

ALAN M. ARAKAWA
Mayor

MICHELE CHOUTEAU MCLEAN
Director

JOSEPH W. ALUETA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

August 21, 2018

RECEIVED


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OFFICE OF THE MAYOR

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran, Chair
and Members of the Infrastructure and
Environmental Management Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor Date 8/29/18

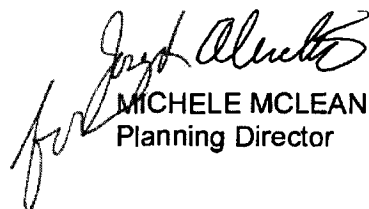
Dear Chair Cochran and Members:

**SUBJECT: SUSTAINABILITY AND RESTORATION OF TRADITIONAL
HAWAIIAN FISHPONDS (IEM-67) (RFC 2018/0077)**

The County of Maui Department of Planning (Department) has received your letter dated August 9, 2018, requesting information regarding the subject topic. The Department supports the sustainability and restoration of traditional Hawaiian fishponds as well as the efforts to streamline the major State and Federal permits associated with these restoration activities. The Department has attached information in which County-issued permits would be needed from the Department and whether the process could be streamlined.

Should you have any questions, feel free to transmit them to the Department via transmittal through the Office of the Mayor.

Sincerely,


MICHELE MCLEAN
Planning Director

Honorable Alan M. Arakawa, Mayor

For Transmittal to:

Honorable Elle Cochran, Chair

August 21, 2018

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Attachment

xc: Joseph W. Alueta, Deputy Planning Director (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Pam Eaton, Planning Program Administrator (PDF)
David Raatz, Administrative Planning Officer (PDF)
Jeffrey P. Dack, Current Planning Supervisor (PDF)
James A. Buika, Coastal Resource Planner (PDF)
Keith C. Scott, Staff Planner (PDF)

MCM:JAB:ela

Project File

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Attachment: (EM-67)

Request

The County of Maui Department of Planning (Department) supports the sustainability and restoration of Traditional Hawaiian Fishponds as well as the efforts to streamline the major State and Federal permits associated with these restoration activities. The Department understands your request is to first, identify situations in which Department-issued permits would be needed from the Department for the restoration of traditional Hawaiian fishponds. Second, to explain whether the Department permit process could be streamlined, in a manner similar to the State's Office of Conservation and Coastal Lands, under the Department of Land and Natural Resources.

To meet your request, the Department provides you with a) Planning Assumptions for our analysis; b) Background on Department rules for permits; c) Department analysis of requirement for permits; and d) Department possible streamlining actions.

Planning Assumptions

The Department assumes, for the purposes of this response that: 1) in some instances shoreline fishponds will be managed from a land-based shoreline parcel or parcels, located contiguous with and mauka of the fishpond; and 2) based on current planning practices, the Department will work proactively with the DLNR-OCCL staff for all shoreline actions and permits associated with fishpond rehabilitation. Fishpond permitting will done very transparently.

Background

Department/County Jurisdiction: The Department and county jurisdiction at the shoreline is located mauka of the State Certified Shoreline for the parcel, where land-based project support is often provided to rehabilitate a fishpond. Under normal circumstances, any project conducted at or near the shoreline will require a State Certified Shoreline to determine specific state and county jurisdictional boundaries and associated permit requirements. The State and Federal government have jurisdiction makai of the State Certified Shoreline, for the actual fishpond restoration activities. Additionally, shorelines are not determined to be the outer edge of the fishpond walls. Pursuant to Hawaii Administrative Rules Chapter 13-222, the shoreline for fishpond locations remains at the shoreline rather than at the outer wall of the fishpond.

Governing Rules: The Department administers six sets of rules under the Coastal Zone Management (CZM) Act, HRS 205A, as amended. The Maui County Charter Section 8-8.4 designates the Maui, Moloka'i and Lana'i Planning Commissions as the authority in all matters relating to the CZM law for their respective islands. Accordingly, the Maui County Council is not involved in permit decisions related to the coastal zone in Maui County. The Department administers the following rules:

1. Special Management Area Rules (SMA Rules) for Maui, Molola'i, and Lana'i Planning Commissions (SMA Rules) (Title MC-12, Ch. 202, 302, 402, respectively) and
2. Shoreline Rules for Maui, Molola'i, and Lana'i Planning Commissions (Shoreline Rules) (Title MC-12, Ch. 203, 304, 403).

The goal of the SMA Rules, as well as the Shoreline Rules, is to further the policy of the State, through the CZM Act, to preserve, protect, and where possible, restore the natural resources of the coastal zone, such as Native Hawaiian Fishponds.

The above referenced sets of rules are guided by the Hawaii CZM Act which provides objectives, policies, and guidelines to manage development in the coastal zone through each island SMA Rules and corresponding Shoreline Rules. Each island's Commissions have the authority to establish shoreline setback rules and procedures for variances. Generally, and in summary, the Maui islands' Shoreline Setback Objectives are to:

- a) Move out of harm's way;
- b) Plan for the obsolescence of structures in shoreline setback area;
- c) Ensure shoreline access; and
- d) Limit the types of structures and activities in the shoreline setback area.

Related to review of land-based activities associated with fishpond rehabilitation, an SMA Permit is required and each set of Shoreline Rules are in place to manage activities in the shoreline setback area, which is defined as the land between the shoreline and the setback line (which ranges from 25' to 150' from the shoreline).

Department Analysis

Under the above assumptions, SMA Rules, and Shoreline Rules, the Department will require a Special Management Area Permit for any planned actions or structures associated with the fishpond on the land-based parcel(s). Additionally, as part of the SMA permit assessment review, the Department will evaluate activities within the shoreline setback area according to each island's Shoreline Rules, referenced above.

The objective of the review is to manage any development action or structure with Best Management Practices associated with fishpond restoration and operations to further protect the coastal zone. Under SMA Rules, key review criteria include analysis of minimized impacts to:

- a) Protected and endangered species, such as shorebird nesting habitats and breeding habitats for the Hawaiian Hoary Bat and the Blackburn Sphinx Moth, as well as turtles and monk seal habitats;
- b) Sensitive dune areas or shorelines governed by the DLNR State Historic Preservation Division, Chapter 6E-42, managing cultural and historic resources;
- c) Review of drainage, runoff, erosion, and floodplain management to preserve and protect marine resources; and
- d) Public shoreline access.

As one example, standards for reviewing a SMA Use Permit application are found under HRS-205A-2, HRS 205A-26 and § 12-202-10, § 12-202-11, and § 12-202-12 of Chapter 202, *Special Management Area Rules for the Maui Planning Commission*. One relevant excerpt from the SMA guidelines include the following:

3. *The Authority shall seek to minimize, where reasonable:*
 - A. *Dredging, filling or otherwise altering any bay, estuary, salt marsh, river*

- mouth, slough, or lagoon;*
- B. *Any development which would reduce the size of any beach or other area usable for public recreation;*
 - C. *Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas and the mean high tide line where there is no beach;*
 - D. *Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and*
 - E. *Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.*

The Department can provide you with the details of the review criteria for any project or action in the Special Management Area, upon further request.

Possible Department Streamlining Actions

To date, the Department has not streamlined the SMA permit requirements for fishponds. The SMA permit would regulate activities on land, via best management practices to minimize impacts from building of ancillary structures, stockpiling, movement of heavy vehicles, drainage and runoff, lighting, and preserving sensitive environmental areas.

To conclude, three possible Department streamlining approaches could include:

- 1) Depending on review of allowed activities in the shoreline setback area by the applicant, the Department could waive the requirement for a State Certified Shoreline for most cases where a project will be clearly support from the land adjacent to the fishpond. This waiver could save applicants the cost for the survey and up to four months for state processing time.
- 2) From the Permit Application Guidebook, Tier One Routine Maintenance Activities for fishponds are “allowed activities” under the Shoreline Rules for each island. For example, the Maui Planning Commission Shoreline Rules allow for ten (10) categories of activities in the shoreline setback area, to include clearing of sand and silt from stream mouths and drainage areas. The list of already allowed activities in the shoreline setback area could become part of the Tier One streamlined permit process.
- 3) The Department could review for the land based activities of the project against a subset of the most relevant Objectives and Policies (10) of the CZM Act along with the most relevant SMA permit review criteria (13) for additional streamlining opportunities.

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