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TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 02

MAUI PLANNING COMMISSION

CHAPTER 202

**SPECIAL MANAGEMENT AREA RULES**

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

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

6           “Best Management Practices” or “BMPs” means a set of mitigation  
7 actions that are intended to protect the environment from harm and to  
8 ensure that water quality and marine resources are protected during all  
9 phases of a project or activity (DPW).

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

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

19           “Coastal erosion” means the wearing away of coastal lands, usually  
20 by wave attack, tidal or littoral currents, or wind. Coastal erosion is  
21 synonymous with shoreline (vegetation line) retreat.

22           “Commission” means the Maui planning commission.

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

26           “Cultural resources commission” means the Maui County cultural  
27 resources commission established under chapters 2.40 and 2.88 of the  
28 Maui County Code.]

29           “Cumulative impact” or “cumulative effect” means the impact on the  
30 environment that results from the incremental impact of the proposed  
31 action when added to other past, present and reasonably foreseeable  
32 future actions regardless of what agency or person undertakes the other  
33 actions. Cumulative impacts can result from individually minor but  
34 collectively significant actions taking place over a period of time.

35  
36           [“Debris line” means a line marking the landward limit of debris  
37 deposits resulting from the upper reaches of the wash of waves.]

38           “Department” means the department of planning of the County of  
39 Maui.

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

4           "Development plan" means a detailed drawing to scale that shows  
5 the proposed activity or structure and all areas where work will be  
6 performed. The plan shall include:

7           (1) Property boundaries;

8           (2) All existing natural and constructed features and conditions  
9 that occur within the proposed area of work; and

10           (3) All proposed modifications to existing features, such as  
11 excavation or other ground-altering activity (length, width, and depth), and  
12 proposed new features and conditions.

13 The director may require that the plan include an accurate instrument  
14 survey of the lot as well as cross sections of the lot at designated locations  
15 to be prepared by a surveyor licensed in the State of Hawaii.

16           "Director" means the director of the department of planning of the  
17 County of Maui.

18           "Director of public works [and environmental management]" means  
19 the director of the department of public works [and environmental  
20 management] of the County of Maui.

21           "Environmental assessment" or "environmental impact statement"  
22 [or "EIS"] means an informational document that is prepared in  
23 compliance with chapter 343, HRS, and the rules of the office of  
24 environmental quality control.

25           "Erosion hazard line" means the mapped, 80 percent, cumulative  
26 probability contour of the coastal erosion hazard zone with 3.2 feet of sea  
27 level rise as approved by the director; such approval must reflect the best  
28 available science as published in peer reviewed literature such as the  
29 Hawaii Climate Change Mitigation and Adaptation Commission's 2017  
30 Hawaii Sea Level Rise Vulnerability and Adaptation Report or its most  
31 current iteration, as accessible within the Hawaii Sea Level Rise Viewer  
32 hosted by the Pacific Islands Ocean Observing System, and as may be  
33 updated to reflect best available science.

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

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

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

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

9 "Ground altering" or "ground disturbance" means grading,  
10 trenching, digging, grubbing, excavating or otherwise moving soil or other  
11 natural material that comprises the surface and subsurface of a parcel of  
12 land to the extent that such activity could potentially impact cultural or  
13 natural resources as determined by the director.

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

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

18 "Lot" means a designated parcel, tract, or area of land established  
19 by subdivision or as otherwise established prior to the adoption of  
20 subdivision laws.

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

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

30 "Nonstructural improvement" is any improvement which does not  
31 involve load-bearing components essential to the stability of any part of  
32 the structure. Nonstructural improvements may include, but are not  
33 limited to, window or door replacement or additions, reroofing, storage  
34 sheds, fencing, signage, low impact development parking lot  
35 improvements, addition of solar panels that do not significantly alter  
36 building height or previously developed land area, or other activities that  
37 do not affect the integrity of a structure as defined in HRS 205A-22.

1           “Nonsubstantive amendment” means a proposed change to a  
2 permit scope that has no impact to the special management area or  
3 places additional demands on infrastructure that are discernibly  
4 different than that associated with the original approval. (OP)

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

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

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

18           “Related adjacent parcel” means one or more lots or parcels  
19 that is next to, across the street from or in close proximity to, as  
20 determined by the director, a lot or parcel that is proposing or has  
21 proposed development as one combined or related project, including  
22 a project that is developed in phases.

23           “Reconstruction” means rebuilding more than 75 percent of  
24 an entire structure as measured by either the floor area or current  
25 valuation.

26           "Renovation" means the remodel, update, or upgrade of a  
27 structure that does not increase existing height or floor area and is  
28 not reconstruction.

29           "Repair" means the fixing or replacing of any part of an  
30 existing structure for the purpose of its maintenance, or renewal of  
31 surface treatments such as painting, carpeting, or exterior siding  
32 with substantially similar use of materials and location, but does  
33 not include expansion of use or intensity, reconstruction or  
34 renovation.

35           “Sand” means particles of mineralogic or rock material  
36 ranging in diameter from 0.0625 millimeters to 2 millimeters that  
37 shall be substantially clean of rubble and debris; shall contain no  
38 more than fifteen percent volume of silt which ranges in diameter  
39 from 0.039 millimeters to 0.0625 millimeters and clay which ranges  
40 in diameter from 0.00006 millimeters to .0039 millimeters; and shall  
41 not consist of artificially crushed coral as defined by chapter 20.08,

1 Maui County Code. Additional provisions on quality, such as for  
2 dune or beach restoration purposes, may be required.

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

8 "Shoreline survey" means the actual field location of the  
9 shoreline prepared by a land surveyor registered in the State of  
10 Hawaii. Such survey maps developed by the registered land  
11 surveyor shall bear the surveyor's signature and date of field survey  
12 and the certifying signature and date of the chairman of the board  
13 of land and natural resources.]

14 "Sea Level Rise Exposure Area" (SLR-XA) means the area  
15 mapped and otherwise used in peer-reviewed literature such as the  
16 Hawaii Climate Change Mitigation and Adaptation Commission's  
17 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report or  
18 its most current iteration, as accessible within the Hawaii Sea Level  
19 Rise Viewer hosted by the Pacific Islands Ocean Observing System,  
20 and as may be updated to reflect best available science.

21 "Shoreline", as defined in HRS section 205A-1 as amended,  
22 means the upper reaches of the wash of the waves, other than storm  
23 and seismic waves, at high tide during the season of the year in  
24 which the highest wash of the waves occurs, usually evidenced by  
25 the edge of natural rather than artificially induced vegetation  
26 growth, or the upper limit of debris left by the wash of the waves  
27 [which] that has been certified by the board of land and natural  
28 resources for a duration determined by the board.

29 "Shoreline area" as defined in HRS section 205A-41, as  
30 amended, means all of the land area between the shoreline and the  
31 shoreline setback line, and may include the area between mean sea  
32 level and the shoreline, provided that if the highest annual wash of  
33 the waves is fixed or significantly affected by a structure that has  
34 not received all permits and approvals required by law or if any part  
35 of any structure in violation of this part extends seaward of the  
36 shoreline, then "shoreline area" shall include the entire structure.

37 "Significant effect" means the sum of effects on the quality of  
38 the environment, including actions that irrevocably commit a  
39 natural resource, curtail the range of beneficial uses of the  
40 environment, are contrary to the County's or State's environmental  
41 policies or long-term environmental goals as established by law, or



1 adversely affect the economic welfare, social welfare or cultural  
2 practices of the community.

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[.], including how floor area  
7 is calculated, that together may be considered an exempt action as  
8 defined in this section (OP).

9 "Structural improvement" means any improvement that  
10 involves load-bearing components essential to the stability of the  
11 structure and that does not exceed \$500,000 in valuation.

12 "Structure" includes, as defined in HRS section 205A-41, as  
13 amended, any portion of any building, pavement, road, pipe, flume,  
14 utility line, fence, groin, wall, or revetment (DPW).

15 "Urban design review board" means the Maui County  
16 urban design review board as established under chapters 2.26 and  
17 2.40 of the Maui County Code, as amended.

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

20 ["Vegetation growth" means any plant, tree, shrub, grass, or  
21 groups, clusters, or patches of the same naturally rooted and  
22 growing.

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

27  
28 **§12-202-5 Severability.** If any provision of these rules or  
29 the application thereof to any person is held invalid, the invalidity  
30 shall not affect other provisions or applications of these rules [which]  
31 that can be given effect without the invalid provision or application.  
32 To that extent the provisions of these rules are severable. [Eff  
33 1/1/94] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)

34  
35 **§12-202-6 Special management area boundaries and**  
36 **maps.** The special management area shall be all lands so  
37 designated on the maps adopted by the commission as of November  
38 19, 1975, or as amended pursuant to section 205A-23, HRS, which  
39 maps are in the keeping of the department. These maps shall be the  
40 official special management area to be administered and enforced

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1 under these rules. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-23,  
2 205A-27, 205A-29) (Imp: HRS §205A-23)

3  
4 **§12-202-7 Implementation of rules.** The director shall  
5 provide such applications in a form as may be necessary to  
6 accomplish the intent of these rules, and shall provide upon request,  
7 a copy of sections of Hawaii Revised Statutes referenced in these  
8 rules. Such copies shall be provided as a convenience to the public  
9 and shall be accompanied with a disclosure cautioning readers that  
10 reproduced sections should not be relied upon to be accurate,  
11 complete, or applicable to any particular application and that  
12 reference should be made to the Hawaii Revised Statutes, all  
13 supplements thereto and [Acts] acts of the [state] State legislature.  
14 The director may also publish with the rules, or separately, tables,  
15 charts, or other graphics that will serve to clarify or illustrate various  
16 provisions. A charge may be imposed for copying costs. **The director**  
17 **may adopt rules, and is authorized, to administer this chapter.** [Eff  
18 1/1/94, am and comp] (Auth: HRS §§91-2, 205A-290) (Imp: HRS  
19 §205A-29)

20 §12-202-8 (Reserved)

21 §12-202-9 (Reserved)]

## 24 SUBCHAPTER 2

### 25 SPECIAL MANAGEMENT AREA PERMIT PROCEDURES

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27  
28  
29 **§12-202-10 Special management area objectives and**  
30 **policies.** (a) The objectives and policies of this chapter shall be  
31 those set forth in section 205A-2, HRS, as amended.

32 (b) In implementing these objectives and policies, the  
33 department or the commission, as appropriate, shall fully consider  
34 ecological, environmental, recreational, cultural, historic, and  
35 [aesthetic values] scenic resources as well as needs for economic  
36 development[.] and hazard mitigation. [Eff 1/1/94] (Auth: HRS  
37 §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4)

38

1           **§12-202-11 Special management area review guidelines.**

2 The review guidelines set forth in section 205A-26, HRS, as  
3 amended, shall be used by the director and the commission, as  
4 appropriate, for the review of developments proposed in the special  
5 management area. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-  
6 29) (Imp: HRS §§205A-2, 205A-4, 205A-26)  
7

8           **§12-202-11.5 Special management area categorical**

9 **exemptions.** Pursuant to HRS 205A-22, it is hereby assessed and  
10 determined that any use, activity, or operation listed below, by its  
11 minimal nature, does not have a cumulative impact or a significant  
12 environmental or ecological effect on the special management area,  
13 and therefore is exempt from any requirements for a special  
14 management area permit. However, such uses, activities, or  
15 operations may be subject to other assessment or permitting  
16 requirements, such as a building permit, a historic district permit,  
17 or a flood development permit, and may require a shoreline setback  
18 approval if the action is located within the shoreline area.

19           Those who propose any use, activity or operation pursuant to  
20 subsections k, l and m below in the special management area must  
21 complete a declaration form, provided by the department and made  
22 accessible to the public, that may establish action-specific Best  
23 Management Practices and other appropriate restrictions.

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

26           (b) Normal and customary agricultural activities on land  
27 currently or historically used for such activities, provided that  
28 appropriate best management practices to control or minimize  
29 pesticide and sediment runoff are implemented to minimize impacts  
30 to nearshore waters;

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

38           (d) Archaeological, geophysical, percolation, engineering,  
39 soils, and other scientific testing conducted by a licensed  
40 archaeological or scientific professional involving temporary

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

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

15 (f) Driveway and parking lot pavement patching, resurfacing,  
16 resealing, restriping, and repairs; and pavement reconstruction not  
17 over three hundred square feet (DPW/DOT);

18 (g) Exterior installation on and maintenance, repairs, and  
19 renovations to existing, lawfully established structures that involve  
20 no ground disturbance and that are nonstructural, such as signage,  
21 wireless antennae and other transmission equipment, satellite  
22 dishes, and roof mounted equipment, such as photovoltaic and solar  
23 panels;

24 (h) Site improvements, except in coastal dunes, involving  
25 limited ground disturbance, such as minor surface grading and  
26 grubbing, installation of turf, shallow landscaping, and irrigation,  
27 and installation of asphalt or concrete slabs and driveways, up to  
28 six inches deep, up to three hundred square feet, and no more than  
29 once in a 12-month period;

30 (i) Site improvements, except in coastal dunes, involving  
31 limited ground disturbance more than six inches deep and up to  
32 sixteen square feet no more than once in a 12-month period for holes  
33 or trenching, such as the installation, removal, or maintenance of  
34 trees and shrubs, utility pedestals, ground signs, water, sewer, and  
35 conduit lines, walls and fences up to four feet in height, telephone  
36 and light poles, mailbox posts, and solar panels, provided that the  
37 improvements may be subject to shoreline setback approval

1 pursuant to the Shoreline Rules, and provided that this does not  
2 include new wireless telecommunications towers, windmills and  
3 wind turbines;

4 (j) Traditional native Hawaiian cultural practices that are  
5 conducted or led by native Hawaiian cultural practitioners and that  
6 do not have a detrimental environmental or ecological effect on the  
7 special management area.

8 (k) Nonstructural exterior maintenance, repairs and  
9 renovations to existing, lawfully established structures that involve  
10 no ground disturbance, such as doors, windows, shutters, siding or  
11 roofs and, for structures erected in 1981 or after, to protect against  
12 impacts from lead-based paint, painting with related preparatory  
13 work; such activities are limited to a cumulative valuation of less  
14 than \$500,000 in any 24-month period for a single ownership on a  
15 single lot or set of lots composing a unified building site; and  
16 provided a declaration is filed with the department for any  
17 maintenance, repairs or renovations performed at one time that  
18 have a total valuation of \$100,000 or more;

19 (l) Operation and maintenance activities for existing public  
20 roadways and drainage systems, subject to approval by the  
21 applicable state or county agency, such as vegetation management  
22 activities, including tree trimming and cutting and vegetation  
23 removal; clearing obstructions including beach sand accumulations  
24 that block publicly-owned drainage ways, provided that beach sand  
25 is placed on adjacent beaches or dunes, and the obstruction  
26 consists solely of beach sand that is removed to the minimum  
27 volume and depth necessary to allow for passage of flood waters;  
28 and including roadway pavement patching, repair, restriping and  
29 grooving but not including resealing, resurfacing or reconstruction  
30 (DPW/DOT); and provided a declaration is filed with the department;

31 (m) With the application of best management practices to  
32 protect the marine and land environment, emergency protection of  
33 water, wastewater, or stormwater infrastructure managed by the  
34 Department of Water Supply, the Department of Environmental  
35 Management or the Department of Public Works if such  
36 infrastructure is at imminent risk of failure which would

1 substantially affect public health or safety, including significant  
2 water loss, or contamination of surface water, land, or water supply,  
3 and provided a declaration is filed with the department; (DPW)

4 (n) During the applicable timeframe of a Governor's or Mayor's  
5 disaster or emergency declaration or proclamation, while required  
6 permits are obtained and while using Best Management Practices:

7 (i) the removal and disposal of disaster debris that does not  
8 expand the area of disturbance; emergency structure  
9 stabilization and control erosion and runoff;

10 (ii) emergency repairs to roofs and windows that do not  
11 expand the footprint or use of the habitable structure  
12 while and after required permits are obtained;

13 (iii) emergency installation of protective measures to protect  
14 habitable structures provided such measures are  
15 temporary and limited in scale.

16  
17 Failure to file a declaration could be subject to enforcement in  
18 accordance with these rules. Filing a declaration for an action that  
19 requires an assessment or a permit could be subject to enforcement  
20 in accordance with these rules. The department does not review or  
21 respond to the filing of declarations.

22  
23 **§12-202-11.6 Actions previously assessed and permitted.**

24 Any action in the special management area that was previously  
25 determined to be exempt, or that was determined to be a  
26 development and required and obtained a special management area  
27 permit, may be renovated or repaired in a manner that, as  
28 determined by the director, falls within the same scope of the prior  
29 exemption or permit, provided that the action involves no ground-  
30 altering activity and does not expand the structure, unless otherwise  
31 provided by the terms of the exemption or permit.

32  
33 **§12-202-12 Assessment and determination procedures.**

34 (a) [All] Any proposed [actions] action within the special management  
35 area that does not fully fall within any of the categorical exemptions  
36 listed in section 12-202-11.5 shall be subject to an assessment and  
37 a determination made by the director as to whether it is a

1 development and requires a special management area use permit or  
2 minor permit or is an exempt action. Such assessment shall be  
3 pursuant to sections 205A-22 and HRS 205A-26, HRS, and the  
4 significance criteria set forth in this section. (OP)

5 (b) The applicant or the director may waive assessment and  
6 determination, and the applicant may apply for a special  
7 management area use permit pursuant to the provisions of sections  
8 12-202-13 and 12-202-15.

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

12 [(1) Any applicant for a proposed action which has been  
13 assessed under the National Environmental Policy Act  
14 (42 U.S.C. §4321, et. seq.) or under chapter 343, HRS,  
15 and for which a findings of no significant impact  
16 (FONSI) has been filed or a required EIS has been  
17 accepted, may apply directly for a special management  
18 area use permit or special management area minor  
19 permit.

20 (2) Any applicant seeking an assessment shall submit an  
21 application form, provided by the department, to the  
22 central coordinating agency. The application shall  
23 require the following information and documentation:

24 (A)

25 (1) Identification of the applicant [along with] and  
26 documentation of ownership or tenancy and, if the  
27 applicant is not the owner, authorization by the  
28 [owners] owner of the parcel on which the proposed  
29 action is to occur; if the subject parcel has more than  
30 one owner and does not have a managing association  
31 authorized to submit the application, evidence of  
32 notification to all owners shall also be provided;

33 [(B)]

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

36 (3) A location map;

37 [(C)]

- 1           (4)    A [plot] development plan, drawn to scale, of the parcel  
2                    upon which the proposed action is to occur [, and  
3                    photographs or VHS format video tape identifying the  
4                    area where the proposed action is to occur]; the  
5                    development plan shall show existing conditions  
6                    including human-caused and natural features such as  
7                    large trees, rock outcroppings, or other known sensitive  
8                    environmental areas such as special flood hazard area,  
9                    coastal dune, tsunami zone, erosion hazard line within  
10                   the parcel, 3.2-foot sea level rise exposure area,  
11                   wetland, streams, estuary or geologically hazardous  
12                   land, as applicable;
- 13           (5)    If the proposed action involves new structures, the  
14                   applicant shall provide dimensioned floor plans,  
15                   sections, and elevations;
- 16           (6)    Photographs identifying the area where the action is to  
17                   occur; video may also be provided;
- 18           [(D)] A shoreline survey if the land abuts the shoreline;  
19                    provided, if the proposed action will occur outside of the  
20                    shoreline [setback] area, the director may waive a  
21                    survey if:
- 22                    (i)    the shoreline is fixed by a manmade structure or  
23                            structures which have been approved by  
24                            appropriate government agencies and for which  
25                            engineering drawings exist to locate the interface  
26                            between the shoreline and the structure;
- 27                    (ii)   the shoreline is fixed by natural stabilized  
28                            geographic features such as cliffs and rock  
29                            formations; or
- 30                    (iii)  the parcel is not abutting the shoreline.
- 31           (E)]
- 32           (7)    A written description of the proposed action, including  
33                    [but not limited to] the use, length, width, height,  
34                    [depth,] building materials, [and statement of  
35                    objectives;] size of structures in square feet and, if  
36                    applicable, area, depth, or volume of grubbing, grading,



- 1                   fill, and any other ground-altering activity such as  
2                   utility installation;
- 3            [(F)]
- 4            (8)    A written description of the anticipated impacts of the  
5                   proposed action on the special management area that  
6                   addresses or describes:
- 7                   [(i)]
- 8                   (A)    The environmental setting of the parcel that is the  
9                           subject of the proposed action;
- 10                  [(ii)]
- 11                  (B)    The relationship of the proposed action to [land  
12                           use plans, policies, and control of the affected  
13                           area] the objectives and policies of chapter 205A,  
14                           HRS; zoning; and the general plan;
- 15                  [(iii)]
- 16                  (C)    The probable impact, including cumulative  
17                           impacts, of the proposed action on the  
18                           [environment;] special management area; and
- 19                  [(iv)] Any probable adverse environmental effects that can be  
20                           avoided;
- 21                           (v)    Alternatives to the proposed action;
- 22                           [(vi)]
- 23                  (D)    [Mitigating measures] Measures proposed to  
24                           minimize [impact] potential impacts, including  
25                           best management practices.; and
- 26                           (vii)   Any irreversible or irretrievable commitment of  
27                           resources.
- 28                  (G)    A plan of the proposed action designating in  
29                           dimensions the location of the proposed action on the parcel.  
30                           If structures are included, the plan shall also show a  
31                           dimensioned floor plan, sections, elevations, and other  
32                           physical features;
- 33                           [(H)]
- 34                  (9)    A written estimated valuation of all components of the  
35                           proposed action, including any component that could  
36                           be considered to be exempt; the director may require an  
37                           estimated valuation [as estimated] by an architect,

- 1 engineer, or contractor licensed by the department of  
2 commerce and consumer affairs, State of Hawaii, or  
3 [written valuation of the proposed action as estimated  
4 by] the administrator of the development services  
5 administration, department of public works, County of  
6 Maui;
- 7 [(I) The state land use district boundary designation,  
8 community plan designation, county zoning designation, and  
9 any other special designation, if applicable.]
- 10 (10) A zoning and flood confirmation form, completed and  
11 signed by the department unless the Department ceases  
12 the use of such form;
- 13 [(J)]
- 14 (11) [An] A draft environmental assessment [and findings of  
15 no significant impact or an] or a draft environmental  
16 impact statement, if the proposed action is subject to  
17 chapter 343, HRS, and the department or commission  
18 is the accepting agency; [if required, pursuant] or the  
19 agency decision letter and any final environmental  
20 document, if the proposed action is subject to chapter  
21 343, HRS, and a government agency has determined  
22 that the action is exempt, issued a finding of no  
23 significant impact, or accepted a final environmental  
24 impact statement;
- 25 [(K)]
- 26 (12) Any oral or written comments received by the applicant  
27 from governmental or [non-governmental]  
28 nongovernmental agencies, community organizations,  
29 applicable design review committees, or individuals  
30 with regard to the proposed action, and a summary of  
31 the dates and attendance of public meetings held on the  
32 proposed action;
- 33 [(L)]
- 34 (13) Any other information and documentation required by  
35 the department to properly process the application; and
- 36 [(M)]

- 1           (14) An administrative fee as established in the [county]  
2                    County budget.
- 3           (d) The assessment application shall be reviewed as  
4 follows:
- 5           (1) Upon submission of [a completed] an application that  
6                   contains all required information, the director may  
7                   submit the application to appropriate agencies for  
8                   review and comment. The director shall request such  
9                   agencies to provide their comments on the application  
10                   within thirty days from the date on which the  
11                   application was distributed for review, or as otherwise  
12                   specified by the director. The director shall determine  
13                   that the application is complete when adequate agency  
14                   comments and, if applicable, applicant responses have  
15                   been received. Upon a determination that an  
16                   application is complete, the director shall review the  
17                   proposed action and make a written evaluation as to:
- 18           (A) The valuation of the proposed action. The  
19                   director may request that the applicant's  
20                   estimates of the total cost or fair market value  
21                   [may] be verified by the director of public works  
22                   [and environmental management]. The director  
23                   of public works [and environmental management]  
24                   shall use the most recent building valuation data  
25                   provided by the International Conference of  
26                   Building Officials. In the event of a conflict  
27                   between the estimates of the applicant and the  
28                   director of public works, [and environmental  
29                   management,] the higher estimate amount shall  
30                   be used by the director for the purposes of an  
31                   assessment of the proposed action; [and]
- 32           (B) Whether the proposed action is [or is not] a  
33                   development or is an exempt action or, upon  
34                   further consideration, the proposed action did not  
35                   require a special management area assessment  
36                   and is a categorical exemption pursuant to  
37                   section 12-202-11.5; and

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- 1 (C) The potential adverse environmental and  
2 ecological effects based upon the following  
3 significance criteria [set forth in subsection (e).]:  
4 [(e) In considering the significance of potential  
5 environmental and ecological effects, the director shall evaluate:  
6 (1)]  
7 (i) The sum of those effects that adversely affect the  
8 quality of the environment and the ecology, and  
9 [shall evaluate] the overall and cumulative  
10 adverse effects of the proposed action, including  
11 the extent of sea level rise impacts predicted  
12 during the proposed action's lifespan (PD), [.];  
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, ongoing and other  
18 proposed or completed actions on the same parcel  
19 or on related adjacent parcels that together with  
20 the subject parcel comprise a development,  
21 within the preceding ~~three~~ two years (OP). A  
22 proposed action may have a significant adverse  
23 effect on the environment when the proposed  
24 action potentially:  
25 (A) Involves an irrevocable [commitment to loss or  
26 destruction of] or substantial and detrimental  
27 effect on any natural or cultural resources;  
28 (B) Significantly curtails the range of beneficial  
29 uses of the environment;  
30 (C) Conflicts with the [county's] County's or the  
31 [state's] State's long-term environmental policies  
32 or goals;  
33 (D) Substantially and detrimentally affects the  
34 economic or social welfare [and activities] of the  
35 community, [county,] County, or [state] State;  
36 (E) Involves substantial [secondary impacts,  
37 such as population changes and increased effects

- 1 on] and detrimental effects on public facilities,  
2 [streets,] such as increased demand on drainage,  
3 sewage, and water systems, beach access,  
4 recreational opportunities, and pedestrian  
5 walkways;  
6 (F) In itself has no [significant adverse]  
7 substantial and detrimental effects but  
8 cumulatively has [considerable effect] substantial  
9 and detrimental effects upon the environment [or  
10 involves a commitment for larger actions];  
11 (G) Substantially and detrimentally affects a  
12 rare, threatened, or endangered species of animal  
13 or plant, or its habitat;  
14 (H) Is inconsistent with the [state] State plan,  
15 [county's] County general plan[,] including the  
16 Maui Island Plan and appropriate community  
17 plans, zoning, and subdivision ordinances;  
18 (I) [Detrimentially] Substantially and  
19 detrimentally affects air or water quality [or  
20 ambient noise levels];  
21 (J) [Affects] Substantially and detrimentally  
22 affects or is likely to suffer damage by being  
23 located in an environmentally sensitive area,  
24 such as flood plain, shoreline, coastal dune,  
25 tsunami zone, erosion-prone area, sea level rise  
26 exposure area, wetland, geologically hazardous  
27 land, estuary, fresh waters, or coastal waters;  
28 (K) Substantially and detrimentally alters  
29 natural land forms and existing public views, or  
30 curtails or forecloses potential improvements to  
31 public views, to and along the shoreline; or  
32 (L) Is inconsistent with the objectives and  
33 policies of chapter 205A, HRS.  
34 (e) An application is automatically incomplete, at any stage  
35 of the application process, if it is for or relates to land use on a lot  
36 or on a unit in a condominium property regime that is the subject  
37 of an unresolved enforcement action by the department, pursuant

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1 to section 12-202-23, if the department has sent a notice of warning  
2 or notice of violation for the enforcement action. However, an  
3 application is not automatically incomplete if the applicant pays all  
4 finances associated with the unresolved enforcement action as required  
5 by the director, and approval of the application would resolve the  
6 enforcement action. An enforcement action is unresolved until all  
7 finances as determined by the director have been paid.

8 [e](f) Based upon the assessment and review of the  
9 application, and considering the significance criteria set forth in  
10 section 202-12(d)(1)(C), (OP) the director shall make a determination  
11 and notify the applicant in writing within thirty calendar days after  
12 the application is complete that the proposed action either:

13 (1) Is exempt from the requirements of this chapter  
14 because it is not a development pursuant to section  
15 205A-22, HRS, as amended;

16 (2) [Requires] Is a development and requires a special  
17 management area minor permit pursuant to section  
18 205A-22, HRS, as amended, which shall be processed  
19 in accordance with section 12-202-14; or

20 (3) [Requires] Is a development and requires a special  
21 management area use permit pursuant to section 205A-  
22 22, HRS, as amended, which shall be processed in  
23 accordance with sections 12-202-13 and 12-202-15[;].

24 [(4) Requires a special management area emergency permit  
25 pursuant to section 205A-22, HRS, as amended, which  
26 shall be processed in accordance with section 12-202-  
27 16; or

28 (5)(g)

29 (f)[Cannot be processed because]If the director determines  
30 that the proposed action is a development and requires a special  
31 management use or minor permit, and if the proposed action is not  
32 consistent with the [county] County general plan, including the  
33 Maui Island Plan and applicable community plan, [and] or zoning,  
34 [unless] the director shall notify the applicant that a general plan,  
35 community plan, or zoning [application for an appropriate]  
36 amendment is required and that an amendment application can be  
37 processed concurrently with the SMA permit application. [Eff

1 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp  
2 10/10/03; am and comp 12/20/04) (Auth: HRS §§91-2, 205A-27,  
3 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)  
4

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

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

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

- 36 (1) The applicant's name, mailing address, and the nature  
37 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

1 by the permit,] and the location and purpose of the development.  
2 [Eff 1/1/94; am 9/28/97, am and comp 12/28/02] (Auth: HRS  
3 §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29,  
4 205A-30)

5  
6 **§12-202-15 Special management area use permit**  
7 **procedures.** (a) Any person whose proposed [development]

8 action is a development and requires a special management area use  
9 permit, or who has waived an assessment by the department, shall  
10 file an application with the department on a form provided by the  
11 department, which may be required to be filed electronically, and  
12 which shall require:

- 13 (1) All information and documentation required pursuant  
14 to section 12-202-12c, [excluding valuation of the  
15 development;] and  
16 (2) [The real property tax map key number of parcels and  
17 the names and addresses of owners of real property for  
18 real property situated within five hundred feet of the  
19 boundaries of the parcel on which the proposed  
20 development is to occur, obtain from the County of Maui  
21 real property tax division;  
22 (3)] An administrative fee as established in the [county]  
23 County budget.[When development for which a fee is  
24 required is started before obtaining a permit, the fee  
25 shall be doubled.] The payment of the fee for  
26 development without a permit shall not relieve any  
27 persons from fully complying with the requirements of  
28 these rules nor from any penalties prescribed in section  
29 12-202-25.  
30 [(4) Any other relevant information and documentation  
31 required by the director.]

32 (b) Upon receipt of the application, the director shall review  
33 the application based on the policies, objectives, and guidelines as  
34 provided in sections 12-202-10 and 12-202-11 and, if necessary,  
35 request that the applicant provide any additional data or information  
36 as may be required for review of the proposed development. The  
37 application shall not be [deemed complete] transmitted for agency  
38 [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 repairs or reconstruction of structures if such structures were  
32 not lawfully constructed. (OP)

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 permit holder shall remove the temporary measure  
21                   unless the permit holder submits an application by the  
22                   date specified by the emergency permit to allow the  
23                   temporary measure to remain, pursuant to subsection  
24                   (i).  
25                   (i) No less than thirty days prior to the expiration date of an  
26                   emergency permit, the permit holder may apply for a time extension  
27                   for any permit provision on a form provided by the department. Such  
28                   application shall include, at a minimum:



- 1           (1) a description of the permit holder's preferred alternative;  
 2           (2) evidence that the permit holder is making adequate progress toward  
 3           completing permanent measures, but reasonably cannot do so  
 4           within the time allowed by the emergency permit; and  
 5           (3) a plan and timeline for obtaining all required permits.

6           The director may approve a time extension for no more than one hundred  
 7 eighty days at a time.

8           (i) If the director finds there is no imminent danger or substantial harm  
 9 to a habitable structure, any person, or the public health, safety, or welfare, or  
 10 that the requirements of subsection (h) were not met, the director shall deny the  
 11 emergency permit. If the director denies the emergency permit, the denial shall  
 12 be in writing, setting forth facts sufficient to demonstrate the application did not  
 13 meet the requirements for issuance of the emergency permit pursuant to  
 14 subsection (h). The director shall notify the applicant it can submit an  
 15 application for an assessment, a special management area use or minor permit  
 16 in accordance with these rules, and shall inform the applicant of the right to  
 17 appeal pursuant to section 12-202-26.

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

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

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

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

38           (1) [The term, condition, or time stipulation to be amended, deleted, or  
 39 determined];

40           (2) If an extension of a time stipulation is requested, the length of time  
 41 extension desired] A description of the requested amendment;

42           [[3]](2) The reasons and justification for the [requested amendment,  
 43 deletion, or determination] request;

44           [[4]] (3) An administrative fee as established in the County budget; [and]

1           (4)    If the request is for a permit transfer, the transferor's consent and a  
2                   notarized affidavit from the transferee acknowledging and agreeing  
3                   to comply with the permit approval;

4           (5)    If the request is to amend a time stipulation, the length of time  
5                   requested, an analysis of whether any changes have occurred within  
6                   the special management area since the granting of the permit that  
7                   may cause the permit holder's development to have a substantial  
8                   adverse environmental or ecological effect or adversely affect the  
9                   capacity or condition of infrastructure; and

10          [[5]](6) Any other information and documentation requested by the  
11                   director.

12          [(c) Unless otherwise provided, any application for an extension of a time  
13 stipulation must be filed not less than sixty calendar days prior to the expiration  
14 date of the time condition, provided that the director for good cause may waive  
15 such sixty day requirement.

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

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

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

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

1            [(e)](d) Time stipulation. Unless otherwise specified in the permit  
2 [conditions] approval, the director may approve a [special management area use  
3 permit] time extension of no more than five years to initiate construction or to  
4 complete construction, [if the permit holder submits a written request for a time  
5 extension. The request shall include the following:] provided that

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

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

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

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

35            [Prior to granting or denying any permit time extension request, the  
36 director shall notify the commission of the request at the commission's next  
37 regularly scheduled meeting, receipt of which shall be acknowledged by the  
38 commission. Such notification shall include, but not be limited to, the  
39 information provided to the department by the permit holder. The commission  
40 may review the permit time extension request at its next available meeting after  
41 receiving notice or waive review of the request. If the commission waives review  
42 of the request, the director may grant or deny the time extension and forward a  
43 copy of the determination to the commission.]

1 If the director finds there have been 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, or adversely affect the condition or capacity of infrastructure,  
5 the request shall be scheduled for commission action.

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

11 (e) Amendment or determination other than transfer or time extension.  
12 Unless otherwise specified in the permit approval, the director may approve  
13 nonsubstantive amendments to the permit and may make determinations  
14 regarding permit approvals when such amendments or determinations are  
15 nonsubstantive. If the director determines that the requested amendment or  
16 determination is substantive, then the director shall forward the request to the  
17 commission for action. The director shall determine whether a public hearing  
18 shall be held and, [(f) After review and final comment by appropriate agencies,  
19 the application shall be deemed complete by the director, and the application  
20 shall be referred to the commission and,] if a public hearing is required, set a  
21 date for the hearing and provide notice as required by section 12-202-13. The  
22 commission shall conduct a hearing in accordance with the procedures set forth  
23 in its rules.

24 (f) Intervention. If a petition to intervene was granted and any person other  
25 than the applicant was admitted as a party to any prior proceeding on the matter,  
26 and the proposed amendment or determination clearly pertains to or could affect  
27 the same rights, privileges or interests on which the intervention was based, the  
28 applicant shall notify such person in writing, at the person's last known address,  
29 of the requested amendment or determination, and ask if such person requests  
30 that a public hearing be held. The applicant shall provide the department with  
31 evidence of such notification, including proof of mailing, which shall be verified  
32 by the department and be to the satisfaction of the director. A public hearing on  
33 the requested amendment or determination shall be held if requested by any  
34 such person within thirty days of the date the applicant's notice was mailed.  
35 Notice of public hearing shall be given pursuant to the procedures set forth in  
36 section 12-202-13. The commission shall conduct a hearing in accordance with  
37 the procedures set forth in its rules. This section shall not apply to requests for  
38 permit transfers or time extensions. Requests for permit transfers shall be  
39 processed pursuant to section 12-202-17(c) and requests for time extensions  
40 shall be processed pursuant to section 12-202-17(d).

41 (g) Commission action. Findings of fact, conclusions of law, and decision  
42 and order for any special management area use permit application seeking to  
43 amend[, delete,] or determine any permit [terms, conditions, and time  
44 stipulations]approval shall be issued in accordance with the rules of practice and

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1 procedure of the commission in effect when action is taken and the review  
2 guidelines as set forth in section 12-202-11. [Eff 1/1/94; am 9/28/97, am and  
3 comp 4/21/08] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §§205A-26,  
4 205A-29)

5  
6        [§12-202-18 (Reserved)  
7        §12-202-19 (Reserved)  
8        §12-202-20 (Reserved)]

9  
10

**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, construction or operation pursuant  
19 to these rules 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 (1) The ~~[landowner]~~ owner shall, and[or] the alleged violator may, [or  
2 both, shall] be notified by the enforcement agency [by certified or  
3 registered mail] of an alleged violation of [this rule,]these rules and  
4 any approval, permit, or permit condition issued pursuant thereto.],  
5 or any condition of a special management area permit approval.]The  
6 director shall provide service by at least one of the following  
7 methods, in order of preference, as the director deems appropriate:  
8 certified or registered mail, regular mail with delivery confirmation,  
9 personal service, posting on the property, or publishing the notice  
10 once per week for three consecutive weeks in a newspaper that is  
11 printed and issued at least twice weekly in the County and is  
12 generally circulated through the County. The date of service shall be  
13 the date on which the certified or registered mail is accepted, the  
14 date of regular mail delivery confirmation, the date of personal  
15 service, the date of posting on the property, or the date of the last  
16 publication in the newspaper. If the director uses more than one  
17 method of service, then the date of service shall be the later of the  
18 dates of service.
- 19 (2) The notice of violation and order shall include [, but not be limited  
20 to,] the specific section of [this rule which] these rules that has been
- 21 violated[,] the nature of the violation[,] and the [remedy(ies)] remedy  
22 required or available[.], including cessation or removal of the  
23 violation, subject to applicable permitting requirements;]. The  
24 notice of violation and order may also require that the violative  
25 activity cease, or that the violative development be removed;] that [a]  
26 an initial civil fine be paid not to exceed \$100,000 per violation; [and]  
27 that a civil fine be paid not to exceed \$10,000 per day for each day  
28 in which the violation persists, unless otherwise required or allowed  
29 by statute, in addition to the foregoing and any other penalties[.];  
30 and that the landowner or violator may appeal the notice of violation  
31 pursuant to section 12-202-26 within thirty days of the date of  
32 service. The filing of an appeal shall not correct or suspend any  
33 violation or stay the assessment and accumulation of fines. The  
34 following and other applicable and reasonable criteria shall be  
35 considered in assessing the initial and daily fines:
- 36 (A) Previous violations by the same person;  
37 (B) The degree of damage or potential damage to the environment,  
38 including damage to the shoreline and marine resources;  
39 (C) The degree of cooperation provided by the violator during the  
40 investigation;  
41 (D) Amount necessary to deter future violations;  
42 (E) Evidence of circumstances beyond the control of the violator;  
43 (F) Whether the owner or violator knew or should have known  
44 that assessments or approvals were required; and



(G) The amount of time and resources required by the department to investigate and determine that a violation occurred.

[(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.

{5) Nothing in this section shall prohibit the department from issuing a warning to the violator before issuing a notice of violation and order.

[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

1 respective agency charged with the administration of the [county] County zoning  
2 laws, and found not to conflict with any [county] County ordinances, zoning laws,  
3 and building codes. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-48) (Imp: HRS  
4 §205A-48)

5  
6 **§12-202-25 Penalties.** Any person who violates any provision of these  
7 rules shall be liable for an initial civil fine not to exceed \$100,000 per violation  
8 and maximum daily fine of \$10,000 in addition to any other penalties until the  
9 violation is [corrected.]remedied, **unless otherwise required or allowed by statute.**  
10 A civil fine may be imposed by the department after an opportunity for [a] an  
11 appeal hearing under chapter 91, HRS, as amended, and subsection 12-202-  
12 26(b) herein.[unless said hearing is otherwise waived.] A special management  
13 area permit application submitted subsequent to an applicant's having  
14 completed the development or having been cited for the activity or construction  
15 without having obtained special management area approval, shall not stay any  
16 order to pay civil fines[.], including initial and accumulating daily fines. [Eff  
17 1/1/94; am 9/28/97] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 205A-26,  
18 205A-28, 205A-29, 205A-30, 205A-33)

19  
20 **§12-202-26 Appeal of director's decision; filing the notice of appeal;**  
21 **settlement of appeal.** (a)For decisions other than enforcement proceedings  
22 pursuant to section 12-202-23, appeal of the director's decision may be made to  
23 the commission by the filing of a notice of appeal with the department not later  
24 than ten days after the receipt of the director's written decision, or, where the  
25 director's decision is not required by the commission or these rules to be served  
26 upon appellant, not later than ten days after the meeting at which the  
27 commission received notification of the director's decision. For enforcement  
28 proceedings pursuant to section 12-202-23, appeal of a notice of violation may  
29 be made to the commission by the filing of a notice of appeal with the department  
30 within thirty days of the date of service. The notice of appeal shall be filed in  
31 accordance with section 12-201-20 of the rules of practice and procedure for the  
32 Maui planning commission. The department shall notify the commission, at the  
33 commission's next regularly scheduled meeting, of the filing of the notice of  
34 appeal.

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

43 (c) **unless otherwise required or allowed by statute.**  
44 **includes a reduction of accumulated fines and correction of the violation. If the**

1 resolution reduces the accumulated fines by \$50,000 or less, then the director  
2 will notify the owner or violator in writing and establish which party shall draft  
3 the agreement. At the commission's next regularly scheduled meeting, the  
4 director shall notify the commission of the agreement, receipt of which shall be  
5 acknowledged by the commission.

6 (d) If the director and the owner or violator agree on a resolution that  
7 reduces the accumulated fines by more than \$50,000, then the director will  
8 notify the owner or violator in writing and establish which party shall draft the  
9 agreement. The agreement shall be submitted to the commission for final action.  
10 The commission may accept, accept with modifications, or reject the agreement.

11 (e) If the director and the owner or violator do not agree on a resolution,  
12 the director will notify the owner or violator in writing of the director's  
13 termination of the negotiation. Submittal of any request for a negotiated  
14 resolution shall not affect the accrual of daily fines or any time limitations for  
15 appealing the notice of violation and order to the commission. [Eff 1/1/94; am  
16 and comp 9/28/97; am and comp 11/4/02] (Auth: Charter §§ 8-8.4, 13-  
17 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

18  
19 **§12-202-27 Content of the [notice of] appeal.** The [notice of] appeal to  
20 the commission shall identify the party [or parties taking] making the appeal [in  
21 the caption and body of the notice of appeal]. The [notice of] appeal shall  
22 designate the decision appealed from and shall state the reasons for the appeal.  
23 [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS  
24 §§205A-29, 205A-30, 205A-49)

25  
26 **§12-202-28 Joint or consolidated appeals.** If two or more parties are  
27 entitled to appeal [from] a decision of the director to the commission and their  
28 interests are such as to make joinder practicable, they may file a joint appeal  
29 and thereafter proceed on appeal as a single appellant. Appeals that are filed  
30 separately may be consolidated by order of the commission upon the  
31 commission's own motion, upon motion of a party, or upon stipulation of the  
32 parties to the several appeals. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-  
33 8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

34  
35 **§12-202-29 Service of the [notice of] appeal.** If the appellant is  
36 someone other than the applicant, appellant shall serve a file-marked copy of the  
37 appeal by mail or delivery thereof to counsel of record for each other party, or, if  
38 a party is not represented by counsel, to the party at the party's last known  
39 address. Proof of service shall be filed with the department within seven days  
40 after the filing of the [notice of] appeal[.], and the department shall notify the  
41 commission of the filing of the appeal at the next regular meeting. [Eff 11/4/02;  
42 comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30,  
43 205A-49)

1           **§12-202-30 Payment of fees.** Upon the filing of any separate or joint  
2 [notice of] appeal, the appellant shall pay such fees as are set forth in the County  
3 budget ordinance. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-  
4 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)  
5

6           **§12-202-31 Contested case hearing on appeal.** The commission shall  
7 hold a contested case hearing on the appeal. The director, the appellant, the  
8 owner, and, where the appellant is someone other than the applicant, the  
9 applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of the  
10 rules of practice and procedure for the Maui planning commission, relating to  
11 petitions to intervene, contested case procedures, and [posthearing] post-hearing  
12 procedures, respectively, shall govern the proceedings, except that petitions to  
13 intervene on an appeal shall be filed with the commission no later than ten days  
14 after the meeting at which the commission received notification of the filing of an  
15 appeal. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS  
16 §§205A-29, 205A-30, 205A-49)  
17

18           **§12-202-32 Disposition of appeal.** The commission may affirm the  
19 decision of the director, or may remand the case to the hearing officer, if any,  
20 with instructions for further proceedings; or it may [reverse]modify the decision  
21 of the director if the substantial rights of the appellant may have been prejudiced  
22 because the decision is:

- 23           (1) Based on clearly erroneous findings of material fact or erroneous  
24 application of the law; or
- 25           (2) Arbitrary or capricious in its application; or
- 26           (3) A clearly unwarranted abuse of discretion. [Eff 11/4/02; comp  
27 11/4/02; am and comp 12/20/04] (Auth: HRS §§91-14(g)(6), 205A-  
28 43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter  
29 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-29, 205A-30, 205A-43, 205A-  
30 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,  
31 13-2(15))  
32  
33  
34  
35