STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, HI

August 12, 2011

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING: Amendments to Title 13, Chapter 5, Hawaii Administrative Rules (Conservation District)

PETITIONER: Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL)

LOCATION: Statewide

BACKGROUND

The Department has 15 years of experience in implementing Chapter 13-5, Hawaii Administrative Rules (HAR). Over this period the Department has identified strengths and weaknesses through the application of the rules. Many elements within the rules could be modified, deleted or added to lead to improvements in work efficiency that will contribute positively to OCCL's core objectives related to natural resource conservation, and will benefit Conservation District owners and agencies alike by streamlining administrative permitting for more routine, non-intrusive, and beneficial uses.

In addition, there exists undesignated conservation lands in the State that should be given subzone classifications. Subzone classifications are conducted through the rule amendment process and coordinating subzone classifications and rule changes through a single effort would be most efficient.

The OCCL requests to amend its administrative rules, Chapter 13-5, HAR, relating to the Conservation District **(Exhibit 1).** The purpose of this staff report is to provide the Board of Land and Natural Resources (Board) with the final proposed amendments to Chapter 13-5, HAR.

COMMENTARY AND EXPLANATION OF PROPOSED CHANGES TO THE CONSERVATION DISTRICT RULES

§13-5-2 Definitions

- Amend "Accessory use" to provide clarity and more flexibility for accessory uses. An accessory use is subordinate to the principle use found on the same property.
- Add "Average annual coastal erosion rate" to support the new shoreline set setback provisions being proposed in this rule amendment.

- Add "Cabin" to provide large landowners with an opportunity to use, enjoy, and manage remote or large land areas. The allowable size is 600 square feet. Also stipulated that it cannot be used for commercial purposes.
- Add "Clearing" to distinguish it from grubbing or grading.
- Add "Coastal erosion study" to define the standards used to calculate an erosion rate to be used in a shoreline setback calculation.
- Add "Coastal high hazard area" to distinguish it from areas outside of the coastal high hazard area.
- Add "Comprehensive management plan" to provide for the preparation of a comprehensive management plan, as in the Mauna Kea Comprehensive Management Plan.
- Add "Emergency" to articulate circumstances under which the Chairperson or the Deputy Director in the absence of the Chairperson can authorize actions to alleviate an emergency.
- Add "Flood zone" to distinguish it from areas that are not within the flood zone.
- Add "Grading" to distinguish it from grubbing and clearing.
- Add "Grubbing to distinguish it from grading and clearing.
- Repeal "Hearing officer" to avoid any inconsistency with the Rules of Practice and Procedure under Title 13-1, HAR.
- Amend "Historic property" to be consistent with Historic Preservation rules.
- Add "Imminently threatened" to provide guidelines to help determine under what conditions a situation may qualify as an emergency and a threat to public health, safety and welfare.
- Add "Invasive species." This definition will support the Department's efforts to remove invasive plants and animals from the State's natural areas.
- Amend "Land use" to stipulate that a use must be in place for more than thirty (30) days, rather than the current fourteen (14) days to be considered a land use under Title 13-5, HAR. Thus, temporary uses could take place in the conservation district for up to 30 days without a permit under Title 13-5, HAR.
- Amended "Management plan" to clarify that certain management plans may be specific, such as aquaculture, forestry, and agriculture projects. The ability of the Department to require broader plans covering larger geographic areas is provided by adding a definition of "Comprehensive Management Plan" to this chapter – e.g., Mauna Kea Comprehensive Management Plan (see above).
- Added or refined definitions for "Minor alteration," "Moderate alteration," and "Major alteration" to clarify under what circumstances and permit levels (e.g., B-1, C-1, or D-1) these uses can be undertaken in the Conservation District.
- Defined "Minor repair" to clarify under what circumstances such repairs can be undertaken without a permit (e.g., A-1). Also included language to clarify that any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with §183-44, and §183B-2 HRS.
- Repeal "Natural area reserve" as this will also be repealed as an identified land use in §13-5-22, HAR. Referring to this as a "Board Permit" has inhibited land conservation/preservation efforts by private landowners because of the regulatory burden. Staff feels that this category of uses has been over regulated. Furthermore, the Board of Land and Natural Resources is already considering many of these actions via existing

programs in the DLNR such as Forest Stewardship and/or Watershed Partnerships. Such uses could be proposed under Public Purpose.

Additionally, staff is recommending that a new provision be added to the rules titled "Land and Resource Management." This section will include a range of administrative, or "no permit" requirements for basic land and resource management actions such as routine weed control, clearing of understory, out-planting of rare plants, predator and ungulate control, tree pruning, fence maintenance, fence building, etc. The overall purpose is to streamline the permit process to encourage landowners to implement conservation practices that improve our island's ecosystems.

- Amend "Nonconforming use" to make the definition consistent with the definition in Chapter 183C, HRS.
- Repeal 'Plant sanctuary" for the same reason that "natural area reserve" will be repealed (see above).
- Add "Presiding officer" to be consistent with the Rules of Practice and Procedure under Tile 13-1, HAR.
- Add "Public purpose use" to include different types public and private uses that further public policy and the purpose of the conservation district. Clarified that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as "Renewable energy facilities." However, we have stipulated that an independent non-governmental regulated public utility may be considered a public purpose use under the definition of public purpose use.
- Add "Repair, maintenance, operation" to articulate a maximum threshold for uses that may be processed as minor actions or requiring no permit.
- Add "Shelter" since this has been added as an identified use in the conservation district to include a maximum floor area of 600 square feet.
- Add "Shoreline" to support the provision of a new shoreline setback system in the conservation district.
- Amend "State marine waters" to include those areas seaward of the "shoreline".
- Amend "Submerged lands" to include those areas seaward of the "shoreline".
- Amend "Topographical features" to include additional landforms such as rivers, gulches, beaches, submerged lands, unimproved roads and trails.
- Add "Transient rental" to distinguish it from long-term rentals. A transient rental is a single-family residence or structure used for rental purposes for less than one hundred eighty consecutive days.
- Amend "Water system" by replacing "consumers" with "water users".
- Repeal "Wildlife sanctuaries" for the same reason that "natural area reserve" and "plant sanctuary" will be repealed (see above).

Miscellaneous Amendments

§13-5-6 **<u>Penalty</u>**

Add a new subsections (d), (e), (f), clarifying that uses may not be conducted in the conservation district without first obtaining a permit or authorization from the department; requiring violators to record terms and conditions of a Board action with the property deed (this insures that future owners will be made aware of any

unresolved regulatory issues); and provide for the adoption of an administrative sanction schedule.

§13-5-7 **Nonconforming Uses and Structures**

Moved this section from the back of the chapter to the front of the chapter since it seems to drive so many land use issues in the conservation district. Also proposing various changes to this section to facilitate and streamline permitting, including an expedited review to rebuild structures for projects that had been previously issued a CDUP, or for some nonconforming uses. Added language to clarify that the repair of structures shall be subject to development standards set forth in this chapter (e.g., shoreline setbacks, maximum developable area, etc.), and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification.

With respect to the replacement of nonconforming structures, added additional provisions under section 13-5-22 (P-8) "Structures existing," such that it would possible to rebuild a nonconforming single family residence under a "site plan approval" provided that setbacks and other standards are satisfied (see Section 13-5-22 (P-8).

There would be a two-year window in which to apply to rebuild a structure. Failure to meet this two-year time frame would mean that the permittee would most likely be required to file for a major permit to re-establish the structure or use. Should the site plan approval process be executed, certain building and/or shoreline setback requirements would have to be complied with as explained in the rules. For instance, if a nonconforming residence is destroyed or severely damaged by coastal erosion, the owner will not be able to reconstruct the residence in its former position, but would most likely have to place the residence further landward from the shoreline, subject to a shoreline certification and prevailing shoreline setback requirements. Similarly, if a nonconforming residence that encroaches into a side yard setback is destroyed, the residence may be reconstructed but must respect the prevailing setback requirements. The main purpose for allowing the rebuilding of a non-conforming residence (or other types of structures) is because there are residences in subzones (Limited/Protective) in which such structures are not currently allowed. The Department is willing to make exceptions to allow for re-construction, but only if reconstruction complies with all other zoning standards, such as setbacks, floor area, height, etc. If the landowner desires to deviate from any of these standards, they would be required to seek discretionary permit or exemption from the Board.

Also amended with language to clarify that damaged nonconforming structures are subject to the Chapter and that voluntary demolition of a nonconforming structure results in its discontinuance similar to when it is destroyed. Also clarifies that dwellings that are destroyed that already have a permit may be rebuilt with a Site Plan Approval, under section 13-5-22, (P-8). Clarify subsection (e) to replace the word "reconstruction" with "maintenance," since reconstruction of non-conforming structures is not allowed except in conformity

with the Chapter, which could involve changes in the location or size of such structures.

§13-5-10 **Subzones, generally**

In subsection (c) replace the word "permitted" with "identified" to be consistent with language in Subchapter 3. The word permitted gives the false impression that the approval process is ministerial or non-existent. Permits for land uses in the Conservation District are approved on a discretionary basis by the Department or Board. This change also occurs in Sections 13-5-(10-14).

§13-5-13 **Resource (R) subzone**

Modify objective statement to make it more consistent with overall conservation district objectives to protect and conserve the natural resources of the state. Amend subsection (5) to make it consistent with definitions under Section 13-5-2 regarding the shoreline location.

§13-5-16 **Designation of subzones**

Increase application fee for subzone designations from $100 to $500 and stipulate that the public hearing fee shall include publication costs. Subzone designations are a lengthy and resource intensive process. The Department should defray some of these costs by increasing fees. Department staff may spend up to 40 hours processing a petition for a subzone designation. This equates to between $1,000-$1,500 if translated into billable hours. As a public hearing is required, Chapter 183C, HRS requires the Department to publish the action three (3) consecutive weeks in the newspaper. Publication costs have increased significantly.

§13-5-17 **Boundary determinations; criteria**

Increase application fee from $50 to $100. Add fifth criteria for determining a subzone boundary to include property boundaries and clarified that property metes and bounds needs to be identified when a subzone boundary follows a property boundary.

§13-5-22 **Identified land uses in the protective subzone**

"Data Collection." Clarifies what activities that do not require a permit (e.g., archaeological, botanical surveys), or temporary (less than 30 days). Clarifies what types of data collection require a Site Plan Approval (e.g. corings and excavations). Also clarifies that data collection involving the installation of larger equipment requires a Departmental Permit, and facilities that are larger than 500 square feet, or cause significant ground disturbance require a Board Permit.

"Fishponds." Removing the A-1 (no permit) requirement as it is redundant. It is redundant because repair of all structures and land uses is covered in a comprehensive manner in section 13-5-22 (P-8) so there is no need to "call out" fishpond repair as a separate element. Also under D-1 remove the word repair as this suggest that you have to get a Board Permit to repair a fishpond. This is overly restrictive. However, retain the requirement that fishpond construction or reconstruction requires a Board Permit.

"Landscaping." Removing the term "landscaping from this section as landscaping would not normally be allowed in the Protective subzone, except for existing

developed lots in the "P" subzone. Replacing this section with "Removal of Invasive Species." Further modified this section to provide for the removal of invasive species (not just invasive plants as previously proposed). Included language that the use of chemical controls must be in accordance with state and federal laws. No permit is required for an area under an acre. Removed any references to invasive species lists, as this is confusing. The purpose of these amendments is to promote the removal of plants and trees that are dangerous to our ecology. Will rely on DLNR resource managers, field specialists, and existing authorities to determine what types of invasive species may be removed within the conservation district. Also changed "natural or cultural" to "natural and cultural."

"Public Purpose Use." Combining governmental and nongovernmental actions into one identified use, expanding the list of potential public purpose uses. Removed the word "mandated" public service. Not all public purpose uses are mandated. Included a section for Site Plan Approval for the installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers. Clarified that such uses covered under public purpose uses can only be for non-profit uses with the exception that a regulated public utility may be considered to be engaged in a public purpose use.

"Sanctuaries." Removing this as an identified use. Having this as a "Board `Permit" has inhibited land conservation/preservation efforts by private landowners due to the regulatory burdens (e.g., CDUA/EA). Such uses are clearly in the interest of conservation and they should not be "regulated away." Furthermore, the Board of Land and Natural Resources is already considering many of these actions via existing programs in the DLNR such as Forest Stewardship and/or Watershed Partnerships. Such uses could be proposed under Public Purpose.

Additionally, staff is recommending that a new provision be added to the rules titled "Land and Resource Management." This section will include a range of administrative, or "no permit" requirements for basic land and resource management actions such as routine weed control, clearing of understory, out-planting of rare plants, predator and ungulate control, tree pruning, fence maintenance, fence building, etc. The overall purpose is to streamline the permit process to encourage landowners to implement conservation practices.

"Structures and Land Use, Existing." Current rule contains inconsistencies. For instance, existing rules allows for the replacement of structures or facilities without a permit, but requires a Departmental Permit to demolish a structure. Proposed changes would include wording expressly allowing for minor repairs and maintenance without a permit; allow for demolition, minor alterations, or replacement under a Site Plan Approval; and require Departmental or Board Permits for major alterations or expansions. Revised language to be consistent with definition of "Minor repair" and to indicate under which circumstances minor repair, maintenance, and operation to existing structures and uses can be conducted. Also clarified that "minor alteration" of existing structures and uses requires a Site Plan Approval. "Minor alteration" is defined in the rules as an alteration that does not result in more than a ten percent increase in the size of the structure, facility, or use. Changes are meant to streamline the permitting process to repair structures and to allow for the replacement of some structures and uses

that had pre-existing conservation district use permits or were a nonconforming structure or use, subject to existing zoning and development standards, including shoreline certification.

Regarding replacement or reconstruction of nonconforming structures: clarified that only a single-family residence can be replaced via a Site Plan Approval. Also stipulated that such replacement is subject to development standards set forth in the rules, such as shoreline setback, shoreline certification, and other requirements as applicable. The explanation for this change is that while there may be circumstances in which the rules may not allow for the replacement of nonconforming structures or uses after they are destroyed or removed, the Department has no desire to completely divest a homeowner from the continued use of their property for residential purposes, where the subzone might otherwise prohibit such use after the structure is destroyed.

"Structures Accessory." Current rule contains a major inconsistency. Allows for accessory structures in the Protective subzone without a Site Plan Approval, while accessory uses in the Limited subzone require a Site Plan Approval. [It appears that the less restrictive subzone is more restrictive.] New rule would require a Site Plan Approval for all accessory uses so there is parity throughout the subzones. Also deleted reference to HAR 11-200-8, for exemptions. This may give the impression that if a use is not identified in the exempt classes of action under Section 11-200-8, HAR (OEQC rules), it cannot be processed as an accessory structure or use under 13-5, HAR (OCCL rules). Our decision to process an action at a particular discretionary level should not be tied to a separate statute and rule beyond the purview of the department.

"Tree Removal." This section has been substantially revised to make it consistent with an earlier section of the rule that allows for the removal of invasive trees without a permit. Proposing to simplify the process by recommending the repeal of sections that govern tree removal based on the number of trees removed. Provides that a Site Plan Approval is required to remove individual trees (non-commercial), provided that each tree is replaced on a one-to-one basis. Another major change is that we have decided to remove any reference to the size of a tree in the rules, thus no definition for tree is needed. It is anticipated that the removal of all dead, dying, diseased, hazardous, and invasive trees will be allowed. Staff is amenable to reducing some of the regulatory burdens for tree removal, especially invasive trees, but we need to maintain some oversight of tree removal action – e.g. removal of koa for profit. Additional guidelines for tree removal will fall under "landscaping," or "sustainable commercial forestry."

Newly identified land uses

OCCL is proposing the addition of (5) five new identified land uses under the Protective subzone. Because the rules are based on a hierarchy of uses from Protective to General, these uses could also be proposed in the Limited, Resource, and General subzones. The proposed identified uses are: 1) power generation from renewable sources; 2) land and resource management; 3) telecommunications; 4) shoreline erosion control; and 5) beach restoration.

Inclusion of "Power Generation from Renewable Sources" will provide opportunities to develop alternatives sources of energy to coal and oil on

conservation lands including, but not limited to, wind, hydro, geothermal and biomass. Also clarified that renewable energy projects, shall be "expedited in the application review and decision-making process" and require a management plan.

The "Land and Resource Management" section will allow landowners to take care of their land with minimal interference from government (e.g., tree pruning, fence mending, clearing sand from stream mouths, weeding, clearing of understory, chemical control use in an area less than an acre in accordance with state and federal law, etc., may be done without a permit). More substantive actions including, but not limited to, new fences, shelters and erosion mitigation measures may be permitted by Departmental Permit. Coupled with the revised and streamlined provisions under the removal of "invasive species," the Division of Forestry and Wildlife and landowners, such as The Nature Conservancy, will be able to manage their lands without being overly burdened by regulations.

Basic land and resource management would include invasive plant control, clearing of understory, out-planting of native or endemic plants, and invasive aquatic organism control. A provision that small ex-closure fences can be used to protect single plant or small native wildlife communities (less than one acre) has been included. Also included language that allows the Department or BLNR to require higher level permits if necessary. Also, under erosion control, excluded shoreline erosion control structures, which are handled as a Board Permit under §13-5-22 (P-15) of the rules.
A cabin, road construction, major erosion control projects and water systems are also uses that could be applied for under this new identified land use.

"Telecommunications" uses specify minor and major permits for a variety of situations.

"Shoreline Erosion Control" was moved to Protective subzone and modified to include a variety of erosion alternatives including sand placement. Clarified that an application for this use must show that: (1) the applicant would be deprived of all reasonable use of such land or building without the permit; and (2) public facilities (e.g. public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g. relocation); and (3) the use will not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. This use requires a shoreline certification.

"Beach Restoration" was added to provide for major and minor permits consistent with the State's programmatic agreement with the U.S Army Corps of Engineers for Small Scale Beach Nourishment.

§13-5-23 **<u>Identified uses in the limited subzone</u>**

"Botanical Gardens and Private Parks" would be repealed from this section and would be placed in section 13-5-25, HAR under Resource subzone.

"Erosion Control" moved to Section §13-5-22, HAR Protective subzone along with "Seawalls and Shoreline Protection" that is now "Shoreline Erosion Control."

"Agriculture" has been amended to include agricultural water systems.

"Landscaping and Removal of Noxious Plants" amended to "Landscaping" Everything having to do with removal of invasive plants is handled under 13-5-22. Landscaping is allowed by permit in the Limited subzone, unlike the Protective subzone (where landscaping is not allowed, unless the lot is already developed). Landscaping may occur with a Site Plan Approval in an area less than 2,000 square feet, provided endemic or indigenous plants are given preference. A Departmental permit is required for landscaping up to 10,000 square feet and landscaping over one 10,000 square involving grubbing and grading requires a Board Permit. Under all categories of permits for landscaping, revised language to qualify that if chemical controls are used, it must be in accordance with state and federal laws and that the introduction of invasive species is prohibited.

"Single Family Residence" currently allows for dwellings in the floodplain or coastal high hazard area. However, the objectives of the Limited (L) subzone are set forth in §13-5-12, HAR as limiting uses where natural conditions suggest constraints on human activities. These areas have typically included steep slopes and areas subject to flood hazards. The Department and Board historically took the position that single family residential development is incompatible with the objectives of the "L" subzone, since these are areas prone to natural hazards and unsuitable for human settlements. This policy changed in 1994 with the adoption of Title 13-5, HAR. Section 13-5-23 (L-5) currently provides for potential uses of Limited subzone, <u>only</u> when the residence is located in a floodplain or coastal high hazard area.

Although this provision appears to be counterintuitive, the thinking at the time of the 1994 rule amendment was that since the Counties allow for residential uses in flood zones through the imposition of special construction standards recommended by the Federal Emergency Management Agency (FEMA), that these uses could also be accommodated in the Conservation District under FEMA building guidelines. The rule was enacted to ensure parity between Conservation District land, and lands under County jurisdictions in flood hazard areas, where construction is allowed provided that flood mitigation measures are implemented (e.g., raising floor of the structure above the area subject to flood waters).

The October 1997 Discussion Draft of the Conservation District Management Plan[1], it is noted that construction in the flood and coastal high hazard zones is a recognized use in the Conservation District as these structures are adequately addressed by the county flood regulations. This discussion reasoned that the objectives of the Conservation District laws and rules are for the protection of the

[1] It is noted that the October 1997 Discussion Draft of the Conservation District Management Plan was never adopted by the BLNR. It is though a public record and contains references to the reasoning for the rule.

environment and ecosystem. Based thereon, construction in areas in which structures would increase runoff, erosion, pollution, and siltation is discouraged. While the BLNR was and remains concerned with the risk to human life and structures in areas prone to flooding, the Discussion Draft noted that these concerns could be adequately addressed by county regulations mitigating against flooding, and ultimately by federal flood insurance guidelines that would provide for a remedy to homeowners whose homes may be damaged in the event of a flood or tsunami. However, this does not mean that single-family residences will always be approved in areas prone to flood hazards. It just means that they are entitled to apply for a use. Each case is reviewed based on its own merits. Other resource concerns and constraints can be a significant factor in the decision whether or not to permit a use in any subzone.

Staff is recommending a small change for this section. The word "floodplain" should be changed to "flood zone." Also recommending adding language that the flood zone is defined by the boundaries of the Federal Insurance Rate Maps (FIRM).

"Structures, Accessory" should be repealed since accessory structures would be handled in Protective subzone and would therefore also be covered in the Limited subzone as a function of the hierarchal structure of the rules from the Protective subzone down to the General subzone.

"Wilderness Camp" has been added to provide opportunities for profit or non-profit outdoor educational and/or recreational centers in appropriate areas of the Conservation District. The application for such a use requires a management plan approved simultaneously with the permit. Overnight accommodations are in tents and that facilities may include only one meeting shelter not to exceed 600 square feet.

§13-5-24 **<u>Identified land uses in the resource subzone</u>**

"Aquaculture" amended to clarify that the application for such a use requires a management plan, approved simultaneously with the permit, not a management plan that has already been approved.

"Astronomy Facilities" also amended to clarify that the application for such a use requires a management plan approved simultaneously with the permit, not a management plan that has already been approved.

"Commercial Forestry" amended to clarify that the use is limited to "sustainable commercial forestry" and also clarify that the application for such a use requires a management plan approved simultaneously with the permit, not a management plan that has already been approved.

"Landscaping" repealed from §13-5-24 (R-5). Provisions for landscaping are handled under §13-5-23 (L-7), HAR. Since the rule is hierarchal, all landscaping in the Resource and General subzones would be subject to the standards set in §13-5-23 (L-7), HAR.

"Marine Construction" amended to accommodate maintenance dredging projects. The current rule requires a Departmental Permit for maintenance dredging. This is unnecessary and redundant as other State departments regulate this activity.

Also, provides new description of marine dredging and also includes other types of marine construction, including piers, marinas, artificial reefs, etc.
"Mining and Extraction" amended to clarify that the application for such a use requires a management plan, approved simultaneously with the permit
"Botanical Gardens, Private Parks, and Nature Centers" has been moved from the Limited subzone and placed in the Resource subzone. Facilities can have not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet.

§13-5-25 **Identified land uses in the general subzone**

Land Uses Not Previously Identified. Replace Previously with "Otherwise" to indicate that this section is for uses that are not otherwise identified in the rules.

§13-5-30 **Permits, generally**

Clarified that in addition to a Management Plan, a Comprehensive Management Plan may be required.
Also added language that encourages applicants to seek a determination from the Department on the type of permit required for a land use.
Repeal subsection (d). This section essentially exempts certain land uses from the requirements of a CDUA. For instance, if an applicant is able to comply with Chapter 171, Hawaii Revised Statutes and obtain a lease for the use of submerged land, the CDUA appears to be waived. This language is inconsistent with 183C, HRS. Because the public leasing law is focused more on property management rather than natural resource management, this would either mean that the natural, cultural, and public use resources would not be properly protected, or it would place the burden of considering natural resource impacts, impacts to public use, and other potential impacts and conflicts on the Division that is not typically organized or trained to assess these matters (i.e., as land agents). Some of the divisions do not have adequate permit application processes in place to properly consider the natural resource impacts of projects on submerged lands and resources. Considering natural and cultural impacts is one of the main functions of the Conservation District Use Application process and the Office of Conservation and Coastal Lands. Furthermore, this provision may exceed the authority of Chapter 183C, HRS that requires conservation district use permits for all major land uses and appears to be inconsistent with Chapter 190D, HRS.

§13-5-31 **Permit applications**

Clarifies that a CDUA may be submitted to the Department with a draft or final environmental assessment, environmental impact statement, or an exemption request from Chapter 343, HRS.
Clarified that the only application requirement that can be waived under this provision is a shoreline certification. No other application requirements can be waived under this provision. Shoreline certification application requirement requires a waiver provision because not all uses occur near the shoreline in the Conservation District. Shoreline certifications can only be waived when the applicant can provide evidence to the satisfaction of the Department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to,

proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area, and the proposed activities will not adversely affect the beach process or interfere with public access or public views to and along the shoreline.
Clarified for State owned lands, that the application shall be reviewed for completeness within 60 days from the date filed with the department.

§13-5-32 **Fees**

This section is amended to exempt state agencies from filing fees.

§13-5-33 **Departmental permits**

Increase the application-filing fee for Departmental Permits from $50 to $250. The application fee increase from $50 to $250 is intended to defray some of the administrative costs associated with the processing of an application. The increases are justified. Staff man-hours per application if translated into actual costs far exceed an application fee for a permit. In addition, the cost of running a public hearing for a CDUA includes publication costs, any site rental fees and travel costs. This would rarely cost less than $500. If the hearing is on a neighbor island, the cost could exceed $1,000.

Amend language in subsection (g) to clarify who may appeal the Chairperson's decision on a Departmental Permit.

Repeal language in subsection (j) to clarify that the decision to bump a Departmental Permit up to a Board Permit is not based on the "necessity of an EIS. This could be construed to mean that a Board Permit would be required in all cases that an environmental document was necessary. As this may not always be the case, and we feel that this language is unnecessary.

§13-5-34 **Board permits**

Increase the application-filing fee for Board Permits from $100 to not less than $250, or equal to 2.5 % of the total project cost up to a maximum of $2,500. Board permits generally involve major projects costing hundreds of thousands or even millions of dollars, such as major offshore aquaculture projects, multi-million dollar homes, etc. Staff man-hours per major application if translated into actual costs can range from a few hours of work to many days of work. More expensive projects generally translate into more staff time. The permit processing requirements for these larger projects can be time consuming and costly in terms of publication fees for hearings, travel, and occasional contested case hearings.

§13-5-35 **Emergency permits**

The current rules provide a process for emergency repairs due to a natural disaster such as a hurricane (e.g., Hurricane Iniki, 2002), but lack a general mechanism to address singular non-natural disaster events. This provision would allow the Chairperson or the Deputy Director in the absence of the Chairperson to issue an emergency authorization to alleviate a threat to pubic health, safety and welfare, in isolated situations, such as episodic shoreline erosion, rock or landslides, etc.

Included language requiring "contingencies for removal methods (e.g., removal of the temporary emergency measures), estimates for the duration of the emergency measures, and future response plans." In addition, removed vague language that could have allowed the emergency measures to remain in place indefinitely. Inserted new language that clarifies that the issuance of emergency permits does not apply to an agency of the county, state, or federal government, or an independent non-governmental regulated public conducting repair, maintenance or operation for a public purpose use, which shall have a letter (A) identified land use designation.

The reason for this is that the Department does not wish to constrain a public utility from restoring a critical public utility in an emergency situation that would have otherwise required an emergency permit, provided that the utility company provides a post-emergency repair report describing the work that was conducted to the Department within thirty days of the repair work. Removed language that could allow the enlargement of structures or uses that are being repaired or reconstructed in the wake of a natural disaster. Added language providing that structures and uses damaged as a result of natural disasters may be repaired or reconstructed in conformance with §13-5-22 (P-8) of the rules. This ensures consistency throughout the rules for the repair and reconstruction of all structures that are either damaged or destroyed as a result of natural hazards, voluntary destruction, or other means.

§13-5-38 **Site Plan Approvals**

Added language to include fire protection.

§13-5-39 **Management Plans**

New language is proposed to allow the Department or Board to require the preparation of a Comprehensive Management Plan. Clarified that a management plan must be approved simultaneously with the permit (e.g., CDUP). A management plan requirement has been added to a number of the previously identified and newly proposed identified uses.

Language has been added to Exhibit 3 (Management plan requirements), which provides for status-updates, and reporting frequencies, and a description of the annual reporting requirements.

§13-5-40 **Hearings**

Adding language to subsection (c) to clarify that rule amendments require not less than 30 days prior notice in accordance with Chapter 91, HRS. Notices of public hearings for conservation district use applications require no less than 20 days notice in accordance with Chapter 183C, HRS.

§13-5-41 **Single family residences; standards**

Provides for minor deviations from SFR standards such as maximum square footage and height, but limits the deviation to 15 percent. Subsection (c) prohibits the construction of an SFR in the Conservation District where the same lot provides for residential development under a different land use district.

§13-5-41.1 **Fire protection zones**

Add new section to provide for fire protection zones with new Exhibit 5.

§13-5-42 **Standard conditions**

Changed the word "applicant" to "permittee" in all of the standard conditions. Subsection (a) (5) prohibits transient rentals, excluding campsites. Transient rentals create a resort-like atmosphere, and can increase pressure and impacts on natural resources. This is clearly inconsistent with conservation objectives. Added language to standard condition # 8 to clarify that any work or construction to be done on the land must be done within a specific timeframe, *"unless otherwise authorized."* Added five new standard conditions to manage various issues, including constraining the spread of vegetation below the shoreline; requiring permittees to obtain county building and grading permits for authorized conservation district uses; controlling artificial light; calling for the protection of beaches and coastal dunes; and for the protection of traditional, customary or religious practices of native Hawaiians. Subsection (b) clarifies that permits are not automatically void, and allows the Chairperson or Board to consider the matter should non-compliance arise. Amend subsection (c) to clarify that the Board may consider deviations to standards or criteria, and not just consider deviations to standard conditions.

§13-5-43 **Time extensions**

Subsection (d) is simplified by stating that time extension requests should be submitted prior to the expiration deadline. A new subsection (e) is added to allow for extension request (grace period) up to one year after the permit has expired.

SUBZONE DESIGNATIONS

Proposing to designate new subzones for lands that are currently undesignated. These are lands that were rezoned to Conservation District as a result of the 1995, Land Use Commission Boundary Review.

HAWAII

Kailua - USGS Quadrangle No. H-7

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within the Kailua United States Geological Services (USGS) quadrangle No. H-7 of the Administrative Rules (13-5, HAR). The subject lands are located in the District of North Kona, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural District to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. A93-694BR. The affected parcels with their intended subzone designations are located on **Exhibit A** and are identified as follows:

(3) 7-3-001:002, 7-4-001:002, 7-4-001:003, 7-5-013:022

Total = 915 acres

Few of the native forests of Kona are in the Conservation District, though they support many rare native species and natural community types. In the higher elevations, the dry zone supports forests dominated by ohia and mamane mixed with koa and sandlewood. Lower areas are wetter and the resources are more scattered, except on the a'a lava flows. The mid elevation forests have been thinned or eliminated in areas by grazing or logging, but some areas still provide excellent habitat for several rare birds. Five endangered bird species have been reported from the Kona area: Akepa, Akiapolaau, Alala, Hawaiian Creeper and Io.

These lands abut or are adjacent to the North Kona Forest. These lands contain areas for watershed protection, public hunting, and recreation and opportunities to reestablish koa forest on the mauka portion, and reforest with non-active species on the makai portion. The Alala Recovery Plan identifies portions of the area as essential habitat for the alala. According to the DLNR Threatened and Endangered Plant and Fire Map, the area has been identified as having high concentration of plant taxa listed or under review for endangered or threatened status.

The proposed additions of the North Kona Forest Reserves will protect wildlife habitats and watersheds, and provide recreational opportunities or wilderness experience and scenic amenities.

RECOMMENDATION:

The subject lands contain native Hawaiian bird species as well as native Koa, Ohia, Apapane and Montane species. In addition the area serves as a watershed and water recharge area, and provides for recreational opportunities.

Based on the subzone classification requirements, the endangered species found within the parcels, the adjoining Resource subzone designations, and the potential for multiple uses, staff recommends that this subzone be designated as Resource (R) subzone.

Puu Pohakuloa & Papa - USGS Quadrangle Nos. H-20 & H-21

The petition areas occur within the Puu Pohakuloa and Papa United States Geological Service (USGS) quadrangles Nos. H-20 and H-21 of the Administrative Rules (13-5, HAR). The subject lands are located in the District of South Kona, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-695. The affected parcels with their intended subzone designations are located on **Exhibits B & C** and are identified as follows:

(3) 8-7-001:008, 8-7-001:012, 8-7-012:005, 8-9-001:002

Total = 3,818 acres

The subject lands (except for parcel 8-9-00100:2) adjoin the South Kona Forest Reserve. These lands need protection because they encompass unique physiographic or ecological areas as well as areas necessary for providing parklands, wilderness reserves and the conservation of natural ecosystems.

The lands contain watershed and water resource areas worthy of protection. The areas include lands necessary for the conservation, preservation and enhancement of sites of unique physiographic or ecological significance. The area also includes land necessary for providing and preserving parklands, wilderness reserves and for conserving natural ecosystems of endemic plants and wildlife for forestry and other uses. The subject lands contains intact native forest with less common and rare native forest bird habitat, public hunting for pigs and goats and areas for forestry management.

The South Kona Forest Reserve enhances and protects the watersheds, provides habitats for rare and endangered species and protects native forests. In the higher elevations, the dry zone supports forests dominated by ohia and mamane mixed with koa and sandalwood. Lower areas are wetter and the resources are more scattered. The vegetation in this area ranges from fair to grazed. There is also an endangered Palila habitat found in one of the parcels. In addition rare plants and invertebrates have been reported in the area. These areas are known as a native forest bird habitat area. Four species of native Hawaiian bird species are known to be endangered and are known to exist in this area. These species are Hawaiian Akepa, Hawaiian Honeycreeper, akiapolaau, alala and io. The watershed areas of Kona are separated vertically (by ownership of ahupuaas, while the native plants and animals are distributed horizontally in elevation bands. As a result conservation areas are separated by large gaps. Bridging these gaps to provide habitat management in key areas is considered essential for the long-term survival of Kona's native species.

RECOMMENDATION:

Based on the subzone classification requirements in conjunction with the information for the parcel, staff recommends that these parcels be placed in the Resource (R) subzone. This is due to the fact that this area contains important watershed and water resource areas, but is also suited for multiple uses, such as recreation. These lands contain native forest species, unique habitats and unique physiographic characteristics that warrants a high level of protection.

Punaluu & Naalehu - USGS Quadrangle Nos. H-42 & H-43

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition areas occur within the Punaluu and Naalehu United States Geological Service (USGS) quadrangles Nos. 42 and 43 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Kau, Island of Hawaii. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife. These parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to Order, filed June 28, 1994, via Docket No. A93-693BR. The affected parcels with their intended subzone designations are located on **Exhibit D** and are identified as follows:

(3) 9-6-006:009, 9-6-006:010, 9-6-006:015, 9-6-006:018, 9-7-001:017, 9-7-001:015, 9-7-001:020, 9-7-001:016, 9-7-001:014

Total = 4,470 acres

These former agricultural lands adjoin Kau Forest Reserve that contains watershed as well as water recharge areas. The Kau Forest Reserve contains viable montane, koa and ohia forests. Some of these lands contain pockets of apapane vegetation as well. Within the forested area of the parcel there are four endangered Hawaiian forest bird populations, which are Hawaiian Akepa, Hawaiian Honeycreeper, Akiapolaau, and Ou. These populations are entirely dependent upon native Hawaiian forest ecosystems for food, shelter and nesting sites.

These parcels contain watersheds and water resources. The State Water Resources Protection Plan states, "Adequate management and control of watersheds is a prerequisite for our two major concerns—retaining sufficient acreage of watersheds to insure infiltration into groundwater aquifers to meet our needs, and to protect the quality of our raw water. It is vital that a minimum area of conservation lands be set aside for watersheds for infiltration." The interior forested portions of the Big Island serve as watershed or water recharge areas.

RECOMMENDATION:

Based on the potential for multiple uses of these lands, their former use as agricultural lands, and the subzone designation on the abutting forest reserve lands, staff recommends these lands for inclusion in the Resource (R) subzone.

MAUI

Wailuku - USGS Quadrangle No. M-5

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within the Wailuku United States Geological Service (USGS) quadrangle No. M-5 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Wailuku, Island of Maui. The petition area is owned by the Maui County Land Trust. A portion of this parcel was designated from the Urban to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed November 20, 1990, via Docket No. A89-650. The affected area and its intended subzone designation is located on **Exhibit E** and is identified as follows:

(2) 3-2-010:001p[2]

Total = 26 acres

The petition area includes some land that is highly unusable due to extreme slopes along coastal areas. The parcel includes dunes, coastal dry herbland/shrublands and fresh/brackish wetlands. There are endangered bird habitats located within this area as well as uncommon plant species habitats. In addition, portions of the parcel are home to uncommon communities of an

[2] Denotes that the petition area constitutes only a portion of the overall parcel.

endangered dwarf naupaka (Scaevola coriacea). This site may also serve as an archeological resource due to the sand dunes. It is common knowledge that this area is replete with *Iwi.*

The petition area surrounds a federally designated wetland of 20+ acres (when flooded). The wetland found in this area provides habitat for endangered Hawaiian stilts and coots as well as migrant bird species and indigenous black crowned night herons. Waihee coastline and Waihee Stream enhances its value as an open space resource.

The petition area contains uncommon plant communities and an endangered dwarf naupaka (Scaevola coriacea). The wetland provides habitat for endangered Hawaiian stilts and coots, as well as migrant bird species and the indigenous black crowned night herons. The area is found within close proximity of Macadamia Nut Orchards.

RECOMMENDATION:

Based on the subzone classification requirements in conjunction with the information for the parcel provided we recommend that this land be classified as Protective (P). This is due to the fact that this area possesses a unique endangered dwarf naupaka plant community. In addition this area provides habitat for endangered Hawaiian stilts and coots as well as migrant bird species and the indigenous black crowned night herons.

Haiku - USGS Quadrangle No. M-10

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition areas occur within the Haiku United States Geological Service (USGS) quadrangle No. M-10 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Paia-Haiku, Island of Maui. East Maui Irrigation Company owns these lands. A portion of parcel seven (7) and all of parcel twelve (12) were designated from the Agricultural District to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1995, via Docket No. A94-713BR. The affected parcels and their intended subzone designations are located on **Exhibit F** and are identified as follows:

(2) 2-8-008:007p, 2-8-008:012

Total = 932 acres

The University of Hawaii Water Resources Center identified this area as having water resources protection and enhancement values. The petition area is a healthy forested area and a former forest reserve. In addition there is a watershed located in the petition area. Due to both of these valuable resources within the area it provides unique habitat space for many endangered species. There are unique bird habitats found within the petition area. It has also been noted that this area serves as a scenic and recreational area.

The petition area is located along the northern slope of Haleakala between Honopou and Opana Gulches between the 700 and 1220-foot contours.

The petition area has been designated as a watershed resource. The Hawaii Water Code and State Water Resources Protection Plan call for increased protection of watersheds. This plan points out that retaining sufficient acreage of watersheds to insure infiltration into groundwater aquifers to meet the need and to protect the quality of raw water is crucial.

On Maui, an endangered forest bird habitat range has been identified in the East Maui region. This area provides habitats for rare and endangered species, protects native plant species and protects the existing watershed area. Bird habitat ranges have been identified in this region to outline the space required for the continued existence and growth of bird species.

RECOMMENDATION:

On behalf of the landowner, comments were received requesting that the area be placed within the General subzone, one of the least restrictive subzones. Currently, the land is undesignated. In order to apply for any type of land use, the land needs to be designated. Given the options to remain undesignated, to petition to place the land in the General subzone or to have it placed in the Resource subzone, the landowner is amendable to placing the land in the Resource subzone as a petition to redesignate the subzone could be filed at a later time should the landowner choose to do so.

Based on the subzone classification requirements in conjunction with the information for the parcel provided we recommend that these lands be designated as Resource (R). This is due to the fact that the petition areas include a watershed as well as a former forest reserve with similar zoning.

Kaupo - USGS Quadrangle No. M-15

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within the Kaupo United States Geological Service (USGS) quadrangle No. M-15 of the Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of Hana, Island of Maui. The National Park Service owns these lands. A portion of these parcels were designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 29, 1995, via Docket No. A94-709BR. The affected parcels and their intended subzone designation are located on **Exhibit G** and are identified as follows:

(2) 1-6-010:001p, 1-6-010:006p

Total = 273 acres

These two parcels contain a stream, referred to as Alelele Stream. The stream encompasses aquatic, riparian, cultural and recreational value. Streams are a protected resource due to their connection with all surrounding ecosystems. The Alelele Stream has been classified as a special stream due to its possession of outstanding aquatic resources or outstanding riparian resources associated with water bird recovery habitat. The stream is also noted for containing native Hawaiian stream fish.

Alelele Stream contains both unique flora and fauna habitats. Alelele Stream is one of Maui's sixteen special streams. Freshwater streams have a multitude of values such as providing irreplaceable habitat for aquatic and riparian flora and fauna. They support and define estuarine ecosystems.

RECOMMENDATION:

Streams provide an irreplaceable habitat area for flora and fauna of Hawaii. The special stream found within the parcels contains unique aquatic species, water bird recovery habitats and excellent riparian habitats, which must be protected.

Based on the subzone classification requirements, the fragility of ecosystems existing within the parcel and the information provided, staff recommends that the petition area be designated as Protective (P) subzone.

OAHU

Kaena - USGS Quadrangle No. O-1

DESCRIPTION OF AREA AND CURRENT LAND USE:

The petition area occurs within Kaena United States Geological Service (USGS) quadrangle No. 1 of the Hawaii Administrative Rules (Title 13-5, HAR). The subject lands are located in the District of the North Shore, Island of Oahu. These parcels are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Division of Forestry and Wildlife, Division of State Parks, or the Land Division. These parcels[3] were re-designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-691. The affected parcels and their intended subzone designation is located on **Exhibit H** and are identified as follows:

(1) 6-9-001:002, 6-9-001:004p, 6-9-003:002p, 6-9-003:003p, 6-9-004:001, 6-9-004:002, 6-9-004:006, 6-9-004:007, 6-9-004:012, 6-9-004:013, 6-9-004:014, 6-9-004:015, 6-9-4:016, 6-9-004:017, 6-9-004:019p, 6-9-005:001, 6-9-005:002, 6-9-005:003, 6-9-005:004, 6-9-005:005, 6-9-005:006, 6-9-005:007p

Total = 969 acres

The slope found within the various parcels ranges from less than 10% to more than 20% in specific regions. The affected parcels are located between Kaena Point and Mokuleia roughly bounded by Puu Pueo on the west, following the 800 foot contour along the south, the existing shoreline on the north with the exception of Camp Erdman and a dwelling unit adjacent to Camp Erdman, and Keekee Gulch up to the 800 foot contour on the east.

The subject parcels contain rare and endemic plants as well as scenic and recreational resources indicative of the northwestern extent of the island of Oahu. There is a Natural Area Reserve and

[3]Only portions of parcels 6-9-001:004, 6-9-003:002, 6-9-003:003, 6-9-004:019, 6-9-005:007 were redesignated to Conservation.

a Forest Reserve located adjacent to these lands. Portions of the upper slopes of these lands provide habitat for rare and endangered species and protect native forests. In addition, these areas are one of the only examples left on Oahu of a healthy shrub land area. The coastal areas are normally dry with interspersed sand dunes that have been heavily damaged by erosion and off road vehicles. Some of these parcels are currently encumbered as part of the Kaena Point State Park.

It has also been noted that this site may be a potential recreational use area. The proposed reclassification will impact favorably the preservation and maintenance of valued cultural, historical and natural resources.

RECOMMENDATION:

The OCCL received one comment regarding placing portions of this area in the Limited subzone. A nearby leaseholder requested that the area be put in the General subzone so that more proposed uses could be applied for. However, Conservation District land in close proximity to the area lies within the Limited subzone and the land fits the criteria for the Limited subzone designation.

These areas contain landforms that necessitate rare native plant species. In addition, the lands contain areas that are subject to severe erosion. These lands are important for scenic and recreational values. Based on the subzone classification requirements, in conjunction with the information for the parcels provided, staff recommends that these lands be designated as Limited (L) subzone.

Honolulu - USGS Quadrangle No. O-13

DESCRIPTION OF AREA AND CURRENT LAND USE:

The subject parcels occur within the Honolulu United States Geological Service (USGS) quadrangle No. 013 of the Administrative Rules. (Title 13-5, HAR). The subject lands are located in the District of East Honolulu, Island of Oahu. These parcels are owned by the State of Hawaii and are under the management of the Division of State Parks. These parcels were designated from the Urban to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-692. The affected parcels and their intended subzone designation is located on **Exhibit I** and are identified as follows:

(1) 3-1-042:010, 3-1-042:021, 3-1-042:023, 3-1-042:024, 3-1-042:025, 3-1-042:036
3-1-042:037

Total = 24 acres

The parcels are located with the boundaries of the Diamond Head State Monument and are adjacent to Diamond Head Road. These parcels have scenic, recreational, historical and cultural value. The Diamond Head State Monument serves as a recreational site for hiking and picnicking. This area is considered to contain unique physiographic features.

RECOMMENDATION:

The Diamond Head State Monument serves as a parkland and recreation site to numerous visitors throughout each year. It can also be considered a historic site.

Based on the subzone classification requirements, the potential for multiple use, the adjoining subzone classification, in conjunction with the information for the parcels provided, staff recommends that these lands be designated as Resource (R) subzone.

Koko Head - USGS Quadrangle No. O-15

DESCRIPTION OF AREA AND CURRENT LAND USE:

The subject parcels occur within the Koko Head United States Geological Service (USGS) quadrangles No. O-15 of the Administrative Rules (Title 13-5, HAR Exhibit 1). The subject lands are located in the District of Koolaupoko, Island of Oahu. Parcels (1) 4-1-008:013, 4-1-010:007, and 4-1-010:074 are owned by the State of Hawaii and are under the management of the Department of Land and Natural Resources, Land Division, but are currently being set aside to the Division of Forestry and Wildlife. Parcel (1) 4-2-006:002 is set aside by Governor's Executive order to the Department of Human Services for Kawailoa Training School. A portion of each of these parcels was designated from the Agricultural to the Conservation District by the Land Use Commission by its Findings of Fact, Conclusions of Law, and Decision to order, filed June 28, 1994, via Docket No. BR93-690. The affected parcels and their intended subzone designation are located on **Exhibit J** and are identified as follows:

(1) 4-1-008:013p, 4-1-010:074p, 4-1-10:093p, 4-2-006:002p

Total = 456 acres

These parcels form a portion of the flanks of Mt. Olomana, which is largely in the Conservation District, Protective Subzone. In January 1991, the Board of Land and Natural Resources designated Mt. Olomana as a "Significant Geological and Unique Area on Oahu," thus allowing it to be placed with the Protective subzone. "The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted watersheds...significant...geological...sites." The developed portion of the Kawailoa Training School (TMK: 4-1-006:002) is not within the Conservation District portion of the parcel, except for a water tank and access road. This subzone designation would not affect the existing uses on the parcel. Staff recommends that all of these parcels be included within the Resource subzone.

RECOMMENDATION:

Based on the subzone classification requirements and the intended purpose of the surrounding lands, staff recommends that these lands be designated as Resource (R) subzone.

ADDITIONAL AMENDMENTS

Exhibit 3 **Management plan requirements**

This section was amended to ensure that the information for management plans that is provided to the department is meaningful and not redundant. Management plans should contain Best Management Practices and reporting/monitoring requirements.

Exhibit 4 **Single family residential standards**

Imposing a limitation on the size of single-family residences protects areas from over speculation and excessive quasi-urban development. Some of the existing standards governing development of single-family residences remain unclear, inflexible, and confusing at times. Proposed changes are as follows:

- Minimum Lot Size: Repeals minimum lot size requirement.
- Minimum Setback: Allow extensions of eves and decks. Includes process for calculating minimum shoreline setback based on erosion rates.
- Shoreline Setbacks: Added standards for calculating shoreline setbacks using an annual erosion rate and standard setback for smaller lots.
- Maximum Developable Area (MDA): Simplifies living area calculation for a graduated scale for MDA as a function of lot size. For instance, for lots less than 14,000 square feet, MDA is 25 percent of total lot area. The proposed rule provides for a deviation in MDA of up to 15 percent, as approved by the BLNR. Thus, all development, whether the primary residence, decks, and pools, must be contained within the MDA, with the possibility of a 15 percent deviation as approved by the BLNR.
- Revised "Maximum height limit" to "Maximum allowable building envelope." It is believed that a "buildable envelope approach" rather than a "maximum height limit" approach would be better and would reduce impacts on natural topography and view planes.

Exhibit 5 **Fire Buffer Standards**

Designed to create and maintain fire protection zones in the Conservation District via Site Plan Approval.

STAFF ANALYSIS:

Statutes and rules that govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- §§91-2 to 7, Hawaii Revised Statues (HRS) [Administrative Procedures];
- §§201M-2 to 4, HRS [Small Business Regulatory Flexibility Act];
- §183 (c)-4, HRS [Conservation District Zoning, Amendments];
- §13-1, Hawaii Administrative Rules (HAR) [Rules of Practice and Procedure]; and
- §13-5-5, HAR [Amendments].

Petitions to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorization for both public hearing and final approval. Further the Governor of the State of Hawaii has issued Administrative Directive No. 09-1 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address

certain policy topic areas. By this submittal, staff proposes that the general content of this petition be transmitted to the Governor's office with a request for approval.

Public Purview

The first major step to amend the administrative rules is to hold a Public Hearing to inform and to receive testimony from the public. Information/notification regarding the proposed rule amendments was presented to the public thru:

- **Two Board of Land and Natural Resource's Meetings** held on February 11, 2010 and on December 1, 2010. The staff report regarding the applicable proposed amendments were posted online to the Department's website prior to both meetings and the current draft continues to be available online;
- **Two press releases** regarding informational meetings and the second round of public hearings;
- **Public notices** that ran for three consecutive weeks in a Kauai, Maui, Oahu, Hilo and Kona newspaper in the summer of 2010 and again in the beginning of 2011 (Total of 30 occasions of publication);
- **Informational meetings** that were held on Kauai, Oahu, Maui, Molokai, Kona & Hilo prior to the first round of Public Hearings. At these informational meetings, presentations regarding the proposed amendments were given followed by a question and answer session and notification of future public hearings (Total of 6 public informational meetings);
- **Two rounds of Public Hearings** were held on Kauai, Oahu, Maui, Molokai, Kona and Hilo. (Total of 12 Public Hearings). Based upon public input received during the first round of public hearings, considerable revisions were made to the first proposed draft amendments. Therefore a second series of hearings was conducted;
- **Two e-mail blast** to all Legislators in the House and Senate notifying them of the proposed amendments and the public hearings encouraging them to notify their constituents;
- Copies of the proposed and revised amendments were forwarded to **20 State Libraries**, the four District Land Offices (Kauai, Oahu, Maui, Hawaii) and were also available at the Department; and
- **Our website** at hawaii.gov/dlnr/occl. During the process, the first draft of rules were posted here. After the first round of Public Hearings, a comment letter explaining proposed revisions to the rules was posted to the site. The revised rule amendments were also posted. The current proposed rules is posted on our website.

In addition, some stakeholders met with the OCCL to discuss some of their concerns. Individuals who phoned the OCCL were encouraged to send written testimony to document their comments. The rule amendments did receive coverage by the media. On Thursday, August 12, 2010, the proposed amendments made the front page of the Star Advertiser and an editorial followed on August 17, 2010. The Honolulu Weekly and the online "Civil Beat" and 'Hawaii Reporter' also covered the proposed amendments. A televised story regarding the amendments were featured on the KHON 6 pm news on July 29, 2010.

There were several hundred attendees at the various public meetings throughout the State. Approximately 120 written letters and hundreds of e-mail inquiries were received. One of the major criticisms during the first round of public hearings was that the rule revision process was

rushed and there was a lack of notification regarding the proposed changes. While Staff does not agree with this assessment, the process of the second round of public hearings should have alleviated that concern.

Small Business Impact

Regarding small businesses, comments received after the second series of public hearings included 3 planning firms, an orchid grower, an architect, a private park owner and an aquaculturalist. The orchid grower lives on Conservation land and expressed that he was grateful of the proposed changes; and the aquaculturalist was concerned with a proposed subzone to adjacent State land. All were concerned with the language of the proposed rules and requested clarification or proposed language to improve the final wording of the rules.

Large landowners and ranchers may also be comparable to a small business. Two large landowners with property in the Limited subzone of the Conservation District expressed some consternation regarding the lack of identified land uses for this particular subzone. Ranchers requested that water systems beyond a 'public purpose' use be identified.

Some adjustments were made to the rules based upon comments received from the public. Wilderness Camps is a new identified land use in the Limited subzone and Water Systems have been identified as a use under Land and Resource Management.

No substantive comments were received in regards to potential impacts the proposed rules would have on any small business. Staff is of the opinion that the proposed rule amendment will not impact or affect small business.

DISCUSSION

Commentary regarding the first round of public hearings is noted as **Exhibit 2**.

2nd Public Hearing Process Commentary

With the refinement of the rules due to the first series of public hearings, the amount of comments received decreased considerably. Our proposed new definition 'invasive species', new identified land uses: P-4 Removal of Invasive Species and P-13 Land and Resource Management received a significant amount of similar testimony. The concern appears to be the belief that the amended sections would allow unregulated animal culling and wide use of poisons, herbicides and bio-controls within the Conservation District.

Staff was surprised at how much attention was focused on the unsubstantiated belief that the proposed rule changes would result in mistreatment of animals and invasive plants. Under the current rules, noxious plants may be removed without a permit. Under the proposed rule, invasive plants could be removed in an area of up to one acre without a permit, or more than one acre with a Site Plan Approval. The proposed rule is more effective at protecting Hawaii's native plants by including a definition of "Invasive Species," and by changing the reference to such plants, yet allows staff to retain some oversight to ensure that such actions do not cause unpermitted clearing of large areas, which could result in secondary or off site impacts. In addition, the removal of invasive plants is not to be confused with "landscaping" which is regulated in the rules via minor and major permits. We feel strongly that the rules guard against abuse of this provision and that it will not be used as a smokescreen by landowners with ulterior motives.

The definition of "invasive species" includes a reference to animals in order to support actions by DOFAW that take place within Conservation District lands including actions that involve land uses such as exclusionary fences, traps, etc.

New identified land use, P-12 Power Generation from Renewable Resources received a number of negative comments with concerns regarding: the potential to site a facility in the Protective subzone, the residual affects on the environment and an 'expedited' process. Staff notes, this proposed land use most likely would have formerly been identified and processed as a 'Public Purpose' land use. Major land uses within the Conservation District require 343, HRS compliance and shall be vetted in an open public process. Although these concerns are not unfounded, public purview will insure proper siting and mitigation of potential affects to the land and the resources.

A number of comments were also received regarding the narrowing of who may appeal decisions made by the Department (§13-5-33, Departmental permits (g)). The language regarding who may appeal a Chairperson's decision was added for consistency with Chapter 13-1-31,HAR that recognizes parties in a contested case proceeding. §13-5-3 Appeals has only been slightly amended to include the board and continues to state: Any final order of the department *or board* based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found.

Tree removal received a number of comments with the main theme being that all trees are a resource (native or non) and that trees would be removed with no oversight. Dead/diseased trees for non-commercial purposes and trees that pose a hazard are allowable uses that don't require a permit. Staff believes this is reasonable and allows property owners to manage their land and take care of a hazardous situation without the burden of government regulation.

With the existing rules, you could remove up to five trees under a Departmental permit or more than five trees under a Board permit. With the proposed rules, you may selectively remove trees for non-commercial purposes **provided** that each tree is replaced on a one-to-one basis with trees that are appropriate to the site with preference to endemic or indigenous trees under a Site Plan Approval. Although the authorization requirement has been reduced, the proposed action has become much more stringent by requiring a one-to-one replacement. Potential fines of up to $15,000 per unauthorized tree removed may act as a deterrent to prevent noncompliance with the new rules.

A number of comments were received regarding nonconforming uses, the ability to replace and reconstruct a nonconforming structure and poorly sited nonconforming structures. While staff may agree with some of these concerns, §183C-5, HRS states: Neither this chapter nor any rules adopted hereunder shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land was used on October 1, 1964…All such existing uses shall be nonconforming uses.

The OCCL has assessed all verbal, written, and e-mailed comments that have been received on this matter. This input has been helpful in formulating applicable revisions to improve the Conservation District Administrative Rules. The second series of hearings and collection of

public input has resulted in better-defined administrative rules to regulate the Conservation District.

RECOMMENDATION

Based on the preceding analysis, Staff recommends the Board of Land and Natural Resources:

1. Grant the Office of Conservation and Coastal Lands request to amend Chapter 13-5, Hawaii Administrative Rules noted as **Exhibit 1**; and

2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for Submittal:

WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

Department of Land and Natural Resources
Rules Amending Title 13
Hawaii Administrative Rules
(Date of Adoption)

1. Chapter 5 of Title 13, Hawaii Administrative Rules, entitled "Conservation District", is amended and compiled to read as follows:

EXHIBIT 1

DRAFT

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

Subchapter 1 General Provisions

§13-5-1 Purpose
§13-5-2 Definitions
§13-5-3 Appeals
§13-5-4 Mediation
§13-5-5 Amendments
§13-5-6 Penalty
[~~§13-5-7 to 13-5-9 (Reserved)~~]
§13-5-7 Nonconforming uses and structures
§13-5-8 to 13-9 (Reserved)

Subchapter 2 Subzones

§13-5-10 Subzones; generally
§13-5-11 Protective (P) subzone
§13-5-12 Limited (L) subzone
§13-5-13 Resource (R) subzone
§13-5-14 General (G) subzone
§13-5-15 Special (S) subzone
§13-5-16 Designation of subzones
§13-5-17 Boundary determinations; criteria
§13-5-18 to 13-5-21 (Reserved)

Subchapter 3 Identified Uses and Required Permits

§13-5-22 Identified land uses in the protective subzone

§13-5-23 Identified land uses in the limited subzone
§13-5-24 Identified land uses in the resource subzone
§13-5-25 Identified land uses in the general subzone
§13-5-26 to 13-5-29 (Reserved)

Subchapter 4 Procedures for Permits, Site Plan Approvals, and Management Plans

§13-5-30 Permits, generally
§13-5-31 Permit applications
§13-5-32 Fees
§13-5-33 Departmental permits
§13-5-34 Board permits
§13-5-35 Emergency permits
§13-5-36 Temporary variance
[~~§13-5-37 Nonconforming uses~~]
§13-5-38 Site plan approvals
§13-5-39 Management plan approvals
§13-5-40 Hearings
§13-5-41 Single family residences
§13-5-41.1 Fire buffer zone
§13-5-42 Standard conditions
§13-5-43 Time extensions
§13-5-44 Revocation of permits
§13-5-45 Severability

Historical Note: This chapter is based substantially upon chapter 13-2. [Eff 6/22/81; am and comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R 07/01/1994]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-5-1 Purpose. The purpose of this chapter is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote

their long-term sustainability and the public health, safety, and welfare. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-1)

§13-5-2 Definitions. As used herein unless otherwise provided:

"Accessory use" means [~~use of land or of a building or a portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use~~] a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or fresh water environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Average annual coastal erosion rate" means the average annual rate of shoreline change as determined by the coastal erosion study performed under this chapter.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Cabin" means a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads. The cabin cannot be used as a principal residence, for rental, or any commercial purposes.

"Chairperson" means the chairperson of the board of land and natural resources.

"Clearing" means the removal of vegetation, with no ground disturbance.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to

carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the shoreline change reference feature. The coastal erosion study shall be carried out by a qualified professional consultant following procedures described in the Hawaii Coastal Hazard Mitigation Guidebook, or other credible publications that provide similar procedures.

"Coastal high hazard area" means an area where wave action or high velocity water or both can cause structural damage in the hundred year flood, primarily defined as an area where a three foot or greater wave height could occur (VE Zone), in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; provided, however, that the use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables and other accessory structures for electronic, radio frequency, or microwave transmissions or receptions.

"Comprehensive management plan" means a comprehensive plan to manage multiple uses and activities in order to protect and conserve natural and cultural resources.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Departmental permit" means a permit approved by the chairperson.

"Emergency" means an imminently dangerous situation that poses a substantial threat to public

health, safety, and welfare as declared by the chairperson, or deputy director in the absence of the chairperson.

"Flood zone" means those areas in the "V" or "A" zones that require mandatory flood insurance, in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.

"Grading" means the excavation of earth material, fill, or combination thereof.

"Grubbing" means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.

[~~"Hearing officer" means a person or persons designated or appointed by the board or chairperson to conduct public hearings or proceedings on behalf of the board.~~]

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old, or otherwise defined in section 6E-1, HRS.

"Imminently threatened" means an inhabited dwelling, essential cultural or natural resource, or other (non-movable) major structure or public facility that is in danger of destruction or severe damage due to natural hazards. For coastal erosion, "imminently threatened" shall mean a distance of twenty feet or less from an actively eroding shoreline or erosion that will threaten the structure in less than six months.

"Invasive species" means any terrestrial or aquatic plant or animal that can directly or indirectly injure or cause damage to the environment, native species, natural or cultural resources, navigation, or to the public health, safety and welfare.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their

Own Lands and House Lots, and Certain Other [~~Privileges,"~~] Privileges", as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Land use" means:

(1) The placement or erection of any solid material on land if that material remains on the land more than [~~fourteen~~] thirty days, or which causes a permanent change in the land area on which it occurs;

(2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

(3) The subdivision of land; or

(4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use.

"Management plan" means a [~~comprehensive~~] project or site based plan to protect and conserve natural and cultural resources [~~plan for carrying out multiple land uses~~].

"Minor alteration" means work done to an existing structure, facility, or use that results in a ten per cent or less increase in the size of the structure, facility, or use.

"Minor repair" means routine work done to an existing structure, facility, use, land, and equipment, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.

"Moderate alteration" means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty percent increase, in the size of the structure, facility, or use.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block, or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.

[~~"Natural area reserve" means those state lands that have been designated as part of the Hawaii natural area reserve system by the department pursuant to section 195-4, HRS.~~]

"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established [~~immediately~~] prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

[~~"Plant sanctuary" means an area of land set aside to preserve, protect, conserve, and manage particular plant species.~~]

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Public purpose use" means not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that

an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty per cent of the replacement value of the structure or use.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Shelter" means a structure used for sheltering from the elements, with a maximum floor area of six hundred square feet.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, HRS.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the [~~upper reaches of the wash of the waves on shore~~] shoreline seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the [~~upper reaches of the waves on shore~~] shoreline seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district [~~which~~] that is identified by boundaries and resource characteristics pursuant to this chapter.

"Temporary variance" means an exception to zoned use, where good cause is shown and where the proposed variance is for a use determined to be in accordance with good conservation practices.

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as, but not limited to, mountains, hills, valleys, rivers, gulches, streams, wetlands, shorelines, beaches, submerged lands, roads, unimproved roads, trails, and other such [~~structures~~] features.

"Transient rental" means the use of a single family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

"Transportation system" includes the means to transport people, animals, or goods or any combination thereof from one place to another, including roads, harbors, airways, and their related facilities.

"Water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g., ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of a surface water collection system) [~~which~~] that furnishes a supply of water to [~~consumers~~] water users. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

"Wilderness area" means an area designated by the department having a diversity and abundance of native flora and fauna, geological formation, or both, largely

undisturbed by human influences, in which the introduction of non-indigenous plants and animals, mining, grazing of domestic animals, removal of vegetation, overnight camping, and the construction of roads or structures is prohibited or restricted.

[~~"Wildlife sanctuary" means an area of land or water designated by the department to preserve, protect, conserve, and manage wildlife, where hunting and other activities may be restricted.~~] [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-2)

§13-5-3 Appeals. Any final order of the department or board based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

Note: See chapter 91, Hawaii Revised Statutes and Hawaii Rules of Civil Procedure.

§13-5-4 Mediation. Upon receipt of a request or on the board's own initiative, the board may request that the petitioner and any affected persons identified as necessary to the resolution of the dispute to participate in mediation. Participation by the parties shall be voluntary. All requests dealing with the same subject matter shall be consolidated in a single mediation. [Eff 12/12/94; comp] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-5 Amendments. (a) Whenever any landowner or government agency whose property is directly affected by this chapter makes an application to change the boundaries or identified land uses of any subzone, rezone a subzone, establish a new subzone with certain identified land uses or when a person seeks to otherwise amend this chapter, or where the board

proposes to make a change or changes itself, the change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

(b) Procedures for amending this chapter are prescribed in section 183C-4, HRS, as amended and chapter 13-1, [~~subpart~~] subchapter 3. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a [~~hearing~~] presiding officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

(e) Any terms or conditions imposed by the board for a violation of this chapter shall be recorded with the deed instrument.

(f) For the purpose of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-7)

§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.

(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.

(c) The repair of structures shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, shoreline setback, and shoreline certification.

(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter, except as provided under section 13-5-22(P-8).

(e) Repairs or maintenance of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964 or at the time of its inclusion into the conservation district.

(f) The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant. [Eff and comp]
(Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

SUBCHAPTER 2

SUBZONES

§13-5-10 Subzones; generally. (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone [~~Designations, dated January 27, 2011."~~] Designations:(new date)", which is located at the end of this chapter and made a part of this section. Subzone designations of conservation district lands are delineated on maps on file with the department.

(b) Lands in the conservation district are classified into one of the following subzones:

(1) Protective;

(2) Limited;

(3) Resource;

(4) General; or

(5) Special.

(c) Land uses [~~permitted~~] identified in a subzone shall be restricted to those uses provided for in this chapter. [Eff 12/12/94; am 2/1/99; am 1/28/02; am 4/27/02; am 4/10/03; am 07/28/06; am 4/7/2011; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

(b) The (P) subzone shall encompass:

(1) Lands and waters necessary for protecting watersheds, water sources, and water supplies;

(2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance;

(3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and

(4) All land encompassing the Northwestern Hawaiian islands except Midway island.

(c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5-22. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The (L) subzone shall encompass:

(1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal [~~governments~~]government; and

(2) Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity, or landslides, or which have a general slope of forty [~~percent~~] per cent or more.

(c) [~~Land~~] Identified land uses [~~permitted~~] in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-13 Resource (R) subzone. (a) The objective of this subzone is to [~~develop,~~] ensure, with proper management, [~~areas to ensure sustained~~] the sustainable use of the natural resources of those areas.

(b) The (R) subzone shall encompass:

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;

(2) Lands suitable for growing and harvesting of commercial timber or other forest products;

(3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

(5) Lands and state marine waters seaward of the [~~upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore~~]

shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

(c) [~~Land~~] Identified land uses [~~permitted~~] in the resource (R) subzone are restricted to those listed in section 13-5-24. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

(b) The (G) subzone shall encompass:

(1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and

(2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

(c) [~~Land~~] Identified land uses [~~permitted~~] in the general (G) subzone are restricted to those listed in section 13-5-25. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-15 Special (S) subzone. The objective of this subzone is to provide for sustainable use of areas possessing unique developmental qualities [~~which~~] that complement the natural resources of the area. The special subzones are listed in Exhibit 2, entitled "Special [~~Subzones,"~~] Subzones", dated September 6, 1994[~~."~~], which is located at the end of this chapter and made a part of this section. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-16 Designation of subzones. (a) A landowner or government agency whose property is

directly affected by this chapter may apply to the department to establish a new subzone, rezone an existing subzone, or change a boundary or identified land uses of a subzone. The board can initiate action under this section.

(b) The application shall include the following:

(1) Name of applicant;

(2) Name of landowner(s), if different from applicant, or any person or entity with the landowner's written consent;

(3) Property description of land being affected by tax map key parcel (metes and bounds may be required when the department deems necessary);

(4) Map of area drawn to scale;

(5) Background of applicable land use commission petition, including a final decision and order (for new subzone designations);

(6) Existing subzone classification or land use zoning designations of subject property and surrounding properties;

(7) Geographic characteristics:

[~~a~~] (A) General topography, geologic conditions, and slope; and

[~~b~~] (B) Soils types and productivity rating (e.g., Agricultural Lands of Importance to the State of Hawaii (ALISH) and proposed Land Evaluation and Site Assessment (LESA));

(8) Climatic characteristics (e.g., rainfall, predominant wind direction annually);

(9) Hydrological characteristics (e.g., surface water, groundwater, drainage patterns) and applicable water area classification, if applicable, (e.g., restricted watershed, groundwater recharge area);

(10) Biological (flora and fauna) characteristics (e.g., vegetation, wildlife, specific identified species, or habitat of identified threatened or endangered species);

(11) A list of historic properties in the project area;

(12) Scenic or visual resources (e.g., significant view planes and geological features);
(13) Infrastructure evaluations (e.g., roads and access, water systems, sewage systems, drainage systems, recreational facilities, community population, income and household characteristics, and utilities availability);
(14) Review of property characteristics in relation to subzone objectives;
(15) Evaluation and recommendation of appropriate subzone designation and boundary characteristics; and
(16) Application fee of [~~$100~~] $500 and public hearing fee of $250 plus publication costs.

(c) The change in boundary or land use shall be put in the form of a proposed administrative rule change by the applicant. Designation of subzones shall be processed as an administrative rule amendment, and, as such, shall be in accordance with departmental rules and applicable statutes, and shall include a public hearing. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

Note: See ~~[§13-5-5]~~ section 13-5-5.

§13-5-17 Boundary determinations; criteria. (a) Prior to the department receiving for processing any application for a permit, if the applicant's proposed land use lies within fifty feet of a subzone boundary, the applicant shall first notify the department of the intended use and seek a determination of the precise boundary of the subzone with respect to the parcel in question. Applications shall be accompanied by a fee of [~~$50~~] $100.

(b) The notification shall include all relevant information, including topographical maps, subzone maps, and tax maps.

(c) The department shall have thirty days within which to issue its determination, after which the party seeking the permit is free to make application.

(d) The applicant can appeal the departmental

determination to the board. The board shall resolve any uncertainty regarding the location of the subzone boundary and the board's determination shall be final.

(e) In all cases, the determination of subzone boundaries shall utilize the following criteria:

(1) The boundary shall follow natural or fixed physical features;

(2) The boundary shall be defined by a series of straight lines;

(3) Where coterminous with forest reserve boundaries, the boundary shall be determined by metes and bounds descriptions of the forest reserve; [~~or~~]

(4) Where a subzone boundary follows an elevation, the boundary shall be determined by reference to topographical maps or other evidence that may be used to establish elevation; or

(5) Where the subzone boundary follows a property boundary the boundary shall be defined by the metes and bounds of the property boundary.

[Eff 12/12/94; am and comp]
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

SUBCHAPTER 3

IDENTIFIED LAND USES AND REQUIRED PERMITS

§13-5-22 Identified land uses in the protective subzone. (a) If a proposed use in the protective subzone is not presented below, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule amendment to have the proposed use added to the identified land uses.

(b) Identified land uses in the protective subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;
(3) Identified land uses beginning with letter (C) require a departmental permit; and
(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

P-1 DATA COLLECTION

(A-1) Basic data collection, research, education, and resource evaluation [~~which~~] that is temporary (less than thirty days) and results in negligible ground disturbance (small gages or monitoring devices) and does not involve a land use (e.g., botanical, archaeological, faunal surveys).

(B-1) Basic data collection, research, education, and resource evaluation [~~as identified in the exempt classes established in section 11-200-8~~] that results in a minor disturbance to natural resources or land (e.g., corings, excavations, etc.).

(C-1) Basic data collection, research, education, and resource evaluation [~~which~~] that involves a land use [~~with incidental~~] causing ground disturbance from installation of equipment (e.g., [~~rain gauges or~~] meteorological towers, radio towers, or test wells).

(D-1) [~~Basic data~~] Data collection, research, education, and resource evaluation that involves [~~a~~] permanent facilities or structures larger than 500 square feet or a land use causing significant ground disturbance or impact to a natural resource [~~(e.g. exploratory wells)~~].

P-2 FISHPONDS

[~~(A-1) Repair, strengthening, reinforcement or maintenance of a fishpond under an approved~~

~~conservation district use permit and approved management plan.~~]

(D-1) Fishpond reconstruction or construction of a new fishpond. [~~Restoration or repair of a fishpond under an approved management plan; where restoration is the act or process of returning the property to a state of utility through repair or alteration which makes possible an efficient contemporary use, such as aquaculture.~~] A management plan approved simultaneously with the permit, is also required.

P-3 KULEANA LAND USES

(D-1) Agriculture and a single family residence, if applicable, when such land use was historically, customarily, and actually found on the property. Agriculture means the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, and subsistence livestock.

P-4 [~~LANDSCAPING,~~] REMOVAL OF [~~NOXIOUS PLANTS~~] INVASIVE SPECIES

(A-1) Removal of [~~noxious plants for maintenance purposes without the use of power tools~~] invasive species including chemical and mechanical control methods, not to exceed one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that [~~does not~~] results in no, or [~~significant~~] only minor ground disturbance. [~~(e.g. weeding). Noxious plants are defined in chapter 152, HRS, and chapter 4-68, subtitle 6.~~] The department or board reserves the right to require site plan approval, departmental or board approval if it is determined that the proposed action may cause

secondary impacts on natural or cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the state. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.

B-1 Removal of invasive species including chemical and mechanical control methods, in an area greater than one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in no, or only minor ground disturbance. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause secondary impacts on natural and cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.

[~~(C-1) Landscaping, defined as alteration (including clearing) of plant cover. Such alteration shall be limited to plant materials that are endemic or indigenous and similar in character and appearance to existing vegetation in the surrounding area. Natural vegetative plant cover, where disturbed, shall be restored or replaced with endemic or indigenous planting. The introduction of alien plant species is prohibited in the protective subzone.~~]

P-5 MOORINGS AND AIDS TO NAVIGATION

(C-1) Moorings and aids to navigation. This requirement is satisfied by obtaining a permit pursuant to chapter 200, HRS.

P-6 PUBLIC PURPOSE USES

(B-1) Installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers.

(D-1) [~~Land uses undertaken by the State of Hawaii or the counties to fulfill a mandated governmental function, activity, or service for public~~] Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit [~~and~~] the public in accordance with public policy and the purpose of the conservation district. [~~Such land uses may include transportation systems, water systems, communications systems, and recreational facilities.~~

~~(D-2) Transportation systems, transmission facilities for public utilities, water systems, energy generation facilities utilizing the renewable resources of the area (e.g. hydroelectric or wind farms) and communications systems and other such land uses which are undertaken by non-governmental entities which benefit the public and are~~

~~consistent with the purpose of the conservation district.~~

~~P-7 SANCTUARIES~~

~~(D-1) Plant and wildlife sanctuaries, natural area reserves (see chapter 195, HRS) and wilderness and scenic areas, including habitat improvements under an approved management plan.~~]

[~~P-8~~] P-7 SIGNS

(B-1) Signs, including safety signs, danger signs, no trespassing signs, and other informational signs. No signs shall exceed twelve square feet in area and shall be non-illuminated. All signs shall be erected to be self-supporting and be less than or equal to eight feet above finished grade.

[~~P-9~~] P-8 STRUCTURES AND LAND USES, EXISTING

(A-1) [~~Replacement or reconstruction of existing structures and facilities as identified in the exempt classes established in section 11-200-8, except as provided in section 13-5-37 where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.~~] Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond

shall be in accordance with section 183-44 HRS, and section 183B-2 HRS.

[~~(C-1)~~] (B-1) Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance.

(B-2) Replacement or reconstruction of existing structures and facilities under a previously approved conservation district use permit where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced. Reconstruction or replacement of structures and facilities shall be subject to development standards set forth in this chapter, and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification. No enlargement of the structures and facilities is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct structures and facilities within two years of the demolition or destruction of structures and facilities.

(B-3) Replacement or reconstruction of an existing nonconforming single family residence, where the new single family residence will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the single family residence replaced. Reconstruction or replacement of any single family residence shall be subject to development standards set forth in this chapter, and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification. No enlargement

of the single family residence is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct a single family residence within two years of the demolition or destruction of the single family residence.

(C-1) Moderate alteration of existing structures, facilities, uses, and equipment.

[~~(C-2)~~] (D-1) [~~Operations, repair, maintenance, or renovation~~] Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original [~~permit or which are different from the department approved construction plans, where applicable.~~] use or different from what was allowed under the original permit. When county permit(s) are required [~~the department shall approve~~] for the associated plan(s), the department's approval shall also be required.

Note: [~~for~~] For nonconforming uses, see [~~section 13-5-37~~] section 13-5-7.

[~~(D-1) Demolition, grading, removal or alteration of topographic features.~~]

[~~P-10~~] P-9 STRUCTURES, ACCESSORY

[~~(A-1)~~] (B-1) Construction or placement of structures accessory to existing facilities [~~as identified in the exempt classes established in section 11-200-8~~] or uses.

[~~P-11~~] P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY

(C-1) Consolidation and resubdivision into an equal number of lots that does not result in increased density.

(C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the

objectives of the subzone. Consolidation followed by resubdivision shall constitute a subdivision.

(D-1) Subdivision of property into two or more legal lots of record [~~which~~] that serves a public purpose and is consistent with the objectives of the subzone.

[~~P-12~~] P-11 TREE REMOVAL

(A-1) Removal of dead or diseased[~~:~~] trees for non-commercial purposes.
[~~(1) Non-native trees; or~~
~~(2) Native trees less than six inches in diameter measured at ground level.~~]

(A-2) Removal of trees [~~which~~] that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the [~~tree~~] trees [~~if it was six inches or greater in diameter measured at ground level~~].

(B-1) Selective removal of individual trees (except that a permit is not required for tree removal allowed under P-4 (A-1) and P-11 (A-1), (A-2)) for non-commercial purposes provided that each tree is replaced on a one-to-one-basis with trees that are appropriate to the site location with preference to trees that are endemic or indigenous to Hawaii.

[~~(C-1) Removal of invasive not more than five trees or more than five trees less than six inches in diameter measured at ground level;~~

~~(D-1) Removal of more than five trees, six inches or greater in diameter measured at ground level.~~]

P-12 POWER GENERATION FROM RENEWABLE RESOURCES

(D-1) Hydroelectric, wind generation, ocean thermal energy conversion, wave, solar, geothermal, biomass, and other renewable power generation facilities from natural resources; includes

generation, conversion, and transmission facilities and access roads. Renewable energy projects shall minimize impacts to natural, cultural and recreational resources, and shall be expedited in the application review and decision-making process. A management plan approved simultaneously with the permit, is also required.

P-13 LAND AND RESOURCE MANAGEMENT

(A-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area less than one acre.

(A-2) Planting of native and endemic plants, fence maintenance, including new fence ex-closures for single plant or small native wildlife communities, in an area less than one acre. The department or board reserves the right to require a site plan approval or a departmental permit or a board permit if it is determined that the proposed action may cause secondary impacts on natural or cultural resources.

(A-3) Clearing of sand or silt from stream mouths, canals, drainage pipes, or other features for state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.

(B-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre. The department or

board reserves the right to require departmental or board approval if it is determined that the proposed action may cause secondary impacts on natural or cultural resources, or the surrounding community.

(B-2) Planting of native and endemic plants, fence maintenance, including new fence ex-closures for single plant or small native wildlife communities, in an area greater than one acre. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause secondary impacts on natural or cultural resources.

(B-3) Clearing land for fire pre-suppression and prevention, under a fire buffer plan approved by the department.

(C-1) Installation of a new fence or shelter.

(C-2) Erosion control, including replanting of trees and groundcover, placement of biodegradable or synthetic materials for slope stabilization, construction of minor swales and check dams, not to include shoreline erosion control structures.

(D-1) Cabin.

(D-2) Road construction and major erosion control projects.

(D-3) Water systems.

P-14 TELECOMMUNICATIONS

(B-1) Installation of new antenna(s) on an existing telecommunications tower, including support equipment.

(C-1) Construction of new tower at an existing site that is lower than existing towers and does not result in adverse visual impacts, and that is part of a site and system master plan.

(D-1) New telecommunications facility. A management plan approved simultaneously with the permit, is also required.

P-15 SHORELINE EROSION CONTROL

(D-1) Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation); and (3) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. Requires a shoreline certification.

P-16 BEACH RESTORATION

(C-1) Sand placement not to exceed 10,000 cubic yards per occasion, with minor sand retention structures, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.

(D-1) Sand placement in excess of 10,000 cubic yards including structures necessary to retain sand, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.

[Eff 12/12/94; am and comp]
(Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-23 Identified land uses in the limited subzone. (a) In addition to the land uses identified [~~herein~~] in this section, all identified land uses and

their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the limited subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

(3) Identified land uses beginning with letter (C) require a departmental permit; and

(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

L-1 AGRICULTURE

(C-1) Agriculture, within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.

(D-1) Agriculture, within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan approved simultaneously with the permit, is also required.

(D-1) Agricultural water systems, including pipelines.

[~~L-2 BOTANICAL GARDENS AND PRIVATE PARKS~~

~~(D-1) Botanical gardens and private parks under an approved management plan.~~

~~L-3 EROSION CONTROL~~

~~(D-1) Erosion control, flood control, and other hazard prevention devices or facilities.~~]

[~~L-4~~] (L-2) LANDSCAPING [~~AND REMOVAL OF NOXIOUS PLANTS~~]

[~~(C-1)~~] (B-1) Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

[~~C-2~~] (C-1) [~~Removal of noxious plants for maintenance purposes in an area less than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing).~~] Landscaping (including clearing, grubbing, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of less than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

(D-1) [~~Removal of noxious plants for maintenance purposes in an area of more than ten thousand~~

~~square feet that results in significant ground disturbance (e.g. clearing or grubbing).~~] Landscaping (including clearing, grubbing, grading, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of or more than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

[~~L 5 SEAWALLS AND SHORELINE PROTECTION~~

~~(D-1) Seawalls, shoreline protection devices, and shoreline structures.~~]

[(~~L-6~~)](L-3) SINGLE FAMILY RESIDENCE

(D-1) A single family residence in a [~~floodplain~~] flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter.

[~~L 7 STRUCTURES, ACCESSORY~~

~~(B-1) Construction or placement of structures accessory to an existing structure, building, or facility under an existing conservation district use permit. Accessory uses shall be allowed only if they are consistent with the purpose of the conservation district.~~]

L-4 WILDERNESS CAMP

(D-1) Establishment providing educational and recreational programs for youth and adult groups, including campsites for overnight accommodations in tents. Facilities may include unimproved access road or trail(s), portable restrooms, and one meeting shelter not to exceed 600 square feet. A management plan, approved simultaneously with the permit, is also required. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)]

§13-5-24 Identified land uses in the resource subzone. (a) In addition to the land uses identified [~~herein~~] in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in [~~sections~~] section 13-5-22 or [~~23~~] section 13-5-23, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with letter (A) require no permit from the department or board;

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

(3) Identified land uses beginning with letter (C) require a departmental permit; and

(4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

R-1 AQUACULTURE

(D-1) Aquaculture under [~~an approved~~] a management plan, approved simultaneously with the permit, is also required.

R-2 ARTIFICIAL REEFS

(D-1) Artificial reefs.

R-3 ASTRONOMY FACILITIES

(D-1) Astronomy facilities under [~~an approved~~] a management plan approved simultaneously with the permit, is also required.

R-4 COMMERCIAL FORESTRY

(D-1) [~~Commercial~~] Sustainable commercial forestry under [~~an approved~~] a management plan, approved simultaneously with the permit, is also required.

[~~R-5 LANDSCAPING~~

~~(B-1) Landscaping, defined as alteration of plant cover, including trees, in an area of ten thousand square feet or less.~~

~~(C-1) Landscaping, defined as alteration of plant cover, including trees, in an area of more than ten thousand square feet.~~]

[~~R-6~~] R-5 MARINE CONSTRUCTION

[~~(C-1)~~] (A-1) Maintenance dredging not to exceed the dredging limits for the area as previously authorized [~~by board permit~~] and dredged.

(D-1) [~~Marine construction, dredging, filling, or any combination thereof of submerged lands.~~] Dredging, filling, or construction on submerged lands, including construction of harbors, piers, marinas, and artificial reefs.

[~~(R-7)~~] R-6 MINING AND EXTRACTION

(D-1) Mining and extraction of any material or natural resource under a management plan approved simultaneously with the permit, is also required.

[~~(R-8)~~] R-7 SINGLE FAMILY RESIDENCE

(D-1) A single family residence that conforms to design standards as outlined in this chapter.

R-8 BOTANICAL GARDENS, PRIVATE PARKS, AND NATURE CENTERS

(D-1) For a profit or non-profit establishment featuring plants or other natural resources and offering tours or other nature-based, outdoors educational and recreational activities, primarily during daylight hours. Facilities may include access road, restrooms, shelters, and not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet, under a management plan approved simultaneously with the permit, is also required. [Eff 12/12/94: am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-25 Identified land uses in the general subzone. (a) In addition to the land uses identified [~~herein~~] in this section, all identified land uses and their associated permit or site plan approval

requirements listed for the protective, limited, and resource subzones also apply to the general subzone, unless otherwise noted.

(b) If a proposed use [~~subzone~~] is not presented below or in [~~sections~~] section 13-5-22, [~~23~~] section 13-5-23, or [~~24~~] section 13-5-24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

(1) Identified land uses beginning with the letter [~~prefix~~] (A) require no permit from the department or board;

(2) Identified land uses beginning with the letter [~~prefix~~] (B) require site plan approval by the department;

(3) Identified land uses beginning with the letter [~~prefix~~] (C) require a departmental permit; and

(4) Identified land uses beginning with the letter [~~prefix~~] (D) require a board permit and, and where indicated, a management plan.

G-1 OPEN SPACE

(D-1) Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.

G-2 LAND USES NOT [~~PREVIOUSLY~~] OTHERWISE IDENTIFIED

(D-1) Land uses not [~~previously~~] otherwise identified in [~~sections~~] section 13-5-22, [~~23~~] section 13-5-23, or [~~24~~] section 13-5-24, which are consistent with the objectives of the general subzone. [Eff 12/12/94; am

and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

SUBCHAPTER 4

PROCEDURES FOR PERMITS, SITE PLAN APPROVALS, AND MANAGEMENT PLANS

§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, or comprehensive management plans, and temporary variances. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson[~~,~~] or [~~his~~] a designated representative. If there is question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.

(b) Unless provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

(1) Departmental permit (see section 13-5-33);

(2) Board permit (see section 13-5-34);

(3) Emergency permit (see section 13-5-35);

(4) Temporary variance (see section 13-5-36);

[~~(5) Nonconforming uses (see section 13-5-37);~~

~~(6)~~] (5) Site plan approval (see section 13-5-38); or

[~~(7)~~] (6) Management plan or comprehensive management plan (see section 13-5-39).

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

(1) The proposed land use is consistent with the purpose of the conservation district;

(2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;

(3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone [~~Management,"~~] Management", where applicable;

(4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;

(5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;

(6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;

(7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and

(8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria.

[~~(d) For uses on submerged lands and in state marine waters the requirements of this chapter are satisfied by complying with provisions of chapters 171 (public lands), 184 (state parks), 187A, 188, 189, and 190 (marine life management), 190D (ocean leasing), 195 (natural area reserves system), 195D (conservation of aquatic life and wildlife), and 200 (boating and ocean recreation), or their implementing rules.~~] [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)]

Note: For regulation of activities in:
State Parks; see Chapter 13-146.
Forest Reserves; see Chapter 13-104.
Natural Area Reserves System; see Chapter 13-209.
Unencumbered Lands; see Chapter 13-221.
Marine Life Conservation Districts; see Title 13, Subtitle 4, Part 1.
Marine Fisheries Management Areas; see Title 13, Subtitle 4, Part 2.
Freshwater Fisheries Management Areas; see Title 13, Subtitle 4, Part 3.
Ocean Waters, Navigable Streams and Beaches; see Title 13, Subtitle 11, Part 3.

§13-5-31 Permit applications. (a) Applications for all permits and approvals provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

(1) A draft or final environmental assessment, [~~or~~] draft or final environmental impact statement, proof of an exemption or request for an exemption from the chapter 343, HRS, process, as applicable;
(2) Associated plans such as location map, site plan, floor plan, elevations, and landscaping plans drawn to scale;
(3) The proposed land use shall address their relationship with county general plans and development plans;
(4) Any other information as determined by the department;
(5) Signature of the landowner;
(6) Applicable fees; [~~and~~]
(7) A minimum of twenty copies (only one original copy required for site plan approvals) of the application and all attachments[~~.~~]; and
(8) A shoreline certification. The department may waive a certified shoreline when the applicant can provide evidence to the

satisfaction of the department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, the history of coastal hazards in the area, and whether the proposed use will or will not adversely affect the beach process or interfere with public access or public views to and along the shoreline.

(b) For [~~State~~] state and public lands, the State of Hawaii or government entity with management control over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel(s), the application shall be signed by landowners whose property interests constitute or exceed eighty-five [~~percent~~] per cent of the fee ownership of the subject parcel(s).

(c) [~~Any~~] Except for state-owned land, any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. For applications including state-owned land, the department shall review the application for completeness within sixty days from the date the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred [~~and~~] eighty day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred [~~and~~] eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a

decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions contained in section 13-5-42.

(e) No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana land as defined in this chapter:

(1) Deed of property;
(2) Land Commission Award (LCA) number;
(3) Land Patent Grant documentation;
(4) Documentation showing current ownership of the kuleana;
(5) Tax map key number;
(6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
(7) Identify legal access to the kuleana; and
(8) Identification of uses to which the kuleana land was historically, customarily, and actually found on the particular lot including, if applicable, a single family residence. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

§13-5-32 Fees. Each application shall be accompanied by [~~such~~] the filing fees [~~as~~] specified in this chapter. All fees shall be in the form of [~~cash,~~] certified or cashier's check, and payable to the State of Hawaii. The application fee for state projects shall be waived. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-33 Departmental permits. (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.

(b) In those applications whose identified land uses require a combination of board permit(s) and departmental permit(s), a board permit shall be required covering all of the proposed uses.

(c) The application for a departmental permit shall be accompanied by:

(1) An application fee of [~~$50~~] $250; and

(2) A public hearing fee of $250, plus publication costs, if applicable.

(d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(e) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:

(1) Type of permit sought;

(2) Applicant;

(3) Location of affected land (by island, district, and tax map key number);

(4) Preliminary environmental determination; and

(5) A brief description of their proposed use, including specifically any proposed use of public lands.

(f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:

(1) The name and address of the requestor;

(2) The departmental permit for which the requestor would like to receive notice of departmental determination; and

(3) The date the notice was published in the OEQC bulletin.

The department is not obligated to notify any person of its determination who does not strictly comply with

this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) [~~Any person~~] The permit applicant or any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the use that their interest is so clearly distinguishable from that of the general public may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend, or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use[~~, the necessity of an environmental impact statement,~~] or the public interest requires a board permit. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

§13-5-34 Board permits. (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:

(1) [~~An application fee of $100, plus an additional $100 per potential developed acre, or major fraction thereof,~~] The application fee which is equal to 2.5 per cent of the total project cost, but no less than $250, up to a maximum of [~~$2,000~~] $2,500; and

(2) A public hearing fee of $250 plus publication costs, if applicable.

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1[~~, subpart 5~~]. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-35 Emergency permits. (a) [~~In the event of an emergency, repair and reconstruction shall be expedited via the issuance of an emergency permit. (b) The following actions shall be processed as a departmental permit:~~

~~(1) Repair or reconstruction of a structure to the same condition as existed prior to the damage. Permits under this clause shall be expedited by the department;~~

~~(2) Reconstruction involving minor deviations (no more than twenty per cent increase in footprint) of the damaged structure, such as enlargements of a dwelling or additions to the structure; and~~

~~(3) The chairperson may designate a time frame during which authorization shall not be required for activities exempt from the building permit requirements as set forth in the applicable county building code, provided that repairs exempt from the building code~~

~~requirements shall not include any addition, change, or modification in construction or land use.~~

~~(c) The department may elect to route certain applications as board permits. This may occur when an application involves one or more of the following situations:~~

~~(1) Substantial enlargement of a structure (twenty per cent or more);~~

~~(2) Change in land use;~~

~~(3) Substantial change in the height of the structure (for example, second floor additions); or~~

~~(4) Where the department determines that a potential for substantial adverse environmental impact exists.~~

~~(d) The repair, reconstruction, or modification under this chapter are only for land uses that have been established or are legally nonconforming.~~] Notwithstanding any provision of this chapter, the chairperson or deputy director in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department. Further, the provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repair, maintenance, or operation for a public purpose use, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-emergency repair report

describing the work that was conducted within thirty days of the date of the emergency repair.

(b) Where a natural disaster has occurred, such as a hurricane, flood, tsunami, volcanic eruption, earthquake, fire, or landslide, damaged structures and land uses may be repaired or reconstructed in conformance with section 13-5-22 (P-8). The provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repairs or reconstruction of such structures and land uses for public purpose uses, which shall have a letter (A) land use designation, provided that the public utility, or agency of the county, state, or federal government provides the department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

(c) If there is a question regarding the legality of a land use or structure, the burden of proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in [~~section 13-5-37~~]section 13-5-7.

[~~(c)~~](d) Repair and [~~replacement~~] reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.

[~~(f) This section shall be effective for the period of time specified by the chairperson.~~]

[~~(g)~~](e) The application fee for an emergency permit shall be waived. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-5, 183C-6)

§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:

(1) There are special and unique circumstances applying to the proposed land use at its particular location;

(2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property;

(3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and

(4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.

(b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication [~~therefore~~] thereafter shall be approved.

(c) Temporary variances require a board permit.

(d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.

(e) The application for temporary variance shall be accompanied by:

(1) An application fee of [~~$100.~~] $250; and

(2) A public hearing fee of $250, plus publication costs, if applicable. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

[~~§13-5-37 Nonconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of nonconforming uses as defined in this chapter. The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant.~~

~~(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and~~

~~actually found on the particular lot including, if applicable, a single family residence.~~

~~(c) Any structures may be subject to conditions to ensure they are consistent with the surrounding environment.~~

~~(d) If a nonconforming structure is destroyed by any means to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.~~

~~(e) Repairs or maintenance reconstruction of the nonconforming structure shall not exceed the size, height or density of the structure which existed immediately prior to October 1, 1964 or at its inclusion into the conservation district.~~] [Eff 12/12/94; R] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)]

§13-5-38 Site [~~Plan Approval~~] plan approvals. (a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall [~~first obtain department approval~~] be approved by the department before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of $50. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

§13-5-39 Management plan approvals. (a) Where required, management plans shall be submitted with the board permit application and shall include the requirements listed in Exhibit 3, entitled "Management Plan [~~Requirements,"~~] Requirements", dated [~~September 6, 1994."~~](new date), which is located at the end of this chapter and made a part of this section.

(b) The department or board may require the preparation of a comprehensive management plan where it finds that further development may lead to significant natural, cultural, or ecological impacts within the conservation district. The geographic area, specific resources to be protected and conserved, and other content of a comprehensive management plan shall be determined by the department or board.

[~~(b)~~] (c) An annual report to the department is required which shall include the status of compliance of the permit conditions and the implementation of land uses pursuant to the approved management plan schedule. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-40 Hearings. (a) Public hearings shall be held:

(1) On all applications for a proposed use of land for commercial purposes, (excluding site plan approvals);

(2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;

(3) On applications requiring a board permit in the protective subzone; and

(4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the

property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4, 183C-6)

§13-5-41 Single family residences[~~; standards~~]. (a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards, dated [~~September 9, 2005.~~] (new date), located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen per cent.

(b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.

(c) No single family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 12/12/94; am 11/14/05; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements

listed in Exhibit 5, entitled "Fire Buffer Zone Standards", dated (new date), which is located at the end of this chapter and made a part of this section. [Eff and comp]
Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use [~~allowed~~] permitted within the conservation district is subject to the following standard conditions:

(1) The [~~applicant~~] permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

(2) The [~~applicant~~] permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

(3) The [~~applicant~~] permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;

(4) The [~~applicant~~] permittee shall comply with all applicable department of health administrative rules;

(5) The single family [~~dwelling~~] residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;

(6) The [~~applicant~~] permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of

the deed instrument, prior to submission for approval of subsequent construction plans;

(7) Before proceeding with any work authorized by the department or the board, the [~~applicant~~] permittee shall submit four copies of the construction plans and specifications to the chairperson or [~~his~~] an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the [~~applicant~~] permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

(8) [~~Any~~] Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and [~~, unless otherwise authorized,~~] shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;

(9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

(10) The [~~applicant~~] permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

(11) In issuing the permit, the department and board have relied on the information and data [~~which~~] that the [~~applicant~~] permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or

revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

(12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the [~~board~~]county department of water supply;

(13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;

(14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the [~~applicant~~] permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

(15) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the [~~applicant~~] permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;

(16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;

(17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

(18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;

(19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;

(20) Animal husbandry activities shall be limited to sustainable levels in accordance with good

soil conservation and vegetation management practices; [~~and~~]

(21) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;

(22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;

(23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

(24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;

(25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

[~~(21)~~] (26) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

(c) Deviation from any of the conditions, standards, or criteria provided [~~herein~~] in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

(1) The deviation is necessary because of the lack of practical alternatives;

(2) The deviation shall not result in any substantial adverse impacts to natural resources;

(3) The deviation does not conflict with the objective of the subzone; and

(4) The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before [~~such a~~] the deviation occurs constitutes cause for permit revocation. [Eff 12/12/94; am and comp] Auth: HRS §183C-3) (Imp: HRS §§183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) [~~All~~] Unless otherwise authorized, all time extensions shall be submitted to the department [~~thirty days before~~] prior to the expiration deadline. [~~If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the board for review.~~]

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the

board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

[~~(e)~~] (f) Temporary variances are excluded from this provision. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-44 Revocation of permits. In any case where a permittee has failed to comply with [~~any~~] one or more of the conditions contained in a permit, the board may direct the chairperson to revoke the permit. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-7)

§13-5-45 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected." [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

DRAFT

_____

William J. Aila Jr., Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

_____

Deputy Attorney General

Exhibit 1
Subzone Designations: [~~April 21, 2011~~] (new date)

(1) "H-1, Makalawena," Hawaii, June 4, 1978
(2) "H-2, Keahole Point," Hawaii, August 23,1985
(3) "H-3, Mahukona," Hawaii, August 23, 1985
(4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
(5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
(6) "H-6, Kiholo," Hawaii, August 23, 1985
(7) "H-7, Kailua," Hawaii, [~~August 23, 1985~~] (new date)
(8) "H-8, Kealakekua," Hawaii, June 4, 1978
(9) "H-9, Honaunau," Hawaii, December 14, 2001
(10) "H-10, Kauluoa Point," Hawaii, June 4, 1978
(11) "H-11, Milolii," Hawaii, August 23, 1985
(12) "H-12, Manuka Bay," Hawaii, June 4, 1978
(13) "H-13, Hawi," Hawaii, June 4, 1978
(14) "H-14, Kawaihae," Hawaii, June 4, 1978
(15) "H-15, Puu Hinai," Hawaii, June 4, 1978
(16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
(17) "H-17, Hualalai," Hawaii, June 4, 1978
(18) "H-18, Puu Lehua," Hawaii, June 4, 1978
(19) "H-19, Kaunene," Hawaii, June 4, 1978
(20) "H-20, Puu Pohakuloa," Hawaii, [~~August 23, 1985~~] (new date)
(21) "H-21, Papa," Hawaii, [~~June 4, 1978~~] (new date)
(22) "H-22, Pohue Bay," Hawaii, August 23, 1985
(23) "H-23, Puu Hou," Hawaii, June 4, 1978
(24) "H-24, Honokane," Hawaii, June 4, 1978
(25) "H-25, Kamuela," Hawaii, June 4, 1978
(26) "H-26, Nohoaohae," Hawaii, June 4, 1978
(27) "H-27, Keamuku," Hawaii, June 4, 1978
(28) "H-28, Naohueleehua," Hawaii, August 23, 1985
(29) "H-29, Puu O Uo," Hawaii, August 23, 1985
(30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
(31) "H-31, Alika Cone," Hawaii, June 4, 1978
(32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
(33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978

(34) "H-34, Ka Lae," Hawaii, June 4, 1978
(35) "H-35, Kukuihaele," Hawaii, June 4, 1978
(36) "H-36, Makahalau," Hawaii, June 4, 1978
(37) "H-37, Ahumoa," Hawaii, June 4, 1978
(38) "H-38, Puu Koli," Hawaii, June 4, 1978
(39) "H-39, Kokoolau," Hawaii, June 4, 1978
(40) "H-40, Mauna Loa," Hawaii, June 4, 1978
(41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978
(42) "H-42, Punaluu," Hawaii, [~~August 23, 1985~~] (new date)
(43) "H-43, Naalehu," Hawaii, [~~June 4, 1978~~] (new date)
(44) "H-44, Honokaa," Hawaii, June 4, 1978
(45) "H-45, Umikoa," Hawaii, June 4, 1978
(46) "H-46, Mauna Kea," Hawaii, June 4, 1978
(47) "H-47, Puu Oo," Hawaii, June 4, 1978
(48) "H-48, Puu Ulaula," Hawaii, June 4, 1978
(49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
(50) "H-50, Wood Valley," Hawaii, June 4, 1978
(51) "H-51, Pahala," Hawaii, June 4, 1978
(52) "H-52, Kukaiau," Hawaii, June 4, 1978
(53) "H-53, Keanakolu," Hawaii, June 4, 1978
(54) "H-54, Puu Akala," Hawaii, June 4, 1978
(55) "H-55, Upper Piihonua," Hawaii, June 4,1978
(56) "H-56, Kulani," Hawaii, June 4, 1978
(57) "H-57, Kilauea Crater," Hawaii, August 23, 1985
(58) "H-58, Kau Desert," Hawaii, June 4, 1978
(59) "H-59, Naliikakani Point," Hawaii, June 4, 1978
(60) "H-60, Papaaloa," Hawaii, October 22, 1993
(61) "H-61, Akaka Falls," Hawaii, November 23, 1987
(62) "H-62, Piihonua," Hawaii, June 4, 1978
(63) "H-63, Puu Makaala," Hawaii, June 4, 1978
(64) "H-64, Volcano," Hawaii, June 4, 1978
(65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978
(66) "H-66, Papaikou," Hawaii, June 4, 1978
(67) "H-67, Hilo," Hawaii, June 4, 1978

(68) "H-68, Mountain View," Hawaii, June 4, 1978
(69) "H-69, Kalalua," Hawaii, June 4, 1978
(70) "H-70, Kalapana," Hawaii, August 23, 1985
(71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
(72) "H-72, Pahoa North," Hawaii, June 4, 1978
(73) "H-73, Pahoa South," Hawaii, June 4, 1978
(74) "H-74, Kapoho," Hawaii, June 4, 1978
(75) "M-1, Honolua," Maui, June 4, 1978
(76) "M-2, Lahaina," Maui, June 4, 1978
(77) "M-3, Olowalu," Maui, June 4, 1978
(78) "M-4, Kahakuloa," Maui, June 4, 1978
(79) "M-5, Wailuku," Maui, [~~June 4, 1978~~] (new date)
(80) "M-6, Maalaea," Maui, June 4, 1978
(81) "M-7, Paia," Maui, June 4, 1978
(82) "M-8, Puu O Kali," Maui, June 4, 1978
(83) "M-9, Makena," Maui, June 4, 1978
(84) "M-10, Haiku," Maui, [~~August 23, 1985~~] (new date)
(85) "M-11, Kilohana," Maui, August 23, 1985
(86) "M-12, Lualailua," Maui, June 4, 1978
(87) "M-13, Keanae," Maui, June 4, 1978
(88) "M-14, Nahiku," Maui, June 4, 1978
(89) "M-15, Kaupo," Maui, [~~June 4, 1978~~] (new date)
(90) "M-16, Hana," Maui, August 23, 1985
(91) "M-17, Kipahulu," Maui, July 25, 1988
(92) "Mo-1, Ilio Point," Molokai, June 4, 1978
(93) "Mo-2, Molokai Airport," August 23, 1985
(94) "Mo-3, Kaunakakai," Molokai, August 23, 1985
(95) "Mo-4, Kamalo," Molokai, June 4, 1978
(96) "Mo-5, Halawa," Molokai, June 4, 1978
(97) "Lanai," June 4, 1978
(98) "Kahoolawe," June 4, 1978
(99) "0-1, Kaena," Oahu, [~~June 4, 1978~~] (new date)
(100) "0-2, Waianae," Oahu, December 13, 2002
(101) "0-3, Waimea," Oahu, January 27, 2011
(102) "0-4, Haleiwa," Oahu, August 23, 1985
(103) "0-5, Schofield Barracks," Oahu, June 4, 1978

(104) "0-6, Ewa," Oahu, June 4, 1978
(105) "0-7, Kahuku," Oahu, June 4, 1978
(106) "0-8, Hauula," Oahu, June 4, 1978
(107) "0-9, Waipahu," Oahu, June 4, 1978
(108) "0-10, Puuloa," Oahu, August 23, 1985
(109) "0-11, Kahana," Oahu, March 24, 1994
(110) "0-12, Kaneohe," Oahu, [~~March 24, 1994~~] (new date)
(111) "0-13, Honolulu," Oahu, [~~April 21, 2011~~] (new date)
(112) "0-14, Mokapu," Oahu, August 23, 1985
(113) "0-15, Koko Head," Oahu, [~~August 23, 1985~~] (new date)
(114) "K-1, Makaha Point," Kauai, June 4, 1978
(115) "K-2, Kekaha," Kauai, June 4, 1978
(116) "K-3, Haena," Kauai, August 12, 1992
(117) "K-4, Waimea Canyon," Kauai, June 4, 1978
(118) "K-5, Hanapepe," Kauai, June 4, 1978
(119) "K-6, Hanalei," Kauai, June 4, 1978
(120) "K-7, Waialeale," Kauai, June 4, 1978
(121) "K-8, Koloa," Kauai, August 23, 1985
(122) "K-9, Anahola," Kauai, June 9, 2006
(123) "K-10, Kapaa," Kauai, June 9, 2006
(124) "K-11, Lihue," Kauai, August 23, 1985

Exhibit 2
Special Subzones: September 6, 1994

(1) Hawaii Loa college special subzone. Subzone designation for educational purposes as delineated on map entitled "0-12, Kaneohe," Oahu;

(2) Haka site special subzone. Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe," Oahu;

(3) Kapakahi Ridge special subzone. Subzone designation for nursing or convalescent home purposes as delineated on map entitled "0-13, Honolulu," Oahu;

(4) Sea Life park special subzone. Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "0-15, Koko Head," Oahu;

(5) Milolii-Hoopuloa special subzone. Subzone designation for Milolii-Hoopuloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991, as delineated on map entitled "H-11, Milolii," Hawaii;

(6) Hale O Ho'oponopono special subzone. Subzone designation for educational purposes as delineated on map entitled "H-9, Honaunau," Hawaii;

(7) Limahuli Valley special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-3, Haena," Kauai.

Exhibit 3
Management Plan Requirements: [~~September 6, 1994~~] (new date)

1 General [~~Description~~] description of the proposed use (e.g., forestry, fishpond, astronomy, aquaculture, agriculture).
[~~Proposed land use in general terms~~
~~How proposed land use is consistent with the purpose of the conservation district and the property's subzone~~
~~Location map, drawn to scale~~

~~2 Existing conditions on parcel~~
~~Ownership~~
~~Resources (e.g. biological, archeological, geological)~~
~~Presence of threatened or endangered species~~
~~Constraints (e.g. flood plain, tsunami, volcanic, topography)~~
~~Existing land uses~~
~~Existing Conservation District Use Permits (CDUPs)~~
~~Access~~
~~Soils~~
~~3 Proposed land uses on parcel~~
~~For each proposed land use:~~
~~Description of proposed land use~~
~~Site plan~~
~~Justification that it is an identified land use for the subzone~~
~~Relationship to existing and other proposed land uses~~
~~Expected timing~~
~~Monitoring strategies~~
~~Environmental assessment~~
~~Site plan showing location of all existing and proposed land uses~~
~~Steps to ensure that historic preservation concerns are met~~]
2 Project location (e.g., island map, location map, site plan (drawn to scale)).

3 Natural resource assessment including descriptive information about the natural resources in the project vicinity such as biological, archaeological, cultural, geological, coastal, recreational, and scenic resources, where applicable. The presence of any threatened or endangered species shall be disclosed.

4 Natural hazard assessment including descriptive information of erosion, flooding, slope, tsunami, and volcanic hazards, where applicable.

5 A description of best management practices used during project construction and implementation (e.g., mitigation measures).

6 A description of the best management practices to be used during the lifetime of the project (e.g., mitigation measures).

7 A description of the conservation methods and applications to be used in the short term and long term (e.g., mitigation measures).

8 Description of existing uses and facilities, if any.

9 Description of proposed facilities and uses, including phases, if applicable.

[~~4~~]10 [~~Reporting~~] Activity schedule
[~~Time duration of management plan (start and end dates)~~
~~Annual reporting schedule~~]
Project schedule including description of project sequencing from project construction to project completion and on-going maintenance plans, including a description and timing of natural resource monitoring and maintenance plans.
[~~Annual reporting requirements~~] A description of the annual reporting requirements.

[~~5~~]11 Any other information or data, as required by the department.

Exhibit 4
Single Family Residential Standards: [~~September 9, 2005~~] (new date)

[~~Minimum Lot Size: 10,000 square feet~~

~~Exceptions:~~
~~1) Kuleana~~
~~2) nonconforming use~~
~~3) lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et al. v. Heirs of Ahi, et al., Civil No. 30, Fifth Circuit Court, State of Hawaii.~~]

Minimum Setback: For lots under [~~10,000 square feet to~~] one acre:

Front: 15 feet
Sides: 15 feet
Back: 15 feet

For lots over one acre:

Front: 25 feet
Sides: 25 feet
Back: 25 feet

Allowable building area extensions 36 inches in 15-foot setback 42 inches in 25-foot setback (e.g., eaves and decks).

Exceptions: Site characteristics and lot shape may be a factor in adjusting

	minimum setbacks when so determined by the board.
Shoreline Setback:	The shoreline setback line shall be established based on a setback distance from the certified shoreline of 40 feet plus 70 times the average annual coastal erosion rate, based on a coastal erosion study as defined in this chapter. No shoreline setback shall be established for any lot subject to this chapter unless the application for a shoreline setback line includes a shoreline survey certified by the department not more than 12 months prior to submission of the permit application. The shoreline setback line shall be based on the average lot depth (ALD)[1] measured from the current shoreline. For lots with an ALD of two hundred feet or less, the shoreline setback line shall be established based on the ALD of the lot, as provided in Table 1, or based on 40-feet plus 70 times the annual

[1] Average lot depth (ALD) shall be calculated as follows: (1) measure the two sides of the property that are at or near right angles to the shoreline; (2) measure the length of a line connecting the mid-point of the seaward (shoreline) side of the property to the mid-point of the landward side of the property; (3) add these three (right, left, center lines) measurements together for a total; (4)divide the total by three to obtain the ALD.

erosion rate. The applicant may choose the lesser of the two methods, but in no case shall the shoreline setback line be calculated to be less than 40 feet.

The department may waive the requirement for coastal erosion study based on supportive documentation from the applicant. Such documentation may include, but is not limited to, county or state approved coastal erosion rate data provided through the University of Hawaii, School of Ocean, Earth Science, and Technology, or evidence that the erosion rate is zero.

TABLE 1: AVERAGE LOT DEPTH

If the average lot depth is:	100 feet or less	101 to 120 feet	121 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet
Then the minimum setback distance is:	40 feet	50 feet	60 feet	70 feet	80 feet	90 feet

Maximum Developable Area (MDA): Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: [~~all enclosed (on~~

~~three sides minimum, with floor or roof structure above)living areas; above grade decks in excess on 4'-0" in width;~~] all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures. [~~;swimming pools, saunas or other developed water features (excluding naturally existing ponds, tidepools, etc.); play courts; or any other standing structures, which are accessory to the approved land use.~~]

For lots up to 14,000 square feet, the maximum developable area is 25 per cent of total lot area.

For lots [~~10,000~~] over 14,000 [~~sq. ft.~~]square feet to one (1) acre [~~÷~~], the maximum developable area is 3,500 square feet.

For lots larger than one (1) acre [~~÷~~] ,the maximum developable area is 5,000 square feet.

Exceptions: Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board.

[~~Maximum Height Limit:~~] Maximum Allowable Building Envelope: [~~The maximum height of the building shall not exceed twenty-five feet measured from the highest point of the roof structure (excluding any allowed chimney, antenna, vents, or similar protrusions) down to the lower of the existing or finished grade at the lowest corner of the building.~~] No portion of any building (excluding any allowed chimney, antenna, vents, solar panels or other renewable energy structures, or similar structures) shall protrude above the maximum allowable building envelope. The top of the maximum allowable building envelope shall be a vertical plane parallel to and twenty-five feet above the existing grade measured by vertical plumb line.

Exceptions: [~~Tsunami or flood prone areas~~] Areas within the flood zone may allow consideration for additional heights above the maximum allowable building envelop to [~~height limits to satisfy flood insurance ordinances~~] comply with the National Flood Insurance Program requirements when so determined by the board.

Compatibility Provisions:	Compatibility with surrounding environs. Structure is designed in accordance with standard conditions[~~,~~] and criteria, including: - Landscaping - screening of structures - Color of paint/surface of structure and roof - earth tones, or compatible with surrounding area - [~~DOH~~] Department of Health wastewater permit/water collection system approval - Grading/contouring of property kept to minimum with consideration of slope - All structures connected, or best alternative - In conformance to applicable building and grading code and shoreline setback provisions - One kitchen[~~1~~][2]

[~~1~~][2] "Kitchen" means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook, and refrigerate food and wash cooking utensils and dining implements.

Exhibit 5
Fire Buffer Zone Standards: (new date)

Design standards for creation and maintenance of fire buffer zones along the urban/conservation interface. Fire buffer zones shall be approved via site plan approval.

PURPOSE The goal of a fire buffer zone is to reduce the risk of fire spreading to an area, and to reduce the speed at which fire spreads, should one occur. This is accomplished by (1) reducing the amount of available fuels, (2) reducing the continuity of available fuels, both horizontally through the proper spacing of trees and shrubs, and vertically by removing the ladder of fuels that can carry fire from the surface to the tree crowns, (3) developing a high-canopy forest, (4) replacing highly-flammable flora with drought and fire resistant indigenous, endemic, or Polynesian-introduced species, and (5) encouraging community stewardship of lands in the Conservation District.

APPLICATION REQUIREMENTS

- Parcel is considered a high-risk fire prone area by an authority recognized by the department (e.g., Division of Forestry and Wildlife, or the County Fire Department).

- If landscaping is to occur on neighboring parcels, the applicant should have permission of the neighboring landowner. The chairperson may sign as landowner for parcels owned by the State.

- A Site Plan should include three elements: (1) location maps, (2) an implementation plan, and (3) a maintenance plan.

- Maps for the area should identify: topography, drainage patterns, land ownership, dominant flora

and fauna, trees greater than ten inches in diameter measured at 4.5 feet above the ground, endangered and threatened trees, and other indigenous, endemic, or Polynesian-introduced trees or shrubs, infrastructure, and known historical or archaeological sites.

- The implementation plan should show the final design of the fire protection zone, how impacts to endangered or threatened trees or shrubs, or historical or archaeological sites will be mitigated.

- The management plan should discuss how and when the fire protection zone will be maintained.

- The size of the fire buffer zone will be based upon the slope of the area, as shown in Table 2. Distances are measured from the outside of the main structure, as measured from the outside eaves and/or any attached structures.

TABLE 2: AREA OF DEFENSIBLE SPACE

ZONE	SLOPE	DEFENSIBLE SPACE
1 Area of maximum reduction	all	0-15 feet
2 Area of fuel reduction	0-20%	15-30 feet
	21-40%	15-50 feet
	>40%	15-70 feet
3 Transition Zone	0-20%	30-75 feet
	21-40%	50-100 feet
	>40%	70-125 feet

DESIGN ELEMENTS

The following are acceptable design elements for each zone:

Zone 1:

- Removal of all flammable vegetation.
- Pruning of existing trees to a height of ten feet above the ground or to one-half the height of the tree, whichever is the lowest.
- Planting of drought and fire resistant indigenous, endemic, or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of all ladder fuels beneath existing trees.

Zone 2:

- Thinning of trees and shrubs so that they stand solo, or in clumps of two or three. Recommended space between crowns is based upon slope, as summarized in Table 3.

TABLE 3: MINIMUM TREE AND SHRUB SPACING FOR ZONE 2

SLOPE	TREE CROWN SPACING	SHRUB CLUMP SPACING
0-10%	10 feet	2½ x shrub height
11-20%	15 feet	3x shrub height
21-40%	20 feet	4x shrub height
>40%	30 feet	6x shrub height

- Removal of ladder fuels.
- Mowing or cutting grasses as needed to keep them at a maximum height of 6-8 inches.

- Pruning of tree branches to a height of at least ten feet.
- Replanting of drought and fire resistant indigenous, endemic or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of dead trees.
- Annual maintenance thinning of trees as they grow in size.
- Annual removal of dead stems and branches.

Zone 3:

- Thinning of trees, with spacing based upon the tree diameter measured at 4.5 foot above the ground, as outlined in Table 4.

TABLE 4: MINIMUM TREE SPACING FOR ZONE 3

Tree Diameter (inches)	Average Stem Spacing (feet)
3	10
4	11
5	12
6	13
7	14
8	15
9	16
10	17
11	19
12	21
13	23

Tree Diameter (inches)	Average Stem Spacing (feet)
14	24
15	26
16	28
17	29
18	31
19	33
20	35
21	36
22	38
23	40
24	42

- Pruning of tree branches to a height of at least ten feet along fire or access roads.
- Annual maintenance thinning as trees grow in size.

MAINTENANCE GUIDELINES

Zones 2 and 3 are subject to the following maintenance guidelines:

- Any replanting should only be done with indigenous, endemic, or Polynesian-introduced trees and shrubs.
- No grubbing or grading is allowed for this land use.
- Slash (limbs, branches, and other woody debris) should be disposed of by removing it from site, chipping and distributing over the ground, or lopping and scattering.
- Tree stumps should remain in the ground.
- Surface (drip) irrigation lines are allowed to support new plantings.
- Applicant should provide the Office of Conservation and Coastal Lands with photographs of completed work.

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PAUL J. CONRY
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 11, 2010

SUBJECT: Response to Comments Received on a Proposal to Amend Chapter 5 of Title 13, Hawaii Administrative Rules, Entitled "Conservation District"

Dear Commenter:

Thank you for your recent comments on the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Land's (OCCL) proposal to amend Chapter 5, Title 13 Hawaii Administrative Rules entitled "Conservation District." The Department received approximately 90 written letters, hundreds of e-mail inquiries, and several hundred attendees at various public meetings on this matter throughout the State.

We have assessed all verbal, written, and e-mail comments that have been received on this matter. This input has been tremendously helpful in helping the Department improve its Administrative Rules.

We have posted a newly revised copy of the proposed rules on our website (http://hawaii.gov/dlnr/occl/), and have highlighted the various sections that have been further changed as a result of this process. For your ease of review, we have highlighted the sections that were changed in *aqua blue, as well as italics.* You may wish to compare this amended version of the proposed rule with the first draft that was the subject of all of the public hearings. Both drafts have been posted on our website so you can compare them.

The purpose of the letter is to provide you with access to these documents on our website, to provide you with a general discussion of many of the changes that have been made as a result of yours and other comments, and to inform you of when the proposed amended rule will be scheduled for decision-making by the Board of Land and Natural Resources (BLNR). This letter **is not** a point-by-point discussion of every comment contained in your comment letter. If there are changes that you do not like, of if you feel that your comments or concerns have not been addressed, you may testify on this matter at the regular BLNR meeting in which this matter will be scheduled for decision-making. Prior to the BLNR meeting on this matter, a staff report will be posted on the Department's website that will discuss ALL of the changes proposed.

EXHIBIT 2

§13-5-2 Definitions

Further refined the definition of "Accessory use" to ensure that it is subordinate to the principle use found on the same and not an abutting property.

Reduced the allowable size of a "Cabin" to 600 square feet. Also stipulated that it cannot be used for commercial purposes.

Corrected the definition of "Historic property" to make it consistent with Chapter 6E-1, Hawaii Revised Statues (HRS).

Changed the definition of "Invasive plant" to "Invasive species" as found in statute under §520A-2, HRS. This definition will support the Department's efforts to remove invasive plants and animals from the State's natural areas.

Added or refined definitions for "Minor alteration," "Moderate alteration," and "Major alteration" to clarify under what circumstances and permit levels (e.g., B-1, C-1, or D-1) these uses can be undertaken in the Conservation District.

Defined "Minor repair" to clarify under what circumstances such repairs can be undertaken without a permit (e.g., A-1). Also included language to clarify that any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with §183-44, and §183B-2 HRS.

Refined "Public purpose use" to clarify that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as "Renewable energy facilities." However, we have stipulated that an independent non-governmental public utility regulated utility may be considered a public purpose use under the definition of public purpose use.

Refined the definition of "Shelter" to include a maximum floor area of 600 square feet.

Added additional features to "Topographical features" such as "unimproved roads" and "trails."

Modified the definition of "Transient rental" to indicate that a transient rental is a single family residence or structure used for rental purposes for less than one hundred eighty consecutive days.

General Provisions

§13-5-6

Under "Penalty," restored language that requires violations to be resolved prior to filing for a Conservation District Use Application (CDUA).

§13-5-7

Under "Nonconforming uses and structures," added language to clarify that the repair of structures shall be subject to development standards set forth in this chapter (e.g., shoreline setbacks, maximum developable area, etc.), and other requirements as applicable, including, but not limited to a county building permit, shoreline setback, and shoreline certification.

Under criteria for determining subzones, changed the word "may" back to "shall" which is how it appears in the original rule.

Under criteria for determining subzone boundaries, it has been clarified that property metes and bounds needs to be identified when a subzone boundary follows a property boundary.

§13-5-22 Identified Uses, Protective Subzone

Removal of Invasive Species: Further modified this section to provide for the removal of invasive species (not just invasive plants as previously proposed). Included language that the use of herbicides and bio-controls must be in accordance with state and federal laws. Removed any references to invasive species lists, as this is confusing. Will rely on DLNR resource managers, field specialists, and existing authorities to determine what types if invasive species may be removed within the conservation district. Also changed "natural or cultural" to "natural and cultural."

Public Purpose Use: Included a section for new Site Plan Approval for the installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers. Clarified that such uses covered under public purpose uses can only be for non-profit uses. Other uses that provide public purposes or services that are for profit, which would not be covered under the definition of public purpose uses, are covered in other sections of the rules under identified uses, such as "Renewable energy facilities." However, it is stipulated that an independent non-governmental public utility regulated utility may be considered a public purpose use under the definition of public purpose use.

Structures and Land Uses, Existing: Revised language to be consistent with definition of "Minor repair" and to indicate under which circumstances minor repair, maintenance, and operation to existing structures and uses can be conducted. Also clarified that "minor alteration" of existing structures and uses requires a Site Plan Approval. "Minor alteration" is defined in the rules as an alteration that does not result in more than a ten percent increase in the size of the structure, facility, or use.

Placement or Reconstruction of Nonconforming Structures: Clarified that only a single family residence can be replaced via a Site Plan Approval. Also stipulated that such replacement is subject to development standards set forth in the rules, such as shoreline setback, shoreline certification, and other requirements as applicable. The explanation for this change is that while there may be circumstances in which the rules may not allow for the replacement of nonconforming structures or uses after they are destroyed or removed, the Department has no desire to completely divest a homeowner from the continued use of their property for residential purposes, where the subzone might otherwise prohibit such use after the structure is destroyed.

Power Generation from Renewable Resources: Clarified that geothermal and biomass may be proposed as a use in the conservation district. Also clarified that renewable energy projects, shall be "expedited in the application review and decision-making process," rather than "given preference," as was previously proposed and criticized.

Land and Resource Management: Revised the language to include invasive plant control, clearing of understory, out-planting of native or endemic plants, and invasive aquatic organism control. Included a provision that small ex-closure fences can be used to protect single plant or small native wildlife communities (less than one acre). Also included language that allows the Department or BLNR to require higher level permits if necessary. Also, under erosion control, excluded shoreline erosion control structures, which are handled as a Board Permit under §13-5-22 (P-15) of the rules.

Shoreline Erosion Control: Clarified that an application for this use must show that: (1) the applicant would be deprived of all reasonable use of such land or building without the permit; and (2) public facilities (e.g. public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g. relocation); and (3) the use will not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss. This use requires a shoreline certification.

§13-5-23 Identified Uses, Limited Subzone

Landscaping: Under all categories of permits for landscaping, revised language to qualify that if herbicides are used, it must be in accordance with state and federal laws and that the introduction of invasive species is prohibited.

§13-5-24 Identified Uses, Resource Subzone

Wilderness Camp: Clarified that a wilderness camp can be for profit or non-profit. Clarified that overnight accommodations are in tents and that facilities may include only one meeting shelter not to exceed 600 square feet.

Camp Site: Deleted this identified use from the rules. The explanation is that such facilities can have potentially significant impacts and might be better suited for other state land use districts.

Botanical Gardens, Private Parks, and Nature Centers: Revised language to clarify that such facilities can have not more than one structure for housing, administration, and maintenance not to exceed 1,200 square feet.

§13-5-30 Permits Generally

Clarified that in addition to a Management Plan, a Comprehensive Management Plan may be required. Also added language that encourages applicants to seek a determination from the Department on the type of permit required for a land use.

§13-5-31 Permit Applications

Clarified that the only application requirement that can be waived under this provision is a shoreline certification. No other application requirements can be waived under this provision. Shoreline certification application requirement requires a waiver provision because not all uses occur near the shoreline in the Conservation District. Shoreline certifications can only be waived when the applicant can provide evidence to the satisfaction of the Department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation). Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area, and the proposed activities will not adversely affect the beach process or interfere with public access or public views to and along the shoreline. This recommendation must be based on a report written by a qualified professional consultant.

§13-5-35 Emergency Permits

Deleted the word "designee" from part (a) so that only the Chairperson can authorize an emergency permit. Also removed the word "designee" from the definition of Emergency. Included language requiring "contingencies for removal methods (e.g., removal of the temporary emergency measures), estimates for the duration of the emergency measures, and future response plans." In addition, removed vague language that could have allowed the emergency measures to remain in place indefinitely. Inserted new language that clarifies that the issuance of emergency permits does not apply to an agency of the county, state, or federal government, or an independent non-governmental public utility regulated utility conducting repair, maintenance or operation for a public purpose use, which shall have a letter (A) identified land use designation. The reason for this is that the Department does not wish to constrain a public utility from restoring a critical public utility in an emergency situation that would have otherwise required an emergency permit, provided that the utility company provides a post-emergency repair report to the Department within thirty days of the repair work. Removed language that could allow the enlargement of structures or uses that are being repaired or reconstructed in the wake of a natural disaster. Added language providing that structures and uses damaged as a result of natural disasters may be repaired or reconstructed in conformance with §13-5-22 (P-8) of the rules. This ensures consistency throughout the rules for the repair and reconstruction of all structures that are either damaged or destroyed as a result of natural hazards, voluntary destruction, or other means. In addition, stipulated that the public utility, or agency of the county, state, or federal government must provide the Department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

§13-5-39 Management Plans

Added new language allowing the Department or BLNR to require the preparation of a Comprehensive Management Plan, and restored language that requires annual reporting requirement for all management plans. Clarified that a management plan must be approved simultaneously with the permit (e.g., CDUP), and added a management plan requirement to a number of the previously identified and newly proposed identified uses.

Exhibit 4

The Department had previously suggested that an applicant could potentially apply for an additional 2,000 square feet of maximum developable area (MDA). This has been deleted. The proposed rule already provides for a deviation in MDA of up to 15 percent, as approved by the BLNR. Thus, all development, whether the primary residence, decks, and pools, must be contained within the MDA, with the possibility of a 15 percent deviation as approved by the BLNR.

Revised "Maximum height limit" to "Maximum allowable building envelope." It is believed that a "buildable envelope approach" rather than a "maximum height limit" approach would be better and would reduce impacts on natural topography and view planes.

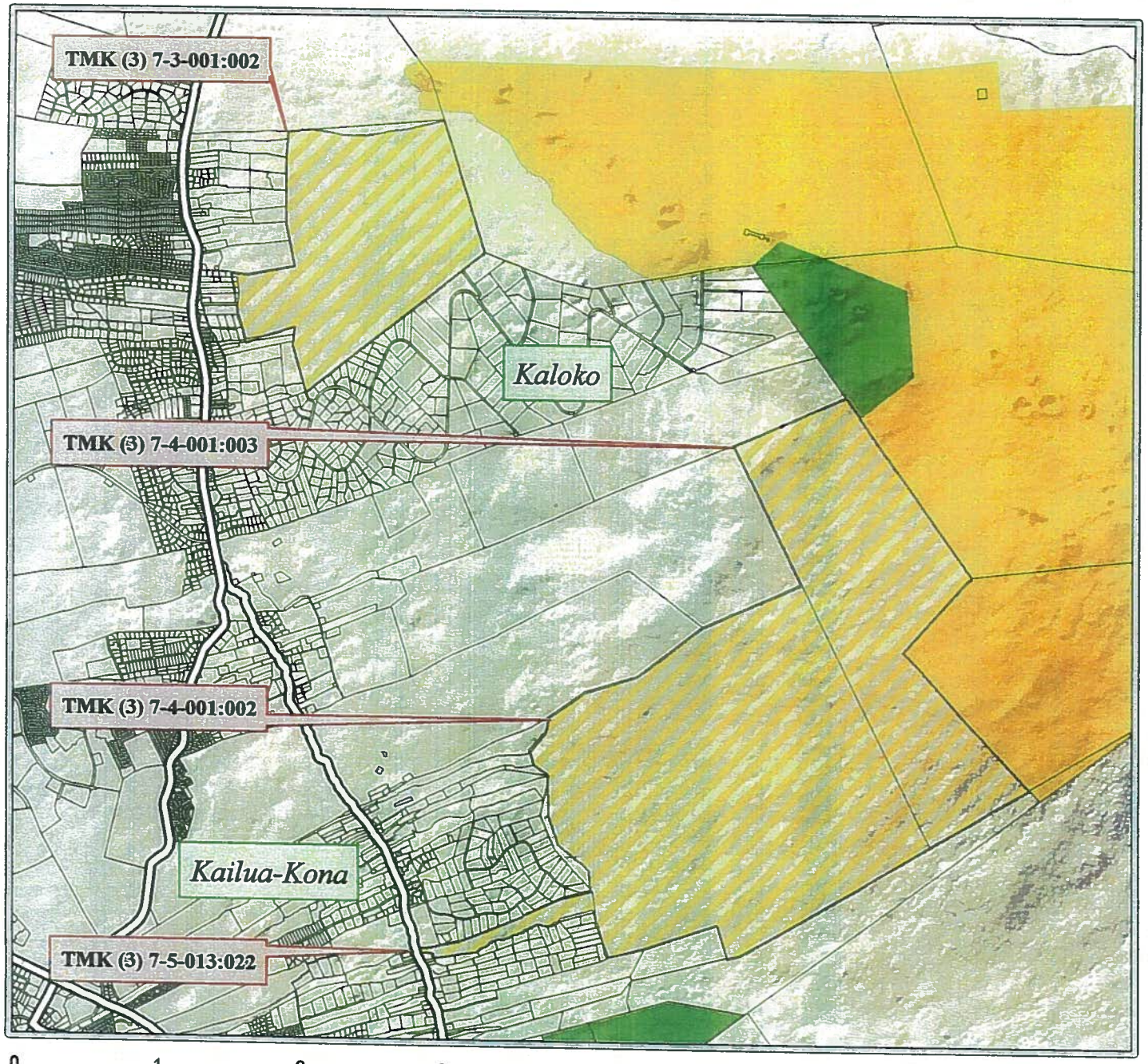
Thank you for your interest in this process. For your information, this matter will be scheduled for decision-making by the Board of Land and Natural Resources (BLNR) at one of the two BLNR meetings in November 2010. Please contact me at (808) 587-0377 if you have any questions. Please visit our website at http://hawaii.gov/dlnr/occl/.

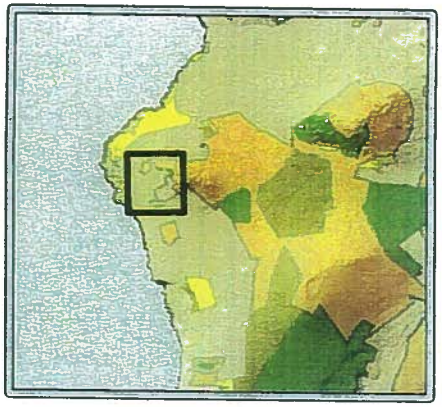
Sincerely,

Samuel J. Lemmo, Administrator

Subzone Maps

Exhibit A - Proposed Subzone Designations: Kailua, Hawaii





USGS Quadrangle H-7: Kailua

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

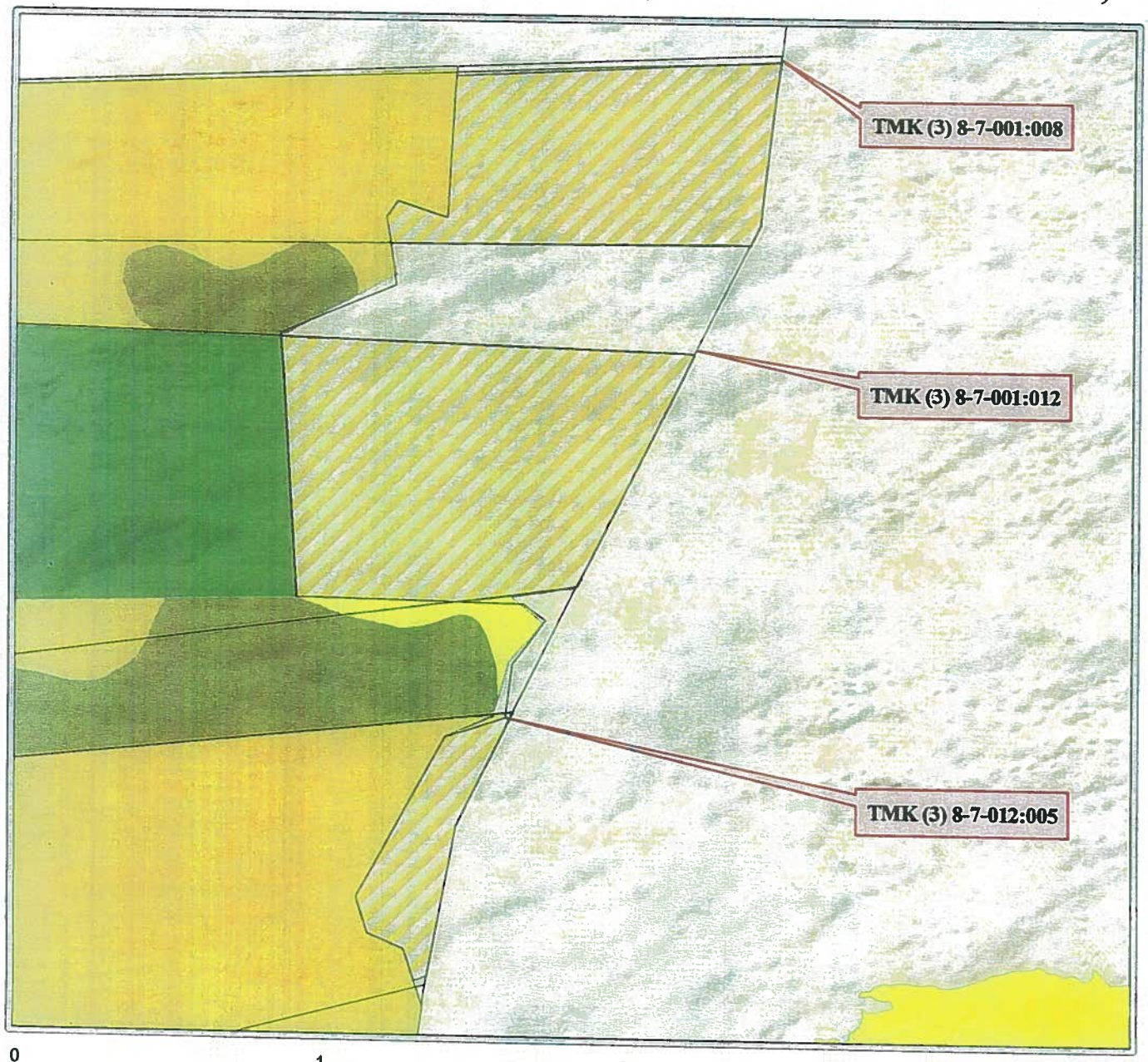
N
W E
S

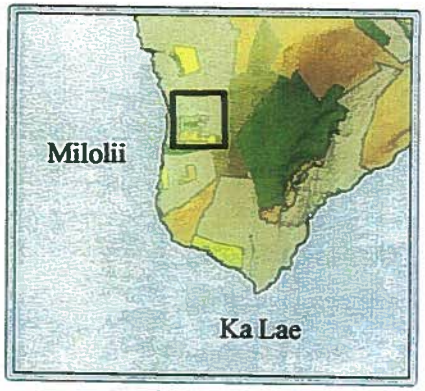
0 1 2 3 4
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit A

Exhibit B - Proposed Subzone Designations: Puu Pohakuloa, South Kona, Hawaii





USGS Quadrangle H-20: Puu Pohakuloa

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

N
W E
S

0 1 2
Miles

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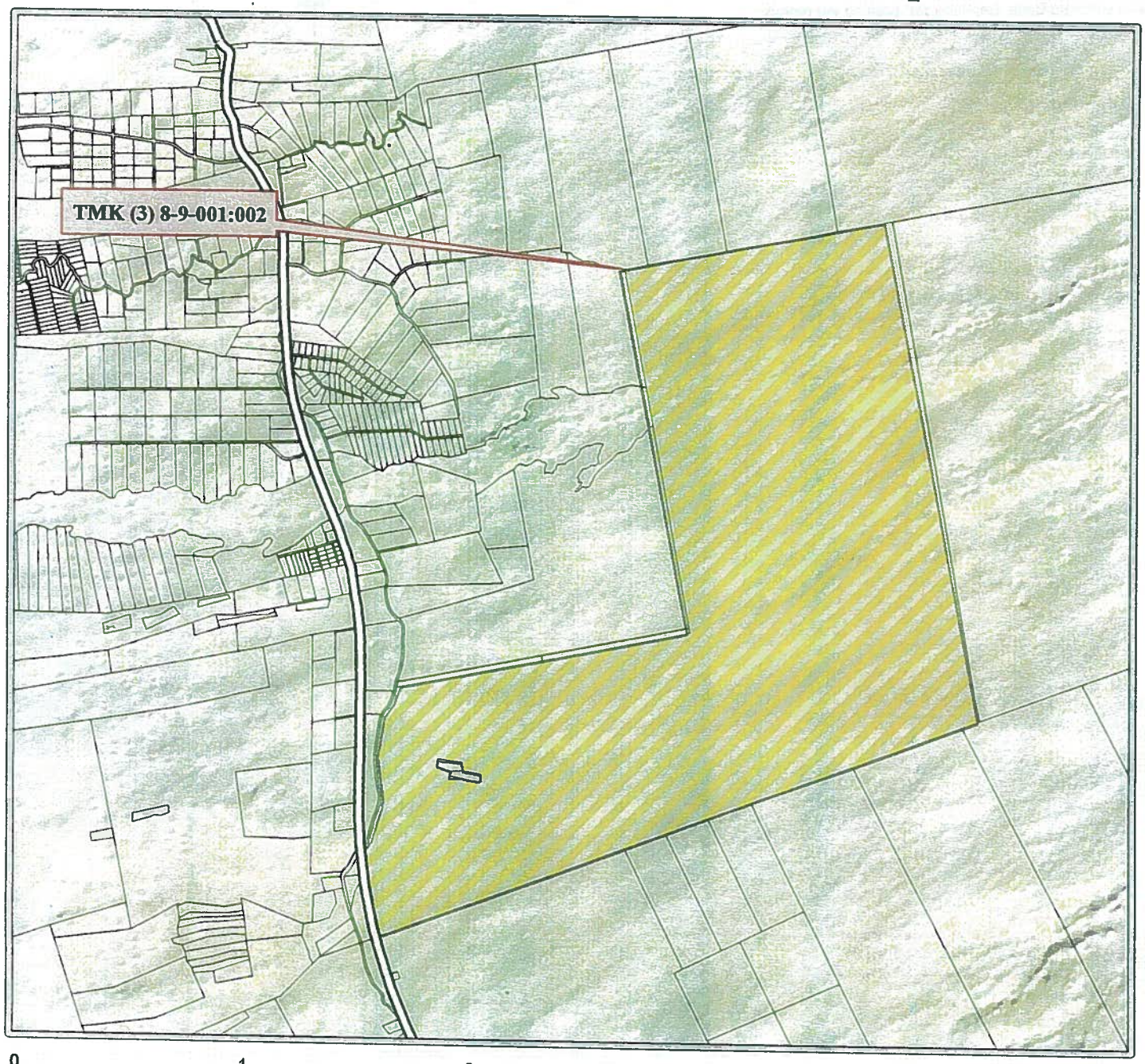
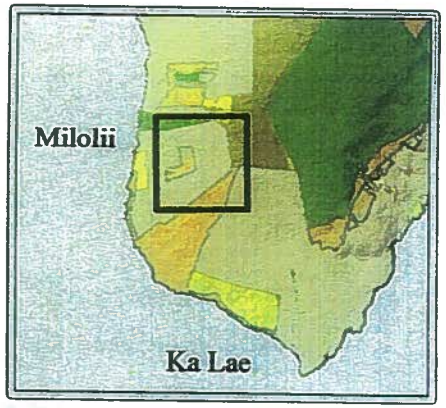
Exhibit B

Exhibit C - Proposed Subzone Designations: Papa, South Kona, Hawaii





USGS Quadrangle H-21: Papa

Conservation District Subzones

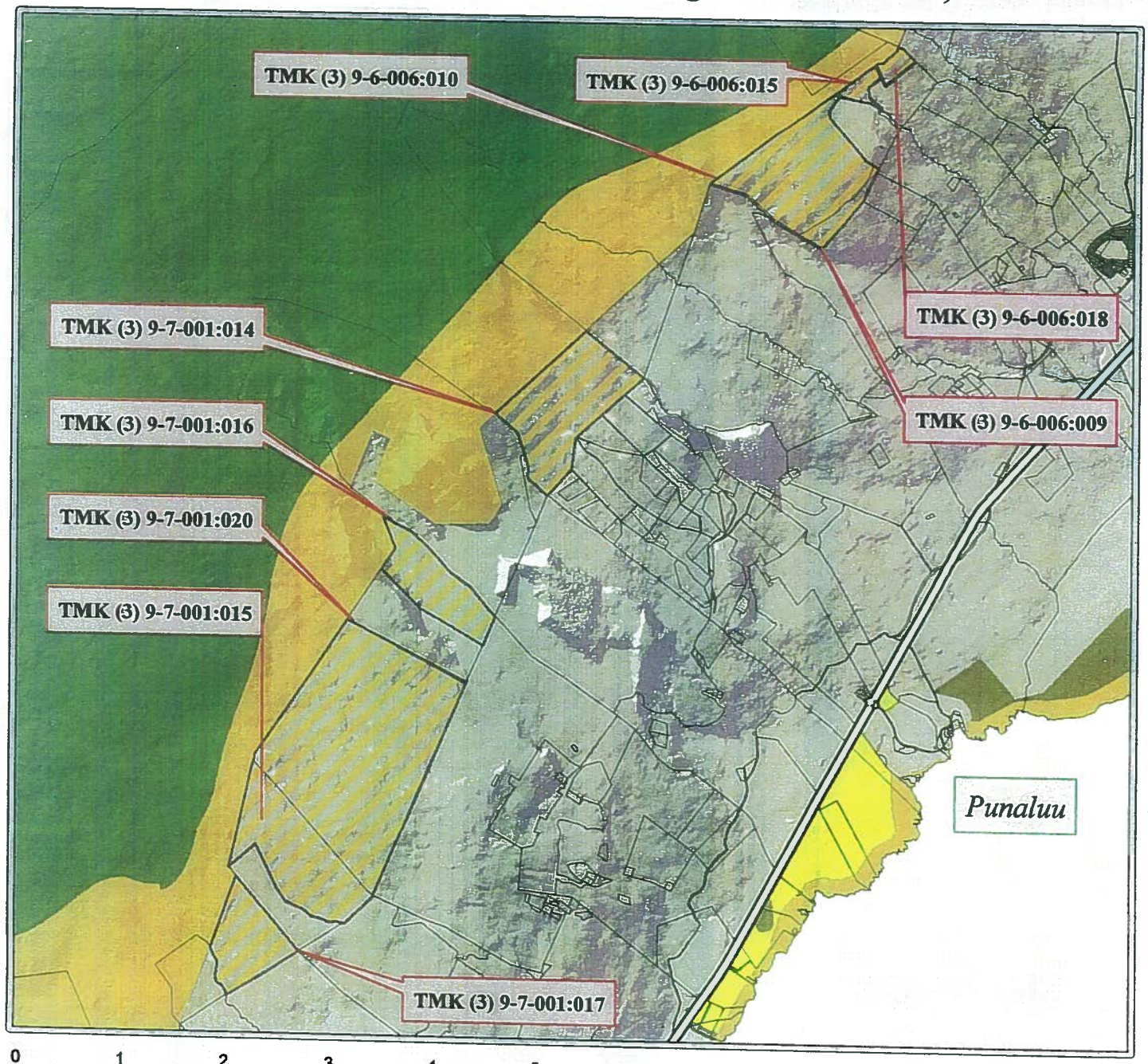
- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

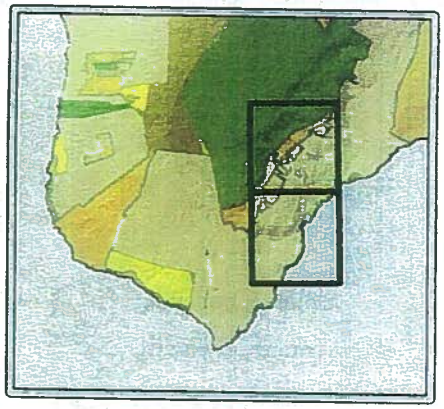
N
W E
S

0 1 2
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit D - Proposed Subzone Designations: Kau, Hawaii





USGS Quadrangles H-42: Punaluu & H-43: Naalehu

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

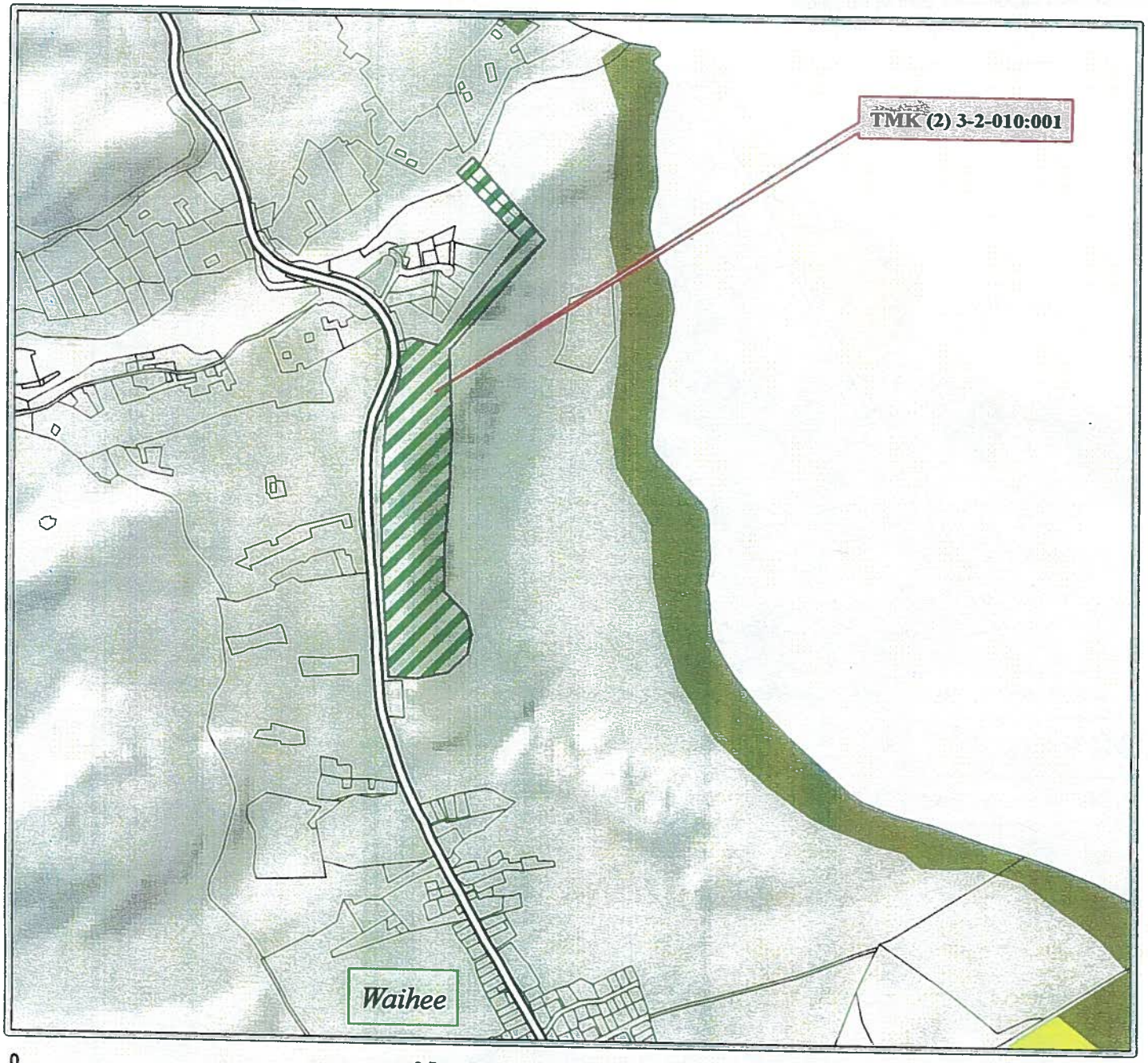
N
W E
S

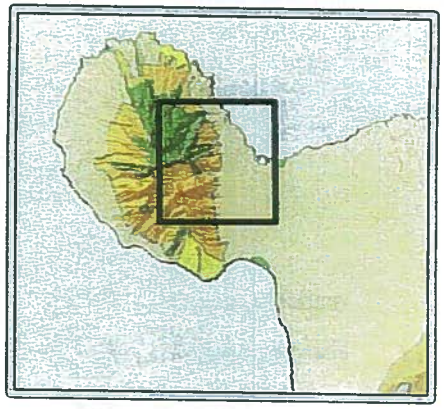
0 1 2 3 4 5
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit D

Exhibit E - Proposed Subzone Designations: Wailuku, Maui





USGS Quadrangle M-5: Wailuku

Conservation District Subzones

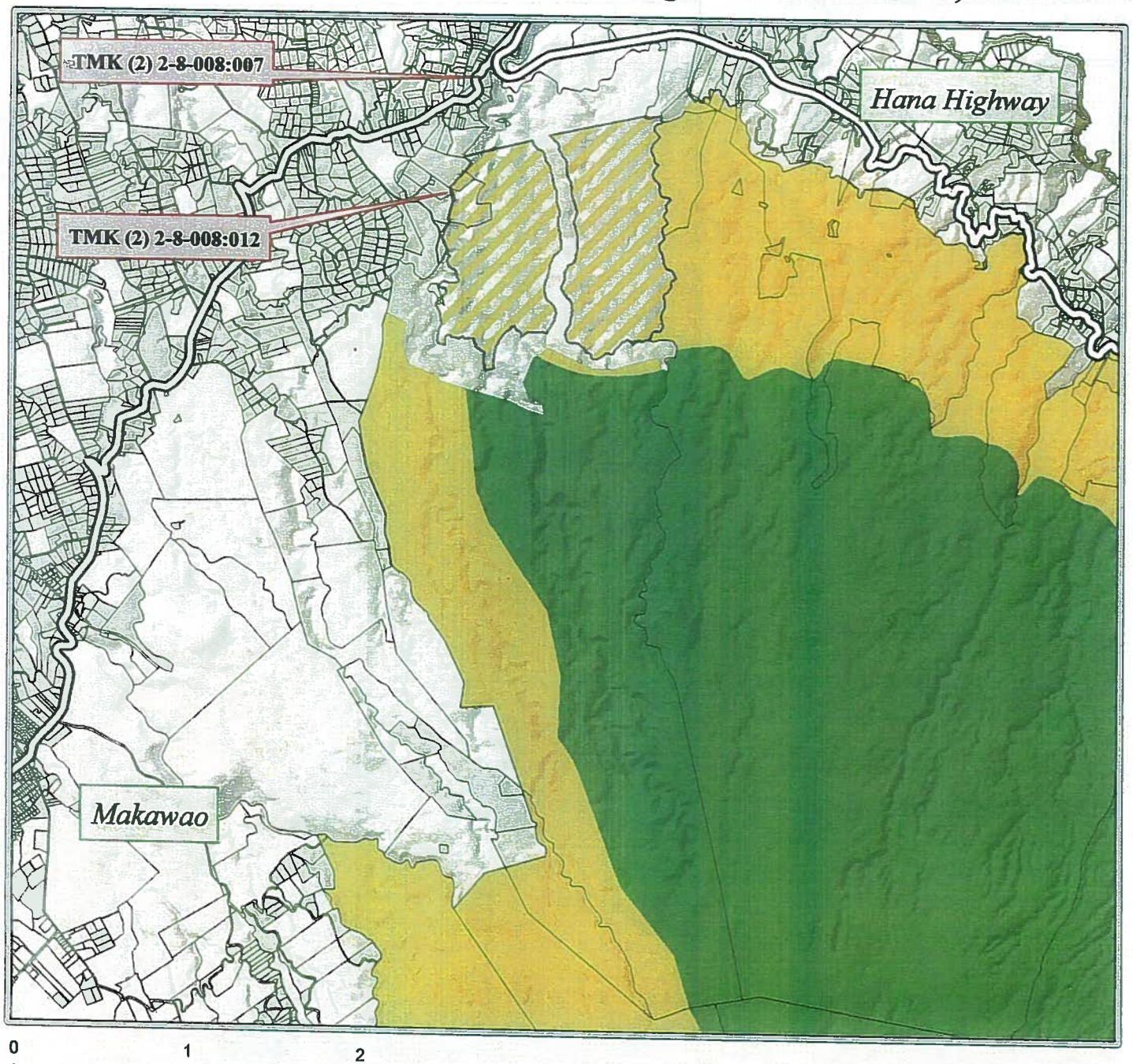
- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

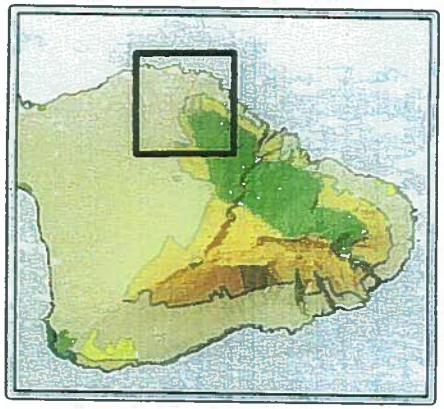
N
W E
S

0 0.5
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit F - Proposed Subzone Designations: Haiku, Maui





USGS Quadrangle M-10: Haiku

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

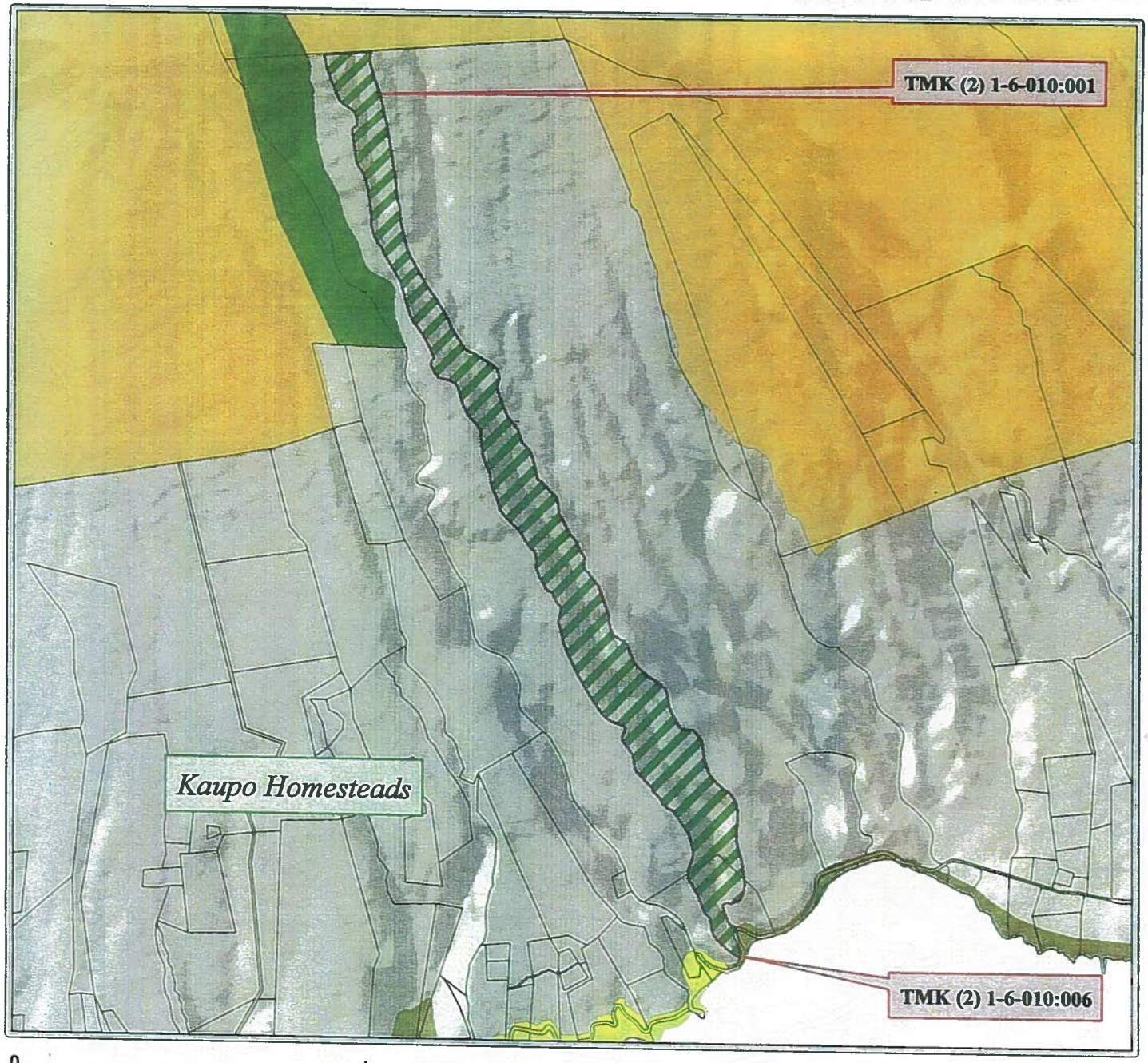
N
W E
S

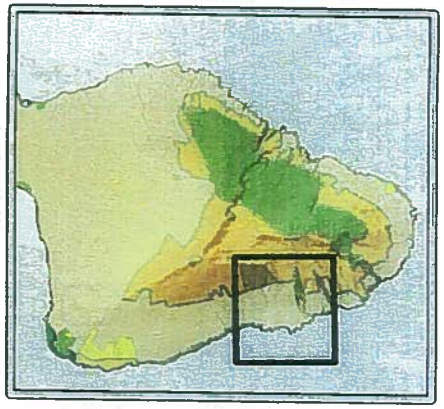
0 1 2
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit F

Exhibit G - Proposed Subzone Designation: Kaupo, Maui





USGS Quadrangle M-15: Kaupo

Conservation District Subzones

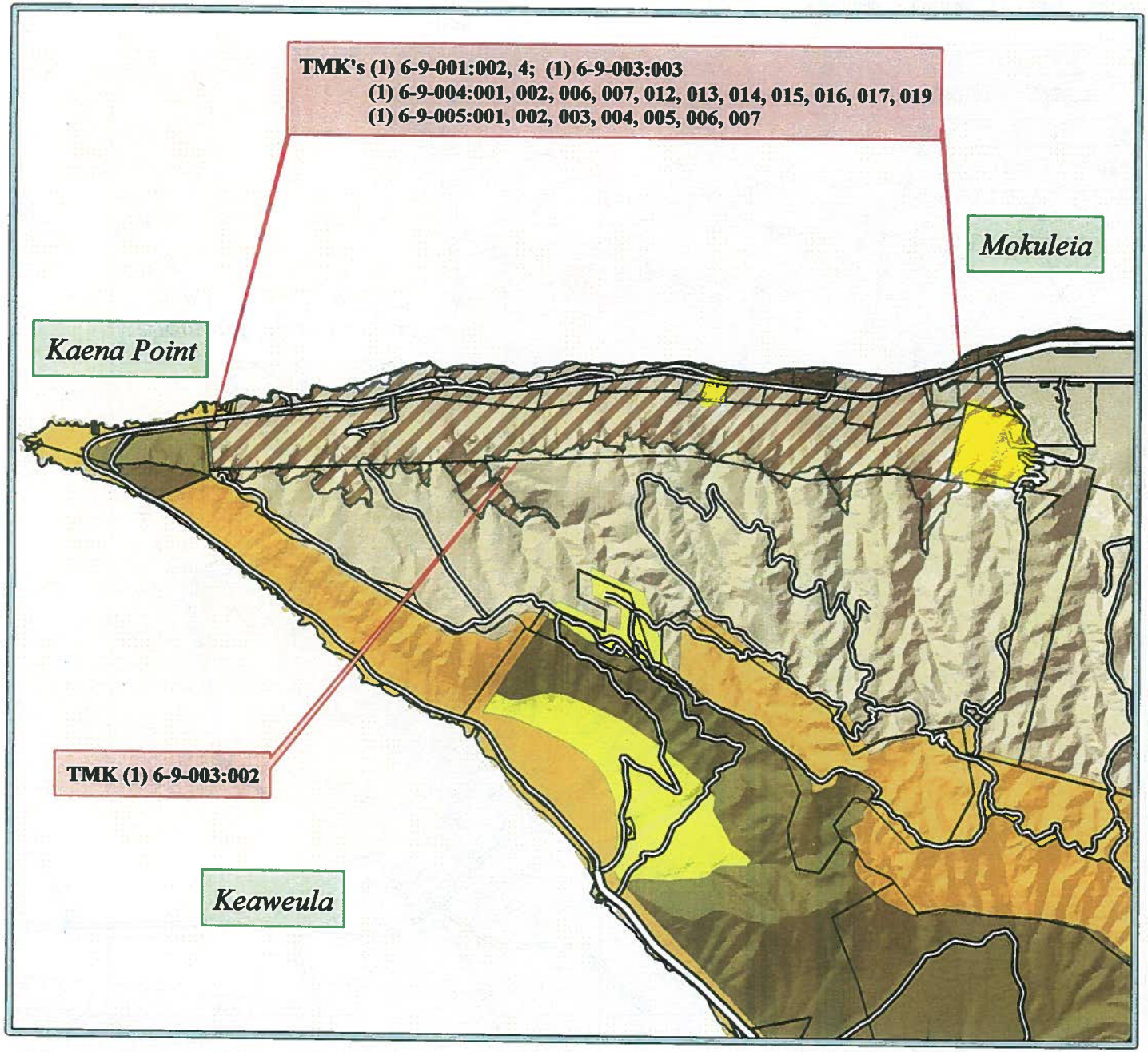
- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

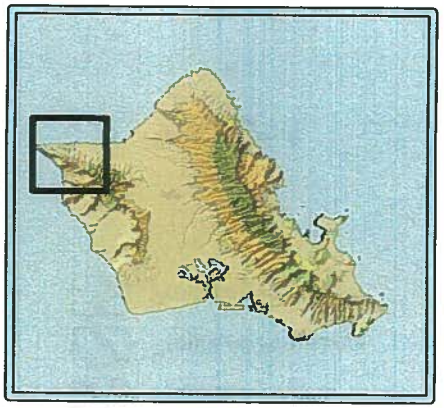
N
W E
S

0 1 2
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit H - Proposed Subzone Designations: Kaena, Oahu





USGS Quadrangle O-1: Kaena

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

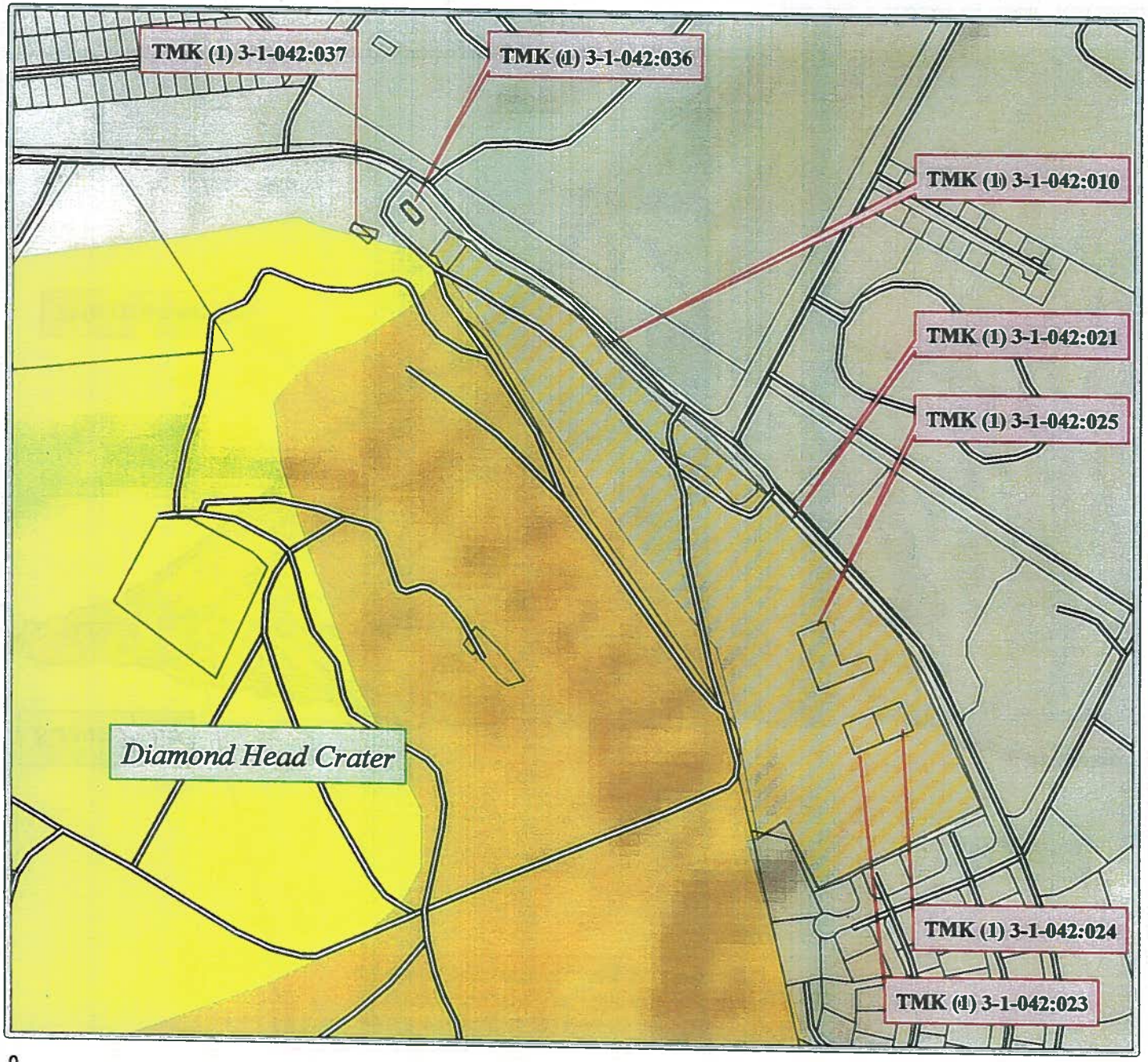
N
W E
S

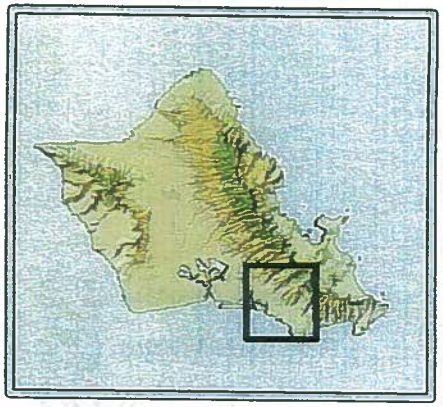
0 1 2
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit H

Exhibit I - Proposed Subzone Designations: Honolulu, Oahu





USGS Quadrangle O-13: Honolulu

Conservation District Subzones

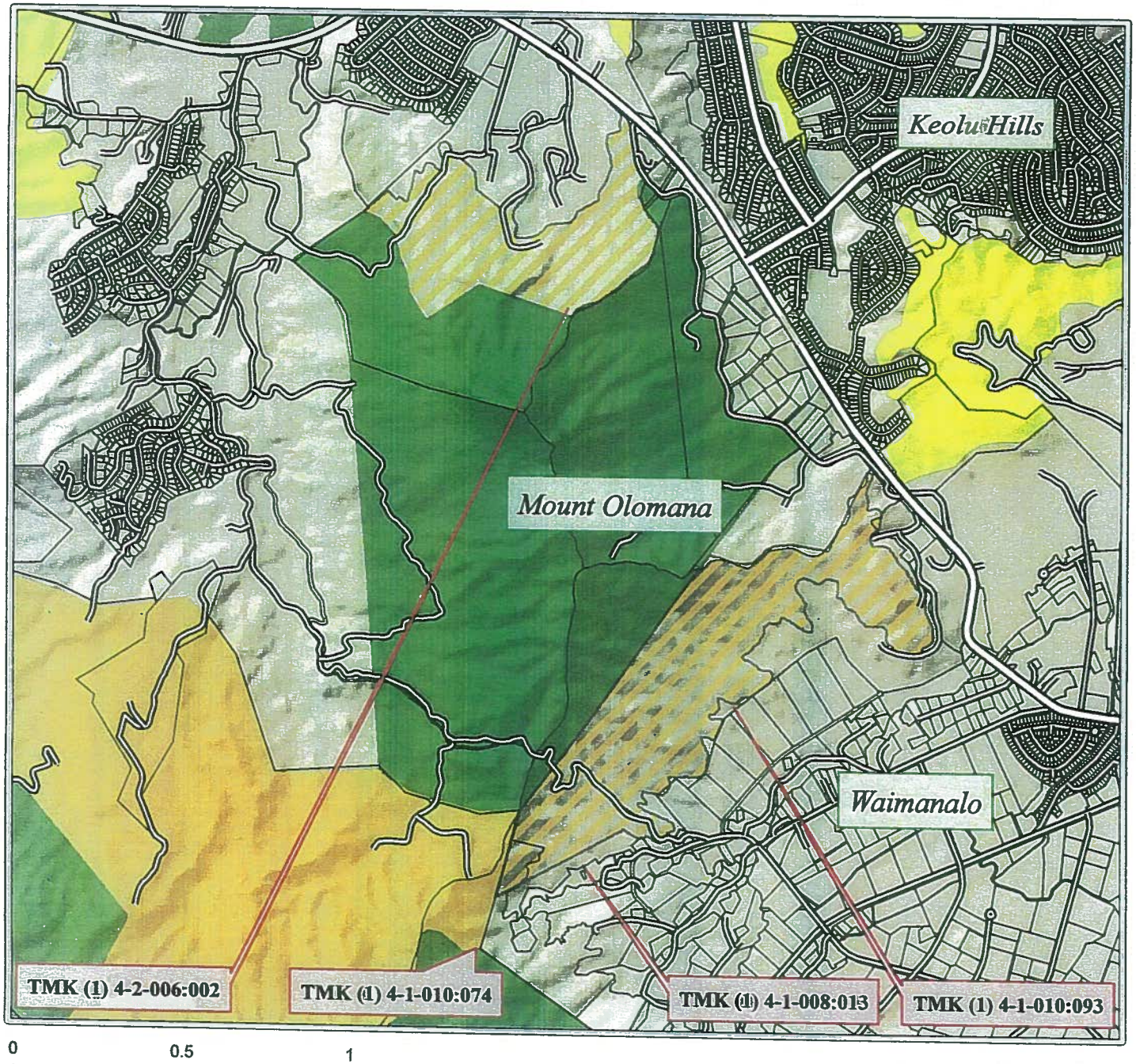
- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

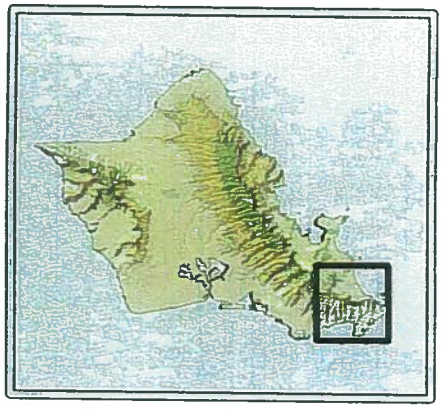
N
W E
S

0 0.25
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit J - Proposed Subzone Designations: Kailua & Waimanalo, Oahu





USGS Quadrangle O-15: Koko Head

Conservation District Subzones

- General
- Limited
- Protective
- Resource
- Special
- Proposed General
- Proposed Limited
- Proposed Protective
- Proposed Resource

N
W E
S

0 0.5 1
Miles

This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of its data.

Exhibit I