" is a use classification that primarily consists of facilities used or intended to be used for dispatching limousines or taxi cabs and where vehicles are kept while not in use;]~~

"Live-work" is a use classification for a mixed-use unit which is occupied or intended to be occupied by a business operator who lives in the same structure

that contains the commercial activity or industry~~[+]~~, including but not limited to retail sales;

"Lodging" is a use classification for a structure or structures in which people are temporarily housed; which ~~[typically include]~~ includes but is not limited to hotel, motel, ~~[and]~~ or bed and breakfast facilities;

"Long-term bicycle parking" means a place to secure bicycles for eight to twenty-four consecutive hours. Long-term bicycle parking can be provided through bicycle lockers, bicycle racks in enclosed areas, or space within a building;

"Lot" means a parcel of land, legally established and duly recorded at the state of Hawaii bureau of conveyances, which can be used, developed or built upon;

"Lot line" means the boundary of a lot of land, often expressed in metes and bounds~~[+]~~ or otherwise legally established;

"Lot width" means the length of the principal frontage line of a lot;

"Low impact development" means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design;

"Medical or dental ~~[clinic]~~ offices" is a use classification which primarily consists of a facility that contains one or more physicians or dentists, their assistants, and a laboratory or an apothecary limited to the sale of pharmaceutical ~~[and]~~ or medical supplies. Shall not include facilities for inpatient care or major surgery;

"Mixed-use" means the combination of more than one use within a development project or lot;

~~["Mobile home park" is a use classification which primarily consists of a lot or lots upon which multiple mobile home structures, or dwelling units manufactured in a factory and designed to be transported to a site and semi-permanently attached, are situated and is in the nature of a residential community;]~~

"Miyawaki method" is an afforestation method developed by Akira Miyawaki that aims to create urban forests by utilizing native species to restore indigenous ecosystems;

"Motel" is a use classification which provides lodging for motorists in rooms usually having direct access to an open parking area;

"Multi-family" is a use classification which primarily consists of a building or buildings containing more than one dwelling and which may have joint services or facilities;

"New building" means and includes the construction of a building including structural supports, walls and a roof;

"Nightclub" is a use classification for establishments primarily engaged in the preparation and sale of alcoholic beverages for consumption on the premises in conjunction with a dance floor accompanied by prerecorded or live music;

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the Kalaeloa CDD as a result of adoption or amendment of this chapter or government action associated with eminent domain;

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the transects established by this chapter;

"Office" is a use classification which is primarily engaged in the production of intellectual property;

"Open space" means a portion of a lot, exclusive of required yards, setback areas, or parking areas which is:

- (1) Open and unobstructed overhead; and
- (2) Is used or intended to be used for outdoor recreation;

~~["Outdoor recreation" is a use classification which primarily consists of out-of-doors recreational facilities which typically include swimming pools, wading pools, tennis courts, badminton courts,~~

~~basketball courts, baseball and soccer fields, play areas, and clubhouse;]~~

"Outdoor storage" is a use classification which primarily consists of a facility which is not enclosed for the storage of goods, materials ~~[and]~~ or motor vehicles, but does not include repair, demolition or salvage operations;

~~["Park and recreation" is a use classification which primarily consists of parks and recreational facilities, including gymnasiums, playing fields, playgrounds, fountains, and swimming pools;]~~

"Parks and outdoor recreation" is a use classification which primarily consists of outdoor recreational facilities, including open fields, fitness stations, sport courts and athletic fields, trails and tracks, playgrounds, off-leash dog areas, skateparks, fountains, splash pads or pools; and may also include partially or fully enclosed buildings or structures that support the primary use such as gymnasiums, museums, clubhouses, sculptures, picnic shelters, bathrooms and changing facilities, or maintenance facilities;

"Parking structure" means a building containing one or more stories of parking above or below grade;

"Passageway" means a pedestrian connector, open or roofed, that passes between buildings to provide shortcuts through long blocks and connect rear parking areas to frontages;

"Pedestrian" means a person or persons who travel by foot;

"Pedestrian thoroughway" means the clear area for the pedestrian walkway area between the furnishing and private frontage areas. See Figure ~~[4.11]~~ 1.10 (pedestrian zone treatment), dated ~~[September 2012,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter;

"Pedestrian zone" means the zone between the building face and the curb. The elements of a pedestrian zone are: the private frontage area, the pedestrian thoroughway area, and the furnishing area. See Figure ~~[4.11]~~ 1.10 (pedestrian zone treatment), dated ~~[September 2012,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter;

"Personal service" is a use classification which primarily consists of services for the enhancement of

personal appearance, cleaning, alteration or reconditioning of garments and accessories. Typical uses include hair salons, nail salons, tanning salons, barber shops, tattoo parlors, tailors, shoe repair shops, self-service laundries, ~~[and]~~ or dry cleaning shops, but exclude uses classified under office ~~[and]~~ or vocational school;

"Plane break" means a horizontal or vertical recess or projection of a dimension specified by these rules particular to building elevations, including facades;

"Planting strip" means a planted and landscaped area accommodated within the furnishing area, intended to provide a buffer between pedestrians and vehicles;

"Principal building" means the main building on a lot, usually located toward the frontage;

"Principal entrance" means the main point of access for pedestrians into a building;

"Principal frontage" means the frontage designated to bear the address and principal entrance to the building, and the measure of minimum lot width as determined by the lot owner;

"Private frontage" means the area of the pedestrian thoroughway area that is privately owned. The private frontage contributes to the character of the transect, and includes the front of building, landscaping, and often a segment of the sidewalk;

"Project" means an endeavor undertaken by a landowner or developer to build upon a lot or combination of lots;

"Project site" means the gross land area of a lot or a combination of lots for a proposed project;

"Public art" means works of art in any media that has been displayed in the physical public domain and accessible to all;

"Public building" is a use classification which ~~[primarily]~~ consists of buildings owned or developed by public entities ~~[or developed]~~ on government-owned lands~~[+]~~. A government-owned building that is leased by a private entity is not a public building. A privately-owned building that is leased in whole or in part to a government entity is not a public building;

"Public frontage" means the area between the curb of the vehicular lanes and the frontage line;

"Public project" means any project or activity of any county or agency of the state conducted to fulfill a governmental function for public benefit and in accordance with public policy;

~~["Raceway track" is a use classification which primarily consists of a facility used or intended to be used for the racing of automobiles, motorcycles, or bicycles;]~~

"Recreation space" means that portion of a lot, exclusive of required yards, setback areas, or parking areas which is:

- (1) Used or intended to be used for the exclusive use of the residents, employees or visitors of the project;
- (2) Either outdoor or indoor within the lot; and
- (3) Located at any elevation;

"Recycling collection facility" is a use classification for a space primarily used or intended to be used to collect and load recyclable materials to be transported to a recycling center. May include bins, boxes, cans, kiosk type structures, ~~[and]~~ or reverse vending machines;

"Regulating plan" means a ~~[zoning]~~ map ~~[or set of maps]~~ that shows the transect zones, ~~[civic zones,]~~ special districts, and special requirements, ~~[if any,]~~ such as overlay zones, of areas subject to regulation;

~~["Research and development" is a use classification for a facility primarily used or intended to be used for scientific research, testing and analysis;]~~

"Reserved housing" means housing as defined in chapter 216, title 15, Hawaii administrative rules;

"Residential" is a use classification for premises available for human dwelling;

"Residential floor area" means the gross total residential floor area including the dwelling unit(s) and limited common areas such as lobby, hallways, storage, covered recreation area, and similar areas set aside for the residents;

~~["Restaurant and bars" is a use classification which primarily involves the sale of food or beverages in a ready-to-eat state for on-site or off-site consumption. Typically includes tables, counters, benches, or other seating facilities. Examples include a sit-down dining facility, fast-food~~

~~restaurant (no drive-through), cafe, bakery, cafeteria, coffee shop, lunchroom, delicatessen, and ice cream parlor. Includes microbreweries as an accessory to the restaurant;]~~

"Retail [~~sales~~] goods and services" is a use classification which primarily involves the sale of goods and services, including but not limited to groceries, apparel, merchandise, [~~drug~~] drugs and pharmaceuticals, hardware, [~~and~~] or appliances;

"Right-of-way" means the area of a thoroughfare between private lot lines;

~~["Robotic parking" means a mechanized parking system which stores and retrieves vehicles in a compact storage facility;~~

~~"Secondary frontage" means on corner lots, the frontage that is not the principal frontage;]~~

"Self-storage facility" is a use classification for a place or building, or portion thereof, that is divided into individual spaces and that is used or is intended for use as individual storage units that [~~is~~] are rented, leased, or owned;

"Setback" means the dimension between the [~~side or rear~~] building elevation and the [~~side or rear~~] lot line that must remain clear of any buildings or other structures with the exception of authorized encroachments;

~~["Shared parking" means a system in which the parking requirements for two or more uses are shared amongst each other;]~~

"Sharrow" means arrow type markings painted on the street to identify the permitted use of the road by both bicyclists and automobiles;

"Solar Heat Gain Coefficient (SHGC)" is the fraction of solar radiation that passes through a glass surface and is released as heat inside a room.

"Short-term bicycle parking" means a place to secure bicycles for less than eight consecutive hours. Short-term bicycle parking can be provided through bicycle racks, [~~and~~] or storage facilities;

"Sidewalk" means the paved section of the public frontage dedicated exclusively to pedestrian activity;

"Single family" is a use classification pertaining to a single dwelling;

"Site" means the place or places where the permanent or temporary works are to be carried out;

"Solar farm" is a use classification which primarily consists of clusters of solar powered devices, either photovoltaic ("PV") or turbine systems. A solar farm ~~[should]~~ shall be large enough to generate at least one megawatt of electricity;

"Standard" means a regulation that is required, rather than discretionary;

"Storefront" means street-facing ground-floor businesses or services that are publicly-accessible and have display windows facing the street;

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement;

"Street" means a pedestrian-friendly~~[, low speed (twenty-five miles per hour)]~~ thoroughfare primarily serving abutting lots. A street is used to connect neighborhoods within the district. Streets ~~[emphasize]~~ may provide curb parking;

"Street furniture" means equipment installed within the pedestrian zone, including but not limited to~~[+]~~ benches, waste receptacles, ~~[and]~~ or newspaper dispensers;

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls, swimming pools, ~~[and]~~ or signs;

"Sustainability and Agriculture" is a use classification that primarily consists of facilities that use, develop, or protect natural resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs, including but not limited to solar and wind farms, recycling facilities, agronomy, aquaculture, forestry, hydroponic farms or nature preserves;

"Swale" means a low or slightly depressed natural area for drainage;

"Theater" is a use classification which primarily consists of performance theaters, movie theaters, ~~[and]~~ or amphitheaters;

"Thoroughfare" means a way or passageway used by vehicular, bicycle, and pedestrian traffic. Thoroughfares consist of vehicular lanes and the pedestrian zone and provide access to lots and open spaces~~[+]~~, and are not limited to the thoroughfares identified in the Thoroughfare Plan;

"Thoroughfare plan" means a component of the Kalaeloa ~~[CDD rules]~~ master plan, as may be amended from time to time, and referred to in the Kalaeloa CDD rules, that shows planned changes to existing thoroughfares and the general location of planned new thoroughfares~~[. See Figure 1.4 (thoroughfare plan), dated September 2012, made a part of this chapter, and attached at the end of this chapter];~~

"Transect zone" means a distinct environment within the Kalaeloa CDD. The Kalaeloa CDD has ~~[six]~~ five transect zones that reflect the physical form and character of an area, according to the density and intensity of its land use and urbanism;

"Visual light transmission" (VLT) is the percentage of visible light that passes through glass;

~~["View corridor" means a section of street that is designated to protect views. See Figure 1.12 (view corridors), dated September 2012, made a part of this chapter, and attached at the end of this chapter;~~

~~"Vocational school" is a use classification which primarily involves training in a skill or trade to be pursued as a career;]~~

"Warehousing" is a use classification which primarily involves the wholesaling, storage, moving or bulk distribution of goods other than live animals. Typical uses include wholesale distributors, storage warehouses, self-storage facilities and moving ~~[and]~~ or storage firms;

"Wind farm" is a use classification which primarily consists of clusters of wind powered devices. A wind farm should be large enough to generate at least one megawatt of electricity; and

"Zoning map" means the official map or maps that are part of the Kalaeloa CDD rules and delineate the boundaries of individual transect zones and district. See Figure 1.2 (regulating plan), dated ~~[September 2012,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§§15-215-9 to 15-215-20 (Reserved).

SUBCHAPTER 2

REGULATING PLAN, TRANSECT ZONES AND THOROUGHFARE PLAN

§15-215-21 **Purpose.** This subchapter establishes the transect zones and thoroughfare plan within the Kalaeloa CDD, adopts the regulating plan for the Kalaeloa CDD as its zoning map and establishes standards applicable to the transect zones. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-194) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-194)

§15-215-22 Regulating plan. The Kalaeloa CDD regulating plan (hereafter referred to as the "regulating plan"), included as Figure 1.2 (regulating plan), dated [September 2012,], made a part of this chapter, and attached at the end of this chapter, identifies the transect zones provided in section 15-215-23 (transect zones). [Eff 10/27/12; am and comp] (Auth: HRS §206E-7, 206E-194) (Imp: HRS §206E-7, 206E-194)

§15-215-23 Transect zones. (a) All lots within the Kalaeloa CDD are organized by transect zones as shown in Figure 1.2 (regulating plan), dated [September 2012,], made a part of this chapter, and attached at the end of this chapter. The transect paradigm defines a spectrum of the built environment from the most natural unblemished landscape, designated as T1, to the most dense urban downtown, designated as T6. Development intensity in the Kalaeloa CDD is envisioned to unfold between the rural zone, T2, and the urban center zone, T5.

(b) ~~[Transect]~~ The Kalaeloa CDD transect zones and their corresponding development use and rules are as follows:

- ~~[(1) T1 natural. The T1 natural zone shall consist primarily of lots along the ocean. The T1 Natural zone is comprised of natural~~

~~landscapes, including beaches and vegetation with limited agricultural use;~~

- (2)] (1) ~~T2 [rural/open space.]~~ rural. The T2 ~~[rural/open space]~~ rural zone shall consist primarily of open space, parks and limited sustainability and agricultural use. Cultural~~[r]~~ and archaeological ~~[and environmental]~~ uses and sites shall also be located within the T2 ~~[rural/open space]~~ rural zone[+]. Limited lodging uses of less than 50 units may be appropriately located within the T2 rural zone as allowed . Civic uses such as museums, libraries, fire stations and aquatic centers may also be located in the T2 rural zone;
- [+3] ~~T3-general urban.]~~ (2) T3-R neighborhood residential. The ~~[T3-general urban]~~ T3-R neighborhood residential zone is characterized by ~~[mixed use projects, with a commercial emphasis.]~~ small lot single-family residential development (attached or detached), duplexes, townhomes, and small apartment buildings, but may also include small live-work spaces, home offices or workspaces, and bed and breakfast inns. Limited amounts of local-serving retail, medical clinics and small office buildings are also suitable in the T3-R zone. Streets with curbs, sidewalks and landscaping shall define medium-sized, pedestrian-friendly blocks;
- (3) T3-M mixed use. The T3-M mixed use zone is characterized by larger lots containing commercial and light industrial uses that produce less adverse air, noise, or visual impacts than those of the Special District SD-1 light industrial zone, which is more intense. Residential uses are also permitted within the T3-M zone, particularly when adjacent to T2 areas.
- (4) T4 general urban [center]. The T4 general urban [center] zone is characterized with a mix of retail, office, residential, and civic buildings. Civic spaces include urban parks, plazas, and squares. Pedestrian-

friendly streets shall be tree-lined with sidewalks and buildings set close to the sidewalks;

- (5) T5 urban center [~~high intensity~~]. The T5 urban center [~~high intensity~~] is characterized by [~~lots with the highest allowable density and height;~~] a diverse mix of uses at higher intensities than T4 general urban zones. Buildings are set close to sidewalks to activate the pedestrian realm and sidewalks are wider to accommodate outdoor dining and public street furniture; and

- (6) SD special district.

- (A) All lots located within the Kalaeloa CDD special [~~district~~] districts are designated due to their function as an aviation, navigation or military installation, ownership by the [~~Federal~~] federal government [~~as of the effective date of these rules. All lots located within the special district shall be governed by the applicable Federal Aviation Administration standards; and~~], or ownership by the department of Hawaiian home lands;

- (B) The Kalaeloa CDD special [~~district~~] districts shall include the following:

- (i) [~~The~~] SD-1 Kalaeloa airport. The Kalaeloa airport (John Rodgers Field) and the navigation area is owned and administered by the state of Hawaii department of transportation; [~~and~~]
- (ii) SD-2 Military [~~facilities.~~]. Military installations such as the Hawaii national guard and United States Coast Guard[~~-~~] comprise the SD-2 zone; and
- (iii) SD-3 Department of Hawaiian home lands. Lands comprising the SD-3 zone are governed by the

Hawaiian Homes Commission Act of
1920.

- (C) If the federal government, department of transportation, or department of Hawaiian home lands ceases to own the land, the special district status will no longer apply. The authority may determine the transect zone regulations at that time.

(7) Overlay Zones.

- (A) Properties within the overlay zones are subjected to Properties within the Saratoga overlay zone are subject to the underlying transect zone regulations, plus additional urban and architectural standards designed to ensure a pedestrian-scaled, lively streetscape.
- (B) Overlay zones are not distinct special district as described in section 15-215-23(b)(6), above.
- (C) Overlay zones within the Kalaeloa CDD shall include the following:
- (i) Saratoga frontage zone., plus additional urban and architectural standards designed to ensure a pedestrian-scaled, lively streetscape.
 - (ii) Ewa battlefield overlay zone. plus additional standards and historic preservation consultation requirements design to ensure compatibility with historic resources.

(D) If

(c) Standards applicable to transect zones. All development, use, and construction within the transect zones shall conform to the standards set forth in Figure 1.3 (development standards summary), dated [September 2012, REDACTED], made a part of this chapter, and attached at the end of this chapter, which allocate building type, frontage type, allowed height, maximum density, and build to line. [Eff 10/27/12; am and comp REDACTED] (Auth: HRS

GENERAL DEVELOPMENT STANDARDS

§15-215-37 Purpose. This subchapter establishes the standards relating to the use, development or improvement of any lot within the Kalaeloa CDD. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-215-38 Building type. All buildings shall conform to the building standards set forth in Figures BT.1 through ~~[BT.9,]~~ BT.10, dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter, which specify lot width, pedestrian access, parking, open space, frontage types and building massing for each building type. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-39 Frontage type. All buildings shall conform to the frontage standards set forth in Figure 1.6 (frontage ~~[type),]~~ types), dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter, which specify element standards for each frontage type. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-40 Land use. (a) All lots shall conform to the land uses specified in Figure 1.7 (land use summary), dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter.

(b) Any one or more allowed land uses may be established on any lot, subject to Figure 1.7, (land use summary), dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter.

(c) Where a project on a single lot proposes two or more land uses, the project shall be subject to all applicable permits and approvals. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-41 Building placement. (a) Facades shall be built parallel to the build to line with a minimum frontage occupancy as provided in Figure 1.8 (building placement and ~~[encroachments],~~ encroachment), as applicable, dated ~~[September 2012,~~ , made a part of this chapter, and attached at the end of this chapter.

(b) For frontage occupancy calculations, single buildings that form a courtyard of fifteen feet in width or less by recessing a portion of the building from the build to line, shall be measured as the full width of the building parallel to the build to line. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-42 Building form. (a) The height of any building or structure or portion thereof shall be measured from ~~[ground elevation.]~~ finish grade.

(b) Attics or raised basements, masts, belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning, as determined by the executive director in his sole discretion; provided, however, that notwithstanding the executive director's determination, attics shall not exceed fourteen feet in height.

(c) Any part of a building which is taller than sixty-five feet ~~[and along a view corridor street, see Figure 1.12 (view corridors), dated September 2012, made a part of this chapter, and attached at the end of this chapter,]~~ shall be ~~[setback]~~ set back from the lot line abutting the ~~[view corridor]~~ principal frontage by fifty feet.

(d) All principal buildings shall be constructed with building elements conforming to Figure 1.3 (development standards summary), dated [September 2012,] [REDACTED], made a part of this chapter, and attached at the end of this chapter. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-43 Architectural standards.

(a) Balconies, galleries, and arcades shall be made of concrete, painted wood or metal.

(b) For building facades and elevations in the [~~T3 general urban,~~] T3-R neighborhood residential, T4 [urban center] general urban and T5 urban center [high intensity] transect zones, a change of exterior texture and material should be accompanied by a change in plane; provided, however, glazing and spandrel glass is exempt from this provision.

(c) Fences, walls, and hedges [~~may be constructed or installed to a height of six feet in any side yard or rear yard and to a height of three feet in any portion of a front yard or a side yard that faces a thoroughfare~~]:

(1) Height shall be as follows:

- (A) Within front and side yards facing and visible from a thoroughfare: four feet. Within the T3 mixed use zone, the executive director may approve additional height within front and side yards up to six feet, without requiring a variance, based on content of the request and consistency with neighborhood character;
- (B) Within front and side yards that are not facing or visible from a thoroughfare: six feet;
- (C) Within rear yards: six feet;
- (D) Within all required yards within special districts: six feet;
- (E) For public utility projects, the executive director may approve fences and walls within required yards of up to eight feet in height, plus an additional foot in height for security

- wire, based on content of the request and consistency with neighborhood character, without requiring a variance; and
- (F) Outside of required yards: ten feet, unless additional height is approved by the executive director based on the content of the request and consistency with neighborhood character;
- (2) Fence materials shall be as follows:
- (A) Fences [~~in~~] within front yards or side [~~yards facing a thoroughfare~~]:
- (i) shall be painted or constructed out of a decorative material compatible with the materials of the principal building; and
- (ii) shall not include chain link, fencing with slats or mesh screen, cinderblocks, or unpainted wood;
- (B) Exceptions to subsection (A) above, for fences within the T2 rural zone, T3-M mixed use zone, and special districts, can be granted by the executive director, without requiring a variance based on the content of the request and the consistency with neighborhood character. Such exceptions shall not be allowed in the T3-R neighborhood residential zone, T4 general urban zone, T5 urban center zone, and the Saratoga overlay district;
- (C) Chain link fences shall not be permitted for residential uses within any required yard;
- ~~[(2)]~~ (D) Retaining walls shall be constructed out of masonry or stone or another equally durable material.
- (d) Lighting:
- (1) Entrances, arcades and passageways shall be illuminated;
- (2) Courtyards, passageways, roof gardens, corner plazas, and other landscaped areas shall provide pedestrian-scaled, tamper-proof lights;

- (3) Lighting sources shall be constructed or installed so that ~~[light]~~ the bulb is fully contained within the lighting fixture, and that light is aimed downwards and does not spill over to abutting properties; and
- (4) Architectural details may be accented through lighting.
- (e) Roofs:
 - (1) Roofs may be accessible and may be used as roof decks, gardens, balconies or terraces;
 - (2) Roofs shall either be finished with light colors for reflectivity or incorporate landscaping; and
 - (3) Rooftop mechanical equipment shall be clustered away from the edge of the building and either painted to match the roof top or located behind a parapet wall or enclosed in a roof top mechanical equipment enclosure so that it is not visible from a thoroughfare, historic or public buildings.
- (f) Service functions ~~[(T3-general urban,]~~ (T3-M mixed use, T3-R neighborhood residential, T4 general urban [center]and T5 urban center [high-intensity] transect zones):
 - (1) Utilities, service elements, recycling and trash elements shall be located off alleys (if applicable), or in structured parking garages where they exist. Alternatively, they may be located at least ten feet behind the facade of a principal building and screened from view from a thoroughfare other than an alley or service street, with a hedge, landscaping, low wall, or fence;
 - (2) Prohibited materials for constructing recycling or trash enclosures include: chain link, fencing with slats or mesh screen, cinderblocks, or unpainted wood;
 - (3) Utilities and service elements that are visible from thoroughfares shall not be visually intrusive and shall be incorporated in the building structure through use of the following strategies:
 - (A) Burying the utilities and service elements underground;

- (B) Constructing a utility room to enclose the utilities and service elements;
- (C) Screening the utilities and service elements behind the building; or
- (D) Clustering the utilities and service elements on the roof within a mechanical equipment enclosure; and
- (4) Recycling or trash enclosures shall be of a similar material and color with the principal building.
- (g) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time.
- (h) Windows:
 - (1) Highly-reflective and mirrored glass materials are prohibited; and
 - (2) Windows shall have the highest reasonably possible visible light transmission (VLT) level, while still complying with the Energy Code requirements for specific heat gain coefficient (SHGC). Visible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per cent or greater. Applicants shall submit, for the executive director's review and acceptance, all window specifications for buildings that propose reducing the window VLT level below seventy per cent at ground level and fifty per cent for all other floors.
- (i) Hawaiian Sense of Place. New development in the Kalaeloa CDD shall contribute to the district as a Wahi Hookela, Center for Excellence, by promoting and fostering a Hawaiian sense of place:
 - (1) Physical manifestations of the Hawaiian sense of place may include but are not limited to traditional Hawaiian motifs, local building materials, and native landscaping.
 - (2) Applicants shall submit for the executive director's review and acceptance:

- (A) A written narrative explaining how the proposed development exhibits a Hawaiian sense of place; and
- (B) Illustrative diagrams that describe the physical features, elements, and characteristics the proposed development will employ to exhibit a Hawaiian sense of place. [Eff 10/27/12; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7)
(Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-44 Landscape. The standards for landscaping for zones [~~T2 rural/open space zone, T3 general urban zone,~~] T3-R neighborhood residential, T3-M mixed use, T4 [urban center zone, general urban, and T5 urban center [~~high intensity~~] shall be as follows:

- (1) All required yards shall be landscaped[+], including trees where there is adequate space;
- (2) New plantings [~~shall~~] and trees should be selected from the preferred plant species list provided in Figure [1.10 (preferred plant species),] 1.5-A (required Kalaeloa street tree list), dated [September 2012, , made a part of this chapter, and attached at the end of this chapter[+]. Street trees shall be selected from the street tree list in the sizes required for the applicable street, as directed in Figure 1.5-A (required Kalaeloa street tree list) and Figure 1.5-B (required street tree size by thoroughfare), dated , made a part of this chapter, and attached at the end of this chapter;
- (3) Exceptional trees that are designated by the city and county of Honolulu shall be protected and preserved in place. In the case where exceptional trees conflict with prescribed standards in the rules, the exceptional tree takes precedence or shall be relocated to another area of the project site; [and]

- (4) Landscaping shall have an automatic irrigation system with a rain or moisture sensor that eliminates water waste~~[-]~~ in T3-R neighborhood residential, T3-M mixed use, T4 general urban and T5 urban center zones;
- (5) Landscaping shall incorporate low impact development elements to the extent practicable, including but not limited to, permeable pavement, rain gardens, or other green infrastructure; and
- (6) Landscaping shall incorporate the Miyawaki method where possible. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-45 Recreation space. (a) ~~[Lots within all transect zones]~~ New residential development shall provide [the following recreation space:]

- ~~(1) Twenty-five square feet per each 1,000 square feet of industrial use;~~
- ~~(2) Thirty-seven and a half square feet per each 1,000 square feet of commercial, office, and goods and services use; and~~
- ~~(3) Fifty-five]~~ fifty-five square feet of recreation space per dwelling unit.

(b) If the on-site recreation space is provided outdoors, it may also be used ~~[to satisfy a portion of]~~ toward the open space requirements as set forth in section 15-215-46 (open space). [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-46 Open space. (a) Open space shall not ~~[to]~~ be used for driveways, loading purposes, storage, or for the parking of vehicles.

(b) Berms, landforms, or underground structures covered with landscaping~~[, including artificial turf,]~~ or used for permitted agricultural uses, may be used to satisfy ~~[any]~~ open space requirements.

(c) For any project in the Kalaeloa CDD, a minimum of twenty per cent of each lot shall be

provided as open space. One third of this requirement shall be satisfied at grade, with the remaining two-thirds at any elevation. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-47 Parking and loading.

(a) Applicability. This section applies to all new buildings and additions and renovations of existing buildings that increase the existing floor area by twenty-five per cent or more~~[-]~~ and where parking is provided. There are no minimum parking space requirements in the Kalaeloa CDD.

(b) Access. Driveway access for parking shall be a minimum of fifty-five feet measured from the edge of the right-of-way.

(c) Curb cuts for ~~[T3-general urban zone,]~~ T3-R neighborhood residential, T4 general urban [center zone] and T5 urban center ~~[high-intensity zone]~~ zones shall be as follows:

- (1) The number of curb cuts shall be minimized along boulevards and avenues, to the maximum practicable extent. Shared alleys, access drives and arrangements are encouraged to reduce the need for new curb cuts;
- (2) Maximum width of new curb cuts shall be twenty-five feet for a two-way driveway and twelve feet for a one-way driveway, except that driveways for front yard houses and all other detached dwellings shall be no more than ten feet in width; and
- (3) Curb cuts shall be setback a minimum of twenty-two feet from adjacent properties. Lots with less than one hundred linear feet of frontage are exempt from this provision.

(d) Placement. Parking location shall conform with standards set forth in Figure 1.9 (parking~~[-]~~ placement), dated ~~[September 2012,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter.

~~[-(e) Quantity:~~

- ~~(1) Required number of off-street parking spaces is as follows:~~

~~Off-Street Parking~~

Uses	Requirements
Detached dwellings, live-work, and duplexes:	two per unit plus one per one thousand square feet of floor area over 2,500 square feet;
Multi-family dwelling six hundred square feet or less:	0.9 per unit;
Multi-family dwelling greater than six hundred square feet:	1.25 per unit;
Group homes, care, convalescent and nursing home:	0.9 per four patient beds, dwelling units, or lodging units;
Commercial, clinics, administrative and all other uses:	one per four hundred fifty square feet of floor area;
Restaurants and bars, and dance-nightclubs:	0.9 per three hundred square feet of eating or drinking area, plus 0.9 per twenty-five square feet of dance floor area, plus one per four hundred fifty square feet of kitchen or accessory area;
Group assembly:	0.9 per three hundred square feet of assembly area or 0.9 per ten fixed seats, whichever is greater;
Religious facilities and theaters:	0.9 per every five fixed seats or fifty square

~~feet of general assembly
area, whichever is
greater;~~

~~Day-care center: 0.9 per ten enrolled
capacity;~~

~~Educational facilities
that are at the
elementary and
intermediate level: 0.9 for each twenty
students of design
capacity, plus one per
four hundred fifty square
feet of office floor
area;~~

~~Educational facilities
that are at the high
school level,
language, vocational,
business, technical,
trade, college, or
universities: 0.9 for each ten students
of design capacity, plus
one per four hundred
fifty square feet of
office floor area;~~

~~Industrial: one per nine hundred
square feet of floor
area; and~~

- ~~(2) When there is uncertainty as to requirements
for a proposed use, the executive director
will review the proposed use and determine
its applicable off-street parking
requirements;~~
- ~~(3) When computation of required parking spaces
results in a fractional number, the number
of spaces required shall be rounded to the
nearest whole number;~~
- ~~(4) Every twenty-four inches of pew or bench
area provided in a religious facility or
other place of assembly shall be counted as
seats for the purpose of determining
requirement for off-street parking;~~
- ~~(5) At least fifty per cent of required parking
spaces shall be standard sized parking~~

- ~~spaces; and~~
- ~~(6) When a building includes uses incidental or accessory to a principal use, the executive director shall determine the total number of required spaces on the basis of the parking requirements for the use that creates a larger parking demand.~~
 - ~~(f) Shared parking:~~
 - ~~(1) Due to the mixed-use nature of the Kalaeloa CDD and the differing peaks associated with different uses, the same parking facility may be utilized by a variety of users throughout the day. This can reduce the total number of parking spaces needed to serve the peak parking demand of the Kalaeloa CDD. The executive director may authorize shared parking based upon a finding that adequate parking or loading spaces will be provided;~~
 - ~~(2) Required parking may be adjusted downward, without the need for a variance, according to the shared parking factor of Figure 1.9 (parking), dated September 2012, made a part of this chapter, and attached at the end of this chapter; and~~
 - ~~(3) Parking required by the rules for an individual project shall be located within 1,200 feet of the project site, within or outside the Kalaeloa CDD by covenant, lease, license or other arrangement to the satisfaction of the executive director.~~
 - ~~(g) On street. Marked on-street parking shall count towards required parking when the on-street parking is adjacent to the lot or within two hundred feet of the lot.~~
 - ~~(h) Aisle]~~ (e) Where parking is provided, the following aisle and space dimensions[+] shall apply:
 - (1) Each standard parking space shall be no less than 8.5 feet wide and eighteen feet long; and
 - ~~[(2) Each compact parking space shall be no less than 7.5 feet wide and sixteen feet long and shall be marked as a compact space; and~~
 - ~~(3)]~~ (2) Ingress and egress aisles shall be provided to a thoroughfare and between

parking bays. Minimum aisle widths for parking bays shall be:

- (A) Parking at 0 - 44 degrees: 12 feet;
- (B) Parking at 45 - 59 degrees: 13.5 feet;
- (C) Parking at 60 - 69 degrees: 18.5 feet;
- (D) Parking at 70 - 79 degrees: 19.5 feet;
- (E) Parking at 80 - 89 degrees: 21 feet;
- and
- (F) Parking at 90 degrees: 22 feet.

Notwithstanding the foregoing, for a parking angle of ninety degrees, the minimum aisle width may be reduced by one foot for every six inches of additional parking space width above the minimum width, to a minimum aisle width of nineteen feet.

~~[(i) Design:]~~ (f) Where parking is provided, the following design guidelines shall apply:

- (1) Tandem parking and hydraulic lifts are permitted in parking facilities used for residential purposes, when both spaces are utilized by a single dwelling;
- (2) Tandem parking and hydraulic lifts are permitted in any attended parking facility;
- (3) Storage is permitted above all parking spaces constructed in parking garages or in parking structures;
- (4) Robotic parking is permitted;
- (5) Any mechanical equipment for providing parking shall be visually screened from view at abutting thoroughfares by architectural or landscape treatments;
- (6) High albedo concrete shall be used instead of asphalt in surface parking lots~~[+]~~, including surface parking lots with PV panels; and
- (7) All sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises.

~~[(j)]~~ (g) Landscaping for surface lots located at grade:

- (1) Parking lot landscape requirements ~~[are]~~ include one shade tree per twenty spaces with a minimum of one landscaped island for every ten spaces;

- (2) Every other row of parking shall include a landscaped median for the entire length of a bay. The entire length shall be planted with large shade trees at least every forty-five feet. Where a tree planting island occurs the entire length of a bay, there shall be a minimum of one planting island every fifteen spaces and a minimum of one large shade tree every fifteen spaces in a tree planting island; ~~and~~
- (3) Required landscaped islands shall be at least the same size as the typical parking spaces provided;
- (4) When PV panels are installed on surface lots located at grade, the executive director may waive the tree requirements in subsection (g), based on the content of the request and consistency with neighborhood character; and
- ~~[(3)]~~ (5) Permeable surfaces for parking and maneuvering areas are permitted.
- ~~[(k)]~~ (h) Structures. Priority placement near entries, doors, elevators, or stairs within parking structures shall be given to parking for bicycles, car-shares, and plug-in electric vehicles.
- ~~[(l)]~~ (i) Loading:
 - (1) The following loading space requirements shall apply:

Loading Space Requirements

Uses	Loading Stall Requirements	Floor Area (in square feet)
Goods and services and industrial:	one	[2,000] 0 - 10,000
	two	10,001 - 20,000
	three	20,001 - 40,000
	four	40,001 - 60,000
	one	Each additional 50,000 over 60,000
Civic, civic support and educational [7] :	one	[5,000] 0 - 10,000
	two	10,001 - 50,000
	three	50,001 - 100,000
	one	Each additional

		100,000 over 100,000
Office:	one	20,000 - 50,000
	two	50,001 - 100,000
	one	Each additional 100,000 over 100,000
Multi-family dwellings and lodging:	one	20,000 - 150,000
	two	150,001 - 300,000
	one	Each additional 200,000 over 300,000

- (2) Loading space requirements shall be provided within a building, lot, or alley. Loading spaces are prohibited in thoroughfares;
- (3) When only one loading space is required and total floor area is less than 5,000 square feet, the minimum horizontal dimensions of the space shall be 19 x 8-1/2 feet, and the space shall have a vertical clearance of at least ten feet;
- (4) When more than one loading space is required, the minimum horizontal dimensions of at least half of the required spaces shall be 12 x 35 feet and have a vertical clearance of at least fourteen feet. The balance of the required spaces shall have horizontal dimensions of at least 19 x 8-1/2 feet and vertical clearance of at least ten feet;
- (5) Each loading space shall be unobstructed and shall be arranged so that any vehicle may be moved without moving the other;
- (6) Adequate maneuvering areas and access to a street shall be provided and shall have a vertical clearance not less than the applicable height for the loading space;
- (7) All loading spaces and maneuvering areas shall be paved with an all-weather surface;
- (8) Where loading areas are illuminated, all sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises;

- (9) Loading spaces for three or more vehicles shall be arranged so that no maneuvering to enter or leave a loading space shall be on any public street, alley or walkway;
- (10) Each required loading space shall be identified as such and shall be reserved for loading purposes;
- (11) No loading space shall occupy required off-street parking spaces or restrict access; and
- (12) An adjustment of up to fifty per cent of the required number of loading spaces may be allowed when such spaces are assigned to serve two or more uses of a single project jointly, provided that:
 - (A) Each use has access to the loading zone without crossing any street or public sidewalk; and
 - (B) The amount of loading spaces which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably expected to be available during differing periods of peak demand.
- ~~[(m)]~~ (j) Bicycle parking:
 - (1) Both short-term bicycle parking and long-term bicycle parking shall be provided by the developer;
 - (2) Bicycle parking shall be provided within four hundred feet of the principal entrance of the building;
 - (3) Instructional signs, if applicable, shall be used to explain how to use the bicycle parking device and directional signage shall be installed when bicycle parking locations are not readily visible from entrances; and
 - (4) For use classifications not specifically mentioned, requirements will be determined by the executive director based on the most similar use listed, except that the building types shown in Figures BT.1 to BT.3, dated [September 2012], made a part of this chapter, and attached at the end of this chapter, are exempt from bicycle parking requirements. [Eff 10/27/12; am and

comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-48 Green building. (a) Purpose. This section provides standards intended to result in a responsible development pattern that conserves natural resources and provides a healthy environment for inhabitants of the Kalaeloa CDD.

(b) Applicability. This section applies to all new buildings and additions and renovations of existing buildings that increase the existing floor area by twenty-five per cent or more.

(c) Green building standards[÷

- ~~(1) A project shall qualify for the applicable base LEED rating system in effect at the date of application, at the appropriate certification level (e.g., new construction projects shall qualify for LEED for new construction);~~
 - ~~(2) The applicable base rating system shall be chosen by the developer based on the construction type, size, and use of the proposed project; and~~
 - ~~(3) The project shall document the achievement of at least one LEED point or other comparable measure in an alternative rating system at the appropriate certification level for the following credit categories:~~
 - ~~(A) At least one LEED point in either sustainable site: stormwater design – quantity control or stormwater design – quality control;~~
 - ~~(B) At least one LEED point in either sustainable sites: heat island effect – non-roof or heat island effect – roof; and~~
 - ~~(C) At least one point in water efficiency, water efficient landscaping.].~~
- New construction as described in section (b), above, shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in Chapter 32 of

the Revised Ordinances of Honolulu 1990, as it may be amended from time to time.

(d) Documentation. The developer shall submit documentation ~~[and sustainability calculations]~~ showing that the proposed project meets the applicable green building ~~[rating system at the appropriate certification level.]~~ requirements. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-49 Saratoga overlay zone development standards. (a) Active commercial design. In the T5 urban center zone of the Saratoga overlay zone, the ground-floor street frontage of new buildings shall be designed to accommodate commercial uses and activities, subject to the following:

- (1) A minimum average depth of 40 feet, but in no case less than 25 feet, for a minimum of 60 per cent of the ground-floor frontage.
- (2) A minimum floor-to-floor height of 14 feet along the ground-floor frontage;
- (3) The finished ground-floor level shall not exceed 18 inches lower or higher than the finish grade of the adjacent sidewalk;
- (4) A minimum of one pedestrian entrance along the street frontage accessible from a public sidewalk during normal business hours;
- (5) For corner parcels located at the intersection of two thoroughfares that are both within the Saratoga overlay zone, the requirements of subsection (a) (1) shall apply to the ground-floor street frontages along both thoroughfares;
- (6) A minimum of seventy per cent of the façade along the ground-floor frontage shall be transparent and include windows, doors, and other openings between 2.5 and eight feet above finish grade. Openings fulfilling this requirement shall have transparent glazing or openings that provide views into work areas, display areas, sales areas, lobbies, or similar active spaces, or into windows displaying merchandise or other items other than signs that are at least three (3) feet

deep. This requirement may be modified by the executive director if it can be demonstrated that the requirement materially interferes with the project's ability to meet the requirements of applicable energy codes;

- (7) A minimum setback between five and ten feet from the Saratoga Avenue right-of-way;
- (b) Pedestrian-oriented design;
- (1) No more than twenty feet or forty per cent of a building's façade, whichever is less, may be continuous blank or featureless linear street-level frontage;
- (2) New development shall incorporate the following design elements into the street-facing façades at the ground-floor level:
 - (A) Articulated façades at the ground-floor street frontage, which may include but do not necessarily require, such measures as indentation in plane, change of materials in a complimentary manner, sensitive composition and juxtaposition of openings and solid wall and/or building frame and projecting elements such as awnings and marquees to provide shade and shelter; and
 - (B) Exterior lighting which provides for a secure nighttime pedestrian environment by reinforcing entrances, public sidewalks, and open areas with a safe level of illumination which avoids off-site glare;
- (3) New development shall incorporate pedestrian-oriented design elements such as street furniture or other seating surfaces and design amenities scaled to the pedestrian such as awnings, drinking fountains, paseos, arcades, colonnades, plazas, noncommercial community bulletin boards, public or private art and alternative paving treatments in areas of pedestrian access.
- (4) When provided, storefront security grates or grilles shall be located inside exterior

windows, shall be retractable into pockets or overhead cylinders, and shall be completely concealed when retracted.

- (5) Residential uses at the ground-floor street frontage shall incorporate planted areas, porches, front stairs and/or other elements that contribute to a pedestrian environment.
- (6) Alternatives to the requirements of this section may be approved if the executive director finds that the proposed use has unique operational characteristics with which providing the required windows and openings is incompatible, and street-facing building walls will exhibit architectural relief and detail and be enhanced with landscaping in such a way as to create visual rest at the pedestrian level.

(c) Build to line, nonresidential uses.

Buildings with nonresidential uses on the ground floor within the Saratoga overlay zone shall be constructed from the street facing property line(s) according to the frontage occupancy indicated in Figure 1.3-B (site development standards), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter.

- (1) This requirement may be waived or modified at the sole discretion of the executive director, subject to a discretionary approval, upon finding that:
 - (A) The alternative configuration will not alter the existing or planned character of the transect zone in which the lot is located and will not be detrimental to or adversely impact adjacent properties;
 - (B) Entry courtyards, plazas, small parks, entries, outdoor eating and display areas, or other uncovered areas designed and accessible for public use are located between the build-to line and building, provided that the buildings are built to the edge of the courtyard, plaza, small park, or dining area; and

- (C) Heritage trees or existing prominent landscape would be adversely impacted, provided that an alternative configuration per subsection A above, is established.
- (2) Within the T4 general urban zone, the area between the property line and the build to line shall be hardscaped or landscaped.
- (3) Within the T5 urban center zone, the area between the property line and the build to line shall be hardscaped.
- [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§§15-215-49~~ §§15-215-50 to 15-215-60
(Reserved).

SUBCHAPTER 4

DISTRICT-WIDE STANDARDS

§15-215-61 Purpose. This subchapter provides standards that apply throughout the Kalaeloa CDD and supplement other standards provided elsewhere in the rules. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-62 Large lot development. (a) Purpose. This section establishes the standards for developing large lots, dividing them into smaller pedestrian-oriented blocks, and achieving an interconnected block network with walkable block lengths. The standards for large lot projects ~~[ensure that these projects]~~ promote walkability, pedestrian-orientation, and sustainability of urban and built form. Buildings should include massing and articulation that reflects a human scale, rather than large, monolithic, and repetitive building fabric.

(b) Applicability. The following standards shall apply to projects on large lots~~[-]~~ in T3-R neighborhood residential, T3-M mixed use, T4 general urban, and T5 urban center zones, except:

- (1) large utility facilities or arrays;
- (2) controlled access uses;
- (3) or any other single development of an entire large parcel that could not safely or appropriately allow pedestrian thoroughfares throughout, as determined by the executive director. No exemption shall apply for residential projects.
- (c) Thoroughfare network:
 - (1) Large lots shall be divided to create pedestrian-oriented blocks;
 - (2) New thoroughfares shall connect with existing thoroughfares;
 - (3) New passageways that are introduced shall be a minimum of fifteen feet wide between building elevations;
 - (4) New passageways that are introduced shall be un-gated and shall be ~~[publically-accessible,-]~~ publicly-accessible;
 - (5) Each new block shall have an alley for service and parking access; ~~[and]~~
 - (6) Cul-de-sacs and dead-end streets are not permitted unless they allow for future connections~~[-]~~; and
 - (7) Where provided, parking access and design shall be provided as per section 15-215-47 (parking and loading); however, land uses listed in section 12-215-62(b), above, are not required to locate parking in the third layer as shown in Figure 1.9 (parking

placement), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter. All other requirements of section 15-215-47 (parking and loading) shall remain in full effect.

- (d) New buildings:
 - (1) New buildings are permitted as indicated by the building types allocated to each transect~~[+]~~ except as listed in section 12-215-62(b), above;
 - (2) New buildings shall have their [~~principle~~] principal entrance off of a new or existing thoroughfare or passageway;
 - (3) New buildings with civic or institutional uses shall be located in central locations, and be recognizable and accessible to the public;
 - (4) Buildings shall incorporate mid-block pedestrian passageways and courtyards at least every three hundred feet. Where passageways are utilized, they shall connect through the block, across existing alleys if necessary, to other passageways, to mid-block crossings, or thoroughfares for greater street grid connectivity;
 - (5) When a building includes a courtyard, the courtyard shall have a minimum dimension of forty feet deep and thirty-five feet wide along the street side;
 - (6) The required mid-block pedestrian passageway or courtyard shall not abut an alley; and
 - (7) For large lots that abut other lots not subject to a permit application, an alley of at least twenty-six feet in width must be provided at the edge of the lot that is adjacent to the other lots to ensure access by vehicles and access to light and air of the other lots. An alternative proposal for this requirement may be considered as long as it meets the intent of providing light, room, and air to neighboring lots.
- (e) Utilities. Utilities shall be buried underground unless an engineering study confirms that the utility cannot feasibly be located underground.

- (f) Large utility installations:
- (1) Solar arrays are permitted in all transect zones and special districts within the Kalaeloa CDD;
- (2) Where a solar array is located in T4 general urban and T5 urban center zones, the solar array must be sited within the third layer so as not to be visible from the primary thoroughfare; and
- (3) When the installation of equipment necessary for the safe and effective operation of the utility installation, such as generation tie-lines, static masts or solar collector towers, will exceed the height limit allowed within the transect zone, the request to exceed this limit shall be reviewed and determined by the executive director, and shall not require a variance. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-63 Historical and cultural sites.

(a) ~~[Lots]~~ Sites located in the Kalaeloa CDD that are ~~[determined]~~ identified in the KMP to be historically ~~[and]~~ or culturally significant shall be preserved, protected, reconstructed, rehabilitated and restored by the landowners consistent with the implementing regulations of section 106 of the National Historic Preservation Act, as amended, and chapter 6E, HRS.

(b) Development potentially affecting historical resources and requiring SHPD review, including but not limited to work involving any building over 50 years old or any ground-disturbance, shall obtain SHPD concurrence. Prior to the submittal of any permit application to the authority, a developer shall obtain a letter from SHPD ~~[which confirms]~~ confirming that the developer has complied with all SHPD requirements. A copy of such letter shall be included with the permit application. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-7, 206E-194) (Imp: HRS §§206E-7, 206E-194)

§15-215-64 Dedication of public facilities.

(a) Applicability. This section shall apply to any new development or improvement project, master plan, or existing development or improvement project within the Kalaeloa CDD that increases the existing floor area by more than twenty-five per cent as compared to the floor area existing on October 27, 2012 or at the time the development permit or improvement permit was issued, excluding proposed demolitions, whichever is less; provided, however, that this section shall not apply to any development or improvement project undertaken by an eleemosynary organization, development or improvement project entirely for public uses, public project, floor area ~~[related to]~~ being used to satisfy the requirement for reserved housing, or new buildings or structures with a floor area of less than two hundred square feet.

(b) Dedication requirement. As a condition precedent to the issuance of an improvement permit or development permit, the developer shall dedicate land for public facilities. The dedication of land for public facilities shall be subject to the maximum ceiling in land or money in lieu thereof calculated in accordance with the formula designated in subsections (d) to (f) herein. Future reductions in floor area for an approved project does not retroactively reduce the required dedication credits previously approved by the Board.

(c) In-lieu fee payments. As an alternative to the land dedication requirement of section 15-215-64(b), an in-lieu fee payment may be authorized as follows:

- (1) For improvement permit applications, the executive director may authorize a developer to pay an in-lieu fee equal to the value of land which would otherwise have had to be dedicated, or combine the payment of fee with land to be dedicated. The total value of such combination shall be not less than the value of land which would otherwise have had to be dedicated; and
- (2) For development permit applications, the authority may authorize a developer to pay a fee equal to the value of land which would otherwise have had to be dedicated, or

combine the payment of fee with land to be dedicated. The total value of such combination shall be not less than the value of land which would otherwise have had to be dedicated.

(d) Minimum dedication requirements. Land dedication requirements are:

- (1) Three per cent of the total commercial or industrial floor area;
- (2) Four per cent of the total residential floor area exclusive of floor area devoted to reserved housing units and their associated common areas in proportion with the floor area of other uses; and
- (3) If the area of land approved for dedication is less than the land area required under subsection (d)(1) and (2) above, the developer shall be required to pay a fee equal to the fair market value of the land area which is the difference between the land area dedicated and the land area required under subsection (d)(1) and (2) above.

(e) Payment timing and use of funds:

- (1) Authorized in-lieu fees shall be payable prior to ~~[the issuance of the initial certificate of occupancy]~~ HCDAs sign-off on any building or grading permit and secured by the developer with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other acceptable means prior to the issuance of the initial building permit; and
- (2) Payment of fees shall be made to the authority for deposit in the authority's revolving fund established under section 206E-195, HRS.

(f) Valuation methodology. Valuation of land when authorized in-lieu fees are to be paid shall be determined as follows:

- (1) Valuation shall be based upon the fair market value of the land as though vacant and unimproved on the date the developer's application for an improvement permit or

development permit is deemed complete pursuant to section 15-215-83 (completeness review), as agreed to by the developer and the executive director if an improvement permit, or the developer and authority if a development permit; and

(2) In the event that a fair market value cannot be agreed on, the fair market value of the land as though vacant and unimproved shall be fixed and established by majority vote of three real estate appraisers whose decision shall be final, conclusive, and binding; one shall be appointed by the developer, one appointed by the executive director in the case of improvement permits or the authority in the case of development permits, and the third shall be appointed by the first two appraisers. In the event a party shall fail to appoint an appraiser within ten days following the appointment of the first appraiser, the party who appointed the first appraiser may apply to the person sitting as the administrative judge of the circuit court of the first circuit of Hawaii, if any, or if none, to any judge in service of said court, for the appointment of the second appraiser; provided, however, that if the developer is the party who has failed to appoint an appraiser within ten days following the executive director's or authority's appointment of the first appraiser, the executive director or authority, as the case may be, may deny the developer's request to pay a monetary fee in lieu of dedicating land. The two appraisers shall appoint a third appraiser, and in case of their failure to do so within ten days after appointment of the second appraiser, either party may apply to the person sitting as the administrative judge of the circuit court of the first circuit of Hawaii, if any, or if none, to any judge in service of said court, for the appointment of the third appraiser. The appraisers shall determine the fair market value of the land as though

vacant and unimproved on the date the developer's application for an improvement permit or development permit is deemed complete pursuant to section 15-215-83 (completeness review). All appraisers shall have had a minimum of five years of training and experience in real estate appraisal work in the state of Hawaii. The appraisers shall be governed in their determination by the provisions of chapter 658A, HRS. The fees and costs of each appraiser and all other appraisal costs shall, with exception of each party's attorneys' fees and costs and witnesses' fees, shall be borne equally by both parties.

(g) Dedication instrument. For land dedication pursuant to this section, the developer shall record the necessary conveyance instrument, free and clear of all encumbrances, in the bureau of conveyances, state of Hawaii, and shall file copies of the recorded conveyance instrument with the authority. The authority may require the developer to maintain the dedicated area until such time that notice is given by the authority to accept ownership and control of the area.

(h) Relationship to existing or future improvement districts. Nothing contained in this section shall preclude the creation of any improvement district for public facilities, or the imposition of assessments against properties specially benefited within the district. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-7, 206E-12) (Imp: HRS §§206E-7, 206E-12)

§15-215-65 Joint zone development. Where a project ~~[is proposed within]~~ will include land that is located in more than one transect zone, the allocation of uses and FAR shall be in proportion to that which is permitted within each zone. The [location of those uses] FAR within the project need not comply with the zone boundaries. However, all other building form provisions such as height, parking location and building placement shall conform to their respective zone boundaries. [Eff 10/27/12; am and

comp] (Auth: HRS §§206E-4, 206E-5,
206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-66 Leased and sub-leased development.

Leasing or sub-leasing any portion of a property to a lessee does not bestow the status of "subject property" to that portion of the property in determining the applicable permit type. In such cases the entire parcel will be considered the lessee's property for the permit and will therefore be the subject of the permit review. This includes, but is not limited to, calculations of total floor area of all buildings on the parcel, total land area, and how either impacts requirements for open space.

[Eff] (Auth: HRS §§206E-4, 206E-5,
206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-67 Subdivision. All subdivisions of lots shall be in compliance with the ordinances of the city and county of Honolulu and applicable rules and regulations, as it may be amended from time to time.

[Eff] (Auth: HRS §§206E-4, 206E-5,
206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

[~~§15-215-66~~] §15-215-68 to 15-215-76
(Reserved).

SUBCHAPTER 5

PROCEDURES

§15-215-77 Rules clearance. (a) Applicability. Any uses, structures, and activities identified by section 15-215-77(b) below ~~[on a lot 40,000 square feet or less]~~ and not otherwise requiring any other permit shall be issued a rules clearance approval when they are in compliance with ~~[the setback requirements, height limits, and]~~ all other ~~[applicable]~~ relevant standards of the Kalaeloa CDD rules[-] as determined by the executive director.

(b) Qualifying land uses, structures and activities. The following are eligible for issuance of a rules clearance:

- (1) Decks, paths and driveways. Decks, platforms, on-site paths, and driveways that are not required to have a building permit or grading permit;
- (2) Grading of up to fifty cubic yards of excavation or fill;
- ~~[(2)]~~ (3) Fences and walls in compliance with height and location requirements in section 15-215-43 (architectural standards);
- ~~[(3)]~~ (4) Interior alterations. Interior alterations that do not increase the gross floor area of the structure, or change the permitted use of the structure;
- (5) Exterior alterations. De minimis exterior alterations, at the discretion of the executive director, including the addition, removal, or replacement of structural features such as doors, windows, or entry ways, if:
 - (A) The work is comprised of less than twenty-five percent of the proposed altered subject; and
 - (B) The work is in compliance with requirements in section 15-25-43 (architectural standards);
- ~~[(4)]~~ (6) Repairs and maintenance:
 - (A) Single-family dwellings. Ordinary nonstructural repairs to, and maintenance of, single-family dwellings; or
 - (B) Multi-family residential and non-residential structures. Ordinary non-structural repairs to, and maintenance

of multi-family residential and non-residential structures, if:

- (i) The work does not [~~change the approved land use of the site or structure, or~~] add to, enlarge or expand the land use and/or structure; and
- (ii) Any exterior repairs employing the same or similar materials and design as the original construction~~[+]~~ and;

(C) Structures of all other uses, if:

- (i) The work does not add to, enlarge or expand the land use and/or structure; and
- (ii) Any exterior repairs employing the same or similar materials and design as the original construction.

~~[(5)]~~ (7) Small, portable residential accessory structures. A single portable structure of one hundred twenty square feet or less per lot or unit, including pre-manufactured storage sheds and other small structures that are exempt from having to obtain a building permit from the city and county of Honolulu and in compliance with the applicable building code. Additional structures may be approved in compliance with section 15-215-43 (architectural standards), where allowed by the applicable zone;

~~[(6)]~~ (8) Spas, hot tubs, and fish ponds.

Portable spas, hot tubs, and constructed fish ponds, and similar equipment and structures that do not exceed one hundred twenty square feet in total area including related equipment; contain more than ~~[2,000]~~ two-thousand gallons of water; or exceed two feet in depth;

(9) Solar panel installations on residential buildings or small-scale installations to support a commercial use, such as on surface parking lots;

~~[(7)]~~ (10) Open space ~~[and parks]~~. Any improvement project over, upon, under or across any public open space ~~[or park]~~; and

~~[(8)]~~ (11) Any public project~~[-]~~, including parks.

(c) Exceptions. Rules clearances shall not be required for the following:

(1) Interior electrical or plumbing work that would otherwise comply with section 15-215-77(a).

(2) Changes in use that are permitted under section 15-215-40 (land use).

~~[(e)]~~ (d) Action. In accordance with Figure 1.1 (approval requirements matrix), dated ~~[September 2012,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff 10/27/12; am and comp [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-78 Improvement and development permits.

(a) Applicability. All new improvement projects and developments shall require a permit.

(b) Initiation. A developer may apply for an improvement permit or development permit by filing an application with the executive director.

(c) Types. There shall be two types of permits: improvement and development. Each type shall apply to developments pursuant to Figure 1.1-B (permit type matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter. Each type shall be subject to the decision-maker review and action pursuant to Figure ~~[1.1]~~ 1.1-A (approval requirements matrix), dated ~~[September 2012,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter~~[-]~~.

~~[(1)]~~ ~~Improvement permits shall apply to improvement projects and are subject to executive director review and action; and~~

~~[(2)]~~ ~~Development permits shall apply to developments and are subject to authority review and action.~~

~~[(d)]~~ Authority referral. ~~The executive director may refer an improvement permit application to the~~

~~authority for review and action. Where a design advisory board ("DAB") has been or will be convened, the DAB shall review the application and provide its non-binding recommendations to the authority.~~

~~(e)]~~ (d) Required findings. Approval of an improvement permit or development permit shall require all the following findings of fact:

- (1) KMP consistency. That the proposal complies with and advances the goals, policies and objectives of the KMP;
- (2) Kalaeloa CDD rules compliance. That the proposed project complies with the Kalaeloa CDD rules; and
- (3) Compatibility. That the proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.


~~[(f)]~~ (e) Conditions. In approving an improvement or development permit, the decision-maker may impose any reasonable conditions to ensure that the project complies with the findings required above. Any conditions attached to an improvement or development permit issued under any previously enacted zoning regulations, subdivision, or other administrative rules shall continue to apply and shall be enforceable as provided in section 15-215-90 (violations and enforcement). Such conditions may be waived by the decision-maker which originally imposed such condition(s) and where the developer agrees to waive and abandon all rights secured under the regulations formerly in effect.

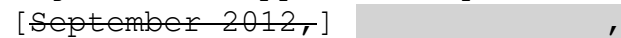
~~[(g) DAB.]~~ (f) Design advisory board. The executive director may convene a [DAB] design advisory board prior to acting on an improvement or development permit application. ~~[Where an application has been referred to the authority for review and action or when reviewing a development permit application, the authority may convene a DAB whether or not the executive director has done so previously]:~~

- (1) Composition. The [DAB] design advisory board shall be comprised of the [Kalaeloa CDD's] director of planning and development or designee, one member of the authority, and one or more technical consultants (e.g.,

- architect, landscape architect, engineer)
chosen by the executive director;
- (2) Fee. The developer shall compensate the authority for all costs relating to the participation of technical consultants in the ~~[DAB.]~~ design advisory board. Prior to retaining technical consultants, the executive director shall consult with the developer on their fees and work scope; provided, however, that the executive director may accept or reject the developer's recommendations and/or comments on the technical consultant to be retained at the executive director's sole discretion; and
- (3) Purpose. The ~~[DAB]~~ design advisory board shall provide only non-binding recommendations to the executive ~~[director or, in the case of referral under section 15-215-78 (improvement and development permits), to the authority.]~~ director. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-79 Conditional use permit. (a) ~~[No inherent right exists to receive a conditional use permit.]~~ Every conditional use permit application or amendment shall, at a minimum, comply with every requirement contained in these rules. Mere compliance with the generally applicable requirements, however, may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. Uses are as designated in Figure 1.7 (land use summary), dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter.

(c) Decision-maker. Conditional use permits are subject to authority review and action pursuant to Figure 1.1 (approval requirements matrix), dated ~~[September 2012,]~~ , made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the KMP;
- (3) The design, location, size and operating characteristics of the proposed use are compatible with the existing and future uses in the vicinity;
- (4) The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or be materially injurious to persons, lots, or improvements in the vicinity and zone in which the lot is located.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of this section. Such additional standards, conditions or requirements may include, but need not be limited to:

- (1) Financing and availability of adequate public facilities or services;
- (2) Dedication of land;
- (3) Reservation of land;
- (4) Payment of exactions;
- (5) Impact fees;
- (6) Creation of special assessment districts;
- (7) Creation of restrictive covenants or easements;
- (8) Special setbacks;
- (9) Yard requirements;
- (10) Increased screening or landscaping requirements;
- (11) Area requirements;
- (12) Development phasing;
- (13) Standards pertaining to traffic, circulation, noise, lighting, hours of

- operation, protection of environmentally sensitive areas, and similar characteristics; or
- (14) Require that a performance guarantee - acceptable in form, content, and amount to the authority be posted by the developer to ensure continued compliance with all conditions and requirements as may be specified. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-80 [~~Conditional use of vacant land.~~]
Temporary use permit. (a) The executive director may issue a [~~conditional use of vacant land~~] temporary use permit, provided that the following requirements are met:

- (1) The proposed use is [~~a~~] permitted by right or by conditional use permit within the applicable transect zone [~~except:~~], with the following exceptions:
 - (A) Open or uncovered temporary parking at grade may be permitted in all transect zones; whether paved or unpaved; and
 - (B) Construction sites, special trade construction and storage yards may be permitted in all transect zones where a six-foot screening wall or fence is erected along all public rights-of-way;
- (2) The maximum duration of the initial use is for a two-year period and the executive director may issue one extension of up to two additional years [~~if~~] for the [~~use was initially allowed;~~] initially-allowed use;
- (3) The density and height of any proposed temporary structure does not exceed the maximum density and height for the applicable transect zone;
- (4) The project conforms to the setback and landscaping requirements of this chapter, except for project lots where a screening wall or fence not exceeding six feet in height is erected along all public

- ~~[right-of-way]~~ rights-of-way or when the use is proposed for fourteen days or less;
- (5) The project conforms to the architectural standards of this chapter~~[, and]~~, except when the use is proposed for fourteen days or less; and
- (6) The proposed use in no way prevents or delays the future development of the lot.
- (b) In addition to the design controls listed in this section, the executive director may impose additional conditions to ensure that the ~~[conditional]~~ temporary use does not adversely affect adjacent lots and the appearance of the Kalaeloa CDD. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-81 Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special physical conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by this section.

(c) Types. There shall be two types of variances - minor and major. Each type shall apply to lots pursuant to Figure 1.1-B (permit type thresholds matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter. Each type shall be subject to the decision-maker review and action pursuant to Figure 1.1 (approval requirements ~~[matrix),]~~ matrices), dated ~~[September 2012,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter~~[÷~~

- ~~(1) Minor variances shall apply to projects on lots 40,000 square feet or less and are subject to executive director review and action; and~~

~~(2) Major variances shall apply to projects on lots over 40,000 square feet and are subject to authority review and action].~~

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions~~[, including]~~ of the subject property, such as irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot[.] including significant archaeological resources such as in situ human remains; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the owner or by a predecessor in title;
- (3) Minimal deviation. That the variance, if granted, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Character of the transect. That the variance, if granted, will not alter the existing or planned character of the transect in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and
- (5) No adverse impact. The variance would result in development that is not detrimental to or that would adversely impact adjacent properties.

(e) Variances for buildings for civic uses. In addition to the findings required by this section, there must also be a finding that the building and use provides a public service dedicated to arts, culture, education, recreation, government, transit or public

parking and is uniquely designed to feature as a prominent, architecturally significant contribution to the built environment such that deviation from the provisions of the rules is warranted in order to grant approval for a variance involving a new building or substantial modification to an existing building providing for a civic land use classification of Figure 1.7 (land use summary), dated ~~[September 2012,~~ , made a part of this chapter, and attached at the end of this chapter.

(f) Limitations. The following shall not be eligible for variance approval:

- (1) Change of transect zone; or
- (2) Deletion of any thoroughfare identified in ~~[the thoroughfare plan; or]~~ Figure 3-14 (thoroughfare plan) in the Kalaeloa master plan, dated .
- ~~[(3) Figure 1.12 (view corridors), dated September 2012, made a part of this chapter, and attached at the end of this chapter.]~~

(g) Submittal requirements. Each variance application shall include, at a minimum, the following:

- (1) A statement of the standard or standards that are the subject of the proposed variance;
- (2) A ~~[textual]~~ narrative description of the manner in which the developer proposes to deviate from such evaluation standard or standards;
- (3) Plans drawn to scale, showing the nature, location, dimensions, and elevation of the structure, area or part thereof that is the subject of the proposed variance; including the development project's relationship to the surrounding context;
- (4) A justification for the proposed variance in light of the requirements set forth above; and
- (5) Any other information as may be required by the decision-maker~~[-]~~, including but not limited to a survey of the proposed encroachment.

(h) Conditions of approval. In approving a variance, the decision-maker may impose any reasonable

conditions to ensure that the project complies with the section 15-215-81(d) (findings). [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-82 Master plan. (a) Purpose. The provisions of this section are intended to encourage investment in new development and commitment to the comprehensive planning of large land holdings. A further purpose of this section is to derive public benefits, such as reserved housing, open space, public parking, off-site infrastructure and other public facilities from master plan developers, in exchange for greater development flexibility for a specified period.

(b) Applicability. Developers of project sites over twenty acres in [~~T3 general urban,~~] T3-R neighborhood residential, T4 general urban [~~center~~] and T5 urban center [~~high-intensity~~] zones are eligible to apply for a master plan permit.

(c) Submittal requirements. Each master plan permit application shall include, at a minimum, the following:

- (1) Plans and supporting information sufficient to clearly indicate the pattern and implications of development within the master plan area;
- (2) Proposed development phasing and timeframe;
- (3) Proposed number, location, type and size of reserved housing;
- (4) Proposed public facility improvements;
- (5) A thoroughfare plan that ensures adequate connectivity within the master plan area. The thoroughfare plan shall provide information on appropriate street types within the master plan area. Continuous street connections within the master plan area shall be provided at least every 1,200 feet; and
- (6) Such other information as may be required by the executive director or authority.

(d) Findings. The authority shall make the following findings of fact in order to approve a master plan permit:

- (1) That the master plan implements and is consistent with the KMP and Kalaeloa CDD rules; and
- (2) That the master plan will either enhance or provide required public facilities, as provided for in section 15-215-64 (dedication of public facilities).
- (e) Public facilities. All public facilities above those required by these rules and other administrative rules of the authority may be voluntarily offered by the master plan applicant.
- (f) Effective period and time extension:
 - (1) A master plan may be granted an effective period of up to ten years; and
 - (2) The authority may authorize two [~~time extension~~] extensions, of five years each.
[Eff 10/27/12; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-83 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether or not all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all permit applications provided for in these rules~~[-]~~, except rules clearance and temporary use permit applications.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the authority and required for proper assessment of the request is included and all filing fees, where applicable, have been paid. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director or designee for completeness. At the time of proposed filing and fee payment, the executive director may reject any application that omits information required by forms

published by the HCDA. Once accepted for filing, the executive director's final determination on completeness of an application is appealable to the authority pursuant to section 15-215-86 (appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Multiple permit approvals. When a proposed project requires more than one permit approval, the developer shall apply for all such permit approvals concurrently~~[-]~~, unless otherwise determined by the executive director.

(g) Completeness review process:

- (1) The executive director shall provide a written determination on the completeness review within forty-five business days of receipt of the permit application, excluding all State holidays. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application;
- (2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from such agency or entity prior to deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;
- (3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;

- (4) If the authority does not render a decision on the appeal within sixty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes a developer and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. In computing time periods of this section, the day upon which the application was submitted is not to be included. Further, the last day is to be included unless it is not a business day, in which event the period runs until the next business day that is not a State holiday.

(i) Information requests. After the executive director issues a certificate of completeness or per this section, the executive director or authority may, in the course of processing the application, request the developer to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits. [Eff 10/27/12; am and comp]

(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-84 Automatic approvals. The following permits shall be deemed approved if the appropriate permit application has been submitted, a certificate of completeness has been issued, and no decision is rendered within the following review periods:

- (1) Rules clearance and [~~conditional use of vacant land~~] temporary use permit (sixty calendar days);
- (2) Improvement [~~Permit~~] permit [~~(ninety)~~] (one hundred twenty) calendar days);
- (3) Development permit (one hundred [~~twenty~~] fifty calendar days);
- (4) Conditional use permit (one hundred twenty

- calendar days);
- (5) Variance (one hundred sixty calendar days);
and
- (6) Master plan (two hundred calendar days).
[Eff 10/27/12; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp:
HRS §§206E-4, 206E-5, 206E-7)

§15-215-85 Effective period. (a) Rules clearance approvals shall have an effective period of one year.

(b) Improvement permits, development permits, ~~[conditional use of vacant land,]~~ temporary use permits, conditional use permits and variance approvals shall have an effective period of two years, unless extended under these rules.

(c) Master plan permits shall have an effective period of ten years, unless extended pursuant to section 15-215-82 (master plan).

(d) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, the executive director may authorize two time extensions of one year each for improvement permits. The authority may authorize two time extensions of one year each for development permits.

(e) In computing the effective period, the day upon which the approval was granted is not to be included.

(f) Improvement permits, development permits, temporary use permits, conditional use permits and variance approvals shall be deemed to run with the land from the effective date of the permit through any change of ownership of the site, except in the case where a permit expires and becomes void. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-86 Appeals. (a) Decisions of the executive director rendered in the administration of the rules are appealable within thirty calendar days of the executive director's decision, as provided herein, to the authority.

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with the authority's rules of practice and procedure. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-87 Subsequent applications. If an improvement permit, development permit, ~~[conditional]~~ temporary use ~~[of vacant land]~~ permit, conditional use permit, variance, or master plan permit is denied, a new application proposing substantially the same development for the same property shall not be filed within six months after the final decision. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-88 Minor changes. (a) After final approval of a rules clearance, improvement permit, development permit, ~~[conditional use of vacant land]~~ temporary use permit, conditional use permit, master plan permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application and shall process such requests as administrative amendments when the requested amendment(s) does not:

- (1) Increase the number of allowable dwelling units~~[, allowable floor area]~~, height, or any additional land-use disturbance;
- (2) Increase the allowable floor area beyond a

- negligible or de minimis amount;
- ~~[(2)]~~ (3) Introduce different land uses;
 - ~~[(3)]~~ (4) Request larger land area;
 - ~~[(4)]~~ (5) Request any variance~~[-]~~ or increase an approved variance;
 - ~~[(5)]~~ (6) Allow any diminution in buffer or transition areas, reduction in landscaping, reduction of required yards, or any significant change in the design characteristics or materials used in construction of the structures; or
 - ~~[(6)]~~ (7) Reduce or eliminate conditions attached to the subject development approval.

(b) Any other change requests which do not qualify under section 15-215-88 (minor changes) shall require the filing of a new application of the original type of permit required, to be processed in accordance with this subchapter. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-89 Nonconformities. (a) Applicability. This section applies to nonconformities, including their continuation, cessation, enlargement, or expansion. There are two categories of nonconformities: uses and structures.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of the applicable statutes or regulations in effect at the time that it was established, but which is no longer permitted or authorized under these rules, may continue subject to the provisions of this section.

(c) Violation of rules. The failure to comply with the requirements of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not conform to the provisions of the rules. Such use may be extended throughout the structure, provided that no structural

alterations or additions to the structure occur, except those made in conformance with the rules. A conforming structure in which a nonconforming use is operated shall not be enlarged or extended except as may be required by the rules; and

- (2) Changes of nonconforming use:
 - (A) Any nonconforming use may be changed to a use conforming with the rules established for the transect zone in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not in the future be changed back to ~~[a]~~ the original or another nonconforming use;
 - (B) A nonconforming use may only be expanded under the provisions of section 15-215-89(f) (nonconformities); and
 - (C) If a nonconforming use is abandoned for twelve consecutive months, any future use of such premises shall be in conformity with the provisions of the rules. Abandonment of a nonconforming use shall terminate the right to continue the nonconformity
- (e) Nonconforming structures:
 - (1) Continuance of nonconforming structures. Subject to the provisions of section 15-215-89(b) (nonconformities) any nonconforming structure may be occupied, operated, and maintained in a state of good repair;
 - (2) Enlargement, conforming use. A nonconforming structure in which only lawfully permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all regulations established in subchapter 2 (regulating plan, transect zones and thoroughfare plan), subchapter 3 (general development standards) and subchapter 4 (district wide standards);
 - (3) Enlargement, nonconforming use. A nonconforming structure in which only

nonconforming uses are operated may be enlarged or extended if:

- (A) The enlargement or extension can be made in compliance with all provisions of subchapter 2 (regulating plan, transect zones and thoroughfare plan), subchapter 3 (general development standards) and subchapter 4 (district wide standards); and
 - (B) The requirements of section 15-215-89(f) (nonconformities) are met;
- (4) Enlargement, limited up to twenty-five per cent of the floor area. A nonconforming structure may be altered or enlarged without compliance with all provisions of subchapter 2 (regulating plan, transect zones and thoroughfare plan), subchapter 3 (general development standards) and subchapter 4 (district wide standards), provided that:
- (A) The floor area of the proposed construction does not exceed twenty-five per cent of the floor area of the structure as it legally existed on October 27, 2012, excluding proposed demolitions;
 - (B) The proposed construction does not encroach into a frontage area;
 - (C) The proposed construction does not adversely affect neighboring properties; and
 - ~~[(D) The parking requirements of this chapter are satisfied for the area proposed to be constructed; and~~
 - ~~-(E)]~~ (D) The area created by the proposed construction is a permitted use;
- (5) Damage to structures. The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is damaged in any manner and from any cause whatsoever, and the cost of repairing such damage exceeds fifty per cent of the replacement cost of such structure on the date of such damage. In determining the replacement cost of any nonconforming

structure, the cost of land or any factors other than the nonconforming structure itself shall not be included. The executive director shall require the submission of sufficient evidence to verify the cost of repairing such structure and the final determination of replacement cost shall be made by the executive director. A nonconforming single-family dwelling unit that is destroyed or damaged more than fifty per cent of the replacement cost may be rebuilt, provided that a permit is issued within one year of the date of such damage or destruction. The executive director shall require the submission of sufficient evidence to verify the date of damage or destruction; and

- (6) Exception for repairs pursuant to public order. Nothing in this subsection shall be ~~[deemed to prevent]~~ construed as preventing the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it ~~[to restoration]~~ restored to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.
- (f) Expansion of nonconformities:
 - (1) Applicability. No nonconforming use or structure shall expand more than twenty-five per cent of the floor area of the structure, exclusive of any proposed demolition, as it legally existed on October 27, 2012, unless a conditional use permit has been granted as set forth in section ~~[15-217-81]~~ 15-217-79 (conditional use permit); and
 - (2) Evaluation criteria. In addition to the criteria required to be met for a section 15-215-79 (conditional use permit), the

following criteria shall apply to the issuance of a conditional use permit for the expansion of a nonconforming use or structure:

- (A) The termination of such nonconformity will result in unnecessary hardship~~[+]~~ that is not solely economic or financial;
- (B) The expansion of the nonconformity will not be contrary to the public interest;
- (C) The expansion of the nonconformity will not substantially or permanently injure the appropriate use of adjacent conforming property;
- (D) The use is consistent with the spirit and purpose of these regulations and the KMP and goals, objectives, and policies;
- (E) The plight of the developer for which the expansion of the nonconformity is sought is due to unique circumstances existing on the property and within the surrounding area;
- (F) The expansion of the nonconformity will not substantially weaken the general purposes of this section or the regulations established in this section for the applicable transect zone;
- (G) The expansion of the nonconformity will not adversely affect the public health, safety~~[, and]~~ or welfare; and
- (H) Nonconforming ~~[parking and]~~ loading may be continued, subject to the following provisions:
 - (i) If there is a change in use which has a greater ~~[parking or]~~ loading requirement than the former use, additional ~~[parking and]~~ loading shall be required and shall not be less than the difference between the requirements for the former use and the proposed use; and
 - (ii) ~~[Off-street parking and loading]~~ Loading requirements of this

section shall be satisfied for additional floor area constructed. [Eff 10/27/12; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-215-90 Violations and enforcement. All provisions relating to violations of these rules and enforcement of said violations are provided in the Hawaii community development authority's rules of practice and procedures. [Eff 10/27/12; comp] (Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-215-91 Fee schedule. The following fee schedule shall be applicable to all permits, [~~rule clearance,~~] rules clearances, and public hearings.

[Rule] <u>Rules</u> Clearance	[\$20.00] <u>\$50</u>
<u>Temporary Use</u> <u>Permit</u>	<u>\$100</u>
<u>Administrative</u> <u>Amendment</u>	<u>\$100</u>
<u>Conditional Use</u> <u>Permit</u>	<u>\$500*</u>
Improvement Permit	Cost: Project Size: (building/structure) [\$20 up to 1,000 s.f.] [\$100 1,001-10,000 s.f.] <u>\$250 up to 10,000 s.f.</u> [\$500] \$700 10,001-30,000 s.f. [\$1,000] \$1,500 > 30,000 s.f.
Development Permit	[\$6,400 plus the cost of public hearing] <u>\$9,000*</u>
Master Plan Permit	[\$10,000 plus the cost of public hearing] <u>\$14,000*</u>
Variance	[\$500 plus the cost of public hearing] <u>\$700*</u>

*plus costs associated with the required public hearing per §15-219 HAR; including but not limited to court recorder fees and public notice publication fees (§15-219-27 and §15-219-28."

[Eff 10/27/12; am and comp] (Auth: HRS
 §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-215-91

§§15-215-92 to 15-215-110 (Reserved) .

List of Figures
[September 2012] [REDACTED]

General Figures:

- 1.1 Approval Requirements [~~Matrix~~] Matrices
 - (A) Approval Requirements Matrix
 - (B) Permit Type Thresholds Matrix
- 1.2 Regulating Plan
- 1.3 Development Standards Summary
 - (A) Building Development Standards
 - (B) Site Development Standards
- 1.4 Saratoga Thoroughfare [~~Plan~~] Type
 - (A) Illustrative Saratoga Thoroughfare - Parking Median
 - (B) Illustrative Saratoga Thoroughfare - Protected Bicycle Lane
- 1.5 [~~Street Tree Chart~~] Landscaping Standards
 - (A) Required Kalaeloa Street Tree List
 - (B) Required Street Tree Size by Thoroughfare
 - (C) Preferred Plant Species
- 1.6 Frontage [~~Type~~] Types
- 1.7 Land Use Summary
- 1.8 Building Placement and Encroachment
 - (A) Illustrative Building Placement Diagram for Residential Uses
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- 1.9 Parking Placement
- [1.10] ~~Preferred Plant Species~~
- ~~1.11~~ 1.10 Pedestrian Zone Treatment - T4 and T5 zones
 - (A) Section View, Illustrative Pedestrian Zone Treatment
 - (B) Plan View, Illustrative Pedestrian Zone Treatment
- [1.12] ~~View Corridors]~~

Building Type Figures:

BT.1	Front Yard House
BT.2	Side Yard House
BT.3	Townhouse
BT.4	[Duplex/Triplex/Quadplex] <u>Duplex, Triplex,</u> <u>Quadplex</u>
BT.5	Flex - Loft
BT.6	Industrial
BT.7	Courtyard
BT.8	Urban Block
BT.9	Lei Building
<u>BT.10</u>	<u>Tropical Urban Court</u>

FIGURE 1.1 APPROVAL REQUIREMENTS MATRICES

FIGURE 1.1-A APPROVAL REQUIREMENTS MATRIX

Development Approvals	Decision Maker	
	Executive Director	Authority
Rules Clearance	D	A
Improvement Permit	D	A
Development Permit	R	D
Conditional Use Permit	R	D
Temporary Use Permit	D	A
Master Plan	R	D
Minor Variance	D	A
Major Variance	R	D

R = Provides Recommendation to Authority

D = Renders Decision on Development Approval Application

A = Considers Appeal of Executive Director Decision

FIGURE 1.1-B PERMIT TYPE THRESHOLDS MATRIX

Transect Zone	Lot Area Threshold	
	Improvement Permit	Development Permit
	Minor Variance	Major Variance
T2 Rural Zone	< 20.0 acres	≥ 20.0 acres
T3-R Neighborhood Residential Zone	< 5.0 acres	≥ 5.0 acres
T3-M Mixed Use Zone	< 10.0 acres	≥ 10.0 acres
T4 General Urban Zone	< 3.5 acres	≥ 3.5 acres
T4 General Urban Zone with Saratoga Overlay Zone Frontage	< 2.0 acres	≥ 2.0 acres
T5 Urban Center Zone	< 2.0 acres	≥ 2.0 acres
SD-1 Light Industrial Zone	< 10.0 acres	≥ 10.0 acres
SD-2 Airport Zone	< 5.0 acres	≥ 5.0 acres
SD-3 Active Military Zone	N/A	N/A

N/A = Not Applicable

FIGURE 1.2 REGULATING PLAN

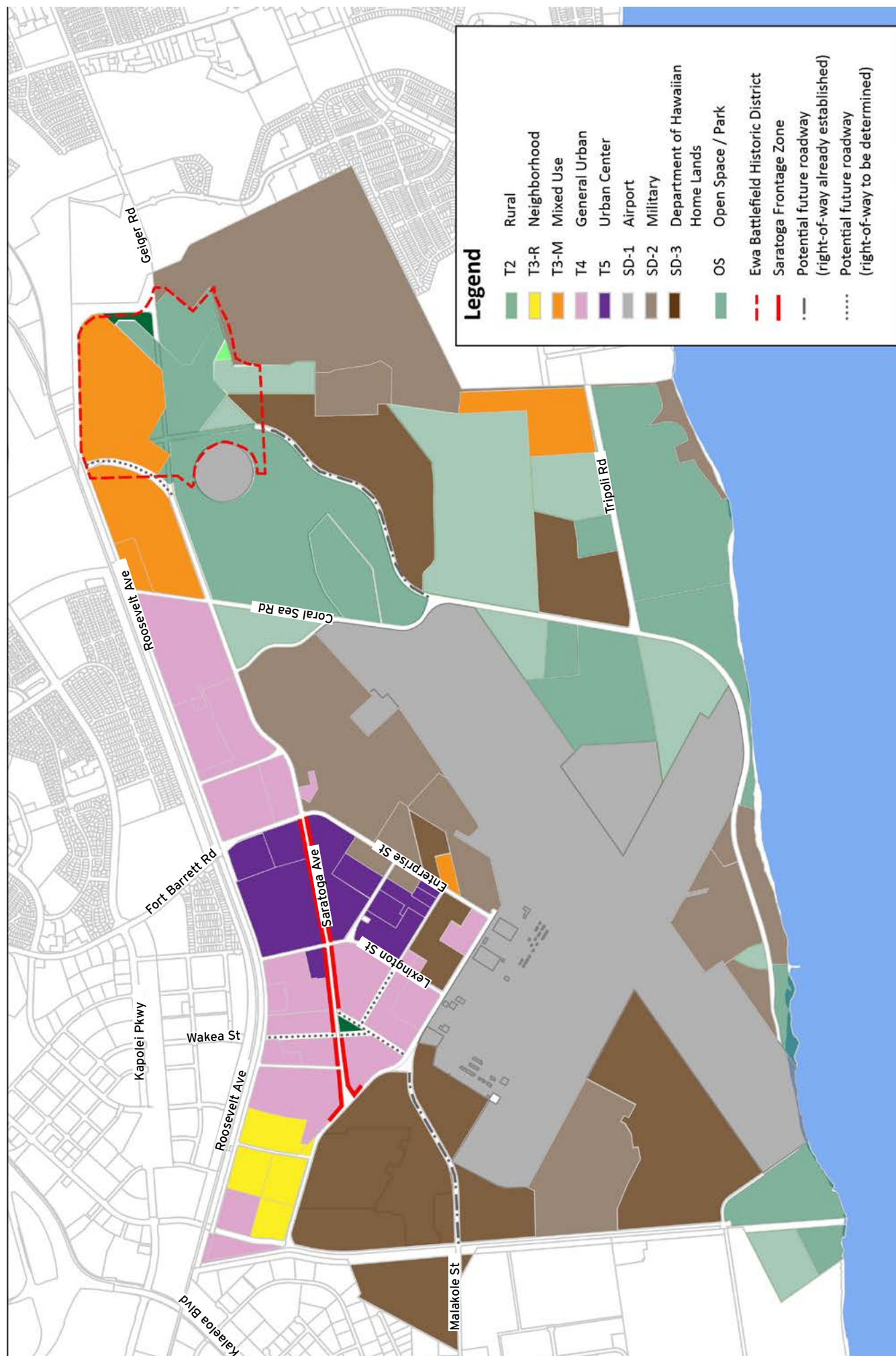


FIGURE 1.3 DEVELOPMENT STANDARDS SUMMARY

FIGURE 1.3-A BUILDING DEVELOPMENT STANDARDS

	T2	T3-R	T3-M	T4		T5		OS/P
	Rural Zone	Neighborhood Residential	Mixed-Use Zone	General Urban Zone	Saratoga Overlay Zone	Urban Center Zone	Saratoga Overlay Zone	Open Space/Parks
BUILDING TYPES	See Figures BT.1 - BT.10 for details on each type							
Front Yard House	-	P	-	P	-	-	-	-
Side Yard House	-	P	-	P	-	-	-	-
Townhouse	-	P	-	P	-	-	-	-
Duplex, Triplex, Quadplex	-	P	-	P	P	-	-	-
Flex-loft	-	P	P	P	P	P	P	P
Industrial	P	-	P	-	-	-	-	P
Courtyard	-	-	P	P	P	P	P	P
Urban Block	P	-	P	P	P	P	P	P
Lei Building	-	-	P	P	P	P	P	P
Tropical Urban Court	-	-	P	P	P	P	-	P
FRONTAGE TYPES	See Figure 1.6 for details on each type							
Common Yard	P	P	P	-	-	-	-	N/S
Porch & Fence	P	P	P	-	-	-	-	N/S
Terrace	-	P	P	P	P	P	P	N/S
Forecourt	-	P	P	P	P	P	P	N/S
Stoop	-	P	-	P	P	P	-	N/S
Shopfront	-	P	P	P	P	P	P	N/S
Gallery	P	-	-	P	P	P	P	N/S
Arcade	-	-	-	P	P	P	P	N/S
BUILDING HEIGHT								
Maximum Height	28'	60'	60'	75'		90'		120'
Maximum Height - Accessory Building	14'	28'	28'	28'		90'		N/S

Key

P = Permitted

- = Not Permitted

N/S = Not Specified; Dependant upon executive director discretion

FIGURE 1.3-B SITE DEVELOPMENT STANDARDS

	T2	T3-R	T3-M	T4		T5		OS/P
	Rural Zone	Neighborhood Residential	Mixed-Use Zone	General Urban Zone	Saratoga Overlay Zone	Urban Center Zone	Saratoga Overlay Zone	Open Space/Parks
FLOOR AREA RATIO								
Minimum	N/S	N/S	N/S	1		1.5		N/S
Maximum	0.35	1.25	1.25	2.5		3.5		N/S
BUILDING PLACEMENT	See Figure 1.8							
Build to Line	N/S	15'	15'	10'	5'	10'	10'	N/A
Frontage Occupancy at Build to Line	N/S	50% minimum	50% minimum	60% minimum	80% minimum	75% minimum	80% minimum	N/A
Side Yard Setback	N/S	8'	6'	4'	N/A	N/A	N/A	N/A
Rear Yard Setback	N/S	10'	10'	4'	4'	4'	4'	N/A

Key

P = Permitted

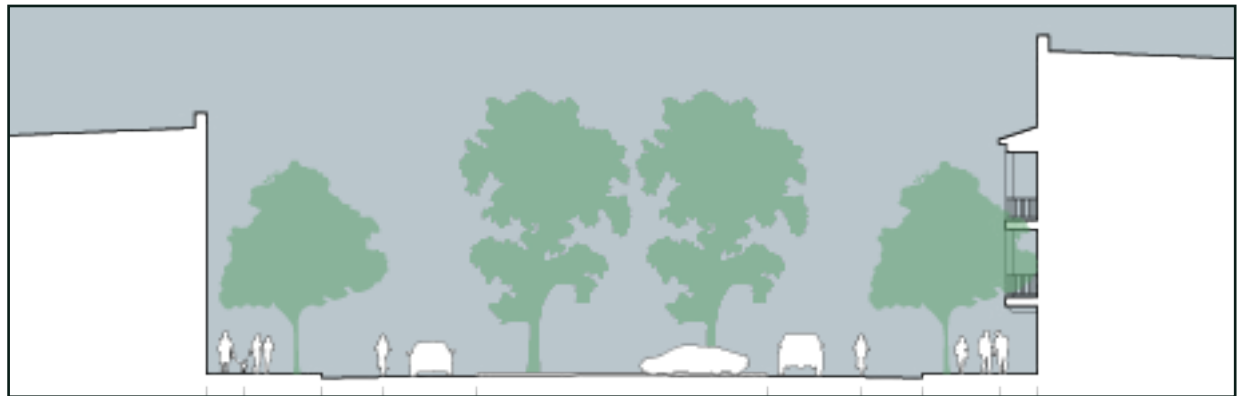
- = Not Permitted

N/S = Not Specified; Dependant upon executive director discretion

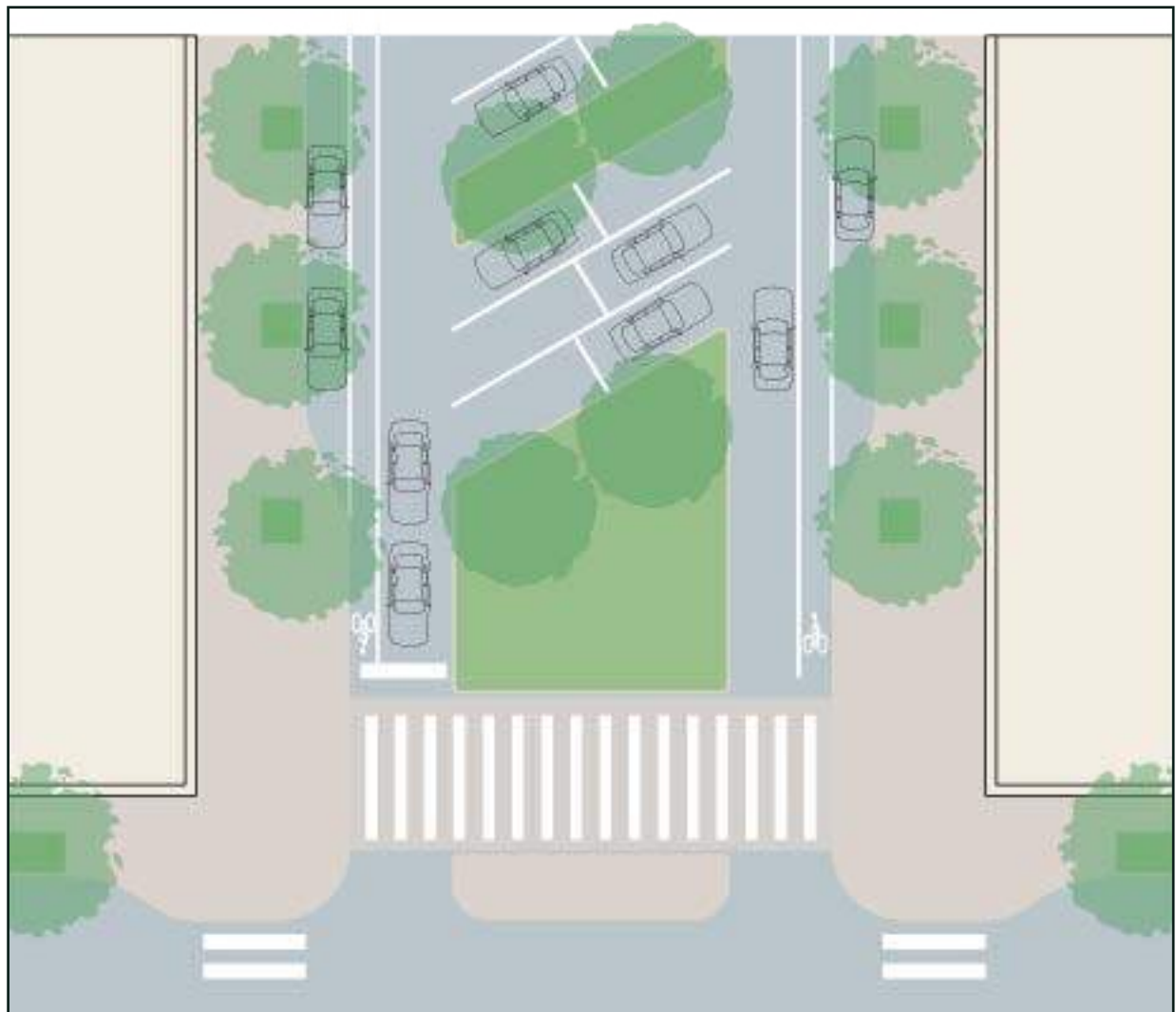
N/A = Not Applicable; Does not apply

FIGURE 1.4 SARATOGA THOROUGHFARE TYPE

1.4-A Illustrative Saratoga Thoroughfare - Parking Median



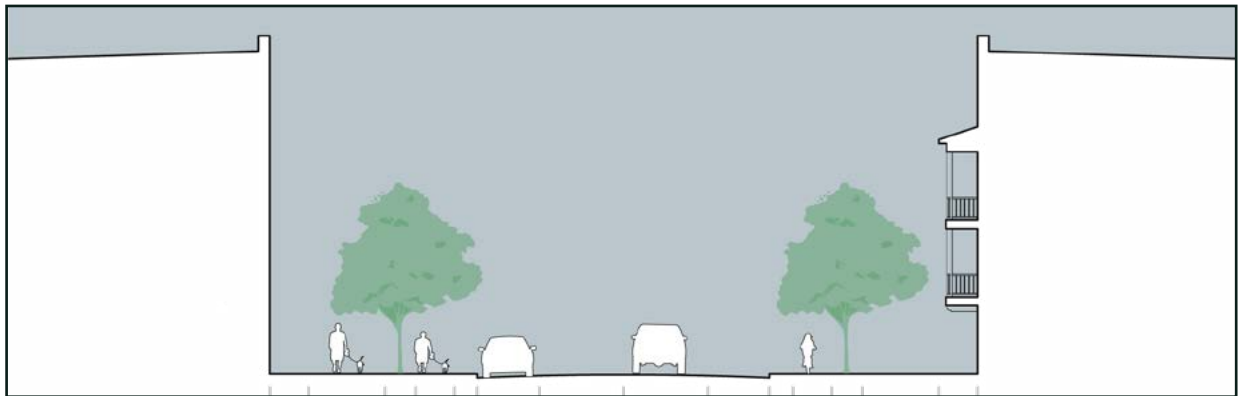
Illustrative Cross Section



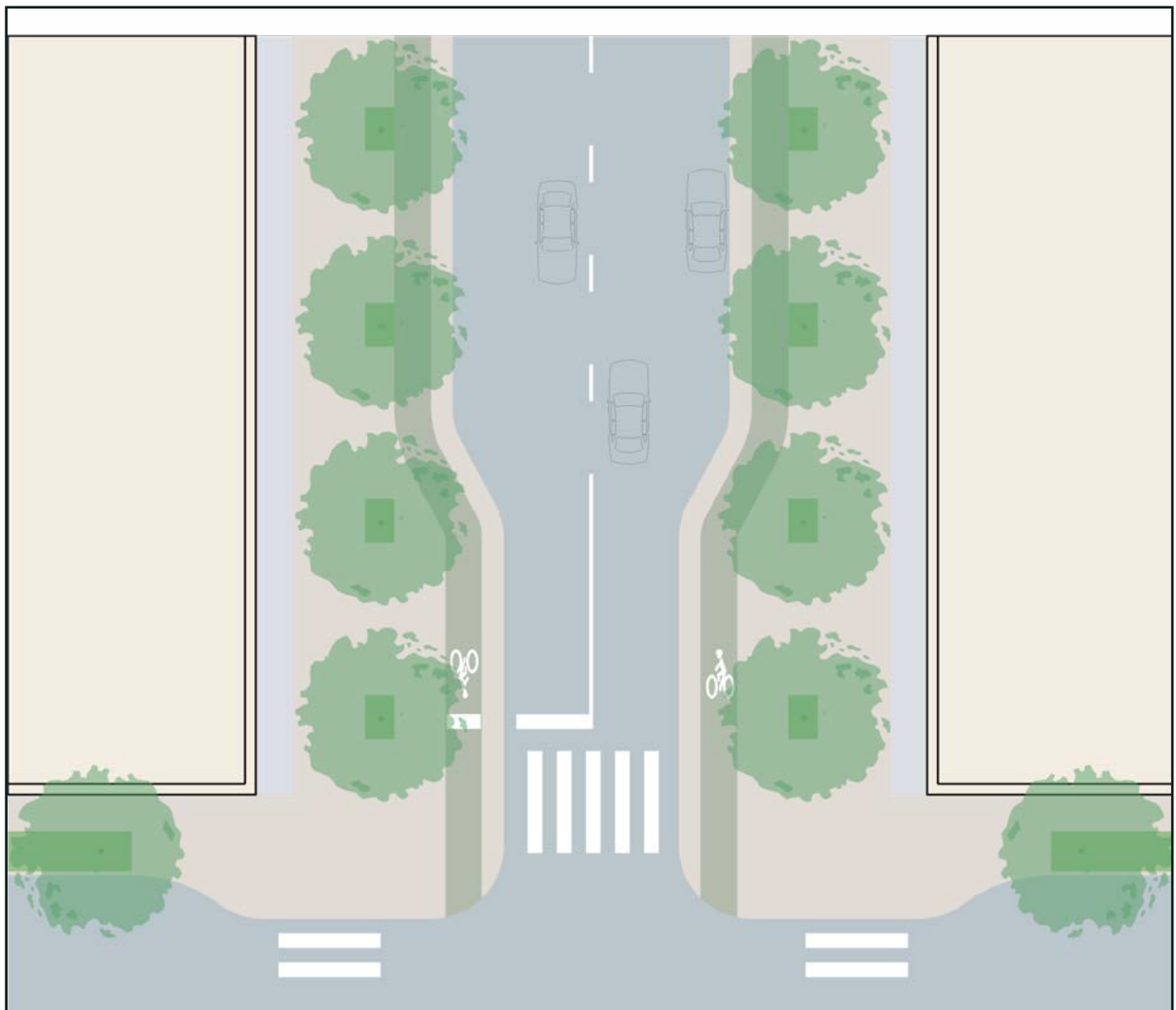
Illustrative Plan

FIGURE 1.4 SARATOGA THOROUGHFARE TYPE

1.4-B Illustrative Saratoga Thoroughfare - Protected Bicycle Lane



Illustrative Cross Section



Illustrative Plan

FIGURE 1.5 LANDSCAPING STANDARDS

1.5-A Required Kalaeloa Street Tree List

The Required Kalaeloa Street Tree List is a list of trees selected for their appropriateness and beauty. It incorporates many of the trees listed in the City and County of Honolulu's Department of Planning and Permitting's *Standards and Procedures for the Planting of Street Trees*. Preference will be given to native and drought-tolerant trees. This list will be updated periodically to allow for substitution of desirable flora and for resolving planting problems which may arise. Trees on this list have been categorized into small, medium, or large based on the average size of the tree at 25 years old. Projects within the Kalaeloa CDD should retain existing street trees where possible. Exceptions to this tree list may be granted by the executive director.

	Scientific Name	Common Name
Small Trees <25 ft in Height	<i>Bauhinia binata</i>	Alibangbang
	<i>Ceratonia siliqua</i>	Carob Tree
	<i>Elaeodendron orientale</i>	False Olive
	<i>Guaiacum officinale</i>	Lignum Vitae
	<i>Lagerstromia indica</i>	Crepe Myrtle
	<i>Magnolia grandiflora</i>	Southern Magnolia
	<i>Metrosideros polymorpha</i>	Ohia Lehua
	<i>Mimusops caffra</i>	African mimusops
	<i>Pimenta dioica</i>	Allspice
	<i>Tabebuia argentea</i>	Silver Trumpet Tree
	<i>Tabebuia banksii</i>	White Tecoma
	<i>Tabebuia palmeri</i>	Palmer's Tecoma
Medium Trees 26-35 ft in Height	<i>Bauhinia blakeana</i>	Hong Kong Orchid Tree
	<i>Callistemon viminalis</i>	Drooping Bottlebrush
	<i>Colchosperrum villifolium</i>	Golden Buttercup
	<i>Connocarpus erectus var. Argentus</i>	Silver Buttonwood
	<i>Cordia subcordata</i>	True Kou
	<i>Cupaniopsis anacardiodes</i>	Tuckeroo
	<i>Erythrina sandwicensis</i>	Wiliwili
	<i>Harpullia pendula</i>	Tulipwood
	<i>Lagerstromia speciosa</i>	Gian Crepe Myrtle
	<i>Melaleuca leucadendra</i>	Paper Bark
	<i>Michelia alba</i>	Pak Lan
	<i>Sapindus spp.</i>	Manele
	<i>Tabebuia chrysantha</i>	Golden Trumpet Tree
	<i>Tabebuia pentaphylla</i>	Pink Tecoma
	<i>Thespeia populena</i>	Milo
Large Trees >36 ft in Height	<i>Andira inermis</i>	Cabbage Tree
	<i>Calophyllum inophyllum</i>	True Kamani
	<i>Cassia javanica XC fistula</i>	Rainbow Shower Tree
	<i>Ficus macrophylla</i>	Moreton Bay Fig
	<i>Ficus retusa</i>	Chinese Banyan
	<i>Jacaranda acutifolia</i>	Jacaranda
	<i>Swietenia mahogoni</i>	Mahogany
	<i>Tabebuia donnell-smithii</i>	Gold Tree

FIGURE 1.5 LANDSCAPING SPECIES

1.5-B Required Street Tree Size by Thoroughfare

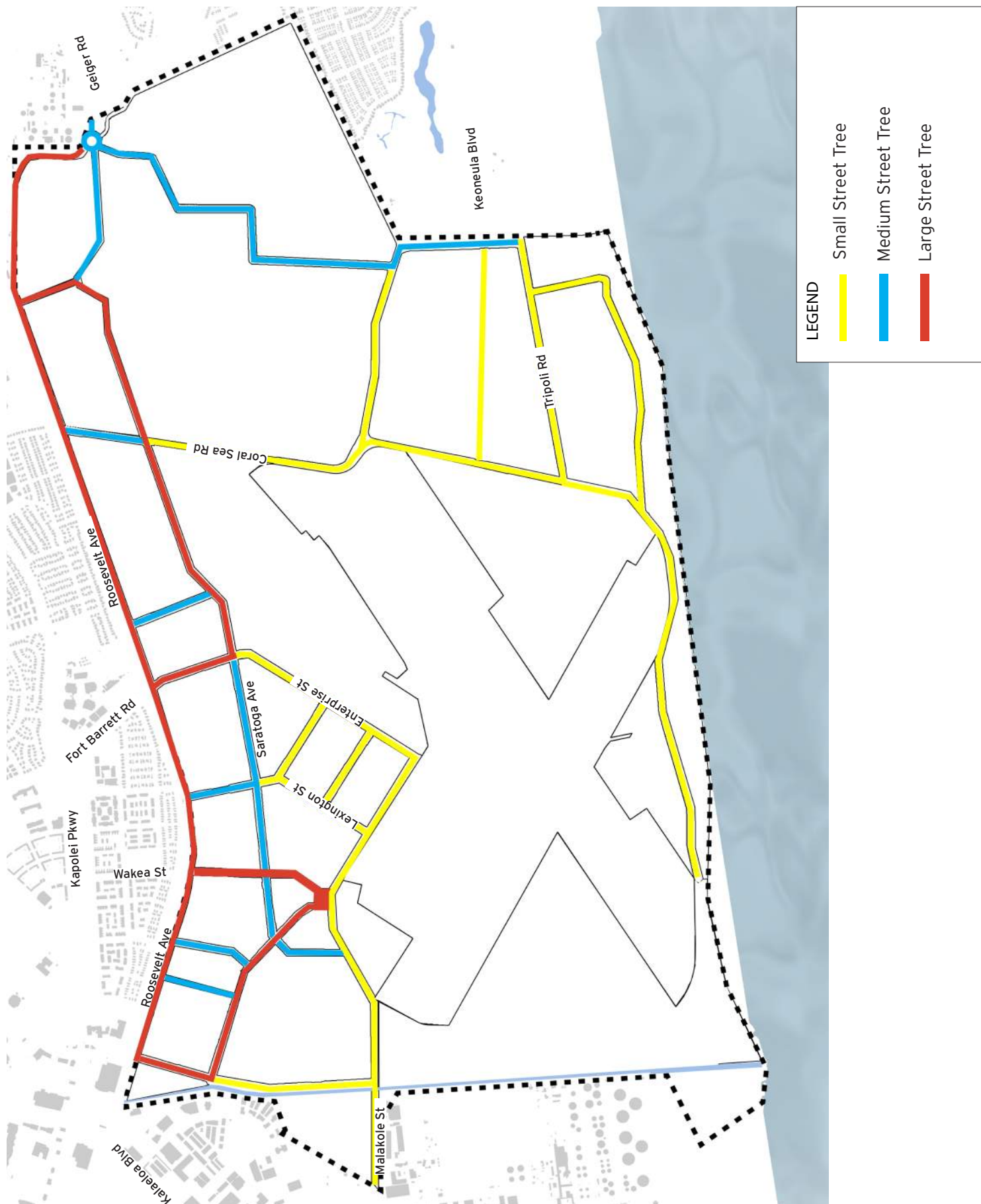


FIGURE 1.5 LANDSCAPING SPECIES

1.5-C Preferred Plant Species

Scientific Name		Common Name
Trees	<i>Bauhinia binata</i>	Alibangbang
	<i>Ficus benjamina</i>	Benjamin Banyan
	<i>Ceratonia siliqua</i>	Carob Tree
	<i>Elaeodendron orientale</i>	False Olive
	<i>Guaiacum officinale</i>	Lignum Vitae
	<i>Lagerstromia indica</i>	Crepe Myrtle
	<i>Magnolia grandiflora</i>	Southern Magnolia
	<i>Metrosideros polymorpha</i>	Ohia Lehua
	<i>Mimusops caffra</i>	African mimusops
	<i>Pimenta dioica</i>	Allspice
	<i>Tabebuia argentea</i>	Silver Trumpet Tree
	<i>Tabebuia banksii</i>	White Tecoma
	<i>Tabebuia palmeri</i>	Palmer's Tecoma
	<i>Bauhinia blakeana</i>	Hong Kong Orchid Tree
	<i>Callistemon viminalis</i>	Drooping Bottlebrush
	<i>Colchlospermum vilifolium</i>	Golden Buttercup
	<i>Connocarpus erectus var. Argentus</i>	Silver Buttonwood
	<i>Cordia subcordata</i>	True Kou
	<i>Cupaniopsis anacardioides</i>	Tuckeroo
	<i>Erythrina sandwicensis</i>	Wiliwili
	<i>Harpullia pendula</i>	Tulipwood
	<i>Lagerstromia speciosa</i>	Gian Crepe Myrtle
	<i>Melaleuca leucadendra</i>	Paper Bark
	<i>Michelia alba</i>	Pak Lan
	<i>Sapindus spp.</i>	Manele
	<i>Tabebuia chrysantha</i>	Golden Trumpet Tree
	<i>Tabebuia pentaphylla</i>	Pink Tecoma
	<i>Thespeia populena</i>	Milo
	<i>Samanea saman</i>	Monkeypod Tree
	<i>Andira inermis</i>	Cabbage Tree
	<i>Calophyllum inophyllum</i>	True Kamani
	<i>Cassia javanica XC fistula</i>	Rainbow Shower Tree
	<i>Ficus macrophylla</i>	Moreton Bay Fig
	<i>Ficus retusa</i>	Chinese Banyan
	<i>Jacaranda acutifolia</i>	Jacaranda
	<i>Swietenia mahogoni</i>	Mahogany
	<i>Tabebuia donnell-smithii</i>	Gold Tree

FIGURE 1.5 LANDSCAPING SPECIES

1.5-C Preferred Plant Species continued

Scientific Name		Common Name
Palms	<i>Latania loddigesii</i>	Blue Latan Palm
	<i>Sabal palmetto</i>	Cabbage Palm
	<i>Livisiona chinesis</i>	Chinese Fan Palm
	<i>Cocos nucifera</i>	Coconut Palm
	<i>Phoenix dactylifera</i>	Date Palm
	<i>Pitchardia spp.</i>	Loulu Palm
	<i>Neodypsis decaryi</i>	Triangle Palm
	<i>Adonidia merrillii</i> (Becc.)	Manila Palm
	<i>Areca catechu</i> L.	Areca Palm
	<i>Hyophorbe lagenicaulis</i>	Bottle Palm
	<i>Ptychosperma macarthurii</i>	McArthur Palm
Shrubs	<i>Dodonaea viscosa</i>	'A'ali'i
	<i>Wikstroemia uva-ursi</i>	'Akia
	<i>Hibiscus tiliaceus</i>	Hau
	<i>Acalypha wilkesiana</i>	Copperleaf
	<i>Agave americana</i>	Agave
	<i>Acalypha hispida</i>	Chenille Plant
	<i>Codiaeum variegatum</i>	Croton Mammy
	<i>Gardenia taitensis</i>	Tiare Gardenia
	<i>Ceanothus thyrsiflorus</i>	Eldorado
	<i>Ixora finlaysoniana</i>	Fragrant Ixora
	<i>Cordyline fruticosa</i>	Green Ti
	<i>Cordyline fruticosa</i> c.v. <i>Lilinoe</i>	Lilinoi Ti
	<i>Strelitzia reginae</i>	Orange Bird-of-Paradise
	<i>Eranthemum purpurascens</i>	Purple Eranthemum
	<i>Ruellia brittoniana</i>	Ruellia Purple Showers
	<i>Lycoris radiata</i>	Spider Lily
	<i>Piper methysticum</i>	Black Awa
	<i>Bougainvillea</i>	Bougainvillea
	<i>Cyperus isocladius</i>	Dwarf Papyrus
	<i>Zingiber officinale</i>	Ginger
	<i>Hibiscus</i>	Hibiscus
	<i>Abutilon menziesii</i>	Ko'olua'ula
	<i>Punica granatum</i>	Pomegranate

FIGURE 1.5 LANDSCAPING SPECIES

1.5-C Preferred Plant Species continued

Groundcovers	<i>Heliotropum anomalum</i>	Hinahina
	<i>Sida fallax</i>	'Ilima
	<i>Capparis sandwichiana</i>	Maiapilo
	<i>Scaevola sericea</i>	Naupaka
	<i>Pohinahina</i>	Vitex rotundifolia
	<i>Cyperus javanicus</i>	Ahu'awa
	<i>Microsorium scolopendrium</i> 'Laua'e Iki'	Dwarf Laua'e Fern
	<i>Dianella sandwicense</i>	Giant 'Uki'uki
	<i>Plumbago zeylanica</i>	Ilie'e
	<i>Vigna mariana</i>	Nanea
	<i>Heteropogon contortus</i>	Pili Grass
	<i>Asystasia gangetica</i>	Pink Asystasia
	<i>Lantana montevidensis</i>	Purple Lantana
	<i>Lantana camara</i>	Yellow Lantana
	<i>Zoysia japonica</i>	Zoysia El Toro
	<i>Hymenocallis pygmaea</i>	Dwarf Spider Lily
	<i>Hemigraphis</i>	Hemigraphis
	<i>Plumbago zeylanica</i>	Ilie'e
	<i>Colocasia esculenta</i>	Kalo, Taro
	<i>Vigna mariana</i>	Nanea
	<i>Epipremnum aureum</i>	Pothos
	<i>Salvia rosmarinus</i>	Rosemary
	<i>Syngonium</i>	Syngonium

FIGURE 1.6 FRONTAGE TYPES


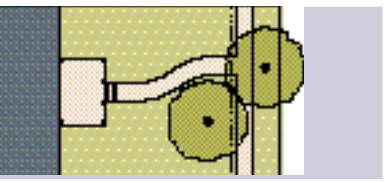

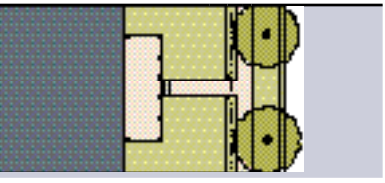

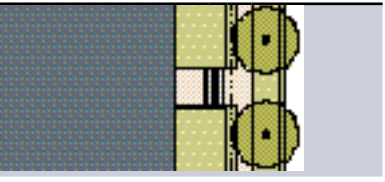

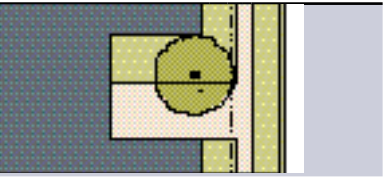
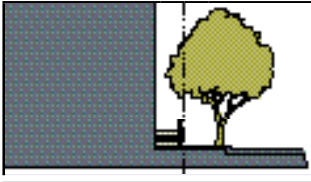

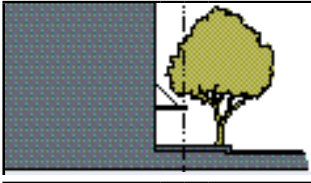

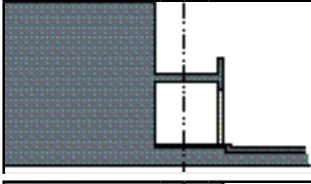
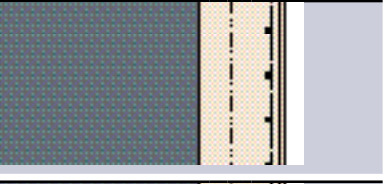


<p>a. Common Yard: a planted frontage wherein the facade is set back substantially from the frontage line. The front yard created remains unfenced and is visually continuous with adjacent yards, supporting a common landscape. The deep setback provides a buffer from the higher speed thoroughfares.</p>		
<p>b. Porch & Fence: a planted frontage wherein the facade is set back from the frontage line with an attached porch permitted to encroach. A fence, or low wall, at the frontage line maintains street spatial definition. Porches shall be no less than 8 feet deep.</p>		
<p>c. Terrace: a frontage wherein the facade is set back from the frontage line by an elevated terrace. This type buffers residential use from urban sidewalks and removes the private yard from public encroachment. Terraces are suitable for conversion to outdoor cafes.</p>		
<p>d. Forecourt: a frontage wherein a portion of the facade is close to the frontage line and the central portion is set back. The forecourt created is suitable for vehicular drop-offs. This type should be allocated in conjunction with other frontage types. Large trees within the Forecourts may overhang the sidewalks.</p>		
<p>e. Stoop: a frontage wherein the facade is aligned close to the frontage line with the first story elevated from the sidewalk sufficiently to secure privacy for the windows. The entrance is usually an exterior stair and landing. This type is recommended for ground-floor residential use.</p>		
<p>f. Shopfront: a frontage wherein the facade is aligned close to the frontage line with the building entrance at sidewalk grade. This type is conventional for retail use. It has a substantial glazing on the sidewalk level and an awning that may overlap the sidewalk to within 2 feet of the curb.</p>		
<p>g. Gallery: a frontage wherein the facade is aligned close to the frontage line with an attached cantilevered shed or a lightweight colonnade overlapping the sidewalk. This type is conventional for retail use. The Gallery shall be no less than 10 feet wide and should overlap the Sidewalk to within 2 feet of the curb.</p>		
<p>h. Arcade: a colonnade supporting habitable space that overlaps the sidewalk, while the facade at sidewalk level remains at or behind the frontage line. This type is conventional for retail use. The arcade shall be no less than 12 feet wide and should overlap the Sidewalk to within 2 feet of the curb.</p>		

FIGURE 1.7 LAND USE SUMMARY

Land Use	T2	T3-R	T3-M	T4	T5	OS/ Parks
Airport & Aircraft Transportation	CU	-	CU	-	-	-
Automobile Refueling Station	CU	-	P	-	-	-
Camping	CU	-	-	-	-	CU
Civic and Cultural Facilities	P	P	P	P	P	CU
Conference Center	CU	-	P	P	P	-
Special Use Park	CU	-	-	-	CU	CU
Day Care Facilities	-	P	-	P	-	-
Eating and Drinking Establishments	CU	P	P	P	P	CU
Health and Exercise Clubs	P	P	P	P	P	-
Kennel and Veterinary Care	-	CU	P	P	-	-
Large Format Retail	-	-	P	-	-	-
Light Industrial	CU	-	P	-	-	-
Live-Work	-	P	P	P	P	-
Lodging	CU	-	-	P	P	CU
Medical and Dental Offices/Hospital	-	P	P	P	CU	-
Nightclubs	-	-	-	P	P	-
Office and Business Services	-	-	P	P	P	-
Parks and Recreation	P	P	P	P	P	P
Personal Services	-	P	P	P	P	-
Residential	-	P	P	P	P	-
Retail Goods and Services	CU	P	P	P	P	CU
Sustainability & Agriculture	P	P	P	CU	CU	P
Theater	-	-	P	P	P	-
Warehousing	P	-	CU	-	-	-

Key

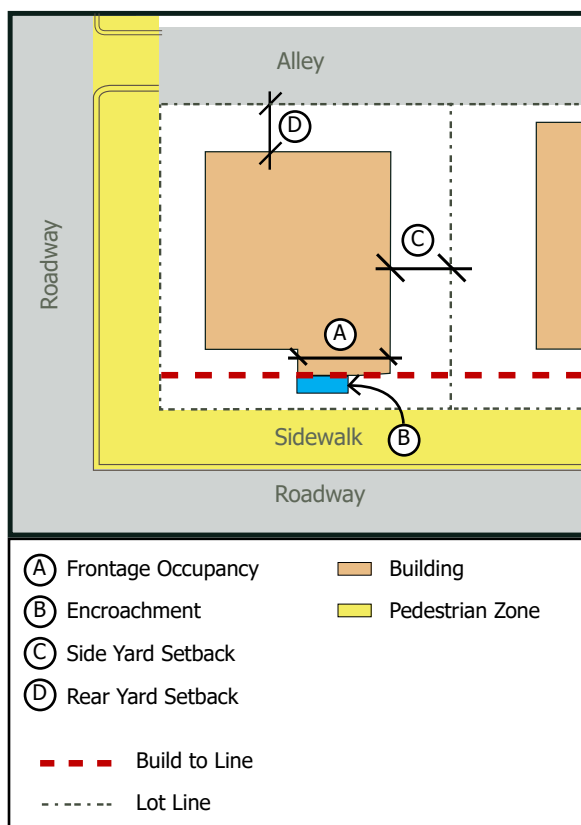
P = Permitted

CU = Permitted with Conditional Use

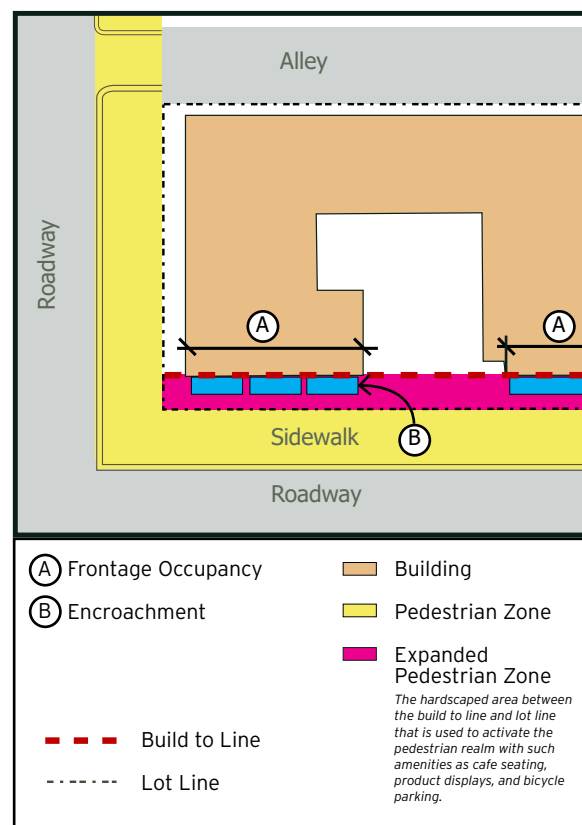
- = Not Permitted

FIGURE 1.8 BUILDING PLACEMENT AND ENCROACHMENT

1.8-A Illustrative Building Placement Diagram for Residential Uses



1.8-B Illustrative Building Placement Diagram for Nonresidential Uses



1.8-C Encroachments

Build to Line Encroachment	Minimum Vertical Clearance	Horizontal Distance Requirement
Awning	16'	No more than 10' or 66% of the distance from the building face to the curb, whichever is less.
Signage	8'	No more than 3' or 33% of the distance from the building face to the curb, whichever is less.
Gallery/Arcade	16'	No more than 2' from the face of the encroachment to the curb.
Balcony	8'	No less than 2' from the face of the encroachment to the lot line.
Residential Porch	8'	No less than 4' from the face of the encroachment to the lot line.
Bay Window and Architectural Features	N/A	No less than 4' from the face of the encroachment to the lot line.
Side Yard Encroachment	Minimum Vertical Clearance	Horizontal Distance
Balconies, Porches, and Architectural Features	8' when above ground floor.	No less than 4' from the face of the encroachment to the lot line.
Rear Yard Encroachment	Minimum Vertical Clearance	Horizontal Distance
Balconies, Porches, and Architectural Features	8' when above ground floor.	No less than 4' from the face of the encroachment to the lot line.

FIGURE 1.9 PARKING PLACEMENT

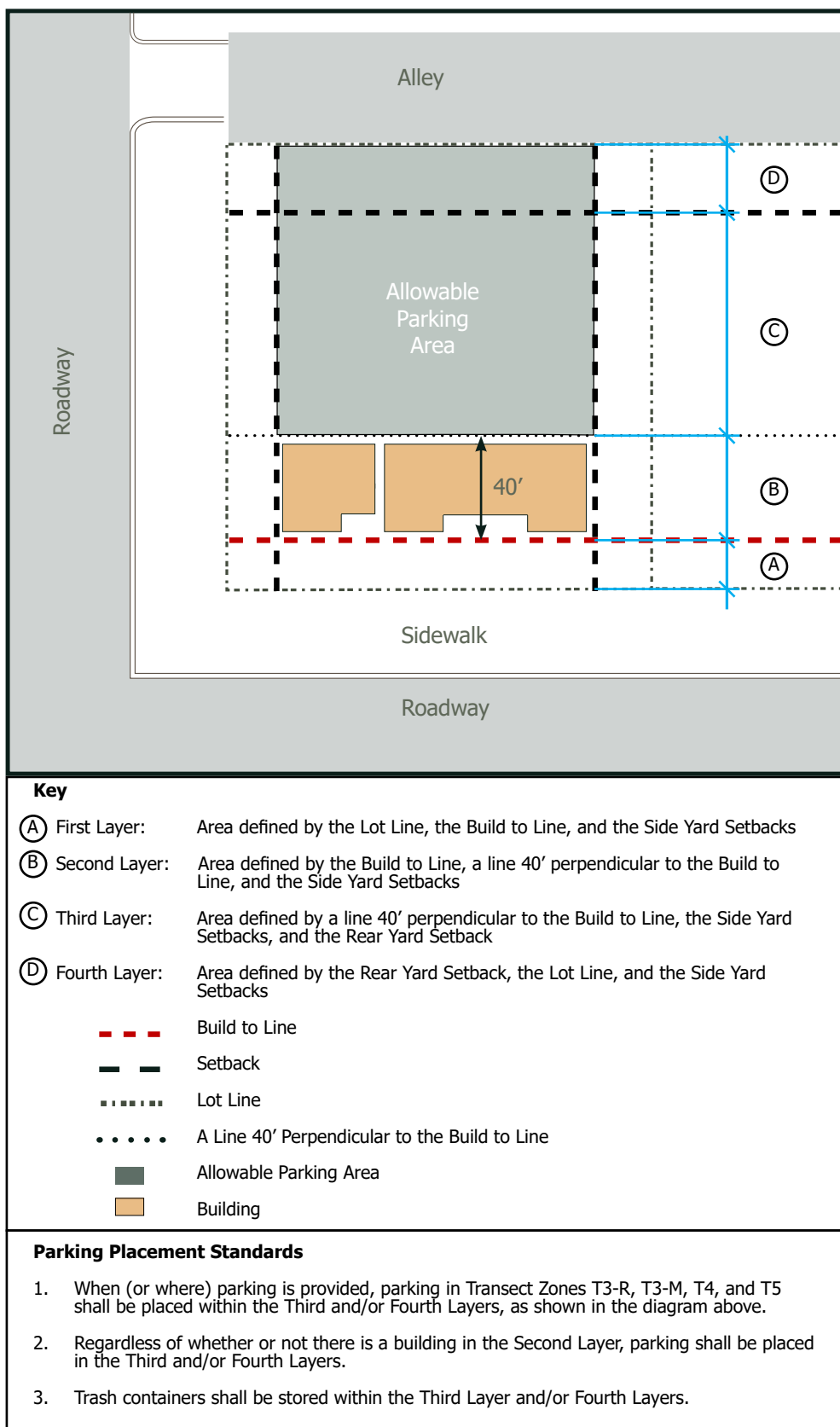
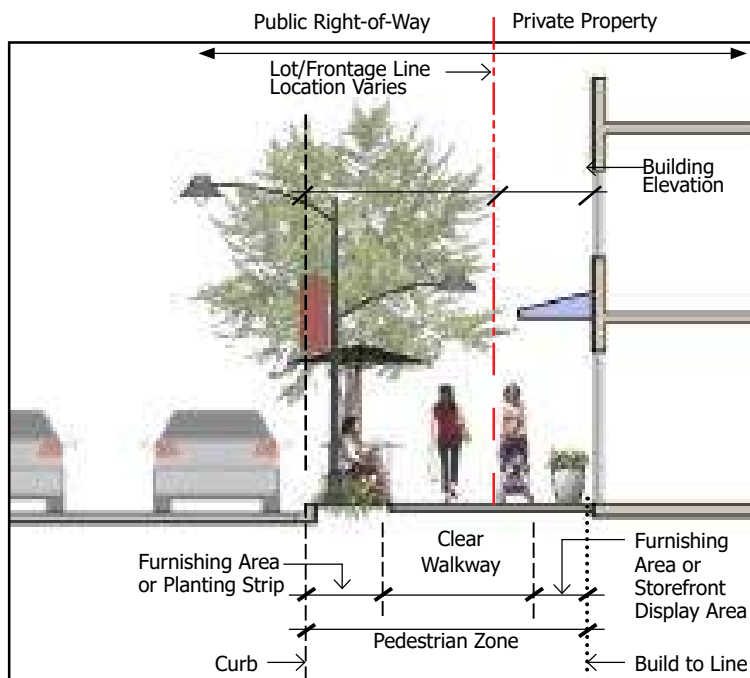


FIGURE 1.10 PEDESTRIAN ZONE TREATMENT - T4 AND T5 ZONES

1.10-A Section View, Illustrative Pedestrian Zone Treatment



1.10-B Plan View, Illustrative Pedestrian Zone Treatment

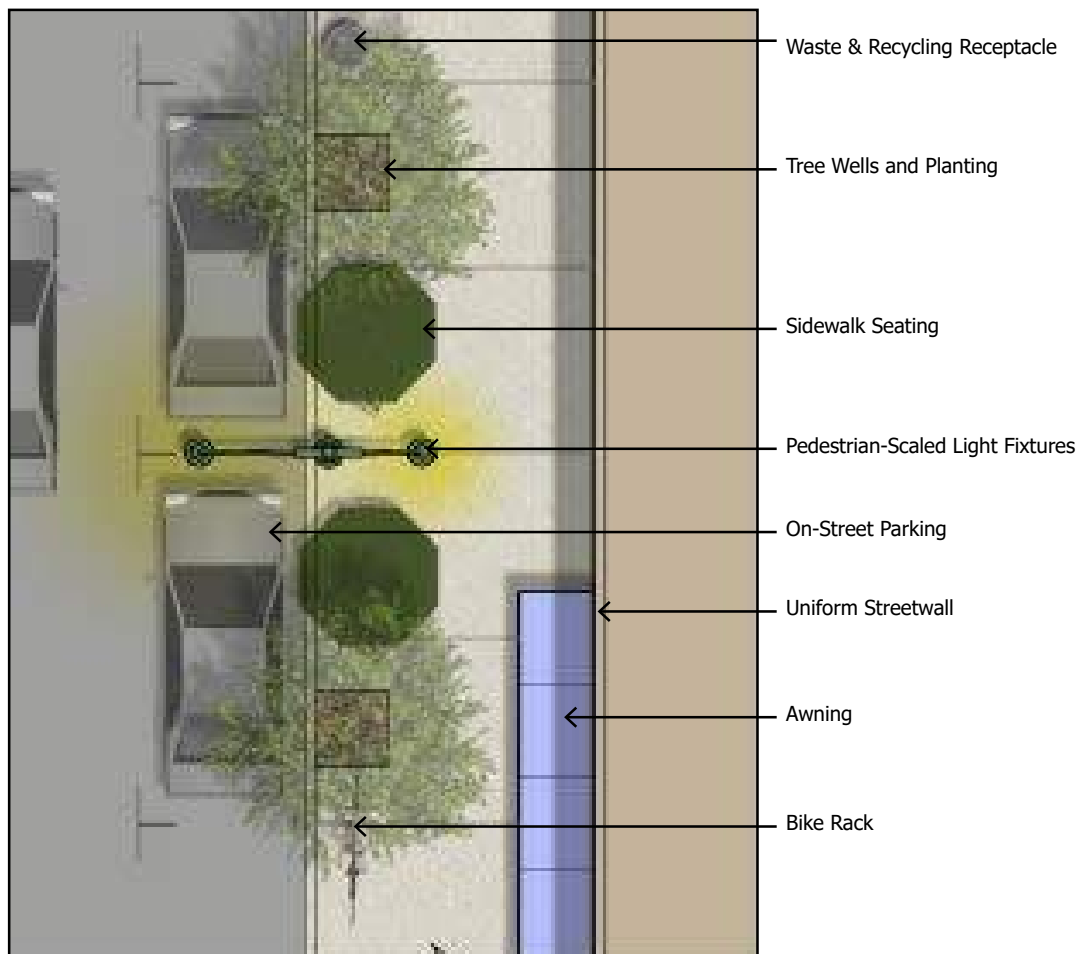


FIGURE BT.1

FRONT YARD HOUSE

A. Pedestrian Access

- 1. The principal entrance to the principal building shall be directly from the street, through the front yard.
- 2. The principal entrance to the accessory dwelling shall be accessible directly from a frontage line, through the side yard setback of the principal building or from an alley.

B. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.

C. Open Space

- 1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
- 2. Open space shall maintain a minimum 15 foot dimension on any one side.

D. Frontage

- 1. Permissible frontage types are: Common Yard, Porch and Fence, and Stoop.

E. Building Massing for Principal Building

- 1. Principal buildings shall be composed of one and/or two stories.
- 2. Maximum floor plate ratios for the principal building shall be as follows:

Table BT.1-1

Stories	Ratio of Each Story Allowed	
	1st Story	2nd Story
1 Story	100%	-
2 Story	100%	100%

F. Building Massing for Accessory Dwelling

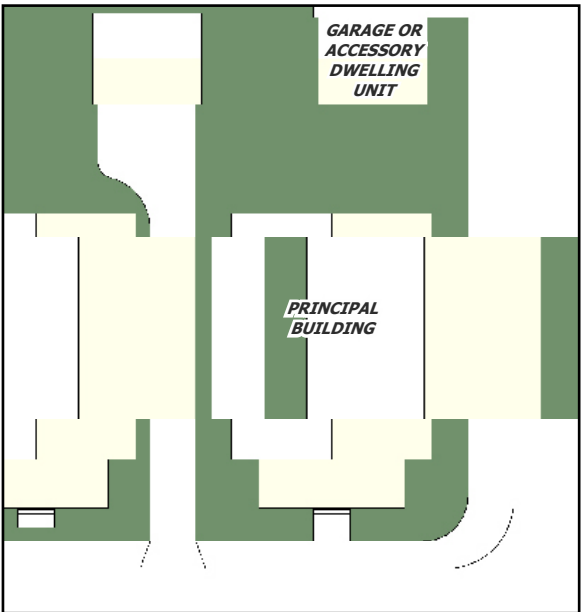
- 1. Accessory dwellings located above garages shall be limited to one story above the garage with a 12 foot maximum floor to floor height.
- 2. Accessory dwellings located at grade shall be limited to one story with a 12 foot maximum floor to floor height.
- 3. Accessory dwellings shall not exceed 50% of the principal building's floor area.

AXONOMETRIC VIEW



For Illustrative Purposes Only

PLAN VIEW



For Illustrative Purposes Only

FIGURE BT.2

SIDE YARD HOUSE

A. Pedestrian Access

- 1. The entrance shall be directly from the street, through the side yard, along the elevation facing the side lot line.

B. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.
- 3. Where a driveway is provided along the side yard, the driveway shall have a permeable surface such as pavers.

C. Open Space

- 1. Open space shall be located along the side yard with an area of no less than 20% of the lot.
- 2. The open space shall maintain a minimum 20 foot dimension.

D. Frontage

- 1. Building facades shall have a minimum fenestration of 15% in order to prevent blank walls facing the street.
- 2. Permissible frontage types are: Common Yard, Porch and Fence and Stoop.

E. Building Massing

- 1. Maximum floor plate ratios shall be as follows:

Table BT.2-1

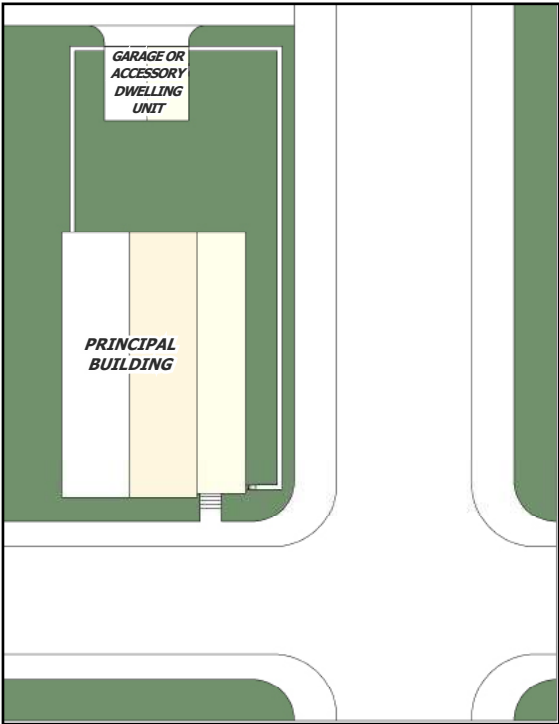
Stories	Ratio of Each Story Allowed		
	1st Story	2nd Story	3rd Story
1 Story	100%	-	
2 Story	100%	100%	
3 Story	100%	100%	100%

AXONOMETRIC VIEW



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PLAN VIEW



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FIGURE BT.3

TOWNHOUSE

A. Facade Width

- 1. Maximum of 26 feet for each townhouse, except that the facade of a townhouse on block corners may be up to 40 feet.
- 2. The maximum number of attached townhouses allowed is ten townhouses per string.

B. Pedestrian Access

- 1. The principal entrance shall be directly accessible from the street through the frontage line.

C. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking shall be as per Section 15-215-47, Parking and Loading.

D. Open Space

- 1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
- 2. The open space may be located on patios, decks, and/or on a roof garden.
- 3. Private patios and balconies are allowed in any yard.

E. Frontage

- 1. Permissible frontage types are: Porch and Fence, Terrace, and Stoop.

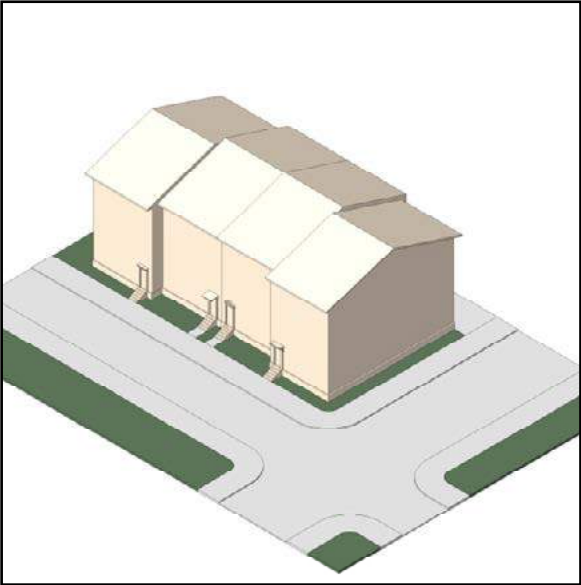
F. Building Massing

- 1. In a three-story building, a two-story townhouse can be stacked over a separate ground floor dwelling.
- 2. Maximum floor plate ratios shall be as follows:

Table BT.3-1

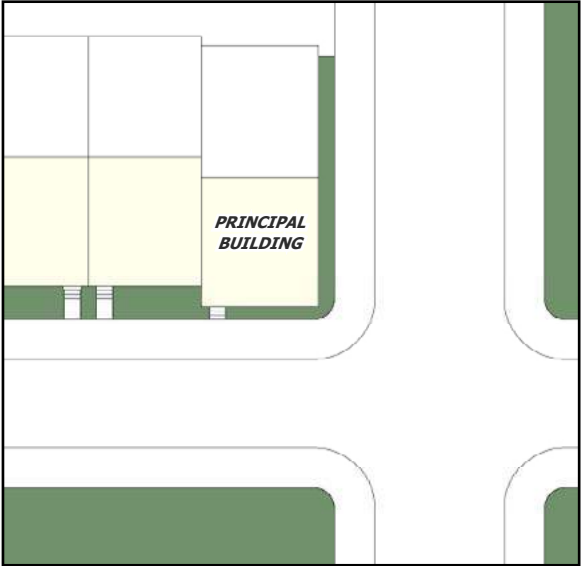
Stories	Ratio of Each Story Allowed		
	1st Story	2nd Story	3rd Story
1 Story	100%	-	-
2 Story	100%	100%	-
3 Story	100%	100%	85%

AXONOMETRIC VIEW



For Illustrative Purposes Only

PLAN VIEW



For Illustrative Purposes Only

FIGURE BT.4

DUPLEX, TRIPLEX, QUADPLEX

A. Pedestrian Access

- 1. The principal entrance shall be directly accessible from the street through the frontage line.

B. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.

C. Open Space

- 1. Each ground floor unit shall have at least 150 square feet of private or semi-private yard space in the rear yard, side yard, or integrated into the building area through courtyards and gardens. One third of this requirement shall be provided at grade.
- 2. Units above the ground floor shall have access to roof garden space for passive and active recreation, patios, balconies, decks or courtyards.

D. Frontage

- 1. Permissible frontage types are: Porch and Fence, Terrace, Forecourt and Stoop.

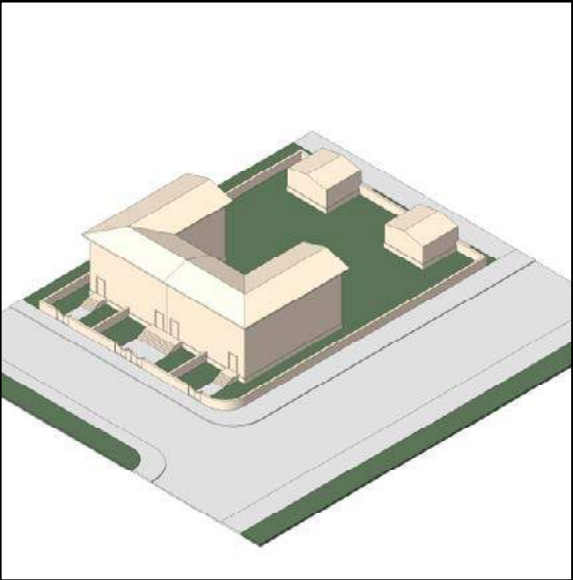
E. Building Massing

- 1. Front facades shall have at least one encroaching element, such as a lanai or balcony, or a plane break occupying at least 15% of the facade.
- 2. Maximum floor plate ratios shall be as follows:

Table BT.4-1

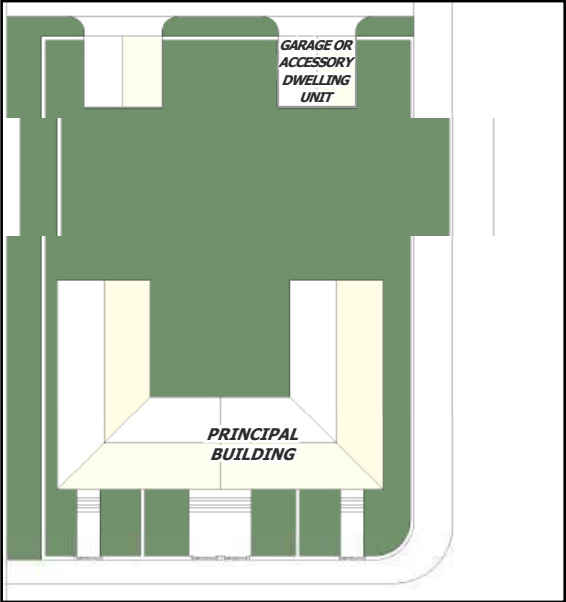
Stories	Ratio of Each Story Allowed			
	1st Story	2nd Story	3rd Story	4th Story
1 Story	100%	-	-	-
2 Story	100%	100%	-	-
3 Story	100%	100%	85%	-
4 Story	100%	100%	80%	75%

AXONOMETRIC VIEW



For Illustrative Purposes Only

PLAN VIEW



For Illustrative Purposes Only

FIGURE BT.5

FLEX - LOFT

A. Facade Width

1. Maximum of 30 feet for each flex-loft.
2. The maximum number of attached flex-loft units is ten.

B. Pedestrian Access

1. The entrance shall be accessible directly from the street through the frontage line.

C. Parking Design and Location

1. Where provided, parking shall be located in the third layer (See Figure 1.9).
2. Parking access shall be as per Section 15-215-47, Parking and Loading.

D. Open Space

1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
2. The open space area must be open to the sky.

E. Frontage

1. Permissible frontage types are: Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

F. Building Massing

1. Facades shall have at least one encroaching element, such as a lanai, balcony, or plane break occupying at least 15% of the facade.
2. Building elevations abutting side yards shall provide at least one horizontal plane break of at least three feet, and one vertical break of at least two feet.
3. Maximum floor plate ratios shall be as follows:

Table BT.5-1

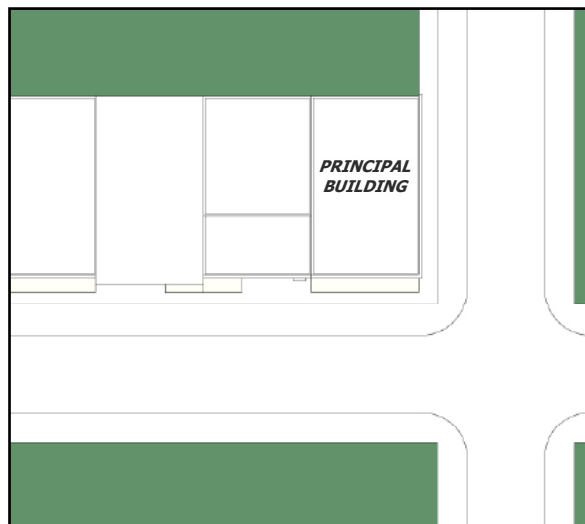
Stories	Ratio of Each Story Allowed			
	1st Story	2nd Story	3rd Story	4th Story
1 Story	100%	-	-	-
2 Story	100%	100%	-	-
3 Story	100%	100%	85%	-
4 Story	100%	100%	85%	85%

AXONOMETRIC VIEW



For Illustrative Purposes Only

PLAN VIEW



For Illustrative Purposes Only

FIGURE BT.6

INDUSTRIAL

A. Pedestrian Access

- 1. The entrance shall be accessible from the street through the frontage line.

B. Parking Design and Location

- 1. Where provided, parking shall be located per Figure 1.9.
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.

C. Open Space

- 1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
- 2. For lots between 10,000 and 20,000 square feet, the minimum open space is proportional to the lot size and provided in the following table:

Lot Area (square feet)	Minimum Open Space (percent of lot area)
15,001-20,000	10
10,001-15,000	5
< 10,000	0

- 3. The open space must be open to the sky.
- 4. Permeably-paved parking areas can count towards the open space requirement.

D. Frontage

- 1. Permissible frontage types are: Common Yard, Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

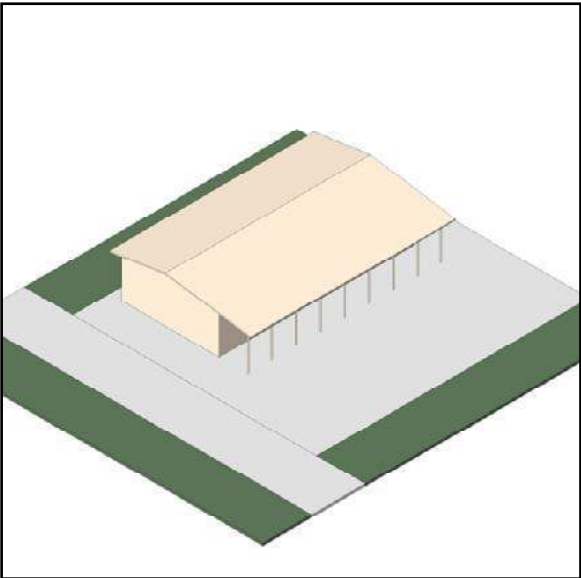
E. Building Massing

- 1. Maximum floor plate ratios shall be as follows:

Table BT.6-1

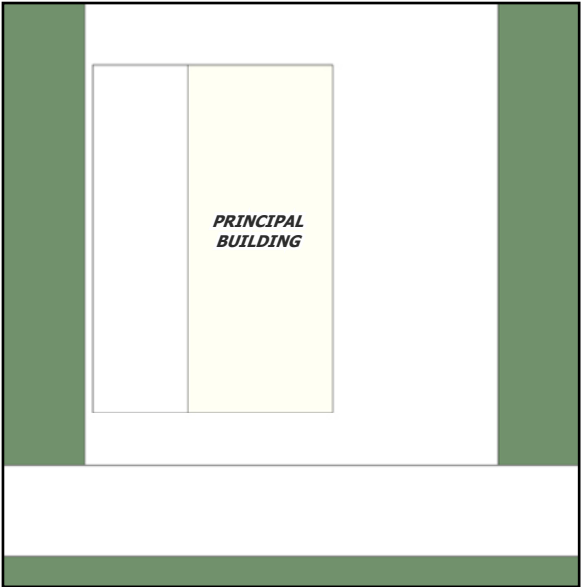
Stories	Ratio of Each Story Allowed	
	1st Story	2nd Story
1 Story	100%	-
2 Story	100%	100%

AXONOMETRIC VIEW



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PLAN VIEW



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FIGURE BT.7

COURTYARD

A. Pedestrian Access

- 1. Ground floor courtyard(s) shall be accessible from the street through the frontage line and through an open or covered passageway.
- 2. Raised courtyards shall be accessed through a lobby, accessed directly from the principal frontage.
- 3. The principal entrance to each ground floor unit shall be directly from the frontage line or from a courtyard.
- 4. Access to units above raised courtyards shall be through a lobby with direct access to each courtyard. Upper floor exterior corridors are limited to 25 feet in length.
- 5. All retail spaces should be accessed from the ground floor, single-tenant entry along a street, courtyard, or passageway.

B. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.
- 3. Where provided, an above-ground garage shall be concealed from view at the street frontage through a liner of habitable space; service streets and alleys excluded.

C. Open Space

- 1. At least 20% of the lot area shall be provided as open space in the form of one or more courtyards open to the sky.
- 2. The minimum courtyard dimension shall be 30 feet on anyone side, not counting any porch, encroachment or projection provided within the courtyard.
- 3. Projections and encroachments into the open space are permitted on all sides, provided that the minimum 30 foot dimension is maintained.

D. Frontage

- 1. Permissible frontage types are: Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

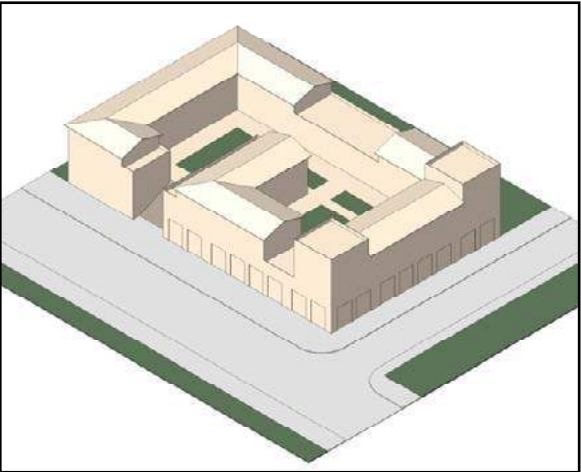
E. Building Massing

- 1. Maximum floor plate ratios shall be as follows:

Table BT.7-1

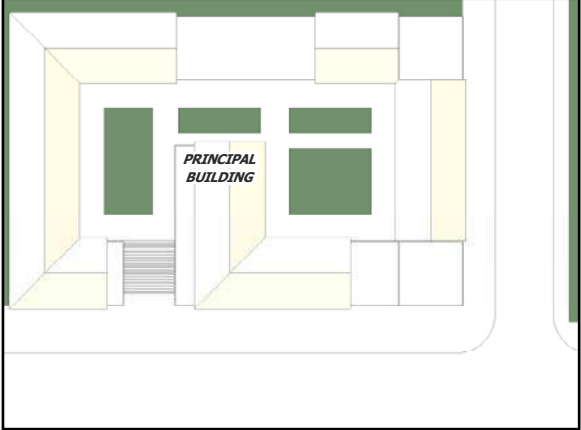
Stories	Ratio of Each Story Allowed				
	1st Story	2nd Story	3rd Story	4th Story	5th Story
2 Story	100%	100%	-	-	
3 Story	100%	100%	65%	-	
4 Story	100%	100%	55%	55%	
5 Story	100%	100%	55%	55%	40%

AXONOMETRIC VIEW



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FIGURE BT.8

URBAN BLOCK

A. Pedestrian Access

- Entrances to upper floors shall be accessed through an interior or exterior lobby, which is accessed directly from the street.
- All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard or passageway.

B. Parking Design and Location

- Where provided, parking shall be located in the third layer (See Figure 1.9).
- Parking access shall be as per Section 15-215-47, Parking and Loading.
- Where provided, above-ground parking garages shall be concealed from view at the street frontage through a liner of habitable space for the first two stories of building height; service streets and alleys excluded.
- Where provided, above-ground garages above two stories shall be screened from view at the street frontage by landscaping, green screens, cladding, or a liner of habitable space; service streets and alleys excluded.

C. Open Space

- At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
- Open space shall have a minimum dimension of 40 feet on any one side.
- Encroachments into the open space are permitted on all sides of the space, provided that the 40 foot minimum dimension is maintained.

D. Frontage

- Permissible frontage types are: Common Yard, Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

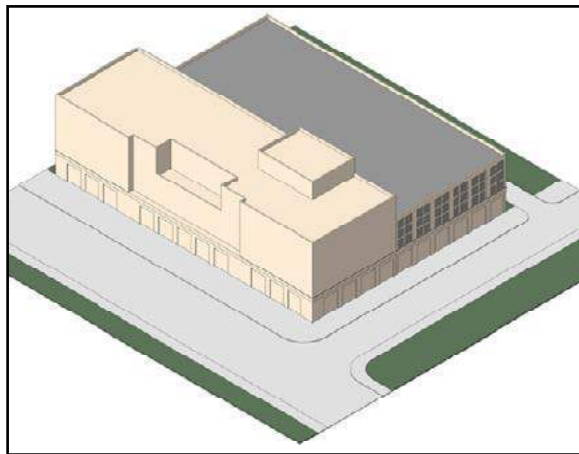
E. Building Massing

- Facades shall have at least one encroaching element (such as porches or balconies) or a plane break that occupy at least 10% of the facade.
- Maximum floor plate ratios shall be as follows:

Table BT.8-1

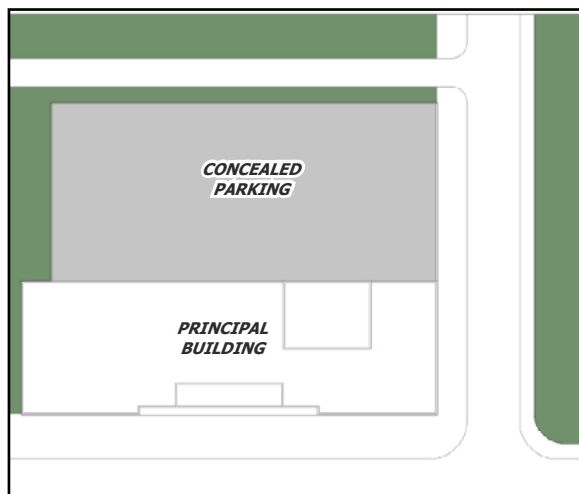
Stories	Ratio of Each Story Allowed (if applicable)					
	2nd + 3rd	4th Story	5th Story	6th Story	7-8 Stories	9+ Stories
2-3 Stories	100%	-	-	-	-	-
4-5 Stories	100%	100%	75%	-	-	-
6 Story	100%	100%	Maximum Ratio for 5th story and above shall average 65%		-	-
7 Story	100%	100%	Maximum Ratio for 5th story and above shall average 60%			-
8 Story	100%	100%	Maximum Ratio for 5th story and above shall average 58%			-
9 + Stories	100%	100%	Maximum Ratio for 5th story and above shall average 53%			

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FIGURE BT.9

LEI BUILDING

A. Pedestrian Access

1. Circulation to all upper floors shall be through an interior corridor or lobby.
2. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard, or passageway.

B. Parking Design and Location

1. Where provided, parking shall be located in the third layer (See Figure 1.9).
2. Parking access shall be as per Section 15-215-47, Parking and Loading.
3. For above-ground garages, parking shall be concealed from view at street frontages through a liner of habitable space on at least three sides of the building; service streets and alleys excluded. Where exposed to the street, above-ground garages shall be screened from view at the street frontage by landscaping, green screens, or cladding; service streets and alleys excluded.

C. Open Space

1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
2. Open space shall have a minimum dimension of 30 feet on any one side.
3. Projections into the open space are permitted on all sides of the space, provided that the 30 foot minimum dimension is maintained.

D. Frontage

1. Permissible frontage types are: Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

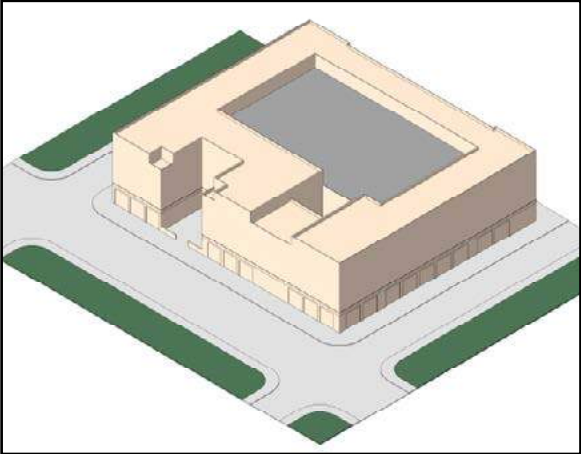
E. Building Massing

1. Front facades shall have at least one encroaching element, such as porches, balconies, or a plane break that cumulatively occupy at least 10% of the facade.
2. Maximum floor plate ratios shall be as follows:

Table BT.9-1

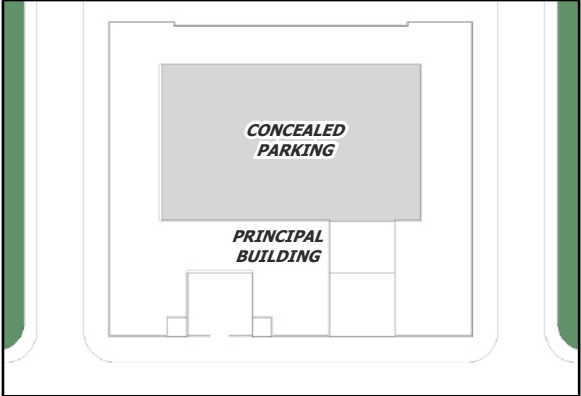
Stories	Ratio of Each Story Allowed (if applicable)					
	2nd + 3rd	4th Story	5th Story	6th Story	7-8 Stories	9+ Stories
2-3 Stories	100%	-	-	-	-	-
4-5 Stories	100%	100%	75%	-	-	-
6 Story	100%	100%	Maximum Ratio for 5th story and above shall average 65%		-	-
7 Story	100%	100%	Maximum Ratio for 5th story and above shall average 60%			-
8 Story	100%	100%	Maximum Ratio for 5th story and above shall average 58%			-
9 + Stories	100%	100%	Maximum Ratio for 5th story and above shall average 53%			

AXONOMETRIC VIEW



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FIGURE BT.10

TROPICAL URBAN COURT

A. Pedestrian Access

- 1. Circulation to all upper floors shall be through an exterior corridor, lobby or courtyard.
- 2. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard, or passageway.

B. Parking Design and Location

- 1. Where provided, parking shall be located in the third layer (See Figure 1.9).
- 2. Parking access shall be as per Section 15-215-47, Parking and Loading.

C. Open Space

- 1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
- 2. Open space shall have a minimum dimension of 30 feet on any one side.
- 3. Projections into the open space are permitted on all sides of the space, provided that the 30 foot minimum dimension is maintained.

D. Frontage

- 1. Permissible frontage types are: Common Yard, Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

E. Building Massing

- 1. Front facades shall have at least one encroaching element, such as porches, balconies, or a plane break that cumulatively occupy at least 10% of the facade.
- 2. Maximum floor plate ratios shall be as follows:

Table BT.10-1

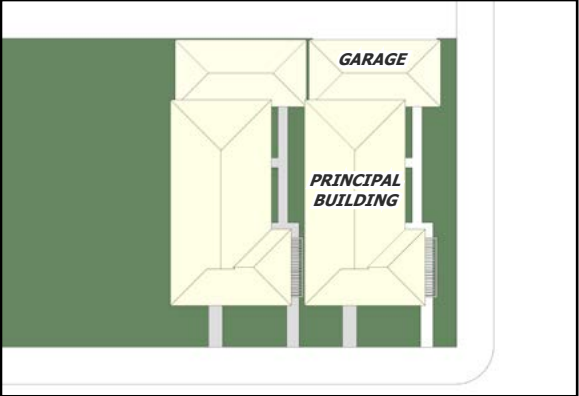
Stories	Ratio of Each Story Allowed	
	1st Story	2nd Story
1 Story	100%	-
2 Story	100%	100%

AXONOMETRIC VIEW



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For Illustrative Purposes Only

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Amendments to and compilation of chapter 15,
title 215, Hawaii Administrative Rules, on the Summary
Page dated [REDACTED], were adopted on [REDACTED],
following public hearings held on [REDACTED], after
public hearing notices were given in the Honolulu Star
Advertiser, Hawaii Tribune-Herald, The Maui News, West
Hawaii Today, and The Garden Island, on [REDACTED].

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

CHASON ISHII
Chairperson
Hawaii Community Development
Authority

JAMES TOKIOKA
Director
Department of Business,
Economic Development, and
Tourism

APPROVED AS TO FORM:

Deputy Attorney General

JOSH GREEN, M.D.
Governor
State of Hawaii

Date:

Filed

IV. NEW BUSINESS

- B. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 89, **Nurses**, promulgated by Department of Commerce and Consumer Affairs

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

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.

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.

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.

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

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

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

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.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
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.
7. How the agency involved small business in the development of the proposed 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.

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.

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.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- 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.
- 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.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

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

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

AHLANI K. QUIOGUE
LICENSING ADMINISTRATOR

BOARD OF NURSING

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
P.O. BOX 3469
HONOLULU, HAWAII 96801
cca.hawaii.gov/pvl

November 21, 2023

Chairperson Robert Cundiff, Director
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism
Sent via email:

RE: **Small Business Impact Review of the Proposed Amendments to Title 16,
Chapter 89, Administrative Rules of the Board of Nursing**

Dear Chairperson Cundiff,

Attached for your review is the amendments being proposed to Title 16, Chapter 89 Hawaii Administrative Rules. We are seeking approval from the Small Business Regulatory Review Board to hold a public hearing on these amendments.

The Board approved the proposed rules at its September 7, 2023 meeting.

These amendments have been submitted and reviewed by the Office of the Attorney General as to substance.

The proposed amendments are to clarify the requirements for a temporary nurse permit so that the issuance of a temporary nurse permit ensures that the individual has met Hawaii's minimum education and exam requirements for licensure, does not have an "encumbered" license elsewhere and that the individual will be practicing in a health care entity licensed by the Department of Health or another State agency.

The purpose of these amendments will help address the nursing shortage affecting health care entities in this State who have been severely impacted by the global nursing shortage and with the additional requirements, further ensuring that these individuals are able to provide safe nursing practice to residents of this State.

The following is a summary of the proposed substantive amendments which are also highlighted in the attached draft to make it easier to identify:

SUBCHAPTER 4 – TEMPORARY PERMITS

Section 16-89-22 Eligibility. This section is being amended by deleting the current language and replacing it with language that further clarifies the requirements and also deleting any duplicate or unnecessary requirements, such as a National Practitioner's Data Bank ("NPDB") self-query report because the Nursys license verification will indicate if any individual had any prior disciplinary action and/or if a nurse license in another state is encumbered.

This section was also amended to recognize individuals who currently hold a multistate license issued by another state under the Nurse Licensure Compact.

This section is further amended to include clarifying language that a temporary nurse permit issued under this section will only be issued to an individual who has been appointed or accepted employment with a single health care entity listed in section 321-11(10) or a "State agency" such as the Department of Education and Department of Public Safety who may hire nurses to care for students in schools or correctional facility, both of which do not fall under section 321-11(10).

Further amendments include the extension from three months to six months that a temporary nurse permit is valid for and also allows for a new and separate temporary permit to be issued where as currently, a second temporary permit shall not be granted.

Currently, the temporary permit was valid for three months, however, this was amended to increase the temporary permit to six months.

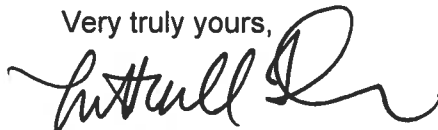
Other non-substantive amendments were also included for clarity and style.

After your review, the proposed amendments will be submitted to the Governor for approval to proceed with a public hearing.

If you have any questions, please contact me at (808) 586-2702 or by email at lteshima@dcca.hawaii.gov.

Thank you for your consideration in this matter.

Very truly yours,



Lee Ann Teshima
Executive Officer
Board of Nursing

December 7, 2023 at 10:00 am
Leiopapa A Kamehameha Building – State Office Tower

Testimony re: Proposed Rules Updates to Hawaii Administrative Rules (HAR) 16-89

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high-quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing more than 30,000 people statewide.

Thank you for the opportunity to provide our **concerns** with the proposed rules to HAR 16-89. Our post-acute care members, which include many home-based care services such as home health and hospice, are small organizations that seek to provide high-quality services in their respective communities. The larger organizations we represent (notably, acute care hospitals) also rely on small businesses such as home care agencies or case management agencies to help patients navigate their recovery after discharge. Small organizations embedded in their respective communities are critical parts in making the entire spectrum of care available.

We deeply appreciate the Board of Nursing's efforts to make the licensure process more efficient and expeditious. While the proposed rules do contain some changes that could improve the nurse licensure process, we believe that the amendments made to these rules would not, ultimately, materially improve the current system. Our main concerns with (and suggested changes for) the proposed rule are three-fold:

1. First, the updated rules would decouple the temporary license application from a full licensure application. Under the current rules, any licensure application submitted for a temporary license is granted as a step towards full licensure. By decoupling these two processes, it will add expense and time to individual nurses and healthcare organizations—especially smaller organizations such as home health agencies or clinics.

We would suggest that any temporary licensure process continue to provide an option by which a nurse could also apply for full licensure at the same time, creating a more efficient process by which a nurse would only have to apply for a license one time.

2. Second, and relatedly, the license will only be valid for six months. This means that a nurse could have to apply for a temporary license multiple times, which would increase costs to the individual nurse or healthcare organization. *We would suggest that, as noted above, allowing an option so that any temporary licensure process would lead directly into a full licensure process so that only one application has to be completed would be ideal.*
3. Lastly, we believe that any proposed rules *must* contain a deadline by which a temporary process is approved. Without any type of deadline, there will be no material improvement to

the issuance of temporary permits in a timely fashion. *We would suggest that a deadline of ten days be inserted into the proposed rules to ensure the issuance of a temporary license in a timely fashion.*

Many of the suggestions that we are making above would reflect language that made it through both the State Senate and State House in [SB 63, Relating to Nurses](#). This legislation represented a consensus position between agencies, providers, health plans, and other key stakeholders because it addressed the core issues related to the temporary nurse licensure process. We would support the adoption of the key changes outlined above that are included in SB 63 in order to ensure an efficient, expeditious temporary licensure program that will support nurses and organizations big and small in the healthcare industry.

Thank you for your attention to this important matter.

Sincerely,

Paige Heckathorn Choy
Associate Vice President, Government Affairs
Healthcare Association of Hawaii

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-89
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 16-89, Hawaii Administrative Rules,
entitled, "Nurses", is amended and complied to read as
follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 89

NURSES

Subchapter 1 General Provisions

§16-89-1	Objective
§16-89-2	Definitions
§16-89-3	Licensure requirement

Subchapter 2 License by Examination

§16-89-7	Registration, time, and place
§16-89-8	License requirements

§16-89-9	Examination policies
§16-89-10	Eligibility for registered nurse examination
§16-89-11	Eligibility for licensed practical nurse examination
§16-89-12	Other eligible candidates

Subchapter 3 License Without Examination

§16-89-16	License requirements
§16-89-17	Eligibility for registered nurse license without examination (endorsement)
§16-89-18	Eligibility for practical nurse license without examination (endorsement)

Subchapter 4 Temporary Permits

§16-89-22	Eligibility
§16-89-23	Conditions

Subchapter 5 License Renewal

§16-89-27	Notice
§16-89-28	Dishonored checks
§16-89-29	Inactive status
§16-89-30	Return to active status
§16-89-31	Right to proceed

Subchapter 6 Approval of Nursing Education

§16-89-33	Repealed
§16-89-34	Types of approval
§16-89-35	Denial of approval
§16-89-36	Survey of approved programs
§16-89-37	Accreditation

Subchapter 7 Development of a New Nursing Program

§16-89-40 Requirements

Subchapter 8 Standards for Nursing Programs

§16-89-44 Philosophy or mission
§16-89-45 Organization and administration
§16-89-46 Curriculum
§16-89-47 The minimum curriculum for programs preparing registered nurses
§16-89-48 The minimum curriculum for programs preparing licensed practical nurses
§16-89-49 The minimum curriculum for programs preparing advanced practice registered nurses
§16-89-50 Annual report required
§16-89-51 Closing of an approved nursing education program

Subchapter 9 Major Revision of Nursing Program

§16-89-52 Phase I - twelve months prior to initiating revised program
§16-89-53 Phase II - six months prior to initiating revised program

Subchapter 10 Seal of the Board

§16-89-57 Description

Subchapter 11 Unprofessional Conduct

§16-89-59 Unprofessional conduct
§16-89-60 Types of unprofessional conduct
§16-89-61 Repealed
§16-89-62 Voluntary surrender of license

§16-89-63 Disciplinary action
§16-89-64 Repealed

Subchapter 12 Practice and Procedure

§16-89-66 Administrative practice and procedure

Subchapter 13 Oral Testimony

§16-89-70 Oral testimony

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-89-1 Objective. This chapter is intended to clarify and implement chapter 457, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. The scopes of nursing practice established in chapter 457, Hawaii Revised Statutes, and this chapter are to serve as general guidelines and not intended to address the appropriateness of or to grant permission to implement specific procedures in particular work settings. [Eff 6/18/79; am and ren §16-89-1, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §457-1)

§16-89-2 Definitions. As used in this chapter:
"Accredited" means certification by the appropriate board of nursing that the nursing program meets established nursing education standards.

"Advanced practice registered nurse **or** "**[←]APRN[→]**" means a registered nurse licensed to practice in this State who has met the qualifications set forth in chapter 457, HRS, and this subchapter, and who because of advanced education and specialized clinical training, is authorized to assess, screen, diagnose, order, utilize, or perform medical, therapeutic, preventive, or corrective measures.

"Approved provider" means a local, state, or national agency, institution, organization, or agency responsible for the development, implementation, evaluation, financing, record-keeping, and maintenance of a continuing education offering program or a total continuing education curriculum which may be delivered in a variety of formats, including electronic, journal, and lecture/seminar, as recognized by the board.

"Board" means the board of nursing.

"Certification" means a form of specialized credentialing, under sponsorship of a recognized national certifying body that has verified an applicant's advanced knowledge, skills, and abilities in defined areas of nurse practice specialties as listed in section 16-89-85.

"Collaborate" means a process in which an APRN works with other members of the health care team to deliver health care services.

"Contact hour" means a minimum of sixty minutes of actual organized instruction. Academic credit will be converted to contact hours as follows:

- (1) One quarter academic credit equals 12.5 contact hours; or
- (2) One semester academic credit equals 15 contact hours.

Contact hour equivalencies shall be as follows:

- (1) 1 continuing education unit = 10 contact hours;
- (2) 1 continuing medical education credit = 60 minutes; or
- (3) 1 American Medical Association credit = 60 minutes.

"Continuing education" means a refresher course in subchapter 18 only.

"Delegation" means the act of authorizing one to act for another.

"Direct supervision" means that the registered nurse assesses the condition to be treated, authorizes each special task to be performed, remains on the premises, and personally evaluates the performance of the unlicensed assistive personnel.

"Drug" means a device, appliance, medicine, or preparation for internal or external use by a human being and shall not include any substance included in the exclusionary formulary.

"Exclusionary formulary" means the listing of drugs or categories of drugs designated and published by the board of nursing that shall not be prescribed by an APRN granted prescriptive authority.

"External degree or certification by examination" means a degree or certificate approved by the

appropriate state board of nursing conferred upon the completion of a series of standardized examinations which are used to document the theory and practice equivalent to the minimum curriculum required of nursing programs in this State.

"Independent study" means a program of learning designed by an approved provider for the registered nurse or practical nurse who completes the program at the individual's pace, e.g., home study, programmed instruction.

"Indirect supervision" means that the registered nurse assesses the condition to be treated, is familiar with the client's medical history, and personally authorizes each task to be performed by other personnel. The presence of the registered nurse is not required; provided that the registered nurse shall be available for consultation.

"Informal offering" means a workshop, seminar, institute, conference, lecture, short term course, or organized independent study which is offered for credit in contact hours or continuing education units.

"Major program revision" means a nursing program in which significant changes occur in the philosophy, objectives, conceptual framework, professional conduct of graduates, curriculum, admission requirements, and methods of implementation.

"National Council" means the National Council of State Boards of Nursing, Inc. or NCSBN.

"National Practitioner Data Bank" or "NPDB" means the repository of information on medical malpractice payments and certain adverse actions related to health care practitioners.

"Nursing program" means a course of study in nursing which includes philosophy, objectives, conceptual framework, professional conduct of graduates, curriculum, admission requirements, and methods of implementation.

"Permit" means a temporary license to legally practice nursing as a registered nurse (RN) or licensed practical nurse (LPN) during the period specified on the permit, pending receipt of a permanent license or until notified of cancellation.

"Physician" means a person licensed to practice medicine or surgery under chapter 453, HRS.

"Prescribed medical orders" means requisitions for resources to be allocated in particular ways for patients, which includes prescription drug orders, signed by the delegating physician, standing medical orders, standing delegation orders, or other orders or protocols.

"Prescription" means an order for medication, which is dispensed to or for an ultimate user.

"Prescription" shall not include an order for medication that is dispensed for immediate administration to the ultimate user, including but not limited to, a chart order to dispense a drug to a bed patient for immediate administration in a hospital.

"Prescriptive authority" means the authority granted by the board to a recognized APRN to verbally, or in writing, direct, order, or designate the preparation of, use of, or manner of using, a drug within the recognized APRN's scope of practice.

"Recognized national certifying body" means nurse credentialing agencies accredited by the National Commission for Certifying Agencies (NCCA) or the American Board of Nursing Specialties (ABNS) and recognized by the board which include, but is not limited to, the American Nurses Credentialing Center, the Pediatric Nursing Certification Board, National Certification Corporation for Obstetric, Gynecologic and Neonatal Nursing Specialties, the Council on Certification of the American College of Nurse Midwives, the American Academy of Nurse Practitioners Certification Board, the Council on Certification of the American Association of Nurse Anesthetists, National Board of Certification & Recertification for Nurse Anesthetists, or any new national certifying body or a national certifying body which is a successor to any body accredited by the NCCA or ABNS and recognized by the board. Any modifications by the national certifying bodies, the NCCA, or ABNS shall apply unless otherwise provided in the board's policy and board's rules.

"Remedial course" means a course that is approved by the board and meets the requirements of subchapter 8 and shall include a minimum of sixty hours of didactic instruction and sixty hours of clinical instruction.

"Semester credit" means a minimum of fifteen hours of classroom instruction or a minimum of thirty hours of laboratory or clinical instruction, or equivalent quarter hours which means a minimum of ten hours of classroom instruction or a minimum of twenty hours of laboratory or clinical instruction.

"Supervision" means the process of critical watching, directing, and evaluating another's performance.

"Unlicensed assistive person" means an individual who is not licensed to practice nursing, but who provides tasks of nursing care delegated by a registered nurse. [Eff 6/18/79; am and ren §16-89-2, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp]
(Auth: HRS §457-5) (Imp: HRS §457-2)

§16-89-3 Licensure requirement. (a) A nurse engaged in practice as a registered nurse or licensed practical nurse shall possess a current Hawaii license. Until such time as a license is issued, the nurse may not be employed as either a RN or LPN.

(b) Nurses not licensed in Hawaii, whether United States citizens or aliens, who are enrolled in accredited nursing education programs for practical nurse ("PN"), associate degree ("AD"), bachelor of science ("BS"), or graduate-level program in nursing, shall not be in violation of the law, provided the practice of nursing is incidental to the program of study as stated in section 457-13, HRS.

(c) Nurses not licensed in Hawaii, whether United States citizens or aliens, who are enrolled in ancillary health training programs that are not

regulated by the board, shall not be in violation of the law provided the practice of nursing is incidental to the ancillary health training programs.

(d) Faculty members whose Hawaii licenses are pending shall provide instruction in theory only. Instruction in the clinical area shall not be provided until the Hawaii license is issued. [Eff 6/18/79; am and ren §16-89-3, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §§457-5, 457-7, 457-8, 457-13)

SUBCHAPTER 2

LICENSE BY EXAMINATION

§16-89-7 Registration, time, and place.

Registration for and the time and place for the National Council Licensure Examination (NCLEX) shall be designated by the National Council unless otherwise determined by the board. [Eff 6/18/79; am and ren §16-89-7, 6/22/81; comp 3/20/82; am and comp 9/18/82; comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-5)

§16-89-8 License requirements. (a) Persons applying for a license by examination shall submit to the board:

- (1) An application prescribed by the board accompanied by the required fee;

- (2) A student final record or official transcript sent directly from the applicant's school to the board to establish compliance with section 16-89-10, 16-89-11, or 16-89-12; and
- (3) Applicants whose school of nursing records are unobtainable because of events beyond the control of the applicant shall be considered on an individual basis when the following is found to be satisfactory to the board:
 - (A) Evidence of graduation from a school of nursing that is recognized by the board; or
 - (B) Evidence of previous licensure as a nurse in another state or a United States jurisdiction; and
 - (C) Two notarized letters from official agencies or previous colleagues.

(b) A letter of completion received by the board directly from the appropriate college authority which states that the student completed the nursing program by the examination date shall be accepted to qualify the student for the appropriate examination. However, the license shall not be issued until the final transcript showing graduation from the nursing program or successful completion of the pre-licensure coursework for the master's entry program in nursing is filed with the board.

(c) Foreign school graduates applying for a license by examination shall submit an application prescribed by the board and accompanied by the required fee. Applicants shall have their transcripts evaluated by a professional educational credential evaluator recognized by the board. Applicants shall work with the evaluator and their schools of nursing. Applicants shall comply with procedures and requirements prescribed on the application form and instruction sheet from the board. Applicants shall arrange to have the evaluator send a report directly to the board.

(d) A candidate for license by examination shall not be granted a license until all applicable requirements of chapter 457, HRS, and this chapter have been met, including passing a nurse licensing examination recognized by the board. [Eff 6/18/79; am and ren §16-89-8, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; am and comp 3/28/13; comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §§457-7, 457-8)

§16-89-9 Examination policies. (a) The passing standards for the NCLEX-RN and NCLEX-PN examinations accurately reflect the amount of nursing ability currently required to practice competently at the entry level. The passing standards for the NCLEX-RN and the NCLEX-PN shall be established by the National Council of State Boards of Nursing unless otherwise determined by the board.

(b) Candidates may take the examination, provided candidates register for each examination. Any candidate who fails the license examination three times, regardless of when or where the examination was taken, and regardless of which state or jurisdiction the candidate was made eligible, shall be required to complete a board-approved remedial course and submit proof of passing the course before the candidate may be approved for reexamination. The candidate shall apply for reexamination within six months after completion of the remedial course. After taking the remedial course, the candidate may be approved to retake the examination up to three additional times before the candidate is required to take remediation again.

(c) Graduates from programs which are outside the United States who have been granted licensure in another state or United States jurisdiction shall be required to pass the NCLEX-RN or NCLEX-PN or the State Board Test Pool Exam or SBTPE (Canadian provinces only) before a license is granted.

(d) The board determination regarding candidate eligibility for examination shall be made after receipt of complete application as described in section 16-89-8(a), (b), or (c).

- (1) The board shall notify the testing service of eligibility status of the candidate.
- (2) The frequency of retests by unsuccessful candidates shall be as established by the National Council unless otherwise determined by the board.

(e) Confidentiality of NCLEX-RN, NCLEX-PN, and SBTPE scores shall be maintained as follows:

- (1) Scores on licensing examinations shall be released only to:
 - (A) The candidate;
 - (B) The school of nursing from which the candidate graduated;
 - (C) Board members; and
 - (D) Other state boards of nursing when requested for endorsement;
- (2) Request for scores for research purposes shall be referred for board action. Scores, when released, shall not include names;
- (3) Test scores received from other state boards of nursing for nurses who applied for licensure in Hawaii by endorsement shall not be released; and
- (4) [The] Upon release of the candidate's exam score to the candidate, the board shall advise [candidates,] the candidate [at the time of initial release of their scores to them,] that the use of scores for any purpose other than licensure is not appropriate and, therefore, the board shall not provide a copy of licensee's examination scores to a prospective employer or to a graduate nursing program. [Eff 6/18/79; am and ren §16-89-9, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and

comp] (Auth: HRS §457-5)
(Imp: HRS §§457-5, 457-7, 457-8)

§16-89-10 Eligibility for registered nurse examination. Graduates of the following nursing programs shall be eligible to take the NCLEX-RN, provided the requirements of section 16-89-47 have been met:

- (1) A state-approved or nationally accredited baccalaureate, the pre licensure portion of a graduate level program in nursing, an associate degree or diploma nursing program in the United States or district or a territory of the United States;
- (2) A foreign nursing school: and
 - (A) Applicants shall have their transcripts evaluated by a professional education credentials evaluator recognized by the board and shall have a report sent directly to the board by the evaluator; and
 - (B) Applicants whose reports from a board-recognized education credentials evaluator indicate that they have successfully completed a nursing program which is comparable to an accredited nursing program in the United States shall be deemed qualified as having met the educational requirements set forth in chapter 457, HRS, and this chapter; or
- (3) A state-approved external degree nursing program recognized by the board. [Eff 6/18/79; am and ren §16-89-10, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; am and comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-7)

§16-89-11 Eligibility for licensed practical nurse examination. Graduates of the following programs shall be eligible to take the NCLEX-PN, provided the requirements of section 16-89-48 have been met:

- (1) Any state-approved or National League of Nursing accredited practical nursing program in the United States or a United States jurisdiction;
- (2) Armed forces programs which have been approved by the board in the state where the program is located and provided the program meets or surpasses the educational standards of this board in accordance with this chapter;
- (3) Foreign nursing schools: Applicants shall have their transcripts evaluated by professional education credentials evaluators designated by the board and shall have a report sent directly to the board by the evaluator; and
- (4) A state-approved certificate by examination program recognized by the board. [Eff 6/18/79; am and ren §16-89-11, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-8)

§16-89-12 Other eligible candidates. The following shall be eligible to take the NCLEX-PN, provided the requirements of section 16-89-48 have been met:

- (1) Nursing students who withdrew in good standing from state-approved programs which

prepare graduates for practice as registered nurses, who have successfully completed the current minimum curriculum requirements for LPN licensure at the time of application and have submitted acceptable evidence to the board; and

- (2) Nursing students presently enrolled in state-approved programs which prepare graduates for practice as registered nurses who have successfully completed the minimum curriculum requirements for LPN licensure and have submitted acceptable evidence to the board. [Eff 6/18/79; am and ren §16-89-12, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §§457-7, 457-8)

SUBCHAPTER 3

LICENSE WITHOUT EXAMINATION

§16-89-16 License requirements. An applicant for license without examination shall submit to the board:

- (1) An application prescribed by the board accompanied by the required fee;
- (2) A verification of license completed by the originating state board verifying licensure; completion of United States accredited nursing program or nursing program approved by state board as being equivalent to a United States accredited nursing education program; licensing exam ~~[score(s)]~~ scores and exam series; number of times applicant

wrote exam; and whether or not there are any encumbrances on the license.

The verification of license form shall be signed and sealed by the originating state board showing that the eligibility requirements of this chapter, including the requirements of section 16-89-17 or 16-89-18 have been met. Verification obtained directly from Nursys shall not require a signature or seal. However, all other eligibility requirements of this chapter shall be met; and

- (3) A self-query report from the NPDB. The board may require additional background checks of nurse applicants from an independent background check service as approved by the board, provided that the applicant shall pay the cost of the background check. [Eff 6/18/79; am and ren §16-89-16, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; am and comp]
(Auth: HRS §§457-5; 457-12) (Imp: HRS §§457-7, 457-8)

§16-89-17 Eligibility for registered nurse license without examination (endorsement). The following shall be eligible; provided all applicable requirements of this chapter and chapter 457, HRS, have been met:

- (1) Applicants who are graduates of accredited United States schools of nursing including graduates of external degree programs recognized by the board who meet the requirements of section 16-89-9;
- (2) Applicants who are graduates of nursing schools located outside the United States

who have met the requirements of section 16-89-9; or

- (3) Applicants who passed a registered nurse state board constructed licensing examination in another jurisdiction of the United States prior to the inception of the SBTPE in that jurisdiction. [Eff 6/18/79; am and ren §16-89-17, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-7)

§16-89-18 Eligibility for practical nurse license without examination (endorsement). The following shall be eligible; provided all applicable requirements of this chapter and chapter 457, HRS, have been met:

- (1) Applicants who are graduates of accredited United States schools of practical nursing, and who meet the requirements of section 16-89-9;
- (2) Applicants who are graduates of schools of practical nursing located outside the United States who have met the requirements of section 16-89-9; or
- (3) Applicants who have passed a practical nurse state board constructed licensing examination in another jurisdiction of the United States prior to the inception of the SBTPE in that jurisdiction. [Eff 6/18/79; am and ren §16-89-18, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-8)

SUBCHAPTER 4

TEMPORARY PERMITS

§16-89-22 Eligibility. ~~[Temporary permits shall be granted to nurses who have been licensed by another state board of nursing, have passed a professional licensing examination recognized by the board, and have filed:~~

- ~~(1) An application prescribed by the board and accompanied by the required fee;~~
- ~~(2) Satisfactory evidence of a current license in another state, provided that the applicant submits proof that the applicant has requested from the originating state board a verification of licensure;~~
- ~~(3) Verification of employment by a Hawaii employer when the temporary permit is granted; and~~
- ~~(4) A self-query report from the NPDB. The board may require additional background checks of nurse applicants from an independent background check service as approved by the board, provided that the applicant shall pay the cost of the background check.~~

~~The temporary permit shall be valid for only that employer and shall be in effect until the verification of licensure is received from the originating state board, provided it is received within three months. The board may grant an extension if verification receipt is delayed for good reasons beyond applicant's control.]~~

(a) The board may issue a temporary permit to an out-of-state licensed practical nurse or registered nurse who has applied and met the following requirements:

- (1) Completed an application on a form prescribed by the board;**

- (2) Paid all fees established by title 16, chapter 53 that are made applicable to the board;
- (3) Provided proof of a valid license in another state, territory, or foreign country by way of a license verification from the other state, territory, or foreign country, or Nursys license verification report pursuant to section 16-89-16(2); and
- (4) The board determines no disciplinary action has been taken by or is pending with a nursing authority.

(b) An individual who currently holds a multistate license issued by another state may also meet the requirements for a temporary permit; provided that the individual has met the following requirements:

- (1) Completed an application on a form prescribed by the board;
- (2) Paid all fees established by title 16, chapter 53 that are made applicable to the board;
- (3) Provided proof of a valid multistate license in another state or territory by way of a Nursys license verification report pursuant to section 16-89-16(2); and
- (4) The board determines no disciplinary action has been taken by or is pending with a nursing authority.

For purposes of this subsection, a "multistate license" means a license to practice as a licensed practical nurse or registered nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(c) A temporary permit shall only be issued to an applicant who has been appointed or accepted employment with a single health care entity listed in section 321-11(10), HRS, and shall not be transferable to another nurse or health care entity. For purposes of this section, health care entities not listed under section 321-11(10), HRS, may include a State agency.

"State agency" means those agencies that include but is not limited to the Department of Education and Department of Public Safety.

(d) A temporary permit may be issued once a complete application is received by the board.

(e) A temporary permit shall be valid only for a period of six months from the date of issuance. In no case shall a permit issued pursuant to this section, be valid for more than a period of six months from the date of issuance. A new and separate temporary permit may be issued provided that the requirements of subsection (a) or (b), and (c) have been satisfied.

[Eff 6/18/79; am and ren §16-89-22, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §457-5) (Imp: HRS §457-13(3))

§16-89-23 Conditions. [~~(a) A second temporary permit shall not be granted.~~]

~~(b)~~ Temporary permits may be invalidated in accordance with section 457-15, HRS. [Eff 6/18/79; am and ren §16-89-23, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; am and comp] (Auth: HRS §457-5) (Imp: HRS §457-13(3))

SUBCHAPTER 5

LICENSE RENEWAL

§16-89-27 Notice. Notices to renew licenses shall be made available biennially to holders of

active licenses to the address of record. Failure to receive the notice shall not be a valid reason for non-renewal. Each licensee shall be responsible for ensuring timely renewal of the licensee's own nursing license. [Eff 6/18/79; am and ren §16-89-27, 6/22/81; am and comp 3/20/82; comp 9/18/82; comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; am and comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-9)

§16-89-28 Dishonored checks. Licensees who submit checks which are not honored by the bank and who do not make ~~[their checks]~~ the check good on or before June 30 of the year of renewal shall be subject to a penalty for late renewal in addition to the renewal fee. [Eff 6/18/79; am and ren §16-89-28, 6/22/81; am and comp 3/20/82; comp 9/18/82; comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §457-5) (Imp: HRS §457-9)

§16-89-29 Inactive status. Licensees who do not intend to practice nursing in Hawaii may request inactive status by writing to the board or by indicating so on the license renewal form. It shall be the responsibility of each licensee on inactive status to keep abreast with current licensing and renewal requirements. [Eff 6/18/79; am and ren §16-89-29, 6/22/81; comp 3/20/82; comp 9/18/82; comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-9)

§16-89-30 Return to active status. Return to active status shall require written notice to the board, payment of the current renewal fee and the compliance resolution fund fee, provided under section 16-53-27, and fulfillment of the current licensing and license renewal requirements. [Eff 6/18/79; am and ren §16-89-30, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §§457-9, 26-9)

§16-89-31 Right to proceed. Placing a nursing license in inactive status shall not deprive the board of jurisdiction to proceed with disciplinary proceedings pursuant to chapter 91, HRS, and chapter 16-201. [Eff and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/31/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-5, chapter 91)

SUBCHAPTER 6

APPROVAL OF NURSING EDUCATION

§16-89-33 Repealed. [R 12/27/10]

§16-89-34 Types of approval. (a) Approval is a process established to ensure that educational programs meet minimum standards in preparing safe practitioners as set forth in chapter 457, HRS, and this chapter.

(b) Approval shall be granted when all requirements of chapter 457, HRS, this chapter, and an accrediting body recognized by the board have been met.

(c) Probationary approval shall be granted if the board determines that any approved nursing education program is not maintaining the standards required by law and by the board, notice thereof in writing specifying the discrepancies shall be immediately given to the institution conducting the program. A program which fails to correct these conditions to the satisfaction of the board within a reasonable time may be subject to losing board approval after a hearing held in conformance with chapter 91. [Eff 6/18/79; am and ren §16-89-34, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-11)

§16-89-35 Denial of approval. Prior to denial of approval or change of approval status, a hearing shall be held pursuant to chapter 91, HRS, and chapter 16-201. A hearing may be petitioned by the board after a program has been given two consecutive warnings and has not presented sufficient evidence of meeting prescribed rules. [Eff 6/18/79; am and ren §16-89-35, 6/22/81; comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-11)

§16-89-36 Survey of approved programs. Hawaii nursing education programs which are approved shall be surveyed on a four-year cycle beginning 1976 unless budgetary or other constraints beyond the control of

the board renders surveyance impractical or impossible. Programs granted probationary approval may be surveyed at a time interval of less than four years at the board's discretion. [Eff 6/18/79; am and ren §16-89-36, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5)
(Imp: HRS §457-11)

§16-89-37 Accreditation. (a) Any Hawaii nursing education program awarded a certificate of accreditation by an accrediting body recognized by the board may apply to the board for approval, provided the applicant:

- (1) Holds a certificate with a designation of full accreditation; and
- (2) Submits a copy of the certificate and the accrediting body's accreditation evaluation report.

(b) The board may renew the approval following recertification by the accrediting body recognized by the board if the nursing education program:

- (1) Completes and submits a self-study report;
- (2) Submits a copy of the reevaluation report and certificate of accreditation after each survey performed by the accrediting body;
- (3) Submits a copy of responses to any recommendation made by the accrediting body and subsequent action of the accrediting body;
- (4) Immediately reports any change or loss of full accreditation including the reasons for the action, and the plans made by the program for reinstatement; and
- (5) Maintains compliance with the board's standards for nursing programs as set forth in subchapter 8. [Eff and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp

10/27/18; comp] (Auth: HRS
§457-5) (Imp: HRS §457-11)

SUBCHAPTER 7

DEVELOPMENT OF A NEW NURSING PROGRAM

§16-89-40 Requirements. (a) Control of the new nursing program shall be vested in the governing body of a university or community college. A new program in nursing may be given initial approval after completion of the requirements of this section.

(b) Phase I - twelve months prior to the intended opening of school.

- (1) Any agency or institution considering the establishment of a school shall advise the board of its intent in writing;
- (2) The following information shall be submitted in writing:
 - (A) Purpose of establishing the school;
 - (B) Philosophy, objectives, and accreditation status of the controlling agency or institution;
 - (C) Type of educational program to be established;
 - (D) Relationship to the controlling agency or institution;
 - (E) Financial resources of the program;
 - (F) Need and readiness of the community to support the program;
 - (G) Source of potential students;
 - (H) Clinical and physical facilities for program;
 - (I) Recruitment activities relative to securing a director of the program; and
 - (J) Tentative timetable for initiating the program.

(c) Phase II - six months prior to the intended opening of the school.

- (1) The agency or institution shall submit a progress report, which shall include the following information:
 - (A) Statements of philosophy and purposes;
 - (B) Curriculum and its objectives;
 - (C) Admission policies and plans for student welfare;
 - (D) Statements of policy necessary for operation of the program;
 - (E) Plans for resources and facilities, including clinical facilities and services;
 - (F) Tentative program calendar;
 - (G) Budget plan;
 - (H) Qualifications and curriculum vitae of the director shall be submitted to the board; the date employment will begin shall be specified;
 - (I) Timetable for employment of faculty and documentation of availability of qualified instructors; and
 - (J) Organizational chart showing agency control, relationships, and lines of authority.
- (2) Continuing approval may be granted by the board at this time, if all the conditions of the law and the rules have been fulfilled. Approval shall be effective until the time of the report of the first accreditation survey.
- (3) Provisions shall be made for accepting students. Students shall not be accepted until continuing approval has been granted by the board.

(d) Phase III - three months prior to the opening of the school. Progress reports on the development of the program shall be made by the director to the board. Qualified faculty members sufficient to initiate the program shall be employed.

(e) Phase IV - after opening of the school. An interim report on the form provided by the board shall be submitted six months after the commencement of the school year. [Eff 6/18/79; am and ren §16-89-40, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; am and comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5)
(Imp: HRS §457-11)

SUBCHAPTER 8

STANDARDS FOR NURSING PROGRAMS

§16-89-44 Philosophy or mission. The philosophy or mission of all nursing programs approved in this State shall be as follows:

- (1) The formulation of a statement of philosophy or mission is the responsibility of the faculty;
- (2) The philosophy as stated shall be in agreement with the philosophy of the controlling institution;
- (3) The needs of the consumer of nursing services and the needs of the student in nursing shall be included in the statement of philosophy or mission;
- (4) The statement of philosophy or mission shall be used by the faculty in planning the total educational program;
- (5) The philosophy shall reflect the beliefs of the faculty in relation to education, nursing, learning, and faculty responsibility for direction and guidance of learning experiences;

- (6) The mission shall be comprehensive in scope, consistent with the stated philosophy and with the resources available; and
- (7) The program objectives or outcomes shall specifically identify the competencies in nursing for which the graduate is prepared.
[Eff 6/18/79; am and ren §16-89-44, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; am and comp 5/5/05; comp 12/27/10 comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5)
(Imp: HRS §457-11)

§16-89-45 Organization and administration. (a)

The control of the school shall be vested in the controlling institution. The function of the controlling institution shall be to ensure that the facilities and leadership will provide the best possible services to students and faculty and provide for a sound educational program. Each institution shall have an organizational chart showing agency control, relationships, and lines of authority.

(b) Sufficient funds shall be available for carrying out objectives of the program. A budget shall be prepared in accordance with sound educational and financial practices.

(c) Organization of the faculty shall enable it to carry fully its responsibility for planning, implementing, and evaluating the philosophy, mission, objectives, and curriculum of the educational program. The following shall be available for review:

- (1) Chart showing faculty organization;
- (2) Minutes of faculty meetings;
- (3) Faculty handbook; and
- (4) Curriculum vitae of each faculty member.

(d) In addition to a current Hawaii RN license, minimum faculty and administrator qualifications and preparation to be completed by the date of application shall include the following:

- (1) The administrator, who is the [+] person directly responsible [+] for the master's degree in the nursing program, shall hold a minimum of:
 - (A) A master's degree in nursing;
 - (B) An earned doctorate from an accredited institution; provided the education shall include academic credit in curriculum development, evaluation, or teaching methods, and
 - (C) Academic preparation for administration or administrative experience or both.
- (2) The administrator, who is the [+] person directly responsible [+] for the baccalaureate nursing program, shall hold a minimum of:
 - (A) A master's degree in nursing;
 - (B) Preferably, an earned doctorate from an accredited institution; provided the education shall include academic credit in curriculum development, evaluation, or teaching methods; and
 - (C) Academic preparation for administration or administrative experience or both[+].
- (3) The administrator, who is the [+] person directly responsible [+] for the associate degree nursing program, shall hold a minimum of:
 - (A) A master's degree in nursing which shall include academic credit in curriculum development, evaluation, or teaching methods; and
 - (B) Academic preparation for administration or administrative experience or both[+].
- (4) The administrator, who is the [+] person directly responsible [+] for the practical nursing program, shall hold a minimum of:
 - (A) A master's degree in nursing which shall include academic credit in

- curriculum development, evaluation, or teaching methods; and
- (B) Academic preparation for administration or administrative experience or both[+].
- (5) Faculty members in a program which prepares advanced practice registered nurses shall be recognized as an advanced practice registered nurse by the board and hold a minimum of:
- (A) A master's degree in nursing;
- (B) Preferably, an earned doctorate from an accredited institution;
- (C) Clinical nursing experience, of which at least one year shall be in ~~[their area(s)]~~ the area of teaching responsibility; and
- (D) Preferably education in curriculum development, evaluation, or teaching methods; or related experience in the above.
- (6) Faculty members in a program which prepares registered nurses shall hold a minimum of:
- (A) A master's degree in nursing with one year of nursing experience in ~~[their area(s)]~~ the area of teaching responsibility; or
- (B) If a bachelor's degree in nursing is the highest degree obtained, at least three years of nursing experience in ~~[their area(s)]~~ the area of teaching responsibility; and
- (C) Preferably education in curriculum development, evaluation, or teaching methods; or related experience in the above[+].
- (7) Faculty members in a program which prepares practical nurses shall hold a minimum of:
- (A) Preferably, a master's degree in nursing with one year of nursing experience in ~~[their area(s)]~~ the area of teaching responsibility; or

- (B) If a bachelor's degree is the highest degree obtained, at least three years of nursing experience shall be in ~~[their area(s)]~~ the area of teaching responsibility; and
- (C) Preferably education in curriculum development, evaluation, or teaching methods; or related experience in the above.

(e) The maximum instructional load shall permit the faculty member opportunities for professional development, curriculum development, student guidance, scholarship, research, and service as appropriate to the nursing program.

(f) In the clinical area, the faculty shall be adequately prepared in education and experience to develop and implement the program approved by the board to meet the requirements of sections 16-89-47 and 16-89-48.

(g) Faculty shall determine policies in the following areas in regard to students:

- (1) Admission;
- (2) Progression; and
- (3) Graduation.
- (h) Physical facilities shall include:
 - (1) Educational facilities, which shall include:
 - (A) Offices for administrative and instructional personnel; and
 - (B) Adequate classrooms, library, laboratories, and conference rooms to accommodate the program; and
 - (2) Clinical facilities, which shall be subject to the following conditions:
 - (A) All agencies and institutions shall maintain a memorandum of agreement used for the educational experiences which shall be available to the board;
 - (B) The selection of clinical facilities shall consider: the number of clients; variety of health conditions; adequate and appropriately qualified nursing staff and other members of the health

care team; and accreditation by appropriate associations.

- (i) The student-teacher ratio shall be:
- (1) In accordance with national education standards for advanced practice registered nurse programs; and
- (2) Preferably eight to one for registered nurse and practical nurse programs, but at no time more than ten to one for direct supervision. The ratio shall be established in accordance with acuity of client needs, objective of learning experiences, level of students, geographic placement of students, environment, other requirements as established by the clinical agency, and teaching methods. Any deviation from the ratio shall first be approved by the board and justified to the satisfaction of the board.

(j) The institution conducting the educational program of nursing shall publish and make available an accurate description of the program in effect.

(k) An institution may request suspension of a program for not more than one year. After one year of inactivity, the institution must reapply and meet the requirements set forth in subchapter 7.

(l) The board shall be notified one year before the proposed closing date. Appropriate arrangements shall be made by the program for the enrolled students.

(m) The institution shall maintain an adequate records system. Student records shall include data which are pertinent to educational performance. Before a program is discontinued, a written statement shall be submitted by the governing body at least one year prior to the proposed closing date of the program indicating where student records or copies thereof shall be kept.

(n) Exceptions to this section may be granted on an individual basis for a limited period of time depending on the needs of the individual nursing program.

(o) Any program which fails to meet the requirements of this subchapter in a timely manner shall be so notified by the board in writing. The program shall have sixty days from the day of receipt of notice to request a hearing in accordance with chapter 91, HRS. [Eff 6/18/79; am and ren §16-89-45, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; am and comp 5/5/05; comp 12/27/10; am and comp 3/28/13; am and com 10/27/18; am and comp]
(Auth: HRS §457-5) (Imp: HRS §457-5)

§16-89-46 Curriculum. Curriculum shall be subject to the following requirements. The curriculum shall be:

- (1) Planned, implemented, and evaluated by faculty;
- (2) Based on the philosophy or mission and program objectives of outcomes of the nursing education program;
- (3) Consistent with the policies of the controlling institution, current standards and competencies of nursing practice, and laws governing the practice of nursing;
- (4) Logically organized and sequenced appropriately; and
- (5) For a period of time that shall ensure sufficient preparation for the safe and effective practice of nursing. [Eff 6/18/79; am and ren §16-89-46, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; comp 6/22/90; comp 9/5/97; comp 8/9/01; am and comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-11)

§16-89-47 The minimum curriculum for programs preparing registered nurses. (a) The curriculum

shall be approved by a national accrediting nursing organization recognized by the board. A new nursing program shall apply for national accreditation at the earliest possible date as defined by the accrediting agency.

(b) The curriculum shall include courses in the biological and physical sciences, social and behavioral sciences, and the arts or humanities.

(c) The curriculum shall include courses in nursing that include, but are not limited to:

- (1) Theory and clinical experiences based on the nursing process;
- (2) Nursing care of clients, as individuals and groups, through the lifespan in a variety of settings for the promotion, maintenance, and restoration of health; and
- (3) Legal and ethical issues, history and trends in nursing, and professional responsibility.

(d) The curriculum shall be comprised of a minimum of:

- (1) One hundred twenty semester credits for a bachelor's degree in nursing of which at least forty per cent of the credits shall be laboratory or clinical instruction; and
- (2) Sixty-four semester credits for an associate degree in nursing of which at least forty per cent of the nursing credits shall be laboratory or clinical instruction. Fifty-six semester credits or the number of semester credits recognized by the board for the pre-licensure portion of a master's entry in nursing program of which at least forty per cent of the credits shall be in laboratory or clinical instruction. [Eff 6/18/79; am and ren §16-89-47; 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; comp 9/5/97; comp 8/9/01; am and comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §§457-5, 457-11)

§16-89-48 The minimum curriculum for programs preparing licensed practical nurses. (a) The curriculum shall include a minimum of thirty semester credits of which at least forty per cent of the nursing credits are laboratory or clinical instruction.

- (b) The curriculum shall have courses in:
 - (1) Biological sciences and social or behavioral sciences; and
 - (2) Nursing:
 - (A) Nursing care of clients, as individuals and families based in nursing process throughout the lifespan;
 - (B) Assisting clients in all age groups to meet relatively stable, predictable nursing requirements;
 - (C) Assisting the registered nurse in complex nursing situations; and
 - (D) Ethical and legal aspects of nursing relevant to the licensed practical nurse. [Eff 6/18/79; am and ren §16-89-48, 6/22/81; am and comp 3/20/82; am and comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; am and comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §§457-5, 457-11)

§16-89-49 The minimum curriculum for programs preparing advanced practice registered nurses. The minimum curriculum for nursing programs preparing advanced practice registered nurses shall meet national accreditation standards. [Eff and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; am and comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-11)

§16-89-50 Annual report required. (a) The institution conducting the educational program of nursing shall submit an annual report of statistical data and qualitative program information to the board by September 1 of each year. The board may extend the deadline if the institution is unable to timely submit the report for reasons satisfactory to the board.

(b) The report shall include, but not be limited to, the following information:

- (1) Pass rates of NCLEX-RN and NCLEX-PN candidates of the school in the last twelve months;
 - (2) Number of full-time and part-time faculty, rationale for non-nurse faculty or faculty who do not meet the requirements of section 16-89-45, and faculty application curriculum vitae, and certified transcripts of new faculty;
 - (3) Data regarding student applications, enrollment, graduation rates, and anticipated number of graduates for each academic year;
 - (4) Any changes or anticipated changes to the curriculum;
 - (5) Changes in fiscal resources or administrators; and
 - (6) Other substantive information as deemed necessary by the board.
- (c) General guidelines for reports:
- (1) The board shall review reports for approval or continued approval of nursing education programs only when the board is in a formal meeting in accordance with chapter 92, HRS;
 - (2) Reports shall be submitted to the board no less than two weeks prior to the meeting at which the report will be reviewed;
 - (3) The school shall be informed in writing of deficiencies in the report or items required in subchapter 7, corrective measures which

- are needed, and the time frame in which the corrective measures shall be completed; and
- (4) Failure to timely correct deficiencies to the satisfaction of the board may result in the withdrawal or suspension of approval after a hearing in accordance with chapter 91, HRS. [Eff and comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-11)

§16-89-51 Closing of an approved nursing education program. (a) Voluntary closing. When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan, and date of the intended closing. Notice of intent to discontinue a nursing program shall be transmitted to the board at least thirty days prior to public announcement. The governing institution shall choose one of the following closing procedures:

- (1) The program shall continue until the last class of enrolled graduates:
- (A) The program shall continue to meet the standards for approval until all of the enrolled students graduate;
 - (B) The date of closure is the date on the degree, diploma, or certificate of the last graduate; and
 - (C) The governing institution shall notify the board of the actual closing date.
- (2) The program shall close after the governing institution has made reasonable effort to transfer its students to other approved programs:
- (A) The program shall make reasonable effort to continue to maintain the standards until date of closing; and
 - (B) A list of the names of students who have been transferred to approved

programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

(b) Closing as a result of denial or withdrawal of approval. When the board denies or withdraws approval of a program, the governing institution shall:

- (1) Close the program after the governing institution has made what the board considers a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board;
- (2) Submit to the board a list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution; and
- (3) Submit in writing to the board thirty days prior to public announcement the expected date of closing, and submit in writing to the board thirty days prior to the actual closing the actual date of closing of the program.

(c) Custody of record. Provision shall be made for custody of records as follows:

- (1) Safe storage of vital records, including permanent records of all graduates of the program; and
- (2) Notification to the board as to where the records will be stored and how they may be accessed by appropriate request. [Eff and comp 5/5/05; comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp

] (Auth: HRS §457-5) (Imp:
HRS §457-11)

SUBCHAPTER 9

MAJOR REVISION OF NURSING PROGRAM

§16-89-52 Phase I - twelve months prior to initiating revised program. Any agency or institution considering major revision of the nursing program shall advise the board of its intent in writing. The following information shall be submitted in writing:

- (1) Justification for revision;
- (2) Need and readiness of community to support the program; and
- (3) Tentative timetable for planning, organizing, and initiating the new curriculum. [Eff 6/18/79; am and ren §16-89-52, 6/22/81; am and comp 3/20/82; comp 9/18/82; comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §§457-5, 457-11)

§16-89-53 Phase II - six months prior to initiating revised program. The following documented evidence of readiness to implement the new program which shall be submitted to the board in writing:

- (1) Statements of philosophy and purpose;
- (2) Curriculum framework;
- (3) Curriculum and its objectives including terminal behaviors of the graduates;
- (4) Admission policies and plans for student welfare;
- (5) Statements of policy necessary for operation of the program;
- (6) Plans for resources and facilities including clinical facilities and services; and
- (7) Tentative program calendar. [Eff 6/18/79; am and ren §16-89-53, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90;

am and comp 9/5/97; comp 8/9/01; comp
5/5/05; comp 12/27/10; comp 3/28/13; comp
10/27/18; comp] (Auth: HRS
§457-5) (Imp: HRS §§457-5, 457-11)

SUBCHAPTER 10

SEAL OF THE BOARD

§16-89-57 Description. The official seal of the State with the inscription of the name of the board shall be and is the adopted seal of this board. [Eff 6/18/79; am and ren §16-89-57, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-5)

SUBCHAPTER 11

UNPROFESSIONAL CONDUCT

§16-89-59 Unprofessional conduct. Nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession and which reflect adversely on the health and welfare of the public shall constitute unprofessional conduct. [Eff and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-12)

§16-89-60 Types of unprofessional conduct. The types of unprofessional conduct shall include, but are not limited to, the following:

- (1) Submitting information to the board pursuant to an application for licensure, renewal of licensure, or reinstatement of licensure which is fraudulent, deceitful, or contains misrepresentations regarding the applicant's or licensee's educational background, passing of a licensure examination, pending disciplinary actions, or licensure status;
- (2) Impersonating any applicant, or acting as proxy for the applicant in any nurse licensure examination, allowing any person to use one's nursing license, or the aiding, abetting, or assisting an individual to violate or circumvent chapter 457, HRS, or this chapter;
- (3) Practicing nursing within this State without a valid current license, or after the temporary license has expired;
- (4) Misrepresenting that the person is a licensed practical nurse or licensed registered nurse, verbally or in writing, when the person does not possess the appropriate license;
- (5) Failing to report to the board any revocation, suspension, or other disciplinary actions against the applicant or licensee by another state or jurisdiction of the United States for any act or omission which would constitute unprofessional conduct;
- (6) Performing unsafe or unacceptable patient care or failing to conform to professional standards required of a nurse which poses a danger to the welfare of a patient which shall include:
 - (A) Intentionally or negligently causing physical or emotional injury to a patient;

- (B) Administering medication and treatment in a careless or negligent manner;
 - (C) Failing to take appropriate action or to follow policies and procedures in the practice setting designed to safeguard the patient;
 - (D) Failing to take appropriate action in safeguarding a patient from incompetent health care practices;
 - (E) Performing nursing techniques or procedures without proper education and training;
 - (F) Violating the confidentiality of information or knowledge concerning the patient or failing to safeguard the patient's dignity and right to privacy; and
 - (G) Leaving a nursing assignment or abandoning a patient without properly notifying appropriate personnel;
- (7) Engaging in any act inconsistent with the practice of nursing as defined in section 457-2, HRS, for that of a licensed practical nurse or a registered nurse including:
- (A) Engaging in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient;
 - (B) Practicing nursing when physical or mental ability to practice is impaired by alcohol or drugs, or because of other physical, psychological, or mental impediment;
 - (C) Willfully, or deliberately, falsifying or altering a patient's, health care facility's, or employee's record;
 - (D) Unauthorized use or removal of drugs, supplies, or property from a patient or health care facility, institution or other work place location, or diverting or attempting to divert drugs or controlled substances for unauthorized

- use or appropriating money, supplies, or equipment;
- (E) Possessing, obtaining, furnishing, or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; and
 - (F) Failing to supervise persons to whom nursing functions have been delegated under one's supervision; and
- (8) Failing to report oneself as a nurse, or failing to report, as a director of nursing, designated nursing supervisor, or designee, a nurse against whom disciplinary action as a result of unprofessional conduct described in §16-89-60(6) or inconsistent with the practice of nursing as identified in §16-89-60(7) has been taken, including termination or resignation of a nurse in lieu of discipline, or who may be a threat to the public health or safety. [Eff and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §457-12)

§16-89-61 Repealed. [R 6/22/90]

§16-89-62 Voluntary surrender of license.

Voluntary surrender of license to practice nursing or placing the nursing license on inactive status shall not deprive the board of jurisdiction to proceed with disciplinary proceedings pursuant to chapter 91, HRS, and chapter 16-201. [Eff 6/18/79; am and ren §16-89-62, 6/22/81; am and comp 3/20/82; comp 9/18/82; am and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18;

comp] (Auth: HRS §457-5) (Imp: HRS
§457-12)

§16-89-63 Disciplinary action. (a) In disciplining a licensee pursuant to a proceeding held in accordance with chapter 91, HRS, and chapter 16-201, the board, in addition to having the power to deny, revoke, or suspend any license to practice nursing may limit the license by restricting the field of practice in which the licensee may engage in, place the licensee on probation, or both.

(b) The board may impose conditions and shall determine whether and when limitations or conditions shall be removed with respect to a registered nurse or a licensed practical nurse who has been placed on probation, or whose license has been suspended or limited in any way. [Eff and comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-12)

§16-89-64 Repealed.

SUBCHAPTER 12

PRACTICE AND PROCEDURE

§16-89-66 Administrative practice and procedure. The rules of practice and procedure for nurses shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and

comp 6/22/90; comp 9/5/97; comp 8/9/01; comp 5/5/05;
comp 12/27/10; comp 3/28/13; comp 10/27/18;
comp] (Auth: HRS §§91-2, 457-5)
(Imp: HRS §§91-2, 457-5)

SUBCHAPTER 13

ORAL TESTIMONY

§16-89-70 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

(6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 6/22/90; am and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §92-3)

SUBCHAPTER 14

ADVANCED PRACTICE REGISTERED NURSE

§16-89-75 Objective. This subchapter is intended to recognize the performance of additional acts performed by registered nurses practicing in expanded specialized roles, and to set standards for nurses practicing as advanced practice registered nurses in order to protect and safeguard the welfare of the public. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-8.5)

§16-89-77 Repealed.

§16-89-79 Title. (a) A registered nurse who has been recognized by the board to have satisfactorily met the requirements of chapter 457, HRS, and this subchapter shall be called an advanced practice registered nurse and authorized to use the abbreviation A.P.R.N.

(b) No person shall practice or offer to practice as an advanced practice registered nurse, or use the A.P.R.N. abbreviation, or any other title, words, letters, signs or figures to indicate that the person is an advanced practice registered nurse unless the person has met all appropriate requirements of this subchapter. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-5)
(Imp: HRS §457-8.5)

§16-89-81 Practice specialties. (a) The four areas of advanced practice registered nurses recognized by the board from which the practice specialties are derived are:

- (1) Nurse practitioner ("NP");
- (2) Certified registered nurse anesthetist ("CRNA");
- (3) Certified nurse-midwife ("CNM"); and
- (4) Clinical nurse specialist ("CNS").

(b) In addition to those functions specified for the registered nurse, and in accordance with appropriate nationally recognized standards of practice, the advanced practice registered nurse may perform the following generic acts which include, but are not limited to:

- (1) Provide direct care by utilizing advanced scientific knowledge, skills, nursing and related theories to assess, plan, and

- implement appropriate health and nursing care to patients;
- (2) Provide indirect care. Plan, guide, evaluate and direct the nursing care given by other personnel associated with the health care team;
 - (3) Teach, counsel, or plan care for individuals or group, utilizing a synthesis of advanced skills, theories, and knowledge of biologic, pharmacologic, physical, sociocultural and psychological aspects of care to accomplish desired objectives;
 - (4) Serve as a consultant and resource of advanced clinical knowledge and skills to those involved directly or indirectly in patient care;
 - (5) Participate in joint and periodic evaluation of services rendered including, but not limited to, chart reviews, case reviews, patient evaluations, and outcome of case statistics;
 - (6) Establish collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of an APRN shall be referred to an appropriate health care provider;
 - (7) Manage the plan of care prescribed for the patient;
 - (8) Initiate and maintain accurate records and authorize appropriate regulatory and other legal documents;
 - (9) Recognize, develop, and implement professional and community educational programs related to health care;
 - (10) Conduct research and analyze the health needs of individuals and populations and design programs which target at-risk groups and cultural and environmental factors which foster health and prevent illness;

- (11) Participate in policy analysis and development of new policy initiative in the area of practice specialty; and
 - (12) Contribute to the development, maintenance, and change of health care delivery systems to improve quality of health care services and consumer access to services.
- (c) The scope of practice for each of the four areas of clinical practice specialties shall be in accordance with nationally recognized standards of practice which are consistent with the following:
- (1) Nurse practitioner scope of practice, depending on area of specialty, may include, but is not limited to:
 - (A) Evaluate the physical and psychosocial health status of patients through a comprehensive health history and physical examination, or mental status examination, using skills of observation, inspection, palpation, percussion, and auscultation, and using diagnostic instruments or procedures that are basic to the clinical evaluation of physical, developmental, and psychological signs and symptoms;
 - (B) Order, interpret, or perform diagnostic, screening, and therapeutic examinations, tests and procedures;
 - (C) Formulate a diagnosis;
 - (D) Plan, implement, and evaluate care;
 - (E) Order or utilize medical, therapeutic, or corrective measures including, but not limited to, rehabilitation therapies, medical nutritional therapy, social services and psychological and other medical services;
 - (F) Monitor the effectiveness of therapeutic interventions;
 - (G) Assist in surgery; and
 - (H) Admit and discharge clients for inpatient care at facilities licensed

as hospitals, long term care facilities or hospice.

(2) Certified registered nurse anesthetist scope of practice:

- (A) Be responsible for performing and documenting total anesthesia care of patient including, but not limited to, pre-anesthetic preparation and evaluation, requesting consultations and diagnostic studies, obtaining informed consent for anesthesia, and selection and administration of anesthetic agents or other agents administered in the management of anesthetic care, anesthesia induction, maintenance, emergence, and post anesthesia care;
- (B) Develop and implement an anesthetic care plan;
- (C) Select and initiate the planned anesthesia technique which may include: general, regional, and local anesthesia and sedation;
- (D) Select, apply, or insert appropriate non-invasive and invasive monitoring modalities for collecting and interpreting patient physiological data;
- (E) Support life functions during the peri-operative period;
- (F) Select, obtain, and administer the anesthetics, adjuvant drugs, accessory drugs, and fluids, necessary to manage the anesthetic to maintain the patient's physiologic homeostasis, and to correct abnormal responses to the anesthesia or surgery;
- (G) Recognize and be able to take appropriate action for untoward patient responses during anesthesia;
- (H) Observe and manage the patient's emergence from anesthesia by selecting,

- obtaining, ordering, or administering medications, fluids, or ventilatory support in order to maintain homeostasis;
- (I) Discharge patients from a post-anesthesia care area;
- (J) Participate in the life support of the patient including, but not limited to, peri-anesthetic and clinical support functions;
- (K) Implement acute and chronic pain management modalities; and
- (L) Respond to emergency situations by providing airway management, administration of emergency fluids or drugs, or using basic or advanced cardiac life support techniques.
- (3) Certified nurse-midwife scope of practice:
 - (A) Provide independent management of women's health care, focusing particularly on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women;
 - (B) Practice in accordance with the standards for the practice of nurse-midwifery of the American College of Nurse-Midwives, unless otherwise indicated by the board. The standards include but do not limit the nurse midwife to:
 - (i) Provide primary care services for women and newborns;
 - (ii) Take histories and perform physical exams;
 - (iii) Order and interpret diagnostic tests;
 - (iv) Operate within a health care system that provides for consultation, collaborative management, or referral as

- indicated by the status of the client; and
 - (v) Admit clients for inpatient care at facilities licensed as hospitals or birth centers in the State; and
 - (C) Includes all of the functions listed in paragraph (1) relating to nurse practitioner scope of practice.
- (4) Clinical nurse specialist scope of practice, depending on area of specialty, may include, but is not limited to:
 - (A) Evaluate the physical, developmental, and psychosocial health status of patients through a comprehensive health history, physical examination, or mental status examination, using skills of observation, inspection, palpation, percussion, and auscultation, and using diagnostic instruments or procedures that are basic to clinical evaluation of physical, developmental, and psychological signs and symptoms;
 - (B) Order, interpret, or perform diagnostic and therapeutic examinations, tests and procedures, if CNS educational preparation included pathophysiology, pharmacology, advanced health promotion and disease prevention, differential diagnosis, and disease management; formulate a diagnosis;
 - (C) Assess the normal and abnormal findings from the history, physical, and mental status examinations, and diagnostic reports;
 - (D) Plan, implement, and evaluate the care of patients and groups of patients (including individuals, couples, groups, families, and communities) with complex needs in the area of practice specialty;

- (E) Provide advanced management of health care for selected client populations;
- (F) Consult, as needed, with members of health care teams concerning physiological, psychological, social, educational, and ethical issues in area of expertise; and
- (G) Initiate and maintain accurate records, appropriate legal documents, and other health and nursing care reports.

(d) Nothing in this section shall allow an APRN to prescribe any substance included in the current ~~[Exclusionary Formulary]~~ exclusionary formulary. It shall be unlawful for any nurse not granted prescriptive authority under this chapter to prescribe, offer to prescribe, or to use any sign, card, or device to indicate that the nurse is so authorized.

(e) Nothing in this section shall preclude a licensed nurse from carrying out prescribed medical orders of a licensed dentist, physician, osteopath, or podiatrist licensed in accordance with chapter 448, 453, or 463E, HRS, or the orders of a recognized advanced practice registered nurse.

(f) Nothing in this section shall limit a certified registered nurse anesthetist from providing total anesthesia care as designated in subsection (c)(2). [Eff and comp 9/5/97; am and comp 8/9/01; comp 5/5/05; am and comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp]
 (Auth: HRS §457-5) (Imp: HRS §457-8.5)

§16-89-83 Requirements for license as an advanced practice registered nurse. In addition to submitting an application prescribed by the board and having a current, unencumbered license as a registered nurse in this State the applicant for license as an advanced practice registered nurse shall provide proof of:

- (1) Documentation relating to any disciplinary action ordered by or pending before any board of nursing in any state or jurisdiction of the United States;
- (2) Documentation from the appropriate agencies or parties regarding any criminal conviction, of which the applicant is the subject, that has not been annulled or expunged. This includes, but is not limited to, certified copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the judgment of the court with regard to the conviction, the sentence imposed, the actual terms of the sentence, and whether sentence was completed; and
- (3) A self-query report from the NPDB. The board may require additional background checks of nurse applicants from an independent background check service as approved by the board, provided that the applicant shall pay the cost of the background check.

The board may also require that the applicant submit a signed explanation of the events that led to the disciplinary action or prior conviction. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-8.5)

§16-89-85 Recognized national certifying body; certification. (a) National certifying bodies recognized by the board to certify the advanced practice registered nurse specialty include:

- (1) The American Nurses Credentialing Center;
- (2) The Pediatric Nursing Certification Board;
- (3) The National Certification Corporation;
- (4) The American Midwifery Certification Board;

- (5) The National Board of Certification and Recertification for Nurse Anesthetists;
- (6) The American Academy of Nurse Practitioners Certification Board; and
- (7) The American Association of Critical-Care Nurses.

(b) The board may recognize other national certifying bodies accredited by the ABNS or the NCCA, which provide competency-based certification examinations reflective of APRN knowledge of and expertise in ~~[their]~~ APRN's nursing specialties.

(c) A national certifying body which is a successor to any body listed in this section may also be recognized by the board, provided the body maintains or exceeds the standards of its predecessor. Any modifications to the standards shall be recognized unless otherwise provided in the board's policy until such time as the board can amend its rules.

(d) A board-recognized ~~[advanced practice registered nurse]~~ APRN shall have the right to use the ~~[title(s)]~~ title designated by the certifying bodies.

(e) No other person shall assume any of the titles designated by the certifying bodies in subsection (a), or any other words, letters, signs, or devices to indicate that the person using the title is so qualified. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp]

(Auth: HRS §457-5) (Imp: HRS §457-8.5)

§16-89-87 Renewal of APRN license. (a) All licenses for advanced practice registered nurses shall expire on June 30 of every odd-numbered year and shall be renewed biennially. In each odd-numbered year, the board shall make available to all licensees an application for renewal of license to be submitted to the board by the deadline set forth by the board. Applicants shall be currently licensed as registered nurses in this State and shall submit:

- (1) Evidence of current national certification if the advanced practice registered nurse does not hold a graduate-level degree in clinical nursing or nursing science in a board recognized practice specialty;
- (2) Documentation from agencies or parties relating to any disciplinary action ordered by or pending before any board of nursing in any state or territory of the United States within the two years prior to application for renewal of license;
- (3) Information, including but not limited to, certified documents from appropriate agencies and persons regarding any criminal conviction within the past two years which has not been annulled or expunged; and
- (4) The required renewal non-refundable fee.

(b) When renewing an APRN license, the applicant may elect to be placed on inactive status by indicating so on the renewal form provided by the board and paying all appropriate fees. ~~[Advanced practice registered nurses]~~ APRNs wishing to reactivate ~~[their]~~ the license at any time during the biennial period shall comply with the requirements of subsection (a).

(c) ~~[Advanced practice registered nurses]~~ APRNs who fail, neglect, or refuse to renew ~~[their]~~ the license on or before June 30 of each odd-numbered year shall have ~~[their]~~ the license forfeited. The license may be restored within six months of renewal date, in compliance with subsection (a), and payment of renewal and penalty fees. Failure to restore within the time period provided, except as otherwise provided by law, shall constitute a forfeiture of the license and the applicant shall file for licensure pursuant to section 16-89-83.

(d) Licensees who fail to renew ~~[their]~~ the APRN license ~~[as advanced practice registered nurses]~~ as provided in subsection (a), or who have placed ~~[their]~~ the APRN license on inactive status as provided in subsection (b) and continue to practice as ~~[advanced practice registered nurses]~~ an APRN, shall be subject

to penalties provided for violations of chapter 457, HRS, and this chapter. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §457-5) (Imp: HRS §§457-9, 457-8.5)

§16-89-89 Discipline. The board shall have the same power to deny, revoke, limit, or suspend any license of an advanced practice registered nurse for any of the actions subject to disciplinary action as prescribed in chapter 457, HRS, and this chapter. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-12)

§16-89-91 Encumbered license. Encumbrances based on disciplinary action ordered by the board to be imposed on the license of an advanced practice registered nurse shall also be placed on all nurse licenses and prescriptive authority held. Any encumbrance on one license or prescriptive authority shall automatically and similarly affect the other. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5) (Imp: HRS §457-12)

§16-89-93 Reinstatement following completion of a board ordered suspension. An advanced practice registered nurse seeking reinstatement of APRN license following a board ordered suspension or limitation shall comply with all conditions of the order of suspension or limitation which may include applying as a new applicant meeting the requirements of section

16-89-83. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §457-5)
(Imp: HRS §436B-20)

§16-89-95 Fees. (a) Every application for a license shall be accompanied by the appropriate fees provided in chapter 16-53 and any other fee required by law.

(b) All fees are non-refundable. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §26-9) (Imp: HRS §§26-9, 457-8.5, 457-9)

§16-89-97 Advanced practice registered nurse requesting prescriptive authority. An advanced practice registered nurse who applies for prescriptive authority also shall comply with the eligibility requirements as set forth by the board in this chapter. [Eff and comp 9/5/97; comp 8/9/01; comp 5/5/05; am and comp 12/2[4]7/10; comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §457-8.6)
(Imp: HRS §457-8.6)

SUBCHAPTER 15

DELEGATION OF NURSING CARE TASKS TO UNLICENSED ASSISTIVE PERSONNEL

§16-89-100 Purpose. (a) Only a registered nurse has authority to practice professional nursing;

therefore, only the registered nurse has authority to delegate nursing.

It is the intent of the board that the delegation of tasks of nursing care to unlicensed assistive personnel be the exception rather than the rule unless the registered nurse can justify the need for delegation.

The board believes that unlicensed assistive personnel can be utilized to provide tasks of nursing care under the specific delegation and supervision of a registered nurse and not under any licensed practical nurse. Nothing in this subchapter shall limit a licensed practical nurse from providing care within the scope of their practice.

A registered nurse may delegate in any setting at any time; provided that when the registered nurse is not regularly scheduled and not available to provide direct supervision, the registered nurse shall provide indirect supervision.

(b) When delegating a task, function, or activity, the nurse shall use the NCSBN delegation decision-making process and the protocols contained in the NCSBN documents recognized by the board as a model.

(c) In public school settings, medication shall be administered by school aides in accordance with the regulations and local policies of the department of health and the department of education. Those regulations and policies shall comply and coordinate with applicable federal and state laws, including but not limited to, part III, subpart F of chapter 302A, HRS (relating to school health services program, including statewide requirements for medication administration) and section 11-146-4. [Eff 7/16/98; comp 8/9/01; comp 5/5/05; am and comp 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp]
(Auth: HRS §457-5) (Imp: HRS §§457-2, 457-5)

§16-89-101 Repealed. [R 12/27/10]

§16-89-102 Repealed. [R 12/27/10]

§16-89-105 Repealed. [R 12/27/10]

§16-89-106 Repealed. [R 12/27/10]

§16-89-108 Repealed. [R 12/27/10]

§16-89-110 Repealed. [R 12/27/10]

§16-89-112 Repealed. [R 12/27/10]

§16-89-114 Repealed. [R 12/27/10]

SUBCHAPTER 16

ADVANCED PRACTICE REGISTERED NURSE PRESCRIPTIVE AUTHORITY

§16-89-116 Purpose. The purpose of this subchapter is to establish the requirements of the board for APRN prescriptive authority. APRNs who are granted prescriptive authority shall only prescribe

drugs appropriate to ~~[their]~~ the [APRNs] APRN practice specialties as recognized by the board and in accordance with the exclusionary formulary. [Eff 12/27/10; comp 3/28/13; comp 10/27/18; am and comp] (Auth: HRS §§26-9 (k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-117 Prescriptive authority. Only an APRN granted prescriptive authority by the board shall be able to practice as an APRN with prescriptive authority or use any sign, card, or device to indicate or in any way imply, that the person is an APRN who is authorized to prescribe. [Eff 12/27/10 comp 3/28/13; comp 10/27/18; comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-119 Prescriptive authority eligibility requirements. (a) The requirements for prescriptive authority are as follows:

- (1) A completed application for prescriptive authority provided by the board and submitted with all appropriate documents and required fees;
- (2) Proof of a current, unencumbered license as a registered nurse in this State and in all other states in which the nurse has a current and active license;
- (3) Proof of a current, unencumbered license as an advanced practice registered nurse in this State and in all other states in which the nurse has a current and active license as an advanced practice registered nurse or similar designation;
- (4) Proof of a current, unencumbered certification for specialized and advanced nursing practice from a national certifying body recognized by the board;

- (5) Proof of successful completion of an accredited graduate-level nursing program with a significant educational and practical concentration on the direct care of patients, recognized by the board, leading to a graduate-level degree as a certified registered nurse anesthetist, a nurse midwife, a clinical nurse specialist, or a nurse practitioner. A graduate-level degree in nursing education or nursing administration does not qualify an applicant for prescriptive authority.
- (6) Proof of successful completion of at least thirty contact hours, as part of a graduate-level nursing degree program from an accredited, board-recognized college or university, of advanced pharmacology education, including advanced pharmacotherapeutics that is integrated into the curriculum, within the three-year time period immediately preceding the date of application. If completed more than the three-year time period, then one of the following shall be completed within the three-year time period immediately preceding the date of application for initial prescriptive authority:
 - (A) At least thirty contact hours of advanced pharmacology, including advanced pharmacotherapeutics, from an accredited, board-recognized college or university; or
 - (B) At least thirty contact hours of continuing education ("CE") approved by board-recognized national certifying bodies in advanced pharmacology, including advanced pharmacotherapeutics related to the applicant's scope of nursing practice specialty; and
- (7) Payment of a non-refundable application fee.
- (8) Upon satisfying all requirements in chapter 457, HRS, and this chapter, and payment of

required fees, the board shall grant prescriptive authority to the APRN.

(b) Nothing in this section shall preclude a registered nurse, a licensed practical nurse, or an APRN from carrying out the prescribed medical orders of a licensed dentist, physician, osteopath, or podiatrist licensed in accordance with chapter 448, 453, or 463E, HRS, or the orders of a licensed APRN granted prescriptive authority in accordance with this chapter.

(c) Nothing in this chapter shall require a certified registered nurse anesthetist to have prescriptive authority under this chapter in order to provide anesthesia care. [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp]
(Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-121 Repealed. [R 3/28/13]

§16-89-122 Exclusionary formulary for prescriptive authority. (a) The board shall determine the drugs or categories of drugs listed in the exclusionary formulary. The current exclusionary formulary dated August 2016, attached at the end of this chapter as "Exhibit A", lists the drugs or categories of drugs that shall not be prescribed by the APRN.

(b) The [Exclusionary Formulary] exclusionary formulary, and any revised formularies, shall be made available to licensed pharmacies at the request of the pharmacy at no cost.

(c) The APRN shall comply with all applicable state and federal laws and rules relating to prescribing and administering of drugs. The APRN with prescriptive authority shall only prescribe, order, and dispense medical devices and equipment or drugs

appropriate to the APRN's specialty and pursuant to HRS section 457-8.6.

(d) Prescriptions by an APRN with prescriptive authority shall be written in accordance with section 16-95-82. [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-123 Prescriptive authority renewal for APRN. (a) Prescriptive authority for each APRN shall expire on June 30 of every odd-numbered year and shall be renewed biennially. At the time of renewal, each APRN seeking renewal of prescriptive authority shall certify under oath that the licensee has completed the thirty hours of continuing education, of which **twenty-two** hours shall be in the APRN's practice specialty and eight hours in pharmacology, within the last two years preceding the APRN renewal and has a current national certification in their practice specialty. The APRN shall also satisfy the renewal requirements for APRN license pursuant to section 16-89-87. The board **may conduct a random audit** to determine compliance with the prescriptive authority renewal requirements. The board shall provide written notice of an audit to all licensees selected for audit. Within sixty days of notification, the licensee shall provide the board with the following documentation verifying compliance:

- (1) Evidence of current national certification in the nursing practice specialty by a board-recognized national certifying body; and
- (2) Documentation of successful completion, during the prior biennium, of thirty contact hours of appropriate continuing education as determined by the board in the practice specialty area, eight contact hours of which shall be in pharmacology, including pharmacotherapeutics, related to the APRN's clinical practice specialty area, approved

by board-recognized national certifying bodies, the American Nurses Association, the American Medical Association, or accredited colleges or universities. Documentation of successful completion of continuing education required for recertification by a recognized national certifying body, earned within the current renewal biennium, may be accepted in lieu of the thirty hours of continuing education required for renewal.

(b) Failure, neglect, or refusal to renew the prescriptive authority by a recognized APRN on or before June 30 of each odd-numbered year shall result in automatic forfeiture of prescriptive authority. Failure of the APRN to renew prescriptive authority shall cause the APRN prescriptive authority to forfeit on the day after the expiration date. The APRN shall not prescribe until prescriptive authority has been restored. Renewal application deadlines shall be as established by the board. Prescriptive authority may be restored within six months from the date of forfeiture, provided the restoration application is in compliance with subsection (a), and is submitted with an additional payment of a restoration fee. Failure to restore within the time frame provided shall constitute an automatic termination of the prescriptive authority. Thereafter, to be eligible for prescriptive authority, the applicant shall meet the requirements of section 16-89-119.

(c) Any APRN subject to this chapter who fails to renew ~~[his or her]~~ the prescriptive authority and continues to practice as an APRN with prescriptive authority shall be considered an illegal practitioner and shall be subject to penalties provided for by law. [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-124 Encumbered license. Encumbrances based on disciplinary action ordered by the board to

be imposed on an APRN with prescriptive authority shall also be placed on the APRN license, RN license, and practical nurse license held by that nurse in this State. Any encumbrance on a RN license shall automatically and similarly affect any other nursing license, or prescriptive authority held by that RN. [Eff 12/27/10; comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-125 Discipline; grounds; proceedings.

(a) In addition to any other actions authorized by law, the board shall have the power to deny, revoke, limit, condition, or suspend prescriptive authority granted, in accordance with this chapter, and to fine or to otherwise discipline an APRN with prescriptive authority for any cause authorized by law, including but not limited to the following:

- (1) Violation of this chapter;
- (2) Violation of chapter 457, HRS, or chapter 16-89;
- (3) Violation of any applicable state statutes and rules or federal laws or regulations;
- (4) Fraud, deceit, misrepresentation in procuring or attempting to procure a license to practice nursing as an APRN with prescriptive authority;
- (5) Unprofessional conduct, including but not limited to:
 - (A) Prescribing, administering, dispensing, or distributing drugs listed in the exclusionary formulary, or not in accordance with state and federal laws and rules;
 - (B) Prescribing or administering drugs in an unsafe manner or not in accordance with acceptable and prevailing standards of practice;

registered nurses, and advanced practice registered nurses. Any modifications by the NCSBN to the scope of practice shall apply. [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §§ 457-6.5, 457-8.6)

§16-89-128 Standards of care. The board adopted the NCSBN Model Nursing Practice Act and Model Nursing Administrative Rules relating to the standards care for licensed practical nurses, registered nurses, and advanced practice registered nurses. Any modifications by the NCSBN to the standards of care shall apply. [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §§ 457-6.5, 457-8.6)

SUBCHAPTER 18

LICENSE ACTIVATION

§16-89-131 Purpose. The purpose of this subchapter is to increase consumer safety by establishing activation requirements for registered and practical nurses who wish to activate their an inactive licenses, license but who have not practiced nursing more than five years in the U.S or its territories. [Eff 12/27/10 comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

§16-89-132 Prerequisite for activation of inactive licenses. (a) This section shall apply to a registered or a licensed practical nurse applying to activate the nurse's license which has been inactive for more than five years, and who has not practiced in the U.S. or a U.S. territory during that period, and is ordered by the board to verify continuing competency.

(b) The nurse shall be required to:

- (1) Submit an application prescribed by the board with the required fee(s); and
- (2) Retake and pass the NCLEX-RN or NCLEX-PN, whichever is applicable; or
- (3) Successfully complete a refresher course which must first be approved by the board. The course shall consist of at least sixty clock hours of didactic and sixty clock hours of clinical practice recognized by an approved provider and designed for the practical nurse or registered nurse who is returning to practice after more than five years absence from nursing practice. The nurse shall submit appropriate documentation to verify successful completion of the refresher course.

(c) The nurse shall not practice nursing, represent the nurse to be a registered nurse or a licensed practical nurse currently licensed to actively practice nursing, verbally or in writing, or in any way imply that the nurse holds a current active license, until the nurse's license is activated by the board.

(d) The following units of measurement shall be used in calculating continuing education hours. Should the units of measurement change, the board shall note the change in its minutes until such time that its rules can be amended:

- (1) 1 contact hour = 60 minutes of instruction;
- (2) 1 contact hour = 60 minutes of clinical or laboratory practice in an informal offering or a minimum of fifty minutes of actual organized instruction;

- (3) 1 continuing education unit (CEU) = 10 contact hours of instruction;
- (4) 1 continuing medical education unit (CME) = 1 contact hour of instruction;
- (5) Academic credit will be converted to contact hours as follows:
 - (A) One quarter academic credit equals 12.5 contact hours; or
 - (B) One semester academic credit equals 15 contact hours.
- (6) Contact hour equivalencies shall be as follows:
 - (A) 1 continuing education unit = 10 contact hours.
 - (B) 1 continuing medical education credit = 60 minutes; or
 - (C) 1 American Medical Association credit = 60 minutes;
- (e) The board may grant a waiver from activation requirements as provided in subsection (b) to a registered nurse or practical nurse if the nurse qualifies under one of the following and provides documents verifying that the nurse:
 - (1) Was enrolled full time in the past two or more years in a nursing program recognized by the board leading to an associate degree, diploma, baccalaureate, or masters degree in nursing science; or
 - (2) Was or is a U.S. government employee who worked or is working outside the U.S. as a practical nurse or registered nurse or is assigned to active military duty outside the United States as a nurse during the entire reporting period. The nurse shall submit evidence satisfactory to the board of nursing practice while in government service or active duty with the military.
- (f) A waiver provides for an extension of time or exemption from some or all of the activation requirements. Any nurse who wishes to activate ~~his~~ or her an inactive license may request an application for a waiver from the board. The board shall approve

or deny an application for waiver after its review of a completed application and supporting documents as requested by the board. The board shall not grant a waiver from activation requirements for more than one biennium, unless there are unusual circumstances including, but not limited to, a national emergency.

(g) The board shall activate the inactive license to active status when the nurse has completed all requirements to the satisfaction of the board.

(h) If requested by the board, the nurse shall submit legible copies of documents which may include, but are not ~~be~~ limited to, certificates of completion of continuing education offerings, transcripts of courses taken, course descriptions, and the name, telephone number and mailing address of the nurse's employer to verify registered or practical nursing practice. The board may require the nurse to submit a job description to verify the nurse's employment in a nursing position which meets the board's requirements.

(i) If the nurse is required by the board to submit the required documents within a specific, time frame the board may grant an extension of time on a case-by-case basis in cases of hardship beyond the nurse's control. The nurse shall submit a written request for an extension of time and provides justification for the request." [Eff 12/27/10; am and comp 3/28/13; am and comp 10/27/18; am and comp] (Auth: HRS §§26-9(k), 436B-4, 436B-7) (Imp: HRS §457-8.6)

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

3. Additions to update source notes and other notes to reflect these amendments to sections are not bracketed, struck through, or underscored.

4. These amendments to and compilation of chapter 16-89, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on M DD, YYYY and filed with the Office of the Lieutenant Governor.

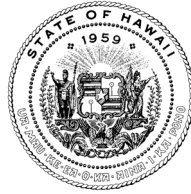
NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Shari Wong
Deputy Attorney General

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



CATHERINE P. AWAKUNI COLÓN
DIRECTOR

CELIA C. SUZUKI
LICENSING ADMINISTRATOR

BOARD OF NURSING

STATE OF HAWAII PROFESSIONAL AND VOCATIONAL LICENSING DIVISION DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

P.O. Box 3469
HONOLULU, HAWAII 96801
cca.hawaii.gov/pvl

August 2016

EXCLUSIONARY FORMULARY FOR ADVANCED PRACTICE REGISTERED NURSES GRANTED PRESCRIPTIVE AUTHORITY FOR CONTROLLED SUBSTANCES

2016 Legislation:

At its August 4, 2016 meeting, the Board of Nursing ("Board") amended the exclusionary formulary for Advanced Practice Registered Nurses with prescriptive authority based on the following amended laws:

- **Act 183, SLH 2016 Relating to Advanced Practice Registered Nurses.** One of the amendments in this measure clarifies that an APRN with prescriptive authority may dispense non-controlled substances, in addition to manufacturers' prepackaged samples of over the counter drugs, to patients under their care.
- **Act 230, SLH 2016 Relating to Medical Marijuana.** One of the amendments in this measure allows APRNs with prescriptive authority and who are registered with the Department of Public Safety, Narcotics Enforcement Division, to qualify their patient(s) for medical marijuana pursuant to the Medical Marijuana Program under the Department of Health. Go to health.hawaii.gov/medicalmarijuana/ for updated information on this program and its requirements.
- **Act 92, SLH 2016 Relating to the Joint Formulary Advisory Committee.** The Joint Formulary Advisory Committee ("JFAC") was repealed allowing the Board of Nursing the authority to determine the applicable formulary or exclusionary formulary for APRNs with prescriptive authority.

Drugs that may be prescribed and administered by an APRN with prescriptive authority:

An APRN with prescriptive authority may prescribe and administer the following drugs within their specialty and for which drugs that are not excluded in this formulary.

- Over-the-counter drugs;
- Legend (non-controlled substances) drugs; and
- Controlled substances

Drugs that may be requested, received, and dispensed by an APRN with prescriptive authority:

An APRN with prescriptive authority may request, receive, and dispense the following drugs within their specialty and for which drugs that are not excluded in this formulary:

- Manufacturers' prepackaged samples of over-the-counter drugs; and
- Non-controlled legend drugs

Exclusionary Formulary:

The exclusionary formulary that an APRN with prescriptive authority shall NOT prescribe, administer or dispense, shall consist of:

- Investigational drugs except as part of an IRB-approved clinical trial;
- Stimulants and hormones for treatment of obesity;
- Human Growth hormones, anabolic steroids, or hormones for performance enhancement or decreasing the impact of aging;
- Methadone for maintenance or detoxification of a narcotic-dependent person as restricted in HRS 329-121; and
- Medical marijuana as restricted in HRS section 329-121 (*see below: Medical Marijuana*).

Medical Marijuana:

An APRN with prescriptive authority who is also registered with the Hawaii State Department of Public Safety, Narcotics Enforcement Division may certify/qualify his/her patient for medical marijuana if:

- The qualifying patient has been diagnosed by the APRN as having a debilitating medical condition;
- The APRN has certified in writing that in the APRN's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and
- The amount of marijuana possessed by the qualifying patient does not exceed an adequate supply.

The APRN with prescriptive authority accepts full responsibility, accountability, and obligation to practice in accordance with APRN standards and functions as defined by the scope of practice/role definition statements for the APRN's category and specialty. The scope and standards shall include the statutes and rules established by the Board, the standards of the national certifying body, recognized by the Board, by which the APRN is currently certified, standards of the National Council of State Boards of Nursing Model Act and Rules, and generally accepted standards of practice in prescribing Schedules II to V, including that of the U.S. Drug Enforcement Agency, the Department of Public Safety, Narcotics Enforcement Division and other applicable state and federal laws and regulations and this Exclusionary Formulary.

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. Follow-up on Discussion with Becker Communications, Inc., regarding the Board's Outreach Efforts - *attachment*
2. Review of the Board's current membership and expiration of terms - *attachment*
3. Presentations to Industry Associations
4. Staff's Small Business Outreach



November 21, 2023

CLIENT: DBEDT
PROJECT: Department and Division Videos for Digital Platforms

OVERVIEW

To effectively communicate its initiatives, engage the audience, and foster a positive perception of DBEDT and its divisions' efforts, BCI recommends integrating video content into its social media strategy.

Benefits of video content:

- Video content has become the most consumer and shared form of media on social platforms, allowing DBEDT to amplify its messages and initiatives.
- Visual content is more engaging, memorable, and shareable, creating a deeper connection with the audience and extending the reach of key messages.
- Videos allow for a more personal and humanized representation of the department and divisions' activities, showing the people and stories behind its programs and initiatives.
- People-centric stories resonate with audiences, building trust and fostering a sense of community engagement with DBEDT's objectives.

OBJECTIVES

- Raise awareness about DBEDT's initiatives
- Increase engagement with followers through interactive and shareable content
- Communicate complex concepts and initiatives in an easily understandable format
- Highlight businesses, initiatives, and programs that have positively impacted the local economy
- Humanize the work of DBEDT and its core divisions

TARGET AUDIENCES

- Business community (entrepreneurs, start-ups, and established companies)
- Lawmakers and decision-makers
- Investors interested in economic opportunities (local, national, and international)
- General public

PLATFORMS

Video content can be shared on various platforms, including divisions' websites. Long-format videos are best suited for YouTube, and shorter clips can be shared on Facebook and Instagram. Videos from the core divisions may also be repurposed for DBEDT's main website page, LinkedIn, and Facebook profiles.

- Facebook: Main platform to share videos up to 2 minutes.
- Instagram: Short, visually appealing clips for a younger audience.
- LinkedIn: Professional content targeting businesses and investors.
- YouTube: Ideal for hosting longer, educational content and success stories.

CONTENT STRATEGY

- **Educational Videos:** Create informative content, including explaining economic development strategies, core division programs, and industry insights. Examples:
 - **BDSD** – Made in Hawai‘i brand, small business financing programs, start-up resources
 - **CID** – Music Immersive Program, importance of Hawai‘i Film Office, workforce development
 - **HBDEO** – Affordable Connectivity Program, Digital Equity Plan
 - **READ** – Monthly visitor and labor statistics, quarterly reports and studies, economic forecasts
 - **SBRRB** – Role in supporting small businesses, board responsibilities
- **Success Stories:** Produce case study videos showcasing businesses that have thrived due to DBEDT’s programs and initiatives. Examples:
 - **BDSD** – Hankyu Hawai‘i Fair participants, CBED loan recipients
 - **CID** – Filmmakers, scriptwriters, musicians and songwriters, animators
 - **FTZ** – Hawai‘i-based exporters
 - **SBRRB** – Small business owners
- **Event Coverage:** Highlights from key events, conferences, workshops, and seminars organized by DBEDT and its core divisions.
 - **DBEDT** – Road to Recovery webinars
 - **BDSD** – Hankyu webinar, Japan E-Commerce Symposium, Japan Food Expo, Made in Hawai‘i Festival
 - **CID** – New film/television project announcements, Ideation workshops, Immersive programs
 - **HBDEO** – ACP pop-ups, Broadband Hō‘ike
- **Q&A Sessions:** Q&A sessions to address common questions about economic development and position DBEDT staff as subject matter experts. Suggested staff includes:
 - **Director’s Office** – Director Tokioka, Deputy Director Wicker
 - **BDSD** – Dennis Ling, Mark Ritchie, Jamie Lum, Lyle Fujikawa
 - **CID** – Georja Skinner, Tracie Young, Donne Dawson
 - **FTZ** – David Sikkink
 - **HBDEO** – Chung Chang, Burt Lum
 - **READ** – Dr. Tian, Jennifer Chun, Jeri Sato
 - **SBRRB** – Dori Palcovich, BOD members

INTERVIEW QUESTIONS:

To follow are suggested questions for the various interviewees (DBEDT staff, program participants, businesses, board members, business and community partners, etc.).

DBEDT Division Staff:

These questions aim to delve into the personal and professional experiences of the staff members, providing followers with a well-rounded understanding of the people behind the work of DBEDT and its core divisions. Not all questions will be asked of everyone; some will depend on the team member's role.

- Introduction:
 - Tell us a bit about yourself and your role within the DBEDT/Core Division.
- Your Work:
 - Describe the work of the division.
 - What does a typical day look like for you in your role?
 - Share a specific project or initiative you're working on and its significance to the community.
- Community Impact
 - How does your work directly impact the local community or businesses?
 - Can you share a success story or a memorable moment that highlights the positive outcomes of your efforts?
- Future Vision:
 - What do you see as the future of economic development in our region?
 - Are there any upcoming projects or developments that you are particularly excited about?

Division Program Participants/Business Owners (Success Stories):

The questions to program participants and business owners will highlight their achievements and provide valuable insights for the audience.

- Introduction:
 - Please introduce yourself and your business.
 - How did you get involved in the [specific DBEDT program]?
- Background:
 - What inspired you to start your business?
 - Please share a brief history of your business journey.
- Involvement with DBEDT/Division programs:
 - How has your involvement in [specific DBEDT program] contributed to your business's success?
 - What aspects of the program have benefited you and your business most?
 - Can you share a specific experience or learning moment from the program?
 - What role do you think DBEDT/division programs play in fostering local businesses?
- Lessons Learned:
 - How have you implemented the knowledge or skills gained from the program into your business?
 - Have there been any notable changes or improvements as a result?
- Collaborations and Networking:
 - Have you had the opportunity to collaborate with other program participants or businesses?
 - How has networking through the program impacted your business?
- Overcoming Challenges:
 - Were there any challenges you faced that the program helped you address?
 - Can you share a specific example of overcoming a hurdle with the support of the program?
- Recommendations:
 - Would you recommend this program to other entrepreneurs or businesses? Why?
 - What would you say to someone considering participating in a similar economic development initiative?

Community and Business Partners:

The questions to community and business partners focus on understanding their perspectives on collaboration, the impact of DBEDT/division initiatives, and their overall involvement in supporting businesses and the community.

- Introduction:
 - Please introduce yourself and your role with the business or organization.
- Partnership with DBEDT:
 - How does your organization collaborate with the DBEDT?
 - Can you share examples of successful and mutually beneficial partnerships?
- Benefits of Collaboration:
 - Based on your experience, what benefits have businesses and organizations gained from partnering with DBEDT initiatives?
 - Are there specific projects or programs that have had a notable impact or are particularly valuable?
- Supporting Local Businesses:
 - How does your organization support Hawai'i businesses and entrepreneurs?
 - Can you share success stories of businesses your organization has been involved with?
- Community Engagement:
 - How does your business engage with the local community, and how has this impacted your brand and operations?
 - Can you share any community-focused projects or events in which your business has been involved?
- Supporting Local Talent:
 - How does your organization contribute to the development of local talent and skills?
 - How has your business benefited from local talent?

#

Small Business Regulatory Review Board

(SBRRB/SBRRB/Members/SBRRB-Brd& ComDoc 23-24)

Purpose: The Small Business Regulatory Review Board (SBRRB), which is administratively attached to DBEDT, was established on July 1, 1998 with the passage of the Hawaii Small Business Regulatory Flexibility Act (RFA). Pursuant to the RFA, the purpose and responsibilities of the SBRRB include:

- 1) Commentary on small business impact statements to the rule-drafting departments,
- 2) Identification and commentary on business impact of existing administrative rules,
- 3) Recommendations to the Governor's Office, Departments or the Legislature regarding the need for an administrative rule or legislative change,
- 4) Recommendations to the Mayors or County Councils regarding County rules, and
- 5) Review of small business petitions and complaints on business impact.

Restrictions: Sec. 26-34, Hawaii Revised Statutes (HRS) / **Number of Seats:** 11

Contact / Email / Phone: 1) Dori Palcovich / dori.palcovich@hawaii.gov / 808 586-2594

2) Jet'aime Ariola / jetaime.k.ariola@hawaii.gov / 808 798-0737

Meeting Location/Duration/Frequency:

Meeting Location: Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Steet, Conference Room 405, Honolulu, HI 96813 (Subject to Change)/ Board meetings are held remotely through ZOOM and in person.

Meeting Frequency: Monthly / Third Thursday of the month

Meeting Time: 10:00 AM

Meeting Duration: Approx. 2 - 4 hours

Chairperson: Mary Albiz / Vice Chair: Robert Cundiff / Second Vice Chair Jonathan Shick

Legal Authority: Chapter 201M, HRS / **201M-5(b)(8), HRS – “There shall be at least one representative from each county.”**

Membership:

Member Name	Initial Appointment Date	Second Appointment Date	Term Ends	Term #	Seat / Representing	Remarks
Gomes, Tessa	4/2022		6/30/2026	1	Senate / Oahu (C&CH)	1 st Term
			6/30/2023	1	Senate	
Atmospera-Walch, Dr. Nancy	4/2015	7/01/2016/2020	6/30/2024	2	Senate / Oahu (C&CH)	2 nd Term
Morioka, Sanford	4/2022		6/30/2027	1	House / Oahu (C&CH)	2 nd Term
Lee, James Kimo	4/2019	4/2022	6/30/2024	2	House / Hawaii County	2 nd Term
Shick, Jonathan	4/2019	4/2022	6/30/2026	2	House / Oahu (C&CH)	2 nd Term
Yamanaka, Garth	4/2015	4/2019	6/30/2023	3	Governor / Hawaii County	3 rd Term
Cundiff, Robert	4/2015	7/01/2016/2020	6/30/2024	2	Governor / Oahu (C&CH)	2 nd Term
Mary Albiz	4/2018	6/2020	6/30/2024	2	SBRRB / Maui County	2 nd Term
William Lydgate	4/2018	4/2022	6/30/2026	2	SBRRB / Kauai County	2 nd Term
DBEDT, Director	NA	NA	NA	s	DBEDT	Ex Officio Voting Member