

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
<u>§12-202-11.5</u>	<u>Special management area categorical exemptions</u>
§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

1	§12-202-16	Special management area emergency permit
2		procedures
3	§12-202-17	Amendments to [and determinations of] permit
4		[terms, conditions, and time stipulations]
5		approvals.
6	§12-202-18	(Reserved)
7	§12-202-19	(Reserved)
8	§12-202-20	(Reserved)]
9		
10		
11	Subchapter 3	Procedures to Adopt Special Management
12		Area Rules; Declaratory Rulings; [and]
13		Adoption and Amendment of Boundaries
14		and Maps; <u>Enforcement; and Appeals</u>
15		
16	§12-202-21	Petition and procedures to adopt, amend, or
17		repeal special management area rules;
18		declaratory rulings
19	§12-202-22	Adoption and amendment of special management
20		area boundaries and maps
21	§12-202-23	Enforcement
22	§12-202-24	Conflicts with other laws
23	§12-202-25	Penalties
24	§12-202-26	Appeal of director's decision; filing the notice of
25		appeal; <u>settlement of appeal</u>
26	§12-202-27	Content of the [notice of] appeal
27	§12-202-28	Joint or consolidated appeals
28	§12-202-29	Service of the notice of appeal
29	§12-202-30	Payment of fees
30	§12-202-31	Contested case hearing on appeal
31	§12-202-32	Disposition of appeal
32		

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 (HRS) chapter 205A, relating to coastal zone management and special management areas, and to establish application procedures for special management area assessments, 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] 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] 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] At the discretion of the director, the rules in this chapter [shall] may 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] notification being sent by the [director] department to the applicant to that effect. Applications deemed complete [shall] may be processed under the rules in effect at the

1 time the application was deemed complete. [Eff 1/1/94] (Auth:
2 HRS §§46-4, 91-2, 205A-27, 205A-29) (Imp: HRS §205A-23)
3

4 **§12-202-4 Definitions.** For the purposes of this chapter,
5 and unless it is plainly evident from the context that a different
6 meaning is intended, the definitions of this chapter shall be those
7 set forth in sections 205A-1, 205A-22, and 205A-41, HRS ([a copy]
8 copies of which shall be provided pursuant to section 12-202-7), and
9 as follows:

10 "Categorical exemption" means a proposed use, activity, or
11 operation for which a special management area assessment,
12 emergency permit, minor permit, or use permit is not required,
13 pursuant to section 12-202-11.5.

14 "Coastal dune" means one of possibly several continuous or
15 nearly continuous mounds or ridges of unconsolidated sand
16 continuous and parallel to the beach, situated so that it may be
17 accessible to storm waves and seasonal high waves for release to the
18 beach or offshore waters as defined by chapter 20.08, Maui County
19 Code.

20 "Commission" means the Maui planning commission.

21 ["Crops" means agricultural produce or parts of plants or trees
22 cultivated for commercial or personal use, including but not limited
23 to the raising of livestock and aquaculture.

24 "Cultural resources commission" means the Maui County
25 cultural resources commission established under chapters 2.40 and
26 2.88 of the Maui County Code.

27 "Debris line" means a line marking the landward limit of
28 debris deposits resulting from the upper reaches of the wash of
29 waves.]

30 "Department" means the department of planning of the
31 County of Maui.

32 "Development" means any of the uses, activities, or operations
33 on land or in or under water within a special management area as
34 defined by section 205A-22, HRS, as amended.

35 "Director" means the director of the department of planning of
36 the County of Maui.

37 "Director of public works [and environmental management]"
38 means the director of the department of public works [and
39 environmental management] of the County of Maui.

40 "Environmental assessment" or "environmental impact
41 statement" [or "EIS"] means an informational document that is

1 prepared in compliance with chapter 343, HRS, and the rules of the
2 office of environmental quality control.

3 "Erosion hazard line" means the mapped 80 percent
4 cumulative probability contour of the coastal erosion hazard zone
5 with 3.2 feet of sea level rise approved by the Hawaii Climate Change
6 Mitigation and Adaptation Commission as part of the 2017 Hawaii
7 Sea Level Rise Vulnerability and Adaptation Report, as accessible
8 within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands
9 Ocean Observing System, and as may be updated from time to time.

10 ["Estuarine sanctuary" means a research area which may
11 include any part or all of an estuary, adjoining transitional areas,
12 and adjacent uplands, constituting to the extent feasible a natural
13 unit, set aside to provide scientists and students the opportunity to
14 examine over a period of time the ecological relationships with the
15 area.]

16 "Estuary" means that part of a river or stream or other body
17 of water having unimpaired connection with the open sea, where the
18 sea water is measurably diluted with fresh water derived from land
19 drainage.

20 "Exempt action" or "exemption" means a proposed use,
21 activity, or operation that is not a development as determined by the
22 director and as defined by section 205A-22, HRS, and as otherwise
23 provided herein.

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

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

27 "Hana advisory committee" means the Hana advisory
28 committee to the Maui planning commission pursuant to chapter
29 2.28 of the Maui County Code.

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

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

40 "Nonsubstantive amendment" means a proposed change to a
41 permit scope that has no impact to the special management area or

1 to the condition or capacity of infrastructure that is discernibly
2 different than that associated with the original approval.

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

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

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

16 "Renovation" means the remodel, update, or upgrade of a
17 structure that does not result in a significant change to its
18 configuration or floor plan, does not increase existing floor area, and
19 does not add floors, including replacement of cabinets, fixtures,
20 roofs, wall surfaces, and floor surfaces.

21 "Reconstruction" means rebuilding of an entire structure.

22 "Repair" means the fixing, replacing or renewal of any part of
23 an existing structure, but not the entire structure, solely for the
24 purpose of its maintenance.

25 "Sand" means particles of mineralogic or rock material
26 ranging in diameter from 0.0625 millimeters to millimeters that
27 shall be substantially clean of rubble and debris; shall contain no
28 more than fifteen percent volume of silt, the particles of which range
29 in diameter from 0.039 millimeters to 0.0625 millimeters, and clay,
30 the particles of which range in diameter from 0.00006 millimeters to
31 .0039 millimeters; and shall not consist of artificially crushed coral
32 as defined by chapter 20.08, Maui County Code.

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

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

1 and the certifying signature and date of the chairman of the board
2 of land and natural resources.]

3 "Single-family residence" means [a] one single-family dwelling
4 and [any accessory dwelling] all accessory structures thereto,
5 including one accessory dwelling as defined in and provided by title
6 19 of the Maui County Code, as amended[.], that together can be
7 considered an exempt action pursuant to section 205A-22, HRS.

8 "Urban design review board" means the Maui County
9 urban design review board as established under chapters 2.26 and
10 2.40 of the Maui County Code, as amended.

11 "Use" means a use as defined in title 19 of the Maui County
12 Code, as amended.

13 ["Vegetation growth" means any plant, tree, shrub, grass, or
14 groups, clusters, or patches of the same naturally rooted and
15 growing.

16 "Vegetation line" means a line marking the seaward limit of
17 vegetation growth.] [Eff 1/1/94; am 9/28/97, am and comp
18 9/25/03, am and comp 4/21/08] (Auth: HRS §§91-2, 205A-29)
19 (Imp: HRS §205A-29)
20

21 **§12-202-5 Severability.** If any provision of these rules or
22 the application thereof to any person is held invalid, the invalidity
23 shall not affect other provisions or applications of these rules [which]
24 that can be given effect without the invalid provision or application.
25 To that extent the provisions of these rules are severable. [Eff
26 1/1/94] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)
27

28 **§12-202-6 Special management area boundaries and**
29 **maps.** The special management area shall be all lands so
30 designated on the maps adopted by the commission as of November
31 19, 1975, or as amended pursuant to section 205A-23, HRS, which
32 maps are in the keeping of the department. These maps shall be the
33 official special management area to be administered and enforced
34 under these rules. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-23,
35 205A-27, 205A-29) (Imp: HRS §205A-23)
36

37 **§12-202-7 Implementation of rules.** The director shall
38 provide such applications in a form as may be necessary to
39 accomplish the intent of these rules, and shall provide upon request,
40 a copy of sections of Hawaii Revised Statutes referenced in these
41 rules. Such copies 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] acts of the [state] State legislature. The director may also publish with the rules, or separately, tables, charts, or other graphics that will serve to clarify or illustrate various provisions. 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)]

SUBCHAPTER 2

SPECIAL MANAGEMENT AREA PERMIT PROCEDURES

§12-202-10 Special management area objectives and policies. (a) The objectives and policies of this chapter shall be those set forth in section 205A-2, HRS, as amended.

(b) In implementing these objectives and policies, the department or the commission, as appropriate, shall fully consider ecological, environmental, recreational, cultural, historic, and [aesthetic values] scenic resources as well as needs for economic development[.] and hazard mitigation. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4)

§12-202-11 Special management area review guidelines. The review guidelines set forth in section 205A-26, HRS, as amended, shall be used by the director and the commission, as appropriate, for the review of developments proposed in the special management area. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-26)

§12-202-11.5 Special management area categorical exemptions. Pursuant to HRS 205A-22 and 205A-26(2), it is hereby assessed and determined that any use, activity, or operation

1 listed below is not considered "development" pursuant to section
2 205A-22, HRS; by its minimal nature, does not have a cumulative
3 impact or a significant environmental or ecological effect on the
4 special management area; and therefore is exempt from any
5 requirements for a special management area assessment or permit.
6 However, such uses, activities, or operations may be subject to other
7 assessment or permitting requirements, such as a building permit,
8 a historic district permit, or a flood development permit, and may
9 require a shoreline setback approval if the action is located within
10 the shoreline area.

11 Those who intend to conduct any use, activity or operation
12 listed below must complete a declaration form as provided by the
13 department and made accessible to the public.

14 (a) Transfer of land title; creation or termination of
15 easements, covenants, or other rights in structure or land;

16 (b) Normal and customary agricultural activities on land
17 currently or historically used for such activities, provided that
18 appropriate best management practices to control or minimize
19 pesticide and sediment runoff are implemented to minimize impacts
20 to nearshore waters;

21 (c) Changes in uses or operations, including changes between
22 short-term and long-term occupancy of dwelling units and various
23 uses of beach parks that are under county or state jurisdiction, that
24 do not increase the density or intensity of use as determined by the
25 director. Increases in the density or intensity of use can be
26 demonstrated by increased off-street parking requirements,
27 pursuant to Title 19, Maui County Code, or increased storage needs;

28 (d) On private property, one temporary event and its signage,
29 such as a fundraiser, community event, festival, fair, luau, and
30 family celebration, occurring not more than once in a thirty-day
31 period, and limited to ninety-six hours including setup and
32 takedown, and involving no new ground altering activity; on public
33 property, such temporary events and signage under a county or
34 state permitting authority; provided that if any event is on the
35 shoreline, then shoreline setback approval is required;

36 (e) Archaeological, geophysical, percolation, engineering, soils,
37 and other scientific testing conducted by a licensed archaeological

1 or scientific professional involving temporary excavation limited to
2 the minimum extent determined necessary and appropriate or as
3 approved by the State Historic Preservation Division, and employing
4 best management practices protective of the environment and
5 natural and cultural resources;

6 (f) Nonstructural interior maintenance, repairs, and
7 renovations to existing, lawfully established structures that involve
8 no expansion or ground disturbance, and do not increase the
9 density or intensity of use, such as paint, floors, carpets, cabinets,
10 and interior walls and doors, limited to a cumulative valuation of
11 less than \$500,000 in any 12-month period for a single ownership
12 on a single lot or set of lots composing a unified building site.
13 Increases in the density or intensity of use can be demonstrated by
14 increased off-street parking requirements, pursuant to Title 19,
15 Maui County Code, or increased storage needs;

16 (g) Nonstructural exterior maintenance, repairs and
17 renovations to existing, lawfully established structures that involve
18 no ground disturbance, such as doors, windows, shutters, siding or
19 roofs and, for structures erected in 1981 or after, to protect against
20 impacts from lead-based paint, painting with related preparatory
21 work; such activities are limited to a cumulative valuation of less
22 than \$500,000 in any 12-month period for a single ownership on a
23 single lot or set of lots composing a unified building site;

24 (h) Driveway and parking lot patching and repairs, but not
25 resurfacing over three hundred square feet;

26 (i) Exterior installation on and maintenance, repairs, and
27 renovations to existing, lawfully established structures that involve
28 no ground disturbance and that are nonstructural, such as signage,
29 wireless antennae and other transmission equipment, satellite
30 dishes, and roof mounted equipment, such as photovoltaic and solar
31 panels;

32 (j) Nonstructural single-story enclosures of existing, lawfully
33 established roofed residential lanais, decks, patios, balconies,
34 carports or similar structures that are accessory to single-family
35 dwelling and multi-family dwellings and that are included in the
36 definition of "floor area" in Title 19 of the Maui County Code,
37 provided that those enclosures will not result in the total floor area

1 of a single family residence exceeding 7,500 square feet, limited to a
2 cumulative valuation of less than \$500,000 in any 12-month period
3 for a single ownership on a single lot or set of lots composing a
4 unified building site;

5 (k) Site improvements, except in coastal dunes, involving
6 limited ground disturbance, such as minor surface grading and
7 grubbing, installation of turf, shallow landscaping, and irrigation,
8 and installation of asphalt or concrete slabs and driveways, up to
9 six inches deep, up to three hundred square feet, and no more than
10 once in a 12-month period;

11 (l) Site improvements, except in coastal dunes, involving
12 limited ground disturbance more than six inches deep and up to
13 sixteen square feet no more than once in a 12-month period for holes
14 or trenching, such as the installation, removal, or maintenance of
15 trees and shrubs, utility pedestals, ground signs, water, sewer, and
16 conduit lines, walls and fences up to four feet in height, telephone
17 and light poles, mailbox posts, and solar panels, provided that the
18 improvements may be subject to shoreline setback approval
19 pursuant to the Shoreline Rules, and provided that this does not
20 include new wireless telecommunications towers, windmills and
21 wind turbines.

22 (m) Operation and maintenance activities for existing public
23 roadways and drainage systems, subject to approval by the
24 applicable state or county agency, such as vegetation management
25 activities, including tree trimming and cutting and vegetation
26 removal, and clearing obstructions including beach sand
27 accumulations that block publicly-owned drainage ways, provided
28 that beach sand is placed on adjacent beaches or dunes, and the
29 obstruction consists solely of beach sand that is removed to the
30 minimum volume and depth necessary to allow for passage of flood
31 waters.

32 (n) With the application of best management practices to
33 protect the marine and land environment, emergency protection of
34 Department of Environmental Management wastewater
35 infrastructure or Department of Water Supply infrastructure at
36 imminent risk of failure which would substantially affect public

1 health or safety, including significant water loss, or contamination
2 of surface water, land, or water supply.
3

4 **§12-202-12 Assessment and determination procedures.**

5 (a) [All] Any proposed [actions] action within the special management
6 area that could be determined to be a development and that does
7 not fully fall within any of the categorical exemptions listed in
8 section 12-202-11.5 shall be subject to an assessment and a
9 determination made by the director as to whether it is a development
10 and requires a special management area use permit or minor permit
11 or is an exempt action. Such assessment shall be pursuant to
12 sections 205A-22 and HRS 205A-26, HRS, and the significance
13 criteria set forth in this section.

14 (b) The applicant or the director may waive assessment and
15 determination, and the applicant may apply for a special
16 management area use permit pursuant to the provisions of sections
17 12-202-13 and 12-202-15.

18 (c) Assessment applications shall be [filed in accordance with
19 the following] submitted in a format prescribed by the department
20 and shall include the following information and documentation:

21 [(1) Any applicant for a proposed action which has been
22 assessed under the National Environmental Policy Act
23 (42 U.S.C. §4321, et. seq.) or under chapter 343, HRS,
24 and for which a findings of no significant impact
25 (FONSI) has been filed or a required EIS has been
26 accepted, may apply directly for a special management
27 area use permit or special management area minor
28 permit.

29 (2) Any applicant seeking an assessment shall submit an
30 application form, provided by the department, to the
31 central coordinating agency. The application shall
32 require the following information and documentation:

33 (A)]

34 (1) Identification of the applicant [along with] and
35 documentation of ownership or tenancy and, if the
36 applicant is not the owner, authorization by the
37 [owners] owner of the parcel on which the proposed

action is to occur; if the subject parcel has more than one owner and does not have a managing association authorized to submit the application, evidence of notification to all owners shall also be provided;

[(B)]

(2) Tax map key number and acreage or square footage of the parcel on which the proposed action is to occur;

(3) A location map;

[(C)]

(4) 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]; the plot plan shall identify any special flood hazard area, 3.2-foot sea level rise exposure area, and the erosion hazard line within the parcel, if applicable;

(5) If the proposed action involves new structures, the applicant shall provide dimensioned floor plans, sections, and elevations;

(6) Photographs identifying the area where the action is to occur; video may also be provided;

[(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)]

(7) A written description of the proposed action, including [but not limited to] the use, length, width, height,

[depth,] building materials, [and statement of objectives;] size of structures in square feet and, if applicable, area, depth, or volume of grubbing, grading, fill, and any other ground-altering activity such as utility installation;

[(F)]

(8) A written description of the anticipated impacts of the proposed action on the special management area that addresses or describes:

[(i)]

(A) The environmental setting of the parcel that is the subject of the proposed action;

[(ii)]

(B) The relationship of the proposed action to [land use plans, policies, and control of the affected area] the objectives and policies of chapter 205A, HRS; zoning; and the general plan;

[(iii)]

(C) The probable impact, including cumulative impacts, of the proposed action on the [environment;] special management area; and

[(iv)] Any probable adverse environmental effects that can be avoided;

(v) Alternatives to the proposed action;

[(vi)]

(D) [Mitigating measures] Measures proposed to minimize [impact] potential impacts, including best management practices.; and

(vii) Any irreversible or irretrievable commitment of resources.

(G) A plan of the proposed action designating in dimensions the location of the proposed action on the parcel. If structures are included, the plan shall also show a dimensioned floor plan, sections, elevations, and other physical features;

(H)]

(9) A written estimated valuation of the proposed action; the director may require an estimated valuation [as estimated] by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or [written valuation of the proposed action as estimated by] the administrator of the development services administration, department of public works, County of Maui;

[(I) The state land use district boundary designation, community plan designation, county zoning designation, and any other special designation, if applicable.]

(10) A zoning and flood confirmation form, completed and signed by the department unless the Department ceases the use of such form;

[(J)]

(11) [An] A draft environmental assessment [and findings of no significant impact or an] or a draft environmental impact statement, if the proposed action is subject to chapter 343, HRS, and the department or commission is the accepting agency; [if required, pursuant] or the agency decision letter and any final environmental document, if the proposed action is subject to chapter 343, HRS, and a government agency has determined that the action is exempt, issued a finding of no significant impact, or accepted a final environmental impact statement;

[(K)]

(12) Any oral or written comments received by the applicant from governmental or [non-governmental] nongovernmental agencies, community organizations, applicable design review committees, or individuals with regard to the proposed action, and a summary of the dates and attendance of public meetings held on the proposed action;

[(L)]

(13) Any other information and documentation required by the department to properly process the application; and

- 1 [(M)]
2 (14) An administrative fee as established in the [county]
3 County budget.
4 (d) The assessment application shall be reviewed as
5 follows:
6 (1) Upon submission of [a completed] an application that
7 contains all required information, the director may
8 submit the application to appropriate agencies for
9 review and comment. The director shall request such
10 agencies to provide their comments on the application
11 within thirty days from the date on which the
12 application was distributed for review, or as otherwise
13 specified by the director. The director shall determine
14 that the application is complete when adequate agency
15 comments and, if applicable, applicant responses have
16 been received. Upon a determination that an
17 application is complete, the director shall review the
18 proposed action and make a written evaluation as to:
19 (A) The valuation of the proposed action. The
20 director may request that the applicant's
21 estimates of the total cost or fair market value
22 [may] be verified by the director of public works
23 [and environmental management]. The director
24 of public works [and environmental management]
25 shall use the most recent building valuation data
26 provided by the International Conference of
27 Building Officials. In the event of a conflict
28 between the estimates of the applicant and the
29 director of public works, [and environmental
30 management,] the higher estimate amount shall
31 be used by the director for the purposes of an
32 assessment of the proposed action; [and]
33 (B) Whether the proposed action is [or is not] a
34 development or is an exempt action or, upon
35 further consideration, the proposed action did not
36 require a special management area assessment

- 1 and is a categorical exemption pursuant to
 2 section 12-202-11.5; and
- 3 (C) The potential adverse environmental and
 4 ecological effects based upon the following
 5 significance criteria [set forth in subsection (e).];
- 6 [(e) In considering the significance of potential
 7 environmental and ecological effects, the director shall evaluate:
- 8 (1)]
- 9 (i) The sum of those effects that adversely affect the
 10 quality of the environment and the ecology, and
 11 [shall evaluate] the overall and cumulative
 12 adverse effects of the proposed action[.];
- 13 [(2)]
- 14 (ii) Every phase of a proposed action, its expected
 15 primary and secondary consequences, and its
 16 cumulative and [short] short-term or long-term
 17 effects, including previous and other proposed or
 18 completed actions on the same parcel or on
 19 related adjacent parcels within the preceding
 20 twelve months. A proposed action may have a
 21 significant adverse effect on the environment
 22 when the proposed action potentially:
- 23 (A) Involves an irrevocable [commitment to loss or
 24 destruction of] or substantial and detrimental
 25 effect on any natural or cultural resources;
- 26 (B) Significantly curtails the range of beneficial
 27 uses of the environment;
- 28 (C) Conflicts with the [county's] County's or the
 29 [state's] State's long-term environmental policies
 30 or goals;
- 31 (D) Substantially and detrimentally affects the
 32 economic or social welfare [and activities] of the
 33 community, [county,] County, or [state] State;
- 34 (E) Involves substantial [secondary impacts,
 35 such as population changes and increased effects
 36 on] and detrimental effects on public facilities,
 37 [streets,] such as increased demand on drainage,

1 sewage, and water systems, beach access,
 2 recreational opportunities, and pedestrian
 3 walkways;

4 (F) In itself has no [significant adverse]
 5 substantial and detrimental effects but
 6 cumulatively has [considerable effect] substantial
 7 and detrimental effects upon the environment [or
 8 involves a commitment for larger actions];

9 (G) Substantially and detrimentally affects a
 10 rare, threatened, or endangered species of animal
 11 or plant, or its habitat;

12 (H) Is inconsistent with the [state] State plan,
 13 [county's] County general plan[,] including the
 14 Maui Island Plan and appropriate community
 15 plans, zoning, and subdivision ordinances;

16 (I) [Detrimentially] Substantially and
 17 detrimentally affects air or water quality [or
 18 ambient noise levels];

19 (J) [Affects] Substantially and detrimentally
 20 affects or is likely to suffer damage by being
 21 located in an environmentally sensitive area,
 22 such as flood plain, shoreline, coastal dune,
 23 tsunami zone, erosion-prone area, sea level rise
 24 exposure area, wetland, geologically hazardous
 25 land, estuary, fresh waters, or coastal waters;

26 (K) Substantially and detrimentally alters
 27 natural land forms and existing public views, or
 28 curtails or forecloses potential improvements to
 29 public views, to and along the shoreline; or

30 (L) Is inconsistent with the objectives and
 31 policies of chapter 205A, HRS.

32 (e) An application is automatically incomplete, at any stage
 33 of the application process, if it is for or relates to land use on a lot
 34 or on a unit in a condominium property regime that is the subject
 35 of an unresolved enforcement action by the department, pursuant
 36 to section 12-202-23, if the department has sent a notice of warning
 37 or notice of violation for the enforcement action. However, an

application is not automatically incomplete if the applicant pays all fines associated with the unresolved enforcement action as required by the director, and approval of the application would resolve the enforcement action. An enforcement action is unresolved until all fines as determined by the director have been paid.

~~[e]~~(f) Based upon the assessment and review of the application, and considering previous and other proposed actions on the same parcel or on related adjacent parcels within the preceding twelve months, the director shall make a determination and notify the applicant in writing within thirty calendar days after the application is complete that the proposed action either:

(1) Is exempt from the requirements of this chapter because it is not a development pursuant to section 205A-22, HRS, as amended;

(2) ~~[Requires]~~ Is a development and 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; or

(3) ~~[Requires]~~ Is a development and 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)~~(g)]~~

~~(f)[Cannot be processed because]~~If the director determines that the proposed action is a development and requires a special management use or minor permit, and if the proposed action is not consistent with the [county] County general plan, including the Maui Island Plan and applicable community plan, [and] or zoning, [unless] the director shall notify the applicant that a general plan, community plan, or zoning [application for an appropriate] amendment is required and that an amendment application can be processed concurrently with the SMA permit application. [Eff 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp

1 10/10/03; am and comp 12/20/04) (Auth: HRS §§91-2, 205A-27,
2 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)
3

4 **§12-202-13 Notice of application and notice of public**
5 **hearing; adequacy of notice.** (a) [Where a public hearing is
6 required to be held pursuant to these rules, the applicant shall
7 prepare a notice of application and legible map. The form of the
8 notice shall be provided to the applicant by the department.] Where
9 these rules require a public hearing, the applicant shall prepare for
10 the department's review a notice of application with a legible location
11 map using a form provided by the department. Prior to publication,
12 the department shall review the notice of application for
13 completeness. [The] Within ten calendar days of departmental
14 approval, the applicant shall submit the notice of application to a
15 newspaper for publication [to a newspaper within ten days of
16 departmental approval]. The applicant shall publish the notice of
17 application once in a newspaper printed and issued at least twice
18 weekly in the County and which is generally circulated throughout
19 the County.

20 (b) [A public hearing before the commission shall commence
21 within one hundred twenty calendar days, or as soon thereafter,]
22 When required by these rules, the commission shall hold a public
23 hearing after the director has determined the application is
24 [complete.] ready for public hearing.

25 (c) [Where a public hearing is required to be held pursuant
26 to these rules, the] When these rules require a public hearing, the
27 applicant shall prepare for the department's review a notice of public
28 hearing with a legible location map using a form provided by the
29 department. The department shall notify the applicant of the date
30 of the public hearing at least forty-five days prior to the public
31 hearing date. The department shall approve the applicant's notice of
32 public hearing before mailing. [The applicant's mailed notice of
33 public hearing shall be approved by the department before mailing
34 and shall include:

- 35 (1) The applicant's name, mailing address, and the nature
36 of the proposed development;

- 1 (2) The street address of the parcel that is the subject of
2 the application (if available);
3 (3) The tax map key number(s) of the parcel;
4 (4) A location map;
5 (5) The name of the applicant's agent and mailing address
6 (if applicable);
7 (6) The date, time, and place of the public hearing; and
8 (7) A statement that additional information may be
9 obtained at the department's office, providing the
10 department's address and telephone number.]
11 (d) The [applicant's mailed] applicant shall mail the notice of
12 public hearing [shall be mailed] not less than thirty calendar days
13 before the hearing date by certified or registered mail or with delivery
14 confirmation, postage prepaid, to owners of record of real property
15 situated within five hundred feet of the boundaries of the parcel that
16 is the subject of the application. The applicant shall obtain the
17 addresses of the owners of record from the real property tax division,
18 department of finance, within thirty calendar days prior to the
19 mailing of the notice of public hearing. The applicant shall also send
20 notice to all persons who have requested the commission in writing
21 to be notified of the subject special management area proceedings.
22 (e) Not less than thirty calendar days prior to the public
23 hearing date, the director shall publish a notice of public hearing,
24 once, in a newspaper that is printed and issued at least twice weekly
25 in the County and which is generally circulated throughout the
26 County, [and] pursuant to section 1-28.5, HRS. The notice shall
27 state the nature of the proposed development, the date, time, and
28 place of the hearing, and all other matters required by law.
29 (f) The director may authorize the consolidation of the
30 hearing with any other hearing required pursuant to law, or
31 pursuant to any rules adopted thereunder.
32 (g) The mailed notice of public hearing shall be deemed
33 adequate, and the failure of any owner to receive such notice shall
34 not invalidate any application, proceedings, assessment, or
35 determination by the commission if the applicant, by affidavit,
36 verifies that the names and addresses of owners of real property
37 situated within five hundred feet of the subject parcel were obtained

1 from the County of Maui real property tax [roll,] division, department
 2 of finance, [and that current ownership was verified with the records
 3 of the County's real property tax division,] within thirty days of the
 4 mailing of the notice of public hearing, stating both the date the
 5 addresses were obtained and the date notice was mailed,
 6 accompanied by receipts of certified or registered mail[.] or evidence
 7 of delivery confirmation. If there are multiple owners of [the] a
 8 property, notification of [the person(s)] all persons listed by name
 9 [on] in the records of the County of Maui real property tax [roll]
 10 division, department of finance, shall be deemed adequate notice as
 11 to all owners. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth:
 12 HRS §§91-2, 205A-27) (Imp: HRS §§1-28.5, 205A-29)

13
 14 **§12-202-14 Special management area minor permit**
 15 **procedures.** (a) If [it] the director has [been] determined that the
 16 proposed action is a development and requires a special
 17 management area minor permit, the assessment application
 18 submitted pursuant to section 12-202-12 may be deemed the minor
 19 permit application[.], provided that when development for which a
 20 minor permit is required is started before obtaining a permit, an
 21 additional fee of \$100 shall be paid by the applicant. The payment
 22 of said fee shall not relieve any persons from fully complying with
 23 the requirements of these rules nor from any penalties prescribed in
 24 section 12-202-25.]

25 (b) The director shall approve, approve with conditions, or
 26 deny such permit in accordance with the guidelines in section 205A-
 27 26, HRS, as amended. The director may ask the commission to
 28 approve standard conditions that shall thereafter apply to all minor
 29 permits, in addition to any project-specific conditions, to ensure that
 30 permitted activities comply with chapter 205A, HRS. Any final
 31 decision shall be transmitted to the applicant in writing and shall be
 32 appealable pursuant to section 12-202-26.

33 (c) The director shall notify the commission, at the
 34 commission's next regularly scheduled meeting, of [the issuance by
 35 the director] the director's approval of special management area
 36 minor permits, receipt of which shall be acknowledged by the
 37 commission. Such notification shall include [, but not be limited to,]
 38 the name of each applicant, the proposed 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)

§12-202-15 Special management area use permit procedures.

(a) Any person whose proposed [development] action is a development and requires a special management area use permit, or who has waived an assessment by the department, shall file an application with the department on a form provided by the department, which may be required to be filed electronically, and which shall require:

- (1) All information and documentation required pursuant to section 12-202-12c, [excluding valuation of the development;] and
- (2) [The real property tax map key number of parcels and the names and addresses of owners of real property for real property situated within five hundred feet of the boundaries of the parcel on which the proposed development is to occur, obtain from the County of Maui real property tax division;
- (3)] An administrative fee as established in the [county] County budget.[When development for which a fee is required is started before obtaining a permit, the fee shall be doubled.] The payment of the fee for development without a permit shall not relieve any persons from fully complying with the requirements of these rules nor from any penalties prescribed in section 12-202-25.
- [(4) Any other relevant information and documentation required by the director.]

(b) Upon receipt of the application, the director shall review the application based on the policies, objectives, and guidelines as provided in sections 12-202-10 and 12-202-11 and, if necessary, request that the applicant provide any additional data or information as may be required for review of the proposed development. The application shall not be [deemed complete] transmitted for agency [transmittal] review until the director is satisfied that the application

1 has fulfilled all application requirements and has addressed the
2 policies, objectives, and guidelines.

3 (c) The director shall submit the application, with all
4 relevant information, to appropriate agencies for review and
5 comment. The director shall request such agencies [, boards, and
6 commissions] to review and comment on the proposed development
7 within thirty days from the date on which the application was
8 distributed for review., and shall request such agencies to address
9 the maintenance, restoration, and enhancement of the special
10 management area consistent with the objectives, policies and
11 guidelines of chapter 205A, HRS, as amended.]

12 (d) The director shall [inform the applicant of any legal
13 requirement to] present the proposed development, if applicable, to
14 the urban design review board [, the cultural resources commission
15 and the NBCIDAC or the Hana advisory committee] for comment and
16 recommendations to the commission. [The urban design review
17 board and the cultural resources commission shall address the
18 maintenance, restoration and enhancement of the special
19 management area consistent with the objectives, policies, and
20 guidelines of chapter 205A, HRS, as amended.] The [commission
21 may designate the NBCIDAC or the] Hana advisory committee is
22 hereby designated by the commission to conduct the public hearing
23 for applications in the Hana Community Plan region.

24 (e) [Upon receipt of final agency comments, the application
25 shall be deemed complete by the director and shall be scheduled for
26 public hearing.] Upon receipt of agency comments and, if applicable,
27 adequate applicant responses, the director shall schedule the
28 application for public hearing.

29 (f) The commission shall approve a special management area
30 use permit, subject to terms and conditions as permitted in sections
31 205A-26(1) and 205A-26(3), HRS, as amended, and any standard
32 conditions approved by the commission if it finds the criteria set forth
33 in sections 205A-26(2) and 205A-26(3), HRS, as amended, have been
34 met. The commission shall deny a special management area use
35 permit if it finds these criteria have not been met.

1 (g) Findings of fact, conclusions of law, and decision and
 2 order shall be issued in accordance with the rules of practice and
 3 procedure for the commission in effect when action is taken.

4 (h) The director may ask the commission to approve standard
 5 conditions that shall thereafter apply to all permits, in addition to
 6 any project-specific conditions, to ensure that permitted activities
 7 comply with chapter 205A, HRS. [Eff 1/1/94; am 9/28/97, am and
 8 comp 12/28/02, am and comp 4/21/08] (Auth: HRS §§91-2, 91-
 9 4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26,
 10 205A-28, 205A-29)

11
 12 **§12-202-16 Special management area emergency permit**
 13 **procedures.**(a) An owner or authorized representative may apply for
 14 a special management area emergency permit when the owner or
 15 representative has concluded that danger or substantial harm to
 16 property, any person, or the public health, safety, and welfare is
 17 imminent. The director will consider the application, including best
 18 management practices to protect the environment, and determine
 19 whether the project is a development and therefore requires a permit,
 20 and whether conditions justify issuance of a permit to begin work
 21 immediately. The purpose of an emergency permit is to allow an
 22 urgently needed protective measure, principally of a temporary
 23 nature. The temporary measure may also be allowed as a permanent
 24 measure only after the director has determined it is the best
 25 environmentally sound alternative. A temporary measure may be
 26 allowed for no more than one hundred eighty days while, if necessary,
 27 a permanent measure is formulated, permitted, and completed. The
 28 director may approve a time extension for a temporary measure when
 29 the director determines the permit holder is making adequate
 30 progress toward completing a permanent measure, but cannot
 31 reasonably do so within the time the emergency permit, or an
 32 extension thereof, allows.

33 (b) Any person seeking a special management area emergency
 34 permit shall file an application with the director[.] before commencing
 35 any emergency work. The application, provided by the department,
 36 shall require:

- 1 (1) Identification of the applicant [along with] and
2 documentation of ownership or tenancy and, if the
3 applicant is not the owner, authorization by the [owners]
4 owner of the parcel on which the proposed action is to
5 occur; if the parcel has more than one owner and does
6 not have a managing association authorized to submit
7 the application, evidence of notification to all owners
8 shall be provided.
- 9 (2) The tax map key [number(s)] number and acreage or
10 square footage of the parcel on which the proposed
11 action is to occur;
- 12 (3) A written description of the proposed action, including [,
13 but not limited to,] the length, width, height, [depth,] and
14 type of materials, [for any proposed action] size of
15 structures in square feet and, if applicable, area, depth,
16 or volume of grubbing, grading, or fill and any other
17 ground-altering activity;
- 18 (4) A written statement of the emergency or imminent
19 danger[and] or substantial harm to property, any
20 person, or the public health, safety, or welfare; and why
21 the proposed development would be immediately
22 required to prevent danger or substantial [physical]
23 harm [to persons or property, or to allow the
24 reconstruction of structures damaged by natural
25 hazards to their original form];
- 26 (5) The most current shoreline survey, if available and
27 applicable;
- 28 (6) Photographs [or VHS format video tape] identifying [the
29 emergency at the affected area and shoreline property
30 boundaries] where the emergency exists and where the
31 action is to occur; video may also be provided;
- 32 (7) Any other relevant information requested by the director;
33 [and]
- 34 (8) Electronic copies of all application documents; and
- 35 (9) An administrative fee as established in the County
36 budget.

1 ~~[(b)]~~(c) The director may ~~[waive]~~ allow the deferral of the filing of
 2 a written application ~~[where]~~ if the applicant demonstrates to the
 3 satisfaction of the director that imminent danger ~~[and]~~ or substantial
 4 harm to a habitable structure, any person, or the public health,
 5 safety, or welfare would result from the delay in filing a written
 6 application. After giving verbal approval ~~[of an oral]~~ to such a
 7 request, the director shall issue a written ~~[permit,]~~ confirmation of
 8 the verbal approval, which shall contain:

- 9 (1) The date and time the request was made;
- 10 (2) The date the permit was issued;
- 11 (3) Applicant's and project names, address, email address,
 12 and telephone number;
- 13 (4) Tax map key number (if available);
- 14 (5) Statement of the imminent danger posed and the
 15 substantial harm that ~~[would]~~ could occur ~~[to the~~
 16 habitable structure] if the permit were not granted; ~~[and]~~
- 17 (6) The permitted temporary measures;
- 18 (7) The requirement that not more than thirty calendar days
 19 after the approval of the request, the permit holder shall
 20 submit a written emergency permit application as
 21 provided in subsection (b), and that if the applicant fails
 22 to do so, the director may require that any temporary
 23 measure be removed; and
- 24 (8) The statement that other permits may be required.

25 ~~[(c)]~~ (d) ~~[Not more than ten calendar days after the date of~~
 26 the oral request, the applicant shall submit the required written
 27 emergency permit application. If the applicant fails to submit such
 28 application, information, and documentation within the ten day
 29 period, the director may require that the temporary measures be
 30 removed.] No special management area emergency permit shall allow
 31 the reconstruction of structures if such structures were not lawfully
 32 constructed.

33 ~~[(d)]~~ (e) ~~[Except as provided in subsection (e),]~~ After reviewing a
 34 written application, the director shall issue a written special
 35 management area emergency permit where the applicable provisions
 36 of this section have been met and:

- 1 (1) The]the director finds the criteria set forth in sections
2 205A-22 and 205A-30, HRS, as amended, have been
3 met.];
- 4 (2)] In the event of impending or presently occurring
5 disaster, the mayor [has waived] may waive the
6 requirements of sections 12-202-12, 12-202-14, or 12-
7 202-15, but not this section.]; or
- 8 (3) In the event of a state-declared emergency, the governor,
9 after conferral with and the recommendation of the
10 mayor, has waived the requirements of sections 12-202-
11 12, 12-202-14, or 12-202-15.
- 12 (e) No special management area emergency permit shall allow
13 the reconstruction of structures damaged by natural hazards to their
14 original form if such structures were previously found not to be in
15 compliance with the federal flood insurance program or were not
16 legally constructed.]
- 17 (f) The director may place reasonable terms, conditions, and
18 time stipulations upon such permit.
- 19 (g) The director shall set [an expiration] a date [for the permit,
20 not to exceed one hundred eighty days, and set a time limitation
21 within] by which the applicant shall [apply] submit an application for
22 a permit pursuant to sections 12-202-14 or 12-202-15[.], or by which
23 the applicant must remove or terminate any temporary measures.
- 24 (h) For an emergency permit request that is the result of or that
25 otherwise involves coastal erosion, the director shall consult with the
26 State department of land and natural resources, office of
27 conservation and coastal lands, or other relevant State agency, on
28 whether to approve any temporary measure in order to benefit both
29 the applicant and neighboring shoreline properties, to resolve the
30 emergency situation expeditiously, and to minimize the
31 environmental impact to the coastal zone. Any such approval, in
32 addition to any project-specific conditions, shall include the following
33 conditions:
- 34 (1) Within ninety days, the applicant shall provide the
35 department a description of potential long-term
36 alternatives designed to alleviate the emergency
37 situation, which shall include:

- 1 (A) alternatives, including relocation of threatened
- 2 structures or elevation of structures, and dune or beach
- 3 restoration;
- 4 (B) assessment of other viable alternatives, which may
- 5 include protective or erosion control measures, such as
- 6 groins, and offshore structures such as breakwaters;
- 7 (C) a description of how each alternative complies with
- 8 chapter 12-203 of the commission's shoreline rules, if
- 9 applicable;
- 10 (C) a draft timeline to plan, design and complete each
- 11 long-term alternative; and
- 12 (D) a list of potential federal, State, and County permits
- 13 required to achieve each long-term alternative.
- 14 (2) Within ninety days of the permit's approval, the permit
- 15 holder shall consult with the department about
- 16 identified long-term alternatives to understand the
- 17 requirements and restrictions for work permitted in the
- 18 shoreline area, as defined in the commission's shoreline
- 19 rules, if applicable.
- 20 (3) The temporary measure must be removed unless the
- 21 permit holder submits an application by the date
- 22 specified by the emergency permit to allow the temporary
- 23 measure to remain, pursuant to subsection (i).
- 24 (i) No less than thirty days prior to the expiration date of an
- 25 emergency permit, the permit holder may apply for a time extension
- 26 for any permit provision on a form provided by the department. Such
- 27 application shall include, at a minimum:
- 28 (1) a description of the permit holder's preferred alternative;
- 29 (2) evidence that the permit holder is making adequate
- 30 progress toward completing permanent measures, but
- 31 reasonably cannot do so within the time allowed by the
- 32 emergency permit; and
- 33 (3) a plan and timeline for obtaining all required permits.
- 34 The director may approve a time extension for no more than
- 35 one hundred eighty days at a time.
- 36 (j) If the director finds there is no imminent danger or
- 37 substantial harm to a habitable structure, any person, or the public

1 health, safety, or welfare, or that the requirements of subsection (h)
 2 were not met, the director shall deny the emergency permit. If the
 3 director denies the emergency permit, the denial shall be in writing,
 4 setting forth facts sufficient to demonstrate the application did not
 5 meet the requirements for issuance of the emergency permit
 6 pursuant to subsection (h). The director shall notify the applicant it
 7 can submit an application for an assessment, a special management
 8 area use or minor permit in accordance with these rules, and shall
 9 inform the applicant of the right to appeal pursuant to section 12-
 10 202-26.

11 [i](k) The director shall [submit reports] provide notice of the
 12 director's approval of all [determinations regarding] emergency
 13 permits to the commission [for review] at the next regular meeting
 14 after the permit has been issued, receipt of which shall be
 15 acknowledged by the commission. [Such reports shall include all
 16 facts and reasons for the determination.

17 (i) If the director denies the emergency permit, the denial
 18 shall be in writing, setting forth facts sufficient to demonstrate the
 19 application did not meet the requirements for issuance of the
 20 emergency permit pursuant to subsection (d). The applicant shall be
 21 informed of his right to appeal pursuant to section 12-202-26
 22 herein.] [Eff 1/1/94; am 9/28/97] (Auth: HRS §§91-2, 205A-27,
 23 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

24
 25 **§12-202-17 Amendments to [and determinations of]**
 26 **permit [terms, conditions, and time stipulations] approvals.** (a)
 27 Request. Any person who has been issued a special management
 28 area emergency permit, minor permit, or use permit may request the
 29 director or commission, as appropriate, to amend [, delete, or
 30 determine] any [conditions placed upon such] permit approval.

31 (b) Form. Any person seeking to amend [, delete, or determine]
 32 a permit [condition]approval shall file an application with the
 33 department in a form provided by the department, the content of
 34 which shall include:

- 35 (1) [The term, condition, or time stipulation to be amended,
 36 deleted, or determined;

- 1 (2) If an extension of a time stipulation is requested, the
2 length of time extension desired] A description of the
3 requested amendment;
- 4 ~~[(3)]~~(2) The reasons and justification for the [requested
5 amendment, deletion, or determination] request;
- 6 ~~[(4)]~~ (3) An administrative fee as established in the County
7 budget; [and]
- 8 (4) If the request is for a permit transfer, the transferor's
9 consent and a notarized affidavit from the transferee
10 acknowledging and agreeing to comply with the permit
11 approval;
- 12 (5) If the request is to amend a time stipulation, the length
13 of time requested, an analysis of whether any changes
14 have occurred within the special management area since
15 the granting of the permit that may cause the permit
16 holder's development to have a substantial adverse
17 environmental or ecological effect or adversely affect the
18 capacity or condition of infrastructure; and
- 19 ~~[(5)]~~(6) Any other information and documentation requested by
20 the director.
- 21 [(c) Unless otherwise provided, any application for an
22 extension of a time stipulation must be filed not less than sixty
23 calendar days prior to the expiration date of the time condition,
24 provided that the director for good cause may waive such sixty day
25 requirement.

Unless waived by the applicant and the director, notice of the public hearing to amend or determine the permit shall be given pursuant to the procedures set forth in section 12-202-13. A public hearing shall not be waived if a petition to intervene was filed or any person, other than the applicant, was admitted as a party to any prior proceeding on the matter, unless a written waiver from all parties has been received by the department. In instances in which the proposed amendment or determination does not clearly pertain to or could not affect the same rights, privileges or interests on which the intervention was based, a written waiver from all parties shall not be required for purposes of waiving a public hearing.] If applicable, the director shall circulate the request to appropriate agencies for review and comment.

[(d)](c) Permit transfer. Unless otherwise specified in the permit [conditions,] approval, the director may issue a written approval for a special management area use permit transfer, [if the permit holder submits a written request for a permit transfer to include the following:

- (1) Reason(s) for permit transfer;
- (2) Transferor's consent; and
- (3) Notarized affidavit from transferee acknowledging the conditions established with the subject permit and agreement by transferee to comply with these conditions.]

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] action in accordance with procedures set forth in this section.

[(e)](d) Time stipulation. Unless otherwise specified in the permit [conditions] approval, the director may approve a [special management area use permit] time extension of no more than five years 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:] provided that

- [(1)] (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.

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

8 If a petition to intervene was granted and any person other than the
9 applicant was admitted as a party to any prior proceeding on the matter, the
10 director shall notify such person at the person's last known address at least ten
11 days prior to taking action on the time-extension request to determine if such
12 person has any objections or concerns that the director should consider in
13 deciding whether to approve or disapprove the request or forward the request to
14 the commission.

15 The director shall notify the commission at the commission's next
16 regularly scheduled meeting of the issuance of any time extension, receipt of
17 which shall be acknowledged by the commission. Nothing in this section shall
18 prevent the director from forwarding any time extension request to the
19 commission for action in accordance with procedures set forth in this section.

20 [Prior to granting or denying any permit time extension request, the
21 director shall notify the commission of the request at the commission's next
22 regularly scheduled meeting, receipt of which shall be acknowledged by the
23 commission. Such notification shall include, but not be limited to, the
24 information provided to the department by the permit holder. The commission
25 may review the permit time extension request at its next available meeting after
26 receiving notice or waive review of the request. If the commission waives review
27 of the request, the director may grant or deny the time extension and forward a
28 copy of the determination to the commission.]

29 If the director finds there have been changes within the special
30 management area since the granting of the permit that will cause the permit
31 holder's development to have any substantial adverse environmental or
32 ecological effect, or adversely affect the condition or capacity of infrastructure,
33 the request shall be scheduled for commission action.

34 A request for a time extension must be submitted prior to permit
35 expiration. If a timely request is submitted but not approved prior to permit
36 expiration, the permit shall remain in effect until the renewal is granted or
37 denied, unless the applicant causes substantial delay in the review and approval
38 process.

39 (e) Amendment or determination other than transfer or time extension.
40 Unless otherwise specified in the permit approval, the director may approve or
41 deny nonsubstantive amendments to the permit and may make determinations
42 regarding permit approvals when such amendments or determinations are
43 nonsubstantive. If the director determines that the requested amendment or
44 determination is substantive, then the director shall forward the request to the

1 commission for action. The director shall determine whether a public hearing
2 shall be held and, [(f) After review and final comment by appropriate agencies,
3 the application shall be deemed complete by the director, and the application
4 shall be referred to the commission and,] if a public hearing is required, set a
5 date for the hearing and provide notice as required by section 12-202-13. The
6 commission shall conduct a hearing in accordance with the procedures set forth
7 in its rules.

8 (f) Intervention. If a petition to intervene was granted and any person other
9 than the applicant was admitted as a party to any prior proceeding on the matter,
10 and the proposed amendment or determination clearly pertains to or could affect
11 the same rights, privileges or interests on which the intervention was based, the
12 applicant shall notify such person in writing, at the person's last known address,
13 of the requested amendment or determination, and ask if such person requests
14 that a public hearing be held. The applicant shall provide the department with
15 evidence of such notification, including proof of mailing, which shall be verified
16 by the department and be to the satisfaction of the director. A public hearing on
17 the requested amendment or determination shall be held if requested by any
18 such person within thirty days of the date the applicant's notice was mailed.
19 Notice of public hearing shall be given pursuant to the procedures set forth in
20 section 12-202-13. The commission shall conduct a hearing in accordance with
21 the procedures set forth in its rules. This section shall not apply to requests for
22 permit transfers or time extensions. Requests for permit transfers shall be
23 processed pursuant to section 12-202-17(c) and requests for time extensions
24 shall be processed pursuant to section 12-202-17(d).

25 (g) Commission action. Findings of fact, conclusions of law, and decision
26 and order for any special management area use permit application seeking to
27 amend[, delete,] or determine any permit [terms, conditions, and time
28 stipulations]approval shall be issued in accordance with the rules of practice and
29 procedure of the commission in effect when action is taken and the review
30 guidelines as set forth in section 12-202-11. [Eff 1/1/94; am 9/28/97, am and
31 comp 4/21/08] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §§205A-26,
32 205A-29)

33
34 §12-202-18 (Reserved)

35 §12-202-19 (Reserved)

36 §12-202-20 (Reserved)]

37

38

SUBCHAPTER 3

**PROCEDURES TO ADOPT SPECIAL MANAGEMENT AREA RULES;
DECLARATORY RULINGS; [AND] ADOPTION AND AMENDMENT
OF BOUNDARIES AND MAPS; ENFORCEMENT; AND APPEALS**

§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]these 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]these rules, or of any order of the department or the commission relating to the special management area 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.]The director may, at any time, initiate a review of and amendments to the boundaries of any special management area map in accordance with 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 of and amendments to the special management area boundaries.

[(d)] (c) 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] submittal of the proposed amendments to the commission. Upon submittal of the proposed amendments to the commission, the director shall schedule the proposed amendments for public hearing.

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 generally circulated throughout the County, [and] pursuant to section 1-28.5, HRS. The notice shall state the proposed amendment, the date, time, and place of the hearing, a map of the proposed boundary amendment, and all other matters required by law.

1 The notice published in the newspaper shall be deemed adequate, and the
 2 failure of any owner to receive such notice shall not invalidate any amendments,
 3 proceedings, assessment, or determination by the commission.

4 ~~[(e)]~~(d) The commission may amend the special management area
 5 boundaries only upon the finding that the amendments will further the
 6 objectives and policies of chapter 205A, HRS, as amended, and will be consistent
 7 with the general plan and other applicable ordinances of the County of Maui.
 8 Upon review of the State of Hawaii office of planning, pursuant to section 205A-
 9 23, HRS, the commission shall render a final decision and issue a written order
 10 and, if applicable,~~[may]~~ direct the director to issue a ~~[written order and]~~ final
 11 map within sixty calendar days after the final vote of the commission, unless
 12 otherwise extended by vote of the ~~[members of the]~~ commission. [Eff 1/1/94;
 13 am 9/28/97; am 11/13/00] (Auth: HRS §91-2) (Imp: HRS §§1-28.5, 205A-23)
 14

15 **§12-202-23 Enforcement.** (a) The ~~[appropriate enforcement agency as~~
 16 ~~designated by the County Charter]~~ director shall enforce these rules, except as
 17 otherwise provided herein.

18 (b) Any ~~[development]~~use, activity, or operation pursuant to these rules
 19 and section 205A-22, HRS, as amended, that ~~[has not received a~~
 20 ~~required]~~requires and fails to obtain a special management area exemption,
 21 emergency permit, minor permit, or use permit ~~[pursuant to this part]~~ or has
 22 failed to comply~~[complied]~~ with conditions established with any such ~~[a]~~ permit,
 23 is a violation of these rules and chapter 205A, HRS.~~[shall be removed or the~~
 24 violation shall be corrected by immediate application for and subsequent
 25 granting of the appropriate permit or other means as determined by the
 26 director.]The violation shall be corrected by requiring the owner or violator to pay
 27 all applicable fines and take the following corrective actions:

- 28 (1) Any unpermitted use, activity, or operation has ceased;
- 29 (2) Any unpermitted construction has been removed with appropriate
 30 permits;
- 31 (3) An exemption, emergency permit, minor permit, permit amendment,
 32 or use permit has been issued; or
- 33 (4) Other means determined by the director have been achieved.

34 Applicable fines shall accrue until the violation is corrected. No other ~~[state or~~
 35 ~~county]~~ permit or approval shall be construed as special management area
 36 permit approval pursuant to this part.

37 (c) ~~[Where the shoreline is affected by a manmade]~~ If a portion of a
 38 constructed structure is situated within the special management area, and the
 39 structure~~[that]~~ has not been authorized with government agency permits
 40 required by law, ~~[if any part of the structure is on private property,]~~ then for
 41 purposes of enforcement of this part, the ~~[development]~~ entire structure shall be
 42 construed to be entirely within the special management area and shall be
 43 ~~[removed or the violation shall be corrected.]~~ subject to enforcement accordingly.

- 44 (d) Issuance of notice of violation and order.

- (1) The ~~landowner~~ owner shall, and~~or~~ the alleged violator may, [or both, shall] be notified by the enforcement agency [by certified or registered mail] of an alleged violation of ~~[this rule,]these rules and~~ any approval, permit, or permit condition issued pursuant thereto[, or any condition of a special management area permit approval.]The director shall provide service by at least one of the following methods, in order of preference, as the director deems appropriate: certified or registered mail, regular mail with delivery confirmation, personal service, posting on the property, or publishing the notice once per week for three consecutive weeks in a newspaper that is printed and issued at least twice weekly in the County and is generally circulated through the County. The date of service shall be the date on which the certified or registered mail is accepted, the date of regular mail delivery confirmation, the date of personal service, the date of posting on the property, or the date of the last publication in the newspaper. If the director uses more than one method of service, then the date of service shall be the later of the dates of service.
- (2) The notice of violation and order shall include [, but not be limited to,] the specific section of ~~[this rule which] these rules that~~ has been violated~~[,];~~ the nature of the violation~~[,];~~ and the ~~[remedy(ies)] remedy required or available[.],~~ including cessation or removal of the violation, subject to applicable permitting requirements~~;~~. The notice of violation and order may also require that the violative activity cease, or that the violative development be removed;] that [a] an initial 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[.]; and that the landowner or violator may appeal the notice of violation pursuant to section 12-202-26 within thirty days of the date of service. The filing of an appeal shall not correct or suspend any violation or stay the assessment and accumulation of fines. The following criteria shall be considered in assessing the initial and daily fines:
- (A) Previous violations by the same person;
 - (B) The degree of damage or potential damage to the environment, including damage to the shoreline and marine resources;
 - (C) The degree of cooperation provided by the violator during the investigation;
 - (D) Amount necessary to deter future violations; and
 - (E) Evidence of circumstances beyond the control of the violator.
- [(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, to the department within thirty days, as stated on the notice. Upon receipt of a request for a hearing, the department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.]

(5) [(3)] The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.

[(6)] (4) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare may be at risk. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-43, 205A-43.6) (Imp: HRS §43.6)

§12-202-24 Conflicts with other laws. In case of a conflict between the requirements of any other [state] State law or [county] County ordinance regarding the special management area, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the [state] State department of transportation over wharves, airports, docks, piers, or other commercial harbors, and any other maritime facilities constructed by the [state] State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the [county] County zoning laws, and found not to conflict with any [county] County ordinances, zoning laws, and building codes. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-48) (Imp: HRS §205A-48)

§12-202-25 Penalties. Any person who violates any provision of these rules shall be liable for an initial civil fine not to exceed \$100,000 per violation and maximum daily fine of \$10,000 in addition to any other penalties until the

violation is ~~[corrected.]remedied.~~ A civil fine may be imposed by the department after an opportunity for ~~[a] an appeal~~ hearing under chapter 91, HRS, as amended, ~~and subsection 12-202-26(b) herein.~~~~[unless said hearing is otherwise waived.]~~ A special management area permit application submitted subsequent to an applicant's 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~~[], including initial and accumulating daily fines.~~ [Eff 1/1/94; am 9/28/97] (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; settlement of appeal. (a)For decisions other than enforcement proceedings pursuant to section 12-202-23, 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. For enforcement proceedings pursuant to section 12-202-23, appeal of a notice of violation may be made to the commission by the filing of a notice of appeal with the department within thirty days of the date of service. 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.

(b) An owner or violator who receives a notice of violation and order who believes that any part of the notice of violation and order, including fines, was issued in error, may submit a written request for the director to negotiate a final resolution of issues, including any corrective action that must be taken by the owner or violator, any permits that are required, any fines that must be paid, and any actions that are required by the department. The request shall be submitted within ten days of the date of service of the notice and may be submitted in addition to or instead of an appeal pursuant to subsection (a).

(c) If the director and the owner or violator agree on a resolution that involves a waiver of fines totaling less than \$50,000, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. At the commission's next regularly scheduled meeting, the director shall notify the commission of the agreement, receipt of which shall be acknowledged by the commission.

(d) If the director and the owner or violator agree on a resolution that involves a waiver of fines totaling \$50,000 or greater, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. The agreement shall be submitted to the commission for final action. The commission may accept, accept with modifications, or reject the agreement.

(e) If the director and the owner or violator do not agree on a resolution, the director will notify the owner or violator in writing of the director's termination of the negotiation. Submittal of any request for a negotiated resolution shall not affect the accrual of daily fines or any time limitations for appealing the notice of violation and order to the commission. [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 to the commission shall identify the party [or parties taking] making 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 to the commission and their interests are such as to make joinder practicable, they may file a joint appeal and thereafter proceed on appeal as a single appellant. Appeals that are filed separately may be consolidated by order of the commission upon the commission's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-29 Service of the [notice of] appeal. If the appellant is someone other than the applicant, appellant shall serve a file-marked copy of the appeal by mail or delivery thereof to counsel of record for each other party, or, if a party is not represented by counsel, to the party at the party's last known address. Proof of service shall be filed with the department within seven days after the filing of the [notice of] appeal~~].~~and the department shall notify the commission of the filing of the appeal at the next regular meeting. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-30 Payment of fees. Upon the filing of any separate or joint [notice of] appeal, the appellant shall pay such fees as are set forth in the County budget ordinance. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-31 Contested case hearing on appeal. The commission shall hold a contested case hearing on the appeal. The director, the appellant, the owner, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of the rules of practice and procedure for the Maui planning commission, relating to

1 petitions to intervene, contested case procedures, and ~~[posthearing]~~ post-hearing
2 procedures, respectively, shall govern the proceedings, except that petitions to
3 intervene on an appeal shall be filed with the commission no later than ten days
4 after the meeting at which the commission received notification of the filing of an
5 appeal. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS
6 §§205A-29, 205A-30, 205A-49)
7

8 **§12-202-32 Disposition of appeal.** The commission may affirm the
9 decision of the director, or may remand the case to the hearing officer, if any,
10 with instructions for further proceedings; or it may ~~[reverse]~~modify the decision
11 of the director if the substantial rights of the appellant may have been prejudiced
12 because the decision is:

- 13 (1) Based on clearly erroneous findings of material fact or erroneous
14 application of the law; or
- 15 (2) Arbitrary or capricious in its application; or
- 16 (3) A clearly unwarranted abuse of discretion. [Eff 11/4/02; comp
17 11/4/02; am and comp 12/20/04] (Auth: HRS §§91-14(g)(6), 205A-
18 43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter
19 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-29, 205A-30, 205A-43, 205A-
20 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,
21 13-2(15))
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