

TITLE MC-12
 DEPARTMENT OF PLANNING
 SUBTITLE 02
 MAUI PLANNING COMMISSION
 CHAPTER 202
 SPECIAL MANAGEMENT AREA RULES

Subchapter 1 General Provisions

§12-202-1	Title
§12-202-2	Purpose
§12-202-3	Scope and exemptions
§12-202-4	Definitions
§12-202-5	Severability
§12-202-6	Special management area boundaries and maps
§12-202-7	Implementation of rules
§12-202-8	(Reserved)
§12-202-9	(Reserved)

Subchapter 2 Special Management Area Permit Procedures

§12-202-10	Special management area objectives and policies
§12-202-11	Special management area review guidelines
§12-202-12	Assessment and determination procedures
§12-202-13	Notice of application and notice of public hearing; adequacy of notice
§12-202-14	Special management area minor permit procedures
§12-202-15	Special management area use permit procedures
§12-202-16	Special management area emergency permit procedures

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 Committee Chair Couch

SUBCHAPTER 1

GENERAL PROVISIONS

§12-202-1 Title. The rules in this chapter shall be known as the "Special Management Area Rules for the Maui Planning Commission". [Eff 1/1/94] (Auth: HRS §§91-2, 205A-27) (Imp: HRS §205A-29)

§12-202-2 Purpose. The purpose of these rules is to implement Hawaii Revised Statutes chapter 205A, relating to coastal zone management and special management areas, and to establish application procedures for special management area emergency permits, minor permits, and use permits, time periods within which hearings must be held, and procedures to provide notice to individuals whose property rights may be affected. The rules further the policy of the state to preserve, protect, and where possible, restore the natural resources of the coastal zone. The rules also assist the commission in giving full consideration to the state policy of establishing special controls on development within the areas along the shoreline to avoid permanent loss of valuable coastal resources and foreclosure of land use and management options of these resources, and to provide adequate access to beaches, recreational areas and natural reserves. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-27, 205A-29, 205A-30) (Imp: §§ HRS 205A-1 to 205A-33)

§12-202-3 Scope and exemptions. (a) The rules contained in this chapter shall apply to the special management area on the island of Maui as designated on the special management area maps and specifically excluding the islands of Kahoolawe, Molokai and Lanai.

(b) The rules in this chapter shall not apply to special management area and shoreline setback area applications that have been deemed complete by the director before the effective date of these rules. An application shall be deemed complete by the director upon receipt of final agency comments and a letter is sent by the director to the applicant to that effect.

open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

"Family" means a family as defined in title 19 of the Maui County Code, as amended.

"HRS" means the Hawaii Revised Statutes, as amended.

"Hana advisory committee" means the Hana advisory committee to the Maui planning commission pursuant to chapter 2.28 of the Maui County Code.

"NBCIDAC" means the Napili Bay civic improvement district advisory committee.

"Nonstructural improvements to existing commercial structures" means non-habitable improvements to existing structures, which improvements are adjunct to the main structure not to exceed fifty square feet in floor area; or temporary structures for special events not to exceed fourteen consecutive days. Improvements may include, but not be limited to, window or door replacement or addition, reroofing, storage additions, signage, tents, and booths.

"Owner" means all holders of an equitable or legal interest in real property on the island of Maui, including any lessee holding under a recorded lease with a term of five years or more.

"Plot plan" means a detailed map prepared to a scale, based upon an accurate instrument survey, defining and showing the design of the proposed action and the existing physical condition of the land, including but not limited to parcel boundaries, topography, natural and man made features, trees, and structures. The director may require the applicant to set forth in the plot plan cross sections of the site at designated locations.

"Proposed action" means any use, activity or operation proposed by an applicant on land within the special management area.

"Scenic amenities" means significant coastal features including, but not limited to, areas of vegetation, growth, land forms such as dunes or rock outcroppings, mountain and seaward visual corridors, beaches, aquatic areas, and archeological and historic sites.

"Shoreline survey" means the actual field location of the shoreline prepared by a land surveyor registered in the State of Hawaii. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the certifying

shall be provided as a convenience to the public and shall be accompanied with a disclosure cautioning readers that reproduced sections should not be relied upon to be accurate, complete, or applicable to any particular application and that reference should be made to the Hawaii Revised Statutes, all supplements thereto and Acts of the state legislature. A charge may be imposed for copying costs. [Eff 1/1/94, am and comp] (Auth: HRS §§91-2, 205A-290) (Imp: HRS §205A-29)

§12-202-8 (Reserved)

§12-202-9 (Reserved)

- (2) Any applicant seeking an assessment shall submit an application form, provided by the department, to the central coordinating agency. The application shall require the following information and documentation:
- (A) Identification of the applicant along with documentation of ownership or authorization by the owners of the parcel on which the proposed action is to occur;
 - (B) Tax map key number and acreage of the parcel on which the proposed action is to occur;
 - (C) A plot plan, drawn to scale, of the parcel upon which the proposed action is to occur, and photographs or VHS format video tape identifying the area where the proposed action is to occur;
 - (D) A shoreline survey if the land abuts the shoreline; provided, if the proposed action will occur outside of the shoreline setback area, the director may waive a survey if:
 - (i) the shoreline is fixed by a manmade structure or structures which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure;
 - (ii) the shoreline is fixed by natural stabilized geographic features such as cliffs and rock formations; or
 - (iii) the parcel is not abutting the shoreline.
 - (E) A written description of the proposed action, including but not limited to the use, length, width, height, depth, building materials, and statement of objectives;
 - (F) A written description of the anticipated impacts of the proposed action on the special management area that addresses or describes:
 - (i) The environmental setting of the parcel that is the subject of the

- (L) Any other information and documentation required by the department to properly process the application; and
 - (M) An administrative fee as established in the county budget.
- (d) The assessment application shall be reviewed as follows:
- (1) Upon submission of a completed application, the director shall review the proposed action and make a written evaluation as to:
 - (A) The valuation of the proposed action. The applicant's estimates of the total cost or fair market value may be verified by the director of public works and environmental management. The director of public works and environmental management shall use the most recent building valuation data provided by the International Conference of Building Officials. In the event of a conflict between the estimates of the applicant and the director of public works and environmental management, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action;
 - (B) Whether the proposed action is or is not a development; and
 - (C) The potential adverse environmental and ecological effects based upon the significance criteria set forth in subsection (e).
- (e) In considering the significance of potential environmental and ecological effects, the director shall evaluate:
- (1) The sum of those effects that adversely affect the quality of the environment and the ecology, and shall evaluate the overall and cumulative adverse effects of the proposed action.
 - (2) Every phase of a proposed action, its expected primary and secondary consequences, and its cumulative and short or long-term effects. A proposed action may have a significant adverse effect on the environment

- chapter because it is not a development pursuant to section 205A-22, HRS, as amended;
- (2) Requires a special management area minor permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-202-14;
 - (3) Requires a special management area use permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with sections 12-202-13 and 12-202-15;
 - (4) Requires a special management area emergency permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-202-16; or
 - (5) Cannot be processed because the proposed action is not consistent with the county general plan, community plan, and zoning, unless a general plan, community plan, or zoning application for an appropriate amendment is processed concurrently with the SMA permit application. [Eff 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp 10/10/03; am and comp 12/20/04) (Auth: HRS §§91-2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)

§12-202-13 Notice of application and notice of public hearing; adequacy of notice. (a) Where a public hearing is required to be held pursuant to these rules, the applicant shall prepare a notice of application and legible map. The form of the notice shall be provided to the applicant by the department. Prior to publication, the department shall review the notice of application for completeness. The applicant shall submit the notice of application for publication to a newspaper within ten days of departmental approval. The applicant shall publish the notice of application once in a newspaper printed and issued at least twice weekly in the County and which is generally circulated throughout the County.

(b) A public hearing before the commission shall commence within one hundred twenty calendar days, or as soon thereafter, after the director has determined the application is complete.

(c) Where a public hearing is required to be held

the names and addresses of owners of real property situated within five hundred feet of the subject parcel were obtained from the County of Maui real property tax roll, and that current ownership was verified with the records of the County's real property tax division, within thirty days of the mailing of notice of public hearing, stating both the date the addresses were obtained and the date notice was mailed, accompanied by receipts of certified mail. If there are multiple owners of the property, notification of the person(s) listed by name on the records of the County of Maui real property tax roll shall be deemed adequate notice as to all owners. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth: HRS §§91-2, 205A-27) (Imp: HRS §§1-28.5, 205A-29)

§12-202-14 Special management area minor permit procedures.

(a) If it has been determined that the proposed action requires a special management area minor permit, the assessment application submitted pursuant to section 12-202-12 may be deemed the minor permit application, provided that when development for which a minor permit is required is started before obtaining a permit, an additional fee of \$100 shall be paid by the applicant. The payment of said fee shall not relieve any persons from fully complying with the requirements of these rules nor from any penalties prescribed in section 12-202-25.

(b) The director shall approve, approve with conditions, or deny such permit in accordance with the guidelines in section 205A-26, HRS, as amended. Any final decision shall be transmitted to the applicant in writing and shall be appealable pursuant to section 12-202-26.

(c) The director shall notify the commission, at the commission's next regularly scheduled meeting, of the issuance by the director of special management area minor permits, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of each applicant, the development authorized by the permit, and the location and purpose of the development. [Eff 1/1/94; am 9/28/97, am and comp 12/28/02] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29, 205A-30)

and guidelines of chapter 205A, HRS, as amended.

(d) The director shall inform the applicant of any legal requirement to present the proposed development, if applicable, to the urban design review board, the cultural resources commission and the NBCIDAC or the Hana advisory committee for comment and recommendations to the commission. The urban design review board and the cultural resources commission shall address the maintenance, restoration and enhancement of the special management area consistent with the objectives, policies, and guidelines of chapter 205A, HRS, as amended. The commission may designate the NBCIDAC or the Hana advisory committee to conduct the public hearing.

(e) Upon receipt of final agency comments, the application shall be deemed complete by the director and shall be scheduled for public hearing.

(f) The commission shall approve a special management area use permit, subject to terms and conditions as permitted in sections 205A-26(1) and 205A-26(3), HRS, as amended, if it finds the criteria set forth in sections 205A-26(2) and 205A-26(3), HRS, as amended, have been met.

(g) Findings of fact, conclusions of law, and decision and order shall be issued in accordance with the rules of practice and procedure for the commission in effect when action is taken. [Eff 1/1/94; am 9/28/97, am and comp 12/28/02, am and comp 4/21/08] (Auth: HRS §§91-2, 91-4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26, 205A-28, 205A-29)

§12-202-16 Special management area emergency permit procedures. (a) Any person seeking a special management area emergency permit shall file an application with the director. The application, provided by the department, shall require:

- (1) Identification of the applicant along with documentation of ownership and authorization by the owners of the parcel on which the proposed action is to occur;
- (2) The tax map key number(s) of the parcel on which the proposed action is to occur;
- (3) A written description of the proposed action, including, but not limited to, the length, width, height, depth, and type of materials for any proposed action;
- (4) A written statement of the emergency or

- (2) In the event of impending or presently occurring disaster, the mayor has waived the requirements of sections 12-202-12, 12-202-14, or 12-202-15; or
- (3) In the event of a state-declared emergency, the governor, after conferral with and the recommendation of the mayor, has waived the requirements of sections 12-202-12, 12-202-14, or 12-202-15.

(e) No special management area emergency permit shall allow the reconstruction of structures damaged by natural hazards to their original form if such structures were previously found not to be in compliance with the federal flood insurance program or were not legally constructed.

(f) The director may place reasonable terms, conditions, and time stipulations upon such permit.

(g) The director shall set an expiration date for the permit, not to exceed one hundred eighty days, and set a time limitation within which the applicant shall apply for a permit pursuant to sections 12-202-14 or 12-202-15.

(h) The director shall submit reports of all determinations regarding emergency permits to the commission for review at the next regular meeting after the permit has been issued. Such reports shall include all facts and reasons for the determination.

(i) If the director denies the emergency permit, the denial shall be in writing, setting forth facts sufficient to demonstrate the application did not meet the requirements for issuance of the emergency permit pursuant to subsection (d). The applicant shall be informed of his right to appeal pursuant to section 12-202-26 herein. [Eff 1/1/94; am 9/28/97] (Auth: HRS §§91-2, 205A-27, 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

§12-202-17 Amendments to and determinations of permit terms, conditions, and time stipulations. (a) Any person who has been issued a special management area emergency permit, minor permit, or use permit may request the director or commission, as appropriate, to amend, delete, or determine any terms, conditions or time stipulations placed upon such permit.

The director shall notify the commission, at the commission's next regularly scheduled meeting, of the issuance of any permit transfer, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the aforementioned information provided to the department and permit transfer approval letter. Nothing in this section shall prevent the director from forwarding any permit transfer request to the commission for consideration in accordance with procedures set forth in this section.

(e) Unless otherwise specified in permit conditions, the director may approve a special management area use permit time extension to initiate construction or to complete construction, if the permit holder submits a written request for a time extension. The request shall include the following:

- (1) Reason(s) for permit time extension;
- (2) Length of time extension requested;
- (3) An analysis of whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder's development to have a substantial adverse environmental or ecological effect; and
- (4) An analysis of whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder's development to adversely affect the capacity or condition of infrastructure.

If the director determines that there have been no changes within the special management area since the granting of the permit that will cause the permit holder's development to have any substantial adverse environmental or ecological effect, and that there have been no changes within the special management area since the granting of the permit that will cause the permit holder's development to adversely affect the condition or capacity of infrastructure, the director may grant up to a two-year time extension.

Prior to granting or denying any permit time extension request, the director shall notify the commission of the request at the commission's next regularly scheduled meeting, receipt of which shall be acknowledged by the commission. Such notification shall

SUBCHAPTER 3

PROCEDURES TO ADOPT SPECIAL MANAGEMENT AREA RULES;
DECLARATORY RULINGS; AND ADOPTION AND AMENDMENT
OF BOUNDARIES AND MAPS

§12-202-21 Petition and procedures to adopt, amend, or repeal special management area rules; declaratory rulings. The commission may adopt, amend, or repeal any of its rules by following the procedures outlined in its rules of practice and procedure section 12-201-92. Any interested person may petition the commission for a declaratory order as to applicability of any statutory provision or of any rule or order of the department or the commission pursuant to the commission's rules of practice and procedure section 12-201-93. [Eff 1/1/94] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6, 91-7)

§12-202-22 Adoption and amendment of special management area boundaries and maps. (a) Any amendment to the boundaries of any special management area map adopted and filed with the department as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, as amended, and these rules, may be initiated by the director in accordance to the requirements of this section.

(b) The director may at any time initiate comprehensive review and amendments to the special management area boundaries.

(c) The commission, by a two-thirds vote of its total membership, may direct the director to initiate a comprehensive review and amendments to the special management area boundaries.

(d) The director shall give notice of the director's intent to amend the special management area boundaries to the commission, the general public and the office of planning, stating the initiation date and estimated completion date of the director's review and shall submit the proposed amendments to the commission.

Not less than thirty calendar days before the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is

construed to be entirely within the special management area and shall be removed or the violation shall be corrected.

- (d) Issuance of notice of violation and order.
 - (1) The landowner or the alleged violator, or both, shall be notified by the enforcement agency by certified or registered mail of an alleged violation of this rule, any permit issued pursuant thereto, or any condition of a special management area permit approval. The notice of violation and order shall include, but not be limited to, the specific section of this rule which has been violated, the nature of the violation, and the remedy(ies) available. The notice of violation and order may also require that the violative activity cease, or that the violative development be removed; that a civil fine be paid not to exceed \$100,000 per violation; and that a civil fine be paid not to exceed \$10,000 per day for each day in which the violation persists, in addition to the foregoing and any other penalties.
 - (2) The notice of violation and order shall state that the order shall become final thirty days after the date of its mailing, unless written request for a hearing is mailed or delivered to the enforcement agency within said thirty days. Nothing in this section shall prevent the landowner or violator from seeking to negotiate a settlement or resolve a dispute.
 - (3) If the violator seeks a negotiated settlement with the enforcement agency, but waives the right to a hearing, the enforcement agency, in consultation with the department and the corporation counsel, may negotiate a settlement agreement with the landowner or, if appropriate, the violator, that provides for cure of the violation, set any fine, and inspection of parcel by the enforcement agency and the department. The proposed settlement shall be forwarded to the commission for final action.
 - (4) Any request for a hearing shall be in writing and delivered, or mailed and postmark dated,

penalties until the violation is corrected. A civil fine may be imposed by the department after an opportunity for a hearing under chapter 91, HRS, as amended, unless said hearing is otherwise waived. A special management area permit application submitted subsequent to an applicant having completed the development or having been cited for the activity or construction without having obtained special management area approval, shall not stay any order to pay civil fines. [Eff 1/1/94; am 9/28/97; am and comp 5/5/12] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 205A-26, 205A-28, 205A-29, 205A-30, 205A-33)

§12-202-26 Appeal of director's decision; filing the notice of appeal. (a) Appeal of the director's decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the filing of the notice of appeal. [Eff 1/1/94; am and comp 9/28/97; am and comp 11/4/02] (Auth: Charter §§ 8-8.4, 13-2.15) (Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-27 Content of the notice of appeal. The notice of appeal shall identify the party or parties taking the appeal in the caption and body of the notice of appeal. The notice of appeal shall designate the decision appealed from and shall state the reasons for the appeal. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15) (Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-28 Joint or consolidated appeals. If two or more parties are entitled to appeal from a decision of the director and their interests are such as to make joinder practicable, they may file a joint notice of

§12-202-32 Disposition of appeal. The commission may affirm the decision of the director, or may remand the case to the hearing officer, if any, with instructions for further proceedings; or it may reverse the decision of the director if the substantial rights of the appellant may have been prejudiced because the decision is:

- (1) Based on clearly erroneous findings of material fact or erroneous application of the law; or
- (2) Arbitrary or capricious in its application; or
- (3) A clearly unwarranted abuse of discretion. [Eff 11/4/02; comp 11/4/02; am and comp 12/20/04] (Auth: HRS §§91-14(g)(6), 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-29, 205A-30, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

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