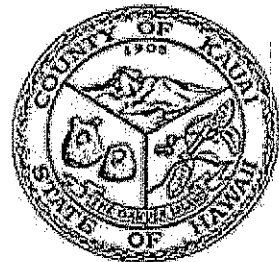


SPECIAL MANAGEMENT AREA
RULES AND REGULATIONS

COUNTY OF KAUAI' I - STATE OF HAWAII' I



As Amended October 2011

TABLE OF CONTENTS

Section	1.0	General Provisions
	1.1	Authority
	1.2	Purpose
	1.3	Title
	1.4	Definitions
Section	2.0	Special Management Area
Section	3.0	Objectives and Policies of the Hawai'i Coastal Zone Management Act
Section	4.0	Special Management Area Guidelines
Section	5.0	Developments Proposed Within the SMA Subject to Review
Section	6.0	Consultation and Initial Determination
Section	7.0	Filing, Assessment, and Determination Procedure
	7.1	Filing
	7.2	Assessment
	7.3	Determination
	7.4	Significant Adverse Effect Criteria
Section	8.0	Application Procedures
Section	9.0	Public Hearings
Section	10.0	Action
Section	11.0	Emergency Permits
Section	12.0	Revocation
Section	13.0	Penalties and Injunctions.
Section	14.0	Hearing Officer
Section	15.0	Appeals
Section	16.0	Severability

Section	17.0	Effective Date
Section	18.0	Amendment of Special Management Area (SMA) Maps
Section	19.0	Land-Based Activities Affecting Coastal Waters
Appendix		History of Adoption and Amendments of SMA Rules and Regulations

SPECIAL MANAGEMENT AREA RULES AND REGULATIONS
OF THE COUNTY OF KAUAI

SECTION 1.0 GENERAL PROVISIONS

1.1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules and regulations hereinafter contained are hereby established and shall apply to all lands within the Special Management Area of the County of Kauai.

1.2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to publicly-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

1.3 Title

These Rules and Regulations shall be known as the "Special Management Area Rules and Regulations of the County of Kauai."

1.4 Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

(These definitions are intended to clarify, not to replace nor to negate the definitions in Chapter 205A, HRS, as amended.)

- A. "Applicant" includes any individual, organization, partnership, firm, association, trust, estate,

private corporation, or other legal entity, including any utility or any agency, department, commission, or board of government who seeks permission or authorization which the Director or Planning Commission may grant under these Rules and Regulations; provided that the individual or entity must have a controlling interest (75% or more of the equitable and legal title) of the lot, or must have a recorded lease to the land having a stated term of not less than five (5) years, or must have the full authorization of another having the controlling interest or recorded lease for a state term of not less than five (5) years.

- B. "County Engineer" means the head of the Department of Public Works of the County of Kaua'i.
- C. "County" means the County of Kaua'i.
- D. "Crops" means agricultural produce or parts(s) of plants or trees cultivated for commercial or personal use including, but not limited to, the raising of livestock.
- E. "Debris Line" or "Line of Debris" means a line marking the landward limit of debris deposits, resulting from wave uprush.
- F. "Development" means any of the following uses, activities, or operations on land or in or under water within a Special Management Area:
 - (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (2) Grading, removing, dredging, mining, or extraction of any materials;
 - (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (4) Change in the intensity of use of water, ecology related thereto, or access thereto; and
 - (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

- (1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Uses of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Final Subdivision Approval;
- (12) Subdivision of land into lots greater than twenty acres in size;
- (13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any land which is so subdivided shall not thereafter qualify for this

exception with respect to any subsequent subdivision of any of the resulting parcels;

- (14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- (15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- (16) Nonstructural improvements to existing commercial structures; and
- (17) Amendment of the County general plan, development plans, State land use district boundaries, and zoning changes;

provided that whenever the Director or Planning Commission finds that any excluded use, activity, or operation may have cumulative impact or, or a significant environmental or ecological effect on a Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of this part.

- G. "Director" means the Planning Director of the Planning Department, County of Kaua'i, or the Director's authorized designee.
- H. "Environmental Impact Statement" ("EIS") means an informational document prepared in compliance with HRS Chapter 343 and the Environmental Quality Commission's Rules and Regulations, and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.
- I. "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.
- J. "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

- K. "Owner" means the holder or holders of at least seventy-five percent (75%) of the equitable and legal title of a lot, and shall include lessees of real property that hold a recorded lease for a state term of not less than five (5) years and that present certification of approval from the legal owner.
- L. "Person" includes any individual, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity including any utility or any agency, department, commission, or board of government.
- M. "Planning Commission" means the Planning Commission of the County of Kaua'i.
- N. "Planning Department" means the Planning Department of the County of Kaua'i.
- O. "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- P. "Shoreline Armoring Device" means a structure or improvement built to artificially fix the shoreline and poses an immediate and future adverse effect on beach process as a result of the structure or improvement located within the coastal hazard zone.
- Q. "Shoreline Survey" shall mean the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a land surveyor registered in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chair of the Board of Land and Natural Resources.
- R. "Single-Family Residence" means a detached building designed for and/or used as the complete facility for the cooking, sleeping, and living area of a single family only and occupied by no more than one family, including uses normally considered accessory to the single family facilities provided that such uses are in compliance with all requirements of any County or State regulations, statute or ordinance. A single family shall include all

persons living in a dwelling related by blood, marriage or adoption or a group comprised of not more than five persons not related by blood, marriage or adoption. For purposes of these Rules and Regulations, a guest house shall not be considered an accessory use.

- S. "Special Management Area" means the land extending inland from the shoreline as delineated on the maps filed with the Planning Commission as of June 8, 1977 or as amended pursuant to HRS Section 205A-23 and Section 18.0 of these Rules and Regulations.
- T. "Special Management Area Emergency Permit" means a permit issued by the Director, pursuant to the authority provided to the Director by the Planning Commission and defined in these Rules and Regulations, authorizing development in a case of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.
- U. "Special Management Area Minor Permit" means a permit issued by the Director, pursuant to the authority provided to the Director by the Planning Commission and defined in these Rules and Regulations, authorizing development the valuation of which is not in excess of \$500,000 and which has no significant adverse environmental or ecological effect, taking into account potential cumulative effects.
- V. "Special Management Area Use Permit" means a permit issued by the Planning Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a significant adverse environmental or ecological effect, taking into account potential cumulative effects.
- W. "State Plan" means the adopted State Plan of the State of Hawai'i, as reflected by Chapter 226, HRS, and any amendments thereto.
- X. "Structure" includes, but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- Y. "Use" is:
 - (1) Any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied.

- (2) Any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- Z. "Valuation" shall be determined by the Director and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined above, the fair market value of the development.
- AA. "Vegetation Line" means a line marking the seaward limit of natural terrestrial growth.
- BB. "Vegetation Growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same naturally rooted and growing.

SECTION 2.0 SPECIAL MANAGEMENT AREA

Special Management Areas as delineated on the maps filed with the Planning Commission and the office of the County Clerk as of June 8, 1977 or as amended pursuant to Section 205A-23, HRS, and Section 18.0 of the Rules and Regulations shall be the official Special Management Area to be administered and enforced under these Rules and Regulations.

SECTION 3.0 OBJECTIVES AND POLICIES OF THE HAWAII COASTAL ZONE MANAGEMENT ACT

The objectives and policies of the coastal zone management program are those set forth in Section 205A-22, as amended. These objectives and policies shall serve as guidelines in the implementation of the rules in this Chapter.

SECTION 4.0 SPECIAL MANAGEMENT AREA GUIDELINES

The following guidelines shall be used by the Director and the Planning Commission for the review of developments proposed in the Special Management Area:

- A. All development in the Special Management Area shall be subject to reasonable terms and conditions set by the Director or the Planning Commission to insure that:

- (1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
 - (2) Adequate and properly located public recreation areas and wildlife preserves are reserved;
 - (3) Provisions are made for solid and liquid waste treatment, disposition, and management that will minimize adverse effects upon special management area resources; and
 - (4) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.
- B. No development shall be approved unless the Director or the Planning Commission has first found that:
- (1) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;
 - (2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and
 - (3) The development is consistent with the County general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.
- C. The Director or the Planning Commission shall seek to minimize, where reasonable:

- (1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
- (2) Any development that would reduce the size of any beach or other area usable for public recreation.
- (3) Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the Special Management Area and the mean high tide line where there is no beach.
- (4) Any development that would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.
- (5) Any development that would adversely affect water quality, existing areas of open water free of visible structure, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

SECTION 5.0 DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW

Any use, activity, or operation proposed within the Special Management Area defined as a "development" pursuant to Section 1.4 H. above shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations. Such review shall be pursuant to the objectives, policies and guidelines set forth in Sections 1.2, 3.0, and 4.0 and the procedures set forth in Sections 7.0 and 8.0.

SECTION 6.0 CONSULTATION

Any person contemplating development within the Special Management Area may contact the Planning Department for procedures and general information that may have a direct influence on his proposed development.

Any person proposing a use, activity, or development in the Special Management Area must first comply with the procedure for initial evaluation and assessment as explained in Section 7.0, and then, if necessary, must follow the application procedures set forth in Section 8.0. If, however, a person determines that the person's proposed development

is in excess of \$500,000 or will have a significant adverse effect on the Special Management Area, the person may apply directly for a permit pursuant to Section 8.0 and waive the Assessment Procedures in Section 7.0. Otherwise, the proposal shall be subject to assessment.

SECTION 7.0 FILING, ASSESSMENT, AND DETERMINATION PROCEDURE

7.1 Filing

If an applicant believes that the proposed use, activity, or development may be exempt from the formal application procedure, may be eligible for a Minor Permit, or may have a valuation of less than \$500,000, that applicant must file the following with the Planning Department:

- A. A tax map key description of the property on which the applicant proposes the project.
- B. A plot plan of the property, drawn to scale with all proposed structures shown thereon, and any other information necessary to a proper determination relative to the specific request.
- C. A written description of the proposed project and a statement of objectives.
- D. A statement of the valuation of the proposed development.
- E. An EIS, if required under Chapter 343, HRS, or when required by the Director, Planning Department, or Planning Commission.
- F. A statement addressing any affected Native Hawaiian customary and traditional rights protected under Article XII, Section 7 of the Hawai'i State Constitution.
- G. A written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's Coastal Zone Management Act (Chapter 205A, HRS) and the guidelines of the Special Management Area as provided herein. This written statement should include the relationship of the proposed action to land use plans of the affected area, an analysis of the probable impact of the proposed action on the environment, a listing of probable adverse environmental effects that cannot be avoided, an evaluation of alternatives to the proposed action, a discussion of mitigating

measures proposed to minimize impacts, and a listing of any irreversible and irretrievable commitment of resources.

- H. A shoreline survey when the parcel abuts the shoreline and when required by the Planning Department.
- I. Any other relevant plans or information required by the Department.

7.2 Assessment

The Director shall assess the proposal upon the person's compliance with Section 7.1, based on the following criteria:

- A. The valuation of the proposal.
- B. The potential effects and the significance of each specific circumstance of the proposed development according to the Significant Adverse Effect Criteria established by Section 7.4.
- C. The nature of the development.

7.3 Determination

The Director within thirty (30) calendar days after the receipt of all filing requirements or within a longer period as agreed to by the applicant, shall consider the proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the person of the Director's determination.

- A. Where the Director finds that the proposal is not a development, as defined in Section 1.4H; the Director shall determine that the proposal is exempt from these Rules and Regulations.
- B. Where the Director finds that the proposal:
 - (1) is a development, as defined in Section 1.4 H; and
 - (2) is not in excess of \$500,000; and
 - (3) is consistent with the County general plan and zoning ordinances; and

- (4) will not have a significant adverse effect on the Special Management Area;

the Director shall issue a Special Management Area Minor Permit and may impose any reasonable terms and conditions deemed necessary to meet the objectives and policies enumerated in Section 3.0, and the guidelines provided in Section 4.0.

C. Where the Director finds that the proposal:

- (1) is a development, as defined in Section 1.4 H; and
- (2) is in excess of \$500,000; or
- (3) directly facilitates commercial boating and vessel activities or operations excluding actions under the jurisdiction of the State Department of Land and Natural Resources-Division of Boating and Ocean Recreation, State Department of Transportation, and or Federal Agencies; or
- (4) directly involves the construction of a Shoreline Armoring Device; or
- (5) may have a significant adverse effect on the Special Management Area;

the Director shall inform the person of the following:

- (a) the requirement of an application pursuant to Section 8.0; and
- (b) the public hearing requirements, pursuant to Section 9.0; and
- (c) the Planning Commission's requirements for action, pursuant to Section 10.0; and
- (d) the area of critical concern to delineate the scope of information which the applicant must address.

D. The Director shall maintain records of the Director's determinations in writing to the Planning Commission. The Director shall also post his determination on a Minor permit to a publicized website. The information posted to the website shall include the date of the Director's

determination, permit number, TMK, location, and activity/structure. This information shall be posted within five (5) business days of the Director's determination.

7.4 Significant Adverse Effect Criteria

In considering the significance of potential environmental effects, the Director, Planning Department, and Planning Commission shall consider the sum of those effects that adversely affect the quality of the environment, and shall evaluate the overall and cumulative adverse effects of the proposal.

A "significant adverse effect" may vary with the individual setting and circumstances of particular proposals. Generally, however, any proposal which may have a major adverse effect on the quality of the environment or adversely affect the economic or social welfare of an area, or would possibly be contrary to the objectives, policies and guidelines of these Rules and Regulations, the County's General Plan, Development Plans, zoning and subdivision ordinances, or the State Plan, would likely result in a "significant adverse effect."

In determining whether a proposal may have a significant adverse effect on the environment, the Director, Planning Department, and Planning Commission shall consider every phase of a proposal and expected consequences, either primary or secondary, and the cumulative as well as the short or long-term effect of the proposal. The Director, Planning Department, and Planning Commission should bear in mind that, in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposal:

- A. Involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but limited to, historic sites, Special Treatment Districts as established in the County Comprehensive Zoning Ordinance, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;
- B. Curtails the range of beneficial uses of the environment;
- C. Conflicts with the County's or the State's long-term environmental policies or goals;
- D. Substantially affects the economic or social welfare and activities of the community, County or State;
- E. Involves substantial secondary impacts, such as population changes and effects on public facilities;

- F. In itself has no significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- G. Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- H. Detrimentally affects air or water quality or ambient noise levels; or
- I. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.

SECTION 8.0 APPLICATION PROCEDURE

Any applicant who has received a determination under Section 7.3 that the proposal is neither exempt, nor that it conforms to the requirements for a Minor Permit, or any applicant who has determined that the proposal is in excess of \$500,000 or will have a significant adverse effect, shall apply for a Special Management Area Use Permit.

The applicant shall be responsible for submitting a completed form provided by the Planning Department. Such form shall be accompanied by:

- A. In the case of applicants whose proposals have not been assessed, all informational requirements of Section 7.1.
- B. A filing and processing fee as set annually by the Director to cover the actual costs of publication plus \$100 for processing; provided, however, that if applications for other permits which require public hearings to be conducted by the Planning Commission are filed for the same development, and if public hearings for the permit applications are to be held simultaneously, only one filing and processing fee will be required.

Upon compliance with the foregoing procedures, the Director shall notify the applicant by mail that this application has been accepted. The Director shall also circulate the application to appropriate government agencies for their comments and recommendations.

SECTION 9.0 PUBLIC HEARINGS

- A. The Planning Commission shall conduct a public hearing within a period of sixty (60) calendar days from the date of acceptance of a properly filed and completed application as determined by the Planning Department, unless the sixty-day period is waived by the applicant. The Planning Commission shall give written notice to the applicant, and notice shall also be published once within the County of Kaua'i and once in a newspaper of general circulation in the State at least twenty (20) calendar days prior to the date of the public hearing in a publication pursuant to HRS Section 1-28.5.
- B. The notice of the public hearing shall state:
 - (1) The location of the property involved;
 - (2) The land area of the proposed development;
 - (3) The nature of the proposed development;
 - (4) The date, time, and place of the hearing; and
 - (5) That persons may petition for intervention pursuant to the Planning Commission's Rules of Practices and Procedures.
- C. In the event a project being considered for a Special Management Area Permit also requires other permits or approvals, the Planning Commission may conduct joint hearings.
- D. At least twenty (20) calendar days prior to the scheduled date of such hearing, the applicant shall either hand-deliver written notices to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kauai'i or send by certified mail written notices to the addresses shown on such Real Property Assessment Notice List for at least eighty-five percent (85%) of all tax map key parcels within 300 feet from the nearest point of the tax map key parcel involved in the petition. For purpose of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager," followed by the name and address of the condominium involved. The notice shall include the same

information contained in the published written notice and shall be in a form approved by the Planning Director.

- E. At least seven (7) calendar days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit describing the mailing or delivery of such notice, including a list of persons to whom such notices were sent,
- F. If the applicant fails to comply with foregoing notification requirements, the public hearing shall be postponed and the applicant shall pay for the cost of republication and processing, which shall be same amount set forth in Section 8.0 above, and shall follow the same notification requirements of this section to re-notify affected persons. The Planning Commission shall reschedule another hearing within sixty (60) calendar days after the receipt of the fee.

SECTION 10.0 ACTION

The Planning Commission shall act by majority vote of its total membership upon an application within sixty (60) calendar days after the conclusion of the hearing, except in the case of emergency (see Section 11.0 below) and minor permits (which do not require Commission action), or in cases where the Planning Commission requires further information or finds that the issues require further classification, or where an extension has been agreed to by the applicant. The Planning Commission should grant the Permit if it determines that the proposed development meets the criteria of Section 4.0 of this Chapter, and the Planning Commission may impose restrictions and conditions on the permit as appropriate. Such action shall be final, but shall be appealable to the Circuit Court of the State of Hawai'i in accordance with HRS Chapter 91. If the Planning Commission has not acted within sixty (60) calendar days after the conclusion of the hearing, the application will be automatically listed on the agenda for the next meeting of the Planning Commission.

When a Minor or Special Management Area Use Permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect. Permits can be amended or revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

No development shall be allowed within the Special Management Area without first obtaining a permit pursuant to these Rules and Regulations.

No County department or State agency authorized to issue permits pertaining to any development within the Special Management Area shall authorize any development unless approval is first received from the Director or the Planning Commission in accordance with the procedures adopted pursuant to these Rules and Regulations. For the purposes of this Section, County General Plan, State land use district boundary amendments, and zoning changes are not permits for development.

SECTION 11.0 EMERGENCY PERMITS

In cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, the following procedures shall apply.

- (1) Any person seeking a Special Management Area Emergency Permit shall file a request along with documents and information as set forth in Section 7.1.
- (2) The Director, within thirty (30) calendar days after the receipt of the proposal or within a longer period as agreed to by the applicant, shall consider the applicant's proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the applicant of the Director's determination.

(a) Where the Director finds that the proposal:

- (i) is not a development, as defined in Section 1.4 H;

the Director shall determine that the proposal is exempt from these Rules and Regulations.

(b) Where the Director finds that the proposal:

- (i) is a development, as defined in Section 1.4 H; and
- (ii) will not have a significant adverse effect on the special management area; and
- (iii) that the proposal is to authorize development in cases of emergency requiring immediate action to prevent substantial

physical harm to persons or property; or the proposal is for the reconstruction of structures damaged by natural hazards to their original form; and

- (iv) that prior to the damage of the structure by natural hazard, the structure was in compliance with the requirements of the Federal Flood Insurance Program;

the Director shall issue an Emergency Permit and may impose any reasonable terms, conditions, and requirements, including but not limited to hazard mitigation plans for properties within the high coastal hazard flood zone area, deemed necessary to meet the objectives and policies enumerated in Section 3.0 and the guidelines provided in Section 4.0.

- (c) Where the Director finds that the proposal:

- (i) is a development, as defined in Section 1.4 H; and
 - (ii) does not meet the requirements for the issuance of an special management area emergency permit in accordance with the provisions of Section 11(B)(2)(b);

the Director shall process the application in accordance with Section 7.3 B. or 7.3 C.

- (d) Any emergency permit issued shall automatically expire two years from the Director's determination, unless otherwise stated.

SECTION 12.0 REVOCATION

Permits can be revoked through the procedure outlined in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 13.0 PENALTIES AND INJUNCTIONS

- A. Any person who violates any provision of these Rules and Regulations shall be subject to civil fine not to exceed \$100,000 or the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation. In addition to any other penalties, any person who performs any development in violation of this part shall be subject to civil fine not to exceed \$10,000 a day for each day

in which such violation persists. Such a fine shall not become final until twenty-one days after the Director's decision to provide the person an opportunity to appeal and request a hearing before the Planning Commission. This hearing shall be held in accordance with Chapter 6 and Sections 1-9(2-5) of the Rules of Practice and Procedure of the Planning Commission.

- B. Any person violating any provision of these Rules and Regulations may be enjoined by the Circuit Court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of these Rules and Regulations in a suit brought by the Planning Department or the Planning Commission.

SECTION 14.0 HEARING OFFICER

Any proceeding before the Planning Commission may be conducted by a hearing officer pursuant to Chapter 6 of the Rules of Practice and Procedures of the Planning Commission.

SECTION 15.0 APPEALS

Any party to the agency hearing pursuant the Chapter 6 of the Rules of Practice and Procedures of the Planning Commission, shall have the right to judicial review of any decision or action of the Planning Commission, pursuant to Chapter 91 of the Hawai'i Revised Statutes.

SECTION 16.0 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Rules and Regulations are severable.

SECTION 17.0 EFFECTIVE DATE

These Rules and Regulations shall take effect on December 1, 1975. Any amendments to these Rules and Regulations, duly approved, shall take effect upon the date of such approval.

SECTION 18.0 AMENDMENT OF SPECIAL MANAGEMENT AREA (SMA) MAPS

- A. All changes for boundary amendments to the SMA maps shall be initialed by the Director.

B. Procedure

A change in the boundary of the SMA maps may be requested by any of the following:

- (1) Any department or agency of the State or County.
- (2) Any owner or lessee of the affected land.
- (3) County Council.

C. Submission

- (1) Sixteen (16) sets of the request shall be submitted on a form prescribed by the Planning Department and shall be accompanied by:
 - (a) A filing and processing fee of \$500.00.
 - (b) A description of the property in sufficient detail to determine its precise location.
 - (c) An explicit statement of the reasons in support of the proposed amendment. Said reasons shall also discuss the relationship of the proposed change with the policies and objectives of the regulations and the County General Plan.
- (2) The Planning Commission shall hold a public hearing no earlier than thirty (30) but no later than ninety (90) calendar days upon receipt of a properly-filed application. The Planning Commission shall give written notice once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty (20) calendar days in advance of the public

hearing. The notice shall state the nature of the petition, its specific location, and the time and place of the hearing.

- (3) The Planning Commission shall no earlier than fifteen (15) but within ninety (90) calendar days after the public hearing, deny or approve the request in writing, stating the reasons for such action.

D. Exemption of Previously Approved Developments

Any development which was issued an appropriate zoning, use, project development or building permit, or received preliminary subdivision approval before the adoption and approval by the Mayor of these amendments to the Special Management Area boundaries which result in the inclusion of the development within the Special Management Area, is not subject to Special Management Area Permit requirements. The pertinent permit or approval, however, must be unexpired. For a permit or an approval which was issued without expiration date or duration period, the exemption provided herein shall lapse two years from the date of approval of the boundary amendment by the Mayor unless otherwise extended.

SECTION 19.0 LAND-BASED ACTIVITIES AFFECTING COASTAL WATERS

No person shall be allowed to conduct any use, activity or operation on lands located within the Special Management Area, which may significantly impact coastal waters or related coastal resources, without first obtaining a Special Management Area Permit pursuant to these Rules and Regulations. An application for a Special Management Area Permit filed under this section shall be subject to the review of the Director, Planning Department, and Planning Commission, and shall be evaluated for consistency with the objectives, policies, and guidelines of the Hawai'i Coastal Zone Management Act.

APPENDIX

Approval and Adoption: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted these rules on December 12, 1979. The Mayor of County of Kaua'i approved these rules on December 17, 1979. The rules were filed in the Office of the Clerk of the County of Kaua'i on December 17, 1979.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted an amendment to "Section 10.0 Action" on January 14, 1981. The Mayor of the County of Kaua'i approved the amendment on January 16, 1981. The amendment was filed in the Office of the Clerk of the County of Kaua'i on January 16, 1981.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraphs T., V., X., Y. and Z.", "Section 6.0 Consultation", "Section 7.1 Filing, paragraph D.", "Section 7.2 Assessment, paragraph A.", "Section 7.3 Determination, paragraph B.(2) and C.(2)" and "Section 8.0 Application Procedure" on August 24, 1983. The Mayor of the County of Kaua'i approved the amendments on August 26, 1983. The amendments were filed in the Office of the Clerk of the County of Kaua'i on August 29, 1983.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraph H., S., U., and X.", and "Section 4.0 Special Management Area Guidelines, paragraph B." on December 12, 1984. The Mayor of the County of Kaua'i approved the amendments on December 18, 1984. The amendments were filed in the Office of the Clerk of the County of Kaua'i on December 19, 1984.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraph H., O., T., and U.", "Section 6.0 Consultation", "Section 7.3 Determination, paragraph B. and C.", and "Section 11.0 Emergency Permits" on May 13, 1993. The Mayor of the County of Kaua'i approved the amendments on May 26, 1993. The amendments were filed in the Office of the Clerk of the County of Kaua'i on June 1, 1993.

Amendment: The Planning Commission of the County of Kaua'i, State of Hawai'i, approved and adopted amendments to Section 19.0 Land-Based Activities Affecting Coastal Waters on June 9, 1998. The Mayor of the County of Kaua'i approved the amendments on July 21, 1998. The amendments were filed in the Office of the Clerk of the County of Kaua'i on July 28, 1998.

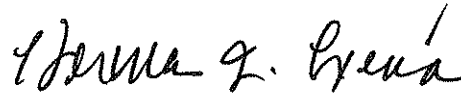
**AMENDMENT TO THE COUNTY OF KAUAI
SPECIAL MANAGEMENT AREA RULES AND REGULATIONS**

Amendments to the County of Kauai Special Management Area Rules and Regulations were adopted by a 5 to 0 vote of the members of the Planning Commission of the County of Kauai, State of Hawaii at its meeting held on the 11th day of October, 2011 as follows:

FOR	AGAINST	ABSTAIN/ABSENT
Texeira, Raco, Katayama, Kimura and Matsumoto	None	Blake and Nishida

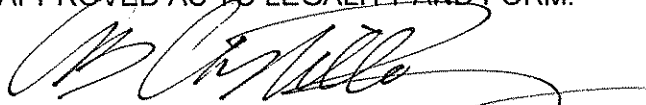
The amendments shall be come effective ten (10) days upon filing with the County Clerk of the County of Kauai.

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAII.



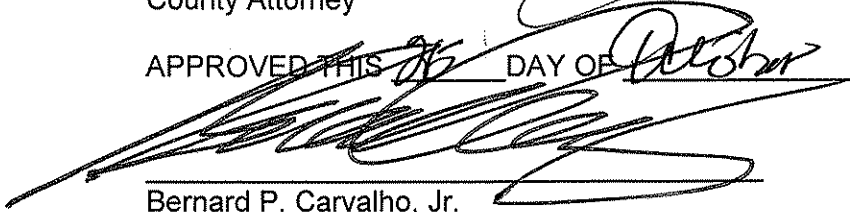
Herman Texeira, Chair

APPROVED AS TO LEGALITY AND FORM:



Alfred B. Castillo, Jr.
County Attorney

APPROVED THIS 26 DAY OF October, 2011.



Bernard P. Carvalho, Jr.
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING AMENDMENTS TO THE COUNTY OF KAUAI SPECIAL MANAGEMENT AREA RULES AND REGULATIONS WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 26th DAY OF October, 2011.



Interim County Clerk

PUBLIC NOTICE: July 29, 2011

PUBLIC HEARING: August 30, 2011