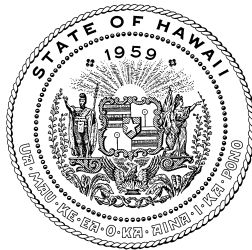


Small Business Regulatory Review Board Meeting

September 21, 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.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 798-0737

AGENDA

Thursday, September 21, 2023 ★ 10:00 a.m.
Leiopapa A Kamehameha Building – State Office Tower
235 S. Beretania Street, Conference Room 405
Honolulu, HI 96813

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=cDhqWEEZGZHYmJLM05tMHU5Mm5HQ09>

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.sbrrb.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, September 20, 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 August 17, 2023 Meeting Minutes

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

III. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 109, **Rules for Establishing Forest Stewardship**, promulgated by Department of Land and Natural Resources – *Discussion Leader – Jonathan Shick*
- B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 71, **Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules**, promulgated by Department of Agriculture – *Discussion Leader – Mary Albitz*
- C. Discussion and Action on Proposed New HAR Title 19 Subtitle 5 Chapter 152, **State Highway Enforcement Program**, promulgated by Department of Transportation – *Discussion Leader – Sanford Morioka*
- D. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 23, **Makai Area Rules**, promulgated by Department of Business, Economic Development and Tourism – *Discussion Leader – Mary Albitz*

IV. Legislative Matters

- A. Review of final proposed Administrative Bill, “Relating to the Small Business Regulatory Review Board” – clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to a request from small business owners

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
 - 1. Hawaii Small Business Fair at Leeward Community College
 - 2. Presentations to Industry Associations
 - 3. Staff’s Small Business Outreach

VI. Next Meeting: Thursday, October 19, 2023 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/accessible formats.

II. Approval of August 17, 2023 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT**

August 17, 2023

ZOOM RECORDING

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

MEMBERS PRESENT:

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

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

Mr. Mark Ritchie motioned to accept the July 20, 2023 meeting minutes, as presented. Mr. Jonathan Shick seconded the motion and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to BWS Rules and Regulations Chapter I – V, Section 54 – 26 for the Adoption of New Water Rates and Charges, promulgated by the Board of Water Supply, City and County of Honolulu

Mr. Ernie Lau, Manager and Chief Engineer at the City and County of Honolulu Board of Water Supply (BWS), explained that all small businesses receiving water service from the BWS will be affected by the proposed water rate adjustments for all its customer classes – Single-Family and Multi-Unit Residential, Non-Residential, Agricultural, Non-Potable, and Recycled Water. These rate adjustments are part of a 5-year rate proposal. Community presentations and briefings on the rate proposal will be held in August 2023. Proposed rate changes would begin January 1, 2024

Mr. Lau provided the members with a presentation of the proposed updates to BWS Water-Rates and Charges. He discussed the history of BWS, which was created in 1929, stating that it is semi-autonomous and has a separate board that governs the policies and water rates of the department. As BWS is financially self-sufficient due to incoming water fees, it operates essentially as a utility. BWS services approximately 145 million gallons of water per day to one million customers on Oahu with 170,000 active services, 13 treatment facilities, and water sources all over the island.

A rate study was done in 2017 and BWS did not foresee a pandemic in its future projections. In 2023, inflation went up a much higher rate and has decreased BWS purchasing power. BWS has about 8% less purchasing power than projected. Power costs have also trended upward driven by fuel costs and the energy cost factor is 20% over budget than what was projected in the 2017 rate study.

Mr. Lau explained that the 2021 Red Hill response requires large investments in new BWS facilities. Monitoring wells for information on how the contamination is moving and exploratory wells to find new sources outside of its path. As a precaution, BWS had to shut down 3 wells and this caused BWS to lose source capacity.

BWS is proposing rates for 5 ½ - year period beginning January 1, 2024 through June 30, 2029. BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates (60% of cost of service) to agricultural customers.

Increases in the dollar amounts of direct costs experienced by small business customers will vary depending on the size of their water meter and actual water use. The percentage increases are as follows: January 1, 2024, 10%; July 1, 2024, 10%; July 1, 2025, 9%; July 1, 2026, 8.5%; July 1, 2027, 8%; July 1, 2028, 8%. There are no indirect costs to any customers as a result of these proposed changes.

Mr. Lau stated that these increases are necessary to continue to fund the operations and capital improvement program of the BWS at a level necessary to continue to provide safe and dependable water to its customers. The BWS is a self-supporting, semi-autonomous agency that receives no tax revenues. Nearly all of the revenue is from water sales to customers.

BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates (60% of cost of service) to agricultural customers.

Second Vice Chair Jonathan Shick motioned to move the proposed amended rules to the Mayor for public hearing. Mark Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui, promulgated by Department of Land and Natural Resources (DLNR)

Discussion Leader and Second Vice Chair Shick noted that agenda items III. New Business B., C., and D. will be presented together. Mr. David Sakuda, DAR Fisheries Program Manager confirms and acknowledges that all three rules will be presented together by Mr. Russel Sparks, DAR Maui District Aquatic Biologist.

Mr. Sparks explained that the proposed rule changes would increase permit fees by \$725/year for smaller vessels (<25 passengers), \$1,475/year for mid-sized vessels (25-74 passengers) and \$2,975/year for larger vessels (>75 passengers). There are forty four boats (Snorkel, Dive, or Scuba dive operations) that are currently permitted to take passengers into the Molokini Marine Life Conservation District will be affected by these rule amendments.

These permit fee increases will amount to approximately \$61,500 dollars being collected by the Department per year. Of this sum, \$12,000 will be paid to OHA as revenue from submerged ceded lands, with the additional \$49,500 being used to administer the permits, correspond with and ensure compliance of the permit holders, operate a remote live web camera system within the MLCD, provide for stepped up enforcement of rules in the area, conduct routine resource monitoring and continue to work with permit holders to reduce crowding and potential impacts to marine ecosystem within the MLCD.

Mr. Sparks presented DAR's proposal of development and a timeline of significant events. The proposals moving forward are to reduce crowding, improve user experience and reduce impacts to the Molokini Shoal Ecosystem. DAR worked through various options for regulating the use of Molokini by the commercial tour operators and made significant changes to the day use mooring rules allowing for more flexibility in use of the area, strengthened language that allowed for only permitted operators to take tours to Molokini, and changed early plans on fees from per person to based on passenger capacity to reduce fee amounts and the administrative burden on the companies, etc.

DAR conducted extensive planning and scoping with all permit holders. DAR gathered input and adjusted the fee plan several times over a 3-year planning process. Fees were reduced and changed to a set fee rather than a per person fee to reduce record keeping and compliance requirements on the operators and agreed to reduce fees given other funding options to help cover the maintenance and upkeep of the day use mooring infrastructure within the MLCD.

Discussion Leader and Second Vice Chair Shick had a question relating to the operators that choose not to use a permit for an extended period of time, was there any feedback. Mr. Sparks responded that the department would like to reduce and limit the amount of those permits. Vessels and commercial operators usually sell their permits with the operation. If someone does not use their permit, for example, three operators have lost their vessels in the Lahaina fire, there is no force of operation to maintain their permit.

Mr. Mark Ritchie comments that it is a very comprehensive approach to managing MLCD, and there has been a lot of work done with the stakeholders.

Chair Mary Albitz mentions that the SBRRB received a request from Mr. Tim Lyons of the Ocean Tourism Coalition on Maui to postpone DAR's presentation to the board. Mr. Sparks states that the testimony provided to the board was directly towards the permit conditions and the ability to make changes to the permits as needed. DAR decided to add language of a 90-day advance notice to the permit holders to be transparent. Ms. Albitz adds that given what has happened in Lahaina with the fires, does that also mean that there might be a way to waive or discount the fees to the permit holders that were affected by the Lahaina fire. Mr. Sparks responds that there is language in the draft rules that does give DAR the authority to change, waive or reduce fees if need be.

Discussion Leader and Second Vice Chair Shick motioned to move the proposed amendments to HAR Chapter 13-31 Molokini Shoal Marine Life Conservation District, Maui to public hearing. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Chapter 13-230, General Provisions, promulgated by DLNR

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

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

D. Discussion and Action on Proposed Amendments to HAR Chapter 13-257, Day-Use Mooring Rules, promulgated by DLNR

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

Second Chair Shick motioned to move the proposed rule to public hearing. Mr. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

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

1. Discussion and Action on Proposed Changes to Section 201M-5 (a) Small business regulatory review board; powers, HRS

Chair Albitz explains that the SBRRB will need to vote on what bill option will be a part of the Governors administrative package submitted by DBEDT. The reason for the suggested change is because the SBRRB was approached by small businesses to give input on proposed legislation.

Option 1 adds in paragraph (a) line 6; a small business regulatory review board to review any proposed new or amended rule or legislation affecting small businesses. Option 1 clarifies the intent of the SBRRB powers to include the review of legislation affecting small businesses.

Option 2 adds in paragraph (a) line 17; or adopted by a state agency or for review of any legislation affecting small businesses. And paragraph (f) line 10; proposed, amended, or adopted by a state agency or for review of any legislation affecting small businesses. Option 2 clarifies that the SBRRB has the authority to review legislation affecting small businesses in response to a request from a small business owner.

Mr. Ritchie makes a comment that he likes the second option because it is more specific for the situation. Vice Chair Shick adds, from a legal standpoint neither bill restricts the board in any way.

Mr. Ritchie motioned to submit bill option 2 to the legislature to be a part of the Governors administrative package submitted by DBEDT. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

2. Presentations to Industry Associations

Chair Albitz mentioned a follow up letter to those organizations who have not responded to the first letter sent.

Mr. Ritchie mentions the Leeward Community College Small Business Fair, September 16th.

3. Staff's Small Business Outreach

Ms. Ariola continues to perform monthly outreach.

4. Director Letters and Meetings with State Agencies and Counties

Chair Albitz suggests an email be sent to the board members who discussion leader assignment agency was not approached yet.

- V. **NEXT MEETING** - Thursday, September 21, 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.
- VI. **ADJOURNMENT** – The meeting adjourned at 11:37 p.m.

III. NEW BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 109, **Rules for Establishing Forest Stewardship**, promulgated by Department of Land and Natural Resources (DLNR)

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Date: 9/7/2023

Department or Agency: Dept. of Land and Natural Resources, Div. of Forestry and Wildlife

Administrative Rule Title and Chapter: HAR 13-109

Chapter Name: Chapter 109, Rules for Establishing Forest Stewardship

Contact Person/Title: Tanya Rubenstein

E-mail: tanya.rubenstein@hawaii.gov Phone: (808) 333-6803

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: 1151 Punchbowl St. Rm 325, online at: <https://dlnr.hawaii.gov/dofaw/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.

The Forest Stewardship Program is a voluntary program for private forest landowners in which the state provides cost-share assistance to participants to manage, protect, and restore important natural resources on private forest or formerly forested property (see Attachment A for details)

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.

Costs vary depending on the scope/size of project. The landowner enters into a voluntary agreement with the state for 50%-75% cost-share split between the state and landowner for forest management practices (see Attachment A for details).

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.

NA

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

NA

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

NA

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

NA

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.

See Attachment A for details

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.

This is a voluntary program for landowners. The proposed amendments to Chapter 13-109, HAR clarify applicant eligibility requirements and the approval process for landowners, and modifications to simplify eligible forest management practices are proposed (see Attachment A for details).

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

See Attachment A for details

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

Businesses that will benefit from the proposed rules include forest and forest products businesses, ecotourism businesses. These businesses may chose to participate in the program if they would like cost-share support for forest management planning and/or implementation of forest management practices (see Attachment A for details).

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

The proposed rules were developed with the input of the The Forest Stewardship Advisory Committee (FSAC), a thirteen-person committee consisting of professionals on forestry issues that advises the DLNR Division of Forestry and Wildlife (Division), which administers the FSP program. FSAC members represent federal and state agencies, professional foresters and resource consultants, conservation organizations, land trusts, cultural representatives, and private landowners (see Attachment A for details).

- 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.

Yes - recommendations were incorporated to align state program with County and federal programs, incorporate revisions to HRS 195F and provide greater flexibility to, and potentially increase program participation by underserved landowners with limited financial resources (see Attachment A for details).

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.

The proposed rules are not more stringent. They are aligned with federal and county standards for similar programs Protecting providing voluntary cost share assistance for managing, and restoring important forest resources on private lands.

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.
NA
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
NA
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
NA
- 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.
NA
- 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.
NA

* * *

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>

ATTACHMENT A: Supplement to the Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board HAR Chapter 13-109 – Rules Relating to Forest Stewardship.

- A. Statement of the topic of the proposed rules or a general description of the subjects involved:

This supplement summarizes proposed amendments to Chapter 13-109 (Rules for Establishing Forest Stewardship), Hawai'i Administrative Rules (HAR). Chapter 13-109, HAR, was adopted January 8, 1999, to implement Chapter 195F, Hawaii Revised Statute (HRS), which authorizes the Board of Land and Natural Resources (Department of Land and Natural Resources or DLNR) to establish a forest stewardship program to financially assist participants to manage, protect, and restore important natural resources on private forest or formerly forested property. The chapter has not been amended since it was established.

The State of Hawai'i Forest Stewardship Program (FSP) provides technical advice and financial assistance on a cost-share basis to promote forest stewardship and restoration. The FSP focuses on the following objectives: forest productivity (timber and non-timber forest resources), native ecosystem health and biodiversity, watershed protection and management, wildlife habitat and recreation. The State's FSP is aligned with and supported by the National Forest Stewardship Program, authorized by the Cooperative Forestry Assistance Act of 1978, and administered by the U.S. Department of Agriculture (USDA) Forest Service. Both state and federal programs provide technical assistance to private forest owners to encourage and enable active long-term forest management, with a focus on the development of comprehensive management plans that provide landowners with the information they need to manage their forests for a variety of products and services.

The majority of Hawai'i's forests (66% of Hawai'i's 1,748,000 acres of forestland) are privately owned and managed. The FSP supports public-private partnerships that are essential to the health of Hawai'i's forests and the public benefits that they provide. The FSP prioritizes the enhancement and protection of key watersheds, development of new forestry and conservation techniques, economic diversification and rural employment, and preservation and restoration of valuable natural resources including native plants, animals, and ecosystems. The FSP also provides opportunities for landowners to keep their land in production by managing lands for timber and other forest products. This can supply Hawai'i's rural communities with a source of income, provide locally grown products, and reduce Hawai'i's dependence on imported goods.

Further information on the FSP can be found in the program handbook:

https://dlnr.hawaii.gov/forestry/files/2023/08/FSP-Handbook-Revision_FINAL-2023.pdf

B. 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?

Chapter 195F, HRS, Relating to Forest Stewardship, establishes a program to financially assist landowners in managing, protecting, and restoring important natural resources in Hawaii's forested and formerly forested lands. Section 195F-8, HRS, authorizes the Department to adopt administrative rules relating to the Forest Stewardship Program through Chapter 91, HRS, rulemaking.

The Forest Stewardship rules are being revised to implement HRS §195F, which requires the agency to interpret the requirements of the statute. Recent amendments to Chapter 195F, HRS, Relating to Forest Stewardship, need to be incorporated into updated rules. Act 221 SLH 2021 amended program requirements to allow long-term leaseholders to participate in the program, increased state cost-share support from 50% to 75% for the development of FSP management plans, allowed non-timber forest products to qualify for the program, allowed the support of the program for portions of management plans and modernized eligibility criteria related to native forest management.

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

The FSP is a voluntary program so landowners will not be required to comply with the proposed rules unless they are participating in the program. The FSP may benefit participating landowners with businesses with timber production and non-timber forest products, farmers/ranchers implementing agroforestry and/or silvipasture practices and ecotourism businesses operating on private lands.

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

The program is voluntary so landowners who chose to participate and have proposals accepted provide cost-share support to prepare management plans and cost-share to implement management practices. Each eligible management practice has a set allowable cost-share rate. The dollar amounts for specific cost share practices are summarized in the FSP Handbook (Appendix F, page 55 of the Handbook).

https://dlnr.hawaii.gov/forestry/files/2023/08/FSP-Handbook-Revision_FINAL-2023.pdf

Allowable Cost-Share Rates

Each eligible management practice has a set allowable cost-share rate. The table below shows the low and high end of the allowable cost-share rates, which represent 50% of allowable total actual costs of completing/installing the practice. FSP will provide up to 50% cost-share reimbursement of the total actual cost within the established rates.

The total cost of implementing management practices will depend on a variety of factors such as project scale, objectives, and current and desired site conditions. Cost-share reimbursements

may cover the costs of purchasing or renting materials and supplies, contracts for services, and “in-kind” contributions such as labor and use of your own equipment or materials.

If costs for certain practices are estimated to be higher than the allowed rates, or a rate is not established, **requested cost-share must be justifiable**. To be allowed an exception to the listed cost-share rates, you must consult with the FSP coordinator to provide further details and justification. Quotes for proposed work may be required.

Practice	Unit	FSP Cost-Share (low end)	FSP Cost-Share (high end)
Management Plan	per plan	\$1,500	\$5,200
Fence	per foot	\$5	\$10
Tree and Shrub Site Preparation	per acre	\$200	\$1,000
Tree and Shrub Establishment	per seedling	\$1.50	\$8
Groundcover Establishment	per acre	\$400	\$1,400
Fertilizers and Soil Amendments	per acre	\$25	\$150
	per plant	\$0.25	\$0.50
Practice	Unit	FSP Cost-Share (low end)	FSP Cost-Share (high end)
Irrigation	per foot (drip only)	\$0.50	\$6
	per gallon (catchment)	\$0.32	\$0.85
	Other systems	*	*
Mulching	per square foot	\$0.07	\$0.16
	per plant	\$9.31	\$21.28
	per acre	\$3,049	\$6,969
Weed Control	per acre	\$100	\$700
Fuelbreak	per acre	\$150	\$500
Trails and Access	*	*	*
Tree Thinning	per acre	\$100	\$500
Tree Pruning	per acre	\$100	\$200
	per tree	\$0.23	\$0.47
Forest Health and Protection	*	*	*
Erosion Control	*	*	*
Monitoring and Maintenance	*	*	*

**Applicant must obtain at least 3 written quotes for the proposed work and/or consult with the FSP Coordinator to determine the allowable cost-share.*

Match Requirements

FSP will provide up to 50% cost-share reimbursement of the total actual cost of eligible practices within the established rates. Applicants are required to provide a 50% match. Eligible forms of match include cash match paid toward the installment of the practice or in-kind match of labor and/or equipment (see table below). Cash may come from private, county, or federal financial and technical assistance programs, provided that funds supplied from all assistance programs, including FSP, do not cover more than 90% of the actual cost of the practice. State

funding is not an eligible match.

Allowable In-Kind Rates

In-kind match refers to non-cash contributions to the project, such as labor costs and the use of your own materials or equipment. When calculating your 50% required contribution to the project, use the rates in the table below to determine labor and equipment cost estimates. Labor costs include fringe.

In-kind Contributions	Unit	Rate
General (unskilled) Hand Labor	per hour	\$27
Specialized (skilled) Hand Labor	per hour	\$53
Line Posts	each	\$23
Corner Posts	each	\$26
Equipment with Operator		
½ and ¾ ton truck	per hour	\$45
1 ton truck	per hour	\$52
1 ½ ton truck	per hour	\$58
2 ton truck	per hour	\$65
2 ½ ton truck	per hour	\$71
5 ton truck	per hour	\$84
20 ton tandem dump truck	per hour	\$110
12 ton tandem dump truck	per hour	\$97
2 and 4 wheel drive tractor	per hour	\$77
2 wheel drive tractor >40 hp	per hour	\$90
In-kind Contributions	Unit	Rate
D-2 or TD6 w/ attachments	per hour	\$97
D-4 or TD9 w/ attachments	per hour	\$135
D-6 or TD14 w/ attachments	per hour	\$155
D-7 or TD18 w/ attachments	per hour	\$194
D-8 or TD20 with attachments	per hour	\$232
D-9 or TD25 w/ attachments	per hour	\$290
Back-hoe	per hour	\$110
Loader	per hour	\$129
Compressor	per hour	\$32
Power saw	per hour	\$32
Power post hole digger	per hour	\$45
Power sprayer	per hour	\$39
Bobcat	per hour	\$84
Manlift	per hour	\$45
Mulcher	per hour	\$32

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

The FSP became effective in July 1991 through the passage of Act 327, Session Laws of Hawai'i (SLH) 1991. The Act authorized the Department of Land and Natural Resources (DLNR) to provide state funds to assist, technically and financially, private landowners and managers in protecting, managing, and restoring important forest resources. Act 195, SLH 1993, and Act 152, SLH 2001, established a dedicated funding source for FSP as a percentage of annual Conveyance Tax revenues that were deposited into the Natural Area Reserve Fund then disbursed by the Department to the Forest Stewardship Fund pursuant to Section 247-7, HRS. Act 084, Session Laws of Hawaii 2015 removed this dedicated funding source, but provides for general fund allocations to support the FSP.

Estimated costs for DLNR to implement the FSP are approximately \$300,000/year. The state currently provides approximately \$15,000-\$30,000/year of state and/or federal cost-share support to landowners for the development of FSP management plans. The FSP currently has implementation agreements with fourteen landowners with a fiscal year (FY) 2023 budget of \$288,059 of state funds providing cost share support. Due to budget cuts, DOFAW has not finalized any new FSP implementation agreements over the last several years but is hoping to provide state funding support for additional FSP projects on a competitive basis in FY24 and beyond. Additional support for FSP may also be provided in the future through pending federal grants (USDA Forest Service and/or Natural Resource Conservation Service) to support state landowner assistance through the FSP.

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.

The draft amendments to definitions, new management practices, and updating of language related to State, Federal, and County forestry incentive programs clarify program requirements, applicant eligibility and the application process for landowners.

Additionally, the current rules do not allow landowners to use federal or county funds for the FSP match requirement. With the removal of the dedicated state funding source for the FSP in 2015, and high costs of management, particularly fencing, landowners need to use multiple funding sources to effectively implement forest management projects. This creates a barrier to landowner participation in FSP. The proposed amendments will allow applicants to match state FSP cost-share support with non-state financial assistance programs (e.g., federal, county and private) as allowed by those programs and as long as total cost share assistance does not exceed ninety percent. This amendment will allow landowners participating in the FSP to better leverage state support to accomplish larger projects and increase public benefits to the state's

forests and the environment. The amendment will provide greater flexibility and potentially increase program participation by underserved landowners with limited financial resources. The amendments are also consistent with other state cost-share programs (e.g., Natural Area Partnership Program), and federal landowner assistance programs commonly used by landowners participating in FSP, such as U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program and U.S. Fish and Wildlife Partner's Program. NRCS may provide up to 90% of the costs of implementing management practices to historically underserved landowners.

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

There are not less restrictive alternatives as these rules are required to implement Chapter 195F through a voluntary landowner assistance program.

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.

There are no general compliance requirements for small businesses other than those businesses who voluntarily decide to participate in the FSP program.

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

The Forest Stewardship Advisory Committee (FSAC), a thirteen-person committee consisting of professionals in the forestry field, advises the DLNR, Division of Forestry and Wildlife (DOFAW), which administers the program. FSAC members represent federal and state agencies, professional foresters and resource consultants, conservation organizations, land trusts, cultural representatives, and private landowners. The FSAC reviews and recommends eligible management practices and cost-share rates under the program, which are described in the FSP handbook.

The FSAC reviewed and recommended approval of the proposed rule amendments attached to this submittal at a public FSAC meeting on November 10, 2022. The meeting minutes can be viewed here: https://dlnr.hawaii.gov/forestry/files/2022/12/Meeting-Minutes_11-10-2022.pdf.

Additionally, the proposed rules were reviewed by the BLNR at a public meeting on August 11, 2023, in a submittal requesting authorization to initiate rule-making proceedings, including conducting public hearings on the proposed amendments.

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

Amendment and compilation of Chapter 109
Hawaii Administrative Rules

June 7, 2023

SUMMARY

1. The title of Subchapter 3 is amended.
2. §§13-109-1 through 13-109-11 are amended.
3. Chapter 109 is compiled.

Amendment and Compilation of Chapter 109
Hawaii Administrative Rules

June 7, 2023

1. Chapter 109, Hawaii Administrative Rules, entitled "Rules for Establishing Forest Stewardship", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

Subchapter 1. General Provisions

\$13-109-1	Purpose and applicability
\$13-109-2	Definitions
\$13-109-3	Establishment and duties of the forest stewardship advisory committee
\$13-109-4	Applicant eligibility
\$13-109-5	Applicant enrollment
\$13-109-6	Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

\$13-109-7	Forest stewardship management plan
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Subchapter 3. Agreements with Applicant

\$13-109-8	Agreements and conditions
\$13-109-9	Reports
\$13-109-10	Penalty payback provisions
\$13-109-11	Payback provision for commercial timber production

SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 [~~Purpose and applicability.~~] **Purpose and applicability.** The purpose of this section is to provide rules to implement chapter 195F, HRS, which authorizes the board of land and natural resources to establish a forest stewardship program to financially assist applicants to manage, protect, and restore important natural resources on private forest or formerly forested property. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 [~~Definitions.~~] **Definitions.** As used in this chapter, unless the context requires otherwise:

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources.

"Agreement" means a written program forest stewardship management [~~contract~~] agreement between the board and applicant[~~-~~], in which the parties agree that the board will contribute some funding to cover the cost of implementing the forest stewardship management plan.

"Applicant" means any private entity or person having an interest in or holding any encumbrance upon [~~private~~] eligible property in the State, as set forth in §13-109-4, including any private entity or person having a leasehold interest in the real property with an unexpired term of ten or more years.

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

"Chairperson" means the chairperson of the board of land and natural resources.

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

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Forest stewardship advisory committee" means a group of people representing federal, state, and county resource agencies, private landowners, forest industry, consulting foresters, native Hawaiian interests, and environmental and conservation organizations who advise the administrator. The forest stewardship advisory committee shall meet the requirements for a State Forest Stewardship Coordinating Committee, as set forth in the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §19 (codified at 16 U.S.C. §2113 (2018)), as amended.

"Hold-down rate" means the maximum cost-share rate that the program will pay to an applicant to implement a practice.

"Landowner" means any person having an interest in or holding any encumbrance upon land in the State, including any person having a lease interest in the real property with an unexpired term of ten or more years.

"Management dedication term" means a period in which the applicant agrees to implement and maintain the project site as established under the agreement.

"Management plan" means a written document for the management of a specified area identifying forest stewardship management goals, objectives, and forestry practices necessary for the long-term management of forest resources, fire hazards, timber and wood products, soil and water resources, riparian areas, wetlands, fish and wildlife habitats, and outdoor recreation.

~~["Natural area partnership program" is a state program as set forth in chapter 195, HRS, and is designed to manage private lands that are of natural area quality that are permanently dedicated to conservation.]~~

"Native vegetation" means trees, shrubs and plants endemic or indigenous to Hawaii.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to chapter 183C, HRS, intact native natural communities identified by the heritage program pursuant to section 195-2, HRS, and other lands or waters meeting criteria established by the natural ~~[areas]~~ area reserves system ~~[pursuant to section 195-2, HRS.]~~ commission.

"Practice" means a management action that is eligible for program cost-share assistance.

"Program" means the forest stewardship program established in section 195F-3, HRS.

"Program proposal" means a request from a landowner to the program for cost-share assistance for the development of a forest stewardship management plan.

[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

§13-109-3 ~~[Establishment and duties of the forest stewardship advisory committee.]~~ **Establishment and duties of the forest stewardship committee.** (a) The chairperson shall establish a forest stewardship advisory committee to advise and assist the division to plan, coordinate, and implement the program. The chairperson or her designee or the authorized representative shall appoint ~~[a chairperson and]~~ members to the forest stewardship advisory committee. Members shall be

volunteers, serve part-time, and shall not be compensated by the program for duties performed.

(b) The forest stewardship advisory committee shall perform the following duties:

- (1) Review and recommend for approval to the administrator~~[7]~~ program ~~[proposal]~~ proposals;
- (2) Review and recommend for approval to the administrator [and] forest stewardship management plans;
- (3) Recommend approval of financial assistance for implementation of forest stewardship management plans to the administrator, prior to board submittal;

~~[(+2)]~~ (4) Establish and periodically review program practices and recommend hold-down rates for each program practice; [and]

~~[(+3)]~~ (5) Advise the department on other [program] relevant policies and guidelines[-], including but not limited to local and national initiatives; and

(6) Review and make recommendations to the administrator regarding federal Forest Legacy Program proposals, grant requests and projects pursuant to the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §7 (codified at 16 U.S.C. §2103c (2012)), as amended.

(7) Review applications for membership on the forest stewardship advisory committee and make recommendations to the chairperson or her designee or the authorized representative for approval.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving ~~[two-year]~~ three-year staggered terms. The chairperson or her designee or the authorized representative may appoint members to consecutive terms.

(d) The forest stewardship advisory committee shall maintain a record of its activities and actions.

(e) Any action taken by the forest stewardship advisory committee shall be by a simple majority of its members.

(f) ~~[Seven]~~ The forest stewardship advisory committee shall consist of thirteen members, and seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 ~~[Applicant eligibility.]~~ **Applicant eligibility.**

(a) In order to qualify under this program, ~~[applicants]~~ an applicant shall be ~~[private individuals, joint owners, private~~

~~organizations, private associations, or corporations.] a~~
landowner, as set forth in §13-109-2.

(b) Applicants are eligible to receive program assistance if ~~[private forest]~~ property is:

- (1) Managed by applying approved practices, as defined by ~~[chapter]~~ section 195F-5(b), HRS[-];
- (2) Managed so as not to degrade native vegetation, as defined by section 195F-2, HRS[-], while applicant is implementing approved forest stewardship management plan as set forth in section 195F-5, HRS[-]; and
- (3) A minimum of five contiguous acres that will be dedicated to the program.

(c) Applicants are ineligible to receive program assistance, if ~~[private]~~ otherwise eligible property is:

- (1) Leasehold for a period of less than ten years following program approval; or
- ~~[(2) Managed under existing federal, state, or private financial assistance programs. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance if the applicant agrees to comply with the requirements of the program or if forest management practices are expanded or enhanced to meet the requirements of this section; or]~~
- [(3)] (2) A potential natural area reserve[- as defined in this chapter].

~~[(d) A minimum of five contiguous acres of private property shall be dedicated to the program.]~~

(d) Private lands managed under existing federal, county, or private sector financial and/or technical assistance programs in conjunction with the forest stewardship program are not eligible to receive more than ninety per cent of the total cost of the forest management practices from all financial and technical assistance programs. [Eff 1/8/99; am and comp
] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 ~~[Applicant enrollment.]~~ **Applicant enrollment.**

(a) Applicants ~~[found]~~ eligible under section 13-109-4 shall follow these steps for program enrollment:

- (1) Applicants shall submit a program proposal to the forest stewardship advisory committee for consideration. The proposal shall describe the applicant's forest management objectives, including proposed practices[-] and the nature of the forest resources to be managed. The forest stewardship advisory committee shall recommend for approval to the

administrator, eligible proposals that adequately address current program priorities. Program priorities include, but are not limited to:

- (A) Enhancement and protection of key watershed areas in the public interest;
- (B) Development or adaptation of new forestry and conservation techniques for Hawaii;
- (C) ~~[Provision]~~ Provisions for economic diversification and rural employment; and
- (D) Preservation or restoration of especially valuable natural resources, including native plants, animals, and ecosystems.

- (2) Applicants whose program proposals are recommended for approval by the forest stewardship advisory committee~~[,]~~ and approved by the administrator, may prepare and submit a ~~[program]~~ forest stewardship management plan pursuant to section 195F-5(a), HRS, for consideration to the forest stewardship advisory committee [The program management plan shall cover a minimum of ten years.] as provided in section 13-109-7(a). Applicants are eligible to receive reimbursement payments from the division in an amount not to exceed the limits set forth in §195F-6(a), HRS, for the development of a forest stewardship management plan after the forest stewardship management plan is recommended for approval by the forest stewardship advisory committee and approved by the administrator.
- (3) Reimbursement for the development of a forest stewardship plan shall be subject to approval of the forest stewardship management plan by the board, or its designee.

(b) Upon approval of the ~~[program]~~ forest stewardship management plan by the forest stewardship advisory committee~~[, the]~~ and administrator, the administrator may recommend to the board, approval of financial assistance for implementation of all or selected portions of the forest stewardship management plan, subject to availability of funding. The division shall also prepare ~~[and enter into]~~ an agreement pursuant to section 195F-6(c)(3), HRS, between the applicant and board ~~[for approval],~~ as provided in section ~~[13-109-7(a).]~~ 13-109-8(a), for approval by the board. The ~~[program]~~ forest stewardship management plan shall be attached as an ~~[addendum]~~ exhibit to the agreement.

(c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the agreement ~~[program management plan]~~ for the duration of the ~~[approved project implementation period.]~~ management dedication

term. [Eff 1/8/99; am and comp] (Auth: HRS
§195F-8) (Imp: HRS §§195F-5, 195F-6)

§13-109-6 [~~Establishment of approved forest stewardship practices.~~] **Establishment of approved forest stewardship practices.** (a) A list of forest stewardship management practices shall be eligible for cost-share assistance as provided in section [~~195F-5,~~] 195F-5(b), HRS. [~~They~~] The eligible categories of forest stewardship practices include, but are not limited to:

- (1) Applicant forest stewardship management plan development [~~enables applicants~~] to define [~~their~~] the forest management objectives and the specific management practices that [~~they~~] will [~~employ~~] be employed to achieve these objectives.
- (2) Reforestation and afforestation [~~establishes~~] to establish or [~~reestablishes diverse~~] reestablish forest stands through natural regeneration, planting, or direct seeding for conservation purposes, windbreaks and sustained [~~timber~~] production of forest products. [~~A list of eligible program practice components includes:~~
 - (A) ~~Site preparation;~~
 - (B) ~~Seedling purchase and/or production;~~
 - (C) ~~Seedling planting;~~
 - (D) ~~Fertilization and/or soil amendments;~~
 - (E) ~~Weed and/or moisture control; and~~
 - (F) ~~Tree seedling protection, including predator control.~~
- (3) Forest and agroforest [~~improvement improves~~] management to improve forest stand productivity, stand vigor, forest health, aesthetic quality, fire prevention, and the value and quality of [~~wood~~] forest products. [~~A list of eligible program practice components includes:~~
 - (A) ~~Release of desirable tree species;~~
 - (B) ~~Noncommercial thinning;~~
 - (C) ~~Control of undesirable plant species;~~
 - (D) ~~Fertilization and/or soil amendments; and~~
 - (E) ~~Tree seedling protection, including predator control.~~
- (4) ~~Windbreak and hedgerow establishment establishes, maintains, and renovates windbreaks and hedgerows to reduce soil erosion and conserve soil and water resources. A list of eligible program practice components includes:~~

- ~~(A) Site preparation;~~
- ~~(B) Seedling purchase and/or production;~~
- ~~(C) Seedling planting~~
- ~~(D) Fertilization and/or soil amendments;~~
- ~~(E) Weed and/or moisture control;~~
- ~~(F) Non-commercial thinning;~~
- ~~(G) Mulching; and~~
- ~~(H) Tree seedling protection, including predator control.]~~

[~~(5)~~] (4) Soil and water protection and improvement [~~maintains or improves~~] to maintain or improve water quality and soil productivity on forested land and along waterways. [~~A list of eligible program practice components includes:~~

- ~~(A) Critical area revegetation;~~
- ~~(B) Mulching;~~
- ~~(C) Water diversion; and~~
- ~~(D) Tree seedling protection, including predator control.]~~

[~~(6)~~] (5) Riparian and wetland protection [~~protects, restores, and improves~~] to protect, restore, and improve wetlands and riparian areas to maintain water quality and enhance habitat. [~~A list of eligible program practice components includes:~~

- ~~(A) Site preparation;~~
- ~~(B) Seedling purchase and/or production;~~
- ~~(C) Seedling planting;~~
- ~~(D) Fertilization and/or soil amendments;~~
- ~~(E) Establish permanent vegetative cover;~~
- ~~(F) Streambank stabilization; and~~
- ~~(G) Tree seedling protection, including predator control.]~~

[~~(7)~~] (6) [~~Wildlife~~] Native fish and wildlife habitat improvement [~~restores, improves, or establishes~~] and management to restore, improve, maintain or establish permanent upland and/or wetland habitat for [~~specific game, non-game, non-native or~~] native fish and wildlife species. [~~A list of eligible program practice components includes:~~

- ~~(A) Control of undesirable plant species;~~
- ~~(B) Site preparation;~~
- ~~(C) Wildlife watering units;~~
- ~~(D) Seedling purchase and/or production;~~
- ~~(E) Seedling planting;~~
- ~~(F) Fertilization and/or soil amendments; and~~
- ~~(G) Tree seedling protection, including predator control.]~~

~~[(8)]~~ (7) Forest recreation enhancement ~~[establishes and enhances]~~ to establish and enhance forest recreation opportunities. ~~[A list of eligible program practice components includes:~~
~~(A) Trail construction~~
~~(b) Harvesting practices, and practices]~~
(8) Invasive species management to control and manage incipient or established invasive species.
(b) The forest stewardship advisory committee shall recommend to the board eligible practices for use under the program.
~~[(b)]~~ (c) ~~[Harvesting practices and practices]~~ Practices involving ~~[Christmas tree or]~~ orchard production are not eligible for program cost-share assistance. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

§13-109-7 ~~[Forest stewardship management plan.]~~ **Forest stewardship management plan.** (a) The forest stewardship management plan shall include:

- (1) Cover sheet. This page lists the applicant's name and address; location of ~~[private]~~ property described in the plan; the name, address, title, and phone number of the person completing the plan; and the date the plan is completed.
- (2) Signature page. This page shall be signed by the applicant, person preparing the plan, and by the administrator certifying that the plan meets the criteria established for the program.
- (3) ~~[Stewardship plan preface.]~~ Executive summary. This ~~[form, when checked off by the person writing the program management plan,]~~ section summarizes the property description, past and current land uses, current forest conditions (e.g., forest type, vegetation, wildlife, forest health, threats, and other resource concerns), landowner vision and goals, and management objectives. ~~[-lists the natural resource values:]~~
 - ~~(A) Reforestation;~~
 - ~~(B) Soil and water quality;~~
 - ~~(C) Agroforestry;~~
 - ~~(D) Forest health;~~
 - ~~(E) Archaeological or cultural resources;~~

~~(F) Wildlife enhancement;~~
~~(G) Threatened and Endangered species; and~~
~~(H) Native resources.~~

~~that the applicant has considered to qualify this program plan as a stewardship project.;~~

- (4) Introduction. This ~~[portion of the plan]~~ section briefly describes ~~[private]~~ the property being dedicated to the program, current and historic land uses, including any commercial uses, elevation, rainfall, topography, the applicant's overall vision and goals, and a concise summary of the applicant's specific forest management objectives.
- (5) Land and resource description. This ~~[portion]~~ section describes the physical and ecological characteristics of the property being dedicated to the program, including existing vegetation, ~~[slope, elevation, aspect,]~~ existing infrastructure, access, soil and watershed conditions, fish and wildlife habitats, threats to forest health and function, forest products, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.
- (6) ~~[Recommended]~~ Management objectives and recommended practices. This ~~[portion]~~ section describes the specific forest management objectives and one or more forest stewardship practices as recommended by the person writing the applicant's program management plan as provided in section 13-109-6(a)(1) to (8).
- (7) Practice implementation schedule. This ~~[portion]~~ section summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. ~~[It]~~ The schedule shall outline the program practices, approved program reimbursements, and the applicant's costs.
- (8) Budget summary. This ~~[portion]~~ section estimates the annual total costs contributed by the program, any other contributing financial assistance program, and applicant for the duration of the approved project implementation period.
- (9) ~~[Program map. A program map or topographic map at one inch equals twenty-four thousand feet scale]~~ Project maps. Maps, such as a location map, project attribute map, and soil map, shall be attached to the ~~[program]~~ forest stewardship management plan. The ~~[map]~~ maps shall delineate the area which the applicant is dedicating to the program. [Eff 1/8/99; am and

comp
\$195F-5)

] (Auth: HRS §195F-8) (Imp: HRS

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 [~~Agreement and conditions.~~] **Agreements and conditions.** (a) The division [~~shall~~] may recommend an agreement, as set forth in 13-109-2, for the applicant's implementation for all or portions of a forest stewardship management plan, pursuant to section 13-109-5(b).

(b) The division may develop, process, and administer an agreement with the applicant for board approval that shall include:

- (1) The scope of work and time of performance to implement program practices;
- (2) The applicant's compensation for implementing approved program practices;
- (3) Amendment procedures to the applicant's forest stewardship management plan;
- (4) Procedures to inspect completed program practices;
- (5) Applicant's program management plan; and
- (6) Other terms and conditions as determined by the board.

[~~The agreement shall be for a minimum of ten years.~~

~~(b)]~~ (c) The agreement, as set forth section 13-109-2, shall be for a minimum of ten years. Depending upon the management objectives, goals, and schedule, the applicant [~~can choose to accept a~~] and division may agree to a longer program management dedication term [~~of greater than 10 years~~]. An agreement, as set forth in section 13-109-2, that includes management practices associated with timber production shall require a management dedication term of a minimum of twenty years.

~~[(e)]~~ (d) Applicants with a board approved forest stewardship management plan and agreement, as set forth in section 13-109-2, subject to availability of funds, shall:

- (1) Receive [~~reimbursed~~] reimbursement payments from the division [~~up to fifty per cent of the total actual costs~~] in an amount not to exceed the limits set forth in §195F-6(a), HRS, to [~~develop and~~] implement practices in the applicant's approved [~~program practices~~] forest stewardship management plan not to exceed a total amount per year per applicant as [~~designated~~] approved by the [~~division,~~] board;

- (2) Be required to ~~[spend]~~ expend the applicant's funds before seeking reimbursement payments from the division~~;~~ and
- ~~(3) Not use other federal, state, or county government program funds for the applicant's fund matching requirements].~~ The applicant may use funds provided by federal, county, or private sector financial and technical assistance programs to fulfill the applicant's cost-share requirement; provided that the funds supplied from all financial and technical assistance programs do not cover more than ninety per cent of the actual cost of forest management practices;
- ~~[(d) Other conditions include:~~
- ~~(1) Reimbursement payments to the applicant shall:]~~
 - ~~[(A) Be]~~ (3) Receive reimbursement payments within the hold-down rates that were established for each program practice ~~[by]~~ based on recommendation of the forest stewardship advisory committee;
 - ~~[(B) Not be made for a management practice that is funded through another government program;]~~
 - ~~[(C) Not be made]~~ (4) Receive reimbursement payments only for [any] work [not] identified in the [program] forest stewardship management plan; and
 - ~~[(D) Not be made]~~ (5) Receive reimbursement payments for program practices implemented [prior] subsequent to the board approving the [program] agreement. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 ~~[Reports.]~~ **Reports.** (a) The applicant shall submit ~~[semiannual]~~ semi-annual progress reports every six months to the division for each year in which the applicant receives program funding. The reports shall detail program accomplishments, areas requiring technical advice, and any proposed modifications to the program management plan and other conditions deemed necessary by the board to implement the purposes of chapter 195F, HRS.

(b) ~~[Upon applicant's submittal of progress reports and program practice invoices,]~~ Before making any reimbursement payments, the division shall have the right to inspect and approve the work on [private] the property after prior notice has been [made] given to the applicant. ~~[Upon approval, the division shall reimburse the applicant an amount up to fifty per cent of the total actual cost to implement approved management~~

~~practices and based on the program budget in the agreement and as provided in section 13-109-8(d)(1)(A) to (D).]~~

(c) In the event that the applicant determines in good faith that it is unable to ~~[fulfill its financial and program management obligations]~~ implement the agreement, the ~~[division]~~ chairperson or her designee or the authorized representative may renegotiate the terms of the agreement with the applicant.

Terms of the agreement shall include:

- (1) Reestablishment of management priorities;
- (2) Deferral or discontinuation of the specified work; or
- (3) An extension of time to accomplish the specified work.
[Eff 1/8/99; am and comp] (Auth: HRS \$195F-8) (Imp: HRS \$1925F-6)

~~§13-109-10 [Penalty payback provisions.]~~ **Penalty payback provisions.** (a) Failure by the applicant to comply with the ~~[management plan and]~~ agreement terms may result in the cancellation of the ~~[forest stewardship designation.]~~ agreement.

(b) In the event that the agreement is cancelled ~~[between the board and applicant]~~, the applicant shall promptly pay the State the following payback and penalty moneys:

- (1) If ~~[the applicant defaults]~~ cancelled in the first three years following the initial date of the agreement, the applicant shall pay back all matching funds to the State;
- (2) If ~~[the applicant defaults]~~ cancelled after the first three years following the initial date of the agreement, the applicant shall pay back matching funds received for the immediately preceding three years to the State; and
- (3) A penalty provision consisting of an interest payment as determined in the agreement between the board and applicant shall be added to the ~~[refund]~~ payment due to the State. ~~[Interest payment shall be calculated on an annual per cent of funds received by the applicant.]~~ [Eff 1/8/99; am and comp]
(Auth: HRS \$195F-8) (Imp: HRS \$195F-7)

~~§13-109-11 [Payback provision for commercial timber production.]~~ **Payback provision for commercial production of timber or other forest products.** If an applicant's primary management objective is commercial ~~[timber]~~ production of timber or other forest products, the board may require as a condition to receiving state matching funds a payback provision that a certain percentage of all matching state funds be paid back to

the State upon each commercial [~~timber~~] harvest as set forth in the [~~contract~~] agreement between the board and the applicant. [~~A commercial timber harvest as used herein is defined as a certain minimum volume of timber removed per acre from a certain minimum acreage of the applicant's property as determined by the division or as set forth in the contract between the board and the applicant.~~] [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

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 109, 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 _____ and filed with the Office of the Lieutenant Governor.

DAWN N. S. CHANG
Director of Department
of Land and Natural
Resources

APPROVED AS TO FORM:

A handwritten signature in black ink, consisting of a stylized 'M' followed by a circular flourish and a horizontal line extending to the right.

Deputy Attorney General

III. NEW BUSINESS

- B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 71, **Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules**, promulgated by Department of Agriculture (DoAG)

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

RECEIVED

By SBRRB at 10:48 am, Sep 08, 2023

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.).
-
-
-
-
-
-
-
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-
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>

Chapter 4-71, Hawaii Administrative Rule Amendments

Board of Agriculture Approved: February 28, 2023

Subject: (1) Placement of the Northern Largemouth Bass, *Micropterus salmoides salmoides*, onto the List of Restricted Animals (Part A) in Chapter 4-71, HAR for Ecosystem and Fishery Impact Research for the Wahiawa Public Fishing Area by the Hawaii Department of Land and Natural Resources; and (2) Proceed with a Public Hearing in Connection with the Proposed Amendment to Chapter 4-71, HAR.

At its meeting on February 28, 2023, the Hawaii Board of Agriculture's (Board) decision to allow the preliminary list placement of northern largemouth bass, *Micropterus salmoides salmoides*, was based on a request from the Hawaii Department of Land and Natural Resources' (DLNR) Division of Aquatic Resources (DAR) for a future ecosystem and fishery impact research pilot project for the Wahiawa Public Fishing Area. At this time, DLNR DAR is only seeking list placement and a review of their import request will undergo the full review process at a future date before being brought before the Board of Agriculture for its final decision.

Since DAR is the primary agency responsible for fisheries stocking, they would like to first do preliminary research within containment away from any bodies of water. DAR wants to ensure that introduction of northern largemouth bass is safe before release.

Specific amendment to Chapter 4-71, HAR, is as follows:

1. Section 4-71-6.5, Permitted Introductions

adds the fish *Micropterus salmoides salmoides* to the List of Restricted Animals (Part A) in preparation for future research by DLNR DAR to determine whether or not this fish is deemed safe to release at the Wahiawa Public Fishing Area.

S4-71-6.5

LIST OF RESTRICTED ANIMALS

APRIL 23, 2019

PART A: FOR RESEARCH AND EXHIBITION

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
INVERTEBRATES	
PHYLUM Annelida	
CLASS Hirudinea	
ORDER Gnathobdellida	
FAMILY Hirudinidae	
<u>Hirudo medicinalis</u>	leech, medicinal
ORDER Rhynchobdellae	
FAMILY Glossiphoniidae	
<u>Helobdella triserialis</u>	leech, small snail
CLASS Oligochaeta	
ORDER Haplotaxida	
FAMILY Euchytraeidae	
Enchytraeidae (all species in family)	worm, white
FAMILY Eudrilidae	
<u>Helodrilus foetidus</u>	earthworm
FAMILY Lumbricidae	
<u>Lumbricus terrestris</u>	earthworm
<u>Allophora</u> (all species in genus)	earthworm
CLASS Polychaeta	
ORDER Phyllodocida	
FAMILY Nereidae	
<u>Nereis japonica</u>	lugworm

RESTRICTED ANIMAL LIST (Part A)

§4-71-6.5

SCIENTIFIC NAMECOMMON NAME

PHYLUM Arthropoda

CLASS Arachnida

ORDER Acari

FAMILY Phytoseiidae

Iphiseius degenerans

predator, spider mite

Mesoseiulus longipes

predator, spider mite

Mesoseiulus macropilis

predator, spider mite

Neoseiulus californicus

predator, spider mite

Neoseiulus longispinosus

predator, spider mite

Typhlodromus occidentalis

mite, western predatory

FAMILY Tetranychidae

Tetranychus lintearius

biocontrol agent, gorse

CLASS Crustacea

ORDER Amphipoda

FAMILY Hyalidae

Parhyale hawaiiensis

amphipod, marine

ORDER Anomura

FAMILY Porcellanidae

Petrolisthes cabrolloi

crab, porcelain

Petrolisthes cinctipes

crab, porcelain

Petrolisthes elongatus

crab, porcelain

Petrolisthes eriomerus

crab, porcelain

Petrolisthes gracilis

crab, porcelain

Petrolisthes granulatus

crab, porcelain

Petrolisthes japonicus

crab, porcelain

Petrolisthes laevigatus

crab, porcelain

Petrolisthes manimaculis

crab, porcelain

Petrolisthes tuberculatus

crab, porcelain

Petrolisthes violaceus

crab, porcelain

ORDER Cladocera

FAMILY Daphnidae

Ceriodaphnia dubia

flea, water

ORDER Mysidacea

FAMILY Mysidae

Mysidopsis bahia

shrimp, mysid

SCIENTIFIC NAMECOMMON NAME

CLASS Insecta	
ORDER Coleoptera	
FAMILY Apionidae	
<u>Apion scutellare</u>	biocontrol agent, gorse
FAMILY Buprestidae	
<u>Lius poseidon</u>	biocontrol agent, clidemia
FAMILY Chrysomelidae	
<u>Chlamisus gibbosa</u>	biocontrol agent, Blackberry
FAMILY Coccinellidae	
<u>Delphastus pusillus</u>	predator, spiraling whitefly
<u>Hippodamia convergens</u>	beetle, convergent lady
<u>Nephaspis oculatus</u>	predator, spiraling whitefly
<u>Nephaspis bicolor</u>	predator, spiraling whitefly
<u>Stethorus nigripes</u>	predator, spider mites
<u>Stethorus picipes</u>	predator, spider mites
FAMILY Curculionidae	
<u>Acythopeus</u> sp. 1	biocontrol agent, ivy gourd
<u>Acythopeus</u> sp. 2	biocontrol agent, ivy gourd
<u>Acythopeus</u> sp. 3	biocontrol agent, ivy gourd
<u>Auletobius convexifrons</u>	biocontrol agent, firetree
<u>Gymnaetron tetrum</u>	biocontrol agent, common mullein
FAMILY Scarabaeidae	
<u>Euoniticellus intermedius</u>	predator, hornfly
<u>Onitis vanderkelleni</u>	predator, horn fly
ORDER Diptera	
FAMILY Chamaemyiidae	
<u>Leucopis</u> (all species in subgenus)	predator

SCIENTIFIC NAMECOMMON NAME

FAMILY Drosophilidae

Drosophila (all species in genus)
Zapriothrica sp.

flies, pomace
 biocontrol agent, banana
 poka

FAMILY Lonchaeidae

Dasiops curubae

biocontrol agent, banana
 poka

FAMILY Muscidae

Musca domestica

house fly

FAMILY Tephritidae

Ceratitus capitata
Urophora stylata

fly, Mediterranean fruit
 biocontrol agent, bull
 thistle

ORDER Heteroptera

FAMILY Anthocoridae

Orius tristicolor

bug, minute pirate

ORDER Homoptera

FAMILY Eriococcidae

Tectococcus ovatus

biocontrol agent,
 strawberry guava

ORDER Hymenoptera

FAMILY Aphelinidae

Aphelinus (all species in genus)
Cales noacki

parasite, aphid
 parasite, woolly
 whitefly

Encarsia formosa

parasite, greenhouse
 whitefly

Encarsia guadeloupae

parasite, spiraling
 whitefly

Encarsia haitiensis

parasite, spiraling
 whitefly

Encarsia lutea

parasite, sweetpotato
 whitefly

Encarsia mineoi

parasite, sweetpotato
 whitefly

Encarsia pergandiella

parasite, greenhouse
 whitefly

SCIENTIFIC NAMECOMMON NAMEMesidia (all species in genus)

parasite, aphid

Mesidiopsis (all species in genus)

parasite, aphid

Protaphelinus (all species
in genus)

parasite, aphid

FAMILY Aphidiidae

Aphidiidae (all species in
family)

parasite, aphid

FAMILY Bethylidae

Cephalonomia stefanoderis
(lab-reared strains)parasite, tropical nut
borerProrops nasuta
(lab-reared strains)parasite, tropical nut
borer

FAMILY Braconidae

Apanteles gelechiidivorus

parasite, tomato pinworm

Apanteles scutellaris

parasite, tomato pinworm

Diachasmimorpha tryoni

wasp, parasitic

Fopius ceratitivorus

biocontrol agent,

Mediterranean fruit fly

Heterospilus coffeicola
(lab-reared strains)parasite, tropical nut
borerOpius dissitus

parasite, leafminer

Opius dimidiatus

parasite, leafminer

Orgilus elasmopalpi

parasite, lesser

cornstalk borer

Parahormius pallidipes

parasite, tomato pinworm

Pseudapanteles dignus

parasite, tomato pinworm

Psytallia insignipennis

parasite, Medfly

FAMILY Cynipidae

Ganaspidium utilis

parasite, leafminer

FAMILY Encyrtidae

Copidosoma truncatellumparasite, green garden
loopersPsyllaephagus yaseeni

parasite, leucaena

psyllid

Zeteticontus utilis

parasite, souring

beetles

FAMILY Eulophidae

Chrysocharis oscinidis

parasite, leafminer

Chrysonotomyia punctiventris

parasite, leafminer

Diaulinopsis callichroma

parasite, leafminer

SCIENTIFIC NAMECOMMON NAME

Diglyphus begini
Horismenus elineatus

parasite, leafminer
 parasite, lesser
 cornstalk borer
 parasite, leafminer
 parasite, tropical nut
 borer
 parasite, tomato pinworm
 parasite, blue coconut
 leaf beetle

FAMILY Ichneumonidae

Diadegma aemiclausum

parasite, diamondback
 moth

Diadegma collaris

parasite, diamondback
 moth

FAMILY Platygasteridae

Amitas ?spiniferus

parasite, woolly
 whitefly

FAMILY Pteromalidae

Halticoptera patellana

parasite, leafminer

FAMILY Tenthredinidae

Priophorus morio

biocontrol agent,
 blackberry

ORDER Isoptera

FAMILY Rhinotermitidae

Coptotermes formosanus

termite, Formosan
 subterranean

ORDER Lepidoptera

FAMILY Carposinidae

Carposinia bullata

biocontrol agent,
 Koster's curse

FAMILY Coleophoridae

Coleophora klimeschiella

biocontrol agent,
 Russian thistle

Coleophora parthenica

biocontrol agent,
 Russian thistle

RESTRICTED ANIMAL LIST (Part A)

§4-71-6.5

SCIENTIFIC NAMECOMMON NAME

FAMILY Crambidae

Pyrausta perelegansbiocontrol agent, banana
poka

FAMILY Diptoridae

Josia ligatabiocontrol agent, banana
pokaJosia fluoniabiocontrol agent, banana
poka

FAMILY Gracillariidae

Caloptilia schinellabiocontrol agent,
firetreePhyllonorycter myricaebiocontrol agent,
firetree

FAMILY Momphidae

Mompha trithalamabiocontrol agent,
Koster's curse

FAMILY Noctuidae

Antiblemma acclinalisbiocontrol agent,
Koster's curseCucullia verbascibiocontrol agent,
common mullein

FAMILY Notodontidae

Cyanotricha necyriabiocontrol agent, banana
poka

FAMILY Oecophoridae

Agonopterix utlicetella

biocontrol agent, gorse

FAMILY Pyralidae

Ephestia kuehniellamoth, Mediterranean
flourGalleria mellonella

moth, greater wax

Pempelia genistella

biocontrol agent, gorse

FAMILY Scythrididae

Scythris gallicella

biocontrol agent, gorse

FAMILY Sesiidae

Melittia oedipusbiocontrol agent, ivy
gourdPennisetia marginatabiocontrol agent,
blackberry

SCIENTIFIC NAMECOMMON NAME

FAMILY Tortricidae
Cryptophlebia ombrodelta

moth, litchi fruit

ORDER Thysanoptera
 FAMILY Thripidae
Scolothrips sexmaculatus
Sericothrips staphylinus

thrips, sixspotted
 biocontrol agent, gorse

CLASS Crustacea
 ORDER Decapoda
 FAMILY Alpheidae
Athanas (all species in genus)

shrimp, anemone

FAMILY Cambaridae
Cambarus (all species in genus)

crayfish

FAMILY Coenobitidae
Birgus latro
Coenobita brevimanus
Coenobita perlatus

crab, coconut
 crab, hermit
 crab, hermit

FAMILY Gecarcinidae
Cardisoma carnifex
Cardisoma guanhumi
Gecarcoides lalandii

crab, land
 crab, great land
 crab, land

FAMILY Hippolytidae
Thor amoinensis
Thor paschalis

shrimp, anemone
 shrimp, anemone

FAMILY Majidae
Mithrax spinosissimus

crab, herbivorous;
 spider, spiny

FAMILY Ocypodidae
Uca (all species in genus)

crab, fiddler

FAMILY Palaemonidae
Periclimenes brevicarpalis
Periclimenes longirostris
Periclimenes ornatus
Periclimenes paraornatus

shrimp, anemone
 shrimp, anemone
 shrimp, anemone
 shrimp, anemone

SCIENTIFIC NAMECOMMON NAMEPericlimenes tunipes

shrimp, anemone

CLASS Merostomata

ORDER Xiphosura

FAMILY Limulidae

Limulus polyphemus

crab, horseshoe

PHYLUM Chordata

CLASS Ascidiacea

ORDER Aplousobranchia

FAMILY Didemnidae

Lissoclinum patellum

tunicates (sea squirts)

PHYLUM Cnidaria

CLASS Anthozoa

ORDER Actinaria

FAMILY Actiniidae

Actiniidae (all species in family)

anemone, sea

FAMILY Edwardsiidae

Nematostella vectensis

anemone, starlet sea

FAMILY Stichodactylidae

Stichodactylidae (all species
in family)

anemone, sea

FAMILY Thalassianthidae

Thalassianthidae (all species
in family)

anemone, sea

ORDER Alcyonacea

FAMILY Acanthogorgiidae

Acanthogorgiidae (all species
in family)

gorgonian

FAMILY Alcyoniidae

Alcyoniidae (all species in family,
except Sarcophyton ehrenbergi,
S. glaucum, S. trocheliophorum)

coral, leather

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Asterozoniariidae Asterozoniariidae (all species in family)	coral, leather
FAMILY Briareidae Briareidae (all species in family)	gorgonian
FAMILY Clavulariidae Clavulariidae (all species in family)	polyp, star
FAMILY Cornulariidae Cornulariidae (all species in family)	polyp, star
FAMILY Ellisellidae Ellisellidae (all species in family)	gorgonian
FAMILY Gorgoniidae Gorgoniidae (all species in family)	gorgonian
FAMILY Isidadae Isidadae (all species in family)	gorgonian
FAMILY Melithaeidae Melithaeidae (all species in family)	gorgonian
FAMILY Nephtheidae Nephtheidae (all species in family)	coral, tree
FAMILY Nidaliidae Nidaliidae (all species in family)	coral, tree
FAMILY Paralcyniidae Paralcyniidae (all species in family)	coral, Christmas tree
FAMILY Subergordiidae Subergordiidae (all species in family)	gorgonian
FAMILY Tubiporidae Tubiporidae (all species in family)	coral, red pipe organ
FAMILY Xenidae	

RESTRICTED ANIMAL LIST (Part A)

§4-71-6.5

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Xeniidae (all species in family)	coral, pulse
ORDER Antipatharia Antipatharia (all species in order)	coral, black and whip
ORDER Ceriantharia Ceriantharia (all species in order)	anemone, tube
ORDER Corallimorpharia FAMILY Discosomatidae Discosomatidae (all species in family)	anemone, mushroom in
FAMILY Ricordeidae Ricordeidae (all species in family)	anemone, mushroom
ORDER Helioporacea FAMILY Helioporidae <u>Heliopora coerula</u>	coral, blue
ORDER Pennatulacea Pennatulacea (all species in order)	sea pen
ORDER Scleractinia FAMILY Acroporidae Acroporidae (all species in family, except <u>Acropora aspersa</u> , <u>A. austera</u> , <u>A. elseyi</u> , <u>A. formosa</u> , <u>A. microphthalma</u> , <u>A. nana</u>)	coral, staghorn
FAMILY Agariciidae Agariciidae (all species in family)	coral
FAMILY Astrocoeniidae Astrocoeniidae (all species in family)	coral
FAMILY Caryophylliidae Caryophylliidae (all species in family)	coral

RESTRICTED ANIMAL LIST (Part A)

§4-71-6.5

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Dendrophylliidae Dendrophylliidae (all species in family)	coral
FAMILY Faviidae Faviidae (all species in family)	coral
FAMILY Fungiidae Fungiidae (all species in family)	coral, mushroom
FAMILY Merulinidae Merulinidae (all species in family)	coral
FAMILY Mussidae Mussidae (all species in family)	coral
FAMILY Oculinidae Oculinidae (all species in family)	coral
FAMILY Pectiniidae Pectiniidae (all species in family)	coral
FAMILY Pocilloporidae Pocilloporidae (all species in family)	coral
FAMILY Poritidae Poritidae (all species in family)	coral
FAMILY Siderastreidae Siderastreidae (all species in family)	coral
FAMILY Trachyphylliidae Trachyphylliidae (all species in family)	coral
ORDER Zoantharia	
FAMILY Epizoanthidae Epizoanthidae (all species in family)	polyp, button
FAMILY Parazoanthidae Parazoanthidae (all species in family)	polyp, button

RESTRICTED ANIMAL LIST (Part A)

§4-71-6.5

SCIENTIFIC NAMECOMMON NAME

FAMILY Zoanthidae

Zoanthidae (all species in family)

polyp, button

CLASS Hydrozoa

ORDER Hydroidea

FAMILY Stylasteridae

Stylasteridae (all species in family)

coral, lace

CLASS Scyphozoa

ORDER Rhizostomeae

Rhizostomeae (all species in order)

jellyfish

ORDER Semaestomeae

Semaestomeae (all species in order)

jellyfish

PHYLUM Echinodermata

CLASS Crinoidea

Crinoidea (all species in class)

crinoid

CLASS Echinoidea

Echinoidea (all species in class)

echinoderm

PHYLUM Echiuroida

CLASS Echiura

ORDER Xenopneusta

FAMILY Urechidae

Urechis caupo

worm, innkeeper

PHYLUM Mollusca

CLASS Bivalvia

ORDER Arcoida

FAMILY Arcidae

SCIENTIFIC NAMECOMMON NAMEAnadara maculosa

clam, Fiji

ORDER Veneroida

FAMILY Veneridae

Gafarium tumidum

clam, Fiji

CLASS Cephalopoda

ORDER Nautilida

FAMILY Nautilidae

Nautilus belauensis

nautilus

Nautilus pompilius

nautilus

ORDER Octopoda

FAMILY Octopodidae

Octopus sp. 19 [Norman 2000]

octopus, mimic

Octopus sp. 20 [Norman 2000]

octopus, "Wunderpus"

ORDER Sepioidea

FAMILY Idiosepiidae

Idiosepius paradoxus

squid, northern pygmy

Idiosepius pygmaeus

squid, two-tone pygmy

FAMILY Sepiadariidae

Sepioloidea lineolata

squid, striped pyjama

FAMILY Sepiidae

Sepia (all species in genus)

cuttlefish

ORDER Teuthoidea

FAMILY Loliginidae

Sepioteuthis lessoniana

squid, baby

CLASS Gastropoda

ORDER Anaspidea

FAMILY Aplysiidae

Aplysia californica

sea hare, California

SCIENTIFIC NAMECOMMON NAME

ORDER Mesogastropoda

FAMILY Ampullariidae

<u>Pila ampullacea</u>	snail, apple
<u>Pila angelica</u>	snail, apple
<u>Pila conica</u>	snail, apple
<u>Pila luzonica</u>	snail, apple
<u>Pila polita</u>	snail, apple
<u>Pila scutata</u>	snail, apple
<u>Pomacea</u> (all species in genus)	snail, apple

FAMILY Cypraeidae

Cypraeidae (all species in family)	cowry
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FAMILY Strombidae

<u>Lambis lambis</u>	conch
<u>Strombus luhuanus</u>	conch

FAMILY Vermetidae

<u>Dendropoma gregaria</u>	vermetid
<u>Dendropoma meroclista</u>	vermetid
<u>Dendropoma platypus</u>	vermetid
<u>Dendropoma psarocephala</u>	vermetid
<u>Petalconchus keenae</u>	vermetid
<u>Serpulorbis variabilis</u>	vermetid

ORDER Neogastropoda

FAMILY Conidae

<u>Conus marmoreus</u>	snail, marine
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FAMILY Muricidae

<u>Drupa morum</u>	snail, marine
<u>Drupa ricina</u>	snail, marine

ORDER Pulmonata

FAMILY Vaginulidae

<u>Vaginulus plebeius</u>	slug, land
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PHYLUM Nemata (=Nematoda)

CLASS Adenophorea

ORDER Mermithida

FAMILY Mermithidae

<u>Romanomermis culicivorax</u>	nematode, mosquito
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SCIENTIFIC NAMECOMMON NAME

ORDER Trichocephalida	
FAMILY Trichinellidae	
<u>Trichinella spiralis</u>	nematode
FAMILY Trichuridae	
<u>Capillaria</u> (all species in genus)	nematode
CLASS Secernentea	
ORDER Ascaridida	
FAMILY Anisakidae	
<u>Anisakis</u> (all species in genus)	nematode
FAMILY Ascarididae	
<u>Ascaris lumbricoides</u>	nematode
FAMILY Dioctophymatidae	
<u>Dioctophyma renale</u>	nematode
FAMILY Toxocaridae	
<u>Toxocara</u> (all species in genus)	nematode
ORDER Camallanida	
FAMILY Dracunculidae	
<u>Dracunculus medinensis</u>	nematode
ORDER Rhabditida	
FAMILY Cephalobidae	
<u>Chiloplacus</u> (all species in genus)	nematode, free living
<u>Panagrellus</u> (all species in genus)	nematode, saprophytic
<u>Turbatrix aceti</u>	eel, vinegar
<u>Turbatrix silusae</u>	microworm
FAMILY Heterorhabditidae	
<u>Heterorhabditis bacteriophora</u>	nematode, entomogenous
<u>Heterorhabditis megides</u>	nematode, entomogenous
FAMILY Steinernematidae	
<u>Neoaplectana</u> (all species in genus)	nematode, entomogenous
<u>Steinernema</u> (all species in genus except <u>S. carpocapsae</u>)	nematode, entomogenous

SCIENTIFIC NAMECOMMON NAME

ORDER Strongylida	
FAMILY Ancylostomatidae	
<u>Ancylostoma</u> (all species in genus)	nematode
FAMILY Metastrongylidae	
<u>Angiostrongylus costaricensis</u>	nematode, rat
FAMILY Strongyloididae	
<u>Strongyloides</u> (all species in genus)	nematode
FAMILY Uncinariidae	
<u>Necator americanus</u>	nematode
ORDER Tylenchida	
FAMILY Allantonematidae	
<u>Heterotylenchus autumnalis</u>	nematode, entomogenous
FAMILY Criconeematidae	
<u>Meloidogyne incognita</u>	nematode, root-knot
PHYLUM Platyhelminthes	
CLASS Catenulida	
ORDER Turbellaria	
FAMILY Stenostomidae	
<u>Stenostomum</u> (all species in genus)	flatworm
CLASS Cestoda	
ORDER Cyclophyllidea	
FAMILY Dilepididae	
<u>Dipylidium caninum</u>	cestode
FAMILY Taeniidae	
<u>Taenia</u> (all species in genus)	cestode
<u>Echinococcus</u> (all species in genus)	cestode
ORDER Pseudophyllidea	
FAMILY Diphyllbothriidae	
<u>Diphyllbothrium latum</u>	cestode

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
CLASS Trematoda	
ORDER Echinostomida	
FAMILY Fasciolidae	
<u>Fasciola hepatica</u>	trematode
<u>Fasciolopsis buski</u>	trematode
FAMILY Gastrodiscidae	
<u>Gastrodiscoides hominis</u>	trematode
ORDER Opisthorchiida	
FAMILY Heterophyidae	
<u>Heterophyes heterophyes</u>	trematode
FAMILY Opisthorchiidae	
<u>Opisthorchis viverrini</u>	trematode
ORDER Plagiorchiida	
FAMILY Paragonimidae	
<u>Paragonimus</u> (all species in genus)	trematode
ORDER Strigeidida	
FAMILY Schistosomatidae	
<u>Schistosoma</u> (all species in genus)	trematode

AMPHIBIANS

PHYLUM Chordata	
CLASS Amphibia	
ORDER Caudata	
FAMILY Ambystomidae	
<u>Ambystoma jeffersonianum</u>	salamander, mole
<u>Ambystoma texanum</u>	salamander, mole
FAMILY Cryptobranchidae	
<u>Andrias japonicus</u>	salamander, Japanese giant
<u>Andrias</u> (Megalobatrachus)	salamander, Chinese
<u>japonicus davidianus</u>	giant

SCIENTIFIC NAMECOMMON NAMECryptobranchus alleganiensis

salamander, hellbender

FAMILY Plethodontidae

Eurycea longicauda

salamander, long-tailed

FAMILY Salamandridae

Echinotriton andersoni

newt, spiny

Notophthalmus viridescens

newt, red-spotted

ORDER Salientia

FAMILY Bufonidae

Bufo (all species in genus)

toad

FAMILY Discoglossidae

Bombina maximatoad, giant fire-
belliedBombina orientalis

toad, fire-bellied

FAMILY Hylidae

Agalychnis annae

treefrog, yellow-eyed

Agalychnis callidryas

treefrog, red-eyed

Pachymedusa dacnicolor

treefrog, Mexican giant

Smilisca baudini smiliscatreefrog, mottled
(Mexican)

FAMILY Leptodactylidae

Ceratophrys calcarata

frog, Columbian horned

Ceratophrys ornata

frog, ornate horned

Leptodactylus pentadactylus

bullfrog, South American

FAMILY Microhylidae

Dyscophus (all species in genus)

frog, tomato

Kaloula mediolineatatoad, Siamese-painted
toad, Malayan narrow-
Mouthed

FAMILY Pelobatidae

Megophrys montana nasuta

frog, Siamese-horned

Megophrys monticola nasuta

frog, Asian-horned

FAMILY Pipidae

Pipa pipa

toad, Surinam

Xenopus laevis

frog, African clawed

FAMILY Ranidae

SCIENTIFIC NAMECOMMON NAMEPyxicephalus adspersusbullfrog, (African grove
crown)

FAMILY Rhacophoridae

Kassina maculata

frog, spotted running

Mantella (all species in genus)

frog, golden

Rhacophorus (Polypedates)

frog, bamboo climbing

leucomystax(gold) (white-bearded
flying)

REPTILES

PHYLUM Chordata

CLASS Reptilia

ORDER Crocodylia

FAMILY Crocodylidae

Alligator mississippiensis

alligator, American

(Prohibited for short-term
performance or exhibition in
circuses, carnivals, or state
fairs. Allowed for short-term
performance for commercial
filming, for exhibition in
government zoos, or for other
purposes permitted under section
4-71-6.5)Caiman crocodilus

caiman, spectacled

(Prohibited for short-term
performance or exhibition in
circuses, carnivals, or state
fairs. Allowed for short-term
performance for commercial
filming, for exhibition in
government zoos, or for other
purposes permitted under
section 4-71-6.5)Crocodylus (all species in genus)

crocodile

(Prohibited for short-term
performance or exhibition
in circuses, carnivals, or
state fairs. Allowed for

SCIENTIFIC NAMECOMMON NAME

short-term performance for
commercial filming, for
exhibition in government
zoos, or for other purposes
permitted under section 4-
71-6.5)

Gavialis gangeticus

gavial, garial

(Prohibited for short-term
performance or exhibition in
circuses, carnivals, or state
fairs. Allowed for short-term
performance for commercial
filming, for exhibition in
government zoos, or for other
purposes permitted under section
4-71-6.5)

ORDER Squamata

Two non-venomous male snakes in
the suborder Serpentes for
exhibition in a government zoo

snakes, non-venomous

FAMILY Agamidae

Acanthosaura armata

lizard, mountain horned

Agama agama

lizard, common agama

Agama atricollislizard, South African
agamaAgama stellio

hardum

Calotes calotes

lizard, sawback agamidae

Ceratophora stoderti

lizard, horned agama

Ctenophor (Amphibolurus)

lizard, crested dragon

cristatusCtenophor (Amphibolurus)lizard, lozenge marked
dragonscutulatusDraco (all species in genus)

lizard, flying dragon

Gonocephalus borniensislizard, horn-headed tree
dragonHydrosaurus (all species in genus)

lizard, sailfin

Leiolepis bellianalizard, smooth-scaled
agama, butterflyLeiolepis rubritaeniata

lizard, giant ground

Moloch horridus

lizard, thorny devil

Physignathus cocincinuslizard, Malayan water
dragonPhysignathus lesueuri

lizard, brown water

SCIENTIFIC NAMECOMMON NAME

<u>Pogona (Amphibolurus) barbatus</u>	dragon lizard, Australian
<u>Pogona (Amphibolurus) nullarbor</u>	Bearded dragon lizard, Nullarbor
<u>Pogona (Amphibolurus) vitticeps</u>	bearded dragon dragon, inland bearded
FAMILY Anguidae	
<u>Gerrhonotus (Elguria) multicarinata</u>	lizard, southern alligator
<u>Ophisaurus ventralis</u>	lizard, eastern glass
FAMILY Chamaeleonidae	
<u>Chamaeleo chamaeleon</u>	chameleon, common
<u>Furcifer oustaleti</u> (<u>Chamaeleo oustaleti</u>)	chameleon, Oustalet's
FAMILY Colubridae	
<u>Boiga irregularis</u> (four sterile snakes for research or training of snake detector dogs)	snake, brown tree male
FAMILY Cordylidae	
<u>Cordylus cataphractus</u>	lizard, armadillo
<u>Cordylus giganteus</u>	lizard, sun gazer
<u>Cordylus warreni</u>	lizard, Warrens girdled
<u>Gerrhosaurus flavigularis</u>	lizard, yellow-throated plated
<u>Gerrhosaurus major</u>	lizard, tawny plated
<u>Gerrhosaurus nigrolineatus</u> plated	lizard, black-lined
FAMILY Gekkonidae	
<u>Chondrodactylus angulifer</u>	gecko, sand
<u>Coleonyx elegans</u>	gecko, elegant banded
<u>Coleonyx variegatus</u>	gecko, western banded
<u>Cyrtodactylus pulchellus</u>	gecko, Malayan banded (naked-toe)
<u>Cyrtodactylus louisadensis</u>	gecko, naked-finger
<u>Diplodactylus spinigerus</u>	gecko, West Australian spiny-tailed (zig-zag)
<u>Eublepharis macularius</u>	gecko, leopard
<u>Gehyra mutilata</u> (Peropus)	gecko, stump-toed
<u>Gekko gekko</u>	gecko, tokay

SCIENTIFIC NAMECOMMON NAME

<u>Gekko stentor</u>	gecko, giant
<u>Gymnodactylus penguensis</u>	gecko, leopard's (bent-toe)
<u>zebraic</u>	
<u>Hemidactylus frenatus</u>	gecko, house
<u>Hemidactylus garnoti</u>	gecko, Indo-Pacific
<u>Hemiphyllodactylus typus</u>	gecko, tree
<u>Hemitheconyx caudicinctus</u>	gecko, African fat-tailed
<u>Homopholus walbergi</u>	gecko, Wallberg's velvety
<u>Nephruerus</u> (all species in genus)	gecko, knob-tailed
<u>Oedura lesueuri</u>	gecko, Lesueur's velvet
<u>Oedura marmorata</u>	gecko, velvet
<u>Oedura robusta</u>	gecko, robust velvet
<u>Pachydactylus bibroni</u>	gecko, Bibron's
<u>Phelsuma abbotti</u>	gecko, Aldabra day
<u>Phelsuma cepediana</u>	gecko, blue-tailed day
<u>Phelsuma guimbeaui</u>	gecko, orange-spotted day
<u>Phelsuma laticauda</u>	gecko, gold dust day
<u>Phelsuma madagascariensis</u>	gecko, Madagascar day
<u>Phelsuma ornata</u>	gecko, Reunion Island day (ornate day)
<u>Phyllurus cornutus</u>	gecko, northern leaf-tailed
<u>Phyllurus platurus</u>	gecko, southern leaf-tailed
<u>Ptychozoon kuhli</u>	gecko, flying
<u>Ptychozoon lionotum</u>	gecko, flying
<u>Rhacodactylus leachianus</u>	gecko, New Caledonia giant
<u>Thecadactylus rapicauda</u>	gecko, turnip-tailed
<u>Underwoodsauros mili</u>	gecko, turnip-tailed
<u>Uroplatus</u> (all species in genus)	gecko, flat-tailed
FAMILY Iguanidae	
<u>Anolis equestris</u>	lizard, knight anole
<u>Basiliscus basiliscus</u>	lizard, brown basilisk
<u>Basiliscus plumifrons</u>	lizard, green basilisk (double crested)
<u>Basiliscus vittatus</u>	lizard, banded basilisk
<u>Brachylophus fasciatus</u>	iguana, Tongan (Fiji banded)
<u>Callisaurus draconoides</u>	lizard, zebra-tailed
<u>Corytophanes cristatus</u>	iguana, helmeted
<u>Crotaphytus collaris</u>	lizard, collared
<u>Ctenosaura similis</u>	iguana, spiny-tailed

SCIENTIFIC NAMECOMMON NAMECyclura macleayiiguana, Cuban
(rhinoceros)Dipsosaurus dorsalis

iguana, desert

Enyaliosaurus quinquecarinatus

iguana, club tail

Gambelia wislizenilizard, long-nosed
leopardHolbrookia maculatalizard, lesser earless
iguanaIguana (all species in genus)Phrynosoma (all species in genus)lizard, horned (horned
toad)Sauromalus obesus

lizard, chuckwalla

Sauromalus varius

lizard, chuckwalla

Sceloporus clarki

lizard, Clark's spiny

Sceloporus jarrovi

lizard, Yarrow's spiny

Sceloporus magister

lizard, desert spiny

Sceloporus occidentalis

lizard, western fence

Sceloporus orcutti

lizard, granite spiny

Urosaurus ornatus

lizard, tree

Uta stansburiana

lizard, side-blotched

FAMILY Lacertidae

Lacerta lepida

lizard, jeweled lacerta

Lacerta sicula

lizard, European wall

Lacerta viridis

lizard, green

Takydromus sexlineatuslizard, long-tailed
(oriental six-lined
runner)

FAMILY Pygopodidae

Delma imparlizard, smooth-scaled
scaleyfootLialis burtonis

lizard, Burton's snake

Pygopus lepidopoduslizard, common scaley-
foot

FAMILY Scincidae

Acontias percivalilizard, East African
leglessCorucia zebrata

skink, green tree

Cryptoblepharus boutoni

skink, snake-eyed

Cyclodomorphus (Tiliqua) branchialisskink, West Australian
short-limbedDasia smaragdinaskink, spotted green
treeEgernia cunninghami

skink, Cunningham's

Egernia stokesii

skink, gidgee

SCIENTIFIC NAMECOMMON NAMEEmoia cyanuraskink, blue-tailed
slenderEumeces obsoletus

skink, Great Plains

Leiolopisma metallicum

skink, metallic

Lipinia noctua

skink, moth

Mabuya capensis

skink, South African

Mabuya capensisskink, South African
blue-tailedMabuya macularia

skink, orange-throated

Omolepida (Tiliqua) branchialisskink, Australian
short-limbedTiliqua nigroluteaskink, blotched- blue-
tonguedTiliqua occipitalisskink, West Australian
blue-tonguedTiliqua scincoides

skink, blue-tongued

Trachysaurus rugosus (Tiliqua rugosus)

skink, shingle back

FAMILY Teiidae

Ameiva ameiva

lizard, jungle runners

Callopistes maculatus

lizard, monitor tegu

Cnemidophorus tessellatuslizard, checkered
whiptailCnemidophorus tigris

lizard, western whiptail

Tubinambis nigropunctatus

lizard, golden tegu

Tupinambis rufescens

lizard, tegu red

Tupinambis teguixin

lizard, tegu black

FAMILY Varanidae

Varanus acanthurus

monitor, spiny-tailed

Varanus bengalensis

monitor, Bengal

Varanus dumerili

monitor, Dumeril's

Varanus exanthematicus

monitor, savannah

Varanus giganteus

monitor, Perentee

Varanus gouldi

monitor, Gould's

Varanus indicus

monitor, Pacific

Varanus komodoensis

monitor, komodo

Varanus niloticus

monitor, Nile

Varanus salvadori

monitor, crocodile

Varanus salvator

monitor, water

Varanus storrimonitor, pygmy (Storr's
dwarf)Varanus varius

monitor, variegated

ORDER Testudines

SCIENTIFIC NAMECOMMON NAME

FAMILY Chelidae

Chelus fimbriatus

turtle, mata mata

Emydura albertisiturtle, New Guinea snake
neckPodocnemis unifilisturtle, yellow-spotted
Amazon

FAMILY Chelydridae

Chelydra serpentina

turtle, snapping

Macroclemys temminckiturtle, alligator
snapping

FAMILY Emydidae

Heosemys grandis

turtle, Asian temple

FAMILY Pelomedusidae

Pelomedusa subrufa olivacea

turtle, helmeted

Pelusios (all species in genus)terrapins, African
Hinged

FISHES

PHYLUM Chordata

CLASS Chondrichthyes

ORDER Carcharhiniformes

FAMILY Carcharhinidae

Carcharhinus amblyrhynchos

shark, gray reef

Carcharhinus galapagensis

shark, Galapagos

Carcharhinus longimanus

shark, oceanic whitetip

Carcharhinus limbatus

shark, blacktip

CLASS Osteichthyes

ORDER Acipenseriformes

FAMILY Acipenseridae

Acipenser baeri

sturgeon, Siberian

Acipenser brevirostrum

sturgeon, shortnose

Acipenser fulvescens

sturgeon, lake

Acipenser guldenstadti

sturgeon, Russian

Acipenser guldenstadti x Huso huso

sturgeon, Okeber

Acipenser medirostris

sturgeon, green

Acipenser oxyrinchus

sturgeon, Atlantic

SCIENTIFIC NAMECOMMON NAMEAcipenser ruthenussturgeon, Siberian;
sterletAcipenser ruthenus x Huso huso

sturgeon, Bester

Acipenser stellatussturgeon, Sevruga
(starry)Huso huso

sturgeon, Beluga

Scaphirhynchus albus

sturgeon, pallid

Scaphirhynchus platorhynchus

sturgeon, shovelnose

FAMILY Polyodontidae

Polyodon spathula

paddlefish

ORDER Atheriniformes

FAMILY Atherinidae

Menidia beryllina

silverside

ORDER Cypriniformes

FAMILY Cyprinidae

Notemigonus crysoleucas

minnow, golden shiner

Pimephales promelas

minnow, fathead

FAMILY Erythrinidae

Hoplias malabaricus

tiger fish

ORDER Perciformes

FAMILY Centrarchidae

Micropterus salmoides salmoidesbass, northern largemouth

FAMILY Mugilidae

Mugil cephalus

mullet, striped

FAMILY Nototheniidae

Dissostichus mawsoni

cod, Antarctic

Notothenia (all species in genus)

cod, Antarctic

FAMILY Siganidae

Lo magnificusfoxface, white
(rabbitfish)Lo uspifoxface, bicolor
(rabbitfish)Lo vulpinus

lo, foxface (rabbitfish)

Siganus corallinus

rabbitfish, spotted

Siganus lineatus

goldenspot

Siganus puellus

rabbitfish, blueline

SCIENTIFIC NAMECOMMON NAME

Siganus vermiculatus
Siganus vermiculatus
Siganus virgatus

rabbitfish, vermiculated
 rabbitfish, spinefoot
 rabbitfish, barhead

ORDER Siluriformes

FAMILY Clariidae

Clarias fuscus

catfish, Chinese

ORDER Synbranchiformes

FAMILY Synbranchidae

Monopterus albe

eel, rice paddy

BIRDS

(Taxonomy after Sibley and Monroe 1990)

PHYLUM Chordata

CLASS Aves

ORDER Anseriformes

FAMILY Anatidae

Anas platyrhynchos

duck, mallard

FAMILY Anhimidae

Chauna chavaria

screamer, black-necked

ORDER Apterygiformes

FAMILY Apterygidae

Apteryx australis

kiwi, common zoi (brown)

ORDER Caprimulgiformes

FAMILY Podargidae

Batrachostomus javensis

Podargus strigoides

frogmouth, Javan

frogmouth, tawny

ORDER Casuariiformes

FAMILY Casuariidae

Casuarus (all species in genus)

cassowarie

SCIENTIFIC NAMECOMMON NAME

FAMILY Dromaiidae
Dromaius novaehollandiae

emu, common

ORDER Charadriiformes
 FAMILY Burhinidae
Burhinus bistriatus

thick-knee, double-
 striped
 cape thick-knee

Burhinus capensis

FAMILY Charadriidae
Pluvialis dominica
Vanellus armatus
Vanellus spinosus

plover, lesser golden
 plover, blacksmith
 plover, African
 spur-wing (spur-winged
 lapwing)

FAMILY Glareolidae
Glareola pratincola

pratincoles, collared

FAMILY Haematopidae
Haematopus ostralegus

oyster catcher,
 European

FAMILY Jacanidae
Actophilornis africana

jacana, African

FAMILY Laridae
Anous stolidus
Gygis alba
Larosterna inca
Larus atricilla
Larus californicus
Larus heermanni
Procelsterna cerulea
Sterna fuscata
Sterna sumatrana
Thalasseus maximus

tern, brown noddy
 tern, fairy
 tern, Inca
 gull, laughing
 gull, California
 gull, Heermans
 noddy, blue-grey
 tern, sooty
 tern, black-naped
 tern, royal

FAMILY Recurvirostridae
Himantopus himantopus
Himantopus mexicanus

stilt, black-winged
 stilt, black-necked

FAMILY Scolopacidae
Limnodromus griseus

dowitcher, short-billed

SCIENTIFIC NAMECOMMON NAME

ORDER Ciconiiformes

FAMILY Ardeidae

Ardea herodias

heron, great blue

Ardeola (Bubulcus) ibis

egrets, cattle

Egretta alba

egret, great

Egretta garzetta

egret, little

Egretta intermedia

egret, plumed

Egretta thula

egret, snowy

Hydranassa caerulea

heron, little blue

Hydranassa tricolor

heron, tricolored

Tigrisoma lineatum

heron, rufescent tiger

FAMILY Ciconiidae

Anastomus lamelligerus

stork, open-billed

Ephippiorhynchus asiaticus

stork, black-neck

Ephippiorhynchus senegalensis

stork, saddle-bill

Jabiru mycteria

jabiru

Leptoptilos crumeniferus

stork, Marabou

FAMILY Scopidae

Scopus umbetta

hammerkop (hammerhead)

FAMILY Threskiornithidae

Carphibis spinicollis

ibis, straw-necked

Eudocimus albus

ibis, American white

Plegadis falcinellus

ibis, glossy

ORDER Coliiformes

FAMILY Coliidae

Colius striatus

mousebird, speckled

ORDER Columbiformes

FAMILY Columbidae

Caloenas nicobarica

pigeon, Nicobar

Didunculus strigirostris

pigeon, tooth-billed

Ducula aenea

pigeon, green imperial

Ducula bicolor

pigeon, pied (imperial)

Ducula myristicivora

pigeon, New Guinea

imperial

Geopelia humeralis

dove, bar-shouldered

Goura cristata

pigeon, common crowned

Leucosarcia melanoleuca

pigeon, wonga

Macropygia phasianella

dove, slender-bill

cuckoo

SCIENTIFIC NAMECOMMON NAMEMacropygia unchall

dove, bar-tailed cuckoo

Otidiphaps nobilis

pigeon, pheasant

(magnificent ground)

Ptilinopus jambu

pigeon, jambu fruit

Ptilinopus melanospilapigeon, black naped
fruitPtilinopus perousii

dove, many colored fruit

Ptilinopus roseicapilla

dove, Mariana fruit

Ptilinopus victor

dove, orange

Streptopelia risoria

dove, ringed turtle

Streptopelia senegalensis

dove, laughing

Turtur chalcospilosdove, wood emerald-
spottedUropelia campestris

dove, long-tailed ground

FAMILY Pteroclididae

Pterocles indicus

sandgrouse, painted

Syrrhaptes paradoxus

sandgrouse, pallas

ORDER Coraciiformes

FAMILY Alcedinidae

Alcedo cristata

kingfisher, malchite

Ceyx erithacuskingfisher, Indian
forestCeyx rufidorsus

kingfisher, red-backed

Dacelo gigas

kookabura, laughing

Halcyon chloriskingfisher, white-
collaredHalcyon cinnamomina

kingfisher, Micronesian

Halcyon leucocephala

kingfisher, grey-headed

Halcyon pileata

kingfisher, black-capped

Halcyon recurvirostris

kingfisher, flat-billed

Tanysiptera galateakingfisher, common
paradise

FAMILY Bucerotidae

Aceros leucocephalus

hornbill, wrinkled

Aceros nipalensis

hornbill, rufous-necked

Aceros plicatushornbill, Papuan
(Blyths)Aceros undulatus

hornbill, wreathed

Anthracoceros coronatus

hornbill, pied

Anthracoceros malabaricus

hornbill, northern pied

Buceros bicornis

hornbill, great

Buceros hydrocorax

hornbill, rufous

Buceros rhinoceros silvestris

hornbill, rhinoceros

SCIENTIFIC NAMECOMMON NAMEBucorvus abyssinicushornbill, Abyssinian
groundBucorvus leadbeateri

hornbill, African ground

Penelopides exarhatus

hornbill, Celebean

Tockus erythrorhynchus

hornbill, red-billed

FAMILY Coraciidae

Coracias benghalensis

roller, Indian

Coracias caudata

roller, lilac-breasted

FAMILY Meropidae

Merops nubicus

bee-eater, carmine

Merops philippinusbee-eater, brown-
breasted

FAMILY Momotidae

Momotus momota

motmot, blue-crowned

FAMILY Phoeniculidae

Phoenicilus purpureus

hoopoe, green wood

FAMILY Upupidae

Upupa epops

hoopoe, common

ORDER Cuculiformes

FAMILY Cuculidae

Carpococcyx renauldicuckoo, red-billed
groundCentropus sinensis

coucal, greater

Rhopodytes tristismalkoha, greater green-
billed

FAMILY Musophagidae

Corythaixoides leucogastergo-away bird, white-
belliedTauraco erythrolophus

turaco, red-crested

Tauraco leucolophus

turaco, white-crested

Tauraco livingstonii

turaco, Livingstone's

ORDER Falconiformes

FAMILY Accipitridae

Aegypius monachus

vulture, cinereous

SCIENTIFIC NAMECOMMON NAME

<u>Aquila</u> (all species in genus)	eagle
<u>Buteo jamaicensis</u>	hawk, red-tailed
<u>Buteo solitarius</u>	hawk, Hawaiian
<u>Gyps africanus</u>	vulture, white-backed
<u>Gyps bengalensis</u>	vulture, white-backed
<u>Haliaeetus</u> (all species in genus)	eagle
<u>Haliastur indus</u>	kite, Brahminy
<u>Harpia harpyja</u>	eagle, harpy
<u>Harpyopsis novaegineae</u>	eagle, New Guinea harpy
<u>Heterospizias meridionalis</u>	hawk, savana
<u>Necrosyrtes monachus</u>	vulture, hooded
<u>Neophron percnopterus</u>	vulture, Egyptian
<u>Parabuteo unicinctus harrisi</u>	hawk, Harris's (bay-winged)
<u>Pithecophaga jefferyi</u>	eagle, monkey-eating
<u>Trigonoceps occipitalis</u>	vulture, white-headed

FAMILY Cathartidae

<u>Cathartes aura</u>	vulture, turkey
<u>Coragyps atratus</u>	vulture, black
<u>Sarcorhamphus papa</u>	vulture, king

FAMILY Falconidae

<u>Falco</u> (all species in genus)	falcon
<u>Herpetotheres</u> (all species in genus)	falcon
<u>Polihierax semitorquatus</u>	falcon, African pigmy
<u>Polyborus</u> (all species in genus)	caracara

FAMILY Sagittariidae

<u>Sagittarius serpentarius</u>	secretary bird
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ORDER Galliformes

FAMILY Cracidae

<u>Crax mitu</u>	curassow, razor-billed
<u>Penelope pileata</u>	guan, white crested
<u>Penelope purpurascens</u>	guan, crested

FAMILY Megapodiidae

<u>Aepyodius arfakianus</u>	turkey, wattled brush
<u>Alectura lathami</u>	turkey, brush
<u>Megapodius freycinet</u>	scrubfowl, common
<u>Megapodius laperouse</u>	fowl, Micronesia scrub
<u>Megapodius pritchardii</u>	megapode, Niuafo'ou

FAMILY Phasianidae

SCIENTIFIC NAMECOMMON NAMECaloperdix oculeapartridge, ferruginous
woodGuttera edouardi
Meleagris ocellatafowl, crested Guinea
turkey, ocellated

ORDER Gruiformes

FAMILY Eurypygidae

Eurypyga helias

bittern, sun

FAMILY Gruidae

Grus japonensis

crane, Manchurian

Grus vipio

crane, white-naped

FAMILY Psophiidae

Psophia crepitans

trumpeter, common

Psophia leucoptera

trumpeter, white-winged

Psophia viridis

trumpeter, green-winged

FAMILY Rallidae

Aramides cajanea

rail, grey-necked wood

Limnocorax flavirostra

crake, black

Porphyrio poliocephalus

moorhen

Porphyrio pulverulentus

pukeko

Rallus owstoni

rail, Guam

Rallus philippensis

rail, banded

ORDER Passeriformes

FAMILY Alaudidae

Alauda arvensis

skylark

Eremopterix keycioareua

lark, Fishers sparrow

FAMILY Artamidae

Artamus leucorhynchusswallow, white-breasted
wood

FAMILY Bombycillidae

Ptilonops cinereus

flycatcher, gray silky

FAMILY Campephagidae

Coracina pectoralisshrike, white-breasted
cuckooCoracina tenuirostris

bird, cicada

Prionops plumatashrike, straight-crested
helmet

SCIENTIFIC NAMECOMMON NAME

FAMILY Corvidae

Cissa chinensis

magpie, green

Corvus albus

crow, pied

Corvus corax

raven

Corvus kubaryi

crow, Mariana

Cyanocitta cristata

jay, blue

Cyanocitta stelleri

jay, Stellers

Cyanocorax chrysopsjay, pileated (plush
crested)Platylophus galericulatus

jay, crested

Urocissa erythrorhynchamagpie, blue (red
billed)

FAMILY Cotingidae

Cephalopterus penduligerumbrella bird, long-
wattledRupicola peruviana

cock-of-the-rock, Andean

Procnis nudicollis

bellbird, naked throated

FAMILY Dicruridae

Dicrurus remiferdrongo, lesser racket-
tailed

FAMILY Emberizidae

Paroaria gularis pheucticuscardinal, black-throated
(red-capped)Passerina cyanoides

grosbeak, blue-back

Pheucticus ludovicianus

grosbeak, rose-breasted

Pheucticus melanocephalus

grosbeak, black-headed

FAMILY Estrildidae

Estrilda rhodopyga

waxbill, crimson-rumped

Lonchura maja

nun, white-headed;

white-headed munia

Ortygospiza atricollis

finch, quail

FAMILY Eurylaimidae

Calyptomena viridis

broadbill, green

FAMILY Icteridae

Icterus chryscephalus

oriole, moriche

Icterus icterus

troupial

Psarocolius decumanus

oropendola, crested

FAMILY Irenidae

Chloropsis aurifrons

leafbird, golden-fronted

SCIENTIFIC NAMECOMMON NAME

FAMILY Mimidae

Dumetella carolinensis

catbird, common

Mimus gilvus

mockingbird, tropical

FAMILY Motacillidae

Motacilla flava

wagtail, yellow

FAMILY Muscicapidae

Acrocephalus luscini

warbler, nightingale

Acrocephalus syrinx

reed

warbler, Caroline

Islands reed

Cettia subulata

warbler, bush

Cyornis tickelliae

flycatcher, Tickell's

blue

Erithacus calliope

rubythroat, Siberian

Erithacus komadori

robin, Temminck's

Erithacus obscurus

robin, black-throated

Eumyias thalassina

flycatcher, verditer

Ficedula narcissina

flycatcher, narcissus

Garrulax leucolophus

thrush, white-crested

laughing

Garrulax milnei

thrush, red-tailed

laughing

Garrulax monileger

thrush, lesser necklaced

laughing

Metabolus regensis

monarch, Truk

Monarcha godeffroyi

monarch, Yap

Monarcha takatsuakasae

monarch, Tinian

Myadestes obscurus

solitaire, brown-backed

Myadestes townsendi

solitaire, Townsend's

Myiagra azureocapilla

flycatcher, blue-crested

Myiagra erythrops

broadbill, Palau

Myiophoneus caeruleus

thrush, blue whistling

Niltava sundara

niltava, rufous-bellied

Pachycephala pectoralis

whistler, golden

Phoenicurus aureus

redstart, Daurian

Rhipidura lepida

fantail, Palau

Rhipidura rufifrons

fantail, rufous

Turdus migratorius

robin, American

FAMILY Oriolidae

Oriolus chinensis

oriole, black-naped

FAMILY Paradisaeidae

Astrapia mayeri

astrapia, ribbon-tailed

Astrapia stephaniae

bird-of-paradise,

SCIENTIFIC NAMECOMMON NAME

Cicinnurus regius
Diphyllodes magnificus

Diphyllodes respublica

Lophorina superba
Paradisaea apoda

Paradisaea guilielmi

Paradisaea minor
Paradisaea rubra
Paradisaea rudolphi
Paradisaea raggiana

Parotia carolae

Parotia lawesii
Ptiloris magnificus
Seleucidis melanoleuca

Princess Stephanie's
 bird-of-paradise, king
 bird-of-paradise,
 magnificent
 bird-of-paradise,
 Wilson's
 bird-of-paradise, superb
 bird-of-paradise,
 greater
 bird-of-paradise, white
 plumed
 bird-of-paradise, lesser
 bird-of-paradise, red
 bird-of-paradise, blue
 bird-of-paradise, Count
 Raggi's
 bird-of-paradise, Queen
 Carol's
 parotia, Lawe's
 rifle bird, magnificent
 bird-of-paradise,
 twelve-wired

FAMILY Pipridae

Chiroxiphia caudata

manakin, swallow-tailed

FAMILY Pittidae

Pitta moluccensis
Pitta sordida
Pitta steerii

pitta, blue-winged
 pitta, hooded
 pitta, steers

FAMILY Ploceidae

Bubalornis albirostris
Dinemellia dinemelli

weaver, buffalo
 weaver, white-headed
 buffalo
 weaver, white-browed
 sparrow

Plocepasser mahali

FAMILY Ptilonorhynchidae

Amblyornis macgregoriae
Chlamydera cerviniventris
Ptilonorhynchus violaceus

bowerbird, Macgregor's
 bowerbird, fawn-breasted
 bowerbird, satin

FAMILY Sturnidae

Buphagus africanus
Cinnyricinclus leucogaster

oxpecker, yellow-billed
 starling, violet-backed

SCIENTIFIC NAMECOMMON NAMECosmopsarus regius

starling, golden-breasted

Lamprotornis purpureus

starling, purple glossy

Lamprotornis purpuropterus

starling, Ruppell's long-tailed

Leucopsar rothschildi

mynah, Bali

Spreo superbus

starling, superb

Sturnus nigricollis

starling, black collared

FAMILY Thraupidae

Piranga olivacea (males only)

tanager, scarlet

Ramphocelus dimidiatus (males only)

tanager, crimson-backed

Thraupis episcopus (males only)

tanager, blue-grey

FAMILY Tinamidae

Eudromia formosa

tinamou, crested

FAMILY Zosteropidae

Zosterops palpebrosa

white-eye, oriental

ORDER Pelecaniformes

FAMILY Pelecanidae

Pelecanus (all species in genus)

pelican

FAMILY Phalacrocoracidae

Phalacrocorax carbo

cormorant, common

ORDER Piciformes

FAMILY Capitonidae

Lybius (all species in genus)

barbets

Megalaima armillaris

barbett, Armott's (blue crowned)

Megalamima asiatica

barbet, blue-throated

Semnornis ramphastinus

barbet, toucan

Trachyphonus erythrocephalus

barbet, red and yellow

FAMILY Indicatoridae

Indicator indicator

honeyguide, black-throated

FAMILY Picidae

Chrysocalaptes lucidus

woodpecker, greater goldenbacked

Picoides canicapillus

woodpecker, gray-capped

FAMILY Rhamphastidae

SCIENTIFIC NAMECOMMON NAME

Pteroglossus beauharnaesii
Ramphastos ambiguus swainsonii
Ramphastos discolorus
Ramphastos sulfuratus
sulfuratus
Ramphastos toco cuvieri
Ramphastos toco toco
Ramphastos vitellinus ariel

Ramphastos vitellinus
vitellinus

Selenidera maculirostris

aracari, curl-crested
toucan, bicolored-billed
toucan, red-breasted
toucan, sulfur breasted,
north kneel-bill
toucan, Cuvier's
toucan, north toco
toucan, ariel channel-
bill
toucan, sulphur and
white, north channel-
bill
toucanet, spot-billed

ORDER Procellariiformes

FAMILY Procellariidae

Puffinus pacificus

shearwater, wedge-tailed

ORDER Psittaciformes

FAMILY Loriidae

Chalcopsitta sintillata
Charmosyna papou goliathina
Trichoglossus haematodus
Trichoglossus johnstoniae
Trichoglossus rubiginosus
Vini peruviana

lory, yellow streaked
lory, central Stella's
lory, rainbow
lorikeet, Johnstone's
lory, Ponape
lory, Tahitian

FAMILY Psittacidae

Brotogeris jugularis
Eunymphicus cornutus
Lathamus discolor
Loriculus galgulus
Loriculus philippensis

Nandayus nenday
Nestor notabilis
Prospoeia tabuensis
Psittaculirostris (all species in
genus)
Psitttrichas fulgidus

parakeet, orange-chinned
parakeet, horned
parrot, swift
lory, blue-crowned
parrot, Philippine
hanging
conure, nanday
kea
parrot, red shining
parrot, fig

parrot, Pesquets

ORDER Rheiformes

FAMILY Rheidae

Rhea americana

rhea, common (greater)

SCIENTIFIC NAMECOMMON NAME

ORDER Strigiformes

FAMILY Strigidae

Asio flammeus

owl, short-eared

Bubo virginianus

owl, great horned

Glaucidium brodiei

owlet, pygmy

Scotopelia peli

owl, Pell's fishing

Speotyto cunicularia

owl, burrowing

Strix varia

owl, barred

FAMILY Tytonidae

Tyto alba

owl, common barn

ORDER Trogoniformes

FAMILY Trogonidae

Pharomachrus auriceps

quetzal, golden-headed

Pharomachrus mocinno

quetzal, resplendent

Harpactes erythrocephalus

trogon, red-headed

Trogon viridis

trogon, white-tailed

ORDER Apodiformes

FAMILY Trochilidae

Trochilidae (sexually dimorphic
males only)

hummingbirds

ORDER Psittaciformes

FAMILY Loriidae

Eos bornea (males only)

lory, red

Eos squamata (males only)

lory, violet-necked

Lorius lory (males only)

lory, black-capped

MAMMALS

SCIENTIFIC NAMECOMMON NAME

PHYLUM Chordata

CLASS Mammalia

ORDER Artiodactyla

FAMILY Bovidae

Bovidae (all species in family
except Bubalus bubalis)

wild cattle, buffalo,
antelopes, etc.

FAMILY Camelidae

Camelus bactrianus

camel, Bactrian

Camelus dromedarius

camel

FAMILY Cervidae

Cervus nippon

deer, sika

Dama dama (=Cervus dama)

deer, white European
fallow

Muntiacus muntjak

deer, Indian muntjac

Muntiacus reevesi

muntjac, Reeve's

Odocoileus hemionus

deer, black-tailed

FAMILY Girrafidae

Okapia johnstoni

okapi

FAMILY Hippopotamidae

Choeropsis liberiensis

hippo, pygmy

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purposes permitted under section
4-71-6.5)

Hippopotamus amphibius

hippopotamus

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government zoos, or for other
purposes permitted under section
4-71-6.5)

FAMILY Suidae

Babirusa babyrousa

barbirusa

SCIENTIFIC NAMECOMMON NAME

Phacochoerus aethiopicus
Sus barbatus

hog, wart
 pig, bearded

FAMILY Tayassuidae
Tayassu tajacu

peccary, collared

ORDER Carnivora
 FAMILY Canidae
Lycaon pictus
Otocyon megalotis
Vulpes (all species in genus)

dog, African hunting
 fox, bat-eared
 fox

FAMILY Felidae
Acinonyx jubatus
 (Prohibited for short-term
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 exhibition in government
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 permitted under section
 4-71-6.5)

cheetah

Felis caracal (=Lynx caracal)
 (Prohibited for short-term
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 circuses, carnivals, or
 state fairs. Allowed for
 short-term performance for
 commercial filming, for
 exhibition in government
 zoos, or for other purposes
 permitted under section
 4-71-6.5)

caracal

Felis pardalis
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 state fairs. Allowed for
 short-term performance for
 commercial filming, for
 exhibition in government
 zoos, or for other purposes
 permitted under section
 4-71-6.5)

ocelot

SCIENTIFIC NAMECOMMON NAMEFelis serval

serval

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Felis wiedii

margay

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

Panthera leo

lion

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Panthera nebulosa (=Neofelis nebulosa)

clouded leopard

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Panthera onca

jaguar

Panthera pardus

leopard

SCIENTIFIC NAMECOMMON NAME

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Panthera tigris

tiger

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Profelis concolor (=Felis concolor)puma, (cougar),
(mountain lion)

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

FAMILY Hyaenidae

Crocuta crocuta

hyena, spotted

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FAMILY Mustelidae

SCIENTIFIC NAMECOMMON NAMEAonyx cinerea

otter, Asian small-clawed

Lutra canadensis

otter, land river

Mephitis (all species in genus)

skunk

Mustela lutreola

mink

Mustela putorius furo

ferret

Mustela vison

mink

Pteronura brasiliensis

otter, giant

FAMILY Procyonidae

Ailurus fulgens

panda, red

Nasua (all species in genus)

coati

Potos flavus

kinkajou

Procyon lotor

raccoon

FAMILY Ursidae

Helarctos malayanus

sunbear, Malayan

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Melursus ursinus

bear, sloth

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Ursus (all species in genus)

bear

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SCIENTIFIC NAMECOMMON NAME

commercial filming, for
exhibition in government
zoos, or for other purposes
permitted under section
4-71-6.5)

FAMILY Viverridae

Arctictis binturongSuricata suricattaHerpestes auropunctatus

binturong

meerkat, slender-tailed

mongoose, small Indian

ORDER Diprotodontia (=Marsupialia)

FAMILY Didelphidae

Didelphis marsupialis

opossum

FAMILY Macropodidae

Aepyrymnus (all species in genus)Bettongia (all species in genus)Caloprymnus (all species in genus)Dendrolagus (all species in genus)Dorcopsis (all species in genus)

rat-kangaroo, Rufous

rat-kangaroo

rat-kangaroo, desert

tree-kangaroo

wallaby, New Guinea
forestwallaby, New Guinea
mountain

rat-kangaroo, musk in

Hypsiprymnodon (all species
genus)Lagorchestes (all species in genus)Lagostrophus (all species in genus)Macropus (all species in genus)Megaleia (all species in genus)Onychogalea (all species in genus)Peradorcas (all species in genus)Petrogale (all species in genus)Potorous (all species in genus)Setonix (all species in genus)Thylogale (all species in genus)Wallabia (all species in genus)

wallaby, hare

wallaby, banded hare

wallaby (kangaroo)

kangaroo, red

wallaby, nail-tailed

rock-wallaby, little

rock-wallaby

potoroo

quokka

pademelon

wallaby, swamp

FAMILY Phascolarctidae

Phascolarctos cinereus

bear, koala

ORDER Edentata

FAMILY Bradipodidae

Bradypus (all species in genus)Choloepus (all species in genus)

sloth, three toed

sloth, two toed

FAMILY Dasypodidae

SCIENTIFIC NAMECOMMON NAMEDasypus (all species in genus)

armadillo

FAMILY Myrmecophagidae

Myrmecophaga tridactyla

anteater, giant

ORDER Hyracoidea

FAMILY Procaviidae

Procavia capensis

hyrax, rock

ORDER Insectivora

FAMILY Erinaceidae

Hemiechinus auritis

hedge hog, long-eared

FAMILY Soricidae

Crocidura (all species in genus)

shrew, musk

ORDER Perissodactyla

FAMILY Equidae

Equus africanus (= Equus asinus)

ass, African wild

FAMILY Rhinocerotidae

Ceratotherium simum

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

rhinoceros, southern white

Diceros bicornis

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rhinoceros, black

Rhinoceros unicornis

rhinoceros, great

SCIENTIFIC NAMECOMMON NAME

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Indian

FAMILY Tapiridae

Tapirus indicus

tapir, Malayan

Tapirus terrestris

tapir

ORDER Proboscidea

FAMILY Elephantidae

Elaphas maximus

elephant, Asian

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

Loxodonta africana

elephant, African

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

ORDER Rodentia

FAMILY Caviidae

Dolichotis patagonum

cavy, Patagonian

SCIENTIFIC NAMECOMMON NAME

FAMILY Cricetidae

Cricetulus griseus

mouse, Chinese

Gerbillus gerbillus

gerbil

Meriones unguiculatus

gerbil

Mesocricetus auratus

hamster

Sigmondon hispidus

rat, cotton

FAMILY Dasyproctidae

Agouti paca

agouti

Dasyprocta agouti (=D. leporina)

agouti

FAMILY Erethizontidae

Erethizon dorsatumporcupine, North
American

FAMILY Heteromyidae

Perognathus longimembris

mice, pocket

FAMILY Hystricidae

Hystrix cristataporcupine, African
crested

FAMILY Myocastoridae

Myocastor coypu nutria

FAMILY Sciuridae

Callosciurus prevosti

squirrel, prevost's

Marmota (all species in genus)

marmots

Sciurus variegatoide

squirrel, variegated

ORDER Scandentia

FAMILY Tupaiidae

Tupaia glis

shrew, tree

ORDER Tubulidentata

FAMILY Orycteropodidae

Orycteropus afer

aardvark

III. NEW BUSINESS

C. Discussion and Action on Proposed New
HAR Title 19 Subtitle 5 Chapter 152, **State
Highway Enforcement Program**,
promulgated by Department of
Transportation (DOT)

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Date: 8/28/2023

Department or Agency: Transportation

Administrative Rule Title and Chapter: Title 19 Subtitle 5 Motor Vehicle Safety Office

Chapter Name: Chapter 152 State Highway Enforcement Program

Contact Person/Title: Laura Manuel Highway Safety Specialist

E-mail: laura.manuel@hawaii.gov Phone: (808) 692-7695

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: Draft rules will be uploaded to Hawaii DOT website and available for viewing in pers

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.
The proposed rules may affect small business. Due to the enactment of ACT 250 on July 1, 2019. Section 4 of ACT 250 indicated the department of transportation shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to carry out the purposes of this Act. HB No 118 Section 3 amended Section 191C-11 Hawaii Revised Statutes that is part of ACT 250.
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.
Per Section 2 of ACT 250, the department of transportation shall submit an annual report to the legislature on the status and progress of the state highway enforcement program.

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.
\$200 per ACT 250
 - b. Amount of the proposed fee or fine and the percentage increase.
\$200 per ACT 250
 - c. Reason for the new or increased fee or fine.
Fee was determined in ACT 250
 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
Based upon ACT 250
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.
Per Section 1 of ACT 250, the purpose of this Act is to establish the state highway enforcement program, which adds a surcharge for illegal parking to existing penalties for violation for the statewide traffic code that involved stopping, standing or parking on the state highways. Fifty per cent of the surcharge shall be deposited into the state highway fund, while the remaining balance shall be distributed to the respective police departments of the county from which the surcharge was collected and shall be used to enforce laws and ordinances pertaining to illegal parking on state highways.

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.
Annual Reports indicate what each County each has done and any circumstance and methods of modifications in the enforcement of the program.

Link to Annual Reports to Legislature:

<https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
Annual Reports details for each county.

Link to Annual Reports to Legislature:

<https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

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.
Annual Reports details for each county.

Link to Annual Reports to Legislature:

<https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

7. How the agency involved small business in the development of the proposed rules.
Annual Reports details for each county.

Link to Annual Reports to Legislature:

<https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

- 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.
No, issues were on the signage and language for the enforcement.

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.

None

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.
The purpose of this chapter is to establish the state highway enforcement program, which adds a surcharge for illegal parking to existing penalties for violations of the statewide traffic code.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
Section 291C-111.5 HRS and ACT 250 requires DOT to report annually on the status & progress of the state highway enforcement program, including all moneys deposited into & expended from the State Hwy Fund.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
The proposed rule follows the language in Section 291C-111.5 HRS, ACT 250 and HB 118 SDS2.
- 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.
Detailed in reports to the legislature and attached for review.
- 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.
The enforcement generated by Section 291C-111.5 HRS, ACT 250 and HB 118 SDS2 may have some effect to small business.

* * *

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>

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

IN REPLY REFER TO:

DIR 1.11632

December 29, 2021

The Honorable Ronald D. Kouchi
President and Members of the
Senate
31st State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives
31st State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the State Highway Enforcement Program Report as required by Act 250 of 2019.

In accordance with HRS 93-16, I am also informing you that the report may be viewed electronically at: <https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

Sincerely,

A handwritten signature in black ink, appearing to read "Jade T. Butay", is written over a horizontal line.

JADE T. BUTAY
Director of Transportation

DEPARTMENT OF TRANSPORTATION'S
REPORT TO LEGISLATURE
OF
THE STATE OF HAWAII
REQUIRED UNDER
SECTION 291C-111.5, HAWAII REVISED STATUTES

**ANNUAL REPORT: "STATE HIGHWAY
ENFORCEMENT PROGRAM"
FROM ACT 250
SESSION LAWS OF HAWAII 2019**

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
DECEMBER 2021

DEPARTMENT OF TRANSPORTATION'S
REPORT TO THE LEGISLATURE
OF THE STATE OF HAWAII

REQUIRED UNDER

SECTION 291C-111.5 HAWAII REVISED STATUTES

**Annual Report to the Hawaii Legislature on the State Highway Enforcement
Program**

Introduction:

Section 291C-111.5 Hawaii Revised Statutes (HRS) requires the Department of Transportation (DOT) to report annually on the status and progress of the state highway enforcement program, including all moneys deposited into and expended from the State Highway Fund.

Surcharge

For fiscal year 2021 (July 1, 2020 – June 30, 2021), the total surcharge amount collected statewide was \$18,770:

Honolulu - \$2,580

Kauai - \$15,825

Maui - \$365

As required by Act 250, the DOT disbursed the following amounts to the counties that issued the citations:

Honolulu - \$1,290

Kauai - \$9,712.50

Maui - \$182.50

Enforcement

During fiscal year 2021 (July 1, 2020 – June 30, 2021), the county police departments issued the following number of citations for Section 291C-111.5 HRS violations:

Honolulu Police Department - 2 citations

Kauai Police Department- 72 citations

Maui Police Department - 21 citations

Signage Update

Hawaii – District Office

The Hawaii District Office has not installed any signage yet.

Kauai – District Office

The Kauai District Office did not install additional signage in 2021. However, they previously installed additional no parking signs to notify the public about the \$200 surcharge for the last two miles, approximately, of Kuhio Highway Route 560.

Maui – District Office

In June 2021, Maui District Office installed additional signage at the following locations:

- Hana Highway, Route 360 – 7 at mile post 6.5
- Hana Highway, Route 360 – 10 at mile post 10
- Hana Highway, Route 360 – 6 at mile post 17
- Hana Highway, Route 360 – 11 at mile post 19.5
- Hana Highway, Route 360 – 8 at mile post 22.5
- Hana Highway, Route 360 – 10 at mile post 24

These signs are in addition to the 12 “No Parking” and tow signs on Hana Highway at Baldwin Beach park.

Oahu – District Office

The Oahu District Office has not installed any signage yet.

JOSH GREEN, M.D.
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN SHISHIDO
ROSS HIGASHI

IN REPLY REFER TO:
DIR 1.11689

December 15, 2022

The Honorable Ronald D. Kouchi
President and Members of the
Senate
32nd State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives
32nd State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the State Highway Enforcement Program Report as required by Section 291C-111.5, Hawaii Revised Statutes.

In accordance with HRS 93-16, I am also informing you that the report may be viewed electronically at: <https://hidot.hawaii.gov/library/reports/reports-to-thelegislature/>

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Sniffen", is written over a horizontal line.

EDWIN H. SNIFFEN
Director of Transportation

DEPARTMENT OF TRANSPORTATION'S
REPORT TO LEGISLATURE
OF
THE STATE OF HAWAII
REQUIRED UNDER
SECTION 291C-111.5, HAWAII REVISED STATUTES

**ANNUAL REPORT: "STATE HIGHWAY
ENFORCEMENT PROGRAM"
FROM ACT 250
SESSION LAWS OF HAWAII 2019**

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
DECEMBER 2022

DEPARTMENT OF TRANSPORTATION'S
REPORT TO THE LEGISLATURE
OF THE STATE OF HAWAII

REQUIRED UNDER

SECTION 291C-111.5 HAWAII REVISED STATUTES

Annual Report to the Hawaii Legislature on the State Highway Enforcement Program

Introduction:

Section 291C-111.5 Hawaii Revised Statutes (HRS) requires the Department of Transportation (DOT) to report annually on the status and progress of the state highway enforcement program, including all moneys deposited into and expended from the State Highway Fund.

Surcharge

For fiscal year 2022 (July 1, 2021 – June 30, 2022), the total surcharge amount collected statewide was \$169,275.00:

Kauai - \$90,095.00

Maui - \$79,180.00

As required by Act 250, the DOT disbursed the following amounts to the counties that issued the citations:

Kauai - \$45,047.50

Maui - \$39,590.00

Enforcement

During fiscal year 2022 (July 1, 2021 – June 30, 2022), the county police departments issued the following number of citations for Section 291C-111.5 HRS violations:

Hawaii Police Department – 1 citation

Honolulu Police Department - 10 citations

Kauai Police Department- 842 citations

Maui Police Department - 638 citations

Signage Update

Hawaii – District Office

The Hawaii District Office has not installed any signage yet.

Kauai – District Office

The Kauai District Office installed 3 additional signs along Kuhio Highway at the Haena Beach Park parking lot (Rte 506, MP 8.8 – 8.9).

Maui – District Office

Since December 2021, Maui District has installed No Parking signs at the following locations:

- Honoapiilani Hwy, Route 30 – 11 signs at MP 18 (vicinity of Launiupoko Beach Park)*
- Honoapiilani Hwy, Route 30 – 7 signs from MP 21 to MP 24 (missing signs in Lahaina town)*
- Honoapiilani Hwy, Route 30 – 7 signs at MP 32 (vicinity of Slaughterhouse Beach)
- Honoapiilani Hwy, Route 30 – 4 signs at MP 32.5 (vicinity of Honolua Bay Access Trail)
- Honoapiilani Hwy, Route 30 – 3 signs at MP 33 (vicinity of Honolua Bridge)
- Hana Hwy, Route 360 – 6 signs at MP 10 (vicinity of Waikamoi Bridge)
- Hana Hwy, Route 360 – 4 signs at MP 10.5 (vicinity of Garden of Eden)
- Hana Hwy, Route 360 – 11 signs at MP 11.5 (vicinity of Haipuaena Bridge)

The Director has approved the parking surcharge for Hana Highway, Route 360 and Honoapiilani Highway, Route 30.

*Surcharge signs were not installed with signs at Launiupoko Beach Park and Lahaina Town. Surcharge signs were installed at all other locations.

Oahu – District Office

The Oahu District Office has not installed any signage yet.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

IN REPLY REFER TO:

December 18, 2020

The Honorable Ronald D. Kouchi
President and Members of the
Senate.
31st State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives.
31st State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the State Highway Enforcement Program Report as required by Act 250 of 2019.

In accordance with HRS 93-16, I am also informing you that the report may be viewed electronically at: <https://hidot.hawaii.gov/library/reports/reports-to-the-legislature/>

Sincerely,

JADE T. BUTAY
Director of Transportation

DEPARTMENT OF TRANSPORTATION'S
REPORT TO LEGISLATURE
OF
THE STATE OF HAWAII
REQUIRED UNDER
SECTION 291C-111.5, HAWAII REVISED STATUTES

**ANNUAL REPORT: "STATE HIGHWAY
ENFORCEMENT PROGRAM"
FROM ACT 250
SESSION LAWS OF HAWAII 2019**

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
DECEMBER 2020

DEPARTMENT OF TRANSPORTATION'S
REPORT TO THE LEGISLATURE
OF THE STATE OF HAWAII

REQUIRED UNDER

SECTION 291C-111.5 HAWAII REVISED STATUTES

Annual report to the Hawaii Legislature on the State Highway Enforcement Program

Introduction:

Section 291C-111.5 Hawaii Revised Statutes requires the Department of Transportation (DOT) to report annually on the status and progress of the state highway enforcement program, including all moneys deposited into and expended from the State Highway Fund.

Surcharge

As of December 2020, \$24,200 has been collected and deposited into the state highway fund. None of the funds have been expended.

Enforcement

All four county police departments continue to issue citations for illegally parked vehicles.

Hawaii – District Office

The Hawaii District Office has not installed any signage yet.

Kauai – District Office

The Kauai District Office installed additional no parking signs to notify the public about the \$200 surcharge for the last two miles, approximately, of Kuhio Highway Route 560. (The signs say “fine” instead of “surcharge” which is technically incorrect but we were expediting fabrication and installation of the signs prior to reopening the highway after the 2018 storms and that was the language requested by the County attorney to make the signs enforceable by KPD. I do not plan to redo the signs unless and until it is determined that the language makes the enforcement problematic.) The memo was forwarded to KPD, County Prosecuting Attorney, State AG and the Judiciary.

Maui – District Office (HWY-M)

The Maui District Office recently installed 12 No Parking and tow signs on Hana Hwy at Baldwin Beach park in coordination with Maui County and the Maui Police Department. They did not put anything specific to the \$200 surcharge though.

Oahu – District Office (HWY-O)

The Oahu District Office has not installed any signage yet.

JOSH GREEN, M.D.
GOVERNOR



EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO

RECEIVED
By SBRRB at 12:23 pm, Sep 08, 2023

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097


IN REPLY REFER TO:

HWY-TT 23-2.0188

September 8, 2023

TO: JAMES KUNANE TOKIOKA, DIRECTOR
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

ATTENTION: DORI E. PALCOVICH, EXECUTIVE OFFICER
SMALL BUSINESS REGULATORY REVIEW BOARD

FROM: EDWIN H. SNIFFEN 
DIRECTOR OF TRANSPORTATION

SUBJECT: PROPOSED ADOPTION OF CHAPTER 19-152, STATE HIGHWAY
ENFORCEMENT PROGRAM, HAWAII ADMINISTRATIVE RULES

We are transmitting the "Small Business Impact Statement" and a copy of the proposed draft rules for review by the "Small Business Regulatory Review Board."

In the draft, we are seeking to adopt Chapter 152.

Your assistance will be greatly appreciated. Should you have any questions, please contact Laura Manuel, Highway Safety Specialist, Traffic Branch at (808) 692-7695 or by email at laura.manuel@hawaii.gov.

Attachments

DEPARTMENT OF TRANSPORTATION

Adoption of Chapter 19-152
Hawaii Administrative Rules

Adoption Date (Month Day, Year)

SUMMARY

Chapter 19-152, Hawaii Administrative Rules, entitled
"State Highway Enforcement Program", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 5

MOTOR VEHICLE SAFETY OFFICE

CHAPTER 152

STATE HIGHWAY ENFORCEMENT PROGRAM

§19-152-1	Purpose
§19-152-2	Definitions
§19-152-3	Applicability
§19-152-4	State highway enforcement program and establishment
§19-152-5	State highway enforcement annual reports
§19-152-6	Noncompliance with stopping, standing, or parking requirements
§19-152-7	Severability

§19-152-1 Purpose.

The purpose of this chapter is to establish the state highway enforcement program, which adds a surcharge for illegal parking to existing penalties for violations of the statewide traffic code that involve stopping, standing or parking on state highways. Fifty per cent of the surcharge shall be deposited into the state highway fund, while the remaining balance shall be distributed to the respective police departments of the county from which the surcharge was collected and shall be used to

§19-152-2

enforce laws and ordinances pertaining to illegal parking on state highways.

[Eff _____] (Auth: HRS §291C-111, SLH (2019), ACT 250) (Imp: HRS §291C-111, SLH (2019), ACT 250)

§19-152-2 Definitions. As used in this chapter:

"Community Groups" means organization aimed at making desired improvements to a community's social health, well-being, and overall functioning.

"County" the City and County of Honolulu, County of Hawaii, County of Kauai, or County of Maui.

"County Official" means one who administers the rules of a county.

"Curb Markings" means color and/or text placed on the curb, or on the pavement where no curb exists to indicate parking regulations.

"Department of transportation" means state department of transportation.

"Director of transportation" means state director of transportation or an authorized representative.

"Driver" means every person who drives or is in actual physical control of a vehicle.

"Highway" means the entire width between the boundary lines of every way publicly maintained and private streets when any part thereof is open to the use of the public for purposes of vehicular travel.

"Illegal Parking" means not according to or authorized by law to bring a vehicle to a stop and keep standing at the edge of a public way.

"Jurisdiction" means the power, right, or authority to interpret and apply the law.

"Law Enforcement" means the department of people who enforces laws, investigate crimes, and make arrests.

"Ordinance" means a law set forth by a county.

"Parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Police Department" means a governmental department concerned with the administration of the police force.

"Police Officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

"Private Highway" means every highway in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Public Way" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"State" means State of Hawaii

"Statewide Traffic Code" means Chapter 291C of the Hawaii Revised Statutes.

"Surcharge" means an additional tax, cost, or impost.

"T-Shaped Intersection" means an intersection with three approaches.

"Traffic Control" means all signs, signals, markings, and devices not inconsistent with Chapter 291C of the Hawaii Revised Statutes placed or erected by authority or with the consent of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including mopeds and bicycles, but excluding toy bicycles, devices other than bicycles moved by human power, and devices used exclusively upon stationary rails or tracks.

§19-152-5

[Eff HRS §291C-111, SLH (2019),
ACT 250] Auth: HRS §291C-
111, SLH (2019), ACT 250

§19-152-3 Applicability. This chapter shall be applicable to highways under the jurisdictions specified in 19-152-6. [Eff]
(Auth: HRS §291C-111, SLH (2019), ACT 250) (Imp: HRS §291C-111, SLH (2019), ACT 250)

§19-152-4 State Highway Enforcement Program and Establishment. There is established the state highway enforcement program within the department of transportation for administrative purposes. The purpose of the state highway enforcement program is to enable the State and counties, in consultation with the director of transportation, to:

- (1) Enforce violations for illegal parking under section 291C-111(c); and
- (2) Provide for parking management improvements.

Implementation of the state highway enforcement program shall include partnering with law enforcement, other state departments, other county agencies, and community groups to increase health and safety along state highways.

[Eff] (Auth: HRS §291C-111, SLH (2019), ACT 250) (Imp: HRS §291C-111, SLH (2019), ACT 250)

§19-152-5 State highway enforcement report. The director of transportation shall submit an annual report to the legislature on the status and progress of the state highway enforcement program, including update of all moneys deposited into and expended from

the state highway fund, on behalf of the state highway enforcement program no later than twenty days prior to the convening of each regular legislative session.

[Eff] (Auth HRS §291C-111(c),
SLH (2019), ACT 250) (Imp: HRS §291C-111(c), SLH
(2019), ACT 250)

§19-152-6 Non compliance with stopping, standing or parking requirements. Section 291C-111, Hawaii Revised Statutes, was amended by SLH (2019), ACT 250 to read as follows:

(a) With respect to highways under their respective jurisdictions, the director of transportation is authorized to and the counties by ordinance may prohibit or restrict the stopping, standing, or parking of vehicles where the stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would interfere unduly with the free movement of traffic; provided that the violation of any law or any ordinance, regardless of whether established under this or any other section, prohibiting or restricting the stopping, standing, or parking of vehicles shall constitute a traffic infraction. The counties shall not provide any other penalty, civil or criminal, or any other charge, in the form of rental or otherwise, in place of or in addition to the fine to be imposed by the district court for any violation of any ordinance prohibiting or restricting the stopping, standing, or parking of vehicles.

This section shall not be construed as prohibiting the authority of the director of transportation or the counties to allow the stopping, standing, or parking of motor vehicles at a "T-shaped" intersection on highways under their respective jurisdictions; provided that such stopping, standing, or parking of motor vehicles is not dangerous to those using the highway or where the stopping, standing, or

parking of motor vehicles would not unduly interfere with the free movement of traffic.

The appropriate police department and county or prosecuting attorney of the various counties shall enforce any law or ordinance prohibiting or restricting the stopping, standing, or parking of vehicles, including but not limited to the issuance of parking tickets. Any person committing a violation of any law or ordinance, regardless of whether established under this or any other section, prohibiting or restricting the stopping, standing, or parking of vehicles shall be subject to a fine to be enforced and collected by the district courts of this State and to be deposited into the state general fund for state use.

(b) The director of transportation, the counties, and owners of private highways, with the consent of county official responsible for traffic control with respect to highways under their respective jurisdictions shall place signs or curb markings that are clearly visible to an ordinary observant person prohibiting or restricting the stopping, standing, or parking of vehicles on the highway. Such signs or curb markings shall be official signs and markings and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs or markings.

(c) Any person committing a violation of any law or ordinance prohibiting or restricting the stopping, standing, or parking of vehicles on state highways or designated county highways shall be charged, in addition to any other applicable penalties and fines, a state highway enforcement program surcharge of \$200 to be enforced and collected by the district courts and to be deposited into the state highway fund; provided that fifty per cent of each surcharge collected shall be disbursed to the police department of the county in which the violation occurred.

[Eff] (Auth: HRS §291C-111, SLH (2019), ACT 250) (Imp: HRS §291C-111, SLH (2019), ACT 250, SLH (2023), HB NO 118 SD 2)

§19-152-7 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remaining provisions of this chapter. [Eff] (Auth: HRS §291C-111, SLH (2019), ACT 250) (Imp: HRS §291C-111, SLH (2019), ACT 250)

Chapter 19-152, Hawaii Administrative Rules, on the Summary Page dated Month xx, 2023 was adopted on Month xx, 2023 following a public hearing held on Month xx, 2023, after public notice was given on Month xx, 2023 in the Honolulu Star Advertiser, The Maui News, The Garden Island, The Hawaii Tribune-Herald, and The West Hawaii Today.

The adoption of chapter 19-152 shall take effect ten days after filing with the Office of the Lieutenant Governor.

APPROVED:

EDWIN H. SNIFFEN
Director of Transportation

JOSH GREEN, M.D.
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

III. NEW BUSINESS

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

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

RECEIVED

By SBRRB at 8:50 am, Sep 12, 2023

Date: 9/12/2023

Department or Agency: Hawaii Community Development Authority

Administrative Rule Title and Chapter: 15-23

Chapter Name: Makai Area Rules

Contact Person/Title: Ryan Tam/Director of Planning or Craig Nakamoto/Exec. Director

E-mail: ryan.am.tam@hawaii.gov or craig.k.nakamoto Phone: 808-594-0338 or 808-594-(

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/kakaako-makai-area-rule-amendments/>

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 Kaka'ako Community Development District will be 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 construction or renovation projects that are typically undertaken by small businesses, permit application requirements and fees will be reduced substantially. Larger projects (over 10,001 s.f.) will have higher fees.

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.

\$200 (flat)

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

Most projects: \$50-100. Larger projects will increase to \$500 or \$6,400.

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

Consistency with rules in other community development districts (Kaka'ako Mauka and Kalaeloa)

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

Amount of staff time required for project review was a partial consideration in the determination of the fee amounts.

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 Kaka'ako 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.

The agency is proposing to relax the specificity of the types of businesses that are allowed in Kaka'ako Makai. In the proposed new rules, detailed lists of allowable business types (such as stationary stores or shoe repair shops) are being replaced by generalized land use categories (such as retail sales or personal services). A variety of new, simpler permit types will also enable faster approvals that bypass a lengthy board approval process.

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 Kaka'ako.

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

Outreach sessions were held with the Kaka'ako Improvement Association (representing businesses in Kaka'ako) and other stakeholders in the development of the Mauka rule updates. Input from the updated Mauka rules were applied to the Makai rules. Input from stakeholders and businesses in Kalaeloa also influenced the development of the proposed Makai 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.

The proposed rules allow for consideration of sea level rise, climate change, and climate resiliency in permitting decisions, as mandated by the Legislature through Act 221 (2023). The rules do not have anything

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.
The Legislature found that that climate change and sea level rise pose significant, dangerous, and imminent threats to the State.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
"Development shall consider the impacts of climate change, sea level rise, and climate-resilient development in the design and siting of buildings."
- 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

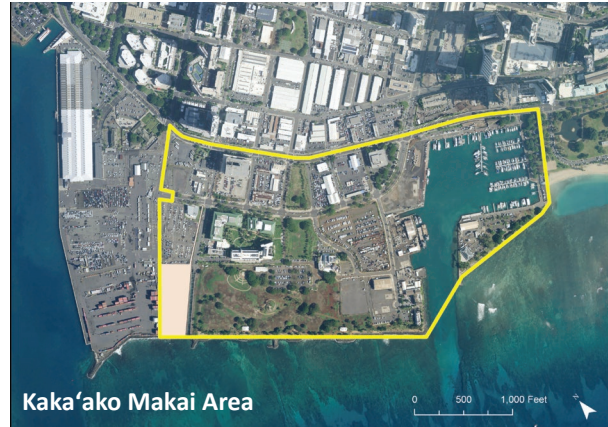
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

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

Proposed Updates to §15-23, Hawai'i Administrative Rules, Kaka'ako Makai Area Rules

September 2023

- The proposed update of the Makai Area Rules (§15-23) is intended to incorporate the Section 206E-31.5, Hawaii Revised Statutes (HRS), ban on residential development.
- The land use zones are now called the "Makai Urban Zone" and "Waterfront Community Zone" to reflect the community's desired character for these areas, including the planning efforts conducted during development of the 2011 Makai Conceptual Master Plan. Allowable building heights and massing, however, remain unchanged.
- The proposed rules simplify the presentation of allowable land uses. This will provide landowners with additional flexibility to propose new activities, and will also be more consistent with the land uses in Kaka'ako Mauka.



- The proposed Administrative Draft rules also introduces new permit types that are consistent with Kaka'ako Mauka, including rules clearance, renovation permit, improvement permit, temporary use permit, and zoning clearance. These new permit types will greatly streamline redevelopment and facilitate investment in existing properties in Kaka'ako Makai.
- Language is also being added to bring zoning review processes in line with Kaka'ako Mauka, including completeness reviews, approval periods, appeals, and historic preservation reviews.
- Parking minimums are eliminated to be in line with the City and County of Honolulu's parking policies. Unlike the planned revision of the Mauka Area rules, however, parking will continue to be excluded from Floor Area Ratio calculations.
- The proposed rules also incorporate consideration for climate change, sea level rise, and climate resilience.



**Hawaii Community
Development Authority**



Summary of Proposed Changes to the Makai Area Rules
August 2023 Administrative Draft (rev 2)

Proposed Change	Citation	Notes
Rule Clarifications		
1. Consistency with Mauka Rules	§ 15-23-1 and -3	Clarifies the application of the rules. Removes obsolete language.
2. Updates window requirements	§ 15-23-5	Consistency with Mauka rules. Requires minimum level of visible light transmission level for ground floor windows. Provides for executive director discretion if visual light transmission requirements conflict with State Energy Code or other government requirements.
3. Added Rules of Interpretation	§ 15-23-6	Consistency with Mauka rules. Replaced rules for construction of lanugage. Provides for conflicts and rules of precedents. Adds provisions for executive director interpretations.
4. Environmental standards	§ 15-23-77	Removed outdated references
5. Historic Resources	§ 15-23-158 to -161	Brings processes in line with current laws and Mauka rules. Allows for treatment of historic resources that no longer exist.

Proposed Change	Citation	Notes
Permit Simplification		
6. Consistency with Mauka Area permits	§ 15-23-5, -11,-24, -25, -26, -78, -79, And -82	<ul style="list-style-type: none"> • Renovation permit allows interior modifications and up to 25% more floor area (§ 15-23-26) • New rules clearances (§ 15-23-25) • Temporary use permit added to allow short-term uses (§ 15-23-78) • Improvement permit allows smaller projects (§ 15-23-11) • Update conditional use of vacant land permit (§ 15-23-79) • Add conditional use permit (§ 15-23-82) • Zoning clearances added to support liquor licenses (§ 15-23-24)
7. Eliminate project eligibility review	§ 15-23-10	Replaced by completeness review for consistency with Mauka rules.
8. Addition of Design Advisory Board	§ 15-23-11	Adds provisions for design advisory boards and a Native Hawaiian cultural consultant, as consistent with Mauka rules.
9. Improved Permit Processes	§ 15-23-13, -22, -23, -24, -85	<ul style="list-style-type: none"> • Updated automatic approval periods for consistency with Mauka rules (§ 15-23-22) • Updated appeals process to be consistent with current practice (§ 15-23-13) • Eliminated development permit lapse provision (§ 15-23-85); replaced by approval validity period (§ 15-23-23)
10. Updated application fee schedule	§ 15-23-16	Permit fees are updated to reflect current costs and staff level of effort.
11. Interpretations	§ 15-23-20	Clarifies process to be consistent with Mauka rules
12. Minor changes	§ 15-23-90	Allows minor permit changes; consistent with Mauka rules

Proposed Change	Citation	Notes
Improved Planning		
13. Update definition of Floor Area	§ 15-23-5	Some consistency with Mauka. Adjusts definition of floor area to include, building overhangs, canopies with more than 50% coverage, and other clarifications. Parking remains excluded as floor area.
14. Consideration of climate change and infrastructure adequacy	§ 15-23-8	Adds explicit mention within overall scope of the Makai rules.
15. Land Use Zones	§15-23-30, -31, -32, -33, and -34	<ul style="list-style-type: none"> • Removed residential uses • Simplified allowable land use types • Eliminated waterfront industrial zone
16. Fences	§ 15-23-64	For public utility projects, allows fences and walls up to 8', with security wire up to 10' in height. Consistent with Mauka rules.
17. Open Space	§ 15-23-5 and -65	Clarifies definition of open space and allows required open space to be provided on a podium, roof garden, or roof top recreation area, if it is publicly accessible.
18. Parking	§ 15-23-68	Eliminates minimum parking requirements to allow developers to right-size parking, lower construction costs, and support multimodal transportation options. Consistent with City and County of Honolulu Ordinance 20-41. Also requires above-ground parking to be lined or screened.
19. Addition of Flood Hazard District Design Standards	§ 15-23-81	Consistency with Mauka rules. Design standards help ensure that flood control measures do not impede pedestrian access and are seamless with the urban fabric.

RECEIVED

By SBRRB at 8:56 am, Sep 12, 2023



Kaka'ako Community Development District

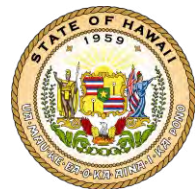
Makai Area Rules

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

Administrative Draft (Ramseyer Version)
August 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 amended.
2. §§15-23-3 to §15-23-8 are amended.
3. §§15-23-10 to §15-23-11 are amended.
4. §15-23-13 is amended.
5. §15-23-16 is amended.
6. §15-23-20 is amended.
7. §15-23-22 is amended.
8. §§15-23-23 to §15-23-26 are added.
9. §§15-23-30 to §15-23-31 are amended.
10. §15-23-32 is repealed.
11. §15-23-33 is amended.
12. §§15-23-34 is repealed.
13. §§15-23-37 to §15-23-38 are repealed.
14. §§15-23-40 to §15-23-41 are amended.
15. §§15-23-64 to §15-23-65 are amended.

16. §§15-23-68 to §15-23-69 are amended.
17. §15-23-73 is amended.
18. §15-23-75 is amended.
19. §§15-23-77 to §15-23-79 are amended.
20. §15-23-81 is amended.
21. §15-23-82 is added.
22. §§15-23-83 to §15-23-84 are amended.
23. §15-23-85 is repealed.
24. §15-23-87 is repealed.
25. §15-23-90 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~~] KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

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

Subchapter 1 General Provisions

§15-23-1	General purposes
§15-23-2	Development guidance policies
§15-23-3	Title
§15-23-4	Plan [and design guidelines] incorporated by reference
§15-23-5	Definitions
§15-23-6	[Rules for construction of language] <u>Rules of interpretation</u>
§15-23-7	Establishment of the Kakaako community development district
§15-23-8	Establishment and scope of controls

§15-23-9	Repealed
§15-23-10	[Project eligibility review] <u>Completeness review</u>
§15-23-11	<u>Development and improvement</u> permits
§15-23-12	Administration
§15-23-13	Appeals
§15-23-14	Variances
§15-23-15	Nonconformities
§15-23-16	Application fees
§15-23-17	Violations
§15-23-18	Amendments
§15-23-19	Severability
§15-23-20	Interpretation by the executive director
§15-23-21	Zoning adjustments and waivers
§15-23-22	Automatic Approvals
§15-23-23	<u>Approval Validity Period</u>
§15-23-24	<u>Zoning Clearance</u>
§15-23-25	<u>Rules Clearance</u>
§15-23-26	<u>Renovation Permit</u>
<u>§§15-23-27</u> to 15-23-29	Reserved

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	Repealed
§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
§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>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 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
§15-23-161	Procedure for designation
§15-23-162	Uses
§15-23-163	Protective maintenance
§15-23-164	Certificate of appropriateness
§§15-23-165 to 15-23-177	Reserved

Subchapter 6 Master Plan Rules

§15-23-178	Purpose and intent
§§15-23-179 to 15-23-191	Reserved

Subchapter 7 Rules Review and Amendment

§15-23-192	Rules review and amendment
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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)]~~ (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 Kakaako 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 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)

§15-23-2 Development guidance policies. The development guidance policies governing the

authority's actions in the Kakaako 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] (Auth: HRS §206E-33) (Imp: HRS §206E-33)

§15-23-3 Title. ~~[These rules shall be known and may be cited as the Kakaako 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 and the makai area plan, dated [REDACTED], 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] (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)

§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 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:

"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;

"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, or the enlargement of an existing building or use;

"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 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;] means the 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 50% open to sky, porches, lanais having more than two walls, accessory structures on the same lot, above grade parking and loading structures, 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 and

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 15% of interior floor area;

- (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;

"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. Window glazing shall be transparent with clear or limited UV tint so as to provide views out of and into the building. Visible light transmission level of windows on the ground floor shall be seventy per cent or greater. The executive director may provide flexibility to the strict compliance with these visual light transmission level requirements if conflicts exist with other government requirements, such as the State Energy Code;

"Hawaii capital district" means a special district established by Article 7 of the land use ordinance;

"Improvement permit" means and includes a permit approved and issued by the executive director authorizing any improvement project;

"Improvement project" means and includes:

- (1) any change over, upon, under, or across improved or unimproved real property on a lot of 20,000 square feet or less; or
- (2) less than 20,000 square feet of project improvements, including exterior alterations or 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 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 of the city and county of Honolulu;

"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 district, established by section 206E-32, HRS, which is bounded by Ala Moana Boulevard, inclusive from Punchbowl Street to Piikoi Street, from Piikoi 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 the property line between Pier 2 and Pier 4 from its intersection with the shoreline to Ala Moana Boulevard; and Ala Moana Boulevard from its intersection with the property line between lands identified by Pier 2 and Pier 4 to Punchbowl Street. The makai area also includes that parcel of land identified by tax map key 2-1-14: 16, 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 Kakaako 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 Kakaako 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 Kakaako community development district originally adopted on February 16, 1982, as amended 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, January 9, 2002, October 31, 2011~~[,]~~, and [REDACTED] ;

"Mixed use" means the combination of more than one land use within a development project or area;

"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 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,]~~ means

space that is 100% open to the sky that is between or adjacent to a structure and located at-grade. The area must be publicly accessible and useable if provided on a 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 will prevent the property from deterioration or loss or which 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 permit" means and includes a permit approved and issued by the executive director authorizing any renovation project;

"Renovation project" means interior alterations, improvements, and modifications of an existing structure. Shall include electrical, mechanical, and plumbing work with no modifications to the exterior of the existing structure. May include additional floor area not to exceed twenty five percent of the building [existing] floor area as originally constructed;

"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;

"Rules Clearance" means and includes a permit approved and issued by the executive director when uses, structures, and activities comply with setback requirements, height limits, and all other applicable standards and nonconformities;

"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~~[-]~~; and

"Zoning Clearance" means and includes a permit approved and issued by the executive director authorizing that a proposed use is consistent with the established land use district. [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] (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)]~~

§15-23-6 Rules of interpretation. (a) The following rules of construction apply to the text of this chapter.

- (1) Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.
- (2) The particular shall control the general;
- (3) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity'0
- (4) Words used in the singular include the plural; words used in the plural include the singular.
- (5) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(b) In addition to text-only contents of the rules, section 15-23-6 (rules of interpretation) shall also control related captions, titles, and figures.

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

(d) The figures located herein are an integral part of the rules. However, Figures 1 to 7, dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, are illustrative guidelines. 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;

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

(f) 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.

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

(h) 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 line, the lot line, street or alley 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.
 - (i) 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 shall apply;
 - (2) Makai area plan. The provisions of the rules, when in conflict with the mauka area plan, 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 master plan shall apply; and
 - (4) Private agreements. The rules apply to all real property located within the makai area 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 (for example, conditions, covenants and restrictions).
 - (j) The provisions of subtitle 219, title 15, HCDA'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)

§15-23-7 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)

§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 Kakaako district controlling, regulating, and determining: 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 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 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 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 within the makai area unless the development conforms to the provisions of the makai area plan and this chapter.

(d) All developments, proposed developments, 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) 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 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 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) 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 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.]~~

(i) 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] (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.]~~

§15-23-10 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.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included and all filing fees 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 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 15-23-13 (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 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 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 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, (appeals). 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. However, 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. Further, 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 deemed as complete per section 15-23-22(c) (completeness review), 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. [Eff]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-11 Development and Improvement permits.

(a) [A] An improvement or 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[-] unless waived in accordance with section 15-23-90 (minor changes) or if eligible for a rules clearance under section 15-23-25, renovation permit under section 15-23-26, a temporary use permit under section 15-23-78, conditional use of vacant land permit under section 15-23-79, or a conditional use permit under section 15-23-82.

(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) Types. There shall be two types of permits- improvement and development. Each type shall be subject to the decision-maker review and action pursuant to Figure 2 (approval requirements matrix),

dated [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) Required findings. Approval of an improvement or development permit shall require all the following findings of fact:
 - (1) Mauka area plan consistency. That the proposal complies with and advances the goals, policies and objectives of the mauka area plan;
 - (2) Mauka area rules consistency. That the proposal will protect, preserve, or enhance desirable neighborhood characteristics through compliance with the standards and guidelines of the mauka area 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.
 - (4) Climate Adaptation. That the proposal has considered climate change, sea level rise, and climate-resilient development in the design and siting of buildings.
- (e) Conditions. In approving an improvement or development permit, the decision-maker may impose any reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to an improvement or development 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 an improvement or development permit application is approved by the decision-maker which

originally imposed such condition(s) and where the applicant agrees to waive and abandon all rights secured under the regulations formerly in effect.

(f) 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 15-23-11(g) 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 be comprised of the HCDA's director of planning and development or his/her designee, one member of the authority, one native Hawaiian cultural consultant, and one or more technical consultants (e.g., architect, landscape architect, engineer) chosen by the executive director. The native Hawaiian 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 technical consultants in the DAB. Prior to retaining technical consultants, the executive director shall consult with the applicant on their fees and work scope; provided, however, that the executive director may accept or reject the applicant's recommendations and/or comments on the 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.

(g) 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.

(h) 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 as delegated by the authority to the executive director; 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)

§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 (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 shall be sustained only if the authority finds that the executive director's action was based on an erroneous finding of a material fact, or that the executive director had acted in an arbitrary or capricious manner or had manifestly abused 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 HCDA's rules of practice and procedure, 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] (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)

§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.

(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;
- (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.

(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; 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, 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 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, 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]
(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.] The following fee schedule~~

shall be applicable to all permits, rule clearance, and public hearings.

<u>Permit</u>	<u>Rule</u>	<u>Cost</u>
<u>Zoning Clearance</u>	<u>\$15-23-24</u>	<u>\$50</u>
<u>Rules Clearance</u>	<u>\$15-23-25</u>	<u>\$50</u>
<u>Renovation Permit</u>	<u>\$15-23-26</u>	<u>\$50</u>
<u>Temporary Use Permit</u>	<u>\$15-23-78</u>	<u>\$50</u>
<u>Conditional Use of Vacant Land</u>	<u>\$15-23-79</u>	<u>\$50</u>
<u>Conditional Use Permit</u>	<u>\$15-23-82</u>	<u>\$50</u>
<u>Improvement Permit</u>	<u>\$15-23-11</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>Development Permit</u>	<u>\$15-23-11</u>	<u>\$6,400 plus the cost of public hearing</u>
<u>Master Plan Permit</u>	<u>\$15-23-178</u>	<u>\$10,000 plus the cost of public hearing</u>
<u>Variance</u>	<u>\$15-23-14</u>	<u>\$500 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] (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 a violation is found to have 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] (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 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.

~~[(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.]~~

(b) 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 mauka 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 Hawaii community development 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 (appeals); 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. 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] (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)

§15-23-22 Automatic approvals. (a) The following [development-related] permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within within the following review periods:

- (1) Master plan permits: 200 calendar days;
- (2) Development permits: [~~160~~] 180 calendar days;
- (3) Certificates of appropriateness: 160 calendar days;
- (4) Conditional use permits [~~for~~] including off-site parking or joint use of parking: [~~160~~] 180 calendar days;
- (5) Variances: [~~100~~] 180 calendar days;
- (6) Modifications: [~~100~~] 180 calendar days;
- ~~(7) Certificates of project eligibility: 60 days;~~
- ~~(8)] (7) Conditional use [permits for] of vacant land permit: [30] 90 calendar days;~~
- ~~[(9)] (8) Zoning adjustments and waivers: 30 calendar days;~~
- ~~[(10) Temporary use permits: 10 days.]~~
- (9) Improvement permit and renovation permit: 90 calendar days;

(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;

(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 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; and

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

§15-23-23 Approval Validity Period. (a) Rules clearance 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 15-23-83(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 working day, in which event the period runs until the next working day.

(f) A permit will not lapse if construction or installation of approved work has commenced.

[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 uses and activities identified may be issued a zoning clearance to satisfy the requirements of other government agencies when they are in compliance with the applicable land use standards;

(b) Initiation. A developer 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 , 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) (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) below shall be issued a rules clearance when they 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);

(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) above:

- (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.
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
non-residential 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;
- (5) 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 may be approved
by the executive director;
- (7) 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;
- (8) Private utility improvements or repairs for
existing structures; and
- (9) 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. Rules clearances shall not be required for the following:

- (1) Interior electrical or plumbing work that is not required to obtain a building permit and would otherwise comply with section 15-23-25(a); and
- (2) Changes in use that are still permitted under subchapter 2. [Eff _____] (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 shall require a permit unless waived in accordance with section 15-23-90 (minor changes) or eligible for a rules clearance under section 15-23-25, temporary use permit under section 15-23-78, conditional use of vacant land permit under section 15-23-79, or a conditional use permit under section 15-23-82. Renovation projects shall be in compliance with section 15-23-15, Nonconformities.

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

(c) Action. In accordance with Figure 2 (approval requirements matrix), dated _____, 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)

~~[§§15-23-23]~~ §§15-23-27 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]~~ 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] (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 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]
(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)]~~

§15-23-32 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]
(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).]~~

§15-23-34 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)~~

~~§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)~~

~~**§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)]~~

§§15-23-37 to 15-23-39 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, greenhouses;
- (7) Parking;
- (8) Exploratoriums; and
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures.

(b) The authority may allow other uses, 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] (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 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] (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] (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,~~], 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) Auditoriums, amphitheaters, and performing arts centers may exceed the height limit as approved by the executive director.
- (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] (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 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 process specified in section 15-23-21, 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, 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, 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] (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, provided that open space shall not exceed four feet from the sidewalk elevation. Open space can be also 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:

<u>Lot Area</u> <u>(square feet)</u>	<u>Minimum Open Space</u> <u>(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] (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,~~ ], 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] (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.] <u>Not required</u>
Churches and theaters		[One per every five fixed seats or fifty square feet of general assembly area, whichever is greater.] <u>Not required</u>
Commercial and all other uses		[One per four hundred square feet of floor area.] <u>Not required</u>
Daycare facilities		[One per ten enrollment capacity.] <u>Not required</u>
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.] <u>Not required</u>

<p>[Multi-family dwellings (including reserved housing units):</p> <p>— 600 sq. ft. or less</p> <p>— More than 600 but less than 800 sq.ft.</p> <p>— 800 sq.ft. and over]</p>		<p>[0.9 per unit</p> <p>1.13 per unit</p> <p>1.35 per unit]</p>
<p>[Nursing clinics and convalescent homes, and special-care homes for the elderly and people with disabilities]</p> <p>Schools: language, vocational, business, technical and trade, colleges or universities</p>		<p>[0.9 per four patient beds, dwelling units, or lodging units.]</p> <p>[One for each ten students of design capacity, plus one per four hundred square feet of office floor area.] <u>Not required</u></p>
<p>Waterfront industrial uses</p>		<p>[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.] <u>Not required</u></p>

~~{(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.]~~
- (c) [The] Where provided, 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 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, or screening; 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) 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, 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) Mechanical means of providing parking spaces or access thereto, 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) 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.] 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]~~
(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 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

<u>Use or Use Category</u>	<u>Floor Area (in square feet)</u>	<u>Loading Space Requirement s</u>
Hospitals or similar institutions or places of public assembly.	5,000 - 10,000 10,001 - 50,000 50,001 - 100,000 Each additional 100,000 over 100,000	one two three one
[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>one</u>
	<u>10,001 - 50,000</u>	<u>two</u>
	<u>50,001 - 100,000</u>	<u>three</u>
	<u>Each additional</u>	<u>one</u>
	<u>100,000 over</u>	
	<u>100,000</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, 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] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-70 Signs. 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 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. [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)

§15-23-71 REPEALED. [R 10/10/98]

§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)

§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 or 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,

however, 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 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 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] (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 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] (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 may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation, as identified in section [15-26-38] 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] (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 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] (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.

(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 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 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 11-46 relating to community noise control, chapter 11-55 relating to water pollution, [~~chapter 11-57 relating to sewage treatment private wastewater treatment works,~~] chapter [~~11-58~~] 11-58.1 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 updated 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] (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 an 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] (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, 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~~[+]~~ 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;]~~ and the project shall conform to the built form and landscaping standards of the rules; and

- ~~[(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;]~~
- (6) 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) 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] (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 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.

(c) In applying for such permission, the landowners, duly authorized agents of the owners, or lessees shall submit an agreement which 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] (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 land use ordinance, 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 only occupy 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 land use ordinance relating to flood hazard districts shall apply to all affected activities and properties within the Kakaako district. [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)

~~[§15-23-82 REPEALED. [R 10/10/98]]~~

§15-23-82 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 however 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 shall be subject to the authority review and action pursuant to Figure 2 (approval requirements matrix), dated [REDACTED], 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 mauka 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, 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(d) (conditional use permit). 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;
- (14) Provision of sustainable features, solar or other renewable energy source, rain water capture, storage and treatment or other feature; or
- (15) 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. 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 conditional permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff [REDACTED]] (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~~[.]~~ (completeness review). ~~[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[~~r~~] 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) 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.

(e) If a permit required by this chapter requires a public hearing, no request for postponement of the hearing shall be allowed after notice has been published; however, the applicant may withdraw the permit application. [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)

§15-23-84 Determination by authority or executive director. In reaching its determination on an application for a development permit, the authority or executive director, as the case may be, 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
- (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] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E -4, 206E-5, 206E-7)

~~**[§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)]~~

§15-23-85 REPEALED. [R REDACTED]

§15-23-86 Conditions. The authority or executive director, as the case may be, may attach to a development 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 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 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] (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)]~~

§15-23-87 REPEALED. [R]

§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)]~~ (5) 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] (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 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] (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 rules clearance, temporary use permit, renovation permit, improvement permit, development permit, conditional use of vacant land 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 when the requested amendment(s) does not:

- (1) Materially increase the number of dwelling units, floor area, height, or any additional land-use disturbance;
- (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.

(b) Any other change requests which do not qualify under section 15-23-90(a) (minor changes) shall require the filing of a new application to be processed in accordance with this subchapter.

[Eff _____] (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, 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] (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] (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] (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 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, as follows:

<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
Ilalo	Samanea Saman	Monkey Pod
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 parks and recreation, 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 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) 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) Within private open space areas visible from street frontages, trees, shrubs, ground cover plant material are required.

(k) 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) 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) 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] (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] (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[.], whether physical remains of the property are present or not.

(b) Applicability. This subchapter applies to all historical or culturally significant properties within the makai area. [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)

§15-23-159 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 or culturally significant property" means any property 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 Kakaako; a tangible, historic or cultural linkage between Kakaako of the past and Kakaako of the present; and capable of productive use to the extent that its owner is able to earn a reasonable return. [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)

§15-23-160 Designation. (a) Properties deemed historic or culturally significant by the authority ~~[are so]~~ shall be designated in the makai area plan~~[-]~~ or recognized by the State Historic Preservation Division. 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.

(b) 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.

(c) 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. [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)

~~[§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.]~~

§15-23-161 Preservation and consultation.

Properties situated in the makai area that are deemed to be historically or culturally significant shall be preserved, protected, reconstructed, rehabilitated and restored by the landowners in accordance with the implementing regulations of chapter 6E, HRS, and section 106 of the National Historic Preservation Act, as applicable.

(a) Developers of new projects or projects with significant alterations on 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, pursuant to section 6E-43, HRS;

(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; and

(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 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, 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] (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)

§§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)

§§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

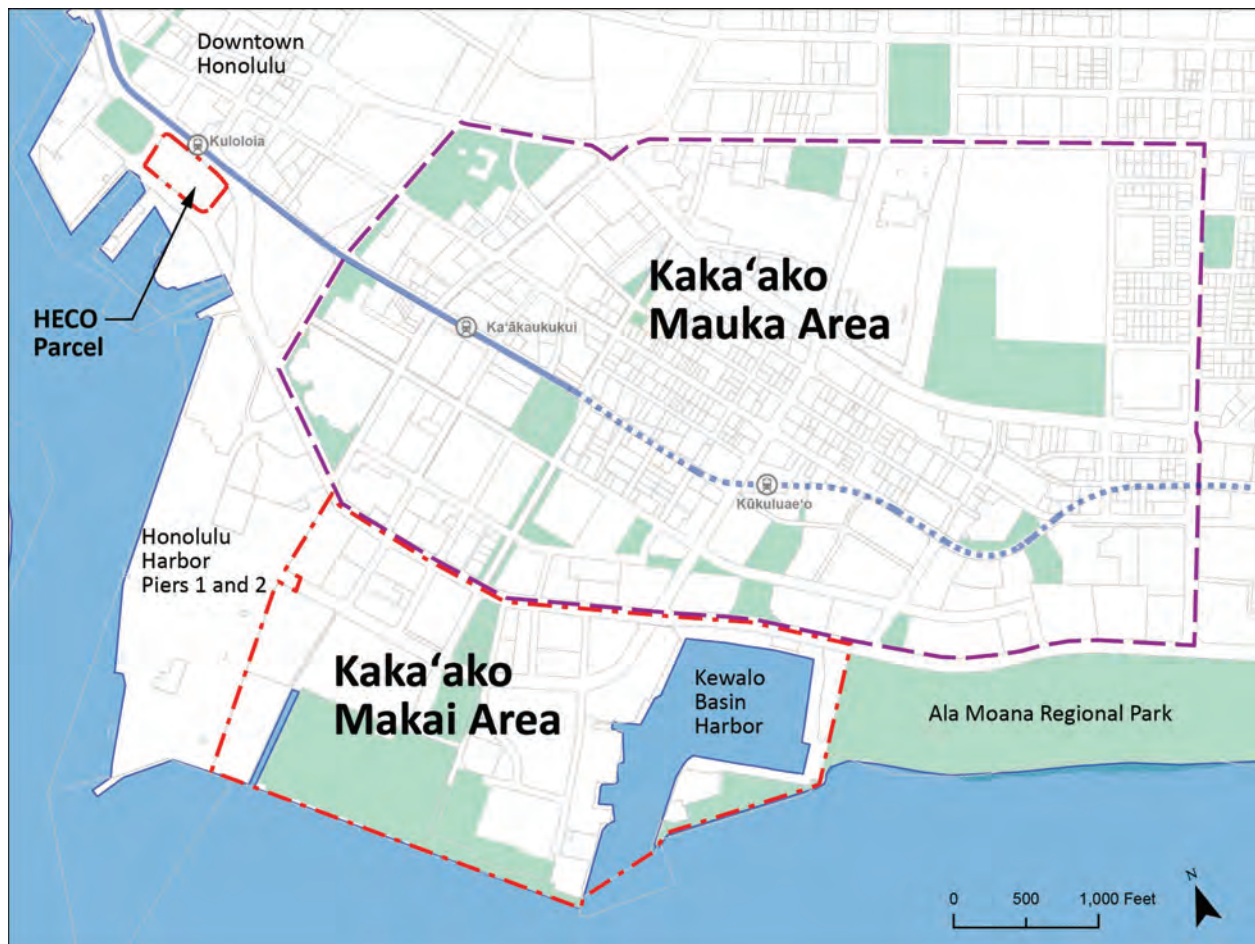


FIGURE 2: APPROVAL REQUIREMENTS MATRIX

Rule	Development Approvals	Role	
		Executive Director	Authority
§15-23-11	Improvement Permit	Decision	Considers Appeal
§15-23-11	Development Permit	Recommends Action	Decision
§15-23-14	Minor Variance	Decision	Considers Appeal
§15-23-14	Major 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
§15-23-78	Temporary use permit	Decision	Considers Appeal
§15-23-79	Conditional Use of Vacant Land	Decision	Considers Appeal
§15-23-82	Conditional Use Permit	Recommends Action	Decision
§15-23-178	Master Plan	Recommends Action	Decision

FIGURE 3: LAND USE ZONES

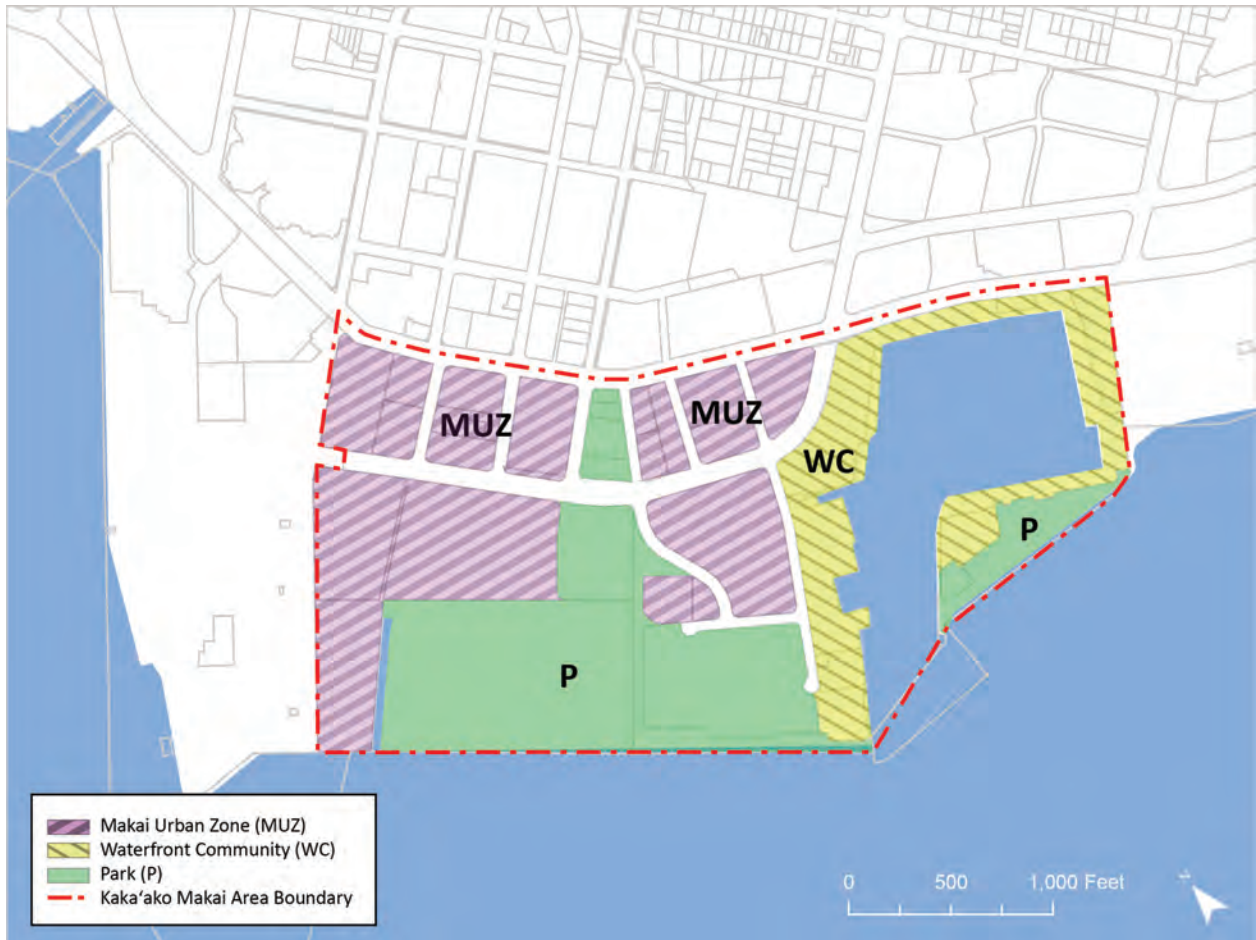


FIGURE 4: MAXIMUM HEIGHT AND DESNSITY PLAN



FIGURE 5: LAND USE

	Makai Urban Zone (MUZ)	Waterfront Community (WC)	Park (P)
Commercial			
Artisan or Craft Production	●	●	-
Convenience Retail or Grocery Store	●	●	-
Marine Services	●	●	-
Medical Services	●	-	-
Office and Professional Services	●	●	-
Personal Services	●	●	-
Restaurants and Bars	●	●	○
Retail Sales	●	●	-
Supermarket / Large Format Retail	●	-	-
Workshop/Studio	●	○	-
Entertainment and Recreation			
Cultural Facility, Gallery, or Museum	●	●	●
Dance-Nightclub	●	●	-
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	●	●	-
Parking Structure	●	○	○
Utility Infrastructure	●	●	●
Vehicle Charging/Fueling or Service	○	-	-

Legend	
●	Permitted
○	Requires conditional use permit
-	Not Permitted

FIGURE 6: MAXIMUM BUILDING ENVELOPE

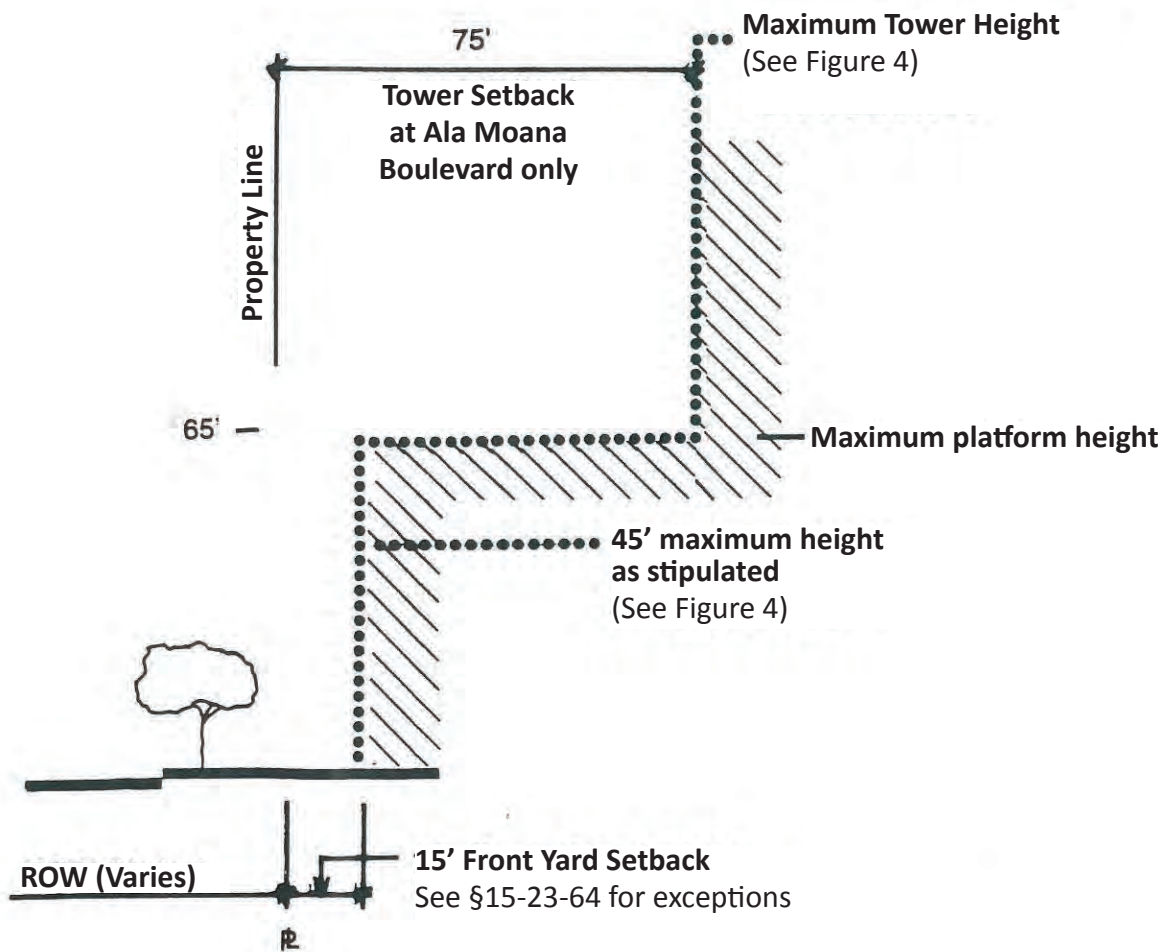


FIGURE 7: FLOOD ZONE DESIGN

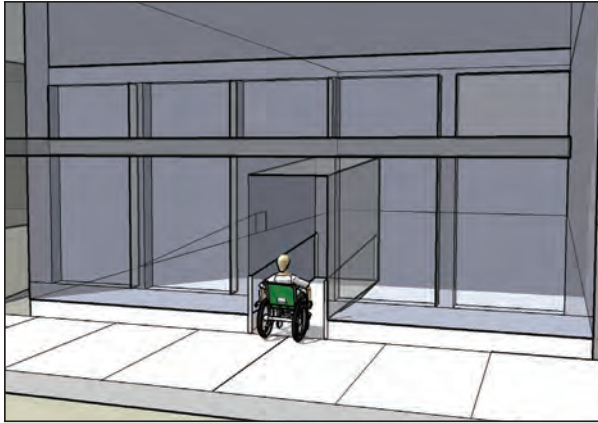
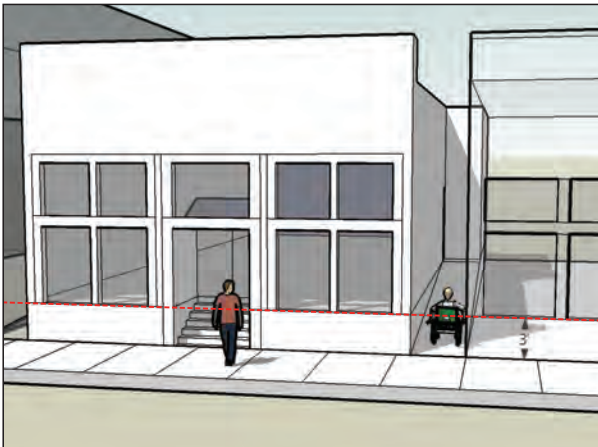
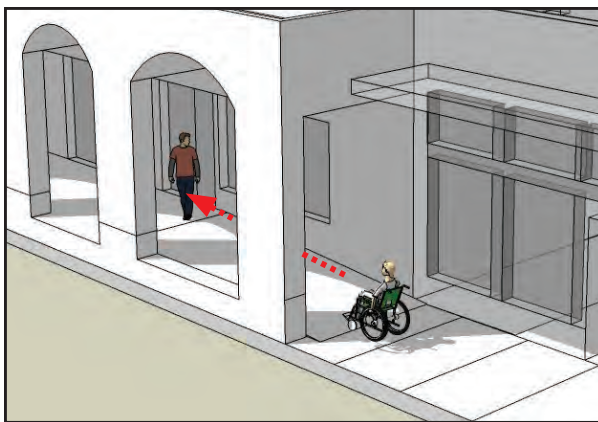


Figure 7.1: Internal Wheelchair Ramp (illustrative image).



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, The Maui News, West Hawaii Today, 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. LEGISLATIVE MATTERS

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

____.B. NO.____

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 201M-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be established within the department of
4 business, economic development, and tourism, for administrative
5 purposes, a small business regulatory review board to review any
6 proposed new or amended rule. If the board determines that a
7 proposed rule will not have a significant economic impact on a
8 substantial number of small businesses, the board shall submit a
9 statement to that effect to the agency that sets forth the
10 reason for the board's decision. If the board determines that
11 the proposed rule will have a significant economic impact on a
12 substantial number of small businesses, the board may submit to
13 the agency suggested changes in the proposed rule to minimize
14 the economic impact of the proposed rule, or may recommend the
15 withdrawal of the proposed rule. The board may also consider
16 any request from small business owners for review of any rule
17 proposed, amended, or adopted by a state agency or for review of
18 any legislation affecting small businesses, and to make

SECTION 2. Section 201M-5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

17 SECTION 3. New statutory material is underscored.

19

21 BY REQUEST

____.B. NO.____

Report Title:

Small Business Regulatory Review Board; Legislation; Small
Business

Description:

Clarifies that the Small Business Regulatory Review Board has
the authority to review legislation affecting small businesses
in response to a request from small business owners.

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

REVISED: 09/13/23
1st DRAFT DATE: 09/05/23

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE SMALL
BUSINESS REGULATORY REVIEW BOARD.

PURPOSE: To clarify that, in addition to considering
any request from small business owners for
review of any rule, proposed, amended, or
adopted by a state agency, the Small
Business Regulatory Review Board has the
authority to review legislation affecting
small businesses in response to requests
from small business owners.

MEANS: Amend section 201M-5(a) and (f), Hawaii
Revised Statutes.

JUSTIFICATION: Because the statute appears vague regarding
the Small Business Regulatory Review Board's
purview to comment on proposed legislation
in response to requests from small business
owners, this bill will conform the wording
of the statute to its intent.

Impact on the public: Ensures the stability
of the Small Business Regulatory Review
Board by clarifying its authority regarding
legislation under the Small Business
Regulatory Flexibility Act.

Impact on the department and other agencies:
Minimal.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-142.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.

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 – *no attachments*

1. Hawaii Small Business Fair at Leeward Community College
2. Presentations to Industry Associations
3. Staff's Small Business Outreach