

**ADMINISTRATIVE RULES**

**FOR THE**

**KAUA‘I COUNTY HOUSING AGENCY**

**COUNTY OF KAUAI**

**STATE OF HAWAII**

**THE ADMINISTRATION OF**  
**CHAPTER 7A, KAUAI COUNTY CODE,**  
**PERTAINING TO THE HOUSING POLICY**  
**FOR THE COUNTY OF KAUAI**

**June 15, 2015**

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## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

#### **1.1 TITLE**

The rules in this Chapter shall be known as “The Administration of Chapter 7A, Kaua‘i County Code, Pertaining to the Housing Policy for the County of Kaua‘i”.

#### **1.2 PURPOSE**

The purpose of these rules is to implement the goals and objectives of Chapter 7A, Kaua‘i County Code.

#### **1.3 DEFINITIONS**

Words defined in Chapter 7A, Kaua‘i County Code shall have the same meaning wherever used herein. Unless otherwise apparent from the context, the following definitions shall apply:

- a. “Affordable housing” means “workforce housing”.
- b. “Council” means the Kaua‘i County Council.
- c. “County” means the County of Kaua‘i, a political subdivision of the State of Hawai‘i.
- d. “Department” means the Kaua‘i County Housing Agency.
- e. “Developer” means a land owner or authorized agent of a land owner of real property that: (1) seeks any County approval for development or subdivision of real property; (2) that has applied to the County for a State Land Use district boundary amendment, a zoning district boundary amendment, or an amendment to the Visitor Destination Area; or (3) that has previously obtained from the County a State Land Use district boundary amendment or zoning district boundary amendment, but has not yet satisfied an existing housing condition, or the County has not yet executed a written housing agreement specifying the means to satisfy all or any portion of an existing housing condition.
- f. “Director” means the director of the Kaua‘i County Housing Agency, or the director’s designated representative.
- g. “Eligible Developer”, as defined in Chapter 201H-32, HRS, means any person; partnership; cooperative, including limited equity housing cooperatives as defined in Chapter 421H, HRS; firm; nonprofit or for-profit entity; or public agency determined by the Department:

- i. To be qualified by experience, financial responsibility, and support to construct housing of the type described and of the magnitude encompassed by the given project; and
  - ii. To have submitted plans for a housing project adequately meeting the objective of Chapter 201H, HRS, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
  - iii. To meet all other requirements the County deems to be just and reasonable, and all requirements stipulated in Chapter 201H, HRS.
- h. “Fast Track Permitting” means the process adopted by the County, pursuant to Section 7A-9.2, Kaua‘i County Code, to expedite the permit process necessary for the development of:
  - i. The project site, including but not limited to, all subdivision applications, civil construction plan permits, and other plans and permits associated with the development of the project; but
  - ii. Building permits shall only be expedited for the workforce housing units.
- i. “HUD” means the United States Department of Housing and Urban Development.
- j. “HRS” means Hawai‘i Revised Statutes, as amended.
- k. “Improved land” means land that has necessary infrastructural improvements to support a public use project or a use density of at least a single-family or a two-family residential building per acre, in conformity with State and County zoning laws and building permit requirements.
- l. “Income-qualified buyer” means a qualified buyer whose income is within the limits of the workforce housing income group that is targeted for the purchase of workforce housing units intended as affordable for that workforce housing income group.
- m. “Income-qualified renter” means a qualified renter whose income is within the limits of the workforce housing income group that is targeted to rent the workforce housing units intended as affordable for that workforce housing income group.
- n. “Kaua‘i Median Household Income (KMHI)” means the median household income for the County of Kaua‘i as determined annually by HUD.
- o. “KCC” means Kaua‘i County Code, as amended.
- p. “*Kuleana*” means those lands granted to native tenants pursuant to L. 1850, p.202

entitled “An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21<sup>st</sup> Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges, as originally enacted and as amended.

- q. “Project” means the lots or parcels and any development thereon, included and approved in an application by a developer for zoning or building permit, subdivision or consolidation, State Land Use district boundary amendment, zoning amendment, or amendment into the Visitor Destination Area.
- r. “Rules” means these Administrative Rules for the Administration of Chapter 7A, Kaua‘i County Code, Pertaining to the Housing Policy for the County of Kaua‘i, as amended.
- s. “Subdivision” means improved or unimproved land or lands divided or consolidated, or proposed to be divided into two or more lots, parcels, sites, or other divisions of land for purposes of, whether immediate or future, sale, lease, rental, transfer of title or interest, in any or all of such parcels, and shall include resubdivision, and when appropriate to the context shall relate to the process and procedure of subdividing of the land being subdivided. Easements for roadway or access purposes shall be construed as subdivided land. The term includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units. Planned unit developments and condominiums shall be considered subdivisions.
- t. “Workforce housing,” “workforce unit,” or “workforce housing unit” means a lot, single-family dwelling unit, or multiple-family dwelling unit that may be rented or sold at price levels that are affordable to households that earn from eighty percent (80%) and below of the Kaua‘i Median Household Income to one hundred ~~[forty]~~ twenty percent (~~[140]~~ 120%) of the Kaua‘i Median Household Income.
- u. “Unimproved land” means land not classified as improved land.

## SUBCHAPTER 2

### APPLICABILITY

#### 2.1 APPLICABILITY

- a. The department shall use the criteria in Section 7A-1.4 (a) through (c), KCC, to determine the applicability of Chapter 7A, KCC, for completed subdivision applications, zoning permit application, and building permit applications for any new development, redevelopment, renovation; conversion to time share use; the subdivision of land; or the construction of single-family dwelling units, two-family dwelling units, multi-family dwellings, or hotels, whether constructed at one time or over several years.
- b. The director shall review and make the determination within thirty (30) days of receipt of the completed subdivision application, zoning permit application, or building permit application
- c. Pursuant to Section 7A-1.2, KCC, the purpose of Chapter 7A, KCC, is to establish that a portion of residential and resort developments shall provide workforce housing opportunities for Kaua‘i residents. In determining whether a project is exempt, Chapter 7A, KCC, may not apply to a project that falls into one or more of the following categories, as determined by the director:
  - i. The project is exempt pursuant to Section 7A-10.1 through 10.4, KCC;
  - ii. The relocation of *kuleana* lots, where no additional lots or density are created by the resulting relocation;
  - iii. The consolidation of lots, including *kuleana* lots, involving not more than four (4) existing lots of record and re-subdivision where no additional lots or density are created by the resultant properties, provided that use of property does not change;
  - iv. A project by a government entity, a project pursuant to Section 201H-38, HRS, or a project developed by a Kaua‘i community housing land trust pursuant to Section 7A-8.2, KCC; or
  - v. An applicant applying for zoning permits that does not incorporate residential or resort development. Should the zoning permits for the project be amended in the future, the project may be subject to Chapter 7A, KCC.

## **2.2 CONFIRMATION OF APPLICABILITY**

- a. The director shall provide electronic or written confirmation to the receiving agency if Chapter 7A, KCC, is applicable to a project.
- b. The director shall notify the receiving agency by electronic or written confirmation when a workforce housing agreement has been fully executed for the project.
- c. Upon request from the receiving agency, the director may provide a copy of the executed workforce housing agreement for the project.
- d. The Department shall maintain records of all executed workforce housing agreements and written confirmations of applicability, non-applicability, or exemption in accordance with the Department’s documentation retention policy.

## **2.3 ADJUSTMENT, REDUCTION, OR WAIVER OF REQUIREMENTS**

- a. Upon receipt of the director’s written determination that a project is subject to the requirements of Chapter 7A, KCC, and these rules, a developer may appeal to the Department for an adjustment, reduction, or waiver of the requirements. Any appeal of the Department’s decision must be filed on or before thirty (30) days from the date on which the Department sent the electronic or written confirmation of the applicability.

### **SUBCHAPTER 3**

#### **RESIDENTIAL AND RESORT WORKFORCE HOUSING REQUIREMENTS**

##### **3.1 GENERAL REQUIREMENTS**

- a. The amount or number of residential workforce housing units required by Chapter 7A, KCC, shall be in accordance with Section 7A-2.1 through 2.6, KCC.
- b. The Department shall require the developer to provide the Department with a copy of a settlement statement for all residential workforce for-sale units or lots and any documents and information required by the Department to verify eligibility of the buyers and sales price requirements pursuant to Section 7A-4.1 and 4.2, KCC.
- c. The Department shall require the developer to provide the Department with access to review executed leases or rental agreements for all for-rent units and any documents required to verify eligibility of the tenant(s) and rental rate requirements pursuant to Section 7A-4.1 and 4.3, KCC.
- d. The Department may request that the developer provide the following information to verify eligibility: (i) name of the owner or lessee who has purchased the unit, purchased the lot, or occupy the rental unit; (ii) the lessee’s family size; (iii) the lessee’s household income.

##### **3.2 SATISFACTION ALTERNATIVES**

- a. In determining whether the residential and resort workforce housing requirements of Chapter 7A, KCC, may be satisfied by an alternative measure pursuant to Section 7A-3.1, KCC, the director shall use, but not be limited to, the following criteria:
  - i. The director may determine on a case by case basis whether the alternative measure will accomplish the objective of producing as many workforce housing units as possible in a reasonable period of time;
  - ii. The director may determine on a case by case basis whether the alternative measure will result in greater added value of workforce housing units which may include, but not be limited to, factors such as: location, zoning designation, or infrastructure.
  - iii. The alternative measure satisfy the requirements of Section 7A-2.1, KCC, by providing for sale or for rental the required number of workforce housing units or lots to income-qualified buyers and income-qualified renters.



- b. **Density Restriction of Project.** Subject to the approval by the director, a density restriction of the project may be granted. Project density shall be restricted to no more than ten (10) dwelling units and shall be recorded on the deed for the property and shall be recorded with the Bureau of Conveyances of the State of Hawai‘i so that the terms and conditions of the deed for the property run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgages, lienors, and any other persons who may claim an interest in such property.
- c. **Payment of In-Lieu Fee.** Subject to the approval by the director, payment of in-lieu fees in accordance with Section 7A-3.1 (a), KCC, can be used to satisfy the requirements of Section 7A-2.1, KCC. The total amount of the in-lieu fee due and owing to the County, if not paid in advance, shall be secured by a lien recorded against the project property on which the market rate units will be situated. Said lien will be released by the County upon full payment of the in-lieu fee to the County.
- d. **Dedication of Land.** Subject to approval by the County Council, improved or unimproved land in-lieu may be dedicated to the County pursuant to Section 7A-3.1(b), KCC, as recommended by the director.
- e. **Rental Units.** Subject to the approval by the director, rental units may be substituted in place of for sale units pursuant to Section 7A-3.1(c), KCC.

### **3.3 DEPARTMENTAL GUIDELINES**

- a. In implementing Section 7A-2.1, KCC, the Department shall use the Kaua‘i Median Household Income, as determined annually by HUD, to determine the workforce housing income group(s). Further, the Department shall use Chapter 7A, KCC, to determine the sale prices and rent limits for workforce units.

## **SUBCHAPTER 4**

### **WORKFORCE HOUSING AGREEMENT**

#### **4.1 GENERAL**

A Workforce Housing Agreement shall be used to incorporate the requirements of Section 7A-2.1, KCC, which shall be recorded on the deed for the project concurrent with final subdivision approval, or concurrent with final zoning approval, or prior to building permit approval, whichever occurs first.

- a. The Department shall require a developer to enter into a Workforce Housing Agreement with the Department that sets forth the detailed terms and conditions of compliance with Chapter 7A, KCC, pursuant to Chapter 7A, KCC, including but not limited to:
  - i. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods;
  - ii. Identification of the number, type, and location of workforce housing units;
  - iii. Designation of workforce housing units for specific income and/or special housing target groups;
  - iv. Marketing process for the residential workforce housing units;
  - v. Eligibility of income-qualified households;
  - vi. Provision for residential workforce housing credits, as applicable;
  - vii. If applicable, payment of in-lieu fee or provision of in-lieu land;
  - viii. If applicable, incentives, pursuant to Section 7A-2.2 and 2.3, KCC, approved by the director; and
  - ix. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.

- b. The Workforce Housing Agreement shall be recorded with the Bureau of Conveyances of the State of Hawai'i or the land court of the State as the case may be, so that the terms and conditions of the Workforce Housing Agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in such project property. The Workforce Housing Agreement shall be enforceable by the County by appropriate action at law or suit in equity against the developer, its successors, and assigns.

#### **4.2 DRAFT HOUSING AGREEMENT**

The Department may require the developer of a project that is subject to Chapter 7A, KCC, to provide the Department a draft Workforce Housing Agreement for review. The director shall approve or deny the draft Workforce Housing Agreement, or request modifications thereto.

## **SUBCHAPTER 5**

### **GOVERNMENT ASSISTANCE FOR WORKFORCE HOUSING**

#### **5.1 WAIVER OF COUNTY FEES**

- a. Pursuant to Section 7A-9.1, KCC, fees associated with the permitting of the portion of the project meeting a Workforce Housing Agreement may qualify for fee exemption.
- b. The developer may apply for a County fee exemption with the Department by completing a Fee Exemption Claims for Affordable Housing Project Form ("Form"). The director shall certify or deny the Form within thirty (30) days of receipt. A certified Form shall be attached to all project permits and applications submitted to the County departments to qualify for fee exemption consideration.

#### **5.2 FAST TRACK PERMITTING**

- a. Pursuant to Section 7A-9.2, KCC, eligible projects may utilize Fast Track Permitting to expedite the review and issuance of County permits necessary for the development of the project site, including but not limited to: subdivision applications, civil construction plan permits, and other plans and permits associated with the project or the project site. Building permits shall only be expedited for workforce housing units. [Eff 04/15/14] (Auth: Section 91-2, HRS, Section 7A-9.2, KCC) (Imp: Section 7A-9.2, KCC)
- b. Fast Track Permitting processing does not apply to any public hearing, hearing examiner, or County Council processes associated with any of the permits, approvals, or reviews. Fast Track Permitting permits shall proceed through public hearings the same as any other permit and without priority status.

#### **5.3 SECTION 201H EXEMPTION PROJECTS**

- a. Pursuant to Section 7A-9.3, KCC, Chapter 201H-38, HRS, may be used by an eligible developer to expedite requests to amend zoning; for zoning permit application, subdivision application, and building permit application; and to consider reduced development standards for a project that is at least fifty-one percent (51%) workforce housing.
- b. Purpose. Chapters 201H-38 and 46-15.1, HRS, authorizes the County to develop or assist in the development of housing projects with an eligible developer, or may assist under a government assistance program in the development of housing projects which are exempt from any statutes, ordinances, charter provisions, and rules of any governmental

agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon provided that:

- i. The Developer of the project has site control; and
  - ~~[i.]~~ ii. The project consists of at least fifty-one percent (51%) workforce housing units, consistent with the intent of Chapter 201H, HRS; and
  - iii. The Department has determined the developer to be an “eligible developer”, as defined in Chapter 201H-32, HRS; and
  - ~~[ii.]~~ iv. The Developer acknowledges that the affordable units will be subject to the Department’s buyback and restriction on sale of transfer, debt, and use; and
  - ~~[iii.]~~ v. The development of the project does not contravene any safety standards, tariffs, rates, or fees approved by the public utilities commission for public utilities or the County of Kaua’i Board of Water Supply; and
  - ~~[iv.]~~ vi. The Council shall approve, approve with modification, or disapprove the project by resolution within forty-five (45) calendar days after the Department has submitted the preliminary plans and specification for the project, which is made a part of the certified 201H Exemption Application Packet to the Council. If, on the forty-sixth (46<sup>th</sup>) day, a project is not disapproved, it shall be deemed approved by the Council.
  - ~~[v.]~~ vii. Projects greater than 15 acres in size requiring exemptions for a State Land Use District Boundary Amendment shall seek approval of the Land Use Commission pursuant to Chapter 201H-38, HRS, after approval by the Council. Projects less than 15 acres in size requiring a State Land Use District Boundary Amendment shall follow the process pursuant to Chapter 11, KCC.  
  
The State Land Use Commission shall approve, approve with modifications, or disapprove a boundary change within forty-five (45) days after the Department has submitted a petition to the commission as provided in Section 205-4, HRS. If, on the forty-sixth (46<sup>th</sup>) day, the petition is not disapproved, it shall be deemed approved by the State Land Use Commission.
- c. Affordability Requirements for 201H Projects. To be given consideration by the County for exemptions under Chapter 201H-38, HRS, a project must:

- i. Provide for economically integrated housing, by stipulation and design, where at least fifty-one percent (51%) of the dwelling units in the project are developed as affordable dwelling units and provided at sales prices or rental rates affordable to households earning from eighty percent (80%) and below, to one hundred ~~[forty]~~ twenty percent (~~[140%]~~ 120%) of the KMHI, according to the household income distribution specified in Subsection iii below;
- ii. For rental projects, units shall be affordable for a period of not less than forty (40) years or as designated in Chapter 7A, KCC, as amended, whichever is longer; and for ownership units, units shall be affordable for a period of not less than ~~[twenty]~~ fifty (~~[20]~~ 50) years, and shall be subject to the buyback provisions of the County;
- iii. Unless an entire project is affordable to households at or below eighty percent (80%) of KMHI, the total number of workforce housing units in the proposed project shall be distributed as follows:
  - a) A minimum of eleven percent (11%) of the total number of units in the project shall be affordable to low-income households earning annual incomes which do not exceed eighty percent (80%) KMHI, adjusted for family size;
  - b) A maximum of fifteen percent (15%) of the total number of units shall be affordable to moderate-income households earning annual incomes ranging between eighty percent (80%) and one hundred percent (100%) KMHI, adjusted for family size;
  - c) A maximum of ~~[fifteen]~~ twenty-five percent (~~[15]~~ 25%) of the total number of units shall be affordable to moderate-income households earning annual incomes ranging between one hundred percent (100%) and one hundred twenty percent (120%) KMHI, adjusted for family size; and
  - d) ~~[A maximum of ten percent (10%) of the total number of units shall be affordable to gap group households earning annual incomes ranging from between one hundred twenty (120%) and one hundred forty percent (140%) KMHI, adjusted for family size; and]~~
  - e) A maximum of forty-nine percent (49%) of the total number of units may be sold or rented at other rates determined by the developer, including market rates.
  - f) As an alternative, distribution of workforce housing units may be based on current housing need on Kaua'i as projected by the most recent Hawai'i

Housing Planning Study, or as supported by other market data and housing demand data, as resolved with and approved by the director.

- iv. Provided that a project meets the criteria set in Subsection iii above, the project shall have a minimum of twenty (20) affordable dwelling units. Projects developed solely for persons with special living needs shall not be subject to this minimum dwelling unit requirement.
  - v. Guideline for Affordable Sales Prices. Maximum for-sale price limits shall be resolved with the Department and not exceed current Affordable For Sale Housing Prices most currently published by the Department at the time of construction.
  - vi. Guideline for Affordable Rental Rates. Maximum rent charged shall be resolved with the Department and not exceed current Net Unit Rents in the Affordable Rental Housing chart most currently published by the Department at the time of construction.
  - vii. Guideline for Workforce Unit Sizes: The number of bedrooms of the workforce units shall be comparable to those of the market units, or based on housing need on Kaua'i as supported by the most current Hawai'i Housing Planning Study, and shall be subject to the approval of the director.
- d. Process. The Department shall administer the 201H Exemption process for projects for the County. The 201H Exemption process consists of four phases: (I) Pre-Consultation with the Department, with State and County Departments, with Public Utilities, and with the Public Community; (II) Submission of a Completed 201H Exemption Application Packet; (III) Determination of Eligibility by the Director; and (IV) Formal Project Review and Processing:
- i. Phase I: Pre-Consultation with the Department, with State and County Departments, with Public Utilities, and with the Public Community.
    - a) The Department shall require the developer to meet with the director to present the project and to consult and review the project's 201H Exemption eligibility; and
    - b) The Department shall require the developer to also conduct pre-consultation meetings with State and County departments and public utilities to discuss the project and its proposed exemptions, and it shall be the developer's responsibility to work directly with consulting agencies to

address their concerns and ensure the proposed project does not negatively affect public health and safety; and

- c) The department shall require the developer to also conduct a pre-consultation community meeting with the public, who reside within a five (5) mile radius of the proposed project site, to discuss the project and its proposed exemptions.
- d) The department may require the developer to provide additional information to determine that the developer is an “eligible developer” and qualified by experience and financial responsibility and support to construct housing of the type described and magnitude encompassed by the proposed project.
- [⇌] e) The department may request additional information to determine the eligibility and feasibility of the proposed project, including but not limited to, information to determine credit worthiness, detailed information on operating costs for private sewer and wastewater systems, and traffic studies.

- ii. Phase II: Submission of a Completed 201H Exemption Application Packet. The department shall require the developer to complete a 201H Exemption Application Packet which includes, but is not limited to, a 201H Exemption Application (“201H Application”), available from the department, and all required exhibits and materials, including a preliminary Draft Environment Assessment (preliminary DEA) for the project.

For the purposes of public disclosure, the Department shall require the developer to fully detail the project’s proposed exemptions and proposed alternate standards in the project’s preliminary DEA. The Department shall require the developer to resolve exemption alternatives with the Department, with State and County departments, and public utilities in the preliminary DEA before the formal submittal of a Draft Environmental Assessment (DEA) to Office of Environmental Quality Control (OEQC).

- iii. Phase III: Determination of Eligibility by the Director. The director shall review the developer’s submitted 201H Exemption Application Packet (1) to determine whether the project and the developer are eligible under Chapter 201H, HRS, and (2) to identify major concerns, if any, relating to the project. The director may request any additional information that is deemed necessary to make a decision as



to developer and project eligibility. The director will notify the developer in writing of developer and project eligibility.

iv. Phase IV: Formal Project Review and Processing.

- a) If the director has determined the developer and the project to be eligible for the 201H Exemption process, the developer shall be deemed an "Applicant".
- b) 201H Exemption Application Packet Review by State and County Departments and Public Utilities.
  - 1) The Department shall request the Applicant to provide the Department ~~[with twenty (20) paper sets and]~~ one (1) digital file (in a file format approved by the County Building division for Electronic Plan Review) of the 201H Exemption Application Packet including all required exhibits and materials, and the project's preliminary DEA;
  - 2) The Department shall provide the Developer with a cover letter for use by the Developer in the distribution of plans and requested exemptions to all appropriate County, State, and/or Federal agencies. The Developer shall be responsible for the [coordinate] distribution of the 201H Exemption Application Packets ~~[amongst applicable State and county departments and public utilities]~~ to all appropriate agencies; and
  - 3) The Department shall request the receiving State and County departments and public utilities to review the 201H Exemption Application Packet to ensure that the project, with the requested exemptions, meets minimum standards of health and safety and the project does not contravene any written safety standards, tariffs, rates or fees approved by the public utilities commission for public utilities or the County of Kaua'i Board of Water Supply. The Department shall request that written comments regarding the 201H Exemption Application Packet be provided to the Department within thirty (30) days after its receipt.

The Department shall require the Applicant to work with the Department, with State and County departments, and with public utilities, to resolve and address their concerns before the formal submittal of a Draft Environmental Assessment (DEA) to Office of

Environmental Quality Control (OEQC) for publication. The Department shall require the Applicant or its representative to modify, if applicable, the 201H Application and its’ exhibits and its’ materials to address the Department, State and County departments, and public utilities concerns. The Department shall require the Applicant to provide adequate copies of all such modifications to the Department for distribution to all State and County departments and public utilities. After the Department’s, State and County departments’, and public utilities’ concerns have been adequately addressed, these agencies shall confirm approval to both the Department and the Applicant in writing.

- c) Public Review Process. The Department shall require the developer to hold at least one (1) public information meeting in the community where the project site is located during the pre-consulting phase.
- d) Environmental Review Process. Once the 201H Exemption Application Packet has been reviewed and approved by the Department, by State and County departments, and by public utilities, the process or Environmental Review pursuant to the Hawai‘i Environmental Policy Act (HEPA), HAR 11-200 is to be followed. For projects requiring National Environmental Policy Act (NEPA), refer to HAR 11-200-25. The Department shall be the approving agency for the NEPA process.

Prior to submission of the 201H Application Packet to Council, the Department also requires that:

- 1) A Final Environmental Assessment (FEA) and a FONSI has been published, or a Final Environmental Impact Statement (FEIS) has been accepted pursuant to Chapter 343, HRS, if significant impacts are anticipated;
  - 2) If NEPA review is required, the final environmental document has been accepted by the responsible federal or state agency and a FONSI published or Record of Decision (ROD) has been filed, if required; and
  - 3) The judicial challenge period for these review processes has expired.
- e) County Council Review

- 1) The Department shall prepare and transmit to the Council a certified 201H Exemption Application Package consisting of, but not limited to: a 201H Application, its required exhibits and materials; a draft agreement between the County and Applicant ensuring the project is built and operated as represented by the Applicant; and a draft resolution to approve, approve with modification, or disapprove the project.
- 2) The Council shall approve, approve with modification, or disapprove the project by resolution within forty- five (45) days after submittal of the 201H Exemption Application Package by the Department. If on the forty-sixth (46th) day a project is not disapproved, it shall be deemed approved by the Council.
- 3) County Council approval of the 201H Exemption Application Package shall constitute the final plans and specifications for zoning, building, construction, and subdivision standards for the proposed project.
- 4) The Department shall require the Applicant, or its authorized representative, to be present at all meetings of the Council and its Committees and at all public hearings for the project, to make presentations and to respond to any questions or concerns regarding the proposed project.

f) Project Development Phase

- 1) If State Land Use District boundary Amendment is required, the Department shall require the Applicant to petition the Land Use Commission pursuant to Chapter 201H-38(a)(4), HRS to obtain approval, prior to proceeding with section 5.3 d. iv. f) 2) of these rules.
- 2) If the Applicant's 201H application is approved by Council, the Department shall require the Applicant to complete final plans and specifications for the proposed project and obtain necessary permit approvals from the State and County departments and public utilities. Final plans and specifications shall not substantially deviate or materially change from the preliminary plans and

specifications approved by the County Council in the 201H application.

[2)] 3) Following Council and/or Land Use Commission Approval, the developer shall execute a development agreement with the Department memorializing the approved exemptions and developer requirements.

[3)] 4) The Department shall require the Applicant to attach the approved County Council resolution to the all permit applications being submitted to the Department, State and County departments, and public utilities.

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End Administrative Rules

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**ADOPTION**

**COUNTY OF KAUA‘I**

RECOMMENDED BY:

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ADAM P. ROVERSI  
Housing Director

---

Date

APPROVED AS TO FORM  
AND LEGALITY:

---

CHARLES FOSTER  
Deputy County Attorney

---

Date

APPROVED BY:

---

DEREK S.K. KAWAKAMI  
Mayor

---

Date

**CERTIFICATION**

It is hereby certified that the foregoing Administrative Rules for the Administration of Chapter 7A, Kaua'i County Code, Pertaining to the Housing Policy for the County of Kaua'i were adopted on \_\_\_\_\_, by the Kaua'i County Housing Agency pursuant to the provisions of the Hawai'i Administrative Procedure Act, Chapter 91, Hawai'i Revised Statutes, as amended, and that the notice of public hearing on the foregoing document was published in *The Garden Island* on \_\_\_\_\_.

Dated in Līhu'e, Kaua'i, Hawai'i, this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

KAUA'I COUNTY HOUSING AGENCY

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ADAM P. ROVERSI  
Housing Director

Received this \_\_\_\_\_ day of \_\_\_\_\_, 2025

**CERTIFICATION OF COUNTY CLERK**

I hereby certify that on \_\_\_\_\_, 2025, I have accepted for filing from the Kaua'i County Housing Agency the Administrative Rules for the Administration of Chapter 7A, Kaua'i County Code, Pertaining to the Housing Policy for the County of Kaua'i adopted by that body on \_\_\_\_\_, 2025.

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JADE FOUNTAIN-TANIGAWA  
County Clerk