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TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 02

MAUI PLANNING COMMISSION

CHAPTER 202

SPECIAL MANAGEMENT AREA RULES

Subchapter 1 General Provisions

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

Subchapter 2 Special Management Area Permit Procedures

- §12-202-10 Special management area objectives and policies
- §12-202-11 Special management area review guidelines
- §12-202-11.5 Special management area categorical exemptions
- §12-202-11.6 Actions previously assessed and permitted
- §12-202-12 Assessment and determination procedures
- §12-202-13 Notice of application and notice of public hearing; adequacy of notice
- §12-202-14 Special management area minor permit procedures

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

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

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

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

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

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

“Commission” means the Maui planning commission.

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

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

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

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

“Department” means the department of planning of the County of 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). For the purposes of this definition, floor
9 area means the roofed area of all floors of a structure measured from
10 the exterior faces of the exterior walls or from the center line of party
11 walls dividing a structure; the floor area of a structure, or portion of
12 the floor area, that is not enclosed by exterior walls shall be the area
13 under the covering, roof, or floor that is supported by posts,
14 columns, partial walls, or similar structural members that define the
15 wall line. Excluded from the floor area are:

- 16 1. Attic areas with head room less than seven feet.
- 17 2. Projections such as sunshade devices and architectural
18 embellishments that are decorative only.
- 19 3. Areas covered by roofing treatment to screen rooftop
20 machinery only.
- 21 4. Areas underneath unsupported roof overhangs or
22 cantilevered building overhangs, provided no portion of the
23 area is enclosed except for a safety railing or wall not
24 exceeding four feet in height.

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

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

31 "Urban design review board" means the Maui County
32 urban design review board as established under chapters 2.26 and
33 2.40 of the Maui County Code, as amended.

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

36 ["Vegetation growth" means any plant, tree, shrub, grass, or
37 groups, clusters, or patches of the same naturally rooted and
38 growing.

39 "Vegetation line" means a line marking the seaward limit of
40 vegetation growth.] [Eff 1/1/94; am 9/28/97, am and comp

1 9/25/03, am and comp 4/21/08] (Auth: HRS §§91-2, 205A-29)
2 (Imp: HRS §205A-29)

3
4 **§12-202-5 Severability.** If any provision of these rules or
5 the application thereof to any person is held invalid, the invalidity
6 shall not affect other provisions or applications of these rules [which]
7 that can be given effect without the invalid provision or application.
8 To that extent the provisions of these rules are severable. [Eff
9 1/1/94] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)

10
11 **§12-202-6 Special management area boundaries and**
12 **maps.** The special management area shall be all lands so
13 designated on the maps adopted by the commission as of November
14 19, 1975, or as amended pursuant to section 205A-23, HRS, which
15 maps are in the keeping of the department. These maps shall be the
16 official special management area to be administered and enforced
17 under these rules. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-23,
18 205A-27, 205A-29) (Imp: HRS §205A-23)

19
20 **§12-202-7 Implementation of rules.** The director shall
21 provide such applications in a form as may be necessary to
22 accomplish the intent of these rules, and shall provide upon request,
23 a copy of sections of Hawaii Revised Statutes referenced in these
24 rules. Such copies shall be provided as a convenience to the public
25 and shall be accompanied with a disclosure cautioning readers that
26 reproduced sections should not be relied upon to be accurate,
27 complete, or applicable to any particular application and that
28 reference should be made to the Hawaii Revised Statutes, all
29 supplements thereto and [Acts] acts of the [state] State legislature.
30 The director may also publish with the rules, or separately, tables,
31 charts, or other graphics that will serve to clarify or illustrate various
32 provisions. A charge may be imposed for copying costs. **The director**
33 **may adopt rules, and is authorized, to administer this chapter.** [Eff
34 1/1/94, am and comp] (Auth: HRS §§91-2, 205A-290) (Imp: HRS
35 §205A-29)

36 [§12-202-8 (Reserved)

37 §12-202-9 (Reserved)]

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SUBCHAPTER 2

SPECIAL MANAGEMENT AREA PERMIT PROCEDURES

6 **§12-202-10 Special management area objectives and**
7 **policies.** (a) The objectives and policies of this chapter shall be
8 those set forth in section 205A-2, HRS, as amended.

9 (b) In implementing these objectives and policies, the
10 department or the commission, as appropriate, shall fully consider
11 ecological, environmental, recreational, cultural, historic, and
12 [aesthetic values] scenic resources as well as needs for economic
13 development[.] and hazard mitigation. [Eff 1/1/94] (Auth: HRS
14 §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4)

16 **§12-202-11 Special management area review guidelines.**
17 The review guidelines set forth in section 205A-26, HRS, as
18 amended, shall be used by the director and the commission, as
19 appropriate, for the review of developments proposed in the special
20 management area. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-
21 29) (Imp: HRS §§205A-2, 205A-4, 205A-26)

23 **§12-202-11.5 Special management area categorical**
24 **exemptions.** Pursuant to HRS 205A-22, it is hereby assessed and
25 determined that any use, activity, or operation listed below, by its
26 minimal nature, does not have a cumulative impact or a significant
27 environmental or ecological effect on the special management area,
28 and therefore is exempt from any requirements for a special
29 management area permit. However, such uses, activities, or
30 operations may be subject to other assessment or permitting
31 requirements, such as a building permit, a historic district permit,
32 or a flood development permit, and may require a shoreline setback
33 approval if the action is located within the shoreline area.

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

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

1 (b) Normal and customary agricultural activities on land
2 currently or historically used for such activities, provided that
3 appropriate best management practices to control or minimize
4 pesticide and sediment runoff are implemented to minimize impacts
5 to nearshore waters;

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

13 (d) Archaeological, geophysical, percolation, engineering,
14 soils, and other scientific testing conducted by a licensed
15 archaeological or scientific professional involving temporary
16 excavation limited to the minimum extent determined necessary and
17 appropriate or as approved by the State Historic Preservation
18 Division, and employing best management practices protective of the
19 environment and natural and cultural resources;

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

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

33 (g) Exterior installation on and maintenance, repairs, and
34 renovations to existing, lawfully established structures that involve
35 no ground disturbance and that are nonstructural, such as signage,
36 wireless antennae and other transmission equipment, satellite
37 dishes, and roof mounted equipment, such as photovoltaic and solar
38 panels;

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

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

18 (j) Traditional native Hawaiian cultural practices that are
19 conducted or led by native Hawaiian cultural practitioners and that
20 do not have a detrimental environmental or ecological effect on the
21 special management area.

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

33 (l) Operation and maintenance activities for existing public
34 roadways and drainage systems, subject to approval by the
35 applicable state or county agency, such as vegetation management
36 activities, including tree trimming and cutting and vegetation
37 removal; clearing obstructions including beach sand accumulations
38 that block publicly-owned drainage ways, provided that beach sand

1 is placed on adjacent beaches or dunes, and the obstruction
2 consists solely of beach sand that is removed to the minimum
3 volume and depth necessary to allow for passage of flood waters;
4 and including roadway pavement patching, repair, restriping and
5 grooving but not including resealing, resurfacing or reconstruction
6 (DPW/DOT); and provided a declaration is filed with the department;

7 (m) With the application of best management practices to
8 protect the marine and land environment, emergency protection of
9 water, wastewater, or stormwater infrastructure managed by the
10 Department of Water Supply, the Department of Environmental
11 Management or the Department of Public Works if such
12 infrastructure is at imminent risk of failure which would
13 substantially affect public health or safety, including significant
14 water loss, or contamination of surface water, land, or water supply,
15 and provided a declaration is filed with the department; (DPW)

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

19 (i) the removal and disposal of disaster debris that does not
20 expand the area of disturbance; emergency structure
21 stabilization and control erosion and runoff;

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

25 (iii) emergency installation of protective measures to protect
26 habitable structures provided such measures are
27 temporary and limited in scale.

28 Failure to file a declaration could be subject to enforcement in
29 accordance with these rules. Filing a declaration for an action that
30 requires an assessment or a permit could be subject to enforcement
31 in accordance with these rules. The department does not review or
32 respond to the filing of declarations.

33
34 **§12-202-11.6 Actions previously assessed and permitted.**

35 Any action in the special management area that was previously
36 determined to be exempt, or that was determined to be a
37 development and required and obtained a special management area
38 permit, may be renovated or repaired in a manner that, as
39 determined by the director, falls within the same scope of the prior

1 exemption or permit, provided that the action involves no ground-
2 altering activity and does not expand the structure, unless otherwise
3 provided by the terms of the exemption or permit.

4
5 **§12-202-12 Assessment and determination procedures.**

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

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

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

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

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

33 (A)]

34 (1) Identification of the applicant [along with] and
35 documentation of ownership or tenancy and, if the
36 applicant is not the owner, authorization by the
37 [owners] owner of the parcel on which the proposed
38 action is to occur; if the subject parcel has more than
39 one owner and does not have a managing association

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

- 1 (7) A written description of the proposed action, including
2 [but not limited to] the use, length, width, height,
3 [depth,] building materials, [and statement of
4 objectives;] size of structures in square feet and, if
5 applicable, area, depth, or volume of grubbing, grading,
6 fill, and any other ground-altering activity such as
7 utility installation;
8 [(F)]
9 (8) A written description of the anticipated impacts of the
10 proposed action on the special management area that
11 addresses or describes:
12 [(i)]
13 (A) The environmental setting of the parcel that is the
14 subject of the proposed action;
15 [(ii)]
16 (B) The relationship of the proposed action to [land
17 use plans, policies, and control of the affected
18 area] the objectives and policies of chapter 205A,
19 HRS; zoning; and the general plan;
20 [(iii)]
21 (C) The probable impact, including cumulative
22 impacts, of the proposed action on the
23 [environment;] special management area; and
24 [(iv)] Any probable adverse environmental effects that can be
25 avoided;
26 (v) Alternatives to the proposed action;
27 [(vi)]
28 (D) [Mitigating measures] Measures proposed to
29 minimize [impact] potential impacts, including
30 best management practices.]; and
31 (vii) Any irreversible or irretrievable commitment of
32 resources.
33 (G) A plan of the proposed action designating in
34 dimensions the location of the proposed action on the parcel.
35 If structures are included, the plan shall also show a
36 dimensioned floor plan, sections, elevations, and other
37 physical features;
38 [(H)]

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

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

- 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
38 on] and detrimental effects on public facilities,
39 [streets,] such as increased demand on drainage,

- 1 sewage, and water systems, beach access,
2 recreational opportunities, and pedestrian
3 walkways;
- 4 (F) In itself has no [significant adverse]
5 substantial and detrimental effects but
6 cumulatively has [considerable effect] substantial
7 and detrimental effects upon the environment [or
8 involves a commitment for larger actions];
- 9 (G) Substantially and detrimentally affects a
10 rare, threatened, or endangered species of animal
11 or plant, or its habitat;
- 12 (H) Is inconsistent with the [state] State plan,
13 [county's] County general plan[,] including the
14 Maui Island Plan and appropriate community
15 plans, zoning, and subdivision ordinances;
- 16 (I) [Detrimentially] Substantially and
17 detrimentally affects air or water quality [or
18 ambient noise levels];
- 19 (J) [Affects] Substantially and detrimentally
20 affects or is likely to suffer damage by being
21 located in an environmentally sensitive area,
22 such as flood plain, shoreline, coastal dune,
23 tsunami zone, erosion-prone area, sea level rise
24 exposure area, wetland, geologically hazardous
25 land, estuary, fresh waters, or coastal waters;
- 26 (K) Substantially and detrimentally alters
27 natural land forms and existing public views, or
28 curtails or forecloses potential improvements to
29 public views, to and along the shoreline; or
- 30 (L) Is inconsistent with the objectives and
31 policies of chapter 205A, HRS.
- 32 (e) An application is automatically incomplete, at any stage
33 of the application process, if it is for or relates to land use on a lot
34 or on a unit in a condominium property regime that is the subject
35 of an unresolved enforcement action by the department, pursuant
36 to section 12-202-23, if the department has sent a notice of warning
37 or notice of violation for the enforcement action. However, an
38 application is not automatically incomplete if the applicant pays all
39 finances associated with the unresolved enforcement action as required

1 by the director, and approval of the application would resolve the
2 enforcement action. An enforcement action is unresolved until all
3 finances as determined by the director have been paid.

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

9 (1) Is exempt from the requirements of this chapter
10 because it is not a development pursuant to section
11 205A-22, HRS, as amended;

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

16 (3) [Requires] Is a development and requires a special
17 management area use permit pursuant to section 205A-
18 22, HRS, as amended, which shall be processed in
19 accordance with sections 12-202-13 and 12-202-15[;].

20 [(4) Requires a special management area emergency permit
21 pursuant to section 205A-22, HRS, as amended, which
22 shall be processed in accordance with section 12-202-
23 16; or

24 (5)(g)]

25 (f)[Cannot be processed because]If the director determines
26 that the proposed action is a development and requires a special
27 management use or minor permit, and if the proposed action is not
28 consistent with the [county] County general plan, including the
29 Maui Island Plan and applicable community plan, [and] or zoning,
30 [unless] the director shall notify the applicant that a general plan,
31 community plan, or zoning [application for an appropriate]
32 amendment is required and that an amendment application can be
33 processed concurrently with the SMA permit application. [Eff
34 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp
35 10/10/03; am and comp 12/20/04) (Auth: HRS §§91-2, 205A-27,
36 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)

37
38 **§12-202-13 Notice of application and notice of public**
39 **hearing; adequacy of notice.** (a) [Where a public hearing is

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

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

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

- 30 (1) The applicant's name, mailing address, and the nature
31 of the proposed development;
- 32 (2) The street address of the parcel that is the subject of
33 the application (if available);
- 34 (3) The tax map key number(s) of the parcel;
- 35 (4) A location map;
- 36 (5) The name of the applicant's agent and mailing address
37 (if applicable);
- 38 (6) The date, time, and place of the public hearing; and

1 (7) A statement that additional information may be
2 obtained at the department's office, providing the
3 department's address and telephone number.]

4 (d) The [applicant's mailed] applicant shall mail the notice of
5 public hearing [shall be mailed] not less than thirty calendar days
6 before the hearing date by certified or registered mail or with delivery
7 confirmation, postage prepaid, to owners of record of real property
8 situated within five hundred feet of the boundaries of the parcel that
9 is the subject of the application. The applicant shall obtain the
10 addresses of the owners of record from the real property tax division,
11 department of finance, within thirty calendar days prior to the
12 mailing of the notice of public hearing. The applicant shall also send
13 notice to all persons who have requested the commission in writing
14 to be notified of the subject special management area proceedings.

15 (e) Not less than thirty calendar days prior to the public
16 hearing date, the director shall publish a notice of public hearing,
17 once, in a newspaper that is printed and issued at least twice weekly
18 in the County and which is generally circulated throughout the
19 County, [and] pursuant to section 1-28.5, HRS. The notice shall
20 state the nature of the proposed development, the date, time, and
21 place of the hearing, and all other matters required by law.

22 (f) The director may authorize the consolidation of the
23 hearing with any other hearing required pursuant to law, or
24 pursuant to any rules adopted thereunder.

25 (g) The mailed notice of public hearing shall be deemed
26 adequate, and the failure of any owner to receive such notice shall
27 not invalidate any application, proceedings, assessment, or
28 determination by the commission if the applicant, by affidavit,
29 verifies that the names and addresses of owners of real property
30 situated within five hundred feet of the subject parcel were obtained
31 from the County of Maui real property tax [roll,] division, department
32 of finance, [and that current ownership was verified with the records
33 of the County's real property tax division,] within thirty days of the
34 mailing of the notice of public hearing, stating both the date the
35 addresses were obtained and the date notice was mailed,
36 accompanied by receipts of certified or registered mail[.] or evidence
37 of delivery confirmation. If there are multiple owners of [the] a
38 property, notification of [the person(s)] all persons listed by name
39 [on] in the records of the County of Maui real property tax [roll]

1 division, department of finance, shall be deemed adequate notice as
2 to all owners. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth:
3 HRS §§91-2, 205A-27) (Imp: HRS §§1-28.5, 205A-29)

4
5 **§12-202-14 Special management area minor permit**
6 **procedures.** (a) If [it] the director has [been] determined that the
7 proposed action is a development and requires a special
8 management area minor permit, the assessment application
9 submitted pursuant to section 12-202-12 may be deemed the minor
10 permit application.], provided that when development for which a
11 minor permit is required is started before obtaining a permit, an
12 additional fee of \$100 shall be paid by the applicant. The payment
13 of said fee shall not relieve any persons from fully complying with
14 the requirements of these rules nor from any penalties prescribed in
15 section 12-202-25.]

16 (b) The director shall approve, approve with conditions, or
17 deny such permit in accordance with the guidelines in section 205A-
18 26, HRS, as amended. The director may ask the commission to
19 approve standard conditions that shall thereafter apply to all minor
20 permits, in addition to any project-specific conditions, to ensure that
21 permitted activities comply with chapter 205A, HRS. Any final
22 decision shall be transmitted to the applicant in writing and shall be
23 appealable pursuant to section 12-202-26.

24 (c) The director shall notify the commission, at the
25 commission's next regularly scheduled meeting, of [the issuance by
26 the director] the director's approval of special management area
27 minor permits, receipt of which shall be acknowledged by the
28 commission. Such notification shall include [, but not be limited to,]
29 the name of each applicant, the proposed development, [authorized
30 by the permit,] and the location and purpose of the development.
31 [Eff 1/1/94; am 9/28/97, am and comp 12/28/02] (Auth: HRS
32 §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29,
33 205A-30)

34
35 **§12-202-15 Special management area use permit**
36 **procedures.** (a) Any person whose proposed [development]
37 action is a development and requires a special management area use
38 permit, or who has waived an assessment by the department, shall
39 file an application with the department on a form provided by the

1 department, which may be required to be filed electronically, and
2 which shall require:

3 (1) All information and documentation required pursuant
4 to section 12-202-12c, [excluding valuation of the
5 development;] and

6 (2) [The real property tax map key number of parcels and
7 the names and addresses of owners of real property for
8 real property situated within five hundred feet of the
9 boundaries of the parcel on which the proposed
10 development is to occur, obtain from the County of Maui
11 real property tax division;

12 (3) An administrative fee as established in the [county]
13 County budget.[When development for which a fee is
14 required is started before obtaining a permit, the fee
15 shall be doubled.] The payment of the fee for
16 development without a permit shall not relieve any
17 persons from fully complying with the requirements of
18 these rules nor from any penalties prescribed in section
19 12-202-25.

20 [(4) Any other relevant information and documentation
21 required by the director.]

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

31 (c) The director shall submit the application, with all
32 relevant information, to appropriate agencies for review and
33 comment. The director shall request such agencies [, boards, and
34 commissions] to review and comment on the proposed development
35 within thirty days from the date on which the application was
36 distributed for review., and shall request such agencies to address
37 the maintenance, restoration, and enhancement of the special
38 management area consistent with the objectives, policies and
39 guidelines of chapter 205A, HRS, as amended.]

1 (d) The director shall [inform the applicant of any legal
2 requirement to] present the proposed development, if applicable, to
3 the urban design review board [, the cultural resources commission
4 and the NBCIDAC or the Hana advisory committee] for comment and
5 recommendations to the commission. [The urban design review
6 board and the cultural resources commission shall address the
7 maintenance, restoration and enhancement of the special
8 management area consistent with the objectives, policies, and
9 guidelines of chapter 205A, HRS, as amended.] The [commission
10 may designate the NBCIDAC or the] Hana advisory committee is
11 hereby designated by the commission to conduct the public hearing
12 for applications in the Hana Community Plan region.

13 (e) [Upon receipt of final agency comments, the application
14 shall be deemed complete by the director and shall be scheduled for
15 public hearing.] Upon receipt of agency comments and, if applicable,
16 adequate applicant responses, the director shall schedule the
17 application for public hearing.

18 (f) The commission shall approve a special management area
19 use permit, subject to terms and conditions as permitted in sections
20 205A-26(1) and 205A-26(3), HRS, as amended, and any standard
21 conditions approved by the commission if it finds the criteria set forth
22 in sections 205A-26(2) and 205A-26(3), HRS, as amended, have been
23 met. The commission shall deny a special management area use
24 permit if it finds these criteria have not been met.

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

28 (h) The director may ask the commission to approve standard
29 conditions that shall thereafter apply to all permits, in addition to
30 any project-specific conditions, to ensure that permitted activities
31 comply with chapter 205A, HRS. [Eff 1/1/94; am 9/28/97, am and
32 comp 12/28/02, am and comp 4/21/08] (Auth: HRS §§91-2, 91-
33 4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26,
34 205A-28, 205A-29)

1
2 **§12-202-16 Special management area emergency permit**
3 **procedures.**(a) An owner or authorized representative may apply for a special
4 management area emergency permit when the owner or representative has
5 concluded that danger or substantial harm to property, any person, or the public
6 health, safety, and welfare is imminent. The director will consider the
7 application, including best management practices to protect the environment,
8 and determine whether the project is a development and therefore requires a
9 permit, and whether conditions justify issuance of a permit to begin work
10 immediately. The purpose of an emergency permit is to allow an urgently needed
11 protective measure, principally of a temporary nature. The temporary measure
12 may also be allowed as a permanent measure only after the director has
13 determined it is the best environmentally sound alternative. A temporary
14 measure may be allowed for no more than one hundred eighty days while, if
15 necessary, a permanent measure is formulated, permitted, and completed. The
16 director may approve a time extension for a temporary measure when the
17 director determines the permit holder is making adequate progress toward
18 completing a permanent measure, but cannot reasonably do so within the time
19 the emergency permit, or an extension thereof, allows.

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

- 23 (1) Identification of the applicant [along with] and documentation of
24 ownership or tenancy and, if the applicant is not the owner,
25 authorization by the [owners] owner of the parcel on which the
26 proposed action is to occur; if the parcel has more than one owner
27 and does not have a managing association authorized to submit the
28 application, evidence of notification to all owners shall be provided.
- 29 (2) The tax map key [number(s)] number and acreage or square footage
30 of the parcel on which the proposed action is to occur;
- 31 (3) A written description of the proposed action, including [, but not
32 limited to,] the length, width, height, [depth,] and type of
33 materials,[for any proposed action]size of structures in square feet
34 and, if applicable, area, depth, or volume of grubbing, grading, or fill
35 and any other ground-altering activity;
- 36 (4) A written statement of the emergency or imminent danger[and] or
37 substantial harm to property, any person, or the public health,
38 safety, or welfare; and why the proposed development would be
39 immediately required to prevent danger or substantial [physical]
40 harm [to persons or property, or to allow the reconstruction of
41 structures damaged by natural hazards to their original form];
- 42 (5) The most current shoreline survey, if available and applicable;
- 43 (6) Photographs [or VHS format video tape] identifying [the emergency
44 at the affected area and shoreline property boundaries] where the
45 emergency exists and where the action is to occur; video may also
46 be provided;

1 (7) Any other relevant information requested by the director; [and]

2 (8) Electronic copies of all application documents; and

3 (9) An administrative fee as established in the County budget.

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

11 (1) The date and time the request was made;

12 (2) The date the permit was issued;

13 (3) Applicant's and project names, address, email address, and
14 telephone number;

15 (4) Tax map key number (if available);

16 (5) Statement of the imminent danger posed and the substantial harm
17 that [would] could occur [to the habitable structure] if the permit
18 were not granted; [and]

19 (6) The permitted temporary measures;

20 (7) The requirement that not more than thirty calendar days after the
21 approval of the request, the permit holder shall submit a written
22 emergency permit application as provided in subsection (b), and that
23 if the applicant fails to do so, the director may require that any
24 temporary measure be removed; and

25 (8) The statement that other permits may be required. [(c)] (d)

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

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

38 (1) The]the director finds the criteria set forth in sections 205A-22 and
39 205A-30, HRS, as amended, have been met.];

40 (2)] In the event of impending or presently occurring disaster, the mayor
41 [has waived] may waive the requirements of sections 12-202-12, 12-
42 202-14, or 12-202-15, but not this section.]; or

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

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

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

10 (g) The director shall set [an expiration] a date [for the permit, not to
11 exceed one hundred eighty days, and set a time limitation within] by which the
12 applicant shall [apply] submit an application for a permit pursuant to sections
13 12-202-14 or 12-202-15[.], or by which the applicant must remove or terminate
14 any temporary measures.

15 (h) For an emergency permit request that is the result of or that otherwise
16 involves coastal erosion, the director shall consult with the State department of
17 land and natural resources, office of conservation and coastal lands, or other
18 relevant State agency, on whether to approve any temporary measure in order to
19 benefit both the applicant and neighboring shoreline properties, to resolve the
20 emergency situation expeditiously, and to minimize the environmental impact to
21 the coastal zone. Any such approval, in addition to any project-specific
22 conditions, shall include the following conditions:

23 (1) Within ninety days, the applicant shall provide the department a
24 description of potential long-term alternatives designed to alleviate
25 the emergency situation, which shall include:

26 (A) alternatives, including relocation of threatened structures or
27 elevation of structures, and dune or beach restoration;

28 (B) assessment of other viable alternatives, which may include
29 protective or erosion control measures, such as groins, and offshore
30 structures such as breakwaters;

31 (C) a description of how each alternative complies with chapter 12-
32 203 of the commission's shoreline rules, if applicable;

33 (C) a draft timeline to plan, design and complete each long-term
34 alternative; and

35 (D) a list of potential federal, State, and County permits required to
36 achieve each long-term alternative.

37 (2) Within ninety days of the permit's approval, the permit holder shall
38 consult with the department about identified long-term alternatives
39 to understand the requirements and restrictions for work permitted
40 in the shoreline area, as defined in the commission's shoreline rules,
41 if applicable.

42 (3) The permit holder shall remove the temporary measure unless the
43 permit holder submits an application by the date specified by the
44 emergency permit to allow the temporary measure to remain,
45 pursuant to subsection (i).

1 (i) No less than thirty days prior to the expiration date of an emergency
2 permit, the permit holder may apply for a time extension for any permit provision
3 on a form provided by the department. Such application shall include, at a
4 minimum:

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

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

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

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

27 (i) If the director denies the emergency permit, the denial shall be in
28 writing, setting forth facts sufficient to demonstrate the application did not meet
29 the requirements for issuance of the emergency permit pursuant to subsection
30 (d). The applicant shall be informed of his right to appeal pursuant to section
31 12-202-26 herein.] [Eff 1/1/94; am 9/28/97] (Auth: HRS §§91-2, 205A-27,
32 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

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

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

- 42 (1) [The term, condition, or time stipulation to be amended, deleted, or
43 determined;
44 (2) If an extension of a time stipulation is requested, the length of time
45 extension desired] A description of the requested amendment;

1 ~~[(3)]~~(2) The reasons and justification for the [requested amendment,
2 deletion, or determination] request;

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

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

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

13 ~~[(5)]~~(6) Any other information and documentation requested by the
14 director.

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

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

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

34 (1) Reason(s) for permit transfer;

35 (2) Transferor's consent; and

36 (3) Notarized affidavit from transferee acknowledging the conditions
37 established with the subject permit and agreement by transferee to
38 comply with these conditions.]

39 The director shall notify the commission, at the commission's next
40 regularly scheduled meeting, of the issuance of any permit transfer, receipt of
41 which shall be acknowledged by the commission. Such notification shall include
42 [, but not be limited to,] the [aforementioned information provided to the
43 department and] permit transfer approval letter. Nothing in this section shall
44 prevent the director from forwarding any permit transfer request to the
45 commission for [consideration] action in accordance with procedures set forth in
46 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.]

44 If the director finds there have been changes within the special
45 management area since the granting of the permit that will cause the permit
46 holder's development to have any substantial adverse environmental or

1 ecological effect, or adversely affect the condition or capacity of infrastructure,
2 the request shall be scheduled for commission action.

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

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

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

38 (g) Commission action. Findings of fact, conclusions of law, and decision
39 and order for any special management area use permit application seeking to
40 amend[, delete,] or determine any permit [terms, conditions, and time
41 stipulations]approval shall be issued in accordance with the rules of practice and
42 procedure of the commission in effect when action is taken and the review
43 guidelines as set forth in section 12-202-11. [Eff 1/1/94; am 9/28/97, am and
44 comp 4/21/08] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §§205A-26,
45 205A-29)

46

- 1 [§12-202-18 (Reserved)
- 2 §12-202-19 (Reserved)
- 3 §12-202-20 (Reserved)]
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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.

- 45 (1) The [landowner] owner shall, and[or] the alleged violator may, [or
46 both, shall] be notified by the enforcement agency [by certified or

1 registered mail] of an alleged violation of [this rule,]these rules and
 2 any approval, permit, or permit condition issued pursuant thereto,]
 3 or any condition of a special management area permit approval.][The
 4 director shall provide service by at least one of the following
 5 methods, in order of preference, as the director deems appropriate:
 6 certified or registered mail, regular mail with delivery confirmation,
 7 personal service, posting on the property, or publishing the notice
 8 once per week for three consecutive weeks in a newspaper that is
 9 printed and issued at least twice weekly in the County and is
 10 generally circulated through the County. The date of service shall be
 11 the date on which the certified or registered mail is accepted, the
 12 date of regular mail delivery confirmation, the date of personal
 13 service, the date of posting on the property, or the date of the last
 14 publication in the newspaper. If the director uses more than one
 15 method of service, then the date of service shall be the later of the
 16 dates of service.

17 (2) The notice of violation and order shall include [, but not be limited
 18 to,] the specific section of [this rule which] these rules that has been
 19 violated[.]; the nature of the violation[.]; and the [remedy(ies)] remedy
 20 required or available[.], including cessation or removal of the
 21 violation, subject to applicable permitting requirements;]. The
 22 notice of violation and order may also require that the violative
 23 activity cease, or that the violative development be removed;] that [a]
 24 an initial civil fine be paid not to exceed \$100,000 per violation; [and]
 25 that a civil fine be paid not to exceed \$10,000 per day for each day
 26 in which the violation persists, unless otherwise required or allowed
 27 by statute, in addition to the foregoing and any other penalties[.];
 28 and that the landowner or violator may appeal the notice of violation
 29 pursuant to section 12-202-26 within thirty days of the date of
 30 service. The filing of an appeal shall not correct or suspend any
 31 violation or stay the assessment and accumulation of fines. The
 32 following and other applicable and reasonable criteria shall be
 33 considered in assessing the initial and daily fines:

- 34 (A) Previous violations by the same person;
- 35 (B) The degree of damage or potential damage to the environment,
 36 including damage to the shoreline and marine resources;
- 37 (C) The degree of cooperation provided by the violator during the
 38 investigation;
- 39 (D) Amount necessary to deter future violations;
- 40 (E) Evidence of circumstances beyond the control of the violator;
- 41 (F) Whether the owner or violator knew or should have known
 42 that assessments or approvals were required; and
- 43 (G) The amount of time and resources required by the department
 44 to investigate and determine that a violation occurred.

45 [(2) The notice of violation and order shall state that the order shall
 46 become final thirty days after the date of its mailing unless written

1 request for a hearing is mailed or delivered to the enforcement
2 agency within said thirty days. Nothing in this section shall prevent
3 the landowner or violator from seeking to negotiate a settlement or
4 resolve a dispute.

5 (3) If the violator seeks a negotiated settlement with the enforcement
6 agency, but waives the right to a hearing, the enforcement agency,
7 in consultation with the department and the corporation counsel,
8 may negotiate a settlement agreement with the landowner or, if
9 appropriate, the violator, that provides for cure of the violation, set
10 any fine, and inspection of parcel by the enforcement agency and
11 the department. The proposed settlement shall be forwarded to the
12 commission for final action.

13 (4) Any request for a hearing shall be in writing and delivered, or mailed
14 and postmark dated, to the department within thirty days, as stated
15 on the notice. Upon receipt of a request for a hearing, the
16 department shall specify a time and place for the person subject to
17 the order to appear and be heard. The hearing shall be conducted
18 by the director or the director's designee in accordance with the
19 provisions of chapter 91, HRS, as amended.]

20 (5) ~~(3)~~ The department, in consultation with the department of the
21 corporation counsel, may institute a civil action in any court of
22 competent jurisdiction for the enforcement of any settlement
23 agreement or order issued pursuant to this section.

24 ~~[(6)](4)~~ Nothing in this section shall prohibit the department, through the
25 corporation counsel, from filing an order or motion directly with a
26 court in the event that public health, safety and welfare may be at
27 risk.

28 {5) Nothing in this section shall prohibit the department from issuing a
29 warning to the violator before issuing a notice of violation and order.
30 [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-43, 205A-43.6) (Imp:
31 HRS §43.6)

32
33 **§12-202-24 Conflicts with other laws.** In case of a conflict between the
34 requirements of any other [state] State law or [county] County ordinance
35 regarding the special management area, the more restrictive requirements shall
36 apply in furthering the purposes of this part. Nothing contained in this part
37 shall be construed to diminish the jurisdiction of the [state] State department of
38 transportation over wharves, airports, docks, piers, or other commercial harbors,
39 and any other maritime facilities constructed by the [state] State; provided that
40 such plans are submitted for the review and information of the officer of the
41 respective agency charged with the administration of the [county] County zoning
42 laws, and found not to conflict with any [county] County ordinances, zoning laws,
43 and building codes. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-48) (Imp: HRS
44 §205A-48)

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

14
15 **§12-202-26 Appeal of director's decision; filing the notice of appeal;**
16 **settlement of appeal.** (a)For decisions other than enforcement proceedings
17 pursuant to section 12-202-23, appeal of the director's decision may be made to
18 the commission by the filing of a notice of appeal with the department not later
19 than ten days after the receipt of the director's written decision, or, where the
20 director's decision is not required by the commission or these rules to be served
21 upon appellant, not later than ten days after the meeting at which the
22 commission received notification of the director's decision. For enforcement
23 proceedings pursuant to section 12-202-23, appeal of a notice of violation may
24 be made to the commission by the filing of a notice of appeal with the department
25 within thirty days of the date of service. The notice of appeal shall be filed in
26 accordance with section 12-201-20 of the rules of practice and procedure for the
27 Maui planning commission. The department shall notify the commission, at the
28 commission's next regularly scheduled meeting, of the filing of the notice of
29 appeal.

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

38 (c) The director and owner or violator may agree on a resolution that
39 includes a reduction of accumulated fines and correction of the violation. If the
40 resolution reduces the accumulated fines by \$50,000 or less, then the director
41 will notify the owner or violator in writing and establish which party shall draft
42 the agreement. At the commission's next regularly scheduled meeting, the
43 director shall notify the commission of the agreement, receipt of which shall be
44 acknowledged by the commission.

45 (d) If the director and the owner or violator agree on a resolution that
46 reduces the accumulated fines by more than \$50,000, then the director will

1 notify the owner or violator in writing and establish which party shall draft the
2 agreement. The agreement shall be submitted to the commission for final action.
3 The commission may accept, accept with modifications, or reject the agreement.

4 (e) If the director and the owner or violator do not agree on a resolution,
5 the director will notify the owner or violator in writing of the director's
6 termination of the negotiation. Submittal of any request for a negotiated
7 resolution shall not affect the accrual of daily fines or any time limitations for
8 appealing the notice of violation and order to the commission. [Eff 1/1/94; am
9 and comp 9/28/97; am and comp 11/4/02] (Auth: Charter §§ 8-8.4, 13-
10 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

11
12 **§12-202-27 Content of the [notice of] appeal.** The [notice of] appeal to
13 the commission shall identify the party [or parties taking] making the appeal [in
14 the caption and body of the notice of appeal]. The [notice of] appeal shall
15 designate the decision appealed from and shall state the reasons for the appeal.
16 [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS
17 §§205A-29, 205A-30, 205A-49)

18
19 **§12-202-28 Joint or consolidated appeals.** If two or more parties are
20 entitled to appeal [from] a decision of the director to the commission and their
21 interests are such as to make joinder practicable, they may file a joint appeal
22 and thereafter proceed on appeal as a single appellant. Appeals that are filed
23 separately may be consolidated by order of the commission upon the
24 commission's own motion, upon motion of a party, or upon stipulation of the
25 parties to the several appeals. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-
26 8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

27
28 **§12-202-29 Service of the [notice of] appeal.** If the appellant is
29 someone other than the applicant, appellant shall serve a file-marked copy of the
30 appeal by mail or delivery thereof to counsel of record for each other party, or, if
31 a party is not represented by counsel, to the party at the party's last known
32 address. Proof of service shall be filed with the department within seven days
33 after the filing of the [notice of]appeal[.],and the department shall notify the
34 commission of the filing of the appeal at the next regular meeting. [Eff 11/4/02;
35 comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30,
36 205A-49)

37
38 **§12-202-30 Payment of fees.** Upon the filing of any separate or joint
39 [notice of] appeal, the appellant shall pay such fees as are set forth in the County
40 budget ordinance. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-
41 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

42
43 **§12-202-31 Contested case hearing on appeal.** The commission shall
44 hold a contested case hearing on the appeal. The director, the appellant, the
45 owner, and, where the appellant is someone other than the applicant, the
46 applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of the

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

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

- 14 (1) Based on clearly erroneous findings of material fact or erroneous
15 application of the law; or
16 (2) Arbitrary or capricious in its application; or
17 (3) A clearly unwarranted abuse of discretion. [Eff 11/4/02; comp
18 11/4/02; am and comp 12/20/04] (Auth: HRS §§91-14(g)(6), 205A-
19 43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter
20 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-29, 205A-30, 205A-43, 205A-
21 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,
22 13-2(15))
23
24
25
26