

REPORT OF THE COMMITTEE ON PLANNING AND THE ECONOMY

Voting Members:

Esther Kia'aina, Chair; Radiant Cordero, Vice-Chair;
Val A. Okimoto, Calvin K.Y. Say, Matt Weyer

Committee Meeting Held
February 9, 2023

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Planning and the Economy to which was referred
Bill 42 (2022), CD1 entitled:

"A BILL FOR AN ORDINANCE RELATING TO THE SPECIAL MANAGEMENT
AREA,"

which passed Second Reading and was the subject of a public hearing held at the
September 7, 2022 Council meeting, reports as follows:

The purpose of the Bill is to update ROH Chapter 25, relating to the special
management area, and to incorporate amendments made by Act 16, Session Laws of
Hawaii 2020, to HRS Chapter 205A (the State Coastal Zone Management law).

Your Committee on Zoning and Planning, at its meeting on September 22, 2022,
postponed action on the Bill to allow more time to consider the Bill and address concerns.

Your Committee considered a proposed posted CD2 version that makes the
following amendments:

- A. Updates the appropriate provisions of the bill to reflect that the bill is amending the
Revised Ordinances of Honolulu 2021 as opposed to the Revised Ordinances of
Honolulu 1990.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

FEB 22 2023

COMMITTEE REPORT NO. **33**

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B. In SECTION 2 of the bill:

1. Revises the definition of "development" in ROH § 25-1.3 as follows:
 - i. Combines subdivisions (1)(F), (G), and (H) with subdivision (1)(E) for clarity;
 - ii. In subdivision (2):
 - a. Combines paragraphs (B) and (N) for clarity and renumbers paragraphs throughout the subdivision accordingly; and
 - b. Specifies that nonstructural improvements to existing commercial or noncommercial structures including, but not limited to, structural and nonstructural improvements directly related to relocating a dwelling unit farther mauka or to an area less susceptible to coastal hazards, on the same zoning lot, and activities related to the relocation of the dwelling unit, is not considered "development."
 - iii. In subdivisions (3) and (4), clarifies that cumulative impacts and significant effects must have a significant adverse environmental or ecological effect on the SMA area to be considered "development."
2. Adds definitions for "Dwelling, Detached," and "Shoreline Setback Area."
3. Amends proposed new ROH § 25-4.1(b)(6) to provide that the agency or Council shall seek to minimize, among other things and whenever reasonable, risk to development from sea level rise and other coastal

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hazards by siting habitable structures away from the sea level rise exposure area.

4. In ROH § 25-5.3:

- i. Exempts one-family and two-family detached dwellings on a single zoning lot from the requirement of preparing the applicable environmental disclosure document.
- ii. Reinstates the director's authority to allow the application for an SMA major permit application to be processed concurrently with the preparation of the applicable environmental disclosure document.

C. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Planning and the Economy at its meeting on February 9, 2023, incorporated oral amendments to further amend the definition of "development" in ROH § 25-1.3, subdivision (2), by undoing the merging of paragraphs (B) and (N) and revising paragraph (B), and to further amend proposed new ROH § 25-4.1(b)(6), to provide that the agency or Council shall seek to minimize, among other things and whenever reasonable, risk to development from sea level rise and other coastal hazards, which may be accomplished by siting habitable structures outside of the sea level rise exposure area if feasible, or if not feasible adapting habitable structures within the sea level rise exposure area to accommodate sea level rise.

The Director of Planning and Permitting testified in support of the proposed CD2 and responded to questions from members of the Committee.

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The Climate Resilience Collaborative and three individuals testified in support of the Bill. Two individuals testified in opposition to the Bill.

Your Committee received written testimony in support of the Bill from Surfrider Foundation O'ahu Chapter; Climate Resilience Collaborative; and six individuals. Written testimony in opposition to the Bill was received from two individuals. Cades Schutte, LLP and five individuals submitted comments on the Bill.

Your Committee on Planning and the Economy is in accord with the intent and purpose of Bill 42 (2022), CD1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 42 (2022), CD2. (Ayes: Cordero, Kia'aina, Okimoto, Weyer – 4; Noes: None; Excused: Say – 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

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COMMITTEE REPORT NO. 33



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **42 (2022), CD2**

A BILL FOR AN ORDINANCE

RELATING TO THE SPECIAL MANAGEMENT AREA.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to update Chapter 25, Revised Ordinances of Honolulu 2021, relating to the special management area, and to incorporate amendments made by Act 16, Session Laws of Hawaii 2020, to HRS Chapter 205A, the State Coastal Zone Management law.

SECTION 2. Chapter 25, Revised Ordinances Honolulu 2021, is amended to read as follows:

"CHAPTER 25: SPECIAL MANAGEMENT AREAS

ARTICLE 1: GENERAL PROVISIONS

§ 25-1.1 Authority.

Pursuant to authority conferred by HRS Chapter 205A, the regulations and procedures ~~[hereinafter contained]~~ in this chapter are established and ~~[shall]~~ apply to all lands within the special management area of the ~~[City and County of Honolulu]~~ city.

§ 25-1.2 Purpose~~[-]~~ and intent.

It is the city's policy to preserve, protect, and ~~[where]~~ whenever possible, ~~[to]~~ restore the natural resources of the coastal zone ~~[of Hawaii]~~. Special controls on development within an area ~~[along]~~ in proximity to the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ~~[insure]~~ ensure that adequate public access is provided to ~~[public owned or used]~~ beaches, recreation areas, and natural reserves, by dedication or other means. It is also the policy of the city to avoid or minimize damage to ~~[natural or historic special management area]~~ wetlands ~~[wherever]~~ whenever prudent or feasible; to require that activities not dependent upon a wetland location be located at upland sites; and to allow ~~[wetland]~~ losses of wetlands only ~~[where]~~ when all practicable measures have been applied to reduce those losses that are unavoidable and in the public interest.



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To ensure this policy is adequately implemented, no development, as defined in this chapter, may be undertaken within the special management area without special management area permit approval. Special management area permit approval is required prior to obtaining any other permits or approvals other than State land use district boundary amendments, zone changes, and amendments to the general plan and development plans, including the development plans entitled "sustainable communities plans."

§ 25-1.3 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. These definitions are intended to clarify but not replace or negate the definitions used in HRS Chapter 205A.

Agency. The department of planning and permitting [~~of the City and County of Honolulu~~].

Applicant. Includes any individual, organization, partnership, firm, association, trust, estate, limited liability company, or corporation [~~including any utility~~], and any agency of the federal, State, and county government.

~~["City and county" means the City and County of Honolulu.]~~

Artificial Light or Artificial Lighting. The light emanating from any fixed human-made device.

Beach. A coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, established and shaped by wave action and tidal processes. A beach includes sand deposits in nearshore submerged areas, sand dunes, and upland beach deposits landward of the shoreline that provide benefits for public use and recreation, coastal ecosystems, and as a natural buffer against coastal hazards.

Coastal Dune. One of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

Coastal Hazards. Natural processes that place people, property, or the environment at risk for injury or damage, including but not limited to tsunami, hurricane, wind, wave, storm surge, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.



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Council. The city council of the City and County of Honolulu, which body shall act as the "authority" under HRS Chapter 205A.

Crops. Agricultural produce or parts of plants or trees cultivated for commercial or personal use.

Cumulative Impact. The impact on the environment that results from the incremental impact of an action or development when added to other past, present, and reasonably foreseeable future actions or developments. Cumulative impacts can result from individually minor but collectively significant actions and development taking place over a period of time.

Development. Any of the uses, activities, or operations on land[;], or in or under water, that occur within the special management area [that are included below, but not these uses, activities, or operations excluded in subdivision (2)-], as follows.

- (1) Development includes but is not limited to the following:
 - (A) The placement or erection of any solid material, or any gaseous, liquid, solid, or thermal waste;
 - (B) Grading, removing, dredging, mining, or extraction of any materials;
 - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (D) Change in the intensity of use ~~[of water]~~, ecology ~~[related thereto]~~, or ~~[of]~~ access ~~[thereto;]~~ to water; and
 - (E) Construction, reconstruction, ~~[demolition,]~~ or alteration of the size of any structure~~[-]~~, including but not limited to the construction or reconstruction of a dwelling unit:
 - (i) Situated on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, including additions that exceed 300 square feet;
 - (ii) When the dwelling unit and related garages, carports, covered lanais, and accessory structures have an aggregate floor area of 7,500 square feet or more; or



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(iii) That is part of a larger development of three or more dwelling units.

(2) Development does not include the following:

- (A) Construction or reconstruction of a ~~[single-family residence]~~ dwelling unit that is less than 7,500 square feet of floor area, is not situated on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development~~[- provided that, for the purposes of this definition, "floor area" means floor area as defined under § 21-10.1;]~~ of three or more dwelling units;
- (B) Structural and nonstructural improvements:
- (i) To existing dwelling units, including the addition of minor accessory structures and floor area additions; provided that such additions are limited to 300 square feet if the dwelling unit is considered development under subdivision (1)(E)(i), (ii), or (iii); or
- (ii) Directly related to relocating a dwelling unit farther mauka or to an area less susceptible to coastal hazards, on the same zoning lot, and activities related to the relocation of the dwelling unit;
- (C) Repair or maintenance of roads and highways within existing rights-of-way;
- ~~[(G)]~~(D) Routine maintenance dredging of existing streams, channels, ~~[and]~~ or drainageways;
- ~~[(D)]~~(E) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power ~~[and]~~ or telephone~~[- and]~~ lines, or minor appurtenant structures, such as pad mounted transformers and sewer pump stations;
- ~~[(E)]~~(F) Zoning variances, except ~~[for]~~ with respect to height, density, or parking, ~~[and]~~ or shoreline setback~~[-]~~ variances;
- ~~[(F)]~~(G) Repair, maintenance, or interior alterations to existing structures;



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~~[(G)]~~(H) Demolition or removal of structures, except ~~[these]~~ for structures located on any historic site as designated in national or State registers;

~~[(H)]~~(I) The use of any land for the purpose of cultivating, planting, growing, and harvesting of 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, subject to review by the ~~[authority]~~ agency in accordance with subdivision (3); provided that this exclusion does not apply to uses associated with agricultural activity dedicated to manufacturing, processing, or packaging;

~~[(I)]~~(J) The transfer of title to land;

~~[(J)]~~(K) The creation or termination of easements, covenants, or other rights in structures or land;

~~[(K)]~~ Final subdivision approval;

~~(L)~~ The subdivision of land into lots greater than 20 acres in size;

~~[(M)]~~(L) The subdivision of a parcel of land into four or fewer parcels ~~[when] if~~ no associated construction activities are proposed; provided that ~~[any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;]~~ after the initial subdivision, any subsequent subdivision of the resulting parcels will be considered development for purposes of this chapter;

~~[(N)]~~(M) Installation of underground utility lines and appurtenant aboveground fixtures less than ~~[four]~~ 4 feet in height along existing corridors;

~~[(O)]~~ Structural and nonstructural improvements to existing single-family residences including additional dwelling units, where otherwise permissible;

~~[(P)]~~(N) Nonstructural improvements to existing commercial structures; [and] or



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~~(Q)~~(O) Construction, installation, maintenance, repair, ~~[and]~~ or replacement of ~~[civil defense]~~ emergency management warning or signal devices and sirens.

(3) *Cumulative impact.* Whenever the ~~[authority]~~ agency finds that any use, activity, or operation ~~[excluded in subdivision (2)]~~ that is not otherwise considered development is or may become part of a larger project, the cumulative impact of which may have a significant adverse environmental or ecological effect on the special management area, that use, activity, or operation ~~[shall]~~ will be defined as development for the purpose of this chapter.

(4) *Significant effect.* Whenever the ~~[authority]~~ agency finds that a use, activity, or operation ~~[excluded in subdivision (2)]~~ that is not otherwise considered development may have a significant adverse environmental or ecological effect on the special management area ~~[or special wetlands areas]~~, that use, activity, or operation ~~[shall]~~ will be defined as development for the purposes of this chapter.

Directly Illuminate. To illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

Director. The director of ~~[the department of]~~ planning and permitting~~], City and County of Honolulu, or authorized subordinate]~~.

Dwelling, Detached. Has the same meaning as defined in § 21-10.1.

Dwelling Unit. Has the same meaning as defined in § 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

Effects or Impacts. Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternative, including those effects that occur at the same time and place as the proposed action or alternative and may include effects that are later in time or farther removed in distance from the proposed action or alternative.

~~[EIS. An informational document prepared in compliance with the environmental quality commission's rules implementing HRS Chapter 343.]~~



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Emergency Permit. Special management area emergency permit as defined in HRS § 205A-22.

Environmental Disclosure Document. An environmental assessment or an environmental impact statement prepared in compliance with HRS Chapter 343.

Finding of No Significant Impact. A determination based on an environmental assessment that the subject action will not have a significant effect and[.] therefore[.] will not require the preparation of an environmental impact statement.

Floor Area. The area of all floors of a structure excluding unroofed areas, measured from exterior faces of exterior walls. The floor area includes areas under the roof overhang or eaves, and the roof or floor above which are supported by posts, columns, partial walls, or similar structural members.

Hawaii Sea Level Rise Vulnerability and Adaptation Report. The 2017 report prepared by Tetra Tech, Inc., and the State department of land and natural resources, office of conservation and coastal lands, and adopted by the Hawaii climate change mitigation and adaptation commission.

Hawaii Sea Level Rise Viewer. The interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii sea grant program and the State department of land and natural resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

~~**Historic Wetlands.** Wetlands that have been in existence for 50 years or longer.~~

~~**Minor Permit.** Special management area minor permit as defined in HRS § 205A-22.~~

~~**Natural Wetlands.** Those wetlands not created by a human activity.~~

Land. Has the same meaning as defined in HRS Chapter 205A.

Mauka. Landward or in a landward direction from the ocean.

Person. Any individual, organization, partnership, firm, association, trust, estate, public or private corporation, limited liability company, the State or any of its political subdivisions, or any other legal entity.



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Restoration. A human activity that returns a natural area, including a wetland or former wetland, from a disturbed or altered condition with lesser acreage or functions[-] to an improved condition.

Sea Level Rise Exposure Area. The mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

Shoreline. The upper reaches of the wash of the waves, other than storm and [tidal] seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edges of vegetation growth or the upper limit of debris left by the wash of the waves.

Shoreline Lot. ~~[Has the same meaning as defined in Chapter 26.]~~ A zoning lot of record, any portion of which lies within the shoreline setback area, or if no certified shoreline survey exists, any portion of which lies within 130 feet inland of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot between the first zoning lot and the shoreline.

~~**[Shoreline Management Permit.**~~ ~~Has the same meaning as "special management area use permit."~~

Shoreline Setback Area. All of the land area between the shoreline and the shoreline setback line.

Shoreline Setback Line. The line established by Chapter 26 that runs mauka from and parallel to the certified shoreline at the horizontal plane.

Shoreline Survey. A survey map ~~[showing the shoreline as determined by the State board of land and natural resources]~~ rendered by a registered land surveyor for the purpose of determining the location of the shoreline. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS § 205A-42 and the rules adopted pursuant thereto.

Significant Effect. The sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.



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Special Management Area or SMA. The land extending [inland] mauka from the certified shoreline, as established in this chapter [and], with the mauka boundary delineated on the maps established by the council and filed with the council and agency pursuant to HRS § 205A-23.

~~[Special Management Area Minor Permit. An action by the agency authorizing development, the valuation of which is not in excess of \$500,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.]~~

~~[Special Management Area Use Permit. An action by the authority authorizing development, the valuation of which exceeds \$500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.]~~

Special Wetland Area. That area that is [both:

- (1) ~~Within the SMA; and~~
- (2) ~~In or within 300 feet of a natural or historic wetland.]~~ a wetland and the area within 50 feet of a wetland.

Structure. ~~[Includes but is not limited to] Any portion of any building, pavement, road, pipe, flume, [conduit, siphon, aqueduct, telephone line and electrical power transmission tower, and distribution line.] utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.~~

Valuation. ~~[Shall be determined by the agency and means the] The estimated [cost to replace the structure in kind,] fair market value of the proposed development based on current [replacement costs, or in the cases of other development, as defined in this section, the fair market value of the development.] costs relating to and including site preparation, materials, labor, stockpiling, grading, grubbing, and impervious surfaces.~~

Wetland. An area possessing three essential characteristics:

- (1) Hydrophytic vegetation;
- (2) Hydric soils; and
- (3) Wetland hydrology,



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as defined in the "Corps of Engineers Wetlands Delineation Manual," January 1987[~~;~~], as amended. Wetlands ~~[shall also]~~ include ponds and mudflats, which while possessing hydric soils and wetland hydrology, may not have the commonly required hydrophytic vegetation. ~~[For the purposes of this chapter, only natural or historic wetlands are included within the protected group of wetlands.]~~

ARTICLE 2: SPECIAL MANAGEMENT AREA

§ 25-2.1 Adoption.

- (a) The special management area, as established by the council in this chapter and shown on the special management area maps, which ~~[maps are]~~ have been adopted and made a part of this chapter and filed with the council, ~~[on the effective date of this chapter,]~~ [shall be] is the ~~[city and county's]~~ city's official special management area to be administered and enforced by the director under this chapter.
- (b) This chapter ~~[shall apply]~~ applies to all development that would affect ~~[natural or historic]~~ wetlands ~~[in the City and County of Honolulu,]~~ within the special management area, regardless of the size of the wetland.

§ 25-2.2 Included area.

The special management area ~~[shall include]~~ includes those areas of the island of Oahu so designated from the mauka boundary on the maps[;] to the shoreline; and the islands within ~~[three]~~ 3 miles offshore of Oahu, including but not limited to those islands shown on the maps; and the northwestern Hawaiian Islands, which include Nihoa, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll.

~~[§ 25-2.3 Wetlands.~~

- ~~(a) The definition and delineation of wetlands shall be based upon:~~
 - ~~(1) The "Corps of Engineers Wetlands Delineation Manual," January 1987. The definition shall incorporate the three essential technical criteria of wetlands:~~
 - ~~(A) Hydrophytic vegetation;~~
 - ~~(B) Hydric soils; and~~



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~~(C) Wetland hydrology.~~

~~(2) Also included within the city's definition of wetland areas are ponds and mudflats, which while possessing hydric soils and wetland hydrology may not have the commonly required hydrophytic vegetation.~~

~~(b) Representatives of any one or more of the following: the department of land and natural resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, or other applicable agencies will be contacted for assistance in identifying the extent and functional values of wetlands.~~

~~(c) The publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979) and the U.S. Fish and Wildlife Service National Wetlands Inventory Maps (1978), submergent aquatic vegetation inventories, infrared aeriels, and property appraiser aeriels shall be utilized for general identification of wetlands within the SMA. It is recognized, however, that such graphic sources do not depict the full extent of wetland delineations and function characteristics.~~

~~Wetlands shall be identified by survey by the applicant for a special management area permit at the time of the permit application on a site by site basis.]~~

§ 25-2.3 Permits required for development.

(a) All development within the special management area is subject to review under the provisions of this chapter, pursuant to the objectives, policies, and guidelines set forth in this chapter.

(b) A proposal is exempt from obtaining a permit if the director finds that the proposal is not development governed by this chapter.

(c) A special management area minor permit may be granted if the director finds that the development proposal:

(1) Has a valuation or fair market value not in excess of \$500,000; and

(2) Will not have significant adverse environmental or ecological effect, taking into account potential cumulative impacts and significant effects.

(d) A special management area major permit, approved by resolution of the council, is required for any development proposal that:



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- (1) Has a valuation or fair market value that exceeds \$500,000; or
- (2) May have significant adverse environmental or ecological effects, taking into account potential cumulative impacts and significant effects.

ARTICLE 3: OBJECTIVES [~~AND~~], POLICIES, [~~REVIEW AND PROCEDURAL~~] AND GUIDELINES

§ 25-3.1 Objectives [~~and~~], policies[~~;~~], and guidelines.

The objectives [~~and~~], policies, and guidelines of this chapter [~~shall be~~] are those contained in HRS [§] §§ 205A-2[~~;~~] and 205A-26(1). The objectives, policies, and guidelines summarized below are the basis for analysis of uses, activities, or operations within the special management area.

- (a) Recreational resources. Development within the SMA should provide coastal recreational opportunities to the public. Adequate access, by dedication or other means, to beaches, coastal dunes, recreation areas, and natural reserves must be provided to the extent consistent with sound conservation principles. Adequate and properly located public recreation areas and wildlife preserves must be preserved.
- (b) Historic and cultural resources. Development within the SMA should protect, preserve, and restore natural or human-made historical and cultural resources.
- (c) Scenic and open space resources. Development within the SMA should protect, preserve, and whenever desirable, restore or improve the quality of coastal scenic and open space resources. Alterations to existing land forms and vegetation, other than for the cultivation of coastal dependent crops, must be limited so they result in minimum adverse impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities. Development that is not dependent on the coast is encouraged to locate mauka of the SMA.
- (d) Coastal ecosystems. Development within the SMA should protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes from disruption, and minimize adverse impacts on all coastal ecosystems. Solid and liquid waste treatment and disposition must be managed to minimize adverse impacts on SMA resources.



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- (e) *Economic uses.* Development within the SMA should consist of facilities and improvements important to the State's economy, and ensure that coastal-dependent development and coastal-related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts within the SMA.
- (f) *Coastal hazards.* Development within the SMA should reduce impacts of coastal hazards on life and property, and must be designed to minimize impacts from landslides, erosion, sea level rise, siltation, or failure in the event of earthquake.
- (g) *Managing development and public participation.* The development review process should stimulate public awareness, education, and participation in coastal management.
- (h) *Beach and coastal dune protection.* Development within the SMA should facilitate beach management and protection by safeguarding beaches and coastal dunes for public use and recreation, the benefit of ecosystems, and use as natural buffers against coastal hazards. New structures should be located mauka of the shoreline setback line to conserve open space, minimize interference with natural shoreline processes, and minimize the loss of improvements due to erosion.
- (i) *Marine and coastal resources.* Development within the SMA should promote the protection, use, and development of marine and coastal resources to ensure that these resources are ecologically and environmentally sound and economically beneficial. Impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities resulting from the construction of structures must be minimized. Development within wetland areas should be limited to activities that are dependent on or enhance wetlands, or are otherwise approved by appropriate State and federal agencies. Examples include traditional Hawaiian agricultural uses such as wetland taro production, aquaculture, and fishpond management, as well as activities that clean and restore traditional wetland areas or create new wetlands in appropriate areas.
- (j) *Cumulative impact or significant effect and compelling public interest.* Development within the SMA should not have any cumulative impact or significant effect, unless minimized to the extent practicable and clearly outweighed by public health, safety, or other compelling public interest.



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- (k) Consistency with plans and regulations. Development within the SMA must be consistent with the general plan, development plans, sustainable communities plans, and zoning ordinances; provided that a finding of inconsistency does not preclude concurrent processing of amendments to applicable plans or a zone change.

~~§ 25-3.2 Review guidelines.~~

~~The following guidelines shall be used by the council or its designated agency for the review of developments proposed in the special management area.~~

- (1) ~~All development in the special management area shall be subject to reasonable terms and conditions set by the council to ensure that:~~
- ~~(A) 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;~~
 - ~~(B) Adequate and properly located public recreation areas and wildlife preserves are reserved;~~
 - ~~(C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and~~
 - ~~(D) 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, landslides, erosion, siltation, or failure in the event of earthquake.]~~

ARTICLE 4: PERMIT REVIEW GUIDELINES

§ 25-4.1 Permit review guidelines.

- ~~[(2)](a)~~ No development ~~[shall]~~ may be approved unless the agency or the council has first found that:-
- ~~(A) The]~~ the development is consistent with the objectives, policies, and guidelines set forth in this chapter and will not have any [substantial, significant adverse environmental[, or ecological effect, except [as such] for situations in which the adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or a



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compelling public interest. ~~[Such adverse effect shall include but not be]~~
Adverse effects include, but are not limited to the potential cumulative
impact of individual developments, each [one] of which taken [in itself-
might] by itself may not have a [substantial] significant adverse effect [and
the elimination of]. Adverse effects may also involve development that
would eliminate future planning [options;] options.

~~[(B)]~~ The development is consistent with the objectives and policies set forth in
§ 25-3.1 and area guidelines contained in HRS § 205A-26; and

~~[(C)]~~ The development is consistent with the county general plan, development
plans, and zoning. Such a finding of consistency does not preclude
concurrent processing where a development plan amendment or zone
change may also be required.]

~~[(3)]~~(b) The agency or council shall seek to minimize, ~~[where]~~ whenever reasonable:

~~[(A)]~~(1) Dredging, filling, or otherwise altering any bay, estuary, salt marsh,
wetland, river mouth, slough, or lagoon[;], except for restoration purposes;

~~[(B)]~~(2) Any development ~~[which]~~ that would reduce the size of any beach,
coastal dune, or other area usable for public recreation;

~~[(C)]~~(3) Any development ~~[which]~~ that would reduce or impose restrictions upon
public access to tidal and submerged lands, beaches, coastal dunes,
portions of rivers and streams ~~[within the special management area;]~~, and
the mean high tide line where there is no beach;

~~[(D)]~~(4) Any development ~~[which]~~ that would substantially interfere with or detract
from the line of sight toward the ~~[sea]~~ ocean from the State highway
nearest the coast; ~~[and]~~

~~[(E)]~~(5) Any development ~~[which]~~ that would adversely affect water quality,
existing areas of open water free of visible structures, existing and
potential fisheries and fishing grounds, coastal ecosystems, wildlife
habitats, or potential or existing agricultural uses of land[-]; and

(6) Risk to development from sea level rise and other coastal hazards, which
may be accomplished by siting habitable structures outside of the sea
level rise exposure area if feasible, or if not feasible adapting habitable
structures within the sea level rise exposure area to accommodate sea
level rise.



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~~[§ 25-3.3 — Procedural guidelines.~~

- ~~(a) — All development within the special management area shall be subject to review by the agency under the provisions of this chapter. Such review shall be pursuant to the objectives, policies and guidelines set forth herein.~~
- ~~(b) — Consultation. Any applicant contemplating development within the special management area is encouraged to contact the agency for information regarding procedures and general information which may have a direct influence on the applicant's proposed development.~~
- ~~(c) — Assessment requirements for special management area use permits.~~
 - ~~(1) — Any proposed development within the special management area requiring a special management area use permit shall be subject to assessment by the agency in accordance with the procedural steps set forth in HRS Chapter 343. The director may allow the assessment to be conducted concurrently with the processing of the application for a special management area use permit.~~
 - ~~(2) — The director may waive the requirements of subdivision (1) for any proposed development which has been assessed under the National Environmental Policy Act or under HRS Chapter 343, and for which a finding of no significant impact has been filed or a required EIS has been accepted.~~
- ~~(d) — Review criteria. The director shall review the proposal based on the following criteria:~~
 - ~~(1) — The valuation or fair market value of the development; and~~
 - ~~(2) — The potential effects and the significance of each effect according to the significance criteria established by § 25-4.1.~~
- ~~(e) — Determination.~~
 - ~~(1) — For the purposes of this chapter, other than special requirements for shoreline lots as provided in § 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under § 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.~~



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~~(2) The director shall issue a special management area minor permit where the director finds that the development proposal:~~

~~(A) Has a valuation or fair market value not in excess of \$500,000; and~~

~~(B) Will not significantly affect the special management area or special wetland area, or both.~~

~~The director shall grant, grant with conditions, or deny an application for a minor permit within 45 days of receipt of a completed application.~~

~~ARTICLE 4: SIGNIFICANCE CRITERIA AND PROCEDURES~~

~~§ 25-4.1 Significance criteria.~~

~~In reviewing and assessing the significance of a development, the director shall confine the director's criteria to the objectives, policies, and guidelines in Article 3.~~

~~§ 25-4.2 Procedures.~~

~~In processing an environmental assessment or environmental impact statement, the director shall adhere to the procedures set forth in HRS Chapter 343, and the regulations adopted under that chapter by the State environmental quality council. If a development is not subject to the chapter, but the director requires an EIS, filing shall be with the agency.]~~

ARTICLE 5: PERMIT PROCESSING PROCEDURES

§ 25-5.1 [Required Materials.] Information—Preliminary determination.

Any applicant contemplating development within the special management area may contact the agency for information regarding procedures and general information that may influence the applicant's proposed development. The applicant may request a special management area determination in which the applicant provides a summary of the proposal to the agency and the agency makes a preliminary determination about whether the proposal constitutes development for purposes of this chapter and whether an SMA permit is required.



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§ 25-5.2 Special management area minor permit.

- (a) When a proposed development requires a special management area minor permit, ~~[an]~~ the applicant for the proposed development within the special management area will be responsible for submitting the following materials to the agency:
- (1) A completed application form (to be obtained from the agency)~~];~~ that is filled out in accordance with the agency's application instructions;
 - (2) A tax map key identification of the property on which the applicant proposes development;
 - (3) A plot plan of the property, drawn to scale;
 - (4) A written description of the proposed development, a statement of the objectives of the development, and an estimate of the valuation of the development;
 - (5) A shoreline survey if ~~[the parcel abuts the shoreline, unless the proposed development is located inland of the waiver line established as provided in]~~ required by rules adopted by the director pursuant to HRS Chapter 91;
 - (6) Any other relevant plans or information pertinent to the analysis of the development required by the agency; and
 - (7) ~~[An]~~ The applicable application fee ~~[according to the schedule set forth in subsection (c).]~~ as specified in § 25-5.4.
- ~~[(b) When a proposed development requires a special management area use permit, an applicant for development within the special management area will be responsible for the following:~~
- ~~(1) Prior to submitting an application to the agency, presenting the project to the neighborhood board of the district where the project is located, or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of such presentation to owners of all properties adjoining the proposed project. The requirements of this subdivision will be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community association and;~~



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- ~~(A) The neighborhood board or community association fails to provide the applicant with an opportunity to present the project at a meeting held within 60 days of the date of the written request; or~~
- ~~(B) The neighborhood board or community association provides the applicant with written notice that it has no objection to the project or that no presentation of the project is necessary; and~~
- ~~(2) Submitting to the agency:~~
 - ~~(A) A completed application form (to be obtained from the agency);~~
 - ~~(B) The items set forth in subsections (a)(2) through (7);~~
 - ~~(C) A written description of the affected environment which addresses the development's technical and environmental characteristics;~~
 - ~~(D) Additional information that may be needed by the agency for determining the impacts of the proposed development on special wetland areas; and~~
 - ~~(E) (i) If the director allows concurrent processing of the assessment required by § 25-3.3(c)(1) and the application for the permit, a copy of either a draft environmental assessment or a draft environmental impact statement preparation notice.~~
 - ~~(ii) If the director does not allow concurrent processing of the assessment required by § 25-3.3(c)(1) and the application for the permit, a copy of either the final environmental assessment for which a finding of no significant impact has been issued, or a completed and accepted EIS.~~
- ~~(c) The application fee required by this section will be as set forth in the following schedule. Application fees are not refundable and shall be waived for city projects.~~
 - ~~(1) When a (major) special management area use permit application is submitted for processing, the application fee will be \$2,400, plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000.~~



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- ~~(2) — When a special management area minor permit application is submitted for processing, the application fee will be \$1,200.~~
- ~~(3) — When an environmental assessment or impact statement must be prepared as a prerequisite to a (major) special management area permit required by this chapter, and is submitted to the department of planning and permitting for processing as the accepting agency, there will be a processing fee of \$1,200 for an environmental assessment, and \$2,400 for an environmental impact statement.~~
- ~~(4) — When a (major) special management area use permit or minor permit application, or prerequisite environmental assessment or impact statement is submitted after the applicant's being cited for undertaking development without having obtained the necessary permit, the application fees, as specified in subdivisions (1), (2), and (3), will be doubled.~~
- ~~(5) — When an application for a minor modification to a (major) special management area use permit is submitted, the application fee will be \$200.~~
- ~~(6) — When an application for a (major) special management area use permit or minor permit, or a minor modification thereto, or a related environmental assessment or impact statement, is submitted for processing, there will be a nonrefundable application review fee to determine whether the application is complete or incomplete, as follows:
 - ~~(A) — Applications with a fee of \$2,400 or more will have an application review fee of \$400;~~
 - ~~(B) — Applications with a fee of \$1,200 will have an application review fee of \$200; and~~
 - ~~(C) — Applications with a fee of \$200 will have an application review fee of \$100.~~~~

~~When an application under this section has been accepted by the department of planning and permitting for processing, the application review fee for the submitted application will be counted as partial payment towards the total application fee for that submittal.~~



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~~(d) When a request for a special management area determination is submitted, a nonrefundable review fee of \$150 will apply.~~

~~Sec. 25-5.2 Acceptance.~~

~~Upon compliance with the foregoing procedures, the director shall notify the applicant for a special management area use permit in writing within 10 working days of receipt of an application that either:~~

~~(1) The application has been accepted; or~~

~~(2) The application will be accepted within 10 working days of completion of the assessment required by § 25-3.3(c)(1), as determined by either the issuance of the finding of no significant impact or the acceptance of a final EIS.~~

~~If an application is incomplete, written notice from the director shall inform the applicant of the specific requirements necessary to complete the application. The application shall not be accepted unless it is complete. Upon acceptance of the application, the director shall also concurrently provide the council with written notice, including the date of acceptance of the application and a brief description of the proposal contained in the application.~~

~~§ 25-5.3 Public hearings.~~

~~(a) The agency, pursuant to powers of delegation given to the council under HRS Chapter 205A, shall hold a public hearing on the application for a special management area use permit at a date set no less than 21 nor more than 60 calendar days after the date on which the application is accepted, unless the 60-day period is waived by the applicant. The agency shall give adequate notice to the pertinent neighborhood boards, the owners of all property within 300 feet of the affected property as well as to all owners of all property described in the application. The agency 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 20 calendar days in advance. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of public hearings.~~

~~(b) The public hearing shall be held in the area in which the development is proposed. Whenever possible, the public hearing shall be held jointly and concurrently with any other hearing required for the same development.~~



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~~§ 25-5.4 Agency recommendation.~~

~~The agency shall transmit its findings and recommendations on the application for a special management area use permit to the council for its consideration and decision within 20 working days of the close of the public hearing, unless the assessment required by § 25-3.3(c)(1) has not been completed, in which case the deadline for transmitting the findings and recommendations to the council shall be within 10 working days of either the issuance of the finding of no significant impact or the acceptance of a final EIS. This transmittal deadline may be extended if agreed to by the applicant.~~

~~§ 25-5.5 Action by council.~~

~~The council shall grant, grant with conditions, or deny any application for a special management area use permit within 60 calendar days after receipt of the agency's findings and recommendations thereon. If the council does not act on the application as provided in this section within such 60 day period, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved before the requested effective date of the extension.]~~

- (b) Upon receipt of an application and applicable fees, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:
- (1) The application is deemed complete and has been accepted for processing; or
 - (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.
- (c) If the director determines the development satisfies the review criteria identified in § 25-4.1, the director shall grant or grant with conditions a special management area minor permit within 45 calendar days after acceptance of a completed application. The director may extend the deadline for an additional 45 calendar days should revised plans or application materials be submitted by the applicant or when additional application materials are deemed necessary during the director's analysis of the proposal. The director may grant an additional deadline extension of 30 calendar days on request of the applicant, as necessary.



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- (d) If the director determines the development is likely to have significant adverse environmental or ecological effects, taking into account potential cumulative effects, the director shall deny the application and the applicant may seek a special management area major permit.

§ 25-5.3 Special management area major permit.

When a proposed development requires a special management area major permit, the following procedures apply.

- (a) Except for one-family and two-family detached dwellings on a single zoning lot, the applicant shall prepare the applicable environmental disclosure document, which will be processed in accordance with the procedures set forth in HRS Chapter 343 and the rules adopted thereunder. The department of planning and permitting will act as the accepting agency for purposes of HRS Chapter 343; provided that if another agency proposes the action and is preparing the environmental disclosure document, that agency shall act as the accepting agency. The director may allow the application for an SMA major permit application to be processed concurrently with the preparation of the applicable environmental disclosure document.
- (b) Prior to submitting an SMA major permit application to the agency, the applicant shall present the project to the neighborhood board of the district where the project is located or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of the presentation to owners of all properties adjoining the proposed development. The requirements of this subsection will be deemed satisfied if the applicant makes a written request to present the proposed development to the neighborhood board or community association and:
- (1) The neighborhood board or community association fails to provide the applicant with an opportunity to present the proposed development at a meeting held within 60 days after the date of the written request; or
- (2) The neighborhood board or community association provides the applicant with written notice that it has no objection to the proposed development or that no presentation of the project is necessary.
- (c) Upon issuance of a finding of no significant impact or acceptance of the environmental disclosure document, and after the applicant has met the requirements of subsection (b), the applicant may submit a special management area major permit application to the agency.



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- (d) The applicant shall submit to the agency:
- (1) All application materials that would be required for the special management area minor permit as specified in § 25-5.2;
 - (2) A copy of the final environmental disclosure document; and
 - (3) The applicable application fee specified in § 25-5.4.
- (e) Upon receipt of an application, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:
- (1) The application is deemed complete and has been accepted for processing; or
 - (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.
- (f) The agency shall hold a public hearing on the application at a date set not less than 21 nor more than 60 calendar days after the date the application was accepted as complete; provided that the period may be extended if agreed to by the applicant. The public hearing may be held in the area in which the development is proposed.
- (g) Notice of the public hearing must be published in a newspaper of general circulation in the State at least 20 calendar days prior to the date of the public hearing.
- (h) The agency shall provide adequate written notice of the public hearing to:
- (1) Pertinent neighborhood boards or community associations;
 - (2) Owners of all property within 300 feet of the affected property; and
 - (3) Owners of all property described in the application.
- (i) The agency shall transmit its findings and recommendations on the application for a special management area major permit to the council for its consideration and decision within 45 calendar days after the close of the public hearing; provided that this transmittal deadline may be extended if agreed to by the applicant.



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- (i) The council shall grant, grant with conditions, or deny any application for a special management area major permit within 60 calendar days after receipt of the agency's findings and recommendations thereon. If the council does not act on the application as provided in this section within the 60-day period, the application will be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved by the council prior to the expiration of the previous deadline for council action.

§ 25-5.4 Fees.

- (a) The following table sets forth application review and processing fees. The review fees cover the costs of determining whether an application is complete or incomplete, and are not refundable.

<u>Submittal Type</u>	<u>Review Fee</u>	<u>Processing Fee</u>	<u>Total Fee</u>
<u>Environmental Assessment</u>	<u>\$200</u>	<u>\$1,200</u>	<u>\$1,400</u>
<u>Environmental Impact Statement</u>	<u>\$400</u>	<u>\$2,400</u>	<u>\$2,800</u>
<u>Special Management Area Minor Permit</u>	<u>\$200</u>	<u>\$1,200</u>	<u>\$1,400</u>
<u>Special Management Area Major Permit</u>	<u>\$400</u>	<u>\$2,400 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000</u>	<u>\$2,800 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000</u>
<u>Modification of a Special Management Area Major Permit</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
<u>Special Management Area Determination</u>	<u>none</u>	<u>\$150 per tax map key</u>	<u>\$150 per tax map key</u>



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<u>Confirmation of Nonconformity or Site History and Status</u>	<u>none</u>	<u>\$300 per tax map key</u>	<u>\$300 per tax map key</u>
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- (b) When an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. When an application has been accepted for processing, the application review fee for the application will be counted as partial payment towards the total fee. If the application is determined to be incomplete, the processing fee will be returned.
- (c) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after a citation has been issued for the activity or construction.
- (d) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after the proposed work is completed.
- (e) The director may waive the fees in this section for city projects.

ARTICLE 6: [PROHIBITIONS] REQUIRED CONDITIONS

~~[§ 25-6.1 Permit Required.~~

~~No development or structure shall be constructed within the special management area without first obtaining a special management area use permit, a minor permit or being exempted pursuant to the provisions of this chapter.~~

~~§ 25-6.2 Permit to precede other permits.~~

~~No agency authorized to issue permits pertaining to any development within the special management area established by this chapter shall authorize any development, unless approval is first received pursuant to the provisions of this chapter. For purposes of this section, county general plans, development plans, State land use district boundary amendments, and zoning changes are not permits.~~

~~§ 25-6.3 Special requirements applicable to shoreline lots.]~~



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§ 25-6.1 Conditions for all development.

The following requirements ~~[shall]~~ apply to all uses, ~~[structures, and improvements on any shoreline lot.]~~ activities, or operations within the special management area, even if the proposal is not considered development as defined in this chapter.

- (a) *Exterior Lighting.* All exterior lighting on a shoreline lot ~~[shall]~~ must be shielded to reduce the possibility that seabirds and other marine life forms may become disoriented and harmed by the lighting. Shielded exterior lighting ~~[shall]~~ must be implemented both during and after any construction work on a shoreline lot. Any wall-mounted exterior lighting on buildings on a shoreline lot ~~[shall]~~ must be shielded by wall directors or other acceptable shielding, and all shielding ~~[shall]~~ must be specified on building permit plans. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes on a shoreline lot ~~[shall be]~~ are prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline or ocean waters, or both, except as may otherwise be permitted by HRS Section 205A-71(b).

- (b) *Landscaping.* All landscaped areas, landscaping, and irrigation on or for any shoreline lot ~~[shall]~~ must be contained and maintained within the property boundaries of the shoreline lot of origin, and ~~[shall under no circumstances extend:]~~ may not:

~~[(A)]~~ (1) Be planted, watered, and maintained so that they act as a shoreline hardening barrier, such as naupaka, particularly if they alter or interfere with the natural beach processes;

(2) [Seaward] Extend seaward of the shoreline as depicted on the current certified shoreline survey for the shoreline lot[; or,] or in the event there is no current certified shoreline survey for the lot, seaward of the presumed shoreline; and

~~[(B)]~~ (3) [Inte] Extend into any adjoining beach access right-of-way, public[;] or private.



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ARTICLE 7: EXEMPTIONS

§ 25-7.1 Emergency permits.

- (a) In cases of emergency repairs to existing public utilities, including but not limited to flood control structures, highways, and water, sewer, gas and electric transmission lines ~~[and highways]~~, the respective governmental agency or public utility company is exempt from obtaining a special management area use permit pursuant to the requirements of this chapter. Two reports on ~~[such]~~ the repair projects ~~[shall]~~ must be recorded with the agency, ~~[one]~~ the first within three days after the start of the project and the ~~[other]~~ second upon ~~[its]~~ the project's completion.
- (b) In the event an impending disaster or disaster has been declared under Chapter 2, Article 25A~~[-as amended,]~~ or under HRS ~~[Chapters 127 and 128,]~~ Chapter 127A, the requirements of this chapter ~~[shall]~~ will be waived.

ARTICLE 8: PENALTIES

§ 25-8.1 Civil fine.

Any person who violates this chapter ~~[shall,]~~ will, upon notice issued pursuant to § 25-9.1, be deemed to have committed a civil violation and ~~[shall]~~ will be subject to a civil fine not to exceed ~~[\$10,000-]~~ \$100,000.

§ 25-8.2 Additional fines.

In addition to any other penalties, any person who ~~[performs]~~ undertakes any development in violation of this chapter ~~[shall,]~~ will, upon notice issued pursuant to § 25-9.1, be deemed to have committed a civil violation and ~~[shall]~~ will be subject to a civil fine not to exceed ~~[\$500-a]~~ \$10,000 per day for each day in which ~~[such]~~ the violation persists.

§ 25-8.3 Additional penalties for special wetland areas.

In the event of a violation of the wetlands rules adopted pursuant to ~~[this chapter,]~~ Article 11, the director ~~[shall, when possible, and in]~~ may, after consultation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, order wetland restoration ~~[and]~~, creation ~~[measures for,]~~ or other appropriate mitigating measures be undertaken by the applicant to address and correct, to the extent possible, the damaged or destroyed wetland areas.



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ARTICLE 9: ENFORCEMENT

§ 25-9.1 Notice of violation and order.

If the director determines that any person is violating this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the person served ~~[by mail or delivery]~~ with a notice of violation and order. A notice of violation and order must be served upon responsible persons ~~[either personally or by certified mail. However,]~~ provided that if the whereabouts of such persons are unknown and ~~[the same cannot be ascertained by]~~ the director ~~[in the exercise of]~~ is not able to ascertain the whereabouts of such persons after exercising reasonable diligence ~~[and the director provides]~~, the director shall provide an affidavit to that effect ~~[then a]~~. The notice of violation and order [may] must be served [by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city] pursuant to ~~[HRS § 1-28.5]~~ the requirements of the agency's administrative rules, or other relevant legal authority.

(a) *Contents of the notice of violation.* ~~[The]~~ At a minimum, the notice ~~[shall]~~ must include ~~[at least]~~ the following information:

- (1) Date of the notice;
- (2) The name and address of the person noticed;
- (3) The section number of the ordinance ~~[which]~~ that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

(b) *Contents of the order.*

- (1) The order may require the person do any or all of the following:
 - (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense before a date specified in the order;
 - (C) Pay a civil fine per recurring incident not to exceed ~~[\$40,000]~~ \$100,000 each, in the manner, at the place, and before the date specified in the order;



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- (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$10,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order, if the person has ~~[performed]~~ undertaken any development in violation of this chapter;
- (E) In the event of a violation of the wetlands rules adopted pursuant to this chapter, the director ~~[shall have the power to order wetland restoration and creation measures for the damaged or destroyed wetland area by the person or agent responsible for the violation.]~~ may pursue the remedies specified in § 25-8.3. If the responsible party does not complete ~~[such]~~ the measures specified in the order within ~~[a reasonable time following]~~ the time frame set forth in the order, the city may restore the affected wetland to its prior condition, and create or restore other wetlands for the purpose of offsetting losses sustained as a result of the violation. The order may require that the person or agent responsible for the original violation ~~[shall]~~ be liable to the city for the cost of such actions~~[-];~~;
- (F) To guide restoration and creation actions, the agency ~~[shall have the power to]~~ may order the violator to develop a plan as described in the rules adopted pursuant to ~~[this chapter]~~ Article 11 for ~~[the]~~ approval ~~[of]~~ by the agency; or
- ~~[(F)](G)~~ Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.
- (2) The order ~~[shall]~~ must advise the person of the finality of the order 20 days after the date of its ~~[mailing or delivery,]~~ service, unless a written request for a hearing is mailed or delivered to the director ~~[within those 20 days.]~~ prior to expiration of the 20-day period specified in § 25-9.2(a).

§ 25-9.2 Effect of order—Right to hearing.

- (a) The provisions of the order issued by the director under § 25-9.1 ~~[shall]~~ will become final 20 days after the date ~~[of the [mailing or delivery of the order,]~~ person is served, unless within those 20 days the person subject to the order requests in writing a hearing before the director. The request for a hearing ~~[shall]~~ will be considered timely if the written request is delivered or mailed and postmark dated to the director within ~~[those 20 days.]~~ the 20-day period.



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- (b) Upon receipt of ~~[the]~~ a written request for a hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing ~~[shall]~~ will be conducted by the director in accordance with the provisions of HRS Chapter 91. Following the hearing, the director, at the director's discretion, may affirm, modify, or rescind the order ~~[as in the opinion of the director may be appropriate]~~.

§ 25-9.3 Judicial enforcement of order.

The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to §§ 25-9.1 and 25-9.2. ~~[Where the]~~ If a civil action has been instituted to enforce ~~[the]~~ a civil fine imposed by the order, the director need only show that a notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, ~~[the]~~ a civil fine was imposed, and ~~[that]~~ the fine imposed has not been paid.

§ 25-9.4 Judicial enforcement of chapter.

~~[The]~~ In addition to any other remedy provided for under this chapter, the director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto ~~[in addition to any other remedy provided for under this chapter]~~.

§ 25-9.5 Nonexclusiveness of remedies.

The remedies provided in this chapter for enforcement of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto ~~[shall be]~~ are in addition to any other remedy as may be provided by law.

§ 25-9.6 Involuntary revocation or modification of permits.

- (a) A special management area ~~[use]~~ major permit or a special management area minor permit may be revoked or modified without the consent of the permittee for any of the following reasons:
- (1) The permit was granted in violation of HRS Chapter 205A or this chapter;
 - (2) A material breach of the terms of the permit has occurred;
 - (3) A material violation of HRS Chapter 205A or of this chapter following the granting of the permit has occurred;



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- (4) A material mistake of fact or a material misrepresentation was made by the permit applicant in the application or otherwise made by the applicant to the agency or the council ~~[in relation]~~ relating to the permit application;
- (5) A material mistake of fact was made by the council in the issuance of the permit ~~[such]~~ so that the findings required to be made by the council as a prerequisite to the issuance of a permit under HRS § 205A-26 and ~~[ROH § 25-3.2(2)]~~ § 25-4.1 were erroneous; or
- (6) A material change in circumstances has occurred following the issuance of the permit that would cause the development, as approved and conditioned in the permit, to pose a ~~[substantial]~~ significant threat to public health or safety, as determined by the State department of health, the State department of labor~~;~~ and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or with respect to the type of health or safety threat posed by the development.
- (b) The revocation or modification of a special management area minor permit ~~[shall]~~ will be processed in accordance with rules adopted by the agency.
- (c) The agency may initiate the revocation or modification of a special management area ~~[use]~~ major permit without the consent of the permittee ~~[may be initiated by the agency pursuant to this subsection or by the council pursuant to subsection (d), and, in the case of a revocation or modification proposed by the agency, shall be processed]~~ as follows.
- (1) Upon determining that adequate reasons may exist under subsection (a) for the revocation or modification of a special management area ~~[use]~~ major permit, the agency shall hold a public hearing on the proposed revocation or modification on a date set ~~[to]~~ not less than 21 nor more than 60 days ~~[following the date of sending the notice]~~ after the date on which the notice of revocation or modification is mailed to the permittee pursuant to subdivision (2).
- (2) The agency shall give written notice of revocation or modification of a special management area major permit to the permittee and any disclosed owner of record of the property that is subject to the permit ~~[shall be given written notice by the agency of the]~~. The notice must include the following information:



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- (A) The permit proposed to be revoked or modified ~~[(by), identified by council resolution number and title[, if any]; the];~~
- (B) The date, time, place, and nature of the hearing; ~~[the]~~
- (C) The reasons for the proposed revocation or modification; and ~~[in]~~
- (D) In the case of a proposed modification, the nature of the modification proposed.

~~[The notice shall also contain such other matters as are prescribed in HRS § 91-9 with respect to notice of contested case hearings. This notice shall be sent by registered or certified mail with return receipt requested addressed to the permittee and disclosed owners of record at the addresses stated in the application for a special management area use permit or at addresses otherwise specified in a written request to the agency from the permittee or such owners.]~~

- (3) The agency shall give written notice~~[-]~~ of the proposed revocation or modification of a special management area major permit, by publication once in a newspaper of general circulation in the city and once in a newspaper of general circulation in the State, [at least 20, but not more than 60, calendar days in advance of the] not less than 21 nor more than 60 days prior to the date of the public hearing. The notice [shall] must state the following:

- (A) The location of the affected property by tax map parcel number or street address, or if neither exists, by a general statement of its location~~[-The notice shall also state the];~~
- (B) The permit ~~[being]~~ proposed to be revoked or modified ~~[(by), identified by council resolution number and title[, if any]; the];~~
- (C) The date, time, place, and nature of the hearing; ~~[and the]~~
- (D) The reasons for the proposed revocation or modification; and~~[-in]~~
- (E) In the case of a proposed modification, the nature of the modification proposed.



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- (4) ~~[Notice]~~ The agency shall give written notice of the proposed ~~[permit]~~ revocation or modification of a special management area major permit containing the information set forth in subdivision (3) ~~[shall be given by the agency]~~ to any pertinent neighborhood boards or community associations, and make a good faith effort ~~[shall be made]~~ to give ~~[such]~~ notice to the owners of all property within 300 feet of the affected property; provided that if ~~[any such]~~ the property is subject to condominium property regime, notice ~~[shall be adequate if it is]~~ may be given to the association of apartment owners of the condominium project.
- (5) In conducting the public hearing, the agency shall provide an opportunity ~~[to]~~ for all parties to provide ~~[evidence and argument]~~ testimony on all issues involved. The agency may adopt rules pursuant to HRS Chapter 91 with respect to the conduct of hearings under this subsection.
- (6) Following the public hearing, the agency shall prepare a written report ~~[thereon]~~ with its findings and ~~[recommendations]~~ recommendation and, if the report recommends revocation or modification, submit the report and a draft ~~[of a resolution to implement the recommendations of the report]~~ resolution implementing the agency's recommendation to the council within 30 calendar days ~~[of]~~ after the close of the public hearing. For each of the reasons for ~~[proposed]~~ the revocation or modification included in the notice ~~[given]~~ provided under subdivision (2), the report ~~[shall]~~ must state whether the evidence presented at the public hearing supported or did not support revocation or modification for that reason. The report ~~[shall]~~ must include a recommendation that the permit be revoked, that the permit not be revoked, or that the permit be modified~~[-]~~ and, in the case of a proposed modification, the nature of the proposed modification.
- (d) ~~[(1)]~~ The council may initiate the ~~[modification or]~~ revocation or modification of a special management area ~~[use]~~ major permit without the consent of the permittee by resolution~~[-]~~ as follows:
- ~~[(2)]~~(1) The resolution ~~[shall]~~ must set forth the following:
- (A) The permit ~~[being]~~ proposed to be ~~[modified or revoked,]~~ revoked or modified, identified by council resolution number and title~~[-, if any]~~;
- (B) The reasons for the proposed ~~[modification or revocation, stated in terms giving notice as to]~~ revocation or modification, identifying which of the permissible reasons ~~[for modification or revocation]~~ set forth in subsection (a) are applicable;



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- (C) In the case of a proposed modification, the nature of the proposed modification; and
- (D) A direction to the agency to process the proposed ~~[modification or]~~ revocation or modification in accordance with this section.
- ~~[(3)]~~(2) After adoption of the resolution, the city clerk shall transmit the resolution to the agency for processing.
- ~~[(4)]~~(3) Upon receiving the resolution, the agency shall conduct an initial investigation into the reasons set forth in the resolution for ~~[modification or]~~ revocation or modification of the special management area ~~[use]~~ major permit and, within 60 days of receipt of the resolution, the agency shall give the permittee and any disclosed owner of record of the property that is subject to the permit, written notice of a hearing on the proposed ~~[modification or revocation.]~~ revocation or modification. The written notice ~~[shall]~~ must meet the notice requirements of subsection (c)(2)~~[-The written notice shall]~~, and must include the reasons for the proposed ~~[modification or]~~ revocation or modification set forth in the resolution ~~[and, in addition,]~~, and any other ~~[or further]~~ reasons for ~~[modification or]~~ revocation or modification the agency may have ~~[discovered, either]~~ identified during its initial investigation or otherwise.
- ~~[(5)]~~(4) The agency shall hold a public hearing on the proposed revocation or modification on a date set ~~[no]~~ not less than 21 nor more than 60 days following the date of sending the notice to the permittee and others pursuant to subdivision ~~[(4)]~~ (3).
- ~~[(6)]~~(5) The agency shall give written notice of the hearing~~[-]~~ and conduct the hearing~~[-, and prepare a report on the hearing, all]~~ in accordance with subsections (c)(3), (c)(4), and (c)(5)~~[-, and (c)(6)]~~. ~~[Notwithstanding subdivision (c)(6), the agency shall transmit with the report a draft of a resolution to implement the recommendation of the report, whether or not the report recommends revocation or modification of the permit.]~~
- (6) Following the public hearing, the agency shall prepare and submit to the council a written report and transcript of the public hearing within 30 calendar days after the close of the public hearing. If the agency recommends revocation or modification, the report must include a draft resolution implementing the agency's recommendation.



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- (e) The council may, by resolution, revoke, refuse or decline to revoke, or modify ~~[the]~~ a special management area ~~[use]~~ major permit within 90 calendar days ~~[of]~~ after receipt of the agency's report and draft resolution; provided that ~~[any]~~ council adoption of a resolution for revocation or modification of [the] a special management area [use] major permit [shall require for its adoption] requires the affirmative vote of at least two-thirds of the entire membership of the council. If the council fails to act within 90 calendar days of receipt of the report and draft resolution, the permit ~~[shall]~~ will be deemed not to have been revoked or modified and the resolution ~~[shall]~~ will be deemed to have been filed; provided that~~[-]~~ pursuant to a written request from the permittee, the council may ~~[extend]~~ approve an extension of this 90-day period.
- (f) ~~[Following]~~ After the filing ~~[or deemed filing]~~ of a resolution proposing ~~[the revocation or modification of]~~ to revoke or modify a special management area ~~[use]~~ major permit, no further resolution may be introduced proposing ~~[the revocation or modification of]~~ to revoke or modify the same permit for the same reasons that were stated in the resolution that has been filed~~[-, except]~~; provided that a further resolution may be introduced no earlier than six months following the filing of the initial resolution~~[-]~~ if a substantial change in circumstances has occurred following the filing of the initial resolution that would cause the development, as approved and conditioned in the permit, to pose a ~~[substantial]~~ significant threat to public health or safety, as determined by the State department of health, the State department of labor~~[-]~~ and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or the type of health or safety threat posed by the development.
- ~~[(f)]~~(g) The council may revoke or modify a permit pursuant to this section only for one or more of the reasons specified in subsection (a). The council shall, ~~[before]~~ prior to revocation or modification of the permit, set forth written findings of fact and conclusions of law justifying the revocation or modification. If the council revokes a permit without the consent of the permittee based upon a material mistake of fact or a material change in circumstances, it must first find that the mistake or change in circumstances cannot be adequately addressed by a reasonable modification to the permit. The findings of fact and conclusions required under this subsection may be incorporated into either the final resolution or a separate document adopted by the council.



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~~[(g)]~~(h) Before a permit may be revoked or modified pursuant to this section, the council must first ~~[have held]~~ hold a public hearing on the proposed revocation or modification, at which ~~[it has provided]~~ the permittee, any disclosed owner of the subject property, and the agency have an opportunity to provide oral testimony of not less than one-half hour ~~[a piece-]~~ each. All other interested parties ~~[shall]~~ must also be given an opportunity to provide oral testimony in accordance with council rules. The permittee, ~~[the]~~ agency, and other interested parties may provide additional oral testimony in accordance with council rules at any council or council committee meetings at which the revocation or modification may be considered. Written testimony may also be provided by any interested party.

~~[(h)]~~(i) In conjunction with the written notice of agency hearing, or by written request from the council sent by registered or certified mail with postage prepaid and return receipt requested sent at least 10 days in advance of the date of ~~[the]~~ a council public hearing, the agency or the council may request the permittee to provide information at or before the agency hearing or the council public hearing, respectively, relating to:

- (1) The current status of all other permits or governmental approvals necessary for the development approved by the special management area ~~[use]~~ major permit;
- (2) The status of the permittee's compliance with or progress toward compliance with any conditions of the permit; and
- (3) The level and timing of expenditures made by the permittee or others with respect to various phases or aspects of the development.

The agency and the council ~~[shall be entitled to, but need not,]~~ may rely upon the accuracy of the information provided by the permittee in any action or proceeding to ~~[modify or]~~ revoke or modify the special management area ~~[use]~~ major permit. If the permittee fails or refuses to provide requested information, the agency or the council ~~[, as the case may be, shall be entitled to]~~ may find that there has been no progress towards compliance with permit conditions or that no expenditures have been made on the development.

~~[(4)]~~(i) The corporation counsel shall, upon request of the agency or the council, advise the agency or the council with respect to the extent to which the permittee's rights to construct the development or ~~[a portion of the development]~~ portion thereof may be vested under law.



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~~[(j)]~~(k) Any expenditures made by the permittee or others on a development for which a special management area ~~[use]~~ major permit ~~[or a special management area minor permit]~~ has been issued following:

- (1) The receipt, by the party making the expenditure, of notice of the proposed ~~[modification or]~~ revocation or modification of the special management area ~~[use]~~ major or minor permit for the development; or
- (2) The first published notice of the agency hearing;

whichever first occurs, and before the adoption~~[- filing, or deemed filing]~~ or filing of the resolution proposing the ~~[modification or revocation, shall not be]~~ revocation or modification is not deemed an expenditure made in good faith reliance upon the issuance of the permit for purposes of determining whether development rights are vested.

~~[(k)]~~(l) For purposes of this section, a ~~["modification"]~~ modification to a permit includes but is not limited to a modification to the plans for the development or a modification to the conditions imposed upon the development in the permit.

~~[(h)]~~(m) An owner of record of property shall be deemed to have been disclosed if a permit applicant, permittee, or ~~[the]~~ owner gave notice to the agency of the owner's status either at the time of the permit application or through a formal written notice to the agency of such ownership status at least one week prior to the date on which the agency is required to give notice to disclosed owners of record.

§ 25-9.7 Voluntary revocation or modification of permits.

- (a) A special management area ~~[use]~~ major permit or a special management area minor permit may be revoked or modified at the request of the permittee in accordance with this section.
- (b) An application for the ~~[modification or]~~ revocation or modification of a special management area minor permit ~~[shall]~~ will be processed in the same manner as an application for the granting of a special management area minor permit; provided that the agency may adopt rules pursuant to HRS Chapter 91 providing for processing of the application for ~~[modification or]~~ revocation or modification in a different manner.



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- (c) An application for the ~~[modification or]~~ revocation or modification of a special management area ~~[use] major permit [initiated by the permittee shall]~~ will be processed in the same manner as an application for the granting of a special management area ~~[use] major permit~~; provided that if a permit proposed for modification provides a different process for minor modifications to the permit, that process may be followed for minor modifications.

ARTICLE 10: APPEALS

§ 25-10.1 Appeal in accordance with State statute.

If any person is aggrieved by ~~[the]~~ an order issued by the director pursuant to §§ 25-9.1 and 25-9.2, the person may appeal the order in the manner provided in HRS Chapter 91; provided that no provision of ~~[such]~~ the order shall be stayed on appeal, unless specifically ordered by a court of competent jurisdiction.

ARTICLE 11: RULES

§ 25-11.1 ~~[Wetlands rules.]~~ Rules.

~~[The director may adopt rules pursuant to HRS Chapter 91 and not inconsistent with the provisions of this chapter, relating to wetlands within the special management area, including but not limited to rules establishing standards for development and for permits for development in special wetland areas; additional special management area permit application requirements and review criteria relating to wetlands standards for nonconforming activities in special wetland areas; standards for determining the existence and boundaries of special wetland areas; additional penalties and enforcement provisions relating to violations of the wetlands rules or special management area use permit conditions relating to wetlands, including standards for requiring wetlands restoration or creation and alternatives thereto; and standards for inclusion of wetlands conditions in special management area use permits.]~~ The agency shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part II.

~~[ARTICLE 12. SEVERABILITY]~~

~~§ 25-12.1 Invalid provisions.~~

~~If this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this chapter, which can be given effect without the invalid provision or application, and to this end, this chapter is severable.]"~~



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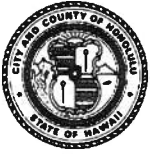
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SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



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SECTION 4. This ordinance takes effect upon its approval; provided that:

1. This ordinance does not affect any special management area use permit or minor permit that had been issued prior to the effective date of this ordinance; and
2. All special management area use permit or minor permit applications received prior to the effective date of this ordinance and deemed complete for processing by the Department of Planning and Permitting must be processed in accordance with Chapter 25 of the Revised Ordinances of Honolulu 2021, as it read prior to the effective date of this ordinance.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

June 23, 2022

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

RICK BLANGIARDI, Mayor
City and County of Honolulu