COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

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PLANNING DEPARTMENT RULES (EXISTING)

Rule 1.	General Rules Adopted: June 20, 1984
Rule 2.	Petition for Adoption, Amendment, or Repeal of Rules Adopted: June 20, 1984
Rule 3.	Declaratory Rulings Adopted: June 20, 1984
Rule 4.	General Plan Amendments Adopted: June 20, 1984 Amended: November 29, 1990
Rule 5.	Zoning Amendments Adopted: June 20, 1984
Rule 6.	Variances Adopted: June 20, 1984
Rule 7.	Planned Unit Development Adopted: June 20, 1984
Rule 8.	Nonsignificant Zoning Changes Adopted: July 28, 1993
Rule 9.	Provisions for Enforcement of Zoning Code and Special Management Area Adopted: June 3, 1996 Amended: February 26, 2016
Rule 10.	Geothermal Relocation Program Adopted: July 8, 1996
Rule 11.	Shoreline Setback Adopted: January 19, 1997
Rule 12.	Ohana Dwelling Units Adopted: August 19, 1996
Rule 13.	Farm Dwellings Adopted: April 4, 1997
Rule 14.	County Environmental Reports Adopted: April 14, 1997

APPENDIX A
PLANNING DEPARTMENT RULES

Rule 15. Project Districts
Adopted: May 4, 1998

Rule 16. Agricultural Project Districts
Adopted: May 4, 1998

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Adopted: August 15, 1998

Rule 18. De Minimis Structure Position Discrepancy
Adopted: April 6, 2002

Rule 19. Pre- existing Lots Based Upon Leases
Adopted: March 28, 2002

Rule 20. Consolidation and Resubdivision
Adopted: May 24, 2002

Rule 21. Public Access Usage
Adopted: January 18, 2005

Rule 22. Water Variance
Adopted: February 15, 2006

PLANNING DEPARTMENT
COUNTY OF HAWAII

RULES OF PRACTICE AND PROCEDURE

RULE 1. GENERAL RULES

1-1 Authority.
The rules hereinafter contained are established pursuant to the authority of section 5-4.2 and section 13-7 of the Charter of the County of Hawaii, and chapter 91, Hawaii Revised Statutes.

1-2 Purpose.
These rules govern the practice and procedure before the Planning Department of the County of Hawaii and its Planning Director.

1-3 Definitions.
As used in these rules, except as otherwise recognized by context:

(1) "Board" means the Board of Appeals of the County of Hawaii.

(2) "Commission" means the Planning Commission of the County of Hawaii.

(3) "Comprehensive Review" means a complete review of the General Plan conducted by the Director at least once every ten years from the initial date of adoption of the General Plan as well as other subsequent ten-year reviews.

(4) "Council" means the County Council of the County of Hawaii.

(5) "Department" means the Planning Department of the County of Hawaii.

(6) "Director" means the Director of the Planning Department of the County of Hawaii.

(7" Environmental assessment" means a written evaluation to determine whether an action may have a significant environmental effect.

(8) "Environmental impact statement" means an information document prepared in compliance with Chapter 343, Hawaii Revised Statutes, 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

(9) "General Plan" means the County of Hawaii General Plan adopted as Ordinance

No. 439 on December 15, 1971, and all subsequent amendments thereof, codified as chapter 16, Hawaii County Code. It is the policy document for the long-range comprehensive development of the island of Hawaii.

(10) "Interim amendments" means amendments to the General Plan proposed by a property owner, the general public, Council or Director at any time other than during the comprehensive review period.

(11) "Property Owner" means a person having an interest in title to the affected land proposed for an amendment and includes the holder of a lease interest in the affected land, where such lease interest is not due to expire until after ten years following the date of the filing of the petition.

(12) "Public Records" means any written or printed report, book or paper, map or plan of the Department, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which the Department has received or required to receive for filing, but shall not include records which invade the right of privacy of an individual.

(13) "Variance" means a deviation from a specific requirement of Chapter 25 (Zoning Code), and Chapter 23 (Subdivision Control Code).

(14) "Zoning amendments" means changes to the boundaries of the zoning districts or changes to any other provisions of Chapter 25.

1-4 Office.

The office of the Department is at Hilo, Hawaii.

1-5 Communications.

Any communication to the Planning Department shall be addressed to the Planning Director, Planning Department, County Building, 25 Aupuni Street, Hilo, Hawaii, 96720, unless otherwise directed.

1-6 The Department.

The Department consists of the Director, the Commission, and the necessary staff.

1-7 The Director.

The Director is the administrative head of the Department and shall:

(1) Serve as the chief planning officer of the County and the technical advisor to the Mayor, Commission, and Council on all planning and related matters.

(2) Prepare a general plan and other implementation documents, i.e., community development plans, area improvement plans, and amendments thereto to guide the development of the county.

(3) Prepare proposed zoning and subdivision ordinances, zoning maps and regulations and any amendments or modifications thereto.

(4) Review the lists of proposed capital improvements contemplated by agencies and executive agencies of the county and recommend the order of their priority.

(5) Be charged with the administration of the subdivision and zoning ordinances and regulations adopted thereunder.

(6) Be charged with the approval of proposed subdivision plans which are in conformity with the subdivision ordinance and regulations.

(7) Receive, process, and recommend to the Commission appropriate action regarding rezoning applications, special exceptions, and other similar requests.

(8) Be charged with the approval of variances as provided by law.

(9) Exercise all the powers and perform all the duties of the Director and the administrator of the Commission as authorized by law or ordinance and exercise such other powers and perform such other duties as shall be required or delegated by the Mayor, Commission, or Council.

(10) Provide administrative-support services to the Board.

1-8 Public Records.

All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state, federal, or county law; provided that, except where such records are open under any rule of court, the Corporation Counsel or Prosecuting Attorney may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the County is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

Copies of records printed or reproduced for persons other than governmental agencies shall be given to any person, provided that the fees or costs prescribed in the Hawaii County Code are paid.

1-9 Computation of Time.

In computing any period of time under these rules, by notice, or by any order or rule of the Department, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 2. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

2-1 Initiation of Rulemaking Procedures.

(a) The Director may, at any time, initiate proceedings for the adoption, amendment, or repeal of any rule of the Department. Procedures to be followed in rulemaking shall be as set forth in these rules.

(b) Any interested person may petition the Director for the adoption, amendment, or repeal of any rule of the Department. Such petitions shall contain:

(1) A non-refundable filing and processing fee of one hundred dollars;

(2) The name, address, telephone number, if available, and signature of the petitioner;

(3) A draft or the substance of the proposed rule or amendment or a designation of the provisions, the repeal of which is desired;

(4) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The Director shall, within thirty days after the filing of a petition for rulemaking, either deny the petition or initiate public rulemaking proceedings.

(d) Any petition that fails in material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings shall be denied by the Director. The Director shall notify the petitioner in writing of such denial, stating the reasons thereof. Denial of the petition shall not operate to prevent the Director from acting, on this own motion, on any matter disclosed in the petition. Petitioner may seek review of the denial through the Board.

(e) If the Director determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking proceedings, the Director shall conduct rulemaking proceedings in accordance with section 2.2 of this rule.

2-2 Notice of Public Hearing.

(a) When, pursuant to a petition therefor or upon his own initiation, the Director proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the County, and the notice shall also be mailed to all persons who have made timely written requests for advance notice of the Department's rulemaking proceedings. The notice shall

be published at least twenty days prior to the date set for the public hearing.

(b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:

(1) A statement of the date, time, and place where the public hearing will be held;

(2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and

(3) A statement of the substance of the proposed rule.

2-3 Conduct of Public Hearing.

(a) The public hearing for the adoption, amendment, or repeal or any rule shall be presided over by the Director or his authorized representative. The hearing shall be conducted in such a way as to afford all interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(c) Any interested person will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations shall not extend beyond the hearing date, unless specified by the presiding officer.

(d) Unless otherwise specifically ordered by the presiding officer, testimony given at the public hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received and made a part of the record.

2-4 Action.

The Director shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action shall be taken within sixty days after the close of the public hearing.

2-5 Emergency Rulemaking.

If the Director finds that an imminent peril to public health or safety requires adoption, amendment, repeal of a rule upon less than twenty days' notice of hearing and states in writing his reasons for such finding, he may proceed without prior notice or hearing upon

such abbreviated notice and hearing as he finds practicable to adopt an emergency rule. The Director shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the County.

2-6 Filing of Rules.

The Director, upon adopting, amending, or repealing a rule and approval by the Mayor, shall file certified copies of the rule with the County Clerk.

2-7 Taking Effect of Rules.

Each rule adopted, amended, or repealed shall become effective ten days after filing with the County Clerk. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule with the County Clerk. An emergency rule shall become effective upon filing with the County Clerk for a period not exceeding one hundred twenty days without renewal unless extended in compliance with section 91-3(a), Hawaii Revised Statutes.

2-8 Publication of Rules.

The Director shall, as soon as practicable, compile, index, and publish all rules adopted by the Director and remaining in effect. Compilations shall be supplemented as often as necessary and shall be reviewed at least once every ten years.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 3. DECLARATORY RULINGS

3-1 Petitions for Declaratory Rulings.

(a) On petition of an interested person, the Director may issue a declaratory order as to the applicability of any statutory provision, ordinance, or of any rule or order of the Director or the Department.

(b) Petition for a declaratory ruling shall contain:

(1) A non-refundable filing and processing fee of one hundred dollars;

(2) Name, address, telephone number, if available, and signature of each petitioner;

(3) A designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved; and

(4) A statement of the petitioner's position or contention; and

(5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.

(c) Within sixty days after the submission of a petition for declaratory ruling, the Director shall either deny the petition in writing, stating the reasons for such denial or issue a declaratory order on the matters contained in the petition, or set the matter for a public hearing, as provided in sections 3-2, 3-3 and 3-4 of these rules.

3-2 Request for Public Hearing.

The Director, in his discretion, may order that a hearing be held on a declaratory ruling petition. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall submit a written request for a hearing, setting forth in the request the reasons why the matters alleged in the petition and the supporting material submitted will not permit the fair and expeditious disposition of the petition and, to the extent that such request for a hearing is dependent upon factual assertion, shall attach to the request an affidavit establishing such facts. In the event a hearing is ordered by the Director, the hearing shall be conducted in accordance with section 3-3 of this rule.

3-3 Notice of Public Hearing.

A notice of the declaratory ruling petition shall be published at least once in a newspaper of general circulation in the County, and the notice shall also be mailed to all persons who

have made timely written requests for advance notice. The notice shall be published at least ten days prior to the date set for the hearing.

3-4 Conduct of Hearing.

(a) The public hearing for the declaratory ruling petition shall be presided over by the Director or his authorized representative. The hearing shall be conducted in such a way as to afford all interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(c) Any interested person will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations shall not extend beyond the hearing date, unless specified by the presiding officer.

(d) Unless otherwise specifically ordered by the presiding officer, testimony given at the public hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received and made a part of the record.

3-5 Action.

The Director shall consider all relevant comments and material of record before taking final action on the declaratory ruling petition. Final action shall be taken within sixty days after the close of the public hearing.

3-6 Status of Orders.

An order disposing of a petition shall have the same status as other Director or Department orders. An order shall be applicable only to the factual situation described in the petition or set forth in the order. An order shall not be applicable to different factual situations or where additional facts not considered in the order exist.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 4. GENERAL PLAN AMENDMENTS

4-1 Authority.

This rules governs General Plan Amendment procedures before the Director pursuant to Ordinance Nos. 89-142 and 90-17, chapter 16, Hawaii County Code as amended.

4-2 Scope and Purpose of Amendments.

The General Plan may be amended by changing its goals, policies, standards, zoning acreage allocations, land use pattern allocation guide map, and other applicable sections thereof when the conditions or premises upon which the General Plan is based have changed and when an amendment would assure the coordinated development of the County and the general welfare and prosperity of its people.

4-3 Amendment Pursuant to Comprehensive Review.

(a) Within forty-five days of a ten-year lapse from the date of adoption of the General Plan, the Planning Director shall upon notification to the County Council, initiate the comprehensive review of the General Plan.

(b) The scope of the comprehensive review shall include, but not be limited to the following:

(1) Basic elements of General Plan.

(2) Goals, policies, standards and courses of actions of the various elements.

(3) Land use designations of the land use pattern allocation guide (LUPAG) map.

(4) Facilities map.

(5) Urban land use pattern acreage and zoning acreage allocations.

(c) The Director shall give notice of the comprehensive review to the County Council, Planning Commission and the general public by filing a notice in a newspaper of general circulation within the County. The notice shall state, but not be limited to the following:

(1)Purpose;

(2) Scope:

(3) The ability for the public and County Council to provide input to the Planning Director within 45 days after the date of the notification.

(d) Upon receipt of suggestions from the public, the Planning Director shall review the General Plan, including the suggestions for change. Within 90 days,the Planning Director may propose draft amendments, and shall give notification of the amendments to the County Council and the public.

(e) Within 30 days of notification of proposed amendments, the Planning Director shall conduct a public workshop on the proposed amendments prior to submitting it to the Planning Commission, and shall allow the public an opportunity to provide comments on the proposed amendments through an additional 30 day period.

(f) Within 30 days of the completion of the public review period, the Planning Director shall initiate and forward proposed amendments to the Planning Commission for its review and recommendation.

(g) Within sixty days of receipt of the Planning Director's proposed amendments, the Planning Commission shall hold a public hearing on the proposed amendments. During the hearing and based on public testimony received, the Planning Commission may request the Planning Director to consider specific modification to any proposed amendment or to initiate within sixty days any new proposed amendment. If the Planning Director modifies a proposed amendment or initiates a new proposed amendment upon the Planning Commission's request, the Planning Commission shall hold further hearing on such matters, together with any proposed amendment originally submitted. Within sixty days of the conclusion of the public hearing, the Planning Commission shall submit to the Council its comments and recommendation on any proposed amendment initiated by the Planning Director.

(h) The County Council shall review the Planning Commission's recommendation and act on the Planning Directors' proposals. The County Council shall request the Planning Director to consider its specific modifications to any proposed amendment or to initiate a new proposed amendment. Within 60 days of the request, the Planning Director shall forward to the Planning Commission either a recommendation for a denial, modification to a proposed amendment or shall initiate the new proposed amendment.

(i) A public hearing on the proposed revisions and/or recommendations by the Planning Director shall be conducted by the Planning Commission within 60 days of its receipt from the Planning Director. Within 60 days of the closing of the public hearing, the Planning Commission shall forward the Director's proposed modifications, amendments, and recommendation together with its recommendations to the County Council.

(j) Failure by the Planning Director or the Planning Commission to respond within

the designated time period shall not preclude the Council from acting on its proposed amendments.

(k) During the comprehensive General Plan review, the Planning Director may defer action to any interim amendment petition to amend the General Plan and on any request to study a proposed General Plan amendment submitted by the County Council. However, any deferral by the Planning Director shall not extend beyond a period of one year and, in any case, shall not extend beyond the completion date of the comprehensive review.

4-4 Interim Amendments by General Public and Property Owners.

(a) Members of the general public may propose amendments to the General Plan goals, policies and standards by filing a written petition with the Planning Director.

(b) In addition, a property owner may propose an amendment to the land use pattern allocation guide map covering land held by that property owner. For this purpose, "property owner" means a person having an interest in title to the affected land. It also includes the holder of a lease interest in the affected land, which such lease interest is not due to expire until after ten years following the date of the petition.

(c) A petition to amend the General Plan shall be filed with the Director and shall include:

(1) A non-refundable filing and processing fee of one hundred dollars.

(2) Original and fifteen copies of:

(A) Application form;

(B) Statement of the nature of the petitioner's interest;

(C) Draft of the language of the proposed amendment;

(D) Environmental assessment;

(E) Statement of the reasons for granting the proposed change, supported by written, documented analysis of the General Plan and using all pertinent elements upon which the General Plan is based; and

(F) Graphs, plot plan, and other supportive information.

(3) In the case of a petition by a lessee, a letter of authorization from the owner of the affected property if not held in fee by the petitioner.

(d) The Director shall neither accept nor process an application which is incomplete as to form and content.

(e) Upon receipt of a completed petition, the Director shall prepare an environmental assessment in accordance with the requirements of Chapter 343, Hawaii Revised Statutes and the regulations of the Environmental Quality Commission. Upon compliance of the entire procedures of chapter 343, HRS, and the regulations of the Environmental Quality Commission, the Director shall officially accept the petition as being complete and properly filed.

(f) Upon acceptance of the properly filed and completed petition, the Director shall have one hundred eighty days in which to study the petition and take one of the following actions:

(1) Recommend the approval of the petition stating the reasons for such approval; or

(2) Recommend the denial of the petition stating the reasons for such denial.

(g) In the case where the Director recommends denial of a petition, if the Council does not act to consider the petition upon a two-thirds vote of its entire membership within thirty days upon receipt of the Commission's recommendation, the Director shall certify the petition to be officially denied.

(h) If a petition is officially denied, the same or a substantially similar petition may not be submitted for consideration within one year following such denial, unless the petitioner submits significant new data or additional reasons which the Director may find to be a sufficient basis for the petition to be considered.

4-5 Council Initiated Interim Amendments.

(a) The Council may, by resolution, request the Director to conduct a study to determine the feasibility of a proposed amendment.

(b) Upon receipt of the resolution, the Director shall have one hundred eighty days or a longer period, as may be agreed to by the Council, to submit a completed feasibility study to the Council.

(c) Upon receipt of the feasibility study, the Council has sixty days to review and act on the study. The Council may, by resolution, direct the Director to initiate the proposed amendment.

(d) The Director shall initiate and transmit the proposed amendment, with his recommendation, to the Council through the Commission.

(e) If the Council does not direct the Director to initiate the proposed amendment, the same or substantially similar proposal may not be considered within one year following the end of the Council's sixty-day review.

4-6 Director-Initiated Interim Amendments.

The Director may initiate proposed amendments to the General Plan in accordance with the following procedures:

(a) The Director shall provide notice of the proposed amendment to the Commission, Council and the general public. The notice shall state:

(1) A description of the proposed amendment;

(2) The ability for the public and Council to provide their input to the Director within 45 days after the date of the notification.

(b) The Director, upon completion of the review, shall submit the proposed amendment to the Council through the Commission.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 5. ZONING AMENDMENTS

5-1 Authority.

This rule governs zoning amendments before the Director pursuant to section 5-4.2 of the County Charter and chapter 25 (Zoning Code), Hawaii County Code.

5-2 Amendments Proposed by Property Owners.

(a) A petition for a zoning amendment shall be filed with the Director and shall include:

(1) A non-refundable filing and processing fee of one hundred dollars.

(2) Original and fifteen copies of:

(A) Application form;

(B) A description of the property in sufficient detail to determine its precise location;

(C) A plot or site plan of the property, drawn to scale, with all existing and proposed uses and/or structures shown thereon;

(D) A statement as to how the zoning amendment would be consistent with applicable goals, policies, standards and courses of action of the General Plan and adopted community development plans and area improvement plans; and

(E) Environmental assessment for amendments involving the construc tion of hotel and/or condominium developments.

(3) A copy of the appropriate questionnaire.

(4) A copy of site plan, a minimum of two feet by three feet in dimension, drawn to scale. The site plan should include property lines, reference points (roadways, shoreline, etc.), and existing and proposed structures and uses.

(A) The Director shall neither accept nor process an application which is incomplete as to form and content.

(B) Within two hundred forty days after the filing and official receipt of

a properly completed application or such longer period as may be agreed to by the petitioner, the Director shall act upon the application to deny it or recommend its approval to the Council, through the Commission. In the event that action is not taken by the director within the time prescribed, the application shall be certified as being denied.

(C) In the event the Director recommends approval of the application, the application shall be forwarded to the Council with the approval of the Mayor through the Commission. The Director may recom mend appropriate conditions of approval which would further the intent of chapter 25, the General Plan, and other related ordinances and documents.

(D) In the event the Director denies the application, the petitioner may appeal the Director's decision in writing to the Commission.

5-3 Amendments Initiated by the Council and Director.

(a) Any amendment initiated by the Council or by the Director shall be prepared by the Director.

(b) The Director shall study the proposed amendment and shall submit a recommendation to the Commission for its review and recommendation to the Council.

Cross-reference:

Article 2, Division 4, Amendments., Zoning Code
Rule 11. ZONING AMENDMENTS, Planning Commission Rules of Practice & Procedure

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 6. VARIANCES

6-1 Authority.
This rule governs variance procedures before the Director pursuant to section 5-4.2 of the County Charter and chapters 25 (Zoning Code) and 23 (Subdivision Control Code), Hawaii County Code.

6-2 Scope.
Variances from the provisions of chapters 23 and 25 may be granted by the Director; provided that a variance shall not allow the introduction of a use not otherwise permitted within a zoned district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations.

6-3 Petition and Content.
A petition for a variance shall be filed with the Director and shall include:

(1) A non-refundable filing and processing fee of one hundred dollars.

(2) Original and five copies of:

(a) Application form;

(b) A statement of the variance sought;

(c) A statement of the reasons for the granting of the variance utilizing the criteria established under section 6-6 of this rule;

(d) A description of the property in sufficient detail to determine the precise location of the property involved; and

(e) A plot plan, drawn to scale, with all existing and proposed structures or improvements shown thereon.

(3) Written approval of the landowner if petitioner is not the same.

(4) A list of the names and addresses of all owners of property interest in property within three hundred feet of the perimeter of the property involved.

6-4 Incomplete Application.
The Director shall neither accept nor process an application which is incomplete as to form and content.

6-5 Notice.

(a) Upon receipt and acceptance of a properly filed and completed application, the Director shall fix a date for consideration of the application.

(b) At least ten calendar days prior to the date of the Director's consideration of the application, the Director shall publish a notice of the application in a newspaper of general circulation in the County which includes the following:

(1) Name of the petitioner;

(2) The precise location of the property involved;

(3) Nature of the use being sought and the proposed accompanying structures, if any;

(4) Date on which the Director will consider the application; and

(5) That such date is the deadline for the Director's actual receipt of written comments on the application.

(c) Within three working days after receiving notice of the date that the Director will be considering the application, the petitioner shall serve notice of the application on owners of interests in properties within three hundred feet of the perimeter boundary of the property involved and to owners of interests in other properties which the Director may find to be directly affected by the variance sought. Such notice shall include all of the information as stated under section 6-5(b) of this rule.

(d) Prior to the deadline for written comment, the petitioner shall submit to the Director proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like.

6-6 Grounds for Variances.

The Director shall not approve a variance unless it is found that:

(1) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or petitioner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property;

(2) There are no other reasonable alternatives that would resolve the difficulty; and

(3) The variance shall be consistent with the general purpose of the district, the intent

and purpose of the affected chapters and the General Plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

6-7 Decision.

(a) Within sixty days after the filing of a proper application or within a longer period as may be agreed to by the petitioner, the Director shall deny the application or approve it subject to conditions. The conditions imposed by the Director shall bear a reasonable relationship to the variance granted.

(b) All actions shall contain a statement of the factual findings supporting the decision.

(c) If the Director fails to act within the prescribed period, the application shall be considered as having been denied.

6-8 Amendment of Conditions.

(a) The petitioner may apply with the Director for an amendment to the condition(s) imposed by a variance permit.

(b) The petitioner shall set forth in writing:

(1) The affected condition;

(2) The specific amendment requested; and

(3) The reasons for the request.

(c) Within forty-five from the date of receipt of the request for an amendment, the Director shall either approve or deny the request.

(d) If the Director fails to act within the prescribed period, the request shall be considered as having been denied.

6-9 Appeal.

The Director's decision is appealable to the Planning Commission.

Cross-reference:

Article 2, Division 5, Variances., Zoning Code

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 7. PLANNED UNIT DEVELOPMENT

7-1 Authority.
This rule governs Planned Unit Development (PUD) procedures before the Director pursuant to article 21, chapter 25 Zoning Code), Hawaii County Code.

7-2 Purpose.
The purpose of PUD is to encourage comprehensive site-planning production of optimum adaptation of development to the land by allowing diversification in the relationship of various uses, buildings, structures, open spaces and yards, building heights and lot sizes in planned building groups while still insuring that the intent of chapter 25 is observed.

7-3 Minimum Area Requirement.
The minimum area of a PUD shall be ten acres.

7-4 Petition, Form and Content.

(a) A petition for a PUD shall be filed with the Director and shall be accompanied by a non-refundable filing and processing fee of one hundred dollars.

(b) The petitioner shall include the original and fifteen copies of:

(1) The application form;

(2) A written description of the proposed project including, but not limited to:

(A) A statement of objectives and reasons for the request.

(B) Any request for deviations or variances from the requirements of chapter 25 (Zoning Code) and chapter 23 (Subdivision Control Code);

(C) A schedule of development timetable;

(D) How the proposed development substantially conforms to the General Plan;

(E) If applicable, how the proposed residential development will constitute an environment of sustained desirability and stability, will be in harmony with the character of the surrounding neighbor-

hood, and will result in an intensity of land utilization no higher than and standards of open space at least as high as permitted or as otherwise specified for the zoned district in which this development occurs;

(F) If applicable, how the proposed commercial development will not create any traffic congestion; not interfere with any projected improvements; provide for proper entrances and exits along with proper provisions for internal traffic and parking; and be an attrac tive center with no adverse effect upon the adjacent and surrounding existing or prospective development;

(G) If applicable, how the proposed industrial development will be in conformity with desirable performance standards; constitute an efficient and well organized development with adequate provisions for freight service and necessary storage; and have no adverse effects upon adjacent and surrounding existing or prospective development; and

(H) How the development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of chapter 25, and that the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.

(3) Drawings and plans comprising a general development plan covering the entire area of the PUD and including, where applicable: uses, dimensions and locations of proposed structures; widths, alignments and improvements of proposed streets, pedestrian and drainage ways; how the property could be divided for individual parcel sale; parking areas; public uses; and landscaping and open spaces; and

(4) Architectural drawings for all buildings other than single family dwellings, demonstrating the design and character of the proposed buildings and uses.

(c) For a request which includes additional building height, the petition shall also include sketches and drawings establishing a view plane from the upper side of the site, line of sight from the site property lines, desirable backdrop of the building site and an absolute maximum building height. The components and regulations are as follows:

Concept	Component	Regulation
Mauka View Plane	A	The building does not penetrate a horizontal plane fifty-five feet above the lowest natural elevation point along the frontage or rear lot line, whicheveris higher.

Concept	Component	Regulation
Side Yard Lines of Sight	B	The building does not penetrate the thirty degree angle inclined envelopes measured from the horizontal, the vertex of which angles are located along the side lot lines.
Building Backdrop	C	The building height does not exceed the sum of fifty-five feet plus one-half of the difference in the elevation between the frontage and rear lot line of the parcel. This last quantity to be computed by utilizing the difference between the lowest elevation on the frontage and the highest elevation on the rear lot line or vice versa, whichever difference is higher.
Absolute Maximum Height	D	The height of the building may exceed the district height limitations up to a maximum building height of seventy-five feet or six stories.

To get the additional height, the site must provide a lower backdrop for the building. Thus, between the lower and upper property lines, there must be a substantial change in elevation. Buildings on flat sites would be limited to three stories or forty-five feet.

Buildings on sites with limited change with a variance would be limited to four stories or fifty-five feet or within such limitation provided by ordinance, whichever is more restrictive. On sloping terrain, some additional height could be allowed provided the building is set down from the upper property line and in from the side property lines.

The procedure grants the most additional height (up to the maximum) for large sites with a substantial change in elevation from lower to upper property lines and where the building is located well down on the site and in from the side property lines.

(d) The petition shall include the written approval of the land owner if petitioner is not the same.

7-5 Incomplete Application.

The Director shall neither accept nor process an application which is incomplete as to form and content.

7-6 Notice.

(a) Upon receipt and acceptance of a properly filed and completed application, the Director shall fix a date for consideration of the application.

(b) At least ten calendar days prior to the date of the Director's consideration of the application, the Director shall publish a notice of the application in a newspaper of general circulation in the County which includes the following:

(1) Name of the petitioner;

(2) The precise location of the property involved;

(3) Nature of the request;

(4) Date on which the Director will consider the application; and

(5) That such date is the deadline for the Director's actual receipt of written comments on the application.

(c) Within three working days after receiving notice of the date that the Director will be considering the application, the petitioner shall serve notice of the application on owners of interests in properties within three hundred feet of the perimeter boundary of the property involved and to owners of interests in other properties which the Director may find to be directly affected by the request sought. Such notice shall include all of the information as stated under section 7-6(b) of this rule.

(d) Prior to the deadline for written comment, the petitioner shall submit to the Director proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like.

7-7 Grounds for PUD.

(a) In order to approve a PUD, the Director shall find the following:

(1) Construction on the project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time;

(2) The proposed development substantially conforms to the County General Plan.

(3) All residential development shall constitute an environment of sustained desirability and stability; shall be in harmony with the character of the surrounding neighborhood; and shall result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this development occurs;

(4) All commercial development shall create no traffic congestion, shall not interfere with any projected improvements, shall provide for proper entrances and exits along with proper provisions for internal traffic and parking, and shall be an attractive center with no adverse effect upon the adjacent and surrounding existing or prospective development;

(5) All industrial development shall be in conformity with desirable perfor-

mance standards and shall constitute an efficient and well organized development with adequate provisions for freight service and necessary storage, and that such development shall have no adverse effects upon adjacent and surrounding existing or prospective development;

(6) The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of chapter 25, and that the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations; and

(7) In reviewing additional building height, the underlying concept is to evaluate a building's relative conspicuousness to the natural terrain of its site. The review of request for additional height shall be as spelled out in section 7-4(c) of this rule.

(b) No PUD shall be considered that proposes a use that is not permitted either directly or as a conditionally permitted use within the zoned district.

7-8 Decision.

(a) Within sixty days after the filing of a proper application or within a longer period as may be agreed to by the petitioner, the Director shall deny the application or approve it subject to conditions. The conditions imposed by the Director shall bear a reasonable relationship to the request granted.

(b) All actions shall contain a statement of the factual findings supporting the decision.

(c) Application for an approval of a PUD, wherein variances from the standard regulations are approved, shall be deemed to be in compliance with all the necessary procedures for securing or granting a variance.

(d) Partial approval may be given where architectural plans and drawings have not been submitted with the original application but no building permit shall be issued nor any construction commence unless and until said drawings have been considered and approved by the Director and full approval of the PUD secured.

(e) Where completed drawings are considered, approval of a PUD shall be deemed to be and include plan approval as provided for in article 20 of chapter 25 (Zoning Code), Hawaii County Code.

(f) If the Director fails to act within the prescribed period, the application shall be considered as having been denied.

7-9 Time Extensions.

(a) The petitioner may apply with the Director for extensions of time limitations

imposed with the PUD approval not less than sixty days prior to the expiration date by submitting:

(1) A non-refundable filing and processing fee of one hundred dollars; and

(2) A written statement setting forth the affected portion of the PUD permit; the length of time requested; and the reasons for the time extension.

(b) Within forty-five days after receipt of such a request or a longer time as may be agreed to by the petitioner, the Director shall conduct a public hearing. At least ten days prior to the date of the hearing, the Director shall publish a notice of the public hearing in a newspaper of general circulation in the County.

(c) Within thirty days after the conclusion of the public hearing or within such longer period as may be agreed to by the petitioner, the Director shall approve or deny the request. If the request is approved, the Director may impose additional conditions as required.

If the Director fails to act within the prescribed period, the request shall be considered as having been denied.

7-10 Other Amendment to Conditions.

(a) The petitioner may apply with the Director for an addition, modification, and/or deletion of a condition, other than a time condition, by setting forth in writing the affected condition, what the request is for, and the reasons for the request.

(b) Within forty-five days from the date of receipt of the request or a longer time as may be agreed to by the petitioner, the Director shall either approve or deny the request.

(c) If the Director fails to act within the prescribed time, the request shall be considered as having been denied.

7-11 Appeals.

The Director's decision is appealable to the Board of Appeals.

Cross-reference:

Article 6, Division 1 Planned Unit Development (P.U.D.)., Zoning Code

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 8. NONSIGNIFICANT ZONING CHANGES

8-1 Purpose and Authority.
The purpose of this rule is to allow nonsignificant zoning changes to be approved administratively by the Planning Director as provided in Section 25-18.1, Division 3, Article 1, Chapter 25 (Zoning Code), Hawaii County Code 1983, as amended.

8-2 Definition.
As used in this rule, except as otherwise recognized by context:

"Nonsignificant zoning change" shall mean a zoning change which does not result in an increase or decrease in any zoning designation affecting more than five percent or one acre of any parcel of property, whichever is less, and which is in compliance with the General Plan and development plan designations of the property.

8-3 Request for Determination.
Written request for a determination for a nonsignificant zoning change shall be filed with the Planning Director and shall include:

(a) A description of the property in sufficient detail, including a location map and Tax Map Key identification, to determine its precise location;

(b) A statement as to the purpose of the request and why this request qualifies as a nonsignificant zoning change;

(c) A legal description of the property in map and written form by metes and bounds as certified by a surveyor. If available, a copy of the AutoCAD disk shall be submitted; and

(d) Calculation showing amount of land area to be changed in terms of percentage of the parcel. (The area requested for zoning change shall not exceed more than five percent or one acre of any parcel of the property, whichever is less.)

8-4 Surrounding Property Owners' Notification.
Upon filing for a determination for a nonsignificant zoning change with the Planning Director, the applicant shall simultaneously notify the surrounding property owners within three hundred feet of the perimeter boundary of the property that such request has been filed with the Planning Director. A copy of such notice and a list of the names and addresses of the surrounding property owners shall be submitted to the Planning Director

within one week from the date of submission of the written request to the Planning Director.

8-5 Criteria for Determination.

The Director may administratively grant nonsignificant zoning changes which:

(a) Does not result in a substantial increase or decrease in any zoning designations;

(b) Does not affect more than five percent or one acre of any parcel of property, whichever is less;

(c) Does not result in a substantial change in the density of the zoned area; and

(d) Is in compliance with the General Plan and development plan designations of the property.

8-6 Planning Director's Determination.

(a) Within thirty days of receipt of the request, the Planning Director shall notify the applicant of the determination as to whether the request is a nonsignificant zoning change.

(b) Should a determination be made that the request is a nonsignificant zoning change, the Director shall then notify the applicant and the County Council of the decision.

(c) Should a determination be made that the request does not qualify as a nonsignificant zoning change, the Director shall then notify the applicant of the decision. The Director shall also inform the applicant that in order to pursue the matter further, a change of zone application in accordance with Chapter 25, Hawaii County Code 1983, as amended, and Rule 5 (Zoning Amendments) of the Planning Department's Rules of Practice and Procedure may be filed with the Planning Department."

(d) The Director's decision is appealable to the Board of Appeals.

SEVERABILITY

In the event any portion of these rules is declared invalid,such invalidity shall not affect other parts of these rules.

Cross-reference:

Section 25-2-45, Hawaii County Code (Zoning Code)

COUNTY OF HAWAI'I
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

Rule 9. PROVISIONS FOR ENFORCEMENT OF ZONING CODE AND SPECIAL MANAGEMENT AREA

9-1. Authority and Purpose.
Pursuant to authority conferred by Subsection 46-1.5, Hawai'i Revised Statutes, the purpose of this rule is to establish a procedure and provisions for the enforcement of Chapter 25 (Zoning Code), Hawai'i County Code, and the Special Management Area (SMA), as defined in Chapter 205A, Hawai'i Revised Statutes and the Planning Commission's Rule 9.

9-2. Complaint and Investigative Procedures.

(a) Complaints shall be recorded on a complaint form prepared by the Planning Department. The complaint form shall include, but not be limited to, the following information:

(1) Name and address of complainant. All information and records acquired by the Planning Department under this part shall be confidential. The information shall be available only to authorized persons in the Department and, such other persons or agencies as the Corporation Counsel shall authorize, under such restrictions as the Corporation Counsel shall prescribe, or by court order;

(2) Nature of complaint;

(3) Name and address of alleged violator;

(4) Tax Map Key of alleged violation;

(5) Date of complaint; and

(6) Any other information deemed necessary by the Planning Department.

(b) All complaints shall be given to the Inspector. Anonymous complaints will not be investigated by the Inspector and/or other Planning Department personnel assigned.

(c) The Inspector and/or other Planning Department personnel assigned shall conduct an initial investigation report which shall be recorded on a form prepared by the Planning Department.

(d) Should the investigation reveal that no violation exists on the property; the Director shall notify the complainant of the determination.

(e) If a violation has occurred, the Director shall issue a Notice of Violation and Order to the violator.

9-3. Issuance of Order.

(a) The Director shall have the Notice of Violation and Order served by personal service or by certified mail on the violator, and/or all affected parties, which may include the fee owner, leaseholder, sub-leaseholder or other assignee, tenant, contractor, mortgage holder, and other persons responsible for the violation or with an interest in the property. The Notice of Violation and Order shall include the following information:

(1) Date of notice;

(2) Name and address of the person(s) noticed;

(3) Section number(s) of the statute, ordinance, rule, permit, or other regulation which has been violated;

(4) Nature and description of the violation;

(5) Location of the property on which the violation occurred, including tax map key identification;

(6) Date and time of the documented violation;

(7) A description of the evidence observed to support the alleged violation;

(8) A cease and desist order;

(9) Fine assessed for the violation;

(10) Fine due date and method of payment;

(11) All remedies associated with the violation;

(12) Remedial action required within a maximum of sixty calendar days from the date of receipt of the Notice of Violation and Order to avoid daily fines; and

(13) Amount of the daily fines for non-compliance

(b) The Notice of Violation and Order shall state separately each violation, the fine assessed for each violation, the date and method of payment of the fine, and all potential remedies associated with each violation. The Notice of violation and

Order shall also state what corrective action is necessary, the date by which such action must be completed to avoid daily fines, and the amount of the daily fines for non-compliance.

(c) The violator shall be advised that the Notice of Violation and Order shall become final thirty days after the person's receipt, unless the Director's action is appealed to the Board of Appeals.

(d) Within thirty days after the person's receipt of the Notice of Violation and Order, any person adversely affected by the Notice of Violation and Order may appeal the Notice of Violation and order to the board of appeals as provided by Section 6-9.2 of the County Charter and Sections 25-2-20 thru 25, Division 2, Article 2 of Chapter 25, Hawai'i County Code, as amended. An appeal to the board of appeals shall not stay the provisions of the order pending the final decision of the Board of Appeals.

9-4. Time Period for Compliance.

(a) When specifying the corrective action to be taken, the director may allow the violator up to sixty calendar days in which to correct the violation.

(b) The deadline set for the correction of the violation may be modified in consideration of the following:

(1) The type and degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order.

(2) Potential threat to human health and safety.

(3) The complexity of the corrective action required.

(4) Any other circumstances beyond the control of the violator.

9-5. Zoning Code Penalties.

(a) Resolution of a violation includes correction of the violation and payment of civil fines not to exceed $500. In specifying the amount of the fine, the director shall consider the following:

(1) The nature and degree of the violation.

(2) Whether the violation involves a threat to public health and safety.

(3) Whether there are multiple violations.

(4) Whether it is a repeated violation.

(b) Daily fines not to exceed $500 per day shall be assessed for each day in which the violation remains uncorrected in accordance with the following schedule.

(1)	Initial violation:	$100 per day
(2)	First repeated violation:	$200 per day
(3)	Second repeated violation:	$300 per day
(4)	Third repeated violation:	$400 per day
(5)	Forth and subsequent repeated Violation:	$500 per day

(c) The fine assessed by the order is payable whether or not the correction of the violation is completed before or after the order becomes final.

(d) When a violation is not corrected by the deadline set by the order, the Director may assess additional fines to a maximum of $500 for each day that the violation remains uncorrected in accordance with the following schedule:

DAILEY FINES FOR VIOLATION	FIRST 3 MOS.	AFTER 3RD MO.	AFTER 6TH MO.	AFTER 9TH MO.
Initial violation	$100	$200	$300	$500
First recurrence	$200	$300	$400	$500
Second recurrence	$300	$400	$500	
Third recurrence	$400	$500		

Forth and subsequent recurrences will be assessed $500 per day of additional daily fines from the date that the violation was to cease as set forth in the order.

(e) Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 91, HRS.

9-6. **SMA Penalties.**

(a) Any person who violates any provision of Planning Commission Rule 9 shall be liable for a civil fine not to exceed $100,000.

(b) In addition to any other penalties, any person who violates any provision of Planning Commission Rule 9 shall be liable for a civil fine not to exceed $10,000 a day for each day the violation persists.

(c) Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 19, HRS.

9-7. Civil Action.

The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any Notice of Violation and Order issued. Where the civil action has been instituted to enforce the assessed fines imposed by said Order, the Director need only show that the Notice of Violation and Order were served, that an assessed fine was imposed, the amount of the assessed fine imposed and that the fine imposed has not been paid.

9-8. Property Liens.

(a) Annually, on September 1, the director shall file with the State of Hawaii, Bureau of Conveyances, liens on all properties which have been the subject of fines levied which remained unpaid for one year or more after final adjudication and the expiration of the time for any further appeal.

(b) Fines assessed shall constitute a lien upon the property upon the filing of said lien with the Bureau of Conveyances. This lien shall be considered, for purposed of priority, to be the equivalent of liens which arise pursuant to the provisions of Chapter 19 of the Hawai'i County Code.

9-9. Other Legal Remedies.

The Director may refer violations to the prosecutor's office for criminal prosecution or pursue any other legal means to correct violation.

SEVERABILITY

In the event any portion of these rules is declared invalid, such invalidity shall not affect other parts of these rules.

Cross-reference:

Article 2, Division 3, Violations, Penalties, Enforcement, Zoning Code
Planning Commission Rule 9

Dated: Hilo, Hawai'i, JAN 2 5 2015

APPROVED:

Planning Director

Notice of Public Hearing:
Hawai'i Tribune Herald: December 04, 2015
West Hawai'i Today: December 04, 2015

Date and Place of Public Hearing: January 5, 2016
Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i 96720

APPROVED:

MAYOR, County of Hawai'i

Date: FEB - 1 2016

APPROVED AS TO FORM:

Deputy Corporation Counsel

Date: JAN 2 7 2016

I hereby certify that the foregoing rules and regulations was received and filed in my office this 16th day of February, 2016.

COUNTY CLERK

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 10. GEOTHERMAL RELOCATION PROGRAM

10-1 Authority.

Pursuant to the authority conferred upon the Planning Department by Ordinance No. 96 2, the rules and regulations hereinafter contained are established to provide for the establishment of a geothermal relocation program and geothermal royalty fund.

10-2 Purpose.

The purpose of this rule is to authorize the Planning Department to establish a geothermal program for the relocation of owner-occupants residing near the Puna Geothermal Venture facility.

10-3 Criteria to Qualify for Geothermal Relocation Program.

The geothermal relocation program shall initially apply only to owner-occupants and the highest priority shall be given to those individuals who:

(a) Reside within a one (1) mile radius of the Puna Geothermal Venture facility;

(b) Purchased their dwelling unit before October 3, 1989 or received a building permit for the dwelling unit before that date and final inspection for the dwelling has been completed by the Department of Public Works, Building Division; and

(c) Express a desire to relocate.

In the event that funds are initially insufficient to purchase all of the dwellings and properties, those located closest to the PGV facility shall be purchased first.

10-4 Procedures for the Purchase of the Affected Dwellings and Properties.

(a) The Planning Director may solicit the assistance of a qualified real estate appraiser and/or real estate broker to assist in implementing the procedures for the relocation of the affected owner-occupants, including the negotiation for the purchase of the affected dwellings and properties.

(b) The real estate appraiser and/or real estate broker shall, on behalf of the Planning Director, do the following:

(1) Contact all affected owner-occupants by certified mail as to whether they would be interested in relocating and selling their respective dwellings and properties to the County.

(2) Upon receipt of the notice, the owner-occupants shall have sixty (60) days in which to respond in writing of their desire to be relocated.

(3) Within sixty (60) days of receipt of the owner-occupants' response, the real estate appraiser and/or real estate broker shall negotiate a purchase price with the affected owner-occupants. The purchase of the affected properties shall be at a rate of not more than one hundred thirty percent (130%) of the assessed value, as determined by the Real Property Tax Division of the Department of Finance.

(4) The real estate appraiser and/or real estate broker shall then present to the Planning Director the negotiated purchase price for approval.

(5) The real estate appraiser and/or real estate broker may work with the escrow company to effectuate the purchase of the properties, including a title search and the preparation of a property description as necessary.

10-5 Notification to Department of Finance.

Upon successful negotiation of a purchase price with the owner-occupant and upon receipt of a deed, the Planning Director shall notify the Finance Director that disbursement from the Geothermal Royalty Fund may be made to purchase the affected dwelling and property. The Planning Director shall pay the funds to the owner-occupant upon receipt of title to the property.

10-6 Creation of a Geothermal Royalty Fund.

The geothermal relocation program shall be funded with proceeds from the following sources:

(a) Geothermal royalties received from the State of Hawaii Department of Land and Natural Resources;

(b) Proceeds from the sale of properties purchased under this program; and

(c) Rental fees from any of the properties purchased under this program.

10-7 Expenditures from Geothermal Royalty Fund.

The proceeds from the fund shall be used for the necessary expenses in administering and carrying out the purposes of the geothermal relocation program. Expenditures relating to the geothermal relocation program include, but are not limited to:

(a) The costs of any necessary appraisals required under the geothermal relocation program;

(b) The payment of necessary fees and expenses;

(c) The costs for the purchase of an affected dwelling and property; and

(d) The costs necessary to dispose of or rent an affected dwelling and property.

10-8 Severability.

If any portion of this rule, or its application to any person or circumstance, shall be held unconstitutional or invalid, the remainder of this rule and the application of such portion to other persons or circumstances shall not be affected thereby.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 11. SHORELINE SETBACK

11-1 Authority.

Pursuant to the authority conferred upon the Planning Department by §205A-43, Hawaii Revised Statutes, the rules hereinafter contained are established and shall apply to lands within the shoreline setback area.

11-2 Purpose.

The growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline and within the nearby shoreline areas. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks. The purpose of this rule is to establish authority, criteria and procedures for the establishment and enforcement of the shoreline setback line and shoreline setback area and for the review of all activities or structures proposed within the shoreline setback area in accordance with the requirements of this rule and Chapter 205A-43 thru 44, Hawaii Revised Statutes.

11-3 Definitions.

(a) "Activity" means any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits.

(b) "Average lot depth" means the measurement obtained by adding the length of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the result sum by three. In order to obtain a more accurate average lot depth, additional lengths may be utilized in the calculation. (SEE EXAMPLE A)

(c) "Buildable area" means the area of a lot excluding the shoreline setback, required yards, and flag stems (poles).

(d) "Lot" means a parcel, tract, or area of land established by subdivision or as otherwise lawfully established prior to the adoption of the Subdivision Control Code

and accepted by the Planning Department.

(e) "Minor structure" shall not alter the existing grade of the shoreline setback area and shall be limited to landscape features (i.e., benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, etc.); walkways for access; and sprinkler systems.

(f) "Minor activity" means an activity that does not alter the existing grade of the shoreline setback area and may include activities such as landscaping and minor clearing (grubbing) of vegetation.

(g) "Planning Commission" means the planning commission of the County of Hawaii.

(h)" Planning Department" means that agency of the County of Hawaii consisting of the planning director and the necessary staff.

(i) "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 vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.

(j) "Shoreline setback area" shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.

(k) "Shoreline setback line" means that line established by the Planning Department running inland from and parallel to the certified shoreline at a horizontal plane.

(l) "Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

(m) "Vegetation" means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.

11-4 Shoreline Certification, Exceptions and Waivers.

(a) The shoreline is certified by the chairperson of the Board of Land and Natural Resources pursuant to its adopted rules. No determination of a shoreline shall be valid for a period longer than twelve months, except where the shoreline is fixed by man-made structures, which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and structure; in which case the certified shoreline survey shall be valid so long as the man-made structure remains intact and unaltered.

(b) For the purpose of establishing the shoreline setback line, the Planning Department may, in consultation with the Department of Land and Natural Resources, require the certified shoreline survey to extend a minimum 40 feet laterally beyond the affected property's shoreline frontage in cases where the inland reaches of an adjacent property's shoreline frontage affects the determination of the shoreline setback area.

(c) The Planning Department may waive the certification requirement in cases where there may be special or unusual physical circumstances or conditions of the land or where a structure or activity is proposed at a considerable distance inland. Setback lines shall be conservatively, but reasonably established. The Planning Department may require a survey map of the subject area depicting physical and geographical conditions to assist in making a determination.

11-5 Establishment of Shoreline Setback Lines.

(a) Except as otherwise provided in this section, all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet (SEE EXAMPLE B).

(b) Exceptions:

(1) A lot which was created (final subdivision approval or a legal lot of record as determined by the Planning Department) prior to the date of adoption of this rule shall have a minimum shoreline setback line of twenty feet when one of the following exists:

(a) When the average lot depth of a parcel is one hundred feet or less (SEE EXAMPLE C); or

(b) When the buildable area of the parcel is reduced to less than fifty percent of the parcelafter applying the forty-foot shoreline setback line and all state and county requirements of the parcel (SEE EXAMPLE D).

11-6 Structures and Activities Prohibited within the Shoreline Setback Area.

(a) The mining or taking of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits from the shoreline setback area, in excess of one gallon per person per day; and

(b) All structures and activities which do not qualify under section 11-7(a) through (c).

11-7 Structures or Activities Permitted within the Shoreline Setback Area.

(a) The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department:

(1) The mining or taking of sand, dead coral or coral rubble, rocks, soil or

other beach or marine deposits from the shoreline setback area, not in excess of one gallon per person per day, for reasonable, personal, noncommercial use;

(2) The clearing of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under section 46-11.5, Hawaii Revised Statutes, provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;

(3) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing for purposes under section 46-12, Hawaii Revised Statutes; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;

(4) A minor structure or activity approved in accordance with section 11-8;

(5) A structure or activity permitted through the issuance of a shoreline setback variance from the Planning Commission;

(6) Structures which were completed by or activities which commenced prior to June 22, 1970;

(7) The structure or activity received a building permit, Board of Land and Natural Resources' approval, Special Management Area Use Permit/ approval and/or a shoreline setback variance prior to June 16, 1989;

(8) Structures and activities necessary for or ancillary to continuation of existing agriculture or aquaculture activity in the shoreline setback area prior to June 16, 1989;

(9) Work being done consists of maintenance, repair, reconstruction, and minor additions to or alterations of legal, publicly-owned boating, maritime, or water sports recreational facilities, which result in little or no interference with natural shoreline processes;

(10) The structure or activity was determined by the Planning Department to be outside the shoreline setback area when it received legal approval(s) (i.e., a building permit, Special Management Area Use Permit or board of land and natural resources approval).

(b) Structures or activities that qualify under section 11-7(a)(6) through (10) may be repaired in conformance with plans approved by the Planning Department, but shall not be enlarged without a shoreline setback variance.

(c) Structures or activities that qualify under section 11-7(a)(6) through (10) may be

routinely maintained.

11-8 Determination of Minor Structure and Minor Activity.

A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.

(a) A request for a minor structure or activity determination shall be submitted to the Planning Department and shall be accompanied by applicable information to assist in the determination, which could include but not be limited to a certified shoreline survey, construction plans, a list of proposed plants and their growth at maturation, existing and finished contours, photographs of the shoreline setback area, an environmental assessment, written reasons addressing the criteria set forth in section 11-8 and other information required by the Planning Department.

(b) Minor structures and activities shall be completed within one year from the date of the Planning Department's minor structure or activity determination or from the approval date of the last discretionary permit, whichever is last.

11-9 Shoreline Setback Variance Application.

An application for a shoreline setback variance shall be filed with the Planning Commission in accordance with its rule of practice and procedure. The Planning Department shall review the variance application and plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this rule. The Planning Department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities.

11-10 Compliance with Environmental Impact Statement Regulations. (Chapter 343, HRS)

An environmental assessement, prepared in accordance with the requirements of Chapter 343, Hawaii Revised Statutes (HRS) and Title 11, Chapter 200, Hawaii Administrative Rules (HAR), shall accompany the filing of a shoreline setback variance application with the Planning Commission. The Planning Department shall be the approving agency of all environmental assessments prepared in accordance with this rule. A shoreline setback variance application shall not be considered complete until such time the Planning Department has complied with the requirements of Chapter 343, HRS and Title 11, Chapter 200, HAR.

11-11 Waiver of Public Hearing and Action.

(a) The Planning Department may waive a public hearing and take action on a variance application for:

(1) Stabilization of shoreline erosion by moving sand entirely on public lands;

(2) Protection of a structure determined by the Planning Department to be legally constructed, which costs more than $20,000; provided the structure is at risk of immediate danger from shoreline erosion as determined by the Planning Department, in consultation with appropriate agencies (i.e. U.S. Army Corps of Engineers, Department of Public Works); or

(3) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which result in little or no interference with natural shoreline processes.

(b) An applicant who seeks processing under Section 11-11 shall make the request in writing upon submittal of the variance application.

(c) The Planning Department may deny the public hearing waiver in which case the variance application shall be heard and noticed by the Planning Commission in accordance with its rule of practice and procedure.

11-12 Enforcement.

(a) The Planning Department shall enforce this rule.

(b) Any structure or activity prohibited within the shoreline setback area that has not received appropriate approvals or a shoreline setback variance or that has not complied with conditions of said variance shall be removed or corrected.

(c) Where the shoreline is affected by a manmade structure that has not been authorized with government agency permits required by law and if any part of the structure is on private property, then for purposes of enforcement of this rule, the structure shall be construed to be entirely within the shoreline setback area.

11-13 General Enforcement Procedures.

(a) Issuance of Notice of Violation and Order.

The landowner and/or the alleged violator shall be notified by the Planning Department by certified or registered mail or by personal service of any alleged violation of this rule, any permit issued pursuant thereto, or any condition of a shoreline setback variance. The Notice of Violation and Order shall include, but not be limited to, the specific section of the rule which has been violated; the nature of the violation; and the remedy(ies) available. The Notice of Violation and Order may also require that the violative activity cease and desist; that a civil fine be paid not to exceed $10,000 per violation; and that a civil fine be paid not to exceed $1,000 per day for each day in which the violation persists.

The Notice of Violation and Order shall advise the person that the Order shall become final thirty days after the date of its receipt, unless written request for a negotiated settlement or a hearing before the Board of Appeals is mailed or deliv-

ered to the department within said thirty days.

(b) Negotiated Settlement

If the violator seeks a negotiated settlement with the Planning Department, but waives the right to a hearing, the Planning Department, in consultation with the Office of the Corporation Counsel, shall be authorized to enter into a settlement agreement with the landowner or, if appropriate, the violator, which will cure the violation, set the fine, and allow for inspection by the Planning Department.

(c) Right to Hearing

A request for hearing shall be considered timely if a written request is delivered or mailed and postmark dated to the Planning Department within said thirty days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the Board of Appeals in accordance with the provisions of Chapter 91, Hawaii Revised Statutes and its rules of practice and procedure.

(d) Judicial Enforcement of Order

The Planning Department, in consultation with the Office of the Corporation Counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.

Nothing in this section shall prohibit the Planning Department, through the Office of the Corporation Counsel, from filing an order or motion directly with the Court in the event that public health and safety may be at risk.

11-14 Penalties.

(a) Any person who violates any provision of this rule shall be liable for an initial civil fine not to exceed $10,000 per violation and a maximum daily fine of $1,000 until the violation is corrected. A civil fine may be imposed by the department after an opportunity for a hearing under Chapter 91, Hawaii Revised Statutes, unless said hearing is otherwise waived.

(b) In specifying the amount of the civil and daily fines, the Planning Department shall consider the following:

(1) The nature and degree of the violation;

(2) Whether there are multiple violations; and

(3) Whether it is a repeated violation.

(c) A shoreline setback variance application filed with the Planning Commission subsequent to an applicant's having completed the structure or activity, or having been

cited for the activity or construction without having obtained said variance, shall not stay any order to pay civil fines.

11-15 Appeals.

An administrative decision of the Planning Department shall be appealable to the Board of Appeals in accordance with its rules of practice and procedure.

11-16 Severability.

If any portion of this rule, or its application to any person or circumstance, shall be held unconstitutional or invalid, the remainder of this rule and the application of such portion to other persons or circumstance shall not be affected thereby.

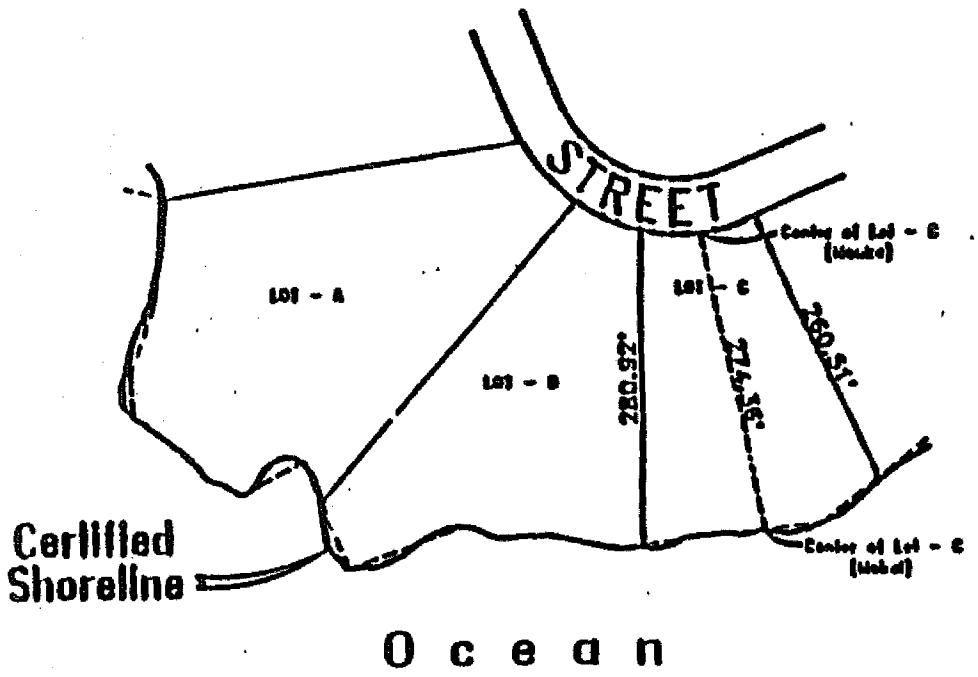
Cross-reference:

Rule 8. SHORELINE SETBACK, Planning Commission Rules of Practice & Procedure

RULE 11-3 Definitions

(b) Average Lot Depth

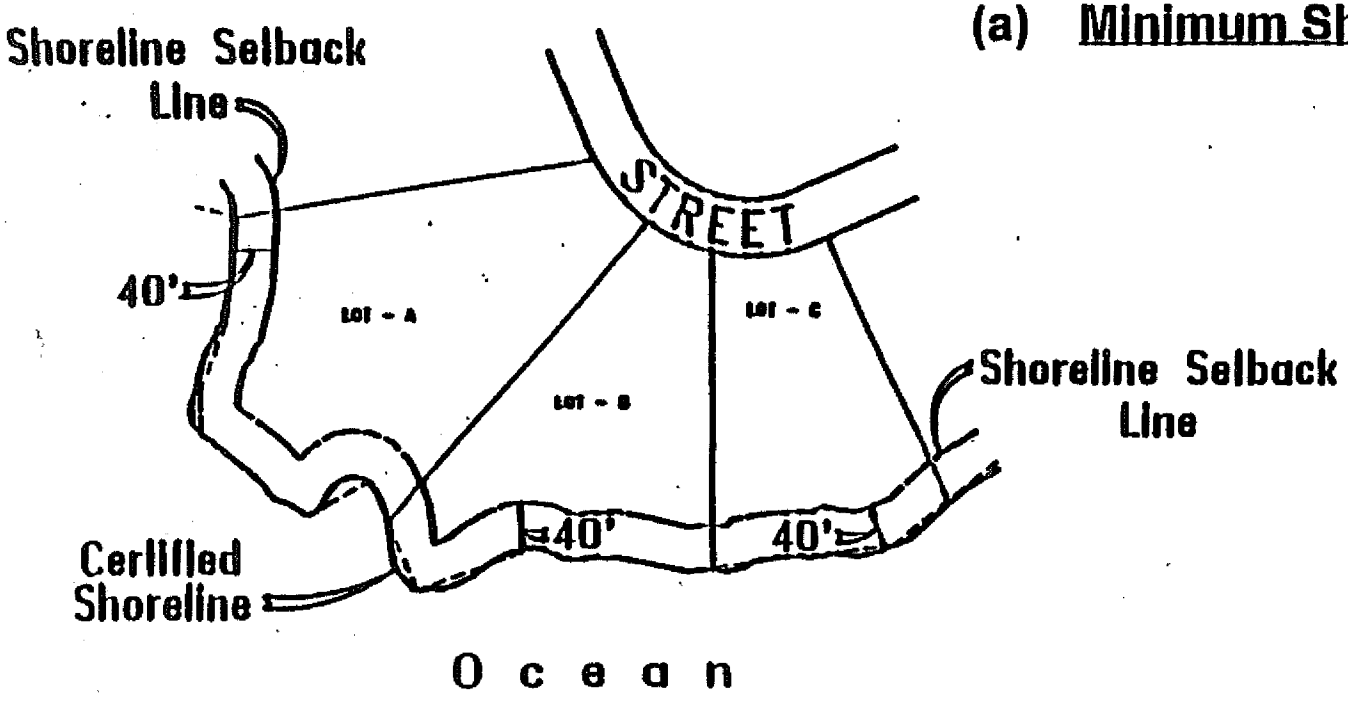
280.92 - Lot Line
\+ 260.51 - Lot Line
\+ 274.36 - Centerline
= 815.79 ÷ 3 = 271.93
(Average lot depth)



Example "A"

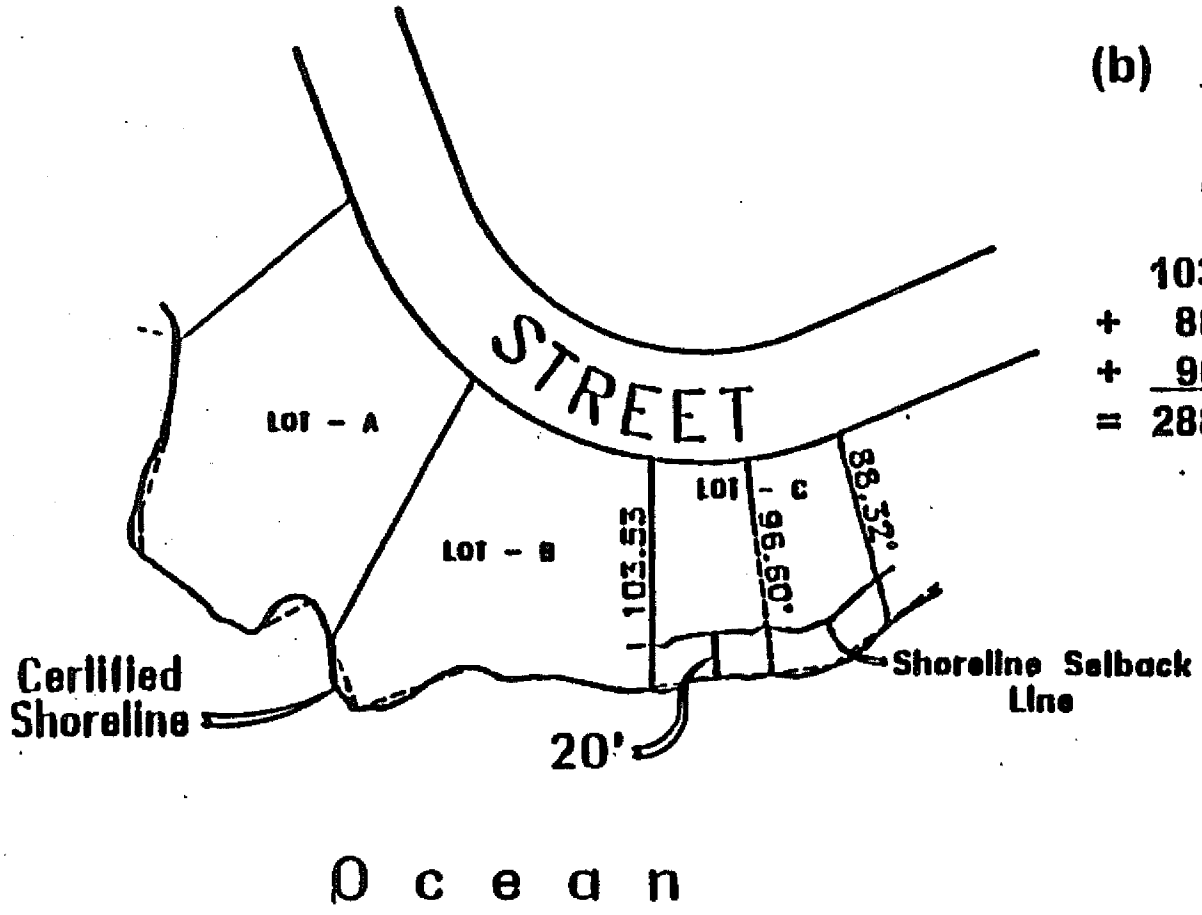
RULE 11-5 Establishment of Shoreline Setback Lines

(a) Minimum Shoreline Setback Line



Example "B"

RULE 11-5 Establishment of Shoreline Setback Lines



(b) Exceptions: (1 - a)

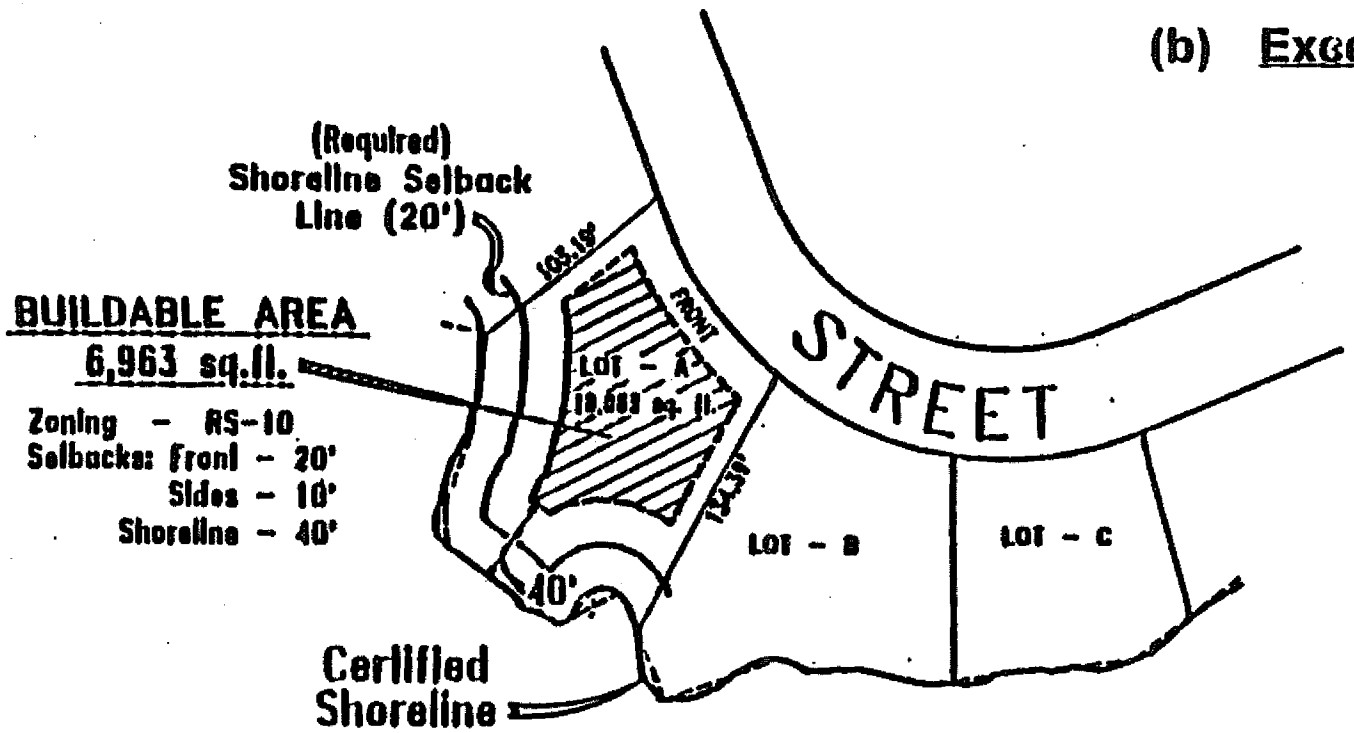
Average Lot Depth

103.53 - Lot Line
\+ 88.32 - Lot Line
\+ 96.60 - Centerline
= 288.45 + 3 = 96.15
(Average lot depth)

Example "C"

RULE 11-5 Establishment of Shoreline Setback Lines

(b) Exceptions: (1 - b)



Example "D"

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 12. OHANA DWELLING UNITS

12-1 Authority.

Pursuant to the authority conferred upon the Planning Department by Ordinance No. 96 47, the rules hereinafter contained are established to regulate ohana dwelling units.

12-2 Purpose.

The purpose of this rule is to establish procedures for the processing of an ohana dwelling unit permit.

12-3 Definitions.

As used in this rule, except as otherwise recognized by context:

(a) "Applicant" means a person having an ownership interest in a lot.

(b) "Legal lot of record" means a lot created in accordance with Chapter 23 (Subdivision Code), Hawaii County Code, as amended, and all previous codes and ordinances relating to the creation of subdivisions within the County of Hawaii. A legal lot of record also includes a pre-existing lot created prior to the adoption of any codes and ordinances relating to subdivisions.

(c) "Ohana dwelling unit" means a second dwelling unit permitted to be built as a separate or an attached unit on a lot situated within the County zoned Single Family Residential (RS), Unplanned (U), Residential and Agricultural (RA), and Agricultural (A) districts.

(d) "Titleholder" means a person, corporation, association, partnership, trust or other entity having ownership or title interest to a lot.

12-4 General Provisions.

An ohana dwelling unit may be permitted in the County zoned Single Family Residential (RS) district, Unplanned (U) district, Residential and Agricultural (RA) district, and Agricultural (A) district; provided that:

(a) The lot on which the ohana dwelling unit is to be constructed is a legal lot of record.

(b) An ohana dwelling unit constructed on a lot which is classified Agricultural by the State Land Use Commission shall be subject to agricultural requirements for farm

dwellings as defined in Section 205-4.5, Hawaii Revised Statutes.

(c) All applicable county requirements, not inconsistent with the provisions of Chapter 25 (Zoning Code), Hawaii County Code, as amended, are met. These include, but are not limited to requirements relating to, building height, yards (set-backs), and parking.

(d) The following public facilities are adequate to serve the ohana dwelling unit:

(1) Sewage disposal system. A lot on which an ohana dwelling unit is proposed shall be served by a public or private sewage disposal system meeting with the requirements of the County Department of Public Works or the State Department of Health, respectively.

(2) Potable water supply. A lot on which an ohana dwelling unit is proposed shall be served by an approved public or private water system meeting with the requirements of the County Department of Water Supply. An ohana dwelling unit that is not served by an approved water system may be permitted to use a water catchment system in an area which receives an annual rainfall of at least eighty inches (The University of Hawaii Water Resources Research Center construction guideline of eighty inches of annual rainfall for catchment systems is being used for this purpose). In the event that an annual rainfall requirement is adopted in a future amendment to the Hawaii County Code, then the annual rainfall as reflected in the code amendment shall be used for this purpose. The requirements of the State Department of Health and the Department of Water Supply must also be met.

(3) Fire protection. A lot on which an ohana dwelling unit would be permitted shall be served by adequate fire protection measures meeting with the requirements of the Fire Department.

(4) Streets. A lot on which an ohana dwelling unit would be permitted shall gain access to a public or private street meeting with the requirements of the Department of Public Works.

12-5 Eligibility.

(a) No application for an ohana dwelling unit permit shall be accepted by the Planning Director prior to the completion of all improvements required for final subdivision approval for any lot established by a subdivision under the provisions of Chapter 23 of the Hawaii County Code, as amended. For purposes of this section, "completion" shall mean actual construction of the subdivision improvements has been completed to the satisfaction of the Chief Engineer of the Department of Public Works.

(b) No more than one ohana dwelling unit permit application may be active for any

one applicant at any time. Any applicant who has previously obtained a permit for an ohana dwelling unit in the County of Hawaii shall not be eligible to apply for a subsequent permit for another ohana dwelling unit on a different lot until two years has elapsed from the date on which the prior permitted ohana dwelling unit was completed to the satisfaction of the Chief Engineer. For purposes of this section, each titleholder and person named in the application shall be construed as an applicant or permittee. The Planning Director shall maintain and keep readily available for public reference a current list of applicants and permittee for ohana dwelling units, including the dates of application and approval or denial.

12-6 Non-applicability.

The provisions of this rule shall not apply to:

(a) A lot within the State Land Use Conservation district.

(b) A lot developed under an affordable housing project approved by the State Housing Finance and Development Corporation (HFDC) and/or the County Housing Agency which has been granted per-emption from the requirements of the Hawaii County Code.

(c) A lot developed as a Planned Unit Development (P.U.D.) or a Cluster Plan Development (C.P.D.).

(d) A lot where more than one dwelling unit is permitted in the zoned district or is permissible in the Single Family Residential (RS) district. No ohana dwelling unit shall be permitted on the same lot with a two-family or multi-family dwelling, a family care home, a public or private care facility, or a single family dwelling with transient accommodations.

(e) A lot and improvements thereon which received any variance from the provisions of Chapter 23 and Chapter 25, Hawaii County Code, as amended.

(f) A lot on which the construction of an ohana dwelling unit or a second dwelling unit is specifically prohibited by a change of zone ordinance.

12-7 Designation of the Ohana Dwelling Unit.

(a) Regardless of the size of a lot, no more than one ohana dwelling unit shall be permitted on the same lot with the first single family dwelling unit.

(b) The Planning Director may designate an existing single family dwelling unit as the ohana dwelling unit in order to allow the permitting of a new single family dwelling unit when such existing single family dwelling unit is the only dwelling unit on the lot.

12-8 Requirements for Height, Building Site Area (Lot size), Yard (Setback) and Off-. Street Parking

(a) Maximum height limitation. A detached ohana dwelling unit shall not exceed a maximum height limit of twenty-five feet regardless of the maximum height limitation of the zoned district.

(b) Minimum building site area (lot size). A lot on which an ohana dwelling unit is proposed shall have a minimum building site area (lot size) of 10,000 square feet.

(c) Minimum yard (setback). The minimum front, rear and side yard requirements for a detached ohana dwelling unit shall be as stipulated in the appropriate zoned district plus an additional five feet from all property lines.

(d) Off-street parking. An ohana dwelling unit shall be provided with a minimum of two off-street parking spaces which comply with the requirements of Section 25-73(a), Chapter 25, Hawaii County Code, as amended.

12-9 Other Requirements.

(a) The ohana dwelling unit and single family unit may be constructed as a duplex.

(b) If a lot contains an existing guest house, an ohana dwelling unit shall not be permitted. However, an existing guest house may be converted into an ohana dwelling unit in accordance with the requirements of Chapter 25, Hawaii County Code, as amended, and this rule.

12-10 Variances.

(a) No variance from the requirements of Chapter 23 and Chapter 25, Hawaii County Code, as amended, shall be granted to permit the construction or placement of an ohana dwelling unit.

(b) An ohana dwelling unit shall not be permitted on a lot which has been the subject of a previously granted variance from any provision of Chapter 23 and Chapter 25, Hawaii County Code, as amended.

12-11 Petition and Content.

An application for an ohana dwelling unit permit shall be filed with the Planning Director and shall include:

(a) A non-refundable filing fee of twenty-five dollars;

(b) Original and five copies of:

(1) Application form;

(2) Plot plan, drawn to scale, showing:

(i) All property boundaries;

(ii) Proposed ohana dwelling unit, including yard (setback) requirements from property lines;

(iii) Existing and proposed structures, including detached garages and water catchment system;

(iv) Two additional parking spaces for the proposed ohana dwelling unit;

(v) Existing and proposed driveway; and

(vi) Location of private sewage disposal system.

(3) Elevations of the ohana dwelling unit, drawn to scale.

(c) A notarized affidavit stating that the applicant is a titleholder of the affected property.

(d) A notarized affidavit stating that provisions of any restriction, covenant or other land use restrictions applicable to the lot by way of a deed or lease or other provision do not prohibit the construction or placement of an ohana dwelling unit or a second dwelling unit.

(e) A copy of the notice of the application sent to all parties listed in the application who did not execute the application as a titleholder, owners of properties within three hundred feet of the perimeter boundary of the lot, and any known association of such property owners, informing them that an application for an ohana dwelling unit permit has been made. Proof of service or of good faith efforts to serve notice of the application shall also be submitted. Such proof may consist of certified mail receipts, affidavits, or the like. The list of names, addresses, and tax map key of those individuals notified shall also be submitted.

12-12 Incomplete Application.

The Planning Director shall neither accept nor process an application which is incomplete as to form and content. An incomplete application shall be returned to the applicant with a written explanation of its deficiencies. A written determination as to whether or not the application is complete or incomplete shall be made within fifteen days upon receipt of the application.

12-13 Agencies Review.

Upon acceptance of a completed application, the Planning Director shall forward it to the following agencies for review and comment on the adequacy of the infrastructure to accommodate the ohana dwelling unit:

(a) Department of Public Works (sewage disposal system and streets);

(b) Department of Water Supply (water);

(c) Fire Department (fire protection); and

(d) State Department of Health (sewage disposal system and water).

12-14 Decision.

The Planning Director shall render a decision (approve or deny) on the application for an ohana dwelling unit permit after thirty days but not more than sixty days after receipt of a completed application. If a decision is not rendered within the sixty day period, the application shall be deemed approved. The Planning Director may attach appropriate performance conditions on an approved ohana dwelling unit permit.

12-15 Appeal of Decision.

The approval or disapproval of the ohana dwelling unit by the Planning Director may be appealed to the Board of Appeals in accordance with its rules.

12-16 Building Permit.

(a) A building permit for the construction of an ohana dwelling unit shall be secured within one year from the date of issuance of the ohana dwelling unit permit. A one time 30-day time extension to obtain the building permit may be granted by the Planning Director. A written time extension request shall be filed with the Planning Director not less than forty-five days prior to the expiration date of the ohana dwelling unit permit. The Planning Director shall render a decision on the time extension request prior to the expiration date of the permit.

(b) The applicant shall not be able to obtain further extensions beyond the initial 30-day time extension. Further, such failure to conform to the time requirement shall not be cause to petition the Planning Director, Board of Appeals or any other governmental body for relief from the time requirement.

12-17 Non-transferability.

A permit for the ohana dwelling unit shall be personal to the applicant until construction of the ohana dwelling unit has been completed. The permit shall not be transferable or assignable to any other person prior to its completion.

12-18 Prohibition of Advertising, Sales, Transfers.

No person shall advertise or represent to the public that a permit to construct an ohana dwelling unit is transferable with the sale of the property on which the permit has been granted.

12-19 Revocations.

(a) The Planning Director may initiate proceedings to revoke the permit for an ohana dwelling unit in the event that:

(1) The applicant intentionally misrepresents a material fact in the application or its attachments.

(2) The applicant transfers or attempts to transfer an ohana dwelling unit permit issued by the Planning Director prior to completion of the construction of the ohana dwelling unit.

(3) The applicant does not secure a building permit for the construction of an ohana dwelling unit by the one year time period or 30-day time extension, if granted.

(4) The building permit is canceled by the Department of Public Works, Building Division.

(b) A written notice of revocation shall be made to the applicant by registered or certified mail with return written receipt.

(c) In the event that an ohana dwelling unit is constructed contrary to the provisions of this rule and Ordinance No. 96 47, with or without a permit therefor having been issued, it shall be considered unlawful and a public nuisance and action or proceedings for abatement, removal and enjoinment of the unlawful ohana dwelling unit shall immediately commence.

12-20 12-20 Pending Applications.

(a) Any permit issued for an ohana dwelling unit prior to May 2, 1996 but for which no building permit has been obtained shall be void one year from that date or on the expiration date of the dwelling approval, whichever occurs first.

(b) All pending applications for ohana dwelling unit permits filed prior to May 2, 1996 shall be processed in accordance with Chapter 25, Hawaii County Code, and the procedures set forth in this rule, with the exception of the filing fee. The Planning Director may require the applicant to submit additional information to comply with Chapter 25 and this rule.

Cross-reference:

Article 6, Division 3, Ohana Dwellings., Zoning Code

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 13. FARM DWELLINGS

13-1 Authority.
Pursuant to the authority conferred upon the Planning Director by Ordinance No. 96 160, the rules hereinafter contained are established to regulate farm dwellings.

13-2 Purpose.
The purpose of this rule is to establish procedures for the processing of farm dwellings.

13-3 Definitions.
As used in this rule, except as otherwise recognized by context:

(a) 'Farm' means land used for the purpose of agricultural, livestock, poultry, or aquatic production.

(b) 'Farm dwelling' means a single family dwelling located on or used in connection with a farm, or if the agricultural activity provides income to the family occupying the dwelling.

13-4 General Provisions.

(a) A farm dwelling may be permitted in the County zoned Family Agricultural (FA), Agricultural (A), and Intensive Agricultural (IA) districts. Prior to approving the building permit for a first farm dwelling within the State Land Use Agricultural district, the Planning Director shall provide a Farm Dwelling Notice to the land-owner. The Farm Dwelling Notice shall include:

(1) A statement that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A farm dwelling as defined in Section 205-4.5, Chapter 205, HRS, means a single family dwelling located on and used in connection with a farm, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.

(2) Information regarding the penalty for violation of Section 205-4.5, HRS.

(b) A farm dwelling notice is not required for property within the State Land Use Urban or Rural district.

(c) Additional farm dwellings may be permitted in the County zoned FA, A and IA districts provided that a farm dwelling agreement, on a form prepared by the Planning Director, is executed between the owner or the lessee of the affected building site and the County. The lessee shall have a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.

13-5 Petition for a Farm Dwelling Agreement.

The following shall be provided by the landowner or lessee in applying for a farm dwelling agreement:

(a) A notarized affidavit that the additional dwelling(s) shall be used for farm-related purposes.

(b) Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.

(c) Written authorization of the landowner if the request is filed by the lessee.

(d) The landowner or lessee shall submit an agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County. Such plan shall also show how the farm dwelling(s) will be utilized for farm-related purposes. To verify the applicant's engagement in any agricultural productivity or farming operation, the following evidences may be submitted:

(1) State of Hawaii Department of Taxation's Gross Income License.

(2) Approved agricultural dedication from the County of Hawaii Department of Finance, Real Property Tax Division.

(3) Receipts of income received from sale of agricultural products.

13-6 Agencies Review.

The Planning Director may forward the agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County to cooperating agencies (i.e., County of Hawaii Department of Research and Development, Department of Finance's Real Property Tax Division, University of Hawaii College of Tropical Agriculture & Human Resources' Cooperative Extension Service, State Department of Agriculture, Department of Water Supply, and U.S.D.A, Natural Resources Conservation Service) for review and comment. Should the agencies not provide any response, the Planning Director may still proceed with making a decision.

13-7 Decision on Farm Dwelling Agreement.

The Planning Director shall render a decision (approve or deny) on the farm dwelling

agreement petition within sixty days of receipt of the request, unless a longer period of time is agreed upon by the applicant. If the decision is not rendered within the specified period, the petition shall be deemed denied.

13-8 Contents of Farm Dwelling Agreement.

At a minimum, the farm dwelling agreement issued by the Planning Director shall include the following:

(a) Name and address of the landowner or lessee. The landowner's authorization is required if the farm dwelling agreement is filed by a lessee.

(b) Tax Map Key identification.

(c) State Land Use district classification and County zoning district.

(d) Conditions requiring that:

(1) The farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.

(2) The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the farm dwelling.

(3) The landowner or lessee shall record the approved Farm Dwelling Agreement with the State of Hawaii, Bureau of Conveyances and/or with the Land Court System within thirty days from the date of receipt of approval of the Farm Dwelling Agreement. A copy of the recorded Farm Dwelling Agreement shall be submitted to the Planning Director prior to approval of the building permit.

13-9 Appeal of Decision.

The approval or disapproval of the farm dwelling agreement by the Planning Director may be appealed to the Board of Appeals in accordance with its rules.

Cross-reference:

Section 25-5-77. Other regulations., Zoning Code

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 14. COUNTY ENVIRONMENTAL REPORTS

14-1 Authority.

Pursuant to the authority conferred upon the Planning Director by Ordinance No. 96 160, the rules hereinafter contained relate to County Environmental Reports.

14-2 Purpose.

The purpose of this rule is to establish procedures for filing County Environmental Reports, including the content and requirements for preparing a County Environmental Report.

14-3 Definitions.

As used in this rule, except as otherwise recognized by context:

(a) "County Environmental Report" means an informational document filed with applications for a Change of Zone, Project District (PD) Development, or an Agricultural Project District (APD) Development on a form prescribed by the Planning Director in accordance with rules adopted pursuant toChapter 91, Hawaii Revised Statutes.

(b) "Environmental Assessment" means a written evaluation prepared in compliance with Chapter 343, Hawaii Revised Statutes, to ensure that environmental concerns are given appropriate consideration and to determine whether an action may have a significant environmental effect.

(c) "Environmental Impact Statement" means an informational document prepared in compliance with Chapter 343, Hawaii Revised Statutes, 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 the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

14-4 General Provisions.

(a) Except as otherwise provided herein, a County Environmental Report and required number of copies shall be submitted with the applications for a Change of Zone, Project District (PD), or an Agricultural Project District (APD). A County Environmental Report shall not be required where either an Environmental Impact Statement or an Environmental Assessment and finding of no significant impact have been prepared and issued in compliance with Chapter 343, Hawaii Revised Statutes, as amended.

(b) The term "County Environmental Report" does not include an Environmental Impact Statement prepared in compliance with Chapter 343, Hawaii Revised Statutes.

14-5 County Environmental Report - Content and Requirements.

A County Environmental Report is required pursuant to Sections 25-2-42(a)(5), 25-6-44(a)(8), and 25-6-54(a)(8), Chapter 25, Hawaii County Code, as amended. A County Environmental Report shall contain the following on a form prepared by the Planning Director:

(a) Description of the physical, social, historical, economic, and natural resource consequences of the proposed action;

(b) Alternatives to the proposed action;

(c) Environmental effects which cannot be avoided should the proposal be implemented;

(d) Relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;

(e) Any irreversible and irretrievable commitments of natural resources which would be involved in the proposed action; and

(f) An analysis of the proposed action.

14-6 Public Notification of County Environmental Reports.

(a) The Planning Department shall inform the public that a County Environmental Report has been filed through the publication of notices in at least two newspapers of general circulation in the county. The notice may be combined with the semi-monthly publications of all applications received pursuant to the Chapter 25 (Zoning Code), Hawaii County Code, as amended. A copy of the notice shall be made available to any person upon request.

(b) The Planning Department shall also maintain a mailing list for any individual desiring notification of any CER filed.

14-7 Public Review of County Environmental Reports.

(a) Copies of the County Environmental Report shall be available for public review and inspection at the Planning Department with the applications for a Change of Zone, Project District (PD), or an Agricultural Project District (APD).

(b) Public comments on the County Environmental Report may be submitted either to the Planning Director during the application review period or to the Planning

Commission prior to or during its public hearing on the application.

(c) The public comments on the County Environmental Report shall be made a part of the record of the applications for a Change of Zone, Project District (PD), or Agricultural Project District (APD) and shall be forwarded to the Planning Commission and the County Council.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 15. PROJECT DISTRICTS

15-1 Authority.

This rule governs Project District (PD) before the Director as required by Chapter 25 (Zoning Code), Hawaii County Code.

15-2 Purpose.

The Project District development is intended to provide for a flexible and creative planning approach rather than specific land use designations for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives. The planning approach would establish a continuity in land uses and designs while providing for a comprehensive network of infrastructure facilities and systems. A variety of uses as well as open space, parks, and other project uses are intended to be in accord with each individual Project District objective. A Project District is an amendment to chapter 25, Hawaii County Code, which changes the district boundaries in accordance with the individual Project District.

15-3 Minimum Land Area Required.

The minimum land area required for a Project District shall be fifty acres.

15-4 Permitted Uses.

Any uses permitted either directly or conditionally in the following County zoning districts shall be permitted in a Project District; provided, that each of the proposed uses and the overall densities for residential and hotel uses shall be contained in a master plan for the Project District and in the Project District enabling ordinance:

(a) Single Family Residential (RS)
(b) Double Family Residential (RD)
(c) Multiple Family Residential (RM)
(d) Residential-Commercial Mixed Use (RCX)
(e) Neighborhood Commercial (CN)
(f) General Commercial (CG)
(g) Village Commercial (CV)
(h) Resort-Hotel (V)

15-5 Application and Requirements.

(a) An application for a Project District may be filed with the Director by a property owner or any other person with the property owner's consent and shall include:

(1) A non-refundable filing fee of $5,000.

(2) Original and twenty copies of:

(A) Description of the property in sufficient detail to determine its location.

(B) Master conceptual plan of the property, showing the Project District boundaries and the land uses and acreage of land involved.

(C) Description of the proposed Project District, including land uses, densities, infrastructure requirements, and development standards.

(D) Description of each of the open space areas proposed for the Project District for cultueral and/orenvironmental purposes, including those open space areas preserved because of natural hazards.

(E) County Environmental Report. A County Environmental Report shall not be required for any amendment where either an environmental impact statement or an environmental assessment and negative declaration have been prepared and issued in compliance with Chapter 343, HRS. The environmental impact statement or environmental assessment in compliance with Chapter 343, HRS, shall be submitted with the application.

(F) Any other plans or information required by rules adopted by the Director in accordance with Chapter 91, HRS.

(3) A full-size copy (minimum 2' x 3') of the master conceptual plan noted under section 15-5(a)(2)(B) above, drawn to scale, for presentation purposes.

(4) Legal description of the property in map and written form by metes and bounds as certified by a surveyor.

(5) List of names, addresses and tax map keys for those property owners and lessees of record of surrounding properties:

(A) Within three hundred feet of any point along the perimeter boundary of the building site affected by the application if the building site is located within State Land Use Urban or Rural district, or;

(B) Within five hundred feet of any point along the perimeter boundary of the building site affected by the application if the building site is located within the State Land Use Agricultural district, except that if the surrounding lots are located within either theState Land Use Urban or Rural district, notice shall be served on the owners and lessees of record of all lots which any portion is within three

hundred feet of the building site.

(b) The Director shall neither accept nor process an application which is incomplete as to form and content.

(c) Within ten days after filing an application for a Project District, the applicant shall service notice of the application on surrounding owners and lessees of record as provided under section 15-5(a)(5) above.

(d) The Director shall forward the application to the Planning Commission within one hundred twenty days after its acceptance. The Director shall also transmit a recommendation on the proposed Project District, together with a proposed ordinance which establishes the Project District. The ordinance shall provide Project District standards and conditions, including permitted land uses, accessory uses, densities, heights, setbacks, and variances from the requirements of Chapter 25 and Chapter 23 (Subdivision Control), Hawaii County Code, if applicable, as contained in the master conceptual plan for the Project District.

15-6 Review and Approval of Site Plans.

(a) After adoption of a Project District enabling ordinance, the applicant shall submit to the Director detailed site plans for the Project District development. The site plans shall conform to the enabling ordinance and shall include the following:

(1) Plans for required infrastructure improvements;

(2) All items required for a plan approval application; and

(3) Any other information required by rules adopted by the Director in accordance with Chapter 91, HRS.

(b) Within sixty days after acceptance of the site plans, the Director shall either deny or approve the plans.

(c) The Director may approve the site plans for the Project District only if the applicant has complied with all of the conditions contained in the Project District enabling ordinance and the site plans conform to the standards contained in the ordinance. The Director may approve the site plans subject to conditions, or subject to certain changes when, in the Director's opinion, such conditions or changes are necessary to carry out the purposes of the Project District and Chapter 25, Hawaii County Code.

(d) If the Director fails to render a decision on the site plans within the prescribed period, the site plans shall be considered approved without further certification by the Director.

15-7 Review Criteria and Conditions of Approval.

In reviewing site plans for a Project District, the Director shall consider the proposed development and uses in relation to the surrounding properties, improvements, streets, traffic, community characteristics, and natural features, and may require conditions or changes to assure:

(a) Adequate light and air, proper siting and arrangements of all structures and improvements are provided;

(b) Existing and prospective traffic movements will not be hindered;

(c) Proper landscaping is provided that is commensurate with the development or use and its surroundings;

(d) Unsightly areas are properly screened or eliminated;

(e) Adequate off-street parking is provided to serve the development or use;

(f) Access to the parking areas will not create potential accident hazards; and

(g) Within reasonable limits, any natural and man-made features of community value are preserved.

15-8 Construction in Conformity with Approved Site Plans.

Every structure, development and use contained in site plans for a Project District approved by the Director shall be constructed and developed in accordance with the terms, specification and conditions of approval for those site plans.

15-9 Plan Approval Issued by Approval of Site Plans.

Plan approval shall be considered issued when site plans for a Project District are approved by the Director, and no further action is required for the issuance of plan approval.

15-10 Amendments.

Any amendment to the conditions and standards contained in a Project District enabling ordinance shall be processed in the same manner as the Project District enabling ordinance, unless the County Council in the ordinance authorizes the amendments to be made by the Director. A request for any amendment shall be submitted in writing to the Director in lieu of the application required for a Project District. The request shall be accompanied by a filing fee of $250.

15-11 Appeal of Director's Actions on Project District Site Plans.

Any person aggrieved by the decision of the Director in the issuance of a decision regarding Project District site plans may appeal the Director's action to the Board of Appeals in accordance with its rules, within thirty days after the written decision is issued by the Director.

Cross-reference:

Article 6, Division 4, Project Districts (PD)., Zoning Code
Rule 15. PROJECT DISTRICTS, Planning Commission Rules of Practice & Procedure

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 16. AGRICULTURAL PROJECT DISTRICTS

16-1 Authority.

This rule governs Agricultural Project District (APD) before the Director as required by Chapter 25 (Zoning Code), Hawaii County Code.

16-2 Purpose.

The Agricultural Project District development is intended to provide a flexible and creative planning approach for developments within the Agricultural zoning districts, in lieu of specific land use designations. It will allow for flexibility in the location of specific types of agricultural uses and variations in lot sizes. Under this planning approach, opportunities will be provided for a mix of small scale agricultural activities and associated residential uses, as well as larger agricultural projects. This district will also provide a vehicle to satisfy the demand for a rural lifestyle on marginal agricultural land, while decreasing the pressure to develop important agricultural land for this purpose. The planning approach would establish a continuity in land uses and designs, while providing for the needed infrastructure facilities and systems to support the various types of agricultural developments. An Agricultural Project District is an amendment to Chapter 25, Hawaii County Code, which changes the district boundaries in accordance with the individual Agricultural Project District.

16-3 Minimum Land Area Required.

The minimum land area required for an Agricultural Project District shall be five acres.

16-4 Permitted Uses; Overall Density.

Any uses permitted either directly or conditionally in the County Agricultural (A) and Intensive Agricultural (IA) zoning districts shall be permitted in an Agricultural Project District, and the overall density permitted in an Agricultural Project District shall not be greater than one acre per building site. Each of the proposed uses and the overall densities for dwelling uses shall be contained in a master conceptual plan for the Agricultural Project District and in the Agricultural Project District enabling ordinance.

16-5 Application and Requirements.

(a) An application for an Agricultural Project District may be filed with the Director by a property owner or any other person with the property owner's consent and shall include:

(1) A non-refundable filing fee of $100 per acre up to a maximum of $5,000.

(2) Original and twenty copies of:

(A) Description of the property in sufficient detail to determine its precise location.

(B) Master conceptual plan of the property, showing the Agricultural Project District boundaries and the land uses and acreage of land involved.

(C) Description of the proposed Agricultural Project District, including land uses, densities, infrastructure requirements, and development standards.

(D) Description of each of the open space areas proposed for the Agricultural Project District for cultural and/or environmental purposes, including those open space areas preserved because of natural hazards.

(E) County Environmental Report. A County Environmental Report shall not be required for any amendment where either an environmental assessment and negative declaration have been prepared and issued in complicance with Chapter 343, HRS. The environmental impact statement or environmental assessment in compliance with Chapter 343, HRS, shall be submitted with the application.

(F) Any other plans or information required by rules adopted by the Director in accordance with Chapter 91, HRS.

(3) A full-size copy (minimum 2' x 3') of the master conceptual plan noted under section 16-5(a)(2)(B) above, drawn to scale, for presentation purposes.

(4) Legal description of the property in map and written form by metes and bounds as certified by a surveyor.

(5) List of names, addresses and tax map keys for those property owners and lessees of record of surrounding properties:

(A) Within three hundred feet of any point along the perimeter bound ary of the building site affected by the application if the building site is located within the State Land Use Urban or Rural district; or

(B) Within five hundred feet of any point along the perimeter boundary of the building site affected by the application if the building site is located within the State Land Use Agricultural district, except that if the surrounding lots are located within either the State Land Use

Urban or Rural district, notice shall be served on the owners and lessees of record of all lots which any portion is within three hundred feet of the building site.

(b) The Director shall neither accept nor process an application which is incomplete as to form and content.

(c) Within ten days after filing an application for an Agricultural Project District, the applicant shall service notice of the application on surrounding owners and lessees of record as provided under section 16-5(a)(5) above.

(d) The Director shall forward the application to the Planning Commission within one hundred twenty days after its acceptance. The Director shall also transmit a recommendation on the proposed Agricultural Project District, together with a proposed ordinance which establishes the Agricultural Project District. The ordinance shall provide Agricultural Project District standards and conditions, including permitted land uses, accessory uses, densities, heights, setbacks, and variances from the requirements of Chapter 25 and Chapter 23 (Subdivision Control), Hawaii County Code, if applicable, as contained in the master conceptual plan for the Agricultural Project District.

16-6 Review and Approval of Site Plans.

(a) After adoption of an Agricultural Project District enabling ordinance, the applicant shall submit to the Director detailed site plans for the Agricultural Project District development. The site plans shall conform to the enabling ordinance and shall include the following:

(1) Plans for required infrastructure improvements;

(2) All items required for a plan approval application; and

(3) Any other information required by rules adopted by the Director in accordance with Chapter 91, HRS.

(b) Within sixty days after acceptance of the site plans, the Director shall either deny or approve the plans.

(c) The Director may approve the site plans for the Agricultural Project District only if the applicant has complied with all of the conditions contained in the Agricultural Project District enabling ordinance and the site plans conform to the standards contained in the ordinance. The Director may approve the site plans subject to conditions, or subject to certain changes when, in the Director's opinion, such conditions or changes are necessary to carry out the purposes of the Agricultural Project District and Chapter 25, Hawaii County Code.

(d) If the Director fails to render a decision on the site plans within the prescribed period, the site plans shall be considered approved without further certification by

the Director.

16-7 Review Criteria and Conditions of Approval.

In reviewing site plans for an Agricultural Project District, the Director shall consider the proposed development and uses in relation to the surrounding properties, improvements, streets, traffic, community characteristics, and natural features, and may require conditions or changes to assure:

(a) Adequate light and air, proper siting and arrangements of all structures and improvements are provided;

(b) Existing and prospective traffic movements will not be hindered;

(c) Adequate off-street parking is provided to serve the development or use;

(d) Access to the parking areas will not create potential accident hazards; and

(e) Within reasonable limits, any natural and man-made features of community value are preserved.

16-8 Construction in Conformity with Approved Site Plans.

Every structure, development and use contained in site plans for an Agricultural Project District approved by the Director shall be constructed and developed in accordance with the terms, specification and conditions of approval for those site plans.

16-9 Plan Approval Issued by Approval of Site Plans.

Plan approval shall be considered issued when site plans for an Agricultural Project District are approved by the Director, and no further action is required for the issuance of plan approval.

16-10 Amendments.

Any amendment to the conditions and standards contained in an Agricultural Project District enabling ordinance shall be processed in the same manner as the Agricultural Project District enabling ordinance, unless the County Council in the ordinance authorizes the amendments to be made by the Director. A request for any amendment shall be submitted in writing to the Director in lieu of the application required for an Agricultural Project District. The request shall be accompanied by a filing fee of $250.

16-11 Appeal of Director's Actions on Project District Site Plans.

Any person aggrieved by the decision of the Director in the issuance of a decision regarding Agricultural Project District site plans may appeal the Director's action to the Board of Appeals in accordance with its rules, within thirty days after the written decision is issued by the Director.

Cross-reference:

Article 6, Division 5, Agricultural Project Districts (APD)., Zoning Code
Rule 16. AGRICULTURAL PROJECT DISTRICTS, Planning Commission Rules of Practice & Procedure

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 17. LANDSCAPING REQUIREMENTS

17-1 Authority and Applicability.

This rule governs the Plan Approval standards for landscaping pursuant to article 2 (Administration and Enforcement), division 7 (Plan Approval), chapter 25 (Zoning Code), Hawaii County Code. Other references to landscaping in the Zoning Code, which are reviewed through Plan Approval, include: sections 25-4-59.3 (parking lot and loading spaces), -5-37 (RM), -5-47 (RCX), -5-97 (V), -5-107 (CN), -5-117 (CG), -5-127 (CV), -5-137 (MCX), -5-147 (ML), -5-157 (MG), -6-3 (PUD), -6-47 (Project District), -7-4 (Kailua Village Design Commission). At no time shall the landscaping requirements pursuant to this rule exceed the requirements of Chapter 25 (Zoning Code), Hawaii County Code.

17-2 Purpose.

Landscaping protects the health and welfare of the community by serving the following purposes:

(a) Buffering and screening. Landscaping eliminates or minimizes potential nuisances such as noise, dust, litter, glare of lights, signs, or unsightly areas between adjacent land uses or between a land use and roadways.

(b) Moderating the visual impact and microclimate of expansive paved parking lots. Landscaping along the perimeter and within the interior of parking lots provide visual relief from the rows of parked vehicles or asphalt. Trees add shade that moderate the temperature of parking lots during sunny days.

(c) Enhancing the streetscape of commercial and industrial areas. Landscaping the front yards of commercial and industrial areas provides a human scale and visual continuity from the viewpoint of motorists and pedestrians traveling within the right-of-way.

(d) Promoting ecological and cultural values. Encouraging landscaping with native species, other species adaptable to the environment, and species suitable for the intended function conserves water, promotes ecological and cultural appreciation, and adequately fulfills the intended buffering, screening, or shading functions without causing undue maintenance problems.

17-3 Definitions.

(a) BERM: An earthen mound designed to provide visual interest on site, screening of

undesirable views, noise reduction, etc.

(b) BUFFER: A combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen incompatible land uses from each other.

(c) BUFFERYARD: One of several specific combinations of minimum building setbacks, landscaped yard widths, and plant material requirements set forth in this rule for use in buffering incompatible land uses.

(d) OPAQUE: A level of screening that completely blocks the view.

(e) SCREENING: A method of reducing the impact of visual and/or noise intrusions through the use of plant materials, berms, fences and or walls, or any combination thereof. Screening blocks that which is unsightly or offensive with a moreharmonious element.

(f) SHRUB: A woody plant, or small palm smaller than a tree, which consists of a number of small stems from the ground or small branches near the ground.

(g) TREE: A large, woody plant or large palm having one or several self-supporting stems or trunks and numerous branches.

(h) WOODLAND: Existing trees and shrubs of a number, size and type that approximately accomplish the same function as new plantings.

17-4 Submittal Requirements.

(a) Applicability. Plan approval applications for projects located in the RM, RCX, V, CN, CG, CV, MCX, ML, MG, or Project districts shall include a landscape plan. Plan approval applications for a project located in any zoning district that proposes a loading area or parking lot with 5 or more parking stalls shall also include a landscape plan.

(b) Preparation. A landscape plan meeting the provisions of this rule which is prepared by a landscape architect or landscape contractor, licensed in the State of Hawaii, shall be granted approval. Any landscape plan developed by other means shall be subject to Planning Department Review.

(c) Contents of Landscape Plan. The landscape plan may be submitted on a separate sheet or superimposed on a single sheet with the site plan. The landscape plan shall include the following planting and site information:

(1) Existing vegetation

(A) Location, general type and quality of existing vegetation, specimen trees, and areas of secondary growth;

(B) Existing vegetation to be saved (indicated and noted accurately);

(C) Methods and details for protection of existing vegetation during construction and the approved sediment control plan, if available;

(2) Proposed vegetation

(A) Locations and labels of all proposed plants;

(B) Plant list or schedule to include botanical and common name, quantity, spacing and size at time of planting of all proposed plants;

(3) Location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights and courts or paved areas;

(4) Irrigation plan;

(5) Planting installation details as necessary to insure conformance with the standards set forth in this rule.

(6) Site information

(A) North arrow and scale;

(B) Property lines;

(C) Zoning and use of all abutting properties;

(D) Name, location, and right-of-way and paving widths of all abutting streets;

(E) Natural features such as ponds, lakes and streams;

(F) Delineation of 100 year floodplain and non-tidal wetlands;

(G) Required yard depths/widths (i.e., setbacks from all lot lines);

(H) Location, height, dimensions, and use of all existing and proposed buildings and other structures (including parking lots, sidewalks, and other paved areas; fences and walls; and recreational facilities);

(I) Location of any slopes steeper than 3:1;

(J) Location of existing and proposed utilities and utility easement, including water, storm drain, and sanitary sewer pipes; overhead

wires; utility poles and boxes; and signs if available; and

(K) Location, size and description of all elements which are required to be screened.

17-5 Review and Approval Procedure.

(a) Plan Approval Procedures. The landscape submittals shall be reviewed together with the complete Plan Approval submittal in accordance with the procedures for Plan Approval.

(b) When Landscaping Must Be Completed. All landscaping, unless the director has approved a phasing plan, shall be completed in accordance with the approved landscape plan prior to issuance of a certificate of occupancy for any building on the lot.

17-6 Landscape Standards.

(a) Open space requirements in the RM, RCX, and V districts. The Zoning Code requires landscaping on a minimum of 20% of the building site in the RM, RCX, and V districts to ameliorate the potential higher densities permitted in these districts.

(1) Calculation of 20% area. In determining the minimum 20% landscaped area, subtract from the gross building site area the following: building footprint, parking areas, loading areas, and driveways. Interior courtyards, roof gardens, solariums, or other landscaping not visible from the lot perimeter at ground level shall not be included in the 20% landscaped area.

(2) Open space landscaping standard. Landscaping shall include plant materials including grass and/or ground cover, and water features such as ponds. It shall not include hard-surface outdoor recreation areas such as tennis courts or swimming pools. A minimum of one (1) tree is required per 2,000 square feet or fraction of landscaped area. Existing trees exceeding two and one-half (2 1/2) inches caliper located anywhere in the landscaped area on the site may be counted on a one-to-one basis as fulfilling up to 100 % of the requirement for trees on that site.

(b) Bufferyard requirements in the CN, CG, CV, MCX, ML, and MG districts. The Zoning Code requires a landscaped bufferyard within the side yards of building sites within the commercial (CN, CG, CV) district if the building site adjoins any residential district (RS, RD, RM), and within the side and/or rear yards of building sites within the industrial districts (MCX, ML, MG) if the building site adjoins any residential district (RS, RD, RM).

(1) General bufferyard standard. Development on any lot within the CN, CG, CV, MCX, ML, and MG districts that adjoins any residential district shall

provide sufficient buffering to shield the residential lot(s) from any adverse external effects of the commercial or industrial development.

(2) Compliance with bufferyard standard. Any of the following landscape treatments may be used singly or in combination to satisfy the general standard:

(A) MCX, ML, MG districts. To exclude all visual contact between the industrial and residential uses and to create a strong spatial with concomitant lessening of noise intrusion, the landscaped buffer shall be opaque from the ground to a height of at least six feet, with intermittent visual screening from the opaque portion to a height of at least 20 feet. Compliance shall be determined on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. At maturity, the portion of intermittent visual screening should not contain any completely unobstructed openings more than 10 few wide. Options that presumptively achieve this standard include (see Example 1):

(i) Small trees (20' at maturity) planted 30'on center with 3' solid fence or wall.

(ii) Small trees (20' at maturity) planted 20-30' on center on top of 3' high seeded earth berm.

(iii) Tall trees (taller than 40' at maturity) planted with branches touching near the ground.

B) CN, CG, CV districts. To partially exclude visual contact between the commercial and residential uses and to create a strong spatial separation, with concomitant lessening of noise intrusion, the land scaped buffer shall be opaque from the ground to a height of at least three feet, with intermittent visual screening from the opaque por tion to a height of at least 20 feet. Compliance shall be determined on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vgetation. At maturity, the portion of intermittent visual screening should not contain any completely unobstructed openings more than 10 feet wide. Options that presumptively achieve this standard include (see Example 2):

(i) Small trees (20' at maturity) planted 30' on center with 3' solid fence or wall.

(ii) Small trees (20' at maturity) planted 20-30' on center on top of 3' high seeded earth berm.

(iii) Large trees (20' to 40' at maturity) planted 40' on center with 3' high hedge shrubbery planted 3' on center.

(c) Front yard landscaping requirements in the CN, CG, CV, MCX, ML, and MG districts. Where the Zoning Code requires a front yard in the CN, MCX, ML, and MG districts, or where the front yard option is selected over the rear yard in the CV and CG districts, the front yard shall be landscaped pursuant to the following standards.

(1) General front yard landscaping standard. Front yard landscaping on any lot within the CN, CG, CV, MCX, ML, and MG districts shall provide sufficient plant material that complements the surrounding. The landscaped strip may not include any paved area, except pedestrian sidewalks or trails which cross the landscaped strip.

(2) Compliance with front yard landscaping standard. Any of the following landscape treatments may be used singly or in combination to satisfy the general standard (see Example 3):

(A) Provide a minimum 10 foot wide landscaped strip to be planted with a minimum of one (1) tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings. Where the plantings required would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, 5 shrubs may be substituted for 1 tree.

(B) Provide a minimum 10 foot wide strip of existing woodlands.

(d) Parking lot landscaping requirements

(1) Perimeter landscaping requirements. The following requirements apply to a parking lot of five or more spaces.

(A) Screening along right-of-way. When a parking lot in any zone is located adjacent to a public right-of-way, a landscape screen shall be provided on the property between the parking lot and the right-of-way. (In circumstances where greater parking lot setbacks are required than those listed below, the greater requirement shall apply). The landscaped strip may not include any paved area except pedestrian sidewalks or trails which cross the landscaped strip. Any of the following landscaped strip treatments may be used singly or in combination (see Example 4):

(i) Provide a minimum 10 foot wide landscape strip between the right-of-way and the parking lot to be planted with a

minimum of one (1) tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings. Where the plant ings required would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, 5 shrubs may be substituted for 1 tree.

(ii) Provide a berm, the top of which is at least 2 ½ feet higher than the elevation of the adjacent parking lot pavement. The slope of the berm shall not exceed 33 % (3:1) for lawn areas. Berms planted with ground covers and shrubs may be steeper. However, no slope shall exceed 50%(2:1). Berms should be graded to appear as smooth, rounded, naturalistic forms. Avoid narrow bumps which result from creating too much height for the width of the space. Plant with a mini mum of one (1) tree and five (5) shrubs per 35 linear feet of frontage, excluding driveway openings. Where the plant ings required would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, 5 shrubs may be substituted for 1 tree.

(iii) Provide a minimum six (6) foot wide landscaped strip and a minimum three (3) foot grade drop from the right-of-way line to the adjacent parking lot pavement. Plant the resulting embankment with a minimum of one (1) tree and five (5) shrubs per 35 linear feet of frontage, excluding driveway openings. Where the plantings required would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, 5 shrubs may be substituted for 1 tree.

(iv) Provide a minimum four (4) foot wide landscaped strip between the right-of-way line and the parking lot, with a maximum three (3) foot high brick, stone or finished con crete wall to screen the parking lot. The wall shall be located adjacent to but entirely outside the four (4) foot landscaped strip. Plant with a minimum of one (1) tree per 35 linear feet of frontage, excluding driveway openings. Where the plantings required would result in an inappropri ate or impractical design due to underground utilities, over head wires, or other factors, 5 shrubs may be substituted for 1 tree.

(v) Provide a minimum 10 foot strip of existing woodlands.

(B) Screening from adjoining RS, RD, RM, RCX, or RA districts. When the adjacent property is zoned RS, RD, RM, RCX, or RA, parking lots shall be set back from adjacent

property lines in accordance with the requirements of the Zoning Code. In all other cases, the perimeter of a proposed parking lot adjacent to a property line shall be treated as indicated below. (For the purposes of this Section, a parking lot shall be considered adjacent to a property line when any part of the lot is within 30 feet of the property line and no building is located between the lot and the property line).

(i) Provide a landscaped strip between the parking lot and any adjacent property line, to be a minimum of five (5) feet wide for building sites 10,000 square feet or more. Within this landscaped strip, provide one (1) tree and three (3) shrubs per 35 linear feet of parking lot perimeter adjacent to property line. (This does not mean that trees must be located 35 feet on center.) Any tree planted to fulfill another requirement of this rule which is located within 15 feet of the edge of the parking lot, may count toward fulfillment of this requirement. Where the plantings required would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, 5 shrubs may be substituted for 1 tree.

(ii) Provide a minimum 25 foot wide strip of existing woodland.

(2) Interior landscaping requirements. Parking lots with more than 12 stalls shall provide landscaping within the interior of the parking lot according to the following standards:

(A) At least one (1) canopy tree shall be provided for every 12 parking stalls or fraction thereof. These trees shall have a minimum of 2" caliper, a planting area or tree well no less than 30 s.f. in area, and a clear trunk at least six (6) feet above finished grade level. Trees shall be sited so as to evenly distribute shade throughout the park ing lot (see Example 5).

(B) A curb or wheelstop shall be provided for all parking spaces adjacent to planting or pedestrian areas to protect those areas from overhanging by parked vehicles. Continuous planting areas with low ground cover centered at the corner of parking stalls may be located within the three-foot overhand space of parking stalls. Hedges and other landscape elements, including planter boxes over six inches in height, are not permitted within the overhang space of the parking stalls (see Example 6).

(C) Planting islands which are parallel to parking spaces shall be a min imum of nine (9) feet wide to allow car doors to swing open (see Example 7).

(D) In cases where a planting island is perpendicular to parking spaces and the spaces head into the planting island on both sides, the island shall be a minimum of eight (8) feet wide to allow for bumper over hang. If parking spaces are located on only one side of such a plant ing island, the island shall be a minimum of six (6) feet wide (see Example 8).

(e) Screening requirements, for loading spaces, trash disposal areas, mechanical equipment.

(1) Loading areas

A) General standard. Except porte cocheres, all loading areas, loading docks, vehicular lanes providing access to the above, and service or maintenance areas shall be screened from any adjoining properties in the RS, RD, RM, RCX, or RA districts; from all public roads; if located within a residential development, from all outdoor living and recreation areas, parking areas, and entrance drives within the development; and if located within a commercial development, from all outdoor recreation areas, retail parking areas and entrance drives within the development. In general, screening materials shall consist of trees and shrubs, vines, walls, fences, and berms; screening fences and walls shall not be constructed of corrugated metal, corrugated fiberglass, sheet metal.

(B) Compliance with general standard. Any of the following landscape treatments may be used singly or in combination to satisfy the general standard

(i) 6 ft. high opaque fence or wall (may be plant covered or veneered with natural materials)

(ii) 6 ft. high berm

(iii) 6 ft. plant screen

(2) Trash disposal areas

(A) General standard. All dumpsters or trash storage areas shall be screened from any adjoining properties in the RS, RD, RM, RCX, or RA districts; from all public roads; if located within a residential development, from all outdoor living and recreation areas, parking areas, and entrance drives within the development; and if located within a commercial development, from all outdoor recreation areas, retail parking areas and entrance drives within the develop ment.

(B) Compliance with general standard. Any of the following landscape treatments may be used singly or in combination to satisfy the general standard:

(i) Opaque fence or wall (may be plant covered or veneered with natural materials).

(ii) Plant screen (height, spacing and variety to be determined by size and location of area to be screened).

(3) Mechanical equipment

(A) General standard. All mechanical equipment and meters (including free standing air conditioners, heat pumps, and similar equipment, but not including public utility transformers, electric and other meters attached to single-family dwelling units, and heat pumps or air conditioners for single-family dwelling units, unless placed in a group of three or more) shall be screened from any adjoining prop erties in the RS, RD, RM, RCX, or RA districts; from all adjacent public roads; if located within residential development, from all outdoor living and recreation areas, parking areas and entrance drives within the development; and, if located within a commercial development, from all outdoor recreation areas, parking areas, and entrance drives.

(B) Compliance with general standard. Any of the following landscape treatments may be used singly or in combination to satisfy the general standard which is intended to shield the equipment from visual contact with concomitant lessening of noise intrusion:

(i) Opaque fence or wall (may be plant covered or veneered with natural materials)

(ii) Plant screen (height, spacing and variety to be determined by size and location of area to be screened)

17-7 Plant Material and Installation Standards.

(a) General. Plant material shall be of a size and quality at installation to meet the objectives of the approved landscape plan within 24 months from the date of the certificate of occupancy.

(b) Hedges. Hedges, where required, shall form a partial visual screen of at least 2-1/ 2 feet in height immediately upon planting and shall be spaced a maximum of 3' on center for a 3' high hedge and 4' on center for a 6' high hedge.

(c) Trees. Root barriers shall be required where there is a potential to damage sidewalks or pavement in the adjoining right-of-way.

17-8 Maintenance Standards; Irrigation Requirements.

Maintenance Standards. All required landscaping shall be maintained in good growing condition. No plant material shall be allowed to encroach on rights-of-way and easements that interferes with motorists' vision of vehicular traffic, pedestrian use within the rights-of-way or easement, or overhead utility lines.

(a) Irrigation Requirement. Irrigation shall be required unless evidence is submitted at plan approval of a maintenance contract or installation guarantee of a minimum of 1 year.

(b) Plant material that dies or is destroyed shall be replaced by comparable plant material.

Cross-reference:

Article 2, Division 7, Plan Approval., Zoning Code

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 18. DE MINIMIS STRUCTURE POSITION DISCREPANCY

18-1 Authority.

This rule is made pursuant to Chapter 91, Hawaii Revised Statutes, Section 25-14, Chapter 25 (Zoning Code), Hawaii County Code, as amended, and sections 669-11,12, and 13, Hawaii Revised Statutes.

18-2 Purpose and Findings.

This rule governs the determination whether a minor discrepancy between the yard or open space required under Chapter 25, Hawaii County Code, and the actual yard or open space, is a violation of the zoning code. The Director :finds that with more modern surveys, it is sometimes discovered that a structure has been inadvertently located a small distance into a required yard or open space. Sections 669-11,12, and 13, Hawaii Revised Statutes, legitimated "de minimis" encroachments of improvements across boundary lines. The purpose of this rule is to apply the same principle to similar minor encroachments into required yards and open spaces.

18-3 Definition.

"De mimmis structure position discrepancy" means a difference between the distance from a property boundary required by the Zoning Code for a yard or open space and the actual distance, of not more than the following:

(a) For property zoned Multiple Residential (RM), Residential-Commercial Mixed Use (RCX), Resort-Hotel (V), Neighborhood Commercial (CN), General Commercial (CG), Village Commercial (CV), Industrial-Commercial Mixed (MCX), Limited Industrial (ML), General Industrial (MG), Downtown Hilo Commercial (CDH), or within a Planned Unit Development (PUD), Cluster Plan Development (CPD), or Project District (PD): 0.25 feet;

(b) For property zoned Single Family Residential (RS) or Double-Family Residential (RD): 0.5 feet;

(c) For property zoned Residential and Agricultural (RA), Family Agricultural (FA), Agricultural (A), Intensive Agricultural (IA), or Agricultural Project District (APD): 0.75 feet.

18-4 Procedure for recognizing a de minimis structure position discrepancy.

An application for recognition of a de minimis structure position discrepancy shall be filed with the Director and shall include:

(a) A description of the property in sufficient detail to determine the precise location of the property involved;

(b) A plot plan of the property, prepared by a licensed surveyor, showing existing improvements, and the improvement(s) and relevant distances for the de minimis structure position discrepancy;

c) A description of the nature of the improvements involved in the de minimis structure position discrepancies;

(d) A statement by the landowner that to the best of the landowner's knowledge and

information, the improvements were placed without actual knowledge that they did not meet the minimum yard or open space requirements.

18-5 Review by Director.

Within fifteen days of receipt of the application, the Director shall either accept the application as complete, or reject it as incomplete, in writing. Any rejection shall list the deficiencies in the application. The Director shall approve or deny an application for recognition of a de minimis structure position discrepancy within twenty-five days after acceptance of the application. If the Director does not approve or deny the application within twenty-five days of acceptance, the application shall be deemed approved.

18-6 Grounds for Approval or Denial.

The Director shall approve an application for recognition of a de minimis structure position discrepancy unless:

(a) The discrepancy is greater than the difference allowed by section 18-3 above; or

(b) The Director finds that the improvement was placed with knowledge that it would violate the minimum yard or open space requirements; or

(c) The improvement could be moved, or the discrepancy otherwise corrected, without significant expense, difficulty, or hardship to the applicant.

18-7 Recognition of De Mimmis Structure Position Discrepancy.

If the Director accepts the application for recognition of de minimis structure position discrepancy, the Director shall notify the applicant in writing that the discrepancy is not a violation of the Zoning Code and that it may remain in place without a variance.

18-8 Disclosure.

A de minimis structure position discrepancy shall be disclosed by the owner to subsequent purchasers of the property in question.

18-9 Appeals.

The Director's decision with respect to a de minimis structure position discrepancy is appealable to the Board of Appeals.

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 19. PRE-EXISTING LOTS BASED UPON LEASES.

19-1 Purpose.
The purpose of this rule is to specify when pre-existing lots may be recognized based upon leases.

19-2 Authority.
This rule is made pursuant to Chapter 91, Hawaii Revised Statutes, Sections 25-14 and 25-2-11, Chapter 25 (Zoning Code), and section 23-7, Chapter 23 (Subdivision Code) of the Hawaii County Code, and sections 6-4 (c) and (e) of the Hawaii County Charter.

19-3 Definition.
As used in this rule, except as otherwise recognized by context:
"Pre-existing lot" means a specific area of land that will be treated as a legal lot of record because of actions that occurred before the enactment of the first applicable county subdivision ordinance.

19-4 Requirements for pre-existing lots based upon leases.
No pre-existing lot shall be recognized based upon a lease, except for a lease which complied with all other applicable laws when made, including territorial statutes on the lease or sale of property by lot number or block number, and on the effective date of this rule, the proposed lot:
(a) Contains a legal dwelling, or
(b) Has been continuously leased since January 8, 1948, as a separate unit.

19-5 Proof.
The owner of property seeking recognition as a pre-existing lot under section 19-4 of this rule must show that a valid lease was in existence on January 8, 1948, for the specific area, with proof sufficient to demonstrate the boundaries of the claimed lot with reasonable certainty.

19-6 [Applicability].
This rule shall not affect any pre-existing lots recognized by official action of the Director, or within any subdivision which had received tentative or final approval, prior to the effective date of this rule.

PLANNING DEPARTMENT
COUNTY OF HAWAII

AMENDMENTS TO THE COUNTY OF HAWAII PLANNING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

THE PLANNING DIRECTOR OF THE COUNTY OF HAWAII ADOPTS THE FOLLOWING AMENDMENTS TO THE PLANNING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

SECTION 1. The County of Hawaii Planning Department's Rules of Practice and Procedure is amended by including the following Rule 20 relating to Consolidation and Resubdivision.

"RULE 20. CONSOLIDATION AND RESUBDIVISION

20-1 Purpose.

The purpose of this rule is to clarify certain aspects of consolidation and resubdivision.

20-2 Authority.

This rule is made pursuant to Sections 25-1-4 and 25-2-11, Chapter 25 (Zoning Code) and Section 23-7, Chapter 23 (Subdivision Code) of the Hawaii County Code, and sections 6-4 (c) and (e) of the Hawaii County Charter.

20-3 Definitions.

As used in this rule, except as otherwise recognized by context:

(a) "Pre-existing lot" means a specific area of land that will be treated as a legal lot of record because of actions that occurred before the enactment of the first applicable county subdivision ordinance.

(b) "Conforming" means in compliance with the requirements of the applicable zoning district, including minimum building site area and minimum dimensions.

20-4 Use of certain pre-existing lots in consolidation and resubdivision.

A pre-existing lot that was created for use as a road lot, a railroad right-of-way, a flume line, or a pole anchor, shall not be counted for purposes of section 23-7, Chapter 23, Hawaii County Code, unless it is conforming.

20-5 Applicability.

Section 20-3 of this rule does not apply to any pre-existing lots recognized by official action of the Director, or to any subdivision which had received preliminary or final approval, prior to the effective date of this rule."

PLANNING DEPARTMENT

Christopher J. Yuen 4/23/02

CHRISTOPHER J. YUEN DATE
Planning Director

APPROVED AS TO FORM AND LEGALITY:

Justin Ishado for Deputy Corporation Counsel 5/3/02

LINCOLN ASHIDA DATE
Corporation Counsel

APPROVED:

HARRY KIM DATE
Mayor

PLANNING DEPARTMENT
COUNTY OF HAWAII

AMENDMENTS TO THE COUNTY OF HAWAII PLANNING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

THE PLANNING DIRECTOR OF THE COUNTY OF HAWAII ADOPTS THE FOLLOWING AMENDMENTS TO THE PLANNING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

SECTION 1. The County of Hawaii Planning Department's Rules of Practice and Procedure is amended by including the following Rule 21 relating to Public Access: Usage.

"Rule 21. Public Access: Usage

21-1 Authority

Pursuant to the authority conferred by Chapter 46, Hawaii Revised Statutes, and Chapter 34, Hawaii County Code, as amended, the rule hereinafter contained is hereby established relative to public access: usage.

21-2 Purpose

The purpose of this rule is to:

(a) Regulate the use of public accesses to and along the shoreline and mountain areas that have been granted in fee or by easement to the County.

(b) Provide guidelines and standards for managing and preserving an environmentally safe public access to and along the shoreline and to mountain areas.

21-3 Definitions

As used in this rule, except as otherwise recognized by context:

(a) "Camping" means being in the possession of a backpack, tents, blankets, tarpaulins, or other paraphernalia with the intent of overnight sleeping, one hour after sundown until sunrise within or along a trail or access.

(b) "Commercial activity" means the solicitation of a person for the sale or rental of goods or services or any transaction whereby a person receives a

benefit or promise to receive a benefit by providing goods or services to another person. A non-profit organization that charges only for its actual expenses incurred in leading groups to hike through a public access or trail, and which does not compensate staff through charges to participants, is not considered "commercial activity" under these rules. Any person receiving compensation in conjunction with a use of or activity on a public access who seeks to qualify as a non-commercial activity shall have the burden of establishing to the satisfaction of the Director that any fee or charge is strictly a sharing of the actual expenses of the use or activity.

(c) "Compensation" includes, but is not limited to, monetary fees, barter, or services in-kind.

(d) "Easement" means the grant of the right to use a strip of land for specific public access purposes.

(e) "Mode of transport or travel" means any method used to move humans along accesses, including, but not limited to, walking, running, bicycling, skating, skate boarding, roller blading, riding equestrian animals, motorcycles, trucks, and automobiles.

(f) "Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

(g) "Mountain" means those lands situated above the one-thousand-foot elevation above sea level.

(h) "Non-motorized vehicle" means a vehicle of any shape or form that does not depend on a motor (gas, electric, or other fuels) for propulsion, such as a bicycle, skateboard, cart, etc.

(i) "Public access" means an easement, trail, route, right-of-way, or portion thereof, to which these rules apply under Rule 21-4.

(j) "Public mountain area" means lands publicly owned or privately owned subject to written grants of easements allowing public access and use. These are areas where there are existing facilities for hiking, hunting, fruit picking, ti-leaf sliding, other recreational purposes and where there are existing public mountain trails.

(k) "Public shoreline area" means lands fronting a shoreline which are publicly owned or privately owned subject to written grants of easement allowing public access and use.

(l) "Service Animal" means any animal individually trained to do work or perform tasks for the benefit of an individual with a disability and accompanied by their master.

(m) "Shoreline" means the upper reaches of the wash of the waves, other than storm or 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 the debris left by the wash of the waves, pursuant to chapter 205A, Hawaii Revised Statutes, as amended.

(n) "Trail" means an identifiable linear course or portion thereof which has been used, is used, or is intended for use by the general public primarily for a recreational, educational, traditional, or inspirational experience to traverse, reach or to depart a public beach, shore, park, forest, historic or cultural site, or other public area. Throughout this rule, "access" also includes "trail" when the context does not preclude such an interpretation.

(o) "Wheelchair" means a mobility aid used primarily by individuals with disabilities.

21-4 Applicability

This rule applies to public accesses that have been granted in fee or by easement to the County pursuant to Chapter 34, Hawaii County Code, or under other land use regulations. It does not apply to public accesses required as conditions of approval of rezoning ordinances, Special Management Area (SMA) Permits, Shoreline Setback Variances (SSV) or other county land use approvals, which have not been granted in fee or easement to the county. The management of those public accesses is pursuant to the terms of the land use approvals and any supplementary conditions imposed as a result of those approvals. It does not apply to "public trails" under the jurisdiction of the Department of Land and Natural Resources under H.R.S. §264-1(b).

21-5 Use of Public Access

(a) No person shall interfere with the rights of any other person to use a public access except as authorized by law, or by a condition of approval or agreement. Interference includes, but is not limited to, the following:

(1) Physically blocking the access.

(2) Making physical changes to an access that impedes use of the access.

(3) Threatening physical harm to persons using the access.

(4) Threatening civil or criminal trespass actions against access users.

(5) Posting signs restricting access or otherwise intimidating persons from using the access.

(6) Removing access signs.

(b) The public access shall be open seven days a week, 24 hours a day unless otherwise noted or restricted by a condition of approval, or by agreement between the County and the private landowner in the grant of easement, or unless the Director limits the hours in accordance with (c) below.

(c) The Director may temporarily close or restrict a public access under the following circumstances:

(1) In the event of an emergency or for public safety reasons;

(2) To address an imminent threat of harm to an access or person;

(3) To comply with the requirements or agreements made with private landowners or lessees who permit access through their land;

(4) To mitigate user impacts upon the access surface, historic and culturally sensitive areas, or environmentally sensitive areas;

(5) To minimize incompatible uses in the access; and/or

(6) To manage and control periods of use of the access.

(d) All persons entering a public access shall comply with all applicable federal, state, and county laws, ordinances, and rules.

21-6 Activities Prohibited Within the Public Access

(a) The following activities shall be prohibited within all public accesses:

(1) Removing, injuring, or killing any form of plant or animal life, except for the taking of aquatic life or wildlife, in accordance with the State of Hawaii fishing and hunting laws or as authorized maintenance activities.

(2) Releasing any animals or plants except for re-vegetation efforts approved by the Director.

(3) Removing, damaging, or disturbing any natural feature, geological features, or resource.

(4) Removing, damaging, or disturbing any historic or prehistoric sites, objects, ruins, or remains.

(5) Removing, damaging, or disturbing any notice, signage, markers, or structures.

(6) Entering, occupying, or using any building or structure, motorized vehicle or machinery, etc. belonging to another person along the access.

(7) Trespassing upon adjacent private properties.

(8) Constructing any improvements.

(9) Using or possessing alcohol, narcotics or non-prescribed drugs.

(10) Possessing firearms or other weapons, except on accesses leading to public hunting areas, by licensed hunters, in season, in compliance with applicable hunting regulations.

(11) Setting fires.

(12) Using the public access for other than transit to or from a permitted activity. This shall not prohibit stops for rest, snacks, fishing and other similar activities, including traditional and customary gathering rights.

(13) Camping or residing.

(14) Using motorized vehicles or non-motorized vehicles, except wheelchairs and other devices for persons with disabilities, and except where allowed by the Director for specifically designated public accesses, pursuant to Rule 21-8 when also allowed by the grant of easement.

(15) Dogs, cats, and other animals are prohibited on a public access unless crated, caged, or on a leash, at all times.

(16) Using horses, mules, or other animals, other than service animals, except when allowed by the Director for specifically designated public accesses, when also allowed by the grant of easement.

(17) Commercial activities.

(18) Using devices that amplify sound, such as radios, portable stereos, megaphones, etc., unless the sound is audible only in the immediate vicinity of the user.

(19) Explosives.

(20) Disorderly conduct, as defined in section 711-1101, Hawaii Revised Statutes.

(21) Draining, dumping, or leaving any litter, animal waste or remains, or any other material on an access including in or near streams and other water sources.

(22) Depositing any human waste except in comfort stations.

(23) Leaving or abandoning a vehicle, equipment, or any other items, including but not limited to refrigerators, stoves, household garbage, trash, or other forms of waste or debris.

21-7 Access By Permit

(a) The Director may designate specified public accesses for use by permit only when the Director has determined that site conditions or lack of supervision necessitates special education, direction, or control of public users.

(b) Such "permit only" public accesses shall be designated by rule.

(c) The Director may delegate the issuance of the permit to another governmental agency or to a contracted permitting agent.

(d) The permit application may include:

(1) A refundable or non-refundable filing fee.

(2) A waiver of liability against the County and adjacent landowners.

(e) The Director may require any other appropriate and relevant information needed to make a decision on granting of the permit and to formulate appropriate permit conditions.

(f) The Director may cancel, revoke, or terminate a permit when:

(1) An emergency is declared by the department or other proper authority;

(2) A permittee violates the permit conditions; or

(3) A permittee's activity damages or threatens to damage, the integrity, or condition of the access, or the surrounding environment, or threatens the safety of the users of the access.

21-8 Public Access Where Motorized Vehicles are Allowed

On public accesses where motorized vehicles are allowed, only motorized vehicles legal for highway travel under H.R.S. Chapter 286 are allowed, in addition to non-motorized vehicles. The following are prohibited in addition to the other prohibited activities:

(a) Parking, except in designated parking areas.

(b) Loitering in parking areas.

(c) Use of the access for cruising (repeatedly riding back and forth), motorcross activities such as jumping, or other activities not directly related to use of the access for transit to or along the shoreline, or to the designated mountain area.

(d) Leaving vehicles unattended. Any vehicle left unattended within a public access for longer than twenty-four hours without prior written permission from the Director shall be considered abandoned. Any abandoned vehicle may be impounded or towed away by the Director at the expense of the owner.

(e) The pertinent provisions of Chapter 291C, Hawaii Revised Statutes, "Traffic Code," are hereby included by reference for those public accesses where motorized vehicles are allowed.

21-9 Conflicts Between Transportation Modes

(a) On a public access where multiple modes of transportation are allowed, motorized vehicles shall yield the right-of-way to all other modes of transport; non-motorized vehicles, including mountain bikes and other bicycles shall yield to equestrians and pedestrians; and pedestrians shall yield to equestrians.

(b) The Director may also post rules or mark accesses to indicate additional rights-of-way, lanes, areas of management, use, or other means to separate or otherwise address the potential conflicts between transportation modes and mitigate adverse effects on the safety, use, and enjoyment of the access by all users.

21-10 Enforcement

Any person who violates any provision of this rule shall be:

(a) Held liable for all costs of clean up and restoration, and damages to public and private property;

(b) Subject to the confiscation and forfeiture of any tools and equipment used in the violation as well as any plants, objects, or artifacts removed illegally from the access;

(c) Subject to a civil fine of $500.00 per incident; and

(d) May be barred from the public access for repeated or serious violations.

21-11 Appeal

The final action of the Director under this rule may be appealed to the Board of Appeals in accordance with its rules.

21-12 Conflicting Rules

When a public access that has been granted in fee or by easement to the County is subject to rules, regulations or conditions of approval other than this rule, all as stated, whenever possible, shall be interpreted in a manner that gives full effect to each. If there is a conflict between such regulations and these rules, the more restrictive rule, regulation or condition of approval shall apply.

When a public access that has been granted in fee or by easement to the County by agreement between the private landowner and the County and the agreement differs from these rules, the agreement shall apply."

SECTION 2. In the event that any portion of this rule is declared invalid, such invalidity shall not affect other parts of the rule.

SECTION 3. This rule shall take effect upon its approval.

PLANNING DEPARTMENT

Chris Yuen 12/16/04

CHRISTOPHER J. YUEN
Planning Director

Date

DATE OF PUBLIC HEARINGS: November 19, 2004 and November 22, 2004.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel 12/20/04

LINCOLN ASHIDA
Corporation Counsel

Date

APPROVED:

Harry Kim JAN 03 2005

HARRY KIM
Mayor

Date

I hereby certify that the foregoing rule was received and filed in my office this 18th day of January 2005.

Constance R. Clin

County Clerk

PLANNING DEPARTMENT
COUNTY OF HAWAII

AMENDMENTS TO THE COUNTY OF HAWAII PLANNING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

THE PLANNING DIRECTOR OF THE COUNTY OF HAWAI ADOPTS THE FOLLOWING AMENDMENTS TO THE PLANING DEPARTMENT'S RULES OF PRACTICE AND PROCEDURE.

SECTION 1. The County of Hawaii Planning Department's Rules of Practice and Procedure is amended by including the following Rule 22 relating to Water Variance.

"RULE 22. WATER VARIANCE

22-1 Purpose and Authority.

The purpose of this rule is to provide criteria for the granting or denial of variances from sec. 23-84 of the Subdivision Code, which requires a water system meeting with the requirements of the Department of Water Supply (DWS). It applies to requests for subdivisions that propose to rely on rain catchment for their water supply, on agriculturally-zoned property. It does not apply to subdivisions that propose to rely on private, non-catchment water systems that do not meet DWS standards. This rule provides more specific criteria to supplement Hawaii County Code (H.C.C.) sec. 23-15, and is authorized under Hawaii County Charter, sec. 6-4.2(c) and (e). The variance request must also meet the general requirements of H.C.C. sec. 23-15.

22-2 Findings.

The Planning Director finds that it is in the public interest to establish criteria for variances from the water supply requirements for subdivisions to use catchment as their water source. The Subdivision Code has required a public water system since 1967, and the General Plan has contained a standard that water systems meet the requirements of the Department of Water Supply and the Subdivision Code. Nevertheless, many variances for catchment have been granted over the years. Such variance requests have many issues in common that should be handled consistently. The water supply requirement exists to ensure that new lots, which ultimately may include homes, have safe water for drinking and fire protection. The Department of Health cautions that catchment systems have had problems with microbial contamination, and with leaching of metals from roofing materials. In some areas, dissatisfaction with catchment systems has led to requests that public funds be spent for wells. Public funds are currently used to provide water from roadside spigots, mostly because of subdivisions on catchment. In low rainfall areas especially, catchment systems may run out of water and owners may have to resort to trucking water. On the other hand, catchment variances allow property owners a way to subdivide property when there is no public water system in the vicinity, and when it would be prohibitively expensive to construct a private water system.

Although the family status of the subdivider cannot be a formal consideration in a variance application, allowing small numbers of lots to be created with water variances facilitates transfer of property to family members. If lots are subdivided to a much lower density and to large lot sizes, some of the concern over the lack of water for fire protection is reduced. When a subdivision involves large numbers of lots, however, the subdivider should put in a water system because it is possible to spread the cost. The Planning Director finds that this rule regarding variances is necessary to ensure that subdivisions created with catchment water are not materially detrimental to the public welfare and do not cause substantial adverse impact to an area's character or to adjoining properties.

22-3 Eligibility.

No property shall be granted a variance from sec. 23-84 to allow subdivision using catchment if there is a public water system in the vicinity of the property, with available capacity, or if the Department of Water Supply has definite plans to extend the public water system or increase the capacity in a way that will allow subdivision of the property with county water, or if it was the subject of a rezoning ordinance that requires a water system.

22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map.

22-5 Maximum Number of Lots.

Except as provided in Rule 22-6, no more than six lots shall be allowed in a catchment subdivision.

22-6 Exceptions for Large Lot Subdivisions.

Exceptions to the minimum rainfall requirement and the maximum number of lots (up to an absolute maximum of twenty lots) may be granted if the subdivision results in lots averaging at least twenty acres in size **and** averaging at least four times the minimum lot size allowed by zoning.

22-7 No Further Subdivision by Water Variance Allowed.

There shall be no further variance from the water supply requirements to allow later subdivision of lots in a subdivision created with a variance under this rule. The deeds to all such lots shall include a covenant running with the land acknowledging that the lot is suitable for the owner or grantee's needs in its present condition and prohibiting further subdivision of the lot by variance from the water system requirements.

22-8 Water Tanks Required.

Any dwelling on a lot in a subdivision created with a variance under this rule shall have a water tank with at least 6000 gallons capacity, and a separate tank for fire fighting purposes with at least 3000 gallons capacity. Both tanks shall be supplied by drainage from the dwelling's roof or equivalent catchment area. This requirement shall be contained in a covenant running with the land.

22-9 Support for Future Water Improvements Required.

All lots in a subdivision created by a variance under this rule shall contain a requirement that if an improvement district is proposed for a public water system that would serve the property, the owner will support the improvement district, and if water from a public system becomes available to the property, the owner will purchase a connection to the system. This requirement shall be contained in a covenant running with the land."

SECTION 2. In the event that any portion of this rule is declared invalid, such invalidity shall not affect other parts of the rule.

SECTION 3. This rule shall take effect upon its approval.

PLANNING DEPARTMENT

Chris Yuen 2/15/06

CHRISTOPHER J. YUEN Date
Planning Director

APPROVED:

Harry Kim FEB 15 2006

HARRY KIM Date
Mayor

DATE OF PUBLIC HEARINGS:
November 29, 2005 (Hilo), and November 30, 2005 (Kona)

APPROVED AS TO FORM AND LEGALITY:

DEC 2 1 2005

LINCOLN ASHIDA Date
Corporation Counsel

I hereby certify that the foregoing rule was received and filed in my office this 15th day of February 2006.

Constance R. Kiriu

Constance R. Kiriu, County Clerk