

## Chapter 25

### SPECIAL MANAGEMENT AREA

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### Article 1. General Provisions

#### Sections:

- 25-1.1 **Authority.**  
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#### Sec. 25-1.1 **Authority.**

Pursuant to authority conferred by HRS Chapter 205A, the regulations and procedures hereinafter contained are established and shall apply to all lands within the special management area of the City and County of Honolulu. (Sec. 33-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### Sec. 25-1.2 **Purpose.**

It is the City and County of Honolulu's policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to insure that adequate public access is provided to public owned or used beaches, recreation areas, and natural reserves, by dedication or other means. It is also the policy of the city and county to avoid or minimize damage to natural or historic special management area wetlands wherever prudent or feasible; to require that activities not dependent upon a wetland location be located at upland sites; to allow wetland losses only where all practicable measures have been applied to reduce those losses that are unavoidable and in the public interest. (Sec. 33-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74)

#### Sec. 25-1.3 **Definitions.**

Whenever the following words are used in this chapter, they shall have the meaning ascribed to them in this section. These definitions are intended to clarify but not replace or negate the definitions used in HRS Chapter 205A.

"Agency" means the department of planning and permitting, City and County of Honolulu.

"Applicant" includes any individual, organization, partnership, firm, association, trust, estate or corporation including any utility, and any agency of federal, state and county government.

"City and county" means the City and County of Honolulu.

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

"Crops" means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use.

"Development" means any of the uses, activities or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2).

(1) "Development" includes but is not limited to the following:

- (A) The placement or erection of any solid material or any gaseous, liquid, solid or thermal waste;
- (B) Grading, removing, dredging, mining or extraction of any materials;
- (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (E) Construction, reconstruction, demolition or alteration of the size of any structure.

(2) "Development" does not include the following:

- (A) Construction or reconstruction of a single-family residence that is less than 7,500 square feet of floor area and is not part of a larger development; provided that, for the purposes of this definition, "floor area" shall mean floor area as defined under Section 21-10.1;
- (B) Repair or maintenance of roads and highways within existing rights-of-way;
- (C) Routine maintenance dredging of existing streams, channels and drainageways;

- (D) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
  - (E) Zoning variances, except for height, density, parking and shoreline setback;
  - (F) Repair, maintenance or interior alterations to existing structures;
  - (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
  - (H) The use of any land for the purpose of cultivating, planting, growing and harvesting of plants, crops, trees and other agricultural, horticultural or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes subject to review by the authority in accordance with paragraph (3);
  - (I) The transfer of title to land;
  - (J) The creation or termination of easements, covenants or other rights in structures or land;
  - (K) Final subdivision approval;
  - (L) The subdivision of land into lots greater than 20 acres in size;
  - (M) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided, that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
  - (N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
  - (O) Structural and nonstructural improvements to existing single family residences including additional dwelling units, where otherwise permissible;
  - (P) Nonstructural improvements to existing commercial structures; and
  - (Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.
- (3) Cumulative Impact. Whenever the authority finds that any use, activity, or operation excluded in paragraph (2) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this chapter.
- (4) Significant Effect. Whenever the authority finds that a use, activity, or operation excluded in paragraph (2) may have a significant environmental or ecological effect on the special management area or special wetlands areas, that use, activity, or operation shall be defined as "development" for the purposes of this chapter.

"Director" means the director of the department of planning and permitting, City and County of Honolulu, or authorized subordinate.

"EIS" means an informational document prepared in compliance with the environmental quality commission's rules and regulations implementing HRS Chapter 343.

"Emergency permit" means special management area emergency permit as defined in HRS Section 205A-22.

"Finding of no significant impact" means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement.

"Historic wetlands" are wetlands which have been in existence for 50 years or longer.

"Minor permit" means special management area minor permit as defined in HRS Section 205A-22.

"Natural wetlands" are those wetlands not created by a human activity.

"Person" means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the state or any of its political subdivisions, or any other legal entity.

"Restoration" means a human activity that returns a wetland or former wetland from a disturbed or altered condition with lesser acreage or functions.

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

"Shoreline lot" means a shoreline lot as defined in ROH Chapter 23.

"Shoreline management permit" shall also mean special management area use permit.

"Shoreline survey" means a survey map showing the shoreline as determined by the state board of land and natural resources in accordance with HRS Section 205A-42 and the rules adopted pursuant thereto.

"Special management area" means the land extending inland from the shoreline, as established in this chapter and delineated on the maps established by the council and filed with the council and agency pursuant to HRS Section 205A-23.

"Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$500,000.00 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds \$500,000.00 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special wetland area" means that area that is both:

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

"Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line and electrical power transmission tower and distribution line.

"Valuation" shall be determined by the agency and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined in this section, the fair market value of the development.

"Wetland" means an area possessing three essential characteristics:

- (1) Hydrophytic vegetation;

(2) Hydric soils; and  
(3) Wetland hydrology,  
as defined in the "Corps of Engineers Wetlands Delineation Manual," January 1987. Wetlands shall also include ponds and mudflats, which while possessing hydric soils and wetland hydrology, may not have the commonly required hydrophytic vegetation. For the purposes of this chapter, only natural or historic wetlands are included within the protected group of wetlands. (Sec. 33-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74, 96-58, 00-11, 10-32, 11-28)

## Article 2. Special Management Area

### Sections:

- 25-2.1 Adoption.
- 25-2.2 Included area.
- 25-2.3 Wetlands.

#### Sec. 25-2.1 Adoption.

- (a) The special management area, as established by the council in this chapter and shown on the special management area maps, which maps are hereby adopted and made a part of this chapter and filed with the council on the effective date of this chapter, shall be the city and county's official special management area to be administered and enforced by the director under the provisions of this chapter.
- (b) This chapter shall apply to all development that would affect natural or historic wetlands in the City and County of Honolulu, regardless of the size of the wetland.
- (Sec. 33-2.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74)

#### Sec. 25-2.2 Included area.

The special management area shall include those areas of the island of Oahu so designated on the maps; the islands within three miles offshore of Oahu, including but not limited to those islands shown on the maps; and the northwestern Hawaiian Islands, which include Nihoa, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll and Kure Atoll. (Sec. 33-2.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### Sec. 25-2.3 Wetlands.

- (a) The definition and delineation of wetlands shall be based upon:
- (1) The "Corps of Engineers Wetlands Delineation Manual," January 1987. The definition shall incorporate the three essential technical criteria of wetlands:
    - (A) Hydrophytic vegetation;
    - (B) Hydric soils; and
    - (C) Wetland hydrology;and
  - (2) Also included within the city's definition of wetland areas are ponds and mudflats, which while possessing hydric soils and wetland hydrology may not have the commonly required hydrophytic vegetation.
- (b) Representatives of the department of land and natural resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and/or other applicable agencies will be contacted for assistance in identifying the extent and functional values of wetlands.
- (c) The publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979) and the U.S. Fish and Wildlife Service National Wetlands Inventory Maps (1978), submergent aquatic vegetation inventories, infrared aeriels and property appraiser aeriels shall be utilized for general identification of wetlands within the SMA. It is recognized, however, that such graphic sources do not depict the full extent of wetland delineations and function characteristics. Wetlands shall be identified by survey by the applicant for a special management area permit at the time of the permit application on a site-by-site basis.
- (Added by Ord. 93-74)

## Article 3. Objectives and Policies, Review and Procedural Guidelines

### Sections:

- 25-3.1 Objectives and policies.
- 25-3.2 Review guidelines.
- 25-3.3 Procedural guidelines.

#### Sec. 25-3.1 Objectives and policies.

The objectives and policies of this chapter shall be those contained in HRS Section 205A 2. (Sec. 33-3.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### Sec. 25-3.2 Review guidelines.

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

- (a) All development in the special management area shall be subject to reasonable terms and conditions set by the council to ensure that:
- (1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas and natural reserves is provided to the extent consistent with sound conservation principles;

- (2) Adequate and properly located public recreation areas and wildlife preserves are reserved;
  - (3) Provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects upon special management area resources; and
  - (4) Alterations to existing land forms and vegetation; except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquake.
- (b) No development shall be approved unless the council has first found that:
- (1) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options;
  - (2) The development is consistent with the objectives and policies set forth in Section 25 3.1 and area guidelines contained in HRS Section 205A 26;
  - (3) The development is consistent with the county general plan, development plans and zoning. Such a finding of consistency does not preclude concurrent processing where a development plan amendment or zone change may also be required.
- (c) The council shall seek to minimize, where reasonable:
- (1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;
  - (2) Any development which would reduce the size of any beach or other area usable for public recreation;
  - (3) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;
  - (4) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and
  - (5) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

(Sec. 33-3.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74)

**Sec. 25-3.3 Procedural guidelines.**

- (a) All development within the special management area shall be subject to review by the agency under the provisions of this chapter. Such review shall be pursuant to the objectives, policies and guidelines set forth herein.
- (b) Consultation. Any applicant contemplating development within the special management area is encouraged to contact the agency for information regarding procedures and general information which may have a direct influence on the applicant's proposed development.
- (c) Assessment Requirements for Special Management Area Use Permits.
  - (1) Any proposed development within the special management area requiring a special management area use permit shall be subject to an assessment by the agency in accordance with the procedural steps set forth in HRS Chapter 343. The director may allow the assessment to be conducted concurrently with the processing of the application for a special management area use permit.
  - (2) The director may waive the requirements of subdivision (1) for any proposed development which has been assessed under the National Environmental Policy Act or under HRS Chapter 343, and for which a finding of no significant impact has been filed or a required EIS has been accepted.
- (d) Review Criteria. The director shall review the proposal based on the following criteria:
  - (1) The valuation or fair market value of the development; and
  - (2) The potential effects and the significance of each effect according to the significance criteria established by Section 25-4.1.
- (e) Determination.
  - (1) For the purposes of this chapter, other than special requirements for shoreline lots as provided in Section 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under Section 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.
  - (2) The director shall issue a special management area minor permit where the director finds that the development proposal:
    - (A) Has a valuation or fair market value not in excess of \$500,000.00; and
    - (B) Will not significantly affect the special management area and/or special wetland area.

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

(Sec. 33-3.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74, 00-11, 10-32, 11-28)

**Article 4. Significance Criteria and Procedures**

**Sections:**

- 25-4.1 Significance criteria.**
- 25-4.2 Procedures.**

**Sec. 25-4.1 Significance criteria.**

In reviewing and assessing the significance of a development, the director shall confine the director's criteria to the objectives, policies and guidelines in Article 3 of this chapter. (Sec. 33-4.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11)

**Sec. 25-4.2 Procedures.**

In processing an environmental assessment or environmental impact statement, the director shall adhere to the procedures set forth in HRS Chapter 343, and the regulations adopted thereunder by the environmental quality commission. In the event that a development is not subject to the chapter, but the director requires an EIS, filing shall be with the agency. (Sec. 33-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11)

**Article 5. Permit Processing Procedures**

**Sections:**

- 25-5.1 Required materials.**
- 25-5.2 Acceptance.**
- 25-5.3 Public hearings.**
- 25-5.4 Agency recommendation.**
- 25-5.5 Action by council.**

**Sec. 25-5.1 Required materials.**

- (a) When a proposed development requires a special management area minor permit, an applicant for development within the special management area shall be responsible for submitting the following to the agency:
- (1) A completed application form (to be obtained from the agency);
  - (2) A tax map key identification of the property on which the applicant proposes development;
  - (3) A plot plan of the property, drawn to scale;
  - (4) A written description of the proposed development, a statement of the objectives of the development, and an estimate of the valuation of the development;
  - (5) A shoreline survey if the parcel abuts the shoreline, unless the proposed development is located inland of the waiver line established as provided in rules adopted by the director pursuant to HRS Chapter 91;
  - (6) Any other relevant plans or information pertinent to the analysis of the development required by the agency; and
  - (7) An application fee according to the schedule set forth in subsection (c).
- (b) When a proposed development requires a special management area use permit, an applicant for development within the special management area shall be responsible for submitting the following to the agency:
- (1) A completed application form (to be obtained from the agency);
  - (2) The items set forth in subsections (a)(2) through -(7);
  - (3) A written description of the affected environment which addresses the development's technical and environmental characteristics;
  - (4) Additional information that may be needed by the agency for determining the impacts of the proposed development on special wetland areas; and
  - (5) (A) If the director allows concurrent processing of the assessment required by Section 25-3.3(c)(1) and the application for the permit, a copy of either a draft environmental assessment or a draft environmental impact statement preparation notice.  
(B) If the director does not allow concurrent processing of the assessment required by Section 25-3.3(c)(1) and the application for the permit, a copy of either the final environmental assessment for which a finding of no significant impact has been issued, or a completed and accepted EIS.
- (c) The application fee required by this section shall be as set forth in the following schedule. Application fees are not refundable and shall be waived for city projects.
- (1) When a (major) special management area use permit application is submitted for processing, the application fee shall be \$1,200.00, plus an additional \$300.00 per acre or major fraction thereof, up to a maximum of \$15,000.00.
  - (2) When a special management area minor permit application is submitted for processing, the application fee shall be \$300.00.
  - (3) When an environmental assessment or impact statement must be prepared as a prerequisite to a (major) special management area permit required by this chapter, and is submitted to the department of planning and permitting for processing as the accepting agency, there shall be a processing fee of \$600.00 for an environmental assessment, and \$1,200.00 for an environmental impact statement.
  - (4) When a (major) special management area use permit or minor permit application, or prerequisite environmental assessment or impact statement is submitted subsequent to the applicant's being cited for undertaking development without having obtained the necessary permit, the application fee set forth above shall be doubled.
  - (5) When an application for a minor modification to a (major) special management area use permit is submitted, there shall be a fee of \$200.00.
  - (6) When an application for a (major) special management area use permit or minor permit, or a minor modification thereto, or a related environmental assessment or impact statement, is submitted for processing, there shall be a nonrefundable application review fee to determine whether the application is complete or incomplete, as follows:
    - (i) Applications with a fee of \$1,200.00 or more shall have an application review fee of \$400.00;
    - (ii) Applications with a fee of \$600.00 shall have an application review fee of \$200.00;
    - (iii) Applications with a fee of \$200.00 shall have an application review fee of \$100.00.

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

(Sec. 33-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 99-31, 00-11, 03-12, 14-4)

**Sec. 25-5.2 Acceptance.**

Upon compliance with the foregoing procedures, the director shall notify the applicant for a special management area use permit in writing within 10 working days of receipt of an application that either: (1) the application has been accepted; or (2) the application will be accepted within 10 working days of completion of the assessment required by Section 25-3.3(c)(1), as determined by either the issuance of the finding of no significant impact or the acceptance of a final EIS. In the event that an application is incomplete, written notice from the director shall inform the applicant of the specific requirements necessary to complete the application. The application shall not be accepted unless it is complete. Upon acceptance of the application, the director shall also concurrently provide the council with written notice including the date of acceptance of the application and a brief description of the proposal contained in the application. (Sec. 33-5.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11, 10-32)

**Sec. 25-5.3 Public hearings.**

- (a) The agency, pursuant to powers of delegation given to the city council under HRS Chapter 205A, shall hold a public hearing on the application for a special management area use permit at a date set no less than 21 nor more than 60 calendar days after the date on which the application is accepted, unless the 60 day period is waived by the applicant. The agency shall give adequate notice to the pertinent neighborhood boards, the owners of all property within 300 feet of the affected property as well as to all owners of all property described in the application. The agency shall give written notice, once in a newspaper of general circulation in the county and once in a newspaper of general circulation in the state, at least 20 calendar days in advance. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of public hearings.
- (b) The public hearing shall be held in the area in which the development is proposed. Whenever possible, the public hearing shall be held jointly and concurrently with any other hearing required for the same development.
- (Sec. 33-5.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11)

**Sec. 25-5.4 Agency recommendation.**

The agency shall transmit its findings and recommendations on the application for a special management area use permit to the city council for its consideration and decision within 20 working days of the close of the public hearing, unless the assessment required by Section 25-3.3(c)(1) has not been completed, in which case the deadline for transmitting the findings and recommendations to the city council shall be within 10 working days of either the issuance of the finding of no significant impact or the acceptance of a final EIS. This transmittal deadline may be extended if agreed to by the applicant. (Sec. 33-5.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11, 10-32)

**Sec. 25-5.5 Action by council.**

The council shall grant, grant with conditions, or deny any application for a special management area use permit within 60 calendar days after receipt of the agency's findings and recommendations thereon. If the council does not act on the application as provided in this section within such 60-day period, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved prior to the requested effective date of the extension. (Sec. 33-5.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11, 10-32)

**Article 6. Prohibition**

**Sections:**

- 25-6.1 Permit required.**
- 25-6.2 Permit to precede other permits.**
- 25-6.3 Special requirements applicable to shoreline lots.**

**Sec. 25-6.1 Permit required.**

No development or structure shall be constructed within the special management area without first obtaining a special management area use permit, a minor permit or being exempted pursuant to the provisions of this chapter. (Sec. 33-6.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-6.2 Permit to precede other permits.**

No agency authorized to issue permits pertaining to any development within the special management area established by this chapter shall authorize any development unless approval is first received pursuant to the provisions of this chapter. For purposes of this section, county general plans, development plans, state land use district boundary amendments and zoning changes are not permits. (Sec. 33-6.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-6.3 Special requirements applicable to shoreline lots.**

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

- (b) Landscaping. All landscaped areas, landscaping, and irrigation on or for any shoreline lot shall be contained and maintained within the property boundaries of the shoreline lot of origin, and shall under no circumstances extend:
- (1) Seaward of the shoreline as depicted on the current shoreline survey for the shoreline lot; or, in the event there is no current shoreline survey for the lot, seaward of the presumed shoreline; and
  - (2) Into any adjoining beach access right-of-way, public or private.

(Added by Ord. 10-32)

## **Article 7. Exemptions**

### **Sections:**

#### **25-7.1 Emergency permits.**

#### **Sec. 25-7.1 Emergency permits.**

- (a) In cases of emergency repairs to existing public utilities including, but not limited to, flood control structures, water, sewer, gas and electric transmission lines and highways, the respective governmental agency or public utility company is exempt from obtaining a special management area use permit pursuant to the requirements of this chapter. Two reports on such repair projects shall be recorded with the agency, one within three days after the start of the project and the other upon its completion.
- (b) In the event an impending disaster or disaster has been declared under Chapter 41, Article 11, ROH 1990, as amended, or under HRS Chapters 127 and 128, the requirements of this chapter shall be waived.

(Sec. 33-7.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 00-11)

## **Article 8. Penalties**

### **Sections:**

#### **25-8.1 Civil fine.**

#### **25-8.2 Additional fines.**

#### **25-8.3 Additional penalties for special wetland areas.**

#### **Sec. 25-8.1 Civil fine.**

Any person who violates any provision of this chapter shall, upon notice issued pursuant to Section 25-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed \$10,000.00. (Sec. 33-8.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### **Sec. 25-8.2 Additional fines.**

In addition to any other penalties, any person who performs any development in violation of this chapter shall, upon notice issued pursuant to Section 25-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed \$500.00 a day for each day in which such violation persists. (Sec. 33-8.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### **Sec. 25-8.3 Additional penalties for special wetland areas.**

In the event of a violation of the wetlands rules adopted pursuant to this chapter, the director shall, when possible, and in consultation with U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, order wetland restoration and creation measures for the damaged or destroyed wetland areas. (Added by Ord. 93-74)

## **Article 9. Enforcement**

### **Sections:**

#### **25-9.1 Notice of violation and order.**

#### **25-9.2 Effect of order Right to hearing.**

#### **25-9.3 Judicial enforcement of order.**

#### **25-9.4 Judicial enforcement of chapter.**

#### **25-9.5 Nonexclusiveness of remedies.**

#### **25-9.6 Involuntary revocation or modification of permits.**

#### **25-9.7 Voluntary revocation or modification of permits.**

#### **Sec. 25-9.1 Notice of violation and order.**

If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by mail or delivery, with a notice of violation and order. A notice of violation and order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

- (a) Contents of the notice of violation. The notice shall include at least the following information:

- (1) Date of the notice;
- (2) The name and address of the person noticed;

- (3) The section number of the ordinance which has been violated;
  - (4) The nature of the violation; and
  - (5) The location and time of the violation.
- (b) Contents of the Order.
- (1) The order may require the person do any or all of the following:
    - (A) Cease and desist from the violation;
    - (B) Correct the violation at the person's own expense before a date specified in the order;
    - (C) Pay a civil fine per recurring incident not to exceed \$10,000.00 each, in the manner, at the place and before the date specified in the order;
    - (D) Pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order, if the person has performed any development in violation of this chapter;
    - (E) In the event of a violation of the wetlands rules adopted pursuant to this chapter, the director shall have the power to order wetland restoration and creation measures for the damaged or destroyed wetland area by the person or agent responsible for the violation. If the responsible party does not complete such measures within a reasonable time following the order, the city may restore the affected wetland to its prior condition and create or restore other wetlands for the purpose of offsetting losses sustained as a result of the violation. The person or agent responsible for the original violation shall be liable to the city for the cost of such actions.  
To guide restoration and creation actions, the agency shall have the power to order the violator to develop a plan as described in the rules adopted pursuant to this chapter for the approval of the agency; or
    - (F) Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.
  - (2) The order shall advise the person of the finality of the order 20 days after the date of its mailing or delivery unless written request for a hearing is mailed or delivered to the director within said 20 days.

(Sec. 33-9.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-74, Ord. 15-19)

**Sec. 25-9.2 Effect of order--Right to hearing.**

- (a) The provisions of the order issued by the director under Section 25-9.1 shall become final 20 days after the date of the mailing or delivery of the order unless within those 20 days the person subject to the order requests in writing a hearing before the director. The request for hearing shall be considered timely if the written request is delivered or mailed and postmark dated to the director within said 20 days.
- (b) Upon receipt of the written request for hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the director in accordance with the provisions of HRS Chapter 91. Following said hearing, the director may affirm, modify or rescind the order as in the opinion of the director may be appropriate.

(Sec. 33-9.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-9.3 Judicial enforcement of order.**

The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to Sections 25-9.1 and 25-9.2. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, the civil fine imposed and that the fine imposed has not been paid. (Sec. 33-9.3, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-9.4 Judicial enforcement of chapter.**

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, in addition to any other remedy provided for under this chapter. (Sec. 33-9.4, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-9.5 Nonexclusiveness of remedies.**

The remedies provided in this chapter for enforcement of the provisions of this chapter, any rule adopted thereunder or any permit issued pursuant thereto shall be in addition to any other remedy as may be provided by law. (Sec. 33-9.5, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 25-9.6 Involuntary revocation or modification of permits.**

- (a) A special management area use permit or a special management area minor permit may be revoked or modified without the consent of the permittee for any of the following reasons:
  - (1) The permit was granted in violation of HRS Chapter 205A or this chapter;
  - (2) A material breach of the terms of the permit has occurred;
  - (3) A material violation of HRS Chapter 205A or of this chapter following the granting of the permit has occurred;
  - (4) A material mistake of fact or a material misrepresentation was made by the permit applicant in the application or otherwise made by the applicant to the agency or the council in relation to the permit application;
  - (5) A material mistake of fact was made by the council in the issuance of the permit such that the findings required to be made by the council as a prerequisite to the issuance of a permit under HRS Section 205A-26 and ROH Section 25-3.2(b) were erroneous; or
  - (6) A material change in circumstances has occurred following the issuance of the permit that would cause the development, as approved and conditioned in the permit, to pose a substantial threat to public health or safety, as determined by the state department of health, the state department of labor, the U.S. Army Corps of

Engineers, the Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other state or federal agency having jurisdiction over the development or with respect to the type of health or safety threat posed by the development.

- (b) The revocation or modification of a special management area minor permit shall be processed in accordance with rules adopted by the agency.
- (c) The revocation or modification of a special management area use permit without the consent of the permittee may be initiated by the agency pursuant to this subsection or by the council pursuant to subsection (d), and, in the case of a revocation or modification proposed by the agency, shall be processed as follows:
  - (1) Upon determining that adequate reasons may exist under subsection (a) for the revocation or modification of a special management area use permit, the agency shall hold a public hearing on the proposed revocation or modification on a date set no less than 21 nor more than 60 days following the date of sending the notice to the permittee pursuant to subdivision (2).
  - (2) The permittee and any disclosed owner of record of the property that is subject to the permit shall be given written notice by the agency of the permit proposed to be revoked or modified (by council resolution number and title, if any); the date, time, place and nature of the hearing; the reasons for the proposed revocation or modification; and in the case of a proposed modification, the nature of the modification proposed. The notice shall also contain such other matters as are prescribed in HRS Section 91-9 with respect to notice of contested case hearings. This notice shall be sent by registered or certified mail with return receipt requested addressed to the permittee and disclosed owners of record at the addresses stated in the application for a special management area use permit or at addresses otherwise specified in a written request to the agency from the permittee or such owners.
  - (3) The agency shall give written notice, once in a newspaper of general circulation in the city and once in a newspaper of general circulation in the state, at least 20, but not more than 60, calendar days in advance of the hearing. The notice shall state the location of the affected property by tax map parcel number or street address, or if neither exists, by a general statement of its location. The notice shall also state the permit being proposed to be revoked or modified (by council resolution number and title, if any); the date, time, place and nature of the hearing; and the reasons for the proposed revocation or modification; and, in the case of a proposed modification, the nature of the modification proposed.
  - (4) Notice of the proposed permit revocation or modification containing the information set forth in subdivision (3) shall be given by the agency to any pertinent neighborhood boards and a good faith effort shall be made to give such notice to the owners of all property within 300 feet of the affected property; provided that if any such property is subject to condominium property regime, notice shall be adequate if it is given to the association of apartment owners of the condominium project.
  - (5) In conducting the hearing, the agency shall provide an opportunity to all parties to provide evidence and argument on all issues involved. The agency may adopt rules pursuant to HRS Chapter 91 with respect to the conduct of hearings under this subsection.
  - (6) Following the hearing, the agency shall prepare a report thereon with its findings and recommendations and, if the report recommends revocation or modification, submit the report and a draft of a resolution to implement the recommendations of the report to the council within 30 calendar days of the close of the public hearing. For each of the reasons for proposed revocation or modification included in the notice given under subdivision (2), the report shall state whether the evidence presented at the hearing supported or did not support revocation or modification for that reason. The report shall include a recommendation that the permit be revoked, that the permit not be revoked, or that the permit be modified, and, in the case of a proposed modification, the nature of the proposed modification.
- (d)
  - (1) The council may initiate the modification or revocation of a special management area use permit by resolution.
  - (2) The resolution shall set forth the following:
    - (A) The permit being proposed to be modified or revoked, by council resolution number and title, if any;
    - (B) The reasons for the proposed modification or revocation, stated in terms giving notice as to which of the permissible reasons for modification or revocation set forth in subsection (a) are applicable;
    - (C) In the case of a proposed modification, the nature of the proposed modification; and
    - (D) A direction to the agency to process the proposed modification or revocation in accordance with this section.
  - (3) After adoption of the resolution, the clerk shall transmit the resolution to the agency for processing.
  - (4) Upon receiving the resolution, the agency shall conduct an initial investigation into the reasons set forth in the resolution for modification or revocation of the special management area use permit and, within 60 days of receipt of the resolution, the agency shall give the permittee and any disclosed owner of record of the property that is subject to the permit, written notice of a hearing on the proposed modification or revocation. The notice shall meet the notice requirements of subdivision (c)(2). The written notice shall include the reasons for the proposed modification or revocation set forth in the resolution and, in addition, any other or further reasons for modification or revocation the agency may have discovered, either during its initial investigation or otherwise.
  - (5) The agency shall hold a public hearing on the proposed revocation or modification on a date set no less than 21 nor more than 60 days following the date of sending the notice to the permittee and others pursuant to subdivision (4).
  - (6) The agency shall give written notice of the hearing, conduct the hearing, and prepare a report on the hearing, all in accordance with the provisions of subdivisions (c)(3), (4), (5) and (6). Notwithstanding subdivision (c)(6), the agency shall transmit with the report a draft of a resolution to implement the recommendation of the report, whether or not the report recommends revocation or modification of the permit.
- (e) The council may, by resolution, revoke, refuse or decline to revoke, or modify the special management area use permit within 90 calendar days of receipt of the agency's report and draft resolution; provided that any resolution for revocation or modification of the special management area use permit shall require for its adoption the affirmative vote of at least two-

thirds of the entire membership of the council. If the council fails to act within 90 calendar days of receipt of the report and draft resolution, the permit shall be deemed not to have been revoked or modified and the resolution shall be deemed to have been filed; provided that, pursuant to a written request from the permittee, the council may extend this 90-day period. Following the filing or deemed filing of a resolution proposing the revocation or modification of a special management area use permit, no further resolution may be introduced proposing the revocation or modification of the same permit for the same reasons that were stated in the resolution that has been filed, except that a further resolution may be introduced, no earlier than six months following the filing of the initial resolution, if a substantial change in circumstances has occurred following the filing of the initial resolution that would cause the development, as approved and conditioned in the permit, to pose a substantial threat to public health or safety, as determined by the state department of health, the state department of labor, the U.S. Army Corps of Engineers, the Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard or any other state or federal agency having jurisdiction over the development or the type of health or safety threat posed by the development.

- (f) The council may revoke or modify a permit pursuant to this section only for one or more of the reasons specified in subsection (a). The council shall, prior to revocation or modification of the permit, set forth written findings of fact and conclusions of law justifying the revocation or modification. If the council revokes a permit without the consent of the permittee based upon a material mistake of fact or a material change in circumstances, it must first find that the mistake or change in circumstances cannot be adequately addressed by a reasonable modification to the permit. The findings and conclusions required under this subsection may be incorporated into either the final resolution or a separate document adopted by the council.
- (g) Before a permit may be revoked or modified pursuant to this section, the council must first have held a public hearing on the proposed revocation or modification at which it has provided the permittee, any disclosed owner of the subject property, and the agency an opportunity to provide oral testimony of not less than one-half hour apiece. All other interested parties shall also be given an opportunity to provide oral testimony in accordance with council rules. The permittee, the agency, and other interested parties may provide additional oral testimony in accordance with council rules at any council or council committee meetings at which the revocation or modification may be considered. Written testimony may also be provided by any interested party.
- (h) In conjunction with the written notice of agency hearing, or by written request from the council sent by registered or certified mail with postage prepaid and return receipt requested sent at least 10 days in advance of the date of the council public hearing, the agency or the council may request the permittee to provide information at or before the agency hearing or the council public hearing, respectively, relating to:
  - (1) The current status of all other permits or governmental approvals necessary for the development approved by the special management area use permit;
  - (2) The status of the permittee's compliance with or progress toward compliance with any conditions of the permit; and
  - (3) The level and timing of expenditures made by the permittee or others with respect to various phases or aspects of the development.The agency and the council shall be entitled to, but need not, rely upon the accuracy of the information provided by the permittee in any action or proceeding to modify or revoke the special management area use permit. If the permittee fails or refuses to provide requested information, the agency or the council, as the case may be, shall be entitled to find that there has been no progress towards compliance with permit conditions or that no expenditures have been made on the development.
- (i) The corporation counsel shall, upon request of the agency or the council, advise the agency or the council with respect to the extent to which the permittee's rights to construct the development or a portion of the development may be vested under law.
- (j) Any expenditures made by the permittee or others on a development for which a special management area use permit or a special management area minor permit has been issued following:
  - (1) The receipt, by the party making the expenditure, of notice of the proposed modification or revocation of the special management area use permit for the development; or
  - (2) The first published notice of the agency hearing,whichever first occurs, and prior to the adoption, filing or deemed filing of the resolution proposing the modification or revocation, shall not be deemed an expenditure made in good faith reliance upon the issuance of the permit for purposes of determining whether development rights are vested.
- (k) For purposes of this section, a "modification" to a permit includes, but is not limited to, a modification to the plans for the development or a modification to the conditions imposed upon the development in the permit.
- (l) An owner of record of property shall be deemed to have been disclosed if a permit applicant, permittee or the owner gave notice to the agency of the owner's status either at the time of the permit application or through a formal written notice to the agency of such ownership status at least one week prior to the date on which the agency is required to give notice to disclosed owners of record.

(Added by Ord. 95-12)

**Sec. 25-9.7 Voluntary revocation or modification of permits.**

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

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

(Added by Ord. 95-12)

#### **Article 10. Appeals**

**Sections:**

**25-10.1 Appeal in accordance with state statute.**

**Sec. 25-10.1 Appeal in accordance with state statute.**

If any person is aggrieved by the order issued by the director pursuant to Sections 25-9.1 and 25-9.2, the person may appeal the order in the manner provided in HRS Chapter 91; provided, that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction. (Sec. 33-10.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### **Article 11. Rules**

**Sections:**

**25-11.1 Wetlands rules.**

**Sec. 25-11.1 Wetlands rules.**

The director may adopt rules pursuant to HRS Chapter 91 and not inconsistent with the provisions of this chapter, relating to wetlands within the special management area, including but not limited to, rules establishing standards for development and for permits for development in special wetland areas; additional special management area permit application requirements and review criteria relating to wetlands standards for nonconforming activities in special wetland areas; standards for determining the existence and boundaries of special wetland areas; additional penalties and enforcement provisions relating to violations of the wetlands rules or special management area use permit conditions relating to wetlands, including standards for requiring wetlands restoration or creation and alternatives thereto; and standards for inclusion of wetlands conditions in special management area use permits. (Added by Ord. 93-74)

#### **Article 12. Severability**

**Sections:**

**25-12.1 Invalid provisions.**

**Sec. 25-12.1 Invalid provisions.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Sec. 33-11.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Sec. 25-11.1, R.O. 1990; Am. Ord. 93-74)